

# Analysis of International Advisory Opinions on Climate Change



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Ella Nightengale-Luhan

[eb.nightengale3@gmail.com](mailto:eb.nightengale3@gmail.com)

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## Introduction

The year 2024 has seen significant evolution of climate change law, punctuated by three advisory opinions that are set to be released in the years 2024-2026 from the International Tribunal for Law of the Sea, the International Court of Justice, and the Inter-American Court of Human Rights.

The International Tribunal for the Law of the Sea released the first-ever advisory opinion on climate change in May 2024. One of the Tribunal's significant findings is that Greenhouse Gasses (GHGs) are a marine pollutant, and, as such, parties to the United Nations Convention on the Law of the Sea are obligated to take actions to control them. Those who work in the climate security sector await the other two pending advisory opinions on climate change from the International Court of Justice and the Inter-American Court of Human Rights. These advisory opinions are evolving at the same time as climate litigation across the globe. Notably, in June 2024, the European Court of Human Rights ruled in favor of the group, Senior Women for Climate Protection Switzerland, which claimed that heat waves caused by climate change put their lives at stake. The Court ruled in the group's favor, setting precedent for much of Europe. However, shortly thereafter, the Swiss Parliament voted to reject the ruling. In light of this ruling and subsequent rejection, it is imperative that climate security professionals watch the application of international advisory opinions even closer as they shape international law going forward.

The opinions from these international bodies could influence the pace for climate change action and encourage member and nonmember states to take steps to address climate change impacts on security. Climate change affects food security, water security and environmental change, which all shape global state relationships. Climate change impacts can exacerbate challenging geopolitical dynamics between states, especially those that are facing more serious consequences of climate change, such as increased heat waves, rising sea levels, and desertification.<sup>1</sup> In particular, these vulnerable states are looking to international courts for potential solutions.<sup>2</sup> It is also increasingly recognized that the burden of adapting to and mitigating climate change will increasingly fall on younger generations and without

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<sup>1</sup> CLIMATE CHANGE AND INTERNATIONAL RESPONSES INCREASING CHALLENGES TO US NATIONAL SECURITY THROUGH 2040, NATIONAL INTELLIGENCE ESTIMATE, [HTTPS://WWW.DNI.GOV/FILES/ODNI/DOCUMENTS/ASSESSMENTS/NIE\\_CLIMATE\\_CHANGE\\_AND\\_NATIONAL\\_SECURITY.PDF](https://www.dni.gov/files/ODNI/documents/assessments/NIE_Climate_Change_and_National_Security.PDF) (LAST VISITED JUL. 17, 2024).

<sup>2</sup> CLIMATE SECURITY 101, C&S, [HTTPS://CLIMATESECURITY101.ORG/WP-CONTENT/UPLOADS/2015/02/CLIMATE-SECURITY-101-2\\_21\\_15.PDF](https://climatesecurity101.org/wp-content/uploads/2015/02/CLIMATE-SECURITY-101-2_21_15.PDF) (LAST VISITED JUL. 16, 2024).

governmental action on climate change, the “lack of action and litigation loss can exacerbate tensions, especially among youth and developing states, which are often the states affected the most by climate change and least able to build resilience to climate related impacts.”<sup>3</sup>

### **The International Bodies**

This section describes the three international bodies that will offer advisory opinions on climate change in the years 2024-2026: the International Tribunal for Law of the Sea, the Inter-American Court of Human Rights, and the International Court of Justice.

The United Nations Convention on the Law of the Sea (UNCLOS) established the International Tribunal for the Law of the Sea (ITLOS), with its headquarters in Hamburg, Germany. UNCLOS is the Convention that created the legal framework to regulate ocean spaces. One of the Convention’s most important roles is in setting standards for the “exploitation of the resources of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.”<sup>4</sup> Thus, the Convention deals not only with defining maritime boundaries, but also how countries can access resources beyond their territorial sea limits. ITLOS is the judicial body that resolves territorial disputes and interprets the Convention’s provisions. It can rule on state party disputes (disputes between states that are members of the tribunal) and on disputes that are not among state parties.<sup>5</sup> The jurisdiction of ITLOS extends to all cases arising under the Convention.<sup>6</sup>

Figure 1 shows the countries that have ratified UNCLOS and accepted the framework of the Convention.

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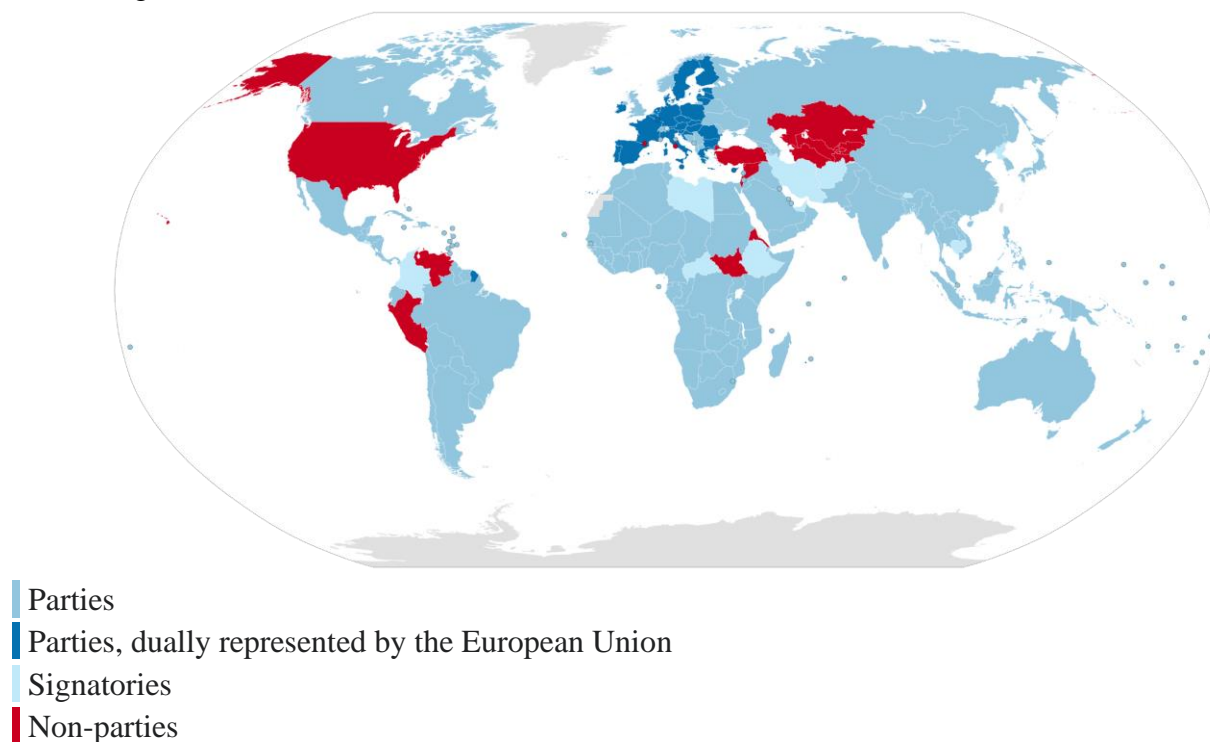
<sup>3</sup> REBECCA GRIPPO, CLIMATE CHANGE LAW: THE IMPACT OF RECENT CASES ON CLIMATE SECURITY (2023). AVAILABLE AT [HTTPS://NPS.EDU/DOCUMENTS/105500366/143516978/CLIMATE-CHANGE-LAW-REPORT-8NOV2023.PDF/41668A45-467F-833E-FF88-68F9543C4871?T=1699923180902](https://nps.edu/documents/105500366/143516978/CLIMATE-CHANGE-LAW-REPORT-8NOV2023.PDF/41668A45-467F-833E-FF88-68F9543C4871?T=1699923180902).

