Den internasjonale domstolen (ICJ): Statenes klimaforpliktelser

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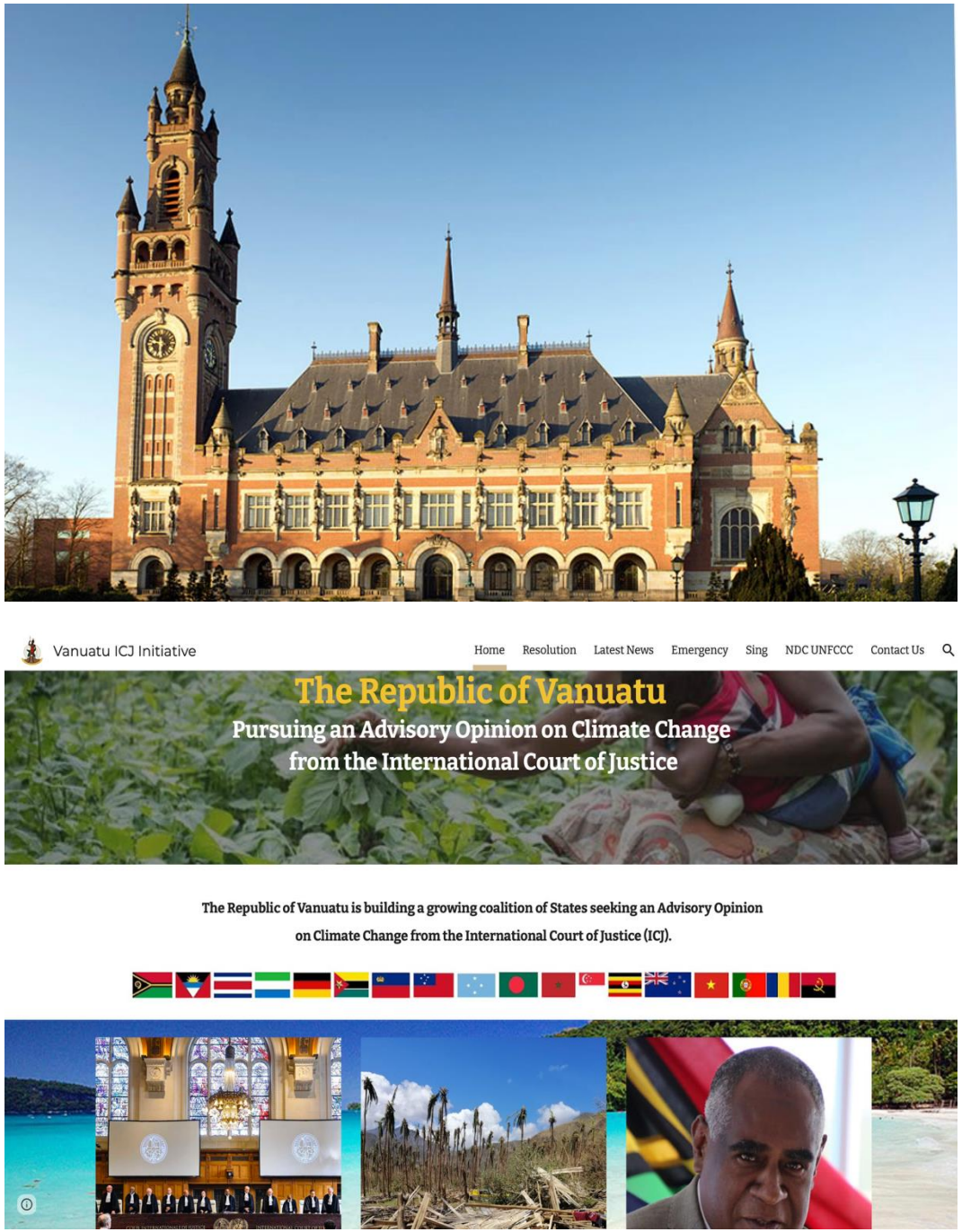
hearings at the International Court of Justice in The Hague on the request for an advisory opinio
gations of States in respect of Climate Change, December 2024 (Photo: International Court of Justi

Klimarett og den internasjonale domstolen (ICJ)

