

**“International Environmental Law: A systemic analysis of obligations
of conduct, cooperation, and reparation in light of the 2025
International Court of Justice Advisory Opinion”**

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1. Custodians of the Future: The Legal Revolution of Vanuatu's Youth

In 2019, a revolutionary idea conceived in Vanuatu, an island nation in Oceania, aimed to convert the climate crisis into a binding legal accountability, establishing explicit obligations and liabilities for States.

A group of law students from the University of the South Pacific, profoundly impacted by the climate crisis, proposed utilizing international law as an instrument for the tangible protection of future generations. Their proposal centered on leveraging pre-existing and binding international norms.

Primarily, they relied on the obligations deriving from current international treaties that provide a detailed regulatory framework for the issue. Chief among these is the Paris Agreement, whose primary objective is to limit global warming to well below 2°C above pre-industrial levels¹, driven by the cohesive action of States aimed at “strengthening the global response to the threat of climate change,”² pursuant to Article 2 of said Agreement. Furthermore, they invoked international customary law and its ancillary principles, such as the “no-harm principle,” which prohibits States from allowing activities within their jurisdiction or control to cause significant transboundary environmental damage.

The applicants, and subsequently the ICJ³, also examined human rights treaties and their interpretations as consolidated by various Conventions⁴. Within this framework, state inertia in the fight against climate change is deemed a direct and systematic violation of human rights, including the rights to health, life, self-determination, and the cultural identity of indigenous peoples.⁵

More specifically, this legal intuition addressed a structural inadequacy within the international climate regime, which was established by the 1992 United

¹ The Paris Agreement, which entered into force on November 4, 2016, upon ratification by at least 55 countries, outlines a global action plan to limit global warming. (See: <https://www.consilium.europa.eu/en/policies/paris-agreement-climate/>).

² Pursuant to Article 2 of the Paris Agreement, the treaty's primary objective is to hold the increase in the global average temperature to well below 2°C above pre-industrial levels through cohesive state action meant to “enhance the implementation of the Convention” and “strengthen the global response to the threat of climate change.”

³ ICJ, Advisory Opinion on the Obligations of States in respect of Climate Change (July 23, 2025).

⁴ “The Court considers that core human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, adopted in 1966, as well as human rights recognized under international customary law, constitute part of the most directly relevant applicable law.”

⁵ The Court transcends an anthropocentric and private-law vision of the environment, defining it not as an abstraction, but as “the vital living space, the quality of life and the very health of human beings, including generations to come.”

Nations Framework Convention on Climate Change (UNFCCC) and reinforced by the aforementioned Paris Agreement. The core limitation of this framework lies in its voluntary, "bottom-up" nature: Nationally Determined Contributions (NDCs)⁶ are not legally binding regarding their outcomes, and the framework excludes any punitive or sanctioning mechanisms in the event of a failure to achieve the established targets. This architecture effectively abandoned small island developing States in the Pacific to the mercy of mere political promises by major global emitters, exposing them to the concrete risk of being submerged by rising sea levels by the end of the century.

The conceptual strength of this initiative resides in the principle of intergenerational equity and in the theorization (far more practical than it might initially appear) of an “anticipatory violation of human rights”: future generations are not to be considered abstract entities but rather true subjects of current rights⁷. Consequently, present-day emissions causing ecosystem degradation constitute actual breaches of the “*dovere di custodia*” (trusteeship) that humanity owes to the entire planet, as well as an act that deprives unborn generations of their fundamental rights.

Faced with this existential emergency, the youth of Oceania recognized the necessity of shifting the battleground from international negotiations to strategic international litigation.

