

Article

Sea-Level Rise, Human Rights, and State Responsibility: Advisory Opinions in an Interdependent International Legal Order

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Abstract

Sea-level rise has its gravest effects in low-lying States and coastal communities. Yet the legal obligations engaged by those effects remain dispersed across the law of the sea, climate treaty law, international human rights law, and the general law of State responsibility. This article examines what the advisory opinions of ITLOS, the International Court of Justice, and the Inter-American Court of Human Rights, read together, clarify in that setting. It argues that their principal significance lies in clarifying how existing duties of prevention, cooperation, regulation, and due diligence operate across different legal regimes without effacing the legal distinctions between them. It further contends that these opinions render the law of State responsibility more workable in a context where harm accumulates over time, multiple actors contribute to it, and serious risks arise for affected persons and communities. Finally, the Kiribati–Tuvalu illustration is used to briefly show what this clarified framework can explain, and where its limits remain, in relation to the stability of maritime entitlements, continuity concerns, and the protection of persons.

Keywords: sea-level rise; climate change; international human rights law; law of the sea; state responsibility; advisory opinions

1. Introduction

Sea-level rise brings into sharp focus one of the clearest legal asymmetries of the present international order. Greenhouse-gas emissions are generated across jurisdictions, over long periods of time, and by a wide range of public and private actors. Yet many of the most severe consequences of climate change are experienced in highly specific places, especially in low-lying islands, fragile coastal zones, and communities whose homes, livelihoods, and access to land, water, and security are progressively undermined. In that sense, sea-level rise is not only an environmental problem. It is also a problem of legal structure. That territorial concentration also reflects the physical unevenness of sea-level rise itself: relative sea-level change is not globally uniform, but is shaped by regional climatic and non-climatic drivers, including storm surges, wave action, tectonic movement, land subsidence, and other local processes. In low-lying coastal settings, sea-level rise produces effects that extend beyond inundation, including coastal erosion, wetland loss, saltwater intrusion, and impaired drainage (Elneel et al. 2024, pp. 1–2, 7–8). Although its gravest harms are concentrated in particular places, the legal obligations engaged by those harms remain distributed across the law of the sea, climate treaty law, international human rights law, and the general law of State responsibility (Mayer and van Asselt 2023, pp. 175–80; Foster 2025, pp. 775–79; Oral 2025, pp. 163–66).



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That dispersion helps explain the recent rise of international climate adjudication. Where negotiated climate law has often remained general, incremental, or unevenly implemented, courts and tribunals have increasingly been asked to clarify legal obligations, legal consequences, and the relationship between different normative fields. Recent scholarship has correctly identified this advisory turn as part of the broader rise of international climate litigation, in which advisory proceedings are used not merely to obtain abstract judicial guidance, but also to strengthen legal baselines, shape institutional argument, and increase the normative force of existing commitments (Mayer and van Asselt 2023, pp. 175–80; Bartenstein 2025, pp. 3–5). In the European setting, this development has also been associated with a broader process of ‘climate constitutionalisation’, through which courts use international commitments and climate science to concretise binding human rights obligations and to subject ordinary state climate action to higher-order legal standards (Eckes 2025, pp. 1–3). In the specific context of sea-level rise, this development matters because the legal questions are not confined to one treaty or one forum. They concern marine environmental protection, climate mitigation and cooperation, human rights protection, and the legal consequences of breach all at once. This interdependence has also been recognised in the International Law Commission’s final work on sea-level rise, which identifies stability, predictability, certainty, preservation of existing rights, and the interlinkages between the law of the sea, statehood, and the protection of persons as cross-cutting issues requiring coordinated legal treatment (ILC 2025, paras. 33, 41).

Recent coastal geomorphological research shows that even relatively optimistic sea-level-rise scenarios may place fragile low-lying coastal formations under severe pressure; in Greece, more than half of mapped tomboles were projected to be fully inundated within a century under RCP 2.6, while many others face severe erosion (Maroukian et al. 2024, pp. 1, 4, 21). It raises difficult questions concerning baselines, maritime limits, jurisdictional stability, and the continued coherence of legal entitlements in the face of physical coastal change (Lando 2025, pp. 100–2, 113, 123–24; Soons 1990, p. 224; Grossman Guiloff 2024, pp. 752, 760; Oral 2025, pp. 166, 171, 176–78). At the same time, the consequences of sea-level rise cannot be reduced to maritime entitlement alone. The literature on the protection of persons affected by sea-level rise makes clear that the problem is also human and institutional: sea-level rise threatens housing, health, culture, subsistence, identity, and, in some settings, the effective capacity of public institutions to protect those who remain in place or move under compulsion (Burson et al. 2023, pp. 265–68, 274; Galvao Teles 2023, pp. 694–98; Higgins 2022, pp. 1–2).

For that reason, the human rights dimension of sea-level rise should not be treated as an afterthought (Galvao Teles 2023, pp. 694–98; Iyer and Schewel 2024, pp. 207, 230; Díaz-Cruces et al. 2024, pp. 1–2), since the legal significance of human rights already arises at the level of prevention and the conditions necessary for communities to remain in place with dignity and security. This broader orientation is visible in rights-based climate litigation in Latin America. As Moreira and her co-authors show in relation to Brazil, climate litigation is increasingly being framed through the human right to an ecologically balanced environment and its connections with the rights to life, health, Indigenous protection, and the conditions of dignified existence. Their analysis also shows that present and future generations are not treated as external policy beneficiaries, but as legally relevant subjects within a rights-based constitutional order (Moreira et al. 2024, pp. 47–49, 56–57, 64). That broader rights-based context helps explain why the human rights dimension of the climate advisory turn cannot be separated from the law of prevention and public regulation.

The temporal dimension of the problem is equally important. Climate harm is cumulative, scientifically legible, and often partly irreversible over time. As Foster argues, the no-harm rule cannot be reduced to a narrow prohibition on immediate transboundary

injury. Properly understood, it also requires States to take account of the interests of others where present conduct foreseeably generates long-term environmental harm, including harm affecting future populations. Climate change is not merely a matter of regulating present-day risks. The long-term harms that present conduct may produce across borders and across generations also raise the question of whether sovereign authority is being exercised lawfully (Foster 2024, pp. 588–90, 597–99, 603–4). It is for that reason that advisory proceedings have acquired central importance.

Taken together, the advisory opinion of the International Tribunal for the Law of the Sea, the climate advisory opinion of the International Court of Justice, and the advisory opinion of the Inter-American Court of Human Rights constitute the most important recent judicial efforts to clarify climate-related obligations at the international level. Early commentary has already shown why each of these opinions matters. ITLOS has been analysed as a major moment in the law of the sea's engagement with climate change, especially because of its reliance on external rules and scientific materials in specifying Part XII obligations (Rioseco 2025, pp. 195–201, 210–11). The ICJ opinion has been read as a careful and authoritative restatement of applicable law, due diligence, and the legal consequences of breach in the climate context (Foster 2025, pp. 777–82, 794–99). In European legal settings, the opinion may have an additional ratcheting effect because it makes it increasingly difficult for national and regional courts to interpret corresponding human rights duties less stringently than the international baseline now articulated by the Court (Eckes 2025, pp. 13–14). More recent work has also shown that the recognition of erga omnes and erga omnes partes dimensions of climate obligations matters for questions of invocation, standing, and the architecture of enforcement beyond strictly bilateral injury (Jackson and Paddeu 2026, pp. 1–2, 4–9; Urs 2025, pp. 257–63, 279–84).

A doctrinal gap remains. Much of the existing literature treats the advisory opinions separately, or focuses on each tribunal's general contribution to climate discourse. It does not sufficiently show what these opinions, read together, clarify in the specific context of sea-level rise. This article argues that they clarify how existing duties of prevention, cooperation, regulation, and due diligence operate across connected legal regimes. It also shows how those duties are translated into the framework of State responsibility. To that end, the article asks three questions. First, what climate-related obligations do the advisory opinions identify? Second, how do they reason across legal regimes without treating them as interchangeable? Third, to what extent does this framework assist in the context of sea-level rise, where the stability of maritime entitlements and the protection of persons must be considered together?

