

SYMPOSIUM ON FINANCING CLIMATE MOBILITY

FINANCING ANTICIPATORY APPROACHES TO CLIMATE MOBILITY: STATES' INPUT INTO THE ICJ ADVISORY OPINION ON CLIMATE

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As recognition of climate change's impact on human mobility increases, a three-part call to action dominates conversations on how to respond. The proposal: to avert, to minimize, and to address climate-related displacement.¹ Each demand requires massive financial support, presumably from states who have contributed to and benefitted from the emission of global greenhouse gases. These responses encompass people who migrate in the context of climate as well as those who strive to adapt *in situ* so that they do not need to migrate. While state commitment to funding these endeavors is crucial, the UN Framework Convention on Climate Change (UNFCCC) framework does not impose binding obligations on states to assist other nations in mitigation, adaptation, or loss and damages. In this context, the Climate Change Advisory Opinion at the International Court of Justice—and other international opinions—provide opportunities to clarify states' legal duties and related financial obligations toward people impacted across the climate mobility continuum.

State submissions before the International Court of Justice (ICJ) demonstrate the urgent concern that climate change is reshaping habitability and human mobility. Not only do states have responsive obligations to address climate mobility, but they also have preventative obligations to invest in adaptation that may help people avoid displacement. Financial commitments are at the heart of these framings. This essay offers a bird's-eye view synthesizing state arguments regarding climate's impact on habitability and on human mobility. It examines state interventions on climate mobility before the ICJ—states recognize both responsive obligations to assist those already displaced, and preventative obligations to help people remain in place if they choose—and links those arguments to the need to hold states accountable for obligations on climate finance. Two important trends emerge in the states' arguments: first, that anticipatory action is critical and financially smart, and second that there very well may be a legal obligation to fund mitigation and adaptation.

Human Mobility in Advisory Opinions Addressing Climate Change

Between December 2022 and March 2023, states in quick succession activated the advisory capacity of three separate international and regional tribunals seeking to clarify state obligations in the context of climate change: the International Tribunal of the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR),

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¹ This framing was first articulated in the 2015 UNFCCC's establishment of the Task for on Displacement and endures as the basis for an emerging architecture to engage with climate related displacement. See [Report of the Conference of Parties on Its Twenty-First Session, Held in Paris from 30 November to 13 December 2015](#), Decision 1/CP.21.

and the ICJ. These cases aim to update ambiguous agreements into ambitious, actionable commitments on mitigation and adaptation, and thus to ground high-level negotiations in a clarified legal context.²

It is no mystery why these cases have come to these judicial bodies now—climate justice advocates and states are overwhelmingly disappointed with the mitigation and adaptation commitments achieved through the UNFCCC process. Advisory opinions present a non-confrontational venue and an opportunity for harmonization of principles³ and lend normative legitimacy to the climate regime, catalyzing deepened commitments before it is too late.

Perhaps the most closely watched of these three decisions will come from the ICJ, due to its comprehensive jurisdiction and the legitimacy granted to it through a UN General Assembly consensus-based referral. That advisory opinion saw unprecedented engagement; ninety-six states participated in the December 2024 oral hearings, along with eleven international organizations.⁴ The ITLOS decision,⁵ published in May 2024, was lauded as a victory for climate justice due to its recognition of anthropogenic climate change and its finding that states are required to prevent climate-related damage. The IACtHR, advocates expect, may produce a relatively progressive decision, considering its human rights mandate. The ICJ, expected to issue its opinion in 2025, may elect to delay publication so that it may harmonize decisions from the other tribunals, aiming to limit conflict or confusion. Therefore, this essay examines the climate mobility arguments within states' submissions to the ICJ, that the Court will consider in its forthcoming opinion.

Since 1991,⁶ the Intergovernmental Panel on Climate Change (IPCC) has recognized the movement of peoples within and across borders as one of the most significant impacts of climate change. Yet, progress on global policy or legal mechanisms addressing climate mobility has been lethargic. The General Assembly's resolution referring the advisory opinion highlights some of the climate challenges faced by vulnerable countries which are "leading to displacement of affected persons."⁷ While the nature of the causal link between climate change and displacement implied in this language is contested,⁸ the referral prompts the Court to unpack how climate change interacts with and amplifies other social, economic, cultural and political factors influencing migration.

States' Evidence Presented on Climate and Human Mobility

States whose ICJ submissions addressed climate mobility stressed the need to recognize both a *responsive* obligation (to assist those already displaced or at imminent risk), and a *preventative* obligation (to ensure that people can adapt and remain in place if they choose).

