Litigating Climate Change

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Why the ICJ's *Climate Change* Advisory Opinion matters and how the UK should respond

Dr Tom Grant, Dr Yuan Yi Zhu and Professor Richard Ekins KC (Hon)

Forewords by Rt Hon Lord Burnett of Maldon KG, Rt Hon Lord Sumption OBE, Hon Alexander Downer AC, Rt Hon Sir Malcolm Rifkind KCMG KC and Lord Verdirame KC

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Forewords

Rt Hon Lord Burnett of Maldon KG, former Lord Chief Justice of England and Wales

Anyone who has eyes in their head knows that climate change is happening. Living in the countryside we see it every day. My own favourite indicator is to look carefully at the date that grape harvesting starts in Bordeaux and Burgundy – records go back centuries. It is no surprise that climate change is spurring litigation, including private law claims and domestic public law challenges to government action or inaction. What is of more note is that international judicial institutions are interpreting treaties and customary international law expansively in a way that treads heavily on the toes of what more naturally would be regarded as the functions of national legislatures and governments.

Many countries, including our own, have introduced legislation that will propel the courts into controversial decisions about climate change policy. Governments should not be surprised, nor reasonably be critical, of litigants seeking through the courts to hold them to the statutory duties that they invited Parliaments to enact. In the United Kingdom the prudence of this legislation is now debated, but Parliament had the authority to pass it.

There is a growing judicial view around the world that the courts should use the law to drive down local carbon emissions. What is in danger of being lost in legal debate that arises in litigation is the wider context and impact of any judicial pronouncement. Imposing obligations on government or business has significant widespread economic consequences. In an area as complex and fraught with difficulty as climate change policy and action there is a strong argument that such consequences can only legitimately be imposed by governments acting with legislative support, taking responsibility for the political consequences if the people disagree. That, after all, is what happened in Switzerland where the people rejected a government proposal in a referendum only to have their democratic interests set aside by the Strasbourg Court in a very short passage.

I speak of the Court's 2024 *KlimaSeniorinnen* judgment, which expanded the ECHR to reach the conclusion that Switzerland's climate policy breached the Article 2 right to life. The then British Judge, Sir Tim Eicke KC, was the sole dissenter. I must confess to having found his robust dissent entirely convincing. As might have been expected, the judgment has been subjected to detailed academic scrutiny, not least by Professor Ekins KC at Policy Exchange. It is questionable whether the Strasbourg

Court's intervention in climate change policy will help address the problem itself. I worry that this may be another area where the political centre of gravity in Europe will become detached from the position of the Court, just as it has in the context of immigration and Article 8 and, in the long run, weaken the Court.

There is a significant difference between domestic law and international law in this context. Domestic law can always be changed; even constitutional provisions can be amended. But international treaties may be impossible in practice to change, and customary international law as well. We are seeing this now with the ECHR, where the member states are attempting to use a political declaration to nudge the Court away from some of its current positions in relation to migration and asylum. This indirect method is only adopted because changing the Convention itself is not feasible.

This new paper by Policy Exchange considers another intervention by an international court, this time the International Court of Justice (ICJ) in its July 2025 Climate Change Advisory Opinion. I have read the paper with interest and admiration. Like the Strasbourg Court, the ICJ has waded into an area which is sensitive politically and requires international political co-operation and action to find resolutions. There are difficult policy choices for any country which start with the balance between controlling climate change and mitigating its consequences. Courts and litigation are ill-suited to deal with these questions; and by focusing on one policy outcome, they may foreclose others because resources are finite. The distribution of resources is essentially a political question, always involving difficult choices and which, in Europe at least, must have popular support. Climate change policy stretches into every area of political activity because no options are cost free either in immediate terms or in the longer-term. They have an impact on economic activity, growth, prosperity and the well-being of each polity's people.

Many states, including the United Kingdom, have accepted obligations in relation to climate change, by entering into the Paris Agreement. The significance of the Advisory Opinion is that it asserts that a host of other international agreements, including the United Nations Convention on the Law of the Sea (UNCLOS), impose obligations in relation to climate change, an assertion which seems calculated to encourage an avalanche of litigation in different forums. The ICJ also asserts that customary international law imposes obligations in relation to climate change, a claim that seems rather difficult to square with the actual practice of states.

The ICJ knew what it was doing when it issued this Advisory Opinion. In paragraph 431, the Court said that:

> *'[I]n the climate change context, the Court considers that each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment. And where several States are responsible for the same internationally wrongful act, the responsibility of each State may be*

invoked in relation to that act'.

In paragraph 427, the Court said that granting fossil fuel licences, an intensely topical domestic question in relation to the North Sea, may constitute an internationally wrongful act – so too could failing to stop existing hydrocarbon production (see paragraphs 447-448).

As the authors of this new paper say, in this Advisory Opinion the ICJ appears to have placed the world's economy under judicial superintendence. Judicial pronouncements of this sort, and decisions by international tribunals in the future cases that it encourages, arguably usurp legitimate areas of political responsibility but will also, I fear, serve to undermine the legitimacy of the international courts in question. In the end that undermines international law and the rule of law. Bluntly, if any state were ordered to pay another (by whatever tribunal) a large sum, the court order would simply be ignored. The alternative might be serious domestic financial difficulty (or worse) and political chaos.

Policy Exchange makes a compelling case that Parliament and the Government must take the Climate Change Advisory Opinion seriously. The UK is particularly exposed to the risks of litigation to which this Opinion gives rise. The paper makes the case to withdraw from the compulsory jurisdiction of the ICJ. Only 75 of 193 states accept compulsory jurisdiction and the UK is the only one of the five permanent members of the Security Council still to do so, France and the United States both having withdrawn their acceptances in response to previous decisions.

Climate change is a real and urgent problem; so too is the expanding use of the ICJ's advisory jurisdiction. It is a matter for our politicians to consider whether to take steps to protect the UK from its consequences. This paper provides much food for thought and should stimulate a debate which has been absent since the Advisory Opinion was delivered.

Rt Hon Lord Sumption OBE, former Supreme Court Justice

Climate change is an issue which presents major challenges, not only for the health of humans but for their mechanisms of government. The essential dilemma can be shortly stated. Effective resolution of the problem is possible only at the international level, but the nation state is the ultimate source of sovereign authority and the only entity by which common rules for controlling carbon dioxide emissions can be enforced, short of war. In the absence of an international legislature, that requires international agreement. International agreement, however, is hard to achieve and harder to enforce. Effective measures to deal with climate change are likely to involve a significant reduction of consumption, something which is difficult to sell to democratic electorates. Even autocracies are vulnerable to popular pressure to maintain standards of living.

International tribunals have sought to resolve this problem in a way which directly conflicts with the sovereignty of nations and with ordinary lines of democratic accountability. They are endeavouring to transform themselves into international legislatures. There have been two recent and significant examples of this tendency. One is the decision of the European Court of Human Rights in *Verein KlimaSeniorinnen Schweiz v Switzerland* in 2024, which turned on the European Convention on Human Rights. The other is the advisory opinion of the International Court of Justice on *Climate Change* in 2025, which is the subject of this new Policy Exchange paper.

The Court purported to discover an international obligation to 'ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions' in the United Nations Convention on the Law of the Sea (UNCLOS) and the rules of customary international law. It may be said that in view of the problems of obtaining international agreement more radical than the Paris Agreement such a principle is necessary. However, the function of a court of law, whether international or domestic, is to declare the law as it is, and not as its judges conceive that it ought to be. For any tribunal which respects the rule of law, necessity cannot be the mother of invention.

The principles governing the interpretation of treaties such as UNCLOS were codified in the Vienna Convention on the Law of Treaties (1969). They must be 'interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.' It is not consistent with good faith to approach the interpretation of a treaty with ideological preconceptions of a kind which its makers did not share. It is not consistent with the Vienna principles to treat the provisions of UNCLOS regarding maritime pollution as dealing with an entirely different subject-matter, namely atmospheric pollution arising from the domestic or industrial burning of fossil fuels.

As for customary international law, it is well established that that depends on the consistent common practice of states, adopted on the footing that it represents their legal obligation. In other words there must

be a consensus among states that such an obligation already exists before an international tribunal can hold that it does. It is obvious that there is no such consensus. There are radical differences of practice and theory between industrialized and undeveloped nations, between nations in temperate climate zones and those in tropical ones, between north and south and so on. Indeed, the very limitations of treaties such as the Paris Agreement, which are so frustrating for climate change activists, reflect these differences.

The United Kingdom has a long tradition of honouring the decisions of international tribunals even when they are adverse to its national interest. It dates back at least to the famous decision of the tribunal which adjudicated in 1872 on the *Alabama Claims* brought by the United States in the aftermath of the American civil war. But this policy has always been founded on the assumption that the decisions of such tribunals are adjudicatory and not legislative. The International Court of Justice has for most of its history been a distinguished court whose judgments commanded respect. This enabled it to make an important contribution to the peace of the world. Unfortunately, as Policy Exchange's new report eloquently lays out, the radical departure from its proper role in some of its recent decisions undermines the whole basis on which it can continue to claim the respect of the international community.

Hon Alexander Downer AC, former Minister for Foreign Affairs and Australian High Commissioner to the UK

International law, properly understood as the product of state consent, is a good thing. International law, weaponised by rent-seeking states in the 'Global South' as well as activists to advance policy objectives that otherwise do not have political support, is obnoxious.

The International Court of Justice's recent Advisory Opinion on Climate Change, in which it opened the floodgates for non-Western countries to claim trillions of dollars in reparations for historical emissions, is clearly an example of the latter.

This is not to dismiss the dangers of climate change, nor indeed to belittle the difficulties faced by Vanuatu and other small Pacific states which instigated the Advisory Opinion. But action to combat climate change must not be turned into an occasion to extort monies from industrialized countries.

Yet this is exactly what has happened. By making grand claims about what international law allegedly mandates of states, the ICJ has given a gloss of legitimacy to the agenda of climate activists for whom punishing the West for the Industrial Revolution is as important, if not more so, than real climate action in this century.

It is thus even more regrettable that so many Western countries, not least the United Kingdom but also my native country of Australia, have given their support to the Advisory Opinion, by voting to endorse the Advisory in the UN General Assembly.

In this extraordinary paper, Dr Thomas Grant, Dr Yuan Yi Zhu, and Professor Richard Ekins masterfully unpack what the Court got wrong, and how the advisory opinion jurisdiction of the ICJ, meant to give non-binding guidance to the UN, has been turned into an instrument of international law lawfare.

As the recent fight over the Chagos Islands in which Policy Exchange has played a key role has shown, Western governments can and will go to very great lengths to be seen to obey the 'World Court', even when there is no legal reason to do so. The danger is even greater with climate change, where many policymakers maintain a mistaken sense of guilt for the West's early lead in industrialization.

Climate change cannot be fought with reparations. International law will not be made stronger by legal over-reach. And energy policy should never be made by judges. Yet the Advisory Opinion will be pressed into service by those who seek all three. The authors of this paper have done a great service to the international community by critiquing the barren foundations of the Advisory Opinion. I recommend this paper to all policymakers.

Rt Hon Sir Malcolm Rifkind KCMG KC, former Foreign Secretary

I am delighted to have been invited to write a Foreword to this Policy Exchange Critique of the recent Advisory Opinion of the International Court of Justice on Climate Change.

I share the serious concerns outlined in this document of the Advisory Opinion despite my many years of support for the International Court of Justice. Although I see the ICJ as an institution which attempts, in good faith, to advance respect for international law by states both strong and weak, it, sometimes, tries too hard.

The judgments of the ICJ and its Advisory Opinions have been the subject of growing, and justified, criticism by not just the UK but by democratic governments in Europe and elsewhere throughout the world.

Some of the controversy is because international law is, of course, different to national law. National laws can be, and are, enforced by our Courts, if they are not respected.

There is, however, no mechanism, nor power, to enforce international laws except the court of public opinion in countries with a free press and media. The multitude of welcome undertakings in bilateral or multilateral treaties are agreed rules which should, normally, be respected by the parties concerned but, sometimes, they are unable to be, if they are deemed to conflict with the vital national interests of the governments in question.

This Policy Exchange document which criticises the ICJ is not the product of politicians nor of political activists. Its authors are three highly distinguished academics and experts in International Law. Their analysis is objective and very persuasive. Their conclusions deserve to be read and welcomed by those who both believe in the rule of law and favour its implementation in a sound and responsible manner.

Amongst other valid criticisms, they warn that for the UK, and other governments, to accept the Advisory Opinion would open the floodgates to historic reparation claims especially against the UK on the ridiculous grounds that this would be justified because the Industrial Revolution began in the UK in the 18th century.

The Industrial Revolution did, indeed, begin in the United Kingdom. It has resulted in extraordinary economic growth and the reduction of poverty throughout the world. That is because the rest of the world has chosen to follow Britain, Europe, and the United States and industrialize, especially countries in Asia. It has been, in recent years, China, India, Japan, and many other countries in Asia and Latin America, with much greater populations than the UK, that are having the maximum impact on carbon emissions and climate change.

Edmund Burke once said that he had no objection to being governed by law, but he did, occasionally, object to being governed by lawyers! The insidious development of treating Advisory Opinions as if they have the force of national law is a large part of the origin of the problem. It is not the solution.

As this Policy Exchange critique acknowledges, 'The ICJ has a long history of useful service in the settlement of disputes between sovereigns consenting to its jurisdiction. It would be a loss, if exorbitant advisory practice were to instigate States to abandon that principal UN organ.'

Lord Verdirame KC is a barrister and Professor of International Law, King's College London

The peaceful settlement of international disputes is a core principle of international law, with settlement through international courts and tribunals assuming an increasingly prominent role since the end of the Cold War. International adjudication has come to be seen not merely as a means of resolving specific disputes but as an important source of stability and legal development.

This success, however, has brought with it significant risks. The authority of international courts ultimately depends not upon coercive power but upon the confidence of states. A growing temptation has been to assume that the legitimacy of international courts is enhanced by embracing expansive interpretations of international law. In reality, the opposite is true: where courts are perceived to exceed the limits of interpretation and instead engage in law-making, they risk provoking political backlash, reducing compliance with their judgments and, ultimately, undermining international law.

Climate change provides a clear example of this tension. The pressure placed upon international courts to develop novel legal obligations in this field has been exceptional. Whatever we think of which policies are best suited to deal with the undeniable challenges of climate change, there remains an important distinction between interpreting existing international law and creating new legal obligations through judicial decisions. If that distinction becomes blurred, confidence in international adjudication will be weakened.

This problem is compounded by the absence of effective mechanisms for correcting judicial error. Unlike most domestic legal systems, international law has no central legislature capable of promptly reversing controversial judicial interpretations, and only limited opportunities for appellate review. Once an international court has adopted an expansive interpretation of legal obligations, that interpretation is likely to crystallise in further judgments.

Britain has traditionally sought to manage these risks through careful engagement with the system. British governments have sometimes supported certain initiatives, in spite of significant political concerns, because they put great faith in carefully negotiated drafting to preserve legal flexibility. These considerations perhaps explain why the United Kingdom decided to support the United Nations General Assembly resolution endorsing the conclusions of the advisory opinion.

