ICJ's 2025 Advisory Opinion: A New Benchmark for State Due Diligence in Climate Affairs

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1. Introduction

Climate change presents a distinctive challenge for the customary international-law duty to prevent significant environmental harm. This characterisation follows the International Court of Justice's (ICJ) recognition of the principle of prevention as a rule of customary international law (Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010).

While the Court had previously linked the prevention principle to a requirement of due diligence, that jurisprudence developed principally in the context of more conventional transboundary environmental risks. Anthropogenic climate change is structurally different: greenhouse-gas emissions

are cumulative, originate from numerous public and private actors across States, and contribute collectively to harm affecting the climate system as a whole (Obligations of States in respect of Climate Change, 2025).

These characteristics complicate the application of the traditional prevention framework, which developed principally in relation to transboundary environmental harm linked to activities within a State's jurisdiction or control (Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010). This difficulty was reflected in differing views advanced by States during the advisory proceedings concerning the applicability and content of the prevention obligation in the climate context (People's Republic of China, 2024).

In its 2025 advisory opinion on Obligations of States in respect of Climate Change, the ICJ addressed this difficulty by confirming that the customary duty to prevent significant environmental harm applies to the climate system and that compliance with this obligation is assessed through due diligence (Obligations of States in respect of Climate Change, 2025). This essay examines how the Court articulates that standard and the extent to which its reasoning resolves pre-existing doctrinal uncertainty. It argues that the opinion clarifies, rather than creates the applicable standard by grounding climate obligations in the existing customary duty of prevention while specifying how due diligence operates in the climate context: through a standard whose application is determined objectively and varies according to factors including the level of risk, available scientific and technological knowledge, and States' respective capabilities (Obligations of States in respect of Climate Change, 2025).

Due diligence is a standard of conduct requiring States to take appropriate measures to fulfil their duty to prevent significant environmental harm, with the content of that standard depending on the circumstances of the particular case (Obligations of States in respect of Climate Change, 2025). In the climate context, Rajamani (2020) similarly identifies due diligence as particularly relevant to obligations of conduct and emphasises that the nature and extent of the diligence required may be influenced by factors including good faith and common but differentiated responsibilities. Building upon earlier environmental jurisprudence, the Court adapts due diligence to the particular characteristics of climate change and gives it greater content through factors including the gravity of environmental risk, scientific and technological information, relevant international standards, States' respective capabilities, precaution, environmental impact assessment, and notification and consultation (Obligations of States in respect of Climate Change, 2025). Nevertheless, important uncertainty remains. Due diligence continues to be variable, evolving and dependent upon the circumstances of each State (Obligations of States in respect of Climate Change, 2025), leaving unresolved questions concerning the weight of these factors, the relationship between compliance with the Paris Agreement and indepen-

dent customary obligations, and the point at which inadequate climate action becomes a breach of the prevention obligation.

2. The ICJ's 2025 Advisory Opinion

2.1. Scope and Trigger of the Duty to Prevent

The ICJ's 2025 advisory opinion confirms that the customary international-law duty to prevent significant environmental harm applies to the climate system (Obligations of States in respect of Climate Change, 2025). For this duty to arise, there must be a risk of significant environmental harm, assessed by reference to both the probability or foreseeability of the harm and its severity or magnitude. The higher the probability and seriousness of possible harm, the more demanding the required standard of conduct (Obligations of States in respect of Climate Change, 2025). The Court concluded that the duty to prevent is not confined to direct cross-border harm but extends to global environmental concerns and therefore applies to the climate system. Its application is not precluded by the cumulative and diffuse character of the activities contributing to anthropogenic climate change (Obligations of States in respect of Climate Change, 2025).

2.2. Due Diligence as the Standard of Conduct

Compliance with this duty is assessed through due diligence, a standard of conduct whose requirements depend on the circumstances of the particular State and may evolve over time (Obligations of States in respect of Climate Change, 2025). The ICJ itself held that the standard of due diligence for preventing significant harm to the climate system is "stringent" (Obligations of States in respect of Climate Change, 2025). The opinion gives this standard more concrete content. This distinction also has consequences for State responsibility. Because due diligence is an obligation of conduct rather than a guarantee of a particular environmental result, responsibility does not arise merely because climate harm occurs; it may arise where a State fails to exercise the due diligence required by its obligation to prevent significant environmental harm (Obligations of States in respect of Climate Change, 2025). States must adopt appropriate regulatory and enforcement measures; the probability and seriousness of environmental harm affect the level of diligence required; scientific and technological information informs what measures can reasonably be expected; relevant international rules and standards guide the assessment; and States' respective capabilities affect the measures required of them (Obligations of States in respect of Climate Change, 2025). The Court also identifies precaution, environmental impact assessment, and notification and consultation as relevant elements of the due diligence framework (Obligations of States in respect of Climate Change, 2025).

