REJECTING LEX SPECIALIS, AFFIRMING SYSTEMIC INTEGRATION: THE ICJ'S ADVISORY OPINION IN OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

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ABSTRACT

In its landmark advisory opinion on the Obligations of States in Respect of Climate Change, the International Court of Justice opined that States have obligations under a wide range of treaties, and customary international law, to, among other things, ensure the protection of the climate system from anthropogenic greenhouse gas emissions, and to prevent significant harm thereof. While its findings will be studied on many issues for decades to come, the present commentary focuses on an underlying matter of methodology. As a Court with general subject-matter jurisdiction, the Court was entrusted with the request for an advisory opinion to

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opine on the implications of a variety of international legal norms. It was argued by some participants that the climate change treaty regime constituted lex specialis, i.e., a body of special rules which precluded the applicability of other rules of international law that may, otherwise, have been relevant as regards the conduct of States with respect to climate change. The Court, however, rejected this argument; not only that, the Court affirmed the necessity to interpret certain norms in question whilst taking account of other relevant rules of international law, i.e., it signalled support towards the systemic integration principle in the climate change context. This commentary studies the approach of the Court on both a general and granular level, seeking to examine the key insights and noteworthy omissions in the reasoning of the Court on the interrelationship between a variety of international legal norms. It will be seen that the Court's approach reflects a balance of harmonisation, respecting the consent of States not to be bound by certain

rules, and a pragmatism in international climate change governance.

Keywords: *International Court of Jutice (ICJ), State Obligations, Lex Specialis, Climate Change.*

I. INTRODUCTION

23rd July 2025 will be remembered as a historic day, considering that the International Court of Justice ("ICJ") delivered, unanimously, its highly anticipated advisory opinion on the *Obligations of States in respect of Climate Change*.[1] The advisory opinion, which was requested by the United Nations General Assembly, is significant for many reasons. Over 100 States and international organisations participated in the written and oral stages of the proceedings, something unprecedented in the history of the Court.[2] Such wide engagement attests to the perceived importance of the challenges surrounding climate change, as well as the role of the Court in clarifying the obligations of States thereof. Uniquely, the impetus for this advisory opinion was borne of the collective efforts of those

[1] *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf> accessed 18 July 2025.

[2] *Climate Change AO* (n 1) ¶¶ 17, 24, 35.

marginalised the most by climate change, the foundation for which was laid by youth mobilisation from within the Pacific Island countries.[3]

In a nutshell, the Court affirmed that States have obligations under international law to protect and prevent harm to the climate system, including with respect to fossil fuel activities within their jurisdiction. The Court's advisory opinion was wide-ranging in terms of the themes it touched upon in respect of their implications regarding climate change.[4] Most Judges also authored individual or joint opinions appended to the advisory opinion; some of these have been characterised as a dissent "in all but name".[5] However, as a corollary, this fact demonstrates that the issues over which consensus could indeed develop and materialize in the text of the advisory opinion should be given great weight as an authoritative statement by the world's highest court, despite the formally non-binding character of an advisory opinion.[6]

[3] Margaretha Wewerinke-Singh, Ayan Garg and Jacques Hartmann, 'The advisory proceedings on climate change before the International Court of Justice' [2023] 102 QIL, Zoom-in 23-43.

[4] *Climate Change AO* (n 11) i-iv.

[5] Mario Prost, 'Disaster Passing as Miracle? A Critical Take on the ICJ's Climate Advisory Opinion' (*EJIL:Talk!*, 14 August 2025), <https://www.ejiltalk.org/disaster-passing-as-miracle-a-critical-take-on-the-icjs-climate-advisory-opinion/> accessed 14 August 2025.

[6] Vahid Rezadoost, 'Unveiling the 'author' of international law — The 'legal effect' of ICJ's advisory opinions' [2024] 15:4 Journal of International Dispute Settlement 506-533.

The Court's advisory opinion concerns a wide array of topics of controversy, including, but far from being limited to, the continuity of statehood despite the submergence of territory owing to sea-level rise, the scope and content of the obligation to prevent significant harm to the climate system, due diligence as a standard of conduct for measuring compliance with particular primary obligations and other important issues.[7] The Court's views and omissions will, undoubtedly, be studied for years to come.

