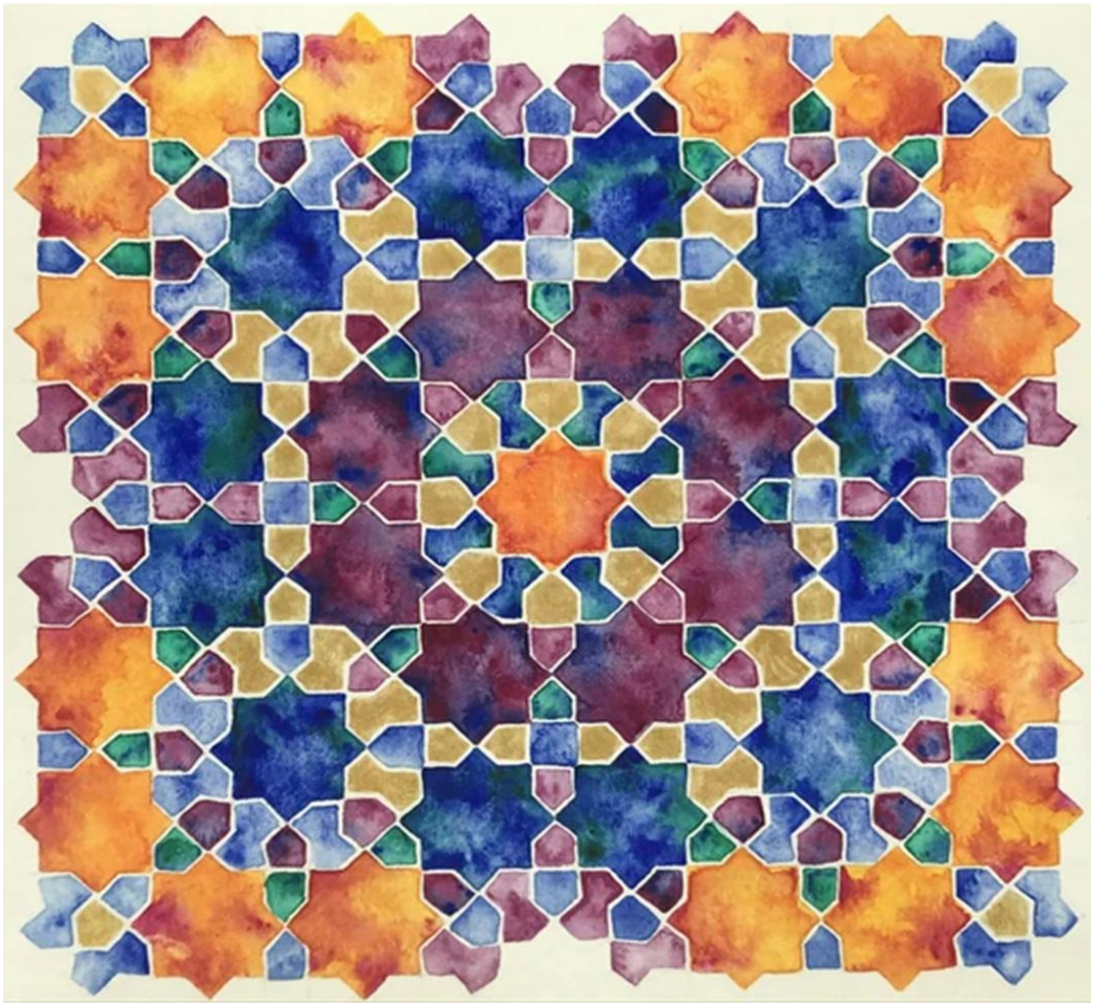
LEGAL TRANSFORMATION IN MUSLIM SOCIETIES

Print ISSN 3029-0961 Online ISSN 3029-097X

Volume 3 | Issue 2 | 2026



REVIVAL PRESS

Legal Transformation in Muslim Societies

The Legal Transformation in Muslim Societies is a quarterly journal that provides a platform for intellectually stimulating and critical commentaries, as well as new discourses, on issues shaping the law in Muslim societies worldwide. Legal transformation in societies is broadly construed as the processes and forms of reforming legal systems and their rules that reflect and promote the values, goals, cultures, customs, structures, interests, and working mechanisms of societies. Legal transformation can involve creating new laws, reforming existing laws, or abolishing unjust or oppressive laws. Legal transformation can also affect the way law is interpreted, applied, enforced, and challenged by different actors and institutions.

