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ADVISORY OPINION OF INTERNATIONAL COURT OF JUSTICE ON OBLIGATIONS OF STATES ON CLIMATE CHANGE: A GAME CHANGER OR A DEAD RUBBER?[1]

1. Introduction

On 23rd July 2025 the International Court of Justice (ICJ) gave an advisory opinion on the obligations of states in respect of climate change. In the advisory opinion, the United Nations top court determined that States have an obligation to protect the climate system and other parts of the environment from anthropogenic greenhouse gas (GHG) emissions. The Court based its decision on various legal sources such as the United Nations Charter, climate and environmental treaties, international human rights law and customary international law and concluded that under these international legal instruments States have a duty to protect the climate system from human induced causes of climate change and when States breach these obligations, they may incur legal consequences under the laws of State responsibility, such as duties to cease the harmful conduct, guarantee non-repetition, and provide reparation.[2]

The ICJ's advisory opinion which was rendered sequel to a request by the United Nations General Assembly (UNGA)[3] has generated significant excitement among climate activists on its implication for state responsibility for climate change and climate justice. This article seeks to review the advisory opinion of the ICJ and assess whether

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2 See,<https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-obligations-of-states-with-respect-to-climate-change/> accessed on 2nd August 2025.

3 See, <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20230301_18913_na.pdf> accessed on 2nd August 2025.

it has teeth to advance climate action or whether this advisory opinion is just a flash in the pan.

2. The United Nations General Assembly's Request for an Advisory Opinion

On 29th March 2023, the 77th session of the UNGA adopted resolution A/77/L.58, requesting an advisory opinion from the ICJ on certain questions on the obligations of States in respect of climate change. The resolution, which was presented by the Government of Vanuatu, a small island nation in the south-western Pacific Ocean, was adopted by consensus.

In the resolution, the UNGA recognized that climate change is an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of humankind depends on an immediate and urgent response to it. The UNGA resolution also took note of the scientific consensus expressed, *inter alia*, in the reports of the Intergovernmental Panel on Climate Change (IPCC) that anthropogenic emissions of greenhouse gases are "the dominant cause of the global warming observed since the mid-20th century" and that human-induced climate change "has caused widespread adverse impacts and related losses and damages to nature and people beyond natural climate variability."[4]

Accordingly, the UNGA pursuant to Article 96 of the United Nations (UN) Charter requested the ICJ to give an advisory opinion on the following questions:

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

4 *Ibid.*

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

The request for an advisory opinion was transmitted to the ICJ by the Secretary-General of the UN by a letter dated 12th April 2023 and was received in the Registry of the Court on 17th April 2023.

3. The Advisory Opinion of the ICJ

Upon its receipt of the request for an advisory opinion from the UNGA, the ICJ informed all states entitled to appear before the Court and invited them along with relevant international organizations to submit written statements on the legal questions on which it had been requested to give an opinion. The Court received a total of 91 written statements and another 62 comments from various states and institutions on the questions sent to it for its advisory opinion.

The case was set down for a public hearing on 2nd December 2024 and on 23rd July 2025, the Court rendered its advisory opinion on the questions posed to it.[5]

4. The Scope of the Advisory Opinion

In rendering its opinion, the Court stated that its response to question (a) is limited to identifying the existing obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, elucidating the content of these obligations, and clarifying the relationship between obligations arising from various sources of international law. In respect of question (b) the Court stated that it was only called upon, first, to establish the applicable legal framework of State responsibility in respect of States that have breached their obligations to protect the climate system, and, second, to outline in general terms the legal consequences flowing therefrom, without prejudging the merits of any future claims that may be brought in relation to the subject-matter of the case before courts or tribunals. The Court said that it was not called upon to identify the legal responsibility of any particular State or group of States because that would require an *in concreto* assessment that must be undertaken on a case-by-case basis.[6]

[5] See, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf> accessed on 2nd August 2025.
[6] *Ibid at* paras. 98-106.

5. Applicable Laws

After establishing that it had jurisdiction to determine the questions posed to it, the Court determined that the following are the most directly relevant applicable laws governing the questions: (1) the Charter of the United Nations, (2) the three climate change treaties, namely: the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement, (3) the United Nations Convention on the Law of the Sea (UNCLOS), (4) the ozone layer treaties, namely the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer and its Kigali Amendment, (5) the Biodiversity Convention, (6) the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, (7) customary international law, and (8) international human rights laws, including International Covenant on Economic, Social and Cultural Rights ("ICESCR"), the International Covenant on Civil and Political Rights ("ICCPR"), and the human rights recognized under customary international law.

