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Leveraging the ICJ Advisory Opinion on Climate Change: Strategic Implications for Bangladesh

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Bangladesh's Participation in the ICJ Climate Change Advisory Proceedings:

As a Bay of Bengal nation, Bangladesh faces many of the same climate risks as India, Thailand, Indonesia, Sri Lanka, and Myanmar— including rising sea levels, cyclones and storm surges, and extreme precipitation events. Yet, its uniquely low-lying deltaic geography, exceptionally high population density, and poverty-driven reliance on climate-sensitive livelihoods render it disproportionately more vulnerable than its regional peers.

Against the backdrop of escalating climate vulnerability, Bangladesh has sought to contribute to the global legal discourse through its participation in the ICJ advisory proceedings on climate change (Das Gupta and Khan).

This post examines the Advisory Opinion from Bangladesh's perspective. It explores how Bangladesh framed its legal position in the advisory proceedings, tailoring its arguments to reflect its unique vulnerabilities and regional concerns. The Court's interpretation of the advisory questions closely mirrored Bangladesh's framing, thereby reinforcing its stance. This alignment provides Bangladesh with strategic leverage in invoking the Advisory Opinion within its climate diplomacy—strengthening its calls for cooperation, support, and enhanced ambition from major emitters, while advancing its national climate governance agenda.

The analysis proceeds in three parts. First, it compares Bangladesh's framing of the advisory questions with that of the small island developing states (SIDS). Second, it examines how and why the Court's interpretation of the advisory questions reflected Bangladesh's position, and the strategic advantages this offered. Finally, it considers how Bangladesh may leverage the Advisory Opinion in the future to advance its climate governance agenda within the Bay of Bengal and beyond.

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Bangladesh's Framing of the Advisory Questions:

The request for the Advisory Opinion originated with a core group of states led by Vanuatu, advanced through deliberation and authorization by the UN General Assembly (UNGA Resolution), and culminated in the ICJ's interpretation and issuance of its Advisory Opinion (CCAO). Bangladesh contributed to the framing of the advisory questions as a member of the core group, supported the relevant resolution in the UN General Assembly, and later tailored its written and oral submissions before the Court to reflect its distinctive climate vulnerabilities and regional concerns.

On the question of states' primary obligations, Bangladesh urged the Court to deliver a strong pronouncement on the mitigation duties of all states —particularly high emitters— as a means of addressing the root causes of climate change and its harmful impacts. This position was reflected in its emphasis on the 1.5 °C threshold as a consensus target and on the fundamental duties of high-emitting states, including the duty of prevention and the duty of due diligence. Likewise, Bangladesh stressed the urgent need for all states to phase out fossil fuels, while recognizing the necessity of a longer transition corridor for developing countries. This aspect of Bangladesh's position paralleled that of SIDS, like Vanuatu, Samoa, and Antigua and Barbuda (e.g. Written statement of the Commission of Small Island States (COSIS))

Bangladesh also requested the Court to affirm the obligation of cooperation by major emitters in assisting specially affected states, such as Bangladesh, with the implementation of mitigation and adaptation measures. Measures such as the loss and damage fund, climate finance, technology transfer were presented as essential for confronting the consequences of climate change and ensuring climate resilience in vulnerable regions.

By contrast, on the question concerning the legal consequences of breaching primary obligations, Bangladesh asked the Court to affirm that states *may* incur responsibility for violations of climate obligations, but refrained from requesting that the Court specify the precise mechanisms by which such responsibility—including for presumed harm—should be enforced.

In this respect, Bangladesh's stance diverged from that of SIDS (Cf. Written statement of COSIS; Written statement of Vanuatu; Judge Yusuf), but aligned with the positions advanced by India (Written statement, paras. 80–90), Thailand (Written statement, paras. 29–31), and Sri Lanka (Written statement, paras. 59–88). Taken together, these submissions from the Bay of Bengal nations articulated a regional consensus emphasizing proactive cooperative support, while leaving the contours of legal responsibility more open-ended.

The ICJ's Interpretation of the Advisory Questions and Its Strategic Advantages for Bangladesh:

The International Court of Justice (ICJ) interpreted the advisory questions as requiring it "to identify the obligations of States in respect of activities that adversely affect the climate system, as well as the legal consequences arising from the breach of these obligations" (CCAO, para. 9). In doing so, the Court did not frame its answers around specific categories of states—such as major emitters or specially affected states like SIDS and LDCs. This marked a departure from the text of the questions in the UNGA Resolution (Vice- President Sebutinde, para. 4; Judge Yusuf, para. 4).

