THE ICJ ADVISORY OPINION ON CLIMATE CHANGE: APPLICABLE LAW, *LEX SPECIALIS*, AND THE STANDARD OF DUE DILIGENCE

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Abstract: The 2025 ICJ Advisory Opinion on Climate Change marks a milestone in international law, clarifying States' obligations under both treaties and customary law. It situates the "climate change treaty framework" within the wider corpus of international law, reaffirming duties such as prevention of significant environmental harm and cooperation. Rejecting claims that climate treaties form a self-contained *lex specialis* regime, the Court emphasizes their complementarity with general norms. It also extensively discusses the stringent due diligence standard, which elevates COP decisions and constrains States' discretion in setting NDCs under the Paris Agreement. Ultimately, the Opinion provides a coherent legal roadmap, combining clarity with practical guidance to strengthen accountability and global climate action.

Resumé: Poradní posudek Mezinárodního soudního dvora ke změně klimatu z roku 2025 představuje milník v mezinárodním právu, který objasňuje povinnosti států vyplývající jak ze smluv, tak z obyčejového práva. Zasazuje „rámec smluv o změně klimatu" do širšího korpusu mezinárodního práva a znovu potvrzuje povinnosti, jako je prevence významných škod na životním prostředí a spolupráce. Soud odmítá tvrzení, že smlouvy o klimatu tvoří samostatný režim *lex specialis*, a zdůrazňuje jejich komplementaritu s obecnými normami. Rozsáhle se také zabývá přísným standardem náležité péče, který povyšuje postavení rozhodnutí konference smluvních stran a omezuje uvážení států při stanovování vnitrostátně stanovených příspěvků (NDC) v rámci Pařížské dohody. Posudek v konečném důsledku poskytuje ucelený právní plán, který kombinuje jasnost s praktickými pokyny k posílení odpovědnosti a globálních opatření v oblasti klimatu.

Key words: climate change obligations, Paris Agreement, *lex specialis*, due diligence.

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Introduction

On 23 July 2025, the International Court of Justice (ICJ) delivered its long-awaited advisory opinion on States' climate change obligations—a decision that has been praised as "historic", "visionary" and "bold."[1] The request for the opinion originated with the University of the South Pacific, located in a region acutely vulnerable to the impacts of climate change. What began as a classroom assignment evolved in 2019 into the Pacific Island Students Fighting Climate Change (PISFCC), a youth-led initiative advocating for

[1] H. E. President Nataša Pirc Musar in 'A Verdict for the Planet: Legal and Political Reflections on the ICJ Climate Ruling', *YouTube* (25 July 2025) <https://www.youtube.com/watch?v=3_seCOWRi-U> accessed 3 August 2025.

clarification of States' obligations under international law in view of the existential risks posed by sea-level rise.[2]

In September 2021, the Republic of Vanuatu announced its intention to pursue an advisory opinion from the ICJ and initiated efforts to build support within the United Nations General Assembly (UNGA).[3] Assisted by a core group of eighteen States,[4] Vanuatu introduced a draft resolution in 2023 that incorporated inputs from all geographic regions and from over 1,700 civil society organizations.[5] On 29 March of the same year, the UNGA adopted Resolution 77/276 ("the Resolution"),[6] co-sponsored by 132 States, formally requesting an advisory opinion from the Court on States' legal duties in relation to climate change.[7]

The Resolution asks the Court to pronounce on the following:

> "Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,
>
> (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?

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2 Pacific Island Students Fighting Climate Change, 'Our Journey' (*Pacific Islands Students Fighting Climate Change*, no date) <https://www.pisfcc.org/ourjourney> accessed 3 August 2025.

3 CARREON, Bernadette, 'Vanuatu to Seek International Court Opinion on Climate Change Rights', *The Guardian* (26 September 2021) <https://www.theguardian.com/world/2021/sep/26/vanuatu-to-seek-international-court-opinion-on-climate-change-rights> accessed 3 August 2025.

4 The eighteen drafting States are: Angola, Antigua and Barbuda, Bangladesh, Costa Rica, Germany, Liechtenstein, Federated States of Micronesia, Morocco, Mozambique, New Zealand, Portugal, Romania, Samoa, Sierra Leone, Singapore, Uganda, Vietnam and Vanuatu. 'UN General Assembly Seeks World Court Ruling on Climate Change' (*Human Rights Watch*, 29 March 2023) <https://www.hrw.org/news/2023/03/29/un-general-assembly-seeks-world-court-ruling-climate-change> accessed 3 August 2025.

5 Ibid.

6 Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, UNGA Res 77/276 (29 March 2023).

