

Fury as US argues against climate obligations at top UN court

US says current climate rules are satisfactory, prompting condemnation from activists and vulnerable countries

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US officials at the international court of justice in The Hague on Wednesday. Photograph: Robin van Lonkhuijsen/EPA

Climate justice campaigners have condemned the US after the world's largest historic greenhouse gas emitter argued against countries being legally obliged to combat the climate crisis.

The US intervention came on Wednesday as part of the historic climate hearing at the international court of justice (ICJ) in The Hague, where island nations and other climate-vulnerable countries are calling for wealthy polluting nations most responsible for climate breakdown to be held legally responsible.

Climate disasters are wreaking havoc across the planet, with dwindling hope of the current climate pledges curtailing global temperatures as the US and other fossil fuel nations continue to expand production.

Yet according to the US, the United Nations framework convention on climate change (UNFCCC) and 2015 Paris agreement and other existing non-binding treaties should be preserved and are the best way forward.

The current UN climate change regime “embodies the clearest, most specific, and the most current expression of states’ consent to be bound by international law in respect of climate change”, Margaret Taylor, legal adviser at the state department, told the ICJ judges on Wednesday.

“Any other legal obligations relating to climate change mitigation identified by the court should be interpreted consistently with the obligations states have under this treaty regime,” added Taylor.

Climate justice activists responded with fury.

“Once again, we witness a disheartening attempt by the US to evade its responsibilities as one of the world’s largest polluters,” said Vishal Prasad, director of Pacific Islands Students Fighting Climate Change. “The US is content with its business-as-usual approach and has taken every possible measure to shirk its historical responsibility, disregard human rights and reject climate justice.”

Ashfaq Khalfan, Oxfam America’s climate justice director, said: “It is absurd for the Biden administration to argue before the ICJ that countries do not have clear legal obligations to reduce carbon pollution, especially as it prepares to turn over the executive office to a proven climate denier like president-elect Trump, whose policies are likely to deeply harm US climate action.”

Australia, China and Saudi Arabia – major fossil fuel economies and among the world’s worst greenhouse gas emitters – also argued against legal accountability that developing nations are pushing for.

After years of campaigning by vulnerable nations and the global climate justice movement, the UN asked the ICJ to provide an advisory opinion on what obligations states have to tackle climate change and what the legal consequences could be if they fail to do so. More than 100 countries and organisations are testifying over the course of two weeks, and many hope the hearings will elevate science to the forefront, ensuring international law reflects the realities of climate breakdown and the urgent need for transformative action.

ICJ advisory opinions are non-binding but carry significant legal and political weight, and this will likely be referred to as an authoritative document in future climate litigation and during international climate negotiations.

Those most vulnerable to climate change – predominantly Pacific nations led by Vanuatu – are pushing for fair financial support and compensation for irreversible loss and damage from the states most responsible as they face an existential threat from rising tides, floods, drought and other climate disasters.



Handful of countries responsible for climate crisis, top court told

On Wednesday, Vanuatu’s special envoy for climate change, Ralph Regenvanu, said his country was “disappointed” at the US and others. “These nations, some of the world’s largest greenhouse gas emitters, have pointed to existing treaties and commitments that have regrettably failed to motivate substantial reductions in emissions ... these treaties are essential, but they cannot be a veil for inaction or a substitute for legal accountability.”

Taylor also appeared to dismiss the idea that the ICJ should propose in its opinion that historic emitters be held responsible for past pollution. “An advisory proceeding is not the means to litigate whether individual states or groups of states have violated obligations pertaining to climate change in the past or bear responsibility for reparations ... nor would it be appropriate to do so,” she said.

The ICJ is one of three international courts tasked with producing an advisory opinion on the climate crisis, alongside the international tribunal for the law of the sea (Itlos) and the inter-American court of human rights. Itlos found earlier this year that greenhouse gases are pollutants which states have a legal responsibility to control – that goes beyond the UNFCCC. The inter-American court held hearings in Barbados and Brazil this year and is expected to be the next to publish its opinion. The ICJ ruling will likely take many months.