TEXAS SUPERCONFERENCE
Paper on Climate Issues

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I. Introduction

This paper introduces and compares two notable developments concerning the law of the world's changing climate. First, the paper addresses the U.S. Environmental Protection Agency's rescission of the greenhouse gas "Endangerment Finding" under the Federal Clean Air Act. Second, the paper addresses the International Court of Justice's advisory opinion on the obligation of states in respect of climate change. The paper compares these two developments as offering largely differing views on the state of global climate change while being the most important recent changes in their two respective legal arenas: federal U.S. law, on the one hand, and international law on the other. Each comes to widely divergent positions. Both will be remarkably influential.

II. EPA Rescission of the Greenhouse Gas Endangerment Finding

On December 15, 2009, the U.S. Environmental Protection Agency ("EPA") issued a final rule, titled "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," commonly known as the Endangerment Finding.[1] The Endangerment Finding constituted EPA's formal determination under the Clean Air Act ("CAA" or "the Act") that a combination of certain greenhouse gases ("GHGs") present in the atmosphere endanger public health and welfare, and that emissions from new motor vehicles and motor vehicle engines cause or contribute to that dangerous air pollution. Over the ensuing 16 years, the Endangerment Finding has served as a legal predicate for federal regulation of GHG emissions from various sources, including motor vehicles, aircraft, and power plants.

On February 18, 2026, EPA rescinded the Endangerment Finding ("the Rescission Rule").[2] Lawsuits challenging the rule were filed immediately. The Rescission Rule rolls back the legal predicate for federal regulation of GHG emissions from motor vehicles and potentially unwinds EPA's basis for regulating GHG emissions from other sources under the CAA. The Rescission rule's basis is primarily a legal one. EPA declined to finalize its scientific rationales. That is important, as the paper will discuss.

The direct background for the Endangerment Finding goes back almost 30 years. In October 1999, a coalition of environmental groups petitioned EPA to regulate four GHGs—carbon dioxide ("CO_2"), methane, nitrogen oxides ("NOx"), and hydrofluorocarbons ("HFCs")—from new motor vehicles and engines under CAA Section 202(a)(1).[3] The groups asserted that

[1] 74 Fed. Reg. 66,496 (December 15, 2009).
[2] 91 Fed. Reg. 7686 (February 18, 2026); *see* proposal at 90 Fed. Reg. 36,288 (Aug. 1, 2025).
[3] Int'l Ctr. for Tech. Assessment, Petition for Rulemaking and Collateral Relief Seeking the Regulation of Greenhouse Gas Emissions from New Motor Vehicles Under § 202 of the Clean Air Act (Oct. 20, 1999), available at https://www.ciel.org/Publications/greenhouse_petition_EPA.pdf.

these substances fall within the CAA's expansive definition of "air pollutant," contribute to global climate change, and satisfy the statutory criteria for regulation under CAA Section 202(a)(1).[4]

EPA denied the petition in 2003 on multiple grounds.[5] In particular, the Agency asserted that it lacked authority under the CAA to regulate GHGs and that EPA's regulation of vehicle GHG emissions would improperly encroach on the Department of Transportation's statutory authority to set fuel economy standards.[6] EPA further reasoned that regulation of GHGs would interfere with the federal government's policy at the time of addressing climate change through scientific research, voluntary measures, and international diplomacy, rather than direct federal regulation.[7]

EPA's petition denial was initially upheld by the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") in 2005.[8] However, the U.S. Supreme Court ("Supreme Court" or "Court") later reversed the D.C. Circuit's ruling in the Court's landmark 2007 decision in *Massachusetts v. EPA* ("*Massachusetts*").[9] The Court held that GHGs fell within the CAA's broad statutory definition of "air pollutants," and that EPA declining to regulate GHG emissions based on policy considerations was arbitrary and capricious.[10] As a result, the Court remanded the matter to EPA for further proceedings and directed EPA to decide under Title II[11] of the CAA whether GHG emissions may reasonably be anticipated to endanger public health or welfare, and, if so, to establish appropriate regulations.[12] If EPA were to be unable to make such a determination, the Court further instructed that EPA must base its judgment on statutory considerations, not policy determinations or speculative uncertainties.[13]

Following the Supreme Court's 2007 ruling in *Massachusetts* and a change in presidential administration, EPA finalized the Endangerment Finding in December 2009, composed of two major components: (1) a finding of "endangerment" of public health and welfare and (2) a "cause-or-contribute" finding.