7 For the list of cosponsoring States, see UNGA Res 77/276, Resolutions and Decisions adopted by the General Assembly during its seventy-seventh session, Volume III, 31 December 2022 – 5 September 2023, General Assembly Official Records, Seventy-seventh session, Supplement No 49, UN Doc A/77/49 (Vol III).

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

The request was transmitted to the ICJ by the UN Secretary-General on 12 April,[8] and two years later, the Court has spoken.

Obligations of States in Respect of Climate Change[9] ("the Opinion") is a decision not only grounded in the law but also in climate science, with the Court recurringly referring to scientific "knowledge" and reports when interpreting States' obligations.[10] It further notes the "severe and far-reaching" consequences of climate change, including the risks it poses to "[h]uman life and health," ultimately framing climate change as an "urgent and existential threat."[11] Then, the Court sets out to identify the "applicable law" in order to clarify the content of States' climate change obligations (question *(a)*) and their legal consequences (question *(b)*). It interprets 1.5°C, rather than 2°C, as the primary temperature goal under the *Paris Agreement*, and for the first time qualifies certain non-peremptory climate obligations as *erga omnes*.[12] The Court also observes, for instance, that restitution may include the restoration of ecosystems and biodiversity.[13] In other words, the ICJ casts as broad a net as possible and weaves a tapestry of interdependent obligations in support of the protection of the climate system from greenhouse gas (GHG) emissions.

It would be naïve to suggest that this brief contribution could address in depth the Court's comprehensive 140-page Advisory Opinion. Accordingly, some choices must be made, and this contribution will focus on three key points: the Court's analysis of what it considers the most relevant rules of international law in the context of climate change (1); its approach to the *lex specialis* maxim (2); and the legal implications of the due diligence standard, particularly in relation to the *Paris Agreement* (3).

1. The "most relevant" law applicable to climate change

The Court begins its analysis under question *(a)* by identifying the body of "applicable law" against which States' climate change obligations must be assessed. It observes that the broad reference to "international law" requires consideration of obligations arising from "the entire corpus of international law."[14] At the same time, it underlines that

> "while indicating that a wide range of international legal rules and principles are potentially relevant, [this] does not mean that the General Assembly requests the Court to address every rule of international law […] in respect of climate change."[15]

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8 Request for Advisory Opinion transmitted to the International Court of Justice pursuant to UNGA Res 77/276 of 29 March 2023, *Obligations of States in Respect of Climate Change* (2023) General List No 187, Letter from the Secretary-General of the United Nations to the President of the International Court of Justice, 12 April 2023.

9 *Obligations of States in Respect of Climate Change* (Advisory Opinion) ICJ Rep 2025 (23 July).

10 See e.g. how the Court highlights the role of the Intergovernmental Panel on Climate Change's reports. Ibid, paras 72-87.

11 Ibid, para 73.

12 Ibid, paras 440 et seq. Prior to this Opinion, outside of *jus cogens* norms, the Court only referred to *erga omnes partes* obligations.

13 Ibid, para 451.

14 Ibid, para 98.

15 Ibid, para 114.

The Court therefore confines its examination to the "most directly relevant applicable law," many elements of which had already been highlighted in UNGA Resolution 77/276.[16]

The Court first mentions the *United Nations Charter*, which it describes as "a pillar of contemporary international law."[17] It recalls that the Charter imposes obligations on all UN Member States which must be carried out in good faith, including when dealing with "problems of common concern, such as climate change."[18] It also identifies the *UN Convention on the Law of the Sea*[19] (UNCLOS), together with "core human rights treaties" and customary human rights law, as directly relevant to the issue.[20] In addition, the Court considers a series of other multilateral environmental agreements referenced in the *chapeau* of Resolution 77/276, such as the *Vienna Convention* and *Montreal Protocol* on ozone protection,[21] the *Convention on Biological Diversity,[22] and the UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*[23]. Acknowledging that other sectoral and regional treaties may also apply, the Court emphasizes that its analysis is limited to the "most relevant" rules of international law.[24]

Therefore, the Court singles out three treaties as forming the "climate change treaty framework": the *UN Framework Convention on Climate Change* (UNFCCC),[25] the *Kyoto Protocol*,[26] and the *Paris Agreement*.[27] Taken together, these instruments are described as "the principal legal instruments regulating the international response to the global problem of climate change."[28] The Court further underscores their complementarity: the UNFCCC sets out the "ultimate objective" and establishes "basic principles and general obligations," while the *Kyoto Protocol* and the *Paris Agreement* "translate" those principles into concrete, interrelated commitments.[29] Notably, the ICJ clarifies that the *Kyoto Protocol* continues to produce legal effects despite the non-extension of its commitment periods.[30]

The Court then turns to customary international law, identifying two obligations of particular relevance: the duty to prevent significant environmental harm and the duty to cooperate in protecting the environment. The duty of prevention, it explains, extends beyond

16 Ibid.

17 Ibid, para 115.

18 Ibid.

19 UN Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

20 Advisory Opinion, paras 124 and 145.

21 Vienna Convention for the Protection of the Ozone Layer (adopted 22 March 1985, entered into force 22 September 1988) 1513 UNTS 293; Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3.

