From policy alternative to legal obligation : Fossil fuel subsidies under international climate and trade law

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Abstract

For three decades, fossil fuel subsidies (FFS) have occupied an ambiguous position in international law: nominally sovereign fiscal choices, yet increasingly difficult to square with States' mitigation commitments under the UNFCCC and the Paris Agreement. That ambiguity has sustained a persistent gap between the rhetoric of decarbonisation and the reality of continued fossil-fuel support, estimated at more than USD 1.1 trillion globally in 2023. This paper argues that two recent developments, close in time though different in kind, are compressing that gap and converting FFS reform from a discretionary policy preference into an increasingly binding, if unevenly enforced, legal obligation. The first is the International Court of Justice's Advisory Opinion of July 2025, which articulates an authoritative due-diligence standard extending to fossil-fuel production, licensing and subsidisation. The second is the 2026 Strait of Hormuz crisis, which disrupted a substantial share of seaborne oil and LNG trade and, in doing so, put the energy-security rationale customarily invoked against subsidy withdrawal to a real-world test.

The study adopts a qualitative doctrinal and comparative legal-policy method. It reads the UNFCCC, the Paris Agreement, the WTO Agreement on Subsidies and Countervailing Measures (ASCM) and the Agreement on Climate Change, Trade and Sustainability (ACCTS) together, and triangulates that doctrinal analysis against a purposive comparison of jurisdictions with divergent development trajectories and energy endowments.

Three findings emerge. First, the ICJ Opinion and ACCTS together constitute an emergent legal norm that operates principally through interpretive diffusion, not direct enforcement. Second, the Hormuz crisis complicates this trajectory without negating it: it reinforces energy-security exceptions whose burden falls hardest on import-dependent developing States. Third, critical-mineral supply-chain bottlenecks risk displacing fossil dependency onto a differently concentrated set of extractive chains. The paper proposes a hybrid three-pillar framework, combining general international law, ACCTS-style climate-trade mechanisms and domestic and WTO enforcement levers, calibrated to protect the fiscal space and energy-access needs of developing States during the phase-out period.

Introduction

Fossil fuel subsidies (FFS) present one of the most persistent contradictions in contemporary international economic governance. States that have committed, under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, to decarbonise their economies continue, at the same time, to direct extraordinary fiscal resources toward the production and consumption of the very fuels whose combustion drives the climate emergency they have pledged to address. The scale of the contradiction is not marginal. Estimates place global fossil fuel subsidies at approximately USD 1.1 trillion in 2023, while separate estimates cited in the Fossil Fuel Subsidy Reform (FFSR) Ministerial Statement place government support for fossil fuels at over USD 1.4 trillion in 2022, during the global energy crisis. By comparison, global investment in renewable energy reached only USD 728 billion in 2024. This asymmetry between subsidised carbon dependence and under-financed decarbonisation is the empirical starting point for the paper.

For most of the post-Rio era, FFS reform has been treated in the scholarly and policy literature as a matter of discretionary fiscal and energy policy: desirable on efficiency and environmental grounds, politically difficult, but ultimately a sovereign choice unconstrained by binding international obligation. That characterisation, this paper argues, is no longer sustainable. Two developments occurring within a single eighteen-month window are compressing the gap between the rhetoric of decarbonisation and the reality of continued fossil-fuel support, and converting FFS reform from a discretionary policy preference into an increasingly binding, if unevenly enforced, legal obligation.

The first development is doctrinal. On 23 July 2025, the International Court of Justice (ICJ) delivered its unanimous Advisory Opinion on the Obligations of States in Respect of Climate Change, in response to General Assembly Resolution 77/276. Notwithstanding its formally non-binding character under Article 65 of the ICJ Statute, the Opinion articulates for the first time an authoritative due-diligence standard requiring States to prevent significant transboundary climate harm, and expressly identifies the granting of fossil-fuel exploration licences and the provision of fossil-fuel subsidies as conduct capable of constituting an internationally wrongful act. This marks a qualitative departure from earlier practice, in which FFS reform initiatives, whether at the Organisation for Economic Co-operation and Development, the G20 or the WTO, proceeded on an avowedly voluntary and aspirational basis.

