Al-Salihat (Journal of Women, Society, and Religion) (Miscellaneous)
Volume: 05, No: 01. January – March 2026
ISSN: 2959-2135; E-ISSN: 2959-2127

State Responsibility for Climate Change under International Law after the ICJ Advisory Opinion

Samreen Pervaiz *, Hafsa Iqbal**

** LL.M. Scholar, University of the Punjab, Lahore, Pakistan*
*** LL.M. Scholar, Behria University, Islamabad, Pakistan*

KEYWORDS

State Responsibility, Climate Change, ICJ Advisory Opinion, International Environmental Law

ABSTRACT

This article delves into how the notion of state responsibility for climate change has developed under international law following the recent Advisory Opinion of the International Court of Justice (ICJ) concerning the Obligations of States in respect of Climate Change. The Advisory Opinion is an important development towards the duty of States to prevent, limit and remediate the negative impacts of climate change. It seeks to reinforce the notion that states have not only treaty obligations, including the Paris Agreement, but also obligations under custom international law, human rights law and environmental protection principles. The article explains how the Advisory Opinion provides the strongest possible legal ground to hold states responsible for failing to act on climate change under their specific obligations, such as exercising due diligence, avoiding significant environmental harm, collaboration with other States, guaranteeing respect for human rights, and providing remedies including reparation. It also looks at the present debates concerning the notion of State responsibility in the climate change context. They involve issues of causation and linkage between emissions and particular impacts, multiple state and non-state responsibility, proof of harm, collective responsibility and working out the obligations for effective implementation. An examination of the ICJ Advisory Opinion, existing legal instruments and legal scholarship in light of this document offers a detailed portrait of the ability of international law to direct the behaviour of states in their efforts to deal with the challenge of climate change and promote accountability. The discussion also highlights the potential role of the Advisory Opinion in supporting climate litigation and shaping future policy development.

Introduction

Grasslands Climate change is a solid scientific, environmental and socio-economic problem, but also it is a serious international legal issue. Increasing global temperatures, caused by anthropogenic greenhouse gas emissions, have repercussions that cross boundaries affecting states, communities and ecosystem globally. The greenhouse gas emissions generated in one state will result in an increased concentration of the atmospheric greenhouse gas in another state, thus presenting a classic transboundary issue involving environmental harm. The sea level rise endangers the existence of small island states, low lying coastal communities are threatened by higher flood risk, and agricultural societies are suffering from drought and food insecurity. Climate change is also having a negative impact on biodiversity, as well as on human rights, such as the right to life, health, food, water and culture (Savaresi, 2015). Climate change is not only a scientific and policy issue; it raises questions concerning the principles of international law as it relates to state's obligations and liability for harms that are diffuse, cumulative and long-term.

The International Court of Justice (ICJ) has given its Advisory Opinion on the *Obligations of States in respect of Climate Change* on 23 July 2025 (International Court of Justice, 2025). This Opinion is the first to provide an in-depth understanding of the

*Corresponding Author: Samreen Pervaiz
Email Address: *samreenpervaiz478@gmail.com*

international responsibilities of States regarding climate change, in legal form. The call for advisory guidance was due to a resolution adopted by the United Nations General Assembly, which aimed to clarify the content and nature of the obligations of law in the field of climate change. The Opinion spells out the responsibilities of states with regard to reducing greenhouse gas emissions, international climate governance, safeguarding vulnerable groups, and avoidance of serious environmental damage. The ICJ Advisory Opinion places those obligations within the general framework of international law, treaty law, human rights law and customary legal norms, thus offering a legal context to evaluate state actions with respect to the climate context.

The ICJ Advisory Opinion has an important role to play in understanding climate responsibilities, yet there is much uncertainty regarding the application of the law of state responsibility in possible future climate change conflicts. Traditional state responsibility international law presumes that there must be a clear relationship between the wrongful act committed by one of these two states and a certain harm suffered by another state or its people (International Law Commission, 2001). However, the paradigm is thrown into question by climate change, as emissions are contributed, collectively and cumulatively, over long periods of time from many states, and from activities of private parties. Attributing specific climate impacts to a specific state's behaviour is a legally and scientifically challenging task. The complexity of the situation also brings problems of proof and responsibility issues, as well as questions about what are proper solutions when harm is manifest and has multiple causes.

This article aims to analyse the impact of the ICJ Advisory Opinion on the doctrine of state responsibility for climate change in international law and how it can be applied to this realm. Specifically, it considers the issue of legal responsibility for states, due diligence obligations and difficulties in proving a 'breach', 'causation' and 'reparations' in climate controversies. The article further considers the interactions between treaty obligations and customary international law and human rights norms in the context of state accountability. Beyond this, it reflects on the implications of the Opinion for future plans on climate litigation, international policy-making and global governance. Last, the study aims at highlighting the limitations of applying conventional theories on state responsibility to multi-layered, cumulative and transboundary climate harms, both practice and conceptually.

In this article a doctrinal legal research method is employed which is suitable for legal analyses of legal sources, interpretation of forms of norms and the examination of international legal aspects of climate change and responsibility for States. The study revolves around the ICJ Advisory Opinion on the *Obligations of States in respect of Climate Change*, which spells out the international responsibilities of states, the legal principles that support these obligations and their implications for state responsibility, with reference to the questions raised by the UN General Assembly and cited by the Court's lawyers (International Court of Justice, 2025). The analysis is based on the articles developed by the International Law Commission on Responsibility of States for Internationally Wrongful Acts, 2001, which delineate the elements of an internationally wrongful act, and attribution and breach of

obligations and the effects of state responsibility in the context of climate related conduct (International Law Commission, 2001). Treaty duties under the UNFCCC, Kyoto Protocol and Paris Agreement are analysed to see if specified state responsibilities are identified for mitigating, adapting to, and cooperating on climate change, and how these relate to other legal obligations recognised by the ICJ. The principles of customary international law, such as the prevention of transboundary harmful effects and the accountability of the state under the principle of 'due diligence' are reviewed as to their binding nature for all states and convergences and interaction with treaty and advisory norms. Furthermore, relevant international judicial and arbitral cases, such as the International Tribunal for the Law of the Sea (ITLOS) Advisory Opinion and regional human rights climate cases, were reviewed to gain insight into state responsibility interpretations of the comparative law perspective (Vazquez, 2014). Last, the scholarly commentary and critical analyses that have arisen after the ICJ Opinion are reviewed to consider views on the implications of the Opinion, its positive aspects, deficiencies and difficulties of handling state responsibility issues in the context of climate change.

