

The logo consists of a solid red square positioned to the right of the company name.

BAKER BOTTS

LEGAL PARTNER TO THE INNOVATORS

The background of the slide features a blurred city street scene with tall buildings on the left and a road with motion-blurred cars extending into the distance. A large, semi-transparent circular graphic is overlaid on the right side of the image, framing the text.

Climate – Texas Superconference

August 7, 2026

Aaron Ramcharan

BAKER BOTTS

LEGAL PARTNER TO THE INNOVATORS

Presenter



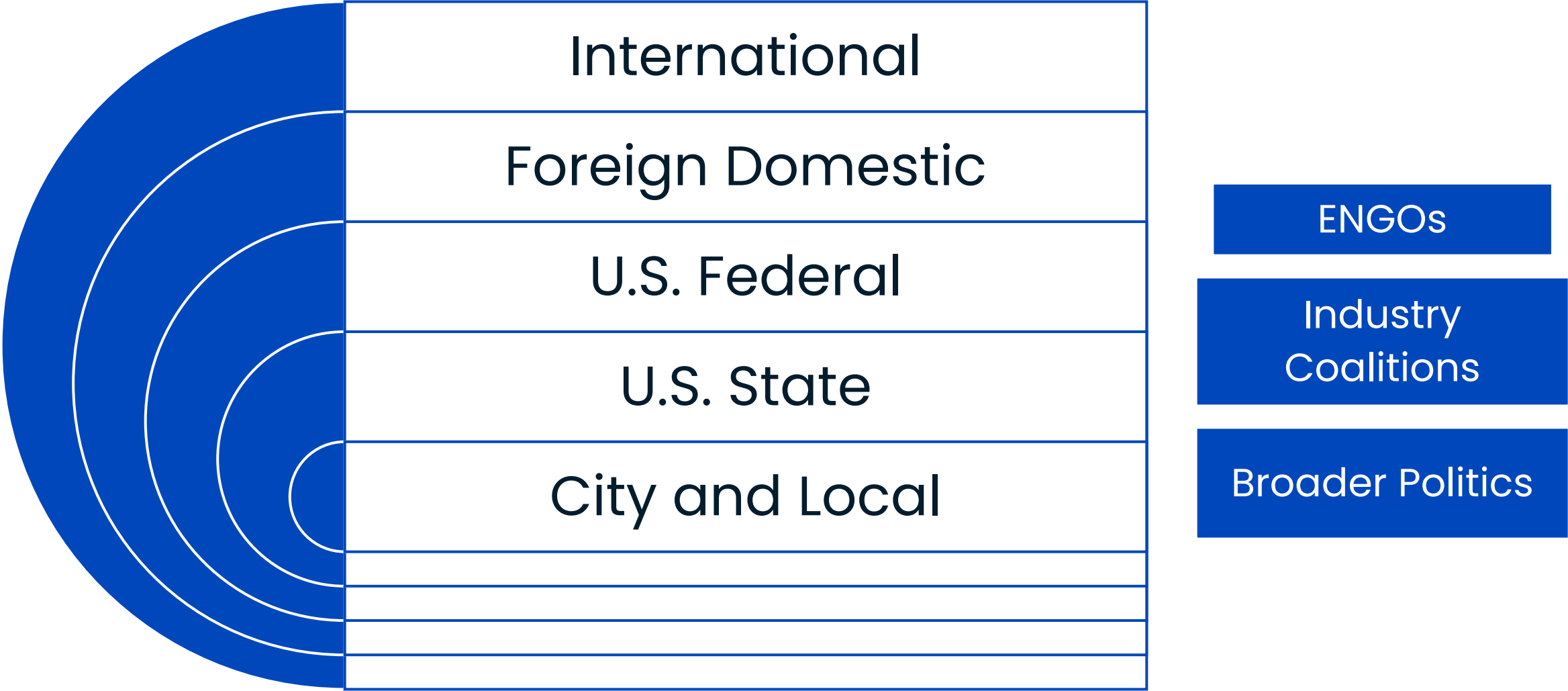
Aaron Ramcharan

Associate
Houston

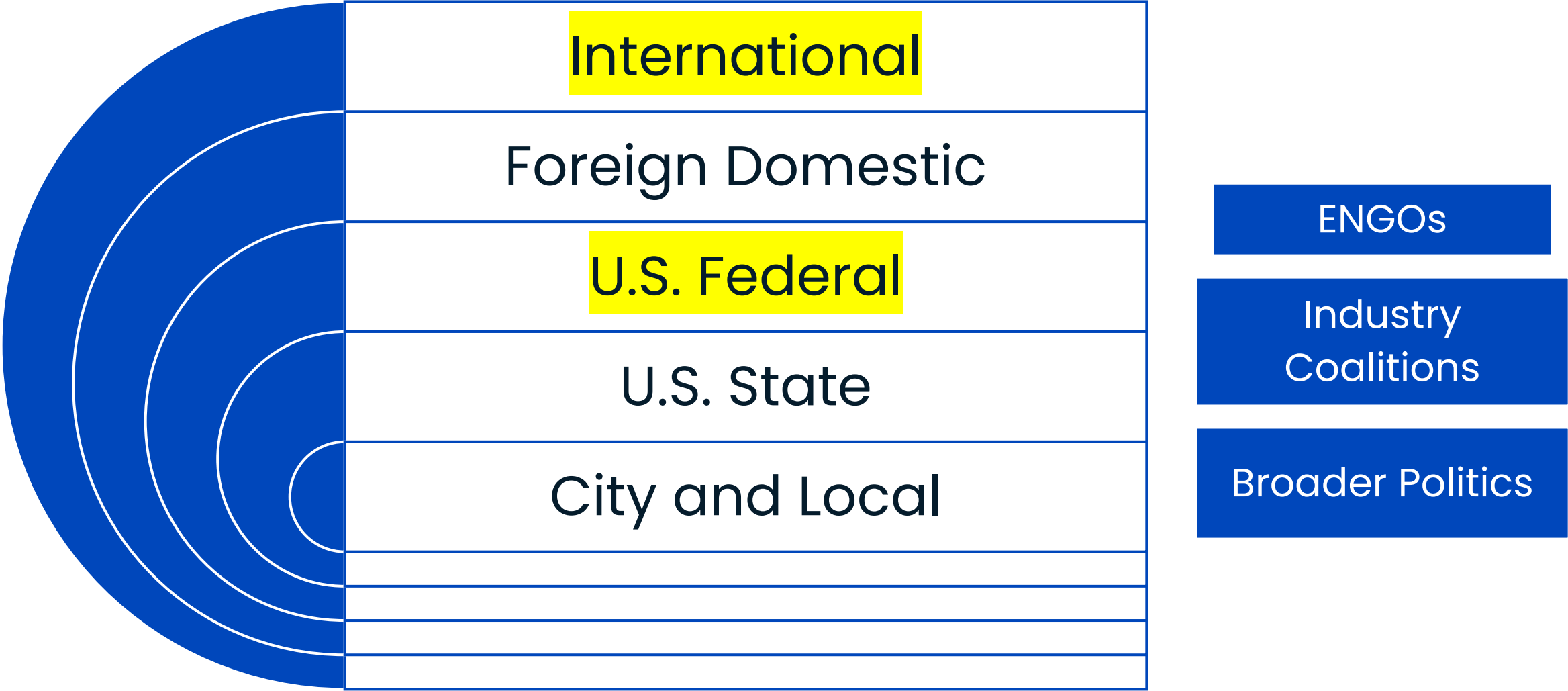
P: +1.713.229.1109

aaron.ramcharan@bakerbotts.com

Sources of Influence



Sources of Influence



On the one hand...

EPA Rescission of the GHG “Endangerment Finding”

2009 Endangerment Finding

CAA Section 202(a)(1):

"The Administrator shall by regulation prescribe... standards applicable to the emission of any air pollutant...which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."

Final Rule (Dec. 15, 2009):

- **Air Pollutant:** Directly-emitted, long-lived and well-mixed greenhouse gases (CO₂, CH₄, NO_x, HFCs, PFCs, SF₆)
- **Emissions Source:** Cumulative impact of all sources of GHG emissions
- **Level of Endangerment:** No bright-line value
- **Evidence:** Current observations and projected risks and impacts within the United States

Basis for regulating emissions from *new motor vehicles*

August 2025 Proposed Rescission

- Three Alternative Bases:
 - Legal: Exceeds EPA's authority under Section 202(a)
 - Only authorizes the Agency "to regulate air pollutant emissions ... [endangering] through *local or regional exposure*"
 - Record: Even if EPA had authority, the "empirical data ... cast[s] significant doubt on many of the critical ... conclusions ... such that it would be unreasonable to retain the decision ..."
 - Alternative: there is no "requisite technology" that meaningfully addresses global climate change

