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COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW

States' obligation to conduct environmental impact assessment

Lessons from international advisory opinions on climate change, and legislation and regulation around the world

Policy insight

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Summary

This policy insight analyses what the international legal obligation to conduct environmental impact assessments (EIAs) entails in the context of climate change. It presents the findings of the recent advisory opinions from the International Tribunal for the Law of the Sea (ITLOS) and the International Court of Justice (ICJ). These opinions reaffirm that EIAs form a core element of states' due diligence obligations to prevent significant environmental harm, including harm to the climate system and the marine environment. This obligation extends beyond states' national borders.

EIA is a formal evaluation process to understand the environmental impact of a proposed public or private activity. Embedded in more than 180 domestic legal regimes, EIA is a nearly ubiquitous tool of environmental governance. However, many domestic legal regimes governing EIA processes ('EIA regimes') are silent on the assessment of climate-related impacts. This lack of clear guidance creates uncertainty and may lead to contestation in courts. Some states have begun to address this problem, explicitly integrating climate-related impact assessment into existing EIA regimes through legislation or regulation. Approaches adopted include:

- **Cumulative impact assessment:** Since the contribution of greenhouse gas emissions to climate change is cumulative, legislation can require that when a project's emissions are assessed it takes into consideration emissions from other existing projects, projects that have been approved but not yet been implemented, and reasonably foreseeable future activities. Where relevant, the assessment should consider the cumulative impacts on the marine environment.
- **Considering Scope 3 emissions:** For high-emitting projects, such as fossil fuel development, a project's 'indirect' Scope 3 emissions should be considered against global emissions pathways.
- **Ensuring consistency with national climate commitments:** Most states have adopted domestic climate change laws and policies and, under the Paris Agreement, submitted nationally determined contributions (NDCs) that set out emissions-reductions commitments. Legislation can require decision-makers to consider whether a proposed project is consistent with national climate laws, policies and commitments to reduce greenhouse gas emissions.
- **Involving climate authorities:** Legislation may require consultation with climate change authorities during EIAs of projects with significant climate implications. This can help decision-makers to access relevant expertise on emissions, climate risks and climate policy.
- **Introducing assessments of vulnerability and adaptation measures:** Projects can be assessed for their vulnerability to the effects of climate change, and requirements for adaptation can be introduced to mitigate physical climate-related risks, including risks to local communities.

Policy recommendations for strengthening EIA frameworks

Drawing on existing state practice, we identify the following legislative and regulatory options for states to strengthen domestic EIA frameworks and better align them with requirements under international law:

1. Legislators should adopt or amend EIA legislation and regulations to explicitly require the assessment of climate impacts, particularly from high-emitting projects.
2. Regulators and relevant public authorities should develop detailed rules, methodologies and technical guidance to integrate climate considerations throughout the EIA process.
3. Governments should provide sufficient institutional capacity, technical expertise and financial resources to enable the effective implementation and enforcement of EIA requirements.
4. Legislators and regulators should ensure that climate adaptation and resilience measures are adequately considered and addressed in EIAs.

1. Introduction

This policy insight aims to help legislators, policymakers and other stakeholders understand how recently clarified climate-related environmental impact assessment (EIA) obligations can be implemented in domestic frameworks. Developed in collaboration with the Commission of Small Island States on Climate Change and International Law (COSIS), it builds on a recent report from the Grantham Research Institute evaluating climate impact assessment across 20 EIA regimes in Latin America and Asia (Bradeen et al., 2026).

EIA is a formal evaluation process requiring the assessment of the environmental impact of a projected activity, such as the building of new transport infrastructure, housing development or industrial facilities (see Box 1.1). The use of EIAs is embedded in more than 180 domestic legal regimes around the world, and it has become a near-ubiquitous tool of international environmental governance (Yang, 2019). Yet, at the domestic level, relatively few EIA laws explicitly require the assessment of the contribution of a projected activity on climate change. This means states consider climate change-related impacts of activities inconsistently. As a result, development and planning decisions may not be aligned with the need to address climate change and may lack resilience to extreme weather or climate events.

Recent advisory opinions from the International Tribunal for the Law of the Sea (ITLOS) and the International Court of Justice (ICJ) reaffirm that EIAs are a core element of states' due diligence obligations to prevent significant environmental harm under international law. Such EIAs must consider environmental impacts beyond national borders, including harm to the global climate system and the marine environment caused by greenhouse gas emissions.

Assessing the vulnerability of planned projects to future climate-related risks, for example assessing the vulnerability of a planned coastal infrastructure project to sea-level rise, is arguably consistent with states' adaptation obligations. The ICJ and ITLOS advisory opinions do not discuss vulnerability assessment as part of the obligation to conduct an EIA. Nonetheless, as adaptation must form part of states' climate policy responses, we include an analysis of the role of EIAs in furthering the adaptation agenda in this policy insight.

Box 1.1. Environmental and climate impact assessments – definitions

Environmental impact assessment is the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of projects or development proposals on the environment (adapted from the International Association for Impact Assessment, n.d.). An EIA allows developers and decision-makers to consider a full range of facts and mitigation options before undertaking actions with significant impacts on the environment. In simple terms, an EIA seeks to answer the question: 'What environmental impacts is this project likely to have, and how can those be avoided, reduced or mitigated?'

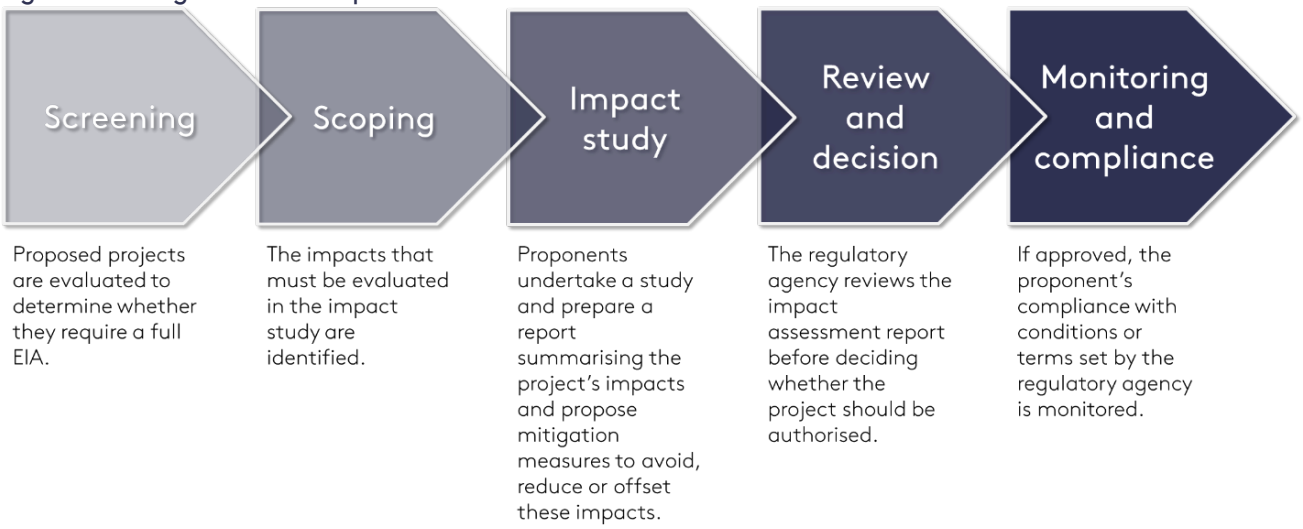
Climate assessment is the process of understanding a project's contribution to climate change, which is part of its broader impact on the environment, before a proposed project is approved (Mayer, 2024). In many cases, this should also extend to assessing the proposed project's vulnerability to future climate-related risk, such as extreme weather and droughts. To assess a project's impact on climate change, greenhouse gases emitted by a project must be calculated and quantified to determine how they may affect the climate system.

