

NHSMUN50

National High School Model United Nations



ICJ

UPDATE PAPER



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Hello, Judges of the Court!

My name is Nicolas Valayannopoulos-Akrivou, and I am excited to welcome you to the International Court of Justice of NHSMUN 50. I will be your Assistant Director (and thus, vice-president of the Court!) during Session I, and I look forward to meeting all of you and seeing all the great work and research you have all been doing.

A little bit about me: I was born to Greek parents and raised in Paris, France. I moved to the US just over nine years ago and resided in Cambridge, MA. I'm a first-year student at MIT, studying mathematics and computer science with a minor in philosophy. However, do not let yourself be deceived. I may be a STEM major, but I am a political science and law enthusiast. I have participated in Model UN since middle school, and this will be my fourth year at NHSMUN and my fourth year at ICJ. Ever since my first time on the Court as a delegate, I was drawn to the high level of debate and the fascinating research behind it, so I decided to do ICJ year after year. The Court is unique in its mode of operation, the rules of its procedure, and even the types of documents that we pass, and I hope you can appreciate its uniqueness as much as I have over the years. Outside of academics, I am a student-athlete with MIT's fencing team, and I enjoy sailing, hiking, and road trips.

As you continue your research journeys, I hope this updated paper can serve as a good jumping point for supplemental reading and clarification on some of the more complex legal topics we will explore. The case of *Albania v. Iran*, while fictitious, will challenge you to apply the fundamentals of international law to a novel sector. At the same time, the advisory opinion on climate will ask you to closely examine codified public international law to respond to the present climate crises around the world.

As we approach the conference, I wish you all the best in your reading and research, and I am more than happy to respond to any questions, comments, or concerns regarding Topic A, the ICJ, NHSMUN, and beyond!

Best,

Nicolas Valayannopoulos-Akrivou

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International Court of Justice Assistant Director

Session I



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Dear Judges,

I welcome you to the International Court of Justice (ICJ) for NHSMUN 2024! My name is Aurora Lai, and I will serve as your Assistant Director for Session II of the conference. Although this is my first year as a NHSMUN staffer, it will be my fifth year at the conference. I am familiar with NHSMUN and competed as a delegate in UNTOC, SOCHUM, UfM, and UNESCO throughout high school! While I never competed in ICJ, I look forward to seeing what you will accomplish throughout the committee in just a few months.

A little bit about myself! I was born in San Diego, California, but I grew up in Delaware and now live in Florida! As the daughter of Taiwanese and Romanian immigrants, I have always had a deep passion for international relations. I am a first-year University of Florida student pursuing a double major in Political Science and International Studies. Once I graduate, I plan on attending law school. On campus, I am very involved with our undergraduate mock trial team (the LitiGators), student government, and Panhellenic Council. Outside of school, I love riding around on my Vespa (the love of my life), playing beach volleyball, and watching reality TV! My guilty pleasures are rom-coms and pretending I could be on Dancing with the Stars.

Considering that NHSMUN was the first Model UN conference I attended as a freshman in high school, it truly has a special place in my heart. I am grateful to be part of an activity that has pushed me to become a better version of myself, alongside introducing me to a staff of people who work tirelessly to ensure this conference's success. From befriending people of different backgrounds and cultures to engaging in discourse over heightened topics, I hope you indulge in all NHSMUN 2024 offers!

As we approach March, it will be vital for you to stay updated with any recent developments. If you have any questions about these topics, ICJ, NHSMUN, or MUN in general, please do not hesitate to reach out! I cannot wait to meet you all soon!

Aurora Lai

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International Court of Justice Assistant Director

Session II





ICJ

NHSMUN 2024

TOPIC A:

ALBANIA V. ISLAMIC REPUBLIC OF IRAN

Photo Credit: PantheraLeo1359531

Introduction

The case that Albania has brought up against the Islamic Republic of Iran is becoming more pressing. Cyber security and cyber conflict issues are increasing around the world. There is good reason to believe that Iran has increased its cyber capabilities, as seen in six widespread attacks since August 2023 that could be traced to various Iranian political groups.¹ At the same time, the international community has held multiple conventions to create a framework to address cyber-attacks.² In the NATO roundtables and the UN Open-Ended Working Group, formal legal documents have yet to be passed.³ Because of this, delegates must examine the law and refrain from using similar conventions or statements made by representatives of each party that do not carry formal legal weight. This paper shall provide delegates with an explanation of the basics of customary international law and an overview of a potentially usable piece of international law to guide them in their continued research on the subject matter.

Delegates should know that the material offered in this Update Paper is an addition to the Background Guide. The point of this material is to expand upon the latest updates to the case. Given the constantly changing landscape of international law and cybersecurity, delegates should continue their research based on the details of this paper. Delegates will form the most well-rounded opinions by using this material as a starting point for elaborated research and considering decisions. Although this case does not represent a real case that has yet to come before the ICJ, it contains accurate details and events. Delegates should still act with the utmost respect and sensitivity regarding the content handled in this case.

UN Negotiations & Legal Stalemate

Recent UN negotiations on responsible state behavior in cyberspace highlight the main challenges in establishing well-rounded cyber norms and agreements in international law. The discussions and intense debate focused on several key issues. One of these was Russia's submission in early March

of a "conceptual" UN Convention on Cyber Security, which clashed with the main views of many states.⁴

The treaty's objective, in theory, was to promote global information sharing in online criminal activities. These include ransomware, denial-of-service attacks, and online exploitation of children.⁵ This treaty is based on the concept of increasing international cooperation on the topic of cybercrime. However, the source of disagreement from Western states such as France and the UK is that such a treaty could be used for negative actions from autocratic governments. They could use this treaty to expand the scope of cybercrimes and surveil their citizens or repress dissent and free speech online. This could be done by formally criminalizing such cyber activities.⁶

These negotiations should be viewed within the broader context of the development of international law. The path for a global legal instrument to use in cyberspace is part of the growing landscape of international law. This includes using legal principles in the digital world and thoroughly analyzing Article 38 of the ICJ Statute.

1 "Significant Cyber Incidents," Center for Strategic and International Studies, accessed December 16, 2023, <https://www.csis.org/programs/strategic-technologies-program/significant-cyber-incidents>.

2 Alina Clasen, "New NATO Cyber Forum To Support Collective Response to Cyberattacks," *Euractiv*, November 10, 2023, <https://www.euractiv.com/section/cybersecurity/news/nato-defence-can-be-sparked-by-digital-strikes-stoltenberg-tells-berlin-summit/>.

3 Louise Marie Hurel, "Avoiding Deadlock Ahead of Future UN Cyber Security Negotiations," *Royal United Services Institute*, August 31, 2023, <https://www.rusi.org/explore-our-research/publications/commentary/avoiding-deadlock-ahead-future-un-cyber-security-negotiations>.

4 Russian Federation, *Concept paper of the Russian Federation*. (United Nations Office for Disarmament, 2021), https://docs-library.unoda.org/Open-Ended_Working_Group_on_Information_and_Communication_Technologies_-_2021/ENG_Regular_institutional_dialogue_Proposal_of_the_Russian_Federation.pdf.

5 Russian Federation, *Updated Concept of the Convention of the United Nations on Ensuring International Information Security*. (United Nations Office for Disarmament, 2021), https://docs-library.unoda.org/Open-Ended_Working_Group_on_Information_and_Communication_Technologies_-_2021/ENG_Concept_of_convention_on_ensuring_international_information_security.pdf.

