

CLIMATE CHANGE LAW SPECIALIST GROUP BLOG SERIES

**REINFORCEMENT OR RESISTANCE? DIVERGENT
PERSPECTIVES ON THE ROLE OF THE ICJ ADVISORY
OPINION ON CLIMATE CHANGE AT COP30-BELÉM**

With the June Climate Meetings (SB64) approaching, IUCN WCEL CCLSG Member [Alice Venn](#) discusses the UNFCCC negotiations at the COP30-Belém through the lens of the ICJ Advisory Opinion on Climate Change and the persisting challenges for integrating the judicial developments into the diplomacy of the climate change regime. Dr Alice Venn is a Senior Lecturer in Climate Law at the University of Bristol Law School, and Co-theme Lead for Environmental Change research at the Cabot Institute for the Environment, UK. She attended COP30 as an observer and worked as a volunteer liaison officer for Legal Response International, a charity providing pro-bono advice and legal capacity-building support to underrepresented developing country and civil society groups in the UN climate negotiations. In this blog post, she shares the key divergences from the COP-30 negotiations.



Photo provided by Author

Polarised positions in the climate negotiations

The conclusion of this year's UN Framework Convention on Climate Change (UNFCCC) negotiations at COP 30 in Brazil was met with marked disappointment from many States Parties, negotiating constituencies and observers in light of the backtracking witnessed on key commitments, notably including the phase down of fossil fuels from the first global stocktake

outcome decision, and the lack of agreement on more concrete adaptation finance targets, among many other elements.

The failure to deliver on either a fossil fuel phase out or a deforestation roadmap, both of which had been identified as key desired outcomes in early discussions with the Brazilian COP Presidency, was poignant. The conference took place at the edge of the Amazon rainforest and, as a result, featured a much stronger presence of Indigenous Peoples, nature-based solutions advocacy, as well as stark reminders of the ongoing devastation wrought by logging and fires in the Amazon itself that were illustrated by forest ash artworks throughout the Blue Zone. The dichotomy of standpoints between ambition and regression of the States Parties was particularly striking in the context of the authoritative statements of the International Court of Justice (ICJ) on universally-held state obligations in its Advisory Opinion on Climate Change.

One of the newly drawn red lines in the COP 30 negotiations was on language relating to the groundbreaking [ICJAO on Climate Change](#) that was delivered four months prior in July 2025. The initial breadth of support from across the international community for the advisory opinion request and the proceedings themselves offered cause for hope, with 132 states co-sponsoring [UN General Assembly Resolution 77/276](#), together with the highest engagement ever witnessed with ICJ advisory proceedings which saw over 90 written and oral statements made by states. The strong statements made by the Court on the existence of *erga omnes* climate obligations, including an obligation of due diligence to prevent significant climate harm that applies to all states, obligations of mitigation, adaptation, cooperation and support, together with the application of *lex generalis* international obligations beyond the climate treaties, notably including human rights and customary law, all represent significant advancements in legal doctrine. Nevertheless, much to the disappointment of the Vanuatu delegation, where the [Pacific Islands Students Fighting Climate Change](#) youth civil society group that championed the request hail from, along with the [Pacific Islands Forum](#) states that endorsed it, and the many co-sponsors and allies that they gained through the process, no express references to the ICJAO appear anywhere in the COP 30 decision texts that were finally agreed.

Loss and Damage

One workstream which illustrated the dichotomy of approaches to the integration of the ICJAO into the UNFCCC process particularly strongly was loss and damage. Pre-existing sticking points in these negotiations have related to the scaling up and accessibility of loss and damage finance and capacity building support, together with the governance arrangements for and review of the [Warsaw International Mechanism for Loss and Damage](#) (WIM). While the discussions surrounding the governance of the WIM under the COP and CMA were once again deferred, the loss and damage agenda did see some good progress being made with launch of the [Barbados Implementation Modalities](#) by the [Fund for Responding to Loss and Damage](#) (FRLD) inviting states to submit proposals for loss and damage funding to June 2026 making an initial 250 million USD available, with a further allocation of funding to be reviewed at the FRLD Board's eighth meeting. COP 30 also saw a hard-fought decision on the WIM review finally reached after an additional mid-session suspension, some last-minute huddling and wording changes by the co-chairs to satisfy party concerns regarding the financial efficiency of loss and damage bodies, in particular the [Santiago Network](#) which is tasked with providing technical capacity-building support.

The WIM review negotiations saw many express references to the ICJAO being made by both developed and developing country delegations in their contributions, highlighting, for example, the missed opportunities to affirm it in the draft decision text, committing to continuing work to promote it through the UN General Assembly process, and recalling the comprehensive approach of the ICJ to the application of the climate treaties (UNFCCC, Kyoto Protocol and Paris Agreement) collectively. The Vanuatu delegation in particular expressed disappointment that there was no consensus to recognise the ICJAO as an initiative championed by Vanuatu youth, but, nevertheless, expressed hope that its time is coming. Conversely, the Arab Group of negotiators affirmed that the ICJAO is not legally binding, that the UNFCCC process remains governed by the climate treaties, and that it is focused on cooperation rather than litigation.

Despite the exclusion of express wording recognising the ICJAO, the WIM Review decision does make strides forward in the loss and damage agenda drawing on core elements forming the foundations of the ICJ's statements on state obligations, notably including the recognition of human rights and best available science. On human rights, both the WIM review decision and ICJAO affirm the human rights language on the impacts for disproportionately affected groups appearing in the [Paris Agreement](#) preamble.

