The International Court of Justice on the Mitigation Obligations in the Paris Agreement

Lavanya Rajamani

Correspondence
Email: lavanya.rajamani@law.ox.ac.uk

Abstract

This article examines the ICJ's interpretation of the Paris Agreement's core mitigation obligations to determine how, on what basis, and to what effect the ICJ disciplined national determination in the operation of the Paris Agreement. In so doing it analyses the extent to which the ICJ's interpretation strengthens the legal character of the Paris Agreement's mitigation obligations. It argues that while the ICJ's interpretation strengthened the legal character of the Paris Agreement's mitigation obligations along some dimensions, notably normative content, language, and precision, along the dimensions of oversight and review, national determination is still dominant, thus potentially diluting the operational impact of the ICJ's robust reframing of the Paris Agreement's mitigation obligations.

1 INTRODUCTION

The 2015 Paris Agreement,[1] the international community's dedicated legal response to the existential threat of climate change, is a product of years of contentious multilateral negotiations fuelled by high drama and stakes. Although a showpiece of ingenious legal drafting and successful political wrangling, over ten years on, the jury is still out on whether the Paris Agreement can deliver a climate safe planet. The answer to this all-too-important question depends in large part on the balance the international legal framework can strike between national determination and multilaterally agreed rules. In an increasingly multipolar, fractured world of radically different and differently motivated States, the Paris Agreement, is, of necessity, premised on national determination. Yet the ability of the international community to decisively address climate change, hinges on the extent to which this national determination (and the discretion that flows from it) is disciplined and channelled in the operation of the Agreement. The International Court of Justice (ICJ) in its Advisory Opinion on Climate Change[2] provided an authoritative interpretation of the Paris Agreement's mitigation obligations that sought to discipline and channel national determination and discretion in service of the climate.

This article examines the ICJ's interpretation of the Paris Agreement's core mitigation obligations to determine how, on what basis, and to what effect the ICJ disciplined national determination in the operation of the Paris Agreement. And, in doing so it analyses the extent to which the ICJ's interpretation strengthens the legal character of the Paris Agreement's mitigation obligations. It argues that while the ICJ's interpretation strengthened the legal character of the Paris Agreement's mitigation obligations along some dimensions, notably normative content, language, and precision, along the dimensions of oversight and review,

[1] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 79.

[2] *Obligations of States in respect of Climate Change* (Advisory Opinion) 23 July 2025 <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf> accessed 1 March 2026 ('ICJ Climate AO').

national determination is still dominant, thus potentially diluting the operational impact of the ICJ's robust reframing of the Paris Agreement's mitigation obligations.

This article first discusses in Section 2 the ICJ's framing of the Paris Agreement's temperature goal, which offers interpretative context for its approach to the Agreement's core mitigation obligations. Section 3 explores the ICJ's interpretation of the Paris Agreement's core mitigation provisions, in particular Articles 4.2 (nationally determined contributions) and 4.3 (progression and highest possible ambition), with a view to determining the extent to which the ICJ's interpretation of these provisions shifts the balance from national determination to international regulation. Section 4 discusses the impact the ICJ's interpretation of the Paris Agreement's core mitigation provisions has on their legal character, and the extent to which these provisions lend themselves to review within the United Nations (UN) climate regime. Section 5 concludes.

2 INTERPRETATIVE CONTEXT: THE PARIS AGREEMENT'S TEMPERATURE GOAL

The ICJ's identification of 1.5°C as the 'agreed primary temperature goal' under the Paris Agreement will perhaps be its single most impactful contribution to international climate change law.[3] Impactful first because the 1.5°C goal will now be argued to provide a lodestar for the breadth of obligations relating to climate change across international law,[4] and second because it reinforces the 1.5°C temperature threshold as the standard for assessment of State actions in national, regional, and international climate litigation.[5] The ICJ's reading of 1.5°C as the agreed temperature goal has already begun to percolate through to national court decisions. In the 2026 *Bonnaire* case, the Hague District Court found that the Netherlands acted unlawfully by pursing a climate policy that 'does not make an equitable contribution to the measures that must be taken worldwide to limit global warming to a maximum of 1.5°C.' The court cited, *inter alia*, the ICJ's Advisory Opinion in identifying the 1.5°C threshold as the standard of assessment.[6] Brazil's Ninth Federal Court of Porto Alegre, in a similar vein, quoting approvingly from the relevant paragraphs of the ICJ's Opinion, held 1.5°C as the standard of assessment, thus requiring authorities to take climate impacts into account in the licensing of coal-fired plants.[7] And, there are several cases in the pipeline where claimants are

[3] ibid para 224. Judge Tladi in his Declaration identifies this as one of the most significant contributions the ICJ makes. *Obligations of States in respect of Climate Change* (Declaration of Judge Tladi) 23 July 2025 <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-12-enc.pdf> accessed 1 March 2026 para 9.

[4] Although the Court explicitly read the 1.5°C goal as the agreed goal 'under the Paris Agreement', the interpretative approach the Court took that read all international obligations relating to climate change in a complementary fashion, premised on best available scientific information, and the fact that it raised the 'collective temperature goal' in the context of the duty to cooperate, implicitly signals a reach for 1.5°C goal beyond the UN climate treaties. ICJ Climate AO (n 2) para 305. 1.5C has been endorsed as the standard for assessment in the human rights context for several years, see below.

[5] See Greenpeace Netherlands and 8 citizens of Bonaire v. The Netherlands C/09/659832 / HA ZA 24-53 (Hague District Court, 28 January 2026) at para 12 <https://www.climatecasechart.com/documents/greenpeace-netherlands-and-8-citizens-of-bonaire-v-the-netherlands-decision_cfdf> accessed 1 March 2026. See also Greenpeace Nordic and Nature & Youth v. Ministry of Energy (Borgarting Court of Appeal, 14 November 2025).

[6] Ibid, para 4.37.

[7] *Instituto Preservar and others v União Federal and others* (9ª Vara Federal de Porto Alegre, Justiça Federal do Rio Grande do Sul, 28 August 2025) Public Civil Action No 5050920-75.2023.4.04.7100/RS, at 124-125. This decision has been overturned on appeal, and is awaiting a decision on merits, but the broader point remains that 1.5°C as the standard of assessment for state action (or lack thereof) has percolated down to national courts.

advancing arguments based on the ICJ's robust interpretation of the Paris Agreement's temperature goal.