A. *Endangerment of Public Health and Welfare*

EPA determined that the combined atmospheric concentrations of six well-mixed GHGs—CO_2, methane, nitrous oxide, HFCs, perfluorocarbons ("PFCs"), and sulfur hexafluoride (altogether, "six GHGs")—may reasonably be anticipated to endanger public health and welfare under the meaning of CAA Section 202.[14] EPA additionally concluded that current and future climate change driven by elevated GHG concentrations presents a range of serious and growing risks, including, among others, heat-related morbidity and mortality, air quality degradation,

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[4] *See generally id*.
[5] *Control of Emissions from New Highway Vehicles and Engines*, 68 Fed. Reg. 52,922 (Sep. 8, 2023).
[6] *Id.* at 52,925–52,929.
[7] *Id.* at 52,931–52,933.
[8] *See Massachusetts v. EPA*, 415 F.3d 50 (D.C. Cir. 2005).
[9] 549 U.S. 497 (2007).
[10] *Id.* at 500–501.
[11] Title II of the CAA, 42 U.S.C. § 7521, houses the mobile source program under the Act.
[12] *Massachusetts*, 549 U.S. at 500–501.
[13] *Id.*
[14] 74 Fed. Reg. at 66,497.

extreme weather conditions, water resource stress, sea level rise, disproportionate impacts on vulnerable groups, and agriculture and forestry impacts.[15]

B. *Cause-or-Contribute Finding*

EPA also determined that GHG emissions from new motor vehicles and new motor vehicle engines in the United States cause or contribute to the identified dangerous air pollution.[16] Citing motor vehicles as significant sources of CO_2 and other GHGs in the national emissions inventory, and given growth projections for vehicle miles traveled, EPA found that emissions contributions from motor vehicles were more than *de minimis* and therefore satisfied the contribution standard under CAA Section 202(a) to trigger regulation under the Act.[17] EPA explained that contribution need not be significant to trigger regulation under CAA Section 202(a); rather, a non-trivial share of emissions suffices for the purposes of Section 202(a).[18]

C. *What the Endangerment Finding Did and Did Not Do*

The Endangerment Finding established that the six GHGs collectively endanger public health and welfare, and that emissions from new motor vehicles cause or contribute to that pollution, thereby triggering EPA's duty to regulate GHG emissions from motor vehicles under CAA Section 202(a). But the Endangerment Finding did not itself set enforceable emission standards or revise existing regulatory programs under the CAA. Rather, subsequent EPA rulemakings established motor vehicle GHG emission standards and influenced how GHGs become subject to regulation in certain contexts, such as permitting. While the Endangerment Finding did not directly impose any requirements on stationary sources, EPA also has cited the Endangerment Finding as a basis for its authority to regulate GHG emissions from certain stationary sources under Section 111 of the CAA, including power plants.

D. *The Proposed Rule*

1. Proposal Overview

Under the Proposed Rule, EPA proposed to find that the Agency lacks statutory authority under the CAA to set emission standards to address "global climate change concerns," and, on this basis, also proposed to rescind the Agency's endangerment and cause-or-contribute determinations under the Endangerment Finding.[19] EPA further proposed to repeal all associated GHG emission standards for light-, medium-, and heavy-duty vehicles and engines issued pursuant to the Endangerment Finding.[20]

Alternatively, EPA proposed to repeal the Endangerment Finding based on EPA's proposed finding that the Agency "unreasonably" analyzed the scientific record available at the time and that recent scientific advancements "cast significant doubt" on EPA's prior

[15] *Id.* at 66,497–66,499.
[16] *Id.* at 66,536.
[17] *Id.* at 66,536–66,545.
[18] *Id.* at 66,542.
[19] 90 Fed. Reg. at 36,299.
[20] *Id.* at 36,297–36,298.

