A Panoply of Consequences?

Remedies and Reparations in the ICJ's Climate Opinion

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The International Court of Justice (ICJ)'s recent advisory opinion on climate change represents a pivotal moment in the evolution of international climate law. By affirming that States can incur legal responsibility for failing to reduce greenhouse gas (GHG) emissions, the ICJ brought long-standing principles of State responsibility into sharper focus within the climate context. Among the opinion's most significant – but underexplored – aspects is its treatment of reparations and remedies. This blog post unpacks the legal consequences outlined by the ICJ, examining what the opinion says and doesn't say about how climate-related harm should be remedied. At the heart of this analysis lies a central question: can the affirmation of legal responsibility without clear guidance on reparation design meaningfully advance climate justice? Similarly to our analysis of how the IACtHR dealt with reparations, the ICJ touched on essential parts, but could have gone further.

The Affirmation of State Responsibility

A key breakthrough in the *ICJ's opinion* is its affirmation that States may bear international responsibility for failing to control and reduce GHG emissions (seePaddeu/Jackson, Wewerinke-Singh/Vinuales, and Reetz). This outcome reflects the positions advanced by several States (e.g., see Vanuatu (para. 197), Colombia (para. 3.10), Saint Lucia (paras. 66–67), and the Melanesian Spearhead Group (para. 298). According to customary law international law, as codified in the International Law Commission (ILC) Draft Articles, "Every internationally wrongful act of a State entails the international responsibility of that State" (art. 1). Common objections in climate litigation-including by several States' arguments in the proceedings–relate to attribution, breach of obligation (art 2), and causation (e.g., Australia (paras. 6.19-6.31); China (para. 138); Kuwait (paras. 108-124); Russia (para. 16); Saudi Arabia (para. 6.7); United Kingdom (paras. 125-127); USA (para. 5.10), and Written Comments (paras. 5.11-5.16)).

The ICJ laid strong foundations for establishing State responsibility. On attribution, it confirmed that States' individual contributions to global emissions, past and present, are scientifically traceable (para. 429) and that international law can address harm involving multiple responsible and injured parties (para. 430). It dismissed the *Monetary Gold* argument, affirming that each State's responsibility can be individually invoked (para. 431) and clarified that States are accountable for the conduct of private business actors (para. 428).

On breach, the ICJ emphasized that both treaty and customary law obligations – especially under the UNFCCC and the Paris Agreement – are binding. It affirmed that Article 4 of the Paris Agreement imposes obligations on all States (para. 234) and that the content of a State's nationally determined contribution (NDC) must reflect progression and "highest possible ambition" (paras. 240-242). States must act with due diligence, and failure to regulate emissions, including through fossil fuel licensing or subsidies, may constitute a wrongful act (paras. 245, 427). Finally, the ICJ held that the existing legal standard of causation applies in climate contexts, requiring a "sufficiently direct and certain causal nexus" between the wrongful act and the injury (para. 436). While the ICJ did not specify a test for causation, it rejected the argument that climate complexity precludes responsibility (para. 438).

Erga Omnes Obligations and Collective Enforcement

Unlike the Inter-American Court of Human Rights, which emphasized the *jus cogens* nature of certain environmental norms in its advisory opinion (see Gehring), the ICJ did not address *jus cogens* directly. Instead, it clarified the *erga omnes* character of specific obligations related to climate change–namely, obligations owed to the international community as a whole. Building on its prior case law, the ICJ affirmed that customary international law duties to protect global commons, such as the climate system, are obligations *erga omnes*. In particular, the duty to prevent significant transboundary harm falls within this category (para. 440). By contrast, obligations under the UNFCCC and the Paris Agreement are *erga omnes partes*–owed only among State Parties to those treaties (para. 440).

This distinction has important implications. *Erga omnes* obligations allow any State—not just those directly harmed—to invoke responsibility for breaches, though they cannot seek reparations for themselves (para. 433). This reinforces a collective approach to climate accountability, rooted in shared global interests rather than bilateral relations. While not unprecedented, the ICJ's articulation lends authoritative weight to a view long advanced in doctrine: that key climate obligations reflect common concerns and may be enforced collectively.

By affirming the *erga omnes* nature of customary environmental duties, the ICJ helps ground climate-related obligations within the framework of international legal responsibility, supporting broader efforts to hold States accountable beyond direct harm. Its findings (paras.439–443) contribute to the evolving architecture of international climate law by recognizing the legitimacy of universal standing and collective enforcement in appropriate circumstances.

The "Panoply of Legal Consequences"

In addressing remedies for breaches of climate-related obligations, the ICJ anchored its analysis in the established framework of State responsibility, confirming that violations—such as failures to regulate GHG emissions—may trigger the full range of legal consequences (or, as the ICJ puts it, a "panoply of legal consequences") under customary international law (para. 445). While this is doctrinally orthodox, the ICJ's treatment is notable for explicitly extending these consequences to the climate context without narrowing their scope.

The ICJ's framework underscores three central elements: (i) cessation and guarantees of non-repetition, (ii) continued performance of obligations, and (iii) full reparation. Importantly, a breach does not extinguish the underlying duty; States remain bound to fulfil their climate commitments. This means that even after a finding of non-compliance—e.g., under Article 4 of the Paris Agreement—States would still be obliged to revise NDCs and pursue mitigation domestically (para. 447). Cessation may also require repeal of laws or permits enabling the wrongful act, while guarantees of non-repetition could entail institutional or regulatory reforms (para. 448).