1. Hva gjaldt saken?
2. Hvorfor er saken “historisk”?
3. Hva sa domstolen? 9 Hovedpoeng
4. Forventninger – og Diskusjon

1. Hva gjaldt saken?

- Rettsuttalelse (advisory opinion)
- 23. juli 2025
- «*Obligations of States in respect of Climate Change*»
- Forespørsel for en rettsuttalelse fra FNs Generalforsammling (Resolution Res 77/L.58, 29. mars 2023)
- Initiativet ble ledet av Vanuatu
- Forslag støttet av mer enn 120 stater (inkl. Norge)
- Vedtatt ved konsensus
- Spørsmålene:



United Nations A/77/L.58

General Assembly

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Agenda item 70
Report of the International Court of Justice

Algeria, Andorra, Angola, Antigua and Barbuda, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belgium, Belize, Bulgaria, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Djibouti, Dominican Republic, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea-Bissau, Guyana, Hungary, Iceland, Ireland, Italy, Jamaica, Kiribati, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, North Macedonia, Norway, Palau, Panama, Papua New Guinea, Portugal, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Vanuatu, Viet Nam and State of Palestine:* draft resolution

Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

"Having particular regard to the Charter of the United Nations, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment, and the duty to protect and preserve the marine environment,

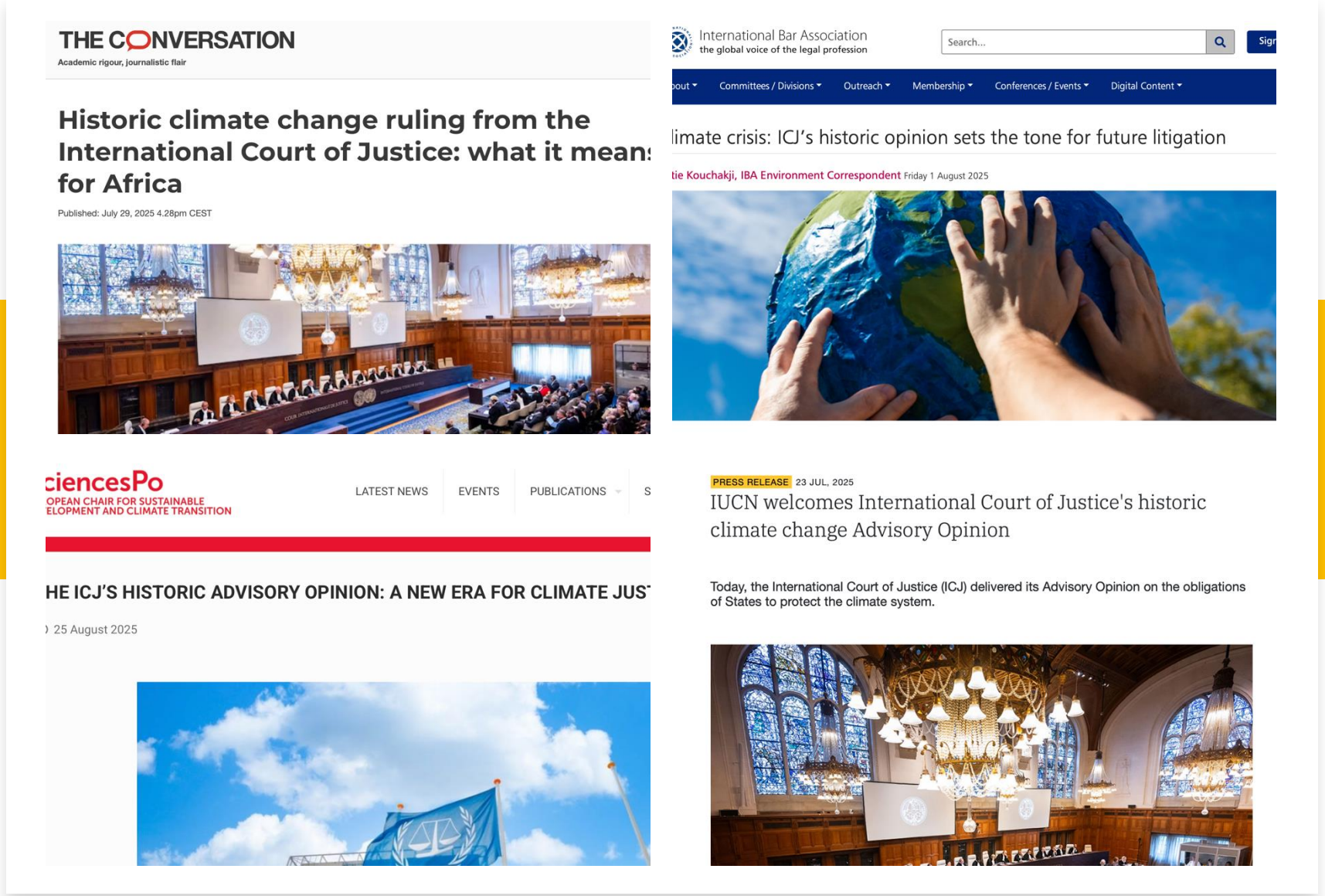
(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"