Conceptual Framework: State Responsibility under International Law

International law has as its basic principles the notions of state responsibility i.e., a framework that makes a state liable for actions that breach its international duties. It emerges when a state's conduct manifests itself as an internationally wrongful act with the resulting legal consequences under international law. The doctrine stresses not only that states are political and social entities, but legal entities as well; that their actions or inactions can have repercussions that impact other states, communities and the environment. In this sense, state responsibility plays a preventive role against criminal acts and a rule of law tool for international relations, as states are no longer allowed to act in ways that could lead to outside impacts on rights and delivered harm.

Under the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, 2001, there are two conditions to establish state responsibility. First, it must have been carried out by the state, by an organ of the state, a member of the state authority or by an entity vested with functions by the state. This makes sure that everybody is held accountable not just when the state acts, but when the state acts through various other activities, such as by enacting a policy or regulation. Second, the conduct must be a violation of an international obligation that could be under treaties or customary international law or general principles of international law. The two elements of attribution and breach create the conditions for legal liability in international law, which outlines when and why a State may be responsible.

State responsibility goes beyond theory, having a structure for the remedy if there is a violation of a right. Provided that a wrongful action can be proven, the responsible party is required to stop that wrongful action, assure themselves that they will not repeat it again, and if feasible make a restitution, compensation, or satisfaction. This structure is especially pertinent for complex, global problems like climate change where negative emissions or environmental degradation can be triggered

by the interaction of public policies and private entities accountable to a State. State responsibility can set the legal boundaries of accountability, encourage adherence to the international rules of the game, encourage due diligence and support the protection of affected communities and ecosystems.

The doctrine of state responsibility sees two types of rules i.e., primary and secondary. Primary rules are those that outline the scope of a state's international obligations, such as those to prevent environmental damage, clean up fossil fuel pollution, or work together to maintain shared resources. Secondary rules, on the other hand, are those other rules of law that follow the violation of a primary rule. These include the responsibility to stop the wrongful action, given assurances and guarantees of non-repetition, and offer reparation by restitution, compensation or satisfaction. It enables a systematic approach to obligations and remedies, with primary rules separated from secondary rules and actions to rectify breaches of the rules can be implemented in a systematic manner within the framework of international law.

Transferring the lines of the rule of state responsibility to climate change is an enormous challenge. The impacts of greenhouse gas emissions can be cumulative and worldwide, causing harm with a combination of impacts from several states over time. Further, emissions can be sourced by private, corporate or non-state actors and that frees up the attribution under traditional legal principles. Historical emissions also pose equity and responsibility concerns: historical emissions could have negative impacts on both current and future generations. They lead to obstacles in being directly attributed a harms or losses to particular state action and make it difficult to equate a specific state's actions with specific harms. However, in the presence of cumulative and multi-actor responsibility, the ICJ Advisory Opinion holds that states have responsibilities in terms of exercising due diligence, controlling private actors, and avoiding transboundary harms. This means that although traditional state responsibility frameworks pose problems in the context of climate change, it also promotes the need for adaptability of law to deal with the challenges in the global environment.

Legal Obligations of States after the ICJ Advisory Opinion

Treaty-Based Obligations

In climate governance, an important and binding source of state responsibility is the treaty obligation. The basic rules for international climate law stem from the United Nations Framework Convention on Climate Change (UNFCCC). One of its principles is "common but differentiated responsibilities and respective capabilities" (CBDR-RC): Under this principle, all states have a responsibility for climate protection, but developed states have, and have had, a greater responsibility because they were higher emitters, with respective duties to reduce emissions and support developed countries (UNFCCC, 1992). The Kyoto Protocol embodied these responsibilities within quantitative emission limits for developed nations, and compliance processes to monitor reduction targets, verify these, and hold countries to account. Given these instruments, the Paris Agreement establishes a new regime by introducing the obligation for all states to develop and execute Nationally Determined Contributions (NDCs) that outline what mitigation will look like, which emissions target will be reached

and what adaptation and climate resilience measures will be taken.

The ICJ Advisory Opinion highlighted that treaty duties have a legal significance but are not the only ones that constitute climate responsibilities; they need to be understood in the context of customary international law, human rights law, and other environmental norms (International Court of Justice, 2025). By doing so, states are not able to simply evade responsibility because of some technicality or loophole in the texts of the treaties. States must design domestic policies, regulatory systems and enforcement planning that can deliver real reductions in emissions, and thus tie international commitments to domestic legal obligations, in the preparation and implementation of NDCs. In addition to mitigation, there are other treaty obligations, such as adaptation measures, that seek to protect vulnerable populations, for example, low-lying islands, flood-prone areas, and regions where agriculture relies on climate-sensitive resources.

There is also an international cooperation requirement for states, which includes sharing of scientific data, transfers of technology and financial and technological support to developing and vulnerable states. This obligation recognizes the global nature of climate change and the inequities in resources and capacities between states. Treaties also include elements of transparency and reporting requirements, increasing accountability by encouraging transparency around progress, effectiveness, and the assessment of commitments, resulting in a commitment to update commitments as a function of scientific knowledge and technological capabilities and progress. In the ICJ Advisory Opinion, the Court emphasizes that state responsibility arises when a state breaches its obligations under the treaties, especially when these obligations bring about foreseeable harm to another state or population. The requirement to implement NDCs, to seek mitigation and adaptation, to cooperate internationally, and to deliver climate finance demonstrates a comprehensive map of the law, policy and equity landscape of the global climate. These treaty obligations thus provide a baseline for understanding of state responsibility in cases and in policy, providing clear markers for the state's obligations to evaluate.