Article 2.1 of the Paris Agreement identifies the purpose of the Agreement as '[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels…'. Although a plain reading of Article 2.1 suggests that 'well below 2°C' is the agreed goal, and '1.5°C' the reach goal, the ICJ found that '1.5°C has become the scientifically based consensus target under the Paris Agreement.'[8] The Court reached this conclusion based on two subsequent decisions of Parties. The first 'resolve[d] to pursue efforts to limit the temperature increase to 1.5°C'[9] and the second encouraged emissions targets 'aligned with limiting global warming to 1.5°C, as informed by the latest science, in the light of different national circumstances.'[10] In the Court's view, these decisions constituted 'subsequent agreements in relation to the interpretation of the Paris Agreement' within the meaning of Article 31(3)(a) of the Vienna Convention on the Law of Treaties,[11] and thus found 'the 1.5°C threshold' to be 'the primary agreed temperature goal for limiting the global average temperature increase under the Paris Agreement.'[12] The Court proceeded to find that the temperature goal in Article 2 constitutes the ''context' relevant for the interpretation of other obligations found elsewhere in the Paris Agreement, such as the mitigation obligations under Article 4,'[13] on which more below.

The Court's endorsement of the 1.5°C temperature goal is remarkable and (will no doubt be) remarkably consequential, in particular in national, regional and international courts.[14] There are clear and compelling reasons to strengthen the normative weight of the 1.5°C temperature goal.[15] First, in the decade since the Paris Agreement was adopted, there have been significant advances in the science. The 2018 Special Report on 1.5°C of the Intergovernmental Panel on Climate Change (IPCC) found discernible differences in impacts between 1.5°C and 2°C.[16] And, since the temperature goal in Article 2 is directly linked to the recognition that it 'would significantly reduce the risks and impacts of climate change,' advances in the science recognizing that there would be higher risks at the lower temperature threshold, offer a compelling reason to strengthen the lower end of the temperature goal in Article 2. Second, there have been significant policy and political advances in response to the science. In the 2021 Glasgow Climate Pact, Parties, guided by the 'the best available

[8] ICJ Climate AO (n 2) para 224.
[9] Decision 1/CMA.3, 'Glasgow Climate Pact' (8 March 2022) UN Doc FCCC/PA/CMA/2021/10/Add.1, para 21 ('Glasgow Climate Pact')
[10] Decision 1/CMA.5, 'Outcome of the first global stocktake' (13 December 2023) UN Doc FCCC/PA/CMA/2023/16/Add.1, para 39) ('UAE Consensus').
[11] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT) art 31.3(a).
[12] ICJ Climate AO (n 2) para 224.
[13] ICJ Climate AO (n 2) para 231.
[14] It is less clear what effect it will have on NDCs, or the climate negotiations, given decisions taken at the 2025 Belem conference of Parties did not contain any references to the ICJ's Advisory Opinion, the vast majority of 2035 NDC targets are not 1.5°C compatible, and only the recent NDCs of small island states refer to the Advisory Opinion. See CAT Climate Update Tracker, <https://climateactiontracker.org/climate-target-update-tracker-2035/> (accessed 1 March 2026); and, see for example the NDCs of the Bahamas, Tuvalu and Vanuatu <https://unfccc.int/NDCREG> (accessed 1 March 2026).
[15] See generally Joeri Rogelj and Lavanya Rajamani, 'The pursuit of 1.5°C endures as a legal and ethical imperative in a changing world' (2025) 389 (6757) Science 238.
[16] Valérie Masson-Delmotte and others (eds), *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways* (CUP 2018) Summary for Policy Makers ('IPCC, *Global Warming of 1.5°C*').

scientific knowledge',[17] shifted the emphasis in the global temperature goal from 'well below 2°C' to 1.5°C.[18] This shift in emphasis was confirmed in the 2022 Sharm el-Sheikh Implementation Plan,[19] and the 2023 UAE Consensus.[20] The 2021 Glasgow Climate Pact also created additional processes and mid-cycle check-in points for enhancing Parties' efforts.[21] These decisions, arrived at through consensus, generate a normative expectation that Parties' actions will be aligned with the 1.5°C temperature goal. Third, human rights treaty bodies have also for several years endorsed the 1.5°C temperature goal in the Paris Agreement as the level at which the most egregious impacts on human rights will be contained. In their joint statement in 2019, five human rights treaty bodies noted with concern that states' current contributions were insufficient to limit global warming to 1.5°C.[22] Using 1.5°C as the standard of assessment in the human rights context effectively operationalises the lower end of the temperature goal identified in the Paris Agreement. The normative weight of 1.5°C temperature goal has also been recognised by national,[23] regional,[24] and international courts.[25]

The ICJ, however, did not proffer any of these compelling reasons to strengthen the normative weight of the 1.5°C temperature goal. The Court limits itself to an assertion that the Glasgow Climate Pact and the UAE consensus, decisions by Parties, that shifted the emphasis within the temperature range from 'well below 2°C' to 1.5°C, represent subsequent agreement between Parties.[26] In an earlier paragraph, the ICJ explained that decisions of Parties 'may constitute subsequent agreements' in so far as 'such decisions express agreement in substance between the parties regarding the interpretation of the relevant treaty, and thus are to be taken into account as means of interpreting the climate change treaties.'[27] While this statement of the general position is of course accurate, the Court did not engage in an analysis of the decisions it cited to determine if these decisions indeed expressed 'agreement in substance' between the Parties as to the interpretation of the temperature goal and if yes, what precisely the agreement related to. Did Parties agree to discard the 'well below 2°C' end of the temperature range and focus exclusively on 1.5°C or did they agree to take 1.5°C more seriously (on paper, at least), considering the emerging scientific evidence on the severity of impacts even at 1.5°C? And, what precise 'legal effects' did these decisions have? The Court appears to interpret these decisions as discarding the 'well below 2°C' end of the temperature goal, however the plain text of these decisions, 'reaffirms' the full range from 'well below 2°C' to 1.5°C.[28] While references in the decisions of Parties since 2021 to the lower end of