But, as this paper convincingly argues, these calculations are sometimes misconceived. Professor Arthur Dyevre of the Centre for Empirical Jurisprudence at the University of Leuven has recently argued that the main predictor of how ICJ judges vote in a given case is how their home states vote in the UN General Assembly.[1] In this intensely political environment, even compelling legal arguments are likely to offer considerably less protection than governments anticipate.

1. A. Dyevre, 'Decision Making on the World Court: Are International Judges Geopolitically Biased', Journal of Conflict Resolution (2025) Vol. 69 (10) 1661-1686.

No responsible British government can ignore the litigation risks that result from the developments in the climate change area. This paper's analysis of those risks should sound a warning in Whitehall. The issue is not opposition to international adjudication as such. The question is whether the conditions upon which Britain originally consented to international adjudication have materially changed and how Britain should respond to protect its interests. In particular, where judicial interpretation has evolved in ways that significantly expand potential State liability beyond what was reasonably contemplated when jurisdiction was accepted, it is entirely legitimate for States to reassess the scope of their consent to jurisdiction.

Britain is the only permanent member of the United Nations Security Council that accepts the Court's jurisdiction as compulsory under Article 36(2) of the Court's Statute. This reflects a commendable and longstanding commitment to international law and to the peaceful resolution of international disputes. Successive governments have amended the British declaration when political and legal circumstances changed, most recently in 2017 following litigation concerning nuclear weapons. Such amendments have been understood not as repudiations of the Court, but as legitimate exercises of the sovereign right to define the extent of consent to jurisdiction.

The paper's central recommendation is that Britain should go further and opt out of the Court's compulsory jurisdiction. Although this recommendation is unlikely to find favour with the Government, the Government must urgently assess the litigation risks examined in the paper. The Court has adopted an expansive approach in other areas of international law, but it has so far interpreted States' declarations accepting its compulsory jurisdiction with considerable restraint and so new a set of qualifications to the UK's acceptance of the Court's compulsory jurisdiction would offer important mitigation.

Executive summary

In July 2025, the International Court of Justice (ICJ) issued its *Climate Change* Advisory Opinion. The Advisory Opinion indicates that States have certain obligations under international law to protect the climate system and to make amends for climate harm that their acts or omissions, past and present, might have caused. The Opinion has since been endorsed by the United Nations General Assembly in a non-binding resolution which was supported by the UK.

The *Climate Change* Advisory Opinion is a significant, and regrettable, development in international law. It exposes the UK to a new wave of litigation and to colossal financial risks. The Government must take immediate action to protect the UK from the Advisory Opinion and its probable sequelae, and to restore the integrity of international adjudication which successive advisory opinions increasingly place in doubt.

In the *Climate Change* Advisory Opinion, the ICJ categorically rejected the UK's argument that international obligations in relation to climate change are to be found exclusively in the Paris Agreement, to which the UK is a party and, relatedly, that customary international law does not impose obligations in relation to climate change. The ICJ found instead, amongst other things, that:

- In addition to the Paris Agreement, other treaties, such as the United Nations Convention on the Law of the Sea (UNCLOS), impose duties related to the prevention of climate change;
- There is a duty in customary international law to 'ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions' which includes 'a duty to prevent significant harm to the environment by acting with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment';
- There is a duty under international human rights law for States to 'respect and ensure the effective enjoyment of human rights by taking necessary measures to protect the climate system and other parts of the environment';
- A breach of these putative obligations by a State constitutes an internationally wrongful act, for which remedies can include cessation, non-repetition, and reparations.

The ICJ's findings leave many questions unanswered, and they open the door to a new wave of litigation across a range of international tribunals, including the International Tribunal for the Law of the Sea (ITLOS) and the ICJ itself. The findings are particularly significant for that reason: the Paris Agreement recognized that cooperation and negotiated solutions are key to addressing climate change; by having declared UNCLOS and many other treaties applicable to climate change, the ICJ has made the compulsory dispute settlement provisions of those treaties automatically available to a large number of potential plaintiffs and thus has replaced consensus-seeking and innovation with the adversarial logic of the courtroom and the prescriptive force of judge-made outcomes.

It is clear as a matter of international law that the Advisory Opinion is not legally binding and does not establish the liability of any State. However, there is a major risk that later international tribunals—now armed with a colourable claim to jurisdiction over climate change disputes—will wrongly take the Opinion to have settled contentious legal questions.

The risk is not speculative. It was demonstrated with respect to the Chagos Islands when ITLOS, in 2021, wrongly took the ICJ's *Chagos Islands* Advisory Opinion to have established that the United Kingdom's creation of the British Indian Ocean Territory in 1965 had been wrongful and that Mauritius is the Chagos' rightful sovereign today.

It seems almost certain that the UK will be a target for litigation on the basis of the *Climate Change* Advisory Opinion, as underdeveloped countries and various other parties allege breach of international obligations relating to climate change. As to the scale of the financial risk, a widely cited paper from 2023 in the journal *Nature Sustainability* calculates that high-carbon countries owe low-carbon countries US$192 trillion in climate change reparations. If judges held the UK responsible for 3 per cent of all emissions, this would amount to a sum of US$5.76 trillion (£4.24 trillion).

The extraordinary magnitude of the liability to which the Advisory Opinion exposes the UK does not seem to have registered in Westminster and Whitehall, let alone among the wider British public. There is certainly no evidence that the Government or Parliament has taken the measure of the problem or done anything to limit the UK's exposure. In view of the supine approach taken by the Government to the *Chagos* Advisory Opinion, fears are well-grounded that the Government will reflexively accept the *Climate Change* Advisory Opinion as if it were binding law and fail to take the action needed to protect the UK from very costly climate change litigation.

This paper considers the *Climate Change* Advisory Opinion, evaluating and critiquing the ICJ's exercise of its advisory jurisdiction in this case, tracing the implications for the UK, and outlining the action that the Government should take to protect the UK.

The Government's first priority must be to limit the UK's exposure to climate change litigation based on the Advisory Opinion, which, at worst, will lead to national bankruptcy or, at best, will impose significant

litigation costs and distort policy making in relation to all aspects of energy, conservation, and environmental protection.

The Government's second priority must be to address – and arrest – a trend of abuse of the ICJ's advisory jurisdiction, which the UN General Assembly (UNGA) has repeatedly activated to circumvent the rule that international adjudication shall not take place without the consent of the States concerned. The *Climate Change* Advisory Opinion is the latest in a series of opinions that should neither have been sought nor granted. The 2019 *Chagos* Advisory Opinion numbers among the ill-judged opinions. The abuse of advisory jurisdiction is a standing threat to the UK's national interest, as well as to an international legal order that is based on State consent. The predictable consequence of this latest exercise of the ICJ's advisory jurisdiction is the alienation of States from the ICJ and from international law in general.

We recommend that the Government now:

- Withdraw from the compulsory jurisdiction of the International Court of Justice, thus bringing the United Kingdom in line with other permanent members of the United Nations Security Council.
- Initiate a renegotiation of the United Nations Convention on the Law of the Sea (UNCLOS) to avoid it being weaponised against this country in climate change litigation on the basis of the *Climate Change* Advisory Opinion.
- Publicly re-affirm the non-binding nature of ICJ advisory opinions in general.
- Reject the far-reaching legal claims made by the Court in the *Climate Change* Advisory Opinion, such as the theory that customary international law contains binding obligations in relation to climate change.
- Make clear that the *Climate Change* Advisory Opinion does not oblige specific outcomes for British national policy, for example on questions such as whether to re-open a gas field or to consider new licences for oil production, much less that it obliges the United Kingdom to accept any future international judgment that declares the United Kingdom liable to pay compensation for injuries allegedly traceable to Britain's role as the birthplace of the Industrial Revolution.

These steps will protect the United Kingdom's national interest. However, they are far from parochial. They will safeguard international law against UNGA activism and will help ensure that initiatives against climate change retain political support, support which will dwindle if the public comes to the jaundiced view that initiatives against climate change are no more than a tool for activists and less developed States to extract money from the British taxpayer.

Introduction

It is now almost a year since the International Court of Justice, the principal judicial organ of the United Nations, issued its *Climate Change* Advisory Opinion.[2] As many who sought the opinion correctly anticipated, it has become a point of reference for lawyers concerned about climate change. For most policymakers and the general public, however, the *Climate Change* Advisory Opinion has receded from view.

This is to be regretted. If the Government and its legal advisers misconstrue the Advisory Opinion, then several serious consequences could follow.

First, they are likely to treat the Advisory Opinion, not as the non-binding pronouncement it is, but as a legal straitjacket. The Government treated the 2019 *Chagos* Advisory Opinion that way, and, so, concerns are well-grounded that the Government will treat the *Climate Change* Advisory Opinion that way too. This is concerning, because the *Climate Change* Advisory Opinion addresses even more consequential issues than that on the *Chagos*. The Government's Net Zero aims, the ongoing energy crisis, and calls to open oil and gas production at the Rosebank and Jackdaw fields in the North Sea rightly now absorb policymakers and the general public in urgent debates.

The *Climate Change* Advisory Opinion, if treated as a binding legal judgment, will not help inform those debates. It will shut them down. The language of the opinion will radiate across government departments and transform into binding directive. In place of consensus-seeking and policy innovation—needed if we are to arrive at workable solutions to climate change—the non-negotiable prescriptions of civil service lawyers' advice will lock Whitehall on an inflexible course.

Second, the Advisory Opinion opens the door to a wave of climate-related litigation. In some national jurisdictions, litigants already have begun invoking the opinion[3] (and two other international advisory opinions on climate-related issues, one by the International Tribunal for the Law of the Sea (ITLOS),[4] the other by the Inter-American Court of Human Rights).[5] As activists take the measure of these early attempts to use the ICJ Advisory Opinion in national courts, we must anticipate more litigation in national courts to follow. However, the Advisory Opinion strongly implies the possibility of *international* claims, including claims against the United Kingdom at the ICJ and under arbitral procedures. As the Advisory Opinion gains traction across national jurisdictions—and as claimants test their arguments—the risk grows that States and activist NGOs will invoke the opinion to bring suits against the United Kingdom,

2. Obligations of States in Respect of Climate Change, Advisory Opinion, ICJ Reports 2025 (23 July): https://icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf

3. For example, *Dini Ze' Lho'imggin v. Canada*, 2025 FC 1586 (Fed. Ct. Can. Sept. 26, 2025), para. [42], https://canlii.ca/t/kfmdw, in which the Federal Court of Canada said, 'The ICJ Opinion is advisory and does not directly impose legal obligations on states. However, the Opinion outlines key principles that may affect state conduct and has substantial persuasive legal authority since it emanates from the principal legal organ of the United Nations.' A federal court in Brazil, relying on paragraph 427 of the ICJ Advisory Opinion, seems to suggest that failure to take adequate measures to protect the climate system from greenhouse gas emissions, including those from fossil-fuel production/consumption, licensing, or subsidies, might constitute an internationally wrongful act attributable to the State: *Núcleo Amigos da Terra Brasil et al. v. União Federal et al.*, Ação Civil Pública No. 5050920-75.2023.4.04.7100/RS, 9ª Vara Federal de Porto Alegre, Sentença (Braz. Aug. 22, 2025) pp. 152-153, https://elaw.org/wp-content/uploads/2025/12/Brazil_JFRS_Candiota.pdf. See also *Stichting Greenpeace Nederland et al. v. De Staat der Nederlanden*, ECLI:NL:RBDHA:2026:1344, C/09/659832 / HA ZA 24-53, Rechtbank Den Haag (Neth. Jan. 28, 2026), English translation ECLI:NL:RBDHA:2026:1347, paras. 5.26, 11.18.3 (citing the ICJ and IACtHR climate change advisory opinions), https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2026:1347; *Amparo en Revisión 450/2025*, Suprema Corte de Justicia de la Nación, Tribunal Pleno (Mex. Feb. 24, 2026) (citing the ICJ and IACtHR climate change advisory opinions); *Blasket Renewable Investments LLC v. Kingdom of Spain* [2025] FCA 1028 (Austl. Aug. 29, 2025) para. 248 (ICSID-award enforcement judgment citing the ICJ *Climate Change* Advisory Opinion), https://www.italaw.com/sites/default/files/case-documents/italaw1827289.pdf. From the European Court of Human Rights, see *Greenpeace Nordic & Others v. Norway*, App. No. 34068/21, Eur. Ct. H.R. (Oct. 28, 2025), para. 324 (citing the ITLOS, IACtHR, and ICJ climate advisory opinions), https://hudoc.echr.coe.int/eng?i=001-245561.

4. *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case No. 31, Advisory Opinion, 21 May 2024, https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_corr.pdf

5. *Climate Emergency and Human Rights*, Advisory Opinion OC-32/25, requested by the Republic of Chile and the Republic of Colombia, 29 May 2025, notified 3 July 2025, https://jurisprudencia.corteidh.or.cr/en/vid/1084981967

in the ICJ, ITLOS, and elsewhere.

Finally, the Advisory Opinion reflects an increasing tendency by the court that issued it to overreach. If the United Kingdom does not push back against it, then it carries potential implications for future Government policy on issues such as slavery reparations, nuclear weapons, and the fate of the British Indian Ocean Territory (Chagos Islands/Archipelago) and other overseas territories—issues seemingly remote from climate change but, on inspection, connected through legal and institutional developments of which the Advisory Opinion forms part.

What is the background to this foray by the ICJ into one of the most sensitive issues of public policy facing the United Kingdom, what does the Advisory Opinion say, and what should the Government do about it?

The ICJ issued the Advisory Opinion at the request of the United Nations General Assembly (UNGA) in 2023, after a long campaign by Pacific Island States to activate the ICJ's advisory procedure. The Advisory Opinion significantly aligns with the agenda of climate activists to obtain reparations from developed countries for injuries allegedly caused by carbon emissions.

As an advisory opinion, it is non-binding, and it directs no government to make specific financial or other reparations to any country, organization, or person. However, as we explain in this paper, various individuals and groups, as well as countries, are likely to invoke the Advisory Opinion in litigation against the United Kingdom. Some, such as the UK Environmental Law Association, already have called on the Government to implement the Advisory Opinion in public policy[6].

The Government should re-affirm the view, which the United Kingdom advanced at the ICJ in the advisory proceedings, namely that international legal obligations concerning climate change are narrowly circumscribed (in particular in the Paris Agreement of 2015)[7] and do not emanate from customary international law. Moreover, responsible ministers should make clear that the Advisory Opinion is not a source of legal obligation precluding measures such as opening oil production at the Rosebank and Jackdaw fields. The Advisory Opinion is not a source of law for the United Kingdom or any country. If the Attorney General has told the Secretary of State for Energy Security and Net Zero or any minister otherwise, then this is a mistake of law, and one that carries serious consequences for the United Kingdom.

Misread as an edict binding on the United Kingdom, the Advisory Opinion will expose the economy to hard-to-forecast risk and will considerably narrow and constrain the United Kingdom's options on climate change and a range of other public policy issues.

The Government should publicly clarify its understanding of the Advisory Opinion, including the instructions it has communicated to Cabinet departments regarding the role, if any, the Government believes the opinion should have in policy making. If the Government has not yet developed a sound strategy for dealing with the *Climate Change* Advisory Opinion, then it should do so as a matter of priority.

