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FROM EMISSIONS TO REPARATIONS? STATES' LIABILITY AFTER THE ICJ'S CLIMATE RULING

On 23 July 2025, the International Court of Justice (ICJ) handed down a historic advisory opinion addressing states' obligations concerning climate change¹, an authoritative opinion expected to significantly influence the development of international climate litigation.

The case originated from the Pacific Island of Vanuatu in 2023 which, leading a group of 132 developing and developed states, successfully urged the UN General Assembly to refer key questions to the ICJ.

The UN General Assembly subsequently requested the Court's opinion on two critical issues:

1. What obligations do states have under international law to protect the climate system and the environment from anthropogenic greenhouse gas emissions, for the benefit of both present and future generations?
2. What are the legal consequences under these obligations when states, through acts or omissions, cause significant harm to the

climate system and other environmental components, particularly with respect to:

- a. States, including small island developing states (SIDS), that are especially vulnerable to, or adversely affected by, climate change due to their geographic and developmental circumstances?
- b. Peoples and individuals of present and future generations impacted by the adverse effects of climate change?

CUSTOMARY LAW AND CLIMATE OBLIGATIONS

In its advisory opinion, the ICJ first affirmed its jurisdiction and admissibility to hear the request, establishing that the questions presented were legal in nature and finding no compelling reason to decline its discretion to provide an opinion.

In its unanimous opinion, the Court recognised that the consequences of climate change constitute an "existential problem of planetary proportions," marking the first time the ICJ has provided an authoritative interpretation of States' legal obligations concerning climate change mitigation, adaptation, and transboundary harm.

Whilst doing so, it confirmed that the states not only have a legal duty to prevent significant harm to the environment and the climate system, but that this extends to a continuing duty to repair

¹ [Advisory Opinion of 23 July 2025](#)



damage caused by the states' historic acts or omissions. The court emphasised that activity such as licensing, production, and subsidising fossil fuels may constitute an "internationally wrongful act", which can call for reparations.

Interestingly, the court went beyond highlighting the states' existing and binding duties under multilateral climate change treaties such as the 1992 UN Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol, the 2015 Paris Agreement and the 1982 UN Convention on the Law of the Sea. The court held that all states are bound by international law, irrespective of treaty membership, and that states' duties in relation to climate change are also found under customary international law. This includes (a) the duty to prevent significant harm to the environment by acting with due diligence and in accordance with common but differentiated responsibilities and respective capabilities ("duty to prevent"); and (b) the duty to cooperate in good faith to prevent significant harm ("duty to cooperate").

In addressing the second question, the Court found that a breach of any of these obligations constitutes an internationally wrongful act, for which the responsible State is liable. Legal consequences for such breaches may include a duty to cease the harmful conduct, provide assurances and guarantees of non-repetition, and offer full reparation for the damage caused - whether through restitution, compensation, or satisfaction.

ATTRIBUTION, CAUSATION AND STATE RESPONSIBILITY

In establishing state liability, courts recognised attribution as a fundamental element in determining whether a state has committed an internationally wrongful act and is thus subject to legal consequences. The ICJ clarified that attribution operates in two distinct contexts. First, in climate science, it refers to linking specific emitting activities to the effects of climate change, as exemplified by the work of the Intergovernmental Panel on Climate Change (IPCC). Second, in international law, attribution pertains to assigning conduct to a state.

On the subject of State liability, the Court affirmed the "well-established rule of international law" that actions undertaken by state organs are attributable to the state itself. It

added that the "failure of a State 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 licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State". The Court also emphasised that "the internationally wrongful act in question is not the emission of GHGs *per se*, but the breach of conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases".

On the topic of private actors, the Court emphasised that the involvement of private actors, such as oil and gas companies, does not absolve states of responsibility. It added that States "have an obligation to regulate the activities of private actors as a matter of due diligence"; ergo, a State may be held liable if it fails to exercise due diligence over corporations operating within its jurisdiction by neglecting to implement adequate regulatory or legislative measures to limit emissions from these private entities.

