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Leveraging the ICJ Opinion to Secure a Just Climate Future for the South during COP30

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ABSTRACT

The 30th Conference of the Parties (COP30) in Belém converges with the recent International Court of Justice (ICJ) Advisory Opinion on Climate Change, creating a critical inflexion point for global climate action. This policy brief analyses how the ICJ Opinion has the potential to reframe climate commitments, transforming them from political aspirations into legally binding obligations. The Opinion establishes objective standards for 'due diligence', integrates the CBDR-RC principle as a legal criterion for ambition, and inextricably links climate action with human rights. The ICJ Opinion confirms that a breach of these obligations triggers a duty of 'full reparation.' This policy brief recommends a strategy for developing countries to leverage this new legal framework at COP30.

KEYWORDS: International Court of Justice (ICJ) Advisory Opinion on Climate Change, 30th Conference of the Parties (COP30), Climate Change, Climate Action, Due Diligence, Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), Human Rights

La 30e Conférence des Parties (COP30) à Belém coïncide avec le récent avis consultatif de la Cour internationale de justice (CIJ) sur le changement climatique, créant ainsi un point d'inflexion crucial pour l'action climatique mondiale. Ce rapport sur les politiques analyse comment l'avis de la CIJ pourrait redéfinir les engagements climatiques, en les transformant de simples aspirations politiques en obligations juridiquement contraignantes. L'avis établit des normes objectives en matière de « diligence raisonnable », intègre le principe CBDR-RC (responsabilités communes mais différenciées et capacités respectives) comme critère juridique d'ambition et lie de manière indissociable l'action climatique aux droits humains. L'avis de la CIJ confirme qu'une violation à ces obligations entraîne un devoir de « réparation intégrale ». Ce rapport sur les politiques recommande une stratégie permettant aux pays en développement de tirer parti de ce nouveau cadre juridique lors de la COP30.

KEY MESSAGES

- "The ICJ Advisory Opinion is transformative, as it reframes the entire discourse on climate change law, notably by elevating the calls of climate-vulnerable nations for finance, accountability and remediation to legal obligations."
- "This legal principle (protection of human rights) shifts the conversation on climate finance from one of 'aid' or 'solidarity' to a legal obligation of reparation owed by States with significant historical responsibility for climate change."
- "With the authoritative legal rulings from the International Court of Justice, developing countries now possess the definitive legal leverage to shift the dynamic from political bargaining to legal compliance."

MOTS-CLÉS: *L'avis consultatif de la Cour internationale de justice (CIJ) sur le changement climatique, La 30e Conférence des Parties (COP30), Le changement climatique, L'action climatique, La diligence raisonnable, Les responsabilités communes mais différenciées et capacités respectives, Les droits humains*

La 30ª Conferencia de las Partes (COP30) en Belém converge con la reciente Opinión Consultiva de la Corte Internacional de Justicia (CIJ) sobre el Cambio Climático, lo que constituye un punto de inflexión crítico para la acción climática global. Este informe sobre políticas analiza cómo la Opinión de la CIJ tiene el

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potencial de reencuadrar los compromisos climáticos, transformándolos de aspiraciones políticas en obligaciones jurídicamente vinculantes. La Opinión establece estándares objetivos de 'diligencia debida', integra el principio de CBDR-RC (Responsabilidades Comunes pero Diferenciadas y Capacidades Respectivas) como un criterio legal para la ambición, y vincula inextricablemente la acción climática con los derechos humanos. La Opinión de la CIJ confirma que el incumplimiento de estas obligaciones desencadena el deber de 'reparación integral'. Este informe sobre políticas recomienda una estrategia para que los países en desarrollo aprovechen este nuevo marco jurídico en la COP30.

PALABRAS CLAVES: *La Opinión Consultiva de la Corte Internacional de Justicia (CIJ) sobre el Cambio Climático, La 30ª Conferencia de las Partes (COP30), El Cambio Climático, La Acción Climática, La Diligencia Debida, Los Responsabilidades Comunes pero Diferenciadas y Capacidades Respectivas, Los Derechos Humanos*

The 30th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP30) in Belém, Brazil, is not just another climate summit. The COP30 will serve as a test to measure the effects and impact of the July 2025 International Court of Justice (ICJ) Advisory Opinion on the obligations of States in respect of Climate Change.[1] This opinion considers climate action a legally binding commitment, giving developing countries significant leverage to turn their efforts to secure climate finance and justice into enforceable legal claims. This analysis outlines key negotiation issues for developing countries, offers a strategic approach to applying the ICJ's advisory opinion, particularly the duty to provide full reparation for damages, and provides recommendations for a fair and balanced discussion at COP30.

