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Climate Change and Democracy

Repainting the Climate Justice Canvas: How the World's Highest Courts are Leading the Way

Christina Voigt
Professor of Law, University of Oslo,
and Chair, IUCN World Commission on Environmental Law

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The Stockholm Series of Public Lectures on Climate Change and Democracy ("Stockholm Series") is a cooperation between renowned Stockholm-based institutions with a particular focus on climate change and democracy from different perspectives, including the Stockholm Environment Institute; the Stockholm Resilience Centre; Future Earth; LSU – The National Council of Swedish Children and Youth Organisations; and We Don't Have Time. It aims to inform, inspire, and engage experts and the general public alike by providing high-profile public lectures on the interlinkages between climate change and democracy, followed by debate.

Christina Voigt's lecture **"Repainting the Climate Justice Canvas: How the World's Highest Courts are Leading the Way"** took place on Tuesday, 16 December 2025, at International IDEA's Headquarters at Strömsborg in Stockholm, Sweden.

International courts are transforming how we understand responsibility for the climate crisis. Recent groundbreaking advisory opinions show that climate obligations expand far beyond the Paris Agreement. What was once a narrow frame has become a broad canvas for climate justice, including the law of the sea, human rights, and customary international law. Through innovative and strong pronouncements on the overlapping, multifaceted, and interconnected obligations of states, have international courts brought us to a legal turning point? What does it mean for national courts and the growing phenomenon of climate litigation? And who are the voices driving this evolving legal landscape?

The lecture was opened by Kevin Casas-Zamora, Secretary-General, International IDEA, and followed by a conversation with Ida Edling, Spokesperson and Legal and Scientific Coordinator, Aurora, moderated by Michele Poletto, Adviser, Climate Change and Democracy, International IDEA, as well as questions and comments from the audience, and a reception.

Stockholm,
16 December 2025

Thank you so much for this invitation and thank you to everyone in the audience for being here tonight.

In this talk, I will focus on climate justice and international courts; because–in my view–this topic is one (perhaps *the*) most dynamic and vibrant, recent developments in climate governance. I will address five sub-themes:

1. Why is climate law important for climate justice?
2. The puzzle of international climate law and the role of international courts
3. The emerging canvas of international climate law
4. Some open questions, and
5. The promise of justice and the limits of law

1. Why is climate law important for climate justice?

Climate justice is a challenging concept. When we hear it, we can relate to it. It speaks to us. But perhaps in different voices: for some it may mean to address the needs of those who contribute the least to climate change but often suffer the most from its impacts, such as poorer countries, vulnerable and marginalized communities, Indigenous peoples, and young or future generations.

For others it might mean that those most responsible for greenhouse gas emissions—wealthy countries, corporations, and higher-income individuals—have a greater responsibility to act.

Or it is understood as social justice which is concerned with fairness in society as a whole, often relating to systemic issues like just transition and human rights, racism, gender inequality, or poverty–which either directly or indirectly impact climate change discourses and solutions.

Climate justice is a challenging concept. When we hear it, we can relate to it. It speaks to us. But perhaps in different voices.

Again, for others climate justice might be equaled with effectively addressing climate change through ambitious action, though effectiveness and fairness can point in different directions.

In general, climate justice is an approach that brings the moral ideal of justice to climate change; both in dealing with its causes and effects.

Climate justice matters because climate change can be approached from a purely technical perspective: for example, a carbon budget divided by the number of states or people (if you take a per capita view). But a purely technical or scientific response to climate change can miss the social, political, and ethical dimensions.

Like general approaches to justice, also climate justice rests on several forms, including:

Distributive justice, which is concerned with how burdens, such a mitigating climate change and taking measures to adapt to it and the respective benefits are distributed among states and within society.

Procedural justice, which focuses on fair and transparent processes for decision-making, impartiality and consistency, the duty to carry out environmental impact assessments, or access to information and to courts.

Retributive justice, which deals with punishment for wrongdoing, for example a duty to pay compensation for climate damages, or fines and penalties for excess emissions under an emissions trading system (ETS).

Restorative or corrective justice, which aims to repair climate harms by focusing on the extent of compensation for losses.

Climate justice–like justice in general–is complex, dynamic, multi-faceted and contentious (for some)–and a telling indicator of this is the fact that climate justice is mentioned in the Preamble of the Paris Agreement, but placed in ”inverted commas”.

Now, what has the law got to do with it? The relationship between justice and law has been subject to philosophical, legal and legal philosophy debates for millennia. This is perhaps not the time and place to recall all of this. But it is still an intriguing relationship–and one that climate change puts in the spotlight.

