
‘Hope With Teeth’: Five Lessons from the ICJ’s Climate Change Advisory Opinion

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Abstract

This analysis sets out five wider lessons that can be learned from the International Court of Justice’s Advisory Opinion on the Obligations of States in respect of Climate Change for developing robust legal responses to climate change in national legal systems. These lessons are about the competence of courts; about word work; about deeper legal structures; about thick legal expertise; and about legal imagination. Overall, this study of the Advisory Opinion underscores what is required to ensure the rigorous evolution of legal thinking in light of climate change. To put the matter differently, these are lessons in how to ‘hope with teeth’.

Keywords climate change, International Court of Justice, international law, legal imagination, adjudication

1. Introduction

The International Court of Justice’s Advisory Opinion¹ on Climate Change is a cause for hope when it comes to developing legal responses to the serious harms that anthropocentric climate change is causing and will cause.² In this analysis, we explain why we, as national environmental law scholars, are hopeful about the Advisory Opinion. The ICJ is right: ‘a lasting and satisfactory solution [to anthropogenic climate change] requires human will and wisdom’.³ The Court’s commitment to the rigorous application of international law to climate

1 International Court of Justice, Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025 (‘Advisory Opinion on Climate Change’).

2 IPCC, *Climate Change: 2023 Synthesis Report Summary for Policymakers* (2023) and International Court of Justice, Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025, [72]-[87].

3 ICJ (n 1) [456].

change is a stunning display of this will and wisdom; it is a blueprint for resilient legal thinking about climate change. This will and wisdom engenders a less recognizable, though equally important, form of hope: a trust and confidence in the legal institutions and processes that underlies a document like the Advisory Opinion.⁴ Hope is too easily conflated with instrumentalism; that a document like the Opinion is simply a means to an end to achieve bigger and better things. Yet hope is also about reckoning with the muddy reality of legal institutions.⁵

We identify five lessons about hope in the ICJ Advisory Opinion: about how the competence of courts matters; about the power of word work; about the importance of deeper legal structures; about the significance of thick legal expertise; and about how legal imagination matters. These are lessons in how to hope when it comes to climate change, in a way that fosters an attentiveness to legal realities.⁶ Or to paraphrase China Miéville, these are lessons in how to ‘hope with teeth’.⁷

2. Hope and despair from below

As national environmental law scholars, we work on the legal realities that climate change is begetting in national legal cultures. This includes, but is no way limited to: the adjudication of climate legal disputes; the creation and enforcement of legal obligations in relation to climate change; and the holding of public and private decision makers to account for their actions that relate to climate change.⁸ The questions are novel, but not legally unanswerable.⁹ There is a lot going on. There is a lot of hope and a lot of despair.¹⁰

Over the last year, we have often been asked about our views on the Advisory Opinion. Our first response is to explain that we are not public international law experts and that public international law is only part of the story of climate change law.¹¹ That is particularly so in the dualist legal cultures we work on. That is not an answer that does much to deliver on the hope of the person asking. The purpose of our answer is not to dismiss the Advisory Opinion (or the work of other international tribunals)¹² as irrelevant. Rather, it is to contextualize it. In law, context is everything. Part of that context must describe what the Advisory Opinion was about.¹³

4 See for example the definition of hope in the Oxford English Dictionary: ‘intransitive. To trust, have confidence’, *Oxford English Dictionary* (March 2026) <https://www.oed.com/dictionary/hope_v?tab=;meaning_and_use#;1255131> accessed 29 March 2026.

5 On hope in legal scholarship, see Elen Stokes, ‘Hope as an Object of Legal Scholarship’ (2025) LSE Law, Society and Economy Working Papers 31/2025 <<http://dx.doi.org/10.2139/ssrn.5893144>> accessed 29 March 2026. On muddy realities see Elizabeth Fisher, ‘“Going Backward, Looking Forward”: An Essay on How to Think About Law Reform in Ecologically Precarious Times’ (2022) 30 *New Zealand Universities Law Review* 111.