<sup>4</sup> INTERNATIONAL TRIBUNAL FOR LAW OF THE SEA, *THE TRIBUNAL*, [HTTPS://WWW.ITLOS.ORG/EN/MAIN/THE-TRIBUNAL/THE-TRIBUNAL/#:~:TEXT=THE%20TRIBUNAL-,THE%20TRIBUNAL,AND%20APPLICATION%20OF%20THE%20CONVENTIO](https://www.itlos.org/en/main/the-tribunal/the-tribunal/#:~:text=The%20Tribunal-,The%20Tribunal,And%20Application%20of%20The%20Convention)

<sup>5</sup> *Id.*

<sup>6</sup> INTERNATIONAL TRIBUNAL FOR LAW OF THE SEA, *JURISDICTION*, [HTTPS://WWW.ITLOS.ORG/EN/MAIN/JURISDICTION/](https://www.itlos.org/en/main/jurisdiction/).

Figure 1.<sup>7</sup>



There are two main bodies to the Inter-American rights system: The Inter-American Commission of Human Rights (IACHR) and the Inter-American Court of Human Rights (Inter-American Court or IACtHR), both based in San José, Costa Rica. These two bodies work together to ensure the member states of the Organization of American States (OAS) follow the appropriate legal frameworks. The OAS’s main pillars are “democracy, human rights, security, and development. In addition, respect for the fundamental rights of the human being is among the basic principles of the OAS.”<sup>8</sup> The Commission’s role is for “the observance and defense of human rights in the Americas.”<sup>9</sup> The Commission fulfills this role by visiting the member countries of the Americas and assessing the human rights situation in the given country. The Commission also handles “processing and analyzing individual petitions with a view to determining the international responsibility of the States for human rights violations, and issuing the recommendations it deems necessary.”<sup>10</sup>

The Inter-American Court interprets and applies the legal framework from the American Convention on Human Rights in addition to other human rights treaties and hears cases involving alleged human rights violations that are brought before the court. The main goal of the Inter-American Court and the OAS is to protect and defend human rights across

<sup>7</sup> WIKIPEDIA, LIST OF PARTIES TO THE UNITED NATIONS CONVENTION ON LAW OF THE SEA, [HTTPS://EN.WIKIPEDIA.ORG/WIKI/UNITED\\_STATES\\_AND\\_THE\\_UNITED\\_NATIONS\\_CONVENTION\\_ON\\_THE\\_LAW\\_OF\\_THE\\_SEA#/MEDIA/FILE:UNITED\\_NATIONS\\_CONVENTION\\_ON\\_THE\\_LAW\\_OF\\_THE\\_SEA\\_PARTIES.SVG](https://en.wikipedia.org/wiki/United_States_and_the_United_Nations_Convention_on_the_Law_of_the_Sea#/media/File:United_Nations_Convention_on_the_Law_of_the_Sea_Parties.svg).

<sup>8</sup> ORGANIZATION OF AMERICAN STATES, HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, [HTTPS://WWW.OAS.ORG/IPSP/IMAGES/ENGLISH%20FAQS.PDF](https://www.oas.org/IPSP/images/english%20FAQs.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

both North and South America.<sup>11</sup> Figure 2 shows the jurisdiction of the IACtHR which presides over the Americas.

Figure 2.<sup>12</sup>



The role of the International Court of Justice’s (ICJ) is to settle legal disputes between state parties to the United Nations (UN) and give advisory opinions on legal questions submitted by UN agencies.<sup>13</sup> The ICJ is also considered the “principal judicial organ” of the UN<sup>14</sup> and is based in The Hague, Netherlands. It can issue binding decisions in contentious cases, and can issue advisory opinions in various circumstances, such as when a UN agency asks for a legal interpretation of a convention or when parties need a legal question answered to help resolve a dispute. Contentious cases are legally binding cases that settle disputes between state parties, whereas advisory opinions are not legally binding.<sup>15</sup> Even so, advisory opinions have a lot of influence and authority, as shown in the next section.

The ICJ has jurisdiction over the same countries over which the UN presides. However, countries have an optional clause to fully opt-in to be subject to ICJ jurisdiction. If the states opt into this optional clause, they recognize the ICJ as compulsory, or enforceable,

<sup>11</sup> *Id.*

<sup>12</sup> JUSTICE TRENDS, *THE INTER-AMERICAN COURT OF HUMAN RIGHTS: ADVANCING JUSTICE IN THE AMERICAS* (2023), [HTTPS://JUSTICE-TRENDS.PRESS/THE-INTER-AMERICAN-COURT-OF-HUMAN-RIGHTS-ADVANCING-JUSTICE-IN-THE-AMERICAS/](https://justice-trends.press/the-inter-american-court-of-human-rights-advancing-justice-in-the-americas/).