Existing domestic legal regimes governing EIA processes ('EIA regimes') may implicitly require assessment of a project's climate-related impacts. However, this may not be made explicit in the regime. As a result, many EIAs do not always adequately assess a project's greenhouse gas emissions and the associated climate-related impacts or the project's vulnerability to climate-related shocks. Legislators can address this omission by revising EIA regimes to make the requirement for climate impact assessment clearer, aligning it with international legal obligations and commitments, and contributing to stronger climate governance.

Overview of the environmental impact assessment process

The EIA process usually involves several stages of assessment (see Figure 1.1). In some cases, an EIA is carried out directly by a government agency. In others, a private developer may be required to perform and submit their own EIA, usually carried out by an independent entity. EIAs are typically applied to a specific project. This makes them different from strategic environmental assessments (SEAs), which apply to broader policies and programmes and require more systematic evaluation of environmental impacts. While we focus on EIAs in this insight, the discussion is also relevant to the broader environmental assessment regime, including SEAs.

Figure 1.1. Stages of the EIA process



Source: Originally published in Bradeen et al. (2026), and adapted from Mayer (2024), Byer et al. (2018) and Mayembe et al. (2023).

State practice is starting to evolve to incorporate consideration of the transboundary climate impacts of activities into national EIA processes. Well-designed EIAs can:

- Support the successful delivery of states' climate commitments: for example, recognising the important role EIA plays in climate and environmental governance, some countries have begun to adapt EIA regimes to require analysis of the greenhouse gas emissions that a project may emit over its lifetime, in addition to identifying measures to mitigate these (Mayer, 2025). It is particularly important to make these assessments for high-emitting sectors, as failing to account for these impacts may lock states into emissions-intensive development pathways (Bradeen et al., 2026).
- Help determine whether projects are well adapted to climate change to ensure resilience to climate-related shocks: although less widely recognised, assessing a project's vulnerability to changing temperatures and climate-related hazards, such as drought or flood risk, can help to ensure that a project is resilient to climate-related shocks (ibid.).

Structure of this policy insight

Section 2 outlines state obligations under international law to conduct EIAs in the context of climate change, drawing on the recent findings of ITLOS and the ICJ in their landmark climate change advisory opinions. This section includes a guest contribution from COSIS exploring the international legal framework governing EIAs and related procedural obligations, and pays specific attention to the assessment of greenhouse gas emissions' impact on the marine environment.

Section 3 explores different approaches to the integration of climate impact assessment into EIA frameworks, drawing on examples of state practice from the Climate Change Laws of the World database and other sources. These offer useful reference points for legislators seeking to revise their own laws.

In Section 4, we make recommendations to support legislators, regulators and relevant public authorities in aligning EIA regimes, projects and policies with climate commitments.

2. Overview of international obligations regarding EIAs

Contribution by the Commission of Small Island States[1]

Summary

The ITLOS and the ICJ recently issued landmark advisory opinions (AOs) on states' obligations to address climate change.[2] Both advisory opinions confirm that EIAs are an essential part of states' obligations to prevent environmental harm and clarify the obligation to conduct EIAs.

As further elaborated below, the ITLOS advisory opinion clarifies the following key points with respect to EIAs:

- **When is an EIA required?** Under the UN Convention on the Law of the Sea (UNCLOS), an EIA is required where there are reasonable grounds to believe that a planned activity may cause substantial pollution or significant and harmful changes to the marine environment. It must be undertaken before the activity is authorised and before the project is implemented, or before marine pollution caused by the activity or any incident spreads beyond the state's jurisdiction. Its purpose is preventive: it must be conducted early enough to identify risks to inform decision-making before environmental harm occurs.
- **Who is responsible for conducting the EIA?** The responsibility rests with the state exercising jurisdiction or control over the planned activity.
- **Which activities are covered?** Activities covered by EIAs include any activity by public or private actors carried out within a state's jurisdiction or control which may cause substantial pollution or significant and harmful changes to the marine environment.
- **What is the purpose of an EIA?** Its purpose is to identify risks to the environment and prevent environmental harm before it occurs. It is also to mitigate and adapt to the adverse effects of a project's emissions on the marine environment.
- **What should an EIA contain?** The precise scope and content of an EIA are determined by domestic law and may vary according to the nature of the activity, the magnitude of the project, the risks of adverse impact on the environment and the resources available to the state concerned. It may include direct, indirect and cumulative effects.
- **What source should inform the EIA?** The best available science.[3]

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[1] While this policy insight is published under the auspices of the Grantham Research Institute, this section was separately prepared by COSIS. The analysis and conclusions presented in this section are those of COSIS alone. They are provided for informational purposes and do not constitute legal advice or represent the official policy or position of any contributors to this policy insight.

[2] ITLOS advisory opinion on the *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Case No. 31), 21 May 2024 (ITLOS AO) and ICJ advisory opinion on the *Obligations of States in respect of climate change*, 23 July 2025 (ICJ AO).

The Inter-American Court of Human Rights which also delivered an AO in 2025, reached the same conclusion as the ITLOS and ICJ from the perspective of human rights. Since states must prevent environmental damage to the climate system, "environmental impact studies must explicitly include an assessment of the potential effects on the climate system". Projects "that imply the risk of generating significant GHG emissions must be subject to a climate impact assessment" (OC-32/25, paras 358-359). Domestic rules must be clear on, among other things, "how the results and the climate impact assessment process will be used to approve the proposed activities" (para. 361), allow public participation and, where appropriate, free, prior and informed consultation of Indigenous and tribal peoples (para. 514). It is worth noting that a fourth Advisory Opinion is forthcoming from the African Court on Human and Peoples' Rights, another regional court with limited jurisdiction, which may provide further clarification on states' EIA obligations in the context of climate change.

[3] Under customary international law, all states must assess the climate impacts of particularly significant proposed activities contributing to greenhouse gas emissions, using the best available science. This obligation concerns the climate system as a whole. See ICJ AO, paras 296-298.

