THE ICJ ADVISORY OPINION ON CLIMATE CHANGE: CONTENT AND CONSEQUENCES

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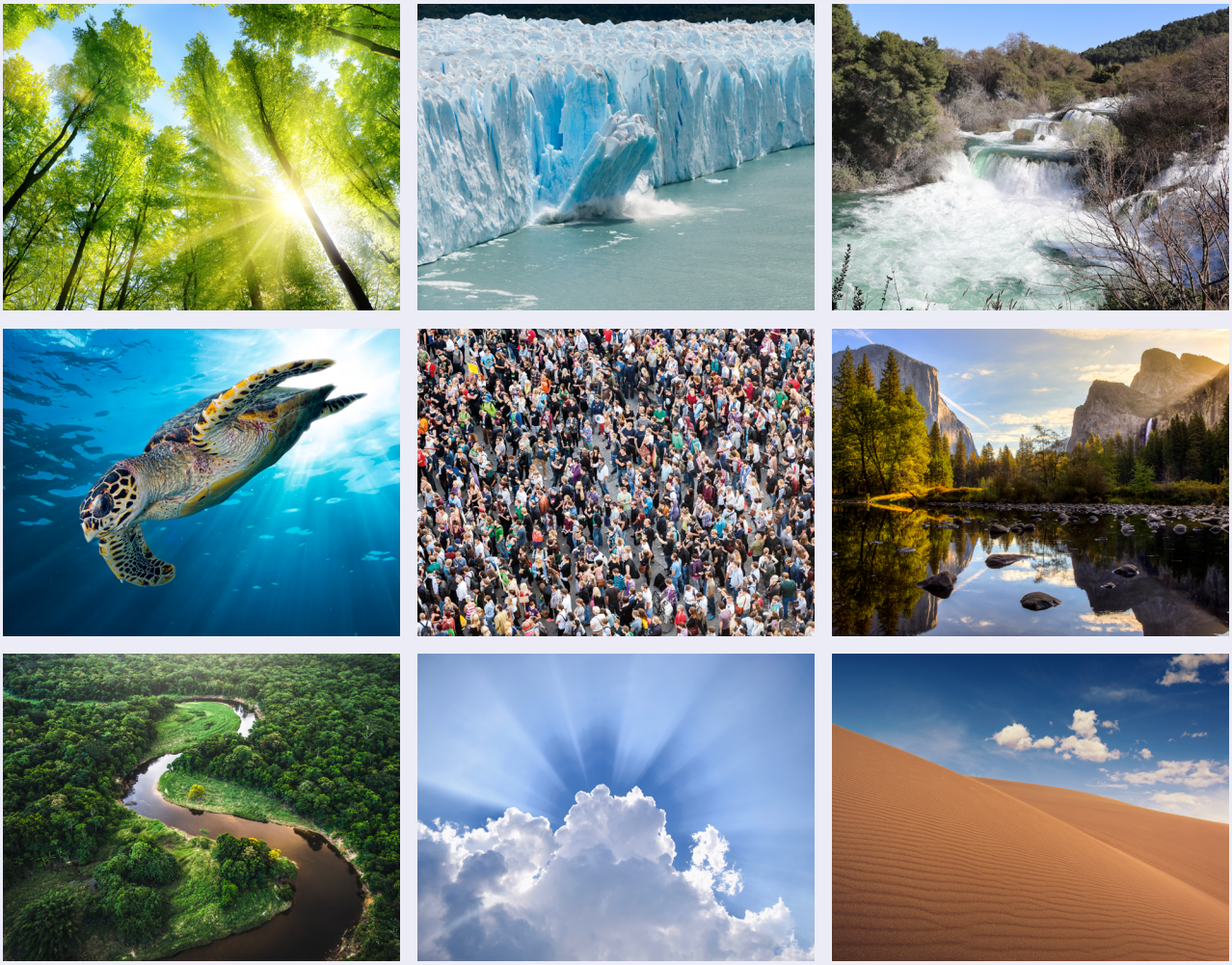

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PROTECT THE PLANET

ABSTRACT

In July 2025 the International Court of Justice (ICJ) issued a remarkable Advisory Opinion on climate change that casts a new light on the Paris Agreement, on human rights and on customary international law. Going further than the rulings of the European Court of Human Rights (ECtHR) and the German Federal Constitutional Court, the ICJ's advisory opinion implies immediate – not as late as 2045 or 2050 – climate neutrality of the developed North. It warns against allowing further deterioration, obliges these countries to increase their efforts and mandates transitioning without delay to a post-fossil fuel economy. To be sure, such a post-fossil fuel economy will reduce harm to humans as well as nature and improve conditions for prosperity, democracy and peace.