Approximately a third of state submissions provided evidence that climate change accelerates forced displacement and migration. These nations stressed a *responsive* obligation to grapple with climate displacement.

² Antonia Maria Tigre & Armando Rocha, *The Role of Advisory Opinions in International Law in the Context of the Climate Crisis*, 117 NIJHOFF LAW SPECIALS 7 (forthcoming 2025).

³ Antonia Maria Tigre & Armando Rocha, *Competing Perspectives and Dialogue in Climate Change Advisory Opinions*, 117 AJIL UNBOUND 287 (2023).

⁴ Molly Quell, *Hearings Are Done, Now the Wait Begins for Verdict on Closely-Watched Climate Case at UN's Top Court*, AP (Dec. 13, 2024).

⁵ Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, *Advisory Opinion*, Case No. 31, ITLOS Rep. 2024 (May 21, 2024).

⁶ World Meteorological Association and the United Nations Environment Programme, Intergovernmental Panel on Climate Change, *Climate Change The IPCC 1990 and 1992 Assessments* (June 1992).

⁷ United Nations General Assembly resolution referencing climate change to the ICJ: GA Res. 76/300 (2022).

⁸ Sarah Nash, *Negotiating Migration in the Context of Climate Change: International Policy and Discourse*, 34 J. REFUGEE STUD. 4593 (2021).

Solomon Islands, for example, demanded a response for island nations whose populations face not only internal but also cross-border displacement in light of sea-level rise.⁹ As Jane McAdam has argued, responsive obligations can be met through application of human rights law, refugee law, and the norm of *non-refoulement*.¹⁰ These responsive obligations imply some financial commitment (accompanied by significant political will).

Financing comes into play more sharply when considering a *preventative* approach to climate mobility, as highlighted by dozens of states through the lens of “habitability.” These nations conveyed that rising sea levels, increasing wildfires, or drought will dramatically degrade the human rights of people living in those places, subsequently prompting them to consider leaving home. They argued that the impacts of climate change can lead to climate mobility and that there exist obligations on the part of states to *prevent* displacement in the context of climate change.

For example, the Netherlands argued that states are obligated to increase funding for adaptation and to enhance climate resilience. It emphasized that low-lying islands may become permanently uninhabitable or that some islands might even disappear, leading to “an increase of climate-change displaced persons who cannot be relocated within the boundaries of their own states.”¹¹ The submission recognizes that these climate impacts may be felt in the Netherlands as well, and thus stressed the universality of the reality of climate mobility.

Antigua’s submission similarly focused on the need for anticipatory action. It laid out a progressive argument explaining that documented greenhouse gas emissions lead first to drivers of harm such as sea level rise, ocean acidification, or temperature rise. Those general harms, in turn, lead to specific harms including loss of territory, compromised access to food and water, and eventually, forced migration and displacement.¹²

State submissions reference additional risks including threats to Indigenous culture, development needs and the impact of debt burdens and unchecked corporate power. They drew on international environmental law, foregrounding the “polluter pays” and “precautionary principles.” And they framed their interventions against disappointment with negotiations on climate, emphasizing intragenerational equity and the need for adaptation finance, compensation for loss and damage, and adequate reparations.

How Finance May Avert, Minimize, or Address Climate Mobility

Financial investment could significantly impact climate mobility, especially relating to preventative approaches. Sufficient investment in limiting climate as a driver of migration, through funding adaptation, resilience, and contributing to the Fund for responding to Loss and Damage, could support people to adapt *in situ* so that they do not need to migrate. Loss and damage occurs when mitigation and adaptation fail or are inadequate, therefore displacement may result from loss and damage, or displacement may itself be considered a form of loss and damage.¹³ As Alice Farmer discusses elsewhere in this volume, investment in communities at risk of climate displacement can also bolster compliance with human rights law (including rights to cultural identity, social and economic rights, and the right to healthy environment) and can support migration in an orderly way that preserves human dignity.

⁹ Solomon Islands, Written Statement of Solomon Islands, para. 227 (Mar. 22, 2024).

¹⁰ Jane McAdam, *How the ICJ Could Shape Protection for People Displaced in the Context of Climate Change*, RESEARCHING INTERNAL DISPLACEMENT (Jan. 24, 2024).

¹¹ Netherlands, Written Statement of the Kingdom of the Netherlands, para. 5.38 (Mar. 21, 2024).