6 Les Back, ‘Hope’s Work’ (2021) 53 *Antipode* 3.

7 China Miéville, ‘Introduction’, Thomas More, *Utopia* (Verso 2016) 24.

8 Sonam Gordhan, ‘Climate Change and the Common Law Method: Towards a Resilient Account of Climate Change Adjudication’ (PhD thesis, UCL Faculty of Laws, 2025); and Elizabeth Fisher, ‘Telling Meaningful Stories About Climate Change and Public Law’ (2025) 37 *JEL* 1, 4.

9 *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5; Elizabeth Fisher, Eloise Scotford, and Emily Barritt, ‘The Legally Disruptive Nature of Climate Change’ (2017) 80 *MLR* 173.

10 On hope and despair see Fisher, ‘Going Backward’ (n 5); Emily Barritt, ‘The Drama of the Anthropocene: Despair and Hope in Legal Scholarship’ in Josephine van Zeben and Chris Hilson (eds), *A Research Agenda for Environmental Law* (Edward Elgar, 2025).

11 Elizabeth Fisher, ‘Public Law, the Levels of the Law and Environmental Problems’ (2024) *Anuario De Derecho Público* 353.

12 Inter-American Court of Human Rights, Climate Emergency And Human Rights Advisory Opinion AO-32/25 of May 29, 2025; and International Tribunal for the Law of the Sea, Climate Change and International Law, Advisory Opinion of 21 May 2024.

13 There are many excellent discussions of the detailed content of the Opinion. See for example EJIL: The Podcast! Episode 37: The ICJ’s Advisory Opinion on Climate Obligations: Remarkable, Radical and Robust (31 July 2025) <<https://www.ejiltalk.org/ejil-the-podcast-episode-37-the-icjs-advisory-opinion-on-climate-obligations-remarkable-radical-and-robust/>> accessed 3 Jan 2026; Miles Jackson and Federica Paddeau, ‘State Responsibility in the ICJ’s Advisory Opinion on Climate Change’ (*EJIL Talk!*, 25 July 2025)

To state the obvious, the Opinion is an Advisory Opinion. The General Assembly posed two questions to the ICJ.¹⁴ First, a clarificatory question concerning the legal obligations of States under international law to ensure the protection of the climate system. Second, an interpretative question concerning the legal consequences under these obligations for States where they have caused significant harm to the climate system and other parts of the environment.

The Court gave a unanimous opinion, albeit with some variation on specific issues, articulated in 12 separate opinions and declarations.¹⁵ In answer to the first question, the Court identified what the directly relevant applicable international law was, emphasizing that the standard of due diligence for preventing significant harm to the climate system is ‘stringent’.¹⁶ It rejected arguments that the United Nations Framework Convention on Climate Change [UNFCCC] and the Paris Agreement were *lex specialis* and affirmed that general rules of international law applied to the problem of climate change.¹⁷ The Court also confirmed States’ limited discretion in preparing nationally determined contributions under the Paris Agreement¹⁸ and highlighted that a ‘clean, healthy, and sustainable environment is a precondition for the enjoyment of many human rights’.¹⁹

In response to the second question, the Court was clear that primary and customary rules of state responsibility were applicable to climate change obligations,²⁰ and that determination of state responsibility would require an assessment *in concreto*.²¹ It confirmed that obligations are *erga omnes*²² and, significantly, that internationally wrongful acts could include the failure of a State to take appropriate action to protect the climate system by granting fossil fuel licences or subsidies.²³

The Advisory Opinion is striking in its clear-sightedness when it comes to identifying how climate change gives rise to obligations and responsibilities in public international law.²⁴ There is much here for public international lawyers to ponder, not least because it is an Advisory Opinion. That is why, as national environmental lawyers, in our responses to queries about the Advisory Opinion, we are careful to state the limits of our expertise. We also make clear that, given what public international law is, it is not going to lead to immediate and dramatic reform of how national legal systems respond to climate change.