Law is the governance system–a system of rules and principles–to regulate behaviour, be it the behaviour by states, private companies or individuals. Justice on the other hand is a moral ideal. Preferably an ideal that guides the creation of laws. And in many instances, it does. But it is not the *only* guide for law-making–there are others too, such as cost-benefit analyses, considerations of effectiveness, best-available science, but also vested interests, culture, politics, power–and often corruption.

Therefore, laws can be just or unjust–or be perceived as just or unjust. However, arguably, (only) those laws that are being perceived as just and fair will lead to greater levels of (non-coerced) compliance. In a way, justice is the standard by which to judge laws.

Justice, however, is an ideal–which relies on law for operationalization, compliance and enforcement. Law provides the procedures and structure—courts, penalties—to enforce ideals of justice. But law is more than fair procedures and processes. Law must also ensure–in substance–that the final result is fair. Because a legal process that is followed correctly can still produce an unjust outcome.

So, where are we in international climate law? Do we have mere procedural rules? And do these rules lead to outcomes that are fair, or just fair for some while not for others?

As I will explain, international climate law currently stands at an inflection point where we are starting to see the alignment between law and justice, arguably to a larger extent than

ever before. This is, in my view, a major change in the trajectory of legal development. But this should not lead to complacency–we need to protect it.

International climate law currently stands at an inflection point where we are starting to see the alignment between law and justice, arguably to a larger extent than ever.

In the following, I will try to sketch out some of the most recent developments in climate law–where climate law catches up with climate justice. Not entirely, not perfectly–certainly not (yet) with the level of compliance necessary–but we can observe very interesting changes and new developments.

Let us now turn to the puzzle of international climate law and the role of international courts.

2. The puzzle of international climate law and the role of international courts

Addressing climate change effectively is intrinsically linked to creating the legal structures that oblige and govern states and societies to do so. International law is not the whole story, but an indispensable part of this.

Climate change at its core is a collective action problem: A situation where everyone in a group (of states) would benefit from taking a certain action, but each individual (state) has an incentive not to participate because it can enjoy benefits without participation ("free riding"). This situation brings to the forefront the need of binding rules governing the relation between states.

But international climate law must do much more than simply avoiding free riding:

It must be able to balance effectiveness (meaning the necessary course of action to address the problem at source and its consequences) on the one hand with fairness/equity on the other.

It must also be able to include multi-dimensions, such as mitigation, adaptation, finance, transparency, loss and damages, human rights and many more.

It must balance process and substance; duties and rights.

It must promote the necessary level of ambition in the light of best available science, and the adequate means to achieve such ambition–such as conserving forests or phasing out of fossil fuels.

And it must give due regard to the profound differences of almost 200 states: Differences in historic and current contributions to climate change–and the respective means and capabilities to solve it.

International law–as I mentioned before–is not the only, but an indispensable part of this equation. Partly because it resembles the highest level of commitment a state can make. But also, because it provides more certainty, is more resilient against changes, demands deeper democratic commitment, and is–after all–more likely to be translated into

domestic legislation and be implemented at national levels than political promises, declarations, workplans and roadmaps.

International legal commitments can also provide more stability and predictability for corporations, private businesses and markets in general, as well as create a level playing field.

Eventually, international law is (almost always) based on a notion of reciprocity and cooperation. If there would not be something "in it" for the participating states, they would not be incentivized to come on board.

International legal commitments can also provide more stability and predictability for corporations, private businesses and markets in general, as well as create a level playing field.

Legal obligations also enable checks on compliance and provide for measures to address cases of non-compliance. Not always, but in some instances, legal obligations allow for judicial review by courts and, in exceptional cases, for enforceability.

But framing something as international law also has its tradeoffs in terms of time (the lengthiness of negotiations), the use of ambiguous and abstract terminology to create consensus, relative inflexibility and, perhaps, concessions in ambition. While this can be the case, it does not necessarily have to be. Climate law gives us a good example where we see both a deepening and broadening of legal obligations over time–but more about this later.

Let me get back to my "puzzle" metaphor: International climate law as a puzzle. Why?

Because there are many pieces. The overall image of our climate law puzzle is still somewhat "fuzzy"; unclear–and perhaps does not fully align yet with the moral ideals of justice–but the pieces are falling into place.

Some pieces are cornerstones, such as the UN climate treaties: the UNFCCC, the Kyoto Protocol and the Paris Agreement. They were negotiated with the purpose of addressing climate change. But even their content remained–until recently–somewhat "woolly"; unclear. These treaties were adopted by consensus, where constructive ambiguity often was the only means for bringing states to agree. This led to formulations that are not clear-cut; leaving room for interpretation.

Our climate law puzzle is still somewhat "fuzzy"; unclear–and perhaps does not fully align yet with the moral ideals of justice–but the pieces are falling into place.