determinations.[21] In the Proposed Rule, EPA argued that the projections, findings, and other underlying information relied upon in the Endangerment Finding appear "unduly pessimistic" in light of more recent scientific records that, according to the Agency, undermine the Endangerment Finding's conclusions.[22] EPA specifically cited a May 2025 draft report prepared by the U.S. Department of Energy ("DOE") Climate Working Group ("CWG"), which "analyze[d] empirical data, peer-reviewed studies, and available scientific information" that, according to EPA, gave rise to "serious concerns" over the validity of key assumptions found in the Endangerment Finding.[23] EPA further claimed that reducing U.S. motor-vehicle GHG emissions—even to zero—would not significantly affect global GHG concentrations or climate trends, and thus there is no "requisite technology" within the meaning of CAA Section 202(a) to alleviate the identified endangerment.[24]

As a final basis for repeal, regardless of whether EPA ultimately retained or rescinded the Endangerment Finding, EPA proposed to repeal all GHG emission standards issued pursuant to the Endangerment Finding because "no requisite technology for vehicle and engine emission control can address the global climate change concerns identified in the [Endangerment Finding] without risking greater harms to public health and welfare."[25]

Notwithstanding the proposed repeal of the relevant GHG emission standards, EPA clarified that it was not proposing to reopen criteria pollutant standards, air toxics programs, Corporate Average Fuel Economy ("CAFE") standards, and fuel economy labeling requirements, and that these requirements would remain in place despite the rescission.[26]

E. *The Final Rescission Rule*

1. Overview

EPA's final action differed in important respects from the proposal, including by adopting a primarily legal rationale and declining to adopt a scientific one. Under the Rescission Rule, EPA concludes that Section 202 of the CAA does not authorize EPA to prescribe emission standards to address "global climate change concerns," and on this basis rescinds its prior 2009 findings in the Endangerment Finding, as well as all subsequent federal GHG emission standards for motor vehicles and motor vehicle engines promulgated pursuant to the Endangerment Finding. Notably, EPA did not finalize its proposed scientific rationale for rescission, explaining that it is not relying on any "new findings" related to climate change as a basis for repeal.

2. Rationale

(i) "Best Reading" of the CAA

[21] *Id.* at 36,291.
[22] *Id.* at 36,308.
[23] 90 Fed. Reg. at 36,292; the Department of Energy published the final report titled, "A Critical Review of Impacts of Greenhouse Gas Emissions on the U.S. Climate," on July 23, 2025, available here: https://www.energy.gov/topics/climate.
[24] *Id.* at 36,312.
[25] *Id.* at 36,311.
[26] *Id.* at 36,298.

EPA concludes that CAA Section 202 authorizes the Agency to regulate only emissions that "cause or contribute to air pollution that endangers public health or welfare through *local or regional exposure*"—referring to pollutants that directly impact public health and welfare through their mere "presence in the ambient air," rather than those that "impac[t] public health and welfare only indirectly and not by [their] mere presence in the ambient air." In contrast, EPA argues that the six well-mixed GHGs identified in the Endangerment Finding impact public health through the cascading impacts of heightened concentrations of these pollutants in the Earth's global atmosphere rather than by their mere presence in the ambient air (i.e., rather than by local or regional exposure).

EPA concludes that U.S. motor vehicle emissions lack a sufficiently close causal connection to the adverse impacts identified in the Endangerment Finding, arguing that the causal relationship is "too uncertain, conjectural, remote, and convoluted by intervening and confounding factors" to meet a proximate cause standard (which EPA finds is required to trigger its regulatory authority under the statute).

As a result, EPA determines that the six well-mixed GHGs identified in the Endangerment Finding are outside the scope of air pollution intended to be regulated under CAA Section 202.

(ii) Major Questions Doctrine

EPA additionally concludes that regulating GHG emissions under CAA Section 202 implicates the major questions doctrine as articulated in *West Virginia v. EPA*, 597 U.S. 697 (2022), and therefore requires clear congressional authorization. EPA concludes that it exceeded its statutory authority when it issued the Endangerment Finding in 2009, and that the issue is one for Congress to directly address.

(iii) Futility of GHG Emissions Regulation

Based on its own modeling, EPA concludes that eliminating GHG emissions from U.S. motor vehicles and motor vehicle engines would have no "material impact" on global climate indicators, rendering any regulation of such emissions "futile." Although EPA maintains that it is not relying on any "new findings" to justify rescinding the Endangerment Finding, the agency contends that this futility determination nonetheless supports its interpretation of CAA Section 202.