6 Rishi Iyengar, Robbie Grammar, and Anusha Rathi. "Russia Is Commandeering the U.N. Cybercrime Treaty," *Foreign Policy*, August 31, 2023, <https://foreignpolicy.com/2023/08/31/united-nations-russia-china-cybercrime-treaty/>.

First and most importantly, a strong understanding of legal *custom* is key in addressing the issue. *Customary* international law refers to the unwritten but widely accepted practices among countries, which have evolved over a long period and are eventually seen as legally binding.⁷ This law is formed when states continue to behave in a certain way—known as *state practice*—and out of a sense of legal obligation—known as *opinio juris*. This means they believe they follow these practices because they are required by law, not just out of courtesy.⁸ For a practice to become customary international law, the practice must be widespread and consistent, and there must be a belief that this practice is obligatory under international law.

Next, learning about some of the most important legal principles in international law is essential. These are sovereignty, territorial integrity, non-intervention, and state responsibility. Sovereignty emphasizes a state’s autonomy within its borders and affirms its right to self-governance.⁹ Territorial integrity reinforces the importance of a state’s borders. This also prevents attempts to change its boundaries.¹⁰ Next, non-intervention is based on the idea that countries refrain from

7 “Customary International Law,” European Center for Constitutional and Human Rights, accessed December 20, 2023, <https://www.ecchr.eu/en/glossary/customary-international-law/>.

8 Stephen C. Neff, “Opinio Juris: Three Concepts Chasing a Label,” Duke Law, accessed December 18, 2023, https://web.law.duke.edu/cicl/pdf/opiniojuris/panel_1-neff-opinio_juris_three_concepts_chasing_a_label.pdf.

9 Douglas Cassel, “A Framework of Norms: International Human-Rights Law and Sovereignty,” *Harvard International Review* 22, no. 4 (2001): 60-63, https://scholarship.law.nd.edu/law_faculty_scholarship/844.

10 Michael Wood, “Territorial Integrity,” *Encyclopedia Princetoniensis*, accessed December 16, 2023, <https://pesd.princeton.edu/node/686>.

11 Maziar Jamnejad, Michael Wood, “The Principle of Non-Intervention,” *Leiden Journal of International Law* 22, no. 2 (June 2009): 345-381, <https://doi.org/10.1017/S0922156509005858>.

meddling in other states’ internal or external affairs. This aims to preserve each state’s independence.¹¹ International law always emphasizes the peaceful resolution of disputes and advocates for negotiation and mediation to prevent conflicts. In line with this, state responsibility establishes accountability for breaching international law, urging states to make amends for wrongful acts. These four principles unite to form the foundation of international law, guiding state interactions. This is done to ensure stability and uphold the rights and obligations of sovereign states. While these principles do not directly relate to cyberspace, it is imperative that any legal decision made concerning this digital “world” be in line with these core values of international law.

Finally, understanding Article 38(1) of the Statute of the Court is necessary to deal with this issue appropriately. This article lists the different sources of law that the Court may consider. In *Albania v. The Islamic Republic of Iran*, the value of Article 38 is in finding what documentation may or may not be used in deciding how to apply “the law.” Article 38(1)

(a) is not needed, as no international conventions create rules

New cyber warfare exercise

Credit: U.S. Space Force photo by Tech. Sgt. Luke Kitterman



regarding cyber security.¹² However, the principles of law can be outlined in parts (b) and (c), which can certainly play a role, as they refer to international customary law and general principles of law.¹³

Part (d) of Article 38(1) mentions Article 59 and the “most highly qualified publicists” as sources that can also be used for consideration.¹⁴ Article 59 establishes that the ICJ is not bound by *stare decisis*—which means that the Court does not have to follow its own previous decisions if it thinks a case should be decided differently for a good reason.¹⁵ However, previous cases provide helpful guidance, and the Court has cited prior judgments in many of its decisions. Iran itself quotes *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)* in its counter-memorial.¹⁶ As for the “most highly qualified publicists,” the ICJ has used diverse sources, including the UN, the International Law Commission, and the International Maritime Organization. From organizations such as these, they have used resolutions, regional court rulings, and commercial arbitration cases. As a final point on Article 38, note the *ex aequo et bono* clause, which refers to the Court considering only what they believe to be fair for this case and not relying on other legal documents. This clause, however, depends on both parties’ agreement, which is relatively unlikely in the present case.

The lack of a current treaty on this issue shows the inability of many countries to agree on the use of force and sovereignty in cyberspace. Regarding the differences in state and international law, many have different perspectives on sovereignty in cyberspace. One of the main points of disagreement has to do with applying traditional concepts of sovereignty in the context of cyberspace. Some will argue that cyber activity that affects another country without authorization infringes

upon sovereignty. This follows the conventional interpretation of sovereignty.¹⁷ Others say that strict territorial sovereignty principles are not helpful in cyberspace, as it is transnational. These others support a more flexible approach, recognizing that cyberspace goes beyond physical borders. This approach requires a new definition of sovereignty to accommodate shared responsibilities and collaborative tools for cyber governance.¹⁸ Unfortunately, the disagreement continues as states struggle to reconcile conventional principles of territorial sovereignty with the complex nature of cybersecurity.

The debate within the UN negotiations also reflects the diverse state practices that are in place around responsible behavior in cyberspace. The discussions about the proposed UN Convention by Russia show the attempts to find a middle ground with contrasting state practices and legal approaches in the cyber domain.¹⁹ However, these month-long efforts in drafting a convention reveal how challenging consensus-building is and the need for a unified approach among countries.

The scenario of Albania accusing Iran of cyberattacks and the following diplomatic fallout directly links to modern problems in the world of international law. Discussions within the UN are based on separate perspectives concerning cyber norms and international agreements.²⁰ This demonstrates the lack of an established legal framework to address cyber warfare, an issue underscored by *Albania v. Iran*. The absence of a treaty governing cyber activities raises concerns about broken trust among states. This is similar to the challenges faced by the UN in negotiating cyber norms due to opposing views on legal instruments. Finally, the lack of international consensus on cyber warfare, much like the absence of *opinio juris* in shaping customary international law, presents a similar challenge. The

12 Statute of the International Court of Justice, art. 38, ¶ 1. 1, Apr. 18, 1946, 33 UNTS 993, <https://www.icj-cij.org/statute>.

13 Statute of the International Court of Justice, art. 38, ¶ 1.

14 Statute of the International Court of Justice, art. 38, ¶ 1. 1, Apr. 18, 1946, 33 UNTS 993, <https://www.icj-cij.org/statute>.

15 Statute of the International Court of Justice, art. 38, ¶ 1. 1, Apr. 18, 1946, 33 UNTS 993, <https://www.icj-cij.org/statute>.

16 *Certain Iranian Assets (Iran v. U.S.)*, Judgment, 2019 I.C.J. Rep. 7. <https://www.icj-cij.org/case/164>.

17 Clovis C. Morrison, “Restrictive Interpretation of Sovereignty-Limiting Treaties,” *The International and Comparative Law Quarterly* 19, no. 3 (July 1970): 361-375, <http://www.jstor.org/stable/757905>.