For some that may be a matter of despair. For us, the Advisory Opinion is a reason for hope. Not just because of the outcome but because of the process of how the Court got there. As national environmental law scholars, there are five lessons about that process that we take from the Opinion. To make sense of those lessons they need to be understood in context, but the importance of the lesson resonates in all legal cultures.

3. Lesson 1: the competence of a court matters

As explained above, the General Assembly posed two questions to the ICJ.²⁵ These questions were fundamental and legally existential; as Lavanya Rajamani puts it, ‘the

<<https://www.ejiltalk.org/state-responsibility-in-the-icjs-advisory-opinion-on-climate-change/>> accessed 7 January 2026.

14 For the questions, see [88] of the ICJ (n 1).

15 International Court of Justice, ‘Obligations of States in respect of Climate Change’ (23 July 2025) <<https://www.icj-cij.org/case/187>> accessed 24 March 2026.

16 ICJ (n 1) [138].

17 *ibid* [162]-[171].

18 *ibid* [174]-[270].

19 *ibid* [373].

20 *ibid* [421]-[443].

21 *ibid* [423].

22 *ibid* [439]-[443].

23 *ibid* [427].

24 *ibid* [456].

25 For the questions, see [88] of the ICJ, *ibid*.

divergences between states in these proceedings were competing visions of international law'.²⁶

In issuing its Advisory Opinion, the ICJ performed two important roles. First, the Court provided an authoritative statement of the physical reality of climate change; it 'stabilized the facts' by integrating them into their process of legal reasoning.²⁷ While the Court was not tasked with a fact-finding mission, the Advisory Opinion's acknowledgement of: the cumulative nature of the causes of climate change²⁸; the temporal uncertainty of climate risks²⁹; the individual and collective contributions to climate change³⁰; and the evolving state of climate science³¹ are all evidence of the Court responding to a highly complex set of facts and integrating them into the international legal order.

Second, the Court performed what Jackson and Paddeau have termed a 'systematizing' role; 'acting to build and systematize fundamental aspects of the international legal system'.³² It was not asked to adjudicate a contentious dispute. Its work was more fundamental; it was asked to articulate, identify, and interpret public international law as it relates to climate change.

The Advisory Opinion did not settle all matters relating to climate change law, nor could it. As Judge Bhandari noted in his separate opinion, 'the advisory function is not designed to exhaustively define all climate-related obligations in concrete terms'.³³ The ICJ did not (and could not) adjudicate a legal dispute; it was not tasked with remedying the impacts of climate harms; and it did not attribute legal responsibility to one particular actor. Rather, it 'rose to the challenge' of delivering a unanimous Opinion without undermining the robustness of its reasoning.³⁴ Therefore, while there was some disappointment that the Advisory Opinion was not radical enough, or that it emulated 'extreme formalism',³⁵ these criticisms somewhat elide the reality of the task facing the ICJ, which was to respond to the two questions posed by the General Assembly in a way that withstood the test of time. Acknowledging the reality of the process of the Court is therefore important for contextualizing and appreciating the broader significance of the Advisory Opinion for public international law.

The first lesson is that the authority of a court adjudicating on climate change derives from its legitimate exercise of its authority. Any court tasked with considering questions concerning climate change is limited by its own competence and by the task with which it has been entrusted. For example, in contrast to the Advisory Opinion function of the ICJ, the competence of a national court in a common law jurisdiction comes from its dispute resolution function, precedent, and its institutional and constitutional competence.³⁶ At the same time, by acting on the basis of that authority, legitimacy is given to the work of the court. The authority of a specific court in any specific legal culture may be contested, but that does not negate the importance of acknowledging the fundamental importance of a court's competence.

26 EJIL Podcast (n 11).

27 Peter Birks, 'Adjudication and Interpretation in the Common Law: A Century of Change' (1994) 14 LS 156, 158.

28 ICJ (n 1) [137].

29 *ibid* [278].

30 *ibid* [277].

31 *ibid* [283].

