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Review article

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Erga omnes and *erga omnes partes* obligations in the International Court of Justice's Climate Change Advisory Opinion

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Abstract

The Climate Change Advisory Opinion's engagement with, and clarification of, the *erga omnes* and *erga omnes partes* character of certain obligations relating to climate change is significant, both on its own terms and in relation to available processes for their enforcement. The Opinion's confirmation that States owe these obligations to the international community as a whole—or to all other parties to the relevant climate treaties—helps to clarify and solidify the legal framework for the protection of the climate and the environment. Although this is a development that had broadly been anticipated in the literature, the Court's holding is meaningful in the light of its role in the development of international law. The Advisory Opinion cannot, of course, resolve the legal and political challenges of global climate governance, but its recognition of *erga omnes* obligations in this context is a welcome reminder of the shared interests at stake. As the effects of climate change continue to unfold unevenly across the world, the affirmation of collective obligations concerning protection of the climate cements an important shift in the legal architecture available to address this most urgent challenge.

Keywords ICJ, Advisory Opinion, climate change, *erga omnes*, *erga omnes partes*

1. Introduction

In this piece, we focus on the question of *erga omnes* and *erga omnes partes* obligations in the *Climate Change Advisory Opinion*.[1] This question is of particular importance in the context of

1 *Obligations of States in Respect of Climate Change* (Advisory Opinion) [ICJ] 23 July 2025.

climate change. Obligations concerning the protection of the climate system are directed at safeguarding a global common good and at protecting interests that transcend bilateral relations between States. Their characterization as *erga omnes* or *erga omnes partes* is central to enforcement and accountability: it determines whether, and on what basis, States other than those directly injured by a breach of these obligations may invoke responsibility, to seek cessation of the wrongful conduct and pursue reparation in the interest of injured States or beneficiaries. In a decentralized international legal order, the Court's recognition of collective obligations in this field thus has expressive, doctrinal, and practical consequences, shaping the enforcement architecture available to address climate harm.

As to structure, after noting the state of play prior to the delivery of the Opinion, we set out the Court's approach, as well as that in the Separate Opinions of individual judges. Thereafter, we draw out three important points arising from the Opinion. These concern (i) the relationship between the Court and the International Law Commission on questions of state responsibility; (ii) the problem of identifying obligations *erga omnes (partes)*; and (iii) the question of reparation in *erga omnes* claims.

2. The state of play prior to the *Advisory Opinion*

We do not recount here the rich and contested history of obligations *erga omnes* and *erga omnes partes* in international law, other than to note five points.[2] First, as to the concepts themselves, a workable definition may be provided.[3] Relying on the decision of the ICJ in *Barcelona Traction*, an obligation *erga omnes* is one owed by a State 'towards the international community as a whole.'[4] An obligation *erga omnes partes* is 'owed by any State party to all other State parties' to a treaty.[5] In both cases, the obligations protect a common interest of the members of the relevant group. They may be contrasted with bilateral obligations, which are instead owed as between two States only and which protect legal interests individual to each.[6]

Second, the character of an obligation as *erga omnes* 'first and foremost affects the question of law enforcement'[7]—all States 'have a legal interest in their protection.'[8] This legal interest entitles all States—or all State parties—to invoke the responsibility of a wrongdoing State, whether through the formal presentation of a claim to another State or through the initiation of proceedings before a tribunal,[9] the latter subject to the existence of a jurisdictional basis.[10]

2 See e.g. Giorgio Gaja, 'Obligations Erga Omnes, International Crimes and Jus Cogens: A Tentative Analysis of Three Related Concepts' in Joseph H Weiler and others (eds), *International Crimes of State: A Critical Analysis of the ILC's Draft Article 19 on State Responsibility* (EUI 1989) 151; Christian J Tams, *Enforcing Obligations Erga Omnes in International Law* (CUP 2005).

3 See also Institut de Droit International (IDI), Krakow Resolution 'Obligations *Erga Omnes* in International Law' (2005). For discussion, see Jörg Kammerhofer, 'Obligations Erga Omnes' (February 2024) in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (online edn).

4 *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* (Judgment) [1970] ICJ Rep page 3, 32 [33].

5 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Preliminary Objections, Judgment) [2022] ICJ Rep page 477 [107].

