ICJ AO Litigation Notes Digest

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Litigation Note on Corporate Conduct

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Cover Illustration and Layout

- Rossella Recupero, CIEL

For any questions, please contact
- Joie Chowdhury, Senior Attorney & Climate Justice and Accountability Manager at CIEL: jchowdhury@ciel.org
- Aditi Shetye, Lead of Strategic Litigation at WYCJ: aditi@wy4cj.org

About this publication

Background

On 23 July 2025, the International Court of Justice (ICJ) delivered its historic unanimous advisory opinion (AO) on States' obligations in relation to climate change. Following the landmark climate advisory opinions from the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights, the ICJ provided exceptional clarity regarding the scope and content of States' duties under international law in the context of the climate crisis. This clarity has the potential to substantially enhance and inform ongoing climate cases as well as future claims before domestic, regional, and international courts. Indeed, since its issuance, the opinion has already been quietly and pervasively taken up across the litigation landscape.

To translate the ICJ AO's normative clarity into practical litigation tools, a coalition of climate litigation practitioners have developed this compendium of structured "Litigation Notes". These notes are designed to assist lawyers in integrating relevant conclusions of the ICJ AO into ongoing and future cases before domestic, regional, and international courts and quasi-judicial bodies towards advancing climate justice.

The litigation notes break down the opinion by topic, prioritizing topics particularly charged in courts at present and/or critical for evolving strategies and the next "generation" or phase of climate litigation. The notes do not aim to be comprehensive in scope. Each contains sections on:

- Key excerpts (including paragraph numbers and specific references) of the most relevant text from the opinion
- Situating the core findings in examples from the broader jurisprudential landscape to highlight what types of cases and claims could use such excerpts

The compendium also includes a list of selected excerpts of overarching importance.

This thematic brief is part of a broader litigation notes compendium organized by topic; the full compilation is available here: www.ciel.org/reports/icj-litigation-notes-digest

Litigation Note on Corporate Conduct

Authors: Louise Fournier, Danilo B. Garrido Alves, and Nomasango Masiye-Moyo[48]
Reviewers: Harro van Asselt and Nikki Reisch[49]
Research Support: Jeanne Gachet[50]

Introduction

The International Court of Justice (ICJ)'s Climate Advisory Opinion (AO) was primarily concerned with the obligations of States under international law relevant to the protection of the climate system. As a result, most of the findings by the Court in relation to corporate conduct are in relation to the duties of States to act with due diligence and to regulate private actors.

Importantly, one of the most progressive findings of the Court was that States that fail to prevent significant harm to the climate system and other parts of the environment as a result of fossil fuels (including their production, consumption, licensing, and subsidizing) could be in breach of their international legal obligations. This unusual singling out of the fossil fuel industry, albeit unsurprising considering its role in the climate crisis, should nonetheless not go unnoticed by litigators and signals a potential path forward in the new era of climate litigation post-Advisory Opinions. Two sections follow: key excerpts from the AO and categories of climate litigation for which those excerpts may be relevant.

Relevant Excerpts from the ICJ AO

The ICJ AO includes important findings on corporate conduct, even if framed in terms of States' primary obligations for breaches of international law caused by private actors under their control and jurisdiction. The ICJ confirmed that the conduct (actions/omissions) of non-state actors fall within the scope of states' international legal obligations.

Para. 94: "In this regard, the Court is further of the view that the relevant conduct for the purposes of these advisory proceedings is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions. The Court considers that the material scope of its inquiry encompasses the full range of human activities that contribute to climate change as a result of the emission of GHGs, including both consumption and production activities. This interpretation is confirmed by the understanding of most of the participants who replied to

[48] Greenpeace International, Greenpeace International, and Natural Justice, respectively. Author names are in alphabetical order.
[49] University of Cambridge and Center for International Environmental Law (CIEL), respectively.
[50] Greenpeace International.

the question posed by a Member of the Court concerning 'the specific obligations under international law of States within whose jurisdiction fossil fuels are produced'. **These participants submitted that obligations pertaining to the protection of the climate system do not rest exclusively with consumers and end users, but also include activities such as ongoing production, licensing and subsidizing of fossil fuels.**" (*emphasis added*)

Para. 95: "The Court's inquiry must therefore have a broad material scope encompassing States' obligations concerning all actions or omissions of States, and of non-State actors within their jurisdiction or effective control, that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions."