Customary International Law Obligations

Customary international law has been understood as complementing treaty law by establishing universal duties on all states related to climate protection without distinction of whether they are involved in particular treaties or not. The ICJ Advisory Opinion also reaffirmed that States have obligations to prevent significant environmental damage, use due diligence and to cooperate in good faith, which extend to non-party States. The responsibility to prevent transboundary harm is especially important due to the inherently global and cumulative nature of climate change; emissions in one State may lead to widespread and long-term harm in another. States, therefore, have to take proactive steps to control the activities happening within their jurisdiction, tracking emissions, and implementing environmental standards to avoid any conceivable damage.

States must predict risks, plan for them and adjust laws and policies to new climate science as part of the process of doing due diligence. This standard imposes a mandate on states to control both public and private actions that lead to greenhouse gas

emissions being emitted and to make it impossible to rely on inaction as a defence in claims of international responsibility. The precautionary principle strengthens this obligation by imposing action even when there is not a full consensus of science when the risks are irreversible and/or catastrophic. Environmental impact assessments (EIAs) are practical tools for implementing these obligations and involve governments in assessing potential environmental, social and health impacts before a project or policy is approved that could lead to climate change.

Good-faith cooperation requires states to share scientific information, actively participate in international negotiations and support other states to meet their climate commitments. The Advisory Opinion satisfies the requirement of treaty obligations alongside these customary norms to provide a strong, legally binding framework. Even non-party states cannot ignore climate responsibilities under customary law, which may make them liable under international law. The application of these principles in all countries bolsters the legal framework for tackling climate change, allowing states to be held accountable for both their failure to cut emissions at home, and for their failure to act in the international sphere, in relation to cooperation, monitoring, and support. Customary international law offers a vital foundation for launching legal actions in transboundary climate litigation and for strengthening the effectiveness of compliance mechanisms in global climate-governance frameworks, through its concept of due diligence, precaution, and prevention of harm, as well as cooperation (Rajamani, 2020).

Human Rights Obligations

The ICJ Advisory Opinion explicitly related climate issues to the protection of human rights stating that harm to the environment can directly affect rights to life, health, food, water, housing, culture and a safe, clean and sustainable environment (International Court of Justice, 2025). This strategy places the responsibility for climate obligations in a larger context of international human rights law, holding a State responsible for environmental and climate failures in addition to fundamental human rights and challenges of its citizens and its peoples overseas. Human rights law is therefore a supplementary bench-mark that can serve to evaluate the legal obligations of current and future governments, and can help to hold those who failed to adequately act on climate change accountable for their failure to do so, especially for vulnerable groups inherently impacted by climate change, such as children, indigenous peoples, and future generations.

The effects of climate change have become an item on agendas of several regional and international bodies of human rights, and are being more regularly addressed in their decisions. The right to life and the right to a healthy environment, for instance, have been interpreted by the European Court of Human Rights, the Inter-American Court of Human Rights, and domestic courts in such countries as the Netherlands and Colombia that a lack of decent climate policy by the responsible states represents a violation of this right. The ICJ Advisory Opinion continues this pattern by confirming that a failure to respond effectively to climate change can violate the protection of human rights, even when the State itself is not directly responsible for the effects of climate change. The legal dimension of climate governance,

highlighted here by the intersection of climate law and human rights, is to ensure that the governance framework becomes a legal duty for the protection of human dignity and for the welfare of humanity.

The human rights stance also emphasizes the concept of intergenerational equity, which suggests that the intergenerational consequences of current policies should be taken into account by states. The ICJ's incorporation of a rights-based perspective to climate obligations increases the arguments for the duty of the States to take measures to prevent a foreseeable harm, to adopt effective adaptation actions and to engage other States to collaborate, in order to safeguard the full enjoyment of the rights. This framework creates potential mechanisms for States' accountability, such as litigation, international advocacy and policy interventions, thereby strengthening the obligations of States under domestic and international law as they relate to climate change.

Obligations Regarding Private Actors

The ICJ Advisory Opinion also made clear that attribution of climate harm to private party actions by states alone is unenforceable and that there was a need for states to regulate, monitor and enforce compliance amongst those within their sphere of influence, responsibility and control (International Court of Justice, 2025). Fossil Fuel Companies, heavy industry, and large monocrop farms are big emitters of greenhouse gas emissions. This means states have an obligation to establish legal mechanisms to curtail such emissions, penalties for those who fail to do so, and financial rewards and punishments for clean technologies. The lack of effective regulation of private actors could be considered as negligence and raise the question of state responsibility, especially if it results in transboundary or cumulative damage.

This approach takes into account the multi-causal nature of climate change, recognising that the impacts on climate occur as a result of multiple actions of State, private sector and other non-State actors. States should ensure that any indirect encouragement of environmentally harmful practices through tax incentives or subsidies to these practices is not done. Oversight responsibilities also involve transparency; reporting on corporate emissions, complying with international and national standards; and access to environmental information for affected communities. The ICJ Advisory Opinion expands the state responsibility to include the regulation of private actors, and thus contributes to a more holistic notion of state responsibility that connects governance, law, and climate change mitigation and adaptation. It enhances global climate governance, holding states accountable for public policies and their private sector contribution to environmental harms.