Moreover, in this "puzzle", pieces were missing or we had pieces that did not fit exactly. Such as human rights obligations with regard to climate change, or the law of the sea–or customary law, unwritten law that binds all states, based on opinio juris and consistent state practice. It was for the longest time not clear how exactly these pieces would fit with climate change.

And now, within the last two-three years we have witnessed this puzzle become an increasingly full picture. International courts, in particular the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR), and the European Court of Human Rights (ECtHR), have either decided contentious cases or rendered advisory opinions on climate change and in doing so have clarified both the content of the UN climate treaties and expanded the scope of independent, parallel legal obligations of states to address climate change, far beyond the legal fold of the UN climate treaties.

This exercise required courts–and judges. Partly because there is no treaty-internal interpretation body or arrangement to provide clarity on the exact legal meaning of the terms included in, for example, the Paris Agreement. And partly because other international law sources, whether treaties or customary law, were not adopted with climate change in mind. They either do not contain any linguistic reference to "the environment", let alone "climate change"–or their genesis and history was not based on climate related issues, making their applicability contentious. In this situation, clarifications by international courts were the *only* means to understand whether and to what extent these "other" international legal instruments bear relevance to climate change–and would become pieces of our puzzle of international climate law.

Let me now attempt to draw this emerging canvas of international climate law.

3. The emerging canvas of international climate law

As mentioned, the canvas–or puzzle–consists of several intersecting pieces. They create individual, independent and parallel obligations for states to address climate change and implicate several of the justice elements outlined above. We will first look into what I call the "deepening and hardening" of climate obligations and then at their "broadening and expansion".

a. Deepening and hardening of climate obligations

When I say "deepening and hardening", I refer to a process through which the existing obligations in the UN climate treaties have now taken on an understanding that takes away some of the uncertainty and ambiguity that has been surrounding them as a result of multilateral compromises.

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As a court of general competence, the ICJ was the first international court to interpret the UN climate treaties, in particular the Paris Agreement, with a profound level of detail in its Advisory Opinion on states obligation in respect of climate change, delivered on 23 July 2025.[1]

[1] The ITLOS and the IACtHR in their respective climate change Advisory Opinions referred to the Paris Agreement as relevant in the interpretations of the legal treaties under their jurisdiction but did not provide a detailed interpretation of the Agreement.

This situation was not unexpected. Many participants had during the proceedings pointed to the Paris Agreement in their written and oral statements. The challenge, however, was that the legal views regarding the Paris Agreement differed significantly: from being worth nothing, to being the only game in town, or limited only to discretionary, voluntary commitments. The ICJ proved both ends of this spectrum of opinions wrong.

The ICJ clarified that 1.5°C has become the 'scientifically based consensus target under the Paris Agreement' and its 'primary temperature goal'.

By applying a careful and diligent legal analysis, the ICJ interpreted the provisions of the Paris Agreement in light of its object and purpose and established the clear content of the Agreement's climate change mitigation provisions. This is not a small feat, especially given the long and cumbersome negotiations of the Agreement and its high degree of complexity and ambiguity (as captured in many books and academic articles).

One of the most important elements–with significant implications for climate justice–is the ICJ's dealing with the temperature goal.

The ICJ clarified that 1.5°C has become the 'scientifically based consensus target under the Paris Agreement' and its 'primary temperature goal' (para 224). It based its finding on decisions by the Governing Body of the Paris Agreement (the CMA), decisions taken after the Agreement was adopted, especially the Glasgow Climate Pact and the Outcome of the First Global Stocktake. In the ICJ's view, these express agreement in substance between the parties regarding the interpretation of Articles 2 and 4 of the Paris Agreement. Thus, they constitute subsequent agreements in relation to the interpretation of the Paris Agreement within the meaning of Article 31.3(a) of the Vienna Convention on the Law of Treaties. This finding in the context of the temperature goal provided helpful guidance on the relative importance of the two temperature goals of "well below 2°C" and "1.5°C" *to each other* and on the question of which goal to adhere.

Another element of "deepening and hardening" of obligations through the ICJ Advisory Opinion is the clarification of climate change mitigation obligations in the Paris Agreement, which are found in Art. 4 (para 230).

With respect to mitigation, the ICJ identified several obligations of result in the Paris Agreement: Art. 4.2 (to prepare, communicate and maintain successive Nationally Determined Contributions, NDCs), Art. 4.9 (to do so every 5 years), Art. 4.13 (accounting for NDCs) and Art. 4.12 (registration of NDCs in public registry) (ICJ para 235).[2] Although these are procedural obligations (but still obligations of result), the ICJ noted that the 'mere formal preparation, communication and maintenance of successive NDCs is not sufficient to comply with the obligations under Article 4' (para 236). It explained that:

[2] Other obligations of result in the Paris Agreement, such as to submit Biennial Transparency Reports under Art. 13.7, to participate in the Facilitative Multilateral Consideration of progress under Art. 13.11, and the communication of biennial information under Art. 9.5 (see for these obligations: Decision 20/CMA.1, para 22.1(a)) were not considered by the ICJ.