3. Scope

Additionally, while the Rescission Rule acknowledges that EPA has, in the past, referenced the Endangerment Finding as a basis for extending GHG regulation to multiple sectors beyond motor vehicles, such as power plants and aircraft, EPA explains that it regulates GHG emissions from these sources pursuant to distinct statutory authorities under the CAA that are outside the scope of the Rescission Rule. Accordingly, the Rescission Rule does not directly address or repeal GHG regulations for power plants, aircraft, or other non-motor vehicle sources.

EPA's rescission of the Endangerment Finding is one of the most notable actions by EPA in recent years. It is a development that will significantly influence American climate law for years to come. Much more can and will be said on it. For this paper's purposes, identifying the positions that EPA has taken on the impact of domestic U.S. emissions is sufficient to set up a contrast with the paper's next focus.

III. International Court of Justice Advisory Opinion on Climate Change Obligations (July 23, 2025)

On July 23, 2025, the International Court of Justice ("ICJ" or the "Court") issued an advisory opinion addressing fundamental questions of international law concerning State obligations to protect the climate system from anthropogenic greenhouse gas ("GHG") emissions.[27] The advisory opinion, requested by the United Nations General Assembly ("UNGA") through Resolution 77/276 adopted on March 29, 2023, represents the most comprehensive judicial pronouncement to date on the international legal framework governing climate change.[28] Indeed, the ICJ's advisory opinion is the most significant development in the international law regarding the world's changing climate since the 2015 Paris Agreement. The paper addresses the key holdings and practical implications of the ICJ's opinion.

The advisory opinion interacts in complex ways with domestic legal frameworks for climate regulation. In the United States, the EPA Rescission Rule discussed in this white paper rests in part on EPA positions about the scope of EPA's statutory authority, causation principles, and the "futility" of regulating emissions that have minimal impact on global concentrations. The ICJ's analysis—stating that GHG emissions from multiple sources contribute to cumulative harm and that each State's contribution is legally relevant—is a contrasting position in international law.

A. Background and Scope of the Advisory Opinion

The UNGA posed two interrelated questions to the ICJ:

> (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, particularly small island developing States that are specially affected or particularly vulnerable to climate change, and (ii) peoples and individuals of present and future generations?"[29]

[27] INTERNATIONAL COURT OF JUSTICE, *Obligations of States in respect of Climate Change, Advisory Opinion*, I.C.J. Reports 2025 (23 July 2025) [hereinafter "ICJ Advisory Opinion"].
[28] U.N. General Assembly Resolution 77/276, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, U.N. Doc. A/RES/77/276 (Mar. 29, 2023).
[29] ICJ Advisory Opinion, para. 88.

The Court determined that the relevant conduct for purposes of the advisory opinion is not limited to conduct that directly results in GHG emissions, but rather encompasses "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."[30] Furthermore, the Court held that the material scope of its 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."[31] This broad interpretation significantly expands the universe of State actions potentially subject to international legal scrutiny.

B. *Applicable Law*

The Court identified an extensive body of international law as most directly relevant to its analysis. The applicable legal framework includes:

> (1) the Charter of the United Nations;
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> (2) the climate change treaty framework comprising the United Nations Framework Convention on Climate Change ("UNFCCC"), the Kyoto Protocol, and the Paris Agreement;
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> (3) the United Nations Convention on the Law of the Sea ("UNCLOS");
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> (4) other environmental treaties, including the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol, the Convention on Biological Diversity, and the United Nations Convention to Combat Desertification;
>
> (5) customary international law, particularly the duty to prevent significant harm to the environment and the duty to cooperate; and
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> (6) international human rights law, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. [32]

Significantly, the Court rejected the argument that the climate change treaties displace other rules of international law. The Court found no actual inconsistency between the climate change treaties and other applicable rules, noting that the preambles of the UNFCCC and Paris Agreement themselves reference other rules and principles. The Court concluded that "the argument according to which the climate change treaties constitute the only relevant applicable law cannot be upheld."[33]

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[30] *Id.* para. 94.
[31] *Id.*
[32] *Id.* paras. 113-172.
[33] *Id.* para. 171.