The Court also stated that the principles of sustainable development, common but differentiated responsibilities and respective capabilities, equity, intergenerational equity and the precautionary approach or principle are applicable as guiding principles for the interpretation and application of the most directly relevant legal rules. The Court emphasized that this list serves to determine only the applicable law which is most directly relevant for answering question (a) put to it by the General Assembly, without prejudice to other rules of international law that may also be relevant under various circumstances in the context of climate change.[7]

6. Advisory Opinion on: Obligations of States in respect of Climate Change

Accordingly, and having regard to the aforementioned laws, the Court unanimously found that the climate change treaties (that is, the UNFCCC, the Kyoto Protocol and the Paris Agreement) set forth binding obligations for States parties to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions. In relation to the UNFCCC, the Court found that States parties have an obligation to adopt measures with a view to contributing to the mitigation of GHG emissions and adapting to climate change and to co-operate with each other to achieve the underlying objective of the Convention. For States parties listed in Annex I to the UNFCCC, the Court found that they have additional obligations to take the lead in

[7] *Ibid at* paras. 113-161.

combating climate change by limiting their GHG emissions and enhancing their GHG sinks and reservoirs.[8]

As to the Kyoto Protocol, the Court found that although no further commitment period was agreed under the Kyoto Protocol beyond 2020, the absence of a new commitment period does not deprive the Kyoto Protocol of its legal effect. The Court said the Kyoto Protocol remains in force and its provisions may still serve as, *inter alia*, substantive provisions to determine whether a State, during the relevant commitment period, had complied with its commitments to limit and reduce their GHG emissions in accordance with agreed individual targets over the first commitment period from 2008 to 2012 and the second commitment period from 2013 to 2020. Thus, non-compliance with emission reduction commitments by a State under the Kyoto Protocol may constitute an internationally wrongful act.[9]

Regarding the Paris Agreement, the Court found that States parties to the Paris Agreement have obligations: (a) to act with due diligence in taking measures, in accordance with their common but differentiated responsibilities and respective capabilities, capable of making an adequate contribution to achieving the temperature goal set out in the Agreement of limiting global warming to 1.5°C above pre-industrial levels; (b) to prepare, communicate and maintain successive and progressive nationally determined contributions which, *inter alia*, when taken together, are capable of achieving the temperature goal of the Agreement; (c) to pursue measures which are capable of achieving the objectives set out in their successive nationally determined contributions; and (d) of adaptation and co-operation, including through technology and financial transfers and capacity building, which must be performed in good faith.[10]

The Court further found that the set of rules contained in the climate change treaties do not constitute *lex specialis*[11] that generally take precedence over, and exclude the application of, other rules of international law because there is no actual inconsistency between the provisions of the climate change treaties and other rules and principles of international law that may be relevant for the response to question (a) nor could the Court identify a discernible intention of the parties to the climate change treaties

8 *Ibid at* paras. 196-218.
9 *Ibid at* paras. 219-221.
10 *Ibid at* paras. 222-270.
11 'Lex specialis' is a legal principle stating that a specific law (lex specialis) overrides a general law (lex generalis) when both apply to the same situation. It essentially means that a law dealing with a specific subject matter will take precedence over a general law that might also cover the same situation. The principle is often summarized by the Latin phrase *lex specialis derogat legi generali*, meaning "a specific law repeals a general law".

generally to displace other possibly applicable rules or principles.[12] Accordingly, the Court went ahead to examine the climate change obligations arising from other relevant rules of international law.

The Court opined that customary international law sets forth obligations for States to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions, including a duty:

(a) in accordance with their common but differentiated responsibilities and respective capabilities to prevent significant harm to the environment by acting with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment, and (b) to co-operate with each other in good faith to prevent significant harm to the climate system and other parts of the environment, which requires sustained and continuous forms of co-operation by States when taking measures to prevent such harm.[13]

The Court also considered the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer and its Kigali Amendment, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, and found that States parties to these treaties have obligations under the treaties to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions.[14]

As to the UNCLOS, the Court opined that States parties to the UNCLOS have an obligation to adopt measures to protect and preserve the marine environment from the adverse effects of climate change and to co-operate in good faith towards this end.[15]

Finally, the Court found that States have obligations under international human rights law to respect and ensure the effective enjoyment of human rights by taking necessary measures to protect the climate system and other parts of the environment. In this connection, the Court noted that the adverse effects of climate change which affect the health and livelihoods of individuals through events such as sea level rise, drought, desertification and natural disasters may significantly impair the enjoyment of certain human rights, including the right to life, the right to health, the right to adequate standard of living (which encompasses access to food, water and housing, as set out

12 *Supra* (n6) at paras. 162-171.
13 *Ibid at* paras. 222-308.
14 *Ibid at* paras. 316-335.
15 *Ibid at* paras. 336-365.

