

Chapter 11, Problem III:

The U.S. withdrawal from the Paris Agreement became effective on November 4, 2020 – the day after the Presidential election between Donald Trump and Joe Biden. On January 20, 2021, just hours after being sworn into office, President Biden signed an executive order triggering the process for the U.S. to reenter the Agreement. In April 2021, the President hosted 40 world leaders in a virtual Summit on Climate. At that time, President Biden announced that the United States would seek to achieve a 50-52% reduction from 2005 levels in economy wide new GHG emissions by 2030.

In August 2022, President Biden signed the Inflation Reduction Act into law. The law was touted as the country's most ambitious piece of climate legislation, and directed hundreds of billions of dollars for decarbonizing the economy. Among other goals, the bill seeks to expand the manufacture and use of electric vehicles in the U.S., reduce carbon emissions in manufacturing processes, particularly energy-intensive industries such as steel and concrete, and incentivize government agencies to purchase low-carbon products.

Other countries have also announced ambitious plans. For example, Japan has pledged to cut emissions by 46-50% below 2013 levels by 2030, a significant acceleration from its pre-existing 26% reduction goal, and Argentina and Canada announced plans to significantly accelerate their carbon emissions. The European Union announced a "European Green Deal," including plans to reduce carbon emissions by at least 55% from 1990 levels by 2030, and to become a climate-neutral continent by 2050.

Conferences after the conclusion of the Paris Agreement, including the Glasgow Climate Change Conference (COP 26) have generated non-binding agreements and unilateral pledges, yet despite improvement in countries' mitigation and adaptation targets, large gaps remain between states' planned GHG reductions and the global temperature goal adopted in the Paris Agreement. Hence, in recent years, much attention has shifted 'from COPs to courts.' As of the end of 2022, some 2,180 climate change-related actions had been filed in 65 jurisdictions, international or regional courts, and other adjudicatory bodies. As the range and scope of legal theories continues to evolve, a number of potentially significant cases are currently pending before various international tribunals.

On March 29, 2023, the United Nations General Assembly (UNGA) adopted by consensus [resolution](#) A/77/L.58, requesting an advisory opinion from the International Court of Justice on the obligations of States with respect to climate change. The resolution reflects many years of lobbying efforts led by the Republic of Vanuatu. The request for an advisory opinion was transmitted to the Court by the UN Secretary-General on April 12, 2023. In the resolution, the General Assembly asked the Court to render an opinion on the following questions:

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gasses (GHG) for States and for present and future generations?

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

Written submissions in this matter are due no later than April 24, 2024, after which the Court is expected to set a schedule for oral argument.

The ICJ request follows other requests to international tribunals for advisory opinions on climate change. On December 12, 2022, the Commission of Small Island States on Climate Change and International Law submitted a request for an advisory opinion from the International Tribunal for the Law of the Sea (the "Tribunal"). The Commission, which consists of Antigua & Barbuda, Vanuatu, Tuvalu, Nieu, St. Lucia, and Palau, referred the following questions to the Tribunal:

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea (the "UNCLOS"), including under Part XII:

(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?

Thirty-two states and nine intergovernmental organizations, as well as several non-governmental organizations, submitted written statements to the Tribunal. Oral proceedings are scheduled to start September 11, 2023. To date, ITLOS has had little opportunity to address environmental obligations under UNCLOS, despite treaty provisions establishing the obligation of states to protect and preserve the marine environment. In the *South China Sea Arbitration*, the Tribunal noted that these obligations have both positive and negative aspects, encompassing “both to ‘protection’ of the marine environment from future damage and ‘preservation’ in the sense of maintaining or improving its present condition” (para. 194). However, ITLOS has not to date addressed climate change, or the ocean warming, ocean acidification, and sea level rise associated with climate change.

In addition, on January 9, 2023, the Foreign Ministers of Chile and Colombia requested an [advisory opinion](#) from the Inter-American Court of Human Rights on the scope of state obligations for responding to the climate emergency under the frame of international human

rights law and, specifically, under the American Convention on Human Rights. The request raises a wide range of legal issues, including individual and collective obligations arising out of the principle of common but differentiated responsibilities; substantive and procedural obligations to preserve the right to life and related human rights; state obligations to protect the rights of children, future generations, and ‘environmental defenders,’ such as indigenous people and women.

This request seeks to build on and extend the Inter-American Court’s 2017 Advisory Opinion on “the Environment and Human Rights” ([OC-23/17](#)), where the Court explicitly recognized a justiciable human right to a healthy environment in the context of the Inter-American Human Rights System. Among other innovative findings, the 2017 Advisory Opinion embraced an expansive interpretation of extraterritorial jurisdiction, finding that jurisdiction could be exercised over human rights violations that occur outside the territory of a State if that State exercises effective control over damaging activities that cause the violation and thus could prevent the consequent harm (paras. 102-104).

While these cases are pending, other proceedings have concluded. For example, in September 2002, the UN Human Rights Committee issued a groundbreaking decision in *Daniel Billy and others v Australia (Torres Strait Islanders Petition)*, finding that climate inaction by the Australian government violated its obligations to the Torres Strait Islanders. Specifically, the Committee found that the state’s climate policy failed adequately to protect the petitioners’ right to enjoy their culture, and to be free of arbitrary interferences with their private life, family, and home. The decision represents the first time that inadequate climate policy was found to violate international human rights, and the first time that Indigenous Peoples’ right to culture was determined to be at risk due to climate change. Yet not all legal proceedings are as successful. The Court of Justice of the European Union dismissed two potentially important climate cases, *Carvalho and Others v European Parliament and Council* (2021) and *Ville de Paris v. European Commission* (2022), finding that the applicants lacked standing.

Domestic tribunals have also decided a number of important cases, sometimes relying upon international law. For example, in December 2019, the Dutch Supreme Court held that the government’s climate change plans violated article 2 (right to life) and article 8 (right to respect for private and family life) of the European Convention on Human Rights. It ordered the state to reduce GHG emissions by 25% below 1990 levels by the end of 2020. *Urgenda Foundation v. State of the Netherlands*. Likewise, in April 2021, the German Federal Constitutional Court ruled that Germany’s Climate Protection Act, mandating significant emission reductions by 2030 and climate neutrality by 2050, was unconstitutional. *Neubauer, et al. v. Germany*. The law left open the possibility that current generations would generate a level of emissions that would preclude future generations from enjoying fundamental freedoms, and thus violated the principle of inter-generational equity. Within days of the judgment, the government released an updated version of the act, setting stricter and clearer emission reduction targets. Similarly, in July 2020, the Irish Supreme Court held that Ireland’s National Mitigation Plan was invalid, as it failed to specify how Ireland would meet its 2050 emission goals, *Friends of the Irish Environment v. Ireland*, and in July 2021, the French Council d’Etat ordered the government to “take all the measures necessary” by March 2022 to reduce emissions to meet its climate goal of a 40% reduction in emissions by 2030. *Commune de Grande-Synthe v. France*.

As the number of climate litigations rises, the adverse effects of climate change are increasingly apparent, and increasingly disruptive. Numerous extreme heat records were set during the summer of 2023, including those for the planet's hottest day, week, and month. In just one month, more than 10,000 global heat and rainfall records were set, and hundreds of people died due to heat and rainfall. In addition, during July 2023, global ocean surface temperature hit a record high, and Antarctica saw the third-consecutive month of record-low sea ice extent. The global increase in carbon dioxide emissions has been roughly 2.4 ppm/year since 2010, or roughly 0.6% annually.