A CORPORATE ACCOUNTABILITY "TURN" IN INTERNATIONAL CLIMATE LITIGATION

by
Jacqueline Peel[*]

Corporations are among the most significant emitters of anthropogenic greenhouse gases, which are responsible for the existential threat of climate change. Yet accountability for corporate emitting activities has been difficult to secure, particularly where companies operate across nation-state borders or have global value chains. This Essay looks at recent developments in international law, found in a series of climate-related advisory opinions issued by international courts and tribunals, which may signal greater corporate accountability for climate harms. It argues that the recent advisory opinions of the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights, and the International Court of Justice preface a "turn" towards greater corporate climate accountability, mediated through judicial interpretations of the international obligations regarding climate change that apply to nation states.

[*] Redmond Barry Distinguished Professor, Melbourne Law School, University of Melbourne. Professor Peel is the 2024 Kathleen Fitzpatrick Australian Laureate Fellow undertaking a five-year project on global corporate climate accountability. Research for this publication was supported by the Australian Research Council, pursuant to Discovery Project DP220100124 on 'Advancing Investor Action on Energy Transition' and Professor Peel's Kathleen Fitzpatrick Australian Laureate Fellowship, Project ID: FL240100065.

INTRODUCTION

Climate change litigation is an increasingly widespread phenomenon,[1] which has recently expanded beyond the domestic sphere to the international stage.[2] The last few years have seen several climate change cases decided by international courts and tribunals.[3] While international cases represent only a small fraction of overall climate litigation (5% of cases to the end of 2024),[4] they are nonetheless "attracting

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[1] JOANA SETZER & CATHERINE HIGHAM, GRANTHAM RSCH. INST. ON CLIMATE CHANGE & THE ENV'T, GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2025 SNAPSHOT 3 (2025), http://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2025/06/global-trends-in-climate-change-litigation-2025-snapshot.pdf [https://perma.cc/RM2U-9CU9] (recording 2,967 climate cases filed across nearly 60 countries globally up to the end of 2024).

[2] Karen C. Sokol, *Bringing Courts into Global Governance in a Climate-Disrupted World Order*, 108 MINN. L. REV. 163, 213 (2023).

[3] In addition to the advisory opinions of the International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR), and the International Court of Justice (ICJ) that are the focus of this Essay, other examples include: the July 2022 decision of the UN Human Rights Committee in respect of the complaint against Australia alleging human rights violations submitted by eight Indigenous Torres Strait Islanders (Hum. Rts. Comm., Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Communication No. 3624/2019, U.N. Doc. CCPR/C/135/D/3624/2019 (July 21, 2022)); rulings handed down by the European Court of Human Rights in contentious cases, such as its April 2024 judgment in Verein KlimaSeniorinnen Schweiz v. Switzerland, App. No. 53600/20, (Apr. 9, 2024); and the Advisory Opinion of the EFTA Court issued in Norwegian State v. Greenpeace Nordic & Nature & Youth Nor. (Case E-18/24, 2025 O.J. (C 6205) 1 (EFTA Ct. May 21, 2025)). For discussion of another advisory opinion request concerning "the human rights obligations of African states" in addressing the climate crisis that is before the African Court on Human and Peoples' Rights, see further, Dina Lupin & Ruth Nekura, *An Advisory Opinion on Human Rights and Climate Change in the African Regional Human Rights System*, *in* THE ROLE OF ADVISORY OPINIONS IN INTERNATIONAL LAW IN THE CONTEXT OF THE CLIMATE CRISIS 143–71 (Maria Antonia Tigre & Armando Rocha eds., 2025).

[4] SETZER & HIGHAM, *supra* note 1, at 13 fig. 1.3 (representing the category of "international and regional" cases as comprising 5% of overall climate litigation cases). This category captures claims brought before human rights bodies (such as the European Court of Human Rights; the European Committee on Social Rights; the IACtHR; the Inter-American Commission on Human Rights; the UN Committee on the Rights of the Child; the UN Human Rights Committee; and UN Special Rapporteurs), investor-state international arbitral tribunals, and other international

considerable attention," particularly international advisory opinions that "are seen as interpretative tools that could clarify states' legal obligations on climate change and inform both domestic courts and international political processes."[5]

One area where international climate advisory opinions are shedding new light is with respect of the obligations of countries to regulate, monitor, and supervise the activities of private actors—such as companies—which give rise to greenhouse gas (GHG) emissions and damage to the climate system.[6] Following a similar trend in domestic climate litigation—which has seen a growing proportion of cases targeting companies and corporate officers[7]—this Essay argues that international climate litigation may likewise be exhibiting a "turn" towards questions of corporate climate accountability.[8]

Underlying this turn is greater understanding of the contribution made by corporations to GHG emissions and climate change, improvements in attribution science illuminating the connection between corporate emissions and specific climate harms, and parallel developments in climate law to recognize the role of corporate law reforms in helping drive shifts in corporate behavior to minimize adverse climate impacts.[9] Even so, corporate climate accountability remains a fluid and evolving concept.[10] In this Essay, the term *corporate climate accountability* is used to encompass both (1) obligations placed on companies to acknowledge and manage their climate impacts (for example, obligations to disclose climate risks, set targets,

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and regional courts and tribunals, including the World Trade Organization (WTO); the ICJ; the International Criminal Court; the East African Court of Justice; the Aarhus Convention Compliance Committee; and the ITLOS. *Id.* at 16 n.5.

[5] *Id.* at 15. A leading example is the collection of essays: THE ROLE OF ADVISORY OPINIONS IN INTERNATIONAL LAW IN THE CONTEXT OF THE CLIMATE CRISIS, *supra* note 3 (collecting a series of essays outlining the dimensions of international climate litigation and exploring the potential of advisory opinions in international courts and tribunals to clarify and enforce States' obligations to regulate greenhouse gas emissions within the international climate framework).

[6] *See* Eoin Jackson, *Advancing Corporate Climate Accountability Post the Inter-American Court Advisory Opinion on Human Rights and the Climate Emergency*, EJIL: TALK! (July 21, 2025), https://www.ejiltalk.org/advancing-corporate-climate-accountability-post-the-inter-american-court-advisory-opinion-on-human-rights-and-the-climate-emergency/ [https://perma.cc/SCB6-TMZG].

[7] In 2024, around 20% of climate cases filed targeted companies, or their directors and senior officers. SETZER & HIGHAM, *supra* note 1, at 5.

[8] In a 2018 article, Professor Hari Osofsky and I conducted a similar trends analysis regarding the emergence of rights-based litigation. *See generally* Jacqueline Peel & Hari M. Osofsky, *A Rights Turn in Climate Change Litigation?*, 7 TRANSNAT'L ENV'T L. 37 (2018) (conducting an analysis of the emerging "turn" of climate change litigants to present rights-based claims and the subsequent judicial recognition of the human rights dimensions of climate change).

[9] *See infra* Part I.

[10] The term is frequently used in the literature without definition. Hence, giving form to this concept and exploring its relationship to international law is the focus of my five-year Australian Laureate Fellowship program on global corporate climate accountability.

and develop implementation plans for reducing emissions), reflecting expectations of the international community that businesses play their part in addressing "the urgent and existential threat posed by climate change";[11] and (2) requirements for companies to be answerable for the adequacy of their decisions and operations that create climate change impacts.[12]

The remainder of the Essay proceeds as follows. Part I considers the reasons for a corporate accountability turn in international climate litigation, unpacking drivers such as legislative corporate law reforms addressing climate risks, the rise of domestic corporate climate litigation, and the role of improvements in climate attribution science. Focusing on recent international climate advisory opinions issued by the International Tribunal for the Law of the Sea (ITLOS),[13] the Inter-American Court of Human Rights (IACtHR),[14] and the International Court of Justice (ICJ),[15] Part II then discusses their rulings relevant to questions of corporate climate accountability. Finally, Part III of the Essay examines why we might see these developments as a turn to corporate climate accountability in international climate litigation and discusses the possible implications.

I. WHY A CORPORATE ACCOUNTABILITY "TURN"?

Much of the debate over the effectiveness of international climate action, and indeed, the relevant legal frameworks, focuses on the obligations of State actors like nations and governments.[16] Why then might we be seeing an increasing turn to questions of *corporate* accountability in the climate context? The following Sections consider legal and scientific developments that are encouraging greater attention to

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[11] Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. No. 187, ¶ 73 (July 23) [hereinafter ICJ Advisory Opinion].

[12] This "working" definition combines concepts of "corporate responsibility" that have particularly developed in the field of business and human rights, and broader notions of "corporate accountability" that have arisen in the broader context of debates on global environmental governance. ELISA MORGERA, CORPORATE ENVIRONMENTAL ACCOUNTABILITY IN INTERNATIONAL LAW 16, 18–19 (2d ed. 2020). The requirement of answerability also encompasses attention to the consequences of corporate non-compliance with relevant obligations and expectations that may take a "hard" (e.g., sanctions) or "soft" form (e.g., reputational impacts).

[13] Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Case No. 31, Advisory Opinion of May 21, 2024, ITLOS [hereinafter ITLOS Advisory Opinion].