> 'an obligation of result, such as, for example, an obligation to "adopt national policies and take corresponding measures on the mitigation of climate change", [cannot] be met merely by the adoption of *any* policies and [...] measures'. To comply with this obligation [...], the policies so adopted, and the measures so taken must be [...] *able to achieve the required goal*. In other words, adoption of a policy, and the taking of related measures, as a mere formality is not sufficient to discharge the obligation of results' (para 208, emphasis added).

The most far-reaching clarification by the ICJ, however, is with respect to the *content* of NDCs.

The legal status of NDCs, especially their content, was one of the most contentious issues during the negotiations of the Paris Agreement. Several parties, in particular the states most vulnerable to climate change, wanted NDCs to be legally binding, for example by being annexed to the Paris Agreement. Other parties were of the view that submitting NDCs is merely a procedural obligation, and that their content, and especially their achievement, does not fall within the legally-binding scope of the Agreement. A compromise was forged that led to the obligation in Art. 4.2, to communicate NDCs, but which is silent on the content of NDCs. Ever since the adoption of the Paris Agreement, it was therefore often (but misleadingly) characterized as 'bottom-up' and NDCs as voluntary and discretionary.

The ICJ smashed this characterization and the ambiguity surrounding NDCs by clearly confirming that both the content and the implementation and achievement of NDCs are obligations of conduct, based on a stringent due diligence standard.

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The ICJ explained that states do not enjoy unfettered discretion when preparing NDCs (para 270). Rather, their discretion is limited (para 245). As an obligation of conduct, parties are obliged to exercise due diligence when putting forward their NDC. Accordingly, NDCs must–as a matter of law–satisfy certain standards under the Paris Agreement (para 249).

These standards require, first, that NDCs need to represent a progression, which the ICJ interpreted as that 'a party's NDCs must become more demanding over time' (para 241). Second, parties must be informed by the outcomes of the Global Stocktake in the preparation of their NDCs, and third, as a requirement of exercising due diligence, a party's NDC must reflect its "highest possible ambition".

This is an interesting–and very important–point; in general, and for me personally. I was a negotiator and lead legal advisor to the Government of Norway in the negotiations of the Paris Agreement and have on behalf of Norway promoted and tirelessly worked for the inclusion of the "highest possible ambition" requirement in the Paris Agreement. As an academic, I was also in the position to point out that this element constitutes a due diligence requirement and published several articles on the matter, and I have subsequently provided more detail on the contours of 'highest possible ambition' in Art.

4.3 through various academic articles (see also this academic article). However, my suggestion that when it comes to NDCs, a state must do the best it can–its utmost–was often met with skepticism or outright critique and dismissal. Until the ICJ said the same and I quote: "Each party has [a due diligence obligation] to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Agreement." (para 246). This view is now mainstream and widely accepted–even if adequate actions are still missing.

This is only a personal story–but it shows that often, and perhaps always, victories and progress in climate law are the result of individuals putting their voices, convictions and understanding of justice on the frontline, whether through negotiations or civil society activism, academic writing or through bringing cases to courts.

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Back to the ICJ: Because of the seriousness of the threat posed by climate change, the court considered that the standard of due diligence is stringent when parties prepare their NDC (para 246). Consequently, parties also have an obligation to undertake best efforts to *achieve* their NDCs. This does not mean that states are obligated to meet their NDC targets, but rather that they must be proactive and pursue domestic measures that are reasonably capable of achieving the NDCs set by them, including in relation to activities carried out by private actors (para 252). These measures may include putting in place a national system, including legislation, administrative procedures and an enforcement mechanism, and exercising adequate vigilance to make such a system function effectively, with a view to achieving the objectives in their NDCs.

As a legal obligation, parties must satisfy these standards under the Paris Agreement. A breach of this obligation of conduct would constitute an internationally wrongful act which can give rise to state responsibility.

The relevance of this clarification by the ICJ for climate justice cannot be over-emphasized. Because it is through their NDCs that states set their climate ambition levels, which then must be followed through by domestic regulations and policies. NDCs are the *lynchpin* for national policies and the vehicle for vulnerable groups to demand climate justice on the domestic level. The process of NDC preparation must be inclusive and representative and–in democracies–provides a very important entry-portal for civil society voices. Moreover, in their NDCs, states are expected to lay out how to respect human rights when taking climate action, including the right to health, rights of Indigenous peoples, local communities, children, right to a clean, healthy and sustainable environment, etc. The ICJ, by stating that the NDCs are not simply a "black box" but must be prepared and implemented with utmost care, has provided a significant climate justice tool, which will–and I am sure–prove its value in many legal climate cases to come.