Scheduled for November 2025, COP30 has been framed by the Brazilian Presidency as a "COP of truth,"[2] given the urgency to act confirmed once again by the first Global Stocktake's findings, which stress that this is the time "for world leaders to prove the seriousness of their commitment to the planet". The central dynamic towards the Conference in the Brazilian Amazon is a living tension between the Presidency's ambitious, justice-oriented vision, and a fraught geopolitical context marked by a widening gap between climate impacts and global response.

The convergence of the first post-Global Stocktake Nationally Determined Contributions (NDC) cycle, the ongoing negotiations for a New Collective Quantified Goal (NCQG) on climate finance, and the delivery of the ICJ Opinion marks a unique moment of truth. This is not merely a coincidence of timing but a critical inflexion point. While progress has been made toward climate action, the Global Stocktake (GST) outcome ultimately determined that these efforts are insufficient. It provided a clear baseline showing the world is not on track to meet its Paris Agreement objectives. The 2025 NDCs will therefore be the first major political test of the collective response to this finding.[3] On the other hand, the NCQG serves as the financial mechanism that enables that response. In this context, the ICJ Opinion offers the legal backing for both political ambition and finance to integrate these elements into a single, legally coherent package.

The ICJ Advisory Opinion is transformative, as it reframes the entire discourse on climate change law, notably by elevating the calls of climate-vulnerable nations for finance, accountability and remediation to legal obligations.[4] The opinion elevates climate policy from a political commitment to a legal duty, requiring governments to increase their climate commitments based not only on their obligations under international climate change law, but also on their legal responsibilities arising from multiple, overlapping sources, including customary international law, the law of the sea, and international human rights law.

The ICJ Advisory Opinion: Core Principles for Climate Accountability in COP30

The ICJ Advisory Opinion clarify the obligations of States emanating from international law in respect to climate change. The elements identified by the ICJ, and the written statements received from States during the drafting of the advisory opinion, have the potential to enhance climate action and support effective compliance.

One of the most important avenues provided by the ICJ in its opinion was the detailed articulation of the standard of 'due diligence', which was defined as an objective, non-discretionary, and determinable obligation of States' conduct concerning the prevention of climate change.[5] For the ICJ, this obligation requires States to 'do the utmost' and to deploy their 'best possible efforts' using all means at their disposal to prevent climate harm.[6] In addition, the ICJ explicitly recognised scientific and technological information as a means for assessing the probability and seriousness of possible harm,[7] and recognised the reports by the Intergovernmental Panel on Climate Change (IPCC) as the authoritative scientific basis for determining such State conduct.[8]

The Court's opinion also offered an avenue to operationalise the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), under the principle of

1 *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ General List No 187. Available from https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf (accessed 27 October 2025).
2 Mayara Souto, "At the United Nations General Assembly, President Lula Declares COP30 Will Be 'the COP of Truth'" (COP30 Brasil, 24 September 2025). Available from https://cop30.br/en/news-about-cop30/at-the-united-nations-general-assembly-president-lula-declares-cop30-will-be-the-cop-of-truth (accessed 27 October 2025).
3 UNFCCC, "Outcome of the first global stocktake". Available from https://unfccc.int/topics/global-stocktake/about-the-global-stocktake/outcome-of-the-first-global-stocktake (accessed 11 November 2025).
4 *Obligations of States in respect of Climate Change* (Request for Advisory Opinion) General List No 187 (12 April 2023). Available from https://www.icj-cij.org/sites/default/files/case-related/187/187-20230412-app-01-00-en.pdf (accessed 27 October 2025).
5 *Obligations of States in respect of Climate Change* (Advisory Opinion).
6 Christina Voigt, "'Doing the utmost': Due diligence as the standard of conduct in international climate law", Climate Law Blog, 3 September 2025. Available from https://blogs.law.columbia.edu/climatechange/2025/09/03/doing-the-utmost-due-diligence-as-the-standard-of-conduct-in-international-climate-law/ (accessed 27 October 2025).
7 *Obligations of States in respect of Climate Change* (Advisory Opinion), para. 283.
8 *Ibid.*, para. 284.

