



Beyond Advisory: The 2025 ICJ Climate Change Opinion and the Future of Climate Accountability in India

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Abstract

This paper examines the legal significance of the 2025 Climate Change Advisory Opinion of the International Court of Justice and its implications for international environmental law and Indian jurisprudence. It argues that, notwithstanding their non-binding character, advisory opinions can meaningfully develop and operationalise state obligations, particularly by clarifying standards of due diligence, attributing private conduct, and adopting flexible approaches to causation and reparation. By situating these developments within India's constitutional framework, the paper assesses how the opinion may inform domestic climate litigation while preserving the differentiated architecture of the international climate regime.

Keywords: International Court of Justice, international environmental law, climate change, advisory opinion, state responsibility, private actors, due diligence

Introduction

The International Court of Justice (“ICJ”), the principal judicial organ of the United Nations,¹ possesses a power unknown to the Indian judiciary: the power to give advisory opinions. Under Article 65 of the ICJ Statute, the court may respond to legal questions presented to it by the General Assembly (or any other body authorised by the UN Charter).² Such opinions interpret and declare the relevant international law applicable to the question posed. The legal value of these opinions, however, remains contested, given their non-binding nature within the already limited binding force of

ICJ Judgments. This concern is of even more importance where advisory opinions articulate expanded obligations and corresponding rights for states.

These issues are brought into stark focus by the 2025 Climate Change Advisory Opinion³ which comprehensively examines international environmental law and its capacity to address climate change. The court made several operative findings on due diligence standards and the adaptability of state responsibility in questions of attribution and causation. The opinion does not merely restate existing law but develops it, enhancing its effectiveness

and expanding avenues for affected states to hold major emitters accountable. Its legal effect attracts attention amid escalating climate harms and growing social activism, especially in light of the Indian Supreme Court's recognition of a fundamental right to be free from adverse effects of climate change. The realisation of such a right and its incorporation into the Indian legal system can draw substantial guidance from this opinion.

This paper analyses the international and national legal framework to assess how the ICJ's directives may be operationalised. It *first* examines the "binding" effects of ICJ advisory opinions. *Second*, the paper analyses three key findings of the 2025 Climate Change opinion i.e. the variable standard of due diligence, attribution of private actors' conduct, and flexible causation standards enabling repair. *Finally*, it considers the opinion's specific relevance for Indian jurisprudence and its potential to inform recent domestic demands for climate protection. In doing so, the paper addresses the gap between the ICJ's normative ideal and its practical implementation in developing states such as India.

Advisory Jurisdiction of the International Court of Justice

The ICJ is entrusted with broadly 2 functions: settling legal disputes submitted by states through its contentious jurisdiction and rendering advisory opinions on legal questions referred to it by duly authorised international organs and agencies. The primary difference between these two functions lies in consent. No state may be a party to contentious proceedings without having accepted the Court's jurisdiction, whereas advisory proceedings operate on no such requirement. Nevertheless, through both avenues, the ICJ has played a formative role in developing international law to its current state.⁴

The power to render "non-binding" advisory

opinions was inherited from ICJ's predecessor, the Permanent Court of Justice,⁵ and has never been free from controversy. The nature of this power, and whether it constitutes a genuinely judicial function at all, has long been a matter of debate. As early as 1944, the Informal Inter-Allied Committee on the Future of the Permanent Court of International Justice observed that some of its members regarded advisory jurisdiction as anomalous and deserving of abolition on the basis that it was incompatible with the proper function of a court of law, which is to hear and determine disputes.⁶ The reservations underlying such views are understandable. An opinion that does not bind parties to whom it is directed may appear to be of limited legal consequence.⁷ This paper argues, however, that such a view has limited force when applied to ICJ's advisory jurisdiction.