Islamic law is not a stagnant system; it has continuously evolved, reflecting the changing needs and circumstances of Muslim societies worldwide. Several factors influence the transformation of Islamic law, including general conceptions of Islamic law, the role of customs and cultures in adapting and developing Islamic law, and the intersections of Islamic law with non-Islamic legal systems. Islamic law scholars hold diverse views on various aspects of Islamic law and frequently debate how it should be interpreted and applied. They place different degrees of emphasis on the primacy of the Qur'an and the Sunnah (the teachings and practices of Prophet Muhammad (PBUH)) as the sources of Islamic law, whilst relying in different proportions on consensus (*ijma*) and rational arguments such as analogical reasoning (*qiyas*) or public interest (*maslaha*) as additional sources. Amidst scholarly debates on the sources of Islamic law and methods of their interpretation, Islamic law has evolved over a long and complex history spanning fourteen centuries, encompassing diverse regions, societies, and cultures. As Islamic law has replaced or reformed existing customs in societies that were incompatible with Islamic principles, local customs, traditions, and cultures have also influenced the interpretation and progress of Islamic law. When Muslim societies expanded their influence, or when Muslims and Islam spread across different regions and continents, they encountered various legal norms and systems with diverse origins, sources, methods, and outcomes. Islamic law has incorporated elements from other legal systems that existed in societies when appropriate and has also reshaped or repudiated elements of other legal systems when necessary, giving rise to questions related to rejection, harmonisation, and reconciliation of these legal systems with Islamic law.

The Legal Transformation in Muslim Societies welcomes contributions that assess existing legal concepts and develop new ones to address issues arising from the transformation, reform, reinterpretation, re-evaluation, and reconstruction of Islamic law, as well as diversity and pluralism within Islam and its cross-cultural interactions. We are also interested in new ideas on the implementation and administration of Islamic law efficiently and effectively in Muslim societies through transformation of institutions such as politics (*siyasa*), judgeship (*qadayya*), market inspection (*hisba*), consultation (*shura*), law schools (*madrasas*), colleges (*madrasas al-tayyibah*), etc. as these institutions play essential roles in developing Islamic jurisprudence (*fiqh*), codifying legal norms (*usul al-fiqh*), resolving legal disagreements (*fiqh al-madhdhab*), producing legal scholarship (*ijtihad*), and building culture and civilisations (*tamudan*). We also seek contributions on aspects such as challenges and opportunities for modernisation. As modernity brings about social changes in the shape of, for example, technological advancements, industrialisation, urbanisation, secularisation, capitalism, liberalism, and globalisation, it also poses new challenges for Muslims in terms of preserving their identity,

values, and traditions while making positive advancements to new realities, demands, and expectations from within and outside of their communities. Authors may also focus on modernisation as a source of new opportunities for Muslims, promoting their interests, rights, and welfare while contributing to global peace, justice, and development through innovation, dialogue, and cooperation with other actors.

The journal welcomes submissions of scholarly articles for consideration with a view to publication. The normal word length for article contributions in the journal is between 5000 and 15000 words. All submissions are peer-reviewed, and they must be original and not previously published elsewhere. Please take a look at our **Detailed Guidelines for Journal Contributors** page for further instructions for authors and an explanation of our peer review process.

REVIVAL PRESS LIMITED

UNITED KINGDOM

The Revival Press Limited, headquartered in East Sussex, United Kingdom, is dedicated to advancing research, scholarship, and education by publishing high-quality academic works on Islamic law, culture, and society, with global dissemination.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the Editor in Chief. Permissions to use this content must be obtained from the copyright owner. Please apply to Ahmad Ghouri via email at a.a.ghouri@outlook.com.

Links to third-party websites are provided by contributing authors in good faith and for information only. Revival Press disclaims any responsibility for the materials contained in any third-party websites referred to in this journal.



© 2023 Revival Press Limited. All rights reserved.
Revival Press Limited is a registered company in England and Wales under company registration number 15280723.

Legal Transformation in Muslim Societies

Volume 3
Issue 2
2026

Print ISSN 3029-0961 ☪ Online ISSN 3029-097X

Editor-in-Chief

Dr Ahmad Ghouri, Associate Professor in Commercial Law, University of Sussex, UK.