32 Jackson and Paddeau (n 13).

33 Separate Opinion of Judge Bhandari [10].

34 Declaration of Judge Tladi [1].

35 Separate Opinion of Judge Yusuf [5].

36 Gordhan (n 8).

4. Lesson 2: word work is powerful work

The work of public international law is the work of words.³⁷ The ICJ's Advisory Opinion on Climate Change is an authoritative interpretation of the legal vocabulary of public international law. It is a set of legal answers to two legal questions.³⁸ As the Court notes, these questions 'require the Court to identify the obligations of States in respect of activities that adversely affect the climate system, as well as the legal consequences arising from the breach of these obligations'.³⁹

The history of international climate change law has largely been a history of negotiation the meaning of words. Each year, lawyers, states, and NGOs fight over the precise wording of decisions or resolutions, whether it is in the crafting of the Paris Agreement or agreeing on its rulebook. The tussle and the excitement happen with the words. Words whispered in the halls of the conferences of the parties; words scribbled in pencil in the margins of each draft of the Paris rulebook; words spoken at the submeetings and plenaries. The Advisory Opinion underscores that these words have consequences.⁴⁰

The importance of words is also obvious in national legal systems. Many national legal disputes about climate change are cases about the meaning of words—specifically statutory words.⁴¹ Are greenhouse gases a pollutant?⁴² Are scope 3 emissions an 'indirect effect' that should be considered in an impact assessment?⁴³ Does a duty to have environmental protection policies include a duty to have climate change policies?⁴⁴ A key legal job in relation to climate change is re-calibrating words in light of its physical reality.⁴⁵

While not formally legally binding, an ICJ Advisory Opinion gains its authority from showing what the work of words can do. An Advisory Opinion 'states the existing law and does not legislate. This is so even if, in stating and applying the law, the Court necessarily has to specify its scope and sometimes note its general trend'.⁴⁶ In relation to the Climate Change Advisory Opinion, its authority comes from exactly that exercise. It is aligning the physical reality of climate change with the realities of the obligations and consequences of public international law. The result is an evolved legal reality. A legal reality in which certain arguments are rendered irrelevant. 'Climate change is a common concern. Co-operation is not a matter of choice for States but a pressing need and a legal obligation'⁴⁷ means exactly what it says.

For those who want answers, the Advisory Opinion might appear yet another example of an 'endlessly and fatally deferred promise of a remedy'.⁴⁸ A statement that 'the adverse effects of climate change may impair the effective enjoyment of human rights'⁴⁹ is betrayed by the word 'may'. But showing that revisiting words begets new legal realities creates new indices of legal calculability. As Crawford explains, the institutions of international

37 Philip Allott, 'The Concept of International Law' (1999) 10 EJIL 31.

38 Art. 96 (1) of the UN Charter. For the questions see ICJ (n 1) [88].

39 *ibid* [94].

40 *ibid* [184].

41 Elizabeth Fisher, 'Climate Change and Statutory Construction: Administrative Law Expertise and "New" Emergencies' (2023) 27 Edinburgh LR 322.

42 *Massachusetts v EPA* 549 US 497 (2007).

43 *Finch (Weald Action Group), R. (on the application of) v Surrey County Council & Ors* [2024] UKSC 20. Discussed in Sonam Gordhan, 'Climate Change, Environmental Impact Assessment and the Supreme Court: Why the Legal Detail Matters in *R (Finch) v Surrey County Council*' (2025) 88 MLR 998.

44 *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority* (2021) 250 LGERA 1.

45 Fisher, 'Telling Meaningful Stories About Climate Change' (n 8) 4.

46 ICJ (n 1) [48] quoting from *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996 (I), [18].

47 ICJ (n 1) [308].

48 Gerry Simpson, *The Sentimental Life of International Law: Literature, Language, and Longing in World Politics* (OUP 2021) 14.

49 ICJ (n 1) [386].

law 'are in a dialectical relationship with the law, shaping it and shaped by it, making it and made by it'.⁵⁰ After this Advisory Opinion, public international law obligations will never be thought about the same way again. A second lesson of the Advisory Opinion is that word work is powerful work. That is not a new insight⁵¹ but one easily forgotten.