Breach of Climate Obligations and Internationally Wrongful Acts

Failure to Mitigate Emissions

A central responsibility of the states with regard to the ICJ Advisory Opinion and current climate pledges is the mitigation of greenhouse gas emissions according to science-based targets. Mitigation is measures implemented by policy change to curb emissions or thresholds of suspected or potential dangerous anthropogenic interference to the climate system. If a state does not take sufficient mitigation measures, resists and obstructs development of fossil

fuel infrastructure, or continually fails to apply and revise its Nationally Determined Contribution (NDC) to meet international obligations, it raises questions on whether it is in breach of international obligations and an internationally wrongful act. Indecipherable language in the ECHR's decision in Urgenda Foundation v. the State of the Netherlands case (2019), the Supreme Court of the Netherlands found that the government's failure to decrease greenhouse gas emissions by 25% by 2020, relative to 1990, in order to protect the environment infringed on the government's duty of care under the human rights and domestic law. In the same way, in Leghari v. Federation of Pakistan (2018), the Lahore High Court argued that the lack of action in Pakistan to implement the National Climate Change Policy and the Climate Change Act was a violation of Pakistan's legal obligations to reduce climate impacts that impinged on the citizens' right. The U.S. case Juliana v. United States (2015–ongoing) is another good example of judges taking notice of inadequate mitigation actions as a violation of the rights to life and freedom.

But climate science shows that putting out deep emissions is needed to keep warming below 1.5°C and maybe even 2°C above pre industrial levels (IPCC, 2022). Without scientific justifications, if the mitigation efforts take too long or become less effective than the scientific guidance, there is a risk to contribute to avoidable harm. Such failures can be seen as a failure to fulfil the obligation of due diligence as recognised in international environmental law, and can even amount to a failure to fulfil the duties of the parties in specific treaties where they have bound themselves to ever more ambitious steps. There is an argument, for example, that failing to 'phase out' coal or take any steps to regulate high emissions industries could represent a breach of states' international obligations, especially if the failing to act is foreseeable and will cause harm to others.

The adequacy of the policy framework can also be evaluated as a failure to mitigate, as can be a state's emission trajectory. Legally, national policies which lack ambition, transparency and are not consistent with scientific understanding may be problematic as both a treaty obligation and customary understandings of prevention and due diligence (Setzer & Vanhala, 2019). Extremes of the weakness of mitigation policy take greater importance when they impact vulnerable states, or when they portray a lack of global cooperation which raises the question of whether it is an internationally wrongful act. The interaction between state obligations and corporate emissions has been reflected in cases like Milieudefensie et al. v. Royal Dutch Shell (2021), and is the basis on which the omission of state regulation or mitigation through private actors may also still lead to legal responsibility.

Failure to Adapt and Protect Vulnerable Populations

Without effective adaptation measures, mitigation is not enough if the states do not take measures to adapt to climate change. Adaptation is defined as activities to help minimize the hazards and effects of climate change on people, ecosystems and infrastructure (UNFCCC, 2015). In the ICJ Advisory Opinion, a crucial point was raised is that states have obligations to protect populations against foreseeable climate related risks, including from flooding, droughts, sea-level rise, heatwaves, storm surges, food insecurity etc. (International

Court of Justice, 2025). Failure to plan, prepare and enact adaptation measures for foreseeable adverse effects could be seen as a violation of the international commitments. For example, in the context of measuring adaptation obligations, Torres Strait Islanders v. Australia (2022) has demonstrated the legal importance of the obligation to mitigate emissions and that of protecting their homes from sea-level rise. Similarly, Juliana v. United States (2015 – ongoing) highlights the implications of inaction to guard future generations against predictable harms of climate change. In Leghari v Pakistan (2018), lack of adequate flood and heatwave protection shows the Pakistani state's inability to fulfil its adaptation obligations.

The impact of climate change on vulnerable populations, such as low-lying island states, coastal areas, semi-arid areas and marginalized communities, is disproportionate. States which fail to plan for adaptation to the needs of these groups could be at risk of infringing upon several international standards including the obligation to protect life, health, water, food, and sufficient living conditions under human rights (Okowa, 2021). For example, avoidable loss of life or displacement due to inadequate flood defences could lead to concerns about state's fulfilment of the duty to prevent harm and human security. Academic commentators stress that adaptation responsibilities are not optional, but rather, rooted in the responsibilities for prevention, due diligence and protection of human rights. Not adequately considering climate risk in development planning, early warning systems, disaster risk reduction strategies and social protection regimes jeopardizes state's legal obligations and creates the potential for harm that can be proven under international law.

Failure to Cooperate

Climate change is transboundary, collective and demands inter-state collaborations. Cooperation involves sharing information, technology transfer, capacity development and climate financing, especially to help developing and vulnerable States. The ICJ Advisory Opinion, quite explicitly, did make a pronouncement on the duty of states to cooperate in good faith on climate related matters, which will certainly be crucial to addressing mitigation and adaptation (International Court of Justice, 2025). If they do not cooperate, it means either they do not participate in the global dialogues or they delay consensus or they consistently fail to deliver on promised funds.

Examples include European Union v. Poland (2021) on a lack of cooperation, because the government of Poland has failed to harmonize its energy policies with the EU climate policies, thus sparking an issue on compliance with collective obligations. There have been some complaints by developing states in UNFCCC forums against developed states not providing the climate finance which they had promised in international agreements and obligations to support vulnerable states. In UNFCCC forums, several developing states have formally complained that developed states have not provided the promised climate finance in violation of international obligations to help vulnerable states. Much like the duty to cooperate and contribute, the requirement on transparency and reporting may also be considered procedural violation for failure to provide emissions data or updated NDCs, which are defined under both treaties and customary international law (Setzer & Byrnes, 2021).

Failure to Regulate Corporations

Regulating private entities with activities strongly linked with climate change falls under a state's obligation. This obligation stems from the principle of 'due diligence', which is an accepted rule of customary international environmental law, and is supported by one of the findings of the ICJ Advisory Opinion. States have a duty to adopt, implement and enforce regulatory regimes which either prevent or discourage harmful environmental activities within them, such as regulation of industry, fossil fuel production, transportation, and other key greenhouse gas emitters.