- **What should happen after the assessment?** The assessment must be made public and accessible. States' obligation does not end there. States bear broad, ongoing responsibility to rigorously monitor the adverse effects of an authorised activity on the marine environment. They can conduct the monitoring themselves or ask international organisations to do so on their behalf.

Clarification regarding EIAs in the jurisprudence from 2010 to 2025

To put the recent ITLOS and ICJ advisory opinions into context, one must recall that in 2010, the ICJ in *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*,[4] provided a first clarification on the obligation for states to conduct EIAs. The ICJ then held that:

(i) Conducting an EIA is a customary obligation which applies to all states irrespective of their ratification of specific treaties

(ii) Not undertaking an EIA when there is a risk that a proposed industrial activity could cause significant transboundary adverse impact, in particular when a shared resource is concerned, is a failure of the state's obligation to exercise due diligence.[5] In 2015, the ICJ confirmed in the *Certain Activities Carried Out by Nicaragua* and *Construction of a Road in Costa Rica* cases, that all activities are concerned, not only industrial ones.[6]

Fourteen years on from *Pulp Mills*, in May 2024, the ITLOS recognised anthropogenic greenhouse gas emissions as a form of marine pollution under UNCLOS.[7] The Tribunal held that any planned activity which may cause "substantial pollution or significant and harmful change to the marine environment [...] through anthropogenic greenhouse gas emissions, including cumulative effects", must be subject to an EIA. The Tribunal held that states have specific obligations to monitor the risk, publish reports and conduct EIAs, as prescribed in UNCLOS. Compliance with these obligations constitutes a means of addressing marine pollution caused by anthropogenic greenhouse gas emissions and contributes to a state's fulfilment of its obligations set forth in Articles 194 and 192 of UNCLOS.[8]

Box 2.1. ICJ observations on the obligation of a state to conduct climate-related EIAs

The ICJ AO on the Obligations of States in respect of Climate Change, issued one year after the ITLOS advisory opinion, confirmed the Tribunal's interpretation of UNCLOS regarding EIAs.[9] Drawing on its earlier findings on EIAs in the *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* case, the ICJ found that, in the context of climate change, there is a customary obligation for a state to conduct climate-related assessments for "particularly significant proposed individual activities" under its jurisdiction or control that will contribute to greenhouse gas emissions.[10] This obligation flows from states' duty to exercise due diligence to assess the risk of such activities on the environment and prevent significant harm to the environment. It is part of what is required of states to fulfil their due diligence duty with regard to the climate system.[11] If a state fails to undertake an appropriate EIA to assess the impact of the project on greenhouse gas emissions and therefore on climate change, the state may be in breach of its due diligence obligation under customary law.[12]

4 ICJ, *Pulp Mills*, judgment para. 204.

5 ICJ, *Pulp Mills*, judgment, para. 204.

6 ICJ, *Construction of a Road in Costa Rica*, judgment, para. 104.

7 ITLOS AO, para. 441. UNCLOS is the Convention creating the Tribunal which has jurisdiction over disputes concerning the interpretation or application of UNCLOS and to give an AO on a legal question related to the purpose of the Convention.

8 ITLOS AO para. 345.

9 See ICJ AO para 353, developed in paras 359 and 361 of the ITLOS AO

10 ICJ AO para. 298.

11 ICJ AO paras 295, 297.

12 ICJ AO paras 296, 298.

The ITLOS and the ICJ agreed that sources of international law with implications for climate change, such as UNCLOS, cannot be interpreted in isolation. Consequently, when a state determines how to implement and fulfil its obligations under one source – for example, its environmental impact assessment obligations under UNCLOS – these obligations must be read in light of other treaties relating to climate change and the environment, as well as customary international law.[13]

Figure 2.1 illustrates the stages of an environmental impact assessment to protect the marine environment, as described in the advisory opinions. These are explained further below.

Figure 2.1. The stages of an environmental impact assessment to protect the marine environment under UNCLOS



Elements of states' obligations regarding EIAs in the context of climate change

i) Conducting EIAs

According to ITLOS, EIAs are key tools to avoid harm to the marine environment[14] and "an essential part of a comprehensive environmental management system".[15] The ICJ considers that EIAs are a tool for identifying ways to reduce the amount of greenhouse gases emitted by a proposed activity, as they provide previously unknown information on the climate impacts of a given activity.[16] The ICJ notes that the UNFCCC describes environmental impact assessments as an example of "appropriate methods [...] formulated and determined nationally" whose objective is "to minimiz[e] adverse effects that adaptation projects or measures could have on the economy, on public health or on the quality of the environment".[17]

[13] ICJ AO paras 309-315; 354.

[14] ITLOS citing PCA *South China Sea Arbitration Award* of 2016, para. 948.

[15] ITLOS AO para. 354.

[16] ICJ AO para. 298.

[17] ICJ AO para. 210 citing UNFCCC Art 4(1) (f); ICJ AO para. 210.

The Tribunal confirmed that the obligation to conduct EIAs is part of customary international law,[18] which means that the obligation applies to all states, even those that are not party to UNCLOS.[19]

Under article 206 of UNCLOS, states parties are obliged to conduct EIAs for certain planned activities. In its advisory opinion, ITLOS interprets article 206 as meaning that any planned activity, either public or private, which may cause substantial pollution or significant and harmful changes to the marine environment through anthropogenic greenhouse gas emissions, including cumulative effects, shall be subjected by the state to an environmental impact assessment.

We present the conclusions of the ITLOS advisory opinion regarding the EIA obligation under UNCLOS below. We focus primarily on the impacts of activities on the marine environment and the EIAs that must be conducted in connection with those impacts. Supplementary analysis of complementary conclusions from the ICJ's advisory opinion, which relates more broadly to the assessment of impacts on the whole climate system, is provided in boxes 2.2 to 2.6.

A. **Activities subject to an EIA are planned either by private entities or by states (public entities).**[20]

Box 2.2. ICJ observations on regulating private conduct

The ICJ found that the planned activities of both private and public entities must be regulated and subject to an EIA to assess the impacts on the climate. States adopt rules and measures to regulate the conduct of both public and private operators conducting activities in the state's jurisdiction or outside the state's jurisdiction but nevertheless under its control, in order to limit the quantity of emissions they cause. Such rules and measures must be accompanied by effective enforcement and monitoring mechanisms.[21] Failing to take necessary regulatory and legislative measures may make a state responsible.[22]

B. **The EIA's scope, content and procedure are determined by the laws or regulations of the state concerned.**[23]

Although **the content of an EIA** is not specified in UNCLOS, the Tribunal determined that it **may vary and be determined by each state in its legislation**.[24] Both the ICJ and the Tribunal consider that the **content of the EIA may vary** depending on the following factors:[25]

- The due diligence required of the state in conducting an EIA[26]
- The nature and magnitude of the project
- The likely adverse impact of the project on the environment
- The state's capabilities (developing countries may have fewer resources to conduct an EIA).[27]

[18] Unwritten international obligation arising from established, consistent state practice and accepted as law ("opinio juris"). It is a primary source of law.