The second development is geopolitical. Beginning in late February 2026, escalating military conflict involving Iran, the United States and Israel produced a near-total closure of the Strait of Hormuz, a chokepoint through which around a quarter of global seaborne oil trade, alongside substantial volumes of liquefied natural gas and fertiliser inputs, ordinarily passes. The crisis triggered coordinated strategic petroleum reserve releases, sharp increases in Brent crude prices above USD 90 per barrel, and severe disruption to LNG, fertiliser, methanol and petrochemical supply chains, with disproportionate consequences for import-dependent developing economies already carrying high debt-servicing burdens.

These two developments repay joint examination, and not merely because they coincided. The Hormuz crisis appears, on its face, to vindicate the energy-security rationale that governments have long invoked against fossil-fuel subsidy withdrawal: when supply is disrupted, subsidised price stabilisation becomes, for many governments, a politically unavoidable response. Yet the same crisis demonstrated, in real time and at global scale, precisely the kind of transboundary and systemic harm that the ICJ's due-diligence standard is designed to discipline, since continued dependence on a small number of maritime chokepoints and a narrow range of fossil-fuel exporting States is itself a structural vulnerability that subsidised consumption helps to entrench. Existing scholarship has tended to treat legal obligation and energy-security exception as separate literatures, largely because they have, until recently, evolved on separate tracks: the ICJ Opinion in the register of international environmental and human rights law, and the Hormuz-type shock in the register of energy security and macroeconomic policy. The contention here is that it is the interaction between the two, and not either read in isolation, that best explains both the pace and the marked unevenness of FFS reform.

The remainder of the paper proceeds in five sections. Section 2 reviews four strands of literature that the paper reads together: the economics and definitional literature on fossil fuel subsidies; the law and limits of the WTO Agreement on Subsidies and Countervailing Measures (ASCM); the emerging due-diligence jurisprudence culminating in the 2025 ICJ Opinion; and the plurilateral climate-trade innovation represented by the Agreement on Climate Change, Trade and Sustainability (ACCTS). Section 3 sets out the doctrinal and comparative legal-policy method adopted. Section 4 presents three principal findings. Section 5 develops a hybrid three-pillar framework and situates it within the wider debate on the future of multilateral trade governance following the WTO's Fourteenth Ministerial Conference (MC14) in Yaounde. Section 6 addresses the limitations of the analysis and directions for future research.

Literature Review

The literature bearing on FFS reform is fragmented across at least four bodies of scholarship that have, until recently, rarely been read together: the economic and definitional literature on subsidy measurement; the trade-law literature on the WTO's subsidy discipline; the international-law literature on due diligence and State responsibility for environmental harm; and the more recent literature on

plurilateral climate-trade instruments. This section reviews each in turn, before identifying the gap that the remainder of the paper addresses.

Defining and Measuring Fossil Fuel Subsidies

A first, substantial body of work addresses the definitional and measurement challenges that have historically stalled FFS reform. Estimates of the scale of fossil fuel subsidies vary considerably depending on methodology: the price-gap approach used by the International Energy Agency, the inventory approach used by the OECD, and the broader concept adopted by the International Monetary Fund, which incorporates unpriced externalities such as local air pollution and climate damage, each produce different figures, ranging from several hundred billion to several trillion US dollars annually. The absence of an agreed international legal definition of a fossil fuel subsidy has, for decades, been identified as the principal obstacle to binding multilateral discipline, since without a shared definition, negotiators cannot agree on what precisely is to be prohibited, phased out, or notified. This definitional impasse forms an important backdrop to the ACCTS innovation discussed below, which is the first international instrument to supply an operative legal definition of a harmful fossil fuel subsidy.

The WTO's Subsidy Discipline and its Limits

A second body of literature addresses the WTO's existing subsidy discipline, principally the Agreement on Subsidies and Countervailing Measures, and its limitations in respect of fossil fuels. The ASCM's categories of prohibited and actionable subsidies were designed around industrial and agricultural support rather than energy-sector fiscal measures, and its specificity requirement, under which only subsidies targeted at particular enterprises are actionable, has proved a significant obstacle: many of the largest fossil-fuel subsidies, such as generalised tax and royalty exemptions for oil and gas production, are not, in the ASCM sense, specific. Commentators have accordingly characterised the WTO's decade-long Fossil Fuel Subsidy Reform (FFSR) initiative, launched by twelve members in 2017 and expanded to forty-eight co-sponsors by 2024, as institutionally significant but substantively modest: valuable for its transparency-building function, but incapable, absent reform of the ASCM's specificity test or the WTO's consensus rule, of producing binding disciplines. A related literature considers proposals, canvassed ahead of MC14, for a reformed Article 8.2 'green light' category recategorising fossil-fuel subsidies as prohibited while creating a safe harbour for renewable-energy subsidies tied to phase-out commitments, sometimes termed a 'brown-to-green swap'.