2.3. Continuity with Earlier Environmental Jurisprudence

These conclusions did not emerge in isolation. The 2025 opinion builds upon principles established through the Court's earlier environmental jurisprudence, particularly Pulp Mills on the River Uruguay and Certain Activities/Construction of a Road (Obligations of States in respect of Climate Change, 2025). Examining those decisions therefore helps identify what the 2025 opinion retains from the existing prevention framework and what it develops when applying due diligence to the distinctive characteristics of climate change.

3. Development of Due Diligence in Environmental Jurisprudence

3.1 Pulp Mills and the Foundations of Due Diligence

The earlier jurisprudence first established the foundations of this framework. In Pulp Mills on the River Uruguay, the ICJ linked the principle of prevention directly to due diligence, stating that "the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory" (Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010, para. 101). The Court further stated that a State is therefore obliged to use "all the means at its disposal" to avoid activities within its territory or jurisdiction causing significant environmental damage to another State (Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010, para. 101). The judgment gives practical content to due diligence by requiring not only the adoption of appropriate rules and measures, but also vigilance in their enforcement and administrative control over public and private operators, including the monitoring of their activities (Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010).

Pulp Mills also established an important procedural dimension through environmental impact assessment (EIA). In essence, an EIA assesses the potential environmental effects of a proposed activity. The Court held that where there is a risk that a proposed industrial activity may have a significant adverse impact in a transboundary context, an EIA is required under general international law (Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010). The Court did not prescribe a universal scope or content for an EIA; this is to be determined according to the circumstances of each case, having regard to the nature and magnitude of the proposed development and its likely adverse environmental impact (Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010).

3.2. The Cases between Nicaragua and Costa Rica

The Court elaborated these requirements in the two cases decided together in 2015: Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along

the San Juan River (Nicaragua v. Costa Rica). Although the proceedings concerned separate disputes brought by Costa Rica and Nicaragua respectively, both required the Court to consider the customary obligation to prevent significant transboundary environmental harm (Certain Activities/Construction of a Road, 2015). The Court confirmed that a State must determine whether a proposed activity creates a risk of significant transboundary harm and, where such a risk exists, conduct an environmental impact assessment (Certain Activities/Construction of a Road, 2015). In Certain Activities, the Court found that Nicaragua's dredging programme did not give rise to a risk of significant transboundary harm and therefore did not trigger an obligation to conduct an EIA, whereas in Construction of a Road it found that Costa Rica's road project did give rise to such a risk and that Costa Rica had failed to comply with its obligation to conduct an EIA before construction (Certain Activities/Construction of a Road, 2015).

The two cases also clarified the relationship between environmental assessment, notification and consultation. Where an EIA confirms a risk of significant transboundary harm, the State is required, in accordance with due diligence, to notify and consult in good faith with the potentially affected State, where necessary to determine appropriate measures to prevent or mitigate that risk (Certain Activities/Construction of a Road, 2015). These requirements help define the procedural component of the prevention obligation: due diligence involves not only taking substantive measures to prevent significant environmental harm, but also assessing environmental risks and, where the relevant conditions are satisfied, notifying and consulting potentially affected States. The 2025 advisory opinion expressly draws upon this jurisprudence when identifying environmental impact assessment, notification and consultation as elements relevant to due diligence in the climate context (Obligations of States in respect of Climate Change, 2025).

3.3. Competing State Positions in the Advisory Proceedings

The scope and content of due diligence were also contested during the advisory proceedings. Vanuatu submitted that due diligence should not simply be equated with the prevention principle, arguing that it has a broader material scope and does not contain the same threshold requirement of "significant" environmental harm (Republic of Vanuatu, 2024). It further argued that the level of diligence required depends partly on the historical moment at which it is assessed, because the expected level of diligence increases as knowledge concerning the consequences of harmful conduct develops (Republic of Vanuatu, 2024). These submissions raised a broader question concerning how an established but context-dependent standard of due diligence should operate in the climate context. The Court's eventual approach represents an evolutionary development in this respect: it characterised due diligence as a multifactorial and evolving standard and treated

scientific and technological information, environmental risk and States' respective capabilities as relevant to determining the diligence required (Obligations of States in respect of Climate Change, 2025). The evolutionary significance of the opinion therefore lies not in the creation of a new duty, but in adapting the existing due diligence standard to the distinctive circumstances of climate change.