in Article 11 of the ICESCR and Article 25 of the Universal Declaration of Human Rights), the right to privacy, family and home, protected by Article 17 of the ICCPR and the rights of women, children and indigenous peoples. The Court therefore determined that a State's failure to implement timely and adequate mitigation and adaptation measures to address the adverse impacts of climate change may violate or impair the enjoyment of the aforesaid and other human rights.[16]

7. <u>Advisory Opinion on: Legal Consequences arising from States' Acts</u>

On question (b) put by the General Assembly to the Court, the Court also unanimously opined that a breach by a State of any obligations identified in response to question (a) constitutes an internationally wrongful act entailing the responsibility of that State. The Court further found that the legal consequences resulting from the commission of an internationally wrongful act in the context of climate change may include the obligations of: (a) cessation of the wrongful actions or omissions, if they are continuing; (b) providing assurances and guarantees of non-repetition of wrongful actions or omissions, if circumstances so require; and (c) full reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met, including that a sufficiently direct and certain causal nexus can be shown between the wrongful act and the injury.[17]

In coming to its conclusion on question (b), the Court acknowledged that the unprecedented nature and scale of harm resulting from climate change give rise to particular issues in relation to the application of the customary rules on State responsibility due to the fact that concentrations of GHG emissions are not produced by a single activity or group of activities identifiable or associated with a certain State or States. Moreover, it is the collective and aggregate effects of GHGs, anthropogenic as well as from natural sources, that cause damage to the climate system. Thus, the Court found it necessary to clarify how the rules of attribution and causation of internationally wrongful acts would apply to determine state responsibility since under the rules on State responsibility, only an action or omission attributable to a State can give rise to international responsibility, and moreover, in cases where reparation is claimed, it must be shown that the damage for which reparation is claimed has been factually and legally caused by a State.[18]

In respect of attribution, the Court noted that while attribution in the field of climate science refers to "*the process of evaluating the relative contributions of multiple causal*

16 *Ibid at* paras. 369-404.
17 *Ibid at* paras. 405-420.
18 *Ibid at* paras. 421-422.

factors to a change or event with an assessment of confidence", attribution in the context of determining State responsibility denotes "*the operation of attaching a given action or omission to a State*" under international law. Attribution in the latter sense the Court noted is one of the elements necessary for finding an internationally wrongful act, and all international claims may be said to require attribution to establish the responsibility of a particular State under international law.

In considering the perceived difficulties in attributing actions or omissions to a State in the context of climate change, the Court stated that attribution is to be based on the well-established rule of international law that the conduct of any organ of a State must be regarded as an act of that State. Thus, 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 emphasized 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. In relation to private actors, the Court observed that the obligations it identified under question (a) include the obligation of States to regulate the activities of private actors as a matter of due diligence. Thus, a State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.[19]

In its decision on submissions that it is difficult to invoke responsibility in the context of climate change given that the wrongful conduct is cumulative in nature, involving different States over a period of time, and involving a plurality of States that cause injury to a plurality of injured State, the Court observed that while climate change is caused by cumulative GHG emissions, it is scientifically possible to determine each State's total contribution to global emissions, taking into account available data on both historical and current emissions of individual states. These, the Court noted can be relied upon as have been done by other courts and tribunals to establish causal links between GHG emissions and climate change, the link - between climate change and adverse effects suffered by litigants, the link between such harm and the actions or omissions of a particular State, and the attributability of responsibility for such adverse

[19] *Ibid at* paras. 425-428.

effects. The Court pointed out that at this stage 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.

The Court, however, acknowledged that the fact that multiple States have contributed to climate change may indeed increase the difficulty of determining whether and to what extent an individual State's breach of an obligation identified in question (a) has caused significant harm to the climate system, but noted that, in principle, the rules on State responsibility under customary international law are capable of addressing a situation in which there exists a plurality of injured or responsible States by invoking the responsibility of a single State for damage without invoking the responsibility of all States that may be responsible. Therefore, in the climate change context, the Court considered that each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment. And where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act. The Court stated that the factual questions arising in the context of attribution and apportionment of responsibility are to be resolved on a case-by-case basis.[20]

In respect of the question of causation, the Court observed that causation of damage is not a requirement for the determination of responsibility as such. For a finding of State responsibility, what is required is an internationally wrongful act and its attribution to a State, whether the act causes harm or not. Causation or causality, the Court stated, only becomes relevant in determining reparation. Since reparation implies the existence of damage, causation must be established between the wrongful act of a State — or group of States — and particular damage suffered by the injured State or, in the case of a breach of obligations under international human rights law, by the injured individuals before reparation can be claimed.[21] What is required, the Court said, is the existence of "*a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant*". This involves two distinct elements. First, whether a given climatic event or trend can be attributed to anthropogenic climate change; and second, to what extent damage caused by climate change can be attributed to a particular State or group of States. The first, the Court held can easily be established by recourse to scientific evidence while the second element the Court acknowledged presents difficulties that must be addressed as and when they arise in