<sup>13</sup> INTERNATIONAL COURT OF JUSTICE, *ORGANS AND AGENCIES AUTHORIZED TO REQUEST ADVISORY OPINIONS*, [HTTPS://WWW.ICJ-CIJ.ORG/ORGANS-AGENCIES-AUTHORIZED#:~:TEXT=IN%20ACCORDANCE%20WITH%20ARTICLE%2096,OPINION%20ON%20ANY%20LEGAL%20QUESTION%E2%80%9D](https://www.icj-cij.org/organs-agencies-authorized#:~:text=In%20accordance%20with%20article%2096,opinion%20on%20any%20legal%20question%E2%80%9D).

<sup>14</sup> INTERNATIONAL COURT OF JUSTICE, *THE COURT*, [HTTPS://WWW.ICJ-CIJ.ORG/COURT](https://www.icj-cij.org/court).

<sup>15</sup> INTERNATIONAL COURT OF JUSTICE, *HOW THE COURT WORKS*, [HTTPS://WWW.ICJ-CIJ.ORG/HOW-THE-COURT-WORKS](https://www.icj-cij.org/how-the-court-works).



A contentious case is a judgment that is legally binding on the disputing parties to the case;<sup>20</sup> this is the traditional plaintiff versus defendant litigation that makes up most case law and precedent. However, a contentious case can result in legal interpretations that will bind other parties to a convention.<sup>21</sup>

Each international body has its own purpose and jurisdiction; however, their decisions shape international law and provide legal frameworks. Similarly, both advisory opinions and contentious cases influence international law. Table 1 summarizes the commonalities and differences of the three international bodies.

Table 1.

|        | Issued Climate Advisory Opinion? | Issue advisory opinions? Contentious cases? | Uses advisory opinions to support decisions? | Jurisdiction   |
|--------|----------------------------------|---|--|--|
| ITLOS  | Yes                              | Both  | Yes  | Has jurisdiction over states as long as the dispute is under UNCLOS (the Convention). In cases brought to ITLOS, it does not matter if states have ratified UNCLOS, as long as the case is in accordance with UNCLOS, ITLOS can make a judgment on it. |
| IACtHR | Pending                          | Both  | Yes  | Jurisdiction over North and South America that is in accordance with the Convention. Cases brought are concerning human rights.  |
| ICJ    | Pending                          | Both  | Yes  | Makes judgments on legal questions (advisory opinions), or legal disputes (contentious cases), often referred by the UN. Has jurisdiction over states that have opted into the jurisdiction of the ICJ.  |

In *Mauritius vs Maldives Preliminary Objections*, a contentious case before ITLOS, the court explained the difference between advisory opinions and binding decisions. Paragraph 203 of the *Mauritius vs Maldives Preliminary Objections* states:

In this regard, the Special Chamber finds it necessary to draw a distinction between the binding character and the authoritative nature of an advisory opinion of the ICJ. An advisory opinion is not binding because even the requesting entity is not obligated to comply with it in the same way as parties to contentious proceedings are obligated to comply with a judgment. However,

<sup>20</sup> INTERNATIONAL COURT OF JUSTICE, *HOW THE COURT WORKS*, [HTTPS://WWW.ICJ-CIJ.ORG/HOW-THE-COURT-WORKS](https://www.icj-cij.org/how-the-court-works).

<sup>21</sup> *Id.*

judicial determinations made in advisory opinions carry no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the “principal judicial organ” of the United Nations with competence in matters of international law.<sup>22</sup>

An advisory opinion can influence international relations and international law as “they are often an instrument of preventive diplomacy and help to keep the peace. In their own way, advisory opinions also contribute to the clarification and development of international law and thereby to the strengthening of peaceful relations between States.”<sup>23</sup> Below are several examples where ITLOS, the ICJ, and the IACtHR relied on advisory opinions in ruling in a contentious case.

The ITLOS case *M/V “Virginia G” (Panama v. Guinea-Bissau)*<sup>24</sup> demonstrates how ITLOS relies on an advisory opinion, indicating that advisory opinions are used as support in binding decisions and evolving international law. In this case, Guinea-Bissau owed compensation to Panama. Guinea-Bissau caught the Panamanian-flagged oil tanker *Virginia G* fishing in Guinea-Bissau’s exclusive economic zone (EEZ). Guinea-Bissau exercised its right as a coastal state to expel the oil tanker from their EEZ. However, Guinea-Bissau went even further and confiscated the ship and its gas cargo. ITLOS ruled that Guinea-Bissau was in violation of the Convention because not only did they expel and arrest the oil tanker (which would have been within their legal rights), they also confiscated the vessel and cargo it possessed.<sup>25</sup>

In determining that Guinea-Bissau owed full compensation of the vessel to Panama, ITLOS relied on the advisory opinion *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*. The court cited the advisory opinion in *M/V “Virginia G” (Panama v. Guinea-Bissau)*:

The Tribunal observes that the Seabed Disputes Chamber of the Tribunal, in its Advisory Opinion, stated that several of the [International Law Commission] Draft Articles on State Responsibility are considered to reflect customary international law (see *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, at p. 56, para.169).... The Tribunal adds that article 1 of the ILC Draft Articles on State Responsibility also reflects customary international law.<sup>26</sup>

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<sup>22</sup> DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY BETWEEN MAURITIUS AND MALDIVES IN THE INDIAN OCEAN (MAURITIUS V. MALDIVES), CASE NO. 28, PRELIMINARY OBJECTIONS, 2021, ITLOS REP. 77, 203. [HTTPS://WWW.ITLOS.ORG/FILEADMIN/ITLOS/DOCUMENTS/CASES/28/PUBLISHED/C28\\_PO\\_JUDGMENT\\_20210128.PDF](https://www.itlos.org/fileadmin/itlos/documents/cases/28/published/C28_PO_JUDGMENT_20210128.PDF).

<sup>23</sup> INTERNATIONAL COURT OF JUSTICE, *ADVISORY JURISDICTION*, [HTTPS://WWW.ICJ-CIJ.ORG/ADVISORY-JURISDICTION](https://www.icj-cij.org/advisory-jurisdiction).