The Due-Diligence Turn in International Climate Law

A third, rapidly growing body of scholarship addresses the due-diligence turn in international climate law, culminating in the ICJ's 2025 Advisory Opinion. Prior to 2025, due diligence in the climate context had been developed principally through domestic climate litigation, most notably the Urgenda line of cases in the Netherlands, without an authoritative international judicial pronouncement. Commentators emphasise several features of the Opinion as legally consequential: its rejection of the lex specialis argument advanced by a coalition of high-emitting States, under which the UNFCCC, Kyoto Protocol and Paris Agreement would displace broader customary and human-rights obligations; its holding that the 1.5°C temperature goal is a legally binding benchmark rather than an aspirational target; its finding that a State's discretion in formulating Nationally Determined Contributions is not unlimited but must be exercised with due diligence; and, most directly relevant here, its explicit identification of fossil-fuel production, consumption, licensing and subsidisation as conduct capable of amounting to an internationally wrongful act. A further strand considers the Opinion's implications for investor-State dispute settlement, noting that fossil-fuel investors have historically relied on ISDS to challenge phase-out measures, and that the Opinion reinforces climate regulation as a legal duty rather than discretionary policy, potentially narrowing the scope for successful investor claims against subsidy withdrawal.

Plurilateral Climate-Trade Innovation: ACCTS

A fourth and most recent body of literature addresses the Agreement on Climate Change, Trade and Sustainability (ACCTS), signed by Costa Rica, Iceland, New Zealand and Switzerland on 15 November 2024 following fifteen negotiating rounds. ACCTS is widely characterised as the first legally binding international instrument to supply an operative definition of a harmful fossil fuel subsidy, encompassing both production and consumption subsidies and dispensing with the ASCM's specificity requirement. On the innovation side, ACCTS prohibits all coal subsidies outright, commits parties to standstill and eventual elimination of most fossil-fuel subsidies, and introduces the Standard Carbon Rate Measurement (SCRM), a voluntary methodology allowing parties to demonstrate that their net carbon price meets a committed benchmark. On the limitation side, commentators note that ACCTS does not capture generalised tax and royalty exemptions, that its carve-outs for 'time-limited' electricity subsidies create a substantial loophole for gas-dependent economies, and that as of mid-2026 it binds only four parties, none of them major fossil-fuel producers, which raises the question of how its disciplines might diffuse to larger emitters.

Energy Security, Geopolitical Shock and Just Transition

A related and increasingly urgent literature concerns the intersection of energy security, geopolitical shock and just transition. Analyses of the 2026 Strait of Hormuz crisis document immediate oil-price and shipping-cost effects, second-order consequences for fertiliser, methanol and petrochemical supply chains, and the disproportionate financial exposure of import-dependent developing economies, many of which already spend more on debt servicing than on health or education. A parallel literature on critical-mineral supply chains observes that lithium, cobalt, nickel and rare earths are geographically concentrated to a degree comparable with, or exceeding, that of conventional oil and gas: the Democratic Republic of the Congo accounted for approximately 74 per cent of global cobalt mine production in 2025, Indonesia for 67 per cent of nickel mine production, and China for 69 per cent of rare-earth mine production and a still larger share of processing capacity. This literature warns that, absent deliberate intervention, the phase-out of fossil dependency risks reproducing the extractive and geopolitical vulnerabilities of commodity dependence, particularly for developing States that supply raw minerals but capture little downstream value.

Taken individually, each of these four literatures offers a partial account. Read together, they point to an emerging but still fragmented regime complex, in which doctrinal hardening at the level of general international law (the ICJ Opinion), innovation at the level of plurilateral trade law (ACCTS), continued incapacity at the level of multilateral trade law (the ASCM and the WTO consensus rule), and structural vulnerability at the level of energy and mineral geopolitics (Hormuz, critical minerals) interact in ways that existing scholarship has not yet systematically mapped. The remainder of the paper takes up that task.