A. State obligations to act with due diligence and regulate the conduct of private actors

Stringent due diligence

States must exercise stringent due diligence, in line with the best available science, to ensure that private actors under their control and jurisdiction do not cause significant harm to the climate system and other parts of the environment. This entails not only regulating private actors, but also monitoring and enforcing regulations under "stringent due diligence."

Para. 132: "'[a] State is . . . obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State' (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 56, para. 101)."

Para. 138: "Under these circumstances, the Court recognizes that the standard of due diligence for preventing significant harm to the climate system is stringent .... Moreover, as the Court has explained, due diligence 'entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control' *(Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I), p. 79, para. 197*). As concerns climate change, a heightened degree of vigilance and prevention is required."

Para. 282: "As far as climate change is concerned, such appropriate rules and measures include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system. Adaptation measures reduce the risk of significant harm occurring and are therefore also relevant for assessing whether a State is fulfilling its customary obligations with due diligence. **These rules and measures must regulate the conduct of public and private operators within the States' jurisdiction**

or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation." (*emphasis added*)

Best available science

Para. 284: "The standard of due diligence may also become more demanding in the light of new scientific or technological knowledge. The Court is aware that scientific research on climate change is well developed. In this regard, reports by the IPCC constitute comprehensive and authoritative restatements of the best available science about climate change at the time of their publication."

Para. 283: "The Court considers that the availability of, and the need to acquire and analyse scientific and technological information is another important factor. Scientific information may provide the necessary evidence to assess the probability and seriousness of possible harm, informing the required standard of due diligence. Thus, where there is generally recognized scientific evidence that it is highly probable that significant harm will occur, the standard of due diligence will be more demanding for all States (see paragraph 138 above)."

Temperature Target

The relevant temperature threshold for private actors such as fossil fuel companies to aim for in their GHG emissions reduction plans is below 1.5°C, as the primary temperature goal under the Paris Agreement.

Para. 242: "...the object and purpose of the Agreement set out in Article 2, i.e. to hold the increase in the global average temperature to below 1.5°C, which the Court has interpreted to be the primary temperature goal under the Agreement (see paragraph 224 above)."

Domestic obligations to achieve NDC targets

Under the Paris Agreement, a Party's Nationally Determined Contributions (NDCs) create binding legal obligations, including to adopt domestic measures and to regulate private actors in order to meet the NDC targets.

Para. 252: "Accordingly, since the domestic mitigation obligations under Article 4, paragraph 2 [of the Paris Agreement], establish an obligation of conduct, parties are required to act with due diligence in taking necessary measures to achieve the objectives set out in their successive NDCs. Thus, a party's compliance with its obligations to pursue domestic mitigation measures under Article 4, paragraph 2, is to be assessed on the basis of whether the party exercised due diligence in its efforts and in deploying appropriate means to take domestic mitigation measures, **including in relation to activities carried out by private actors**. Indeed, as ITLOS observed, the 'obligation of due diligence is

particularly relevant in a situation in which the activities in question are mostly carried out by private persons or entities' (*Climate Change, Advisory Opinion, ITLOS Reports 2024*, p. 90, para. 236)." (*emphasis added*)

Cumulative harm

States must consider the cumulative environmental harm caused by their own actions and by private actors, including the fossil fuel industry, since individually minor activities can collectively produce significant damage.

Para. 276: "The Court is of the view that a risk of significant harm may also be present in situations where significant harm to the environment is caused by the cumulative effect of different acts undertaken by various States and by private actors subject to their respective jurisdiction or control, even if it is difficult in such situations to identify a specific share of responsibility of any particular State. States must assess the possible cumulative effects of their acts and the planned activities under their jurisdiction or control. Although such 'activities may not be environmentally significant if taken in isolation, . . . they may produce significant effects if evaluated in interaction with other activities' (*Climate Change, Advisory Opinion, ITLOS Reports 2024*, p. 128, para. 365)."

B. Fossil fuel production, consumption, licensing, and subsidizing

States that do not act diligently to prevent significant harm to the environment through the production, consumption, licensing, or subsidizing of fossil fuels may be in breach of their international obligations.