2. Hvorfor er denne prosessen historisk?



2. Hvorfor historisk?

- Største prosess noensinne: 98 Stater, 12 Internasjonale Organisasjoner (inkl. IUCN)
- For mange små øystater/LDCs: første gang foran ICJ
- Første gang ICJ sa noe om klima (relativt få saker om miljø fra før)
- Innholdet i uttalelsen:
  - Argumentene var svært sprikende
  - Stor "politisering" og polarisering av deltakende stater (forhandlingsposisjoner pakket inn i rettslige argumenter)
  - Ambivalens/tvetydighet og kompromisser (særlig Parisavtalen)

3. Hva sa domstolen?: 9 Hovedpoeng

1. Uttalesen er **enstemmig**! (12 individuelle “forklaringer” og “separate meninger”)

3. Hva sa domstolen?: 9 Hovedpoeng

2. **Vitenskapelig basert** på IPCC´s rapporter: ikke noen tvil om klimaendringer er menneskeskapte og et grunnleggende problem

72. …While certain GHGs occur naturally, it is scientifically established that the increase in concentration of GHGs in the atmosphere is primarily due to human activities, whether as a result of GHG emissions, including by the burning of fossil fuels, or as a result of the weakening or destruction of carbon reservoirs and sinks, such as forests and the ocean, which store or remove GHGs from the atmosphere.

73. The consequences of climate change are severe and far-reaching.

74. These consequences underscore the urgent and existential threat posed by climate change

456. …the questions posed by the General Assembly represent more than a legal problem: they concern an existential problem of planetary proportions that imperils all forms of life and the very health of our planet.

3. Hva sa domstolen?: 9 Hovedpoeng

3. Stater har flere **parallele forpliktelser** til å beskytte klimasystemet basert på flere folkerettslige kilder (ingen er *lex specialis*):

- Folkerettslige traktater (FNs klimaregimet: Klimarammekonvensjon og Parisavtalen), Menneskerettighetstraktater, Havrettstraktaten, CBD m.fl.),

og

- Internasjonal sedvanerett (forpliktelsen til å forebygge betydelig grenseoverskridende skade, samarbeid/cooperation)

3. Hva sa domstolen?: 9 Hovedpoeng

4. **Parisavtalen** er det **primære** instrumentet (folkerettslig traktat) for å begrense klimaendringer

Forpliktelser:

i. **Innmeldelse av NDC** (resultatforpliktelse)

ii. **Innhold av NDCen** (handlingsforpliktelse/obligation of conduct), basert på en strikt aktsomhetsstandard (strict due diligence). Dette omfatter:

- "Progresjon" og "høyest mulig ambisjon» i art. 4(3)
- Å være informert av den globale gjennomgang (GST), art. 4.9
- «1.5^{o}C aligned» (basert på 1/CMA.3 og 1/CM.5 tolket domstolen 1.5 som det «primære temperaturmålet»)

249. "…the Court concludes that, rather than being entirely discretionary as some participants argued, NDCs must satisfy certain standards under the Paris Agreement."

iii. Å **gjennomføre** nasjonale tiltak (lovgiving, regulering av private aktører) for å nå NDC målene (handlingsplikt) – og kan føre til brudd av folkeretten

270….”To comply with their mitigation obligations, all parties must take measures, in fulfilment of their obligations under the Paris Agreement, that make an adequate contribution to achieving the collective temperature goal; these measures must be reflected in parties’ NDCs which must be adjusted to be more demanding every five years; and these NDCs must, when taken together, be capable of achieving the temperature goal and the purposes of the Agreement. While the scope and content of measures contained in the NDCs may vary in accordance with the means available to parties and their capabilities, parties do not enjoy unfettered discretion in the preparation of their NDCs. Each party has a due diligence obligation to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Agreement (Article 4, paragraph 2). Consequently, parties have an obligation to undertake best efforts to achieve the content of their NDCs.”