⁶ Nationally Determined Contributions (NDCs) constitute the operational core and central programmatic tool of the 2015 Paris Agreement to combat climate change. Under Article 4, paragraph 2 of the Agreement, each State Party is under a legal obligation to prepare, communicate, and maintain successive nationally determined contributions that it intends to achieve. Although these action plans are flexible and autonomously determined by individual States (self-differentiation), they are bound by the principles of progression and non-regression: every five years, successive NDCs must represent a progression beyond the State's then-current NDC and reflect its highest possible ambition, in light of its common but differentiated responsibilities and respective capabilities. The primary legal source establishing this mechanism is the Paris Agreement (adopted during COP21 and opened for signature in New York on April 22, 2016), read in conjunction with the operational guidelines adopted within the Katowice Climate Package (COP24) to harmonize transparency and greenhouse gas (GHG) accounting criteria.

⁷ Already in the Preamble of the United Nations Charter (1945), a solemn commitment is expressed to “save succeeding generations from the scourge of war.”

Thus, they launched an extraordinary and ambitious mobilization campaign, traveling through the rural and coastal communities of Fiji, Vanuatu, the Solomon Islands, and Tonga. During these expeditions, the students gathered written statements, oral testimonies, and declarations from elders and local leaders. They systematically documented, from both scientific and legal standpoints, phenomena such as the salinization of aquifers destroying taro crops, coastal erosion mandating the relocation of ancestral cemeteries, and the forced displacement of entire villages. These compilations served as concrete evidence of "loss and damage" to culture and identity, weaving a choral narrative of a threat shared by numerous nations.

The foresight of these twenty-seven students, born on a small oceanic university campus, prompted the government of Vanuatu to act by providing a concrete roadmap to challenge the global geopolitical chessboard. In 2021, the executive branch of Vanuatu adopted the draft resolution formulated by the PISFCC, initiating a diplomatic offensive. This effort culminated in March 2023, when the United Nations General Assembly adopted by consensus a resolution requesting an advisory opinion from the International Court of Justice.

This process led the ICJ to unanimously issue its Advisory Opinion on Climate Change on July 23, 2025, which was subsequently shielded politically by the UN General Assembly in May 2026 with an overwhelming majority of 141 votes in favor.

2. Analysis of the Opinion: Revolutionary Principles and Standards

The systemic value of the advisory opinion of the International Court of Justice lies in its profound de-fragmentation of international environmental law, achieved with the

support of preceding judgments, jurisprudential developments, and scholarly doctrine⁸. By transcending the atomistic view that treated climate treaties and customary international law principles as a closed, isolated self-contained regime, the Court reinstates the regulation of global warming into the broader framework of general international law. The effect of this opinion was precisely to provide a new and innovative perspective on international environmental law, offering jurists and stakeholders alike a fresh interpretation of the binding international provisions currently in force.

To resolve the interpretive questions surrounding the concurrent application of norms, the Court examines the entire body of conventions codifying global climate change obligations, establishing the alarming increase in atmospheric greenhouse gas (GHG) concentrations as its factual and scientific premise.

On this basis, the ICJ outlines the scope of the cornerstone treaties, referencing the 1992 United Nations Framework Convention on Climate Change (which entered into force in 1994), the 1997 Kyoto Protocol (which entered into force in 2005)⁹, and the 2015 Paris Agreement (which entered into force in 2016). Preliminarily, the Court radically rules out any incompatibility, configuring instead a perfect complementarity and synergistic coexistence between these instruments. It determines that the UNFCCC establishes the structural framework and sets the macro-systemic objective. The Kyoto Protocol and the Paris Agreement modify its ratio, translating and specifying its

⁸ The jurisprudential evolution of the ICJ marks the shift beyond an anthropocentric and private-law vision of the environment. Moving from the Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons (1996), which qualifies the environment as an intergenerational vital living space, and passing through the judgment in *Pulp Mills on the River Uruguay* (Argentina v. Uruguay) (2010), which expands prevention duties via customary environmental impact assessment, the Court progressively extends the scope of state obligations. This parabola culminates in the integration of the Paris Agreement, which elevates climate to a common concern of humankind, leading to the 2025 Advisory Opinion where the violation of climate targets is definitively sanctioned as an international wrongful act, establishing a true legal reparatory liability (and as will be seen, not only that) upon States.

