

Room to Sue? State Responsibility, Causation and Remedies

The Court is clear that State responsibility may ensue in the case of wrongful conduct.¹ Concrete examples include the failure of a State to take appropriate action to protect the climate from greenhouse gas (GHG) emissions – including through fossil fuel production; fossil fuel consumption; the granting of exploration licences or the provision of fossil fuel subsidies, all of which may constitute an internationally wrongful act.² Indeed, hot on the heels of the Advisory Opinion came the BBC headline “Top UN Court says countries can sue each other over climate change”.³

The Advisory Opinion is thought by many likely to form part of a wider litigation strategy giving rise to contentious proceedings. Even if there may be a State or States interested in undertaking contentious litigation internationally, a close reading of the Advisory Opinion implies that expectations should perhaps be calibrated down.⁴ A conservative reading might expect a declaratory remedy as satisfaction in respect of damage caused by the breach of obligations, and/or potentially an inexact global sum award as reparation. The main difficulty will be in relation to causation. On the positive side, the Court does identify a pathway for establishing causation in general terms. On the other hand, the Advisory Opinion could be taken to indicate that causation might be hard to demonstrate in finer grain.

In international legal terms the legal consequences of State responsibility for breach of international obligations, or “remedies” include duties of cessation and non-repetition of a wrongful act, if it is continuing. Thus, as the Court clarifies, in the climate context the duty of cessation may require a State that is not already doing so to employ all means at its disposal to reduce its GHG emissions.⁵ This might require a State “to revoke administrative, legislative and other measures that constitute an internationally wrongful act”.⁶ For instance, a State could potentially be legally obliged to cancel oil and gas licences. Judge Bhandari considered the Court could have been more specific that cessation in general requires discontinuing practices directly contributing to greenhouse gas emissions and adopting policies to facilitate deep and immediate emissions cuts.⁷

The duties of cessation and non-repetition are distinct from a State's continuing primary duties to perform its obligations despite having breached these obligations. Here the Court gives the example that States will have a continuing duty to preserve and improve reservoirs’ and sinks’ absorption capacity even if such obligations have previously been breached. Equally a State that has set a nationally determined contribution (NDC) which is inadequate under the Paris Agreement would have a continuing duty to set an adequate NDC.⁸

Beyond the duty of cessation, the general law on State responsibility holds that States can be required to make reparation in three combined forms: restitution, compensation and satisfaction. Compensation for financially accessible damage is in principle available when restitution proves materially impossible. Significantly the Court observed that this could include damage caused to the environment “in and of itself” including impairment of environmental goods and services during

¹ *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025 [2025] ICJ Reports [457(4)].

² [427].

³ Esme Stallard and Georgina Rannard, “Top UN Court says countries can sue each other over climate change,” 24 July 2025, available at: <https://www.bbc.com/news/articles/ce379k4v3pwo>

⁴ *Obligations of States* (n 1) Declaration of Judge Nolte [14].

⁵ [448].

⁶ [447].

⁷ Separate Opinion of Judge Bhandari [5].

⁸ [446].

recovery, and expenses incurred in consequence of damage. Satisfaction could take the form of expressions of regret, formal apologies, public acknowledgement or statements, education of the society about climate change, or a formal judicial declaration.⁹ Judge Bhandari's Separate Opinion suggested also recognition of States and communities as victims of climate change, commemorations and tributes to the affected, as well as the ideas of a trust fund to manage funds for beneficiaries and of symbolic monetary awards for non-pecuniary damage.¹⁰

However, restitution and compensation will only flow in relation to damage that has been *caused by* a State or States' wrongful conduct. What, then, did the Court have to say about causation? The Court reiterated the previously established international law test which requires "a sufficiently direct and certain causal nexus" between the wrongful act and the injury.¹¹ In the context of climate change, this had two elements. Firstly scientific evidence establishing that harm to the environment has been caused by anthropogenic greenhouse gas emissions, and secondly the attribution to particular State or group of States of the relevant conduct. The Advisory Opinion can be read as saying that scientific evidence before the Court considered the first of these elements of causation could be established by means of clearly linking observed increases in heat waves, flooding and drought to anthropogenic greenhouse gases (although only at a general level and only in respect of the increases in these phenomena).¹² Additionally in respect of the second we may note that the Court highlighted that we can determine scientifically the amount of emissions that each State has contributed to the atmosphere (although not all of these emissions will be unlawful).¹³