[17] Paris Agreement (n 1) preambular recital 4.
[18] Glasgow Climate Pact (n 7) para 22.
[19] Decision 1/CMA.4, 'Sharm el-Sheikh Implementation Plan' (17 March 2023) UN Doc FCCC/PA/CMA/2022/10/Add.1, 2, paras 8, 15, 23.
[20] UAE Consensus (n 8) para 4.
[21] Glasgow Climate Pact (n 7) para 29.
[22] See eg UN Human Rights Office of the High Commissioner (OHCHR), 'Five UN human rights treaty bodies issue a joint statement on human rights and climate change' (16 September 2019) <https://www.ohchr.org/en/statements-and-speeches/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human> accessed 1 March 2026.
[23] VZW Klimaatzaak v. Kingdom of Belgium and Others (Court of Appeals Brussels, 30 November 2023) para 191.
[24] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* App no 53600/20 *(ECtHR*, 9 April 2024) para 106.
[25] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion, 21 May 2024) para 222 ('ITLOS Climate AO').
[26] ICJ Climate AO (n 2) para 224.
[27] ICJ Climate AO (n 2) para 184 (citing Conclusion 11 of 'Yearbook of the International Law Commission' (2018) A/CN.4/SER.A/2018/Add.1 (Part 2), the commentary to the text of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, 73, para 38.
[28] Glasgow Climate Pact (n 7) para 21 and UAE Consensus (n 8) para 3. See also for further critical commentary on the Court's approach on this issue, Stephen Humphreys, '1.5 at the ICJ' (25 August 2025) EJIL: Talk!

the temperature range in Article 2 have been increasing,[29] at no point is there a discernible 'agreement in substance' to discard the 'well below 2°C' end of the range. Quite the contrary. The only reference to 1.5°C in the decisions of the 2024 Baku conference is in the context of the full temperature range from 'well below 2°C' to 1.5°C.[30] And, even the cover decision of the 2025 Belem conference of Parties, adopted after the ICJ delivered its Advisory Opinion, reaffirms the full text of Article 2.1(a).[31] As the crossing of the 1.5°C threshold is imminent,[32] retaining the full range from 'well below 2°C' to 1.5°C offers a safety net for States that fear the political fallout that will likely flow from frustrating the Paris Agreement's purpose.

In any case, it is challenging to identify a consistent signal that can shape the evolving interpretation of treaty text from politically charged decisions reached by Parties at high-stakes conferences driven by popular demand for attention-grabbing outcomes. For instance, Judges Bhandari and Cleveland in their Joint Declaration cite the 2023 UAE Consensus as reflecting 'subsequent agreement' on the need to transition away from fossil fuels and require States to reflect this in their nationally determined contributions (NDCs).[33] Yet, the caveated language on 'transitioning away from fossil fuels'[34] that occurs in the UAE Consensus has not been repeated or built upon in subsequent conferences despite concerted efforts by the hosts, especially the Brazilian Presidency at the 2025 Belem conference.[35]

Judge Tladi in his Declaration, seemingly sensitive to the weakness in the Court's 1.5°C reasoning, locates the Court's interpretation more robustly in the Paris Agreement's 'science-based approach' and argues that given the state of the current scientific knowledge, holding 'well below 2°C' as the main temperature target would 'undermine the object and purpose of the Agreement.'[36] While this is an accurate representation of the science and needs of vulnerable States and peoples, a little more nuance and substantive grounding of the Court's reasoning on 1.5°C would have strengthened the Opinion.

Be that as it may, having identified 1.5°C temperature goal as Parties' primary agreed temperature goal, the Court found that the temperature goal is 'the 'context' relevant for the interpretation of other obligations found elsewhere in the Paris Agreement, such as the

---

<https://www.ejiltalk.org/1-5-at-the-icj/> accessed 1 March 2026; Daniel Bodansky and Susan Biniaz, 'The ICJ's Advisory Opinion on Climate Change: Does It Throw a Wrench into the Negotiator's Toolbox of Diplomatic Problem-Solving Techniques?' (23 September 2025) EJIL: Talk! <https://www.ejiltalk.org/the-icjs-advisory-opinion-on-climate-change-does-it-throw-a-wrench-into-the-negotiators-toolbox-of-diplomatic-problem-solving-techniques/> accessed 1 March 2026.

[29] The texts of the 2021 Glasgow Climate Pact (n 7) and 2022 Sharm-el Sheik Implementation Plan had 4 references to 1.5°C, the 2023 UAE consensus (n 8) had 12 references, and the 2025 Global Mutirão decision had 13 references.

[30] Decision 1/CMA.6, 'New collective quantified goal on climate finance' (27 March 2025) UN Doc FCCC/PA/CMA/2024/17/Add.1, para 1.

[31] Draft decision -/CMA 7, 'Global Mutirão: Uniting humanity in a global mobilization against climate change' (22 November 2025) UN Doc FCCC/PA/CMA/2025/L.24, para 6. ('Global Mutirão'). This could be read at worst as a rejection or at best as studied indifference of the ICJ's interpretation of the 1.5°C goal.

[32] Piers M Forster et al, 'Indicators of Global Climate Change 2024: annual update of key indicators of the state of the climate system and human influence' Earth System Science Data 17(6) (19 June 2025) < https://essd.copernicus.org/articles/17/2641/2025/> accessed 1 March 2026 (finding that 'human-induced global warming rates are at their highest historical level, and 1.5 °C global warming might be expected to be reached or exceeded in around 5 years..').

[33] *Obligations of States in respect of Climate Change* (Joint declaration of Judges Bhandari and Cleveland) 23 July 2025 <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-06-en.pdf> accessed 1 March 2026 para 20.

[34] UAE Consensus (n 8) para 28 (d). The chapeau to para 28 'calls on Parties to contribute'… 'in a nationally determined manner' to inter alia 'transitioning away from fossil fuels in energy systems'.

[35] See Georgina Rannard, 'UN climate talks fail to secure new fossil fuel promises' (*BBC News*, 22 November 2025) <https://www.bbc.co.uk/news/articles/c75vn7yel73o> accessed 1 March 2026.

[36] Declaration of Judge Tladi (n 3) paras 10-13.

mitigation obligations under Article 4.'[37] The precise role this 'context' plays in the ICJ's interpretation of the Paris Agreement's mitigation obligations will be discussed below.