Deputy Editors-in-Chief

Dr Zubair Abbasi, Royal Holloway University of London, UK.
Fatima Dhanani, Assistant Lecturer, SOAS University of London, UK.

Associate Editors

Dr Sufi Shahab Saqib, University of Birmingham, UK.
Dr Shoukat Ahmad Wani, Alliance University, India.
Yousef Wahb, University of Windsor, Canada.
Dr Mariana Dussin, Haqaiq Center, Saudi Arabia.
Dr Badreddine Berrahlia, Badji Mukhtar University, Algeria.
Dr Mahmoud Ashami, University of Aberdeen, UK.
Dr Maya Najeeb Ammar, University of Jordan.
Dr Ozat Shamshiyev, Social Sciences University of Ankara, Türkiye.
Dr Sheikh Inam Ul Mansoor, Symbiosis Law School, Hyderabad, Symbiosis International (Deemed University), Pune.
Dr Fatima Essop, Senior Lecturer, University of Western Cape, South Africa.
Dr Rabia Tus Saleha, Lecturer, Department of Shari'ah & Law, Faculty of Law, The Islamia University of Bahawalpur, Pakistan.

Assistant Editors

Asif Belal, Aligarh Muslim University, India.
Amina Karim, University of the Punjab, Pakistan.
Kaif Hasan, Aligarh Muslim University, India.
Amr Ibn Munir, International Islamic University, Islamabad, Pakistan.
Md. Omar Farque, Eastern University, Bangladesh.

Book Reviews Editor

Dr Muhammad Abdullah Fazi, Monash University, Malaysia.

Editorial Board

Prof. Md Maimul Ahsan Khan, Leading University, Bangladesh.
Prof. Nisrin Mahasneh, Qatar University, Qatar.
Prof. Faizan Mustafa, Chanakya National Law University, India.
Prof. Adnan Sarhan, University of Sharjah, UAE.
Prof. Muhammad Faruque, University of Cincinnati, USA.
Prof. Mahmoud Masud, Prince Mohammad bin Fahd University, Saudi Arabia.
Prof. Ali Khaled Qtaishat, The World Islamic Sciences and Education University, Jordan.
Prof. Malahayati Rahman, Universitas Malikussaleh, Indonesia.
Prof. Germán Rodriguez, IE University, Spain.
Prof. Jabeur Fathally, University of Ottawa, Canada.
Prof. Saeid Nazari Tavakkoli, University of Tehran, Iran.
Qudsia Mirza, University of East London, UK.
Dr Safdar Ali Sohail, Social Protection Resource Centre, Pakistan.

Legal Transformation in Muslim Societies

Volume 3 2026 Issue 2

Contents

Articles

Introduction to the Special Issue: The Maldives at the Crossroads of International Law
Thamil Venthan Ananthavinayagan, Nizamuddin Ahmad Siddiqui, Mohd Imran 1

Informal Empires of the Indian Ocean: The Case of the Maldives as a British Protectorate
Aminath Rifga Mohamed 6

Commodities, Custom, and the Indian Ocean: Trade, Normativity, and the Maldives in Pre-Modern Global Order
Suha Habeeb 29

Universalism Versus Cultural Relativism: The Place of Islamic Shari'ah in the Maldivian Legal System
Mohammad Sabuj 41

Exploring Trade Opportunities for Maldives: An Analysis of SAFTA and Bilateral Arrangements
Krishna Bhattacharya 52

Survival of the Flattest: The Maldives amid Land Reclamation Schemes and the Global Climate Change Regime
Nuha Mohamed Didi 71

The Right of the Maldives to Climate Reparations
Benoit Mayer 86

The Limits of Multi-Agency Regulation: Re-Evaluating Migrant Worker Protection in the Maldives
Arunika Mishra 99

New Weapons for Old Battles: The Maldives' Quest for Equitable and Sustainable Indian Ocean Tuna Management
Louis McDonough Monroy 110

The Maldives' Path to Tax Integrity: BEPS Implementation and International Tax Law Instruments
Ahsam Ahmed Asim 122

Enforcement of Arbitral Awards under the New York Convention: Lessons for the Maldives from International Best Practices
Wasiq Abass Dar 134