6. See also, e.g., Carla Denyer MP (Greens, Bristol Central) (in Environmental Audit Committee, The Seventh Carbon Budget), HC 1327 (12 November 2025): https://committees.parliament.uk/oralevidence/16722/html/; House of Commons, Committee Report, The Seventh Carbon Budget (4 March 2026), para. 35: https://publications.parliament.uk/pa/cm5901/cmselect/cmenvaud/1327/report.html; Written evidence submitted by Greenpeace UK (ICP0038) (January 2026), answer to first question, para 4: https://committees.parliament.uk/writtenevidence/161033/pdf/; House of Commons Energy Security and Net Zero Committee, Written evidence submitted by the UK Environmental Law Association (UKELA) (ICP0030) (January 2026), para 4: https://committees.parliament.uk/writtenevidence/160986/pdf/

7. Paris Agreement, concluded 12 December 2015, entered into force 4 November 2016: 3156 UNTS 79.

In this paper, we describe the principles underlying advisory opinions, how the *Climate Change* Advisory Opinion departs from those principles, and how it potentially undermines the United Kingdom's national interests, including our interest in finding solutions to the environmental crisis the opinion purports to address. The *Climate Change* Advisory Opinion accedes to the wishes of activists and certain low-income countries whose aim is to extract vast wealth from technologically advanced countries such as the United Kingdom.

The United Kingdom should respond to the *Climate Change* Advisory Opinion as a sovereign State that takes climate change seriously, but we should not allow its exponents to use the opinion as a weapon to advance their narrow self-interest. Nor should we allow them to impose the opinion on our own sovereign decision-making. Climate change requires innovative solutions, and it requires the commitment of broad cross-sections of society in advanced nations including the United Kingdom. Neither the solutions nor the commitment will come from judicial fiat. An *ad hoc* refashioning of international law in which the logic of reparations-seeking replaces the logic of problem-solving will interfere with Britain's sovereignty and will fail to address the challenges that climate change entails.

We conclude that it is essential for the United Kingdom to re-affirm long-standing principles of international law, especially the voluntaristic basis of international dispute settlement and the limits of the judicial function when it comes to matters that require balancing between competing legal principles and political interests and, moreover, that require the collaborative development of technologies and strategies to solve one of humanity's most complex problems. To this end, we recommend that the United Kingdom:

- Withdraw from the compulsory jurisdiction of the International Court of Justice, thus bringing the United Kingdom in line with all the other permanent members of the United Nations Security Council.
- Initiate a renegotiation of the United Nations Convention on the Law of the Sea.
- Publicly re-affirm the non-binding nature of ICJ advisory opinions in general.
- Reject the far-reaching legal claims made by the Court in the *Climate Change* Advisory Opinion, such as the theory that customary international law contains binding obligations in relation to climate change.
- Make clear that the Advisory Opinion does not oblige specific outcomes for British national policy, for example on questions such as whether to re-open a gas field or to consider new licences for oil production, much less that it obliges the United Kingdom to accept any future international judgment that declares the United Kingdom liable to pay compensation for injuries allegedly traceable

to Britain's role as the birthplace of the Industrial Revolution.

These steps will protect the United Kingdom's national interest. However, they are far from parochial. They will maximize the chances for building consensus at home and abroad around real solutions to climate change. And they also will help ensure a long-term future for international law, a future that UNGA activism is now placing in doubt.

1. The *Climate Change* advisory proceedings in brief

In March 2023, the United Nations General Assembly, through Resolution 77/276, requested an advisory opinion of the ICJ on the legal obligations of States in relation to climate change. The resolution, after noting the importance of climate change, asked the following questions:

> *'(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;*
>
> *(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:*
>
> *(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?*
>
> *(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?'*

The resolution was passed as a result of a protracted campaign by Vanuatu, a small Pacific Ocean State whose leaders are concerned about the effect of climate change on its future due to its location and low-lying territory, which are thought to be at risk of disappearance owing to rising sea levels. The General Assembly adopted the resolution by consensus, and the United Kingdom was one of its 130 cosponsors.

At the time of the General Assembly's adoption of the advisory request, the United Kingdom said,

> *'We welcome the International Court of Justice considering the current obligations of all States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, as well as the legal consequences when States, by their acts or omissions, breach such obligations, causing significant harm.'*[8]

There followed public hearings in The Hague in December 2024 in which a record 96 States and 11 international bodies presented oral

8. A/77/PV.64 (29 March 2023) at page 20.

arguments.

The United Kingdom advanced a submission which focused on the Paris Agreement. In essence, the United Kingdom argued that the Paris Agreement which contains 'binding and meaningful mitigation obligations to ensure the protection of the climate system from anthropogenic greenhouse gas emissions' was a complete answer to both questions.

The United Kingdom argued that no rule of customary international law touches on the questions posed in the advisory request, State practice being insufficient to evince the emergence of such a rule. Finally, the United Kingdom made clear that the advisory proceedings were not the place to address any questions of State responsibility beyond those which the Paris Agreement might elucidate.

The United Kingdom's positions differed from the many States that sought to advance far-reaching theories about duties imposed by international law in respect of climate change. In particular, those States urged the Court to read into customary international law climate change duties which might impose liability on industrialized States for monetary and other reparations for emissions.[9]

The Court rendered its advisory opinion in July 2025. In the Opinion, the Court made sweeping legal claims. For our purposes, the most important of them are the following:

- States which are parties to the various international instruments on climate change such as the Paris Agreement have duties arising from them to prevent climate change;
- Other treaties, including but not limited to the United Nations Convention on the Law of the Sea (UNCLOS), also impose duties which are related to the prevention of climate change[10];
- There is a duty in customary international law to 'ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions' which includes 'a duty to prevent significant harm to the environment by acting with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment';
- There is a duty under international human rights law for States to 'respect and ensure the effective enjoyment of human rights by taking necessary measures to protect the climate system and other parts of the environment';
- A breach of these obligations by a State constitutes an internationally wrongful act, for which remedies can include cessation, non-repetition, and reparations.

In a joint declaration, Judges Bhandari and Cleveland argued that States have a duty to phase out fossil fuel production and to stop any new fossil fuel project from operating.[11] Though the Court as a whole did not go

9. The participants that argued for far-reaching climate change duties included Vanuatu, Colombia, Solomon Islands, Kenya, The Philippines, Bahamas, and the African Union. See further p. 24, notes 15-17. https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-31-00-en.pdf

10. See pages 43-44 below for the Court's suggestion of further and extensive treaties and areas of international law entailing climate-related obligations.

11. Joint Declaration of Judges Bhandari and Cleveland, Obligations of States in respect of Climate Change, ICJ, 23 July 2025, https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-06-en.pdf

that far, those who supported a broad theory of States' duties to prevent climate change rightly considered the Advisory Opinion to be a major victory.

The Advisory Opinion seems to open the door for lawsuits against States which generated greenhouse gas emissions in the past. The United Kingdom, as birthplace of the Industrial Revolution, is the most obvious target for such suits. BBC News put it succinctly in one headline: 'Top UN court says countries can sue each other over climate change'.[12] As to the scale of potential reparations, a widely cited paper from 2023 in the journal *Nature Sustainability* puts the figure at US$192 trillion from high-carbon countries to low-carbon countries.[13] A back-of-the-envelope calculation, assuming the UK is responsible for 3 per cent of all emissions, puts a figure at US$5.76 trillion (£4.24 trillion).[14]

Many participants in the proceedings accused industrialized States in general of causing climate harm. At least three specifically identified the United Kingdom as a malfeasor.

Vanuatu identified the United Kingdom as one of the ten largest contributors to historical greenhouse-gas-caused warming, giving the UK's share as 2.4 per cent, corresponding to 0.04 °C of global warming for the period of 1851–2022. Vanuatu argued that State-specific contributions to climate harm can be identified and attributed. It rejected the possible objection that there were no relevant international-law limits on carbon emissions 'during the Industrial Revolution.'[15]

The Organisation of African, Caribbean and Pacific States (OACPS) described the UK as the 'colonial power which unleashed the Industrial Revolution' and argued that colonial powers 'must bear responsibility' for emissions from territories under their control. The Organisation stated that the United Kingdom's emissions 'nearly double' when colonial emissions are accounted for. OACPS then connected this to legal responsibility by arguing that large greenhouse-gas-emitting States' conduct, collectively and individually, constitutes a composite breach and that from the beginning of the Industrial Revolution they were bound by obligations of due-diligence and prevention.[16]

Burkina Faso stated that greenhouse-gas emissions are ongoing conduct that first emerged at the beginning of the Industrial Revolution. It then argued that legal consequences should focus on States' cumulative historical contributions to aggregate anthropogenic emissions, identified the UK among the largest cumulative contributors for 1850–2021, and presented an analysis attributing emissions to former colonial powers. Burkina Faso characterized the relevant wrongful conduct as acts and omissions of developed States over time in relation to greenhouse-gas emissions that, by their scale, caused significant harm.[17]

Against this, the UK Government said in its submission to the ICJ that claims against it 'not only fall outside the scope of the Request, but, crucially, are made without any attempt to analyse the degree and effect of the UK's considerable efforts in recent decades in respect of, in particular, mitigation of its own emissions and the financing of the mitigation and

12. Esme Stallard and Georgina Rannard, "Top UN court says countries can sue each other over climate change", BBC News, 23 July 2025, https://www.bbc.co.uk/news/articles/ce379k4v3pwo

13. Andrew L. Fanning and Jason Hickel, "Compensation for atmospheric appropriation", Nature Sustainability 6 pp.1077–1086 (2023), https://www.nature.com/articles/s41893-023-01130-8

14. Harriet Bartlett, "Tuesday Talks: The case for climate reparations", Rubens College, Oxford, 2 March 2026, https://reuben.ox.ac.uk/article/tuesday-talks-the-case-for-climate-reparations

15. Republic of Vanuatu, Written Statement of the Republic of Vanuatu, Obligations of States in Respect of Climate Change (Request for Advisory Opinion), ICJ, 21 Mar. 2024, PDF pp. 75–78, 110–11.

16. Organisation of African, Caribbean and Pacific States, Written Statement of the Organisation of African, Caribbean and Pacific States (OACPS), Obligations of States in Respect of Climate Change (Request for Advisory Opinion), ICJ, 22 Mar. 2024, PDF pp. 5, 11, 20–22, 75–78.

17. Burkina Faso, Written Statement of Burkina Faso, Obligations of States in Respect of Climate Change (Request for Advisory Opinion), ICJ, 2 Apr. 2024, PDF pp. 25, 91–96.

adaptation initiatives of other States.'[18]

It is regrettable that the United Kingdom expressed the point in this fashion, suggesting, as it did, a concession that the United Kingdom's conduct in truth constituted an international law breach for which 'considerable efforts' and 'mitigation' were necessary. The Secretary of State for Business, Jonathan Reynolds, has taken a more appropriate line than did the United Kingdom's lawyers on the scene, telling Times Radio that '[t]he fact that we have a modern industrial society is a good thing. We led on that innovation that then has been transferred around the world. But I don't think it's anything to apologise for or pay reparations for.'[19] As encouraging as the Secretary of State's assurance might be, it stands in contrast to the Government's formal position, expressed in front of the principal judicial organ of the United Nations and, as yet not disowned in any convincing way.

It is even more regrettable that the UK, on 13 May 2026, voted in support of a resolution of the United Nations General Assembly endorsing the Opinion. In the resolution, the General Assembly '[w]elcomes the unanimous advisory opinion of the International Court of Justice of 23 July 2025 on the obligations of States in respect of climate change, and affirms the importance of the Court's advisory opinion as an authoritative contribution to the clarification of existing international law'.[20]

Further, the General Assembly endorsed the idea of climate change reparations, by stating that 'a breach by a State of any of the obligations identified by the Court in relation to climate change' and 'the legal consequences resulting from the commission of an internationally wrongful act may include the obligations of… [f]ull reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met, including that a sufficiently direct and certain causal nexus can be shown between the wrongful act and the injury.'

It is highly unfortunate that the United Kingdom did not vote against the resolution or abstain. True, neither the Opinion nor the Resolution is strictly speaking binding at law; but taken together they can bootstrap from one another and create the impression that there is a general state consensus – to which the United Kingdom adheres—that the principle of climate reparations has been accepted. As one academic who welcomed the Advisory Opinion writes, 'The text itself is analytically significant. It signals States' broad acceptance of the most critical parts of the opinion … For litigators, the resolution therefore offers new ammunition. For negotiators, it provides a legal baseline that cannot be negotiated away—even if it is not cited in outcome documents.'[21]

18. *Obligations of States in Respect of Climate Change*, Written Comments of the United Kingdom of Great Britain and Northern Ireland, 12 August 2024, quoted at https://commonslibrary.parliament.uk/research-briefings/cbp-10354/

19. Adam Vaughan, "UN climate ruling 'flawed' and reparations unnecessary, minister says", The Times, 24 July 2025, https://www.thetimes.com/uk/science/article/un-court-ruling-poor-countries-pollution-0w2jkrl9h

20. A/80/L.65 (13 May 2026), https://docs.un.org/en/A/80/L.65

21. Margaretha Wewerinke-Singh, "From Opinion to Action: The General Assembly Votes to Operationalize the ICJ's Climate Advisory Opinion", EJIL:Talk! 22 May 2026, https://www.ejiltalk.org/from-opinion-to-action-the-general-assembly-votes-to-operationalize-the-icjs-climate-advisory-opinion/

2. The ICJ's advisory jurisdiction and its abuse

The *Climate Change* Advisory Opinion belongs to a long-term trend in the practice of the International Court of Justice in which the Court has handed down findings on sensitive matters of policy that, traditionally, it had refrained from addressing except when the concerned States expressly consented to it doing so. To recognize the surprising implications of the trend and how the *Climate Change* Advisory Opinion in particular is likely to constrain the United Kingdom's approach to climate change, it helps, first, to distinguish the ICJ's contentious jurisdiction—i.e., the jurisdiction that the Court exercises when two or more States consent to an adversary proceeding to settle a specific legal dispute between them—from the ICJ's advisory jurisdiction—i.e., the jurisdiction that arises when a competent international organ has placed before the Court a question about a general legal issue. Then we will turn to consider the abuse of advisory jurisdiction and its implications for climate change.

Contentious and advisory jurisdiction distinguished

The ICJ exercises two types of jurisdiction. First, it exercises jurisdiction over disputes between States, but it has the power to do so only if disputing States agree that the ICJ shall hear their dispute. International lawyers call this consent-based jurisdiction of the ICJ *contentious jurisdiction*. A judgment of the ICJ, reached in accord with contentious jurisdiction, is legally binding between the States that were party to the case. Such a judgment binds *only* the States that were party to the case, but, for the very reason that they have consented to adjudication in the first place, such States tend to respect the ICJ's judgment.

A State is free to accept the jurisdiction of the ICJ over a particular dispute that has arisen, for example by concluding a special agreement with the State (or States) with which it is in dispute.[22] An agreement such as that stipulates that its parties will accept the Court's jurisdiction for the purpose of adjudicating only the particular dispute (or disputes) that their agreement identifies.

Article 36(1) of the ICJ Statute provides for contentious jurisdiction where a dispute has arisen for which a treaty in force between the parties to the dispute provides for ICJ jurisdiction. The United Kingdom is party to a number of treaties that contain 'compromissory clauses', as the treaty clauses providing for such contentious jurisdiction are called.[23]

A State also may accept ICJ jurisdiction by signifying, as Article 36(2) of

22. Another mechanism to accept jurisdiction is for a State to consent to adjudication *after* another State already has instituted proceedings against it. *Forum prorogatum*, as the mechanism is called, is seldom invoked.