The ICJ raises the prospect of inter-state claims for damages resulting from unmitigated climate destruction. Such claims for more effective climate protection and compensation may take various forms: Countries of the Global South could take legal action against Northern industrialized countries. Lawsuits in constitutional courts demanding effective climate legislation are being facilitated; also civil lawsuits against large corporations.

The ICJ's Advisory Opinion promises to influence national legislation and international climate negotiations. By linking international environmental law and human rights it also strengthens biodiversity and other environmental protection against threats and drivers that are often identical. Invariably, the Advisory Opinion will raise a variety of implementation issues and controversies.

This study was commissioned and financed by Protect the Planet in the summer of 2025. It reflects the opinion of the author, as all parties involved agreed on the common goal of an unbiased examination of the legal situation. This expert opinion represents the scientific findings of the author and does not constitute legal advice for specific individuals. It is always possible that a court dealing with a specific case (whether convincing in terms of content or not) may assess legal issues differently than legal experts. The text has been deliberately formulated to be largely gender-neutral; where this is not the case in isolated instances, both female and male forms are always intended. Protect the Planet makes the text available to the general public free of charge.

INTRODUCTION

Climate protection is no longer a voluntary commitment—it is mandatory under international law. The latest climate opinion of the International Court of Justice (ICJ) from July 2025 marks a historic turning point: it makes it unmistakably clear that industrialized countries in particular must take **immediate and significantly more ambitious action** to limit global warming to 1.5 degrees. From Protect the Planet's perspective, this legal milestone is of enormous significance: it strengthens current and future climate lawsuits and gives new impetus to the global fight for climate justice.

Protect the Planet commissioned this legal analysis from Prof. Dr. Dr. Felix Ekardt with the support of the **Dorothea-Laura-Janina Sick environmental foundation** in order to explore the legal consequences and opportunities opened up by the ICJ opinion and to make the findings available to a broad public. With this opinion, Protect the Planet is helping to ensure that the ICJ's groundbreaking legal opinion has an impact—in courtrooms, in parliaments, and in the global climate movement. Protect the Planet is therefore making the text available free of charge.

"The ICJ opinion confirms what we have been demanding since our foundation: climate protection now—not in decades—and the 1.5-degree target remains valid. Anyone who continues to promote fossil fuels is not only acting negligently and irresponsibly, but also in violation of international law," emphasizes Protect the Planet founder **Dorothea Sick-Thies**.

"The current federal government is the first ever to roll back climate protection measures. The new ICJ opinion gives tremendous momentum to the wide-ranging and justified criticism of Germany's climate policy—we expect it to have a significant impact on case law, including ongoing proceedings in Germany," says Protect the Planet CEO and climate litigation expert **Markus Raschke.**

» About Protect the Planet

The environmental and climate protection organization Protect the Planet was founded in 2015 on the initiative of Dorothea Sick-Thies. Since then, Protect the Planet has been committed to ambitious climate protection and the preservation of natural resources. The team at this independent NGO works with strong networks ranging from local initiatives to international associations. One of Protect the Planet's main areas of focus is legal action: one of the most important instruments of democracy. The organization is currently supporting a climate lawsuit against the approval of the climate-damaging pesticide ProFume and a constitutional complaint for comprehensive biodiversity legislation in Germany.

I. Background: Content and genesis of the ICJ climate opinion

Responding to a request initiated by Vanuatu, the International Court of Justice (ICJ), on July 23, 2025, delivered a bombshell.[1] The small nation of Vanuatu – 300,000 inhabitants on 83 islands in the Pacific – is particularly affected by the consequences of global warming. Supported by a global youth movement and some 130 states,[2] Vanuatu engineered the United Nations General Assembly's request to the ICJ to advise on international legal obligations to protect the climate and on possible inter-state claims for damages in the event of non-compliance.[3] The ICJ concluded, unanimously, that states are legally obliged to protect the climate and the continued production, consumption and subsidization of fossil fuels may "constitute an internationally wrongful act which is attributable to that state." Curbing greenhouse-gas emissions is thus not voluntary, and the failure to do so is illegal. The Advisory Opinion, while not legally binding, will assuredly be relevant in future legislative procedures, international negotiations and court proceedings. It established wide-ranging obligations for all states to protect the climate and to compensate for the damage caused by climate change, based primarily on international climate law, human rights, and customary international law (with other areas of international treaty law, such as maritime law and biodiversity law, also considered).