6 For discussion, see James Crawford, 'Multilateral Rights and Obligations in International Law' (2006) 319 Recueil des Cours 325; Tams (n 2) 117–57; Miles Jackson and Federica Paddeu, 'The Countermeasures of Others: When Can States Collaborate in the Taking of Countermeasures' (2024) 118 AJIL 231; Miles Jackson and Federica Paddeu, '"To Deter and Counteract Economic Coercion": The Puzzle of Countermeasures in the European Union's Anti-Coercion Instrument' (2025) 28 Journal of International Economic Law 1.

7 Tams (n 2) 309.

8 *Barcelona Traction* (n 4) page 32, [33].

9 ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, *with Commentaries* (2001) Commentary to Article 42, para 2.

10 See e.g. IDI (n 2) Article 3, 'In the event of there being a jurisdictional link…'.

As the ICJ put it in its Preliminary Objections judgment in *The Gambia v Myanmar*: 'The common interest in compliance with the relevant obligations…entails that any State party, without distinction, is entitled to invoke the responsibility of another State party for an alleged breach of its obligations *erga omnes partes*.'[11]

Third, there remains some uncertainty as to the method for the identification of obligations owed *erga omnes* or *erga omnes partes*. In addition to a common interest in compliance, the Court has also relied on other factors in this determination, in particular the importance of the rights involved,[12] and the understanding that certain multilateral obligations are 'unamenable to bilateral performance'[13] in particular where, without characterization as *erga omnes*, the obligation in question would be unenforceable by other States.[14] Moreover, leaving aside the initial articulation of the concept in *Barcelona Traction*, in contentious cases[15] the Court had, prior to the Climate *Advisory Opinion*, identified only treaty obligations as being *erga omnes partes*, relying on the object and purpose of the treaty in making this determination.[16] At the same time, the Court has not specified whether all or only some (and if so, which) obligations within these treaties are to be characterized as *erga omnes partes*.[17]

Fourth, there is relative consensus on core examples of *erga omnes (partes)* obligations in existing practice. In *Barcelona Traction*, the Court referred to obligations that derive from 'the outlawing of acts of aggression, and of genocide as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.'[18] Relatedly, it is generally accepted that all peremptory norms of international law give rise to obligations owed *erga omnes*.[19] On this basis, taking the International Law Commission's (ILC) collated list of peremptory norms as indicative, to these we might add, or confirm as included within the Court's original category, torture, crimes against humanity, apartheid, self-determination, and basic rules of international humanitarian law.[20] As to environmental protection specifically, in addition to support in the ILC's Commentary to the Articles on State Responsibility,[21] there is some support in judicial practice[22] and scholarship for the idea that at least some environmental obligations are owed

11 *The Gambia v Myanmar* (n 5) [108].

12 *Barcelona Traction* (n 4) page 32, [33]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep page 136, [155]; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion of 19 July 2024) [2024] ICJ Rep [274].

13 Priya Urs, 'The Articulation of Obligations Erga Omnes and Erga Omnes Partes by the International Court of Justice: Coherence or Confusion?' (2025) 74 ICLQ 257, 259.

14 See Tams (n 2) 117–57 and particularly 130 referring to a 'structural approach' to identification.

15 As to the Court's advisory jurisdiction, see *Palestine Advisory Opinion* (n 12) [96], [232], [274].

16 *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep page 422, [68]–[70]; *The Gambia v Myanmar* (n 5) [106]–[108]; *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v Syrian Arab Republic)* (Provisional Measures, Order of 16 November 2023) [2023] ICJ Rep page 587, [48]–[51]; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures, Order of 26 January 2024) [2024] ICJ Rep page 3, [33]–[34].

17 On which, see *The Gambia v Myanmar* (n 5) Declaration of Judge *ad hoc* Kress [16].

18 *Barcelona Traction* (n 4) page 32 [34].

19 See ILC, 'Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)' (2022); Giorgio Gaja, 'The Protection of General Interests in the International Community' (2011) 364 Recueil des Cours 55–57.

20 See ILC (n 19) Conclusions and Annex; For wider discussion, see ILC, 'Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur' (29 April–7 June and 8 July–9 August 2019) UN Doc A/CN.4/727.

21 See Articles on State Responsibility (n 9), Commentary to Article 48, paras 7, 11; ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries' (2022) UN Doc A/77/10, Commentary to Conclusion 17, para 3.

