The Legal Consequences of Climate Harm: Complementarity Between the Advisory Opinions of the International Court of Justice and the Inter-American Court of Human Rights

Juan Auz[*]

I. Introduction

The Advisory Opinions recently issued by the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR) offer significant legal guidance on States' climate-related obligations and the consequences of their breach.[1] Both opinions rely on a plethora of international legal sources, from international legal custom as codified by the International Law Commission (ILC) Draft Articles on State Responsibility, which outline key principles such as attribution, causation, and remedies,[2] to soft law like the UN Guiding Principles on Business and Human Rights.[3] They also incorporate foundational principles of international environmental law—prevention, precaution, sustainable development, and common but differentiated responsibilities and capabilities (CBDR-RC)—as set out in treaties such as the UNFCCC and the Paris Agreement.[4]

While both courts diverge in their approach to answering the questions posed by their respective request, mainly due to the legal frameworks delimiting their mandate, the horizontal and vertical logic of their dispute settlement distinctions, and the nature of the legal proceedings, their inter-

* Postdoctoral Researcher at Tilburg Law School. His research is funded by the ERC 2021 Starting Grant TransLitigate(101039648). The views expressed here are only of the author and do not reflect those of the EU or ERC.

1 ICJ, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025.; IACtHR, *Advisory Opinion on Climate Emergency and Human Rights*, 29 May 2025, AO-32/25.

2 ILC, 'Articles on the Responsibility of States for Internationally Wrongful Acts with Commentaries', (2001) ILCYB, Vol. II, Part Two, 31, Arts. 31–33.

3 UN Guiding Principles on Business and Human Rights, UN Doc. HR/PUB/11/04 (2011).

4 UN Framework Convention on Climate Change (UNFCCC), 1771 UNTS 107; UN, Paris Agreement to the UNFCCC, 3156 UNTS No. 54113.

pretative outputs can be mutually complemented for climate protection and the benefits derived from it. This post, therefore, focuses on how these courts complement each other in examining questions of attribution, causation, and remedies, which are arguably the main legal consequences used to determine state responsibility in the context of potential climate harm.[5] By analysing and comparing their respective reasoning across these key issues, the post reflects on the broader implications for international climate law.

II. Framing of Questions: Shaping Judicial Responses

The ICJ was asked by the UN General Assembly to address the legal consequences of States' acts and omissions causing significant harm to the climate system.[6] Its task was therefore grounded in international state responsibility. The ICJ was called to interpret existing obligations under international, climate, environmental and human rights law, and to assess how breaches by States can be addressed under international law. This required not only a doctrinal engagement with the ILC's Articles on State Responsibility but also a contextual interpretation of environmental treaty regimes. The ICJ's mandate also required it to evaluate how climate-related harm engages obligations under customary international law.

In contrast, the IACtHR received a request from Chile and Colombia concerning climate change in relation to the Inter-American human rights framework.[7] The IACtHR reformulated the questions to focus on States' obligations to respect, protect, and fulfil the rights of people threatened by climate change, especially vulnerable groups.[8] As a result, the IACtHR did not address doctrinal issues related to state responsibility as outlined by the ILC's Draft Articles and further elaborated by the ICJ in the context of climate change, thereby avoiding discussion of the legal consequences of breaches. Instead, given the scope of the questions and its role as an interpreter of human rights law, it identified the relevant human rights

5 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), paras. 358–363.

6 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 88.

7 Juan Auz and Thalía Viveros-Uehara, 'Another Advisory Opinion on the Climate Emergency? The Added Value of the Inter-American Court of Human Rights', EJIL:Talk!, 02 March 2023.

8 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), para. 28.

obligations and examined their application in relation to the climate emergency. Despite this core distinction, the IACtHR outlined procedural rights options for future claimants to seek redress for violations of human rights duties, thus aligning, to a certain extent, with the law of state responsibility.