[14] Climate Emergency and Human Rights, Advisory Opinion OC-32/25, Inter-Am. Ct. H.R. (ser. A) No. 32 (May 29, 2025) [hereinafter IACtHR Advisory Opinion].

[15] ICJ Advisory Opinion, *supra* note 11.

[16] *See generally, e.g.*, Radoslav Dimitrov, Jon Hovi, Detlef F. Sprinz, Håkon Sælen & Arlid Underdal, *Institutional and Environmental Effectiveness: Will the Paris Agreement Work?*, 10 WIREs CLIMATE CHANGE e583 (2019) (reviewing the Paris Agreement's effectiveness in inducing States Parties to implement policies).

the accountability of actors beyond the State for addressing climate change, and particularly corporate actors.

A. Developments in Corporate Law

Since the conclusion of the Paris Agreement in 2015,[17] there has been growing scholarly interest in the intersection between the previously separate fields of corporate law and climate law.[18] As Lisa Benjamin explains, corporate law has traditionally focused on the protection and advancement of the interests of shareholders, relegating climate change as an "environmental" issue to other bodies of law considered external to corporate law.[19] However, one of the consequences of increased business engagement with climate law at the Paris summit[20] was global initiatives seeking to improve the dissemination of information about companies' GHG emissions and business-related climate risks as a spur for greater corporate action on climate change.[21] This included the efforts of the Financial Stability Board's Taskforce on Climate-related Financial Disclosures, whose 2017 report helped mainstream the idea that risks associated with climate change could affect the financial bottom line of companies, making dealing with climate risk a core business activity.[22]

Legislative and judicial developments since—led initially by industrialized countries in North America, Europe, and Oceania but increasingly extending beyond such countries—have built on these foundations.[23] In the legislative sphere,

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[17] Paris Agreement, Dec. 12, 2015, 3156 U.N.T.S. 79.

[18] For a seminal academic work in this regard, see LISA BENJAMIN, COMPANIES AND CLIMATE CHANGE: THEORY AND LAW IN THE UNITED KINGDOM 20–45 (2021). *See also* Sarah E. Light, *The Law of the Corporation as Environmental Law*, 71 STAN. L. REV. 137, 146–47 (2019) (arguing that corporate and business law can gap fill as a fundamental part of environmental law); Cynthia A. Williams, *Climate Change and Corporate Law in the United States: Not "Woke" but Eyes Open*, 110 IOWA L. Rev. 2277, 2281–82 (2025) (framing climate change as a material risk for corporations that must be considered pursuant to fiduciary obligations).

[19] BENJAMIN, *supra* note 18, at 22.

[20] This was led by organizations such as the We Mean Business Coalition and the World Business Council for Sustainable Development. For an early assessment of non-state action, including that of businesses, see Sander Chan, Robert Falkner, Harro van Asselt, & Matthew Goldberg, *Strengthening Non-state Climate Action: A Progress Assessment of Commitments Launched at the 2014 UN Climate Summit* 17–34 (Ctr. for Climate Change Econ. & Pol'y, Working Paper No. 242; Grantham Rsch. Inst. on Climate Change & the Env't, Working Paper No. 216, 2015).

[21] Maria L. Banda, *The Bottom-Up Alternative: The Mitigation Potential of Private Climate Governance After the Paris Agreement*, 42 HARV. ENV'T L. REV. 326, 355–80 (2018).

[22] *See* TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES, RECOMMENDATIONS OF THE TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES 5–11 (2017), https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf [https://perma.cc/29QY-UWL8].

[23] For example, the Commonwealth Climate and Law Initiative (CCLI) maintains the

a particular focus has been the development of mandatory climate-related disclosure laws requiring companies to provide regular information about the risks posed by climate change to their businesses and the measures being taken to manage those risks.[24] While threatened rollbacks and "anti-ESG" legislation and litigation have more recently dimmed regulatory enthusiasm for such measures in some jurisdictions (notably the United States),[25] the overall trend towards greater regulation of corporate activity with climate consequences remains robust.[26]

B. Growth of Corporate Climate Litigation

In the field of corporate climate litigation—as mentioned earlier—there is a parallel trend of focusing on companies and corporate officers as targets in such cases (again, with some headwinds in the United States involving "anti-regulatory" lawsuits challenging new rules on climate-related financial disclosures or targeting voluntary climate pledges and sustainability labels under antitrust and fiduciary duty laws).[27] Corporate climate cases are pursuing a wide range of legal strategies, from challenges to the targets, policies, or decision-making processes of companies with

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Directors' Duties Navigator: Climate Risk and Sustainability Disclosures, now in its fifth edition, which covers legislative, regulatory and judicial developments in more than 30 jurisdictions, including Australia, Belgium, Canada, Hong Kong, India, Indonesia, Japan, Malaysia, the Philippines, Singapore, South Africa, United Kingdom, and the United States. *See* Commonwealth Climate & L. Initiative, *Directors' Duties Navigator: Climate Risk and Sustainability Disclosures*, CHAPTER ZERO ALL. (Jan. 20, 2026), https://hub.chapterzeroalliance.org/resource/directors-duties [https://perma.cc/5KYM-E4KQ].

[24] For a review of relevant laws across countries such as Australia, Brazil, Canada, California, the European Union (EU), Hong Kong, Japan, New Zealand, Singapore, the United Kingdom (UK), and the United States (US), see Elisa de Wit & Andrew Pollock, *Review of Climate-Related Financial Disclosure Regimes Around the World*, NORTON ROSE FULBRIGHT (June 2024), https://www.nortonrosefulbright.com/en/knowledge/publications/9261bbcf/review-of-climate-related-financial-disclosure-regimes-around-the-world [http://perma.cc/EQ2Z-9HYE].

[25] Taylor Nchako & Lisa Benjamin, *ESG Backlash in the United States—Investor Concerns or "Red Scare"?*, 5 J. L. & POL. ECON. 268, 270, 280 (2025). The February 26, 2025, "Simplification Omnibus" package unveiled by the EU has also raised concerns in that jurisdiction of scaling back of the EU's flagship sustainability reporting directives. *See* Rosalia Mazza, *EU's Rollback of Sustainability Reporting Rules Sparks Investment Concerns*, FINTECH WEEKLY (Mar. 1, 2025, at 19:21 PT), https://www.fintechweekly.com/magazine/articles/eu-reduces-corporate-sustainability-reporting-requirements [https://perma.cc/H9H6-VAQ6].

[26] TASKFORCE ON NET ZERO POL'Y, NET ZERO POLICY MATTERS 11, 20 (2024), https://public.unpri.org/taskforce-on-net-zero-policy/net-zero-policy-matters-assessing-progress-and-taking-stock-of-corporate-and-financial-net-zero-policy-reform/12852.article [https://perma.cc/9MHD-N5W6].

[27] SETZER & HIGHAM, *supra* note 1, at 5, 37, 44 (discussing the efforts of policymakers and advocates to impose environmentally conscious policies on corporate actors using a range of litigation avenues).

regard to climate risks,[28] to efforts to link corporate emissions to breaches of human rights or duties of care,[29] and "greenwashing" claims alleging inaccuracies in corporate statements or marketing that represent companies' activities to be more aligned with climate-protective goals than is the case.[30]

A common factor underpinning these developments has been recognition of the major role played by companies and their corporate financial underwriters in producing and financing GHG emissions. For example, scientific assessments show that the world's 90 largest fossil fuel and cement companies accounted for 63% of global emissions between 1751 and 2010, and contributed 43% of the observed rise in carbon dioxide (CO_2) and 11–14% of the observed sea level rise since 1980.[31] Studies of fossil fuel investments by OECD pension funds and banks suggest that of the approximately two trillion dollars invested in total liquid portfolio assets of such funds, €79.6 billion belongs to fossil fuel firms.[32] And reported annual emissions of multinational fossil fuel companies, like Royal Dutch Shell, come in at around 1.2 billion metric tons, dwarfing the GHG contributions of even major industrialized countries such as the United Kingdom (at 400 million metric tons CO_2 equivalent in 2024).[33] Reducing corporate GHG emissions, and holding companies to account for their promises to do so, is

28 *See id.* at 37 (describing the targets of such "corporate framework" cases as the "group-wide policies, governance structures and decision-making processes" of companies). *See, e.g.*, Case 200.302.332/01, Shell Plc v. Env't Def. Ass'n, ECLI:NL:GHDHA:2024:2100, ¶ 7.58 (Nov. 12, 2024).

29 An example is the New Zealand case *Smith v. Fonterra*. In its February 7, 2024, judgment, the New Zealand Supreme Court allowed Mr. Smith's tort claims to proceed to trial finding that the common law was not displaced by climate statutory law in the country and that the New Zealand Parliament had left a pathway open for the common law to operate, develop, and evolve amid that statutory landscape. Smith v. Fonterra Co-Operative Grp. Ltd. [2024] NZSC 5 at [4], [101] (N.Z.).