equity.[9] This allowed the ICJ to integrate the CBDR-RC principle directly into the legal standard of due diligence when assessing an NDC's 'highest possible ambition', making it an objective legal criterion for differentiating the obligations of States. Similarly, the ICJ established an explicit link between climate action and the protection of human rights.[10] The Court found that States have binding obligations under international human rights law to protect fundamental rights and to take the 'necessary measures' to protect the climate system, requiring adaptation to its impacts to protect human rights.

The ICJ confirmed that a breach of climate obligations triggers the 'entire panoply' of legal consequences under the law of State responsibility. The ICJ recognised that it was not possible to establish the specific consequences of a State's breach of its climate change obligations without identifying the specific breach in question, but concluded that in general such consequences will trigger "obligations of cessation and non-repetition, which are consequences that apply irrespective of the existence of harm, as well as the consequences requiring full reparation, including restitution, compensation and/or satisfaction."[11]

A key aspect of the ICJ's advisory opinion is its rejection of the *lex specialis* argument, emphasising that climate change treaties do not operate in isolation but are grounded in broader international law. For the ICJ, climate change treaties are primary tools for tackling the global climate crisis, but their goals and functions do not conflict with or override other established international legal rules and principles. Through this finding, the ICJ confirmed that the principle of *lex specialis* does not imply a blanket exclusion of other international law rules by these treaties.[12]

Therefore, some of the core principles highlighted in the ICJ's opinion reinforce the legal obligation of States to implement ambitious climate measures, providing both an active duty to prevent harmful conduct and a safeguard for ambitious domestic policies enacted by developing countries to respond to the impacts of climate change. As a result, the ICJ opinion is an essential legal and political platform for developing countries to strengthen their negotiating positions at COP 30, insisting that negotiations proceed from a new baseline, one that is defined, guided, and constrained by the established and binding principles of international law, as identified by the ICJ.

Legal Levers for Key Negotiating Pillars at COP30

In line with these findings, the ICJ's Opinion has the potential to transform the current legal framework governing climate change. COP30 will serve as a testing ground for applying the ICJ's opinion. The COP in Belém will agree on new NDCs. The ICJ advisory opinion could have a direct effect in translating such assessment from a subjective exercise of self-judged 'ambition,' to an objective evaluation of obligations based on international law commitment and on clear scientific and technological information, solidifying the 1.5°C limit as the legally significant temperature goal of the Paris Agreement, reflecting the best available science.[13]

The question, therefore, is no longer a political one, but one based on legal standards: do agreed NDCs meet the heightened standard of due diligence required by historical contribution to cumulative emissions and financial and technological capacity? This question allows COP30 to demand greater ambition from developed State parties, not as a plea for historical justice and equity, but as a call for compliance with a legally defined standard of conduct integrated in international law.

The ICJ's legal findings on the linkages between climate change and human rights, and the fact that the principle of *lex specialis* no longer applies to international instruments on climate change, could have a beneficial impact on discussions of the Global Goal on Adaptation (GGA). This recognition could shift the process to strengthen the GGA from only a technical exercise to also consider it as a human rights imperative.[14] A failure at COP30 to agree on and implement a robust GGA framework, complete with indicators and support, could be legally characterised as a failure by States to take the 'necessary measures' required by the ICJ's advisory opinion to protect human rights from foreseeable climate harm.

Moreover, the focus on the interrelation between climate change and human rights strengthens the legal obligation to provide adaptation finance, particularly in the form of grants rather than loans.[15] As many developing countries are confronted with severe debt crises, worsened by climate-related disasters, the fact that adaptation and mitigation finance are commonly provided as loans increases their debt load, reducing their ability to fund other vital public services and uphold human rights.[16]

Therefore, the recognition by the ICJ that obligations for adaptation and mitigation are means of preventing human rights violations should support developing countries' demands not only for increased adaptation finance but also for shifting the provision of such finance from loans to grants, as avenues to implement all 'appropriate' responses to comply with the standard of due diligence, to cover historical responsibilities based on the CBDR-RC principle. Therefore, the ICJ advisory opinion provides a solid legal foundation for adaptation financing to fulfil the broader obligation to protect human rights, notably through grant-based funding aimed at the most vulnerable nations.