[19] ITLOS AO para. 355 citing ITLOS *Area advisory opinion* paras 145, 147 and ICJ *Pulp Mills* judgment, para. 204.

[20] ITLOS AO para. 358.

[21] ICJ AO para. 282.

[22] ICJ AO para. 428.

[23] ITLOS AO para. 363.

[24] ITLOS AO paras 357, 363.

[25] ITLOS AO paras 357, 363 citing ICJ *Pulp Mills* judgment, ICJ AO para. 298.

[26] ITLOS AO para. 363 citing ICJ *Pulp Mills* judgment

[27] ITLOS AO para. 364.

Box 2.3. ICJ observations on the principle of 'common but differentiated responsibilities and respective capabilities' (CBDR-RC) in light of national circumstances

The ICJ AO refers to the ITLOS AO's interpretation of the 'common but differentiated responsibilities and respective capabilities' (CBDR-RC) principle, which it deems to be implicit in many rules of international environmental law. It finds that "[...] in the context of UNCLOS, ITLOS has recognized that the implementation of the obligation to prevent harm to the marine environment 'requires a State with greater capabilities and sufficient resources to do more than a State not so well placed'". Implementing the obligation of due diligence requires even states with fewer capabilities and resources to take all the means at their disposal to protect the climate system in accordance with their capabilities and available resources.[28]

Depending on the activity concerned, the EIA must assess:

- The **specific (i.e. direct and indirect) effects**[29] of the planned activity on the environment, including the **possible effects on the climate**. For example, depending on the activity, it may be relevant for a state to assess the downstream effects of said activity.[30] In the case of proposed fossil fuel extraction projects, downstream emissions are the ones with the most significant impact on climate (see the discussion of Scope 3 emissions below).
- The **cumulative impact**[31] of the planned activity on the environment. Assessing cumulative impacts provides a more accurate view of how, taken together, the projected activity and all previously approved activities, impact the marine environment overall and thus contribute to global climate change.[32] Taking into consideration the cumulative impact of all activities rather than assessing the activity under review in isolation, allows the state to make a more informed decision on whether to approve a given project.

The EIA may also assess the **socio-economic impact** of the activity at issue.[33]

The Biodiversity Beyond National Jurisdiction (BBNJ) Agreement contains further detailed provisions on EIAs that may guide states regarding the thresholds, factors, processes to conduct EIAs and reporting methods to be followed for emission-generating activities conducted beyond national jurisdiction.[34] They could also serve as model guidelines for activities within national jurisdiction.

[28] ICJ AO para. 291.

[29] ITLOS AO para. 365.

[30] ICJ AO para. 298.

[31] ITLOS AO para. 365. In the BBNJ Agreement, "cumulative impacts" are defined as "the combined and incremental impacts resulting from different activities, including known past and present and reasonably foreseeable activities, or from the repetition of similar activities over time, and the consequences of climate change, ocean acidification and related impacts".

[32] ITLOS AO para. 365, ICJ AO para. 276.

[33] ITLOS AO para. 365.

[34] ITLOS AO para. 366. The BBNJ Agreement is the third implementing agreement to UNCLOS, entered into force on 17 January 2026.

Box 2.4. ICJ observations on the impact of activities on the climate system as a whole

The ICJ also finds that states have an obligation to conduct EIAs for planned activities emitting greenhouse gases and that have an impact on areas beyond national jurisdiction.[35] The ICJ clarifies that the scope and content of the EIA that a state must conduct to assess the impacts of an activity on the climate system as a whole, beyond the sole impacts on the marine environment, are determined on a case-by-case basis and based on the same factors as those outlined above by the ITLOS. The EIA must, however, comply with national legislation, which the state has sovereign authority to choose.[36]

C. **The state must conduct an EIA when it has reasonable ground to believe that the activity may cause:**
   - **Substantial pollution** of the marine environment; or
   - **Significant and harmful changes** to the marine environment.[37]

The ITLOS finds that a state must **determine objectively** whether an activity may cause substantial pollution or significant and harmful changes: it must be based on facts, scientific knowledge and use of precaution. It follows that the state's discretion in its determination is limited.[38]

Box 2.5. Scientific knowledge in the context of fossil fuel extraction

In COSIS's view, fossil fuel production projects, the granting of fossil fuel exploration licences and the provision of fossil fuel subsidies, are examples of activities which objectively, based on facts and scientific knowledge, may cause substantial pollution and significant and harmful changes to the marine environment that require EIAs, including assessment of downstream emissions.[39]

When it comes to the risks posed by climate change, the ICJ AO recalls the requirement for a state to adopt a framework guiding the conduct of EIAs at the national level, to establish general procedures for proposed activities under its jurisdiction or control that will contribute significantly to greenhouse gas emissions, and to conduct the assessments based on the best available science.[40]

D. **A state must use precaution in its assessment.**

This means that a state must disapprove a proposed project when the pollution or harmful change to the marine environment is:

- actual; or
- merely potential.[41] The pollution or harmful change is potential when we lack full scientific certainty about the harm that the project will cause or scientific evidence on the probability and severity of harm on the marine environment is insufficient.[42]

[35] ICJ AO para. 353.
[36] ICJ AO paras 297-298. citing ICJ *Nicaragua v. Costa Rica* judgment para. 104 and ICJ *Pulp Mills* judgment para 205.
[37] ITLOS AO paras 359, 361, 362 and ICJ AO para. 353
[38] ITLOS AO para. 361.
[39] ICJ AO para. 427.
[40] ICJ AO para. 298.
[41] ITLOS AO para. 361; ICJ AO paras 294, 296.
[42] ITLOS AO para. 242.

Scientific uncertainty does not excuse inaction. At a minimum, the measures taken must reflect the best available science, the 1.5°C goal and the timelines for achieving it.

A state that disregards or does not adequately account for a potential risk in the EIA does not apply precaution. Therefore, it does not meet its stringent due diligence obligation[43] and does not fulfil its duty to prevent significant harm.