February 2026 Final Rescission

Final Bases for Rescission

1

“Best Reading” of the CAA

2

Major Questions Doctrine

3

**Futility of Regulating GHG
Emissions**

Final EPA Position: No Proximate Cause

Congress affirmatively incorporated proximate cause principles with the phrase “may reasonably be anticipated”



Emissions from new motor vehicles and engines in the United States do not have a sufficiently close causal connection to the adverse impacts



Climate change involves causal relationships that are “too uncertain, conjectural, remote, and convoluted by intervening and confounding factors”

Final EPA Position: Regulation is Futile

Eliminating all GHG emissions from motor vehicles and engines in the United States would have no “material impact” on global climate indicators



Regulating GHG emissions from motor vehicles would be “futile”



Eliminating motor vehicle emissions would not impact the global climate

August 2025: DOE Critical Review of Impacts of GHGs

- “A Critical Review of Impacts of Greenhouse Gas Emissions on the U.S. Climate”
- Released by Department of Energy (“DOE”) on August 1, 2025
- At proposal phase, EPA heavily relies on the DOE report
- But at final rule phase, EPA does not rely on DOE report or amend the science

Challenges to the DOE Report

- On August 12, 2025, Environmental Defense Fund and Union of Concerned Scientists filed a complaint in the U.S. District Court for the District of Massachusetts against EPA and DOE
 - for allegedly “secretly” convening a panel of “climate skeptics” to make the scientific case to rescind EPA’s Endangerment Finding in violation of the procedural and substantive requirements of the Federal Advisory Committee Act (“FACA”)
 - The complaint makes fourteen requests for relief to the court, including the following:
 - Postpone the effective date of, and vacate, all actions taken by the Group, including the drafting, completion, and transmission of the Group’s report, as well as EPA’s use of and reliance on the report in its proposed rule to rescind the Endangerment Finding;
 - Preliminarily and permanently enjoin DOE and EPA from relying on or citing to the report and any other recommendations, advice, or reports of the Group, in any agency actions or proceedings;
 - Preliminarily and permanently enjoin the current deadlines for public comments on the report and EPA’s proposal to rescind the Endangerment Finding until the FACA violations are remedied
 - The Massachusetts court concluded FACA violations but did not enjoin further reliance

DOE Report's Main Positions

- Elevated CO2 directly enhances plant growth, contributing to global “greening”
- Climate models lack rigor and certainty
- Intergovernmental Panel on Climate Change (“IPCC”) underweights unknowns
- Extreme weather events in the U.S. do not show long-term trends
- Attribution to humans is challenged by natural variability and model deficiencies
- Excessively aggressive mitigation policies could prove more detrimental than beneficial
- U.S. policy actions expected to have undetectably small direct impacts

... And on the other hand ...

International Court of Justice Advisory Opinion

International Court of Justice: Authority and Background

- Principal judicial organ of the United Nations
 - Established 1945
 - Based at the Peace Palace, The Hague, Netherlands
- Jurisdiction
 - Contentious cases between States
 - Advisory opinions for UN bodies
- Legal influence
 - Highest authority on the interpretation of international law
 - Opinions guide States, not directly binding
 - Great controversy surrounds the scope and force of ICJ opinions



Photo: Aaron at the Peace Palace,
February 2022

Advisory Opinion Procedure: Context & Process

- “Obligations of States in Respect of Climate Change”
- Initiated at the request of the UN General Assembly (2023)
 - 132 Member States sponsored the request
 - Sought legal clarity on climate obligations, specifically two questions
- ICJ process
 - Written and oral submissions from States, organizations
- Wide participation by nations in proceedings, including:
 - Canada, China, Egypt, Germany, India, Kenya, Netherlands, Pakistan, Russia, Saudi Arabia, Singapore, United Arab Emirates, United Kingdom, United States, Vanuatu, Zambia, and others

The Two Questions Posed to the ICJ

- Question (a):
 - What are States' obligations under international law to protect the climate system from greenhouse gas emissions?
- Question (b):
 - What are the legal consequences for States causing significant harm to the climate system?
 - (i) With respect to other States, especially vulnerable ones
 - (ii) With respect to peoples and individuals, present and future

Scope

- “...the relevant conduct ... [is] **all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions.**” (See page 40.)
- “... inquiry encompasses **the full range of human activities** that contribute to climate change as a result of the emissions of GHGs, including **both consumption and production activities.**” (Id.)