This has featured, for example, Milieudefensie et al. v. Royal Dutch Shell (2021) where courts examined gaps in state regulation in relation to emissions by companies and Friends of the Irish Environment v. Ireland (2020) where courts found that lack of enforcement of mitigation measures in high emission sectors could breach the state obligations. ClientEarth v. UK (2021-on-going) is one of the cases highlighting issues where governments fail to ensure companies are complying with air quality and emissions limits. The cases as a whole illustrate that legal liability can be triggered not only by the direct action of the State, but also by a lack of action in regulating private activities that have a significant impact on the climate. Domestic law can therefore match international obligations and hold states accountable if reduction or elimination of fossil fuel subsidies, regulatory failures, or corporate mismanagement led to environmental damage, infringing on human rights.

Attribution and Causation in Climate Change Claims

Attribution of Conduct to the State

In international law, attribution establishes whether a certain action is legally binding to a state in the context of assigning responsibility. Climate change emissions from state-owned enterprises, government authorities and public institutions are well defined as state emissions. Likewise, states are held legally liable for emissions caused by the enabling environment (e.g. regulatory structure, licensing procedures or subsidies) of actions taken by others, which run at high emission levels. In particular, measures taken to support the fossil fuel sector or to enforce emission limits with a lax approach are legally considered to be acts carried out by the State, since they reflect policy decisions which directly affect environmental results (Falkner, 2020).

Attribution also applies to 'inaction', if the state has the power and the opportunity to prevent harm and does not. There are arguments that omission, including the failure to regulate emissions or regulate emissions when allowed to proceed without environmental assessment, or to revoke licenses, counts as conduct that can be attributed to the state in international law under the 'effective control' principle. The principle is particularly important where a number of state policies combine to create aggregate adverse effects, even though none of the individual emission sources would, isolation and in isolation, be harmful to the environment, such as climate change.

Finally, the ICJ Advisory Opinion confirms the attribution of emissions is not only for direct emissions but also for actions of structures and systems that facilitate emissions. International law provides for a wider basis for establishing state responsibility, by connecting state policy choices, the allocation of resources and

regulatory defects to environmental damage. That is, a state may not escape liability by focusing exclusively on private actors or broad, diffuse emissions sources, and legal liability can attach to the enabling environment which a state cultivates.

Private Conduct and State Due Diligence

Although emissions may be from private sources, states are still liable under international law for taking due diligence to put in place measures to prevent harmful activities. A duty to avoid reasonably foreseeable harm, whether from State or private source, is a standard of conduct known as due diligence (Heyvaert, 2020). Failure to do so can mean that a state is in default for failure to take regulatory action, corporate compliance, or take environmental action. High emission industrial project authorization without environmental assessment is an example of failure to exercise due diligence.

The ICJ Advisory Opinion also indirectly advances state responsibility for omission, insofar as states may not use the presence of non-state actors as a defence against their responsibilities, when emissions are the result of their conduct. This is important especially in the field of climate law because much of global emissions are private sector. To reduce risk, states should establish emission limits and gather reports from industry and enforce compliance.

Furthermore, the non-regulation of private conduct not only impacts mitigation but other adaptation and human rights outcomes as well. It is an international obligation of States to intervene when private actors contribute to an environmental problem that endangers human life, health or property. But the increasing number of climate lawsuits suggests that imbalanced inaction by the government could lead to liability even when emissions are generated by businesses or other non-state actors (Jordan & Vogler, 2009).

Causation Problem

One of the consistency challenges in climate responsibility is the multiplicative and cumulative effects of emissions. However, linking emissions to a specific harm in the climate is complex because the climate damage is a product of many decades of such emissions triggered by the collective actions of many states and also many private actors. The ICJ Advisory Opinion recognises these challenges, but does not bear them as an excuse to deny the existence of state responsibility.

International law uses concepts such as the “sufficiently direct and certain causal nexus,” principles that enable courts to determine liability when multiple states have contributed to the harm, even if this is not the exclusive cause of the harm (Heyvaert, 2020). This will give a lawful solution to overcome traditional problems that exist in establishing cause and effect for phenomena that involve climate change or are a global phenomenon, such as climate change.

Recent litigation and new science show the methods around the use of probabilistic causation for establishing liability. International legal principles could be used to hold states liable for the effects of their policies and emissions, even if extreme weather events, sea-level rises and ecosystem damage are caused by several factors. This balance between uncertainty in science and accountability is not difficult to achieve and concludes that, while causation is difficult, it

is not impossible for climate responsibility claims.

Role of Climate Science

Climate science is a major factor when determining whether there is a connection between emissions and a certain damage, and is important for legal proceedings of attribution and causation. New attribution science provides scientists with the means to attribute to individual states or sectors the role it plays in global warming, extreme weather events and sea-level rise. It is becoming more and more beneficial for purposes of litigation and in advisory opinions to show foreseeable harm from some action or omission.

In probabilistic climate attribution studies, for instance, the increased frequencies of heatwaves, floods or droughts due to anthropogenic emissions can be determined. These conclusions give a strong basis for establishing that a state's emissions are indeed a substantial contributor to harm, in conformance with international law's obligation on causation (Rogelj et al., 2021). Increasingly in climate cases, courts and tribunals are taking account of such evidence to draw a connection between conduct and impact.

Furthermore, the climate science contributes to determining who and where are vulnerable, and who would be most impacted by emissions, so that the liabilities of states can be measured against predictable harm. Scientific evidence can inform attribution to states, and assessment of their performance in meeting mitigation and adaptation obligations, via the integration of climate modelling, emissions inventories, and risk assessment. Therefore, the contribution of climate science is pivotal when it comes to the operationalisation of the state's responsibilities under climate law, linking global climate phenomena with legal responsibility.