China advanced a different position concerning the application of the prevention principle to climate change. While accepting that the prevention of significant transboundary environmental harm is a well-established principle of international law requiring States to exercise due diligence and take appropriate measures, China argued that the prevention principle itself was inapplicable to climate change because of the global, historical and cumulative character of anthropogenic climate change (People's Republic of China, 2024). China nevertheless considered the duty of due diligence to be applicable to addressing climate change in principle (People's Republic of China, 2024). This distinction sharpened the doctrinal question confronting the Court: whether the customary prevention obligation, developed in relation to transboundary environmental harm, could extend to the structurally different problem of global climate change.

The United States similarly questioned how the customary due diligence framework should apply to climate change, but placed greater emphasis on the role of the climate treaty regime. It characterised due diligence as a context-specific obligation of conduct whose requirements depend on the particular facts and circumstances (United States of America, 2024). The United States stressed that anthropogenic greenhouse-gas emissions and global climate change differ from the kinds of activities and harms to which due diligence had previously been applied (United States of America, 2024). Assuming that a customary obligation to prevent or minimise significant transboundary environmental harm applies to anthropogenic greenhouse-gas emissions, it argued that the obligations established by the UN climate change regime, particularly the Paris Agreement, should define the relevant standard of due diligence (United States of America, 2024). In its view, implementation of a State party's obligations under the Paris Agreement would satisfy the requirements of any such customary due diligence obligation (United States of America, 2024).

3.4. ITLOS and the Stringent Climate Standard

The 2024 International Tribunal for the Law of the Sea (ITLOS) climate advisory opinion developed this jurisprudence further by expressly drawing on Pulp Mills. ITLOS relied on the ICJ's requirement that due diligence entails appropriate rules and measures, vigilance in their enforcement and administrative control over public and private operators, and applied this approach to the regulation of anthropogenic greenhouse-gas emissions (Request for an Advisory Opinion submitted by the Commission of Small

Island States on Climate Change and International Law, 2024). ITLOS characterised due diligence as a "variable concept", whose standard depends on factors including scientific and technological information, relevant international rules and standards, the risk of harm and the urgency involved (Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, 2024, para. 239). Significantly, it held that the standard applicable to marine pollution from anthropogenic greenhouse-gas emissions must be "stringent" because of the high risks of serious and irreversible harm to the marine environment (Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, 2024, para. 241). This strengthens the earlier approach by translating the principle that greater environmental risk demands greater diligence into an expressly demanding standard for climate-related harm (Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, 2024). Although implementation may vary according to States' capabilities and available resources, this does not give States unrestricted discretion: ITLOS stressed that the content of due diligence must be determined objectively in light of the relevant circumstances (Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, 2024).

4. The Emerging Climate Due Diligence Standard

4.1. Climate-specific Context of Due Diligence

The 2025 advisory opinion brings the earlier jurisprudence together into a more detailed climate-specific account of due diligence. Although the Court provides limited guidance on what a "stringent" standard requires in practice, Guillod and Perrez (2026) argue that stringency entails greater depth and breadth in State climate policies and requires competing policy interests to be balanced more strongly in favour of preventing climate change. Building on Pulp Mills and Certain Activities/Construction of a Road, the Court identified regulation and enforcement, environmental impact assessment, notification and consultation as relevant elements, while also emphasising scientific and technological information, international rules and standards, environmental risk and States' respective capabilities (Obligations of States in respect of Climate Change, 2025). The significance of the Court's approach is that these considerations provide identifiable benchmarks against which State conduct can be assessed rather than leaving the content of due diligence entirely to State discretion. This responds to a longstanding concern identified by Duvic-Paoli and Gervasi (2023) that the prevention principle's normative indeterminacy may limit its usefulness in climate adjudication by making it difficult to identify sufficiently specific benchmarks for State conduct.