The General Assembly request to the ICJ (following a lengthy explanatory preamble) was as follows: "(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 gases 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 present and future generations affected by the adverse effects of climate change."

The current analysis of the ICJ Advisory Opinion – and of the resulting legal consequences – implies a strengthening of climate policy in nation states, the EU and the world that goes beyond what can be inferred from the rulings of the European Court of Human Rights (ECtHR) 2024[4] and the German Federal Constitutional Court (BVerfG) 2021[5] in favor of climate policy. This conclusion may seem incongruous at a time when environmental protection generally and climate protection specifically are no longer just progressing far too slowly, but are actually regressing. The advance of renewables is impeded and new fossil fuel sources are developed. The US, Canada, Guyana, Russia, Saudi Arabia, the United Arab Emirates, the Congo and Mozambique are at the forefront of this expansion. The ICJ forcefully rejects this turn of events and casts responsibility widely from historical emissions to current climate policies. This is of great significance for Western countries, as they account for almost half of all emissions, historical and current. ■

[1] International Court of Justice, Advisory Opinion: Obligations of States in Respect of Climate Change, July 23, 2025, Advisory Opinion of 23 July 2025

[2] International Court of Justice, Request by the General Assembly for an advisory opinion of the Court, undated, Part I - Request by the General Assembly for an advisory opinion of the Court (documents received from the Secretariat of the United Nations) | INTERNATIONAL COURT OF JUSTICE

[3] Resolution of the General Assembly, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, A/RES/77/276 of March 29, 2023; https://undocs.org/A/RES/77/276

[4] ECHR, Klimaseniorinnen, judgment of April 9, 2024, VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS v. SWITZERLAND

[5] BVerfGE 157, 30.

II. Paris Agreement, temperature limit, and greenhouse gas budget

Like the ECtHR and the German Federal Constitutional Court in their groundbreaking, globally acclaimed decisions in 2024 and 2021, the ICJ does not examine the effectiveness of specific climate policy instruments but, instead, highlights the climate protection obligation of states and the resulting level of ambition that is required as well as the imperative of global cooperation and careful observation of the facts.

While the Paris Agreement's nationally determined contributions seemingly leave climate protection to the discretion of states, the ICJ goes further, arguing that the ostensible discretion of states is complemented by significant substantive requirements. The ICJ interprets the Paris Agreement (PA) and human rights as the ECtHR, insisting that **global warming must be limited to 1.5 degrees above pre-industrial levels** (para. 224 of the opinion). Even though the PA unambiguously holds that states must make "efforts" to achieve the upper limit of 1.5 degrees, the German Federal Constitutional Court held that, perhaps, 1.75 degrees could also be the ceiling,[6] because Article 2(1) PA also refers to "well below 2 degrees" as a target. Politicians and even the IPCC often refer only to "2 degrees".

By focusing on 1.5 degrees (also supported by references to many other norms of international treaty law, from the Climate Change Framework Convention to the Law of the Sea), the ICJ applies a consistent legal interpretation, whereby – as is customary – the wording, the systematic context, and the purpose of the norms are taken into account. In so doing, the ICJ follows the wording and spirit of Article 2(1) PA as, otherwise, demanding "efforts" to achieve 1.5 degrees would make no sense. Similarly, the ICJ interprets the 1.5-degree goal in Article 4(3) PA as necessitating the greatest possible and ever-increasing ambition in climate protection. Furthermore, Articles 2, 3, and 4 PA, in the ICJ's interpretation, imply legally binding **temperature limits**, while Articles 3 and 4 PA are categorical that the supposedly freely selectable NDCs of the states must be aligned with the temperature limit.[7] The ICJ does not quantify what this means in terms of greenhouse gas emission.