The article ultimately shows three things: a conduct-based model of obligation, a disciplined form of cross-regime reasoning, and a more workable law of State responsibility. Second, it explains how cross-regime reasoning may be carried out without collapsing the distinct structures of the law of the sea, climate treaty law, human rights law, and general international law. This point matters because systemic integration has become both indispensable and controversial in climate adjudication. Rioseco shows that ITLOS relied extensively on external legal and scientific materials in interpreting UNCLOS obligations, while Thin warns that any expansive use of Article 31(3)(c) VCLT must still be disciplined by relevance, applicability, consent, and legal certainty (Rioseco 2025, pp. 200–2, 210–11; Thin 2025, pp. 31–32, 46, 55–57). Third, the article argues that the advisory opinions make the law of State responsibility more usable in climate cases without pretending to resolve every evidentiary and remedial difficulty. This point is especially important where climate obligations protect collective interests and where questions of cessation, assurances of non-repetition, and invocation by non-injured States become more salient (Jackson and Paddeu 2026, pp. 1–2, 7–9; Urs 2025, pp. 260–63, 276, 284).

Methodologically, the article adopts a doctrinal approach grounded in treaty interpretation and the secondary rules reflected in the law of State responsibility. It proceeds first from primary legal materials, especially the advisory opinions themselves, and then reads them alongside the Vienna Convention on the Law of Treaties rules on interpretation (United Nations 1969) and the general framework governing internationally wrongful acts. In this respect, Article 31(3)(c) VCLT is important, but it is not treated as a free-standing invitation to abstract coherence. It is treated as a disciplined interpretive rule that permits account to be taken of other relevant rules of international law applicable in the relations between the parties, while still requiring the interpreter to explain why those rules are relevant and how they bear on the treaty provision under interpretation. That methodological restraint is particularly important in the present field. It preserves the distinction between legal coordination and legal collapse, and it answers a concern repeatedly raised in the literature, namely, that climate adjudication may become rhetorically ambitious while remaining doctrinally unclear about its interpretive basis and its consequences for responsibility (Thin 2025, pp. 55–57; Mayer 2023, pp. 41, 53–55, 86–100; McLachlan 2005, pp. 289–91, 312–13).

A final point on scope is necessary at the outset. This is not a general article on disappearing States, climate mobility, or the whole law of sea-level rise. Nor does this article suggest that the recent advisory opinions have settled all controversies concerning baselines, continuity, non-refoulement, or displacement. Its narrower purpose is to identify what those opinions clarify with respect to obligations, interpretation, and responsibility, and then to examine how far that clarified framework assists where sea-level rise creates concurrent pressures on maritime stability and human protection. For that reason, the Kiribati–Tuvalu material is used later in the article only as a controlled illustration.

2. Re-Specifying Climate Obligations Across Legal Regimes

The recent climate advisory opinions do not operate at the same normative level, but they converge on a recognisable legal pattern. None of them treats climate change as a matter exhausted by diplomatic ambition or political discretion. Instead, all three recast climate-related duties through familiar legal categories: prevention, regulation, cooperation, due diligence, and, in different ways, protection. The significance of that convergence is especially visible in the context of sea-level rise. Here, the legal problem is not simply that climate harm is severe. It is that the relevant obligations are distributed across different regimes and had long remained under-specified. The advisory opinions narrow that indeterminacy. ITLOS does so within the vocabulary of marine environmental protection under UNCLOS. The ICJ does so by reading climate obligations across treaty law, customary law, and human rights law in a harmonised manner. The Inter-American contribution sharpens the point that climate obligations are also obligations owed in relation to the material conditions of human life, including those of present and future generations. The European Court of Human Rights' judgement in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland confirms the same protective turn in a different regional system, but in a more procedurally restrained form. The Court held that Article 8 ECHR encompasses a right to effective protection by State authorities against the serious adverse effects of climate change on life, health, well-being and quality of life, and that this requires a domestic regulatory framework capable of mitigation, including relevant targets and timelines (ECtHR 2024, paras. 519, 545–50). At the same time, the judgement does not transform the Convention into a general climate-policy code: it proceeds through positive obligations, standing, access to court, and margin of appreciation, and therefore supports this article's narrower claim that human rights law informs climate obligations without dissolving the distinct structures of other regimes.

2.1. *The ITLOS Advisory Opinion: UNCLOS, Marine Pollution, and the Content of Due Diligence*

The most consequential move in the ITLOS Advisory Opinion (ITLOS 2024) was classificatory. The Tribunal held that anthropogenic greenhouse-gas emissions may constitute “pollution of the marine environment” within the meaning of UNCLOS (United Nations 1982). Once that move is made, climate-related marine harm no longer sits outside the Convention’s architecture. It falls within an existing framework of protection, prevention, reduction, and control. In doctrinal terms, this was an indispensable first step. Without it, sea-level rise, ocean warming, and ocean acidification would have remained adjacent to UNCLOS rather than falling within its legal framework (ITLOS AO, paras. 161–79, discussed in Bartenstein 2025, pp. 17–18; Rioseco 2025, pp. 197–201). The point went beyond a mere analogy. ITLOS did not simply observe that climate change affects the marine environment. It held that the Convention’s existing obligations are engaged because greenhouse-gas emissions can be brought within the treaty’s own legal categories. This explains why the Opinion is of particular importance for sea-level rise. In this setting, sea-level rise appears in the legal analysis not as an abstract consequence of global warming, but as one of the deleterious effects through which harm to the marine environment is legally understood under Part XII. That, in turn, allows the Convention’s existing standards to operate with real legal effect. The second important clarification concerns the legal nature of those obligations.

ITLOS treats the relevant obligations under Article 194(1) as obligations of conduct rather than obligations of result. States are not required to guarantee that no harm will occur. They are required to make their best efforts to prevent, reduce, and control marine pollution. Bartenstein rightly emphasises that the Tribunal explicitly tied this point to due diligence and to the earlier Area Advisory Opinion, thereby situating climate obligations within an orthodox structure of conduct-based responsibility rather than an impossible standard of outcome-guarantee (Bartenstein 2025, pp. 20–21).

The Tribunal’s treatment of due diligence is particularly important. It does not present due diligence as a residual formula or a deferential standard. It makes clear that the standard is variable, fact-sensitive, and informed by scientific and technological knowledge, relevant international rules and standards, the urgency involved, and the risk of harm. Because anthropogenic greenhouse-gas emissions pose a high risk in terms of foreseeability and severity of harm, ITLOS held that the standard of due diligence “needs to be stringent.” Bartenstein’s reading is especially useful here because she shows that the due-diligence formula in the Opinion becomes the entry point for both precaution and differentiated treatment while still preserving the seriousness of the standard (Bartenstein 2025, pp. 20–21).

The reference to “best available science” is equally significant. ITLOS relied extensively on IPCC materials and treated scientific uncertainty not as a reason for inaction, but as a reason to apply the precautionary approach. In this respect, the Opinion does not merely invoke science as background context. The Opinion gives science a normatively operative role in specifying what counts as “necessary measures” and in calibrating the due-diligence standard under Article 194(1) (Bartenstein 2025, pp. 18–20; Rioseco 2025, pp. 198–202).

ITLOS links the obligation of cooperation to specific duties concerning assistance to developing States, environmental impact assessment, fragile ecosystems, and the conservation of living marine resources. Nguyen correctly notes that this matters because it undercuts any suggestion that collective-action problems excuse individual State inaction. The Opinion leaves room for joint or coordinated measures, but it does not allow the collective character of climate harm to become a defence to regulatory failure by individual States (Nguyen 2025, pp. 384–85).

At the same time, the ITLOS Opinion has not escaped criticism. Its openness to external rules has been welcomed as evidence that UNCLOS can function as a “living instrument” responsive to climate change, but that same openness has raised concerns about methodological discipline. Riosseco argues that ITLOS made a serious effort to justify its use of external legal and scientific materials, especially through rules of reference, Article 237 UNCLOS, and Article 31(3)(c) VCLT, yet did not always explain with sufficient precision how those materials were integrated into the legal reasoning (Riosseco 2025, pp. 200–2). Nguyen similarly sees the Opinion as a strong instance of normative cross-fertilisation, but also notes that further guidance is needed regarding which external rules matter and how they fit together (Nguyen 2025, pp. 380–85).