⁹ From a strictly formal perspective, the Kyoto Protocol concluded its second commitment period (the Doha Amendment) on December 31, 2020, resulting in a substantial loss of operational efficacy for its specific binding emission reduction quotas in favor of the new global regime inaugurated by the Paris Agreement. Nonetheless, within the hermeneutic perspective of the International Court of Justice, the Protocol has not lost its relevance. The ICJ considers it an integral and permanent part of the regulatory architecture on climate: its provisions not only continue to serve as a historical and logical parameter to evaluate the past conduct and good faith of States, but its cornerstone principles remain vital as an expression and specification of general customary international law regarding the prevention of transboundary harm, integrating synergistically with current obligations.

fundamental principles into operational obligations and parameters of conduct for individual States.

Finally, the Court addresses the core issue of the quantum of obligations binding sovereign actors. The centerpiece of its jurisprudential reasoning lies in the rejection of a hierarchy between treaty law and customary law, which for a long time had been subject to an excluding interpretation, meaning they were viewed as mutually exclusive. Recalling the hermeneutic canons enshrined in the Vienna Convention on the Law of Treaties¹⁰, the ICJ highlights how general customary norms coexist and overlap with conventional norms without any friction.

The interpretative scope is thus widened: a State cannot shield itself behind the mere formal fulfillment of flexible targets, namely the Nationally Determined Contributions (NDCs) of the Paris Agreement. The commitments undertaken in treaties must be read in conjunction with the major and peremptory principles of general international law, such as the obligation of prevention and the prohibition of causing transboundary harm (*sic utere tuo ut alienum non laedas*).

2.1 Due Diligence as an Obligation of Conduct in Environmental Law

The International Court of Justice asserts that States must comply with their obligation to prevent significant damage to the environment by acting with due diligence¹¹.

¹⁰ Article 31, paragraph 3, letter c, states that there shall be taken into account, together with the context: any relevant rules of international law applicable in the relations between the parties. By virtue of this, binding customary norms and parallel treaties applicable to the same parties are considered binding international rules.

¹¹ Due diligence does not constitute a mere and isolated formal obligation, but rather the logical-legal parameter and the fundamental premise through which to interpret, evaluate, and render operational all obligations of conduct in international environmental law. As solemnly reaffirmed by the International Court of Justice, the standard of due diligence represents the cornerstone both for the fulfillment of the customary duty to prevent significant harm to the environment (ICJ, Advisory Opinion on the Obligations of States in respect of Climate Change, 2025), and for the concrete implementation of the duty to cooperate, the fulfillment of which is structurally evaluated in light of this parameter (ICJ, *ibidem*). Prior jurisprudence had already widely consolidated this approach, defining due diligence as an obligation requiring the State not only to adopt an appropriate regulatory framework, but also to exercise active vigilance and stringent, continuous administrative control over public and private activities capable of causing ecological harm (ICJ, *Pulp Mills on the River Uruguay, Argentina v. Uruguay*, Judgment of 20 April 2010; see also ICJ/International Tribunal for the Law of the Sea, Advisory Opinion on Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area, 2011).

The latter is to be considered an obligation of conduct, rather than of absolute result, which must be fulfilled through the adoption of a series of criteria systematically enumerated within the 2025 Advisory Opinion:

The adoption of national laws, regulations, and measures as strategic mitigation instruments aimed at achieving a rapid reduction in greenhouse gas emissions;

The adoption of scientific and technological information, alongside the necessity of analyzing and utilizing such data;

The necessity to comply with standards deriving from hard law or soft law¹², COP decisions, or technical rules and practices (e.g., the guidelines of the Intergovernmental Panel on Climate Change on how to calculate a country's carbon footprint);

The uncertainty of scientific data regarding the actual impact of one's actions does not allow for political inertia or the postponement of preventive measures in the face of a risk of serious damage (Precautionary principle);

Assessing the impact risks of one's actions (e.g., through the application of Strategic Environmental Assessment at the strategic planning level and Environmental Impact Assessment for the control of individual projects, instruments of European origin);

The obligation to inform and consult other States in good faith in the event that one's activities or policy reforms risk causing significant harm or hindering global climate efforts.