Another clarification made by international courts, specifically in the advisory opinions from the ICJ and the ITLOS, relates to how to address the differences in capacity between the world's some 200 states. Central here is the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR).

The courts clarified that CBDR does not categorically place different burdens on whether a state is a developed or developing country.

The courts noted that CBDR reflects the need to distribute equitably the burdens of the obligations in respect of climate change. Traditionally, this principle has been considered to put a larger burden on developed countries. However, the courts clarified that CBDR does not categorically place different burdens on whether a state is a developed or developing country. Rather, in the view of the courts, the principle calls for taking into account the circumstances of the state in question, such as historical and current contributions to cumulative greenhouse gas emissions, and their different current capabilities, including their economic and social level of development and other national circumstances (ICJ, para 148). The ICJ observed that this principle has been formulated in the Paris Agreement by adding the qualifier 'in the light of different national circumstances' which adds nuance and dynamism to the CBDR principle by recognizing that the status of a state as developed or developing is not static (para 226. See further this academic article on the nuanced and dynamic nature of CBDR).

Importantly, in this dynamic context, the ICJ noted that:

> 'on one end of the spectrum are the most developed States which have contributed significantly to the overall amount of GHG emissions since the Industrial Revolution, and which have resources and the technical capacity to implement wide-ranging emission reductions. On the other end are those least developed States that have contributed only minimally to historical emissions and have only a limited capacity to transform their economies. *In between* are States that have progressed considerably in their development since the conclusion of the UNFCCC in 1992, in line with that instrument's expectation that "the share of global emissions originating in developing countries will grow to meet their social and development needs" (UNFCCC, third preambular paragraph), and some of which now contribute significantly to global GHG emissions and possess the capacity to engage in meaningful mitigation and adaptation efforts.' (para 150, emphasis added).

The courts concurred that CBDR 'requires a State with greater capabilities and sufficient resources to do more than a State not so well placed', but that, in implementing the obligation of due diligence requires 'even the latter State to take all the means at its disposal to protect the climate system in accordance with its capabilities and available resources' (ICJ, para 291. Similar also to ITLOS Advisory Opinion). And the ICJ stated:

> 'The difference between the respective capabilities of States, as one of the factors which determines the diligence required, cannot therefore merely result from a distinction between developed and developing countries, but must also depend on their respective national circumstances. The multifactorial and evolutive character of the due diligence standard entails that, as States develop economically and their capacity increases, so too are the requirements of diligence heightened. Finally, the reference to available means and capabilities cannot justify undue delay or a general exemption from the obligation to exercise due diligence.' (para 292).

These findings by the courts carry profound implications for our starting point: climate justice. Not only do they address questions of distributive justice–who should carry the efforts/burden–but also of restorative and compensatory justice. As the courts point out, there is an expanding group of states which have increased their global share of emissions–and thereby their share of responsibility and accountability.

b. Broadening and expansion of climate obligations

But the courts did not only clarify the concrete nature of obligations under the UN climate treaty. They also expanded the breadth of sources of obligations to those beyond the climate treaties: to human rights treaties, the Law of the Sea Convention (UNCLOS) and the High Seas Treaty, customary international law and other sources–something that I call "broadening and expanding".

This marks a profound shift in climate justice. Duties–and corresponding rights where they exist–are no longer confined to one treaty regime but come from different legal spheres and angles; different fields of international law. Many international legal obligations can now be phrased and understood in a climate context–leaving more room for decisions on choice, agency and strategy to those who fight for climate justice–in courts and governments.

The courts did not only clarify the concrete nature of obligations under the UN climate treaty. They also expanded the breadth of sources of obligations to those beyond the climate treaties.

Just to give a few examples: the European Court of Human Rights in its 2024 judgment in *Verein Klimaseniorinnen Schweiz and others v Switzerland* found that "The State's primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change" (para 545) and, accordingly, that "Article 8 of the [European Convention on Human Rights] requires [...] each Contracting State to undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades." (para 548).

I would like to highlight two important elements here: first, the European Convention on Human Rights does not mention the word "environment" anywhere in its text. So, the court had to interpret the Convention in a dynamic and evolutionary manner, in the context of a challenge to human rights that was not contemplated by the drafters of the Convention in 1950.

The European Court "updated" (or "future-proofed") the Convention on Human Rights by dynamic interpretation and by placing it within a larger normative environment when it comes to climate change.

And second, the interpretation of the Convention in the light of the Paris Agreement. The Paris Agreement is not part of the applicable law by the court upon which it can decide on cases–but it can use it to specify legal obligations, such as to reduce greenhouse gas emission levels to net-zero by 2050.

