Highlights of IFC, IBRD, ADB and their Member States' Climate Change Legal Obligations (all Quotes) from Dr. Lorenzo and Dr. Lin's Nov. 7, 2025 Legal Opinion:

INTERNATIONAL LEGAL OBLIGATIONS OF MULTILATERAL DEVELOPMENT BANKS AND THEIR MEMBER STATES IN RELATION TO CLIMATE CHANGE

International Law Governing States' Conduct as Members of IFIs

(98) States are subject to treaty law—the UNFCCC, Kyoto Protocol, Paris Agreement [Law of the Sea]—and customary international law in their conduct as Members of IFIs. States must fulfill the obligations under both these sources of law.

(99) The ICJ, ITLOS, and Inter-American Court of Human Rights (IACtHR) advisory opinions provide an additional normative context for the international obligations of States generally, and the Major Shareholders in particular, under climate law. These advisory opinions cover not only the direct GHG emissions produced through State actions, but also all acts or omissions of States that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions, such as the ongoing production, consumption, licensing, and subsidizing of fossil fuels.

(100) The international legal obligations interpreted and clarified in these advisory opinions are therefore applicable to development projects under the purview of IFIs that produce GHG emissions. These advisory opinions clarify the international legal obligations of Member States, especially Major Shareholders who have greater historical responsibility for anthropogenic GHG emissions, greater capacity to provide climate finance, and greater voting/decision-making power in IFIs that support development projects.

(104) All member States (whether voting via a lone representative or in a constituency), particularly but not limited to Major Shareholders, should exercise this [voting] power for the purpose of ensuring that the IFIs' operations are consistent with their and the IFIs' respective international climate law obligations.

(163) Pursuant to their own treaty- and custom-based obligations, therefore, Major Shareholders, in particular, should independently evaluate the risks of harm to the climate system posed by the IFIs' operations and avoid voting in favor of development projects that undermine climate change mitigation and/or adaptation.

(3)(b)(ii) Member States are also bound by the customary legal obligations to prevent significant harm to the environment with due diligence and to cooperate. The different elements constituting the harm prevention duty, including the variable standard of due diligence, must take into account the best available science. In the context of climate change, the stringency of such standard requires States to, among others, assess the probability and seriousness of harm in the light of new scientific or technical knowledge, as well as adopt and implement appropriate rules and measures designed to reduce GHG emissions that cause significant harm to the climate system.

(104) A State's failure to take appropriate action to protect the climate system from GHG emissions—including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses or the provision of fossil fuel subsidies—may constitute an internationally wrongful act which is attributable to that State.

(2) member States of IFIs, particularly Major Shareholders, have obligations both under treaty and customary international law, to exercise their voting powers such that development projects dependent on fossil fuels are not financed while those aimed at a clean and just energy transition are supported.

(168) The Major Shareholders' due diligence conduct involves ensuring that the MDBs are not financing development projects that are likely to cause or exacerbate climate change and related harms.

(118) a State voting in favor of a fossil fuel project (or against a policy enhancing support for renewable energy projects) could be deemed to aid or assist the IFI—who also bears climate change obligations under customary international law—in committing an internationally wrongful act within the meaning of draft ARIO Article 58. An alternative application of this rule involves aid or assistance given by one Paris Agreement State party to another State party, which is also a member of the IFI. Otherwise stated, a Major Shareholder potentially incurs responsibility for aiding or assisting a borrowing State that breaches the obligation to mitigate climate change by undertaking an IFI-supported fossil fuel project.

(170) Under international law, the Major Shareholders—not accidentally, also major emitters—are especially obliged to ensure that their voting power is exercised towards the rejection of fossil fuel-based development projects and the promotion of alternative energy options that not only emit the least amount of GHGs but are also suitable to the development needs of borrowing States. IFIs' member States are further required not to finance new fossil fuel related projects or increase financing of existing ones, to prevent adverse human rights impacts on the right to life and the right to health.

(127) [Law of the Sea obligations:] These obligations entail reducing anthropogenic GHG emissions, in line with obligations of Parties to the Paris Agreement and which have a detrimental effect on the marine environment. Member States of IFI should therefore restrain from voting in favor of fossil fuel projects, to fulfill these aforementioned obligations. The broad interpretation of 'all necessary measures' in Article 194, paragraph 1 by ITLOS necessitates that these measures include Major Shareholders restraining from voting in favor of fossil fuel-based projects.

(136) To perform their climate change obligations under international law, they must avoid financing new fossil fuel projects, unless the best available science demonstrates that a given project does not lock-in the borrowing State (or any other country) to a carbon-based development pathway and can contribute to the 1.5°C goal.