22 See *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Advisory Opinion) ITLOS Reports 2011, page 44 [180].

erga omnes or *erga omnes partes*.[23] Prior to the Advisory Opinion, however, the Court had made no such determination.[24]

Fifth, the last few years have seen an increase in reliance on the legal interest provided by *erga omnes partes* obligations to bring claims before the Court. Since the initiation of a claim by Belgium against Senegal under the Convention against Torture in 2009,[25] a number of States have sought to vindicate common interests before the Court.[26] At present, these cases include: under the Genocide Convention: *The Gambia v Myanmar*, initiated in 2019; *South Africa v Israel*, initiated in 2023; and *Nicaragua v Germany*, initiated in 2024.[27] Under the Convention against Torture, Canada and the Netherlands initiated proceedings against Syria in 2023.[28] So far, only one case has been brought on the basis, in part, of the breach of *erga omnes* obligations under customary law: *Nicaragua v Germany*.[29] The higher proportion of *erga omnes partes* over *erga omnes* claims might be taken to suggest the relative acceptance of these types of claims by States, but it is likely to be simply the result of contingent factors—namely, the presence of compromissory clauses in treaties.

For many international lawyers, the Court's development of the concept and practice of *erga omnes* obligations has been welcome.[30] As a whole and viewed in the most optimistic spirit, these cases look like a step towards public law-style judicial enforcement in a decentralized legal order—one that concretizes an important conceptual development. This is the promise of the recognition of community or collective interests. Of course, such action is uneven, subject to political choice in its initiation,[31] and will raise the question of compliance in many cases. Nonetheless, determination that an obligation is owed *erga omnes (partes)* is of expressive, legal, and practical significance.

3. The court's decision and separate opinions

It is in this context that the Court's decision can be assessed. In the written proceedings, a number of participants addressed the issue of the *erga omnes* character of environmental obligations concerning the protection of the climate system.[32] In its Opinion, the Court did

23 See e.g. Jessie Phyffer, 'Establishing the Erga Omnes Character of the Obligation to Prevent Transboundary Environmental Harm' (2025) 27 MPYUNL 659; Zakieh Taghizadeh and Hoda Asgarian, 'From Global Commons to Global Accountability: The *Erga Omnes* Obligation to Safeguard Marine Biological Diversity as Common Heritage of Humankind' (2025) 28 JIWLP 193.

24 See though *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* (Compensation Owed, Judgment) [2018] ICJ Rep Dissenting Opinion of Judge *ad hoc* Dugard [35]. We leave aside potential contrasting methodology for identifying obligations *erga omnes* and *obligations erga omnes partes*, respectively—see Priya Urs 'Obligations *Erga Omnes* and the Question of Standing before the International Court of Justice' (2021) 34 LJIL 518.

25 *Belgium v Senegal* (n 16).

26 See Priya Urs (n 24) 505.

27 *The Gambia v Myanmar* (n 5); *South Africa v Israel* (n 16); *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v Germany)* (Provisional Measures, Order of 30 April 2024) [2024] ICJ Rep page 560.

28 *Canada and The Netherlands v Syrian Arab Republic* (n 16).

29 See *Nicaragua v Germany* (n 27) [92], entailing a claim under the Geneva Conventions and Additional Protocols thereto, as well as 'other rights arising under general international law, in particular the inalienable principles of international humanitarian law'.

30 See Tams (n 2) 306–307 on what he calls 'idealist' and 'sceptical' myths about the concept.

31 See Martti Koskenniemi, 'Solidarity Measures: State Responsibility as a New International Order' (2001) 72 BYIL 337, 344.

32 For a survey, see Luciano Pezzano, 'Erga Omnes Nature of Human Rights Obligations in Respect of Climate Change: A Preliminary Survey of the Positions in the ICJ Climate Change Advisory Proceedings', (EJIL:Talk! (16 January 2025) <https://www.ejiltalk.org/erga-omnes-nature-of-human-rights-obligations-in-respect-of-climate-change-a-preliminary-survey-of-the-positions-in-the-icj-climate-change-advisory-proceedings/> accessed 8 February 2026.

grasp the problem, albeit somewhat briefly.[33] In a paragraph worth quoting at length, the Court held:[34]

> The Court observes that certain rules of international law relating to global common goods, such as the climate system, may produce *erga omnes* obligations…In the present context, the Court considers that all States have a common interest in the protection of global environmental commons like the atmosphere and the high seas. Consequently, States' obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, in particular the obligation to prevent significant transboundary harm under customary international law, are obligations *erga omnes*. In the treaty context, the Court recalls that the UNFCCC and Paris Agreement acknowledge that climate change is "a common concern of humankind"…requiring "a global response"…They seek to protect the essential interest of all States in the safeguarding of the climate system, which benefits the international community as a whole. As such, the Court considers that the obligations of States under these treaties are obligations *erga omnes partes*.