E. The assessment must be conducted by the state party that exercises jurisdiction or control over the planned activity.

Activities falling under the jurisdiction or control of the state include **not only those taking place within the state's territory, but also those that extend beyond that territory**, into areas where the state may exercise jurisdiction or authority. This includes, for example, activities carried out in the exclusive economic zone and on the continental shelf, aboard ships or aircraft registered in that state even if they are located outside the state's territory, and more generally, onshore, offshore and land-based activities carried out by that state.[44]

F. A state must be vigilant and prevent transboundary harm through EIAs.

According to the ITLOS, a state has a **duty of vigilance and prevention** to avoid causing damage by pollution to other states and their marine environment. This duty requires the state to conduct an EIA for activities that risk harm to the marine environment:

- **Before the activity begins** and before the project is implemented[45]
- **Before marine pollution** caused by the activity or incidents **spreads beyond the state's jurisdiction.**[46]

Box 2.6. The ICJ's interpretation of the duty of vigilance and prevention

The ICJ, unlike ITLOS, analyses the duty of diligence not only with respect to the conservation of the marine environment, but also with respect to the conservation of the climate system as a whole. According to the ICJ, states' **due diligence obligation and duty of vigilance and prevention** requires states to:

- Conduct an EIA for proposed industrial activities that may have a significant adverse impact on the environment in a transboundary context.[47]
- Determine the potential environmental effects in order to prevent significant harm to the climate system.[48]
- Take both substantive and procedural measures, such as conducting EIAs.[49]

[43] Stringent due diligence constitutes a heightened standard of due diligence, justified by "the high risks of serious and irreversible harm to the marine environment from such emissions" (ITLOS AO para. 243. See also ICJ AO paras 246, 175).

[44] ITLOS AO paras 247, 360.

[45] ITLOS AO paras 356, 358. citing ICJ *Pulp Mills* judgment paras 204, 205, ICJ *Certain Activities (Costa Rica v. Nicaragua)* judgment paras 104, 153, 161, and PCA *South China Sea Arbitration award* para. 948.

[46] States' jurisdiction are the areas where states have sovereignty and exercise sovereign rights (Exclusive Economic Zone and Continental Shelf), in accordance with UNCLOS. It excludes the area beyond national jurisdiction. ITLOS AO para. 356 citing ICJ *Pulp Mills* judgment para. 204, and PCA *South China Sea Arbitration* award para. 948.

[47] ICJ AO para. 296. citing ICJ *Nicaragua v. Costa Rica* judgment para. 104.

[48] ICJ AO paras 296-297, citing ICJ *Pulp Mills* judgment para. 204.

[49] ICJ AO para. 295.

G. **The assessment must be conducted with the objective of mitigating, and adapting to, the adverse effects of emissions on the marine environment.**

The Tribunal does not provide a list of mitigation and adaptation objectives the activity must meet in order to be approved. However, it finds that states have an obligation to take measures to prevent, reduce and control pollution of the marine environment objectively, taking into account the best available science. In particular, states must take into account: (i) "the global temperature goal of limiting the temperature increase to 1.5°C above pre-industrial levels", and (ii) the emission reduction goals for 2030, 2050, etc., which will allow us to limit global temperature rise to 1.5°C above pre-industrial levels (referred to as "the timeline for emission pathways").[50] Arguably, the planned projects assessed by the EIA must be compatible with the 1.5°C objective and set emission reduction targets, to be approved.

Examples of measures to mitigate the adverse effect caused by the project include requiring the use of alternative technologies or approaches by a project proponent to reduce or eliminate greenhouse gas emissions linked to a proposed project. Examples of measures to adapt to the adverse effect caused by the project when environmental harm is inevitable, include requiring the project proponents to engage in restoration activities to support damaged ecosystems' recovery. These measures should be compatible with the 1.5°C objective and set emission reduction targets, to be approved.

As discussed below, the result of these EIAs must be disseminated in accordance with article 205 of UNCLOS and customary international law.

ii) Publication of EIA reports

Pursuant to article 205 of UNCLOS and customary international law, and in the context of climate change, states must demonstrate transparency[51] and:

- **Inform the public** about the result of their assessment, through the publication of reports, as to whether the greenhouse gas-generating activities they authorise or carry out pose a risk to or have adverse effects on the marine environment. This ensures the public have access to information on marine pollution resulting from certain greenhouse gas-emitting activities.[52]
- If states do not publish the report, they may fulfil their obligation under article 205 by **providing the reports to the competent international organisations for dissemination** at appropriate intervals, thereby making them accessible to all states.[53]

The Tribunal considers that sharing, through reports, information and scientific results regarding the risks that an activity poses to the marine environment constitutes one of the most effective means available to states to ensure the effective protection and preservation of the marine environment.[54] A decision-maker who is aware of the harmful consequences of an activity on the marine environment can make informed decisions on whether to proceed with a polluting activity or how to avoid pollution, in a manner consistent with the state's international obligations.

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[50] ITLOS AO para. 243. See also ICJ AO para 224 which considers the 1.5 °C objective as state agreed primary temperature goal.

[51] ITLOS AO para. 351.

[52] ITLOS AO para. 351.

[53] ITLOS AO para. 350.

[54] ITLOS AO para. 351.

iii) Monitoring the risks or effects of marine pollution from greenhouse gas emissions

Under article 204(1), UNCLOS states parties have a specific obligation to endeavour to observe and measure (phase 1), and then evaluate and analyse (phase 2), the risks or effects on marine pollution resulting from anthropogenic greenhouse gas emissions.

EIAs provide a means of observing, measuring, evaluating and analysing this information.[55] In conducting this monitoring, states must:

- Make every effort as far as practicable[56]
- Within the limits of their capabilities[57]
- Using recognised scientific methods.[58]

States can choose to **conduct this monitoring themselves**, for example through their specialised agencies, **or through an international organisation**. For example, international scientific bodies and mechanisms such as the World Ocean Assessment, the Intergovernmental Panel on Climate Change (IPCC) and the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection, have monitored the adverse effects of greenhouse gas emissions on the marine environment.[59]

Under article 204(2), a state that authorises or is involved in an activity bears **broad responsibility to keep under constant watch** (i.e., "continuing surveillance") **the adverse effects of that activity** – greenhouse gas emissions – on the marine environment, in order to determine if the activity is likely to cause marine pollution.[60] In legal terms, this means that **monitoring and surveillance are not one-time requirements, but continuing obligations** of states. States must ensure that, at all times, they keep abreast of all activities within their jurisdiction that may cause marine pollution.

In practice, a state may have to monitor activities carried out within or outside the country, by domestic or foreign individuals or entities (legal persons).[61]

[55] ITLOS AO paras 346-347.
[56] ITLOS AO para. 346.
[57] ITLOS AO para. 346.
[58] ITLOS AO para. 347.
[59] ITLOS AO para. 348.
[60] ITLOS AO para. 346.
[61] ITLOS AO para. 349.

3. Approaches to integrating climate impact assessment in legislative and regulatory frameworks governing EIAs

Many domestic EIA regimes are silent on the requirement to assess the impacts on climate change of a proposed project or development. In effect, the requirement is often present, but implicit. However, the lack of explicit guidance on how EIAs should assess impacts on climate change can lead to partial assessments and result in non-compliance with international obligations, which may ultimately result in contestation in the courts (see Section 2). Recognising explicitly in the legal regime that the EIA process must include the assessment of the impact on climate change and including guidance on how such assessments should be conducted, can contribute to the state meeting national climate targets and mitigating the risk of its non-compliance with such targets.