2.2. The Principle of *Lex Specialis Derogat Legi Generali* in International Environmental Law

The Court recalls one of the complex systems for coordinating norms in force within constitutional states¹³. Among the interpretative tools aimed at regulating coexisting sources, a central role is assumed by the maxim *lex specialis derogat legi generali*,

¹² Which obtains legal, and not merely political, relevance in environmental matters.

¹³ The principle *lex specialis derogat legi generali* finds explicit positive recognition within the Italian legal order both in criminal law (Art. 15 c.p., according to which the special provision derogates from the general one when multiple laws regulate the same matter), and in the administrative law of decriminalization (Art. 9 L. 689/1981, which mandates the application of the special provision in the event of a conflict between a criminal sanction and an administrative sanction for the same act).

indicating which norm must be applied based on an analysis of its legal nature, its prerequisites for application, and its concrete operability.

In delineating the interpretative rule of *lex specialis*, the International Court of Justice adopts a restrictive and rigorous approach, borrowing the orientations expressed by the International Law Commission (ILC).

For the principle to apply, the ILC and the ICJ clarify that there must be a clear intention manifested by the parties for a specific provision to exclude the other.

Applying these criteria to the international climate change regime¹⁴, the ICJ rules out that this body of norms constitutes an excluding *lex specialis* with respect to the rest of international law, finding no actual inconsistency.

“The Court considers that the principle of *lex specialis* does not lead to a general exclusion by the climate change treaties of other rules of international law”¹⁵.

The hermeneutic relevance of *lex specialis* thus extends with equal significance to the legal consequences of internationally wrongful acts committed by States in environmental matters.

3. The Obligation to Cooperate by Virtue of Due Diligence

In reshaping global climate governance, the International Court of Justice identifies international cooperation not merely as a political aspiration, but rather as a binding legal obligation of conduct, structured around the parameter of due diligence¹⁶. The logical premise from which the ICJ operates is the intrinsic indivisibility of climate

¹⁴ Composed primarily of the three fundamental agreements: the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement.

¹⁵ The cited 2025 ICJ Advisory Opinion was formally rendered under the official title of "Obligations of States in respect of Climate Change".

¹⁶ United Nations General Assembly Resolution 2625 (XXV), adopted on October 24, 1970, which contains the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, represents the cornerstone for the codification of the general duty to cooperate. The text elevates the obligation to cooperate to a structural principle of customary international law, establishing that States have the duty to cooperate with one another, irrespective of the differences in their political, economic, and social systems, in order to maintain international peace and security and to promote global economic stability. In the context of international environmental law, the International Court of Justice leverages its dogmatic scope to demonstrate that the duty to cooperate in the face of global and indivisible emergencies—such as the climate crisis—is not a recent or exclusively conventional prerogative, but a pre-existing structural obligation rooted in the very pillars of the United Nations Charter.

risk: as it constitutes a global threat, no sovereign system can pursue the effectiveness of environmental protection in an isolated manner¹⁷.

This obligation articulates through a complex dialectic between conventional sources and general international law, unfolding along specific systemic vectors. Primarily, a synergy exists between custom and treaties, wherein the Court observes that the customary duty to cooperate for the protection of the environment is reflected and articulated across various provisions of climate change treaties. This principle finds expression in Articles 3 and 4 of the UNFCCC and, subsequently, in Articles 7, 9, 11, 12, and 13 of the Paris Agreement. According to the Court's rationale, these two coexisting sources complement one another: customary law intervenes to strengthen and provide prescriptive force to treaty-based obligations, binding their fulfillment to the canons of good faith¹⁸ and qualified diligence.