A second criticism is more substantive. As Nguyen observes, the Tribunal’s treatment of human rights was notably thin. Despite acknowledging that climate change raises human rights concerns, ITLOS did not integrate human rights instruments into its interpretation of Article 194 in the way some commentators had hoped, especially given the existential stakes for small island developing States (Nguyen 2025, pp. 381–82). This does not deprive the Opinion of value but it does mean that the ITLOS contribution, though powerful on marine environmental protection and due diligence, remains incomplete as a statement of the full human significance of climate harm.

2.2. *The ICJ Advisory Opinion: Harmonised Applicable Law and the Consolidation of Climate Due Diligence*

If ITLOS brought climate-related harm within the legal categories of UNCLOS, the ICJ clarified the wider field of applicable law. One of its most important holdings was the rejection of any broad claim that the UNFCCC (United Nations 1992) and the Paris Agreement (United Nations 2015) operate as a self-contained *lex specialis* displacing other relevant norms. Foster shows that the Court instead adopted an expressly harmonising approach: where several rules bear on a single issue, they should, so far as possible, be interpreted so as to produce a compatible set of obligations. She further distinguishes three forms of that harmony: intra-regime harmony within the climate treaties, harmony between treaty law and customary law, and harmony across different treaty regimes relevant to climate change (Foster 2025, pp. 777–79).

This matters because the ICJ refuses to reduce climate obligations to the climate treaties alone. The Court identifies as relevant not only the UNFCCC architecture, but also customary duties of prevention, UNCLOS, human rights law, and other environmental treaties. The legal consequence is broader than the internal architecture of NDCs, reporting cycles, and treaty conferences. Because the Court did not treat the climate treaties as a self-contained *lex specialis*, climate-related obligations remain situated within the wider structure of public international law; and, as Foster shows, due diligence is the connective device through which treaty rules, customary duties of prevention, and other applicable norms are read together (Foster 2025, pp. 777–80; ICJ 2025, para. 163). The point becomes especially important in relation to private actors. Foster identifies the “golden thread” of the Advisory Opinion as the proposition that States are under an obligation in international law to regulate private conduct. The Court accordingly linked due diligence to the regulation, enforcement, and monitoring of both public and private operators, and made clear that responsibility may arise where a State fails to adopt the regulatory and legislative measures necessary to limit emissions caused by private actors under its jurisdiction (Foster 2025, pp. 776–77; ICJ 2025, paras. 252, 282, 403, 428). The doctrinal consequence is significant because it shifts the climate wrong away from the mere existence of emissions and towards failures of governance, regulation, and control. The internationally wrongful act is therefore not climate change in the abstract, but the breach of treaty or customary obligations, including failures of due diligence in the regulation of conduct under State jurisdiction.

Foster's discussion of the responsibility section confirms the same structure: the Court did not accept that the climate treaties displace the general law of State responsibility as *lex specialis*, but instead linked primary obligation, breach, and responsibility in an orthodox sequence that gives the underlying duties a firmer legal edge (Foster 2025, pp. 794–95; ICJ 2025, paras. 419–20, 428).

That structure also has a temporal dimension of particular importance for sea-level rise. Foster's earlier account of the no-harm rule argues that the interests of future generations are not merely policy considerations external to law, but legally relevant interests that must be taken into account where present conduct foreseeably produces long-term and potentially irreversible environmental harm; at minimum, this may require the avoidance of "manifestly excessive adverse impacts" on those interests (Foster 2024, pp. 588–90, 602–605). In her reading of the 2025 Advisory Opinion, the Court did not finally settle that issue, but neither did it exclude a future-oriented approach. By expressly linking the environment to the well-being of present and future generations, it left room for further juridical development in that direction (Foster 2025, p. 794). The Court's treatment of *erga omnes* and *erga omnes partes* obligations reinforces that point at the level of enforcement. As Jackson and Paddeu argue, recognition of the collective character of certain climate obligations matters because it shapes who may invoke responsibility and for what ends. On their reading, non-injured States may invoke responsibility for breach of collective obligations, but the legal consequences remain differentiated: they may seek cessation and assurances of non-repetition in their own right, whereas reparation may only be claimed in the interest of the injured State or the beneficiaries of the obligation breached (Jackson and Paddeu 2026, pp. 4–9; ICJ 2025, paras. 440–43). This makes the law of State responsibility more workable in the climate context, where the protected interest is collective even though the distribution of concrete harm is uneven.

Still, that move is not free from uncertainty. Urs cautions that the Court's jurisprudence does not yet provide a fully coherent method for identifying which specific obligations within a multilateral treaty are properly characterised as *erga omnes partes*. She warns against moving too quickly from a treaty's collective purpose to the assumption that all of its obligations are collectively enforceable in the same way. In the climate context, this caution is important. It supports a narrower and more defensible proposition: the Court's reasoning is strongest with respect to core obligations of prevention, mitigation, and cooperation, but should not be generalised indiscriminately across every climate-related treaty provision (Urs 2025, pp. 283–84).

The ICJ contribution is therefore broader than that of ITLOS, but not redundant. ITLOS shows how climate-related marine harm can be absorbed into an existing treaty framework. The ICJ shows that such clarification belongs within a wider legal field in which climate treaties, customary law, human rights law, and the law of State responsibility all remain operative. The relation between the two opinions is not one of duplication—it is one of scale and consolidation.

2.3. The Inter-American Advisory Contribution: Human Rights, Collective Dimensions, and Present and Future Generations

The Inter-American dimension of the advisory turn does not simply add a human rights gloss to obligations already defined elsewhere. It shifts attention to what climate obligations protect and for whom they matter. Recent analysis of OC-32/25 likewise reads the Inter-American Opinion as significant not only for substantive obligations, but also for its articulation of procedural and intersectional climate obligations, thereby reinforcing the Court's distinctive contribution to the protection-centred side of the advisory turn (IACtHR 2025; Borràs-Pentinat 2025, pp. 1, 14, 17). In the sea-level-rise context, that shift is decisive. Legal analysis cannot stop at marine pollution, atmospheric protection, or

inter-State cooperation. It must also account for the conditions of life, residence, health, culture, and security under severe environmental stress.

The wider Latin American context helps explain this move. Moreira and her co-authors show that rights-based climate litigation in Brazil has developed through a constitutional framework in which the right to an ecologically balanced environment is treated as a fundamental human right, connected to other constitutionally protected rights and owed to present and future generations. They further show that Brazilian courts, particularly the STF, are increasingly placing climate issues within a broader human rights structure and treating environmental protection as a constitutional duty rather than a political option (Moreira et al. 2024, pp. 48–50, 60).

That background matters because it shows that the Inter-American contribution is not an isolated doctrinal development, but part of a wider regional jurisprudential setting in which environmental protection is already treated both as a right in itself and as a condition for the enjoyment of other rights (Moreira et al. 2024, pp. 48–50, 60; ICJ 2025, para. 393). Foster’s discussion of the 2025 ICJ Advisory Opinion is useful in this respect because she draws an explicit contrast between the ICJ’s State-centred limits on standing and the Inter-American Court’s recognition that, in the climate context, human rights may have collective dimensions and may be owed to both present and future generations (Foster 2025, p. 794; ICJ 2025, para. 111). That contrast is legally important because it shows that the human rights dimension of climate obligations cannot be reduced either to bilateral injury or to the rights of presently identified individuals alone. In the context of sea-level rise, that point is especially important. The legal injury does not arise only once a border has been crossed or territory has been fully lost. It emerges earlier, as environmental deterioration begins to undermine the conditions of secure habitation and the material basis for the continued enjoyment of rights.