20 *Ibid at* paras. 428-432.
21 *Ibid at* para. 433.

light of the facts of the case at hand and the evidence presented to the Court in respect of specific claims brought by States in respect of damage.[22]

In conclusion, the Court found that all States have a common interest in the protection of global environmental commons like the atmosphere and the high seas. Consequently, States' obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, in particular the obligation to prevent significant transboundary harm under customary international law, are obligations *erga omnes* (that is, obligations that are owed to everyone, rather than just specific individuals or states) because they seek to protect the essential interest of all States in the safeguarding of the climate system, which benefits the international community as a whole. It follows that responsibility for breaches of such obligation may be invoked by any State when such obligations arise under customary international law or by any State party when such obligations arise under the climate change treaties.[23]

9. Assessing the Effectiveness and Enforceability of the ICJ Advisory Opinion

The advisory opinion of the ICJ is highly commendable. On the face of it, it presents a very good framework for climate action and veritable grounds to hold developed countries liable for damage caused by climate change as a result of their historical emissions of GHG. It also gives legal grounds for developing countries to seek to compel developed countries to provide much needed finance for climate change mitigation and adaptation efforts in developing countries. However, the decision is afflicted with fundamental problems associated with international law. First, it is only an advisory opinion which is not binding on any country; and second, even if it were a binding decision, international law notoriously lacks the mechanisms to compel compliance. It depends too much on the goodwill of states to comply with its prescriptions. That goodwill has continually eroded overtime. States mostly carry out their treaty obligations when it is convenient and can choose to withdraw from any treaty whenever it feels like, such as when the United States withdrew from the Paris Agreement.[24]

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22 *Ibid at* paras. 436-438.

23 See, paras. 439-443. However, while a non-injured State may pursue a claim against a State in breach of a collective obligation, it may not claim reparation for itself. Rather, it may only make a claim for cessation of the wrongful act and for assurances and guarantees of non-repetition, as well as for the performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached.

24 See, <https://www.theguardian.com/law/2025/jun/26/are-we-witnessing-the-death-of-international-law> accessed on 14 August 2025.

Notwithstanding the above, it is worth noting the fact that certain subtle enforcement mechanisms have been developed over time to force states and institutions to comply with their obligations under international law. Some of these include the use of sanctions, economic and political pressures and the adoption of countermeasures. The UN and regional institutions like the European Union and African Union regularly impose sanctions on member and non-member states to compel compliance with their resolutions and relevant international law principles. States like the United States of America also use sanctions as a means to compel obedience. These sanctions, although not always effective, have been veritable instruments in compelling obedience to international law. Similar to sanctions are economic and political pressures that states exert on each other to compel compliance with their demands. These may include acts of retorsion like prohibition or restriction of diplomatic relations or other contacts, and the withdrawal of voluntary aid programs. While some resilient economies are able to resist these pressures, others easily buckle under their weight. States also take countermeasures in response to other states' internationally wrongful acts in order to procure its cessation and to achieve reparation for any injury suffered. These countermeasures may easily qualify as self-help, thus, to be lawful under international law they must among other things be a proportional response to prior internationally wrongful act and must not involve the threat or use of force or violations of fundamental human rights.[25] These subtle enforcement mechanisms are usually helpful in engaging a state's responsibility for internationally wrongful acts. However, the very factor that gives these subtle enforcement mechanisms gravitas is also its biggest drawback – i.e., inequality of states. Developed industrialised nations have greater economic and political powers and are more able on the one hand to resist threats of sanctions from multilateral institutions and on the other hand can exert economic and political pressures and impose sanctions on other countries to compel compliance with their obligations. The same cannot be said of developing countries who suffer the most from the effects of climate change and can hardly compel other countries to comply with their climate change-related obligations.

When these are considered together with the complexity involved in establishing a causal link between damage caused by climate change and the breach of climate change obligations of particular states, one cannot but wonder whether the advisory

[25] See, Yuji Iwasawa, "Various Means of Enforcement in International Law" (Winter 2023) Volume 65, Number 1 *Harvard International Law Journal* available at https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/HILJ-651-Iwasawa_compressed.pdf accessed on 6 September 2025.

opinion of the ICJ will have any practical utility or it will end up as another hollow judicial elucidation of the principles of international law. Time, as they say, will tell.

10. Conclusion

What we cannot, however, take away from the advisory opinion of the ICJ is the fact that it has presented both national and international courts and tribunals with sufficient materials to revolutionize climate action and hold states liable for breaches of their climate change obligations. It is left for national and international organisations and states, especially developing countries, to find ways to compel other states to comply with the climate change obligations identified by the ICJ and seek redress for internationally wrongful acts arising therefrom.

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