23. A machine-aided search (on 19 April 2026) discloses 27 treaties-in-force for the United Kingdom which contain compromissory clauses, though the search missed an obvious one—the UN Convention on the Law of the Sea 1982, further to which see below pages 33-36.

the ICJ Statute invites, its general acceptance of ICJ jurisdiction or acceptance of jurisdiction over particular categories of dispute. Seventy-five States—that is to say, significantly under half the UN's 193 Member States—have 'optional clause' declarations currently in force, as declarations accepting the ICJ's contentious jurisdiction under Article 36(2) are known.[24] The overwhelming majority of these declarations are qualified (e.g., as to substance of dispute, identity of parties, date of origin of dispute) and conditioned on reciprocal acceptance.

The United Kingdom is the only permanent member of the UN Security Council for which an optional clause declaration is currently in force, having accepted the compulsory jurisdiction of the Permanent Court of International Justice in 1929 and maintained the declaration since, albeit with significant amendments over the century as well as numerous reservations.[25]

The other form of jurisdiction that the ICJ may exercise is advisory jurisdiction. The ICJ may exercise advisory jurisdiction after the General Assembly or Security Council makes a formal request to the ICJ asking the Court a legal question. In accordance with UN Charter Article 96, paragraph 2, the General Assembly has conferred authority on a number of UN specialized agencies to make advisory requests to the ICJ as well.

An ICJ advisory opinion is not legally binding on any State,[26] and '[t]he requesting organ, agency or organization remains free to decide, as it sees fit, what effect to give to these opinions'.[27]

The growing scope of advisory opinions

The ICJ has wide discretion to refrain from answering an advisory request even when the formal indicia of advisory jurisdiction are satisfied, and it may refrain in whole or in part.[28] The ICJ, in the eighty-one years since its establishment, has not exercised this discretion. The ICJ's predecessor, the Permanent Court of International Justice, which functioned under a nearly identical Statute, did so on one occasion.[29] For the first half-century of the International Court of Justice, however, the United Nations General Assembly practiced self-restraint in asking the Court for advisory opinions. There being no advisory jurisdiction without an advisory request, the self-restraint of the requesting authorities restrained the advisory practice of the Court.

From the 1990s onward, this began to change. The UN General Assembly, as one would expect of a political organ, always had adopted resolutions reflecting the political and strategic aims of its majority. By the 1960s, small States, Non-Aligned States, and States newly emerged from colonial rule gained the majority. Because the resolutions of the General Assembly are non-binding (subject to small exceptions not relevant here), many resolutions had a ritualistic character and little practical effect. However, the possibility was always latent that the Assembly might make an advisory request to the ICJ in respect of one or another matter of political interest to the majority and thereby involve the UN's principal judicial organ, irrespective of the suitability of the matter for treatment

24. "Declarations recognizing the jurisdiction of the Court as compulsory", International Court of Justice, https://www.icj-cij.org/declarations?utm_source

25. For the United Kingdom's declaration, dated 22 February 2017, see https://www.icj-cij.org/declarations/gb

26. As a State might consent to be bound by any instrument it chooses, a State might consent to be bound by an advisory opinion, but there are not many instances of a State having done so. Examples are found in the Convention on the Privileges and Immunities of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations, and the Headquarters Agreement between the United Nations and the United States of America. For the application of Article VIII, Section 30 of the Convention on Privileges and Immunities of the United Nations, see *Difference relating to the Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Reports 1999 p. 62, 77 (para 25) (29 April).

27. "Advisory Jurisdiction", International Court of Justice, https://www.icj-cij.org/advisory-jurisdiction

28. See *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*, Advisory Opinion, ICJ Reports 1950, pp. 71–72 (30 March); *Certain Expenses of the United Nations*, Advisory Opinion, ICJ Reports 1962, p. 155 (20 July); *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996 (I), pp. 234-235, para. 14 (8 July).

29. See *Status of Eastern Carelia*, Advisory Opinion, 1923 PCIJ at p. 28 (23 July).

by judges.

The turning point came in 1994, when the United Nations General Assembly requested an advisory opinion on the legality of the threat or use of nuclear weapons.[30] The request resulted from a campaign in the General Assembly by anti-nuclear weapon States that wished to establish that nuclear weapons are illegal and thus to require nuclear-weapon States to disarm. The ICJ issued its *Nuclear Weapons* advisory opinion in 1996.[31] The substantive holdings in the advisory opinion were equivocal, some have suggested opaque: the current United Kingdom National Group nominee for election to the ICJ, Dapo Akande, the Chichele Professor of Public International Law at the University of Oxford, said shortly after the *Nuclear Weapons* Advisory Opinion that the reasons for the ICJ's conclusions relating to the question of the lawfulness of threat or use of nuclear weapons by a State facing a threat to its existence 'are not deducible from the text of the opinion' and are 'matters as much for the mind-reader as for the interpreter'.[32]

In retrospect, the case was nevertheless significant. The door had opened for the General Assembly to activate the ICJ's advisory jurisdiction and thus to obtain pronouncements from the UN's principal judicial organ on matters heretofore at least tacitly acknowledged to be inherently political and ill-suited for a court to settle.

By a resolution adopted in 2003, the UNGA referred the legality of Israel's security barrier to the ICJ as a way of getting around the fact that Israel has not consented to the ICJ adjudicating claims about the barrier. In 2019, the ICJ issued its *Chagos* Advisory Opinion, the result of a diplomatic campaign by Mauritius to have the UN General Assembly refer the issue to the ICJ after the United Kingdom had refused to allow a challenge to its sovereignty over the British Indian Ocean Territory to be heard as a contentious dispute.

With these developments, the advisory procedure has come to embrace questions that the earlier practice suggested are beyond the procedure's scope. Matters of political sensitivity, including high profile bilateral disputes, peace and security questions subject to negotiations under Security Council direction, and constitutional ordering at the global level, now appear ripe for advisory opinions. In addition to their political sensitivity, matters subject to advisory requests in recent years have turned on complex questions of fact. This is a far cry from the early advisory practice which had chiefly concerned abstract questions of legal interpretation only.

Even some judges of the Court have expressed misgivings about the Court's enlarged use of advisory jurisdiction. In the recent *Right to Strike under ILO Convention No. 87* Advisory Opinion, four judges wrote separate dissents, each highly critical of what the judge understood to be the Court's improper finding that there was a right to strike under ILO Convention No. 87. In the words of Judge Mahmoud Hmoud, 'the Court's opinion conveys the appearance of a predetermined conclusion in search of justification. The majority appears to have inverted the judicial process,

30. GA resolution 49/75K (15 December 1994): https://www.icj-cij.org/sites/default/files/case-related/95/7646.pdf

31. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996 p. 226 (8 July).

32. Dapo Akande, 'Nuclear Weapons, Unclear Law? Deciphering the *Nuclear Weapons* Advisory Opinion of the International Court', (1998) 68 *British Yearbook of International Law* 165, 203.

starting from a conclusion and, thereafter, assembling its reasoning to support it.'[33] He was supported by Judge Peter Tomka, former President of the Court, who accused his colleagues of perverting legal method 'to avoid accepting that a treaty may have deliberately left out a right, which policy considerations now make attractive to impute.'[34] Judge Ronny Abraham, another former President of the Court, said that the Advisory Opinion suffered from 'numerous and grave deficiencies.'[35] The Court is not in a good place if such accusations are being made from within.

The General Assembly's adoption in recent decades of advisory requests on more sensitive and forensically challenging topics than before, and the ICJ's readiness to give far-reaching answers, form the backdrop to the *Climate Change* Advisory Opinion.

The ICJ's exercise of its jurisdiction in the *Climate Change* Advisory Opinion

Throughout the *Climate Change* Advisory Opinion, the Court notes the limitations that follow from its non-binding character. At paragraph 97, for instance, the Court affirmed that the Advisory Opinion does not concern in any way 'the responsibility of individual States'. In other words, the Advisory Opinion is not a judgment that any State holds legal liability to any other. In multiple passages of the Advisory Opinion, the Court stated that determinations of State responsibility (i.e., liability for injuries) must be assessed 'on a case-by-case basis'.[36] At first sight, the ICJ re-affirmed the basic point that an advisory opinion is non-binding.

One must approach the Court's assurances in this regard with caution, however.

International courts and tribunals in recent years, notwithstanding the elementary limitation of advisory opinions, have treated them as binding. A striking illustration of this risk is found in the reception given to the Advisory Opinion regarding the Chagos Archipelago. The *Chagos* Advisory Opinion declared that the separation of the Chagos Archipelago from the colony of Mauritius in 1965 was invalid and, thus, that 'the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible.'[37]

The *Chagos* Advisory Opinion contained disclaimers very similar to those in the *Climate Change* Advisory Opinion; the ICJ indicated that the Advisory Opinion is non-binding. In subsequent proceedings, however, the disclaimers were ignored. In particular, a Special Chamber of the International Tribunal for the Law of the Sea (ITLOS), in a maritime delimitation case between Mauritius and the Maldives, over the objections of the Maldives, relied on the *Chagos* Advisory Opinion to conclude that it was settled law that Mauritius holds sovereignty over the Chagos Islands.[38]

The *Climate Change* Advisory Opinion already has crept into the corpus of the European Court of Human Rights.[39] The 2004 and 2024 advisory opinions addressing Israel have gained purchase as well, including in international courts and the courts of several countries.[40] As for domestic

33. Dissenting Opinion of Judge Hmoud, Right to Strike under ILO Convention No. 87 (21 May 2026), https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-11-encc.pdf

34. Dissenting Opinion of Judge Tomka, Right to Strike under ILO Convention No. 87 (21 May 2026), https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-03-en.pdf

35. Opinion dissidente de M. le juge Abraham, Right to Strike under ILO Convention No. 87 (21 May 2026), https://icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-04-fr.pdf

36. *Climate Change* Advisory Opinion, paragraphs 106, 406, 432, 451; see also paragraphs 438 and 445.

37. *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019 at p. 140, paragraph 183(4) (24 Feb.).

38. *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Judgment of 28 April 2023, ITLOS Reports 2022-2023, p. 10.

39. See note p. 18 fn. 3 above.

40. As to *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, ICJ Reports 2024 p. 753 (19 July), see, e.g., *R (Al-Haq) v Secretary of State for Business and Trade*, [2025] EWHC 1615 (Admin), [200] n.20 (High Ct. K.B.D., Admin. Ct., 30 June 2025), https://www.judiciary.uk/wp-content/uploads/2025/06/Al-Haq-Final-Approved-Judgment-rev-1-8-July.pdf; *Al-Haq et al. v The State of the Netherlands*, Gerechtshof Den Haag, 6 Nov. 2025, ECLI:NL:GHDHA:2025:2290, https://uitspraken.rechtspraak.nl/details?id=ECLI%3ANL%3AGHDHA%3A2025%3A2290; *Ramstein—Deployment of Drones*, Bundesverfassungsgericht, 2 BvR 508/21, Judgment of 15 July 2025, ECLI:DE:BVerfG:2025:rs20250715.2bvr050821, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2025/07/rs20250715_2bvr050821en.html. As to *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004 p. 136 (9 July 2004), see *Mara'abe v Prime Minister of Israel*, HCJ 7957/04, paras. 11, 37–74 (Supreme Court of Israel sitting as High Court of Justice, 15 Sept. 2005), https://versa.cardozo.yu.edu/opinions/mara%E2%80%99abe-v-prime-minister-israel; *Yassin v Government of Israel*, HCJ 8414/05, paras. 11, 19 (Supreme Court of Israel sitting as High Court of Justice, 4 Sept. 2007), https://versa.cardozo.yu.edu/opinions/yassin-v-government-israel; *Public Committee Against Torture in Israel v Government of Israel*, HCJ 769/02, para. 18 (Supreme Court of Israel sitting as High Court of Justice, 14 Dec. 2006), https://versa.cardozo.yu.edu/opinions/public-committee-against-torture-v-government; *R (Al-Haq) v Secretary of State for Foreign and Commonwealth Affairs*, [2009] EWHC 1910 (Admin) (High Ct. Q.B.D., Admin. Ct., 27 July 2009), https://www.refworld.org/jurisprudence/caselaw/gbrhc-qb/2009/69357; *Stichting Oxfam Novib, Stichting Vredesbeweging PAX Nederland and Stichting The Rights Forum v The State of the Netherlands*, Gerechtshof Den Haag, 12 Feb. 2024, ECLI:NL:GHDHA:2024:191, paras. 3.12, 5.25, 5.47, https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHDHA:2024:191; unofficial English translation at https://www.prakkendoliveira.nl/images/Uploads_Brechtje/ECLI_NL_GHDHA_2024_191_CoA_The_Hague_200.336.130_01_F-35_Unoff.ENG.pdf; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment, 2005 I.C.J. 168, para. 216 (19 Dec. 2005), https://www.icj-cij.org/case/116/judgments; Case C-363/18, *Organisation juive européenne and Vignoble Psagot Ltd v Ministre de l'Économie et des Finances*, ECLI:EU:C:2019:954, paras. 35, 48, 56–57 (C.J.E.U. Grand Chamber, 12 Nov. 2019), https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62018CJ0363; *Al-Skeini and Others v United Kingdom*, App. No. 55721/07, 53 Eur. H.R. Rep. 18 (ECtHR Grand Chamber, 7 July 2011), https://hudoc.echr.coe.int/eng?i=001-105606; *Hassan v United Kingdom*, App. No. 29750/09, ECHR 2014-VI (ECtHR Grand Chamber, 16 Sept. 2014), https://hudoc.echr.coe.int/eng?i=001-146501; *Prosecutor v Strugar*, Case No. IT-01-42-T, Trial Judgment, paras. 225 n.767, 227 n.772 (ICTY Trial Chamber II, 31 Jan. 2005), https://www.icty.org/x/cases/strugar/tjug/en/str-tj050131e.pdf; *Situation in the State of Palestine*, ICC-01/18-143, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' (ICC Pre-Trial Chamber I, 5 Feb. 2021), https://www.icc-cpi.int/court-record/icc-01/18-143.

activists and international lawyers, they invoked the *Chagos* Advisory Opinion in their efforts to bring the United Kingdom to relinquish the Archipelago.[41] Those who seek far-reaching influence over British policy on climate and energy likewise already point to the *Climate Change* Advisory Opinion and assert that it leaves the United Kingdom no lawful choice but to implement the Advisory Opinion as law and thus, *inter alia*, to cease to permit fossil fuel production and to require payment of substantial reparations to other States.[42]

The *Climate Change* Advisory Opinion joins the trend that we noted above. It is not the first Advisory Opinion to trespass into contentious questions that the ICJ has power to adjudicate only when the contending parties have consented to adjudication. State consent, which is the cornerstone of international adjudication by courts, is effectively bypassed when the Court delivers advisory opinions on matters that, in truth, are State-to-State disputes rather than general questions of legal interpretation. When the Court confines itself to questions such as those, it can helpfully clarify points of international law; it does not, however, settle the legal rights of sovereign States. The ICJ adopted the *Climate Change* Advisory Opinion in an international setting in which States contemplate legal suits against others in connection with climate change.