30 Such "climate-washing" cases "remain the most widely used strategy in corporate litigation." SETZER & HIGHAM, *supra* note 1, at 6. Australia has been a particular hotspot for such litigation. *See* Jacqueline Peel, *Australasia*, *in* THE OXFORD HANDBOOK OF CLIMATE CHANGE AND PRIVATE LAW 645–63 (Douglas A. Kysar & Ernest Lim eds., 2026).

31 Richard Heede, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010*, 122 CLIMACTIC CHANGE 229, 230, 234, 238 (2014); B. Ekwurzel, J. Boneham, M.W. Dalton, R. Heede, R.J. Mera, M.R. Allen & P.C. Frumhoff, *The Rise in Global Atmospheric CO2, Surface Temperature, and Sea Level from Emissions Traced to Major Carbon Producers*, 144 CLIMATIC CHANGE 579, 581, 583, 587 (2017).

32 Arthur Rempel & Joyeeta Gupta, *Conflicting Commitments? Examining Pension Funds, Fossil Fuel Assets and Climate Policy in the Organisation for Economic Co-operation and Development (OECD)*, 69 ENERGY RSCH. & SOC. SCI., Nov. 2020, at 1, 3, 6.

33 Shadia Nasralla, *Shell's 2024 Emissions Largely Stable at 1.2 Billion Tons CO2 Equivalent*, REUTERS (Mar. 25, 2025, at 01:43 PDT), https://www.reuters.com/business/environment/shells-2024-emissions-largely-stable-12-billion-tons-co2-equivalent-2025-03-25/ [https://perma.cc/5ART-R4SY].

accordingly now seen as an essential component of international climate governance.[34]

C. Advances in Climate Attribution Science

Supporting this shift in understanding of the outsized role—and responsibility—of companies in the global mitigation effort, are developments in the field of climate attribution science. This scientific field seeks to quantify the role that climate change plays in shaping harms caused by extreme weather events, sea level rise, or air temperature increases.[35] Groundbreaking work, such as that of scientist Richard Heede and the scientific organizations behind the Carbon Majors Project, expanded attribution science to "source attribution," quantifying the historical emissions of particular fossil fuel companies and linking these to specific contributions to climate change impacts.[36] More recent attribution research has focused on "impact attribution," such as a new paper published in *Nature* using peer-reviewed attribution methods and advances in empirical climate economics to quantify the trillions in economic losses attributable to the extreme heat caused by emissions from individual companies.[37] This work increasingly provides the scientific underpinnings for climate liability claims against corporate actors seeking remedies such as damages, with 11 new cases in this category filed in 2024 alone.[38]

Overall, these collective developments in law and scientific understanding underscore the important role that corporations—and the governance of their emitting activities—can play in ensuring an effective response to global climate change, but also "the glaring gap in corporate climate accountability."[39] In essence,

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[34] *See, e.g.*, UN'S HIGH-LEVEL EXPERT GRP. ON THE NET ZERO EMISSIONS COMMITMENTS OF NON-STATE ENTITIES, INTEGRITY MATTERS: NET ZERO COMMITMENTS BY BUSINESSES, FINANCIAL INSTITUTIONS, CITIES AND REGIONS 29 (2022), https://www.un.org/sites/un2.un.org/files/high-levelexpertgroupupdate7.pdf [https://perma.cc/4KV2-L5TG].

[35] *What Is Attribution Science?*, UNION CONCERNED SCIENTISTS (Mar. 18, 2025), https://www.ucs.org/resources/attribution-science [https://perma.cc/KW8K-VWP9].

[36] *See* Heede, *supra* note 31, at 234, 238; Ekwurzel et al., *supra* note 31, at 587. The Carbon Majors database is "a database of historical production data from 178 of the world's largest oil, gas, coal, and cement producers . . . used to quantify the direct operational emissions and emissions from the combustion of marketed products." *About Carbon Majors*, CARBON MAJORS, https://carbonmajors.org/ [https://perma.cc/UTA9-VQU5] (last visited May 31, 2026).

[37] *See* Christopher W. Callahan & Justin S. Mankin, *Carbon Majors and the Scientific Case for Climate Liability*, 640 NATURE 893, 893, 896–97 (2025) (finding emissions linked to Chevron (the highest-emitting investor-owned company included in the study) "very likely caused between US $791 billion and $3.6 trillion in heat-related losses over the period 1991–2020, disproportionately harming the tropical regions least culpable for warming").

[38] SETZER & HIGHAM, supra note 1, at 27.

[39] Mikko Rajavuori, Annalisa Savaresi & Harro van Asselt, *Mandatory Due Diligence Laws and Climate Change Litigation: Bridging the Corporate Climate Accountability Gap?*, 17 REGUL. & GOVERNANCE 944, 944 (2023).

scientific advances and legal reforms have provided enhanced knowledge of the corporate contribution to global GHG emissions without (yet) delivering effective tools for reducing companies' carbon footprint and associated climate change impacts. This accountability gap has long been considered to be particularly acute at the global level given that international law, as traditionally conceived, does not speak to the responsibilities of private actors like companies but instead is directed to the obligations of States.[40] However, as the next Part explores, some ruptures in this conventional view are emerging, mediated by the rulings of international courts and tribunals, especially in a set of recent advisory opinions.

II. INTERNATIONAL CLIMATE LITIGATION AND CORPORATE ACCOUNTABILITY

As mentioned in the introduction, international climate litigation was not a well-established phenomenon until recently. However, we are now experiencing a particularly productive period for international climate jurisprudence, with three major advisory opinions on different aspects of States' international climate obligations issued in the last two years by the ITLOS, the IACtHR, and the ICJ.[41] In all three opinions, the international courts and tribunals concerned engage with the relevance of climate-related obligations under international law to the regulation of the emissions-generating conduct of private actors, such as business entities.

Three decisions might not seem sufficient to preface a corporate accountability turn, particularly given the formally non-binding legal status of advisory opinions and States' variable acceptance of international judicial rulings.[42] However, the wide-ranging nature of these advisory opinions, the degree of coherence between them, and their singling out of private and corporate actors for comment against the backdrop of rulings directed to State obligations provides at least an arguable counterpoint. In support of this contention, the following Sections briefly summarize the rulings of the three opinions relating to private and business actors, highlighting their relevance for questions of corporate climate accountability.

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[40] Carlos M. Vázquez, *Direct vs. Indirect Obligations of Corporations Under International Law*, 43 COLUM. J. TRANSNAT'L L. 927, 930 (2005) (discussing that international law generally addresses the conduct of corporations by imposing an obligation on states to regulate them).

[41] *See* Maria Antonia Tigre & Armando Rocha, *The Role of Advisory Opinions in International Law in the Context of the Climate Crisis: An Introduction*, *in* THE ROLE OF ADVISORY OPINIONS IN INTERNATIONAL LAW IN THE CONTEXT OF THE CLIMATE, *supra* note 3, at 1, 4–6 (discussing recent and forthcoming significant advisory opinions related to international law and climate change).

[42] Eran Sthoeger, *How Do States React to Advisory Opinions? Rejection, Implementation, and What Lies in Between*, 117 AJIL UNBOUND 292, 293–97 (2023) (explaining the non-binding nature of advisory opinions by contrasting a case in which Israel paid compensation in response to an advisory opinion, with another case where States ignored the opinion and petitioned for another).

A. *ITLOS Advisory Opinion on Climate Change and Marine Pollution*

The ITLOS Advisory Opinion was the first "cab off the rank" of international decisions opining on the international climate obligations of States. Consistent with the ITLOS' jurisdictional scope and the nature of the questions put by the Commission of Small Island States on Climate Change and International Law (COSIS) as the initiator of the request,[43] the ITLOS Advisory Opinion focused primarily on States' obligations under the law of the sea.[44] Hence a key question for the Tribunal was whether the requirements of law-of-the-sea treaties directed to preventing and regulating marine pollution and preserving the marine environment—like those of the United Nations Convention on the Law of the Sea (UNCLOS)[45]—applied in the context of anthropogenic GHG emissions causing

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[43] COSIS was established by Antigua and Barbuda and Tuvalu through the Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law (COSIS), signed by these countries Prime Ministers on the eve of COP26. *About COSIS: Organization of Small Island States United to Protect the Climate System*, COMM'N OF SMALL ISLAND STATES ON CLIMATE CHANGE & INT'L L., https://www.cosis-ccil.org/ [https://perma.cc/N7HW-XLGR] (last visited May 31, 2026). The Commission now has nine small island state members and membership is open to any member of the Alliance of Small Island States. *Id.* According to Article 1(3) of its establishing Agreement, COSIS' mandate is

> to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change, including, but not limited to, the obligations of States relating to the protection and preservation of the marine environment and their responsibility for injuries arising from internationally wrongful acts in respect of the breach of such obligations.

Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law, art. 1(3), Oct. 31, 2021, 3444 U.N.T.S. It is also authorized by Article 2(2) of the COSIS Agreement "to request advisory opinions from the International Tribunal for the Law of the Sea ('ITLOS') on any legal question within the scope of the 1982 United Nations Convention on the Law of the Sea, consistent with Article 21 of the ITLOS Statute and Article 138 of its Rules." *Id.* art. 2(2). In its Advisory Opinion, ITLOS found that that these provisions established the Tribunal's jurisdiction to render an advisory opinion in the case. ITLOS Advisory Opinion, *supra* note 13, ¶ 89.