5. Lesson 3: the importance of thinking about the deeper legal structures of legal cultures

Word work is not superficial work. It is not a performative exercise in the 'right optics' and nothing more. Word work is also not only the words that are the product of negotiation between parties as part of the UNFCCC regime.⁵² Evolving legal realities demands deep, structural work. It requires seeing the bigger legal picture. As Rajamani has put it, public international law is 'a seamless web of inter-locking norms rather than of particular treaties functioning as atomistic reflections of state consent in that area'.⁵³ Words matter as part of the waft and weave of public international law.

Much of the word work of the Advisory Opinion is thus about that waft and weave. The material, territorial and temporal scope of the Advisory Opinion is wide.⁵⁴ The duty of customary international law of 'States to prevent significant environmental harm applies in the context of climate change'.⁵⁵ The customary duty to co-operate for the protection of the environment is also 'a guiding principle for the interpretation of other rules',⁵⁶ as are a range of principles from international environmental law.⁵⁷ International human rights law is also directly applicable law.⁵⁸ This is not exhaustive⁵⁹—to think about climate change is to think about *all* of public international law. The interpretative approach is one grounded in the working doctrines of legal interpretation in public international law.⁶⁰ Obligations in relation to climate change are closely related to 'well-established rules on State responsibility under customary international law'.⁶¹

The legal reasoning process of the Court in arriving at its Advisory Opinion is therefore a major contribution to the evolution of public international law and should be recognized as such. It is the 'process of articulation and assessment that occurs where rights and interests are engaged at the international level that matters'.⁶² Responding to the General Assembly's questions required deliberate and thoughtful engagement with international treaties; articulation of both guiding principles and applicable law; a deep examination of customary international law; and the recognition of the existing jurisprudence of international courts and tribunals. As Rajamani and Okowa have noted, there are many elements of the Advisory Opinion that deploy an orthodox approach to the interpretation of public international law.⁶³ It is thus a product of close attention to detail, a deep understanding of legal materials, and robust legal reasoning.

50 James Crawford, *Chance, Order, Change: The Course of International Law* (Brill Nijhoff 2014) 21.

51 Philip Allott, *Eunomia: A New Order for a New World* (OUP 2001).

52 ICJ (n 1) [171] and [279].

53 Lavanya Rajamani, 'Interpreting the Paris Agreement in its Normative Environment' (2024) 77 CLP 167, 169.

54 ICJ (n 1) [94]–[97].

55 *ibid* [139].

56 *ibid* [142].

57 *ibid* [161].

58 *ibid* [145].

59 *ibid* [173].

60 *ibid* [176]–[178].

61 *ibid* [420].

62 Crawford (n 50) 22.

63 EJIL: The Podcast! Episode 37 (n 13).

The third lesson of the Advisory Opinion is that aligning legal and physical realities requires thinking across a legal culture.⁶⁴ The Advisory Opinion is an incarnation of the course of international law, and in its turn tells a story about what that body of law is. It is tempting to silo the legal problems of climate change from other types of legal problems. Yet climate change is not the preserve of one area of the law or one group of lawyers. It requires different legal jobs by courts and legislatures depending on the nature of the problem. It also requires a broad and deep appreciation of existing legal doctrine. That is why in all legal systems there is a need for ‘climate conscious lawyering’.⁶⁵

This lesson is particularly important for national lawyers looking to the ICJ for inspiration. The Advisory Opinion is an exciting development in public international law. However, its authority within national legal systems is limited, and its function is distinct to national courts. It is thus important that national lawyers pay detailed attention to the nature and scope of domestic courts to build robust legal arguments about how they ought to respond to climate change problems. Let us be clear: we are not saying that courts have no role to play in aligning legal realities and physical realities. We are emphasizing that *how* this alignment takes place requires concerted attention on the nuances and varied roles of courts, understood in their context.