Firstly, advisory opinions in practice carry considerably greater authority than the label "non-binding" might suggest. When a court of the ICJ's standing declares the law, it does so in the exercise of one of the primary functions of any senior judicial body i.e. not merely resolving disputes but articulating and developing the law. The practical operation of the ICJ advisory opinions bears this out.⁸

The Reparations for Injuries advisory opinion illustrates this well.⁹ The substantive question before the court in this case was whether the United Nations had the capacity to bring international claims against the responsible state for injuries suffered by its agents in UN missions. To answer this, the court first had to resolve a more basic question i.e. whether international organisations have international legal personality.¹⁰ The answer may seem obvious today, but at the time it was far from clear. The court reasoned that the UN "was intended to enjoy, and is in fact exercising and enjoying, rights which can only be explained on the basis of the possession of international personality."¹¹ Following this, the international community

contended that an organisation must be able to act at the international level, and if this ability means it has international legal personality (as framed by the opinion), it follows that international personality is a necessary feature of any international organisation.¹² Thus, a previously contested question became settled law. Notably, this was achieved not through a binding judgment, but through an advisory opinion, which shows that the court's advisory pronouncements can be just as consequential in shaping international law as its contentious decisions.

Secondly, because the ICJ is “a judicial organ”, it must remain faithful to its judicial character even in exercising of its advisory function. This requires adherence to judicial procedure, being properly informed, and full opportunity for all interested parties to present their views.¹³ The advisory opinion is not an informal or discretionary pronouncement but rather, it is the product of the same rigorous process that governs contentious proceedings.

Thirdly, and perhaps most significantly, the binding character of an advisory opinion in each context often derives not from the opinion itself, but from the factual and legal circumstances in which it is sought. A request for an advisory opinion is rarely abstract; it arises from a concrete situation, and its legal consequences are shaped accordingly. The more urgent and determinate the underlying circumstances, the harder it becomes to treat the resulting opinion as merely advisory.¹⁴ This is precisely the context in which the 2025 Climate Change Advisory Opinion must be understood. The request did not emerge in a vacuum but was a product of years of mounting climate harms, inadequate state action, and the frustration of vulnerable states. The call had been initiated by a group of states, led by the Pacific island Vanuatu, that had been hit by adverse climate effects. Their efforts culminated in the United Nations General Assembly formally requesting the ICJ in 2023 to clarify what obligations states have

to protect the climate system from greenhouse gas emissions.¹⁵ The purpose was not merely academic. The opinion was sought with a clear practical goal in mind which is to serve as a mandate for implementing climate policies at the national and regional level. Though the opinion itself is not legally “binding”, any climate obligations it identifies would be.¹⁶ Understanding these circumstances is essential to appreciate why this opinion carries the kind of legal importance this paper attributes to it.

Taken together, these three considerations reveal that the distinction between advisory and binding jurisdiction, while formally significant, is not as substantive in practice as its critics suggest. Advisory opinions, at their most consequential, do not merely illuminate the law but interpret and settle it.

Key Findings

Having now established that the 2025 Climate Change Advisory Opinion is not merely a formal legal pronouncement but one whose authority is grounded in ICJ's institutional standing, judicial rigour, and the urgency of the circumstances that produced it, the question that follows is what the opinion actually says. The opinion is significant not only because of the weight it carries, but because of what it does with that weight. It does not merely restate existing climate obligations but develops and expands them in ways that have meaningful consequences for state accountability. The paper now turns to three such developments: the variable standard of due diligence imposed on states, the attribution of private actors' conduct to states, and the flexible approach to causation that opens the door to reparation for climate-affected states. These findings construct a more robust and actionable framework for climate accountability than previously existed in international law.

Variable Standard of Due Diligence

The primary obligation upon States in international environmental law is the duty to

prevent significant harm to the environment through the exercise of due diligence. Due diligence is not a fixed rule but a standard of conduct.¹⁷ Its content is situation-specific and evolves over time, depending on the specific circumstances and situation of the State concerned. States must deploy all the means at their disposal to prevent significant harm to the climate system.¹⁸ Importantly, The Court identifies several guiding elements that shape what due diligence requires from a State in a particular climate change context.

First, States must adopt appropriate measures. This entails establishing a functioning national regulatory system including legislation, administrative procedures, monitoring frameworks, and enforcement mechanisms capable of regulating activities within their jurisdiction.¹⁹ In relation to climate change, such measures should be designed to secure deep, rapid, and sustained reductions in greenhouse gas emissions. Adaptation measures are equally relevant, as they reduce the risk and severity of harm. Crucially, these regulatory systems must govern both public and private actors and must operate effectively in practice.²⁰ Continued emphasis on this aspect throughout the opinion reaffirmed that symbolic participation in international regimes is insufficient, and exercise of due diligence requires operational domestic implementation.