[44] The questions put in the request were set out by the Tribunal in its Advisory Opinion, *supra* note 13, ¶ 139. They asked the Tribunal to opine on:

> What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea ('UNCLOS'), including under Part XII: (a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere? (b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?

Id.

[45] *See* U.N. Convention on the Law of the Sea, art. 194(3)(a)–(d), Dec. 10, 1982, 1833 U.N.T.S. 397. Much of the treaty is accepted as reflecting customary international law, which is an important consideration for non-parties such as the United States. Keyuan Zou &

adverse impacts on oceans.[46] The ITLOS' finding that anthropogenic greenhouse gas emissions constitute "pollution of the marine environment" within the meaning of that term in UNCLOS, paved the way for its consideration of the obligations of States to regulate GHG emitting activities with marine polluting effects.[47]

A central obligation of UNCLOS States Parties is contained in Article 194 of the treaty. Article 194(1) requires States Parties to take all necessary measures to prevent, reduce, and control pollution of the marine environment from any source, whereas paragraph two of this Article requires all necessary measures to ensure that activities under State Parties' jurisdiction or control do not cause damage through transboundary pollution, and that pollution arising from polluting incidents or activities does not spread beyond the areas where States Parties exercise sovereign rights.[48]

Holding both paragraphs of Article 194 to create due diligence obligations for States with a "stringent" standard applicable, ITLOS noted that the obligation to regulate marine pollution from anthropogenic GHG emissions under Article 194(1) is "particularly relevant in a situation in which the activities in question are mostly carried out by private persons or entities."[49] Likewise, the Tribunal stressed that under Article 194(2), the covered "activities" giving rise to transboundary marine pollution refer to "activities carried out by both public and private actors."[50] Hence, under Article 194(2), States are required "to take all necessary measures to ensure that GHG emissions under their jurisdiction or control do not cause damage to other States and their environment, and that pollution arising from such emissions under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights."[51] This would include situations where emissions arise from corporate activities (for example, fossil fuel extraction or consumption projects) occurring on a State's territory, in

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Qiang Ye, *The Relationship Between UNCLOS and Customary International Law: Some Reflections*, MARINE POL'Y, May 29, 2023, at 1, 2–3.

[46] ITLOS Advisory Opinion, *supra* note 13, ¶¶ 179–81.

[47] *Id.* ¶ 179.

[48] U.N. Convention on the Law of the Sea, *supra* note 45, art. 194(1)–(2). This reflects the "general obligation of States to ensure that activities within their jurisdiction and control respect the environment or other States or of areas beyond national control is now part of the corpus of international law relating to the environment." Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. No. 679, ¶ 29 (July 8). In Judge Wolfrum's separate opinion in the MOX Plant Case, his honor found Article 194(2) constituted customary international law. The Mox Plant Case (Ir. v. U.K.), Case No. 10, Order of Dec. 3, 2001, 10 ITLOS Rep. 95, 133 (separate opinion of Judge Wolfram).

[49] ITLOS Advisory Opinion, *supra* note 13, ¶¶ 236, 243. This finding was cited approvingly by the ICJ. *See* ICJ Advisory Opinion, *supra* note 11, ¶ 252.

[50] ITLOS Advisory Opinion, *supra* note 13, ¶ 247.

[51] *Id.* ¶ 250.

their exclusive economic zone, or in respect of activities carried out on board ships or aircraft registered to those States.[52]

Another broad obligation under UNCLOS is found in Article 192, which declares that States Parties "have the obligation to protect and preserve the marine environment."[53] The Tribunal in its advisory opinion was of the view that the obligation "has a broad scope, encompassing any type of harm or threat to the marine environment," including "climate change impacts, such as ocean warming and sea level rise, and ocean acidification."[54] The Tribunal interpreted the obligation—in light of the requirements of climate treaties like the Paris Agreement—as one requiring States Parties "to implement measures to protect and preserve the marine environment in relation to climate change impacts and ocean acidification that include resilience and adaptation actions as described in the climate change treaties."[55] It also specifically called out the need for States, in taking necessary measures, "to ensure that non-State actors under their jurisdiction or control comply with such measures."[56] This might conceivably include imposing conditions on domestic companies undertaking GHG-emitting projects which threaten harm to marine environments that require the implementation of adaptation measures or even efforts to restore damaged marine habitats and ecosystems.[57]

A similar finding was reached by the ITLOS in respect of the obligation under Article 206 of UNCLOS requiring States Parties to undertake environmental impact assessments (EIAs) to assess the potentially harmful effects of planned activities prior to their execution.[58] The term "planned activities" was, in the Tribunal's view, a "broad" one which would encompass activities planned by "private entities."[59] Accordingly:

> Any planned activity, either public or private, which may cause substantial pollution to the marine environment or significant and harmful changes thereto through anthropogenic GHG emissions, including cumulative effects, shall be subjected to an environmental impact assessment. Such assessment shall be conducted by the State Party under whose jurisdiction or control the planned activity will be undertaken with a view to mitigating

[52] *Id.* ¶ 247.

[53] U.N. Convention on the Law of the Sea, *supra* note 45, art. 192.

[54] ITLOS Advisory Opinion, *supra* note 13, ¶¶ 385, 388.

[55] *Id.* ¶ 391.

[56] *Id.* ¶ 396.

[57] *Id.* ¶ 386.

[58] *See id.* ¶ 355. The Tribunal noted that the obligation to conduct an EIA is considered to be one of customary international law, citing its findings in Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Case No. 17, Advisory Opinion of Feb. 1, 2011, ITLOS, ¶¶ 145, 147.

[59] ITLOS Advisory Opinion, *supra* note 13, ¶ 358.

and adapting to the adverse effects of those emissions on the marine environment.[60]

This ruling would seem to readily capture large corporate emitting projects which threaten "substantial pollution" or "significant and harmful changes to the marine environment" because of their contribution to climate change.[61] In Australia, for example, where federal EIA laws often do not allow assessment of the impacts of companies' coal mining proposals on marine environments like the Great Barrier Reef, the government could still be in breach of its international UNCLOS obligations if it failed to subject such corporate activities to an environmental impact assessment.[62] In effect this provides an additional layer of accountability sourced in a country's international law obligations in respect of corporate projects with significant emissions profiles and climate-related marine pollution impacts.

B. IACtHR Advisory Opinion on the Climate Emergency and Human Rights

Similar to the ITLOS, advisory opinions issued by the IACtHR have a limited jurisdictional scope, solely applying to requests relating to the interpretation of the American Convention on Human Rights or other inter-American treaties concerning the protection of human rights.[63] In the case of the IACtHR, advisory opinions can be requested by members of the Organization of American States (OAS), with the request in the recent climate case made by Chile and Colombia.[64]

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[60] *Id.* ¶ 367.

[61] U.N. Convention on the Law of the Sea, *supra* note 45, art. 206.

[62] *See* JACQUELINE PEEL, CLIMATE COUNCIL, LEGAL OPINION—GAPS IN THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT AND OTHER FEDERAL LAWS FOR PROTECTION OF THE CLIMATE 9–14 (2023).

[63] *See* American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), art. 64, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention on Human Rights]; American Convention on Human Rights Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (ser. A) No. 10, ¶ 48 (July 14, 1989). Other relevant inter-American treaties include the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the "Protocol of San Salvador," Nov. 17, 1988, O.A.S.T.S. No. 69; and the American Declaration of the Rights and Duties of Man, June 10, 1948, adopted by the 9th International Conference of American States, E/CN.4/122.

[64] American Convention on Human Rights, *supra* note 63, art. 64; IACtHR Advisory Opinion, *supra* note 14, ¶ 1. In addition, "the organs listed in Chapter X of the Charter of the Organization of American States (OAS), as amended by the Protocol of Buenos Aires, may in like manner consult the Court." American Convention on Human Rights, *supra* note 63, art. 64. The OAS is an international organization with 35 member states across the Americas and the Caribbean, including the United States and Canada. Even so, Canada has never accepted the court's jurisdiction, and the United States, as the region's largest emitter, has no binding

The IACtHR has a reputation for issuing wide-ranging advisory opinions, including its previous advisory opinion on human rights and the environment that established the right to a healthy environment as an autonomous human right.[65] Of the three climate advisory opinions issued by international courts and tribunals, that of the IACtHR is unsurprisingly the most far-reaching and ambitious, including the court's consideration of issues of corporate climate accountability. As Juan Auz argues, the IACtHR's climate opinion "matters" even though it is unlikely to change the behavior of powerful States "because it provides a coherent, justice-based legal framework for climate action, from below and across."[66] Eoin Jackson emphasizes this conclusion in the context of corporate climate accountability.[67] He notes that while the majority of OAS members are not major GHG emitters nor the home jurisdictions of carbon majors, several prominent fossil fuel companies have expanded their investments in the Americas.[68] In addition, Western companies are increasingly the focus of greenwashing complaints, often due to their reliance on poorly monitored carbon credit schemes in critical forest sinks like the Amazon.[69] These factors have the potential to make directives from the IACtHR—which call for tightened regulation and enforcement by OAS member States of business' climate-related human rights violations—a potent tool for enhancing corporate climate action.