In the following paragraph, the Court appears to frame the *erga omnes partes* obligations arising under these treaties in a narrower way: 'all States parties have a legal interest in the protection of the *main mitigation obligations* set forth in the climate change treaties and may invoke the responsibility of other States for failing to fulfil them.'[35]

Thereafter, in its discussion of the consequences of such a categorization, the Court draws explicitly on the ILC's foundational distinction between injured States (Article 42 ASR) and States 'other than the injured State' (Article 48 ASR), and refers approvingly to Article 48(1)(b)'s provision that any 'State other than an injured State' may (also) invoke the responsibility of a wrongdoing State.[36] However, in relation to Article 48, the Court concludes:[37]

> There is … a difference between the position of injured States or specially affected States on the one hand, and that of non-injured States on the other, as concerns the availability of remedies. While a non-injured State may pursue a claim against a State in breach of a collective obligation, it may not claim reparation for itself. Rather, it may only make a claim for cessation of the wrongful act and assurances and guarantees of non-repetition, as well as for the performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached.

Moving beyond the Opinion itself, the *erga omnes* character of the obligations received relatively little attention in the individual opinions and declarations; only Judges Tladi and Yusuf mention the issue. Judge Tladi's Declaration is concerned with the relationship between peremptory norms and obligations *erga omnes*.[38] We leave this aside.[39] For Judge Yusuf, the Opinion as a whole was a disappointment in failing to provide more concrete

33 See Priya Urs, 'Open the Floodgates: Standing for the Enforcement of Obligations Erga Omnes in the ICJ's Advisory Opinion on Climate Change', CIL Dialogues (11 August 2025) <https://cil.nus.edu.sg/blogs/open-the-floodgates-standing-for-the-enforcement-of-obligations-erga-omnes-in-the-icjs-advisory-opinion-on-climate-change/> accessed 8 February 2026.

34 *Obligations of States in Respect of Climate Change* (Advisory Opinion) [2025] ICJ [440] (internal citations omitted).

35 ibid [441] (emphasis added); see also [442]: '… such as climate change mitigation obligations…'.

36 ibid [443].

37 ibid [443]. We return to this paragraph below.

38 *Obligations of States in Respect of Climate Change* (Advisory Opinion) [2025] ICJ, Declaration of Judge Tladi [34].

39 See also *Palestine Advisory Opinion* (n 12) Declaration of Judge Tladi [28]–[35].

and tangible answers, and for failing to distinguish among different groups of States as contributors, on one hand, and as specially affected or vulnerable, on the other.[40] In this respect, Judge Yusuf criticized the Court for failing to examine whether small island developing States (SIDS) or least developed countries (LDCs) or 'other States particularly affected by sea level rise or other extreme weather events caused by climate change' should be understood as *injured States* under Article 42 ASR.[41]

4. Evaluation

In the following section, we draw out three reflections on the Court's Opinion. These concern the role of the Court and the International Law Commission in relation to the law of State Responsibility; the question of which obligations are of an *erga omnes partes* character; and the issue of reparations.

4.1. The court, the ILC, and the law of state responsibility

Our first point is that in this Opinion, the Court continues to play a systematizing role in the law of State responsibility.[42] As has been noted elsewhere, this systematizing role is two-fold, encompassing both the customary status of the rules and their general applicability.[43] As to the first, the Court explicitly found that the Articles on State Responsibility (ASR) 'in many respects are reflective of the customary rules on State responsibility',[44] and in practice drew on a number of provisions and implicitly treated them as customary without much discussion at all.[45] As to the second, in the face of the arguments of certain participants that climate change treaties were *lex specialis* to the exclusion of the general framework of responsibility,[46] the Court came down firmly on the side of the general framework. Specifically, the Court found that 'the text, context, and object and purpose of the climate change treaties do not support the proposition that the parties intended to exclude the general rules on State responsibility'.[47] Any such exclusion (or variation) requires evidence of a 'discernible intention' on the part of the treaty parties.[48]