C. *Customary International Law: Core Obligations*

The Court identified two foundational duties under customary international law applicable to climate change: the duty to prevent significant harm to the environment and the duty to cooperate for the protection of the environment.

1. Duty to Prevent Significant Harm

The Court concluded that States have a customary duty "to use all the means at [their] disposal in order to avoid activities which take place in [their] territory, or in any area under [their] jurisdiction, causing significant damage to the environment."[34] Critically, this duty applies to all States, not merely treaty parties. The Court emphasized that "customary obligations are the same for all States and exist independently regardless of whether a State is a party to the climate change treaties."[35] For non-party States that do not cooperate with the climate change treaty framework, such States bear "the full burden of demonstrating that [their] policies and practices are in conformity with [their] customary obligations."[36] This is notable in light of the 2026 withdrawal of the U.S. from the Paris Agreement.

2. Duty to Cooperate

The Court held that States have a customary duty to cooperate with each other in good faith to prevent significant harm to the climate system. This obligation requires "sustained and continuous forms of co-operation by States when taking measures to prevent such harm."[37] The Court emphasized that "climate change is a common concern" and that "co-operation is not a matter of choice for States but a pressing need and a legal obligation."[38] The duty to cooperate has no territorial limits—obligations are global in scope and owed to all nations.

D. *Due Diligence Standard*

Central to the Court's analysis is the standard of due diligence, which the Court characterized as "stringent" in the climate context.[39] The Court held that compliance with customary obligations and treaty obligations alike is to be assessed based on whether States exercise due diligence—that is, whether they "employ all means at [their] disposal" and use "best efforts" in the performance of their obligations.[40]

The stringent due diligence standard has multiple dimensions. Due diligence is not a static concept but "varies depending on a range of factors," including the "seriousness of the threat posed by climate change" and the capabilities of the State concerned.[41] The standard requires States to take "appropriate measures"—which may include legislative measures, administrative procedures, and enforcement mechanisms—and "entails not only the adoption of appropriate rules

[34] Id. para. 272.
[35] *Id*. para. 315.
[36] *Id*.
[37] *Id.* para. 304.
[38] *Id*. para. 308.
[39] *Id*. para. 138.
[40] *Id.* paras. 135, 228-229.
[41] *Id.* para. 246.

and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control."[42] In the climate context, this "heightened degree of vigilance and prevention" is required given, in the Court's view, the severity and urgency of the threat.[43]

The Court also held that due diligence must be informed by "best available science," specifically referencing the findings of the Intergovernmental Panel on Climate Change ("IPCC"), and must be consistent with "relevant international rules and standards."[44] Notably, the Court confirmed that the 1.5°C temperature threshold has become "the parties' agreed primary temperature goal for limiting the global average temperature increase" under the Paris Agreement, establishing this as a binding interpretive standard.[45]

E. *Obligations Under the Climate Change Treaty Framework*

The Court interpreted the three climate change treaties—the UNFCCC, Kyoto Protocol, and Paris Agreement—as "mutually supportive," with the Kyoto Protocol and Paris Agreement "providing greater specification to the general obligations contained in the UNFCCC."[46] The Court identified obligations of mitigation, adaptation, and cooperation under each instrument.

1. Mitigation Obligations

Under the Paris Agreement, States parties have binding obligations to prepare, communicate, and maintain successive nationally determined contributions ("NDCs") every five years. The Court rejected arguments that NDCs are purely "self-defined" or within the unfettered discretion of parties.[47] Rather, the Court held that "NDCs must satisfy certain standards under the Paris Agreement" and that all NDCs prepared by parties "must, when taken together, be capable of realizing the objectives of the Agreement" including the 1.5°C temperature goal.[48] Each party's successive NDC must "represent a progression" beyond the previous NDC and "reflect its highest possible ambition."[49] States also have a substantive obligation to "pursue domestic mitigation measures, with the aim of achieving the objectives of" their NDCs.[50] The principle that NDCs are substantive is a significant development.