3 DISCIPLINING NATIONAL DETERMINATION

The ICJ's interpretation of the Paris Agreement's core mitigation obligations seeking to discipline national determination is perhaps its second most significant contribution to international climate change law. National determination, and the discretion that flows from it, is part of the design logic of the Paris Agreement.[38] It is explicitly and implicitly privileged in the core GHG mitigation provisions of the Paris Agreement, in the Rules operationalizing these provisions, as well as in numerous decisions of Parties.[39] Indeed, in a provision emblematic of the centrality of national determination to the consensus underpinning the Paris Agreement – the UAE consensus 'reaffirms the nationally determined nature of nationally determined contributions…'.[40] Yet it is the privileging of national determination in the architecture of the Paris Agreement that has led to a breathtaking array of contributions from Parties, reflecting differing levels of credibility and ambition, that collectively fall short of what is necessary to achieve the temperature goal.[41] It is in this context that the ICJ's finding that the 'discretion of parties in the preparation of their NDCs is limited'[42] and that 'NDCs must satisfy certain standards under the Paris Agreement'[43] assumes significance.

3.1 Calibrated Mix of Obligations

The ICJ interprets Article 4. 2, the central obligation relating to GHG mitigation in the Paris Agreement, in line with the scholarship,[44] as a calibrated mix of different types of obligations. The first sentence of Article 4.2 requires Parties to 'prepare, communicate and maintain'

---

[37] ICJ Climate AO (n 2) para 231.

[38] National determination is zealously guarded by the major emitters. See eg *Obligations of States in respect of Climate Change* (Written statement of China) 22 March 2024 <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-19-00-en.pdf> accessed 1 March 2026 para 39: 'Nationally determined climate action is the principal approach of addressing climate change'. See also ibid (Written statement of the United States of America) 22 March 2024 <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-06-00-en.pdf> accessed 1 March 2026 para 4.24: 'A determination of what measures are 'appropriate' necessarily should be informed by what actions States have taken to address a particular problem. Where States have decided almost universally on a particular approach to addressing a problem—which is the case with respect to the Paris Agreement's nationally determined approach to mitigation of anthropogenic GHG emissions—that approach should be considered a reasonable or appropriate approach'.

[39] See for a full discussion, Lavanya Rajamani, 'Interpreting the Paris Agreement in its Normative Environment' (2024) 77(1) CLP 167 ('Interpreting Paris in its Normative Environment').

[40] UAE Consensus (n 8) para 39.

[41] See 'The Climate Action Thermometer' <https://climateactiontracker.org/global/cat-thermometer/> accessed 1 March 2026. See also UNFCCC, '2025 NDC Synthesis Report' <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs/2025-ndc-synthesis-report> accessed 1 March 2026; UNFCCC, '2024 NDC Synthesis Report' <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs/ndc-synthesis-report/2024-ndc-synthesis-report> accessed 1 March 2026; UNFCCC, 'Outcome of the first global stocktake' <https://unfccc.int/topics/global-stocktake/about-the-global-stocktake/outcome-of-the-first-global-stocktake> accessed 1 March 2026.

[42] ICJ Climate AO (n 2) para 245.

[43] ICJ Climate AO (n 2) para 249.

[44] See eg Benoit Mayer, 'International Obligations Arising in relation to Nationally Determined Contributions' (2018) 7(2) Transnational Environmental Law 251; Lavanya Rajamani, 'Due Diligence in International Climate Change Law' in Heike Krieger, Anne Peters, and Leonard Kreuzer (eds), *Due Diligence in the International Legal Order* (OUP 2020) 163; and Christina Voigt 'The power of the Paris Agreement in international climate litigation' (2023) 32(2) RECIEL 237.

successive NDCs that it intends to achieve. The second sentence requires Parties to 'pursue domestic mitigation measures, with the aim of achieving the objectives' of their successive NDCs. The ICJ interprets the first sentence as comprising a procedural obligation (to submit an NDC) and an obligation of result (as failure to submit an NDC would constitute a breach).[45] It interprets the second sentence as a substantive obligation (to pursue domestic mitigation measures) and an obligation of conduct.[46]

The Court makes it clear that the distinction between obligations of conduct and result is not necessarily 'impermeable', some obligations may exhibit characteristics of both, and that the two types of obligations coexist and seek to achieve the same objectives through different means.[47] In this vein it reads UNFCCC Article 4.2 (a), that requires developed countries to 'adopt national policies and take corresponding measures' as an obligation of result that requires that 'policies so adopted and the measures so taken must be such that they are able to achieve the required goal.'[48] The Court proceeds to note that adopting policies and measures 'as a mere formality is not sufficient to discharge the obligation of result.'[49] Extrapolating from its analysis of the obligation of result in UNFCCC Article 4.2 (a) to adopt national policies and take corresponding measures, the Court interprets Paris Article 4.2 to find that the 'mere formal preparation, communication and maintenance of successive NDCs is not sufficient to comply with the obligation under Article 4' and 'the content of the NDC is equally relevant to determine compliance.'[50] While this is an intuitively appealing conclusion, it is worth examining the Court's logic in extending its analysis of FCCC Article 4.2(a) to Paris Article 4.

The FCCC Article 4.2 (a) obligation to adopt national policies and take corresponding measures is a *substantive* obligation of result, whereas most of the obligations the Court identifies as obligations of result in relation to Paris Article 4 - the obligation contained in the first sentence of Article 4.2 (obligation to prepare, communicate and maintain successive NDCs), Article 4.9 (obligation to prepare NDCs every five years), Article 4.13 (obligation to account for NDCs) and 4.12 (obligation to register NDCs) - are *procedural* obligations. In particular, the obligation to prepare, communicate and maintain successive NDCs in the first sentence of Article 4.2 is a *procedural* obligation. It is an obligation of result in that Parties are obliged to submit the NDC and not just make their best efforts to do so, but it is nevertheless a procedural obligation to submit an NDC. Thus, while content-based requirements can be plausibly read into the *substantive* obligation in FCCC Article 4.2 (a), as the Court has done, doing so with respect to the *procedural* obligation in the first sentence of Paris Article 4.2 is a bit more of a stretch. Parties can be held to account for breaching Paris Article 4.2 if they do not submit an NDC within the prescribed timeframes, and the Paris Agreement's compliance committee is authorised to do so and has done so, as we shall see below, but Parties are only held to account for the breach of the procedural obligation to submit an NDC, not for its content.[51]

After a discussion on the mix of obligations in Article 4, the Court turns to the crucial question of whether the content of the NDCs is left to the discretion of each Party.[52] After observing that Article 4.2 'neither sets forth requirements for the content of the NDCs nor

[45] ICJ Climate AO (n 2) para 235.
[46] ICJ Climate AO (n 2) para 251.
[47] ICJ Climate AO (n 2) para 175.
[48] ICJ Climate AO (n 2) para 208.
[49] ibid.
[50] ICJ Climate AO (n 2) para 236.
[51] See below notes accompanying (n 94) to (n 97).
[52] ICJ Climate AO (n 2) para 237-249.

indicates that the parties have unfettered discretion in their preparation',[53] it proceeds to find 'expectations and standards' in Article 4.3.