However, the **residual carbon budget** corresponding to temperature limits of 1.5 or 1.75 degrees Celsius within the meaning of Article 2(1) PA can be quantified, taking both legal arguments and natural scientific findings into account. The widely accepted calculation by Forster et al. is based on IPCC data but is more up-to-date and also includes the effect of aerosols on the global climate.[8] It determines a global residual budget of 168 $GtCO_2$ calculated as of January 1, 2023, for a 67 percent probability of compliance with 1.5 degrees Celsius (instead of only calculating as of January 1, 2020 as the IPCC in the last report). If this budget's per capita share were calculated by country, Germany (representing 1% of the world's population) would have used up its entire

[6] BVerfGE 157, 30, para. 36, 72, 166 and passim.
[7] On Art. 2 PA, see Wieding et al., Sustainability 2020, 8858; Ekardt/Bärenwaldt, Sustainability 2023, 12993; Ekardt/Bärenwaldt/Heyl, Environments 2022, 112; Voigt /Ferreira, Transnational Environmental Law 2016, 285.
[8] Forster et al., Earth System Science Data 2024, 2625; based on IPCC, AR 6, 2022.

share of 1.68 $GtCO_2$ in the 2.5 years that have passed since January 1, 2023 – as well as the U.S. (with a share of 6.7 $GtCO_2$). The U.S., the EU, Germany and other industrialized countries would have to be climate neutral today – not as late as 2045 (see Section 3 (2) of the German Climate Protection Act) or even 2050 (see Article 1 EU Climate Law). The residual climate budget of industrialized countries would be far overspent already for 1.5 degrees Celsius when calculating with a probability of 83% – the next highest percentage projection category of the IPCC; and even much more so if the principles of state capacity and historical responsibility – binding under international law – were taken into account. The inclusion of capacity and historical emissions is virtually mandatory under Article 2(2) and 4(4) of the PA and Article 3(3) of the Climate Framework Convention, and is also explicitly mentioned by the ICJ under the label of common but differentiated responsibilities and respective capabilities.

The ICJ thus establishes a comprehensive, appropriate and, considering current state practice, momentous climate protection obligation, in terms of both mitigation and adaptation. The court is concerned about inadequate progress and, even more, about regression ("prohibition of deterioration"), expecting that all states must use the update of their NDCs due this year under Article 4(9) PA to raise them meaningfully. This applies in particular to **industrialized countries, given their high responsibility for historical emissions**. The ICJ includes these prominently in its considerations, unlike the customary shortcut in political discourse, where the current emission levels of, say China and India, prompt finger pointing and excuse insufficient commitment. And since countries as such do not cause emissions themselves, they must establish an appropriate regulatory framework for industries and consumers.

Some of the details can only be clarified in further discussions in the context of international climate negotiations, legislation, and foreseeable court proceedings (including before the ICJ), which will be discussed later. For example, it is not entirely clear to what extent historical emissions would have to be taken into account. Mathematically, these could be considered going back to the second half of the 19th century, although estimates could also go back to the middle of the 18th century. Conversely, states could be held responsible only for emissions only from the time climate change became known somewhere between approximately 1950 and 1990. ■

III. Human rights theory: more clarity than in the decision of the German Constitutional Court

The ICJ considers the 1.5-degree limit to be a human rights obligation, not only a climate law obligation. By drawing a parallel between Article 2(1) PA and international human rights catalogues (whose rights to freedom and preconditions for freedom are also found in national catalogues of fundamental rights, as well as in the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights, which are also binding on states as international treaty law), the ICJ is taking a decisive step. **The climate protection obligation also applies to states that have left the Paris Agreement**, given that Article 31 of the Vienna Convention on the Law of Treaties (VCLT) explicitly provides that international law must be interpreted in the light of all other international obligations of the states concerned – including human rights.

Climate change currently poses a double threat to the **freedoms guaranteed by human rights** in liberal democracies and international treaties: it threatens to destroy the basic prerequisites of freedom, namely life, health and a minimum standard of ecological existence. Conversely, despite the damage already evident today, there is a risk that effective climate protection will be postponed further, as it can only be achieved quickly in a manner that curtails freedom. Unlike the Federal Constitutional Court in Germany, the ICJ (para. 369 ff. and 387 ff.) focuses on the first and not the second aspect of the double threat to freedom.[9] The ICJ refers to this as the right to a healthy environment, but without the boundless expanse often associated with it. It is simply a matter of protecting the basic prerequisites for freedom, i.e., the environment insofar as its impairment affects the life, health, and minimum subsistence level of human beings.[10] This is convincing because corresponding rights are explicitly included in national and transnational human rights catalogues – the right to a minimum standard of living is clearer in international law than often in national law (see, for example, Article 11 ICESCR) – and are implicitly derived from the guarantees of freedom. For, without life, health and a minimum standard of living, there is no freedom.[11]