22 Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79.

23 UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (adopted 17 June 1994, entered into force 26 December 1996) 1954 UNTS 3.

24 Advisory Opinion, para 130.

25 UN Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

26 Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

27 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 3.

28 Advisory Opinion, para 116.

29 Ibid, para 120.

30 Ibid.

transboundary harm to encompass "global environmental concerns."[31] This duty requires States to act with due diligence.[32] As for cooperation, the Court draws on the *UN Charter*, *UNGA Resolution 2625 on Friendly Relations*,[33] on its own jurisprudence, and on decisions of the International Tribunal for the Law of the Sea to assert its legal nature.[34] It observes that cooperation is thus found in numerous legal instruments, binding and non-binding alike, and has crystallized into a customary obligation.[35] Moreover, the ICJ remarks that cooperation and prevention are two intrinsically linked duties since "unco-ordinated individual efforts by States may not lead to a meaningful result."[36]

Finally, the Court considers whether additional principles invoked by participants are directly relevant to the obligations at issue. It recognizes the relevance of the principles of sustainable development, common but differentiated responsibilities and respective capabilities, equity, intergenerational equity, and the "precautionary principle or approach;"[37] all of which appear in the UNFCCC as interpretive and implementation guides.[38] The Court does not go as far as including the "polluter pay" principle as a tenet of the relevant body of law as, by contrast, it is neither embedded in the climate change treaties nor yet accepted as customary international law.[39]

2. The rejection of the *lex specialis* argument

During the ICJ proceedings, several predominantly industrialized, high-emission States argued that the climate change treaties constitute a self-contained *lex specialis* regime, which would effectively displace other rules of international law under the maxim *lex specialis derogat legi generali*.[40] The Court, however, rejects this narrow characterization, emphasizing that these agreements operate alongside, rather than in place of, States' broader international obligations.[41]

In addressing this argument, the Court provides a detailed methodology for applying the *lex specialis* principle, drawing not only on its own jurisprudence but also on the work of the International Law Commission (ILC).[42] It then applies this methodology to the relationship between the climate change treaties and the other rules of international law identified earlier in the Opinion.

31 Ibid, para 134.

32 Ibid, paras 135-137. Also see *infra* section 4 on Due diligence.

33 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625(XXV).

34 Advisory Opinion, para 140.

35 Ibid.

36 Ibid, para 141.

37 The Court referred to "the precautionary approach or principle" without pronouncing on its legal status. See *e.g.* Advisory Opinion, section IV, sub-section A, 7, (e).

38 Advisory Opinion, para 146 et seq.

39 Ibid, para 160.

40 Japan, Written Statement submitted to the International Court of Justice in *Obligations of States in Respect of Climate Change* (Advisory Opinion, 23 July 2025) paras 14–15; Russia, ibid, 20; USA, ibid, 70–71.

41 Advisory Opinion, para 171.

42 See e.g., ibid, para 165 where the Court refers to Conclusions of the work of the ILC Study Group on the Fragmentation of International Law: Difficulties Arising from Diversification and Expansion of International Law, *Yearbook of the International Law Commission* 2006, Vol II, Part Two, Conclusion 4.

The Court first notes that when several rules bear on a single issue, they should, where possible, be interpreted to produce "a single set of compatible obligations."[43] Notably, it emphasizes that the *lex specialis* maxim should not be seen as an automatic instrument for sidelining general rules; rather, it is an interpretive principle that guides how specific and general norms interact.[44] Its legal effect will vary depending on the circumstances of its invocation: in some cases, a specific rule may prevail, while in others it functions as a refinement of the general rule, with the broader principles continuing to shape its scope and application.[45]

In practice, the Court reaffirms the high standard set by the ILC in its *Articles on State Responsibility*[46] (ILC *Articles*): for one rule to displace another, there must be either an actual "inconsistency" between the rules or a "discernible intention" of the parties that one rule should prevail over the other.[47] Applying this framework to the climate change treaties, the Court finds neither inconsistency nor such an intention. On the contrary, the preambles of the UNFCCC and *Paris Agreement* explicitly refer to other rules and principles of international law, indicating that States accept the complementary role of the wider legal framework in addressing climate change.[48]