This commentary, however, will focus on one cross-cutting issue concerning the methodology of the Court, which affected its findings—namely, the systemic interrelationship between rules of international law from a range of contexts and areas, when it comes to the obligations of States with respect to climate change.

In this regard, two particular matters will be addressed: the Court's rejection of the argument that the climate change treaty regime constituted a '*lex specialis*' (i.e., a body of special rules in the climate change context) to the exclusion of other international legal rules; and secondly, the Court's slightly cautious, but noteworthy approach to the 'systemic integration' of rules of different rules of international law, in identifying and giving meaning to the obligations of States concerning climate change. The Court's views on these matters will have an

[7] 'Systemic Impacts and Structural Shifts: Climate Change and the Role of the ICJ Advisory Opinion' (*Völkerrechtsblog*, August 2025) <https://voelkerrechtsblog.org/symposium/symposium-on-the-icj-climate-change-advisory-opinion/> accessed 18 December 2025.

enduring influence not only in the climate change discourse, but in any proceeding in the future where *lex specialis* or systemic integration questions arise.

II. THE *LEX SPECIALIS* CONTROVERSY

The United Nations Framework Convention on Climate Change ("UNFCCC"), 1992, was the first treaty specifically regulating international climate change governance.[8] Under the purview of this regime, other treaties of significance were also adopted. The Kyoto Protocol, 1997, was the first treaty creating obligations for certain States towards cutting emissions; however, it was widely regarded as a failure for many reasons, including the fact that binding obligations were limited to 'Annexe I' (i.e., developed) countries.[9] The Paris Agreement, 2015, was seen as a breakthrough, given the fact that it crafted obligations for all countries, whether developed, developing, or least developed, towards emission cuts and other measures with a view to tackling climate change.[10] This agreement, however, was also not without its deficiencies and concessions. It was made possible by the

[8] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

[9] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162; Christopher Napoli, 'Understanding Kyoto's Failure' [2012] 32:2 The SAIS Review of International Affairs 183-196.

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

formulation of "Nationally Determined Contributions" ("NDCs"), which were commitments made voluntarily by each country towards a common global temperature target.[11] Whereas promising on first impressions, there increasingly arose questions on whether NDCs would be ambitious enough, or in any case, timely, to ensure the realisation of the goals envisaged under the Paris Agreement.[12] Moreover, the Paris Agreement was drafted with notable omissions; as but one example, its text does not restrict activities surrounding fossil fuels, which are the most prominent contributors to climate change.[13] Further decisions on such issues could be made, with the consensus of the States Parties, within the framework of the Conference of the Parties to these treaties.[14] Still, this regime of successive treaties constituted what the Court characterised as the climate change treaty regime.

The Court held that States in formulating their NDCs must ensure their ambitions are progressively higher rather than merely a cosmetic exercise, and in line with a stringent 'due diligence' standard, tempered by the principle of common but differentiated responsibilities and

[11] ibid art 4(2).
[12] Manjana Milkoreit, 'The Paris Agreement on Climate Change—Made in USA?' [2019] 17:4 Perspectives on Politics 1019-1037.
[13] Abhijeet Shrivastava, 'A Moment for Momentum: Due Diligence Regarding Fossil Fuel Activities in the ICJ's Advisory Opinion' (*Indian Blog of International Law*, 9 August 2025) <https://allaboutil.wordpress.com/2025/08/09/due-diligence-regarding-fossil-fuel-activities/> accessed 18 December 2025.
[14] *Climate Change AO* (n 1) ¶ 184.

respective capabilities.[15] However, one question remained—were the obligations under this regime, such as to develop and act on NDCs, exclusive to other possible obligations that might be implicated by climate change? In other words, was the climate change treaty regime a '*lex specialis*', a body of special rules regulating the conduct of the States Parties regarding that phenomenon, precluding the applicability of obligations under other areas, such as the law of the sea, human rights law or customary international law more widely?[16] It is noteworthy that to characterise a body of law as '*lex specialis*' may imply, depending on the circumstances, either (a) that it is of exclusive application, displacing other rules (as a tool of conflict resolution), or (b) that it results in that body of law being co-applicable with others, but acting as the interpretive prism for the co-applicable rules (as a tool of harmonisation).[17] Here, it was argued in the former conception.