The questions on which the IACtHR opined (following the court's reformulation of the originally numbered 20 points) concerned the scope of OAS States' obligations with regard to substantive human rights, procedural human

relationship with the court. Juan Auz, *The Inter-American Court of Human Rights' Advisory Opinion on the Climate Emergency: A Global South Contribution to Climate Governance*, EJIL: TALK! (July 18, 2025), https://www.ejiltalk.org/the-inter-american-court-of-human-rights-advisory-opinion-on-the-climate-emergency-a-global-south-contribution-to-climate-governance/ [https://perma.cc/R6U3-W73R].

65 *See* The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R., ¶ 62 (Nov. 15, 2017) [hereinafter Environment and Human Rights, Advisory Opinion].

66 Auz, *supra* note 64.

67 Jackson, *supra* note 6.

68 *Id.* (citing Andrei Netto, *'Will You Stop Exploring Yours?': Latin America Forges Ahead on New Oil Frontier*, THE GUARDIAN (July 8, 2024, at 05:00 EDT), https://www.theguardian.com/global-development/article/2024/jul/08/will-you-stop-exploring-yours-latin-america-forges-ahead-on-new-oil-frontier [https://perma.cc/K5RY-VKXP]). The term "carbon majors" refers to 178 of the world's largest, mostly state- and investor-owned, fossil fuel producers. These 178 producers are linked to approximately 70% of global industrial CO_2e emissions (over 1.44 trillion tonnes) since 1854. *See About Carbon Majors*, *supra* note 36.

69 Juliana Vélez Echeverri, Catherine Higham & Joana Setzer, *"Climate-Washing" Litigation Deters Misinformation, But Can it Help Cut Emissions?*, LSE BUS. REV. (Apr. 17, 2024), https://blogs.lse.ac.uk/businessreview/2024/04/17/climate-washing-litigation-deters-misinformation-but-can-it-help-cut-emissions/ [https://perma.cc/WJX3-JWC5]. A forest sink is a forest ecosystem that absorbs more carbon dioxide from the atmosphere than it releases. *See What Is a Carbon Sink?*, CLIENT EARTH (Dec. 22, 2020), https://www.clientearth.org/latest/news/what-is-a-carbon-sink/ [https://perma.cc/M6GB-UU7H].

rights, and the rights of vulnerable individuals or groups protected by the inter-American human rights treaties in the context of "the climate emergency."[70] The opinion contains frequent references to the need for State measures regulating, supervising, and monitoring the activities of private entities, including business enterprises, to prevent rights violations.[71]

A specific section of the IACtHR's opinion addresses the regulation of corporate conduct, reflecting the court's conviction that "business enterprises are called on to play an essential role in addressing the climate emergency."[72] In this respect, the court adopted a conventional framing of international corporate climate accountability where obligations sit with States—as the subjects of international law subject to the court's jurisdiction—"to regulate the conduct of the business sector to ensure compliance with the human rights recognized in various instruments of the inter-American system for the protection of human rights."[73] Consequently, the IACtHR opined that States have obligations to "adopt legislative and other measures to prevent human rights violations committed by public and private enterprises and, when these occur, investigate them, punish them, and guarantee redress for their consequences," with these obligations conceived as ones "that should be complied by the business sector and must be regulated by States."[74]

Nonetheless, pointing to the efforts of the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, the court agreed with the UN Working Group's conclusion that not only States, but also business enterprises, have obligations and responsibilities with respect of climate change and related impacts on human rights.[75] Eoin Jackson argues that this language "establishes a shift toward an approach whereby companies have, in the Court's view, an obligation to take climate action, which is concretized and articulated through appropriate state regulation."[76] He notes, however, that the IACtHR muddies the waters somewhat with its following statement that "States must establish such obligations [for companies] within their domestic legal framework and ensure full compliance."[77] Thus, on the one hand, the IACtHR seems to suggest corporations have an independent obligation to address climate

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[70] IACtHR Advisory Opinion, *supra* note 14, ¶ 217. The use of the term "climate emergency" was a deliberate formulation by the court, reflecting the complexity and existential nature of the climate change threat.

[71] *Id.* ¶¶ 226, 230, 336.

[72] *Id.* ¶ 345.

[73] *Id.*

[74] *Id.*

[75] *Id.* ¶ 346 (citing Working Grp. on the Issue of Hum. Rts. & Transnat'l Corps. & Other Bus. Enters., *Information Note on Climate Change and the Guiding Principles on Business and Human Rights*, ¶ 16 (June 2023)).

[76] Jackson, *supra* note 6.

[77] *Id.* (citing IACtHR Advisory Opinion, *supra* note 14, ¶ 346).

change along the lines of that recognized in the Dutch case of *Milieudefensie v. Shell*, but on the other hand, it situates that obligation as arising by virtue of State regulation.[78]

Paragraph 347 of the court's opinion fleshes out the nature of OAS States' obligations with respect of the climate-related activities of companies that may otherwise give rise to human rights violations, essentially elaborating a framework for modern corporate climate regulation.[79] Elements of this framework articulated by the IACtHR include obligations for States to:[80]

- Urge all business enterprises domiciled or operating in a State's territory and jurisdiction to take effective measures to combat climate change and its related impacts on human rights;
- Enact legislation that requires companies to conduct human rights and environmental due diligence to identify and address human rights and climate change-related impacts, across the entire value chain;
- Require public businesses (e.g. State-owned fossil fuel companies) and private businesses to disclose in an accessible way the GHG emissions along their value chain;
- Require business enterprises to take measures to reduce their GHG emissions and to address their contribution to climate change and to climate mitigation targets, throughout their operations; and
- Adopt a range of regulations to discourage greenwashing and undue corporate influence in the political and regulatory domains in this regard, and to support the actions of human rights defenders.

Introduction of such a corporate climate regulatory framework by States would help address often-thorny questions, such as the accountability of companies for both "downstream" (scope 3) emissions and "upstream" emissions associated with value chain inputs into their products.[81] The IACtHR extended

[78] IACtHR Advisory Opinion, *supra* note 14, ¶ 345 ("Based on this [state] regulation, business enterprises should prevent their activities from causing or contributing to human rights violations, and must take measures to remedy any such violations."); *see* Case 200.302.332/01, Shell Plc v. Env't Def. Ass'n, ECLI:NL:GHDHA:2024:2100, ¶ 1 (Nov. 12, 2024) ("In this judgment it is determined on the basis of objective factors that Shell has an obligation to counter dangerous climate change.").

[79] IACtHR Advisory Opinion, *supra* note 14, ¶ 347.

[80] *Id.*; *see also id.* ¶¶ 506, 516 (discussing obligations the context of procedural rights).

[81] Indirect emissions that occur in a company's value chain are broken in to "downstream" and "upstream" emissions; "downstream" emissions are those associated with the use and disposal of solid products, "upstream" emissions are those produced to create products and services. *See* Janet Ranganathan, *E-Ledgers vs. GHG Protocol Approaches to Emissions Reporting: What You Need to Know*, WORLD RES. INST. (Feb. 2, 2026), https://www.wri.org/technical-

this even further to companies' multinational operations, stressing:

> the importance of ensuring that the relevant regulations take into consideration the role played by the different components of financial conglomerates and transnational corporations, so that States can attribute legal responsibilities to the parent companies, or those that exercise control over others, based on the greenhouse gas emissions generated by their subsidiaries or the companies they control.[82]

In accordance with their obligation to guarantee the effective exercise of the human rights recognized in the American Convention, the IACtHR found that OAS States must "adopt the necessary administrative, regulatory and legislative measures to ensure that business enterprises establish and implement effective due diligence processes with regard to environmental and human rights matters."[83] According to the court, these processes "must be appropriate to the size, sector and operating context of each enterprise and encompass all its operations, products and services, including domestic and international supply chains," with the aim of identifying, preventing, mitigating, and potentially remedying "the possible adverse impacts of business activities on the environment or on human rights."[84] Moreover, States are to ensure that these processes "include mechanisms for continuous monitoring, independent assessment, public access to pertinent information, and satisfactory channels for participation and accountability," with the court indicating that, in its view, accountability measures such as the establishment of compliance monitoring mechanisms by companies "constitutes a best practice to ensure the effective implementation of environmental and human rights laws and regulations."[85]

What is interesting about these pronouncements by the court is the potential link they create between business due diligence processes established under State regulation and "the standard of enhanced due diligence in relation to the prevention of damage to the climate system," which the IACtHR articulates as the relevant standard for assessing States' climate action.[86] Certainly the court makes clear that "taking into account the differentiated responsibility of some enterprises in light of

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perspectives/e-liabilities-vs-ghg-protocol-emissions-reporting [https://perma.cc/G3PR-TYJZ] (discussing different approaches to measuring corporate emissions).