<sup>24</sup> THE M/V “VIRGINIA G” CASE (PANAMA V. GUINEA-BISSAU), CASE NO. 19, JUDGMENT OF APR. 14, 2014, ITLOS REP. 117, 430. [HTTPS://WWW.ITLOS.ORG/FILEADMIN/ITLOS/DOCUMENTS/CASES/CASE\\_NO.19/JUDGMENT\\_PUBLISHED/C19\\_JUDGMENT\\_140414.PDF](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.19/judgment_published/C19_JUDGMENT_140414.PDF).

<sup>25</sup> PRESS RELEASE FROM INTERNATIONAL TRIBUNAL FOR LAW OF THE SEA, JUDGEMENT IN THE M/V “VIRGINIA G” CASE (PANAMA V. GUINEA-BISSAU), (APR. 14, 2014). [HTTPS://WWW.ITLOS.ORG/FILEADMIN/ITLOS/DOCUMENTS/PRESS\\_RELEASES\\_ENGLISH/PR\\_211\\_E.PDF](https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_211_E.PDF).

<sup>26</sup> THE M/V “VIRGINIA G” CASE (PANAMA V. GUINEA-BISSAU), CASE NO. 19, JUDGMENT OF APR. 14, 2014, ITLOS REP. 117, 430.



The court concluded that Guinea-Bissau needed to compensate Panama, citing paragraph 194 of the advisory opinion which stated: “The obligation for a State to provide for a full compensation or *restituto in integrum* is currently part of customary international law.”<sup>27</sup>

Similarly, the following ICJ case shows the body citing an advisory opinion in a binding case, reinforcing that advisory opinions guide international law. In *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*,<sup>28</sup> Costa Rica alleged Nicaragua occupied Costa Rica in dredging channels of the San Juan and constructing a canal that would affect the flow and harm some of Costa Rica’s wetlands. In evaluating Costa Rica’s claim, the *Costa Rica* court cited one of its earlier advisory opinions regarding a state’s obligation to protect the environments of other states. Specifically, the *Costa Rica* court cited paragraph 29 of the advisory opinion in *Legality of the Threat or Use of Nuclear Weapons*: “The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”<sup>29</sup> Relying on this precedent, the ICJ ruled in Costa Rica’s favor.

Similarly, the IACtHR also used an advisory opinion in supporting a recent contentious case. In 2020, in the *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*,<sup>30</sup> the IACtHR found that Argentina was in violation of the indigenous community’s right to property, water, cultural identity, and a safe and healthy environment.<sup>31</sup> For this case, IACtHR relied on the advisory opinion *OC-23/17*,<sup>32</sup> which addresses “the environmental obligations of states that comprise the Inter-American Human Rights System.”<sup>33</sup> This advisory opinion is cited multiple times throughout the judgment made by the IACtHR, proving that the court relied heavily on its contents, which in turn

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[https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.19/judgment\\_published/C19\\_JUDGM ENT\\_140414.PDF](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.19/judgment_published/C19_JUDGM ENT_140414.PDF).

<sup>27</sup> RESPONSIBILITIES OF STATES SPONSORING PERSONS AND ENTITIES WITH RESPECT TO ACTIVITIES IN THE AREA, CASE NO. 17, ADVISORY OPINION OF FEB. 1, 2011, ITLOS REP. 194.

[https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.17/17\\_adv\\_op\\_010211\\_en.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.17/17_adv_op_010211_en.pdf).

<sup>28</sup> CERTAIN ACTIVITIES CARRIED OUT BY NICARAGUA IN THE BORDER AREA (C.R. V. NICAR.), JUDGMENT, 2015, I.C.J REP. 50, ¶ 118, (DEC. 16). <https://www.icj-cij.org/sites/default/files/case-related/150/150-20151216-jud-01-00-en.pdf>.

<sup>29</sup> LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS, ADVISORY OPINION, 1996, I.C.J REP. 241-242, ¶ 29, (JUL. 8). <https://iilj.org/wp-content/uploads/2016/08/Legality-of-the-Threat-or-Use-of-Nuclear-Weapons-1996.pdf>.

<sup>30</sup> CASE OF THE INDIGENOUS COMMUNITIES OF THE LHAKA HONHAT (OUR LAND) ASSOCIATION V. ARGENTINA, INTER-AM CT. H.R. (SER. C.), ¶ 58 AND 75-77 (FEB. 6, 2020).

[https://www.corteidh.or.cr/docs/casos/articulos/SerieC\\_400\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/SerieC_400_ing.pdf).

<sup>31</sup> CAMBRIDGE UNIVERSITY PRESS, INDIGENOUS COMMUNITIES OF THE LHAKA HONHAT (OUR LAND) ASSOCIATION V. ARGENTINA, (2021). <https://www.cambridge.org/core/journals/American-Journal-of-International-Law/article/indigenous-communities-of-the-lhaka-honhat-our-land-association-v-argentina/D9DE378094040097131E02394C675BE2>.

<sup>32</sup> THE ENVIRONMENT AND HUMAN RIGHTS, ADVISORY OPINION OC-23/17, INTER. AM. CT. H.R. (SER. A), (NOV. 15, 2017). [https://www.corteidh.or.cr/docs/opiniones/SerieA\\_23\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/SerieA_23_ing.pdf).

<sup>33</sup> ESCR-NET, ADVISORY OPINION OC-23/17, <https://www.eschr-net.org/caselaw/2019/advisory-opinion-oc-2317> (LAST VISITED JUL. 15, 2024).

shows the relevance of the advisory opinion on international law and the IACtHR's argument. For example, the 2020 judgment cites the advisory opinion which states the "Court considers that the rights that are particularly vulnerable to environmental impact include the rights to life, personal integrity, private life, health, water, food, housing, participation in cultural life, property, and the right to not be forcibly displaced."<sup>34</sup> This supports the judgment, adds to international law precedent and reinforces a key finding from the case that indigenous communities have rights.

These three examples show the difference between advisory opinions and contentious cases and that they work together to shape international law. Advisory opinions carry great weight, respect and authority with the various international bodies even though they are not legally binding. With the recent ITLOS opinion and the expected advisory opinions from the ICJ and the IACtHR, advisory opinions will shape international climate change law moving forward.