Research Methodology

This study adopts a qualitative doctrinal and comparative legal-policy method, structured in three analytically distinct but cumulative stages, consistent with established approaches to international economic law scholarship that combine close textual analysis of primary instruments with structured jurisdictional comparison.

First, the paper undertakes a close doctrinal reading of the primary instruments bearing on FFS discipline: the UNFCCC, the Paris Agreement, the WTO Agreement on Subsidies and Countervailing Measures, and the Agreement on Climate Change, Trade and Sustainability. These instruments are read together rather than in isolation, on the premise that FFS obligations are dispersed across general international law, multilateral trade law and plurilateral innovation, and that their cumulative legal effect can only be assessed by considering how each instrument's obligations, exceptions and enforcement mechanisms interact with the others. This reading is informed throughout by the ICJ's July 2025 Advisory Opinion, which the paper treats as an interpretive lens, consistent with the Opinion's own formally advisory character, and not as a freestanding source of obligation. This stage allows the paper to

distinguish obligations that remain declaratory from those that, following the Opinion, arguably now carry an enforceable due-diligence content.

Second, the doctrinal analysis is triangulated against a purposive, most-different-systems comparison of jurisdictions selected for divergent development trajectories and energy endowments: renewable scale-up in Germany and China, rapid solar deployment in India and Brazil, and negotiated coal phase-out in the European Union. The comparison is deliberately not exhaustive. Its purpose is to surface the structural conditions under which formally similar legal obligations, whether arising from the Paris Agreement, the ICJ Opinion or WTO transparency mechanisms, produce divergent domestic outcomes: differences in fiscal capacity to absorb the revenue loss from subsidy withdrawal, differences in energy mix and consequent exposure to the ACCTS-style carve-outs for gas-related energy-security measures, and differences in exposure to critical-mineral supply-chain constraints that condition the feasibility of renewable substitution.

Third, the paper maps these empirical trajectories against the emerging legal framework identified in the doctrinal stage, in order to identify implementation gaps, with particular attention to the critical-mineral bottlenecks that risk substituting one form of resource dependency for another. This mapping draws on recent UNCTAD trade-policy analysis of critical-mineral concentration and value capture, and on the WTO's own 2026 analytical work on subsidies to high-emitting, energy-intensive sectors.

The method's principal limitation, addressed further in Section 6, is that doctrinal and comparative analysis of this kind can establish the direction and structural drivers of legal change, but not its causal magnitude. The ICJ Opinion is barely a year old at the time of writing, and ACCTS has not yet produced a completed implementation cycle; empirical claims about compliance effects would therefore be premature. The findings below are accordingly framed as an emerging normative trajectory, not a settled legal transformation, and the paper's contribution is conceptual and doctrinal in character.

Findings

The analysis yields three principal findings, each qualified by a tension that the paper works through without claiming to resolve.

Finding One: The ICJ Opinion and ACCTS as an Emergent Norm of Interpretive Diffusion

Read together, the ICJ Opinion and ACCTS constitute an emergent legal norm that reframes FFS reform as a matter of due diligence, transboundary-harm prevention and subsidy discipline, a qualitative departure from the pre-2025 paradigm in which FFS reform was treated as voluntary and aspirational. Prior to July 2025, no authoritative international judicial body had held that the provision of a fossil-fuel subsidy could, in principle, form part of an internationally wrongful act. The ICJ's unanimous finding that a State's failure to exercise due diligence, including through fossil-fuel subsidisation, may trigger the law of State responsibility supplies, for the first time, an authoritative benchmark against which conduct can be assessed.

This norm, however, operates less through direct enforceability than through what the paper characterises as interpretive diffusion. The ICJ Opinion remains formally advisory, and ACCTS presently binds only four Parties, none of them major fossil-fuel producers; neither instrument creates an enforceable obligation applicable to the largest subsidisers, including the United States, China and Russia. Diffusion instead operates through three channels: domestic courts, increasingly likely to draw on the Opinion's due-diligence standard in climate litigation; treaty bodies and future NDC review under the Paris Agreement's global stocktake, for which the Opinion supplies an authoritative interpretation of the 'due diligence' already present in Article 4; and, prospectively, WTO panels, which may find the Opinion persuasive in interpreting the ASCM's object and purpose. ACCTS reinforces this diffusion by supplying the first operative legal definition of a harmful fossil-fuel subsidy, a definitional innovation WTO members have cited as informative for the broader FFSR initiative.