Para. 427: "Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State. The Court also emphasizes that the internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations identified under question *(a)* pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases."

Attribution and international responsibility

States can be held responsible where they fail to take adequate regulatory or legislative measures to limit their GHG emissions caused by private actors under their jurisdiction.

While climate change is caused by cumulative GHG emissions, it is scientifically possible to determine major fossil fuel companies' total contribution to global emissions.

Para. 428: "In relation to private actors, the Court observes that the obligations it has identified under question (a) include the obligation of States to regulate the activities of private actors as a matter of due diligence. Therefore, attribution in this context involves attaching to a State its own actions or omissions that constitute a failure to exercise regulatory due diligence. In such circumstances, the question of attributing the conduct of private actors to a State does not arise. The legal standard to assess compliance with the obligation to regulate, as well as the nature of the actions or omissions that lead to attribution, has been set out by the Court in several cases .... 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."

Para. 429: "The Court further notes that some participants submitted that it is difficult to invoke responsibility in the context of climate change, given that the wrongful conduct is cumulative in nature, involving different States over a period of time, and involving a plurality of States that cause injury to a plurality of injured States. In this respect, the Court observes that while climate change is caused by cumulative GHG emissions, it is scientifically possible to determine each State's total contribution to global emissions, taking into account both historical and current emissions."

C. International Human Rights Law

States must take several measures, including regulating the activities of private actors, in order to meet their international obligations to guarantee the effective enjoyment of human rights.

Para. 403: "Taking into account the adverse effects of climate change on the enjoyment of human rights, the Court considers that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment. In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, inter alia, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the **regulation of the activities of private actors**. Under international human rights law, States are required to take necessary measures in this regard." (*emphasis added*)

D. Rights and obligations of private actors

Standing to bring suits

It is possible for individuals and private actors to bring claims against States for breaches of their climate obligations, although the standing to do so depends on specific treaties or legal instruments that have not been analysed in the Advisory Opinion.

Para. 111: "The Court notes in this regard that certain treaties enable actors other than States, such as individuals or other private actors, to bring claims against States on the international plane. Thus, whether individuals are entitled to invoke a State's responsibility for failure to comply with obligations identified under question (a) depends not on the general rules on State responsibility, but on the specific treaties and other legal instruments that create procedural and substantive rights and obligations governing the relationship between the States and individuals concerned."

Polluter-pays principle

The polluter-pays principle, enshrined in the Rio Declaration, may still apply in the context of climate harms, despite not being reflected in the main climate treaties. Sector-specific treaties and national laws play a role in filling this gap in the climate treaties.

Para. 160: "[The recommendation of Principle 16 of the Rio Declaration] has been followed by States in certain sector-specific treaties and various types of national legislation, mostly in the form of strict liability of private actors for specific hazardous activities. However, the principle "that the polluter should, in principle, bear the cost of pollution" is not envisaged or reflected in any of the climate change treaties. ... This does not preclude the possibility that forms of strict liability for hazardous acts and other kinds of acts that are not wrongful under international law are developing."

Categories of Climate Cases Relevant to the Excerpts

The following categories of corporate climate litigation highlight key contexts in which harmful corporate conduct and/or the obligations of States to regulate such corporate conduct (especially, in relation to fossil fuels) have been or could be litigated, as well as how the aforementioned excerpts could be relevant. The authoritative weight of the ICJ AO conclusions will vary by jurisdiction and legal system. Please note that the case categories are not mutually exclusive; cases can fall into one or more of the following categories.

Licensing cases

Licensing cases are, for the most part, focused on decision-makers' approval of fossil fuel or hydrocarbon developments, especially due to failing to consult local communities or to consider scope 3 emissions in their environmental impact assessments.

Examples: ***R (Finch on behalf of the Weald Action Group & Others) v. Surrey County Council (& Others)***, the series of cases involving Norwegian decisions (***Greenpeace Nordic and Others v Norway (People v. Arctic Oil)*** App no 34068/21 (ECtHR, 22 December 2022); ***Case E-18/24 The Norwegian State v Greenpeace Nordic and Nature and Youth Norway*** [2025] EFTA Court; ***Greenpeace Nordic & Nature and Youth v Norway*** [2025] Bogarting Court of Appeal); and ***Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others*** (2021).