Building on its reasoning, the Court later reapplies the same methodology when identifying the secondary rules governing State responsibility for breaches of climate change obligations. From the outset, it acknowledge States' right to adopt specific responsibility regimes that derogate from the customary rules—most of which are codified in the ILC *Articles*.[49] The main issue then bears on the scope of the *lex specialis*: treaties may establish self-contained regimes that partially or wholly modify customary rules on responsibility, or they may address specific elements, such as excluding particular forms of reparation. In the context of the Opinion, the Court confirms that while States may derogate from customary rules under certain circumstances, such derogation must also meet the ILC's high threshold: there must be an actual inconsistency or a discernible intention to displace the customary rule. Finding neither in the present case, the Court concludes that

> "responsibility for breaches of obligations under the climate change treaties, and in relation to the loss and damage associated with the adverse effects of climate change, is to be determined by applying the well-established rules on State responsibility under customary international law."[50]

43 Ibid.

44 Ibid, para 166.

45 Ibid.

46 ILC, *Responsibility of States for Internationally Wrongful Acts: Text Adopted by the Commission at its Fifty-Third Session* (2001) UN Doc A/56/49 (Vol I)/Corr 4, art 55. Also see the ILC's Commentary of Article 55, ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001) UN Doc A/56/10, art 55.

47 Advisory Opinion, para 167.

48 Ibid, para 168.

49 Ibid, para 411.

50 Ibid, para 420.

3. The legal implications of due diligence

Among the cornucopia of international obligations discussed by the Court, one emerges with particular prominence: due diligence. Although the Court does not quite frame it as a standalone obligation, it presents it as "the required standard of conduct" by which the faithful performance of other duties, most notably the obligation to prevent significant environmental harm, is to be assessed.[51]

From the outset, the Court's approach to due diligence offers little novelty. For the most part, it reaffirms its prior jurisprudence, underscoring that States must "use all the means at [their] disposal" to fulfill their international obligations.[52] In assessing the threshold of due diligence, the Court considers a range of factors, including the extent to which the State took scientific and technological information into account, its capabilities, the risk of causing harm, and the urgency of the situation.[53] It further reasserts that due diligence encompasses not only substantive measures but also procedural obligations, such as conducting proper environmental impact assessments and consulting and sharing information with other States.[54]

Accordingly, due diligence must be assessed *in concreto*,[55] as the standard applicable to a State will vary with circumstances. Climate change is a multifaceted challenge, and neither scientific knowledge nor technological capacity is static. As both evolve, so too does what can reasonably be expected of States. The Court thus describes due diligence as a "variable" and "evolving" standard, to be evaluated in context.[56]

This, however, does not prevent the Court from bringing attention to the very "stringent" nature of the due diligence standard.[57] For instance, the Court does not consider it sufficient for a State to comply only with legally binding norms, such as those found in treaties or customary international law.[58] States may also be held to non-legally binding standards, including decisions of the Conferences of the Parties (COP) to the climate change treaties and recommended technical norms and practices.[59]

By grounding COP decisions in the customary duty of due diligence, the Court enhances their normative weight, confirming that they are not merely political instruments, but tools that help interpret and delineate the contours of States' legal obligations. One example is the Court's observation that, while

> "the Paris Agreement provides for limiting the global average temperature increase to well below 2°C above pre-industrial levels as a goal and 1.5°C as an additional effort, 1.5°C has become the scientifically based consensus target under the Paris Agreement."[60]

51 Ibid, paras 135–36.
52 Ibid, para 175.
53 Ibid, paras 136, 250.
54 Ibid, paras 295, 299.
55 Ibid, para 136.
56 Ibid, para 300.
57 Ibid, para 138. Here the Court reiterates the findings of the ITLOS in its 2024 advisory opinion on Climate Change, *Climate Change* (Advisory Opinion) ITLOS Rep 2024, paras 241, 243, 248, 398–400 and 441.
58 Ibid, para 287.
59 Ibid.
60 Ibid, para 224.