4.2. An Objective-but-differentiated Standard

The resulting standard is therefore objective but differentiated. A State's capabilities and national circumstances affect what measures can reasonably be required of it, but the Court expressly held that the existence of significant risk and the application of the relevant due diligence factors must be determined objectively (Obligations of States in respect of Climate Change, 2025). Rajamani (2026) similarly observes that, in determining the applicable standard of due diligence, the Court places particular emphasis on States' differing capabilities, while leaving unresolved the extent to which historical and current contributions to greenhouse-gas emissions should also influence that standard. Mayer (2026) similarly observes that, although the Court requires the content of the duty to prevent to be determined objectively, it provides limited guidance on how that content should be determined in practice, particularly because the required standard depends on the specific circumstances and capabilities of each State. State discretion is therefore constrained by external reference points including scientific evidence, available technology and relevant international standards, although the Court does not specify precisely how these factors should be weighed in every case. The opinion consequently makes due diligence more legally assessable while leaving future courts and tribunals to determine where permissible differentiation ends and insufficient climate action begins.

4.3. The Paris Agreement and Independent Customary Obligations

The Paris Agreement operates alongside the customary prevention obligation rather than defining its entire content. Rajamani (2024) argues that the Paris Agreement should be interpreted within its wider normative environment, including the customary principle of harm prevention, so that due diligence can provide objective benchmarks capable of constraining excessive national discretion. Mayer (2026) likewise notes that the Court rejects the proposition that compliance with the climate treaties automatically fulfils the customary prevention obligation, although treaty obligations may help give substance to the content of that customary duty. Although the Agreement establishes climate-specific obligations, including nationally determined contributions, the ICJ's 2025 advisory opinion assesses States' customary due diligence obligations separately (Paris Agreement, 2015; Obligations of States in respect of Climate Change, 2025). The treaty regime therefore provides relevant standards for assessing due diligence without replacing the customary prevention obligation.

4.4. The Extent of Clarification and Remaining Uncertainty

Academic commentary reinforces the significance of due diligence in the Court's reasoning. Foster describes due diligence as a "central and unifying

feature" of the international legal framework governing climate change, operating across both treaty and customary international law (Foster, 2025, p. 779). She also highlights the Court's application of a stringent standard of due diligence in the climate context, under which States may be required to meet an elevated standard of conduct (Foster, 2025). Importantly, Foster emphasises that the content of due diligence is not left entirely to State discretion. Its application is informed by identifiable factors, including effective domestic regulation and enforcement, scientific and technological information, relevant international rules and standards, States' differing capabilities, precaution, environmental impact assessment, and notification and consultation (Foster, 2025). Foster's analysis therefore supports the view that the advisory opinion gives due diligence greater legal structure while retaining the flexibility necessary for its application to different States and circumstances.

A further uncertainty concerns the relationship between the climate treaty regime and customary international law. Knox highlights the Court's statement that full and good faith compliance with the climate treaties may suggest substantial compliance with the customary duties to prevent significant environmental harm and to co-operate, while not automatically fulfilling those customary obligations (Knox, 2026). He suggests that this formulation may appear internally inconsistent but explains that its central implication is that treaty and customary obligations inform one another while remaining independent and not necessarily overlapping (Knox, 2026). This distinction limits the extent to which States can treat compliance with the Paris Agreement as conclusive evidence of compliance with customary international law. It nevertheless leaves an important question for future application: when might conduct satisfying the climate treaty regime still fall short of the customary standard of due diligence?

5. Conclusion

The ICJ's 2025 advisory opinion represents an important clarification of the role of due diligence in the international law of climate change. Rather than creating a new climate-specific obligation, the Court applies the established customary duty to prevent significant environmental harm to the distinctive characteristics of anthropogenic climate change. In doing so, it builds on earlier jurisprudence, particularly Pulp Mills and Certain Activities/ Construction of a Road, while developing a more detailed framework for assessing the conduct required of States.

The opinion gives due diligence greater practical content by identifying factors that inform its application, including the gravity of environmental risk, scientific and technological information, relevant international rules and standards, States' respective capabilities, precaution, environmental impact assessment, and notification and consultation. Importantly, these factors are not left entirely to State discretion. Their application must be as-

sessed objectively, even though the measures required may differ according to States' capabilities and circumstances. The opinion therefore combines a common legal standard with differentiated expectations of State conduct. Nevertheless, the advisory opinion does not eliminate the uncertainty inherent in due diligence. Questions remain concerning how its various factors should be weighed, how differences in States' historical and current contributions to greenhouse-gas emissions should affect the applicable standard, and when climate action that complies with the Paris Agreement may nevertheless fall short of customary international law. The Court consequently provides a clearer framework rather than a complete formula for determining compliance. Its principal contribution is to make climate due diligence more legally assessable while preserving the flexibility inherent in an obligation of conduct. Future courts and tribunals will therefore play an important role in determining how this increasingly structured standard operates in particular disputes.

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