This human rights lens also exposes a limit in the other advisory opinions. ITLOS developed a sophisticated account of pollution, prevention, precaution, and due diligence, but offered only sparse engagement with human rights. The ICJ read human rights into the applicable law and linked climate harm to the interests of present and future generations, but, as Foster notes, it still gave relatively limited attention to the most vulnerable States and to displaced populations (Foster 2025, pp. 808–9). The Inter-American contribution is therefore not merely supplementary. It helps correct a tendency, visible especially in more State-centred forums, to render the protection of persons secondary to questions of treaty interpretation, institutional competence, or inter-State responsibility.

At the same time, the three opinions should not be collapsed into a single human rights narrative. Their legal bases remain distinct. The narrower and safer point is that, taken together, they show climate obligations to be at once regulatory, preventive, cooperative, and relevant to the protection of rights. That convergence becomes especially salient in sea-level-rise cases, where the instability of maritime entitlements and the vulnerability of affected persons are not parallel issues but connected legal consequences of the same underlying harm.

The convergence identified so far, however, still requires explanation at the level of method. These opinions do not simply announce compatible results. They arrive at them by reading across regimes in different ways and with different degrees of openness to external rules and materials. That interpretive problem is the next one to be confronted.

3. Interpreting Across Regimes Without Collapsing Them

The convergence identified in the recent advisory opinions does not arise by assertion alone. It depends on a series of interpretive choices about how one treaty regime may be read in light of others, how scientific materials may enter legal reasoning, and how courts

may respond to the fact that climate harm engages more than one field of international law at the same time. Those choices matter because sea-level rise is precisely the kind of problem that exposes the limits of treaty isolation. At the same time, it also exposes the dangers of unstructured doctrinal fusion. If every norm touching climate change were simply folded into every other, interpretive coherence would be purchased at the cost of legal basis, consent, and doctrinal discipline. The better view is narrower. The recent opinions support a form of constrained systemic integration: they read across regimes where relevance and applicability can be shown, while preserving the distinct juridical basis of each regime.

3.1. Article 31(3)(c) VCLT and the Discipline of Relevance and Applicability

The starting point is Article 31(3)(c) of the Vienna Convention on the Law of Treaties, which requires that, together with the context, account be taken of any relevant rules of international law applicable in the relations between the parties (Hinrichsen 2024, pp. 2–3). Thin is right to emphasise that this provision is neither a decorative reference to coherence nor an unlimited warrant for cross-regime borrowing. It is an interpretive rule embedded in the general rule of interpretation, and its function is to help situate treaty terms within the wider legal system rather than to dissolve those terms into it (Thin 2025, pp. 31–35; McLachlan 2005, pp. 289–91). The important consequence is methodological. External rules may inform interpretation; they do not replace the treaty being interpreted (McLachlan 2005, pp. 303–4).

That point has several implications. The first concerns relevance. As both Thin and Bartenstein show, relevance is not self-proving. The fact that two treaties relate, in a broad sense, to climate change does not by itself establish that one may be used to interpret the other. The external rule must bear materially on the same legal problem, or at least on a closely connected one, and there must be a plausible bridge between the treaty provision under interpretation and the external rule invoked (Thin 2025, pp. 33–35; Bartenstein 2025, pp. 13–15). In the climate context, that bridge may sometimes be relatively direct, as where UNCLOS obligations concerning marine pollution overlap with climate treaties dealing with atmospheric greenhouse-gas emissions. In other instances, however, overlap is factual rather than juridical, and the interpretive pathway is much less obvious.

The second implication concerns applicability “in the relations between the parties.” Here, the literature remains divided. Thin notes that a restrictive reading would require a high degree of identity between the parties to the treaty under interpretation and the parties to the external rule relied upon, whereas broader readings permit greater openness where the external norm can reasonably be treated as expressing a common understanding relevant to the interpreted provision (Thin 2025, pp. 34–35). Bartenstein is more sympathetic to the broader view, largely because a stricter reading would make systemic integration nearly impossible in large multilateral settings and would frustrate the very purpose of ensuring that treaties are not interpreted in isolation (Bartenstein 2025, pp. 14–15). For present purposes, the broader reading is more persuasive, but only if handled with care. It should not be taken to mean that any climate-related norm may automatically shape the meaning of every climate-relevant treaty provision. It only means that interpretation may take account of external rules where their legal relationship to the interpreted treaty provision can be shown, and where doing so does not sever interpretation from the treaty text and structure.

The third implication concerns the legal quality of the materials invoked. Thin’s critique is especially pointed here. She argues that ITLOS pushed Article 31(3)(c) beyond binding rules by also relying on non-binding instruments and other materials that do not readily fall within the category of ‘relevant rules of international law’, thereby risking

ambiguity, weakened consent, and reduced legal certainty (Thin 2025, pp. 34, 46). That concern should be taken seriously. The interpretive value of an instrument is not identical to its normative status, and not every useful material belongs under Article 31(3)(c). Where a court uses scientific materials to ascertain the meaning of technical terms, that move may sometimes sit more naturally within the ordinary-meaning inquiry under Article 31(1) than within systemic integration under Article 31(3)(c). Rioseco makes precisely this point in criticising ITLOS for not distinguishing clearly enough between the use of external rules as legal context and the use of scientific sources as explanatory aids in determining the meaning and implications of treaty language (Rioseco 2025, pp. 208–11).

What emerges from these debates is not a reason to abandon systemic integration, but a reason to discipline it. Climate adjudication does require courts to read treaties in light of a wider legal environment. But that wider environment cannot function as an undifferentiated reservoir of supportive materials. The more persuasive use of Article 31(3)(c) is one that remains tied to three questions: whether the external rule is legally relevant to the interpreted provision, whether it is applicable in the relations between the parties in a meaningful sense, and whether the mode of reliance respects the difference between binding legal rules, soft-law materials, and scientific evidence.

3.2. ITLOS, External Rules, and the Limits of Integrative Reasoning

ITLOS is the most explicit recent example of an international tribunal embracing integrative reasoning in a climate context. Rioseco shows that the Tribunal did not rely on external rules through a single undifferentiated method. Instead, it identified three mechanisms through which a relationship between Part XII UNCLOS and external rules could be formed: rules of reference within UNCLOS itself, Article 237 UNCLOS, and Article 31(3)(c) VCLT (Rioseco 2025, pp. 200–2). This is important because it demonstrates that ITLOS did not present systemic integration as a free-floating appeal to coherence. It grounded its interpretive openness in specific legal pathways internal or adjacent to UNCLOS.

That structure is one of the strongest features of the Opinion. It explains why the Tribunal could speak of coordination and harmonisation between UNCLOS and external rules, and why it could describe the Convention as a “living instrument,” without claiming that UNCLOS had become legally interchangeable with the climate treaties (Rioseco 2025, pp. 196, 200–1). Bartenstein is especially helpful on this point. In her reading, the treatment of anthropogenic greenhouse-gas emissions as marine pollution functioned as a bridge between two regimes that had long been factually connected but legally compartmentalised. The interpretive move was therefore not one of treaty displacement, but one of treaty connection (Bartenstein 2025, pp. 16–17).

Nguyen’s analysis pushes the same point further by describing the ITLOS approach as one of normative cross-fertilisation. On her account, the Opinion shows how a specialised tribunal may foster regime interaction while still operating through the treaty it is mandated to interpret. Yet she also emphasises the limitations of that role. A specialised tribunal may connect different regimes and draw on external norms in order to clarify legal obligations, but it does not thereby become a general climate court. The authority of its reasoning still depends on the legal relationship between the external norms invoked and the treaty being interpreted, as well as on the tribunal’s ability to explain that relationship with sufficient transparency (Nguyen 2025, pp. 368, 380–85). It is precisely at this point that the main methodological difficulty arises. Rioseco argues that, although ITLOS made a serious effort to articulate the legal basis for relying on external rules and scientific materials, it did not always make sufficiently clear how those materials were situated within the different elements of Article 31 VCLT or how scientific findings were translated

into legal conclusions (Rioseco 2025, pp. 200–2, 210–11). Thin’s criticism is sharper still. In her view, the Tribunal’s approach was at once expansive and selective: expansive because it stretched the constituent elements of Article 31(3)(c), and selective because it incorporated environmental norms while largely passing over international human rights norms, notwithstanding express requests by some participants that they be taken into account (Thin 2025, pp. 31–32). Even for those broadly sympathetic to the direction of the Opinion, this remains a serious difficulty. Integrative reasoning is most convincing where it is clear why certain external norms are relied upon, why others are not, and under what doctrinal basis each is introduced.