For this reason, 1.5°C must be understood as the legally binding temperature goal under the Agreement.[61]

The ICJ further refers to the due diligence standard in support of the achievement of this goal. It affirms that the obligation limits States Parties' discretion in setting their nationally determined contributions (NDCs) under the Agreement, and concludes that NDCs must thus reflect the "highest possible ambition" of the Parties in making an adequate contribution to achieving the 1.5°C temperature objective.[62]

This integration of due diligence into NDC obligations constitutes a substantial contribution by the Court to the fight against climate change. It addresses a key weakness in the *Paris Agreement*'s system, namely the lack of objective mechanism to evaluate the fairness and adequacy of States' NDCs.[63] Now, States must actively pursue the 1.5°C goal when establishing their NDCs. It means they must *inter alia* adopt the national legislations, administrative procedures, and enforcement mechanisms necessary to regulate GHG-emitting activities effectively.[64]

Consequently, these rules and measures must govern not only the conduct of public operators but also that of private actors within the State's jurisdiction or control.[65] By extension, because States are required to regulate private activities as part of their due diligence obligations, they may also be held indirectly responsible for private conduct where they fail to adopt such necessary regulatory measures to limit emissions.[66] However, this does not alter the customary rules of attribution of conduct to the State for purposes of international responsibility: here, responsibility arises from the State's failure to meet its diligence obligations, not from the private actors' conduct *per se*.

Finally, the Court masterfully implies, in a roundabout manner, that States not party to climate change treaties may be indirectly held to their standards.[67] The Court acknowledges that climate change treaties themselves create obligations only for parties. Nonetheless, compliance with these obligations is assessed against the customary stringent standard of due diligence, which applies to all States. The treaties' objectives therefore help define the scope of appropriate conduct with regard to meeting States' climate obligations. Accordingly, a non-party State that cooperates and aligns its practice with treaty standards may be considered diligent. Conversely, a State that disregards these standards bears the "full burden" of demonstrating that its conduct complies, not with relevant treaties *per se*, but with its general duty of due diligence.[68] In effect, the Court incentivizes non-parties to cooperate and adopt the best practices established in climate change treaties, thus reducing the risk of being found internationally responsible under customary law.

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61 Ibid, paras 224-25. The Court grounds its interpretation of the Agreement's temperature goal in Article 31(3)(a) of the Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

62 Ibid, paras 242 and 246.

63 'The ICJ's Advisory Opinion on Climate Obligations: Remarkable, Radical and Robust' (Podcast, EJIL: The Podcast!, 30 July 2025) <https://player.captivate.fm/episode/e48c88df-1d3f-47ad-81b4-0d298daab189> accessed 8 August 2025.

64 Advisory Opinion, paras 281-82.

65 Ibid.

66 Ibid, para 428.

67 Ibid, para 315.

68 Ibid, paras 315 and 409.

Conclusion

The ICJ's Advisory Opinion on Climate Change, provides unprecedented clarity on States' legal obligations to address climate change, well beyond actual participation in treaties. Although advisory opinions lack direct enforceability under Article 59 of the Court's Statute, they carry significant authority as pronouncements of the United Nations' principal judicial organ. They play a crucial role in clarifying and shaping international law by defining States' legal responsibilities and have historically influenced State behavior and contributed to the crystallization of emerging customary norms. To that extent, it is fair to say that the Opinion marks a milestone in international law.

In its pursuit of clarifying States' obligations in respect of climate change, the Court carefully selects and excludes obligations from diverse sources of law. The result is a meticulously woven tapestry of interdependent binding duties to which States remain beholden. In doing so, the ICJ particularly underscores the complementarity of these obligations, including within what it describes as the 'climate change treaty framework'.

At the same time, the Court also firmly rejects the argument that this framework constitutes a self-contained *lex specialis* regime that would otherwise exempt States from their obligations under other sources of international law. It further emphasizes that States remain bound by customary rules on State responsibility, thereby confirming their continued relevance even in the complex context of climate change. Here, the ICJ draws heavily on the ILC's work, reaffirming the high standard set out in Article 55 of the *Articles on State Responsibility*, and further consolidating the ILC's role in the systematization of international law.

Another notable aspect of the Opinion is the Court's articulation of due diligence. This evolving and context-specific standard governs both substantive and procedural measures, with legal implications that extend to private actors under State jurisdiction. By grounding COP decisions and NDCs in due diligence, the Court enhances the normative weight of non-binding instruments, incentivizes cooperation, and addresses a structural weakness in the *Paris Agreement*'s implementation mechanism.

Ultimately, the Opinion provides a comprehensive legal roadmap for climate action. It affirms that States' obligations are both binding and actionable under international law, requiring proactive, coordinated, and accountable measures. The Court thus combines legal clarity with a practical framework, guiding States toward effective global action to prevent, mitigate, and remedy the impacts of climate change. Yet, as the Court emphasizes, "[a]bove all, a lasting and satisfactory solution requires human will and wisdom—at the individual, social and political levels—to change our habits, comforts and current way of life in order to secure a future for ourselves and those who are yet to come."

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