Legal Consequences of State Responsibility

Cessation

The main remedy in the law of state responsibility is by cessation, demanding the responsible state to stop what it was doing. In the framework of climate change this could mean terminating policies, subsidies, or practices that directly lead to greenhouse gas emissions, e.g. expansion of fossil fuel industry, and lack of emission limits (International Law Commission, 2001). It is a remedy which is taken immediately to stop further damage, as it is for the damage being done now in the environment that has transboundary effects. The ICJ Advisory Opinion affirms that states have a duty under international law to exercise due diligence and take all measures to prevent actions that can contribute to climate change, whether in their own territories or outside its boundaries, such as domestic and extra-territorial laws. The ICJ Advisory Opinion confirms that States have under international law a duty to exercise due diligence and to take all necessary measures to prevent actions which may contribute to climate change, both within their own territories and beyond, including national and foreign laws and regulations.

Legal scholarship focuses on the fact that cessation is not just about emissions, but also indirect contributions made through policies of governments, like grants, tax breaks, or weak enforcement of environmental laws. The remedy is forward-looking, aimed at preventing future harms

and can include the adoption of corrective legislation, reform of regulation and establishment of monitoring systems to enforce compliance. It is increasingly acknowledged in courts and international forums that the failure to stop harmful action after it has been identified only serves to perpetuate the responsibility of the state, particularly when inaction perpetuates foreseeable climate risks.

The success of new laws depends on the State's ability and willingness to enforce them in its area of jurisdiction. Cessation can be tricky in climate cases, as emissions can be cumulative and multi-actor, with the end of one emissions source in one sector potentially necessitating more systemic changes. However, this principle leaves no doubt: if the behaviour responsible for the climate damage is known, the responsible State is obliged to take steps at once to end it.

Assurances and Guarantees of Non-Repetition

Remedies for the future which are designed to prevent the repetition of wrongful acts are assurances or guarantees of non-repetition. At the climate level, this could involve strengthening the laws that frame climate action, climate law reforms, and compliance tools that promote long-term mitigation and adaptation action (International Law Commission, 2001). These assurances give the legal and procedural guarantees that the state will not repeat actions that lead to climate harm. The ICJ Advisory Opinion also calls for structural reforms to ensure that states do not repeat the mistakes made in the future, including the need for climate governance institutions to build capacity at the national level and ensure consistency between domestic and international policies and obligations.

Scholarly discussion focuses on the fact that non-repetition guarantees may manifest themselves in a variety of ways. They range from legislation to impose more stringent emission limits to the establishment of independent monitoring and inspection agencies, compulsory corporate reporting provisions and investment in renewable energy facilities. States may also be obligated to carry out cooperation with other States, which includes the exchange of technology and know-how, in order to prevent similar violations on an international scale. These measures help to ensure that remedies are systemic and long-term and not ad hoc corrective actions.

Assurances and guarantees of non-repetition play a vital part in domestic and international accountability in practice. They offer a foundation for monitoring and enforcement ensuring that States will meet the mitigation and adaptation requirements in the future. They also let vulnerable states and international bodies know that legal obligations are treated seriously, which may minimise conflicts due to reoccurring violations. Good guarantees are essential for the prevention of climate-related harms in the long term.

Reparation

There are three complementary types of reparations, namely, restitution, compensation, and satisfaction. Restitution is the restitution to the situation which would have existed before the occurrence of the wrongful act, which in cases where the nature of climate change may cause damage to the environment, is technically or practically not achievable (International Law Commission, 2001). Compensation describes means of financial compensation for loss and damage relating to damage to infrastructure,

relocation of affected population groups or economic loss due to climate impacts. Satisfaction entitles to declaratory relief, formal apology or recognition of wrongdoing, and is a measure of state recognition of responsibility and moral obligations.

The ICJ Advisory Opinion reinforces claims for reparation for a failure to take effective climate action (International Court of Justice, 2025). This encompasses both local and transboundary damage. Scholars have highlighted that there are two ways to provide compensation: either from the developed or vulnerable states that are disproportionately impacted by climate change or financial assistance to developing vulnerable states. According to the scholars, there are two methods of providing compensation: one is giving financial assistance to developing states or vulnerable states badly affected by climate change, and the other is giving financial assistance to developing or vulnerable states of developing countries. Judicial recognition of violations is also a form of declaratory relief which contributes to strengthening the international legal framework for accountability.

A legal remedy that is essential for climate justice is reparations. Restitution and compensation offer material reparations to affected communities, whereas satisfaction establishes the acknowledgment of unlawful behaviour, and assures adherence with the norms. All these types of reparation contribute to the main goals of climate law: the prevention of future damages, the holding of the responsible party accountable in the face of the victim and the recognition of fairness between the country with the high emitter and the country with the high vulnerability.

Climate Loss and Damage

Climate loss and damage are the cost and effects of climate change that cannot be mitigated or adapted to. Loss and damage were explicitly acknowledged as a separate part within the Paris Agreement, in Article 8 of which, there is a reference to residual risks, especially in vulnerable states (Paris Agreement, 2015). The ICJ Advisory Opinion could bolster legal claims for compensation for loss and damage by emphasizing the treaty and customary law obligations of states to prevent significant harm and to offer remedies to populations impacted by loss and damage (International Court of Justice, 2025).

Loss and damage can result from the destruction of property under extreme weather events, the destruction of livelihoods from agricultural disruption or relocation expenses caused by sea level rise. These harms affect vulnerable states and communities who bear the brunt burden of emissions reductions, but emit relatively less. In the eyes of scholars, the state responsibility for climate loss and climate damage is critical to equity and justice in international law. If that is the case, then financial compensation or technical assistance might be deemed as a legal duty, not a voluntary act.

Additionally, climate science and attribution studies are increasingly enabling quantification of loss and damage and are serving as the basis for claims and reparations. The integration of emissions, causation, and harm increases the likelihood of claims for compensation, particularly with vulnerable states claiming climate damages. The ICJ Opinion therefore emphasizes that loss and damage is not just a moral or political problem, but a legal problem that

calls for lawful and fair remedies under international law.