The deeper lesson is therefore mixed. ITLOS shows that climate adjudication cannot proceed by keeping UNCLOS hermetically sealed from the rest of international law. But it also shows that the success of an integrative approach depends on methodological self-restraint. The more a court relies on external rules and materials, the more clearly it must distinguish between legal sources, interpretive aids, and evidentiary materials. Without that distinction, integrative reasoning risks losing the very discipline that makes it defensible.

3.3. Human Rights as Relevant Context, Not a Free-Floating Override

The omission or marginalisation of human rights in ITLOS has become one of the most discussed aspects of the Opinion. Thin treats this as evidence of selective integration: if systemic integration is genuinely concerned with relevant rules applicable in the relations between the parties, then the near-exclusion of human rights norms from the interpretive analysis is difficult to justify given the obvious human stakes of climate change and sea-level rise (Thin 2025, pp. 31–32). Nguyen makes a similar point more cautiously, noting that the Tribunal acknowledged the human consequences of climate change but did not substantially incorporate human rights law into the interpretation of Part XII UNCLOS (Nguyen 2025, pp. 380–82).

That criticism is persuasive up to a point. Climate harm, and sea-level rise in particular, cannot be reduced to an inter-State environmental externality. It affects secure habitation, health, subsistence, cultural continuity, and, in some contexts, the basic conditions of collective life. Human rights law is therefore not legally incidental to the broader climate field. Foster’s discussion of the 2025 ICJ Advisory Opinion is telling here. She notes that the ICJ recognised the right to a clean, healthy and sustainable environment as inherent in the enjoyment of other human rights while also observing that regional human rights courts have often gone further in reading environmental degradation directly through human rights guarantees (Foster 2025, pp. 788, 794–95). Moreira and her co-authors likewise show that, in the Latin American context, climate claims have increasingly been built around the right to an ecologically balanced environment and its relationship to life, health, Indigenous rights, and the interests of present and future generations (Moreira et al. 2024, pp. 47–49, 56–57, 64).

Even so, human rights relevance must not be converted into a free-floating override. The stronger view is not that human rights law silently rewrites every other regime. It is that human rights law forms part of the relevant legal environment within which climate-related obligations are interpreted and applied, especially where the consequences of environmental deterioration bear directly on rights enjoyment. That distinction matters. It preserves the separate legal basis of UNCLOS while avoiding any reading that would make human protection disappear from view. In this approach, human rights norms help to clarify the legal significance of climate harm and to identify the beneficiaries of climate-related duties, but they do not automatically displace the structure, thresholds, or institutional limits of the treaty regime being interpreted. KlimaSeniorinnen also illustrates

why counter-arguments about institutional competence and democratic choice cannot simply be dismissed. Although the Court found violations of Articles 8 and 6 § 1, it did not prescribe a precise emissions pathway or a particular legislative model, leaving the choice of measures primarily to the respondent State under supervision of the Committee of Ministers (ECtHR 2024, paras. 657–58). The decision therefore strengthens the legal character of climate-related human rights duties, but it also confirms that courts generally articulate minimum legal standards rather than replace domestic climate governance. This narrower position is also more persuasive in relation to the ICJ. Foster’s analysis of the Court’s harmonising method is helpful precisely because it avoids both extremes. The ICJ did not confine itself to climate treaty law, but neither did it collapse climate law, human rights law, UNCLOS, and customary law into a single undifferentiated body of obligations. Instead, it treated them as coexisting parts of a broader legal framework and sought, where possible, a compatible reading across them (Foster 2025, pp. 777–79). For present purposes, that is the more defensible model. Sea-level rise requires interpretation across regimes because the underlying facts engage more than one regime at the same time. The legal response, however, should remain one of coordination rather than absorption. Once that point is accepted, the move to responsibility becomes clearer. If the advisory opinions specify obligations through disciplined cross-regime interpretation, the next issue is what follows when those obligations are breached in a context of cumulative and shared harm. The question is no longer only how obligations are interpreted across regimes, but also how they enter the law of State responsibility.

4. From Primary Obligations to State Responsibility

Once climate obligations are specified through due diligence, prevention, cooperation, and regulation, the issue is no longer whether climate change is legally cognisable, but how breaches are to be addressed within the law of State responsibility. The recent advisory opinions did not invent a new framework. They confirm that the general law of State responsibility remains applicable even where harm is cumulative, contribution is shared, and those affected are multiple or difficult to individualise. The key move is not conceptual innovation, but juridical translation: climate harm becomes responsibility-relevant through breach of conduct-based obligations, not through proof that one State was the sole physical cause of a particular climatic outcome.

4.1. Breach, Attribution, and the Conduct-Based Structure of Climate Responsibility

In climate cases, the internationally wrongful act is not climate change in the abstract, nor sea-level rise as such. It lies in a State’s failure to comply with specific treaty or customary obligations concerning prevention, mitigation, cooperation, and regulation. When these obligations are understood as obligations of conduct, assessed by reference to due diligence and best efforts, the complex nature of causation does not preclude an examination of responsibility; it merely shifts the focus of that enquiry. The central question becomes whether the State took the measures required in light of the seriousness, foreseeability, and scientific intelligibility of the risk (Foster 2025, pp. 794–95). The ICJ expressed this with unusual clarity: a State may incur responsibility where it fails to exercise due diligence by not adopting the necessary regulatory and legislative measures to limit emissions caused by private actors under its jurisdiction. This shifts the focus of breach from the diffuse fact of emissions to failures of governance, legislation, regulation, enforcement, and monitoring (ICJ 2025, para. 428; Foster 2025, pp. 776–77, 794–95). It also shows that the more difficult questions concern not attribution, but causation and remedy. On this point, the advisory opinions offer only a partial clarification: breach is

easier to conceptualise than the status of particularly affected States within the framework of responsibility (Jackson and Paddeu 2026, p. 5; Foster 2025, pp. 808–9).

4.2. *Invocation Beyond Bilateral Injury: Erga Omnes, Erga Omnes Partes, and the Architecture of Enforcement*

In classical bilateral settings, responsibility is framed through the relationship between a wrongdoing State and an injured State. Climate change does not render that model irrelevant, but it does show its limits. Many climate obligations protect collective interests or global common goods, and their breach cannot always be reduced to a single bilateral injury. The ICJ's recognition that certain climate-related obligations are erga omnes and erga omnes partes is significant because the collective character of the interest protected would otherwise leave an important enforcement gap. As Jackson and Paddeu explain, the point is not merely classificatory. It bears directly on whether States other than those directly injured may invoke responsibility, seek cessation and assurances of non-repetition, and, where appropriate, pursue reparation in the interest of the injured State or of the beneficiaries of the obligation breached (ICJ 2025, paras. 440–43; Jackson and Paddeu 2026, pp. 1–4, 7–9). In that respect, the Opinion confirms that the collective character of certain climate obligations has consequences not only at the level of principle, but also for standing and the structure of claims.

Nevertheless, a cautious approach is required. As Urs shows, the Court has still not articulated a sufficiently clear method for identifying which obligations qualify as erga omnes or erga omnes partes, and common interest alone remains too indeterminate a criterion, particularly in the context of multilateral treaty obligations (Urs 2025, pp. 258–60, 283–86). Jackson and Paddeu identify a related ambiguity in the Advisory Opinion itself: while paragraph 440 appears to speak broadly of obligations under the UNFCCC and the Paris Agreement as erga omnes partes, paragraph 441 refers more specifically to the main mitigation obligations (Jackson and Paddeu 2026, pp. 8–9). The more defensible reading is therefore the narrower one. On that reading, the strongest case for collective invocation concerns core obligations of prevention, mitigation, and cooperation directed to the protection of the climate system; any broader claim would go beyond what the Court's reasoning securely establishes.