[15] *Climate Change AO* (n 1) ¶¶ 233-249.

[16] *Climate Change AO* (n 1) ¶¶ 162, 166; Abhinandita Biswas, 'ICJ Rejects the Narrow Framing of Lex Specialis in its Climate Change Advisory Opinion' (*Indian Blog of International Law*, 11 August 2025) <https://allaboutil.wordpress.com/2025/08/11/icj-rejects-the-narrow-framing-of-lex-specialis/> accessed 12 August 2025.

[17] Amirabbas Kiani, 'From 'Nuclear Weapons' to 'Climate Change': The ICJ's Approach to the lex specialis Maxim' (*Opinio Juris*, 7 November 2025) <https://opiniojuris.org/2025/11/07/from-nuclear-weapons-to-climate-change-the-icjs-approach-to-the-lex-specialis-maxim/ed> accessed 18 December 2025; Marko Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (OUP 2011) 229-261.

This argument was advanced, strategically, by countries, such as those highly reliant on fossil fuels, that sought to minimise international legal scrutiny to the fullest extent possible. To suggest that the climate change treaty regime, with its deficiencies, was the exclusive body of international law that addressed the obligations of States Parties as regards climate change, was a tactic to deny the applicability of a variety of other international legal norms, which could impose possibly more stringent requirements than the voluntary or less than truly effective targets set within this regime.

A year prior to the ICJ's delivery of its advisory opinion on this matter, the International Tribunal on the Law of the Sea ("ITLOS") had already pronounced on the implications of climate change, particularly for States Parties of the United Nations Convention on the Law of the Sea ("UNCLOS"), 1982.[18] The ITLOS was also presented with an argument that the climate change treaty regime constituted a '*lex specialis*', to the extent of excluding the applicability of UNCLOS when it came to the obligations of States Parties concerning the oceans and the marine environment; or, even if UNCLOS co-applied, the thresholds via which the breaches of UNCLOS obligations were to be determined, were to be found in NDCs and other commitments undertaken under the climate change treaty regime.[19] The ITLOS

[18] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

[19] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion) (2024) ITLOS Case No 31 para 220.

unanimously and firmly rejected the *lex specialis* contention. In the view of the ITLOS, while the climate change treaty regime and the provisions of the UNCLOS pertinent to States Parties' conduct surrounding climate change were complementary, this did not mean that their obligations under the UNCLOS "would be satisfied simply by complying with the obligations and commitments under the Paris Agreement".[20] In this vein, the ITLOS signalled clearly that the UNCLOS could, depending on the circumstances, impose a more stringent standard of conduct than foreseen in the climate change treaty regime.[21] The separate, but complementary, application of these international legal rules was preserved.

The ICJ followed the path set forth by the ITLOS in many ways. Like the ITLOS, the ICJ found that whereas a number of wide-ranging obligations under international law were pertinent with respect to climate change, these obligations were not, as such, displaced by the climate change treaty regime.[22] In this regard, the climate change treaty regime offered no indication that it was meant to apply to the exclusion

[20] ibid ¶¶ 223-224.

[21] Bastiaan Klerk, 'The ITLOS advisory opinion on climate change: Revisiting the relationship between the United Nations Convention on the Law of the Sea and the Paris Agreement' [2025] 34:1 Review of European, Comparative and International Environmental Law 181-193; Christina Voigt, 'ITLOS and the importance of (getting) external rules (right) in interpreting UNCLOS' (*Verfassungsblog*, 29 May 2024) <https://verfassungsblog.de/itlos-and-the-importance-of-getting-external-rules-right-in-interpreting-unclos/> accessed 18 December 2025.