### **Current Context: Advisory Opinions**

Historically ITLOS, the ICJ, and IACtHR have looked to advisory opinions to support their judgments in contentious cases, as shown through the examples above. Similarly, international courts can look at other international courts' advisory opinions to use as supporting documents. Following this logic, the recent ITLOS advisory opinion on climate change could influence the two pending advisory opinions on climate change. Below is an example proving that international courts rely upon opinions from other international courts.

In the advisory opinion *Responsibilities and obligations of States with respect to activities in the Area*,<sup>29</sup> ITLOS cited a different advisory opinion from the ICJ:

60. The fact that these instruments are binding texts negotiated by States and adopted through a procedure similar to that used in multilateral conferences permits the Chamber to consider that the interpretation rules set out in the Vienna Convention may, by analogy, provide guidance as to their interpretation. In the specific case before the Chamber, the analogy is strengthened because of the close connection between these texts and the Convention. The ICJ seems to have adopted a similar approach when it states in its advisory opinion on *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, that the rules on interpretation of the Vienna Convention "may provide guidance" as regards the interpretation of resolutions of the United Nations Security Council (ICJ, 22 July 2010, paragraph 94).<sup>35</sup>

In ITLOS's first advisory opinion, the body determined that GHGs are marine pollutants by the following criteria:

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<sup>34</sup> THE ENVIRONMENT AND HUMAN RIGHTS, ADVISORY OPINION OC-23/17, INTER. AM. CT. H.R. (SER. A), (NOV. 15, 2017). [HTTPS://WWW.CORTEIDH.OR.CR/DOCS/OPINIONES/SERIEA\\_23\\_ING.PDF](https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf).

<sup>35</sup> RESPONSIBILITIES OF STATES SPONSORING PERSONS AND ENTITIES WITH RESPECT TO ACTIVITIES IN THE AREA, CASE NO. 17, ADVISORY OPINION OF FEB. 1, 2011, ITLOS REP. 60. [HTTPS://WWW.ITLOS.ORG/FILEADMIN/ITLOS/DOCUMENTS/CASES/CASE\\_NO\\_17/17\\_ADV\\_OP\\_010211\\_EN.PDF](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/17_adv_op_010211_en.pdf).

“(1) there must be a substance or energy; (2) this substance or energy must be introduced by humans, directly or indirectly, into the marine environment; and (3) such introduction must result or be likely to result in deleterious effects.”<sup>36</sup>

The ITLOS advisory opinion could be the first of many climate opinions to advance climate action at the state, regional and international levels. The original request for an ITLOS advisory opinion was submitted by the Commission of Small Island States on Climate Change and International Law (COSIS), where they posed the legal question of what states obligations are to address climate change under UNCLOS. COSIS’s main goal, as a group, is to hold emitting states accountable for climate impacts to their small island nations and to shape international climate law. They requested the opinion because of climate change’s impact and harm to humans and marine life. The small island states are facing the loss of their homeland without immediate climate action; the advisory opinion from ITLOS plays an important role for these maritime states, marine wildlife and habitat and was a significant turning point for COSIS and globally.<sup>37</sup>

Although originally expected in 2024, the ICJ is now expected to release its advisory opinion on climate change in 2025 or 2026. The title of the request for an advisory opinion from the ICJ is *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*.<sup>38</sup> The request was submitted by the United Nations General Assembly (UNGA),<sup>39</sup> which recognized the urgency for efforts to limit GHG emissions and to meet the Paris Agreement goal to keep the global temperature under 1.5°C.<sup>40</sup> However, this was not the first time such an effort was undertaken in the UNGA.

In 2011, Palau and the Marshall Islands asked the UNGA to adopt a resolution asking for the ICJ to clarify the obligations of states regarding climate change. This effort did not have support from enough states and the UNGA failed to adopt the resolution. However, In 2019, the Republic of Vanuatu led a second effort to have the UNGA consider a resolution for an ICJ opinion on climate change. The original campaign was started by a group of students who saw the importance of addressing climate impacts affecting small island states, especially in the Pacific. There were about 18 supporting countries at the beginning of this resolution; at the time of UNGA approval, there were approximately 130 supporting states.

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<sup>36</sup> REQUEST FOR AN ADVISORY OPINION ON CLIMATE CHANGE (COMMISSION OF SMALL ISLAND STATES), CASE NO. 31, ADVISORY OPINION OF MAY 21, 2024.

[HTTPS://ITLOS.ORG/FILEADMIN/ITLOS/DOCUMENTS/CASES/31/ADVISORY\\_OPINION/C31\\_Adv\\_Op\\_21.05.2024\\_0RIG.PDF](https://itlos.org/fileadmin/ITLOS/DOCUMENTS/CASES/31/ADVISORY_OPINION/C31_Adv_Op_21.05.2024_0RIG.PDF).

<sup>37</sup> CATHERINE AMIRFAR AND DUNCAN PICKARD, Q&A: ‘THE OCEANS COURT’ ISSUES LANDMARK ADVISORY OPINION ON CLIMATE CHANGE, JUST SECURITY (MAY 21, 2024), [HTTPS://WWW.JUSTSECURITY.ORG/95874/ITLOS-ADVISORY-OPINION-CLIMATE-CHANGE/](https://www.justsecurity.org/95874/itlos-advisory-opinion-climate-change/).

<sup>38</sup> OBLIGATIONS OF STATE IN RESPECT OF CLIMATE CHANGE, ADVISORY OPINION, 2023 I.C.J (MAR. 29).

[HTTPS://WWW.ICJ-CIJ.ORG/SITES/DEFAULT/FILES/CASE-RELATED/187/187-20230412-APP-01-00-EN.PDF](https://www.icj-cij.org/sites/default/files/case-related/187/187-20230412-app-01-00-en.pdf).

<sup>39</sup> MARIA ANTONIA TIGRE & JORGE ALEJANDRO CARRILLO BAÑUELOS, *THE ICJ’S ADVISORY OPINION ON CLIMATE CHANGE: WHAT HAPPENS NOW?*, CLIMATE LAW: A SABIAN CENTER BLOG, (MAR. 29, 2023).