Despite the AO's recent issuance, some courts have already applied its findings in licensing cases. The Ninth Federal Court of Porto Alegre, in Brazil, extensively cited the ICJ AO and the Inter-American Court of Human Rights (IACtHR) Advisory Opinion (AO) in its decision on the ***Amigos da Terra ACP***,[51] regarding the licensing of a thermoelectric plant and a coal mine, which were found to be incompatible with Brazil's climate plans. Referencing the ICJ AO, the judge noted, *inter alia*, (i) that IPCC reports were reflective of the best available climate science; (ii) that the most important obligation for States in climate matters was the obligation to prevent significant harm to the climate system; (iii) that environmental impact assessments (EIAs) for activities that can impact the climate system must take into account the "specific nature of the respective climate risk"; (iv) that States can be held legally responsible for their omissions to act in relation to the production, consumption, licensing, and subsidizing of fossil fuels; (v) that the duty to protect the environment extends to the climate system, which in turn must be protected for present and future generations; and (vi) that the 1.5°C threshold of the Paris Agreement was a legal standard. Referencing the IACtHR AO, the judge also noted that (i) EIAs were key for a State to evaluate whether it was meeting their mitigation goals; (ii) in order to guarantee the right to a healthy climate, States must regulate, supervise, monitor, request, and approve EIAs; (iii) that mitigation measures must consider 1.5°C as a maximum limit, and take into account considerations of justice, CBDR-RC, and intra- and inter-generational equity; and (iv) that high-polluting States (such as Brazil) must make a "proportionate emissions mitigation commitment".

[51] *Núcleo Amigos da Terra Brasil and others v. Federal Government (União) and others*, *Ação Civil Pública (ACP) n. 5050920-75.2023.4.04.7100*, Judgment (Sentença, Aug. 22, 2025), Ninth Federal Court of Porto Alegre, p. 42. [Amigos da Terra ACP]. Note that this decision was appealed and partially amended on Oct. 16, 2025 (*Embargos de Declaração*); however, the court reiterated its understanding of the ICJ and IACtHR opinions in its reformed decision.

Duty to regulate cases

In duty to regulate cases, claimants may wish to rely on the ICJ's statements that States must take action to halt climate change by deploying appropriate measures to achieve deep, rapid, and sustained reductions of GHG emissions (**para. 282**), including by regulating the conduct of public and private operators within their jurisdiction or control (**paras. 282, 403, 496, 529(a)**), with effective monitoring and enforcement (**paras. 282, 359**). Particular emphasis should be placed on the responsibility of a State for failing to exercise due diligence in regulating the emissions of private actors under its jurisdiction. The Court found that, because these duties also emerge from customary international law, they apply to all States, regardless of whether they are parties to the UN climate treaties (**paras. 315, 394**), which is but one source of law applicable to the climate crisis (**paras. 114, 173, 315, 394**). For duty to regulate cases, issues relating to the attribution of private conduct to the State do not arise, but a State may nevertheless be responsible for its failures to exercise due diligence in the regulation of private conduct, including omitting to limit the quantity of emissions caused by private actors under its jurisdiction (**para. 428**).

Regarding Scope 3 emissions, claimants can rely on the ICJ's rejection of the argument that only activities directly generating GHG emissions would be covered under its Advisory Opinion (**paras. 94–95**). Claimants may further rely on the Joint Declaration of Judges Bhandari and Cleveland, which further expands on the obligations to consider Scope 3 emissions:

> "13. The Advisory Opinion accordingly acknowledges that assessments of potential risk of significant harm to the climate system must take into account the cumulative effect of all relevant activities occurring within a State's jurisdiction or control, including risks resulting from fossil fuel production, licensing and subsidies and the foreseeable 'downstream' consequences of such activities in other jurisdictions.
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> 14. Fossil fuels are produced in order to be burned. Numerous participants emphasize that States within whose jurisdiction fossil fuels are produced know the destination and intended final use of the coal, oil and gas that they export, and must therefore factor these consequences into their assessment of the harms that such production contributes to the climate system.
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> 15. We agree. In order to fulfil their obligations under Articles 2 and 4 of the Paris Agreement, as well as their stringent due diligence obligations under customary international law, States are required to account, in their assessments of environmental risk, for the increased concentration of GHGs in the atmosphere that will foreseeably result from, inter alia, production, licensing and subsidy activities."