In other words, the ECtHR "updated" (or "future-proofed") the Convention on Human Rights by dynamic interpretation and by placing it within a larger normative environment when it comes to climate change.

Recently, the ECtHR in its judgment of 28 October 2025 in the case of *Greenpeace Nordic and others v Norway* further clarified that human rights obligations also include procedural aspects, such as the need to carry out an adequate, timely and comprehensive environmental impact assessment, based on the best available science, which must be conducted before authorizing a potentially dangerous activity (para 318).

In a step that expands the normative reach of this duty beyond the state's own territory, the ECtHR found that in the context of petroleum production projects, the environmental impact assessment must include, at a minimum, a quantification of the greenhouse gas emissions anticipated to be produced, including the combustion emissions both within the country *and abroad*. Moreover, as a matter of human rights law, any assessment of greenhouse gas emissions, project by project, must include the *cumulative* greenhouse gas emissions of all those projects combined.

In the same vein, both the ICJ and the IACtHR in their advisory opinions on climate change underlined that climate change "may significantly impair the enjoyment of certain human rights" (ICJ para 376), e.g., right to life right to health, adequate standard of living, as well as the right to a clean, healthy and sustainable environment.

Accordingly, states have an obligation to guarantee the enjoyment of human rights, including through the protection of the climate system and *must* take all necessary measures ("positive obligations") through mitigation, adaptation, adoption of standards and legislation, and regulation of private actors.

Individuals have the right to be free from the impairment of their human rights and can demand adequate and timely climate action from the relevant state authorities.

These clarifications have perhaps the most far--reaching implications in the context of climate justice. Individuals have the right to be free from the impairment of their human rights and can demand adequate and timely climate action from the relevant state authorities.

Obligations follow further from the Law of the Sea (UNCLOS). ITLOS and the ICJ concurred that anthropogenic greenhouse gas emissions are pollution of the marine environment according to Art. 1.1(4) UNCLOS. Following from this is an obligation to prevent, reduce and control pollution by greenhouse gas emissions from *any* source (Art. 194.1 UNCLOS), be it, for example, from deforestation or coal-based power plants or other sources–and to protect and preserve the marine environment (Art. 192 UNCLOS).

Similar to the European Convention on Human Rights, the Law of the Sea Convention does not contain a reference to climate change. However, both the ICJ and ITLOS interpreted the Law of the Sea Convention in light of the Paris Agreement and, in harmonizing international law, established that the obligations pertaining to the protection of the marine environment are based on stringent due diligence which is

informed by the standards contained in the Paris Agreement 1.5°C goal and the pathway of net zero emissions by 2050.

Importantly, also customary international law–an unwritten source of law–which contains the duty to prevent significant harm to the environment, according to the ICJ, applies to the climate system. This duty, alongside the duty to cooperate, are based on stringent due diligence which requires states to take all appropriate measures to avoid climate harm, including measures to address fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses or the provision of fossil fuel subsidies.

States already have the legal duty to take all adequate means to address fossil fuels, which must be complied with–otherwise, state responsibility arises.

In situations, where negotiations–for example those at COP30 in Brazil–to address fossil fuels seem to have deadlocked, such clarifications by the world's highest court are crucially important. In other words, states *already have* the legal duty to take all adequate means to address fossil fuels, which must be complied with–otherwise, state responsibility arises. Let me emphasize: this duty and responsibility are already stablished, even in the absence of fossil fuel phase out roadmaps or a non-proliferation treaty–two initiatives that recently have stimulated much discussion.

c. What is the glue?

Now that we have put before us the big puzzle of climate law with its many pieces, a pertinent question is: what holds it all together? What is the glue?

On a closer look, it becomes apparent that all obligations, despite their different legal character and nature have some common denominators when it comes to climate change, be it those in the UN climate treaties, human rights treaties, the High Seas Treaty, or customary law.

Let me briefly identify three of these common denominators:

For small island nations who for more than 30 years have fought for the legal recognition of a temperature threshold that secures their chances of survival, this is a crucial win–and a signal that the law starts to align with the demands of justice.

First, the clarification or interpretation of all obligations is based on best available science as well as on the 1.5°C temperature goal in the Paris Agreement as the guiding standard of climate ambition. As the ICJ stated, 1.5°C is the primary goal and the scientific consensus target–and the other courts adopted a similar view. For small island nations who for more than 30 years have fought for the legal recognition of a temperature threshold that secures their chances of survival, this is a crucial win–and a signal that the law starts to align with the demands of justice.

Second, the different courts in the interpretation of different international treaties and customary law referred to the standards of conduct in the Paris Agreement for informing

the respective obligations, such as the need to regularly update climate plans or laws, the need to have plans at the level of highest possible ambition, to be informed by best available science and precaution, and to have both short-term and long-term targets, thereby widening the time horizon for climate action.