Second, this required standard of diligence is to be set keeping in mind by scientific and technological knowledge. The availability of reliable scientific evidence regarding the probability and seriousness of harm heightens the level of care expected of States. Where the risk of significant harm is well established, as it is in the context of climate change, the standard correspondingly becomes more demanding. Due diligence also requires States to actively pursue and assess relevant scientific information. In this regard, authoritative scientific assessments, such as those of the

IPCC, inform what can reasonably be expected of States at a given time.²¹ However, even in laying down these guidelines, the court has taken note of the running theme of Common But Differentiated Responsibilities and Respective Capabilities (“CBDR-RC”) by acknowledging that the availability and affordability of technological means to mitigate harm remain relevant considerations.²²

Third, the content of due diligence is shaped by relevant international rules and standards. Current standards may be derived not only from binding treaty obligations and customary international law, but also from evolving normative frameworks, including decisions adopted within climate treaty bodies like the COPs.²³ Such standards help determine the level of care expected in assessing and addressing environmental risk. Importantly, the duty to prevent significant harm comprises both substantive obligations (such as the adoption of mitigation measures) and procedural obligations (including risk assessment, notification, and consultation). These are functionally linked but the state can still be required to answer to both obligations separately.²⁴

Fourth, and perhaps the one most relevant for developing states, the Court integrates the principle of common but differentiated responsibilities and respective capabilities (“CBDR-RC”) into the determination of the due diligence standard. The obligation to use “all the means at its disposal” necessarily varies with a State’s economic capacity, technological resources, governance structures, and historical contribution to emissions. States with greater capabilities and resources are therefore expected to meet a more demanding standard of conduct.²⁵ At the same time, differentiation cannot operate as a blanket exemption. Even States with limited resources must act to the full extent of their available means, and as their capabilities increase, so too does the required level of diligence.²⁶

Fifth, the precautionary approach forms an integral component of the due diligence obligation. Scientific uncertainty cannot justify inaction where there are plausible indications of serious or irreversible harm.²⁷ States are therefore required to adopt cost-effective preventive measures even in the absence of complete scientific certainty.

Sixth, due diligence entails procedural obligations of risk assessment.²⁸ This follows directly from the earlier-mentioned observation by the ICJ which affirms that the standard includes both substantive and procedural aspects. The Court recognises environmental impact assessment as an expression of a broader customary requirement to assess environmental risks.²⁹ This may necessitate both general regulatory assessments covering categories of emissions-generating activities and specific assessments for particularly significant projects. Such assessments must be conducted on the basis of the best available science and tailored to the nature and magnitude of the risk.³⁰ Though the court noted that the cumulative and diffuse character of greenhouse gas emissions may create difficulties, this does not eliminate this obligation as such assessments could still uncover otherwise unknown information about possibilities of reducing emissions from relevant individual activities.

Finally, due diligence may require notification and consultation with other states in good faith where activities within a State's jurisdiction risk significantly affecting other States or collective efforts to address climate harm. Given the global and interconnected nature of the climate system, meaningful co-operation becomes an essential dimension of prevention.³¹

This web of factors reveal that the ICJ conceives due diligence as multifactorial, context-sensitive, and evolutive. It is not a uniform standard. Instead, it is an objective

standard tuned to scientific knowledge, technological feasibility, international norms, and differentiated capabilities. By articulating due diligence in this manner, the Court has defined what might otherwise appear as a general environmental obligation into a structured and operational benchmark against which state conduct in the climate context can now be assessed.