4.3. *Cessation, Assurances of Non-Repetition, and Reparation: What the Advisory Opinions Clarify—And What They Do Not*

The advisory opinions clarify the remedial structure of State responsibility more clearly than they resolve the ultimate allocation of forms of reparation. Their contribution lies in relation to cessation and assurances of non-repetition. This follows from the internal logic of the secondary rules themselves. Under the general law of State responsibility, cessation is required where the internationally wrongful act is continuing, while assurances and guarantees of non-repetition become relevant where the circumstances disclose a risk of recurrence (United Nations 2001, art. 30). In the climate context, that distinction matters because the wrong is not the abstract existence of climate change as such, but a continuing failure to regulate, prevent, or mitigate with due diligence. Once breach is understood in those terms, the legal consequence is correspondingly easier to identify, e.g., the discontinuance of non-compliant conduct and the adoption of legislative, regulatory, and administrative measures capable of restoring conformity with the underlying obligation. Foster's reading of the Advisory Opinion supports that understanding. She notes that Judge Bhandari would have preferred the Court to say more explicitly that cessation may require discontinuing practices directly contributing to greenhouse-gas emissions and adopting policies capable of producing deep and immediate reductions, but the basic direction of the Court's reasoning is already clear (Foster 2025, pp. 797–98). In the specific context of sea-level rise,

that prospective orientation is especially significant. Where the most serious injuries are cumulative, worsening, and partly future-facing, cessation and assurances of non-repetition are not merely ancillary to compensation; they are the legal forms through which secondary rules reconnect responsibility to the preventive logic of the primary obligations. Mayer's analysis is helpful here because it shows why, in a context of continuing wrongful conduct, cessation directs legal attention to bringing emissions-generating conduct under control rather than treating responsibility only as a backward-looking question of monetary redress (Mayer 2014, pp. 22–25).

Reparation stands on a different footing. The Court confirmed that the ordinary law of State responsibility remains applicable and that full reparation continues, in principle, to take the familiar forms of restitution, compensation, and satisfaction (United Nations 2001, art. 31; Foster 2025, pp. 798–99). Yet the climate context does not affect each form in the same way. Restitution encounters obvious material limits where environmental degradation, territorial transformation, and long temporal delay make restoration difficult or impossible; compensation remains available for financially assessable damage; and satisfaction retains a residual but genuine function where complete material restoration cannot be achieved (Foster 2025, pp. 798–99; Mayer 2014, pp. 25–30). Mayer's earlier account is particularly useful because it makes clear that the difficulty lies not only in remedial technique, but in the structure of climate harm itself: emissions accumulate over time, physical effects manifest unevenly, and the social consequences of those effects are mediated by multiple intervening variables, including adaptation capacity, infrastructure, and domestic regulation (Mayer 2014, pp. 27–30). Nollkaemper's analysis sharpens the same point from the standpoint of causation. Recent climate adjudication has shown that courts can move forward on responsibility by working with conduct-based obligations, general causation, and prevention-oriented normative standards; but that move is more helpful in establishing responsibility than in allocating compensation for diffuse and cumulative injury (Nollkaemper 2024, pp. 5, 31, 34–35). The result is not that reparation is legally unavailable, but that the hardest questions arise once the inquiry turns from breach to the proof, valuation, and distribution of compensable loss.

What it did do was more modest, but also more useful: it rejected the view that climate treaties displace the general law of State responsibility as *lex specialis*, and it confirmed that causation problems become most acute where reparation is sought, rather than at the earlier stage of establishing that conduct-based obligations exist and may be breached (Foster 2025, pp. 794–99; Jackson and Paddeu 2026, pp. 4–5).

A further qualification is necessary. Recognition of collective obligations does not transform the structure of State responsibility. As Jackson and Paddeu note, non-injured States may seek reparation only in the interest of injured States or the beneficiaries of the obligation breached, not as if they themselves had suffered the underlying material loss (Jackson and Paddeu 2026, pp. 2, 9). This preserves the structure of the Articles on Responsibility of States for Internationally Wrongful Acts while still giving meaningful effect to collective enforcement. For that reason, this article does not claim that the advisory opinions have solved the remedial problem of climate change. They have clarified the legal pathways through which responsibility may be invoked and the forms legal consequences may take, but they have not resolved the evidentiary and distributive questions that would arise in concrete claims for large-scale climate reparation. States may rely on the collective character of certain climate obligations to seek cessation and assurances of non-repetition, while injured States or the beneficiaries of the obligation breached remain central to claims for reparation (ICJ 2025, para. 443). The May 2026 resolution of the United Nations General Assembly is significant in this more limited sense. By welcoming the ICJ Advisory Opinion and calling on States to comply with their international obligations as clarified by the Court,

the General Assembly did not convert the advisory opinion into a binding judgement. It did, however, give the Opinion an additional institutional endorsement and created a follow-up setting in which compliance, cooperation, and remaining gaps in multilateral climate action may be politically and legally discussed ([United Nations General Assembly 2026](#), A/RES/80/263). Its value is therefore not coercive enforcement, but consolidation: it reinforces the authority of the Court's reasoning and may strengthen the argumentative position of States and affected groups in subsequent diplomatic, domestic, regional, and international proceedings.

The advisory opinions have made three linked propositions harder to deny: first, climate-related obligations are capable of breach within the ordinary structure of State responsibility; second, the collective character of certain obligations expands the possibilities of invocation beyond strictly bilateral injury; and third, cessation and non-repetition stand on firmer doctrinal ground than any simplified expectation of full compensatory repair for all climate harm. These clarifications do not resolve every difficulty of climate responsibility but they do make it possible to ask a more concrete question in the sea-level-rise context: how far can this clarified framework respond when maritime instability and human vulnerability arise together? That question is discussed in the next part.

5. Sea-Level Rise at the Protection Interface: Maritime Stability, Human Rights, and the Limits of Existing Categories

The clarification of obligations and responsibility becomes most concrete where sea-level rise simultaneously generates institutional instability and human vulnerability. In that setting, maritime entitlements, continuity concerns, and the protection of affected persons do not present three unrelated questions. These are interlocking aspects of the same legal problem. Maritime instability affects not only access to resources and jurisdictional certainty, but also the material conditions of self-government. By the same token, an approach to protection framed only in terms of mobility or displacement overlooks the prior question of how law sustains the conditions in which affected communities may remain in place. The doctrinal significance of the recent advisory opinions lies in making these connections more visible, even if they do not fully resolve them.

5.1. Maritime Stability as a Condition of Legal Security

One of the clearest pressure points created by sea-level rise concerns the relationship between changing coastlines and legal stability. UNCLOS was framed on the assumption of relatively stable coastal geography. As Oral rightly notes, that assumption is no longer tenable in the face of directional and persistent sea-level rise, and a strict ambulatory approach puts at risk not only baselines, but also legal certainty, predictability, and the stability of established maritime boundaries and related entitlements ([Oral 2025](#), pp. 165–71; [Soons 1990](#), p. 224; [Grossman Guiloff 2024](#), pp. 752, 760). The issue therefore goes beyond technical doctrine in the law of the sea. For low-lying States, maritime instability is not simply cartographic inconvenience; it bears directly on jurisdiction, access to resources, and the institutional basis of continued public authority.

The recent advisory turn has strengthened the stability-oriented reading, but not in a uniform way. That stability-oriented reading has been further strengthened by the ILC's final report, which records a convergence of State views that UNCLOS does not prohibit preservation of baselines and maritime zones and does not require their updating to reflect sea-level-rise-induced change, and by the 2024 ILA Resolution, which endorses the view that duly determined baselines, maritime limits, and agreed or adjudicated maritime boundaries need not be redetermined on that account ([ILC 2025](#), paras. 40–41; [ILA 2024](#), pp. 1–2). Oral argues that there is now a marked convergence of State views and institu-

tional work in favour of preserving baselines and maritime boundaries notwithstanding physical coastal change caused by sea-level rise, and that the ICJ's (2025) Advisory Opinion significantly reinforced that clarification by endorsing the ILC's conclusions on the point (Oral 2025, pp. 175–78). The view that UNCLOS imposes no continuous obligation to revise baselines, outer limits, or deposited charts because of sea-level rise is now much harder to dismiss as merely aspirational. In that sense, the advisory opinions help secure legal stability for particularly exposed States.