International Law Governing the Conduct of MDBs as International Organizations Requires they Meet Stringent Climate Change Due Diligence Requirements

(2) IFIs have the obligation under customary international law, as well as their respective constituent instruments, to avoid supporting development projects that result in high greenhouse gas (GHG) emissions and pose climate risks. That they have voluntarily committed to align their operations with the objectives of the Paris Agreement reinforces this point.

(43) (171) the most relevant international legal obligation applicable to IFIs—with respect to their support of development projects posing risks of climate harm—is the customary duty to exercise due diligence in order to prevent significant harm… Complying with this duty requires IFIs to undertake

appropriate measures that minimize, if not eliminate, the risk of harm to the climate system arising from the development projects they finance.

(32) IFIs must rely on and/or incorporate the best available science—as reported by the IPCC—in formulating the safeguard policies' risk classification system applied to different development projects and, as expounded below, in determining the list of universally (non-) Paris-aligned projects. More concretely, there should be stricter requirements for, if not an outright prohibition of, fossil fuel-dependent energy projects, since current scientific knowledge shows that '[m]itigation includes [] reducing GHG emissions through measures such as transitioning away from fossil fuels'

MDB's Are Bound by International Law to Adhere to their Own Board Adopted Policy Requirements

(60) IFIs are also subject to climate-related international obligations based on their environmental and social policies, which they are mandated to follow under their constituent instruments.

(79) the IFIs have bound themselves (and their borrowers/clients) to certain sustainability standards. More specifically, insofar as the safeguard policies are deemed to interpret the treaty-based development mandates of IFIs, the latter's approval of a project that fails to meet the safeguards requirements can be considered a violation of an IFI's obligations under its constituent instrument.

(97) Besides being bound by the customary harm prevention duty, therefore, MDBs have treaty-based obligations to prevent harms to the climate and other parts of the natural environment arising from their operations.

Best Available Science Standard Applies to MDB's GHG Emissions Quantification, Cumulative Impact Assessment, and Alternatives Analysis Prior to Financing Decisions

(55) exercise of due diligence also entails using the methods based on best reasonably available science to conduct an alternatives analysis—that encompasses GHGs quantification and impact assessment—as well as enabling timely and meaningful public review by disclosing the results of such analysis.

(3)(c) An in-depth evaluation the MDB Paris Methodologies shows inadequacies potentially leading to the IFIs' and Member States' non-fulfillment of their international legal obligations. In addition to overly giving credence to the borrowing States' NDCs, which may not contain decarbonization pathways aligned with the 1.5°C temperature goal, these Methodologies do not adopt the essential 'best available science' standard in their quantification of GHG emissions and assessment of alternatives.

(161) Considering that bearers of the customary harm prevention duty must 'assess the possible cumulative effects of their acts and planned activities under their jurisdiction or control', evaluation of projects' Paris-alignment under the MDB Paris Methodologies should take into account the remaining global carbon budget, as established by the IPCC, among others.

(167) In implementation of the more stringent diligence due from IFIs, the MDB Paris Methodologies should include assessment of Scope 3 emissions, which are indirect emissions associated with the extraction and production of purchased materials, fuels and services, including transport in vehicles. These Scope 3 emissions represent the greatest amount of emissions and cutting them is crucial for keeping within then 1.5°C threshold. The inclusion of Scope 3 emissions in EIA assessments is also increasingly well established in domestic law. …. Where the inclusion of Scope 3 emissions in the EIA could entail additional costs, the IFI should either perform the more rigorous assessment or assist the borrower in undertaking the same.

Legal Inadequacies of IFC's, IBRD's, and ADB's Paris Methodologies and Prohibited Investment Lists

(3)(c) An in-depth evaluation the MDB Paris Methodologies shows inadequacies potentially leading to the IFIs' and Member States' non-fulfillment of their international legal obligations. In addition to overly giving credence to the borrowing States' NDCs, which may not contain decarbonization pathways aligned with the 1.5°C temperature goal, these Methodologies do not adopt the essential 'best available science' standard in their quantification of GHG emissions and assessment of alternatives.

(158)-(159) activities in the universally non-aligned list 'are deemed to undermine the mitigation goals of the Paris Agreement for all intents and purposes under all circumstances and in all countries'….Given the best available science, the universally non-aligned list is too limited in its coverage. Activities involving the use and extraction of coal and peat are included, but extraction, production, and consumption of other fossil fuels such as petroleum (crude oil) are not, even though these activities undermine climate change mitigation. The list of universally non-aligned activities should be expanded to include petroleum and other fossil fuels, to create a stringent presumption against financing new fossil fuel projects, since the IPCC and the International Energy Agency (IEA) have determined that 'continued installation of unabated fossil fuel infrastructure will "lock-in" GHG emissions' and that new upstream oil and gas projects are unnecessary to achieving the collective temperature goal.