Attribution of Conduct of Private Actors

In climate science, "attribution" refers to the process of assessing the relative contribution of multiple causal factors to a particular climatic event or trend. In international law, however, attribution denotes the operation of attaching a given action or omission to a State for the purpose of determining responsibility. It is this latter meaning that is relevant in assessing whether an internationally wrongful act has occurred.³²

Several participant states argued that attribution for the purposes of establishing state responsibility is particularly difficult in the climate change context. Since greenhouse gas emissions are widespread, cumulative, and produced by a plurality of States and private actors over time, it is suggested that responsibility becomes almost impossible to individualise.³³ The Court squarely rejects this contention. It reiterates that attribution is governed by well-established principles of international law, particularly as reflected in the 2001 ILC Articles on State Responsibility. The conduct of any organ of a State is attributable to that State. Accordingly, decisions relating to fossil fuel production, licensing, subsidies, regulatory frameworks, and national climate policies fall squarely within the sphere of attributable conduct.³⁴

What is arguably the most historic ruling on this aspect is the court clarifying that the internationally wrongful act is not the

emission of greenhouse gases per se. Emissions in themselves are not prohibited under international law. The wrongful act consists in the breach of conventional or customary obligations to protect the climate system from significant harm resulting from anthropogenic emissions. In other words, what is attributed is not the physical emission, but the State's action or omission in failing to comply with its international obligations.³⁵ In light of this characterisation, evaluating the objection concerning the conduct of private actors becomes unnecessary. It is often argued that emissions produced by corporations and other non-State entities cannot be attributed to States. However, where the relevant obligation is one of due diligence, namely, the obligation to regulate activities within a State's jurisdiction, attribution does not require treating private emissions as acts of the State. Instead, the focus shifts to the State's own failure to regulate. If a State does not enact or enforce adequate legislative and regulatory measures to limit emissions by private actors under its jurisdiction or control, that omission itself may constitute an internationally wrongful act attributable to the State.³⁶ In this way, private conduct enters the framework of responsibility indirectly, through the lens of regulatory due diligence.

The cumulative nature of climate change also does not render attribution legally untenable. Although global warming results from aggregate emissions over time, scientific methods make it possible to estimate both historical and current contributions of individual States to global emissions. International reporting frameworks under the climate regime provide a basis for identifying relative contributions.³⁷ Similarly, the existence of multiple responsible States does not preclude the invocation of responsibility against any one of them. International law has long recognised that where multiple actors contribute to injury, responsibility may be apportioned accordingly.³⁸

Thus, the Court affirmed that the general rules on State responsibility are capable, in principle, of addressing the climate context. Any injured State may invoke the responsibility of any State whose breach of an international obligation has caused damage to the climate system. The responsibility of one State does not depend on simultaneous proceedings against all others who may also bear responsibility. Questions of apportionment and evidentiary complexity, while genuinely difficult, remain factual matters to be worked out case by case. They do not call into question the applicability of the legal framework itself.

What the Court has done, through this reasoning, is close a gap that had long been perceived as a weakness in applying State responsibility to climate change. That gap was the difficulty of moving from collective, diffuse harm to individual legal accountability. The Court addressed this by shifting the focus away from the physical act of emission and towards the State's own conduct, particularly its failure to enact and enforce adequate regulatory measures. Once the wrongful act is understood in these terms, attribution becomes straightforward. Private emissions do not need to be treated as acts of the State; what matters is whether the State fulfilled its obligation to regulate them.

Flexibility of Causation and Access to Reparation

Causation is not required to establish State responsibility itself. To find a State responsible, it is enough to show (1) an internationally wrongful act and (2) that the act is attributable to the State. Whether the act caused harm is a separate issue. Causation becomes relevant at the stage of reparation. Since reparation is meant to compensate for damage, there must be a proven link between the wrongful act and the injury suffered. In climate cases, this means showing a connection between a State's failure to meet its climate obligations and the specific harm experienced by another State or

by individuals.³⁹

The Court was presented with two opposing positions on how causation should be handled in climate cases. Some participants argued that causation in climate change cases is impossible to prove because climate harm results from many States' emissions over time. Others argued that causation should simply be presumed. The Court rejects both extremes. Drawing on its earlier case law, including *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations*, it reiterated that the existence of multiple causes does not excuse a State from making reparation.⁴⁰ At the same time, causation cannot be automatically presumed, it must be proven.