Legal Transformation in Muslim Societies
Volume 3, Issue 2, 2026: 86-98

The Right of the Maldives to Climate Reparations

Benoit Mayer*

Abstract: The Maldives has long claimed reparations for the impacts of climate change on the grounds that it is only responsible for a tiny fraction of global greenhouse gas emissions. At the same time, it is disproportionately affected by the impacts of climate change. This argument is now central both in litigation, including before the International Court of Justice, and in negotiations, following COP28's decision to establish funding arrangements to address 'loss and damage' associated with climate impacts. This article looks critically at the Maldives' claim for climate reparations. On the facts, it shows that, while the Maldives reports low per capita emissions, it is far from being entirely blameless. In particular, the country has benefited from emissions associated with international transportation and from overseas emissions embedded in trade, neither of which is included in the national emissions inventory. Overall, the article questions the argument's legal premise by showing that the causation of harm is probably not sufficient to justify a legal or moral duty to make reparation; rather, reparations must generally be justified by the existence of a wrongful act. As such, the article argues, the Maldives could only seek reparations from States that have breached their obligation to mitigate climate change, and only to the extent that the harm suffered by the Maldives results from this wrongful act.

Keywords: Climate reparations; Loss and Damage; State Responsibility; Wrongful Act; International Aviation Emissions

I. INTRODUCTION

The Maldives has long presented itself as a victim of climate change. For instance, in the First Biennial Update Report under the UN Framework Convention on Climate Change (UNFCCC), the Minister of Environment, Dr Hussain Rasheed Hassan, wrote that the 'Maldives is among the most vulnerable and least defensible countries to the projected impacts of climate change'.[1] Dr Hassan submitted that the Maldives' 'commitment to climate action is unparalleled'.[2] He further emphasised that the State's greenhouse gas (GHG) 'emissions are negligible compared to the global emissions'.[3] Likewise, President Dr Mohamed Muizzu was reported to be heading to COP29 with the aim of 'secu[ring] compensation from those responsible for environmental destruction to address the harm caused'.[4] During the advisory proceedings on climate change, the Maldives submitted to the International Court of Justice (ICJ) that it needed international

* Professor of Climate Law, University of Reading School of Law. Email: b.mayer@reading.ac.uk. The author is grateful to an anonymous reviewer for insightful suggestions. This manuscript was completed prior to the issuance of the ICJ advisory opinion and was not fully updated at the time of finalisation in October 2025.

[1] 'Maldives First Biennial Update Report to the United Nations Framework Convention on Climate Change' *Ministry of Environment* (2019) iii <https://unfccc.int/documents/257130> accessed 13 March 2026.

[2] ibid.

[3] ibid.

[4] 'President pledges to advocate for citizens' rights amid climate challenges' *The President's Office, Maldives* (10 November 2024) <https://presidency.gov.mv/Press/Article/32088> accessed 13 March 2026.

support as a matter of 'concrete legal obligations'.[5] Unquestionably, this discourse justifies international assistance to the Maldives. However, a more complex question is whether the vulnerability of the Maldives to climate change could also justify reparations—that is, a legal obligation of states responsible for causing climate change to compensate for the harm suffered by the Maldives.

This article assesses the legal claim of the Maldives for such reparations. Section II situates the Maldives' discourse in the broader context of claims for climate reparations that the Maldives and other states have been making, first through international negotiations on climate change, and increasingly through domestic and international litigation. Section III then assesses the validity of the argument by engaging with its factual premise—by questioning whether the Maldives is a victim of climate change or also an accomplice—and its legal foundations. As a whole, the article defends a nuanced argument for climate reparations limited to the consequences of wrongful acts.

II. CLAIMS FOR CLIMATE REPARATIONS

Claims for climate reparations have been made from the outset of international negotiations on climate change. The first subsection takes stock of the limited success of this argument through political negotiations. The second subsection retraces the more recent making of similar claims in the context of domestic and international litigation.