III. Attribution: Identifying Responsible Actors

Attribution determines whether conduct can be legally imputed to a State.[9] The ICJ provided a detailed, doctrinal analysis based on the ILC Articles. It distinguished scientific attribution (assessing causal contributions to climate change) from legal attribution (imputing conduct to States).[10] The Court reaffirmed the principle that states are responsible for the acts of their organs and for private conduct they fail to regulate with due diligence.[11] Notably, the ICJ highlighted that failure to regulate emissions-intensive activities, including fossil fuel production, subsidisation, and licensing, could give rise to state responsibility.[12] This suggests a broader reading of primary obligations to prevent significant environmental harm.

The IACtHR, while not engaging in a formal doctrinal discussion of attribution under the ILC Articles, reinforced accountability through a human rights lens. Drawing on its earlier jurisprudence, including the *La Oroya* and *Lhaka Honhat* judgments, the Court reiterated that States must prevent foreseeable harm that could infringe protected rights.[13] In this context, the IACtHR considers the failure to regulate environmental risks as a breach of the State's duty to respect, protect, and fulfil rights.[14] Although the Court did not treat attribution as a technical legal concept,

9 Petra Minnerop, 'Climate Causality: From Causation to Attribution' in: Margaretha Wewerinke-Singh and Sarah Mead (eds.), *The Cambridge Handbook on Climate Litigation* (Cambridge University Press 2025) 415–44.

10 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 425.

11 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 427–428.

12 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 427; Joint Declaration of Judges Bhandari and Cleveland, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025.

13 *IACtHR, Inhabitants of La Oroya v Peru (Preliminary Exceptions, Merits, Reparations and Costs)* judgement of 2023, Series C No. 511; IACtHR, *Caso Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v Argentina*, Judgement of 2020, Serie C No. 400.

14 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), paras. 552–554.

it implicitly held that regulatory omissions were attributable to the State. This interpretation of attribution based on the lack of effective preventive measures in place is consistent with both Courts' understanding of the standards of due diligence, which must be 'enhanced' for the IACtHR and 'stringent' for the ICJ.[15] In both opinions, therefore, attribution might be inferred when a State fails to demonstrate a heightened degree of vigilance and prevention vis-à-vis the risks arising from carbon-intensive activities.

On corporate responsibility, the IACtHR emphasised that States have differentiated obligations based on corporate actors' historical and ongoing contributions to climate change. The IACtHR urged States to regulate transnational corporations and parent companies to ensure accountability for the emissions of their subsidiaries, particularly in fossil fuel-related sectors.[16] The IACtHR, by fleshing out the polluter-pays principle, stressed that certain corporate actors whose operations entail greater risks to the climate shall have stringent obligations, including addressing loss and damage. Contrariwise, the ICJ dismissed the polluter-pays principle altogether as a source for interpretation and therefore did not directly address corporate actors.[17] However, it reaffirmed the duty to regulate private entities,[18] thereby complementing the IACtHR's position, especially in jurisdictions where corporate emissions are significant.

Both Courts also acknowledged the problem of diffuse responsibility. The ICJ stressed that the cumulative nature of emissions does not preclude responsibility. Rather, the ICJ insisted on the scientific and legal feasibility of quantifying each State's contribution to global emissions and of apportioning legal responsibility accordingly.[19] The Court recognised the principle that an injured State may invoke responsibility against any State whose conduct contributed to the harm.[20] The IACtHR, by recognising the right to a safe climate as a derivative of the right to a healthy environment, established that the collective interests of present and future generations and other species in preserving an adequate climate system shall be protect-

15 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), para. 236; ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 138.
16 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), para. 350.
17 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 159–160.
18 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 428.
19 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 429–432.
20 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 441–442.

ed, and that failing to do so gives rise to state responsibility.[21] This opens the door to multilateral climate litigation and further legal development in areas such as joint and several liability and equitable apportionment of liability.

Taken together, the ICJ and IACtHR opinions present two complementary avenues for attribution: one anchored in the parlance of state responsibility as codified by the ILC and the ICJ's case law and the other framed through the human rights obligations of States in relation to people and nature, emphasising differentiated obligations and the regulation of corporate conduct. Future litigants operating across jurisdictions could leverage both frameworks to establish state and corporate responsibility for climate-related harm.