[22] *Climate Change AO* (n 1) ¶¶ 162-171

of the applicability of other rules that may bear on the same subject matter, namely, climate change.[23] Therefore, the Court opined on a variety of international legal norms which regulated the conduct of States Parties as regards climate change, including, as previously mentioned, the customary duty to exercise due diligence to prevent significant harm (in this instance) to the climate system.[24]

However, the ICJ went further to state:

> *"As it is difficult to determine in the abstract the extent to which the climate change treaties and their implementation practice influence the proper understanding of the relevant customary obligations and their application, the Court considers that, at the present stage, compliance in full and in good faith by a State with the climate change treaties, as interpreted by the Court (see paragraphs 174-270 above), suggests that this State substantially complies with the general customary duties to prevent significant environmental harm and to co-operate. This does not mean, however, that the customary obligations would be fulfilled simply by States complying with their obligations under the climate change treaties (see Climate Change, Advisory Opinion, ITLOS Reports 2024, pp. 85-86, para. 223). While the treaties and customary international law inform each*

[23] *Climate Change AO* (n 1) ¶¶ 168-169.
[24] *Climate Change AO* (n 1) ¶ 172.

> *other, they establish independent obligations that do not necessarily overlap."*[25]

The first part of this paragraph can possibly be interpreted as watering down the Court's rejection of the *lex specialis* argument. It could be viewed as suggesting that, although the climate change treaty regime did not wholesale displace other obligations pertinent to climate change, it did, however, provide for the operational thresholds for examining breaches of the former. In effect, then, a State compliant with its NDCs, or other such commitments, "substantially complies" with other rules under international law; the burden is on its opponents to demonstrate otherwise.

That, however, is not the end of the story. As the second part of the same paragraph warns, referring clearly to the view of ITLOS on the matter, complementary obligations nevertheless retain their separate existence. A State compliant with its obligations under the climate change treaty regime may, despite that, be acting in a given situation in breach of its obligations under the UNCLOS, human rights treaties, or of customary legal norms, such as the prevention principle. Judges Charlesworth, Brant, Cleveland, and Aurescu emphasise in their joint declaration devoted to this issue that:

[25] *Climate Change AO* (n 1) ¶ 314.

> *"When read in isolation, these formulations of the relationship between customary law and treaty law with respect to climate change appear ambiguous and potentially misleading. They must, however, be read within the frame of the whole Opinion, in conjunction with its relevant findings. In our view, paragraphs 314 and 315 should not be interpreted to suggest that compliance with customary rules may be assessed only by reference to the climate change treaties, since the Court expressly rejects this reading when emphasizing that obligations under customary law are not fulfilled simply by States complying with their obligations under the climate change treaties. As the Court recognizes, the treaties and customary international law establish independent obligations that do not necessarily overlap. Any other interpretation would run contrary to the rules of international law and the Opinion as a whole."*[26]

Judge Tladi, in his declaration, suggests that the Court's choice to include this paragraph was because, as a "practical matter, the Paris Agreement "currently commands much of the attention of the States".[27] The Court's reference to the climate change treaty regime, then, as a yardstick to evaluate, at least as a starting point, compliance with other

[26] *Obligations of States in respect of Climate Change* (Joint declaration of Judges Charlesworth, Brant, Cleveland and Aurescu) [2025] <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-09-en.pdf> accessed 18 December 2025.

[27] *Obligations of States in respect of Climate Change* (Declaration of Judge Tladi) [2025] <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-12-enc.pdf> accessed 18 December 2025.

legal obligations, can be seen as a result of pragmatism, not a concession in principle. The Court, then, rightly rejected the submissions seeking the climate change treaty regime to monopolise international legal governance on the issue; yet, it appeared to favour a presumption of compliance with other rules when the climate change treaty regime itself is complied with.

That being the case, the question arises whether, and how, the Court referred to the possible overlap or interrelationships between this range of international legal norms in respect of climate change.

III. SYSTEMIC INTEGRATION IN CLIMATE CHANGE

Under international law, States may assume obligations under a range of treaties across specialist areas, or under customary international law, which may, in some situations, parallelly regulate or have a bearing on the same subject-matter. Such was the case, as argued by a majority of participants, with regard to climate change;[28] indeed, the very framing of the question submitted to the Court in the request for an advisory opinion included references to a range of international legal norms,[29] including as the prevention principle, commitments under the UNCLOS, certain multilateral environmental agreements ("MEAs"), or the two most significant human rights treaties—the International

[28] *Climate Change AO* (n 1) ¶ 163.
[29] *Climate Change AO* (n 1) ¶ 1.