[HTTPS://BLOGS.LAW.COLUMBIA.EDU/CLIMATECHANGE/2023/03/29/THE-ICJS-ADVISORY-OPINION-ON-CLIMATE-CHANGE-WHAT-HAPPENS-NOW/](https://blogs.law.columbia.edu/climatechange/2023/03/29/the-icjs-advisory-opinion-on-climate-change-what-happens-now/).

<sup>40</sup> SABIAN CENTER ON CLIMATE CHANGE LAW, *REQUEST FOR AN ADVISORY OPINION ON THE OBLIGATIONS OF STATES WITH RESPECT TO CLIMATE CHANGE*, [HTTPS://CLIMATECASECHART.COM/NON-US-CASE/REQUEST-FOR-AN-ADVISORY-OPINION-ON-THE-OBLIGATIONS-OF-STATES-WITH-RESPECT-TO-CLIMATE-CHANGE/](https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-obligations-of-states-with-respect-to-climate-change/) (LAST VISITED JUL. 15, 2024).

Of note, China and the U.S. did not sign onto the resolution.<sup>41</sup> It is also interesting to note that most states in COSIS have opted into the ICJ's jurisdiction and are involved in the request for this advisory opinion as well as the ITLOS advisory opinion.

The request from the UNGA to the ICJ centered around states obligations to address climate change, and the legal responsibilities for emitting nations that have had a significant role in climate change. In 2023, the ICJ agreed to issue an advisory opinion and started the process with member states submitting written statements and responses.<sup>42</sup> In May 2024, the ICJ announced it will allow oral arguments on the issues; legal experts indicate this means that the advisory opinion will be delayed until 2025 or 2026.<sup>43</sup>

The climate change request falls into the ICJ's jurisdiction as the ICJ is the judicial body for the UN. The ICJ is also in charge of interpretations of treaties, such as the UNFCCC. The requesters hope that the ICJ advisory opinion will shape climate laws and lend more support behind finding higher emitting countries liable.

As noted above, in April 2024, the European Court of Human Rights (ECtHR) considered the obligation of countries to address GHGs in the case: *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (brought by the Senior Women for Climate Protection). The women claimed that the increase of GHG emissions leads to heat waves, which were impacting their health and their quality of life. They also claimed that Switzerland was not doing all that it could to bring its emissions down. The ECtHR ruled in favor of the Senior Women for Climate Protection, stating that the lack of attention to limiting GHGs was in violation of their human rights, and ordered Switzerland to do more to limit their emissions. However, despite the ruling, the Swiss parliament voted to reject the ECtHR's decision, claiming the state has done enough to provide protection from climate change.<sup>44</sup> The Parliament's ruling is not final since the national council and council of states must take the parliament's decision under consideration.<sup>45</sup> If both of these councils approve of parliament's ruling, only then can the ruling be considered final.<sup>46</sup>

This could create a dynamic precedent: because the Swiss parliament defied the ECtHR, many other countries, or member parties to the ECtHR, could also claim to be doing

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<sup>41</sup>HUMAN RIGHTS WATCH, *UN GENERAL ASSEMBLY SEEKS WORLD COURT RULING ON CLIMATE CHANGE*, [HTTPS://WWW.HRW.ORG/NEWS/2023/03/29/UN-GENERAL-ASSEMBLY-SEEKS-WORLD-COURT-RULING-CLIMATE-CHANGE#:~:TEXT=\(NEW%20YORK\)%20%E2%80%93%20THE%20UNITED,HUMAN%20RIGHTS%20WATCH%20AID%20TODAY](https://www.hrw.org/news/2023/03/29/un-general-assembly-seeks-world-court-ruling-climate-change#:~:text=(New%20York)%20%E2%80%93%20The%20United,Human%20Rights%20Watch%20aid%20today) (LAST VISITED AUG. 1, 2024).

<sup>42</sup>MARTA TORRE-SCHAUB, *INTERNATIONAL JUSTICE AND THE ENVIRONMENT: ANALYSIS OF THE REQUEST FOR AN ADVISORY OPINION TO THE INTERNATIONAL COURT OF JUSTICE*, IDDRI BLOG (MAY 11, 2023), [HTTPS://WWW.IDDRI.ORG/EN/PUBLICATIONS-AND-EVENTS/BLOG-POST/INTERNATIONAL-JUSTICE-AND-ENVIRONMENT-ANALYSIS-REQUEST-ADVISORY](https://www.iddri.org/en/publications-and-events/blog-post/international-justice-and-environment-analysis-request-advisory)

<sup>43</sup>JON MCGOWAN, *INTERNATIONAL COURT EXTENDS DEADLINE FOR CLIMATE CHANGE OPINION RESPONSES*, FORBES (MAY 31, 2024, 01:31 PM), [HTTPS://WWW.FORBES.COM/SITES/JONMCGOWAN/2024/05/31/INTERNATIONAL-COURT-EXTENDS-DEADLINE-FOR-CLIMATE-CHANGE-OPINION-RESPONSES/](https://www.forbes.com/sites/jonmcgowan/2024/05/31/international-court-extends-deadline-for-climate-change-opinion-responses/).

<sup>44</sup>IMOGEN FOULKES, *SWISS PARLIAMENT DEFIES ECHR ON CLIMATE WOMEN'S CASE*, BBC, (JUN. 12, 2024), [HTTPS://WWW.BBC.COM/NEWS/ARTICLES/CL55GGJQVX70](https://www.bbc.com/news/articles/cl55ggjqvx70).

<sup>45</sup>EMMA FARGE, *SWISS PARLIAMENT SNUBS EUROPEAN COURT CLIMATE RULING*, USN, (JUN. 12, 2024, 1:08AM), [HTTPS://WWW.USNEWS.COM/NEWS/WORLD/ARTICLES/2024-06-12/SWISS-PARLIAMENT-CONSIDERS-SNUBBING-EUROPEAN-COURT-CLIMATE-RULING](https://www.usnews.com/news/world/articles/2024-06-12/swiss-parliament-considers-snubbing-european-court-climate-ruling).