3.2 Prescriptive Standards

The Court interprets Article 4.3 to do two things. First, it reads the text of Article 4.3 as 'prescriptive' rather than 'merely hortatory' and second, it introduces concrete content-based standards for NDCs, both of which discipline national determination. The reasoning for the first is on shakier ground than the second.

3.2.1 Prescriptive

Article 4.3 reads, '[e]ach Party's successive nationally determined contribution *will* represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.'[54] Although the court acknowledges that Article 4.3 uses the term 'will' rather than the 'prescriptive term 'shall'' it proceeds to find that the term ''will' is used here in the prescriptive sense'.[55] While the sentiment animating this finding is intuitively appealing, the logic is less so. Eleven of the nineteen provisions on mitigation in Article 4 of the Paris Agreement use the term 'shall'[56] denoting a mandatory obligation, three use the term 'should' signalling a recommendation, two use the permissive 'may',[57] and one uses the term 'can'.[58] The term 'will' occurs three times.[59] The use of these terms is deliberate and driven by the nature of the obligation that Parties chose to set for themselves in each provision.

In addition to its use in Article 4.3, the term 'will' is used in Article 4 in the following contexts: 'recognizing that peaking *will* take longer for developing countries'[60] and 'recognising that enhanced support for developing country Parties *will* allow for higher ambition in their actions'.[61] Neither of these occurrences of 'will', read in context, merit either a prescriptive or a hortatory reading. Parties, it would appear, used 'will' to signal a prediction. Admittedly the use of 'will' in Article 4.3 – Party's successive NDC 'will represent a progression…' is imbued with an expectation rather than merely reflecting a value-neutral prediction. However, to interpret 'will' in Article 4.3 as prescriptive is out of kilter both with the rest of the provisions in which Parties have used 'shall' in a prescriptive sense as well as those in which they have used 'will' in a predictive sense. Thus, the more defensible interpretation of Article 4.3 is that it is neither hortatory nor prescriptive. It is predictive with a strong normative expectation that Parties' successive NDCs are to represent a progression from their previous and to reflect their highest possible ambition, but they are not obliged or mandated to do so. Nevertheless, the Court's interpretation of Article 4.3 was designed to strengthen its legal character, and it did so along some dimensions but not on others, as we shall see below.

3.2.2 Standards

[53] ICJ Climate AO (n 2) para 239.
[54] Paris Agreement (n 1) Article 4.3 (emphasis added).
[55] ICJ Climate AO (n 2) para 240.
[56] Articles 4.2, 4.5, 4.8, 4.9, 4.10, 4.12, 4.13, 4.15, 4.16, 4.17 and 4.18.
[57] Articles 4.6 and 4.11.
[58] Article 4.7.
[59] Articles 4.1, 4.3 and 4.5. (Article 4.5 contains both a 'shall' and a 'will' in different sub clauses).
[60] Article 4.1.
[61] Article 4.5.

Having read Article 4.3 as imposing prescriptive requirements on Parties, the Court proceeds to mine this Article for concrete standards that Parties' NDCs must comply with. The Court finds that Parties' NDCs:

> -'must become more demanding over time' which the Court links to UNFCCC Article 4.2(a) which requires developed countries to take mitigation measures and the customary duty of harm prevention which requires States to exercise due diligence, including with respect to setting NDCs.[62]
> -'must reflect its highest possible ambition'[63] which the Court interprets as imposing content-related requirements on States such that 'the content of a party's NDC must, in fulfilment of its obligations under the Paris Agreement, be capable of making an adequate contribution to the achievement of the temperature goal.'[64]

Judges Bhandari and Cleveland in their Joint Declaration go further and interpret Articles 2, and 4, specifically, progression and highest possible ambition, as requiring NDCs to address 'all fossil fuel production, licensing and subsidy activities in a manner consistent with achieving the 1.5°C temperature goal.'[65]

The Court also identifies the requisite standard of conduct for States in preparing their NDCs. Parties 'are obliged to exercise due diligence and ensure that their NDCs fulfil their obligations under the Paris Agreement' with reference to the 1.5°C temperature goal.[66] The Court recognises that the standard of due diligence 'varies' but 'because of the seriousness of the threat posed by climate change' the standard of due diligence to be applied to the preparation of NDCs is 'stringent'. This means that 'each party has to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realise the objectives of the Agreement.'[67] However, the Court recognises that this standard, consistent with the principle of common but differentiated responsibilities and respective capabilities (CBDR), will vary depending on 'historical contributions to cumulative GHG emissions, and the level of development and national circumstances of the party in question.'[68]

Unlike its reasoning on 1.5°C and on the nature of the Article 4.3 obligation, the ICJ offers a robust defence of its finding that the Paris Agreement, read in context, implicitly, imposes content-related requirements of States. These requirements, and the stringent standard of due diligence, that the Court identifies, emerge organically from a reading of the Paris Agreement in its normative environment, in light of the latest science, and in keeping with findings of international courts and tribunals.[69] Admittedly, the specific requirements the Court identifies, and indeed even the imposition of content-related requirements, does not reflect agreement among Parties to the UN climate treaties. Parties have been considering the

---

[62] ICJ Climate AO (n 2) para 241.
[63] ICJ Climate AO (n 2) para 242.
[64] ICJ Climate AO (n 2) para 242.
[65] Joint declaration of Judges Bhandari and Cleveland (n 30) para 19.
[66] ICJ Climate AO (n 2) para 245.
[67] ICJ Climate AO (n 2) para 246.
[68] ICJ Climate AO (n 2) para 247.
[69] Daniel Billy and others v. Australia (Torres Strait Islanders Petition) CCPR/C/135/D/3624/2019 (UN Human Rights Committee, 23 September 2022) <https://www.climatecasechart.com/documents/daniel-billy-and-others-v-australia-torres-strait-islanders-petition-decision_951a> accessed 1 March 2026; ITLOS Climate AO (n 22); *Climate Emergency and Human Rights*, Advisory Opinion AO-32/25, Inter-American Court of Human Rights Series A No 32 (29 May 2025).

issue of 'features' of NDCs for well over a decade, with no resolution in sight.[70] Parties disagree on whether there should be guidance on features (as it would constrain national determination), if yes, whether that guidance should be just on mitigation-related features of NDCs or also extend to adaptation and support, and if it is just on mitigation, what those features should be.[71] Indeed, even after the ICJ's Advisory Opinion that infused content-related requirements into NDCs aligned to 1.5°C, the 2025 Global Mutirão decision merely 'encourages' Parties to align their NDCs towards global net zero by or around mid-century 'with a view to keeping 1.5°C within reach.'[72]The Court, however, adopted an interpretative approach anchored in an understanding of international climate law as premised on science, and a seamless web of inter-locking norms including duties to prevent harm and cooperate, rather than of particular treaties functioning as atomistic reflections of state consent in that area.