¹² Antigua and Barbuda, Written Statement of Antigua and Barbuda, at 8 (Mar. 22, 2024).

¹³ Steve Miron, *Loss and Damage and Human Mobility at COP28: An Emerging Architecture to Avert, Minimize and Address Displacement?*, REFUGEE L. INITIATIVE BLOG (Dec. 19, 2023).

Failing to anticipate and finance climate mobility comes with high costs. When people flee their homes due to rapid-onset climate events, it is invariably more destabilizing and costly than pre-planned movement, investment in adaptation, or financing measures that build resilience.¹⁴ A primary goal of increased financial commitment is to limit climate's impact as a driver of movement.¹⁵ Investment in anticipatory projects—including but not limited to planned relocation, as discussed by Erica Bower and Charlotte Finegold—can save lives, preserve community and human rights, and can offer a path forward, when necessary, to support necessary migration that is locally led, minimally disruptive, and culturally sensitive.¹⁶

Legal Consequences Related to Finance and Human Mobility

In their submissions, many states presented the argument that so-called polluting states owe legal obligations to finance interventions along the climate mobility continuum. While climate finance can help fund people to stay and adapt *in situ*, it may also support people along their journey.

For nearly thirty years, scholars have scrutinized states' obligations stemming from the 1992 UNFCCC, the 1997 Kyoto Agreement, and the 2015 Paris Agreement. This framework—the “UNFCCC legal complex”—while consequential from a policy perspective, has insufficiently characterized legal obligations at best and includes a mix of mandatory and non-mandatory provisions.¹⁷ Article 4 of the Paris Agreement, which articulates its core obligations, was formulated as non-binding aim rather than a legal obligation and exemplifies that states' obligations on mitigation are left up to states themselves to determine.¹⁸ Article 7, a “Global Goal on Adaptation,” aims to enhance adaptive capacity, increase resilience, and reduce vulnerability to climate change;¹⁹ yet these clauses are expressed not as legal obligations, but rather as recommendations or understandings. And while the amount of finance that developed nations are required to contribute to the mitigation and adaptation efforts of developing countries is unspecified, they are obligated to provide financial support and to report on the financing they supply.²⁰

Against this backdrop, states argued before the ICJ that these obligations should be upheld with greater seriousness. Beyond the UNFCCC framework, states argued that customary international law prompts the Court to find an obligation to prevent climate-related harm. The Netherlands, for example, explained that while adaptation commitments are framed as collective commitments under Paris, these can be met by “contributing to the instruments flowing from these and related instruments, such as the funds established for this purpose.”²¹

¹⁴ While there is an absence of conclusive studies on the cost of planned relocation, a commonly cited statistic argues that every dollar spent in risk reduction saves six dollars later. *See, e.g.*, UN Secretary-General Press Release, [For Every Dollar Invested in Climate-Resilient Infrastructure Six Dollars Are Saved](#), Secretary-General Says in Message for Disaster Risk Reduction Day (Oct. 10, 2019).

¹⁵ Lawrence Huang & Samuel Davidoff-Gore, [Funding Climate Mobility Projects: Key Players and Strategies for Growth](#), MIGRATION POL'Y INST. (Mar. 2025).

¹⁶ Erica Bower & Charlotte Finegold, *To Fund or Not to Fund? A Key Question Where International Human Rights Law Provides Guardrails in Planned Relocations of Communities Facing the Climate Crisis*, 119 AJIL UNBOUND 83 (2025).

¹⁷ *See* Lavanya Rajamani, *The 2015 Paris Agreement: Interplay between Hard, Soft and Non-obligations*, 28 J. ENVTL. L. 337 (2016); Daniel Bodansky, *The Legal Character of the Paris Agreement*, 25 REV. EUR., COMP. & INT'L ENVTL. L. 142 (2016).

¹⁸ [Paris Agreement](#), Art. 4.2, Dec. 12, 2015, 55 ILM 743 (“Each Party shall prepare, communicate and maintain successive national determined contributions that it intends to achieve.”).

¹⁹ *Id.* Art. 7 (“Parties establish the global goal on adaptation of enhancing adaptive capacity, strengthening reliance and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.”).

²⁰ *Id.* Art. 9.1 (indicates that states “shall provide financial resources to assist developing country parties”).

²¹ Netherlands, Written Statement of the Kingdom of the Netherlands, para 4.14

Belize elucidated the ways in which obligations to prevent foreseeable harm applied.²² Others, including Vanuatu, Antigua and Barbuda, Colombia, Philippines, and Cook Islands, argued that Paris includes binding mitigation and adaptation targets, as well as an obligation to provide financial support to countries.