Thus for example, the groundbreaking decision of the Dutch Supreme Court in *Urgenda* is specific to the monist legal culture of the Netherlands⁶⁶; the strike-out decision in the New Zealand Supreme Court decision in *Smith v Fonterra Co-operative Group Ltd* is a product of New Zealand strike out principles and Māori customary law⁶⁷; and the Strasbourg decision in *Verein KlimaSeniorinnen* is grounded in the jurisprudence of the European Court of Human Rights.⁶⁸ None of these decisions is more important than the others, and each warrants attention on their own terms. More fundamentally, they should be appraised not by reference to how ‘activist’ they were in relation to climate change, but rather by reflecting on how well or poorly they performed the legal task they were asked to perform.

6. Lesson 4: the need for ‘thick’ legal expertise

The Advisory Opinion is not written on the back of an envelope. It is a collective act of legal expertise. Lawyering requires skills, knowledge, and experience. The Advisory Opinion was the product of a proceeding that had the highest level of participation by states in the history of the ICJ and its predecessor.⁶⁹ The significant and expert legal work that went into making that happen should not be underestimated. Not just work of those on the Court, and those that made submissions (a who’s who of public international law), but also those that catalysed the request for an Advisory Opinion, and the many scholars and lawyers over the years who, through acute attention to legal detail, have explored the interrelationship between international law and climate change.⁷⁰

⁶⁴ Lawrence M Friedman, ‘Is There a Modern Legal Culture?’ (1994) 7 Ratio Juris 117.

⁶⁵ Brian Preston, ‘Climate Conscious Lawyering’ (2021) 95 ALJ 5; Kim Bouwer, ‘Climate Consciousness in Daily Legal Practice’, *OUPBlog* (22 May 2015) <<https://blog.oup.com/2015/05/climate-consciousness-daily-legal-practice/alpractice|OUPblog>> accessed 7 May 2026.

⁶⁶ *Urgenda Foundation v Netherlands* (20 December 2019) ECLI:NL:HR:2019:2006.

⁶⁷ *Smith* (n 9). See Sam Bookman, ‘*Smith v Fonterra* and the Climatisation of Tort Law’ (2025) 88 MLR 192.

⁶⁸ European Court of Human Rights Grand Chamber Case of *Verein Klimaseniorinnen Schweiz and others v Switzerland* (Application no 54600/20) 2024.

⁶⁹ Leslie-Anne Duvic-Paoli, Climate Change at the International Court of Justice (House of Commons Library Research Briefing 8 October 2025).

⁷⁰ Wonderful examples of that legal expertise on show are EJIL: The Podcast, Episode 37 (n 13); and Jackson and Paddeau (n 13).

Arriving at this Advisory Opinion required a co-ordinated and collective effort of civil society, lawyers, judges, and academics over a period of time.⁷¹ The legal and scientific building blocks of the Opinion are a culmination of the work of lawyers, scientists, and politicians.⁷² The campaign for an ICJ Opinion was propelled by the student-led movement, ‘Pacific Island Students Fighting Climate Change’ between 2019 and 2023.⁷³ 132 states co-sponsored the UN General Assembly’s resolution requesting the Advisory Opinion.⁷⁴ And before the ICJ were over 200 participants to the proceedings delivering oral and written presentations over the course of two weeks.⁷⁵

That expertise of those who were involved was not produced in a vacuum—it was the product of professional communities engaged in their ‘daily legal practice’.⁷⁶ The ICJ could not—and did not—reinvent itself to respond to the problem of climate change. It engaged with, and deployed, two core functions—stabilizing the facts and systematizing international law—and did so in a way that ensured the integrity of both the Court and the international legal order.

That required legal expertise. It is easy to be cynical about expertise. To argue it is politics or legalism by another name.⁷⁷ The power of legal expertise to frame the world and give it significance should not be underestimated.⁷⁸ But the question then to be asked is how to foster that legal expertise well.⁷⁹ By ‘well’ we mean in a way that recognizes that the work of law is word work within a context of deeper legal structures and complex physical realities. While there are those who want to claim that legal expertise when it comes to climate change is a mystic power that only they wield, the reality is that the Advisory Opinion shows the exact opposite. As an act of collective work, it is what Karl Llewellyn called ‘juristic method’,⁸⁰ a ‘craft’⁸¹ that includes spokespersonship, trouble shooting, giving advice, knowing the law, and understanding what an act of valid legal interpretation is and could be in a legal culture.⁸²