Yet the point should not be pressed further than the authorities allow. Lando's analysis is valuable precisely because it separates desirability from current positive law: baseline preservation may be a desirable response to sea-level rise, and UNCLOS does not clearly prohibit it, but that does not yet mean that treaty interpretation or existing custom has already secured it as a rule of *de lege lata*. For that reason, Lando argues that some *de lege ferenda* steps may still be required in order to provide firmer legal support, particularly through interpretative declarations or treaty amendment (Lando 2025, pp. 102–4, 118, 123). In this respect, he adopts a cautious approach. A similar need for precision also arises in the debate on islands. According to Bjorge, even if anthropogenic sea-level rise has altered the physical condition of an island, that fact alone should not lead to the loss of its status under Article 121 of UNCLOS. His reasoning rests on the requirement that the geographical feature be naturally formed. It also rests on the view that Article 121 should be applied by reference to the feature's natural condition and intrinsic capacity, rather than by treating human-induced environmental harm as a ground for reclassification. On this view, sea-level rise caused by climate change should not, by itself, convert an island that otherwise meets the necessary conditions into a juridically lesser category (Bjorge 2025, pp. 179–80, 188, 192). The practical effect of this argument is to resist an interpretation under which the law of the sea would itself intensify climate vulnerability by depriving islands and their populations of maritime entitlements. Even so, this argument relates more directly to the regime of islands than to the broader question of the continuity of statehood. The two issues remain connected, but they should not be collapsed into one another.

The more defensible proposition is therefore narrower, but firmer. The recent advisory opinions reinforce a stability-oriented reading of maritime entitlements, especially where renewed instability would aggravate the exposure of low-lying States. They do not, however, resolve every doctrinal controversy concerning baselines, islands, or continuity. Even so, this partial clarification has practical significance. Certainty in relation to maritime entitlements serves not only to preserve access to maritime space and resources, but also to maintain the legal and institutional conditions through which an affected State may continue to exercise authority and protect its population (Grossman Guiloff 2024, pp. 727, 759). For that reason, the relationship between the stability of maritime entitlements and the protection of persons should not be treated as incidental. It should be stated directly.

5.2. *Protection of Persons: Staying in Place, Mobility, and the Persistence of Duty-Bearers*

If maritime stability relates to the legal conditions of collective survival, the protection of persons relates to the legal conditions of human security. The literature has now moved beyond a narrow concern with displacement alone. As Burson, Kälin and McAdam make clear, the impacts of sea-level rise cannot be framed only in terms of final inundation or cross-border migration. Well before that point, populations may face salinisation, freshwater loss, declining habitability, damage to livelihoods, and the gradual erosion of the conditions required for a dignified life. The legal consequences are therefore dynamic rather than binary: rights may be impaired well before territory is fully lost, and the corresponding obligations of States change over time as factual circumstances deteriorate (Burson et al. 2023, pp. 267–68, 275–78; Galvao Teles 2023, pp. 694–98).

This perspective has at least three implications. First, protection cannot be reduced to relocation. As Burson, Kälin and McAdam stress, mitigation and adaptation measures may help communities remain in their homes for as long as possible, and legal analysis must give proper weight to that possibility. A rights-sensitive response to sea-level rise is therefore not exhausted by post-displacement categories; it also includes the duties that bear on resilience, adaptation, public participation, access to information, and conditions of continued residence (Burson et al. 2023, pp. 275–77; Iyer and Schewel 2024, pp. 207, 230; Yildiz 2022, pp. 5–6). This orientation is now expressed with unusual clarity in the Pacific Regional Framework on Climate Mobility, which adopts a rights-based and people-centred approach to climate mobility encompassing staying in place, planned relocation, migration, and displacement, and expressly treats helping Pacific peoples stay in their homes with safety and dignity as a fundamental regional priority (Pacific Islands Forum 2023b, paras. 9, 13, 18, 22). In the present context, that point is especially important because a framework focused only on movement risks missing the prior legal question of how international law supports the possibility of staying in place.

Second, the duty-bearing structure remains more complex than a simple one-State/one-population model. Burson, Kälin and McAdam argue that at every point there will be at least one State, or other entity with international legal personality, exercising jurisdiction over affected persons, jointly or severally, and that certain core obligations—such as non-discrimination and, where relevant, non-refoulement—do not disappear merely because sea-level rise complicates territorial assumptions (Burson et al. 2023, pp. 277–78). This is a useful corrective to the fear that the protection question becomes legally indeterminate once mobility increases or State capacity weakens. The problem is serious, but it is not lawless.

Third, the protection of persons cannot be collapsed into continuity of statehood. Burson, Kälin and McAdam are particularly clear on this point. Preserving statehood and maritime entitlements may be vital because they help sustain the financial and institutional capacity through which a State can continue to discharge its human rights obligations. The 2023 Pacific Islands Forum Declaration makes that linkage explicit by acknowledging that continuity of statehood is necessary and fundamental for the protection of persons to be implemented and endure, while also framing such protection in terms of human rights, culture, cultural heritage, identity, dignity, and essential needs (Pacific Islands Forum 2023a, paras. 10–14). But that does not by itself answer the distinct question of how affected persons are to be protected over time, including where mobility, relocation, or shared jurisdiction becomes unavoidable (Burson et al. 2023, pp. 277–78). This distinction prevents continuity arguments from appearing as if they were complete solutions to the human consequences of sea-level rise.

The advisory opinions help here, but within limits. They strengthen prevention, cooperation, and due diligence, and thus reinforce the legal basis for arguing that States must act before harm becomes irreparable. They also make it harder to treat climate vulnerability as a purely policy domain external to legal obligation. What they do not provide is a comprehensive code for the protection of persons affected by sea-level rise (Galvao Teles 2023, pp. 694–98). The categories remain plural, and the duties remain distributed. That is precisely why the protection interface is the right place to test both the value and the limits of the advisory framework.

5.3. Kiribati and Tuvalu: A Brief Illustration of Value and Limit

Kiribati and Tuvalu help show what the advisory framework now makes easier to argue, and what it still leaves unresolved. They should not be treated as universal models, nor as proof that advisory opinions have solved the full law of sea-level rise.

Their significance is narrower. They illustrate a setting in which prevention, continuity, maritime stability, mobility, and human protection arise together rather than sequentially (Gerlic 2024, pp. 25–27; Jiang et al. 2025, pp. 210–16). Their inclusion is useful because both States are low-lying atoll States, but they illustrate different legal and institutional responses to the same structural pressure. Kiribati consists predominantly of atolls and reef-island features, and South Tarawa is frequently used in the literature as an example of the kind of low-lying atoll setting in which sea-level rise, coastal erosion, saltwater intrusion, and baseline instability may converge (Bernard et al. 2021). Kiribati's own climate policy identifies sea-level rise and changing weather patterns as direct risks to vulnerable communities, their environment, and livelihoods (Government of Kiribati 2018). The Teitiota litigation then shows the human-protection side of the same problem: the Human Rights Committee did not find a violation on the facts, but accepted that, without robust national and international action, climate-change impacts may in principle expose individuals to risks capable of engaging non-refoulement obligations under Articles 6 or 7 ICCPR (Human Rights Committee 2020, para. 9.11). By contrast, Tuvalu illustrates how continuity and mobility may be legally addressed without treating relocation as the abandonment of statehood. The Australia–Tuvalu Falepili Union Treaty recognises the continuing statehood and sovereignty of Tuvalu notwithstanding the impacts of climate-change-related sea-level rise. It also establishes a practical legal pathway enabling Tuvaluan citizens to live, study, and work in Australia (Australia and Tuvalu 2023, arts. 2–3). This demonstrates that the stability of maritime entitlements, continuity of statehood, and the protection of persons are interconnected; however, each of these issues requires a distinct legal response. This does not mean, however, that the advisory opinions have clarified the law in full. The situation rather shows that cumulative harm, the stability of maritime entitlements, continuity concerns, and the protection of persons together constitute a connected legal situation that must be assessed as a whole. For States such as Kiribati and Tuvalu, the principal difficulty lies in the legal cognisability of the problem. Sea-level rise cannot be reduced to a single act attributable to one State.