This legal principle shifts the conversation on climate finance

9 *Ibid.*, para. 151.
10 *Ibid.*, para. 369.
11 *Ibid.*, para. 445.
12 *Ibid.*, para. 171.

13 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), UNTS Reg No I-54113, art. 2(1)(a); Climate Analytics, "Latest science on the 1.5°C limit of the Paris Agreement", 26 June 2025. Available from https://climateanalytics.org/publications/latest-science-on-the-1-5-c-limit-of-the-paris-agreement (accessed 15 October 2025).
14 Ana Terra Amorim-Maia and Marta Olazabal, "Beyond adjustment: A new paradigm for climate change adaptation in a complex world", *Global Environmental Change* 103027 (2025). Available from https://doi.org/10.1016/j.gloenvcha.2025.103027.
15 Global Initiative for Economic, Social and Cultural Rights, "Boosting Ambition Through International Obligations: The Added Value of Integrating Human Rights to the Climate Financing Discussion" (2024), p. 14. Available from https://gi-escr.org/images/Boosting%20Ambition%20Through%20International%20Obligations%20-%20The%20Added%20Value%20of%20Integrating%20Human%20Rights%20to%20the%20Climate%20Financing%20Discussion.pdf (accessed 29 October 2025).
16 *Ibid.*, p. 6.

from one of 'aid' or 'solidarity' to a legal obligation of reparation owed by States with significant historical responsibility for climate change. The Court also highlighted the customary international law 'duty to co-operate' as a binding commitment, meaning that States with greater capacity must provide the necessary resources, such as funding and technology, to support developing nations in meeting their obligations under international law. This means that the negotiation of the New Collective Quantified Goal (NCQG) on climate finance should now be framed as a partial fulfilment of the duty of reparation. This implies that the goal must be considered in a needs-based, predictable manner and consist primarily of new and additional public, grant-equivalent finance, rather than loans and leveraged private finance aimed at market-based returns, which conflict with the legal principle of compensating the injured party and may worsen economic vulnerability.

Similarly, the capitalisation of the Loss and Damage Fund transforms from a voluntary pledge to the primary mechanism for delivering on the duty of reparation for harm. Contributions from historically responsible parties should become a legal obligation, directly linked to their past and present breaches of the due diligence standard, as failing to provide reparative funding exposes countries to substantial future legal liabilities under international law. Consequently, the discussion shifts from aid allocations to broader national risk management strategies.

Conclusions

The ICJ's legal clarifications offer practical strategies for the main negotiation areas at COP30, enabling negotiators from developing nations to shift key debates and uphold existing commitments. To make the most of this legal development, negotiators should adopt a coordinated, proactive approach. Consistently integrating legal language from the ICJ Opinion into all negotiation documents, national statements, and group positions could be essential.

The adoption of the ICJ advisory opinion makes that failures in pledges and finance delivery a 'breach of binding international law', increasing the stakes politically and legally. A 'Coalition of the Legally Ambitious' could be formed among Parties dedicated to enforcing the rule of law, creating a critical mass that moves negotiations towards legal accountability. COP30 in Belém highlights an apparent dilemma: whether to persist with slow, insufficient compromises or shift to a new strategy built on legal principles and accountability? With the authoritative legal rulings from the International Court of Justice, developing countries now possess the definitive legal leverage to shift the dynamic from political bargaining to legal compliance.

Key negotiation pillars, such as the ambition of new NDCs, grant-based financing for the Global Goal on Adaptation, the reparative aspects of the NCQG, and the Loss and Damage Fund, are now confirmed as clear legal commitments. For the Global South, the ICJ can transform their moral appeals for justice into enforceable legal obligations. Using this historic opinion is more than just a negotiation tool; it is the most effective strategy to achieve a just, sustainable, and equitable climate future. Ultimately, the success of COP30 will depend on how well it aligns with this new legal framework.

The South Centre is the intergovernmental organization of developing countries that helps developing countries to combine their efforts and expertise to promote their common interests in the international arena. The South Centre was established by an Intergovernmental Agreement which came into force on 31 July 1995. Its headquarters is in Geneva, Switzerland.

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