2. Adaptation Obligations

The Court identified specific adaptation obligations under Article 7, paragraph 9, of the Paris Agreement, requiring States to "engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions."[51] The Court emphasized that adaptation obligations "complement the

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[42] *Id.* para. 138.
[43] *Id.*
[44] *Id*. paras. 283-286.
[45] *Id.* para. 224.
[46] *Id.* para. 195.
[47] *Id*. para. 237.
[48] *Id*. para. 270.
[49] *Id*. para. 240 (citing Paris Agreement, Art. 4, para.3).
[50] *Id*. para. 234.
[51] *Id.* para. 256.

mitigation obligations in preventing and reducing the harmful consequences of climate change" and that parties must use "best efforts, in line with the best available science" to enhance adaptive capacity, strengthen resilience, and reduce vulnerability.[52]

3. Cooperation Obligations

The Court identified financial assistance, technology transfers, and capacity-building as the principal forms of cooperation required under the Paris Agreement. Under Article 9, developed country parties "shall provide financial resources to assist developing country parties" for mitigation and adaptation.[53] The Court held that these cooperation obligations exist both under conventional international law (the Paris Agreement) and customary international law, and that "the customary duty to co-operate for the protection of the environment reinforces the treaty-based co-operation obligations."[54]

F. *Obligations Under the Law of the Sea*

The Court held that anthropogenic GHG emissions constitute "pollution of the marine environment" within the meaning of UNCLOS, making Part XII of that Convention applicable to climate change.[55] Under Article 192, States have a positive obligation to "protect and preserve the marine environment" and a negative obligation not to degrade it.[56] The standard of due diligence for compliance with these marine environmental obligations is likewise "stringent."

States parties are obligated under UNCLOS Article 194 to take "all measures necessary" to prevent, reduce, and control pollution of the marine environment from any source, although they are not required to ensure immediate cessation of marine pollution caused by anthropogenic GHG emissions. The Court also addressed the issue of sea-level rise, holding that UNCLOS does not require States parties to update their charts or lists of geographical coordinates showing the baselines and outer limits of their maritime zones once duly established, even in the face of physical changes resulting from climate change-related sea-level rise.[57] The Court further held that once a State is established, the "disappearance of one of its constituent elements would not necessarily entail the loss of its statehood"—a significant pronouncement for small island developing States.[58]

G. *International Human Rights Law*

The Court concluded that "the protection of the environment is a precondition for the enjoyment of human rights" and that climate change threatens numerous internationally recognized human rights.[59] These include the right to life (protected under Article 6 of the ICCPR), the right to private and family life, and economic and social rights under the ICESCR including the rights to health, food, water, and housing. The Court recognized that a "clean, healthy and

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[52] *Id.* para. 258.
[53] *Id*. paras. 263-265 (citing Paris Agreement, Art. 9).
[54] *Id.* para. 261.
[55] *Id.* para. 340 (citing also *Climate Change, Advisory Opinion, ITLOS Reports 2024*, pp. 65-71, paras. 161-179).
[56] *Id*. para. 342.
[57] *Id*. paras. 344-349.
[58] *Id.* para. 363.
[59] *Id.* para. 373.

sustainable environment" is now widely recognized as a human right under international human rights law.[60]

The Court held that "international human rights law, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other."[61] States must therefore take their human rights obligations into account when implementing their climate change and environmental treaty obligations, and vice versa. The Court further held that this requires States to "take measures to protect" the climate system to also protect individuals in the enjoyment of their human rights."[62]

H. *Other Influential Principles*

The Court recognized several additional principles as guiding the interpretation of treaty obligations and customary law. These include: (1) sustainable development, which integrates environmental and development concerns; (2) common but differentiated responsibilities and respective capabilities ("CBDR"), reflecting burden-sharing based on historical emissions and different national capabilities; (3) the precautionary approach, under which lack of full scientific certainty is not a reason to delay; (4) intergenerational equity, establishing obligations to future generations; and (5) the "polluter pays" principle, though the Court declined to rely on the polluter pays principle in its analysis of legal consequences.

I. *Determining State Responsibility in the Climate Context*

The Court concluded that the customary rules on State responsibility apply to the climate change context and are not displaced by the climate change treaty framework. The Court rejected arguments that the loss and damage mechanism under Article 8 or the compliance mechanism under Article 15 of the Paris Agreement constitute *lex specialis* excluding the general rules on State responsibility.