This relationship between the Court and the ILC bears further emphasis.[49] As has been widely noted by scholars, these two institutions have long cooperated in the development of the law of State responsibility.[50] For instance, the defence of necessity was adopted by the ILC in 1980 despite doubts as to its customary status or even the desirability of its inclusion among ILC members and States in the Sixth Committee.[51] In 1997, the ICJ determined

40 *Obligations of States in Respect of Climate Change* (Advisory Opinion) [2025] ICJ, Separate Opinion of Judge Yusuf, e.g. [16].
41 ibid [37].
42 See also Fernando Lusa Bordin, 'Still Going Strong: Twenty Years of the Articles on State Responsibility's 'Paradoxical' Relationship between Form and Authority', EJIL:Talk! (3 August 2021) <https://www.ejiltalk.org/still-going-strong-twenty-years-of-the-articles-on-state-responsibilitys-paradoxical-relationship-between-form-and-authority/> accessed 8 February 2026.
43 Federica Paddeu and Miles Jackson, 'State Responsibility in the ICJ's Advisory Opinion on Climate Change', EJIL:Talk! (25 July 2025) <https://www.ejiltalk.org/state-responsibility-in-the-icjs-advisory-opinion-on-climate-change/> accessed 8 February 2026.
44 *Climate Change Advisory Opinion* (n 1) [407].
45 See e.g. ibid [411], [423], [425], [426], [442], [448], [450].
46 See ibid [410].
47 ibid [418].
48 ibid [418].
49 On which see, generally, Omri Sender, *International Law-Making by the International Court of Justice and International Law Commission: Partnership for Purpose in a Decentralized Legal Order* (CUP 2024).
50 See e.g. Christian J Tams, 'The Development of International Law by the International Court of Justice' in Cannizzaro (ed), *Decisions of the ICJ as Sources of International Law?* (International and European Papers Publishing 2018) 63; Sender (n 49).
51 ILC, *Draft articles on Responsibility of States for Internationally Wrongful Acts* (2001) ILC Report (A/56/10), Articles 33 to 35.

that this defence reflected a rule of custom in *Gabčíkovo-Nagymaros*,[52] thus securing its continued inclusion in ASR.[53] In relation to the prohibition on aid and assistance to another State, after its inclusion in Article 16 ASR by the ILC, the Court quickly, and without reasoning, found that it reflected a rule of custom in its merits judgment in *Bosnia v Serbia* in 2007.[54] More broadly, while not always referring to the ASR in its decisions, the Court's approach to questions of State responsibility is shaped by its concepts, language and structure.[55]

In the present Opinion, we see a further consolidation of this relationship and of the authority of the Articles on State Responsibility. To give some examples: the Court endorsed the attribution rules in Articles 4-11 ASR;[56] referred to Article 55 ASR as the test for the application of the maxim of *lex specialis*;[57] to Article 48(1)(b) ASR as setting out the entitlement of States other than the injured State to invoke responsibility in relation to obligations *erga omnes*;[58] implicitly to the remedies that might be sought by such States as set out in Article 48(2) ASR;[59] and to the possibility that a responsible State may be required to offer appropriate assurances and guarantees of non-repetition as set out in Article 30(b) ASR.[60] The Court also referred to the ILC's basic definition of attribution (Article 2 ASR),[61] provisions on acts having a continuing character (Article 14 ASR)[62] and composite acts (Article 15 ASR),[63] and reparation (Article 31 ASR).[64]

We see here further confirmation that the ILC's work has 'encoded the way in which we think about responsibility' in international law.[65] Moreover, the Court's approach to the customary status of the rules reflected in many of these Articles—as is often the case when the Court engages with the Articles—is simply one of assertion.[66] To give one example, in its Commentary to the ASR, the ILC had explicitly noted that the proposition in Article 48(2) ASR that a non-injured State may seek 'performance of the obligation of reparation…in the interest of the injured State or of the beneficiaries' involved 'a measure of progressive development' rather than codification.[67] In the Advisory Opinion, the Court simply adopts this rule and implicitly determines it to be customary without any reference to practice in the intervening years.

52 *Gabcikovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ, page 7, [51]. Only 7 years prior, the tribunal in *Rainbow Warrior* had concluded that the defence did not form part of customary law: *Rainbow Warrior (New Zealand v France)* (1990) 20 RIAA 215 [78].

53 See Federica Paddeu, *Justification and Excuse in International Law: Concept and Theory of General Defences* (CUP 2018), 334–429.