Universal and Treaty-Wide Obligations in Climate Law

There are some climate duties that are owed not only to certain states, but to the international community as a whole, which can be found under the rubric of universal obligations. Customary mitigation duties, such as the right to avoid the occurrence of significant environmental harm across borders and the duty to exercise due diligence to minimize emissions, are universal because of their protection of basic global interests, including the climate system and rights of future generations. These obligations can be used by any state, even one not directly affected, to call into question the obligation of a state that has failed to meet it. International law highlights the collective responsibilities to climate change, as shown through the universal obligation states have to mitigate and adapt to climate change, with their actions being held accountable to the wider global community and not only those that have been most severely affected. The ICJ Advisory Opinion pointed out that all the duties stemmed from customary law, which, by its universal nature, serve as the basis for states' accountability for climate change-related harms and their causes, namely global warming, in particular (International Court of Justice, 2025).

Climate treaties also establish treaty obligations which are owed to all the parties of a given treaty. However, mitigation obligations and reporting obligations are implicit within the UNFCCC and Paris Agreement that each state party has to the collective membership, which allows for cooperative compliance and within the treaty, for holding each other accountable. This distinction makes it clear that the obligation to minimise the damage and to provide remediation or enforcement is owed as a collective (not individual) obligation, meaning that vulnerable states, small island developing states or other non-injured states can legitimately seek this under international law. The legal architecture provides for global and treaty-based accountability; by acknowledging universal and treaty wide obligations, the protection of common interests including environmental integrity, intergenerational equity and safeguarding of essential ecosystems is reinforced. This system allows for a more robust call for compliance, and makes climate commitments a shared responsibility rather than a bilateral one.

Significance of the ICJ Advisory Opinion

The ICJ Advisory Opinion on climate change is a novelty in international law; it offers authoritative guidance on states' obligations, but is still a non-binding document. While advisory opinions may not have the binding effect of a judgement in a contentious case, they have considerable persuasive force given the role of the ICJ as the leading judicial body of the United Nations. This opinion specifies its legal principles regarding the climate context state responsibility, including obligations to mitigate emissions, adaptation to anticipated harms, regulation of private actors and cooperation at the international level (International Court of Justice, 2025). Its importance is compounded by the fact that domestic courts increasingly cite ICJ logic as they start ruling on climate change litigations, such as Juliana v. United States, Leghari v. Pakistan and Urgenda v. Netherlands, where they refer to international legal norms, human rights, and environmental obligations to

bolster their reasoning. The advisory opinion also serves as a reference for drawing connections between emissions, harm, and legal accountability as they are relevant to international adjudication and international human rights courts, such as the ITLOS, as well as investment arbitration. The opinion's political and normative significance is strengthened by its heightened international acceptance in recent years, exemplified by the General Assembly of the UN overwhelmingly adopting the opinion on 26th May 2026, which reinforces the global recognition of the significance of climate obligations.

Critical Analysis

The ICJ Advisory Opinion is a major step towards accountability for climate change by establishing that climate commitments are legal obligations, not just political pledges. It places a stronger legal connection between climate change and human rights; it restates the principle of due diligence as a standard of state behaviour and it makes clear that, as long as general international law principles on state responsibility are not put aside, the Paris Agreement does not necessarily exclude them. It does so in order to offer a transparent legal basis for future climate litigation and guidance for national and international courts, thus adding a greater degree of normativity to the climate obligations. A framework by which states can evaluate their mitigation and adaptation strategies and their regulatory actions, and also a warning to vulnerable people that violations of international obligations may be subject to action. By acknowledging both treaty and customary obligations, and incorporating human rights concerns, the Advisory Opinion can become a crucial instrument in the quest for environmental justice and an influence on the future of global climate governance.

The Advisory Opinion is also a document that has its own limitations and cannot have an immediate effect. It is non-binding and advisory and does not create direct liability for any state or responsibility for compensation, cause or enforcement. Considerable hurdles still lie ahead, such as figuring out how to connect a state's actions with the resulting climate harms, as well as formulating and accounting for a legal mechanism to enforce reparations. Consequently, the ICJ Opinion offers a solid foundation of law and prescriptive advice but does not necessarily establish a duty to pay for all acts of climate damage. The Advisory Opinion should be used in the future as guidance to future courts, governments and claimants to apply these principles on a case-by-case basis rather than as a final interpretation with respect to state responsibility.

Recommendations

To ensure coherence between domestic climate laws and policies with the ICJ Advisory Opinion, States should take proactive action. This should encompass the review of existing legislation, setting emission reduction targets in line with National Developed Contributions and ensuring regulatory frameworks are up to the standard of due diligence mentioned by the Court. There is a need to improve monitoring, supervision, and control of fossil fuel companies and other high-emission industries, such as mandatory reporting systems and environmental impact assessments, as well as measures to ensure that emissions are not excessive. These

measures can be institutionalized by States to illustrate their commitment to fulfil international obligations and minimize potential liability towards damages caused by climate change. Furthermore, vulnerable states must wisely use the Advisory Opinion in diplomatic negotiations and in climate litigation to argue for more equitable sharing of responsibility, and for better protection.

There is also a need to amend international law to offer clarity on climate compensation and how loss and damage is managed, especially for those communities most vulnerable to climate effects. Courts should embed climate science in decision making to respond to challenging questions of causation and attribution, thereby making their decision making more scientifically sound. Furthermore, climate finance must be considered a binding action of international cooperation, not a choice, and must ensure that states will provide timely and appropriate climate finance support to developing countries to mitigate and adapt. Taken together, the recommendations contribute to the goal of making the Advisory Opinion a reality in terms of legal, policy and judicial measures, which will further increase accountability and enhance global climate governance.