1. Attribution

The Court addressed concerns about the difficulty of attributing State conduct in the climate context. Critically, the "internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations" pertaining to the protection of the climate system.[63] Failure of a State to take appropriate action—"including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies"—may constitute an internationally wrongful act attributable to that State.[64] Regarding private actors, the Court concluded that States have an obligation to regulate private activities as a matter of due diligence, stating that "responsibility is incurred if the State fails to take all measures which were within its power to prevent the significant harm."[65]

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[60] *Id*. paras. 387-393.
[61] Id. para. 404.
[62] *Id.* para. 402.
[63] *Id.* para. 427.
[64] *Id.* paras. 427-432.
[65] *Id*. para. 409.

2. Causation

The Court held that causation of damage is required for reparation but not for a finding of State responsibility as such. The Court established that causation requires "a sufficiently direct and certain causal nexus" between the wrongful act and the injury.[66] While acknowledging that the causal link in the climate context is "more tenuous than in the case of local sources of pollution," the Court stated that "this does not mean that the identification of a causal link is impossible"; rather, causation "must be established in each case through an *in concreto* assessment."[67] The Court concluded that scientific evidence enables determination of each State's total contribution to global emissions. No presumption of causation arises but equally, in the Court's view, climate science permits linkage of specific climate events to anthropogenic emissions and, to varying degrees, to the contributions of particular States.[68]

3. Multiple States

The Court acknowledged that climate change results from the cumulative and aggregate actions of multiple States, but held that this does not defeat the application of State responsibility rules. "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."[69] Where several States are responsible for the same internationally wrongful act, "the responsibility of each State may be invoked in relation to that act."[70]

4. *Erga Omnes* Character of Obligations

The Court held that States' obligations to protect the climate system and other parts of the environment from anthropogenic GHG emissions are obligations *erga omnes*—that is, obligations owed to the international community as a whole. In the treaty context, the UNFCCC and Paris Agreement state that climate change is "a common concern of humankind" requiring "a global response," and thus the Court considered that obligations under these treaties are obligations *erga omnes partes*. This characterization means that all States parties have a legal interest in the protection of mitigation obligations and "may invoke the responsibility of other States for failing to fulfil them"—even States not directly injured by a particular breach.[71]

J. *Legal Consequences of Breach*

The Court held that breach of any obligation identified under question (a)—whether arising from treaty law or customary international law—constitutes an "internationally wrongful act" entailing the international responsibility of that State.[72] The Court outlined the applicable

[66] *Id*. para. 436.
[67] *Id*. para. 438.
[68] *Id*. para. 437-438.
[69] *Id*. para. 431.
[70] *Id.*
[71] Id. para. 441
[72] *Id*. para. 445.

legal consequences, which may include obligations of cessation, guarantees of non-repetition, and full reparation.

1. Duty of Continued Performance

The breach by a State of its international obligations does not extinguish its underlying duty of performance. "States have a continuing duty to perform their obligations despite their breaches thereof."[73] For example, in the case of a State setting an inadequate NDC under Article 4 of the Paris Agreement, a competent court or tribunal could order that State to adopt an NDC consistent with its obligations.[74]

2. Cessation and Non-Repetition

A State responsible for an internationally wrongful act is under an obligation to cease that act if it is continuing.[75] The Court stated that the obligation to put an end to the wrongful act "may require a State to revoke all administrative, legislative and other measures that constitute an internationally wrongful act."[76] The duty of cessation may require States "to employ all means at their disposal to reduce their GHG emissions and take other measures in a manner, and to the extent, that ensures compliance with their obligations."[77] In appropriate circumstances, a responsible State could also be required to offer appropriate assurances and guarantees of non-repetition.[78]

3. Reparation

The Court stated that a responsible State has an obligation to make "full reparation for the damage caused by the internationally wrongful act," which must "wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."[79] Full reparation can be achieved through restitution, compensation, satisfaction, or a combination thereof.[80] In the climate context:

Restitution may take the form of "reconstructing damaged or destroyed infrastructure, and restoring ecosystems and biodiversity," though the Court stated that environmental harm is "often not easily reversible."[81]

Compensation may be owed for significant harm caused by climate change if a sufficiently direct and certain causal nexus can be shown. The Court confirmed that "environmental damage is compensable under international law," including for damage to the environment "in and of itself" and for impairment or loss of environmental goods and services.[82]

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73 *Id*. para. 446.
74 *Id.*
75 *Id*. para. 447
76 *Id.*
77 *Id*. para. 448
78 *Id.*
79 *Id*. para. 450.
80 *Id.*
81 *Id*. para. 451.
82 *Id.* para. 453.