Covenant on Civil and Political Rights ("ICCPR"),[30] and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR"), 1966.[31] Not just that, participants submitted on the possible implications of treaties and customary principles from a number of other areas of international law, such as international trade law, international investment law, international civil aviation law, and international humanitarian law.[32]

There was, then, a clear decision to be made—whether, and which rules of international law the Court would address, and of those that it chose to address, how it would define their interrelationship.

In this regard, this Section examines, in general, the systemic integration principle (A), the Court's present approach to 'relevance' of a rule for interpreting another rule (B), and its view on when such a rule is 'applicable in the relation between' the States in question (C).

A. The Systemic Integration Principle

It is useful to highlight, as a methodological matter, the principle of systemic integration under international law. In essence, in giving meaning to an international legal norm, it is incumbent upon the interpreter to take account of other 'relevant rules' of international law

[30] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
[31] International Covenant on Economic, Social, and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
[32] *Climate Change AO* (n 1) ¶¶ 173, 317.

that may be 'applicable in the relations between' the States in question.[33] Considering that international law is a legal system, and not just a set of regimes operating in silos, it is essential to interpret complementarily applicable obligations so as to give rise to a single set of coherent obligations.[34] This principle is codified, notably, under Article 31(3)(c) of the Vienna Convention on the Law of Treaties, 1969.[35] However, systemic integration is of significance not just in respect of the interpretation of treaty obligations, but also other norms, such as customary international legal principles, as seen already in the Court's statement on how the climate change treaty regime may inform the interpretation of relevant customary obligations.[36]

This raises two questions of significance—how would the Court determine which other rules of international law were 'relevant' to the interpretation of an international legal norm? That is, what criteria would the Court refer to for determining which other rules were proximate enough in content to be accounted for in interpreting a given

[33] Campbell McLachlan, *The Principle of Systemic Integration in International Law* (OUP 2024) ¶ 3.206.

[34] Report of the Study Group of the International Law Commission on Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN Doc A/CN.4/L.702, 18 July 2006 ¶ 14(4).

[35] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

[36] Margaret Young, 'Systemic Integration of Obligations in an Era of Climate Change: Stability and Optimal Control' [2025] British Yearbook of International Law 1, 3.

rule? Secondly, how would the Court define which obligations are 'applicable in the relations' between the States in question—is a unison of identity required between States Parties to different treaties? In other words, could the Court, in interpreting obligations under a treaty or a customary norm, refer to rules under treaties without universal participation from States?

Scholarship shows that the Court has not had the opportunity to clarify the latter question.[37] The former question, i.e., which factors the Court considers in determining relevance, can be answered with a few indicative past examples. The Court has affirmed the principle of contemporaneous interpretation—rules that may be relevant to the interpretation of an obligation may have arisen after the emergence of the norm being interpreted.[38] In case a given international legal norm cross-references or has a close similarity in formulation to another rule, these norms may be interpreted coherently through systemic integration.[39] Similarities, for the purpose of establishing relevance, may also be discerned through other considerations, such as whether the object and purpose of a treaty alleged to contain relevant rules

[37] See Sotirios-Ioannis Lekkas, Panos Merkouris and Daniel Peat, 'The Interpretative Practice of the International Court of Justice' [2023] 26:1 Max Planck Yearbook of United Nations Law Online 316, 334-343.

[38] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16 ¶ 53.

[39] *Maritime Delimitation in the Indian Ocean (Somalia v Kenya)* (Preliminary Objections) [2017] ICJ Rep 3 ¶ 89.

resembles that of the primary treaty in question.[40] The present advisory opinion, then, offered a critical opportunity to the Court to clarify and elucidate further upon both the requirement of 'relevance' and of the rule being 'applicable in the relations' between the given States.