A. Negotiations

From the outset of international negotiations on climate change, developing countries have suggested that developed countries ought to 'bear the main responsibility' for addressing climate change on the grounds that they 'account[ed] for the bulk of the production and consumption of environmentally damaging substances.'[6] In 1991, the Alliance of Small Island States (AOSIS)—of which the Maldives is a member state—proposed to the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change the establishment of an international insurance mechanism whose revenues would be drawn 'from mandatory sources' in developed States and would be used 'to compensate the most vulnerable small island and low-lying coastal developing countries.'[7]

The UNFCCC, adopted in 1992, recognised States' 'common but differentiated responsibilities' for climate change[8] and also highlighted 'the specific needs and concerns' of small island countries.[9] Further, the developed countries listed in Annex II committed to 'provide new and additional financial resources' to support climate action in developing country Parties,[10] including by 'assist[ing] those developing country Parties that are

[5] International Court of Justice, Verbatim record, public sitting on the 'Obligations of States in respect of Climate Change', held on Friday 6 December 2024 at 3pm (HE Mr Ahmed Usham, Attorney General) CR 2024/44, 46.
[6] 'Caracas Declaration of the Ministers of Foreign Affairs of the Group of 77 on the Occasion of the Twenty-Fifth Anniversary of the Group' *G77* (23 June 1989) section II, para 34 <https://www.g77.org/doc/Caracas%20Declaration.html> accessed 13 March 2026.
[7] Vanuatu (on behalf of AOSIS), 'An insurance mechanism for the consequences of sea level rise' *Alliance of Small Island States* (9 December 1991) <https://www.aosis.org/an-insurance-mechanism-for-the-consequences-of-sea-level-rise/> accessed 13 March 2026.
[8] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, art 3(1).
[9] ibid art 4(8)(a).
[10] ibid art 4(3).

particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects',[11] and to 'take all practicable steps to promote, facilitate and finance … the transfer of, or access to, environmentally sound technologies and know-how'.[12]

A decade into the implementation of the UNFCCC, it became increasingly clear that financial support for adaptation action was no longer enough to address claims for climate reparations. By 2007, the Conference of the Parties (COP) agreed to consider 'means to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change.'[13] While adaptation is deeply rooted in social scientific literature on climate change that predates the UNFCCC,[14] no scientific literature refers to or defines a concept of 'loss and damage associated with climate change impacts' independently from references to international negotiations,[15] and the phrase seems to be little more than a placeholder for more controversial concepts such as compensation and responsibility. The very fact that the COP could only agree on rather obscure language on, e.g., 'addressing loss and damage,' and not on any language on responsibility and reparations, indicates a lack of political support for this view.

In light of these disagreements on the underlying conceptual framework, it is perhaps unsurprising that negotiations on loss and damage progressed very slowly.[16] Instead of any concrete action, the negotiations have long focused on adopting work programs, work plans, and other workstreams to be implemented by mechanisms, committees, and task forces, or other networks, through workshops, expert meetings, and expert dialogues.[17] Article 8 of the

[11] ibid art 4(4); Daniel Bodansky, 'The United Nations Framework Convention on Climate Change: A Commentary' (1993) 18 Yale Journal of International Law 451, 528, fn 466, noting that this provision was drafted in such a way as for Annex II Parties to avoid a commitment to meet all the costs of adaptation in those developing country Parties.

[12] UNFCCC (n 8), art 4(5).

[13] 'Bali Action Plan', UNFCCC Decision 1/CP.13 (15 December 2007) UN Doc FCCC/CP/2007/6/Add.1, 3, para 1(c)(iii).

[14] 'Formulation of Response Strategies' in *Climate Change: The IPCC 1990 and 1992 Assessments* (World Meteorological Organization and UN Environment Programme, 1992) 114, 134.

[15] The rare mentions of 'loss and damage' in IPCC reports prior to the Bali Action Plan refer to loss and damage associated with extreme events and other disasters, rather than associated with climate change. See Nigel Arnell and others, 'Hydrology and Water Resources' in James McCarthy and others (eds), *Climate Change 2001: Impacts, Adaptation, and Vulnerability* (CUP 2001) 191, 223; Zbigniew W Kundzewicz and others, 'Europe' in James J McCarthy and others (eds), *Climate Change 2001: Impacts, Adaptation, and Vulnerability* (CUP 2001) 641, 657. The Sixth Assessment Report refers to loss and damage by reference to a thread of negotiations rather than as a scientific concept. See Andy Reisinger and others, 'Annex I: Glossary' in Hoesung Lee and others (eds), *Climate Change 2023: Synthesis Report* (IPCC 2023) 119, 126.

[16] Observers noted that developed States were seeking to 'avoid discussions related to proposals around compensation for loss and damage' by proposing an alternative focus on risk management. See Koko Warner and Sumaya A. Zakieldeen, *Loss and Damage Due to Climate Change: An Overview of the UNFCCC Negotiations* (Anju Sharma (ed), European Capacity Building Initiative 2012) 4.