Similar to attribution, the Court confirms that its existing legal standard applies. A State seeking reparation must show a "sufficiently direct and certain causal nexus" between the wrongful act and the injury suffered. The Court also notes that this standard is flexible and the required closeness of the causal link may vary depending on the type of obligation breached and the nature of the damage.⁴¹

To guide the application of this standard in the climate context, the Court set out a two-element test. The first element requires scientific evidence linking a particular climatic event or trends to human-induced climate change. The second requires attribution of that damage to the conduct of a specific State or group of States.⁴² This part of the advisory can be interpreted to mean that scientific evidence before the Court allowed that the first element of causation can be established by clearly linking observed increases in heat waves, flooding and drought to anthropogenic GHGs, even if only at a general level. On the second element, the Court stated that it is possible to scientifically estimate the quantity of emissions each State has contributed to the atmosphere over time, though not all of them might be unlawful,

Thus, there is scope for a contentious case arguing that while you may not be able to draw a straight line from one State's emissions to one specific storm, you can establish that a State's unlawful conduct contributed, as part of a larger pattern, to the conditions that made such harms more likely and more severe. Thus, it seems that a 'core' causative connection can be proved where causation in a general sense is laid down and the physical consequences are, at least in part, necessarily a result of those impugned emissions.⁴³

The Court acknowledges that environmental damage may result from multiple concurrent causes and that scientific uncertainty may sometimes exist. However, these difficulties do not make proof impossible. They must simply be assessed carefully in light of the evidence presented. Ultimately, though the causal link in climate cases may be more complex and less direct than in cases involving local pollution, it is not legally impossible to establish. It requires a concrete, fact-specific analysis in each case, applying the standard of a "sufficiently direct and certain causal nexus."⁴⁴

One important limitation must be noted. While the Court affirmed the availability of reparation in principle, it stopped short of providing concrete guidance on how reparations should be designed in practice to provide active relief in climate change litigation processes. It did not specify how cumulative or intergenerational harm should be quantified, nor how burdens should be equitably allocated. Separate opinions, however, sketched a more ambitious vision, suggesting compensation mechanisms, restoration of carbon sinks, protection of displaced communities, and even institutional innovations such as claims commissions.⁴⁵ The transformative potential of the Advisory Opinion will therefore depend less on what the Court definitively resolved, and more on how domestic courts, international bodies, and States build upon its foundations.

Relevance for Indian Environmental Law

The 2025 Climate Change Advisory Opinion carries particular significance for India. India is not merely a participant in the proceedings but a constitutional democracy navigating the difficult intersection of developmental priorities and climate vulnerability, as is the case with many developing countries. India's submissions before the ICJ, delivered by Dr. Luther Rangreji, foregrounded historical responsibility, climate justice, and the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC). The Advisory Opinion introduces conceptual and legal clarifications that may reshape how these principles operate within India's domestic legal order.⁴⁶

First, the Court's articulation of a variable due diligence standard gives Indian courts a concrete legal yardstick against which to measure State conduct on climate. By recognising that due diligence obligations are context-sensitive and shaped by capacity, contribution, and knowledge, the Court preserves the differentiated structure of the environmental legal regime. This aligns with India's long-standing insistence that obligations under the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement must be interpreted through the lens of equity and CBDR-RC. Yet the advisory simultaneously strengthens accountability by transforming due diligence from a vague political commitment into a legally reviewable standard tied to regulatory adequacy, evolving scientific knowledge, and demonstrable action. The significance of this shift for Indian jurisprudence is immense. The Supreme Court, in *M.K. Ranjitsinh v. Union of India*, recognised a fundamental right to be free from the adverse effects of climate change, flowing from Article 21's guarantee of the right to life.⁴⁷ What was previously missing was a structured legal framework to give that right

operational content. The Advisory Opinion supplies precisely that, equipping Indian courts with a principled basis to assess whether executive action on climate meets a legally cognisable standard of diligence, without requiring courts to substitute their judgment for that of the executive on questions of policy.