Furthermore, the Court demonstrates the specific binding nature of this duty by leveraging references to other global conventional regimes. It highlights, for instance, how Article 197 of the United Nations Convention on the Law of the Sea (UNCLOS) similarly imposes a primary obligation on States to cooperate on a global and regional basis for the protection and preservation of the marine environment. This confirms the transversal and cross-sectoral nature of the duty of collaboration among States when facing ecological emergencies. Regarding the operational content and means of cooperation, States retain formal freedom in choosing their methods of cooperation, provided that such modalities remain consistent with due diligence standards. However, the essential core of this obligation—especially under the Paris Agreement—substantiates into precise thematic areas and concrete actions: mitigation, adaptation, managing loss and damage, financial assistance, technology transfer, and structural capacity-building for the benefit of developing countries.

¹⁷ The Court recognizes that the duty to cooperate leaves States a certain discretion in determining the means to regulate their GHG emissions. However, such discretion cannot serve as an excuse for States to exempt themselves from cooperating with the required level of due diligence or to present their efforts as an entirely voluntary contribution that cannot be subjected to scrutiny.

¹⁸ See the cornerstone judgment of the ICJ, *Nuclear Tests Case (New Zealand v. France)*, Judgment of 20 December 1974, in which the Court consecrated good faith as a fundamental principle for the creation and performance of legal obligations.

Although the obligation to cooperate is universal, its practical implementation is modulated through the principle of common but differentiated responsibilities and respective capabilities¹⁹. The Paris Agreement translates this principle into a formula of self-differentiation, allowing States to autonomously determine their efforts through Nationally Determined Contributions (NDCs). This flexible framework is not, however, devoid of cogenecy: the Court highlights that the freedom of modulation is balanced by the expectation of progressively more ambitious commitments for all signatories, in accordance with the principle of continuous progression and the non-regression of environmental protection.

4. State Responsibility and the Causal Link in Post-2025 Litigation

In light of the substantive obligations binding upon States as meticulously outlined by the International Court of Justice, the necessity of understanding the resulting remedial and procedural dimension becomes entirely evident.

In international law, the breach of a legal obligation (whether derived from a treaty or custom) constitutes an internationally wrongful act. The rules governing the consequences of an internationally wrongful act were codified by the UN International Law Commission in the Articles on Responsibility of States for Internationally Wrongful Acts (2001) and rest upon two pillars:

The rise of a new international responsibility: A State's failure to comply with its obligations determines the birth of a new legal relationship between the wrongdoing State and the injured State;

The consequences for the wrongdoing State: The wrongful act entails specific obligations, namely cessation, guarantees of non-repetition, and full reparation.

During the proceedings that led to the historic Advisory Opinion, certain States, including major powers and oil exporters such as China, Saudi Arabia, and the United States, advanced a specific line of defense, invoking Article 55 of the ILC Articles.

¹⁹ As defined by the Paris Agreement in its preamble: In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

The article in question, referencing the scope of the Draft itself, states that “these articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law”²⁰.

These States argued that the Paris Agreement should therefore be considered a *lex specialis*, and that any failure to meet climate targets could never constitute an internationally wrongful act, nor obligate a State to pay financial reparations to damaged countries. The International Court of Justice, however, rejected this approach and clarified in the Opinion that the Paris Agreement does not govern the consequences of its breach. Therefore, in cases of climate inaction, the general rules of international responsibility apply, including the obligation of full reparation for injury pursuant to Article 31 of the International Law Commission's Articles²¹.

A State's wrongful act can manifest through omissive conduct (such as the failure to adopt progressive national mitigation plans), but also through active, concrete conduct. As precisely noted in legal doctrine, the ICJ opened the door to the scrutiny of specific national economic policies, clarifying that conduct such as "the production or use of fossil fuels, the granting of exploration permits, or the provision of subsidies

for such fuels" can constitute actual internationally wrongful acts attributable to the State²².

