



CADWALADER
CLIMATE
Connecting Climate Change and the Law

UN Requests Opinion from International Court of Justice on Climate Change Obligations

May 9, 2023



By **Timbre Shriver**
Associate | Global Litigation



By **Drew Newman**
Associate | Global Litigation

The United Nations General Assembly, the UN's primary policy-making body, has adopted a resolution requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of its 193 member states regarding climate change.

The resolution requests that the court render an opinion on 1) states obligations under international law to ensure the protection of the climate system from human-generated greenhouse gas emissions and 2) the legal consequences for states where they, by their acts and/or omissions, have caused significant harm to the climate system and, in particular, to small island developing states, and "people of present and future generations," the General Assembly said in a [March 29 statement](#).

Advisory opinions issued by the [International Court of Justice](#), the UN's principal judicial organ located in The Hague, Netherlands, are legally non-binding but have the potential to impact international law. "Such opinions can provide clarification on existing international legal obligations and could help the General Assembly, the United Nations and member states take stronger climate action. Such opinions could also guide the actions and conduct of States in their relations with each other, as well as towards their own citizens," said UN Secretary-General António Guterres.

A representative of the European Union delegation said the EU expects the court's advisory opinion to answer legal questions on the basis of the current state of international law and to identify and clarify obligations of member states under applicable international law. "The resolution, however, does not prejudge whether and when breaches have occurred, are

occurring or will occur in the future but rather focuses on the consequences thereof for all States,” the representative noted.

During the debate that preceded the resolution’s adoption, many member states expressed concern that the most vulnerable states, which have historically contributed the least to climate change, are being disproportionately affected by its consequences. The introduction of the resolution was organized by Vanuatu, the island nation in the Pacific Ocean that faces significant environmental threats due to climate change, especially from rising sea levels.

Andy Raine, Head of the Frontiers in Environmental Law Unit at the Law Division of the United Nations Environment Programme (UNEP), which sets the UN’s environmental agenda, called the resolution a significant development for climate justice. “It is the first time that the world’s highest court has been asked clarify the obligations on states to protect the climate system, and the legal consequences of failing to meet them,” he said in a [March 31 statement](#).

The resolution invites the court to look beyond the Paris Agreement and spotlights the legal consequences of causing significant harm to small developing island states like Vanuatu as well as future generations, said Raine.

Taking the Temperature: While the resolution appears to mark the first time the ICJ has been asked to provide an advisory opinion on environmental justice, it is not the first time the court has considered issues of obligations, liabilities and compensation for environmental damage between member states. A handful of cases based on claims of environmental damage have been brought before the court, including Argentina’s litigation alleging damage to water quality from [Uruguay’s building of pulp mills on the River Uruguay](#); [Australia’s challenge against Japan’s whaling industry](#); [Ecuador’s action alleging that Colombia’s use of aerial herbicides caused damage to the crops, animals, humans and the environment in Ecuador’s border region](#); and [territorial border disputes between Costa Rica and Nicaragua over a small wetland area in which both countries claimed sovereignty and that the other had intruded on the land in a way that harmed protected rainforests and wetlands](#).

As highlighted in our article in this edition on the report published by the Centre for Climate Change Economics and Policy (CCCEP) and consistently throughout previous editions, climate-related litigation is on the rise worldwide with both pro- and anti-reform agendas being pursued through the courts. Recent examples include [cases in the French courts against major oil companies on the basis of the “Duty of Vigilance” law](#); [a climate-related suit against directors of UK pension plans](#); [the referral of certain EU Member States to the European Court of Justice for failing to transpose the EU’s Renewable Energy Directive](#); and [the challenge by Republican state attorney generals to the U.S. Department of Labor Rule on accounting for ESG factors in investment decisions](#).