In its interpretation of human rights, the ICJ does not adopt the, for instance, German view that such protective rights against the state with regard to fellow human beings are less important and more subject to balancing considerations than defensive rights against a state acting in a harmful manner (which was always a contested view according to the wording of the German Constitution, see Article 1 para. 1 sentence 2, 1 para. 2, 2 para. 1[12]). As the ECtHR, the court does not even discuss this question. Furthermore, the ICJ takes it for granted that fundamental rights have a precautionary dimension, as implicitly confirmed by the German Federal Constitutional Court in its climate decision when examining the "present nature" of the restriction of fundamental rights.[13]

[9] BVerfGE 157, 30, para. 256; partly critical of the BVerfG focus Faßbender, Neue Juristische Wochenschrift 2021, 2085; Calliess, Zeitschrift für Umwelt recht 2021, 355; Schlacke, Neue Zeitschrift für Verwaltungsrecht 2021, 912; Ruttloff/ Freihoff, Neue Zeitschrift für Verwaltungsrecht 2021, 917; Ekardt/ Bärenwaldt, Sustainability 2023, 12993.

[10] For the discussion on the budget, see again the references in footnote 5.

[11] For theoretical considerations on this and other human rights issues, see Ekardt, Sustainability: Transformation, Governance, Ethics, Law, 2nd ed. 2024, Ch. 3.

[12] Ekardt, Sustainability: Transformation, Governance, Ethics, Law, 2nd ed. 2024, Ch. 3.4.; on the German debate see Schwabe, Juristenzeitung 2007, 134; Calliess, Rechtsstaat und Umweltstaat, 2001; Koch, Der Grundrechtsschutz des Drittbetroffenen, 2000.

[13] For more on these issues, see also Ekardt/Heß/Bärenwaldt/Hörtzsch/Wöhlert, Judikative als Motor des Klimaschutzes? Bedeutung und Auswirkungen der Klimaklagen (The judiciary as a driver of climate protection? Significance and impact of climate lawsuits), UBA-Texte, 2023; Ekardt/Bärenwaldt, Sustainability 2023, 12993.

Furthermore, unlike the German Federal Constitutional Court and, to some extent, the ECtHR, the ICJ does not explain in detail under the heading of the principle of proportionality, how it arrives at the conclusion that international climate law, with its 1.5-degree limit, represents the limit of the legislature's discretion. In the course of legislative balancing of economic freedom on the one hand and the fundamental protection of the preconditions for freedom on the other, it is certainly reasonable to assume that this is where the limits of discretion, i.e., the necessity and appropriateness of political action and inaction, lie, given that climate change is already causing massive damage even at the current level of warming.[14] A more precise subsumption of the limits of balancing would nevertheless have been helpful.

In any case, the ICJ does not overlook the fact that in democracies, the right climate policy is first and foremost a matter for elected representatives in parliaments and governments. But there is no world parliament and no world government. And even within individual countries, if parliaments and governments disregard certain limits of their balancing leeway – especially with regard to future generations, who often have no voice in the present-focused political discourse – **they can be sued before a supreme court with a request for legislative improvement**. ■

[14] On average, the latest study by Kotz/ Levermann/ Wenz, Nature 2024, 551, calculates global damages of 38 trillion dollars per year (!) by 2050 (without even taking into account significant factors such as the consequences of climate wars).

IV. Customary international law: supplement to international climate law and human rights and the question of claims for damages

The ICJ derives the obligation to limit global warming to 1.5 degrees not only from the PA and human rights, but also from customary international law. The court refers in particular to the customary obligation to avoid significant environmental damage by observing duties of care with regard to technical risks (para. 271 ff.[15]). This means that, in addition to obligations to refrain from further damage, states are also liable for damages to other states if they have contributed to climate change through negligence and culpable conduct and thereby caused certain damage elsewhere. **The ICJ considers further approvals for the development of new fossil fuel sources and fossil fuel subsidies to be culpable conduct** (para. 94).