(161) As international economic organizations, MDBs consider both scientific and economic data to assess if the proposed project will help the country's low-carbon development. However, the methodologies' undue emphasis on alignment with a country's NDCs or long-term strategies (LTSs), coupled with the fact that the borrower takes the lead in providing information to the MDB, would probably fall short of compliance with the Paris Agreement's objectives, especially the temperature goal, as most NDCs and LTSs are currently not aligned with the necessary decarbonization pathways to fall within the 1.5°C threshold. Considering that bearers of the customary harm prevention duty must 'assess the possible cumulative effects of their acts and planned activities under their jurisdiction or control', evaluation of projects' Paris-alignment under the MDB Paris Methodologies should take into account the remaining global carbon budget, as established by the IPCC, among others. Under exceptional (region-specific) circumstances, MDBs and/or the Major Shareholders may need to prioritize climate considerations over economic factors by insisting support for less carbon-intensive alternatives even when they may have higher costs and/or potential obstacles regarding technical feasibility.

(162) The discretion States have to determine their development pathways is circumscribed by their international legal obligations, interpreted in the light of the country ownership principle in development finance that has partly similar implications as the climate regime's CBDR-RC principle. The MDB Paris Methodologies' recognition of State discretion should not mean that MDBs must defer to borrowing States' NDCs, LTSs , or other national plans. Rather, the measures appropriate and necessary for IFIs to undertake as part of their customary preventive obligation include independently evaluating the risks of harm posed by IFI-supported operations to the climate system. Further, the IFIs must avoid financing development projects that undermine climate change mitigation and/or adaptation, lest such financial support causes breach of international legal obligations on the IFIs' part, of borrowing countries, or of other member States such as the Major Shareholders.

(164) In their current version, the MDB Paris Methodologies can be found inconsistent with the IFIs' customary obligation to diligently prevent harm to the climate system, because contrary to the best available scientific information, these instruments permit the possibility of funding fossil-fuel (oil and gas) projects. Granted, by evaluating the carbon intensity of operations to be financed by the MDBs, as

well as the energy transition risks of development projects, the MDB Paris Methodologies serve as the climate risk and impact assessment necessitated by the customary rule. However, these methodologies' level of comprehensiveness does not seem commensurate with the stringency of due diligence required in the climate change context and with IFIs' considerable resources that translate to greater harm preventive capacity.

(55) exercise of due diligence also entails using the methods based on best reasonably available science to conduct an alternatives analysis—that encompasses GHGs quantification and impact assessment—as well as enabling timely and meaningful public review by disclosing the results of such analysis.

(165) The Joint Methodological Principles provide that the MDBs' expert judgment will be 'based on available information … and they are likely to be revised in the future, reflecting the evolving body of scientific and economic information available to the MDBs and their clients'. This statement, however, does not clearly make it mandatory for MDBs to use the best available science in assessing the Paris alignment of a project. Where the MDB Paris Methodologies also appear to fall short concerns the public disclosure of evaluations and meaningful consultation with stakeholders, including concerned civil society organizations.

(167) In implementation of the more stringent diligence due from IFIs, the MDB Paris Methodologies should include assessment of Scope 3 emissions, which are indirect emissions associated with the extraction and production of purchased materials, fuels and services, including transport in vehicles. These Scope 3 emissions represent the greatest amount of emissions and cutting them is crucial for keeping within then 1.5°C threshold. The inclusion of Scope 3 emissions in EIA assessments is also increasingly well established in domestic law. …. Where the inclusion of Scope 3 emissions in the EIA could entail additional costs, the IFI should either perform the more rigorous assessment or assist the borrower in undertaking the same.

(169) To conclude, because they do not rely on the best available science, which provides evidence for including in MDBs' universally non-aligned list such projects that use or depend on other fossil fuels (e.g. petroleum) besides coal, the MDB Paris Alignment Methodologies are potentially inconsistent with the respective climate-related customary obligations of IFIs and member States. Major Shareholders that rely on these methodologies in their decision making also risk violating their treaty-based climate obligations, including to provide climate finance that supports mitigation and adaptation.

(172) without correcting these methodologies' failures to rely on the best available science and to enhance support for less carbon-intensive alternative projects, the IFIs and the Major Shareholders are not acting with the requisite stringent due diligence in the context of climate change.