The Court's reasoning was anchored in the overarching objective of the climate regime: stabilizing greenhouse gas concentrations to prevent dangerous anthropogenic interference (UNFCCC, Article 2). Central to this objective is the obligation of mitigation (CCAO, para. 200). Focusing solely on the rights of specially affected states would do little to advance mitigation, given their negligible emissions. Conversely, emphasizing only the accountability of major emitters could diminish the role of middle-range states, creating selective disincentives for climate action. By balancing these considerations, the Court sought to reinforce individual accountability of all states and to mobilize political will for climate change action.

The Court addressed climate justice concerns through the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), describing it as the "core guiding principle for the implementation of the climate change treaties." The principle acknowledges both the historical responsibility of certain states and the differing expectations of measures across states (CCAO, para. 148, Written statement of Bangladesh, para. 129). The Court considered CBDR-RC relevant for treaty interpretation and customary law identification but stopped short of treating it as generative of new obligations (CCAO, para. 151; cf. Judge Xue, para. 3).

This approach not only closely aligns with Bangladesh's written submissions but also carries practical benefits for Bangladesh and other specially affected states within the Bay of Bengal region and beyond. By emphasizing obligations of all states rather than a select few, the Court provides Bangladesh and other climate-vulnerable nations with a stronger basis to invoke legal commitments in support of climate justice. Bangladesh may rely on its own legal duties as requiring cooperation from other states (as reflected in its Third Nationally Determined Contribution) and directly invoke the duties of states with greater capabilities, without being confined to categories such as "major emitters."

The Court's framing of obligations induces all states, including regional powers such as India and China, to scale up their mitigation efforts and to cooperate meaningfully with states with fewer capabilities, including through loss and damage mechanism, climate finance, technical assistance, and technology transfer. Crucially, the Court's reasoning underscores that arguments based on low historic emissions or low per capita emissions cannot serve as a shield against responsibility, thereby reinforcing the expectation of meaningful action from all states regardless of their emission profiles.

Had the Court recognized CBDR-RC as generative of new legal duties, states could have opened a Pandora's box of interpretations—either imposing novel obligations on others or shielding themselves from existing ones. By limiting CBDR-RC to its role *infra legem*, the Court safeguarded against discretionary climate justice claims.

Had the Court concentrated exclusively on the rights of specially affected states, Bangladesh might have struggled to leverage the Advisory Opinion after its forthcoming graduation from LDC status. Instead, the Opinion reassures Bangladesh that, as a developing state, it will continue to benefit from the special treatment afforded under climate treaties, while also gaining a stronger basis to demand cooperation and support from states with greater capabilities.

Strategic Use of the Advisory Opinion by Bangladesh:

By clarifying the duties of states and the consequences of their breach, the Advisory Opinion sends a strong normative signal: climate change obligations are not merely moral but legal, and state discretion in interpreting and implementing them is bounded. Compliance can be subject to objective assessment, and breaches entail legal consequences. The Opinion thus represents a meaningful contribution towards mobilizing political will for collective and individual action to confront climate change and its consequences—much of which must ultimately be carried out by the judiciary, legislature, and executive within each State (President Iwasawa, p.6).

For climate-vulnerable countries such as Bangladesh, the Advisory Opinion provides a reinforced legal and moral foundation to advance claims for support in mitigation, adaptation, and climate-resilient development. Used as a tool in climate diplomacy, it can strengthen Bangladesh's pursuit of climate justice and bolster demands for greater ambition from major emitters in line with the 1.5°C pathway.

Bangladesh's active participation in the proceedings, coupled with its subsequent reliance on the Opinion in its Third Nationally Determined Contribution, illustrates how the Advisory Opinion can be operationalized to advance national priorities while simultaneously reinforcing global commitments under the Paris Agreement.

Looking ahead, Bangladesh will determine its own strategic path in drawing upon the Advisory Opinion. One promising avenue is to employ it as a source of moral leverage in climate negotiations. As Bangladesh graduates from LDC status, the Opinion may assume an even more prominent role in shaping its position within global climate governance, offering both continuity of special treatment under climate treaties and a stronger platform to demand cooperation and support from states with greater capabilities.

Should Bangladesh choose to rely on the Advisory Opinion as the basis for legal claims in diplomatic or judicial settings, careful attention will be required to the purpose of such reliance and its potential countereffects (Judge Nolte, paras. 31–32). Because global climate governance ultimately depends on cooperation, any legal claim must be advanced in ways that reinforce collective efforts.

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