5. Cumulative Harm and State Responsibility

Historically, due to the globally diffuse nature of emissions, the most controversial aspect of climate litigation has been the invocation of international responsibility. Because global warming is the cumulative result of actions by multiple actors, States named as defendants in lawsuits have routinely contested the feasibility of establishing individual liability. This legal defense can be summarized by the expression "a drop in the ocean": States assert that even if they were to reduce their emissions to zero, climate

²⁰ ILC, Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Art. 55.

²¹ See T. Scovazzi, *Il parere consultivo della Corte Internazionale di Giustizia sul cambiamento climatico*, in RGA Online (Rivista Giuridica dell'Ambiente), no. 68, October 2025, p. 4.

²² T. Scovazzi, *op. cit.*, p. 4.

change and its progression would not halt due to the contributions of all other actors. This shared perspective contends that it is radically impossible to demonstrate the direct and individual responsibility of a single State for the occurrence of a specific event and that, dealing with global phenomena, individual liability cannot be established since the blame lies collectively with everyone.

The response of the International Court of Justice in its 2025 Advisory Opinion dismantles this line of defense by systematically clarifying several points²³:

The conduct: The internationally wrongful act resides in the breach of the obligation of due diligence, characterized by a failure to adopt all necessary and proportionate measures within a State's resources to curb emissions;

Cumulative or diffuse harm: The contribution of a plurality of actors to the injury does not preclude the invocation of the responsibility of an individual State²⁴; every material contribution to global warming violates erga omnes obligations owed to the international community as a whole.

Disjoint responsibility: The responsibility of a State can be invoked and determined individually.

Furthermore, the Court introduced a key element by recognizing the authority and efficacy of the Intergovernmental Panel on Climate Change (IPCC) reports as the best available scientific evidence. Thanks to these individualized datasets, it is now legally possible to calculate with precision both the historical emissions of a single country and its contribution to the global cumulative total, thereby enabling tribunals to overcome the ambiguity of collective blame through the application of a proportional criterion.

6. Standard of Proof and the Causal Link

Another crucial nexus in climate litigation concerns establishing a causal link between the wrongful conduct of a State and the injury suffered by the applicant (be it a vulnerable State or an individual). Due to the diffuse nature of the phenomenon, some

²³ International Court of Justice, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, specifically the section "Rules on State responsibility".

²⁴ See T. Scovazzi, *op. cit.*, pp. 3-4.

asserted the impossibility of tracing this link, while others requested a *juris et de jure* presumption. The latter argued that the Court should provide an automatic rule: that a State's excess emissions and the occurrence of a climate event should be considered sufficient to render its liability automatic and self-evident.

The Court rejected both views, relying instead on the traditional causal standard of a "sufficiently direct and certain" link²⁵. In its practical application to climate litigation, the judges clarified that this determination must be structured across two distinct levels:

Scientific attribution of the event: It must be established that a specific meteorological shift is scientifically attributable to anthropogenic climate change (a task made possible, as previously stated, by the IPCC reports)²⁶.

Attribution of state responsibility: Assessing concretely to what extent that injury can be traced back to the specific action or inertia of a State or group of States²⁷.

Finally, since restoring the prior situation (*restitutio in integrum*) is almost always materially impossible, the obligation translates into monetary compensation²⁸. Aware of the technical difficulties in quantifying climate damage, the Court introduced a principle of flexibility for litigation: the option for judges to award global and lump-sum damages, calculated on the basis of the evidence acquired and guided by unassailable considerations of equity²⁹.

7. Effects on Climate Litigation

From the perspective of transnational litigation, the primary milestone emerging from the Court's advisory opinion of July 23, 2025, lies in its explicit and unanimous affirmation of the *erga omnes* character of obligations linked to protecting the climate system from anthropogenic greenhouse gas emissions³⁰. Simultaneously, the Court

²⁵ ICJ, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment on Compensation of 2 February 2018, para. 32.

²⁶ ICJ, *Climate Change Advisory Opinion*, cit., para. 437-438.

²⁷ See D. Pauciulo, op. cit., p. 948.

²⁸ ICJ, *Certain Activities*, cit., para. 41-43, cited in D. Pauciulo, op. cit., pp. 948-49.