In this section, we provide illustrative examples of the ways in which some states have begun to explicitly integrate climate-related impact assessment into national EIA regimes, highlighting key features of the different legislative and regulatory approaches. The European Union's EIA Directive provides a good example of how to integrate such requirements into law (see Box 3.1).

Box 3.1. The European Union EIA Directive

The EU introduced its first Environmental Impact Assessment Directive (85/337/EEC) in 1985. Directive 2014/54/EU amended it to include in the EIA, the assessment of impacts of projects on biodiversity and climate change, as well as their vulnerability to climate change. In its preamble, the Directive recognises that climate change and biodiversity protection should "constitute important elements in assessment and decision-making processes" (para. 7) and that it is "appropriate to assess the impact of projects on climate (for example, greenhouse gas emissions) and their vulnerability to climate change" (para. 13).

- Article 3 of the Directive requires EIAs to identify, describe and assess the "direct and indirect significant effects of a project" on the climate and biodiversity. In many cases, when read with Article 5 and Annex IV, this implies that the cumulative effects of the proposed project should be assessed in the context of other projects that have already been approved (see below).
- The Directive recommends that projects in the marine environment require the assessment of impacts on climate change and of the vulnerability of the project to climate change (through Directive 2013/30/EU of the European Parliament and of the Council). It thus establishes the requirement of climate EIA for marine projects.

It is important to note that it may not be practicable or desirable to adopt all approaches for all projects. Instead, legislators and regulators may need to consider setting thresholds for climate assessment based on the potential emissions profile of new projects or the vulnerability of particular locations and activities to the physical impacts of climate change.

Evaluating 'cumulative impacts' for high-emitting projects

It is the accumulation of greenhouse gas emissions that contributes to dangerous global warming. Taken in isolation, an individual project's contribution to global warming may seem marginal. However, looking at the cumulative impact of all approved similar projects on global greenhouse gas emissions brings into sharper focus the contribution of a single project to the depletion of the remaining global carbon budget – and thus its overall contribution to climate change (Mayer, 2024; Eccleston, 2010; Green, 2025).[62]

Legislation can require that the proponents of a project put the assessment of its individual emissions into the wider national context. For example, if a state is considering the development of multiple offshore oil and gas projects, the impacts on the climate system and marine environment from the emissions of a single project may be marginal, but approving all the projects would lead to significant damage. This needs to be considered in the EIA process.

One example of integrating cumulative impact assessment into a domestic EIA regime can be found in the UK. The Offshore Petroleum Regulator for Environment and Decommissioning, part of the Department for Energy Security and Net Zero (DESNZ), published supplementary guidelines for assessing the impact of greenhouse gas emissions from offshore oil and gas projects in June 2025, providing further clarity on cumulative effects assessment. The guidelines require developers to consider all the emissions associated with new oil and gas developments (see below). The guidance notes: "Given the global effect of greenhouse gas emissions, the [environmental impact statement] must consider the cumulative effects of the proposed project with other existing and planned future projects, in a global context." Global emissions reduction pathways may be used to contextualise this information. The guidance also recommends considering: "how the [greenhouse gas] emissions associated with a proposed project impact climate" at both a global and national level, likely involving the "assessment of the project's emissions against global climate objectives [...] as well as against national objectives and targets, where appropriate" (DESNZ, 2025).

It may not be practical to require the cumulative impacts assessment of greenhouse gases from all activities and projects. In practice, legislators may be required to set threshold criteria to determine when projects are likely to be significant enough to warrant this kind of evaluation (Mayer, 2024). Where such thresholds are met, as is likely to be the case with new fossil fuel extraction projects, methods such as 'commitment accounting' for carbon dioxide emissions can be used in the assessment process (Davis and Socolow, 2014).

[62] The IPCC defines the remaining global carbon budget as the "total net amount of carbon dioxide (CO^2) that can still be emitted by human activities while limiting global warming to a specified level (e.g., 1.5°C or 2°C above pre-industrial levels)." Estimates of the "remaining global carbon budget" will differ depending on whether 1.5°C or 2°C above pre-industrial levels is understood as the relevant global temperature target (see Canadell et al., 2021).

Including the evaluation of Scope 3 emissions in EIAs

In order to assess a project's indirect impacts on the environment and climate, it may be necessary to evaluate its 'indirect' or Scope 3 emissions, where these are likely to be significant.

The Greenhouse Gas Protocol defines company emissions with reference to three scopes:

- Scope 1 greenhouse gas emissions are direct emissions from a company's operations
- Scope 2 emissions are indirect emissions from the generation of purchased or acquired electricity consumed by the company
- Scope 3 emissions are all indirect emissions not included in Scope 2, that occur in the company's value chain. Scope 3 emissions are often a significant component of a new project's climate-related impacts. This is especially true for fossil fuel extraction projects, where downstream Scope 3 emissions, typically comprise 80-95% of a project's total greenhouse gas emissions (Higham and Parekh, 2024).

The UK guidance discussed above requires that all greenhouse gas emissions generated by new offshore oil and gas projects are considered, including Scope 3 emissions.

Including Scope 3 emissions in EIAs is essential to understanding a project's full impact on the climate. Conversely, omitting Scope 3 emissions can obscure the true impact these projects have on global warming and can lead to decisions being made on an incomplete evidence base. This was the subject of litigation in the UK, which led to the issuance of the UK guidelines (see Box 3.2).

Box 3.2. EIA law and assessing the impacts of a proposed project on climate change

Courts around the world are starting to interpret existing EIA law as requiring that the impacts of a proposed project on climate change should be considered.

The case of *Finch v. Surrey County Council*[63] concerned the development of an onshore oil well in Surrey in the south of England. In 2024, the UK Supreme Court determined that Scope 3 emissions from new oil and gas developments must be considered in the EIA, as they are part of the 'indirect' environmental impacts associated with such a development. This case is part of a broader trend: similar questions have recently been put to the courts of Australia, Norway and to the European Court of Human Rights (Setzer and Higham, 2026).

Where there is uncertainty on how to assess the climate change impacts of a project under existing legislation, applicants are increasingly turning to the courts to fill definitional gaps or clarify impact assessment obligations (Bradeen et al., 2026).

South Korea's approach to Scope 3 emissions and its EIA regime

As yet, very few countries expressly require mandatory Scope 3 emissions assessment in the primary legislation governing their EIA regimes. One exception is South Korea.

The South Korean Carbon Neutrality Act (CNA) and its Enforcement Decree establish that any project or plan undergoing an impact assessment under the existing Environmental Impact Assessment Act must also conduct a climate change impact assessment. Article 23 of the CNA requires proponents to assess both the project's impacts on climate change (quantifying greenhouse gas emissions across Scope 1, Scope 2 and, where relevant, Scope 3) and the impacts of climate change on the project, including its vulnerabilities to sea-level rise, extreme rainfall, heatwaves and other climate hazards.