Moving on to the Court's treatment of the CBDR principle. The Court's approach is intriguing for two reasons. First, while CBDR is a relevant factor in varying the standard of due diligence,[73] and the Court rightly raises the principle in this context, the fact that it chose not to identify the principle as part of the content-based requirements it identifies as applying to NDCs is telling. The text of Article 4.3 places three normative expectations on States' successive NDCs – progression, highest possible ambition, and common but differentiated responsibilities and respective capabilities, in light of different national circumstances. Yet, the Court, chose to address CBDR not *as part of* the content-based requirements placed on NDCs but as a factor that could vary the standard of due diligence that attaches to a State's preparation of its NDCs, thus arguably diluting the salience of CBDR in Article 4.3. Second, the Court identifies specific criteria to operationalise CBDR in this context – historical contributions to cumulative GHG emissions, level of development, and national circumstances.[74] Earlier in the Opinion, the Court interprets the CBDR principle in the context of the climate treaties to identify a list of (partially overlapping but not identical) criteria – historical *and current contributions* to cumulative GHG emissions, *current capabilities* and national circumstances, including their economic and social development.[75] It could be argued that the Court understood national circumstances as including current contributions and capabilities, and thus did not deem it necessary to specifically list those in this context, but the exclusion of current contributions and capabilities in the context of varying the standard of due diligence that attaches to States in the preparation of their NDCs is intriguing. It is a separate matter that there are limited avenues within the Paris Agreement to consider these criteria and operationalise CBDR, whether in the context of prescribing standards for NDCs or varying the standard of due diligence.[76] And, the ICJ's showcasing and

[70] See Decision 1/CP.21, 'Adoption of the Paris Agreement' (29 January 2016) UN Doc FCCC/CP/2015/10/Add.1, para 26 (Parties agreed to continue consideration on features of NDCs); Decision 4/CMA.1, 'Further guidance in relation to the mitigation section of decision 1/CP.21' (19 March 2019) UN Doc FCCC/PA/CMA/2018/3/Add.1 ('Paris Rulebook Mitigation Decision') para 20 (Parties agreed to continue consideration on features of NDCs in 2024); 'Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its sixth session, held in Baku from 11 to 24 November 2024' (27 March 2025) UN Doc FCCC/PA/CMA/2024/17, para 49 (Parties agreed to continue consideration on features of NDCs in 2026).

[71] See for a representative sample of recent views of Parties, 'Further guidance on features of nationally determined contributions, referred to in paragraph 26 of decision 1/CP.21: Compilation of in-session submissions' (18 November 2024) UN Doc CRP.CMA6.i7.2.

[72] See (n 31) at para 35.

[73] See for a full discussion Rajamani, 'Interpreting Paris in its Normative Environment' (n 36).

[74] ICJ Climate AO (n 2) para 247.

[75] ICJ Climate AO (n 2) para 148.

[76] See for a full discussion, Lavanya Rajamani, 'Untangling the Gordian Knot: Differentiation in the ICJ's Advisory Opinion on Climate Change' (2026) Journal of Environmental Law (forthcoming).

recognition of 'historical contributions' – a long-standing bone of contention in the climate negotiations – has decisively resolved the debate, at least on paper, but not the problem.[77]

Nuance-picking aside, the Court – in reading into the core mitigation provisions of the Paris Agreement a 'prescriptive sense' and identifying distinct content-related standards that apply to NDCs, based on an interpretative approach that privileges best available science and planetary health over politics – the ICJ purposively disciplines and channels national determination in the Paris Agreement. To what extent, however, does the Court's robust interpretation of the core mitigation obligations in the Paris Agreement strengthen their legal character and enhance their operational impact?

4 STRENGTHENING LEGAL CHARACTER

The ICJ's interpretation of the core mitigation provisions strengthens their legal character along some dimensions but not on others leaving its operational impact in suspense. The legal character of a provision refers to the extent to which the provision creates rights and obligations for Parties, sets standards for State behaviour, and lends itself to assessments of compliance/non-compliance, and the resulting visitation of consequences. Ultimately the legal character of a provision may determine how effective the provision is in inducing the desired behavioural change to meet the purpose of the agreement. The legal character of a provision can be assessed along several dimensions[78] including in particular for current purposes: *normative content*, specifically, how unambiguously the provision sets standards for State behaviour; *language*, in particular whether the provision uses imperative verbs such as 'shall' or recommendatory ones such as 'should'; *precision*, that is how precise the provision is in the requirements it places on Parties; and, *oversight and review*, specifically how rigorous the institutional mechanisms to ensure oversight of the provision are.[79]

4.1 Normative Content, Language, and Precision

It follows from the discussion in the previous section that the ICJ strengthened the legal character of the core mitigation provisions along several dimensions. In reading specific content-related standards for NDCs into these provisions, and subjecting States to a stringent standard of due diligence in preparing NDCs, the Court strengthened their normative content and precision. And, in reading a 'prescriptive sense' into Article 4.3, indeed in reading a 'shall' into a 'will', it strengthened the language in that crucial provision. The ICJ therefore

[77] ibid.

[78] See Lavanya Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations' (2016) 28(2) Journal of Environmental Law 337. See, for variations on these elements, Jake Werksman, 'Legal Symmetry and Legal Differentiation Under a Future Deal on Climate' (2010) 10(6) Climate Policy 672; Jake Werksman, 'Remarks on the International Legal Character of the Paris Agreement' (2016) 34(1) Maryland Journal of International Law 343. See also, Daniel Bodansky, 'The Legal Character of the Paris Agreement' (2016) 25(2) Review of European, Comparative and International Environmental Law 142; Ralph Bodle and Sebastian Oberthür, 'Legal Form of the Paris Agreement and the Nature of its Obligations', in Daniel Klein and others (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (OUP 2017) 91; Kenneth W. Abbott and others, 'The Concept of Legalization' (2000) 54(3) International Organization 401.

