

# Why ICJ ruling on climate change is significant

*The court has held that countries are under a legal obligation to take steps to reduce greenhouse gas emissions. The ruling is not binding — but it could move the needle on international climate action*

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Activists demonstrate outside the ICJ in the Hague on Wednesday. AP

The International Court of Justice (ICJ) delivered a landmark ruling on Wednesday that can breathe new life into the climate movement, and potentially open the floodgates for litigation seeking greater accountability from countries on climate action.

The Hague-based court, which is the main judicial branch of the United Nations, has held that countries are under a legal obligation to take steps to reduce greenhouse gas emissions, and

could be held liable to pay compensation if they failed to do so.

The ruling has come in the form of an advisory opinion of the court, and does not on its own impact any country immediately. It can nonetheless have significant implications for the global fight against climate change.

By making it clear that climate action is not just a policy imperative for countries but a legally-binding commitment under international law, the ruling strengthens the position of developing countries and everyone else advocating enhanced climate action from the rich and industrialised world.

The ruling was delivered in a case resulting from a resolution passed by the UN General Assembly in March 2022, seeking the advisory opinion of the court on climate change.

The UNGA wanted the ICJ to address two very specific questions: (i) what are the obligations of countries under international law to protect the climate system and, (ii) what are the legal consequences for countries that do not fulfil their obligations.

### **Ruling of the court**

The court examined the provisions of the three climate treaties — the 1994 UN Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol, and the 2015 Paris Agreement — and several other environment-related international laws that have a bearing on the climate system.

These include the UN Convention on the Law of the Sea (UNCLOS), the 1987 Montreal Protocol for protecting ozone, the 1992 Convention on Biodiversity and the 1994 Convention to Combat Desertification.

The court concluded that climate action was not a matter of choice or preference, but a legal obligation: countries were obligated to take measures that contributed to the reduction of greenhouse gas emissions. In addition, rich and industrialised countries in Annexure I of the UNFCCC had an obligation to take the lead on emissions reduction, and facilitate technology and financial transfers to developing countries.

It identified several other obligations of countries, and said that failure to fulfil them would constitute “an internationally wrongful act” which could have legal consequences. These could include being held liable to provide full reparation to countries that suffer on account of climate disasters, or other impacts of climate change. Countries could be held liable even for the irresponsible actions of private businesses or corporations, if they had failed to exercise

due diligence and not taken adequate regulatory or legislative measures to prevent the irresponsible behaviour of private actors, the court held.

## Significance of ruling

The advisory opinion of the ICJ is not international law, and it is not binding on countries. However, it is the most authoritative interpretation of international law on the subject, and it is likely to be relied upon by courts around the world in deciding matters that come before them.

This ruling is expected to put the spotlight back on climate change. In recent years, progress on the global fight against climate change has been severely undermined by the lack of adequate action by countries, particularly those in the developed world. The emissions reduction targets for 2030 will almost certainly be missed.

The withdrawal of the US, the world's biggest historical emitter and a major laggard nation on climate action, from the Paris Agreement has put a question mark on the future of cooperative global action on climate. The credibility of international climate negotiations is at stake, with developing countries, particularly the most vulnerable ones, very upset over their concerns being ignored.

The ICJ's advisory opinion does not directly set right any of these. Several parts of the ruling could be difficult or impractical to implement, and these are likely to be hotly contested in courts. What the opinion has done though, is to reaffirm the legal sanctity of the provisions and principles mentioned in international laws on climate change, and declared that non-adherence to these could be reason to impose penalties on countries.

This is important because the climate actions mandated under the UNFCCC or the Paris Agreement are, barring a few, largely suggestive in nature, and there are no consequences for countries for non-compliance.

For example, the US suffered no consequences for pulling out of the Paris Agreement, and the developed countries as a whole got away with not meeting their finance obligations. Most developed countries did not meet their emissions reduction targets under the Kyoto Protocol either, and some of them walked out of the treaty — again without any consequences.

The ICJ has not spelt out the consequences for any of these countries. That will be for other courts to decide, if any such matter comes before them.

The ICJ's opinion that countries that suffer from climate impacts — it calls them “injured states” — are entitled not just to compensation, but full reparation, is a major development. Developed nations reluctantly acknowledge that small and vulnerable countries require assistance, financial and otherwise, to deal with climate disasters, but reject any suggestion of liability, compensation, or reparations.

With this, the ICJ has strongly endorsed the concept of loss and damage in climate laws, which call upon developed countries to take the lead in raising financial and other support to help countries recover from impacts of climate change. This is likely to trigger a wave of litigation seeking compensation from the developed countries. Corporate polluters too are likely to be taken to court.

The advisory opinion is likely to be contested — and not just by the developed world.

For example, the ICJ has opined that merely initiating some climate actions is not sufficient compliance with the obligations of countries— the scale or magnitude of these actions is open to scrutiny. However, under the Paris Agreement, countries are free to decide their climate actions, and the only requirement is that every subsequent set of actions must be a progression on the previous ones. There is no provision to ascertain the sufficiency of a country's climate action, or the lack thereof.

The actual impact of the ruling will become evident only when it begins to be cited as precedent in individual cases on climate-related disputes, and from the treatment that it receives from governments.

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