²⁹ See T. Scovazzi, op. cit., p. 4, emphasizing the recourse to a global assessment within the limits of the evidence provided.

³⁰ ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 440. See D. Pauciulo, *Breve nota al parere consultivo della Corte Internazionale di Giustizia*, in *Diritto e clima*, no. 3, 2025, p. 949.

qualified the obligations deriving from the principal climate change treaties—foremost among them the Paris Agreement—as *erga omnes partes* obligations³¹.

This has a disruptive impact on the standing to act (*jus standi*) before international fora. In international law, invoking the responsibility of a State typically requires demonstrating a direct injury suffered within bilateral relations. By recognizing that all States possess a common and shared legal interest in safeguarding the equilibrium of the planet, the ICJ transcends the logic of this traditional bilateralism³². Consequently, this allows any State—or any State party to a multilateral treaty—to invoke the responsibility of a non-compliant State, regardless of whether it has suffered direct material damage within its own territory.

7.1 Differentiated Remedies Between Injured and Non-Injured States

The Court introduced a clear differentiation within the text of the Opinion regarding the concrete remedies that can be adopted, depending on the legal standing of the applicant State in the dispute³³.

The ICJ ruled that a substantial distinction exists between:

Injured States: Those countries which, due to their geographical circumstances or developmental level (such as the small island developing State of the Republic of Vanuatu), suffer the lethal effects of the climate crisis. They alone are granted the right to seek full reparation in the form of monetary compensation for the degradation or loss of environmental goods and services³⁴.

Non-injured States: While clearly entitled to invoke state responsibility by virtue of the *erga omnes* nature of the obligation, they lack standing to claim any form of financial compensation³⁵. Their action in litigation is limited to demanding the cessation of the

³¹ See T. Scovazzi, *Il parere consultivo della Corte Internazionale di Giustizia sul cambiamento climatico*, in RGA Online (Rivista Giuridica dell'Ambiente), no. 68, October 2025, p. 4.

³² D. Pauciulo, *op. cit.*, p. 949.

³³ ICJ, Climate Change Advisory Opinion, *cit.*, para. 443 and 447.

³⁴ See T. Scovazzi, *op. cit.*, p. 4.

³⁵ D. Pauciulo, *op. cit.*, p. 949.

internationally wrongful act, followed immediately by a claim for adequate assurances and guarantees of non-repetition³⁶.

Scholarly doctrine has not spared severe criticism regarding this restrictive approach by the Court. It has been observed that fragmenting legal standing in relation to integral obligations seriously risks undermining the efficacy of state responsibility as an enforcement tool.

First, the global climate equilibrium and the atmosphere are unequivocally common and indivisible goods. For this reason, unlawful greenhouse gas emissions and inertia in mitigation policies alter the stability of the planet as a whole, thereby rendering every member of the international community an injured party of the climate wrong.

Second, fragmenting legal standings based on the geographical severity of material damage drastically reduces the sanctioning and deterrent effect of responsibility. Major emitting States are well aware that claims for financial reparation can only be raised by a narrow circle of small island developing States, which often possess fewer economic, political, and diplomatic resources to sustain monumental international litigation. Consequently, the risk of major polluters being ordered to pay heavy monetary compensation is drastically diminished³⁷.

Finally, depriving "non-injured" or "third" States (those not directly affected but legally interested in compliance with the norm) of the ability to seek forms of compensation disincentivizes litigation by those geopolitical actors who actually possess the structural capacity to bring major polluters to court.

³⁶ T. Scovazzi, *op. cit.*, pp. 2-3.

³⁷ Regarding the limitation of financial remedies and the allocation of compensation based on the specific circumstances of vulnerable countries, see D. Pauciulo, *op. cit.*, p. 949; see also T. Scovazzi, *Il parere consultivo della Corte Internazionale di Giustizia sul cambiamento climatico*, in *RGA Online (Rivista Giuridica dell'Ambiente)*, no. 68, October 2025, p. 4.