18 Ruth Lapidoth, “Sovereignty in Transition,” *Journal of International Affairs* 45, no. 2 (1992): 325-346, <http://www.jstor.org/stable/24357360>.

19 Allison Pytlak, “Discord and Diplomacy: Reviewing Outcomes From the UN’s Cyber Working Group,” *Stimson*, August 14, 2023, <https://www.stimson.org/2023/discord-and-diplomacy-reviewing-outcomes-from-the-uns-cyber-working-group/>.

20 UNIDIR Security and Technology Programme, *Use of ICTs by States: Rights and Responsibilities Under the Charter of the United Nations* (Geneva: UNIDIR, 2023), https://unidir.org/wp-content/uploads/2023/09/UNIDIR_CS_2023-Conference_Report_Use_of_ICTs_by_States_Roles_Responsibilities_under_UN_Charter.pdf.

argument highlighted in both the UN and this case shows the lack of agreement regarding the legal boundaries around cyber activities. These emphasize the need to think creatively and outside the traditional law-making “box” to apply concepts like sovereignty and state responsibility to this unique issue.

On the Applicability of ARSIWA

The International Law Commission (ILC) drafted the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) to arrange the rules of international law. This was done concerning the responsibility of states for their internationally wrongful acts.²¹ ARSIWA contains 78 articles, which provide a framework to determine when a state is responsible for a wrongful act. It also builds in the consequences of such responsibility. These articles have influenced the understanding of state responsibility in international law.

The ARSIWA principles have been used in various cases before international courts, including the ICJ. In the *Corfu Channel Case (UK v. Albania, 1949)*, the Permanent Court of International Justice referred to the principle of due diligence, a concept echoed in ARSIWA concerning the obligation of states to ensure the safety of international navigation. Similarly, in *Nicaragua v. United States (1986)*, the ICJ relied on various ARSIWA Articles 4 to 11 principles to determine the US’s involvement in acts against Nicaragua. These cases illustrate the impact of ARSIWA principles on international courts’ decisions and interpretations of disputes involving state responsibility for internationally wrongful acts.

The International Law Commission (ILC) is an expert body in the United Nations. It is responsible for developing and establishing international law. Created in 1947, the ILC comprises legal experts from different countries and acts as

an advisory committee to the UN General Assembly.²² Their leading role involves studying international law principles, identifying areas that need legal regulation, and preparing materials on these subjects. Initially, the ILC’s works, including ARSIWA, were considered secondary means for determining rules of law under Article 38(1)(d) of the ICJ Statute. However, ARSIWA has gained recognition over time as reflective of customary international law.²³ This recognition means that ARSIWA acts as a primary source of law under Article 38(1)(b) in international legal discourse and practice.²⁴ Parts of ARSIWA have become part of customary international law.

The case of cyberattacks on Albania’s government websites allegedly orchestrated by Iran raises several legal considerations under ARSIWA. Understanding each of these articles will be essential to deciding on this case. The relevant articles are detailed as follows.

ARSIWA Articles 4-11 establish rules for attributing conduct to a state. This means determining when a state can be held responsible for actions taken by various entities or individuals. Article 4 addresses actions carried out by state organs, including actions carried out by a state’s government, legislative bodies, or administrative agencies. These actions are considered acts of the state itself.²⁵ Article 5 focuses on actions performed by persons or groups that have the authority to exercise parts of governmental authority.²⁶ In these cases, their conduct is linked to the state if they act in a specific manner at the direction or control of the state. These first few articles relate to actions directly related to governmental authority.

Article 6 relates to the conduct of organs placed at the use of a state by another state.²⁷ In simple terms, it means that if one country lends its government officials or resources to another country to carry out certain functions, the actions of those

21 International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, A/RES/56/83, (Nov. 2011), https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

22 “International Law Commission; Origin and Background,” Office of Legal Affairs, accessed December 22, 2023, <https://legal.un.org/ilc/ilcintro.shtml>.

23 James Crawford, “The ILC’s Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect,” *The American Journal of International Law* 96, no. 4 (October 2002): 874-890, <https://doi.org/10.2307/3070683>.

24 Maurizio Arcari, “The future of the Articles on State Responsibility: A matter of form or of substance?” *Questions of International Law, Zoom-in* 93, (2022): 3-21, http://www.qil-qdi.org/wp-content/uploads/2022/07/02_Future-of-ARSIWA_ARCARI_FIN-2.pdf.

25 UN General Assembly, Resolution 56/83, Responsibility of States for Internationally Wrongful Acts, A/RES/56/83, (Aug. 3, 2001), <https://undocs.org/A/RES/56/83>.

26 A/RES/56/83 art. 5

27 A/RES/56/83 art. 7

officials or resources will be considered the responsibility of the country using them, not the country lending them. This principle helps determine which state is responsible for the actions of organs placed in the hands of another state. This ensures accountability in international relations.

The following articles detail responsibility when actions are carried out in the name of the state, even though they may not directly represent the state. Article 7 addresses the conduct of non-state actors. It establishes that the conduct of non-state entities can be attributed to a state if the state exercises control over these entities in carrying out the conduct.²⁸ This is the case even if these entities exceed their authority. Similarly, Article 8 deals with the conduct of a person or entity acting under direct instructions or control of a state in the absence of authority.²⁹ Even in the absence of official authority, if a person or entity acts under the instructions or control of a state, their conduct can be attributed to that state. Article 10 addresses the conduct of entities using elements of governmental authority that are not recognized as state organs.³⁰ If an entity performs the functions of a state organ and uses governmental authority, its conduct is attributable to the state. This includes,

²⁸ A/RES/56/83 art. 8

²⁹ A/RES/56/83 art. 9

³⁰ A/RES/56/83 art. 10

³¹ A/RES/56/83 art. 11

³² Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 190 (June 27). <https://www.icj-cij.org/case/70/judgments>.

Members of the International Law Commission (elected for 2023 - 2027)

Credit: Arturo94



for example, insurrectional movements where those carrying out the insurrection establish a new state.

Finally, Article 11 establishes that conduct can still be attributed to a state if that state acknowledges the conduct as its own.³¹ This allows some flexibility in the attribution of conduct to a state. Overall, these articles help assess whether Iran had control over the cyber attackers targeting Albania. By using the principles of ARSIWA, delegates could determine Iran's responsibility or lack thereof. These articles can examine acts of cyber warfare and determine whether a state can be held responsible for cyberattacks perpetrated by non-state actors within its territory or under its control. In the case of *Albania v. Iran*, these articles will help establish whether Iran can be held responsible for cyberattacks conducted by actors allegedly sponsored by the Iranian government.

One case showing the attribution of conduct to a state involves *Nicaragua v. United States of America*, 1986. Nicaragua accused the US of supporting armed groups (the Contras) that conducted military activities against Nicaragua, and the ICJ addressed the responsibility of conduct to the United States.³² The Court examined whether the actions of the Contras, non-

state actors supported by the US, could be attributed to the United States. The Court concluded that the United States was responsible for certain unlawful activities, including providing military aid and logistical support to the Contras, leading to violations of international law.

Cases like *Nicaragua v. United States of America* show that the principles found in Articles 4 to 11 are relevant to this discussion. These principles play a crucial role in determining when a state can be held responsible for actions carried out by non-state actors within its territory or under its control. This way, they contribute to understanding state responsibility in international law, including in cyber warfare scenarios.