The WTO's own Fourteenth Ministerial Conference, held in Yaounde, Cameroon from 26 to 30 March 2026, illustrates both the direction and the limits of this diffusion. The forty-eight FFSR co-sponsors issued a further joint ministerial statement reaffirming commitment to rationalisation and phase-out, and a

parallel Coalition of Trade Ministers on Climate adopted a communique referencing a menu of voluntary climate actions, with Vanuatu explicitly invoking the ICJ Opinion's fossil-fuel-subsidy findings in the FFSR discussions. Yet MC14 closed without an overall ministerial declaration, with the 'Yaounde Package' left for completion in Geneva, a reminder that consensus-based multilateralism continues to lag behind the doctrinal hardening evident at the ICJ.

Finding Two: The Hormuz Crisis as Complication, Not Negation

The 2026 Hormuz crisis complicates this trajectory without negating it. By reinforcing energy-security justifications for retaining fossil-fuel support, the crisis demonstrates that geopolitical shocks can delay, and selectively legitimise exceptions to, an obligation that is otherwise hardening. UNCTAD's rapid assessments document that global merchandise trade growth is projected to slow from approximately 4.7 per cent in 2025 to between 1.5 and 2.5 per cent in 2026, that inflationary pressure is rising as a direct consequence of the energy shock, and that developing countries face weakening currencies, rising borrowing costs and investor withdrawal precisely at the moment when subsidy withdrawal would otherwise be most fiscally warranted.

The paper reads the crisis not as a rupture in the emerging legal norm identified in Finding One, but as evidence of a persistent, and unevenly distributed, gap between formal obligation and practical enforceability, one that falls hardest on import-dependent developing States with the least fiscal space to absorb either subsidy withdrawal or energy-price shocks. The mechanism is structural, not merely political. ACCTS itself anticipates this tension by carving out 'time-limited' electricity-related fossil-fuel subsidies designed to ensure security of domestic energy supply during the transition to renewables; the FFSR initiative's second work-programme pillar is dedicated specifically to the design, adjustment and roll-back of crisis-related subsidy measures. Both instruments were, in effect, designed in anticipation of exactly the kind of shock that Hormuz represents. Yet neither supplies a binding limit on the duration or scale of such crisis measures once invoked, leaving considerable discretion to the States whose fiscal position is weakest and whose leverage in shaping any future binding discipline is correspondingly limited.

The distributional asymmetry deserves emphasis. UNCTAD estimates that 3.4 billion people live in countries that already spend more on debt servicing than on health or education combined, leaving essentially no room to absorb both subsidy elimination and an unhedged energy-price shock simultaneously. For these States, the ICJ's due-diligence standard and the crisis-driven imperative to stabilise domestic energy prices point, at least in the short run, in opposite directions, even though both are, in the medium run, consistent with reducing structural dependence on volatile fossil-fuel imports. This tension is better understood as a distributive-justice question internal to the due-diligence standard itself, since the CBDR-RC principle the ICJ invokes requires that due diligence be calibrated to a State's capacity, and cannot be read as a uniform standard indifferent to fiscal constraint.

Finding Three: Critical-Mineral Bottlenecks and the Risk of Displaced Dependency

Critical-mineral bottlenecks in clean-energy supply chains expose a structural vulnerability that the existing legal architecture, whether the ICJ Opinion, ACCTS, or the WTO's FFSR initiative, is not designed to address: the risk that fossil dependency is not eliminated but displaced onto a different, similarly concentrated, set of extractive supply chains, disproportionately affecting the same developing States that FFS reform is meant to benefit. The concentration data bear this out. As of 2025, the Democratic Republic of the Congo accounted for approximately 74 per cent of global cobalt mine production, Indonesia for 67 per cent of nickel mine production, and China for 69 per cent of rare-earth mine production, with China's dominance of downstream processing and refining capacity substantially exceeding even these mining shares. These concentration ratios are comparable to, and in some cases exceed, historical measures of fossil-fuel supply concentration, including the roughly one-quarter share of global seaborne oil trade that transits the Strait of Hormuz alone.

UNCTAD projects that global lithium demand could rise by more than 1,500 per cent by 2050, with comparable increases for nickel, cobalt and copper, yet current investment in extraction and processing is

not keeping pace: an estimated USD 360 to 450 billion is required between 2022 and 2030 to meet net-zero pathways, against a projected shortfall of USD 180 to 270 billion. Of the roughly USD 128 billion invested globally in critical-mineral extraction and processing in 2025, the great majority flows toward extraction rather than the higher-value midstream processing and refining stages, meaning mineral-rich developing States remain positioned, as under the fossil-fuel paradigm, primarily as raw-material exporters rather than value-added producers.