Conclusion

In the ICJ Advisory Opinion, the framework for state responsibility in the context of climate change has been reinforced, rendering states bound by the principles of treaty law, customary international law, human rights law, and environmental law. The Opinion sets a norm and legal framework for accountability obligations, including cessation obligations, reparations and preventative obligations, in the context of articulating obligations to mitigate emissions, to adapt to foreseeable harms, to regulate private actors and to cooperate internationally. This emphasises that climate commitments are not simply policy targets, but binding legal obligations and violations can lead to international law state responsibility.

The value of this framework, however, will largely rely on how future courts, tribunals and States will respond to issues of causation, attribution, compensation and enforcement. The Opinion sets out the principles by which states can be held to account, but does not address all practical and legal challenges, and there are other issues to be considered when developing future litigations and treaties. Therefore, the ICJ Advisory Opinion cannot be interpreted as a standalone instrument for climate justice, but it is still a significant legal ground for climate justice and a means to global accountability and policy alignment. It will be realized as states follow its guidance and courts interpret and apply its principles on real-life situations related to climate harm.

REFERENCES

Biermann, F., & Boas, I. (2010). Preparing for a warmer world: Towards a global governance system to protect climate refugees. *Global Governance, 16*(1), 121–142.

Birnie, P., Boyle, A., & Redgwell, C. (2009). *International law and the environment* (3rd ed.). Oxford University Press.

Bodansky, D. (2010). *The art and craft of international environmental law*. Harvard University Press.

Bodansky, D., Brunnée, J., & Rajamani, L. (2017). *International climate change law* (2nd ed.). Oxford University Press.

Bodansky, D., Brunnée, J., & Rajamani, L. (2021). *International climate change law: Cases, materials, and commentary* (2nd ed.). Oxford University Press.

Brownlie, I. (2008). *Principles of public international law* (7th ed.). Oxford University Press.

Carlarne, C. P., Gray, K. R., & Tarasofsky, R. (Eds.). (2016). *The Oxford handbook of international climate change law*. Oxford University Press.

ClientEarth v. United Kingdom, Case No. CO/1998/2021 (UK, 2021–ongoing).

Diffenbaugh, N. S., Field, C. B., Applegate, P., & Frankenberg, E. (2017). Linking climate change to extreme weather events and impacts. *Nature Climate Change, 7*(7), 492–500.

European Union v. Poland (Climate Finance Dispute, 2021).

Falkner, R. (2020). *International climate governance: A global challenge*. Oxford University Press.

Fisher, D., et al. (2020). Pathways to deep decarbonization. *Energy Research & Social Science, 70*, 101680.

Friends of the Irish Environment v. Ireland, [2020] IESC 49 (Sup. Ct. Ireland, 2020).

Heyvaert, V. (2020). *Climate change and the law of state responsibility*. Cambridge University Press.

Intergovernmental Panel on Climate Change (IPCC). (2022). *Climate Change 2022: Mitigation of Climate Change (Working Group III Report)*. Cambridge University Press.

International Court of Justice. (2025). *Advisory Opinion on Obligations of States in respect of Climate Change*. The Hague: ICJ.

International Law Commission. (2001). *Articles on Responsibility of States for Internationally Wrongful Acts*. United Nations.

Jordan, A., & Vogler, J. (Eds.). (2009). *Governing climate change: Global governance effects and interconnectedness*. Cambridge University Press.

Juliana v. United States, Case No. 6:15-cv-01517-TC (D. Or., 2015–ongoing).

Kaczorowska, A. (2010). *Public international law: Text, cases, and materials* (4th ed.). Routledge.

Knox, J. H. (2018). *Report of the Special Rapporteur on human rights and the environment*. United Nations.

Leghari v. Federation of Pakistan, W.P. No. 25501/2015 (Lahore High Court, 2018).

Milieudefensie et al. v. Royal Dutch Shell, Case No. C/09/571932 (District Court The Hague, 2021).

Rajamani, L. (2020). Climate change and international law. *Annual Review of Law and Social Science, 16*, 1–22.

Rajamani, L. (2021). State responsibility and climate change: Legal frameworks and litigation trends. *Journal of Environmental Law, 33*(2), 223–245.

Rajamani, L., & Peel, J. (Eds.). (2021). *The Oxford handbook of international environmental law* (2nd ed.). Oxford University Press.

Roberts, E., et al. (2021). *Adaptation to climate change: From resilience to transformation*. Routledge.

Rogelj, J., Shindell, D., Jiang, K., et al. (2021). Climate modeling and attribution for policy-relevant assessments. *Nature Reviews Earth & Environment, 2*, 333–347.

Savaresi, A. (2015). *Human rights and climate change: The role of international law*. Routledge.

Setzer, J., & Byrnes, R. (2021). Global trends in climate change litigation: 2021 snapshot. Sabin Center for Climate Change Law.

Setzer, J., & Vanhala, L. (2019). Climate litigation in context: Lessons from across the field. Cambridge University Press.

Torres Strait Islanders v. Australia, CCPR/C/136/D/2810/2022 (UN Human Rights Committee, 2022).

United Nations. (1992). *United Nations Framework Convention on Climate Change*, May 9, 1992, 1771 U.N.T.S. 107.

United Nations. (1997). *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, Dec. 10, 1997, 2303 U.N.T.S. 162.

United Nations. (2015). *Paris Agreement to the United Nations Framework Convention on Climate Change*, Dec. 12, 2015, T.I.A.S. No. 16-1104.

Urgenda Foundation v. The State of the Netherlands, Case No. 19/00135 (Sup. Ct. Netherlands, 2019).

van Asselt, H., Kulovesi, K., & Heyvaert, V. (2021). Climate change, state responsibility, and international litigation. *Review of European, Comparative & International Environmental Law, 30*(1), 3–18.

Vazquez, C. (2014). *International law in the 21st century: Rules for global governance*. Routledge.