

What Does the International Court of Justice Advisory Opinion on Climate Change Mean for Environmental Impact Assessment?

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March 2026

In July 2025, the International Court of Justice (ICJ) delivered its landmark Advisory Opinion on the Obligations of States in Respect of Climate Change. The opinion provides authoritative legal guidance on states' obligations to address climate change and prevent significant harm to vulnerable countries and communities. While the opinion is non-binding, it makes clear that failure to act can trigger legal consequences. States require timely and accessible analysis to understand their legal obligations and the consequences of breaching them.

This brief is part of a series of publications aimed at unpacking the implications of the opinion and suggesting clear actions governments can take to ensure compliance across five critical areas: climate adaptation, environmental impact assessments, environmentally harmful subsidies, international investment law, and multilateral environmental agreements.

Introduction

Environmental impact assessments (EIAs) are a crucial policy tool for obtaining and evaluating environmental information in development decision-making processes (Abaza et al., 2004), and more than 190 countries have introduced some form of EIA system (Caro-Gonzalez et al., 2023). EIAs' key characteristics include the following: they are aimed at preventing or minimizing harm to the environment; they are administrative processes consisting of several steps; they begin in the planning phase, prior to an activity taking place; and they predict impacts of an activity on the environment and provide evidence to determine trade-offs between policy goals (UN Environment, 2018).

The state's duty to conduct an EIA before authorizing activities that may result in transboundary harm is well grounded in international environmental law. It is generally recognized that the international legal duty of prevention of transboundary harm to the environment implies a duty of due diligence. In *Pulp Mills on the River Uruguay (Argentina*



v. Uruguay) the ICJ said that “due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if a party ... did not undertake an environmental impact assessment of the potential effects” of activities that “may have a significant adverse impact in a transboundary context” (ICJ, 2010, para. 204). The ICJ has also previously held, in *Nicaragua v. Costa Rica*, that “it may now be considered a requirement under general international law to undertake an environmental impact assessment” and that the principle underlying this obligation applies not only to industrial activities but “generally to proposed activities which may have a significant adverse impact in a transboundary context” (ICJ, 2015, para. 104).

In the ICJ Advisory Opinion on climate change (ICJ, 2025b), the court built on these previous judgments to make several observations about the necessary content of EIAs in the context of climate change. The most significant of these relates to EIAs for fossil fuel extraction projects. Until now, EIAs for fossil fuel extraction projects have focused only on the emissions that occur in operating an oil and gas field or coal mine, such as from powering rigs or fuelling support ships. But about 75%–85% of the greenhouse gas (GHG) emissions associated with a barrel of oil occur when the fuel is ultimately consumed, such as in a car or airplane (Eugène, 2021), which means the largest climate impact comes from the decision to extract the oil in the first place, rather than from a decision about how to extract it.

In its advisory opinion on climate change, the ICJ made history by ruling that end-use emissions from burning extracted fossil fuels must be considered in project EIAs. This brief first considers national- and regional-level precedents for this aspect of the opinion, before turning to the opinion itself, and then examining its impacts on subsequent litigation. It closes with recommendations for steps governments can take to avoid increased legal risk.

National- and Regional-Level Precedents

Two national- and regional-level courts had, previously to the ICJ Advisory Opinion, already ruled that EIAs must take into account end-use emissions associated with fossil fuel production. In *Finch v Surrey County Council* (UK Supreme Court, 2024), the United Kingdom Supreme Court held that planning authorities must assess “downstream” GHG emissions as part of the EIA process for fossil fuel projects. The case specifically concerned oil extraction at Surrey’s Horse Hill site, where planning permission was granted without considering emissions from burning the extracted oil. The British government subsequently published guidance requiring oil and gas companies to consider end-use emissions associated with oil and gas production in their EIAs when applying for development consents (Department for Energy Security & Net Zero, 2025).

The European Free Trade Association (EFTA) Court, in relation to three Norwegian oil fields, likewise held that EIAs of a petroleum project’s probable significant effects on the environment must include “a reasoned estimate of the greenhouse gas emissions that are likely to result from the subsequent combustion of petroleum and natural gas extracted in the course of a project” (EFTA Court, 2025, paras. 89, 99).

These two judgments formed a crucial context for the ICJ’s statements regarding EIAs.