[63] *Finch v. Surrey County Council* [2024] UKSC 20

The Enforcement Decree implements these duties by:

- Identifying high-emitting sectors that automatically require climate assessment; and
- Specifying required technical components to include in the EIAs, such as consistency with national reduction of greenhouse gas emissions targets, mitigation of greenhouse gas emissions measures and site-specific adaptation strategies.

The South Korean Ministry of the Environment has produced a dedicated set of guidelines which standardises assessment methodologies and helps to align projects with Korea's carbon-neutrality pathway. The guidelines detail how to assess the greenhouse gases emitted by a project or plan in EIAs.

Ensuring consistency with national climate commitments and other environmental priorities and obligations, such as states' duties to protect the marine environment

As discussed above, UK government guidance requires the consideration of greenhouse gas emissions from new oil and gas developments as part of the UK's national climate change commitments, including proposed developments which fall under the Climate Change Act 2008. A similar approach has been adopted in other countries.

In **Fiji**, for example, the Climate Change Act 2021 revises the Environmental Management Act 2005, to require consideration of climate change in EIAs. It is a way to verify the alignment of projects with the country's climate commitments, specifically greenhouse gas emissions targets or pathways.

The Act establishes a new section 28(3A) which requires that where a proposed activity may result in material greenhouse gas emissions or may be adversely affected by climate change, the terms of reference for the EIA study must report:

- Emission levels that the projected activity would cause; or
- The adverse effects that climate change would cause to the project.

The EIA study must also propose measures to address such adverse effects. Consideration must be given to whether the activity is compatible with Fiji's climate commitments outlined in:

- The objectives and principles of the Climate Change Act 2021
- Fiji's Nationally Determined Contributions
- Fiji's National Development Plan
- Fiji's National Climate Change Policy
- Fiji's National Adaptation Plan and Low Emission Development Strategy.

Recognising the link between climate and the oceans, known as the 'climate–ocean nexus' (see Box 3.3), the Fiji Climate Change Act 2021 requires that any activities which will potentially emit substantial greenhouse gases or which may be adversely affected by climate change should be considered for their compatibility with the National Ocean Policy. The policy highlights the vital role played by Fiji's more than 10,000 square kilometres of coral reefs and other marine ecosystems for the country's economy and society. Protecting these ecosystems is a national priority, and the policy sets out Fiji's plans for meeting its commitment to the 100% sustainable management of the ocean and its designation of 30% marine-protected areas by 2030.

Box 3.3. Spotlight on marine biodiversity

The Convention on Biological Diversity (CBD) Framework

The threat that climate change poses to marine biodiversity has been recognised within the CBD regime for more than two decades (see UN Framework Convention on Climate Change [UNFCCC] CBD Conference of the Parties [COP] 5 Decision V/3, which refers to the impact of climate change on coral bleaching).

In recent years, the interconnection between biodiversity loss and climate change has become more evident. Research suggests that conservation measures can simultaneously help to mitigate global warming, and that climate change mitigation measures can also assist species conservation (Shin et al., 2022). Yet, despite the mutual benefits of preserving biodiversity to preserve the climate system, policy responses to biodiversity loss and climate change have historically not been taken together (Hu et al., 2021).

Nonetheless, incorporating marine biodiversity protection into efforts to combat climate change is becoming prevalent. The Kunming-Montreal Global Biodiversity Framework (KMGBF), adopted at CBD COP15 in December 2022, explicitly ties biodiversity and climate, especially through targets 3 and 8 (CBD COP15 Decision 15/4, 2022):

- **Target 3** of the KMGBF concerns the conservation of at least 30% of terrestrial and inland water areas and marine areas of particular importance for biodiversity preservation by 2030 (also referred to as the '30 by 30' target)
- **Target 8** of the KMGBF concerns minimising the impact of climate change and ocean acidification on biodiversity and increasing biodiversity resilience.

The Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (the 'BBNJ Agreement')

In June 2023, the BBNJ Agreement was adopted by the international community. Its key objective is to clarify states' duties to conserve and protect the marine environment in international waters or the 'high seas' (Pabreja and Huhn, 2026). It is an important resource for legislators revising EIA legislation, particularly:

- Part III of the Agreement creates a mechanism for the creation of marine protected areas (MPAs) on the high seas
- Part IV of the Agreement sets out states' obligations to conduct EIAs for activities that might cause substantial pollution or significant harm to the marine environment.

The ITLOS advisory opinion mentions states' obligations to conduct EIAs under the BBNJ Agreement. The opinion notes that the BBNJ provides "detailed provisions on environmental impact assessments relating to their thresholds and factors, the processes for conducting them and the reports of such assessments" (para. 366, ITLOS AO). As such, the ITLOS advisory opinion is an important resource for legislators revising or amending EIA legislation.

Domestic environmental law: UK efforts to enhance biodiversity

In some countries, domestic environmental law is being reformed to ensure that new projects *enhance* biodiversity, going beyond the requirement to *not harm* biodiversity. For example, the UK's Environment Act 2021 integrates the concept of 'biodiversity net gain' (BNG). From November 2026, most new developments and onshore nationally significant infrastructure projects (NSIPs) in the UK must demonstrate a 10% measurable increase in biodiversity 'value' (Department for Environment, Food & Rural Affairs [Defra], 2023; CMS, 2026). This

regime operates separately to the EIA regime. However, the information generated during the EIA informs how the BNG obligation is understood for each project. The UK government has indicated that it is considering developing a 'marine net gain' requirement for relevant NSIPs (Pinsent Masons, 2026).

Involving climate change authorities and specialist bodies in project approval

Many proposed projects are approved by decision-makers who may not have direct climate expertise. **Fiji's** EIA regime addresses this by requiring climate change public authorities to be involved in decisions regarding significant development projects. The Climate Change Act introduces a new provision (section 30(6)) into the Environmental Management Act 2005, which states that where climate change is found to be a relevant consideration, "the EIA Administrator or approving authority must request recommendations from the Director responsible for climate change within the Ministry of Environment and Climate Change, on whether the report should be approved, with or without conditions, or whether an additional study is necessary".

Similarly, **Nauru's** Environmental Management and Climate Change Act No. 34 creates an Environmental Impact Assessment Committee, which must include the Secretary for Climate Change and National Resilience (or their representative). The Committee has the power to approve or refuse any applications for projects. When the Secretary determines that an EIA is required for a substantial development project, applicants must provide an EIA which details any environmental impact the project is likely to cause and justifies the "use or commitment of depletable or non-renewable resources, if any apply to the project" (section 19(a) and 19(b) of the Act). The inclusion of a dedicated climate expert in the Committee can ensure that a general environmental impact assessment adequately addresses climate-related impacts.