The Joint Declaration clarifies that EIAs must include Scope 3 emissions from fossil fuel burning in the EIA of a fossil fuel project, citing both the UK Supreme Court's decision in ***Finch*** and the ***EFTA Advisory Opinion*** (**paras. 16–17, Separate Opinion Bhandari and Cleveland**).

Litigation Targeting Corporate Frameworks

In corporate framework climate cases, where claimants are seeking to hold companies accountable for their contributions to climate change by challenging group-wide policies, governance structures, and decision-making processes, the ICJ AO can be supportive in the following ways.

Examples: ***Milieudefensie et al. v. Royal Dutch Shell*** (Netherlands), ***Greenpeace Italy and others v. ENI, the Italian Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A*** (Italy), and ***Notre Affaire à Tous et al v. Total*** (France), where the plaintiffs allege that the defendant fossil fuel companies (and majority shareholders) must assess and mitigate climate-related risks and impacts across their full value chains, including Scope 3 emissions. The excerpts relating to the primary temperature goal of the Paris Agreement (**para. 242**) can support the argument that the relevant threshold for corporate defendants' obligations to reduce is also below 1.5°C, where this is still a defence brought by the defendant, as in ***Notre Affaire à Tous v. Total***.

Furthermore, in contesting the defendant's arguments that they provide an essential function in ensuring energy security (energy trilemma argument), claimants may wish to rely on the ICJ AO's statements that protection of the climate system is crucial to guarantee the effective enjoyment of human rights (**para. 470**). The ICJ AO states that the environment "is the foundation for human life, upon which the health and well-being of both present and future generations depend" (**para. 373**) and that the degradation of the climate system and other parts of the environment impairs numerous human rights (**para. 375**). In contesting the energy trilemma argument from corporate defendants, claimants may wish to rely on the right to a healthy environment as a norm of international law (**para. 392**), as a precondition for the enjoyment of many other human rights (**para. 393**), and its protection for both present and future generations (**paras. 233, 273, 373**), particularly in light of the urgent and existential threat posed by climate change (**paras. 73, 168**). This is particularly relevant where the national law imposes an open duty of care or a similar non-contractual obligation that can be derived from obligations under other areas of law, such as human rights law or international law, as in ***Milieudefensie et al v. Shell***.

The ICJ AO's statement that the plurality of actors responsible for GHG emissions does not undermine the determination of responsibility, as it is scientifically possible to determine each actor's contribution to global emissions, taking into account both historical and

current emissions (**para. 429**) can also be applied to emissions by private entities (see explanation below).

Corporate Accountability Cases

Relevance to cases seeking to hold major polluters accountable for climate harm and seek remedies.

Examples: ***Saúl Luciano Lliuya v. RWE*** (Germany) and the pending case ***Asmania v. Holcim*** (Switzerland), where claimants allege corporate responsibility for adaptation costs and loss and damage caused by climate impacts. The newly filed ***Odette case***, filed in England in December 2025 against Shell by over 100 Filipinos who were impacted by Typhoon Odette, also benefits from the ICJ's statements on the panoply of full legal consequences applicable, as well as the finding that 1.5°C is a legal threshold that requires commensurate GHG emissions reductions.

Greenwashing cases

The ICJ AO can also have relevance to corporate cases challenging inaccurate corporate narratives regarding contributions to the transition to a low-carbon future.

Examples: ***Australian Securities and Investments Commission's (ASIC) v. Mercer*** or ***Greenpeace France and others v. TotalEnergies SE and another***, [2025] Tribunal Judiciaire de Paris, 23 October 2025.

The ICJ's clear pronouncement on the global temperature threshold of 1.5°C will contradict corporate defenses that, under a "well below 2°C" trajectory, their statements are not misleading. This is what the Paris Judicial Tribunal found in ***Greenpeace France and others v. Total*** in 2025. Further, the relevance of the sections referring to the incompatibility of new fossil fuels with the government's climate obligations (**para. 427**) can be used to justify why corporate fossil fuel expansion, while claiming net zero by 2050, is deceptive, as found by the Paris Judicial Tribunal in ***Greenpeace France and others v. Total***.