<sup>46</sup>WHAT DOES THE SWISS PARLIAMENT DO?, [HTTPS://WWW.CH.CH/EN/POLITICAL-SYSTEM/PARLIAMENT/SWISS-PARLIAMENT/#](https://www.ch.ch/en/political-system/parliament/swiss-parliament/#).

enough even if a court finds they are not. Parliament's action inadvertently showed that countries can sidestep international court decisions and, at least in the short term, limit the impact of a ruling. Thus, if countries decide that they are already doing enough to limit their GHGs, will they reject the ITLOS opinion claiming to have done enough, just as the Swiss parliament has done with the ECtHR's ruling?

The ruling from the ECtHR could influence the pending advisory opinion from the IACtHR and could be used as an example for the IACtHR to demonstrate how climate change violates human rights. The IACtHR can use the ITLOS opinion and ECtHR findings in its advisory opinion focused on human rights. According to the World Health Organization, "Reducing emissions of greenhouse gasses through better transport, food and energy use choices can result in very large gains for health, particularly through reduced air pollution."<sup>47</sup> The protection of human rights through the limitation of GHGs falls directly in the IACtHR's jurisdiction.

In 2017, Colombia requested an advisory opinion from the IACtHR entitled "Environment and Human Rights" which emphasized that "states must protect human rights if they are affected by environmental harm, even if it happens outside their borders."<sup>48</sup> Thus, states need to take care of human rights regardless of their borders and boundaries.

The 2023 request for an IACtHR advisory opinion centers on the obligations of states to respond to climate change under Human Rights Law. Chile and Colombia also posit that many countries are experiencing climate change unevenly: a significant number of countries are experiencing the brunt of climate change, while others have not felt the impact as much. Chile and Colombia are experiencing fires, floods, droughts, heat waves, and landslides which are all impacting their citizens' right to a healthy environment and security. The effects to security include, but are not limited to, a shortage of water, smoke pollution, heat waves, migration of people and re-housing due to rising sea levels, fires, or other natural phenomena.<sup>49</sup> The request also highlighted "the vulnerability of communities and ecosystems in Latin America."<sup>50</sup> The advisory opinion could add clarification on the role of states in addressing climate change impacts and protecting human health.

### **Advisory Opinions in the Context of the Paris Agreement**

As a body of law, climate change law is created at the international, national, and sub-national levels through case law, advisory opinions, legislation and treaties. It addresses

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<sup>47</sup> CLIMATE CHANGE, WORLD HEALTH ORGANIZATION, [HTTPS://WWW.WHO.INT/NEWS-ROOM/FACT-SHEETS/DETAIL/CLIMATE-CHANGE-AND-HEALTH](https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health) (LAST VISITED JUL. 15, 2024).

<sup>48</sup> ISABELLA KAMINSKI, *HOW CHILE AND COLOMBIA'S CALL TO HUMAN RIGHTS COURT COULD DRIVE CLIMATE ACTION*, DIALOGUE EARTH (FEB. 15, 2024), [HTTPS://DIALOGUE.EARTH/EN/CLIMATE/389305-HOW-CHILE-AND-COLOMBIAS-CALL-TO-HUMAN-RIGHTS-COURT-COULD-DRIVE-CLIMATE-ACTION/](https://dialogue.earth/en/climate/389305-how-chile-and-colombias-call-to-human-rights-court-could-drive-climate-action/).

<sup>49</sup> *WHAT IS THE CHILE AND COLOMBIA INTER-AMERICAN COURT OF HUMAN RIGHTS INITIATIVE?*, CLIENTEARTH (MAR 15, 2024), [HTTPS://WWW.CLIENTEARTH.ORG/LATEST/NEWS/WHAT-IS-THE-CHILE-AND-COLOMBIA-INTER-AMERICAN-COURT-OF-HUMAN-RIGHTS-IACHR-INITIATIVE/#:~:TEXT=CHILE%20AND%20COLOMBIA%20REQUESTED%20AN,OF%20REGIONAL%20HUMAN%20RIGHTS%20LAW](https://www.clientearth.org/latest/news/what-is-the-chile-and-colombia-inter-american-court-of-human-rights-iachr-initiative/#:~:text=CHILE%20AND%20COLOMBIA%20REQUESTED%20AN,OF%20REGIONAL%20HUMAN%20RIGHTS%20LAW.).

<sup>50</sup> SABIAN CENTER ON CLIMATE CHANGE LAW, *REQUEST FOR AN ADVISORY OPINION ON THE OBLIGATIONS OF STATES WITH RESPECT TO CLIMATE CHANGE*, [HTTPS://CLIMATECASECHART.COM/NON-US-CASE/REQUEST-FOR-AN-ADVISORY-OPINION-ON-THE-OBLIGATIONS-OF-STATES-WITH-RESPECT-TO-CLIMATE-CHANGE/](https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-obligations-of-states-with-respect-to-climate-change/) (LAST VISITED JUL. 15, 2024).

issues related to environmental change along with climate change impacts on humans, infrastructure and natural systems. Climate change law has evolved considerably at the national and international levels, including the 2024 ITLOS advisory opinion along with treaty-based country goals set under the Paris Agreement.

The Paris Agreement entered into force on 4 November 2016 and currently includes 195 parties. This agreement is best explained as “...commitments from all countries to reduce their emissions and work together to adapt to the impacts of climate change and calls on countries to strengthen their commitments over time.”<sup>51</sup> In order for the states to strengthen their commitments over time, they must update their nationally determined contributions (NDCs). NDCs are drafted by the member states and are presented and updated every five years. These are put in place to show how each country will take steps towards limiting GHG emissions, and to show each country's progression towards reductions and limiting warming.<sup>52</sup> However, there are member states that declare their current efforts are enough, evidenced by the Switzerland Parliament rejecting the European Court of Human Rights decision finding that the country needs to do more.

In November 2024, there will be a 29th meeting of the Conference of Parties (COP 29 and also known as the UN Climate Conference) where parties will discuss ways to limit emissions, review countries' NDCs, move from writing to implementation, and work to keep the global temperature rise under 1.5°C in accordance with the Paris Agreement.<sup>53</sup> In recent years, these meetings happen annually and mainly focus on the Convention's goals. The COP follows and implements the United Nations Framework Convention on Climate Change (UNFCCC) which includes a framework on how countries should go about communicating and participating together to reduce and adapt to climate change.<sup>54</sup>

### **Effect on the Private Sector**

Advisory opinions also impact the private sector, as these international laws shape how private companies may operate in the oceans. For example, the American Bureau of Shipping (ABS), which supports private shipping companies, tracks the evolution of climate change law at the international level to help its members understand the current context for their operations.