To give one example, in the *Climate Change* proceedings themselves, the Attorney General of the Bahamas, Ryan Pinder KC, said, 'It's time for these polluters to pay' and that industrial States 'need to take urgent action now and provide reparations… We insist on liability, we demand reparations'.[43] To the extent that a suit for climate change reparations has any plausible grounding, it would properly be brought under contentious procedures, subject to the consent of those against whom an applicant State brings it. To suggest that an Advisory Opinion has settled the questions such a suit would raise is to ignore one of the founding principles of international dispute settlement, the principle of State consent. And, yet, in respect of other recent advisory opinions—not least of these, the *Chagos* Advisory Opinion—activists, lawyers, and government representatives suggest that, when the ICJ speaks through advisory opinions, it lays down new law that a State must obey.[44]

State consent is the fundamental requirement for an international court or tribunal to exercise jurisdiction over a dispute. It is a mistake to see the requirement of consent as a mere technicality. The remarkable achievement of international law is that it identifies a vocabulary of legal obligation for subjects—sovereign States—that, by definition, are independent and, thus, in principle, free from superior command. International law has worked most successfully when it balances the fact of sovereign independence with the need for guardrails and limits in the international relations of States. Balancing is at its most delicate when it comes to compulsory and binding court procedure.

States recognized that climate change is too important to afford getting the balancing wrong. They consented to a dispute settlement provision in the 1992 UN Framework Convention on Climate Change (UNFCCC) that

41. See Foreign Affairs Sub-Committee on the Overseas Territories. Oral evidence: The UK Government's engagement regarding the British Indian Ocean Territory, HC 598 (Wednesday 28 February 2024), Written evidence of Professor Philippe Sands KC, paragraph 5: https://committees.parliament.uk/writtenevidence/128059/html/

42. See p. 18 fn. 3 above.

43. Oral Hearings at the ICJ in the Advisory Proceedings on the Obligation of States in Respect of Climate Change, Senator the Hon Ryan Pinder KC, Attorney General and Minister of Legal Affairs, The Commonwealth of The Bahamas (2 December 2024), pages 9-10, paragraph 16; page 10, paragraph 17. https://cdn.bahamas.gov.bs/tenant/tenanttgotb/documents/icj-advisory-opinion-oral-arguments---delivered-20241203110205.pdf

44. See, e.g., Philippe Sands, 'At last, the Chagossians have a real chance of going back home', *The Guardian* (24 May 2019) ('Chagos belongs — and has always belonged — to Mauritius'; UNGA resolution on *Chagos* Advisory Opinion 'requires the UK to leave Chagos within six months'), https://www.theguardian.com/commentisfree/2019/may/24/chagossians-britain-colony-shameful-un-resolution; Marko Milanovic, *ICJ Delivers Chagos Advisory Opinion, UK Loses Badly*, EJIL: Talk! (25 Feb. 2019) (the UK either 'really has no sovereignty over the islands at all' or is 'obliged to relinquish that sovereignty to Mauritius as soon as practicable'), https://www.ejiltalk.org/icj-delivers-chagos-advisory-opinion-uk-loses-badly/; Elena Katselli, *Comment: Refusal to hand back Chagos Islands echoes era of colonialism*, Newcastle Univ. / The Conversation (11 June 2019) ('the return of the Chagos Archipelago . . . is not a matter of negotiation'; the UK must end 'as rapidly as possible' its control over the islands), https://www.ncl.ac.uk/press/articles/archive/2019/06/commentchagosislands/; Miriam Bak McKenna, *UN has called out shameful British colonialism by urging it to return Chagos Islands to Mauritius*, The Conversation (6 Mar. 2019) ('the UK has an obligation to return control of the Islands to Mauritius "as rapidly as possible"'), https://scroll.in/article/915357/un-has-called-out-shameful-british-colonialism-by-urging-it-return-to-chagos-islands-to-mauritius; Owen Bowcott, *UN court rejects UK's claim of sovereignty over Chagos Islands*, The Guardian (25 Feb. 2019) (quoting Namira Negm, legal counsel of the African Union: 'The full decolonisation of Mauritius, and of Africa, is long overdue' and 'must be accomplished today and not tomorrow'; and quoting Sands: the UK should 'honour the ICJ's findings and give effect to it as rapidly as possible'), https://www.theguardian.com/world/2019/feb/25/un-court-rejects-uk-claim-to-sovereignty-over-chagos-islands; LALIT, *Maldives aligns with Quasi-Totality of Countries on Sovereignty over Chagos* (20 Jan. 2023) ('The UK must leave Chagos now'; 'Sovereignty is not negotiable'), https://www.lalitmauritius.org/en/newsarticle/3120/maldives-aligns-with-quasi-totality-of-countries-on-sovereignty-over-chagos/; Chagos Refugees Group, *Our History* ('Britain illegally took sovereignty from Mauritius' and must 'bring to an end its administration of the Chagos Archipelago as rapidly as possible'), https://thechagosrefugeesgroup.com/our-history/

makes the search for settlement mandatory—through negotiation 'or other peaceful means of their own choice'.[45] When it comes to compulsory and binding court procedures, by contrast, the UNFCCC offers them but does not require them.[46] In other words, a State must seek peaceful settlement of climate-related disputes, but it is required to submit such disputes to the power of a court or arbitrator *only* if the State specifically has declared in a separate writing that it consents to do so. The 2015 Paris Agreement carefully leaves this approach intact.[47]

The States parties at Paris had the opportunity to enlarge the role of judges and arbitrators by declaring compulsory jurisdiction mandatory. They chose not to. The ICJ, with the 2025 Advisory Opinion, however, now invites activists and potential claimant States to find, in its invocation of UNCLOS and other treaties containing compulsory dispute settlement clauses, the very enlargement of judges' power to which States deliberately declined to give their consent.

International law contains no such backdoor to consent. The danger in the 2025 Advisory Opinion is that judges and arbitrators now might conclude that it does. The important difference here is between a possible settlement through means that depend on consensus—negotiation 'or other peaceful means of their own choice'—and a settlement that a judge or arbitrator necessarily hands down and that the law compels parties to obey. For many States that joined the diplomatic effort to arrive at the Paris Agreement, the Advisory Opinion is a surprise. Rather than ratify their achievement and encourage States to continue developing a response to climate change through consensus and cooperation, the opinion suggests that agreement is no longer needed. The ICJ has invited adversarial procedure and judicial power to occupy the field.

The *Climate Change* Advisory Opinion is surprising not only in its implications for State consent. It breaks new ground in the breadth of the questions it answered. The questions that the UNGA put to the Court, in addition to embracing practically all the main treaties relevant to climate change, range across the law of the sea, human rights, general principles (or *putative* general principles—see, e.g., 'intergenerational equity'[48]), and, indeed, much of the corpus of customary international law. The questions also implicate problems of State responsibility, including attribution and causation; and the effects of *lex specialis* on rules of international law outside the climate treaties.

As mentioned above, the ICJ has the discretion to refrain from giving an advisory opinion, for example on prudential grounds in light of the proper role of the Court.[49] It also has a well-used toolkit for curbing the scope of the advisory opinions that it gives.[50] Following the UNGA's request for an Advisory Opinion on climate change, however, the ICJ gave as far-reaching a response as any in the history of advisory procedure. Apart from refraining from naming particular States as holding particular legal responsibilities for climate change—which, of course, the Advisory Opinion could not do, as questions of State responsibility were not presented and would have been blatantly improper for the Court to

45. United Nations Framework Convention on Climate Change (UNFCCC), 9 May 1992, entered into force 21 March 1994, Art. 14(1): 1771 UNTS 107.

46. *Id.*, Art. 14(2).

47. Paris Agreement, Art. 24: 'The provisions of Article 14 [of the UNFCCC] on settlement of disputes shall apply *mutatis mutandis* to this Agreement'.

48. *Climate Change* Advisory Opinion, paragraphs 155-157.

49. See p. 27 above.

50. The Court's skill in narrowing and focusing questions that UNGA has posed in advisory requests was on full display in the *Kosovo* Advisory Opinion. There, States were hoping for far-reaching statements for (or against) the independence of Kosovo; for (or against) a 'remedial' right of secession; for (or against) the legality of recognizing Kosovo as a State. The Court—wisely, in view of the limits of its judicial function—interpreted UNGA's request as focused on the legal character of the particular entity that issued Kosovo's declaration of independence and on the particular legal rules limiting that entity in regard to that declaration. See *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, Advisory Opinion, ICJ Reports 2010 p. 403 (22 July).

address in an advisory procedure even if they had been—the sole area of any breadth where the Court refrained from giving an answer was that which the Court called 'temporal scope'.

By 'temporal scope', the Court meant a compound of two rather different things. It meant scope in time of particular legal obligations—what international lawyers once called 'intertemporal questions'. And it meant duration of an alleged breach.[51] The Court concluded that questions under these two rubrics can only be answered '*in concreto*'—that is to say, in a particular contentious case duly submitted to jurisdiction of a court or tribunal, not in an advisory proceeding. In the Advisory Opinion of 23 July 2025, this one modest act of judicial restraint is the outlier, albeit one much criticized by activist lawyers who wanted the Court to go further in order to provide a basis for reparations for historical emissions.

51. *Climate Change* Advisory Opinion, paragraphs 97, 423, and 424.

3. The Law of the Sea (including UNCLOS)

Arguably the furthest-reaching pronouncements in the *Climate Change* Advisory Opinion are those regarding the United Nations Convention on the Law of the Sea 1982 (UNCLOS). The Court's view that there are significant climate change-related duties under UNCLOS opens the door for lawsuits against developed countries such as the UK under UNCLOS's compulsory adjudication procedures, which have already been abused in other contexts such as the dispute over sovereignty over the Chagos Archipelago. The *Climate Change* Advisory Opinion, however, implicates questions of national policy far broader and more consequential than the ICJ ever before has purported to address in such prescriptive terms. The Advisory Opinion's pronouncements on UNCLOS connect climate change obligations to a diverse array of other obligations and, most worryingly, implicate that disputes concerning those obligations are subject to binding and compulsory decision by international judges and arbitrators.

UNCLOS is the basis of contemporary international law of the sea for the 172 States, including the United Kingdom,[52] that are party to it.[53] UNCLOS featured prominently in the UN General Assembly's request for an advisory opinion to the Court.[54] In its Advisory Opinion, the Court determined that 'anthropogenic [greenhouse gas] emissions' are embraced within the definition of 'marine pollution' under UNCLOS Article 1, paragraph 1, subparagraph 4[55] and, accordingly, that the substantive provisions of UNCLOS Part XII on the protection of the marine environment apply in respect to such emissions.[56]

The Advisory Opinion goes on to identify a range of UNCLOS provisions that it says articulate obligations on States to '…"prevent or reduce the deleterious effects of climate change"…'[57] or that it says shall be interpreted in light of States' climate change obligations[58].

To start, the Advisory Opinion identifies UNCLOS Article 192—UNCLOS's 'general obligation' with respect to protection and preservation of the marine environment—as belonging to the corpus of climate change obligations. According to Article 192, 'States have the obligation to protect and preserve the marine environment.' The Advisory Opinion takes a due diligence standard to inhere in this provision and elevates measures of due diligence to the highest priority:

> *'Considering the seriousness of the threat posed by climate change and in view of the high risks of serious and irreversible harm to the marine environment*

52. The United Kingdom acceded to UNCLOS on 25 July 1997; UNCLOS entered into force for the United Kingdom on 24 August 1997.
53. https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en. As to the United Kingdom's participation as a party to UNCLOS, see Alan Boyle & James Harrison, 'British Contributions to the Law of the Sea and the Protection of the Marine Environment, including its Natural Resources', (2023) *British Yearbook of International Law:* https://academic.oup.com/bybil/advance-article/doi/10.1093/bybil/brad005/7143759
54. See GA resolution 77/276, 29 March 2023, 5th preambular paragraph and *chapeau* of operative paragraph: https://icj-cij.org/sites/default/files/case-related/187/187-20230412-app-01-00-en.pdf
55. *Id. Climate Change* Advisory Opinion at paragraph 339.
56. *Id.* at paragraphs 340 and 457(3)(D).
57. *Climate Change* Advisory Opinion, paragraph 343, quoting ITLOS Climate Change Advisory Opinion of 21 May 2024.
58. These provisions include UNCLOS Articles 192, 193, 194(1), 194(2), 197, and 206.

> *from anthropogenic [greenhouse gas] emissions, the standard of due diligence to be applied when complying with the obligation to protect and preserve the marine environment is stringent.'*[59]

In the ICJ's reasoning, the stringency of the standard follows from the categorization of activities that release greenhouse gases as 'riskier activities': because they are 'riskier,' such activities trigger an obligation 'to take measures "as far reaching and efficacious as possible" to protect and preserve the marine environment and "to prevent or reduce the deleterious effects of climate change and ocean acidification on the marine environment"'.[60] To oblige in such terms measures 'as *possible*' is to discard those considerations of balance and risk-reward that States understood to be necessary when drafting the UNFCCC and Paris Agreement: if the measure is possible, then the State shall adopt it; consensus and policy trade-offs are not in the picture. This holding about stringency is all the more consequential, because the Advisory Opinion applies it throughout.[61]

The Advisory Opinion also specifically embraces UNCLOS Article 194(2) within the climate change corpus. Article 194(2) provides as follows:

> *'States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.'*

Article 194(2) is one of the several UNCLOS provisions that the Advisory Opinion says entails a stringent due diligence standard.[62] Moreover, in concluding that 'the term "activities" in Article 194, paragraph 2, encompasses activities which produce [greenhouse gas] emissions',[63] the Advisory Opinion greatly enlarges the scope of activities that a litigant might attack by invoking that UNCLOS provision. States, in adopting Article 194(2), intended to impose legal responsibility, e.g. when an oil spill originating in State A spreads beyond 'the areas where [State A] exercise[s] sovereign rights'. No doubt adjacent areas—e.g. neighbouring State B's territorial sea, or the high seas immediately past the outer limits of State A's Exclusive Economic Zone—are concerned in Article 194(2); environmental effects of pollution, or at least their geographic scope, are broadly forecastable on that understanding of the provision, and causal linkage between such effects and injuries is conceivably determinable, even if parties likely will contest it. By contrast, the injuries and the scope of responsibility that Article 194(2) embraces according to the Advisory Opinion now would seem very considerably larger, harder to forecast, and almost inevitably to be bedevilled with uncertainties about causation. Greenhouse gas emissions, considering their global spread, long-term effects, and differentiated impact on different States, seem very different from the kinds of pollution States Parties had in mind in 1982 when they concluded UNCLOS. Now, however, if judges and arbitrators treat the Advisory Opinion as governing law for the interpretation of UNCLOS,

59. *Climate Change* Advisory Opinion, paragraph 343.
60. *Id.*, quoting *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 43, para. 17; and *Climate Change*, Advisory Opinion, ITLOS Reports 2024, p. 91, para 239.
61. *Climate Change* Advisory Opinion, paragraphs 138, 246, 254, 268, 343, 347, 349.
62. *Climate Change* Advisory Opinion, paragraph 349.
63. *Id.*

that difference does not matter.