Reparation—whether restitution, compensation, or satisfaction—remains available but raises specific challenges in the climate context. Restitution, though ideal in principle, is often unfeasible for large-scale and long-term environmental harm, making it more relevant to localized damage than to diffuse climate impacts (para. 451). Compensation, recognised as applicable to environmental damage in *Certain Activities Carried Out by Nicaragua in the Border Area* (*Costa Rica v. Nicaragua*), faces evidentiary and methodological hurdles when applied to climate harm. The ICJ's acknowledgment that equitable considerations and aggregate estimates may be used where precise quantification is impossible (paras. 452–454) signals a pragmatic flexibility that could prove critical for future claims.

Satisfaction—ranging from formal apologies to judicial declarations of wrongfulness—may appear symbolic, yet can carry significant normative weight. In climate disputes, such measures could advance recognition of historical loss and damage, affirm shared responsibilities, and contribute to rebuilding trust with disproportionately affected communities (para. 455). While the ICJ stopped short of operationalizing these remedies, its articulation leaves the door

open for creative adaptation of traditional principles to the distinctive realities of climate litigation.

Looking ahead, the ICJ's framing of remedies could have tangible ripple effects across multiple fora. By explicitly confirming that the "panoply" of consequences under State responsibility applies to climate breaches, the ICJ equips domestic, regional, and international adjudicators with a doctrinally secure basis for ordering both forward-looking measures (cessation, guarantees of non-repetition, ongoing compliance) and backward-looking relief (reparation). While operational challenges—especially in quantifying compensation—will persist, the ICJ's openness to equitable and aggregate approaches lowers the evidentiary bar that has often stalled climate claims. This interpretive space could embolden litigants to test climate-related remedies not only before international bodies but also in domestic courts applying international law or constitutional environmental provisions, broadening the practical pathways for accountability.

Individual Opinions: Calls for a More Ambitious Vision

Sharing the view that the opinion could have gone further on this topic, individual judges used their separate opinions to push beyond the majority's cautious approach to remedies. Several states have called for specific remedies and reparations to be outlined in the opinion. For example, some States advocated for compensation to include a variety of forms beyond monetary damages, such as transfers of technology, capacity-building, and debt-relief (e.g., Antigua and Barbuda (para. 599), the African Union (para. 298), Brazil (para. 96), Colombia (para. 4.15), and Vanuatu (para. 597)). Other states had stressed the link between compensation and loss and damage (India, para. 90), as well as the need to compensate not only tangible financial losses, but also intangible losses associated with, for example, emotional pain and suffering (e.g., Federated States of Micronesia, para. 130). Vanuatu also stressed that restitution should include, among other things, non-monetary redress for the human mobility, including displacement and migration, caused by the adverse effects of climate change (para. 582).

Both Vice-President Sebutinde and Judge Bhandari urged a more expansive and concrete articulation of reparations for climate-related harm, signalling pathways the ICJ left underdeveloped. Vice-President Sebutinde underscored the missed opportunity to detail specific remedial measures—ranging from monetary compensation to reforestation, biodiversity recovery, coastal protection, debt relief, technology transfer, and infrastructure rebuilding—while situating reparations within the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) (para. 12).

Judge Bhandari pressed for a fuller account of all forms of reparation under international law, including cessation, restitution, compensation, and satisfaction. His proposals included restoration of carbon sinks, habitat rehabilitation, return of lost territory, and protection of Indigenous peoples' land rights (para. 6). In cases of sea-level rise, he argued for the continued recognition of maritime entitlements and sovereign rights, and for restitution to extend to climate-displaced communities (para. 7) (see here).

On compensation, Bhandari highlighted the evidentiary difficulties inherent in climate harm, advocating for global lump-sum awards based on equitable considerations and suggesting that the General Assembly establish claims commissions under UN auspices (para. 8). For satisfaction, he envisioned symbolic and institutional measures—from formal recognition of States and communities as climate victims to memorials, tributes, and trust funds—designed to address non-pecuniary loss and affirm shared responsibility.

Taken together, these opinions frame a more assertive vision for climate reparations—one that integrates material restoration with symbolic recognition, and that treats equity, vulnerability, and differentiated responsibilities as core legal considerations rather than peripheral political ones. While non-binding, they provide a normative blueprint that litigants and policymakers could invoke to push courts and arbitral bodies toward more imaginative and victim-centred remedies. If embraced, such approaches could broaden the remedial repertoire available in both domestic and

international proceedings, moving climate adjudication closer to a form of justice that responds to the scale, complexity, and human dimensions of climate harm.

Conclusion

The ICJ's advisory opinion cements that climate obligations are binding and breaches can trigger reparations, but its abstract treatment of remedies leaves much of climate justice's practical architecture undefined. By avoiding the hard questions—how to address cumulative and intergenerational harm, private-sector responsibility, or equitable allocation of burdens—the Court risks leaving vulnerable communities without a clear path to redress. The separate opinions point toward a more concrete and justice-oriented model, combining material restoration with symbolic recognition and institutional innovation. Whether this potential is realized will depend on how decisively States, domestic courts, regional human rights bodies, and arbitral panels translate these principles into practice. As some observers have already noted, the decision may mark the start of a "new era of climate reparations" — but only if it is seized as an operational blueprint rather than allowed to remain an aspirational statement.

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