“253. What is required of parties under Article 4, paragraph 2, is not a guarantee that communicated NDCs will be achieved, but rather that they will make best efforts to obtain such a result. The Court considers that the obligation to “pursue domestic mitigation measures” that aim to achieve the objectives of their NDCs requires States to be proactive and pursue measures that are reasonably capable of achieving the NDCs set by them. These measures may include putting in place a national system, including legislation, administrative procedures and an enforcement mechanism, and exercising adequate vigilance to make such a system function effectively, with a view to achieving the objectives in their NDCs….”

3. Hva sa domstolen?: 9 Hovedpoeng

5. "Klimaforpliktelser" finnes videre i **menneskerettighetstraktater** (e.g. EMK, ICCPR, ICESCR)

- Climate change "may significantly impair the enjoyment of certain human rights" (para 376), e.g. retten til liv, helse, adekvat levestandard
- Retten til et rent, sunt og bærekraftig miljø som forutsetning for andre menneskerettigheter
- Stater har ("positive") forpliktelser til å garantere MR, inkludert ved å beskytte klimasystemet
- "States are obliged to take all necessary measures to protect the climate system, through mitigation, adaptation, adoption of standards and legislation, and regulation of private actors"
- Henvisning til EMD dommen i *Klimaseniorinnen vs. Sveits*

403. Taking into account the adverse effects of climate change on the enjoyment of human rights, the Court considers that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment. In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, *inter alia*, 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. Under international human rights law, States are required to take necessary measures in this regard.

3. Hva sa domstolen?: 9 Hovedpoeng

6. "Klimaforpliktelser" finnes videre i **FNs Havrettstraktat**

- Henvisning til Havrettstribunalets uttalelse (mai 2024)
- Klimagassutslipp som forurensning (pollution) av det marine miljø (Art. 1.1.4 UNCLOS)
- Forpliktelser under
  - Art. 194.1 UNCLOS til å unngå, redusere, kontrollere forurensing fra ***ALLE*** kilder
  - Art. 192 UNCLOS til beskytte og bevare det marine miljø
- Basert på strikt aktsomhet (stringent due diligence): Parisavtalens 1.5^{o}C mål som "rettslig standard"

3. Hva sa domstolen?: 9 Hovedpoeng

7. Klimaforopliktelser følger av **internasjonal sedvanerett**

- Forpliktelse til å ikke volde betydelig miljøskade på andre staters territorium eller i områder utenfor statenes jurisdiksjon
- Plikt til samarbeid (cooperation)
- Gjelder alle stater
- Strikt handlingsplikt (stringent due diligence)
- Konkrete faktorer:

> ” The duty to prevent significant harm to the environment also applies to the climate system, which is an integral and vitally important part of the environment and which must be protected for present and future generations.” (para 273)

3. Hva sa domstolen?: 9 Hovedpoeng

(a) *Risk of significant harm*

(b) *Due diligence as the required standard of conduct*

(i) Appropriate measures

(ii) Scientific and technological information

(iii) Relevant international rules and standards

(iv) Different capabilities

(v) Precautionary approach or principle and respective measures

(vi) Risk assessment and environmental impact assessment

(vii) Notification and consultation

427. …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.

3. Hva sa domstolen?: 9 Hovedpoeng

8. Rettslige konsekvenser av brudd følger av statsansvarsreglene (IWA, tilregnlighet, reparation (restitution, compensation, satisfaction), opphør av IWA (cessation and non-repetition)