[79] Other dimensions include location, that is where the provision is located, whether in the preamble, an operational part of the treaty or an Annex; and subjects, that is how clearly the subjects or actors are identified in the provision. Admittedly, some dimensions of legal character such as 'precision' are relevant in relation to the operational impact of political agreements or soft law instruments as well. There is, however, in my reading, a spectrum of legality among the provisions of international treaties, and the dimensions identified here strengthen or weaken the legality of provisions. This reading is premised on an understanding of a distinction between the *legal form* of an instrument, which is a binary matter - an instrument either is or is not binding - and the *legal character* of provisions within a binding instrument which occupy different positions on a spectrum of legality based on the identified dimensions.

reinforced normative content, precision and language in the core mitigation provisions in the Paris Agreement. However, for legal character to be strengthened overall and translate into operational outcomes within the UN climate regime, the oversight and review mechanisms would also need to be aligned. This unfortunately is where the train comes to a grinding halt.

4.2 Oversight and Review

The Paris Agreement's oversight and review mechanisms comprise a set of informational requirements and processes. Parties are required to submit information both with their NDCs[80] and after.[81] This information feeds into processes including those relating to the enhanced transparency framework,[82] implementation and compliance,[83] and the global stocktake.[84] These informational requirements and processes, premised on national determination, neither permit content-based oversight nor review the adequacy of Parties NDCs.

4.2.1 Ex-ante informational requirements

The Paris Agreement and Rulebook contain detailed guidance on information to be submitted by a Party with its NDC, but the guidance requires Parties to provide the listed information only 'as applicable' to their NDC.[85] This caveat allows Parties to determine their informational requirements through their choice of NDC. These informational requirements include information from Parties on how 'the Party considers' their NDC is fair and ambitious, has addressed Article 4.3, and contributes towards achieving the objective of the Convention and Paris Agreement.[86] This too allows Parties to (nationally) determine and advance their own preferred narrative on how they consider that their NDC is fair and ambitious, reflects progression and highest possible ambition and contributes to 1.5°C.[87]

4.2.2 Enhanced Transparency Framework

The Paris Agreement and Rulebook create an elaborate set of informational requirements and processes to track progress in Parties' implementation and achievement of their NDC.[88] This includes tracking both the targets, policies, and measures contained in Parties' NDCs, the 'content' of their NDCs, as it were, as well as the domestic mitigation measures that Parties

[80] Paris Rulebook Mitigation Decision (n 67).
[81] Article 13.7; Decision 18/CMA.1, 'Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement' (19 March 2019) UN Doc FCCC/PA/CMA/2018/3/Add.2 ('Paris Rulebook Transparency Decision').
[82] Article 13; Paris Rulebook Transparency Decision (n 77) 18.
[83] Article 15; Decision 20/CMA.1, 'Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement' (19 March 2019) UN Doc FCCC/PA/CMA/2018/3/Add.2, 59 ('Paris Rulebook Compliance Decision').
[84] Article 14; Decision 19/CMA.1, 'Matters relating to Article 14 of the Paris Agreement and paragraphs 99-101 of decision 1/CP.21' (19 March 2019) UN Doc FCCC/PA/CMA/2018/3/Add.2, 53 (Paris Global Stocktake Decision').
[85] Article 4.8; Paris Rulebook Mitigation Decision (n 67) para 7.
[86] ibid paras 6 (a) (c) and 7 (a) and (b).
[87] A review of NDCs for their 'fairness' narratives suggests that Parties use objective indicators subjectively and in self-serving ways to advance their preferred narratives. See Lavanya Rajamani and others, 'National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law' (2021) 21(8) Climate Policy 983, for a discussion of fairness indicators.
[88] Article 13.7; Paris Rulebook Transparency Decision (n 77) Annex, Chap III, 27-33.

are taking to meet these targets.[89] Parties are required to submit this information in their biennial transparency report.[90] Parties continue to retain discretion and flexibility in relation to tracking. First, the rules require Parties to provide information relating to their NDCs, against which progress is to be tracked, only 'as applicable'.[91] The use of the term 'as applicable' permits Parties the discretion to self-characterise their NDC and thus choose the corresponding informational requirements to fulfil.[92]

The information submitted by Parties is reviewed at the technical level through the technical expert review and at the political level through the facilitative multilateral consideration of progress.[93] At the technical level, the information Parties provide is subject to consistency and clarity but (expressly) not adequacy checks. Indeed, the rules prohibit the technical expert review teams in mandatory language ('shall not') from making 'political judgments' or reviewing the 'adequacy or appropriateness' of a Party's NDC, domestic actions, or support provided.[94] At the political level, Parties are required to participate in a 'facilitative multilateral consideration of progress' but in line with the general deference to national autonomy, the consideration is only with respect to 'implementation and achievement' of a Party's NDC, not with respect to its adequacy or ambition.[95]

4.2.3 Implementation and Compliance

The Paris Agreement's implementation and compliance mechanism comprises a committee that is 'expert-based and facilitative', and functions in a manner that is 'transparent, non-adversarial and non-punitive'.[96] The Paris Rulebook identifies ways of initiating the committee's consideration of an implementation and/or compliance issue, outlines the process that the committee is to follow, and describes the outputs of the committee's process and the measures it can take.[97] The committee is only authorised to initiate consideration of issues in relation to Parties on a sub-set of the binding procedural obligations in the Paris Agreement.[98] This includes the binding obligation to submit an NDC.[99] That the committee works efficiently within its mandate is evident from the fact that consideration has been initiated against 171 Parties thus far for the breach of this procedural obligation.[100] The implementation and compliance committee is, however, expressly not authorised to address the 'content of the contributions, communications, information and reports'.[101]

4.2.4 The Global Stocktake

---

89 Paris Rulebook Transparency Decision (n 77) Annex, Chap III.B, 28 and Chap III.D, 31-32.
90 Paris Rulebook Transparency Decision (n 77) Annex, Chap I.E, 21, para 10(b).
91 Paris Rulebook Transparency Decision (n 77) Annex, Chap III.B, 28, para 64 chapeau.
92 ibid.
93 Article 13.11.
94 Paris Rulebook Transparency Decision (n 77) Annex, Chap VII.A, 46, paras 149(a) and (b).
95 Article 13.11.
96 Article 15.2.
97 Paris Rulebook Compliance Decision (n 79) Annex, 61.
98 Paris Rulebook Compliance Decision (n 79) Annex, Chap III, 62, para 22(a) (these are the binding procedural obligations in Articles 4.2, 13.7, 13.11 and 9.5). The rules, as a matter of abundant caution, note that 'nothing in the work of the Committee may change the legal character of the provisions of the Paris Agreement'. Ibid, para 19(a).
99 ibid para 19(a) (i).
100 'Report of the 13th meeting of the Paris Agreement Implementation and Compliance Committee' UN Doc PAICC/2025/M13/3 (1-4 April 2025) <https://unfccc.int/sites/default/files/resource/Report_on_the_13th_meeting_of_the_PAICC.pdf> accessed 1 March 2026, para 16.
101 Paris Rulebook Compliance Decision (n 79) Annex, Chap III, 62, para 23.