The next section of ARSIWA, Articles 12 to 14, outlines a state's obligation to use due diligence in stopping internationally wrongful acts. In cyber warfare, these articles can help determine Iran's responsibility in stopping or preventing cyberattacks in its territory. These articles raise questions about the country's responsibility in such situations.

Article 12 says that a state has to take measures to prevent acts that breach its international obligations.³³ This means states must put measures into place that ensure everyone in their control complies with international law. However, Article 13 states that a state is not responsible for breaching an international agreement unless said agreement was in place at the time of the act. It emphasizes that a state should refrain from actions defeating the object and purpose of a treaty or established customary international law.³⁴

Last, Article 14 deals with the extension of responsibility from when the act occurs. It states that if the act is continuous, the state is considered responsible for the entire time it happens. If the act occurs at a single moment, but the effects continue, the state is only responsible for the moment it occurred and not its effects.³⁵ It highlights that all states have a collective interest in preventing such grave violations and must cooperate following their obligations under international law.

³³ A/RES/56/83 art. 12

³⁴ A/RES/56/83 art. 13

³⁵ A/RES/56/83 art. 14 ¶ 2

³⁶ A/RES/56/83 art. 2-3

³⁷ A/RES/56/83 art. 22

³⁸ A/RES/56/83 art. 23 ¶ 1

These articles combined mark the duty of states to stop acts that would break international obligations. It also shows the duty to take proactive measures to ensure compliance. They highlight the importance of exercising due diligence in preventing wrongful acts, even in cases where these acts extend over time. States are expected to adopt appropriate measures following their international legal obligations to prevent actions that would go against established norms of international law. In this current case, delegates must examine the nature of Albanian and Iranian actions. Considering these articles, delegates must see whether both states were acting under their duties and doing their due diligence to stop wrongful acts.

ARSIWA Articles 2 and 3 affirm the principles of state sovereignty and equality of states. Article 20 specifies that an act is not wrong if performed with the state's consent.³⁶ In the case of cyberattacks, these articles can be used to argue that such attacks may constitute a breach of Albania's sovereignty by violating its government systems and digital infrastructure, as they did not consent to these actions beforehand.

ARSIWA Articles 22-25 discuss countermeasures available to an injured state against the responsible state. In response to the cyberattacks, Albania severed diplomatic ties and expelled Iranian diplomats. These actions and others that the country took should be examined under these articles to determine whether they might be considered countermeasures.

Article 22 specifies that a state may only resort to countermeasures against another state if the responsible state has breached its international obligations toward the injured state.³⁷ Countermeasures are intended to induce the responsible state to comply with its obligations and should be proportional to the gravity of the initial breach.

Countermeasures should not exceed what is necessary to address the breach, as per Article 23.³⁸ Moreover, the injured state must notify the responsible state about its intent to take countermeasures. However, there are exceptions to this

requirement if the breach is grave and requires immediate action to safeguard essential interests. This is specified in Article 24.

Before initiating countermeasures, the injured state is encouraged to consult with the responsible state. Also, Article 25 notes that if the responsible state complies with its obligations, the injured state should suspend or terminate the countermeasures unless otherwise agreed upon.³⁹

The application of ARSIWA's articles is nuanced in the case of *Albania v. Iran*. However, these articles show the evolving nature of international law in the digital age and the need to adapt legal principles to emerging challenges in cyberspace. Delegates should carefully consider articles of ARSIWA and how they can be applied to the case at hand.

Conclusion

The landscape of international law is constantly evolving in the digital age. The hypothetical case of *Albania v. Iran* demonstrates the need for new, comprehensive legal frameworks to address this topic. Although multiple discussions occur in different bodies, formal legal documents are absent. Despite numerous conventions and councils on this topic, it is complex. This committee is responsible for managing this, considering past legislation and the current landscape of cyberwarfare.

There is no internationally accepted framework to deal with cyber warfare. This is why the case of *Albania v. Iran* is pressing to address. Because there is so much disagreement among different countries, there are challenges in establishing customary international law on this topic. However, these disagreements do not mean this legal agreement is impossible. To address concepts of sovereignty and state responsibility, a framework is essential.

When searching for documents to guide decisions of the Court, the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) present crucial guidelines. By addressing the state's responsibility in preventing wrongful acts and how countries

can respond in the face of a wrongful act, these articles are all relevant to this case. Applying ARSIWA's articles in *Albania v. Iran* highlights the need to adapt legal principles to the nuances of cyberspace.

Finally, as the International Court of Justice deliberates on this case, it is imperative to recognize that the ICJ is not bound by *stare decisis* (prior judgments). However, these can still provide valuable precedents for the case at hand. Article 38 of the ICJ Statute explains the sources of law the Court considers, emphasizing the importance of analysis of secondary materials. Judges must evaluate prior judgments and legal teachings to make informed decisions.

2023 was the year that saw the most significant rise in international cybercrime and saw hacking used more and more in conflicts around the world. This issue is pressing now more than ever before, and the sooner the ICJ rules on this case, the sooner there will be a set of norms that allow for peace and order in both the real and the digital realm.

³⁹ A/RES/56/83 art. 25



ICJ

NHSMUN 2024

TOPIC B: ADVISORY OPINION ON STATES' OBLIGATIONS REGARDING CLIMATE CHANGE

Photo Credit: U.S. Forest Service—Pacific Northwest Region

Introduction

Climate change has worsened yearly since the mid-1800s.¹ The International Court of Justice (ICJ) is crucial to combating this worldwide problem. The opportunity to address states' obligations regarding climate change should not be taken lightly. Despite the increased impacts on vulnerable island states and the risks to the international community, there has been a lack of adequate climate agreements in recent years. While 23 rich industrialized countries are responsible for 50 percent of all historical emissions, more than 150 countries are accountable for the rest. This highlights how universal the consequences of climate change are.² Delegates need to remember that this advisory opinion and the judgments of The Oceans Court and European Court of Human Rights are not binding. However, they will serve as foundational decisions for governments working to minimize the rise of global temperatures to 1.5 degrees Celsius and reduce excessive greenhouse gas emissions.

Recent summits, such as COP28 and the Climate Action Summit, can impact how governments approach the climate crisis. As COP28 conference president Al Jaber warns, "failure is not an option... There are countries here with the capacity to ensure the outcome of this summit is historic for the right reasons."³ Just like the summit, the same contention remains true for the delegates of this committee. Justices must consider how these additional updates may shift a state's obligation to act on this issue. Judges of the Court can significantly change the global response to climate change. In this case, judges are asked to approach the debate from an advisory perspective rather than an argumentative one.

Recent Developments to Legal Proceedings

This past year, several international courts heard cases on the adverse effects of the climate crisis. Since some of these decisions are expected to be released in early 2024, Justices must know how case law is proceeding. The outcome of these cases will be important in considering how to write one's own

advisory opinion.