High-GDP countries for the most part disagreed. Indeed, seven of the top-emissions producing states argued that climate treaties do not impose any binding obligations to undertake adaptation measures.²³

Two important trends are evident in states' framings on financial obligations and climate mobility. Most important: anticipatory action is critical and financially smart. States stressed that money spent now investing in adaptation to maintain *in situ* adaptation is more cost effective and saves more lives than money spent on a crisis.

Second, even if the UNFCCC legal complex does not provide mandatory guidance on finance, states sought to persuade the Court that an obligation exists to fund mitigation, adaptation and loss and damages. They claim that international law including human rights law and the general law of state responsibility, mitigates in favor of a state obligation to provide financial assistance to impacted states.

Catalyzing Financial Commitment on Climate Mobility

One of the current ICJ judges has observed that international law typically prefers to address a crisis rather than a latent but slow-moving challenge.²⁴ But climate mobility, to reference a common aphorism, requires the global community to simultaneously run a marathon and a sprint. Slow-onset climate events may not as obviously be categorized as climate mobility, because many people grappling with these life-altering events are trying to avoid moving by adapting *in situ*.²⁵

It is for this reason that observers at the ICJ were so deeply moved by state submissions: their climate mobility framings sought to persuade the Court to help them stay and to prevent them from having no choice but to move. Perfectly capturing the pain of leaving one's cultural home, one author describes climate-related planned relocation in Kiribati not merely as a contract to relocate, but as a eulogy for that community.²⁶

State submissions lay out some key principles for catalyzing financial commitment, arguing that the Court should articulate legal obligations to finance adaptation not only as a response to displacement, but also as a preventative obligation to the threat of displacement. This would enhance UNFCCC processes by reinforcing climate finance obligations and promoting greater ambition for adaptation and resilience. The states' arguments also promote recognition of the role of climate finance in supporting people's choice to move. This may include investment in skills building to bolster the workforce for the green transition, or investment in building—with state support—better systems for managing circular migration to support the growing need for labor in the global north.

²² Corina Heri, *An Interim Report on the ICJ's Climate Advisory Opinion*, JUST SECURITY (Dec. 21, 2024).

²³ See United States, Sweden, Denmark, Finland, Iceland, Norway, Saudi Arabia as summarized in [Outrageous Arguments Against Climate Justice at the ICJ](#), PACIFIC ISLANDS STUDENTS FIGHTING CLIMATE CHANGE (Dec. 2024).

²⁴ Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 MOD. L. REV. 377, 377 (2002).

²⁵ See Jaya Ramji-Nogales, *Slow-Onset Climate Justice and Human Mobility*, 93 TEMPLE L. REV. 671, 687 (2021).

²⁶ With thanks for this evocative reference. Julian Aguon, *To Hell with Drowning*, ATLANTIC (Nov. 1, 2021).

Conclusion: Forward-Looking Climate Finance

Finance alone will not “solve” the challenges associated with climate mobility. But it can support anticipatory planning and integrate climate mobility into legal frameworks, migration policy, and development strategies. The return on investment is higher when funding is directed at averting displacement, not just reacting to it.

While it is important to preserve choices for people who may want to move as their homes are affected by the climate crisis, this is not the only approach. Science on global warming has already predicted that climate will reshape habitability across the globe. Research on the “human climate niche” predicts that by the year 2070, over one third of the global population will live outside the norms of temperature, rainfall, heat that have historically supported human life.²⁷ Approximately one third of the global population will either adapt to life in a changed environment or will need to migrate. Global financial structures must invest in helping people both stay and adapt, or safely and humanely move.

The ICJ’s advisory opinion on climate change marks a consequential moment in international law. The unprecedented engagement from states across the globe reflects deeply held concerns for preventative and responsive obligations regarding climate mobility. States are clearly looking for key issues to be addressed: first, funding obligations to avert and minimize climate displacement, and related human rights and humanitarian challenges; second, interpretations of the Paris Agreements obligations on mitigation and adaptation that support the object and purpose of that treaty. And third, states seek recognition of the impact that climate change has on human habitability as well as its flipside: climate mobility. States are making a definitive statement to the global community: invest and catalyze financial commitments to avert, minimize, and address climate displacement now to avert even more damaging impacts and costly interventions in years to come.

²⁷ Martin Scheffer et al., *Future of the Human Climate Niche*, 117 PNAS 11350 (2020).