B. Identifying Relevant Rules

Turning to the question of relevance, insights may be found, firstly, from the Court's identification at the outset of the "most directly applicable law" in the proceedings, to which it was nudged to "have particular regard" in the request for the advisory opinion.[41] The Court took note of those treaties and norms which were mentioned in express terms in the request, such as, namely, the United Nations Charter, the UNFCCC, UNCLOS, certain MEAs, international human rights law, and certain customary international legal principles such as the prevention principle. The Court further noted:

> *"The Court emphasizes that this list serves to determine only the applicable law which is most directly relevant for answering question (a) put to it by the General Assembly. It is without prejudice to other rules of international law that may also be relevant under various circumstances in the context of climate change. Such rules may be found, for example, in*

[40] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v United Arab Emirates)* (Preliminary Objections) [2021] ICJ Rep 71 ¶ 104.
[41] *Climate Change AO* (n 1) ¶¶ 1, 99, 113-114.

> *international trade law, international investment law, and international humanitarian law."*[42]

From the approach of the Court, it is inferable that a few pragmatic considerations played a role in its selection of the applicable law, including the invocation thereof in express terms in the question posed to it, and the frequency with which certain rules were invoked during the course of the proceedings.[43] Ultimately, if the Court chose not to address certain rules as the most directly applicable law in the first place (such as trade, investment, or humanitarian and criminal law), it would also not have had the opportunity to clarify their interrelationship with other norms of international law. However, as the Court cautions, its advisory opinion was not exhaustive, and its decision not to address these rules should not be interpreted as indicating that the rules it omitted operate in silos; on the contrary, the views of certain Judges engage with some of the rules and regimes omitted from the advisory opinion, and their interrelationship with different norms.[44]

As regards the above-named international legal norms which the Court indeed decided to address in the advisory opinion, there was one common thread—a finding from the Court that the norm in question had implications over the subject-matter of the proceedings, i.e.,

[42] *Climate Change AO* (n 1) ¶ 173.
[43] *Climate Change AO* (n 1) ¶¶ 133, 370, 419.
[44] See *Obligations of States in respect of Climate Change* (Declaration of Judge Cleveland) [2025] <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-10-en.pdf> accessed 18 December 2025.

climate change.[45] The Court stated, as mentioned above, that the framework of the climate change treaty regime may inform the interpretation of customary international legal norms having a bearing on the climate system, such as the prevention principle and the duty to co-operate.[46] So, too, the other way around—the climate change treaty regime, and any interpretive ambiguities therein, would have to be rationalised with reference to the principle of prevention and the duty to co-operate; hence, their complementary character.[47] Considering the common aegis under which the climate change treaties were established, the Court had no qualms affirming their interpretive interrelationship.[48] As regards MEAs, the Court referred to certain obligations under the Ozone Layer Convention, 1985,[49] The Montreal Protocol, 1987,[50] The Biological Diversity Convention, 1993,[51] and the Desertification Convention, 1994,[52] Insofar as the Court found that the concerned obligations regarding specific spheres of the environment

[45] *Climate Change AO* (n 1) ¶¶ 113-145.
[46] *Climate Change AO* (n 1) ¶ 314.
[47] *Climate Change AO* (n 1) ¶¶ 309-315.
[48] *Climate Change AO* (n 1) ¶¶ 116-121.
[49] Vienna Convention for the Protection of the Ozone Layer (adopted 22 March 1985, entered into force 22 September 1988) 1513 UNTS 293.
[50] Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3.
[51] Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 179.
[52] United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (adopted 14 October 1994, entered into force 26 December 1996) 1954 UNTS 3.

were ultimately connected, in the circumstances, to the regulation of the climate system, which was the subject-matter of the proceedings.[53] The same applies in its analysis of the UNCLOS, with respect to obligations concerning the protection and preservation of the marine environment.[54]

Likewise, as regards obligations under the ICCPR, the ICESCR, and the right to a clean, healthy, and sustainable environment, the Court stated as follows (indicative of its affirmation, in general, to systemic integration):

> *"The Court is of the view that international human rights law, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other (see paragraphs 309-315 above). States must therefore take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other relevant environmental treaties and under customary international law into account when implementing their human rights obligations."*[55]

[53] *Climate Change AO* (n 1) ¶¶ 316-315.
[54] *Climate Change AO* (n 1) ¶ 339.
[55] *Climate Change AO* (n 1) ¶ 404.