The Paris Agreement's global stocktake assesses 'collective progress towards achieving the purpose of this Agreement and its long-term goals,' every five years. The first concluded in 2023 and the second will begin shortly. The Paris Agreement and the Rulebook ensure that the global stocktake, in keeping with the rest of the informational requirements and processes, is ultimately deferential to national determination. The Paris Agreement requires that the outcome of the stocktake inform Parties in updating and enhancing their actions and support, but this need only be done 'in a nationally determined manner'.[102] Further, as the stocktake is only authorised to consider 'collective' progress, not 'individual', Parties are insulated from any assessments of adequacy in relation to their actions.[103] The Paris Rulebook, consistent with the Paris Agreement, specifies that the stocktake will be 'a Party-driven process',[104] will not have an 'individual Party focus', and will include only 'non-policy prescriptive consideration of collective progress'.[105] In line with these rules the 2023 Outcome of the first Global Stocktake, after highlighting significant gaps in mitigation ambition, called on Parties to 'contribute' to an identified list of 'global efforts' – including tripling renewable energy capacity globally, accelerating efforts towards the phase down of unabated coal power, and transitioning away from fossil fuels in energy systems – but to do so in a 'nationally determined manner'.[106] The latest UNFCCC NDC Synthesis Report, that reviewed 64 NDCs submitted in 2024-2025, noted that 88 per cent of Parties had indicated that their NDCs were informed by the outcomes of the global stocktake and 80 per cent had specified how.[107]

It is evident from the discussion above that the Paris Agreement's oversight and review mechanisms, while largely functioning as intended by Parties, overwhelmingly privilege national determination, and are fundamentally (and expressly) limited in their ability to challenge or review the content or adequacy of NDCs. The ICJ's interpretation of the core mitigation obligations, premised on the understanding that 'content of the NDCs is […] relevant to determine compliance,'[108] imposes 'expectations and standards' on NDCs and attaches a 'stringent' standard of due diligence to States in relation to their NDCs. Yet, the oversight and review mechanisms relating to these NDCs are content-independent.

In its robust interpretation of the Paris Agreement's mitigation provisions, the Court strengthens some dimensions of legal character but given the fundamentally content-independent character of the oversight and review mechanisms, the Court arguably just serves to accentuate the chasm between the strengthened normative framework and the ability of the existing institutional arrangements to deliver on it.

5 CONCLUSION

The ICJ, tasked with responding to legal questions concerning an 'existential problem of planetary proportions that imperils all forms of life and the very health of the planet',[109] provided a robust scientifically grounded, normatively progressive and analytically rich interpretation of the Paris Agreement's core mitigation provisions. The ICJ took the metaphorical 'bull by the horns' and sought to discipline national determination in service of

[102] Article 14.3.
[103] Article 14.1.
[104] Paris Rulebook Global stocktake decision (n 80) 54, para. 10.
[105] ibid para 14.
[106] UAE Consensus (n 8) para 28.
[107] 'Nationally determined contributions under the Paris Agreement', Synthesis Report by the Secretariat, FCCC/PA/CMA/2025/8 (28 October 2025) < https://unfccc.int/sites/default/files/resource/cma2025_08.pdf> accessed 1 March 2026.
[108] ICJ Climate AO (n 2) para 236.
[109] ICJ Climate AO (n 2) para 456.

the planet and its people. In doing so, its interpretation strengthened the legal character of the Paris Agreement's mitigation obligations along some dimensions, notably normative content, language, and precision. The operational impact of such strengthening within the UN climate regime, is likely, however, to be muted by the design of the Paris Agreement's oversight and review processes which do not permit content-dependent oversight of Parties' actions.

This metaphorical 'slip between the cup and the lip' exposes the tension at the heart of the ICJ's interpretation of the Paris Agreement's mitigation obligations. The Paris Agreement, while a diplomatic triumph at the time, is a fundamentally limited legal instrument that relies for its effectiveness on a sense of ownership and good faith investment from States in the climate project. Given the alarming consequences of climate change, and an impending failure to deliver on this project, the Court attempted to infuse a 'sense of prescriptiveness' into the equation to make the Paris Agreement a better fit for its planetary purpose. The ICJ's interpretative approach (and thus the outcome) reflects a rich account of international legal resolve relating to climate change – one that implicitly rejects narrow, atomistic and (exclusively) consent-based understandings of key provisions of the Paris Agreement. This interpretative approach rose magnificently to the moment and responded with a flourish to the urgency and scale of the climate challenge. Whether in doing so the Court went beyond its judicial function is contested terrain, and one that this article does not enter. No doubt others will argue and address this challenge. It is evident, however, from the tenor and tone of the Court's Opinion, that the Court was acutely conscious of the importance as well as the limits of its role in addressing this existential crisis. The Court took a stand for vulnerable nations and peoples, and whether the Opinion is likely to mould state behaviour or not, it will, likely have considerable purchase and authority in the evolution of climate governance, as well as in climate litigation, and the wider landscape of actions and actors.

ACKNOWLEDGEMENTS

I acted as external counsel for Vanuatu in the ICJ's Advisory Opinion on Climate Change, but this article reflects my personal academic opinion. I am grateful to Daniel Bodansky, Jutta Brunnée, Jacob Werksman and Ginevra Le Moli for helpful comments on an earlier draft of this article.

AUTHOR BIOGRAPHY

Lavanya Rajamani is Professor of International Environmental Law, Faculty of Law and Yamani Fellow in Public International Law, St Peter's College, Oxford.