The advisory opinions do not remove that difficulty. They do, however, prevent cumulative causation from bringing the legal analysis to an end at the outset by framing the relevant obligations in terms of prevention, cooperation, regulation, and due diligence. In this way, the enquiry is redirected away from the impossibility of isolating a single causal source and towards more manageable questions of conduct, breach, and legal consequences.

The same logic also explains why, in the cases of Kiribati and Tuvalu, continuity arguments cannot be considered separately from certainty in relation to maritime entitlements. State practice has increasingly linked the preservation of maritime zones with stability, certainty, and predictability. The reason is that renewed instability in maritime entitlements would further increase the exposure of States that are already in a vulnerable position (Oral 2025, pp. 174–77). In this respect, the Pacific approach is particularly notable. The 2021 Pacific Islands Forum Declaration did not present the preservation of baselines as a merely technical adjustment. Rather, it recorded the position that maritime zones lawfully established and duly notified that should be maintained without reduction and should not be reviewed or updated solely because of climate change-related sea-level rise (Pacific Islands Forum 2021; Freestone and Schofield 2021, pp. 685–87, 695). Oral shows that this approach did not remain confined to the regional level, but received broader support from AOSIS and other multilateral groupings, and was later reaffirmed in the 2023 Pacific Islands Forum Declaration on Continuity of Statehood and Protection of Persons (AOSIS 2024; Oral 2025, pp. 175–77). In this respect, stability in relation to maritime entitlements matters not only because it provides clarity to jurisdiction, but also because it supports the legal security on which continuity claims depend.

That clarification, however, does not answer the separate question of the protection of persons. Even where continuity and stability in relation to maritime entitlements are strengthened, living conditions may deteriorate at a much earlier stage. Sea-level rise affects low-lying areas through recurring pathways such as saltwater intrusion into groundwater and freshwater aquifers, coastal erosion, flooding, and impaired drainage. All of these processes may weaken habitation and infrastructure even before any complete loss of territory occurs (Elneel et al. 2024, pp. 1–2, 8).

This is why Burson, Kälin and McAdam insist that statehood and protection must be analysed together, but not collapsed into one another (Burson et al. 2023, pp. 267–68, 277–78). The Kiribati–Tuvalu illustration confirms that distinction. The advisory opinions strengthen the legal basis for prevention, cooperation, and responsibility, and they reinforce a more stability-oriented reading of maritime entitlements. They do not, however, furnish a complete legal framework for mobility pathways, relocation governance, or the distribution of protection duties where State capacity is progressively weakened. The remaining gap is therefore not peripheral. It marks the point at which continuity arguments cease to be sufficient and dedicated legal and institutional arrangements for the protection of persons become indispensable.

The recent advisory opinions make sea-level-rise claims more legally intelligible by clarifying why cumulative causation does not preclude responsibility analysis, and by strengthening the case for continuity and maritime stability under conditions of acute vulnerability. At the same time, they make equally clear that sea-level rise cannot be treated as only a law-of-the-sea problem or only a human-rights problem. What they provide is a more usable legal framework at the point where these problems intersect. What they do not provide is a complete settlement of the law concerning baseline preservation, the long-term status of low-lying States and islands, or the evolving protection of persons affected by sea-level rise.

6. Conclusions

Sea-level rise exposes a structural asymmetry in contemporary international law. The causes of climate harm are globally distributed, yet many of its gravest effects are territorially concentrated in low-lying States and coastal communities. This article has argued that the recent climate advisory opinions matter because they make that asymmetry more legally intelligible. Their significance lies not in creating a new body of climate law, but in clarifying how existing obligations, interpretive techniques, and responsibility consequences operate across an interdependent legal order.

The first question was what climate-related obligations the recent advisory opinions identify, and how they specify the content of due diligence across the law of the sea, climate law, and human rights law. The answer is that the opinions converge on a conduct-based structure centred on prevention, cooperation, regulation, and due diligence. ITLOS translated anthropogenic greenhouse-gas emissions into the legal categories of marine environmental protection under UNCLOS. The ICJ confirmed that climate obligations cannot be confined to the climate treaties alone and must be understood within a wider field of applicable international law. The Inter-American contribution brought the human significance of these duties into sharper focus by emphasising the conditions necessary for the protection of present and future generations. Taken together, the opinions make it harder to treat climate obligations as vague aspirations or as matters left entirely to political discretion.

The second question concerned interpretation across regimes. On this point, the advisory opinions are best read neither as endorsing treaty isolation nor as collapsing distinct bodies of law into a single climate regime. Their contribution is methodological

rather than synthetic in the strong sense. They show that climate-related obligations may be interpreted in light of other relevant rules of international law, but only where relevance, applicability, and legal basis are demonstrated with care. The point, therefore, is not that fragmentation has disappeared, it is that the recent advisory jurisprudence has made it more difficult to treat the relevant regimes as hermetically sealed from one another where they bear on the same climate-related harm. What emerges is a more disciplined account of legal coordination: one that permits cross-regime reasoning while preserving the distinct juridical structure of the law of the sea, climate treaty law, human rights law, and the general law of State responsibility.

The third question was how far that clarified framework assists in the specific context of sea-level rise. Here too, the answer is qualified, but materially important. The advisory opinions do not solve the problem by identifying sea-level rise itself as the wrongful act. This shifts the enquiry to whether States have complied with their obligations of prevention, regulation, cooperation, and due diligence in the face of a foreseeable and serious risk. In this way, the law of State responsibility becomes more workable. It also has consequences for remedies and invocation. In particular, cessation and guarantees of non-repetition rest on firmer ground than any simplified expectation of full reparation for climate harm as a whole. Likewise, where collective interests are engaged, the possibility of invocation extends beyond the bilateral injury model; yet this expansion does not transform the law of responsibility into an open-ended system of general enforcement.

The practical contribution of the advisory turn should therefore be understood modestly. It does not compel immediate compliance by high-emitting States, nor does it remove the procedural barriers that affected individuals may face in domestic or regional litigation. It does, however, clarify the legal standards against which State conduct may be assessed, particularly in relation to due diligence, regulation of private conduct, access to court, cooperation, cessation, non-repetition, and reparation where a sufficient causal nexus can be shown.

In the context of sea-level rise, the practical significance of this framework appears most clearly where the stability of maritime entitlements and the protection of persons arise together. The advisory opinions make clearer that issues concerning baselines, state continuity, mobility, and protection status cannot be treated in isolation from one another. Stability in relation to maritime entitlements matters not only for jurisdiction and legal certainty, but also for the institutional and material conditions that enable vulnerable States to continue protecting their populations. By the same token, the human consequences of sea-level rise do not acquire legal significance only once displacement occurs; the need for protection arises earlier. Law becomes engaged when environmental deterioration begins to undermine the conditions of secure habitation, subsistence, and public authority. In that respect, the real value of the recent advisory opinions lies in making it possible to express, in clearer and more legally arguable terms, the relationship between the stability of maritime entitlements and the protection of persons. The difficulties concerning the preservation of baselines, the long-term continuity of low-lying States, the legal position of affected persons, and the proof and distribution of climate reparation remain. Yet, the fact that these questions remain unresolved does not diminish the importance of the opinions. They have not fully resolved the legal consequences of sea-level rise; but they have made them more structured.

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Abbreviations

The following abbreviations are used in this manuscript:

AO	Advisory Opinion
AOSIS	Alliance of Small Island States
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
IACtHR	Inter American Court of Human Rights
ICJ	International Court of Justice
ILA	International Law Association
ILC	International Law Commission
IPCC	Intergovernmental Panel on Climate Change
ITLOS	International Tribunal for the Law of the Sea
NDC	Nationally Determined Contribution
RCP	Representative Concentration Pathway
STF	Supremo Tribunal Federal
UNFCCC	United Nations Framework Convention on Climate Change
UNCLOS	United Nations Convention on the Law of the Sea
VCLT	Vienna Convention on the Law of Treaties

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