It seems, then, that the moment the Court found that a given international legal norm regulated, in some form, the subject-matter of the proceedings, i.e., the conduct of States surrounding the climate system, every such norm was seen as, at least potentially, relevant for the purposes of systemic integration with the other norms also characterised in this manner. Thus, in other words, all of the international legal norms identified as the "most directly relevant" in the proceedings by the Court should be seen as complementary and systemic in application, giving rise to a single set of coherent obligations.

In a nutshell, then, the Court affirmed, in principle, the role of systemic integration in interpreting the most directly applicable law to the proceedings. The Court may be critiqued, however, for not going further. After all, the advisory opinion would have been much more enriching if the Court provided practical guidance on how, for instance, obligations under the UNCLOS, the climate change treaty regime, the prevention principle, and human rights law could, in a given situation, give rise to a coherent set of legal obligations, especially on issues of significance, such as fossil fuel production, consumption and subsidies. Therefore, rather than just stating the necessity of the complementary interpretation of different international legal norms in respect of climate change, the advisory opinion could have been more impactful had it given operational insights regarding systemic integration. It may also be considered that the Court addressed three forms of "harmony":

intra-regime (as between treaties comprising the climate change treaty regime), between treaty law and customary law (such as the Paris Agreement and the prevention principle), and inter-regime (as between rules from, say, the law of the sea, MEAs and other fields).[56] On this understanding, one may more precisely say that although the Court offered useful insights on the first and second categories, its analysis on inter-regime harmony, a topic of immense importance in an increasingly fragmented climate governance discourse, could have offered much-needed clarity. As the world's highest Court, and the only Court with general subject-matter jurisdiction, that too, having been entrusted with a wide-ranging set of norms, the Court ought to have seized this opportunity.

Nevertheless, the significance of the Court's insistence on how these rules may inform each other, cannot be overstated, and will surely offer a range of possibilities on future thinking and argument on the matter. In any event, further insights in this regard may be discerned from the views of the ITLOS,[57] or the advisory opinion also recently delivered by the Inter-American Court of Human Rights on the Climate

[56] Caroline Foster, 'The 2025 International Court of Justice Advisory Opinion on Obligations of States in respect of Climate Change' [2025] International and Comparative Law Quarterly 1, 4.

[57] Khaled Elmahoud, 'The ITLOS Advisory Opinion: Human Rights as a Withered Branch of International Law?' (*EJIL: Talk!*, 24 June 2024) <https://www.ejiltalk.org/the-itlos-advisory-opinion-human-rights-as-a-withered-branch-of-international-law/> accessed 18 December 2024.

Emergency and Human Rights,[58] and the decisions of other specialist courts and tribunals.

C. The Applicability of Relevant Rules

It is a trite matter that treaties only establish obligations as between States Parties to the treaty.[59] Regarding the present proceedings, the question remains how the Court determined which rules were 'applicable in the relations' between States, when it concluded that such rules had an interpretive relationship. For example, were obligations under the ICCPR, the UNCLOS or MEAs material for those States that were not parties to these agreements, when it came to the determination of universal obligations, such as the customary prevention principle? The Court's answer here, as with its view on the *lex specialis* argument, requires close attention.

In principle, the Court, whenever insisting that a treaty rule could be used to interpret another rule, was sure to ensure it respected the consent of non-State Parties by adding a disclaimer, such as the one that follows:

[58] Rebecca McMenamin, 'The ICJ climate advisory opinion and systemic integration' (*Cambridge International Law Journal*, 8 August 2025) <https://cilj.co.uk/the-icj-climate-advisory-opinion-and-systemic-integration/> accessed 18 December 2025; Climate Emergency and Human Rights, Advisory Opinion AO-32/25, Inter-American Court of Human Rights (29 May 2025).
[59] VCLT (n 35) art 34.

> …In this regard, the obligations incumbent upon States parties to the Biodiversity Convention complement those set forth in climate change treaties, insofar as the States concerned are also parties to those instruments.[60]

Thus, by cautioning that the effect of systemic integration was limited as between those States that were parties to both the treaty containing the rule being interpreted and the treaty containing the relevant external rule, the Court struck a balance between ensuring the complementarity of different rules of international law and the absence of the consent of non-States Parties.