54 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ, page 43, [420]. See further Miles Jackson, *Complicity in International Law* (OUP 2015) 147–75; Helmut P Aust, *Complicity and the Law of State Responsibility* (CUP 2011) 97–191.

55 See Federica Paddeu and Christian J Tams, 'Dithering, Trickling Down, and Encoding: Concluding Thoughts on the "ILC Articles at 20" Symposium', EJIL:Talk! (9 August 2021) <https://www.ejiltalk.org/dithering-trickling-down-and-encoding-concluding-thoughts-on-the-ilc-articles-at-20-symposium/> accessed 8 February 2026.

56 *Climate Change Advisory Opinion* (n 1) [426].

57 ibid [411].

58 ibid [442].

59 ibid [443].

60 ibid [448].

61 ibid [425].

62 ibid [423].

63 ibid [423].

64 ibid [450].

65 James Crawford, 'The International Court of Justice and the Law of State Responsibility' in Christian J Tams and James Sloan (eds), *The Development of International Law by the International Court of Justice* (OUP 2013) 71, 81. See also Paddeu and Tams (n 55).

66 See further Stefan Talmon, 'Determining Customary International Law: The ICJ's Methodology between Induction, Deduction and Assertion' (2015) 26 EJIL 417.

67 Articles on State Responsibility (n 9) Commentary to Article 48, para 12.

4.2. Which obligations are of an *erga omnes (partes)* character?

As noted above, the Court also clarified the *erga omnes* character of certain obligations in relation to climate change, a characterization that had already found support in the literature and had been endorsed by various international institutions.[68] In the Opinion, the Court expressly identifies obligations 'pertaining to the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions', and, in particular, the customary duty to prevent significant transboundary harm, as having *erga omnes* character.[69] It also treats the 'main mitigation obligations' in the climate change treaties as *erga omnes partes* obligations.[70] While the clarification of the *erga omnes* character of these obligations is a welcome development, the Opinion's reasoning on this point is both underdeveloped and somewhat unclear, leaving unresolved several key uncertainties about how *erga omnes* and *erga omnes partes* obligations are to be identified.[71]

With respect to *erga omnes* obligations, this is the first time the Court has determined an *erga omnes* status specifically by reference to the notion of common goods. As we noted earlier, the Court's approach to this determination has so far seemingly involved two steps: first, establishing that a common interest exists in respect of the obligation at issue, and second, relying on additional factors—notably, the importance of the obligation or its non-bilateralizable structure (sometimes in combination). These additional factors are not expressly invoked in the Opinion, which instead derives an *erga omnes* character directly from the obligation's relationship to common goods.[72] This reasoning can nevertheless be reconciled with the Court's earlier approach: as to the first step, the Court establishes the existence of States' common interests in the relevant obligations through their connection to common goods; and as to the second step, obligations concerning common goods may not always be subject to bilateralization, such that their breach is unlikely to affect any single State in particular.

There is, however, some tension and uncertainty in the Court's reasoning on this point. The Court begins by noting that only 'certain' rules relating to 'global common goods' may produce such obligations. This suggests that while a link to common goods is a necessary condition, it is not, by itself, sufficient. The Court then reasons that all States have a common interest in the protection of common environmental goods and, on this basis, concludes that obligations relating to the protection of the climate system are *erga omnes*.[73] Now, by definition, common goods presuppose a shared interest in their protection. But if, as the Court notes, only certain obligations relating to 'global common goods' are *erga omnes*, the underlying question remains—how does one determine which rules concerning common goods, the protection of which is a common interest of all States, actually give rise to *erga omnes* obligations?

Turning to the identification of *erga omnes partes* obligations, the Court follows its now well-established method of relying on the object and purpose of the treaty. This approach has long been criticized—both in academic commentary[74] and by members of the

68 Similarly: *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Advisory Opinion of 1 February 2011) ITLOS Reports 2011, 10, [180]; ILC (n 9) Conclusion 17, para 3 of the Commentary, 66 (cited by the Court in the *Climate Change Advisory Opinion* at para 440). Special Rapporteurs on State responsibility Crawford and Arangio-Ruiz had also supported this view, see: James Crawford, 'Third Report on State Responsibility, by Mr. James Crawford, Special Rapporteur', (A/CN.4/507/Add.1), page 100; Gaetano Arangio-Ruiz, 'Fourth report on State responsibility, by Mr. Gaetano Arangio-Ruiz, Special Rapporteur' (A/CN.4/444/Add.3) page 45.