Even the least onerous of the UNCLOS obligations identified in the Advisory Opinion are changed and enlarged by the Court's conclusion that anthropogenic greenhouse gas emissions are 'marine pollution' for UNCLOS purposes. For example, as the Advisory Opinion says, the obligations it identifies under Articles 194(1) of UNCLOS and 197 are obligations of conduct[64]—meaning that the measures that States must take in order to fulfil those obligations are not measures that necessarily attain a particular result. (Obligations of result typically are more onerous than obligations of conduct.) However, much like the obligations under Article 194(2), the obligations of conduct here now go considerably past the categories of pollution and environmental impact that States Parties would seem to have had in mind when they drafted UNCLOS in the 1970s and 1980s. According to Article 194(1),

> *'States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.'*

According to Article 197,

> *'States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.'*

The Advisory Opinion defines the standard of due diligence attaching to Article 194(1), as it did in regard to Article 192 and Article 194(2), as 'stringent'.[65] Claimants are likely to argue that the *Climate Change* Advisory Opinion combines the preventive and cooperative obligations of Articles 194(1) and 197 with the climate change obligations that the United Kingdom accepted as particular to the Paris Agreement. Judges or arbitrators who accept that climate change obligations indeed are now folded into Articles 194(1) and 197 will proceed to hand down decisions that determine far-reaching issues of climate change policy, notwithstanding the absence of the United Kingdom's consent to adjudicate climate change on those terms. If they do as the Advisory Opinion bids them, and they interpret the applicable standard of due diligence as 'stringent,' then they will require that the United Kingdom do not what makes sense in view of competing considerations of public welfare, national interest, and international consensus, but what is *possible*. If the United Kingdom has failed to do the possible—however unreasonable—then a colourable claim will have arisen that the United Kingdom has violated the law.

Having concluded that UNCLOS's environmental provisions apply in this way in respect of activities allegedly contributing to climate change, the Court has opened the gate to a flood of claims. To understand the

64. *Climate Change* Advisory Opinion, paragraphs 347 and 351.

65. *Climate Change* Advisory Opinion, paragraphs 347, 349.

litigation risk, one needs to consider the jurisdictional architecture of UNCLOS.

Under Article 297 of UNCLOS, '[d]isputes concerning the interpretation or application of [UNCLOS] with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 [of Part XV] in the following cases: […]

> *(c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by [UNCLOS] or through a competent international organization or diplomatic conference in accordance with [UNCLOS]'.*

By no means does Article 297 speak entirely for itself. But, read together with the *Climate Change* Advisory Opinion, it is of the utmost interest to a range of likely claimant States. Under the Statute of the ICJ, States are subject to no jurisdiction unless they consent to it on the terms indicated in Article 36 of the Statute—that is, being party to the ICJ Statute does not in itself establish a State's consent to jurisdiction. By contrast, simply being a party to UNCLOS means that a State consents to jurisdiction over a range of substantive matters. UNCLOS Article 298(1) invites States to elect one or a number of 'optional exceptions' to jurisdiction. In other words, under the ICJ Statute, States must opt in if they are to be subject to jurisdiction; under UNCLOS, they must opt out to avoid it. However, opting out, under UNCLOS, goes only so far. The UNCLOS jurisdictional scheme has a residuum that is always active, even after a State has elected the maximal scope of optional exceptions.

The residuum of UNCLOS jurisdiction is significant, because it potentially supplies a basis for far-reaching claims in adversarial proceedings. It contrasts sharply with the approach that States took when they agreed to the UNFCCC in 1992. They explicitly affirmed the UNFCCC approach in the Paris Agreement in 2015, and they declined to go beyond it. Under the UNFCCC and Paris Agreement, as we noted above, States are invited to consent to binding and compulsory court procedure in relation to disputes concerning substantive climate change obligations in those instruments, but it is their choice whether they do so. If, however, UNCLOS is part of the international law of climate change as the *Climate Change* Advisory Opinion strongly implies, then claimants are likely to assert that consent no longer matters: binding and compulsory procedure is now available when they bring claims concerning climate change.

UNCLOS is not the only treaty under which the United Kingdom has expressed its consent to adjudication. As noted above,[66] there are at least another two dozen treaties in force for the United Kingdom containing compromissory clauses. Each of these the United Kingdom carefully considered at the time of drafting and when adopting the respective treaty. Adoption of each treaty was on the expectation that judges or arbitrators might adjudicate disputes *in respect of the specific subject matter of* that *treaty*. It was

66. See p. 26 fn. 23 above.

not expected that a court or tribunal would take the compromissory clause in such a treaty and refashion it into a hook that pulls in the substance of climate-related obligations to which the United Kingdom agreed under other treaties, such as the Paris Agreement. Creative litigants, invoking the *Climate Change* Advisory Opinion, are now likely to tell judges and arbitrators that the compromissory clauses of these earlier treaties give them the power to decide disputes against the United Kingdom concerning climate change.

As claimant States invoke jurisdictional provisions in various treaties, including UNCLOS Part XV, section 2, we should expect hard-fought skirmishes in the preliminary phases of each case. A respondent State in international proceedings can win the day early in a case by ousting a claim for lack of jurisdiction, for lack of claimant standing, or even on more arcane points, such as the absence of a legally cognizable dispute. Potential respondent States should not assume that deft stratagems will prevent every claimant from taking every claim all the way to final judgment, however. The United Kingdom, thanks in no small part to the skill of its lawyers, in 2016 scored a victory at the ICJ in the *Marshall Islands* nuclear weapons case (not to be confused with the 1996 *Nuclear Weapons* advisory opinion), by convincing the Court that the claimant had simply failed to identify any legal question between the parties. The Court split, eight-to-eight, only the President's casting vote having settled the matter in the United Kingdom's favour.[67]

If one's answer to the concerns that we raise is to assure the policy-maker that the United Kingdom will side-step the coming climate cases just like that, then one is indulging in recondite self-deception. Moreover, counting on a technicality to win will make the United Kingdom a hostage to fortune. The figurative dice roll will be the legal reasoning of judges and arbitrators—drawn from much the same epistemic community that produced the Advisory Opinion.

67. *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament*, ICJ Reports 2016, para. 59(1) (5 October 2016).

4. Questions of causation in future climate change litigation

Causality is a problem that almost surely will loom large when litigation, post-*Climate Change* Advisory Opinion, begins. A party seeking reparations in financial form for climate-related injuries, if the party is to prevail, will have to demonstrate not only that it in fact suffered those injuries, and not only that the State (or States) it has sued violated a climate change obligation under international law. It also will have to demonstrate that the defendant's violation caused the injuries. Demonstrating the requisite causal link between a respondent (i.e., defendant) State's violation and the applicant (i.e., plaintiff) State's injury (or injuries) can be difficult even in familiar areas of international activity. Tracing a particular, quantifiable injury to particular climate-related violations would seem exceptionally difficult. Industrial activity—and other activities, as well as natural processes—have resulted in greenhouse gas emissions over the course of centuries; greenhouse gases have originated in a great many countries; and the effects of greenhouse gases spread widely but unevenly. The ICJ acknowledges the challenge: '[C]oncentrations of [greenhouse gas] emissions are not produced by a single activity or group of activities identifiable or associated with a certain State or States'.[68]

And, yet the ICJ seems to have resisted the suggestion that ordinary approaches to causation in international law will fail in face of the anticipated challenge. In the ICJ's view:

> *'The existing legal standard for establishing causation, which has been developed in the jurisprudence of the Court, is capable of being applied to the establishment of causation between the internationally wrongful act of non-compliance with States' obligations to protect the climate system from harm caused by anthropogenic GHG emissions and the damage suffered by States as a result of such a wrongful act.'*[69]

It is not entirely clear what the ICJ means in this passage. To say that the 'existing legal standard for establishing causation' suffices ('is capable') seems almost cavalier. Methods for establishing causation in international dispute settlement are vexingly underdeveloped and difficult to apply. International courts and tribunals have required a causal nexus between internationally wrongful conduct and compensable injury, but they have offered little systematic description of how to implement the requirement. Instead, they apply fact-sensitive formulas that acknowledge uncertainty, the confounding effect of concurrent causes, and the absence of a single

68. *Climate Change* Advisory Opinion, paragraph 421.
69. *Climate Change* Advisory Opinion, paragraph 436.

applicable legal test.

In the classic early case, *Factory at Chorzow*, the Permanent Court of International Justice judged itself incapable of calculating precisely how much financial damage Poland's misconduct toward the German factory owners in Upper Silesia had caused; the Court appointed experts separately to make that calculation.[70] This resort to auxiliaries to do what the judges recognized they could not do themselves only begins to suggest the difficulties a climate change claim will present on the question of causation.

Sixty years later, it was again alleged maltreatment of investors in a factory that instigated an international dispute, this time between the United States and Italy in respect of an American factory in Sicily. In *Elettronica Sicula S.p.A.* (ELSI) (*United States* v. *Italy*), the ICJ rejected the United States's plea for financial compensation, because

> *'one feature of ELSI's position stands out: the uncertain and speculative character of the causal connection, on which the Applicant's case relies, between the requisition [of the factory by Italian authorities] and the results attributed to it by the Applicant. There were several causes acting together that led to the disaster to ELSI.'*[71]

With all due respect to the ICJ (in its 2025 composition), if the Court could not untangle the causal puzzle in what was little more than an investment dispute after relations between an investor and local authorities went sour, then there seems little chance of an orderly adjudication of claims embedded in the complexities of the world climate system. To give an altogether more sobering example, the Court rejected Bosnia's request for financial compensation for Serbia's (proved) breach of the obligation to prevent genocide. The Court merits quoting at length on the point:

> *'[T]he question just mentioned, whether genocide at Srebrenica would have taken place if the Respondent had attempted to prevent it by employing all means in its possession, becomes directly relevant, for the definition of the extent of the obligation of reparation borne by the Respondent as a result of its wrongful conduct. The question is whether there is a sufficiently direct and certain causal nexus between the wrongful act, the Respondent's breach of the obligation to prevent genocide, and the injury suffered by the Applicant, consisting of all damage of any type, material or moral, caused by the acts of genocide. Such a nexus could be considered established only if the Court were able to conclude from the case as a whole and with a sufficient degree of certainty that the genocide at Srebrenica would in fact have been averted if the Respondent had acted in compliance with its legal obligations. However, the Court clearly cannot do so… [T]he Respondent did have significant means of influencing the Bosnian Serb military and political authorities which it could, and therefore should, have employed in an attempt to prevent the atrocities, but it has not been shown that, in the specific context of these events, those means would have sufficed to achieve the result which the Respondent should have sought. Since the Court cannot therefore regard as proven a causal nexus between the Respondent's*

70. *Factory at Chorzów (Claim for Indemnity)*, 1928 PCIJ Ser. A No. 17 at p. 64 (13 Sept.).

71. *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy)*, ICJ Reports 1989 p. 15, 62, paragraph 101 (20 July).

> *violation of its obligation of prevention and the damage resulting from the genocide at Srebrenica, financial compensation is not the appropriate form of reparation for the breach of the obligation to prevent genocide.*'[72]

We will not endeavour here to map a hypothetical climate change claim in detail onto the Court's holdings in the 2007 *Genocide* judgment, but it suffices to observe that even where a respondent State 'did have significant means of influencing' the matter, that finding in itself does not prove 'a causal nexus between the… violation of [an international law] obligation… and the damage resulting from [a wrongful act].' In *Armed Activities on the Territory of the Congo* (*Congo* v. *Uganda*), the Court acknowledged again how difficult it is to establish causation amidst the ebb and flow of an armed conflict,[73] noting, *inter alia*, that '[i]t may be that the damage is attributable to several concurrent causes… [and] that several internationally wrongful acts of the same nature, but attributable to different actors, may result in a single injury or in several distinct injuries.'[74] Still closer to home for potential future climate change claimants, the ICJ in *Certain activities carried out by Nicaragua in the Border Area* (*Costa Rica* v. *Nicaragua*), noted that'[d]amage may be due to several concurrent causes, or the state of science regarding the causal link between the wrongful act and the damage may be uncertain.'[75] Moreover, international law contains no rule for valuating environmental damage.[76]

So, it is far from clear what the Court means, in its *Climate Change* Advisory Opinion, when it says, without qualifying or elaborating, that '[t]he existing legal standard for establishing causation, which has been developed in the jurisprudence of the Court, is capable of being applied' in a climate change case.

More concerning still, the ICJ's words here sound conclusory. To refer to 'the establishment of causation', at least in some general sense, suggests that the causal link already has been established and so all that is left is to apply the 'existing legal standard'—whatever that might be—in specific cases. In the eighty-one years of the ICJ's practice, there have been many passages in the judgments and opinions of the Court that defy very rigorous analysis as a matter of law. The Court is a judicial organ, but a diplomatic culture is seldom far in the background of its proceedings even when States have consented to judicial settlement of disputes. A degree of diplomatic imprecision is frequently visible in judgments of the ICJ.

By no means has the sometimes-impenetrable character of the ICJ's judgments prevented States from putting them to practical use. They interpret the judgments in a manner that gives effect to them and avoids contradiction. Doing that, we read this passage in the Advisory Opinion about 'establishing causation' *not* to be conclusory as to the causal linkage in future climate change cases. But even reading the passage that way, we have trouble avoiding the impression that the ICJ thinks that proving causation in climate change cases will pose no special problem: the 'existing legal standard' will suffice. This leads to the question, what is the 'existing legal standard'? It intends no disrespect to the ICJ to observe that its 'jurisprudence' on causation is threadbare. Even a court that

72. *Case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, Judgment, ICJ Reports 2007 p. 43, 234, paragraph 462 (26 Feb.).

73. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, ICJ Reports 2022 p 13, 48, paragraphs 93-94 (9 Feb.).

74. *Id.* at paragraph 94.

75. *Certain activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*, Compensation, Judgment, ICJ Reports 2018 p. 15, 26, paragraph 34 (2 Feb.).

76. ICJ Reports 2018 at p. 29, paragraph 44.

applies a highly-developed jurisprudence on causation would find climate change cases difficult. The ICJ has found causation to be lacking in claims concerning relatively routine matters and extraordinary cases alike.

The kinds of claims that the Advisory Opinion invites will involve factual and legal questions of vexing complexity.

- What starting point will States such as Vanuatu and the Bahamas advert to, when they allege breaches? The dawn of the Industrial Revolution? The date of their independence? The date at which particular asserted legal obligations came into force by treaty or crystallized as customary international law?
- How will claimants demonstrate causal connection between emissions at a given time and later injuries?
- How will they distinguish between injuries related to the *climate* from injuries related to climate *change*?
- How will they separate concurrent effects of climate change violations by two or more States?
- How will they characterize the legal nexus between injuries they allege and the particular source of international law they invoke? Does the impact on the marine environment—which a claimant might advert to in a claim under UNCLOS—entail the same kinds of proof as the impact on human rights—which a claimant might advert to in a claim under one or another human rights treaty?
- What are the substantive outer limits of claim that parties will invoke the Advisory Opinion to pursue? Claims for colonial oppression (because the colonial powers used their industrial might—which caused climate-changing emissions—to assert control over their colonies)? Claims for present-day disparities in material well-being and political stature (because those disparities are traceable to activities the industrialized countries engaged in)? International lawyers indeed suggest the possibility of claims as far-reaching as these.[77]

Arguments over causation are likely to be enormously contentious. International environmental law had a turning point in the famous *Gabčíkovo-Nagymaros* case. In that case, the environmental impact was, in its larger frame, self-evident and clearly time-limited: a dam and a bypass canal re-channelled the Danube where the river flows between two adjacent States, Slovakia and Hungary, and—unsurprisingly—this had an impact on Hungary. By contrast, when it comes to activities that a claimant alleges affect climate in distant places and at a remove of decades or centuries, the causal connections flow with nothing like that directness or clarity. Expect duelling expert submissions on scientific and factual evidence—and volumes of counsel pleading on causation in international law—when the climate change cases come. Will the ICJ throw up its hands, as the PCIJ did in *Factory at Chorzów* nearly a century ago, and appoint experts to decide the question? As surprising as it would be for the United Kingdom to

77. See e.g. Julia Dehm, "The Evasion of Historical Responsibility? Colonialism, Temporality and Reparative Justice in the ICJ's Climate Advisory Opinion, Verfassungsblog. 4 September 2025, https://verfassungsblog.de/the-evasion-of-historical-responsibility/

submit its entire energy sector—and thus much of its national economy—to an ICJ judgment, a referral of the matter to court-appointed experts would be more surprising still.