The fourth lesson from the Advisory Opinion is that fostering legal expertise matters.⁸³ The significance of the Advisory Opinion is because of the craft work of so many. The question then for national legal systems is the fostering of that legal expertise through practice and pedagogy.⁸⁴

71 See for example scholarly perspectives on this issue: Philippe Sands, ‘Climate Change and the Rule of Law: Adjudicating the Future in International Law’ (2016) 28 JEL 19; Dan Bodansky, ‘The Role of the International Court of Justice in Addressing Climate Change: Some Preliminary Reflections’ (2017) 49 *Arizona State Law Review* 690; Dan Bodansky, ‘Advisory Opinions on Climate Change: Some Preliminary Questions’ (2023) 32 *RECIEL* 185.

72 For an overview of this evolution see Lavanya Rajamani, *Innovation and Experimentation in the International Climate Change Regime* (Brill/Nijhoff 2020).

73 Pacific Island Students Fighting Climate Change, *Youth Climate Justice Handbook: Summary for Policymakers* (2023) <<https://static1.squarespace.com/static/6090cc1eec59dc2ed057b027/t/645446ba7067c607abf77cce/1683244781596/Summary+for+Policymakers+%7C+Part+1+%7C+Youth+Climate+Justice+Handbook.pdf>> accessed 24 March 2026.

74 ICJ (n 1) [47]. See also UNGA ‘Resolution 77/276, Request for an Advisory Opinion of the International Court of Justice on the Obligation of States in Respect of Climate Change’ UN Doc A/77/L.58 (29 March 2023).

75 ICJ (n 1) [35].

76 Bower (n 65).

77 David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton UP 2016) 255.

78 Martti Koskeniemi, ‘The Politics of International Law – 20 Years Later’ (2009) 20 *EJIL* 7, 11.

79 Elizabeth Fisher, ‘Legal Imagination and Teaching’ in Jacqueline Peel and Lavanya Rajamani (eds), *Oxford Handbook of International Environmental Law* (2nd edn, OUP 2021).

80 Karl Llewellyn, ‘The Normative, the Legal, and the Law-Jobs: The Problem of Juristic Method’ (1940) 49 *Yale L J* 1355, 1392–95.

81 *ibid* 1393. For Llewellyn’s longer discussion of this see his unpublished course materials extracted in William Twining, *Karl Llewellyn and the Realist Movement* (2nd edn, CUP 2012) 552–72, 561–58.

82 Twining, *ibid* 566.

83 Elizabeth Fisher and Eloise Scotford, ‘Climate Change Adjudication: The Need to Foster Legal Capacity: An Editorial Comment’ (2016) 28 *JEL* 1.

84 Preston (n 65); and Kim Bower, ‘“Climate Change isn’t Optional”: Climate Change in the Core Law Curriculum’ (2023) 43 *LS* 240.

7. Lesson 5: legal imagination matters

Inherent to any expert community is disciplinary imagination.⁸⁵ Law is no exception.⁸⁶ As Maksymilian Del Mar notes, imagination is ‘something that we do together’.⁸⁷ Legal imagination is in operation in the classroom, the law office, the court room, and at an academic conference to name a few examples. That does not mean everyone imagines in the same way—it is ‘a field of struggle’ and a collective one at that.⁸⁸ Lawyers and legal scholars use the constructs of legal imagination to reason, persuade, and communicate.

The Advisory Opinion is a significant act of legal imagination in its aligning of legal realities with political realities. Doing this work is no easy feat. It involves what Judge Peter Tomka referred to as ‘a great normative contestation...a reimagining of categories in response to a novel and existential challenge’.⁸⁹

At the same time, it is in many ways a clarification of the obvious. As Judge Yusuf noted in his separate opinion, the Court’s opinion is ‘difficult to disagree with’.⁹⁰ Anthropogenic climate change is caused by humans, and it impacts humans. It is thus inevitable that there will be obligations on states, under public international law, to protect the climate system and that acts and omissions by states that cause significant harm can have legal consequences.