69 *Climate Change Advisory Opinion* (n 34) [440].

70 ibid [441].

71 See also Urs (n 33).

72 ibid

73 *Climate Change Advisory Opinion* (n 1) [440].

74 See Urs (n 13) 257, 283–86.

bench[75]—for being overly broad, since it provides insufficiently clear criteria for determining which specific obligations within such treaties are owed collectively to all other parties. The Opinion does little to clarify this. On the contrary, its reasoning here is rather equivocal. After finding in paragraph 440 that 'the obligations' under the Paris Agreement and the UNFCCC are *erga omnes partes*,[76] the Court states in the following paragraph that 'some provisions' in treaties protecting common interests are of this character, and then identifies the 'main mitigation obligations' in climate treaties as belonging to this category. The relationship between these two paragraphs of the Opinion is left unclear. Is paragraph 441 a narrowing of the earlier statement in paragraph 440, or merely an illustration of it? In other words, are all obligations under the Paris Agreement and UNFCCC owed *erga omnes partes*, or only their main mitigation provisions?

While the Court's recognition of *erga omnes* obligations relating to climate change is a welcome development, we are still left with some uncertainty. As Crawford has asked, 'which international obligations are not in some sense established for the protection of a collective interest?'[77] Or as Koskenniemi put it: 'is not any multilateral obligation capable of being described as having been set up in the collective interest of the parties?'[78] Given the important practical consequences of the classification of obligations as *erga omnes*, it is essential to refine the analytical framework in a way that distinguishes *erga omnes* obligations from those that simply advance broadly shared aims.[79]

4.3. Erga omnes claims and reparation

Finally, the Opinion is valuable as the first time that the Court has acknowledged the right of a State other than an injured State to request reparation 'in the interest of the injured State or of the beneficiaries of the obligation breached.'[80] While the Court does not cite to ASR Article 48(2), the language in the Opinion is unequivocally taken from this provision, which states:

Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:

(a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
(b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.

This provision distinguishes between claims for cessation and non-repetition, which a State other than an injured State may claim in its own name, and the performance of the obligation of reparation, which a State other than an injured State may only claim in the interest of the injured State or other beneficiary of the obligation.

ASR Article 48(2)(b) responds to a logical and practical need that arises from the recognition of standing for States not injured by a breach.[81] In the absence of this provision, it would be possible for a State responsible for the breach of an *erga omnes* obligation to avoid

75 See e.g. *Belgium v Senegal* (n 16) Dissenting Opinion of Judge *ad hoc* Sur, [27]–[46]; *The Gambia v Myanmar* (n 4) Declaration of Judge *ad hoc* Kress [16].
76 *Climate Change Advisory Opinion* (n 1) [440].
77 James Crawford 'Multilateral Rights and Obligations in International Law' (2006) 319 Recueil 325, 449.
78 Koskenniemi (n 31) 337, 348.
79 It may be worth noting, that the ILC has put the topic of 'Identification and legal consequences of obligations *erga omnes* in international law' in its long-term programme of work: ILC, 'Report on the work of its seventy-sixth session' (28 April–30 May 2025) UN Doc A/80/10, June 2025, para 446.
80 *Climate Change Advisory Opinion* (n 1) [443].
81 Giorgio Gaja, 'States Having an Interest in Compliance with the Obligation Breached' in James Crawford and others (eds), *The Law of International Responsibility* (Oxford Law Pro 2010) 961.

fulfilling any obligation of reparation in cases where there is no individually injured State,[82] a situation which may arise in relation to certain environmental obligations concerning the climate system.[83] To avoid this gap, the ILC thought it 'highly desirable' that 'some State or States be in a position to claim reparation, in particular restitution'.[84] However, to allay the concern expressed by some States within the Sixth Committee at the time,[85] the ILC acknowledged in its Commentary that this solution involved 'a measure of progressive development'.[86]

The Opinion's holding that Article 48 States can request reparation on behalf of the injured States or beneficiaries of the obligation is therefore significant, and may potentially move the dial on the ILC's earlier cautious assessment as to the customary character of this obligation. Of course, under Article 38 of the ICJ Statute, judicial decisions are only 'subsidiary means for the determination of rules of law', and not a source of law themselves. While the Court cites no practice or other authority in support of this statement,[87] it is undoubted that its judgments and decisions carry considerable weight and almost inevitably contribute to the development of international law.[88]