It should be noted that including climate authorities or specialist bodies with relevant expertise in the EIA process may not be possible or desirable for all projects, particularly in larger states with devolved EIA processes or in countries where the capacity of these bodies is limited. This issue can be addressed by establishing thresholds based on the likely significance of a project for national greenhouse gas emissions, or the particular vulnerability of its proposed location. For projects which meet the relevant threshold criteria, legislation may then require consultation with climate change authorities or other processes to draw on their expertise.

Assessing a project's adaptation and resilience to climate-related shocks in EIAs

Countries around the world are failing to implement adequate adaptation responses to the accelerating risks from climate change. This results in new developments that are not resilient to the impacts of climate change and extreme weather events (Jager et al., 2026; UN Environment Programme [UNEP], 2025).

Reflecting this wider problem, very few domestic EIA frameworks have required the assessment of climate adaptation measures in place for proposed activities and projects. Historically, EIAs that have included climate have skewed towards assessing the mitigation-related impacts of a project, such as a project's greenhouse gas emissions (Mayembe et al., 2023; Bradeen et al., 2026).

Climate-related shocks, such as extreme weather events and sudden changes in the climate, have become unavoidable with global warming. In order to ensure that projects are resilient to these threats, it is crucial to understand projects' vulnerability to climate change impacts and incorporate adaptation and resilience-building measures into approved projects. This is particularly relevant to infrastructure projects with long lifespans (Agrawala et al., 2012).

Adaptation planning should ensure that projects are resilient to climate change, and that they do not intensify the adverse effects of climate change in their localities, such as extreme weather or sea-level rise, putting communities at risk. Projects that would intensify the adverse effects of climate change may even affect the resilience of communities in neighbouring states.

Examples from the Philippines, the Caribbean Community and Secretariat of the Pacific Regional Environment Programme

Two approaches to adaptation-related impact assessment that may be instructive are outlined below. The **Philippines** has produced technical guidelines on mainstreaming disaster risk reduction and adaptation into EIAs from the pre-screening stage to the monitoring and compliance stage:

- **At the pre-screening stage**, when proponents are setting out a basic outline of what the project entails, they are encouraged to adopt a precautionary approach by incorporating potential climate-related impacts to avoid postponing risks to later stages of the project.
- **At the review stage of the impact statement**, regulators must ensure that proponents have identified and developed adequate environmental mitigation, adaptation and disaster risk reduction measures, based on the risk evaluations undertaken during the screening and scoping processes. At this stage, project proponents must also commit to implementing these measures in the project design.

Guidelines prepared by the **Caribbean Community (CARICOM)** and the **Secretariat of the Pacific Regional Environment Programme (SPREP)** in 2004 also outline how adaptation considerations, such as a project's vulnerability to sea level rise or extreme weather events, can be integrated across all stages of the EIA process, from the definition of the project onwards. The guidelines:

- **Introduce and explain key concepts**, such as cumulative effects assessment
- **Set out detailed guidance on a minimum baseline of information** to be included for each stage of the EIA process
- **Provide an impact rating matrix** for use by proponents to help estimate the severity of various impacts.

However, there is little evidence available to determine whether these guidelines have been taken up by CARICOM member countries and implemented or made mandatory at the domestic level.

4. Recommendations for policymakers

Following the ITLOS and ICJ advisory opinions, **states are obliged to conduct climate assessments** that focus on mitigation measures for projects which may generate significant greenhouse gas emissions, and on adaptation measures for projects which may be significantly impacted by climate-related hazards. States must consider the transboundary environmental impacts of projects.

As a result, **national legislators and regulators may need to revise existing EIA regimes** to ensure that the projects and activities under their jurisdiction comply with the international law obligations to which their country is subject. Current practices presented in this policy insight offer a range of approaches that policymakers can draw upon when adapting domestic frameworks.

We make four key recommendations to support legislators, regulators and relevant public authorities in aligning their EIA regimes, projects and policies with their national and international climate commitments.

Recommendation 1: Ensure that EIA frameworks explicitly incorporate climate change considerations

Legislators should adopt or amend EIA legislation and implementing regulations to explicitly require, when assessing the impact of a project on the environment, the assessment of climate-related impacts. This should include both the contributions of projects to climate change, and the extent to which projects may be vulnerable to climate-related hazards. In developing such frameworks, policymakers should consider:

- Assessing both direct and indirect emissions, including, where appropriate, Scope 3 emissions
- Assessing the cumulative impacts of a project's greenhouse gas emissions alongside those of other proposed and approved projects
- Assessing the consistency of high-emitting projects with national climate targets, strategies, including targets set in NDCs, and other environmental commitments, as well as global emissions reduction pathways
- Involving climate change authorities in project approval processes, particularly for high-emitting sectors
- Recognising the implications of the ITLOS advisory opinion, including the finding that greenhouse gases are a form of marine pollution.

More broadly, EIA frameworks should reflect the recognition that greenhouse gas emissions can cause significant environmental harm and should ensure that project approval processes adequately consider available mitigation measures.

Recommendation 2: Develop clear regulatory guidance and methodologies for climate assessment

Regulators and relevant public authorities should develop regulations and technical guidance to support the integration of climate-related considerations throughout the EIA process:

- For high-emitting sectors and projects, regulators should consider developing guidelines and methodologies for the holistic assessment of emissions incurred by a planned project, namely the assessment of Scope 3 emissions.
- As recognised by the ITLOS and ICJ advisory opinions, EIA methodologies should be tailored to national contexts. Regulatory reforms should prioritise the sectors which have the most

significant impact on the climate, including fossil fuel and energy production, agriculture, and the industrial and infrastructure sectors.

- Regulators should consider recommending the use of established carbon accounting methodologies to enable an assessment of the cumulative impacts of a given project and its interaction with national or sectoral decarbonisation pathways.

Recommendation 3: Strengthen institutional capacity and resources for implementation and enforcement

Governments should ensure that sufficient resources are devoted to capacity-building for EIA obligations to be effectively enforced, including:

- Adequate financial resources must be allocated to environmental protection agencies, or their equivalent regulatory bodies, that scrutinise, make decisions on EIAs and are responsible for enforcing the conditions placed on projects that proceed.
- Additional support should be provided to train regulators on how to evaluate the climate impacts of a project and conduct a climate impact assessment, especially when existing frameworks are amended to include new climate-related provisions or require climate EIAs.
- Adequate resourcing and capacity-building can support the integrity and independence of the regulatory body or agency in their decision-making, and in the scrutiny and enforcement roles they play.

Recommendation 4: Integrate adaptation considerations into environmental impact assessment

Legislators and regulators must ensure that adaptation-related considerations are adequately assessed in EIAs:

- EIAs should evaluate a project's exposure and vulnerability to extreme weather events or climate-related shocks. In developing requirements for such assessments policymakers may draw on existing practice, including the regional CARICOM and SPREP guidelines, which provide practical approaches for integrating adaptation-related concerns into EIA.
- Project proponents should be required to use the best available scientific evidence to assess exposure and vulnerability to climate-related hazards.

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