In giving the Advisory Opinion, the ICJ had to make certain conclusions about these complex matters. The traditional understanding of advisory procedure and the judicial function was that, past a point, the demands of evidentiary inquiry and fact-finding make a question inappropriate for an advisory opinion. The Permanent Court of International Justice, the ICJ's predecessor, in 1923, wrestled with a question that presented demands of that kind. The PCIJ had been asked to opine on the status of Eastern Carelia,[78] a territory the Soviet Union claimed from Finland. The Court exercised its discretion to refrain from giving an advisory opinion. According to the Court,

> *'there are other cogent reasons which render it very inexpedient that the Court should attempt to deal with the present question… The Court does not say that there is an absolute rule that the request for an advisory opinion may not involve some enquiry as to facts, but, under ordinary circumstances, it is certainly expedient that the facts upon which the opinion of the Court is desired should not be in controversy, and it should not be left to the Court itself to ascertain what they are'.*[79]

The narrow question was whether Finland and Russia had agreed to an autonomy arrangement for Eastern Carelia, a thorny problem to be sure; if it had been easy, it would not have confounded the League of Nations' Council. Yet, it may be suggested, the question in *Eastern Carelia* had nothing like the evidentiary complexity of questions of causality between industrial activities in particular countries at particular times on climate and their impact on specific other countries later.

The climate *is* changing. Anthropogenic sources—i.e., human activity—have affected the climate. Certain States will experience more severe effects from climate change than others. These truths do not establish that an international court or tribunal—even if granted the authority through the express consent of States to do so—is well-placed to contribute to a solution to the problem of climate change. The problem has led governments to contemplate changes of policy that will have profound implications for politics, economic life, and legal relations. The policy-making challenges that arise are of a kind that judicial procedures are not at all well-equipped to solve.

78. Now known as Eastern Karelia.
79. *Eastern Carelia*, op cit, at p. 28.

5. Legal uncertainty: the coming flood of claims against the UK and other States

Many claimants, many claims

In issuing the Advisory Opinion, the Court has opened the door to experimental litigation on a large scale and from uncertain quarters. The Opinion as a whole indicates as much. One passage illustrates the multiplicity of potential claims:

> *'[I]n the climate change context, the Court considers that each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment. And where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act'.*[80]

Under received understandings of climate change, the adverse impact will be global, and, therefore, 'injured State' describes a category of potential claimants numbering most of the States. As the 'Court considers that *each* injured State may separately invoke the responsibility of *every* [responsible] State' (emphasis added), the number of potential claims is enormous. One notes, parenthetically, that the ICJ, in this formulation ('the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment'), seems to assume that multiple States are violators; such an assumption is inappropriate before full scrutiny of claims and acutely so in an advisory proceeding.

Be that as it may, the implicit invitation is for claimant States to invoke one or more of the many treaties that the Advisory Opinion addressed and customary international law as well and to bring suit against any State involved in activities to which climate change might be traced. The search for jurisdictional provisions to accommodate claims, in particular compromissory clauses in treaties, no doubt already has begun. The Advisory Opinion addressed UNCLOS at some length.[81] States should expect claims under Part XV, section 2 of UNCLOS, which provides for the compulsory resolution of disputes by court or by a tribunal.

UNCLOS is unlikely to be the only treaty under which claimants bring climate claims. The Advisory Opinion alludes to various other

80. *Climate Change* Advisory Opinion, paragraph 431.
81. *Id.* at paragraphs 54, and 336 to 365.

treaty regimes, and, by implication, to the courts and tribunals open to parties alleging breach of provisions of those regimes. This gives rise to a bewildering array of possibilities. The Court's open-ended observations about the extra-territorial effect of human rights treaties,[82] combined with its even more allusive invocation of investment law, trade law, and the law of war,[83] are ominous.

To get a picture of the potential substantive scope of climate claims, it helps to recall the Court's conclusion as to the 'directly relevant applicable law'. According to the Court,

> *'the most directly relevant applicable law consists of the Charter of the United Nations, the UNFCCC [United Nations Framework Convention on Climate Change 1992], the Kyoto Protocol, the Paris Agreement, UNCLOS, the ozone layer treaties, the Biodiversity Convention, the Desertification Convention, the customary duty to prevent significant harm to the environment and the duty to co-operate for the protection of the environment, and international human rights law, as well as certain guiding principles for the interpretation of various applicable rules and principles (sustainable development, common but differentiated responsibilities and respective capabilities, equity, intergenerational equity, and the precautionary approach or principle).'*[84]

This conclusion amounted to rejection of the United Kingdom's entire legal strategy in the advisory proceedings. The United Kingdom had argued that only the climate change treaties, in particular the Paris Agreement, supply legal rules relevant to the questions that the UNGA advisory request had posed. The Court said those rules are only the start.[85] The list, above, followed. More concerning still, the Court 'emphasize[d] that this list serves to determine only the applicable law which is *most directly relevant*.'[86] Other possible 'relevant' rules 'may be found, *for example*, in international trade law, international investment law, and international humanitarian law [i.e., the laws of war].'[87] Each of these is a far-reaching category of legal obligation, and, as the Court sees them as only examples, even they do not identify the full extent of the rules that are available for claimants to invoke when they bring climate change cases against industrialized countries.

As already mentioned, a number of judges appended Declarations and separate opinions to the Advisory Opinion. To these we can turn for further elucidation of the sources of substantive right and obligation that litigants might invoke in climate change claims. Judge Cleveland, in a Declaration, agreed with the Court and concluded that international investment law 'must be informed by States' obligations in respect of climate change'[88] and that the law of armed conflict obliges States 'to protect the climate system'.[89] Coming from a judge nominated by the United States, the world's largest capital-exporting State and long its principal security guarantor, these conclusions are, to say the least, surprising.

The Advisory Opinion itself contains surprising material. For example, it suggests that a State granting licences for the exploitation of hydrocarbons has breached international law[90] and that a State declining to cease

82. *Id.* at paragraphs 394 to 402.
83. *Id.* at paragraph 173.
84. *Id.* at paragraph 172.
85. *Id.* at paragraph 171.
86. *Id.* at paragraph 173 (emphasis added).
87. *Id.* (emphasis added).
88. Declaration of Judge Cleveland, paragraph 22.
89. Declaration of Judge Cleveland, paragraph 20.
90. *Climate Change* Advisory Opinion, paragraph 427.

existing hydrocarbon production is in breach as well.[91] The Court relies on a principle of 'common but differentiated responsibilities' in respect of climate change—the Advisory Opinion uses the expression some forty times in numerous connections—and it pronounces repeatedly in the Advisory Opinion on possible compensatory obligations.[92] Connecting these elements of the Advisory Opinion with the Advisory Opinion's suggestions as to specific international law breaches, claimants are to be expected to pursue reparations from the main industrial powers of the present day — and even will try their luck suing the United Kingdom on the special 'differentiated' ground that it was there that the Industrial Revolution—*fons et origo* of anthropogenic carbon emissions—began.

Reparations for climate injuries?

Calls to stop oil and gas production are very unlikely to be the end of the matter for the United Kingdom. As we already have suggested, underdeveloped States can be expected to seek financial compensation for injuries that they allege have resulted from violations of international legal obligations related to the climate.

The suggestion that violations of climate-related obligations entail a duty of cessation follows from the widely-accepted understanding of State responsibility in international law. A State in breach of a rule is obliged, first and foremost, to stop the breach if it is a continuing one.[93] According to the ILC's Commentary on State Responsibility, '[t]he function of cessation is to put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule.'[94]

A claimant who, for example, demands that the United Kingdom stop producing oil and gas in the North Sea, will invoke the duty of cessation, but, of course, the claimant first must establish that 'the underlying primary rule' that it says the respondent violated indeed exists and, second, that the respondent violated it. Once the claimant establishes these points, then it is possible that *any* State might call attention to the violation and demand cessation: 'The responsible State's obligation of cessation,' says the ILC, '… protects both the interests of the injured State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law.'[95] If this makes it sound like a great many States could join a bandwagon of complainants demanding that the United Kingdom, say, rescind all existing oil and gas licences, then that's because they very well could. Under the position that the Advisory Opinion expresses, a future judgment might well demand that the United Kingdom stop all hydrocarbon production, refining, and even use.

Formally speaking, the law of State responsibility does not treat the duty of cessation as part of the law-breaker's reparative duty.[96] The duty to make reparation, a distinct legal category, inheres in every breach of a primary international legal obligation. That is to say, where a State has violated a substantive obligation (i.e., an obligation to do or refrain from doing a particular thing), the obligation need not expressly indicate the reparative duty; it is automatic.[97]

91. *Id.* at paragraphs 447 to 448.
92. *Id.* at paragraphs 452 to 454.
93. ARSIWA Art. 30 states: '*Cessation and non-repetition*

    The State responsible for the internationally wrongful act is under an obligation:

    to cease that act, if it is continuing;

    to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.'
94. ARSIWA Art. 30, Comment (5).
95. *Id.*
96. The perceptive reader well might think that the line in international law between cessation and reparation is thin. The ILC agreed. See ARSIWA, Art. 30, Comment (8), quoting *'Rainbow Warrior' (New Zealand* v. *France)*, XX UNRIAA p. 217, p. 266, paragraph 105 (1990).
97. ARSIWA Art. 31, Comment (1).

That is *not* to say that the *form* or *magnitude* of reparation follows by mere operation of law from the violation. Reparation may take one or a combination of three forms: restitution (i.e., reversion of a state of affairs to the status quo ante),[98] compensation (i.e., the payment of financial sums),[99] or satisfaction (i.e., apology or other symbolic expression).[100] To determine which form or forms of reparation are called for, a court or tribunal applies the law of State responsibility to the facts and to the underlying primary (i.e., substantive) rule.

Without excluding the possibility that a State alleging climate injury might demand restitution, or that such a State even might rest its case with a call for mere apology (satisfaction), the form of reparation that should most concern the United Kingdom and other industrialized States is compensation. As we noted earlier, a number of small island States have made known their intention to seek compensatory awards for alleged violations of climate-related international law and the injuries that they say the violations caused.[101]

What might compensatory reparations for climate change look like *in concreto*?

An oft-cited estimate for climate change damages is contained in a paper published in *Nature Sustainability* in 2023 by Andrew L. Fanning of the University of Leeds and Jason Hickel of the Autonomous University of Barcelona.[102] Fanning and Hickel assign a 'carbon budget' to every State on the assumption that global temperature must not rise above 1.5 °C, the target which States adopted at the Paris Conference. The authors then look at cumulative greenhouse gas emissions since 1960 and assign a carbon budget to every State based on their share of the world population.[103]

Using such an approach, they unsurprisingly find that developed States such as the UK have exceeded their carbon budget, as their share of the world's economic output and therefore of greenhouse gas emission exceeds that of developing States. They then use this observation to assign damages, which they estimate to be US$192 trillion 'owed to the undershooting countries of the Global South for the appropriation of their atmospheric fair shares by 2050, with an average disbursement to those countries of US$940 per capita per year.' On a rough estimate which puts the UK's share at 3 per cent, the damages for the UK would amount to US$5.76 trillion.[104] By comparison, the UK's GDP for 2024 in current US dollar terms as estimated by the World Bank is $3.68 trillion.[105]

The US$192 trillion figure may seem unreal, but this is at the lower end of the scenarios which the authors hypothesised about. Using 1850 as its starting point, the authors found an upper bound for damages of US$371 trillion. As the first State to industrialize, the United Kingdom would hold a considerable part of the responsibility for that sum.

To emphasise, all the above figures would only cover the period up to 2050, after which it would be natural for claimants to call for more. The authors decided to leave out of their calculations emissions from land usage, from gases other than greenhouse gases, and 'the principle of common but differentiated responsibilities in light of respective national

98. *Id.*, Art. 35.

99. *Id.*, Art. 36.

100. *Id.*, Art. 37.

101. See notes 15, 16-17, 43.

102. Web of Science, which comprehensively ranks peer-reviewed scientific journals, places *Nature Sustainability* at 99.5 per cent, meaning that it ranks higher than 99.5 percent of the journals in its field (Green & Sustainable Science & Technology): https://wos-journal.info/journalid/122

103. Andrew L. Fanning and Jason Hickel, "Compensation for atmospheric appropriation", Nature Sustainability 6 (2023), pp. 1077–1086, https://doi.org/10.1038/s41893-023-01130-8

104. Bartlett, "Tuesday Talks: The case for climate reparations". https://reuben.ox.ac.uk/article/tuesday-talks-the-case-for-climate-reparations

105. "GDP (current US$) - United Kingdom", The World Bank, https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=GB

capabilities, by which countries with greater means, and with higher cumulative emissions, must decarbonize faster than the rest of the world (and vice versa for countries with lesser means).' In other words, the authors deliberately have erred on the moderate end of their own model and assumptions.

It might be argued that the estimate we highlight is essentially the product of an academic flight of fantasy. Yet it is hard to find estimates which fall below the range of trillions of dollars. For example, in 2025, the NGO ActionAid estimated that developed countries owe Africa US$36 trillion in climate damages, and US$107 trillion to the developing world overall.[106] Oxfam estimates that the liability of the G7 for climate change harm is US$8.7 trillion for damages accrued since 1979 alone. In short, trillion-dollar figures are fully within the mainstream discourse on climate change reparations.

The idea of climate change reparations has steadily gained support from both civil society and States. States and intergovernmental organizations which pursue climate reparations include Vanuatu, Pakistan, CARICOM's reparations committee, the Organisation of African, Caribbean and Pacific States, Burkina Faso, and the Bahamas.

The decided cases of the ICJ offer little reassurance as to how the Court might calculate climate change reparations. It took until 2022 for the Court to hand down its first judgment containing a significant financial reparations clause, that in *Democratic Republic of the Congo* v. *Uganda*, but the injuries there, though serious, arose from a localized armed conflict over a fixed period of years.[107] Under UNCLOS Part XV, section 2, the power exists for ITLOS or an Annex VII tribunal to make a determination of reparative obligation, including financial compensatory obligation.[108] In accordance with Article 293(1), a tribunal having jurisdiction under section 2 'shall apply this Convention and other rules of international law not incompatible with this Convention.' A party seeking climate change reparations under UNCLOS likely would invoke Article 293(1) as a link that in turn would allow it to invoke, certainly, the general rules of State responsibility, and also, likely, the Advisory Opinion and a range of other rules, including putative customary international law rules, for purposes of calculating financial compensation. UNCLOS practice is too sparse on financial compensation, and each determination too case-specific, to be sure how large a monetary sum a climate claim under UNCLOS against Britain might entail. The *Climate Change* Advisory Opinion presages claims for reparations and offers no limiting principle to cap them.