[82] IACtHR Advisory Opinion, *supra* note 14, ¶ 350. The court also recommended States to review their trade and investment agreements, including investor-state dispute settlement provisions, "to ensure they do not limit or restrict efforts relating to climate change and human rights." *Id.* ¶ 351.

[83] *Id.* ¶ 348.

[84] *Id.* (referencing the UN Guiding Principles on Business and Human Rights and "the most recent developments in international and comparative law").

[85] *Id.* ¶ 349.

[86] *Id.* ¶ 353. For discussion of the enhanced due diligence standard, see *id.* ¶¶ 231–37.

their current and cumulative GHG emissions,"[87] carbon major companies in industries such as fossil fuel exploration, extraction, transportation and processing, cement manufacture, and industrial agriculture should be held to a "more demanding" standard by States in carrying out their monitoring, supervision and enforcement duties for GHG emissions-generating activities of private actors.[88] In effect, this transposes the international climate law principles of States' "common but differentiated responsibilities" in addressing climate change, and "polluter pays" to the context of corporate climate accountability.[89] This may help to provide a firmer normative foundation for the special liability of carbon majors for climate harms in future litigation against these actors.[90]

C. ICJ Advisory Opinion on States' Climate Obligations and Responsibilities

The ICJ Advisory Opinion is the latest issued in the series of climate-related international advisory opinions, and the one with the greatest likely scope of application. This is due to the ICJ's status as the principal judicial organ of the United Nations,[91] and its capacity to rule on any question of international law.[92] In

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[87] *Id.* ¶ 353. The court also emphasized that although corporate responsibility in the area of human rights is shared in common by companies, regardless of size or sector, some companies "bear greater responsibility for their impacts on climate change due to the risk created by their activities" and hence should be subjected to "differentiated obligations with regard to climate action based on the actual and historical contribution of business enterprises to climate change." Accordingly, companies whose activities are major sources of GHG emissions could be subject to "stricter obligations," which could relate, in the IACtHR's view "to their operating conditions, tax burden, contributions to just transition plans and strategies, investment in education, and measures of adaptation or to measures to address loss and damage." *Id.* ¶ 350.

[88] *Id.* ¶ 353; *see also id.* ¶ 356 (discussing investigating, prosecuting and sanctioning those who fail to comply with the laws and regulations, including business enterprises). The court also "underscores that, in the context of the climate emergency, the obligation of prevention in relation to business-related activities necessarily signifies the duty to prevent and punish acts of corruption that seek to weaken the effective execution" of climate measures. *Id.* ¶ 357.

[89] *See id.* ¶¶ 327, 350 (referencing the "common but differentiated responsibilities" and "polluter pays" principles). By contrast, the ICJ took a much narrower approach on the applicability of the polluter pays principle, stating that it is "not envisaged or reflected in any of the climate change treaties." ICJ Advisory Opinion, *supra* note 11, ¶ 160. The ICJ's "narrow approach" was strongly criticized by Judge Bhandari in his separate opinion. Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. No. 187, ¶ 2 (July 23) (separate opinion by Bhandari, J.).

[90] *See* Jackson, *supra* note 6.

[91] Statute of the International Court of Justice, art. 1; U.N. Charter art. 92.

[92] Statute of the International Court of Justice, art. 36. Nonetheless, in contested proceedings, the court does not have jurisdiction unless this is consented to by the states concerned. *Id.* Advisory proceedings, given their formally non-binding nature, do not require the consent of the states involved, but can only be initiated by particular UN organs or specialized agencies, including the General Assembly, as was the case with respect of the ICJ Advisory

advisory proceedings, the court's opinions are formally non-binding on States but are nonetheless considered to "carry great legal weight and moral authority," which may "contribute to the clarification and development of international law."[93] Some have pointed to the tendency in recent times for the ICJ's advisory proceedings to be used as a "soft" litigation strategy, which may be a particularly useful tool for small States "to counterbalance the inherent power disparities in the process of international bargaining by adding the authoritative voice of the ICJ to the debate."[94] This was certainly a key motivation for small island Pacific States, such as Vanuatu, which spearheaded the international campaign for an advisory opinion request on climate to be put to the ICJ by the UN General Assembly.[95] Whether the ICJ Advisory Opinion influences the actions of powerful emitting States or contributes to the achievement of the broad climate justice aims sought by climate-vulnerable nations and communities remains an open question.[96] However, like the

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Opinion discussed in this Essay. *See Advisory Jurisdiction*, INT'L CT. OF JUST., https://www.icj-cij.org/advisory-jurisdiction [https://perma.cc/UTA2-526G] (last visited June 2, 2026).

[93] *Advisory Jurisdiction*, *supra* note 92. The standing and influence of the ICJ's Advisory Opinion is likely to be strengthened by the UN General Assembly's adoption of a resolution (A/80/L.65) on May 20, 2026, welcoming the court's unanimous advisory opinion (para. 1) and calling upon "all States to comply with their respective obligations under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions, as identified by the Court" (para. 2). In the General Assembly, 141 States voted to adopt the resolution, with 28 States abstaining and 8 States voting against adoption (being the United States, Belarus, Iran, Israel, Liberia, Russia, Saudi Arabia and Yemen). *See* UN News, General Assembly Backs Historic World Court Climate Crisis Ruling (May 20, 2026), https://news.un.org/en/story/2026/05/1167561 [https://perma.cc/KL24-B36R].

[94] Myrto Stavridi, *The Advisory Function of the International Court of Justice: Are States Resorting to Advisory Proceedings as a "Soft" Litigation Strategy?*, J. OF PUB. & INT'L AFFS. (Apr. 22, 2024), https://jpia.princeton.edu/news/advisory-function-international-court-justice-are-states-resorting-advisory-proceedings-"soft" [https://perma.cc/T6HJ-ANCR].

[95] Vanuatu ICJ Initiative states that:

> [t]hrough this transformational ICJ Initiative, Vanuatu aims to bring a voice to vulnerable and marginalised populations, including indigenous peoples, migrants, women, children, persons with disabilities, the elderly, and the poor, who are the most at risk to the impacts of climate change.
>
> Vanuatu's aim is to work in coalition with all vulnerable nations, peoples and supporters, raising our small but powerful voice in all fora. We look forward to working alongside civil society, including youth, as well as experts from all disciplines in this historic endeavor towards an AO from the ICJ.

The Republic of Vanuatu, VANUATU ICJ INITIATIVE, https://www.vanuatuicj.com/vanuatu [https://perma.cc/Z63L-D5UF] (last visited June 2, 2026).

[96] Many commentators have hailed the ICJ Advisory Opinion as historic and groundbreaking. For a contrary view, raising concerns that the opinion may risk (further) eroding the credibility of international institutions and undermining the foundations of international climate cooperation, see Benoit Mayer, *International Advisory Proceedings on Climate Change*, 44 MICH. J. INT'L L. 41, 47–49 (2023).

opinions of the ITLOS and the IACtHR, the ICJ Advisory Opinion signals a widening of the international law accountability lens with regard to climate to encompass the activities of corporations.

This widening was evident from the outset of the opinion with the ICJ's consideration of the material scope of the request from the UN General Assembly. Noting the breadth and "magnitude" of the problem of climate change, the court ruled that its inquiry must also "have a broad material scope encompassing States' obligations concerning all actions or omissions of States, *and of non-State actors* within their jurisdiction or effective control, that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions."[97]

Extension of the court's consideration to embrace non-State actors, like companies, continued with its findings in respect to question (a) of the request, which asked: "What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?"[98] The ICJ's response encompassed a range of international law obligations, including obligations under the climate change treaties, in international human rights law, and in respect to the customary law duties of States to prevent environmental harm and to cooperate for protection of the environment. Significantly, the court found other non-climate treaty laws and customary duties apply in the climate context and are not excluded by the operation of climate treaties such as the Paris Agreement.[99]

A key Paris Agreement obligation examined by the ICJ was that contained in Article 4, which provides that parties "shall pursue domestic mitigation measures, with the aim of achieving the objectives of" their successive nationally determined contributions (NDCs).[100] In earlier parts of the opinion, the court had established that NDCs are not entirely discretionary and must satisfy certain standards under the Paris Agreement.[101] It also ruled that parties are "required to act with due diligence in taking necessary measures to achieve the objectives set out in their successive NDCs."[102]

Elaborating on this requirement, the ICJ emphasized that assessment against the due diligence standard would involve an evaluation of whether the party concerned exercised due diligence in its efforts and in deploying appropriate means to take domestic mitigation measures, "including in relation to activities carried out

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97 ICJ Advisory Opinion, *supra* note 11, ¶ 95 (emphasis added).

98 *Id.* at 8.

99 *See id.* ¶¶ 169–171.

100 *Id.* ¶ 250 (citing Paris Agreement, *supra* note 17, art. 4, ¶ 2).

101 *See id.* ¶ 249.