This is particularly interesting in practical terms because industrialized countries (and, more recently, emerging economies) have contributed disproportionately to the centuries-long persistence of greenhouse gases in the atmosphere, but conversely often have less to fear from the consequences than comparatively poor countries in the global South.

The ICJ's reference to customary international law and human rights also has very significant implications for countries that consider which leaving the Paris Agreement, or have left it, e.g. the US. Consequently, in view of this legal basis, the Trump administration cannot escape its obligations or claims for damages resulting from climate change. To be sure, the US is obligated to phase out fossil fuels in the short term, which is exactly the opposite of the US government's policies.

However, it is no secret that there have been states that have not consistently complied with ICJ rulings and that the already **precarious effectiveness of international law** is currently coming under even greater pressure. Since the ICJ opinion runs counter to the current mood of many political actors (albeit one shaped by a lack of natural scientific understanding of the dramatic nature of the situation), further developments remain to be seen. It will emerge in the course of specific lawsuits brought by states against others before the ICJ which exact climate protection obligations apply to which states, and the kind of damage that can be claimed. In any case, the ICJ has indicated that, in addition to **monetary payments**, technology transfer may also play a role as compensation for damages. ■

[15] On the derivation of customary international environmental law, see Cordonier Segger, in: Bugge/ Voigt (eds.), Sustainable Development in International and National Law, 2008, p. 87

V. Consequences for state lawsuits, individual lawsuits, private lawsuits, the EU, and NDCs

The implications of consistent climate protection are far-reaching, even if the ICJ does not address them in detail. This leaves states with much work to do, particularly in terms of regulating the private sector, including companies. It is therefore a matter of tangible legislation and, indeed, of scaling up NDCs. Ultimately, it is necessary to move **expeditiously toward zero fossil fuels in all sectors** (electricity, heating, mobility, industry, agriculture) – at least that is what the ICJ consistently suggests. Reductions in land use and animal husbandry – the latter not mentioned specifically – as well as improvements in natural climate protection with regard to, e.g., peatland and forests to neutralize greenhouse gases are inevitable.[16] Challenging individual laws will remain difficult because climate change is the result of aggregate emissions. Ultimately, what counts is the general direction and the totality of emissions.

Given that, considering the current political situation, states will at best comply selectively, numerous legal disputes based on the ICJ Advisory Opinion are likely. Lawsuits in pursuit of more systematic climate protection are just as likely as those demanding compensation for damage already caused. Both types of lawsuits between states will have to deal with the fact that all states are both perpetrators and victims of climate change – albeit to very different degrees.

For example, it is conceivable that Global South states could bring actions before the ICJ against industrialized countries, demanding compensation for the massive climate damage they have already suffered in proportion to the respective industrialized country's share of historical climate emissions, which in the case of Germany is around 5 percent in that of the US around 25 percent. The sums involved could be enormous, dwarfing anything that has been negotiated in court to date. However, if compensation is demanded rather than a transition towards a post-fossil fuel economy, the ICJ would then to check that the damage in the respective country, for example flooding, is actually the result of climate change. Although the question of causality and attribution[17] is only referred to in general terms by the ICJ, extensive negotiations will certainly follow. Clearly, though, those **countries that continue to neglect climate change are now facing dramatic risks**.

The ICJ opinion will also have potentially far-reaching effects on individual lawsuits brought before national or regional supreme courts against inadequate legislation (e.g., before the ECtHR and the German Federal Constitutional Court). Such disputes will not be heard before the ICJ due to its limited jurisdiction. However, the ICJ's interpretations of human rights, international climate law, and their interaction supply arguments for the interpretation of national catalogs of fundamental rights, in Germany's case in constitutional complaints before the Federal

[16] On the need for action and instruments, with further references, Ekardt/ Rath/ Gätsch/ Klotz/ Heyl, Ecological Civilization 2025, 10019 (on fossil fuels); Weishaupt/ Ekardt/ Garske/ Stubenrauch/ Wieding, Sustainability 2020, 2053 (on animal husbandry); Stubenrauch/ Ekardt/ Hagemann/ Garske, Forest Governance, 2022 (on forests); Günther/ Garske/ Heyl/ Ekardt, Environmental Sciences Europe 2024, 72 (general information on land use).

[17] From a scientific perspective, Otto et al., World Weather Attribution Report, 2022, take a rather optimistic view.