As this case concerns an advisory opinion, the ICJ had set a deadline of October 20, 2023. Until then, states could submit written statements of their legal arguments. However, the Republic of Vanuatu and fourteen other states requested an extension granted by ICJ President Judge Joan E. Donoghue. Now, states have until January 22, 2024.⁴ Given this three-month delay, the pushback gives states and international organizations extra time to compose legal arguments. For example, Justices may be concerned about the contradiction between a state's obligation and investor-state dispute settlement tribunals (ISDS). ISDS' are treaties that protect the interests of businesses when governments try to change policies that impact them.⁵

These international agreements can increase investment in low-carbon options for state actors. However, they also tend to protect investor rights. This ultimately limits a state's ability to adopt tangible environmental policies.⁶ ISDS' complicates whether states are legally obligated to act in the climate crisis. Due to the competing interests of private companies and global

1 "How Do We Know Climate Change Is Real?" Global Climate Change, NASA, accessed December 21, 2023, <https://climate.nasa.gov/evidence/>.

2 Nadja Popovich and Brad Plumer, "Who Has The Most Historical Responsibility for Climate Change?" *The New York Times*, November 12, 2021. <https://www.nytimes.com/interactive/2021/11/12/climate/cop26-emissions-compensation.html>.

3 Jonathan Watts and Natalie Hanman, "Cop28: 'failure is not an option,' says summit president - as it happened," *The Guardian*, December 10, 2023, <https://www.theguardian.com/environment/live/2023/dec/10/cop28-live-focus-on-food-and-agriculture-as-climate-change-summit-continues>.

4 Jon McGowan, "International Court Extends Timeline for Climate Change Opinion," *Forbes*, September 20, 2023, <https://www.forbes.com/sites/jonmcgowan/2023/09/20/international-court-extends-timeline-for-climate-change-opinion/?sh=28acd0f36bcf>.

5 International Institute for Environment and Development, "ICJ should address legal contradictions holding back action on climate change," news release, October 17, 2023, <https://www.iied.org/icj-should-address-legal-contradictions-holding-back-action-climate-change>.

6 Mathilde Dupré, "IPCC points out the incompatibility between protecting fossil investments and decarbonisation," Intergovernmental Panel on Climate Change, Institut Veblen, last modified April 5, 2022, <https://www.veblen-institute.org/IPCC-points-out-the-incompatibility-between-protecting-fossil-investments-and.html>.

responsibility, establishing frameworks can become difficult. Both Principle 21 of the 1972 Stockholm Declaration on the Human Environment and Principle 2 of the 1992 Rio Declaration on Environment and Development assert that states have an obligation in environmental law to ensure their activities do not harm another actor. Delegates may determine if and how the ICJ will provide guidance to balance investment treaties with international climate legislation.⁷

Another update to case law comes from the conclusion of the International Tribunal for the Law of the Sea (ITLOS or The Oceans Court). These hearings concerned the Commission of Small Island States on Climate Change (COSIS) following the 2021 Climate Commission Agreement. The Agreement authorizes COSIS to request advisory opinions from the ITLOS within the UN Convention on the Law of the Sea scope.⁸ Initiated by COSIS, representatives of over fifty countries, including large greenhouse gas emitters like China

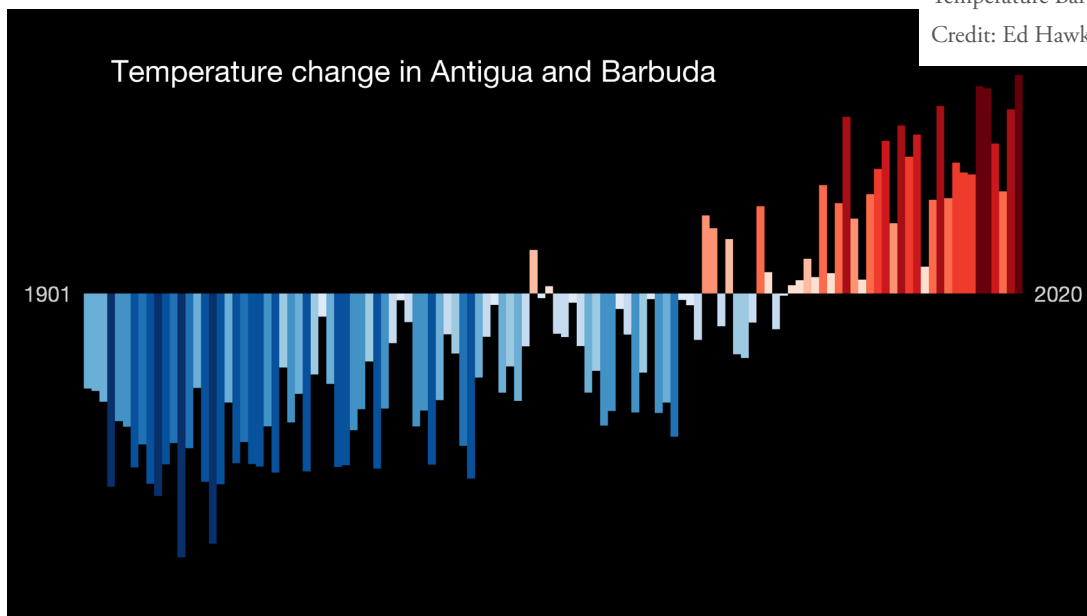
and India, were present for hearings from September 11 to September 25, 2023. China, the United States of America, and India respectively ranked as the top three emitters in 2023.⁹ During these hearings, they participated through oral interventions and written statements. The tribunal was asked to clarify state responsibilities and obligations to protect the marine environment from the impacts of climate change, including ocean warming, acidification, and rising sea levels.¹⁰

Before the hearing, arguments were expected to revolve around the UN maritime treaty upholding the 1982 UN Convention on the Law of the Sea (UNCLOS). This legal framework covers the uses of the oceans, their resources, and obligations to protect the marine environment.¹¹ The case before the Oceans Court is the first time the court has heard a case on greenhouse gasses and, by extension, its impacts on climate change and the ocean.¹² In the weeks before the start of the hearings, the small island country of Antigua and Barbuda witnessed the

⁷ International Institute for Environment and Development, “ICJ should address legal contradictions holding back action on climate change.”
⁸ African Union, “The African Union Delegation Pleads before ITLOS in the Question of International Law and Climate Change Oral Hearing,” news release, September 25, 2023,

<https://au.int/en/pressreleases/20230925/african-union-delegation-pleads-itlos-question-international-law-and-climate>.
⁹ “Greenhouse Gas Emissions by Country 2023,” Wisevoter, March 25, 2023, <https://wisevoter.com/country-rankings/greenhouse-gas-emissions-by-country/>
¹⁰ Isabella Kaminski, “Small island slam ‘endless’ climate talks at landmark maritime court hearing,” Climate Home News, last modified November 9, 2023, <https://www.climatechangenews.com/2023/09/11/small-island-leaders-climate-negotiations-un-maritime-court/>.
¹¹ *United Nations Convention on the Law of the Sea* (Montego Bay: UN, November 1994) https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
¹² Marlise Simons, “Island Nations Hope for Court’s Help on Climate’s Effects,” *The New York Times*, September 11, 2023, <https://www.nytimes.com/2023/09/11/world/asia/island-nations-ocean-court-climate.html>.