Both the decision and the ICJAO similarly stress the need to enhance action with respect to particularly vulnerable developing states and groups. The WIM review decision in paragraph three stresses this with respect to '*segments of the population that are already vulnerable owing to geography, socioeconomic status, livelihood, gender, age, minority status, marginalization, displacement or disability, as well as the ecosystems that they depend on*'. These compounding geographic, socio-economic and structural inequality elements are highlighted by the Intergovernmental Panel on Climate Change's (IPCC) findings on [impacts, adaptation, and vulnerability for its sixth assessment report](#) that are relied upon by the ICJ in its statements relating to the international human rights obligations of states.

The strengthened role of science was another element called for strongly by many advocates of the ICJAO in the COP30 negotiations and a significant win in the decision text with respect to this can be found in the provisions for a new regular multi-year loss and damage report in paragraph 20 with the aim of '*providing regular, concrete information on scientific, policy, financial and technical work*' and in paragraph 21(b) which provides that the report should be informed, inter alia, by '*best available science, including inputs and information from the [IPCC] relating to loss and damage*'. The report itself can also be seen as a significant step forward in creating greater transparency and accountability in addressing loss and damage, the scope of which may well extend beyond the UNFCCC into the exploration of state responsibility through alternative international law mechanisms, including the UN human rights treaty bodies.

Climate Finance

The international obligations affirmed by the ICJAO were similarly raised in the discussions of climate finance which have proven particularly controversial in the wake of the COP 28 New Collective Quantified Goal on Climate Finance (NCQG) discussions surrounding the nature of the obligations of developed states parties to provide financial support to developing states for their mitigation and adaptation efforts. A sticking point here emerged surrounding the application of Article 9.1 of the Paris Agreement which is worded more strongly as

*‘Developed country Parties **shall** provide financial resources to assist developing country Parties with respect to both mitigation and adaptation’ as opposed to Article 9.3 which provides that ‘As part of a global effort, developed country Parties **should** continue to take the lead in **mobilizing climate finance from a wide variety of sources**’, the latter of which was reflected in the final COP 28/CMA 6 NCQG outcome [Decision 1/CMA.6](#). This debate emerged again at COP 30 in the negotiations surrounding the Sharm el-Sheikh dialogue on the scope of Article 2, paragraph 1(c), of the Paris Agreement and its complementarity with Article 9 of the Paris Agreement. Article 2.1(c) provides for ‘*making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development*’ in line with the overarching objective of the treaty to strengthen the global response to climate change.*

In the third High-level Ministerial Dialogue on Climate Finance, Hon. Polycarp Paea as [Pacific Islands Forum Chair stated](#) in no uncertain terms that the ICJAO ‘*reaffirmed that developed States have binding legal obligations under international law to provide adequate financial resources, technology transfer, and capacity support to developing countries — particularly SIDS and LDCs*’ and that this represents a ‘*duty rooted in the principles of fairness and differentiated responsibilities*’ that underpin the climate treaties themselves. In light of the pushback on language surrounding both the ICJAO and Article 9.1 of the Paris Agreement however, no reference to either appears in the [Sharm-el-Sheikh dialogue decision](#), indeed, the word ‘shall’ does not appear in the text at all and paragraph 3(d) provides that efforts for and deliberations on the implementation of Article 2 ‘*are undertaken in a facilitative, enabling, non-punitive and non-prescriptive manner*’ echoing the cautious language that has shaped the mandate of the Paris Agreement Implementation and Compliance Mechanism.

Conclusions

The polarisation of negotiating positions between the UNFCCC States Parties on the issue of the ICJAO is likely rooted in the long-standing resistance to embedding legal accountability in the climate regime which was reflected strongly during the COP 21 negotiations adopting the Paris Agreement. Those negotiations culminated in the adoption of [Decision 1/CP.21](#) which provides for an express exclusion of liability or compensation with respect to Article 8 on loss and damage, is echoed as outlined above in the ‘non-punitive’ and ‘facilitative’ language surrounding the remit of the Paris Agreement Implementation and Compliance Mechanism under Article 15. While many states parties and observers had hoped that the ICJAO would pave the way for a bolder and legally strengthened approach to the core issues of financial and capacity building support obligations, the effect in practice seems to have been further entrenchment of States Parties’ views on the avoidance of binding legal obligations in this space.

There remains much work to be done to meaningfully embed the ICJAO’s findings in the UNFCCC regime. It may not have been recognised expressly in the decision texts of COP 30 and CMA 7, yet it has arguably had an impact on the discourse surrounding the core elements of climate vulnerability, human rights, scientific evidence, cooperation, and scaled-up support for disproportionately impacted States Parties and communities that have featured more strongly in the outcomes, particularly on loss and damage. The extent to which the ICJAO featured in the statements of both developed and developing country delegations at COP 30 and clearly served to embolden the negotiating positions and statements of SIDS is evidence of widespread determination to see it integrated into the UNFCCC regime. This would represent the next significant step forwards in the harmonised evolution of international climate

law, yet the question remains whether this will be achievable with the consensus-based decision-making model in the UNFCCC process, along with rising geopolitical tensions globally.

This blog was written for the Climate Change Law Specialist Group, IUCN WCEL, as part of a series that aims to map activities, events, and panels related to Climate Change Law around the year.

If you wish to learn more, please contact [Tanya Agarwal](#) and [Marina Dutra Trindade](#), executive assistants of the IUCN WCEL Climate Change Law Specialist Group.