None of the three legal instruments examined in this paper directly addresses this risk. The ICJ Opinion is framed around greenhouse-gas emissions and fossil-fuel-specific conduct, and does not extend its due-diligence analysis to the extractive or labour practices associated with critical-mineral supply chains. ACCTS's environmental-goods liberalisation chapter facilitates trade in the finished technologies, solar panels, batteries and wind turbines, that critical minerals feed into, but contains no discipline on the terms of access to, or value capture from, the minerals themselves. The WTO's FFSR initiative is, by definition, confined to fossil-fuel subsidies and does not extend to critical-mineral trade policy, even though WTO members, including the African Group ahead of MC14, have explicitly linked the two agendas, calling for rules that encourage local processing of critical minerals rather than simply their export, precisely to avoid reproducing the raw-material-exporter position that many African economies occupied under the fossil-fuel-dominated trading system. Taken together, these three findings suggest that international regimes governing climate, trade and investment remain fragmented: formally more demanding than a decade ago, yet insufficiently attentive to equity and just-transition concerns, and structurally unable, on their own, to manage the intersection of due-diligence obligations, trade discipline and energy security that the 2025–2026 period has brought into sharp relief.

Discussion and Conclusions

The three findings developed in Section 4 point toward a common diagnosis: no single existing regime, whether general international law as clarified by the ICJ, plurilateral trade innovation as represented by ACCTS, or multilateral trade discipline as represented by the WTO's ASCM and FFSR initiative, is presently capable of bearing the full weight of FFS reform alone. This section proposes, provisionally, a hybrid three-pillar framework in place of a single unifying instrument, on the premise that the fragmentation identified above is unlikely to be resolved through the negotiation of a new comprehensive treaty in the near term, given the demonstrated difficulty of achieving consensus outcomes even at a dedicated ministerial forum such as MC14.

A Hybrid Three-Pillar Framework

Pillar I anchors obligations in general international law: the UNFCCC, the Paris Agreement, and the customary due-diligence norm affirmed by the ICJ. This pillar's principal function is interpretive. It does not require new treaty text; it requires, instead, that the due-diligence content of existing obligations, as clarified by the 2025 Opinion, be actively invoked by developing-country claimants, domestic courts and treaty bodies as an interpretive resource, including within the Paris Agreement's global stocktake and enhanced transparency framework mechanisms. Given the ICJ's own emphasis on the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), this pillar should explicitly incorporate differentiated due-diligence content: the standard of care expected of a high-income, fiscally resilient economy in phasing out subsidies differs from that expected of an import-dependent developing State exposed to a Hormuz-type shock.

Pillar II operationalises these general obligations through ACCTS-style climate-trade mechanisms, including the Standard Carbon Rate Measurement, carbon border adjustment interoperability, and subsidy transparency registers modelled on the FFSR initiative's Trade Policy Review questions. The paper's central recommendation within this pillar is that ACCTS's open plurilateral design, under which any WTO member may accede and non-parties benefit from most-favoured-nation liberalisation of environmental goods, be actively used as a template and not treated as a closed four-party arrangement. The debate at MC14 over whether the WTO should formally recognise open plurilateral agreements without requiring universal consensus is directly relevant here: such recognition would allow ACCTS-

style disciplines to diffuse into the WTO's institutional architecture without requiring the unanimous agreement of major subsidisers such as the United States, China and Russia in the first instance.

Pillar III relies on domestic law and WTO instruments as complementary, if presently under-used, enforcement levers. At the domestic level, this includes the extension of due-diligence-based climate litigation, informed by the ICJ Opinion, to challenge both direct subsidies and indirect fiscal support such as tax and royalty exemptions that fall outside ACCTS's coverage and outside the ASCM's specificity test. At the WTO level, this includes continued use of the Trade Policy Review mechanism to build the transparency base without which any future binding discipline, whether an amended ASCM Article 8.2 'green light' category or a plurilateral agreement on subsidies and sustainable investment, would be difficult to negotiate credibly.