The call for reparations for climate change belongs to a broad push for reparations including in respect of slavery. In 2025, the African Union (AU) declared its theme to be 'Justice for Africans and People of African Descent Through Reparations'.[109] Use of strategic litigation is a feature of reparative justice campaigns as we have seen in the *Climate Change* Advisory Opinion and through efforts such as the attempt to use the Judicial Committee of the Privy Council to force the UK to pay reparations for the trans-Atlantic slave trade. The *Climate Change* Advisory Opinion can be

106. "Africa is owed US$36 trillion in climate debt by rich polluting countries, a new report by ActionAid shows", ActionAid, 10 February 2025, https://actionaid.org/news/2025/africa-owed-us36-trillion-climate-debt-rich-polluting-countries-new-report-actionaid

107. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, Judgment, 2022 ICJ Reports p. 13 (9 Feb.), as to which see Cecily Rose, 'Evidentiary Challenges in the Litigation of War Reparations: *Armed Activities on the Territory of the Congo* (DRC v Uganda),' (2025) 16 *Journal of International Dispute Settlement* 1.

108. See, e.g., *M/V 'Saiga' (No. 2)* (Saint Vincent and the Grenadines v. Guinea), Judgment (merits), ITLOS Reports 1999 (1 July), paras. 167–75, 183(12), awarding US$2,123,357 plus interest. This was a case concerning a small oil tanker, with an insured value of US$1.5 million, that had been selling bunker fuel to fishing boats off the coast of West Africa before Guinean customs authorities arrested it.

109. "AU Theme of the Year 2025", African Union, https://au.int/en/theme/2025

understood in its context as an effort to extract wealth from the Global North, capitalizing on widespread feelings of historical guilt and on UK-specific institutional developments which treat determinations by international courts as necessarily binding on national policy.

* * *

There is little to welcome, and much to doubt, in the Advisory Opinion. Law is to serve the interest of stability and predictability in social relations, including the interest in reliably forecasting how material changes in human affairs will affect legal rights and obligations. The *Climate Change* Advisory Opinion raises more questions than it answers. It does something that judges should exercise caution before doing, and especially in an advisory proceeding: it leaves its addressees with more legal puzzles than they had before the judges spoke.

And, in having spoken as they did, the judges rejected the commonsense view that the Paris Agreement, the UK's principal climate treaty, is the main source of obligation in respect of climate change. Instead, they declared that climate obligations embrace practically the entire corpus of international law. In so doing, the ICJ has all but guaranteed that a coterie of small and underdeveloped States will try their hand at litigation against any industrialized State that makes itself amenable to suit.

6. The future of international adjudication

The Advisory Opinion of 23 July 2025 addresses climate change as a project of reparative justice. It invites judicialization of a problem that stands little chance of solution through the backward-looking and adversary process of litigation. Climate change calls, instead, for foresight and collaboration among States. If the Advisory Opinion exercises much influence over national policy, this collaboration will prove elusive.

The *Climate Change* Advisory Opinion joins the quarter-century trend in the expansive exercise of advisory jurisdiction by the ICJ. The *Nuclear Weapons* Advisory Opinion of 1996, in this light, was a precursor, the *Wall* Advisory Opinion of 2004, a turning point. With the *Chagos* Advisory Opinion in 2019, and further opinions in 2024 and 2025 addressing Israel's presence in the occupied territories,[110] the Court signalled its readiness to cast off the limits. The General Assembly itself—the organ most frequently requesting advisory opinions—had exercised restraint during its first fifty years. However, that time has passed. The Assembly has established a new practice.

For particular States, including the United Kingdom, the new practice presents a dilemma. The ICJ has a long history of useful service in the settlement of disputes between sovereigns consenting to its jurisdiction. It would be a loss, if exorbitant advisory practice were to instigate States to abandon that principal UN organ. Loss would also result, if States Parties were to abandon UNCLOS, a treaty which claimants seem likely to invoke, *Climate Change* Advisory Opinion in hand. Perhaps the *Climate Change* Advisory Opinion will prove to have less impact than all that, but the initial indications are that its impact will be significant. Some environmental lawyers are already preparing for a flood of lawsuits. In the words of one climate change lawyer, 'The ICJ Advisory Opinion now paves the way for significant claims to be brought for reparations by countries harmed by climate change, with potential liabilities likely to reach into the trillions of dollars. It is only a matter of time before the law recognises that similar claims may be brought against companies and, critically, against directors personally.'[111]

If one concludes that the Advisory Opinion will infuse new life into international adjudication, then one is right in a narrow sense and wrong in a wider sense.

One is right in a narrow sense, because the Advisory Opinion will give rise to an enormous docket of new cases at the ICJ and under other dispute

110. *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, ICJ Reports 2024 p 753 (19 July); *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2025 (22 Oct).

111. Jennifer Robinson, "Climate Integrity publishes expert opinion on the ICJ Advisory Opinion on climate change and its effect on corporate directors' duties", Doughty Street Chambers, 21 April 2026, https://www.doughtystreet.co.uk/news/climate-integrity-publishes-expert-opinion-icj-advisory-opinion-climate-change-and-its-effect

settlement mechanisms, such as those identified in UNCLOS Part XV, section 2. The ICJ's pronouncements on climate change—and in particular its suggestion that every State in a large category of putative climate-victim States has individual claims against every State in a category of putative climate wrong-doer States—are good for the business of international lawyers.[112] Thanks to the opinion, NGOs, their lawyers, and counsel and experts engaged by the governments of claimant States and respondent States alike stand poised upon halcyon days. The stakes in the possible reparative claims invoking the Advisory Opinion are enormous, and, so, this will be no small addition to international claims practice.[113]

But our public institutions should not serve a mere sectoral interest. The institutions of public international law whose purpose is to adjudicate disputes between consenting sovereigns will face a backlash if they are imprudently used. Energy consumption is indispensable to every domain of economic life on the planet. If allowed to attain the expansive interpretation claimants have an interest to urge, the *Climate Change* Advisory Opinion will effectively place the world's economy under judicial superintendence. States that have not consented to binding dispute settlement will feel vindicated. Those that have will step away. In short, while the Advisory Opinion will be good for international lawyers, it will not be good for international law.

The Court in the *Climate Change* Advisory Opinion speaks in closing of 'an existential problem of planetary proportions'.[114] An Advisory Opinion will not solve such a problem, nor will it contribute to solving it. In adopting the *Climate Change* Advisory Opinion, the Court has ignored the limits of its judicial function and misjudged its role.

112. See again *Climate Change* Advisory Opinion, paragraph 431.

113. A precise count of potential suits is difficult to arrive at. However, if we (1) consider the words of the Advisory Opinion—'each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment'; (2) count only the nine Member States of the Commission of Small Island States on Climate Change and International Law; (3) count the 38 countries with market economies comprising the Organisation for Economic Cooperation and Development (OECD); and multiply (9 x 38), 342 bilateral claims might be identified. To put that number in perspective, some 170 bilateral disputes have been adjudicated at the ICJ in the Court's entire history since 1945.

114. *Id.* at paragraph 456.

7. How the United Kingdom should respond

Given the likely effect of the Advisory Opinion as catalyst for litigation against the United Kingdom, the Government should take the following steps to safeguard against climate-related lawsuits in forums such as the ICJ and ITLOS, but potentially many others as well. The actions we recommend are consistent with international law, with the practices of the United Kingdom's peers, and with the national interest.

Withdraw from the compulsory jurisdiction of the International Court of Justice

Uniquely among the five permanent members of the United Nations Security Council, the United Kingdom, through an 'optional clause' declaration, accepts the compulsory jurisdiction of the International Court of Justice under ICJ Statute Article 36(2).[115] This means that any State wishing to take the United Kingdom to The Hague can do so, as long as its case satisfies the terms of the United Kingdom's 'optional clause' declaration.

Given the Advisory Opinion's scope and the likelihood that States will invoke it to pursue far-reaching claims against the United Kingdom, including claims for compensation and challenges to overturn Parliament's choices in regard to the public policy of the United Kingdom, the United Kingdom should immediately withdraw its declaration recognizing the jurisdiction of the ICJ as compulsory. This will reduce the opportunities for foreign States to invoke the Advisory Opinion in suits to obtain financial reparations from the United Kingdom.

Some may object that withdrawing our acceptance of ICJ jurisdiction would be a retrograde step: in 2025, the United Kingdom 'reiterate[d] the General Assembly's call for States that have not yet done so to consider accepting the Court's jurisdiction in accordance with its Statute' and said that its own acceptance of compulsory jurisdiction identifies the UK as a 'steadfast supporter of the Court'.[116] Yet it is important to highlight that, in continuing to accept the ICJ's compulsory jurisdiction the United Kingdom is very much an outlier among its peers. As noted, none of the other P5 States—the United States, China, Russia, and France—accepts compulsory ICJ jurisdiction under Article 36(2). The United States and France formerly

115. "Declarations recognizing the jurisdiction of the Court as compulsory: United Kingdom of Great Britain and Northern Ireland", International Court of Justice, 22 February 2017, https://icj-cij.org/declarations/gb

116. Sally Langrish, "The United Kingdom remains a steadfast supporter of the International Court of Justice: UK statement at the UN General Assembly", Foreign, Commonwealth & Development Office, 30 October 2025, https://www.gov.uk/government/speeches/the-united-kingdom-remains-a-steadfast-supporter-of-the-international-court-of-justice-uk-statement-at-the-un-general-assembly

accepted the ICJ's compulsory jurisdiction but withdrew their acceptances after the Court made determinations which both viewed as affecting their core national interests.[117] The United Kingdom has itself withdrawn from the ICJ's compulsory jurisdiction in specific areas, for instance on disputes concerning nuclear weapons or nuclear disarmament unless other nuclear powers agree to submit themselves to the Court's jurisdiction on the issue, and disputes with members of the Commonwealth and former members of the Commonwealth.

To withdraw from optional clause jurisdiction is *not* to withdraw from the ICJ. The United Kingdom will remain party to the ICJ Statute and can still accept ICJ jurisdiction in many ways, for instance under existing treaties, or by *ad hoc* special agreement. But the important thing is that the acceptance of ICJ jurisdiction on bases such as those will be specific to a treaty regime or to a particular dispute, instead of the blanket acceptance of jurisdiction to which the United Kingdom is subject today. After this change of policy that we propose, only cases that the United Kingdom recognizes as suitable for ICJ judgment will go to the ICJ.

Make a statement about the non-binding nature of the Advisory Opinion

The United Kingdom Government should publicly affirm, as the Court did, that the Advisory Opinion is not legally binding and that States are free to take whatever notice they deem necessary of its substance. This would re-assert the United Kingdom's, and the ICJ's, longstanding position on this issue.

Some may say that this is redundant in view of the ICJ's own affirmation that the Advisory Opinion is not legally binding. However, as seen after the *Chagos* Advisory Opinion and in other circumstances, other international bodies increasingly treat Advisory Opinions as legally binding. Therefore, as part of the United Kingdom's duty to the progressive development of international law through State practice, it should publicly affirm the longstanding position vis-à-vis Advisory Opinions, the non-binding status of which is stipulated in the Charter of the United Nations.

To relate the non-binding nature of the Advisory Opinion to a specific matter of national interest, the United Kingdom should note that the ICJ's pronouncements in the opinion have no bearing on our choice of action in respect of Rosebank and Jackdaw oil and gas fields in the North Sea.

At worst, these clarifications will be merely redundant; but given the manner in which Advisory Opinions are increasingly weaponised as part of international lawfare, to assert their non-binding character will help preserve the intent of the framers of the United Nations Charter as well as international law's core nature as a body of law voluntarily accepted by States.

117. France withdrew its acceptance of compulsory jurisdiction in 1974 after the ICJ announced provisional measures against France to refrain from testing nuclear weapons in the Pacific, when France took the view the ICJ lacked jurisdiction over that case. The United States of America for its part withdrew in 1985 when the ICJ accepted a case against the USA from Nicaragua. In this case the United States of America accused Nicaragua as well as other Communist States of using the ICJ as a 'political weapon' but even then was ready to answer the applicant State's claims—until the Court all but disabled the respondent State's collective self-defence argument by refusing to allow El Salvador, one of the States under armed attack by Nicaragua, to submit evidence of the claimant's misconduct. Neither France nor the United States has returned to the ICJ's compulsory jurisdiction. The People's Republic of China and the Russian Federation have never accepted the ICJ's compulsory jurisdiction.

Reiterate the United Kingdom's substantive position as expressed in the advisory proceedings

As we noted, the United Kingdom took the position in the advisory proceedings that the Paris Agreement contains 'binding and meaningful mitigation obligations to ensure the protection of the climate system from anthropogenic greenhouse gas emissions'. The Paris Agreement, moreover, prioritizes cooperation, diplomacy, and consensus; it does not impose the jurisdiction of international courts and tribunals over this vital and complex area of policy. The Government should reiterate its existing position and clarify that the Paris Agreement marks the limits of the United Kingdom's legal obligations in this field of international law.

Renegotiate UNCLOS

This is perhaps the most ambitious of our proposals. UNCLOS resulted from a decades-long effort by the international community to codify the law of the sea. On the whole it has been a success for participating States. However, the ICJ through the *Climate Change* Advisory Opinion has implicitly invited claimant States to invoke UNCLOS in suits for alleged injuries arising from climate change, a development that risks transforming UNCLOS into something which it was never intended to be and delegitimizing the Convention in the eyes of many States party.

Therefore, we recommend that, in concert with peer States, the United Kingdom launch an effort to clarify the ambit of UNCLOS in climate matters and to prevent the compulsory dispute settlement mechanisms in UNCLOS from being used to adjudicate matters which exceed the Convention's scope. Otherwise, the ICJ's implicit invitation to litigants to avail themselves of UNCLOS and the litigation opportunities afforded by Part XV, section 2, of the Convention will be taken up with great enthusiasm, with unfortunate results.

Consult and collaborate with like-minded countries

To tackle climate change, the United Kingdom and other countries need to collaborate. The *Climate Change* Advisory Opinion, however, risks pitting country and against country, something which we carefully avoided in the Paris Agreement and UNFCCC by making compulsory judicial procedure under those instruments purely optional.

The *Climate Change* Advisory Opinion addresses its far-reaching assertions of reparative justice to practically every upper-income country and to many middle-income countries as well. Their interest in getting the Advisory Opinion right is obvious. And yet the *Climate Change* Advisory Opinion will harm claimant States too. It gives individual States among them the incentive to shun collaboration, even though collaboration is the most promising strategy in the long run for all, and the smallest and poorest States are the least likely to flourish if they go it alone.

Much of the international community therefore has an interest in coordinating a proper response to the Advisory Opinion. Both to restate

the non-binding nature of the Advisory Opinion and to renegotiate UNCLOS, the United Kingdom should engage in private exchange of views with other countries and should coordinate multilaterally to help ensure the Advisory Opinion does not get in the way of constructive dialogue and meaningful action on climate change. In addition to our shared interest in finding solutions to climate change, we also have an interest in making international dispute settlement work. Approaching the *Climate Change* Advisory Opinion the way we propose will enhance the advisory procedure of the ICJ by returning it to its proper scope and function.

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