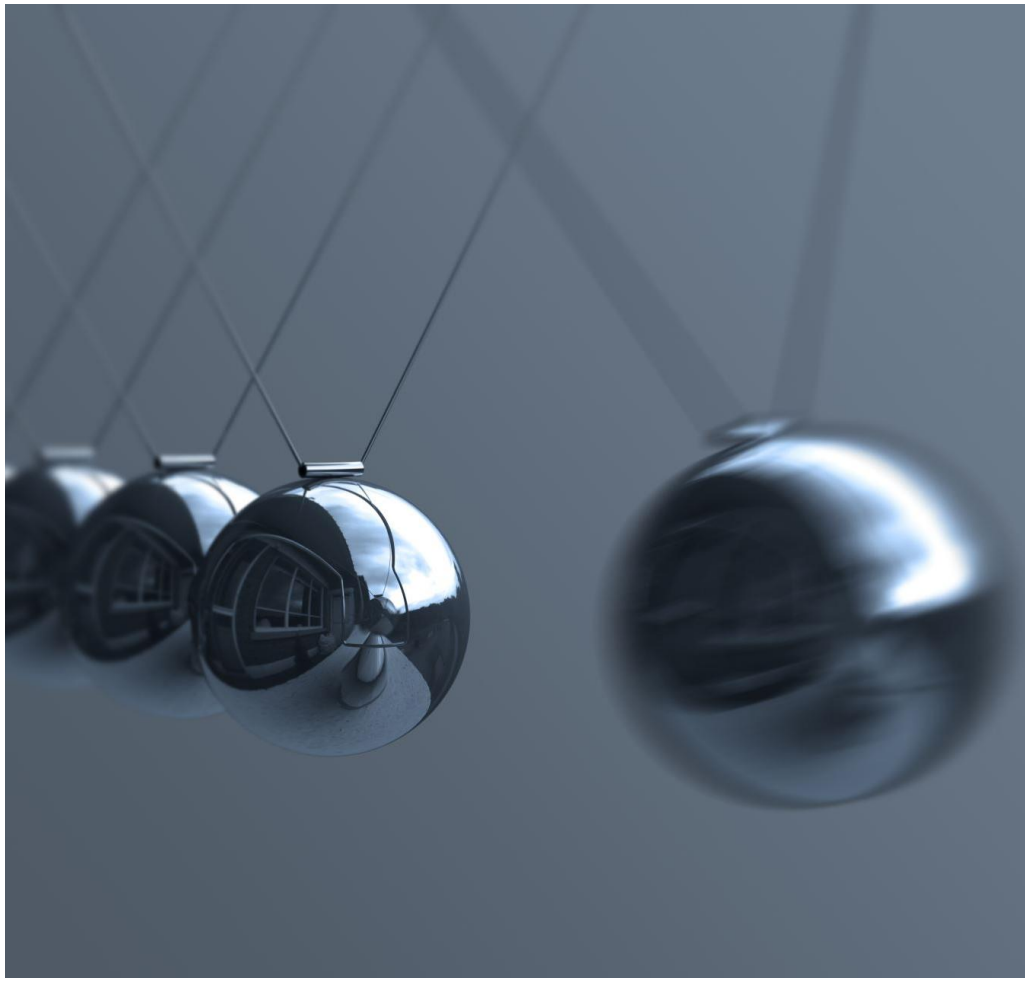
3. Hva sa domstolen?: 9 Hovedpoeng

10. Begrensinger av folkeretten: trengs grunnleggende endringer

456…. the questions posed by the General Assembly represent more than a legal problem: they concern an existential problem of planetary proportions that imperils all forms of life and the very health of our planet. International law, whose authority has been invoked by the General Assembly, has an important but ultimately limited role in resolving this problem. A complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other. Above all, a lasting and satisfactory solution requires human will and wisdom — at the individual, social and political levels — to change our habits, comforts and current way of life in order to secure a future for ourselves and those who are yet to come. Through this Opinion, the Court participates in the activities of the United Nations and the international community represented in that body, with the hope that its conclusions will allow the law to inform and guide social and political action to address the ongoing climate crisis.

4. Forventinger

- COP30 Belem ...
- FNs generalforsamling (forslag til resolusjon februar 2026, Vanuatu) 2025 NDCene: 60 mangler fortsatt....
- 2030 NDCene!
- Nasjonal lovgiving
- Nasjonale og andre internasjonale domstoler
- Bruk av sivilsamfunn
- Mye forskning....



SYMPOSIUM, SYSTEMIC IMPACTS AND STRUCTURAL SHIFTS: CLIMATE CHANGE AND THE ROLE OF THE ICJ ADVISORY OPINION

The ICJ and the UN Climate Regime

Clarifying Mitigation Obligations Under the Paris Agreement

04.08.2025

Author

Christina Voigt

This article belongs to the debate » The ICJ's Advisory Opinion on Climate Change

03 September 2025

"Doing the Utmost"

Due Diligence as the Standard of Conduct in International Climate Law

One of the most profound findings in the International Court of Justice's (ICJ's) climate change advisory opinion (AO) is that State obligations to mitigate climate change to a level that holds warming to the Paris Agreement's 1.5 °C threshold are spread out over the large canvas of international law, including United Nations (UN) climate treaties,

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Christina Voigt is Professor of Law at the University of Oslo, Norway. The views expressed in this contribution are personal.

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