In at least one instance, concerning the interpretation of customary norms in light of the climate change treaty regime, the Court appears to water down this balance by stating:

> *"….On this basis, the Court considers that it is possible that a non-party State which co-operates with the community of States parties to the three climate change treaties in a way that is equivalent to that of a State party, may, in certain instances, be considered to fulfil its customary obligations through practice that comports with the required conduct of States under the climate change treaties. However, if a non-party State does not co-operate in such a way, it has the full burden*

[60] *Climate Change AO* (n 1) ¶¶ 324, 329, 334.

> *of demonstrating that its policies and practices conform with its customary obligations."*[61]

As discussed earlier, for the Court, a State Party's compliance with the climate change treaty regime would imply a presumption favouring its compliance with its customary obligations concerning the climate system, such as the prevention principle and the duty to co-operate. The foregoing observation may be seen as a corollary of this view; for any non-State Party acting inconsistently with the standards specified under this regime, it will be presumed that, while not being in breach of the treaties (as a non-Party), it may be in breach of its customary obligations. In positivist terms, the conclusion of the Court may be critiqued for giving treaty norms functional equivalence with the content of customary norms, especially since it did not anywhere suggest that the scope of the concerned treaty and customary obligations was identical. Nor did the Court, and it could not, find that the treaties, wholesale, reflected co-existing customary norms. In pragmatic terms, however, one may understand the approach of the Court as seeking to ensure that there is some yardstick with which to examine breaches of customary obligations for non-State Parties to the climate change treaty regime, rather than leaving this matter with no operational insight.

[61] *Climate Change AO* (n 1) ¶ 315.

What might explain the Court's choice of referring only to the climate change treaty regime in this observation on treaty norms that may show thresholds for compliance with universal customary norms? Why not also refer to the MEAs, the UNCLOS, or human rights treaties it considered? Again, the answer is likely pragmatic—the treaties under this regime have universal or near-universal ratification.[62] In this sense, then, the Court's approach to the interpretive relationship between international legal norms through systemic integration, including on whether a unison of identity is necessary between the norms, can be described as balanced—neither conservative to the point of dismissing the complementarity of certain norms, nor progressive to the extent of dismissing the requirement of State consent to treaties.

IV. CONCLUSION

The ICJ should be appreciated, like the ITLOS, for firmly rejecting the unfounded argument that the climate change treaty regime constituted a *lex specialis*, displacing every other international legal norm that had a bearing on States' conduct surrounding climate change. The Court's approach to systemic integration in respect of the interpretation of complementary international legal norms as regards climate change reflects a balance of positivist caution and providing an enriching and coherent account of otherwise distinct norms. The Court only addressed those rules which it considered the "most directly relevant" as applicable law, thus reserving its position on less directly relevant

[62] *Climate Change AO* (n 1) ¶ 223.

norms, such as under international economic law, while addressing other topics ranging from the law of the sea, MEAs, and international human rights law. Although insisting that these norms are to be interpreted and applied as a single set of coherent obligations, the Court could have gone further, if only illustratively, to provide operational guidance on how such coherence may be developed as between obligations from different specialist areas of international law. Moreover, the Court's approach to the relationship between the climate change treaty regime and customary international law, in respect of both States Parties and non-States Parties thereof, reflects more of a dependence on pragmatism than the Court might wish to admit. However, one cannot fully fault the Court, given the complexity of the matter, and since the Court was not dealing with the specific facts of a dispute, but rather, striving to answer a question on the obligations of States in a general form. Perhaps further proceedings, including in contentious cases in the future, could clarify some of these enduring controversies. In any event, the fact that the Court accepted, in principle, the interpretive relationship between a wide range of international legal norms, offers fertile ground for practitioners and academics to give concrete meaning to international law as a legal system in the climate change context. That foundation, provided unanimously, cannot be taken for granted. While one cannot easily think of a phenomenon more complex than climate change, the insights of the Court on the *lex specialis* and systemic integration principles will

surely influence its methodology, and that of other courts and tribunals, in the future. At least, the Court is to be praised for leaving the door open.