Of course, many difficulties remain, including the question of *res judicata* in relation to subsequent claims[89] and the very practical question of how to ensure that any reparation ordered reaches the actual beneficiaries.[90] As to the principle at least, the possibility of reparation in the interest of the beneficiaries may soon be tested. Until now, the Court has only addressed requests made under Article 48(2)(a) by States other than an injured State—in particular, requests that focus on cessation.[91] Yet, in three pending proceedings—*The Gambia v Myanmar*, *Canada and the Netherlands v Syria,* and *South Africa v Israel*—the applicant States have sought reparation on behalf of the beneficiaries of the obligation.[92] These cases may thus provide the first real opportunity for the Court to solidify and also clarify the contours of this emerging aspect of *erga omnes* litigation in international law.

5. Conclusion

The Court's engagement with, and clarification of, the *erga omnes* and *erga omnes partes* character of certain obligations relating to climate change is a significant step, both on its own

82 Articles on State Responsibility (n 9), Commentary to Article 48, para 12.
83 Gaja (n 81) 961.
84 Articles on State Responsibility (n 9), Commentary to Article 48, para 12.
85 Cameroon: 'a source of legitimate concern'. See UNGA Fifty-sixth session, Summary record of the 14th meeting, UN Doc A/C.6/56/SR.14 (2001), para 60; For China, see UNGA Fifty-sixth session, Summary record of the 11th meeting, UN Doc A/C.6/56/SR.11 (2001), paras 59–61. Since the adoption of ASR, Cyprus has noted that 'the question of eligibility for reparation' required further elucidation. See UNGA Sixty-second session, Summary record of the 13th meeting, UN Doc A/C.6/62/SR.13 (2007), para. 14.
86 Articles on State Responsibility (n 9), Commentary to Article 48, para 12.
87 See Section 4(A).
88 See foundationally Hersch Lauterpacht, *The Development of International Law by the International Court* (1958) and more recently Christian J Tams and James Sloan (eds), *The Development of International Law by the International Court of Justice* (OUP 2013).
89 See Urs (n 24) 505, 521, and more widely Jessica Howley, *Overlapping Individual and Interstate Claims in International Law* (OUP 2024).
90 Options might include, depending on the case, the UN Secretariat, the Loss and Damage Fund, or perhaps a tailored *ad hoc* solution proposed by the applicant.
91 *Belgium v Senegal* (n 16) [12].
92 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Application Instituting Proceedings and Request for the Indication of Provisional Measures, 11 November 2019) [2019] ICJ [112]; *Application of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v Syrian Arab Republic)* (Joint Application Instituting Proceedings, 8 June 2023) [2023] ICJ, [60(f)]; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Application Instituting Proceedings Containing a Request for the Indication of Provisional Measures, 29 December 2023) [2023] ICJ, [111(2)(e)].

terms and in relation to available mechanisms for their enforcement. The Opinion's confirmation that States owe these obligations to the international community as a whole—or to all other parties to the relevant climate treaties—helps to clarify and solidify the legal framework for the protection of the climate and the environment more widely. Although this is a development that had broadly been anticipated in the literature, the Court's holding is particularly meaningful in the light of its role in the development of international law. Yet, the Court's treatment of the issue remains thinner than one might have hoped. The Opinion provides limited guidance on the method for identifying *erga omnes* (*partes*) obligations, thus leaving some uncertainty as to which obligations beyond those specifically mentioned in the Opinion share this character—a matter thus left to be resolved in future litigation or practice. Likewise, the Court's endorsement of the substance of Article 48(2)(b), on claims for reparation 'in the interest of the injured State or beneficiaries', is significant and will, almost without doubt, cement the customary status of a rule which the ILC had deemed, in 2001, as involving progressive development. Still, and perhaps not surprisingly, the Opinion leaves unaddressed the practicalities for how reparation will be made in these instances. Pending disputes before the Court will bring up these questions, and the Court may be called upon then to provide guidance on the practicalities for the seeking and making of reparation in this context.

The Court's Advisory Opinion cannot, of course, resolve the legal and political challenges of global climate governance, but its recognition of *erga omnes* obligations in this context is a welcome reminder of the shared interests at stake. As the effects of climate change continue to unfold unevenly across the world, the affirmation of collective obligations concerning protection of the climate cements an important shift in the legal architecture available to address this most urgent challenge. It is, in this respect, a step forward—but much remains to be done.

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