Constitutional Court and, if these fail, in subsequent complaints to the ECtHR. This will be directly relevant, for example, to several complaints pending since the summer of 2024 before the Federal Constitutional Court that challenge German and, indirectly, the EU climate targets. The German climate targets, including those in Section 3 of the Climate Protection Act, have been raised and specified in more detail as a result of the German court's 2021 climate ruling; they are still not based on the residual budget for the 1.5-degree limit that is actually available (or no longer available), even though the latter is accepted in Section 1 of the Climate Protection Act. The spring 2024 amendment to the German Climate Protection Act instead maintain the goal of climate neutrality by only 2045. And through various mechanisms, the law makes it even less likely that the federal government and the Bundestag will achieve even this inadequate target, for example by weakening sector targets and improvement mechanisms.[18] This criticism was confirmed by the German Federal Government's Expert Council on Climate.[19]

In any case, the ICJ opinion—even more clearly than the ECtHR ruling of 2024—underlines the arguments in favor of consistently adhering to the **1.5-degree limit** and (based on the above-mentioned natural scientific research) stating that there is a much greater need for action than is currently being done by German and EU legislation. Admittedly, there is no possibility of a constitutional complaint against the EU specifically. However, EU legislation can be addressed indirectly – on the one hand through national constitutional complaints, and on the other hand through preliminary ruling proceedings (on more specific legal disputes) under Article 267 of the Treaty on the Functioning of the European Union (TFEU). Furthermore, under Article 340 TFEU, **direct claims for damages against the EU based on inadequate climate protection are possible**. However, this would require proof of specific causal damage that can be attributed to climate change.

Indirectly, the principles of climate protection obligations and the assertion of climate damage claims may also have an impact on civil proceedings. The Higher Regional Court of Hamm recently explained in great detail and in discussion with scientific attribution research that, in principle, climate damage can also be claimed by individuals against globally relevant private large emitters such as RWE, provided that certain damaging events can be attributed to climate change.[20] The economic and philosophical considerations underlying this reasoning are similar to those behind instruments for pricing emissions: liberal democracies are based on a combination of freedom and responsibility: The consequences of economic choices must be borne by those who do the choosing. However, due to the complex questions of proof as well as for reasons of democracy and the separation of powers – and so as not to consider only some damages and some large emitters – emission pricing is the more obvious governance instrument compared to claims for damages.

[18] The constitutional complaints are publicly available: see, for example, www.bund.net/fileadmin/user_upload_bund/publikationen/klimawandel/klimaklage-klageschrift.pdf. The author is legally involved in the proceedings, as well as in the constitutional complaint on biodiversity mentioned briefly below.

[19] See ERK, Audit Report on the Calculation of German Greenhouse Gas Emissions for 2024 and on the Projection Data for 2025, updated version of May 15, 2025, p. 15

[20] Hamm Higher Regional Court, judgment of May 28, 2025, ref.: I-5 U 4/17 – juris; on research, see Otto et al., World Weather Attribution Report, 2022.

The ICJ opinion on climate change also has an indirect impact on constitutional lawsuits regarding **other environmental problems such as biodiversity loss**. This too has been continuing unabated for decades, as the regular reports of the IPBES in particular show. The rate of species extinction is currently around 100 times higher than the normal rate of extinction in evolutionary biology. Almost half of the world's natural ecosystems have deteriorated in recent decades. Twenty-five percent of animal and plant species, around one million species, are threatened with extinction, many of them within a few decades.[21] Even if politicians and the media often overlook it, **the planetary boundaries have been exceeded even more clearly in this area than in climate change**.[22] This threatens the physical foundations of all human freedom and thus human rights, especially the right to life and health. Without intact ecosystems, soil formation, functioning pollination, and functioning freshwater cycles, human existence is threatened in the long term. More effective nature conservation is therefore imperative for the freedom of us all.[23]