The fifth lesson is that even something so obvious requires a lot of active legal work, by a lot of people. To align collective mental constructs with emerging realities is difficult work and often contested work. It requires communities of practice, to quote the anthropologist Mary Douglas, to ‘run against our strongest mental habits’.⁹¹ The result may be a statement that once articulated seems legally obvious—but it was not before then. Climate change is ‘an existential problem of planetary proportions that imperils all forms of life and the very health of our planet’.⁹² It is a big fact and one that legal systems were not initially developed in response to. For lawyers and scholars, this big fact disrupts the mental constructs that lawyers use to make sense of law in the world. Disruption is not rupture, but it does require lawyers to actively confront facts and think about the limits of current constructs and evolve them. This is not activism. It requires hard and serious thought and active legal work—conscientious and considered.⁹³

8. Conclusion

We live in uncertain climate times. Given the stakes, it is easy to vacillate between believing law is a magic wand when it comes to climate change and thinking it a charade. As China Miéville notes:⁹⁴

Utopia? Apocalypse? Is it worse to hope or to despair? To that question can only be one answer: yes. It is worse to hope to despair.

85 Jens Beckert, *Imagined Futures: Fictional Expectations and Capitalist Dynamics* (Harvard UP 2016) and Arnon Levy and Peter Godfrey-Smith (eds), *The Scientific Imagination: Philosophical and Psychological Perspectives* (OUP, 2020).

86 Fisher, ‘Telling Meaningful Stories’ (n 8).

87 Maksymilian Del Mar, *Artefacts of Legal Inquiry: The Value of Imagination in Adjudication* (Hart, 2020) 128.

88 Ruha Benjamin, *Imagination: A Manifesto* (Norton, 2024) 8.

89 Declaration of Judge Peter Tomka [7].

90 Separate Opinion of Judge Yusuf [1].

91 Mary Douglas, *A Very Personal Method: Anthropological Writings Drawn From Life* (Sage, 2013) 45.

92 ICJ (n 1) [456].

93 On the distinction between activism and active legal work see Elizabeth Fisher, ‘The Administrative Law Expertise of the Land and Environment Court of New South Wales’ in Elizabeth Fisher and Brian Preston (eds), *An Environmental Court in Action: Function, Doctrine and Process* (Hart, 2022) 199.

94 Miéville (n 7) 24.

If we place the wrong hopes on decisions such as the ICJ Advisory Opinion, it will only lead to despair. What is needed in times like these is what Miéville calls ‘hope with teeth’.⁹⁵ His idea of what such hope entails is angrier than ours,⁹⁶ but what we can agree on is the need for such hope to be grounded in, and tempered by, realities.

When we point to the limits of our expertise that is the type of hope we are pointing to. The decision of a court is not a single ‘moment in time’ divorced from its legal and physical reality. It is part and parcel of a thicket of legal decisions and in turn is a building block, rather than the whole house. The Advisory Opinion does not ‘solve’ all legal questions relating to climate change—and nor should it. It is better understood as an example of legal reasoning in the context of climate change—and in turn provides a wealth of material for any lawyer, scholar, or judge in understanding the legal work involved in responding to the existential threats of climate change. Therefore, recognizing thick legal expertise or acts of legal imagination are not just nice things to write about, they are critical lessons for how scholars and lawyers—both national and international—engage with the role of courts in responding to climate change.

The rippling effects of the Advisory Opinion will no doubt continue to be felt around the world. Acclimatizing to this new legal reality requires an appreciation of the deeper legal structures and legal expertise that led to this moment. It requires an appreciation of the importance of words and working with words in a way that is robust. It demands an understanding of the role of courts that transcends surface-level discussions about their propensity to engage with the politics of climate change. It entails rigorous deployment of legal imagination. Now then, that is ‘hope with teeth’.

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None declared.

⁹⁵ *ibid* 24.

⁹⁶ *ibid* 26-7.