102 *Id.* ¶ 252.

by private actors."[103] This suggests that a State's compliance with its Paris Agreement obligations to adopt mitigation measures will depend, to some extent, on the adequacy of its regulation of emitting activities carried out by private actors, like companies, in relation to which the obligation of due diligence is "particularly relevant."[104]

Regarding the customary law duty of environmental harm prevention, the ICJ considered the threshold question of at what point a risk of significant harm to the environment, including to the climate system, could be said to arise, triggering the application of the duty. Here again, the court referenced the part played by private actors' activities in contributing to such risks. It opined:

> The Court is of the view that a risk of significant harm may also be present in situations where significant harm to the environment is caused by the cumulative effect of different acts undertaken by various States and by private actors subject to their respective jurisdiction or control, even if it is difficult in such situations to identify a specific share of responsibility of any particular State. States must assess the possible cumulative effects of their acts and the planned activities under their jurisdiction or control. Although such "activities may not be environmentally significant if taken in isolation, . . . they may produce significant effects if evaluated in interaction with other activities."[105]

This ruling creates potential accountability for risks of significant harm to the climate system that arise not just from the activities of a State or States but also those activities in combination with activities of private corporate actors under a State's jurisdiction or control. It is the "cumulative effects" of these different acts and planned activities that is relevant in assessing whether risks of significant climate harm arise that require the adoption of preventive measures by States.

As for obligations of States under the climate treaties, such as Article 4 of the Paris Agreement, the ICJ found that due diligence is the required standard expected of States in order to fulfil their customary duties to prevent harm to the environment and climate system and to cooperate for protection of the environment.[106] Similarly to the IACtHR, the court anchored the due diligence standard to adopt appropriate measures to the introduction and implementation of regulation addressing the conduct of both public and private operators.[107] The ICJ stated:

> As far as climate change is concerned, such appropriate rules and measures include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG

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103 *Id.*

104 *See id.* (endorsing the ITLOS Advisory Opinion, *supra* note 13, ¶ 236).

105 *Id.* ¶ 276 (alteration in original) (quoting ITLOS Advisory Opinion, *supra* note 13, ¶ 365).

106 *Id.* ¶ 280.

107 *Id.* ¶ 282; *see* IACtHR Advisory Opinion, *supra* note 14, ¶¶ 335–36.

> emissions that are necessary for the prevention of significant harm to the climate system. Adaptation measures reduce the risk of significant harm occurring and are therefore also relevant for assessing whether a State is fulfilling its customary obligations with due diligence. These rules and measures must regulate the conduct of public and private operators within the States' jurisdiction or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.[108]

While far less detailed than the comparable rulings of the IACtHR, this finding nonetheless highlights the connection between meeting States' customary law duties to prevent harm to the climate system and adequate regulatory measures addressed to the contributing activities of corporate emitters, including through "effective" enforcement and monitoring mechanisms to ensure implementation.

Another area of international law considered by the ICJ was human rights obligations and their application in a climate context. In this regard, the court affirmed the link between the effective enjoyment of human rights to be guaranteed by States and States' need to take measures to protect the climate system and other parts of the environment.[109] Such measures, according to the ICJ, could include taking mitigation and adaptation measures, "with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities of private actors."[110] Again, this was a far less fulsome endorsement of the need for regulation of corporate conduct harming the climate system and human rights than given by the IACtHR, but is nonetheless aligned with the regional court's findings.

On the second question addressed to the ICJ concerning the "legal consequences" of breaches of States' international obligations resulting in significant harm to the climate system and other parts of the environment, the court's opinion was more circumspect, leaving much to be determined in the event of a future *in concreto* assessment.[111] Nonetheless, the court did respond to the arguments made by some States that the conduct of private actors resulting in emissions of GHGs is not attributable to States and thus cannot incur their international responsibility.[112] Rejecting this narrow approach to determining accountability, the ICJ recalled that the relevant international obligations it had determined were applicable with respect of climate change included the obligation of States to regulate the activities of private actors as a matter of due diligence.[113] Accordingly, attribution in this context involved attaching to a State its own actions or omissions that constituted a failure

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108 ICJ Advisory Opinion, *supra* note 11, ¶ 282.

109 *See id.* ¶ 403.

110 *Id.*

111 *See id.* ¶ 437.

112 *Id.* ¶ 428.

113 *Id.*

to exercise due diligence.[114] Responsibility of a State might thus arise in a situation where that State has failed to exercise due diligence "by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction."[115] This is not a finding endorsing an independent international legal obligation on companies to take climate action. However, it does provide an indirect means to hold corporate emitters accountable under international law where their activities are insufficiently regulated by their home State jurisdictions, leading to climate damage.

The ICJ also specifically called out fossil fuel-related activities as ones that could give rise to an actionable "internationally wrongful act" of a State if it failed to take appropriate action to protect the climate system from the associated GHG emissions.[116] It stated:

> Failure of a State to take appropriate action to protect the climate system from GHG emissions—including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies—may constitute an internationally wrongful act which is attributable to that State.[117]

Such activities are frequently conducted by, or benefit, large corporate actors in the fossil fuel sector. The ICJ's ruling signals that lack of "appropriate" action by States to address the outsized GHG emissions and climate impacts of such carbon major companies may breach international law and entail States' international responsibility.

III. IMPLICATIONS OF A CORPORATE ACCOUNTABILITY TURN

How might these developments in the three international advisory opinions presage a turn to corporate accountability in international climate litigation?[118] And what might be the implications of any such "turn"? The following Sections consider these questions from three different perspectives, namely: (1) what the rulings contribute to the conceptualization of corporate climate accountability in international law; (2) how we might understand international legal requirements of "due diligence" as they pertain to the regulation of corporate conduct with potential climate impacts; and (3) the possible implications of the international advisory opinions for holding companies responsible for the damage their emitting activities cause to the global climate system.

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[114] *See id.*

[115] *Id.*

[116] *Id.* ¶ 427.

[117] *Id.*

[118] Noting there could yet be future developments in this regard, for example, from an advisory opinion issued from the African Peoples Court.

A. *Conceptualizing Corporate Accountability in International Law*

As Elisa Morgera has described, the traditional understanding is that international law does not matter for corporations other than through the medium of State regulation.[119] On some level, the three international advisory opinions each subscribe to this conventional view while also suggesting ways to go beyond it. In so doing, I would argue that they help to fill—in the climate context—the normative gap "between multinationals being oblivious to international law and their having obligations or being liable directly under international law."[120] We might label the resultant legal developments the beginnings of an "interstitial" international law of corporate climate accountability, which through soft law, international standard-setting, and non-binding judicial pronouncements, inhabits the intervening space between formal international law directed to States and domestic corporate regulation.[121]

Each of the climate advisory opinions delivered by the ITLOS, the IACtHR, and the ICJ take a step beyond the position that international law is only relevant for shaping the obligations of States. All three international judicial bodies were at pains in their rulings to make clear that the international obligations of States with respect of climate change extend also to their regulation of private entities. As the ICJ put it, the relevant scope of inquiry encompasses States' obligations concerning all actions or omissions of States, *and of non-State actors* within their jurisdiction or control, that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions.[122]

Accordingly, in interpreting the international obligations of States to address climate change, the ITLOS, the IACtHR, and the ICJ all opine on the need for States to regulate, monitor, and supervise the activities of private actors by, for example, ensuring that their activities are included in environmental impact assessments, are subject to regulation to prevent environmental and human rights harms as a result of anthropogenic GHG emissions, and are a focus of States' compliance and enforcement efforts. As Carmen Márquez Carrasco put it in discussing the ICJ Advisory Opinion:

> [P]rivate sector emissions—and the failure to plan for their reduction—must now be seen in light of the State's duty to act under relevant interlinked obligations in the fields of international human rights law, international

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[119] *See* MORGERA, *supra* note 12, at 17.

[120] *Id.* at 15.

[121] An "interstitial space" is a gap or void located between other things such as the space that lies between blood vessels and cells in the body providing fluid and structural environment for their maintenance and healthy functioning. Rachael Rettner, *Meet Your Interstitium, a Newfound "Organ,"* SCI. AM. (Mar. 27, 2018) https://www.scientificamerican.com/article/meet-your-interstitium-a-newfound-organ/ [https://perma.cc/4CE2-KEEA].

[122] *See* ICJ Advisory Opinion, *supra* note 11, ¶ 95.