A constitutional complaint filed with the German Federal Constitutional Court in October 2024 has sued the German legislature, requesting that it be obliged to establish a comprehensive legal biodiversity protection concept, arguing on the basis of the fundamental preconditions for freedom now strongly emphasized by the ICJ and the parallelization of fundamental rights balancing limits and agreed global environmental goals.[24] Similar to climate protection, a convergence of fundamental rights with an international environmental law objective can be cited here, in this case Article 1 CBD, which requires all states to preserve – i.e. protect and restore – biodiversity, and has done so since December 1993, when the CBD entered into force. Nevertheless, biodiversity has continued to decline at an unsustainable rate instead of halting its loss and taking comprehensive steps to restore it. In this regard, the ICJ correctly points out that climate change and the destruction of nature feed on each other (and, incidentally, share a significant part of the problem drivers in the form of fossil fuels and animal husbandry), so that legal obligations on biodiversity and climate protection reinforce each other (para. 325 ff.). ■

[21] For the following, see also IPBES in detail Ekardt/ Günther/ Hagemann/ Garske/ Heyl/ Weyland, Environmental Sciences Europe 2023, 80 and the constitutional complaint on biodiversity www.bund.net/service/presse/pressemitteilungen/detail/news/bund-erhebt-weltweit-erste-verfassungsklage-auf-bessere-naturschutz-gesetzgebung/; see also SRU/ WBBGR/ WBW, statement April/ August 2024.

[22] Rockström et al., Nature 2023, 102; Henn et al., NuR 2024, 234.

[23] See Ekardt/ Günther/ Hagemann/ Garske/ Heyl/ Weyland, Environmental Sciences Europe 2023, 80; Henn et al., NuR 2024, 234.

[24] For more details, see the constitutional complaint on biodiversity (in English) www.bund.net/fileadmin/user_upload_bund/publikationen/lebensraeume/Presse-relase-constitutional-complaint-biodiversity-BUND_01.pdf.

VI. Outlook: fossil diversity and post-fossil freedom

The ICJ Advisory Opinion with much clarity outlines international environmental law and the protection of fundamental environmental rights. It will undoubtedly continue to be a subject of intense international negotiations, legislative debate and legal practice. It also poses a major challenge to the tendentious classification of post-fossil fuel policies as "only climate-friendly".[25] The science is clear: the urgent phase-out of fossil fuels is both essential for solving various environmental problems (e.g., pollution and disrupted nutrient cycles) and economically beneficial.[26] **Fossil fuels also finance a number of authoritarian regimes and sometimes their wars**, such as Russia's against Ukraine. Many Western countries are complicit by continuing to obtain fossil fuels indirectly via India or even directly, thereby filling the war chest via state-owned companies, or indirectly by keeping world market prices high through continued demand for oil and gas (which, in the event of an expansion of the war, could also pose a massive threat to peace and democracy in Western countries).

Therefore, accelerated post-fossilization is urgent for a host of reasons in addition to those at the core of the ICJ Advisory Opinion. A scaled up EU emissions trading system would be more ecological, liberal, and economical than the path frequently taken to date via subsidies – with a climate neutrality target not as late as 2050 but 2035 at the latest, with the inclusion and massive reduction of animal husbandry and an accelerated border adjustment regime to incentivize other countries to comply and not simply to shift emissions elsewhere.[27] Such policies, together with an **elimination of fossil fuel subsidies** – a point made by the ICJ – would free up resources for a wide range of future-oriented investment. Besides higher defense spendings in Europe, financial resources would be freed up for individual meaningful subsidies there[28] where government money is needed for green investments. These could be used to promote technologies that are not yet available on the market and are therefore not sufficiently supported by emissions trading.

In this respect, e.g., the outcome of the ongoing constitutional complaints on climate change mentioned above, as well as the constitutional complaint on biodiversity, in Germany is of great interest. Similarly, lawsuits on climate protection and damages brought by countries of the Global South against industrialized countries before the ICJ can be expected. ■

[25] For more on this, see Ekardt, Postfossile Freiheit: Warum Demokratie, Umweltschutz, Wohlstand und Frieden nur gemeinsam gelingen (Post-fossil freedom: Why democracy, environmental protection, prosperity, and peace can only succeed together), 2025.
[26] See again Kotz/ Levermann/ Wenz, Nature 2024, 551.
[27] See Ekardt/ Rath/ Gätsch/ Klotz/ Heyl, Ecological Civilization 2025, 10019 (on emissions trading); Weishaupt/ Ekardt/ Garske/ Stubenrauch/ Wieding, Sustainability 2020, 2053 (on animal husbandry); Ekardt/ Friedrich, Ecological Civilization 2025, 10010 (on the EU CBAM).
[28] For details on this limited role of subsidies, see Heyl et al., Sustainability 2022, 15859.

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