On evidence and causation, the ICJ made a number of comments:

- + First, as to evidence, accepting that climate change is caused by cumulative GHG emissions, the Court said, "it is scientifically possible to determine each State's total contribution to global emissions, taking into account both historical and current emissions". (The authors note that this would be a highly contentious issue in any such proceedings as to which 'science' is held more persuasive than another.) That said, the Court stressed that "what constitutes a wrongful act is not the emissions in and of themselves but actions or omissions causing significant harm to the climate system in breach of a State's international obligations".
- + Second, as to plurality of injured or responsible States (i.e. think contributory negligence), the Court advised that it considers that, in principle, the rules on State responsibility under customary international law are capable of addressing such a situation. Moreover, the Court noted that factual



questions arising in the context of attribution and apportionment of responsibility are to be resolved on a case-by-case basis.

- + Third, as to causation, the Court clarified that proving causation of damage is not necessary to establish state responsibility under international law but is crucial for determining reparations. (It is interesting to note that while some participants submitted that causation between a wrongful act and damage should be presumed in the context of climate change, this was sensibly rejected by the Court.) The Court then reaffirmed the traditional legal standard developed in the jurisprudence of the Court requires "a sufficiently direct and certain causal link between the wrongful act and the harm suffered". While acknowledging the unique challenges posed by climate change because of its global scale and cumulative emissions, the Court emphasised that these difficulties do not render establishing causation impossible.

In practice, however, both attribution and causation may present considerable evidentiary challenges for claimants. It remains to be seen how other courts will interpret and apply this standard, particularly given the risk that an overly flexible approach could dilute the threshold for responsibility. Ultimately, each case will depend on its specific facts and must be supported by robust scientific evidence.

THE SIGNIFICANCE - THE END OF CLIMATE IMPUNITY?

Although ICJ advisory opinions are not legally binding, they carry significant normative weight, which can influence the evolution of international law, inform national policy frameworks, and serve as persuasive authority in both international and domestic courts.

This opinion could mark a pivotal moment by strengthening the ability of climate-vulnerable states that have been disproportionately affected by climate change to pursue accountability from major emitters. It may lead to an increase in cases brought before the ICJ, a greater likelihood of successful claims by member states, and a broader recognition of remedies for historic contributions to climate change.

At the domestic level, the ruling could have wide-ranging implications across both public and private law. It may spur public law challenges to government policies and regulatory decisions that result in GHG emissions, potentially reshaping environmental and energy regulation. These developments could have a significant impact on business practices, particularly for industries associated with fossil fuels, greenwashing, or high-emissions activities.

Moreover, the advisory opinion could bolster the growing trend of climate-related human rights litigation, with activists, affected communities, and even states seeking accountability directly from corporate actors. This includes claims based on the failure to prevent foreseeable harm to people and ecosystems resulting from inadequate mitigation or adaptation efforts.

CONCLUSION

Ultimately, it is important to recognise that the ICJ's opinion builds upon several rulings and advisory opinions from human rights courts and the International Tribunal for the Law of the Sea. These decisions emphasise that climate responsibility is not merely an aspiration but a binding legal obligation. Failures to meet this obligation have a direct impact on human rights and carry tangible consequences.

Whether this moment represents a historic turning point in climate justice and accountability remains to be seen; certain States have chosen to ignore ICJ rulings in the past and enforcing such rulings is problematic, albeit impossible in some instances. Much will depend on the willingness of domestic and international courts to engage with complex causation arguments, and on whether they are prepared to grant meaningful reparations and remedies.

Regardless, the opinion sends a strong message to states and businesses alike: the time to implement and expect heightened due diligence on climate practices is now. As more policies are developed, states and private actors alike should seek to align their actions with legal standards to shield themselves from potential legal challenges.



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