Each pillar is designed to carry differentiated obligations and just-transition safeguards calibrated to protect the fiscal space and energy-access needs of developing States during the phase-out period, consistent with the CBDR-RC principle. Concretely, this requires: graduated implementation periods linked to debt-sustainability indicators of the kind UNCTAD already tracks in its Hormuz-crisis assessments; integration of critical-mineral value-capture provisions, such as those demanded by the African Group ahead of MC14, into Pillar II itself, so that the displacement risk identified in Finding Three is addressed within the same instrument that disciplines fossil-fuel subsidies; and extension of technical and financial cooperation, of the kind already present in ACCTS Article 8.6, to the domestic administrative capacity required to measure and report fossil-fuel subsidies accurately, since transparency itself is a significant and resource-intensive first step.

The framework's contribution is accordingly twofold and deliberately modest in its claims. Theoretically, it is among the first attempts to read the ICJ Opinion, ACCTS and WTO subsidy discipline as a single, if imperfectly coordinated, regime complex, in place of three unrelated developments in separate legal silos. Practically, it offers a template that governments and international bodies can adapt within existing treaty structures, without presupposing the conclusion of a new binding instrument that current geopolitical conditions, including the deadlock evident at MC14 and the continuing Hormuz disruption, make unlikely in the near term.

Limitations and Directions for Future Research

The paper's principal limitation, flagged in Section 3, is methodological: doctrinal and comparative legal analysis of the kind undertaken here can identify the direction and structural drivers of legal change but cannot establish causal compliance effects. At the time of writing, the ICJ Opinion is not yet a year old, ACCTS has not completed a full implementation and review cycle, and the Hormuz crisis remains, on UNCTAD's own account, an unresolved and evolving situation. Claims made in this paper about interpretive diffusion and normative hardening are therefore necessarily framed as an emerging trajectory, and should be revisited once domestic courts, WTO panels and future NDC review cycles have had the opportunity to engage substantively with the Opinion.

A second limitation concerns the comparative dimension of the method. The jurisdictions selected, Germany, China, India, Brazil and the European Union, were chosen purposively for their divergent development trajectories and energy endowments, and the comparison is accordingly illustrative rather than representative of the full diversity of developing-country experience, particularly of smaller, import-dependent economies most exposed to the Hormuz-type shock discussed in Finding Two. Future research employing a larger and more systematically sampled comparative set, ideally combined with quantitative subsidy-tracking data of the kind compiled by the IEA, OECD and IMF, would strengthen the empirical foundations of the claims advanced here.

Third, the critical-minerals dimension of the paper, developed in Finding Three, is necessarily preliminary, given that the legal architecture for critical-mineral trade governance is, as of mid-2026, considerably less developed than the fossil-fuel-subsidy architecture that is the paper's primary focus. Future research should examine whether, and how, the due-diligence standard articulated by the ICJ might be extended by analogy to critical-mineral extraction, and whether an ACCTS-style plurilateral instrument addressing critical-mineral value capture, along the lines demanded by the African Group

ahead of MC14, is a realistic near-term prospect or a longer-term aspiration. Finally, given the fast-moving nature of the underlying events, particularly the still-unresolved Hormuz crisis and the unfinished 'Yaounde Package' negotiations continuing in Geneva, readers should treat the empirical account offered here as a snapshot as of mid-2026, subject to material revision as these processes develop further.

Appendix

Appendix A summarises the hybrid three-pillar framework developed in Section 5.1, mapping each pillar to its primary legal source, operative mechanism and principal just-transition safeguard.

Appendix A: The Hybrid Three-Pillar Framework

Pillar	Primary legal source	Operative mechanism	Just-transition safeguard
Pillar I: General international law	UNFCCC; Paris Agreement; ICJ due-diligence standard	Interpretive invocation in domestic courts, treaty bodies and the Paris Agreement global stocktake	Differentiated due-diligence content linked to CBDR-RC and fiscal capacity
Pillar II: Plurilateral climate-trade mechanisms	ACCTS; Standard Carbon Rate Measurement	Open-plurilateral accession; carbon-price interoperability; subsidy transparency registers	Integration of critical-mineral value-capture provisions; deferred accession timelines
Pillar III: Domestic law and WTO instruments	ASCM; WTO Trade Policy Review; FFSR initiative	Domestic due-diligence litigation; TPR-based transparency reporting; possible Article 8.2 reform	Technical and financial cooperation for subsidy measurement and reporting capacity

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