Second, the Court's treatment of attribution of private conduct is highly relevant in India's mixed economy, where a substantial share of emissions arises from private industry.⁴⁸ The Opinion clarifies that States need not be held directly responsible for every private emission, but that responsibility may arise from a failure to regulate. This sits comfortably alongside established Indian environmental jurisprudence. The public trust doctrine and principles of sustainable development have long recognised regulatory oversight as a constitutional obligation.⁴⁹ In *Virender Gaur v. State of Haryana*,⁵⁰ the supreme court emphasised that the State has a constitutional obligation to ensure and properly safeguard environment and to take adequate measures to promote, protect and improve both man-made and natural environment. On attribution, the case makes clear that environmental harm resulting from State decisions, such as improper land allocation or regulatory failures, can be directly attributed to governmental authorities.⁵¹ Especially, considering the recognition of a fundamental right to be free from the adverse effects of climate change, climate protection is recognised as a constitutional obligation. Thus, failures in mitigation or adaptation policy are not merely administrative shortcomings but are potential violations of fundamental rights. State inaction or inadequate regulation becomes reviewable under constitutional standards.

Third, the ICJ's flexible causation standard may prove the most transformative for climate litigation in India. By affirming that environmental harm resulting from multiple concurrent causes does not preclude reparation and that a "sufficiently direct and certain causal

nexus” can be established through scientific evidence, the ICJ lowers the practical barriers that have historically constrained climate claims. Indian courts, which frequently rely on precautionary reasoning in environmental matters, may find in this formulation a basis to entertain claims linking climate impacts to regulatory insufficiency. This approach finds support in *M.C. Mehta v. Kamal Nath*, where the Supreme Court treated ecological degradation as actionable harm and emphasised the State’s preventive duty under the public trust doctrine without insisting on narrowly individualised proof of injury.⁵² Together, these strands suggest that Indian courts may be willing to accept scientifically grounded, risk-based causation in climate cases, even where harm is cumulative and diffuse.

Importantly, the Advisory Opinion does not negate India’s structural concerns. The Court’s reasoning preserves the theme of CBDR-RC in the climate regime and acknowledges the relevance of historical emissions and capacity. It affirms that responsibility may be invoked against major historical emitters without imposing symmetrical burdens on developing States whose contributions and capabilities differ materially. In this respect, the Opinion complements India’s emphasis on climate justice and developmental imperatives.⁵³

For India, the Advisory Opinion therefore operates on two levels. Internationally, it strengthens the legal basis for demanding enhanced mitigation ambition and climate finance from developed States. Domestically, it sharpens the tools available for judicial review of climate governance. The task now lies in managing both simultaneously i.e. asserting differentiated responsibility at the global level while meeting increasingly robust standards of due diligence at home.

The Opinion has narrowed the gap between normative aspiration and enforceable obligation and for Indian jurisprudence, it offers both an opportunity and a constraint in that it

supports claims grounded in climate justice and equity, yet it also demands demonstrable regulatory seriousness consistent with evolving scientific knowledge. The real challenge for Indian courts will not be whether to draw upon the Advisory Opinion, but how to adapt its findings to a constitutional order that must balance poverty eradication, energy security, and environmental protection all at once.

Conclusion

This paper has argued that advisory opinions can be just as consequential as binding judgments in shaping the development of international law. The 2025 Climate Change Advisory Opinion bears this out. By clarifying due diligence standards, strengthening the rules on attribution, and adopting a flexible approach to causation, the Court has given climate obligations a precision and enforceability they previously lacked. India occupies an unusually complex position in relation to this Opinion. It is a State that bears the consequences of climate harm, a developing economy with legitimate claims to differentiated treatment, and a constitutional democracy whose courts have already begun recognising climate protection as a fundamental rights obligation. The Opinion speaks to all three of these dimensions at once.

Going forward, the challenge will lie in translating these principles into effective action. This includes strengthening regulatory frameworks, integrating scientific assessments into policymaking, ensuring transparent climate impact evaluations, and aligning development planning with long-term emission reduction goals. At the same time, India can continue to use the Opinion as a legal and moral basis to press for enhanced climate finance and technological support from developed countries. Ultimately, the Opinion’s transformative potential will depend on sustained judicial engagement, accountable executive action, and a careful balancing of development and environmental protection.

Endnotes

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- 28 *Obligations of States in Respect of Climate Change* (n 12) para 295
- 29 *Pulp Mills* (n 13) para 205
- 30 *Obligations of States in Respect of Climate Change* (n 12) para 298
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