Temperature Bar Chart-Antigua and Barbuda
Credit: Ed Hawkins, University of Reading



highest ocean temperatures on record. As climate change disproportionately impacts vulnerable island states, delegates are encouraged to consider the three pillars that COSIS focuses on. These are (1) severity of climate impacts, (2) scientific consensus, and (3) compelling arguments regarding the existing legal obligations of States.¹³ Some of the most debated issues focused on interpreting state duties. During this debate, certain countries and country alliances, such as the African Union, Guatemala, Chile, Belize, Portugal, Italy, New Zealand, Mauritius, and Micronesia, argued that the Oceans Court should interpret UNCLOS under international law. On the other hand, the EU, Australia, and the United Kingdom supported a more narrow interpretation of the Paris Agreement and the UN Framework Convention on Climate Change. Under this latter approach, states' actions under the accords would satisfy their "state obligations." Many states, such as Chile, emphasized intergenerational equity and the rights of future generations during the hearings.¹⁴ With looming advisory opinion proceedings before the Inter-American Court of Human Rights (request by Chile and Colombia) and the ICJ, delegates may look towards the open court hearings before the Ocean Court to gain a deeper understanding of diverse stances when writing the opinion.¹⁵

After the hearings in Hamburg, Germany, concluded for the COSIS advisory opinion, the European Court of Human

Rights heard an unprecedented lawsuit from six young people against 32 European countries for failing to tackle the climate crisis. Although the case was not filed until 2020, the problem emerged in 2017 when devastating wildfires burned 500,000 hectares of Portugal and led to more than 100 fatalities.¹⁶ The claimants of the suit, ages 11 to 24, hope the EU Court will rule that countries (the 27 EU countries along with Norway, Russia, Switzerland, Turkey, UK) fueling the crisis have obligations to protect citizens both in and out of their state. They demand that the states drastically cut their global warming and emissions across supply chains. However, in response, the sued countries have claimed that climate change has severely harmed none of the claimants.¹⁷ Additionally, the government of Greece has emphasized that there is no correlation between the effects of climate change and human life or health. While European governments largely want the case dismissed, Council of Europe human rights Commissioner Dunja Mijatović intervened as a third party. She emphasized why it is important that the European Court hear the case.¹⁸ A ruling on this case is expected to be issued before June 2024.¹⁹ If the European Court rules in favor of the claimants, the judgment would force the 32 countries listed as parties to accelerate climate action. Still, the case may be dismissed on procedural grounds or the legal argument that there is no human rights obligation to climate change.²⁰

13 Joie Chowdhury, "At Historic ITLOS Hearings, States Stake Out Positions on Climate Duties and Ocean Protection," Center for International Environmental Law, last modified September 28, 2023, <https://www.ciel.org/at-historic-itlos-hearings-states-stake-out-positions-on-climate-duties-and-ocean-protection/>.

14 *International Tribunal for the Law of the Sea* (Hamburg: International Tribunal for the Law of the Sea, September 2023), 1-36, https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/ITLOS_PV23_C31_7_E.pdf.

15 "Request for an advisory opinion on the scope of the state obligations for responding to the climate emergency," Climate Case Chart, accessed December 21, 2023,

<https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/>.

16 "Europe: Six young people to present landmark climate case before the European Court of Human Rights," Amnesty International, last modified September 26, 2023,

<https://www.amnesty.org/en/latest/news/2023/09/six-young-people-to-present-landmark-climate-case-before-the-european-court-of-human-rights/>.

17 Laura Paddison and Vasco Cotovio, "'Truly a David and Goliath case': Six young people take 32 countries to court in unprecedented case," *CNN*, September 27, 2023,

<https://www.cnn.com/2023/09/27/europe/portugal-climate-lawsuit-human-rights-court-intl/index.html>.

18 Strasbourg, "Hearing of the Grand Chamber of the European Court of Human Rights in the case of Duarte Agostinho and Others v. Portugal and 32 Others," Commissioner for Human Rights, Council of Europe Portal, last modified September 27, 2023,

<https://www.coe.int/en/web/commissioner/-/hearing-of-the-grand-chamber-of-the-european-court-of-human-rights-in-the-case-of-duarte-agostinho-and-others-v.-portugal-and-32-others>.

19 Catarina Demony, "Youth vs Europe: 'Unprecedented' climate trial unfolds at rights court," *Reuters*, September 27, 2023,

<https://www.reuters.com/world/europe/youth-vs-europe-unprecedented-climate-trial-kick-off-rights-court-2023-09-27/>.

20 Paddison and Cotovio, "'Truly a David and Goliath case.'"

This case is not the only climate crisis case yet to be ruled upon. The European Court has two other climate cases from March 2023 to rule on. Through these cases, they can clarify how governments' human rights duty coincides with the climate crisis.²¹ Additionally, the growth in climate lawsuits extends outside of Europe, as there are more than 2,400 climate lawsuits globally. Ultimately, climate litigation is becoming an integral aspect of the road to achieving climate justice.²² Justices may consider how this global shift by individuals against a state's government may challenge a state's obligation. Like with the wildfires that occurred in Portugal, it is important to recognize that this challenge is different from that of the vulnerabilities and challenges of Pacific Island states, such as ocean acidification and rising sea levels.²³ Justices must weigh how states endure their respective challenges when considering states' obligations and preparing the opinion.

Escalating Debates in Climate Summits

With more discussions of climate goals than actionable solutions, UN Secretary-General António Guterres is strong in his desire to fight the climate crisis. Because of this, he started the Climate Ambition Summit on September 20, 2023, at the UN Headquarters. This summit occurred at a time when over 600,000 people took part in over 700 protests across 65 countries, calling for government action to phase out fossil fuels.²⁴ Despite worldwide protests, not all states were invited to the summit. Some of the world's biggest emitters, namely

China and the United States, were not among the 34 invited countries. Limiting summit participation aimed to inspire greater change and ambition for those not selected. Heads of state and business leaders who were invited are expected to aid in building support before the COP28 (Conference of the Parties to the UN Framework Convention of Climate Change Meeting 28) occurs.²⁵ In doing so, the summit leaders agreed to accelerate the phase-out of fossil fuels. They also drew up a series of new pledges, such as one for coordinated efforts within the Clean Energy Ministerial. These are designed to speed up renewable technologies and put into use the new loss and damage fund by 2027 or earlier.²⁶

COP28, from November 30 to December 12, 2023, marked the largest climate conference ever, with nearly 100,000 politicians, ambassadors, and campaigners. One of the important topics on the agenda was the distinction between phase-out and phase-down regarding fossil fuels. These efforts were done with rapidly escalating tensions and building questions of whether or not this would achieve the 1.5 Celsius goal agreed upon by nearly 200 countries and set out by the Paris Agreement.²⁷ More than 100 hundred African, European, Pacific, and Caribbean countries supported a phase-out of unabated fossil fuels, as climate change disproportionately affects these countries.²⁸ Unfortunately, the Alliance of Small Island States delegates found that COP28's draft deal to cut global fossil fuel production framed these reductions as optional.²⁹ This frustration also came from the fact that

21 Katharina Rall, "European Court Hears Climate Crisis Case Brought by Children," *Human Rights Watch*, September 29, 2023, <https://www.hrw.org/news/2023/09/29/european-court-hears-climate-crisis-case-brought-children>.

22 "Sabin Center for Climate Change Law and UNEP, "Climate litigation more than doubles in five years, now a key tool in delivering climate justice," news release, July 27, 2023,

<https://climate.law.columbia.edu/news/sabin-center-unep-release-global-climate-litigation-report-2023-status-review>.

23 Kaminski, "Small island slam 'endless' climate talks."

24 Antonia Juhasz, "Bold Action Needed Following UN Climate Ambition Summit," *Human Rights Watch*, September 22, 2023, <https://www.hrw.org/news/2023/09/22/bold-action-needed-following-un-climate-ambition-summit>.