Where there is uncertainty regarding the exact extent of damage, compensation "in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations, may be awarded on an exceptional basis."[83]

Satisfaction may take forms such as "expressions of regret, formal apologies, public acknowledgments or statements, or education of the society about climate change."[84] The Court recognized that a formal declaration by an international court or tribunal of the wrongfulness of State conduct is also a potential form of satisfaction.

K. *UN General Assembly Resolution Endorsing the Advisory Opinion*

On May 20, 2026, the UN General Assembly adopted a resolution endorsing the ICJ's advisory opinion. The resolution, drawn up by Vanuatu and several other countries following months of negotiations with contributions from over 100 states, passed by a vote of 141 in favor, 8 against, and 28 abstentions. The eight States voting against were Belarus, Iran, Israel, Liberia, Russia, Saudi Arabia, the United States, and Yemen.

The resolution's adoption by over two-thirds of UN Member States represents a significant endorsement of the ICJ's legal analysis. The resolution suggests that the majority of nations view mitigating climate change as a legal duty under international law.

L. *Practical Implications*

While advisory opinions are not formally binding, the ICJ's opinion carries substantial legal, normative, and practical significance. Several implications are particularly noteworthy for energy, natural resources, and environmental practitioners:

1. Changing Legal Exposure for Fossil Fuel Activities

The Court's conclusion that State actions relating to "fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies" may constitute internationally wrongful acts significantly expands the potential legal exposure of both governments and, indirectly, private sector participants in fossil fuel value chains. Alleged inadequacies in the regulation of private actors may now form an independent basis for State responsibility.

2. Heightened Regulatory Scrutiny

The "stringent" due diligence standard articulated by the Court will likely inform regulatory approaches at both the international and domestic levels. States may face increased pressure to strengthen climate-related regulations, including emissions standards, permitting requirements, and subsidy reforms, to demonstrate compliance with their international obligations.

3. Influence on Climate Litigation

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[83] *Id*. para. 454.
[84] *Id*. para. 455.

The advisory opinion is likely to influence climate litigation before domestic courts and international tribunals. In the eyes of some readers, the Court's detailed analysis of attribution, causation, and the legal consequences of breach may read like a roadmap for plaintiffs seeking to hold States—and potentially private actors—accountable for climate-related claims. The normative and political weight of the International Court of Justice's advisory opinion, its unanimous nature, and its grounding in international legal principles would likely make the advisory opinion attractive to plaintiffs for use in judicial complaints. The advisory opinion would be similarly valuable to others working to anticipate what those complaints might look like.

4. NDC Scrutiny

The Court's holding that NDCs are not purely discretionary—but must be capable of "making an adequate contribution to the achievement of the temperature goal" and must reflect a party's "highest possible ambition"—subjects national climate commitments to meaningful legal review.[85] This could influence both the content of future NDC submissions and the assessment of compliance with existing commitments.

IV. Conclusion

The ICJ's advisory opinion is the most significant development in international climate change law since the 2015 Paris Agreement. EPA's rescission of the Endangerment Finding is similarly among the most significant developments in the American law regarding climate change in many years. By comprehensively articulating the legal obligations of States under multiple bodies of international law, stating the applicability of general rules of State responsibility to the climate change context, and stating that obligations to protect the climate system are owed *erga omnes*, the International Court of Justice has significantly changed the international legal framework regarding the world's changing climate.

In the ICJ's view, the questions posed by the General Assembly "represent more than a legal problem: they concern an existential problem of planetary proportions that imperils all forms of life and the very health of our planet."[86] But the ICJ's advisory opinion contrasts significantly with EPA's rescission of the Endangerment Finding. EPA has stated that there is a minimal causal connection between American GHG emissions and that regulating sectors of American emissions would be largely futile.

As the two developments interact in multiple legal, policy, and political dialogues, each will continue to significantly contrast with the other. Both will be remarkably influential. All among us will watch the results.

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[85] *Id.* para. 242.
[86] *Id.* para. 456.