> environmental law and climate change law.
>
> . . .
>
> [C]orporate conduct, and the regulatory measures that shape it, can no longer be treated as secondary to global climate accountability.[123]

B. Due Diligence and the Regulation of Corporate Conduct

Many of the State climate obligations discussed in the international advisory opinions were regarded as "obligations of conduct" subject to a standard of due diligence.[124] This standard was held to apply, for instance, with respect of law of the sea obligations for States to take necessary measures to prevent marine pollution from anthropogenic GHG emissions;[125] in respect of OAS States' duty to ensure that business enterprises establish and implement effective due diligence processes with regard to environmental and human rights matters;[126] in regard to the customary law duty of harm prevention which extends to the climate system;[127] and in evaluating whether Paris Agreement parties have taken the necessary measures to achieve the objectives set out in their successive nationally determined contributions.[128] Due diligence was further recognized by the ITLOS, the IACtHR, and the ICJ as an objective standard for the evaluation of State conduct, which is stringent in the climate context given the significant risks involved. At the same time, the international judicial bodies found that the standard of due diligence required varies with States' capacity and capabilities, with a greater burden of climate action falling on developed countries.[129]

In assessing whether States have met their obligations of due diligence to address climate change, frequent references were made by the three international tribunals and courts to the need to regulate, monitor, and supervise private actors'

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[123] Carmen Márquez Carrasco, *Climate Change and Corporate Accountability: What the ICJ Advisory Opinion Means for Business and Human Rights*, BUS. & HUM. RTS. J.: BLOG (Aug. 27, 2025), https://bhrj.blog/2025/08/27/climate-change-and-corporate-accountability-what-the-icj-advisory-opinion-means-for-business-and-human-rights/ [https://perma.cc/K3T5-YHES].

[124] *See* ICJ Advisory Opinion, *supra* note 11, ¶ 175 (discussing "obligations of conduct" versus "obligations of result").

[125] ITLOS Advisory Opinion, *supra* note 13, ¶ 243.

[126] IACtHR Advisory Opinion, *supra* note 14, ¶ 347.

[127] ICJ Advisory Opinion, *supra* note 11, ¶ 273.

[128] *See id.* ¶¶ 241, 270.

[129] In this regard, the international judicial bodies referenced the principle of "common but differentiated responsibilities and respective capabilities" found, for example, in Article 3(1) of the United Nations Framework Convention on Climate Change and the Paris Agreement. *See* United Nations Framework Convention on Climate Change, art. 3(1), May 9, 1992, 177 U.N.T.S. 107; Paris Agreement, *supra* note 17, arts. 2, 4; *see, e.g.*, ICJ Advisory Opinion, *supra* note 11, ¶ 247; ITLOS Advisory Opinion, *supra* note 13, ¶ 229; IACtHR Advisory Opinion, *supra* note 14, ¶ 327.

activities that give rise to GHG emissions and climate impacts. The IACtHR went further than the ITLOS or the ICJ in this respect, articulating in some detail the requirements of States to regulate corporate climate-related conduct.[130] These requirements—such as disclosing climate risks, introducing due diligence processes to prevent the business causing environmental harms, addressing emissions throughout the company's operations and value chain, and adopting measures to avoid greenwashing[131]—might be viewed as a useful framework against which to assess the "appropriateness" of States' measures to prevent climate harms arising from the activities of businesses in their jurisdictions or under their control. Thus, a State that allows high-emitting corporations to operate without measures such as climate transition plans or environmental due diligence processes in line with current scientific standards may fail to meet its treaty or customary international law obligations to prevent environmental harm.[132] In turn, this may increase pressure on States—particularly those which are home to major-emitting companies or their financial backers—to improve the regulation of corporate emitting activities in their jurisdictions to avoid potential international responsibility.[133]

C. Corporate Liability for Climate Harms

One of the most difficult issues confronting climate change litigation seeking accountability—whether from States or corporate emitters—has been whether legal liability for harms caused by GHG emissions can be established and remedies secured for affected communities and environments.[134] Notwithstanding the intimation in the Advisory Opinion of the IACtHR that companies may have an independent obligation under international law to take climate action consequent upon their "essential role in addressing the climate emergency,"[135] the international advisory opinions as a whole remain a long way from endorsing a separate

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[130] IACtHR Advisory Opinion, *supra* note 14, ¶ 345.

[131] *Id.* ¶ 347.

[132] *See id.*

[133] There are already emerging signs of this in some countries such as Singapore. *See* Joseph Chun, *The World Court's Climate Opinion May Increase Regulatory Risk for Singapore Businesses*, SHOOKLIN & BOK (Aug. 2025), https://www.shooklin.com/images/publications/2025/The-World-Courts-Climate-Opinion-May%20Increase-Regulatory-Risk-for-Singapore-Businesses.pdf [https://perma.cc/Z9FD-XT5W].

[134] *See generally, e.g.*, Saul Holt & Chris McGrath, *Climate Change: Is the Common Law Up to the Task?*, 24 AUCKLAND U. L. REV. 10 (2018) (examining the adequacy of tort lawsuits against governments for climate change-related liability). For a more critical view of private climate litigation seeking liability as the "holy grail" of the field, see generally Kim Bouwer, *Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation*, 9 TRANSNAT'L ENV'T L. 347 (2020). The ICJ Advisory Opinion addresses this issue only in passing, noting that causation of climate damage, while difficult, is not impossible. ICJ Advisory Opinion, *supra* note 11, ¶ 438.

[135] IACtHR Advisory Opinion, *supra* note 14, ¶ 345.

international legal basis for holding companies responsible for the damage their emitting activities cause to the global climate system. The ICJ, for example, addressed the attribution of private actors' conduct to States and the issue of causation of climate damage only at a general level, leaving a full resolution to future contentious cases.[136]

Even so, the ICJ Advisory Opinion suggests possibilities for indirectly holding carbon majors to account for the climate damage their emissions cause through the pathway of State responsibility claims. It explicitly linked omissions regarding the regulation of private emitting activities to international legal responsibility and also singled out inadequate State oversight of corporate-dominated activities, such as fossil fuel production, as a potential basis for an "internationally wrongful act" entailing the State's responsibility.[137] Carmen Márquez Carrasco sees this as "strengthen[ing] the normative foundation for transnational claims seeking accountability for climate-related damage."[138] To this we might add the IACtHR's insight that "differentiated" obligations to prevent and redress climate damage can logically be derived both in the case of wealthy industrialized States with significant historical and current emissions, and also with regard to large corporate emitters who have played an outsized role in contributing to the anthropogenic GHG emissions driving global climate change.[139] Given that all three international judicial bodies recognized the applicability of the principle of "common but differentiated responsibilities" and respective capabilities to the interpretation and implementation of States' climate obligations,[140] this may open up an additional avenue to argue that strengthened climate measures are particularly expected of countries hosting carbon major emitters who have disproportionately contributed via their emissions to global climate change.

CONCLUSION

This Essay has reviewed the rulings of recent international advisory opinions on climate change pertaining to the regulation of private entities' emitting activities. The decisions of the ITLOS, the IACtHR, and the ICJ—although dealing with different substantive areas of international law—are united in their findings that States' international climate obligations extend to the regulation, monitoring, and supervision of the emitting activities of private actors like companies. Regulatory

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[136] *See* ICJ Advisory Opinion, *supra* note 11, ¶ 438.

[137] *See id.* ¶ 428.

[138] Carrasco, *supra* note 123.

[139] The Environment and Human Rights, Advisory Opinion, *supra* note 65, ¶ 350.

[140] *See* ICJ Advisory Opinion, *supra* note 11, ¶ 247; ITLOS Advisory Opinion, *supra* note 13, ¶ 229; IACtHR Advisory Opinion, *supra* note 14, ¶ 327.

omissions by States in this regard, which lead to harms to the climate system, may entail those States' international responsibility.

The turn to questions of corporate accountability evident in these international climate litigation rulings is consistent with broader developments in corporate and climate law, and in climate science, which have brought greater attention to the contribution companies can make both to addressing climate change and also to preventing consequent damage. While it may be too early in the still-nascent development of international climate litigation to predict trends, the advisory opinions of the ITLOS, the IACtHR, and the ICJ arguably portend shifts in the conventional view that international law is not applicable to the activities of corporations.

Three contributions of the international advisory opinions were highlighted in this regard. First highlighted is the work that these climate-related international advisory opinions do in sketching the details of what might be conceived of as an "interstitial" international law of corporate climate accountability, filling the intervening normative space between formal international law directed only to States and domestic corporate regulation. This effort is by no means complete as the advisory opinions all adhere—to varying degrees—to the view that climate obligations falling on companies as a matter of international law do so (solely) through the medium of regulation by the States under whose jurisdiction and control such corporate actors operate. However, the "turn" to corporate climate accountability in international climate litigation that the advisory opinions signal is significant and could provide the foundation for further legal developments in this area.

Second, this Essay highlighted the prevalence of the notion of "due diligence" throughout the three advisory opinions, and its linkage by the deciding courts and tribunals to States' climate related duties to prevent risks of significant harm arising to the climate system from their own activities and those of private entities under their jurisdiction or control. Due diligence was uniformly seen across the opinions as an objective and stringent standard against which to judge the adequacy of State measures to address climate impacts, and one which if not met could entail State responsibility. This potential liability of States could well lead to a greater strengthening of domestic regulation of corporate emitting activities.

Finally, the international climate-related advisory opinions may pave the way for the development of solutions to one of the most complex issues that has confronted climate law and climate litigation: the liability of large emitting actors for the loss and damage caused by climate change. Again, we are likely only at the beginning of a turning of the tide in this regard with difficult seas still to navigate on questions of proof of causation of harm. Nevertheless, the advisory opinions provide compass settings for a new direction of travel, towards the possibility of greater international responsibility and domestic liability for the climate harms caused by the activities of major corporate emitters.