25 Valerie Volcovici, "UN Chief puts spotlight on 'movers,' excludes US, China at climate summit," *Reuters*, September 20, 2023, <https://www.reuters.com/world/un-chief-puts-spotlight-movers-excludes-us-china-climate-summit-2023-09-20/>.

26 *Climate Ambition Summit* (New York: UN Headquarters, September 2023),

https://www.un.org/sites/un2.un.org/files/climate_ambition_summit_-_20_september_2023_-_chairs_summary.pdf.

27 Mark Poynting, "Five climate change solutions under the spotlight at COP28," *BBC*, December 5, 2023,

<https://www.bbc.com/news/science-environment-67544977>.

28 European Council, "Joint Statement of the Organisation of African, Caribbean, and Pacific States and the European Union for COP28," news release, November 30, 2023,

<https://www.consilium.europa.eu/en/press/press-releases/2023/11/30/joint-statement-of-the-organisation-of-african-caribbean-and-pacific-states-and-the-european-union-for-cop-28/>.

29 Damian Carrington and Ben Stockton, "Cop28 president says there is 'no science' behind demands for phase-out of fossil fuels," *The Guardian*, December 3, 2023, <https://www.theguardian.com/environment/2023/dec/03/back-into-caves-cop28-president-dismisses-phase->

after COP27 in 2022, Pacific Island countries emphasized that climate change was an existential threat to their region. Because of this, representatives of AOSIS expressed their disappointment when they were left out of the meeting room when the deal was decided on December 13, 2023.³⁰ During the closing session, AOSIS lead negotiator Anne Rasmussen was given a standing ovation. She said that the deal contains “a litany of loopholes. It does not deliver on a subsidy phaseout or advance us beyond the status quo.”³¹ Although many countries came together intending to reduce greenhouse gas emissions, progress was not made.

Even though more than 130 of the 198 countries and scientists urged for the agreement to include either a phase-out or phase-down of fossil fuels, the landmark deal urges all countries to ‘transition away’ from fossil fuels.³² Petrol states like Saudi Arabia blocked stronger wording. While this was the first time in 30 years of negotiations that fossil fuel was

referenced, scientists argue that the language is misleading. Professor Michael Mann of the University of Pennsylvania said, “It’s like promising your doctor that you will transition away from donuts after being diagnosed with diabetes.”³³ The lack of accountability within the deal to phase-out or phase-down contrasts the goals made in the 2015 Paris climate agreement to limit the global average temperature rise to 1.5 degrees Celsius.³⁴ Many scholars and scientists view the loopholes as greater failures than they appear on paper. Although the deal recognized a need for reductions in greenhouse gas emissions, it lacked real efforts.³⁵

The Paris Agreement requires countries to submit their nationally determined contributions (NDCs) to tackle climate change every five years. Article 4 of the Paris Agreement indicates that NDCs should be “informed by the outcomes of the global stocktake.”³⁶ To account for the pledges made by COP28, there needs to be a major increase in targets and

out-of-fossil-fuels.

30 Natasha Turak, “Pacific Islands lash out at COP28 presidency: ‘We weren’t in the room’ when deal was announced,” *CNBC*, December 13, 2023, <https://www.cnbc.com/2023/12/13/cop28-climate-summit-pacific-islands-lash-out-at-final-deal.html>.

31 Anne Rasmussen, *COP28 Closing Plenary: AOSIS Statement on GST Decision* (Dubai: AOSIS, December 13, 2023), <https://www.aosis.org/cop28-closing-plenary-aosis-statement-on-gst-decision/>.

32 UN Environmental Programme, “Some key takeaways from the COP28 climate summit,” accessed December 21, 2023, <https://www.unep.org/news-and-stories/story/some-key-takeaways-cop28-climate-summit>.

33 Issam Ahmed, “‘Weak tea’: Climate scientists push back against COP28 cheer,” December 14, 2023, <https://phys.org/news/2023-12-weak-tea-climate-scientists-cop28.html>.

34 “COP28: the science is clear – fossil fuels must go,” *The International Journal of Science* 624, no. 225 (December 2023), <https://doi.org/10.1038/d41586-023-03955-x>.

35 Damian Carrington, “Failure of Cop28 on fossil fuel phase-out is ‘devastating,’ says scientists,” *The Guardian*, December 14, 2023, <https://www.theguardian.com/environment/2023/dec/14/failure-cop28-fossil-fuel-phase-out-devastating-say-scientists>.

36 Bob Ward, “Does the world need to phase out fossil fuels to deliver the goals of the Paris Agreement?” Grantham Research Institute

Net Zero Nuclear Event at COP28

Credit: IAEA Imagebank



policies when countries submit new commitments in 2025.³⁷ One of the major barriers to implementing the deal will be rooted in finances. While the deal highlights the need for more money, richer developed countries are not obligated to act.³⁸ Although global climate investment has increased to around 1 percent of global GDP, this amount is not nearly enough to transform the energy systems of emerging and developing countries.³⁹

However, COP28 brought new finance initiatives to the table. For example, the United Arab Emirates announced it would put USD 30 billion into a new climate finance fund called Alterra to steer capital towards climate investment. The Green Climate Fund, the largest international fund dedicated to supporting developing countries against climate change, has also invested USD 150 billion in Canada's development finance institution to offer long-term loans for climate change mitigation in up to 25 developing countries.⁴⁰ Regarding funding of specially impacted states, it is vital for Justices to keep in mind that there is a gap between developing countries and their energy demand.⁴¹ The American state of Colorado uses more than 52 terawatt-hours of electricity annually.⁴² Rwanda, with a population about twice as large as Colorado, uses about 6 TWh of electricity per year.⁴³ Additionally, while renewable technology is the cheapest energy option

for most countries, it requires a significant investment at the beginning of the project. With fluctuations in interest rates and misaligned policies, wind and solar are not accessible nor feasible for all developing countries.⁴⁴ As the United Nations estimates a financing gap of USD 500 billion per year for climate projects over the next 10 years, the Loss and Damages Fund will surely come into play.⁴⁵ As one of the most awaited financial developments of COP28, the Loss and Damaged Fund was operationalized in the first plenary meeting. The fund is designed to help countries prone to the impacts of climate change handle mitigation and recovery. While USD 700 million was pledged for the fund, vulnerable countries may face up to USD 580 billion in climate-related damages by 2030.⁴⁶ This leaves little funding left over to fund the green transition. With questions of which country is hosting, what bank will be in charge, and how the money will be allocated unanswered, delegates may consider how to respond and alleviate current confusion about accessing this financing.⁴⁷

Another development at COP28 was the discussions over food security and systems. Food and land use contribute a third of global greenhouse gas emissions. In many developing countries, such as Brazil, food and land use drive 70 percent of emissions.⁴⁸ Conversations over how food systems interconnect with climate change were long overdue. Although

on Climate Change and the Environment, The London School of Economics and Political Science, last modified December 12, 2023, <https://www.lse.ac.uk/granthaminstitute/news/does-the-world-need-to-phase-out-fossil-fuels-to-deliver-the-goals-of-the-paris-agreement/>.