This harmonization of other obligations with the standards in the Paris Agreement is important, as the absence of it could have led to different climate standards in different agreements–and potentially a situation of "obligation shopping"–or worse: a race to the bottom. By harmonizing all obligations with the Paris Agreement standards, the courts avoided further fragmentation of international law and contributed to a mutually supportive system of different treaty and customary obligations.

What can be drawn from this is that the Paris Agreement permeates other international obligations of states, both under treaty and customary law, and informs their interpretation and the exercise of due diligence. Thus, the standards and norms included in the Paris Agreement have become *the benchmark* against which, to a large extent, the performance of states in respect to climate change is assessed under other international treaties and under customary law. Such an approach ensures that states are *consistently* held to the 1.5°C temperature threshold and to acting with the necessary due diligence in this regard.

The Paris Agreement permeates other international obligations of states, both under treaty and customary law, and informs their interpretation.

Third, the courts applied consistently the *same* standard of care to all climate obligations: a standard of stringent (ITLOS and ICJ) or enhanced (IACtHR) *due diligence*. In this context, the courts clarified that due diligence is an objective standard and can be determined by a set of factors. The factors include, in a non-exhaustive manner: (i) taking all appropriate measures, (ii) based on scientific and technological information, (iii) relevant international rules and standards, (iv) different capabilities, (v) the risk of harm and the urgency, (vi) precautionary approach or principle, (vii) risk assessment and environmental impact assessment, (viii) notification and consultation.

This catalogue of factors to assess whether the obligation to act with due diligence has been met is detailed and specific and allows for the determination of lawful–or unlawful–state behavior as regards climate change.

Due diligence with respect to the standards and obligations of the Paris Agreement is a strong glue. The advisory opinions issued by the ICJ, ITLOS, and IACHR make clear that nothing short of the utmost effort by each individual state would satisfy the duty of states. Due diligence–once believed to be soft and weak–has now emerged as a potent and powerful standard against which to assess compliance with international obligations. There is no hiding behind discretion and sovereign entitlements anymore. States must act with stringent due diligence and do the utmost in addressing climate change, or they will incur

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the consequences of international responsibility: restoration, in the form of restitution, satisfaction, and–importantly–compensation for climate harms.

4. Open questions: Goal and overshoot, causation and attribution

Despite the emerging picture of our climate law puzzle, there are some pieces that are still not entirely in place, and where science–but also the law–need to evolve. Such open questions relate, for example, to the issue of overshoot, and causation and attribution of climate harms.

First to overshoot: The most recent projections show that exceeding global warming of 1.5°C is, by now, inevitable. A definite crossing of this temperature threshold requires a two-decadal average of more than 1.5°C warming–but all signs point to the fact that we have entered these two decades last year and that the 1.5°C threshold will be crossed by or around 2040.

The likelihood of holding warming to 1.5°C at the end of this century depends on how much and how quickly emissions are reduced now. But–according to the IPPC–there is no historic precedent or scenario anymore wherein emissions would reduce sufficiently rapidly to not exceed 1.5°C warming.

The question therefore is not whether global warming will exceed 1.5°C (it will)–but by how much and for how long. And this leads us to the overshoot scenario.

The only option left for "keeping 1.5 alive" is to ensure that the temperature excess over 1.5°C is as short and little as possible, and then to *return* to 1.5°C.

The only option left for "keeping 1.5 alive" is to ensure that the temperature excess over 1.5°C is as short and little as possible, and then to *return* to 1.5°C before the end of this century. The IPCC refers to this "peak and decline to 1.5" scenario as "overshoot".

Overshoot therefore includes, by definition, the required corrective action.

This means that the 1.5°C marker in the Paris Agreement is an inherent part of the overshoot scenario. Article 2 of the Paris Agreement does not exclude temporary exceedance of 1.5°C and exceeding 1.5°C therefore does not render the goal nor the Agreement irrelevant. Indeed, it makes it even more urgent that parties ramp up their efforts in their NDCs to halt or even reverse the increase in global warming.

What then is necessary to get temperatures back to 1.5°C after exceeding this limit?

Now, this depends on the extent of excess and duration. But one thing is clear: the shorter and the less the 1.5°C limit is exceeded, the better–and the less risky.

In any case: Reversing global warming back to 1.5°C requires *even greater* mitigation efforts than achieving net-zero emissions. Net-zero global CO2 emissions would approximately stabilize CO2 induced warming at around 1.7°C or 1.8°C. Reversing such warming levels therefore requires rapid and major global CO2 emissions reduction to net-

zero and, thereafter, *net-negative* global CO2 emissions–a situation where anthropogenic, permanent atmospheric Carbon Dioxide Removals (CDR) outweigh any residual CO2 emissions. Net-zero is important, but not sufficient.