Customary International Law

- Duty to prevent significant harm
 - Applies to all States, not just treaty parties
 - “Customary obligations are the same for all States and exist independently regardless of whether a State is a party to the climate change treaties. ... if a non-party State does not cooperate ... it has the full burden of demonstrating that its policies and practices are in conformity with its customary obligations.” (96)
- Duty to co-operate
 - Good faith, sustained, continuous efforts
- No territorial limits
 - Owed to all nations

Due Diligence Standard

- Employ “best efforts” by using “all means” at the nation’s disposal
- “States must assess the possible **cumulative effects** of their acts and the planned activities under their jurisdiction or control.” (86)
- Active enforcement and administrative control
- Use of best available science
 - “... reports by the IPCC constitute comprehensive and authoritative restatements of the best available science about climate change at the time of their publication” (88)
- Adapted to State’s capabilities
 - “The multifactorial and evolutive character of the due diligence standard entails that, as States develop economically and their capacity increases, so too are the requirements of diligence heightened.” (90)

International Human Rights Law

- “... the protection of the environment is a precondition for the enjoyment of human rights...” (109)
- “...the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.” (113)
- “... full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment.” (115)
- States must take “necessary measures” to protect these rights

Determining State Responsibility: Climate Context

- Breach of obligations = internationally wrongful act
 - Applies to treaty and customary law breaches
- Consequences
 - Cessation of wrongful conduct
 - Guarantees of non-repetition
- Reparation
 - Restitution, compensation, satisfaction
 - Requires causal link to damage
- Remedies
 - Available to injured States, sometimes non-injured States
- Satisfaction
 - May include apologies, acknowledgments, education

UN General Assembly Resolution (May 20, 2026)

UNGA RESOLUTION

on the '*Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*'

The General Assembly,

Guided by the purposes and principles enshrined in the Charter of the United Nations and international law,

Recalling its resolution 77/276 of 29 March 2023, by which it decided to request the International Court of Justice to render an advisory opinion on the obligations of States in respect of climate change,

Recalling also its resolution 76/300 of 28 July 2022 recognizing the right to a clean, healthy and sustainable environment as a human right, and recalling the finding of the Court that the right is a precondition for the enjoyment of other human rights, such as the rights to life, health, and an adequate standard of living, including access to water, food and housing,

Stressing that climate change is an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it,

Reaffirming the right of all peoples to self-determination, as well as respect for territorial integrity, in accordance with the Charter of the United Nations and international law,

Recalling the United Nations Framework Convention on Climate Change¹ and the Paris Agreement², acknowledging that they are the primary international, intergovernmental forums for negotiating the global response to climate change,

Acknowledging the Court's finding that the principle of *lex specialis* does not lead to a general exclusion by the climate change treaties of other rules of international law,

Having received the advisory opinion of the International Court of Justice, rendered on 23 July 2025, in which the Court found, inter alia, that:

- (a) Without prejudice to other rules of international law that may also be relevant under various circumstances in the context of climate change, the most directly relevant applicable law governing States' obligations in respect of climate change includes:

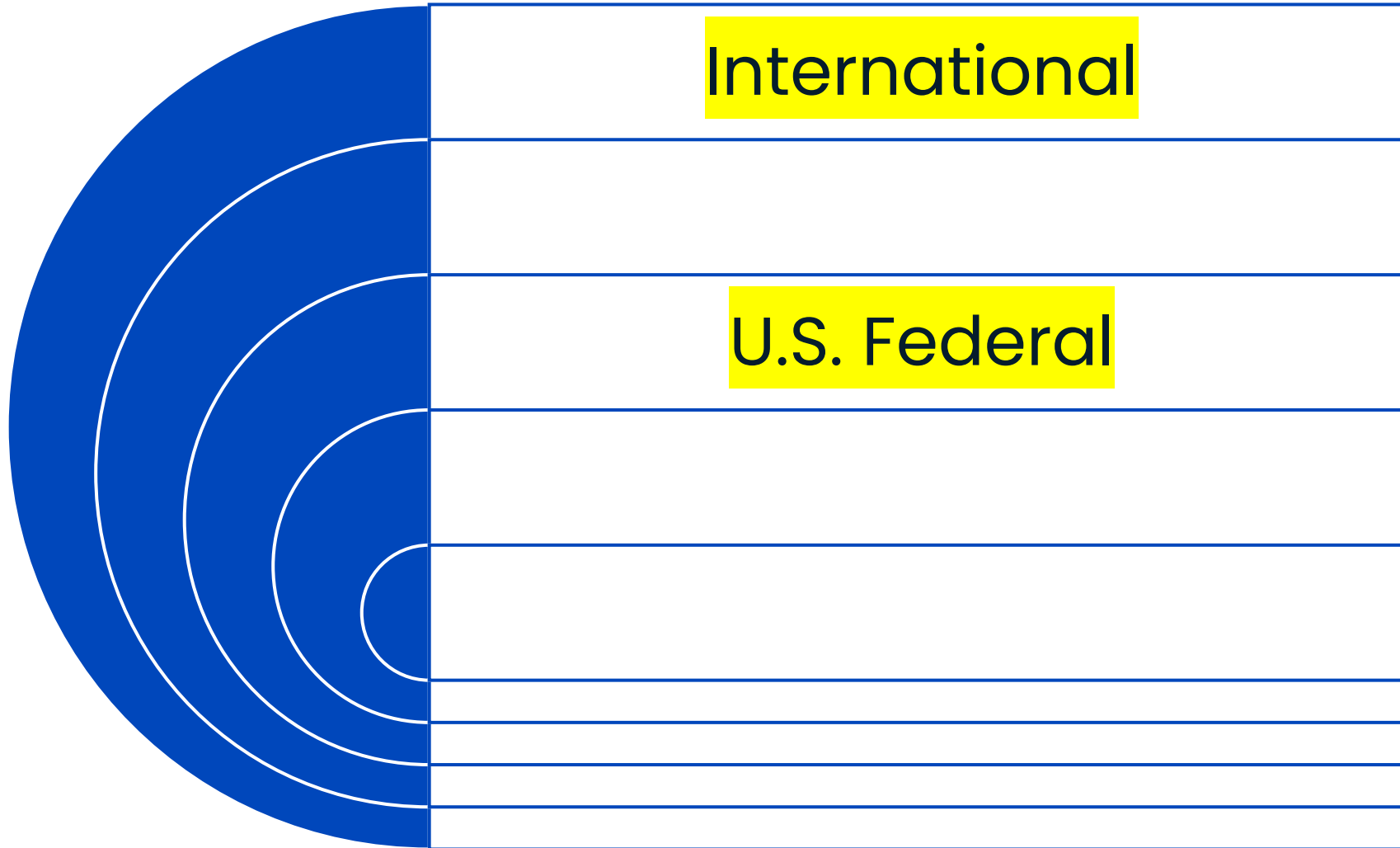
UN General Assembly Resolution

- Resolution drawn up by Vanuatu and several other countries
 - Drafting process involved months of negotiations and contributions from over 100 states
- Vote: 141 in favor, 8 against, 28 abstentions
 - Against: Belarus, Iran, Israel, Liberia, Russia, Saudi Arabia, U.S., and Yemen
 - Over two-thirds of UN Member States endorsed the resolution
- Resolution endorses the ICJ opinion and suggests that majority of nations view mitigating climate change as a legal duty

Key Takeaways

- “Failure of a State to take appropriate action to protect the climate system from GHG emissions – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses or the provision of fossil fuel subsidies – may constitute an internationally wrongful act which is attributable to that State.” (122)
- State obligations extend to domestic regulation of production, licensing, subsidies
- Due diligence and cooperation are ongoing duties
- Human rights law as basis for State climate obligations
- State’s failure to act may trigger State’s international responsibility

Two frameworks on the same issue...



AUSTIN
BRUSSELS
DALLAS
DUBAI
HOUSTON
LONDON
NEW YORK
PALO ALTO
RIYADH
SAN FRANCISCO
SINGAPORE
WASHINGTON

bakerbotts.com

©Baker Botts L.L.P., 2026. Unauthorized use and/or duplication of this material without express and written permission from Baker Botts L.L.P. is strictly prohibited. Excerpts and links may be used, provided that full and clear credit is given with appropriate and specific direction to the original content.