IV. Causation: Connecting Acts to Climate Harm

Causation, per the ILC Articles, requires a sufficient link between the wrongful act and the harm.[22] In the climate context, establishing this link is challenging due to the global and cumulative nature of emissions. Both Courts acknowledged this complexity.

The IACtHR recalls the transboundary nature of harm caused by a damaged climate system,[23] requiring States to provide redress when a causal link exists between the injury and that State's polluting activities within its territory, jurisdiction, or control. Beyond this general reference to causation in the context of transboundary harm, the IACtHR elaborates its operationalisation through procedural rights related to the environment, rather than the broader framework of causation for an internationally wrongful act as outlined by the ICJ. The IACtHR emphasised the need for evidentiary flexibility to ensure access to justice for victims, recommending the use of scientific presumptions and the precautionary principle when establishing direct causation is difficult.[24] It bases this approach on principles such as *pro persona* (favouring the protection of the person), *pro natura* (favouring ecological integrity), and *pro actione* (ensuring effective access to justice).

21 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), para. 302.
22 ILC, ARSIWA (n. 2), Art. 31.
23 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), para. 551.
24 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), paras. 552–554.

In essence, the IACtHR does not engage with the general rationale of causation in the law of state responsibility as per the ICJ, but instead focuses on the procedural aspect of access to justice as a human right, asserting that causation is an evidentiary matter that requires flexibility in assessing injury and responsibility. This approach to causation, through access to justice, recognises the power imbalances often faced by Indigenous peoples and other marginalised groups in proving harm, aligning with the IACtHR's intersectional interpretation of State obligations.

The ICJ, while adhering to the formal causation requirements under international law, adapted its approach to the unique challenges posed by climate change. In that regard, the ICJ emphasised that there is flexibility in establishing a causal nexus between the wrongful act/omission and the alleged damage.[25] In paragraphs 433 to 438, the ICJ distinguished between the causation required for establishing a breach and that necessary for reparation. It reaffirmed that a 'sufficiently direct and certain causal nexus' is necessary for compensation claims, but recognised that this standard is not fixed and must be adjusted according to the nature of the primary obligation and the specific harm.[26] The Court also differentiated between the scientific attribution of climate change and the legal attribution of harm to State conduct, requiring an *in concreto* assessment based on the best available science.[27] Identifying these two elements paved the way for the ICJ to ultimately dismiss any claim that causation is inherently unprovable in the climate context, but stopped short of declaring that causation will always be established. As attribution science advances and becomes more detailed, it may influence future climate lawsuits by better clarifying the extent of the State's conduct involved in climate-related damage inflicted on a State or an individual.

Taken together, the ICJ's two-stage causation test, the recognition that science can satisfy it, and the increasing sophistication of attribution science suggest that future claimants may indeed be able to demonstrate causation in international climate litigation. While the ICJ's careful wording might reflect internal disagreements, it deliberately refrained from closing the door on causation for States' contribution to climate harm. Perhaps, with a flexible view on causation, cases like *RWE v. Lliuya* could succeed

25 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 436.
26 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 436.
27 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 437.

in the future,[28] especially if they rely on the IACtHR's embrace of presumptions of causation even for transboundary harm.

V. Remedies: A Path Towards Climate Reparations?

The ICJ noted that climate harm attributable to a State's act or omission may give rise to the entire 'panoply of legal consequences under the law of State responsibility'.[29] These include obligations of cessation and non-repetition, which apply regardless of whether harm exists, requiring States to revoke all administrative, legislative, and other measures that constitute an internationally wrongful act and to take necessary steps to cut their GHG emissions to meet their obligations.[30] It also confirmed that States must continue to fulfil their obligations despite the breach.[31]

Additionally, the ICJ elaborated on the consequences requiring full reparation, including restitution, compensation and/or satisfaction.[32] It recognised the difficulties of achieving restitution in environmental cases but proposed ecosystem restoration and infrastructure rehabilitation as potential measures.[33] Compensation may include economic losses, environmental damage per se, and consequential damages, with allowances for flexible valuation methods in the face of evidentiary gaps.[34] Satisfaction may take symbolic forms, including declarations of responsibility or apologies.[35] This comprehensive model supports the development of reparations jurisprudence in the context of transboundary environmental harm, whereby the cessation aspect of a remedy, as seen in the *Whaling* case,[36] meets the compensation reparation as awarded in *Certain Activities*.[37]