37 Adam Morton, Patrick Greenfield, Fiona Harvey, Nina Lakhani, and Damian Carrington, "Cop28 landmark deal agreed to 'transition away' from fossil fuels," *The Guardian*, December 13, 2023,

<https://www.theguardian.com/environment/2023/dec/13/cop28-landmark-deal-agreed-to-transition-away-from-fossil-fuels>.

38 Mike Scott, "ESG Watch: COP28 a milestone in terms of ambition, but falls short on finance," *Reuters*, December 14, 2023,

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39 Amar Bhattacharya, Vera Songwe, Eleanore Soubeyran, and Nicholas Stern, "A climate finance framework: decisive action to deliver on the Paris Agreement - summary," Grantham Research Institute on Climate Change and the Environment, The London School of Economics and Political Science, last modified November 30, 2023, <https://www.lse.ac.uk/granthaminstitute/publication/a-climate-finance-framework-decisive-action-to-deliver-on-the-paris-agreement-summary/>.

40 "GAIA – a climate and blended finance platform – gains momentum at Paris Summit for a New Global Financing Pact," MUFG, last modified June 22, 2023, <https://www.mufgema.com/media/gaia-a-climate-and-blended-finance-platform-new-global-financing-pact/>.

41 Umair Irfan, "Who gets to keep burning fossil fuels as the planet heats up?" *Vox*, November 30, 2022,

<https://www.vox.com/energy-and-environment/23458617/cop27-fossil-fuels-energy-developing-countries-coal-oil-gas-africa-finance>.

42 *State of Colorado Energy Sector Risk Profile*. (Washington DC: Department of Energy, Office of Electricity Delivery & Energy Reliability, 2014), https://www.energy.gov/sites/prod/files/2016/09/f33/CO_Energy%20Sector%20Risk%20Profile.pdf.

43 Hannah Ritchie and Max Roser, "Rwanda: Energy Country Profile," Our World in Data, last modified 2022, <https://ourworldindata.org/energy/country/rwanda>.

44 David Waskow, Jamal Srouji, Jennifer Layke, Nathaniel Warszawski et al, "Unpacking COP28: Key Outcomes from the Dubai Climate Talks, and What Comes Next," World Resources Institute, December 17, 2023, <https://www.wri.org/insights/cop28-outcomes-next-steps>.

45 Scott, "ESG Watch."

46 Waskow, "Unpacking COP28: Key Outcomes from the Dubai Climate Talks, and What Comes Next."

47 United Nations Climate Change, "About COP 28," accessed December 21, 2023, <https://unfccc.int/process-and-meetings/conferences/un-climate-change-conference-united-arab-emirates-nov/dec-2023/about-cop-28#What-will-be-discussed-at-COP-28>.

48 "Pathways to a Low-Carbon Economy for Brazil," McKinsey&Company, accessed December 29, 2023, https://www.mckinsey.com/en/Client_

the Declaration is not binding, it sends a powerful signal. 159 states, comprising nearly 80 percent of the world's land, signed the COP28 UAE Declaration on Sustainable Agriculture, Resilient Food Systems, and Climate Action, pledging to integrate food and food systems into their commitments.⁴⁹ It explicitly calls for states to build integrated water management to ensure sustainability.

Another success occurred on COP28's Food, Agriculture, and Water Day. On this day, Norway, Brazil, Sierra Leone, Rwanda, and Cambodia launched an Alliance of Champions for Food Systems Transformation (ACF), marking the first high-ambition coalition for food systems.⁵⁰ The coalition works across 10 priority intervention areas to improve and implement food systems in their countries.⁵¹

Although COP28 did have some successes with the Loss and Damage Fund and the agenda for food systems, scientists and scholars have considered it an overall failure due to pushbacks on financial initiatives and a lack of action towards fossil fuels.⁵² The International Energy Agency concluded that the pledges on renewable energy, energy efficiency, and methane will not keep the world within a 1.5-degree Celsius rise in temperature.⁵³ It is evident that greater action must be taken, and thus, delegates need to determine what that means for states' obligations to climate change. "Whilst we didn't turn the page on the fossil fuel era in Dubai, this outcome is the beginning of the end," said UN Climate Change Executive Secretary Simon Stiell in his closing speech. "Now all governments and businesses need to turn these pledges into real-economy outcomes, without delay."⁵⁴ How the outcomes of COP28 are directed into the agendas of individual state governments is a concern that must be monitored for states'

Paris Agreement goals.

Justices of the court are encouraged to consider the recent conclusion of COP28 in their approaches to addressing the ICJ. Both the successes and failures of COP28 provide insight into the current global status of our climate crisis. As the International Court of Justice, this Court can offer solutions that consider the multidimensional nature of this case. This nuanced case requires an understanding of national interests, government standpoints, and the structure of the United Nations.

Conclusion

Recent legal and governmental responses towards climate change must be understood to present this Court's advisory opinion. These offer the opportunity to challenge whether states should take action towards climate change. Given the delay for governments, businesses, and civil society groups to submit written statements of legal arguments to the ICJ until January 2024, recent events present the opportunity to change the advisory opinion. Impending rulings by alternative courts may challenge governments' ambitions to transition away from fossil fuels, reduce greenhouse gas emissions, and combat oceanic pollution. In addition, there have been calls for distributing the Loss and Damage Fund to ensure that vulnerable island states have access to climate adaptation. Failure of this fund will lead to disasters caused by weak infrastructure and extensive effects worldwide.

Delegates should account for how recent conversations and future rulings will shape the writing of the advisory opinion. Justices must keep in mind when drafting the opinion that

Service/Sustainability/Latest_thinking/~/media/McKinsey/dotcom/client_service/Sustainability/cost%20curve%20PDFs/pathways_low_carbon_economy_brazil.ashx.

49 "STATEMENT: 134 Countries Sign the Emirates Declaration on Sustainable Agriculture and Put Food High on the Climate Agenda at COP28," World Resources Institute, last modified December 1, 2023, <https://www.wri.org/news/statement-134-countries-sign-emirates-declaration-sustainable-agriculture-and-put-food-high-0>

50 *COP28 UAE Declaration on Sustainable Agriculture, Resilient Food Systems, and Climate Action* (Dubai: COP28, December 2023), <https://www.cop28.com/en/food-and-agriculture>.

51 Alliance of Champions for Food Systems Transformation, "Alliance of Champions launched at COP28 to supercharge global food systems transformation efforts," news release, December 10, 2023, <https://allianceofchampions.org/>.

52 Carrington, "Failure of Cop28 on fossil fuel."

53 Gerrit Hansen, "COP28: Significant Progress but Disappointing Ambition," *Council of Councils*, December 15, 2023, <https://www.cfr.org/councilofcouncils/global-memos/cop28-significant-progress-disappointing-ambition>.

54 United Nations Climate Change, "COP28 Agreement Signals "Beginning of the End" of the Fossil Fuel Era," news release, December 13, 2023,

while only a third of all UN members have accepted ICJ compulsory jurisdiction, its judgments, and orders are widely respected and cited by other international courts.⁵⁵ The opinion rendered by this committee will result in an unprecedented shift in the climate change crisis.

⁵⁵ Juan Manuel Gómez-Robledo Verduzco, "The International Court of Justice: A Bright Light in Dark Times," Just Security, October 24, 2022, <https://www.justsecurity.org/83723/the-international-court-of-justice-a-bright-light-in-dark-times/>.

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