

## Finance and Reparation

The Court handled the question of climate finance adroitly although unemphatically. This is perhaps because the sums called for are vast, although the efforts the world must go to will be sorely needed. In international climate negotiations there is a distinction between provision of **finance** to assist developing countries with mitigation and adaptation, and **finance** for the loss and damage caused by climate change.

Both have been challenging subjects of negotiation in the climate change treaty context. Slow progress on the latter especially was among the motivations for the campaign to request the Advisory Opinion. Progress has since been achieved at the Conferences of the Parties to the UNFCCC, although there is a long way to go. This progress includes the agreement at the 27<sup>th</sup> Conferences of the Parties (COP 27) in Sharm el-Sheik in Egypt in 2022 to establish a fund on finance for loss and damage as part of a mosaic of funding arrangements and its formal operationalization the following year.<sup>1</sup> As to **finance** to assist developing countries with mitigation and adaptation, the New Collective Quantified Goal on Climate Finance adopted at COP29 in Baku, Azerbaijan in 2024 is to comprise at least \$US 300B per annum by 2035 from public and private sources, with up to \$US1.3T primarily from private financing.<sup>2</sup>

The Court deals with the broad subject of climate **finance** flows in a relatively low-key way. Often the Court talks about "support" and "cooperation" rather than **finance** flows. By doing this the Court is placing the accent on the aim and the obligation rather than monetary matters, perhaps making the discussion more palatable. The topic is addressed first as part of the Court's analyses of the requirements of the UNFCCC.<sup>3</sup> Here the Court observes that: "a case-by-case determination of the adequacy of current financial aid and technology transfer commitments is to be made by the application of the principle of good faith, which governs the duty of cooperation".<sup>4</sup> This does infer that States could be judged for its efforts in respect of finance, although the yardstick of good faith would perhaps only reveal conduct that was sadly lacking.

**Finance** features centrally in the analysis of mitigation obligations under the Paris Agreement, where the Court places it squarely within the rubric of cooperation, alongside capacity building and technology transfer.<sup>5</sup> There is not only a binding obligation of financial assistance,<sup>6</sup> but also binding obligations to communicate in advance the projected **finance**, under Article 9.<sup>7</sup> The Court makes the key point that the Paris Agreement does not specify the amount or level of financial support to be provided, but the relevant provisions are to be interpreted in the light of other provisions including the Paris Agreement's Article 2 temperature goal: "parties are to implement their obligations under Article 9 in a manner and at a level that allows for the achievement of the objectives listed in Article 2." This level of contribution can be evaluated on the basis of factors including developed States' respective capacity and developing States' respective needs. There are also important obligations

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<sup>1</sup> Decision 1/CMA.4, Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage, available at <https://unfccc.int/documents/624434>

<sup>2</sup> Decision 1/CMA.6, New Collective Quantified Goal on Climate Finance, available at <https://unfccc.int/cop29/auvs>

<sup>3</sup> *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025 [2025] ICJ Reports [212, 217-21].

<sup>4</sup> [218].

<sup>5</sup> [262ff] .

<sup>6</sup> [264]

<sup>7</sup> [262].

regularly to communicate action taken, under Article 11 (4), and to enhance capacity building activities through appropriate institutional arrangements, under Article 11 (5).

These important observations from the Court about **finance** flows must be distinguished from later sections of the Advisory Opinion addressing the subject of the legal consequences where States' conduct has caused significant harm to the climate system, including reparation. Reparation is governed primarily by the law on State responsibility, as the Court explains. The Court made it clear that State conduct precipitating State responsibility includes all wrongful acts. These wrongful acts might, for instance, take the form of parties' failures to communicate and maintain Nationally Determined Contributions (NDCs) under the Paris Agreement – and a number of States have been late with their successive NDCs; or failure to regulate greenhouse gas emissions in accordance with the customary international law obligation of due diligence in the prevention of environmental harm; or failure to conduct environmental impact assessments.<sup>8</sup>

The Court also made clear the full panoply of legal consequences found in the law of State responsibility would be applicable,<sup>9</sup> in addition to the continued duty to perform relevant obligations.<sup>10</sup> As mentioned in the previous section, these consequences would include the duties of cessation and non repetition.<sup>11</sup> The duty to make reparation would then sit on top of the cessation obligation, assuming that causation of the damage suffered by the injured State was established, or damage suffered by individuals if there were a breach of international human rights law.<sup>12</sup>

Reparation might comprise restitution, compensation and/or satisfaction. Restitution might not be feasible for environmental harm, although the restoration of ecosystems and reconstruction of damaged infrastructure could be called for.<sup>13</sup> Judge Bhandhari would have liked the Court to refer more specifically to reparation measures aimed at protecting, preserving, and enhancing the absorption capacity of greenhouse gas (GHG) reservoirs and sinks; as well as, where feasible, returning lost territory or property.<sup>14</sup> Judge Sebutinde promoted reference also to reforestation, prevention of coastal erosion, infrastructural rebuilding and disaster or debt relief, as plead by certain countries including from the African continent.<sup>15</sup> Most importantly for certain States Judge Aurescu took the view that restitution could embrace the continued recognition of the entitlement of States affected by sea level rise to their prior maritime territories, as well as of their continued Statehood.<sup>16</sup>

Compensation would correspond as per the law on State responsibility to financially assessable damage not made good by restitution, and the Court had previously confirmed that compensation could fall due for environmental damage.<sup>17</sup> This might include damage to the environment in and of itself, which might involve indemnification for impairment or loss of environmental goods and

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<sup>8</sup> [444].

<sup>9</sup> [445] [457(4)]. Hailed in Margaretha Wewerinke-Singh and Jorge Viñuales, “The Great Reset: The ICJ Reframes the Conduct Responsible for Climate Change Through the Prism of Internationally Wrongful Acts” 4 August 2025, EJILTalk! Available at <https://www.ejiltalk.org/the-great-reset-the-icj-reframes-the-conduct-responsible-for-climate-change-through-the-prism-of-internationally-wrongful-acts/>

<sup>10</sup> [446].

<sup>11</sup> On both the continued duty to perform and cessation see *Room to Sue? State Responsibility, Causation and Remedies*.

<sup>12</sup> [449].

<sup>13</sup> [451].

<sup>14</sup> See also Separate Opinion of Judge Bhandari [6].

<sup>15</sup> Separate Opinion of Vice-President Sebutinde [12].

<sup>16</sup> Separate opinion of Aurescu [24].

<sup>17</sup> [453] citing *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018 (I), pp. 28-29, paras. 41-43.

services, and also damage in the form of expenses incurred by injured States as a consequence of such damage.<sup>18</sup> The matter of valuation is addressed in the previous paper.<sup>19</sup>

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<sup>18</sup> *Obligations of States* (n 3) [453].

<sup>19</sup> See under *Room to Sue? State Responsibility, Causation and Remedies*.