End-Use Emissions From Burning Extracted Fossil Fuels Must Be Considered in Project EIAs

After reaffirming that due diligence includes the duty to conduct EIAs for activities undertaken within a state’s jurisdiction or control, the ICJ ruled that end-use emissions from burning extracted fossil fuels must be considered in EIAs for fossil fuel projects. It observed that “possible specific climate-related effects must be assessed as part of EIAs at the level of proposed individual activities, e.g., for the purpose of assessing their *possible downstream effects*” (ICJ, 2025b, para. 298, emphasis added). While the court used the word “downstream,” meaning that in the context of a project proposal for fossil fuel extraction, it could refer to a number of different emissions categories under the GHG Protocol, the most significant such category is the so-called Scope 3, Category 11 emissions that come from burning the extracted fuel (Greenhouse Gas Protocol, 2013).

It is, the ICJ said, for each state “to determine in its domestic legislation or in the authorization process for the project, the specific content of the environmental impact assessment required in each case” (ICJ, 2025b, para. 298). However, this must be read subject to the court’s above statement that downstream effects must be assessed where relevant.

Corroborating this interpretation is the statement earlier in the court’s opinion on the scope of the relevant conduct for the purposes of the advisory proceedings. Such conduct “is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions,” including “both consumption and production activities” (ICJ, 2025b, para. 94). Fossil fuel production, then, is “relevant conduct” that can be subject to international law. Reading the court’s statements on EIAs in light of this consideration, it is even clearer that EIAs must, in the case of proposed fossil fuel production projects, consider end-use emissions from burning extracted fossil fuels.

In a joint declaration, Judges Bhandari and Cleveland elaborated on this aspect of the Court’s opinion. Stating that fossil fuel emissions “contribute overwhelmingly to climate change,” and that it is “unimaginable that States can achieve their obligations ... without a rapid and drastic reduction in—and the phasing out of—fossil fuel production and dependency” (ICJ, 2025a, para. 1), the judges highlighted that fossil fuels “are produced in order to be burned,” and that states “must therefore factor these consequences into their assessment of the harms that such production contributes to the climate system” (ICJ, 2025a, para. 14). In other words, “States are required to account, in their assessments of environmental risk, for the increased concentration of GHGs in the atmosphere that will foreseeably result from, *inter alia*, production, licensing and subsidy activities” (ICJ, 2025a, para. 15). Judges Bhandari and Cleveland specifically stated that this obligation stems not only from the due diligence obligations, but also their obligations under Article 2 (objectives) and Article 4 (nationally determined contributions) of the Paris Agreement (ICJ, 2025a, para. 15).



Impacts of the Advisory Opinion on Subsequent Litigation

While it is still relatively early days for subsequent litigation to draw on the ICJ Advisory Opinion, its effects regarding EIAs have been felt in at least two judgments of national and regional courts.

First, in *Greenpeace Nordic and Others v Norway* (European Court of Human Rights, 2025), which concerned the same three oil fields considered by the EFTA Court (EFTA Court, 2025), the European Court of Human Rights (ECtHR) considered the ICJ Advisory Opinion at length. The ECtHR reasoned that petroleum would not be extracted but for the opening of an area for extraction and the granting of production licences, and that the link between petroleum exploration and its future production is inherent (para. 294). It held that for oil and gas production projects, the EIA must include “at a minimum, a quantification of the GHG emissions anticipated to be produced (including the combustion emissions both within the country and abroad...)” (para. 319).

Second, in *Ministry of Energy v Nature and Youth and Greenpeace Nordic* (Borgarting Court of Appeal, 2026), which concerned the same three oil fields, the Borgarting Court of Appeal agreed with the EFTA Court and the ECtHR that end-use emissions must be included in EIAs. The Court of Appeal specifically referred to the ICJ Advisory Opinion in this regard.

These decisions show that in the 6 months since the ICJ Advisory Opinion, it is already having an effect in domestic and regional case law. Other states that do not yet require EIAs to consider end-use emissions should take note.

Recommendations for States

To avoid increased legal risk, we recommend that states modify relevant laws, regulations, forms, and guidance to **require EIAs for fossil fuel extraction projects to take into account end-use emissions from burning extracted fossil fuels**. In doing this, states could draw on the experience of the United Kingdom, which changed its guidance in 2025 (Jones, 2025). In changing the rules, states should make the following clear:

1. Substitution—the idea that granting consent for a certain oil field will not cause an aggregate increase in GHG emissions, since production to meet market demand for oil and gas would come from another project elsewhere if the relevant field is not opened—should not affect whether end-use emissions need to be assessed in the EIA.
2. There should be a rebuttable presumption that all fossil fuels produced by the proposed project will be combusted. This approach prevents fossil fuel companies from making unsubstantiated claims that the oil, gas, or coal will not be burned.
3. End-use emissions should be assessed in relation to global and national climate objectives and the state of climate and global emissions reduction pathways, such as Intergovernmental Panel on Climate Change 1.5°C-aligned pathways. They should also be considered cumulatively with other existing and planned future projects in a global context.



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