ABS is an independent organization that represents its private sector members on standards related to maritime safety and resource protection. It accomplishes this in part through their Sustainability Notations; companies can earn a Sustainability Notation by meeting certain specifications set by ABS. Currently, there are two Sustainability Notations,

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<sup>51</sup> UNITED NATIONS CLIMATE CHANGE, *THE PARIS AGREEMENT*, [HTTPS://WWW.UN.ORG/EN/CLIMATECHANGE/PARIS-AGREEMENT](https://www.un.org/en/climatechange/paris-agreement) (LAST VISITED JUL. 15, 2024).

<sup>52</sup> UNITED NATIONS DEVELOPMENT PROGRAMME, *WHAT ARE NDCs AND HOW DO THEY DRIVE CLIMATE ACTION?*, [HTTPS://CLIMATEPROMISE.UNDP.ORG/NEWS-AND-STORIES/NDCs-NATIONALLY-DETERMINED-CONTRIBUTIONS-CLIMATE-CHANGE-WHAT-YOU-NEED-TO-KNOW](https://climatepromise.undp.org/news-and-stories/nDCs-nationally-determined-contributions-climate-change-what-you-need-to-know) (LAST VISITED JUL. 15, 2024).

<sup>53</sup> CGIAR, *2024 UN CLIMATE CHANGE CONFERENCE (UNFCCC COP 29)*, [HTTPS://WWW.CGIAR.ORG/NEWS-EVENTS/EVENT/2024-UN-CLIMATE-CHANGE-CONFERENCE-UNFCCC-COP-29/#:~:TEXT=COP29%2C%20LIKE%20ITS%20PREDECESSORS%2C%20WILL.MOBILIZE%20FINANCING%20FOR%20THESE%20ACTIVITIES](https://www.cgiar.org/news-events/event/2024-un-climate-change-conference-unfccc-cop-29/#:~:text=COP29%2C%20like%20its%20predecessors%2C%20will,mobilize%20financing%20for%20these%20activities) (LAST VISITED JUL. 15, 2024).

<sup>54</sup> UNITED NATION CLIMATE CHANGE, *HISTORY OF THE CONVENTION*, [HTTPS://UNFCCC.INT/PROCESS/THE-CONVENTION/HISTORY-OF-THE-CONVENTION#CLIMATE-CHANGE-IN-CONTEXT](https://unfccc.int/process/the-convention/history-of-the-convention#climate-change-in-context) (LAST VISITED JUL. 15, 2024).

SUSTAIN-1 and SUSTAIN-2. These assist maritime shipping companies to adapt their fleet and practices to meet marine safety and protection goals. These are in alignment with the United Nations Sustainable Development Goals demonstrated in Figure 4.

Figure 4.<sup>55</sup>

| ITEM | TOPIC                                 | SDG  | SUSTAIN-1 (2020)   | SUSTAIN-2 (2020)  |
|------|---------------------------------------|--|--|---|
| 1    | Oil and Chemical Pollution            |    |    |    |
| 2    | Waste Streams                         |    |    |    |
| 3    | Coastal and Marine Ecosystems         |   |    |    |
| 4    | Air Emissions                         |  <br>  |    |    |
| 5    | Efficiency and Performance Monitoring |     |   |   |
| 6    | Ship Recycling                        |    |  |  |
| 7    | Low-Carbon Fuels                      |    |  |  |
| 8    | Human-Centered Design                 |    |  |  |

Companies with the titles of the sustainability notations, SUSTAIN-1 and SUSTAIN-2 can use them for advantageous business dealings. In its Sustainability Notation 2, ABS strives to create sustainability standards for commercial shipping, and to limit the production of GHGs. The Sustainability Notation 2 touches on: *Low or Zero Carbon Fuels and Technologies, Air Emissions, and The Human Element*. The main section of this Notation is the Low or Zero Carbon Fuels and Technologies. A low or zero-carbon alternative to carbon emitting fuel include biofuels. Biofuels are a lower carbon replacement which, in some cases, can be a ‘drop-in’ fuel, meaning that they can be used as a replica of the original higher-carbon fuel. A downside of biofuels is the limited availability compared to the current future demand; however, ABS indicates the quantity and availability of biofuels is slowly increasing.<sup>56</sup>

<sup>55</sup> GUIDE FOR SUSTAINABILITY NOTATIONS, ABS, [HTTPS://WW2.EAGLE.ORG/EN/PRODUCTS-AND-SERVICES/SUSTAINABILITY/SUSTAINABILITY-GUIDE.HTML](https://ww2.eagle.org/en/products-and-services/sustainability/sustainability-guide.html) (LAST VISITED AUG. 1, 2024).

<sup>56</sup> INTERVIEW WITH KIRK WALTZ, AMERICAN BUREAU OF SHIPPING (JUL. 12, 2024). ALSO SEE ABS, SECTION 3, SUSTAIN-2 NOTATION, [HTTPS://PUB-RM20.APPS.EAGLE.ORG/R/3/2022-11-01/SECTION-2-SUSTAIN-1-NOTATION](https://pub-rm20.apps.eagle.org/r/3/2022-11-01/section-2-sustain-1-notation) (LAST VISITED JUL. 16, 2024).

## **Summary and Next Steps**

While advisory opinions are non-legally binding judgements, they are written with the same rigor and attention to detail as decisions in contentious cases and are respected as valuable parts of the law. Consequently, advisory opinions are sometimes used as supporting legal precedent in legally binding judgments. The ITLOS decision may serve as a significant precedent for the ICJ and IACtHR pending opinions. Advisory opinions also lend themselves to the larger international conversation about climate change and security, including among the parties at the UN Conference of Parties (COP 29) taking place in Baku, Azerbaijan in November 2024.

In addition to awaiting the pending advisory opinions, there are also research questions that need to be addressed to advance clarity resulting from these opinions. Two such questions include how these advisory opinions impact non-member states (to the corresponding treaty) and how such opinions impact provisions under the treaties that are considered customary international law. Analysis of questions like these can help the climate security sector better understand how the evolving international climate change law affects the security of the United States and its allies.