Thus there is scope for a contentious case arguing that certain States' conduct has caused increases in destructive weather. It seems that causation in a general sense could be established, on the Court's reasoning. The physical consequences are at least in part a result of the conduct. There is a "core" causative connection. This leads us to the Court's remarks on compensation. The Court comments, citing past jurisprudence, that "the absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage."¹⁴ Combined with what the Court has had to say about causation, it appears that even if it is unclear how much of the material damage a State may have suffered is due to another State or States' greenhouse gas emissions, and what the extent of that damage is, compensation may be possible, provided there is a core causative link.

The Court also goes on to highlight that compensation in the form of what it has referred to as a "global sum" may be possible, on an exceptional basis, where the exact extent of damage caused is uncertain, which the Court expects it would be in a climate change context.¹⁵ We have seen this in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, where the DRC sought some \$US 13 billion in reparations with the Court ordering reparations of \$US 325 million US i.e. about 2.5% of the amount sought.¹⁶ Given the high number of potential claimants, Judge Bhandari makes suggestions about institutional frameworks for delivery in the form of

⁹ [455].

¹⁰ Separate Opinion of Judge Bhandari [9].

¹¹ [436] [457(4)(c)].

¹² [437]. Also known as "impact attribution", Katalin Sulyok, "On the Science-Coloured Glasses of the International Court of Justice: Harmfulness, Wrongfulness, and Climate Accountability", *Voelkerrechtsblog*, 6 August, 2025. Available at: <https://voelkerrechtsblog.org/>

¹³ [429]. Also known as "source attribution", Katalin Sulyok, *idem*.

¹⁴ [453] citing *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Compensation*, Judgment, I.C.J. Reports 2012 (I), pp. 26-27, para. 35.

¹⁵ [454] citing *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* *Reparations*, Judgment, I.C.J. Reports 2022 (I), p. 52, para. 106.

¹⁶ Robert Uerpmann-Wittzack, "Armed Activities on the Territory of the Congo Cases" *Max Planck Encyclopedias of International Law* July 2023, discussing *Armed Activities on the Territory of the Congo* (n 113).

international claims commissions or a UN administered compensation fund.¹⁷ There is no reference in the Advisory Opinion to the matter of the affordability of full reparation *vel non*.

Of particular interest is the Court's acknowledgement that it is the collective and aggregate effects of the GHGs emitted by all States as well as from natural sources that cause damage to the climate system.¹⁸ We can combine this with the Court's remark that previously where there have been multiple causes of injury the Court itself has held that "responsibility for part of such injury should [be] allocated among [the] actors".¹⁹ This statement has been described as significant at the level of principle, though leaving much to be determined.²⁰ The Court also observed that States have contributed to the atmospheric concentration of GHGs in significantly different degrees.²¹

Finally it may be helpful to observe that the Court considered that the responsibility of a single State could be invoked without invoking the responsibility of all States that may be responsible.²² If contentious proceedings were to ensue, the Court might have to address objections to admissibility on the basis proceedings could involve the determination of obligations of third parties not party to the proceedings. The extent to which the *Monetary Gold* principle posed an impediment might depend on the legal issues before the adjudicators.

¹⁷ *Obligations of States* (n 1) Separate Opinion of Judge Bhandari [8].

¹⁸ [441].

¹⁹ [430] quoting *Armed Activities on the Territory of the Congo* (n 115) pp. 49-50, para. 98. See also Declaration of Judge Nolte, and his distinct reasoning that the quantum of compensation for collective acts would need to be distributed among all responsible.

²⁰ Federica Paddeu and Miles Jackson, "State Responsibility in the ICJ's Advisory Opinion on Climate Change", July 25, 2025, EJILTalk! available at <https://www.ejiltalk.org/state-responsibility-in-the-icjs-advisory-opinion-on-climate-change/>

²¹ *Obligations of States* (n 1) [441].

²² [431].