These options require a new global debate–a debate which has not taken place yet–on challenges they hold for policy, governance and justice, including their trade-offs and potential synergies. Because each one of these options comes with new and additional policy, legal and justice challenges.

A second set of open questions relates to issues left open by the ICJ on the prospect of compensation for climate harms: causation and attribution.

In its Advisory Opinion, the ICJ clarified the legal obligations of states–but only in a general manner the legal consequences, if those obligations are breached. In this situation, the framework under the rules of state responsibility applies.

A second set of open questions relates to issues left open by the ICJ on the prospect of compensation for climate harms.

But while the ICJ addressed questions of attribution, causation and temporality in this context, it left the specific determination to be assessed *in concreto*–or in other words, it left this for another day (or rather another legal case, most likely a contentious one…).

International law–and lawyers–still need a deep-dive into these elements identified by the ICJ and assess in more detail and specificity the implications of breaches of international obligations to protect the climate system for the invocation of state responsibility and the arising legal consequences. These issues are at the heart of global justice–in particular compensation for climate harms. I am currently visiting professor at the University of the West Indies in Barbados–where the impacts of climate change are very tangible–and where I conduct research and organize regional and international symposia on these legal issues.

In any case, the work is not done–it never is–and the picture is not perfect. But the jurisprudence by international courts in the course of the last two years has given us more clarity on the contours of international climate law, its scope and content–than we ever had before. This should give us hope in tilting the global balance towards a future in which we are collectively able to align justice and the law.

5. Limits of law

Yet, finally, law has limits and cannot be the only answer. Let me finish by recalling the final paragraph in the ICJ's Advisory Opinion, where the court spoke to the limits of law.

The ICJ reminded us that climate change is more than a legal problem: It concerns an existential problem of planetary proportions that imperils all forms of life and the very health of our planet.

The court reminded us that climate change is more than a legal problem: it concerns an existential problem of planetary proportions that imperils all forms of life and the very health of our planet.

"International law" says the court, "has an important but ultimately limited role in resolving this problem. A complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other. Above all, a lasting and satisfactory solution requires human will and wisdom—at the individual, social and political levels—to change our habits, comforts and current way of life in order to secure a future for ourselves and those who are yet to come." (ICJ para 456).

We need all hands-on-deck: Every sector, every discipline, every level of governance, everywhere. Law and the legal structure for a coordinated response commensurate with these global challenges are an indispensable part, as I said in the beginning.

Justice will almost always evolve faster than the law, as ideas of fairness change over time. All the time. With respect to climate change, we still need to see the ideas of just transition or compensation for climate harms adequately reflected in legal structures. The laws we have lag behind social movements and evolving values–but we *need* the law to provide the structures necessary to make justice stick. Law is the tool for justice. Without law, justice is just an ideal–and without justice, law is merely oppression. It is only where the two intersect, that we will see the change and the impact needed to effectively and fairly address climate change.

Thank you.

Dr. Christina Voigt is Professor at the Department of Public and International Law at the University of Oslo. In 2025-2026, she is a Visiting Professor at The University of the West Indies Cave Hill Campus, Barbados. Christina Voigt is a leading expert in international environmental law and works in particular on legal issues of climate change, biodiversity conservation, environmental multilateralism and sustainability. She chairs the thematic group on "Climate Law" at the Faculty of Law, Department of Public and International Law, is Chair of the IUCN World Commission on Environmental Law (WCEL), and a member of the Paris Agreement Implementation and Compliance Committee (PAICC). She acted as IUCNs lead legal counsel in the climate change advisory proceedings before the ICJ, ITLOSA and the IACtHR. From 2009-2018, she served the Norwegian Government as as principal legal advisor in the UN climate change negotiations where she negotiated, inter alia, the Paris Agreement. She is the author of numerous academic articles and several books.

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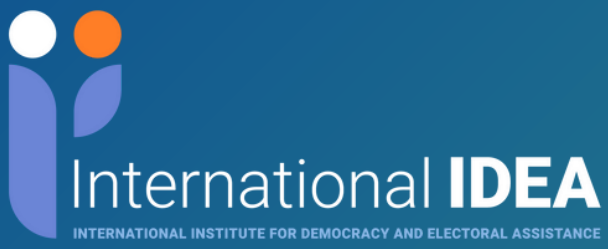
The Department of Public and International Law is part the University of Oslo Faculty of Law.

Department of Public and International Law
University of Oslo
Postboks 6706 St. Olavs plass
N-0130 Oslo, Norway



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Strömsborgsbron 1
103 34 Stockholm SWEDEN
Telephone: +46 8 698 37 00
Email: info@idea.int
Website: http://www.idea.int