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28 Oberlandesgericht Hamm (Germany), *Lliuya v.* RWE *AG*,I-5 U 15/17 (2025).
29 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 445.
30 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 447–448.
31 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 446.
32 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 449–445.
33 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 451.
34 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 453.
35 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 455.
36 ICJ, *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, judgment of 31 March 2014, ICJ Rep. 226 (para. 245).
37 ICJ, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation owed by the Republic of Nicaragua to the Republic of Costa Rica, judgment of 2 February 2018, ICJ Rep. 15 (para. 156).

The IACtHR, by contrast, articulated a human rights-centred framework for remedies. Citing Articles 25(1) of the American Convention and XVIII of the American Declaration, the Court asserted that access to reparation is a substantive right that must be guaranteed through domestic judicial and administrative mechanisms.[38] It proposed procedural innovations such as reversing the burden of proof and adopting special evidentiary regimes for structurally disadvantaged groups.

Substantively, the IACtHR laid out a four-part model of reparation: (i) restitution, including ecosystem restoration and mitigation efforts; (ii) rehabilitation, such as medical and psychological care tailored to affected populations; (iii) compensation, adapted to the unique characteristics of climate-related damage; and (iv) guarantees of non-repetition, including institutional reforms, early warning systems, and strengthened environmental governance.[39] It further emphasised that reparation must be grounded in the best available science and respect both the procedural and substantive rights of individuals and communities.[40] The invocation of the doctrine of 'control of conventionality' obliges domestic authorities to implement these standards in good faith.[41]

Together, the ICJ and IACtHR present a two-tiered view of climate reparations. The ICJ establishes the broad legal framework for future climate reparations in cases of violations that may invoke the law of state responsibility, leaving specific details to be settled in future disputes. Complementarily, the IACtHR provides greater clarity on what reparations for climate-related damage could entail, linking them to human rights, equity, and environmental justice. These two levels of reparations address the legal consequences of States' breaches of their obligations vis-à-vis other States or individuals.

38 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), para. 556.

39 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), para. 558.

40 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), para. 559.

41 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 1), para. 560.

VI. Concluding Remarks

Despite their structural, historical, geographical, and institutional differences, both Courts affirm the justiciability of climate harm and the applicability of international legal responsibility to climate-related breaches. The ICJ reinforces the doctrinal foundation of climate obligations through the law of state responsibility. The IACtHR, in turn, enhances the accessibility and effectiveness of climate justice through procedural innovations and rights-based reasoning. This means that historical emitters cannot claim that the content of the Paris Agreement, particularly paragraph 51 of the text adopting it,[42] derogates any basis for liability or compensation for loss and damage resulting from climate-related harm.

Together, these approaches create a more holistic legal framework in which human rights, environmental protection, and state responsibility reinforce each other, thereby making the prospect of climate reparations more than a rhetorical aspiration. They offer a roadmap for legal practitioners, scholars, and affected communities seeking to hold States accountable and advance equitable, science-based solutions to the climate crisis. Their convergence on principles such as due diligence, evidentiary flexibility, and differentiated responsibilities paves the way for a more integrated and progressive international legal order responsive to the climate emergency.

Therefore, the ICJ and IACtHR have established the normative and procedural groundwork for a new phase of climate litigation—one that connects formal legal doctrine with transformative hopes for global climate justice. The route toward climate reparations has now, in theory, been made possible, and the otherwise formidable challenges of proving causation and attribution to determine the right remedy should start to fossilise underneath in the strata of attribution science.[43]

42 Decision 1/CP.21, *Adoption of the Paris Agreement* (COP-21, 12 December 2015) (UNFCCC), para. 51.

43 For an insightful deployment of geological parlance to understand international law as a discipline in dialectical temporalities, including in stratigraphic moves, see: Moritz Vinken, 'International Law's Fault Lines and Sediments: Geology as Method' (29 May 2025), Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2025–09, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5274030.