[17] 'The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention', UNFCCC Decision 1/CP.16 (10–11 December 2010) UN Doc FCCC/CP/2010/7/Add.1, 2, para 26; 'Work programme on loss and damage', UNFCCC Decision 7/CP.17 (9 December 2011) UN Doc FCCC/CP/2011/9/Add.2, 5, paras 6–15; 'Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity', UNFCCC Decision 3/CP.18 (8 December 2012) UN Doc FCCC/CP/2012/8/Add.1, 21, paras 6-7, 10; 'Warsaw International Mechanism for loss and damage associated with climate change impacts', UNFCCC Decision 2/CP.19 (23 November 2013) UN Doc FCCC/CP/2013/10/Add.1, 6, paras 1, 5; 'Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts', UNFCCC Decision 2/CP.20 (13 December 2014) UN Doc FCCC/CP/2014/10/Add.2, 2; 'Adoption of the Paris Agreement', UNFCCC Decision 1/CP.21 (12 December 2015) UN Doc FCCC/CP/2015/10/Add.1, 2, paras 48–49; 'Warsaw International Mechanism for Loss and Damage associated

Paris Agreement, a treaty that the COP adopted in 2015, emphasised 'the importance of averting, minimizing and addressing loss and damage' and reaffirmed the need to 'enhance understanding, action and support … on a cooperative and facilitative basis with respect to loss and damage.'[18] Yet it did not contain any specific measure that could readily be implemented. At the insistence of developed countries, the COP clarified 'that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation.'[19] Yet several small island States (though not the Maldives itself) emphasised that their acceptance of the Paris Agreement 'shall in no way constitute a renunciation of any rights under international law … concerning compensation due to the impacts of climate change.'[20]

Even though the COP has never agreed on the use of words such as 'compensation' or 'reparation', it moved over time towards the idea of providing funding to support countries affected by loss and damage. In 2021, the COP decided that 'the Santiago network [would] be provided with funds to support technical assistance'[21] and it 'urge[d] developed country Parties to provide' such funds.[22] In 2022, when taking note of the Sixth Assessment Report of the IPCC, the COP expressed 'deep concern regarding the significant financial costs associated with loss and damage for developing countries, resulting in a growing debt burden.'[23] Overall, the COP established 'new funding arrangements,' including a dedicated fund, to assist vulnerable developing countries in responding to loss and damage. However, funding remains very limited, relying on the goodwill of contributing states.[24]

B. Litigation

In parallel with negotiations, reparation claims have increasingly been made before courts—first within states, and increasingly on the international plane. Cases invoking general obligations on climate change mitigation have faced substantial obstacles, including the presumption that specific but undemanding statutes could displace the application of these

---

with Climate Change Impacts', UNFCCC Decision 3/CP.22 (17 November 2016) UN Doc FCCC/CP/2016/10/Add.1, 8, paras 3–4; 'Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts', UNFCCC Decision 5/CP.23 (17 November 2017) UN Doc FCCC/CP/2017/11/Add.1, 18, para 9 (note omitted); 'Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts', UNFCCC Decision 10/CP.24 (15 December 2018) UN Doc FCCC/CP/2018/10/Add.1, 40, para 3; 'Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and its 2019 review', UNFCCC Decision 2/CMA.2 (15 December 2019) UN Doc FCCC/PA/CMA/2019/6/Add.1, 4, para 43.

[18] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 79, art 8(1)-(3).

[19] Adoption of the Paris Agreement (n 17) para 51.

[20] See Declarations upon ratification of the Paris Agreement by the Cook Islands (3156 UNTS 87), Niue (3156 UNTS 93) and Tuvalu (3156 UNTS 97). See also the declarations of the Federated States of Micronesia (3156 UNTS 92), Nauru (3156 UNTS 95) and the Solomon Islands (3156 UNTS 96).

[21] 'Glasgow Climate Pact', UNFCCC Decision 1/CMA.3 (13 November 2021) UN Doc FCCC/PA/CMA/2021/10/Add.1, 2, para 67.

[22] ibid para 70 (emphasis removed).

[23] 'Sharm el-Sheikh Implementation Plan', UNFCCC Decision 1/CMA.4 (20 November 2022) UN Doc FCCC/PA/CMA/2022/10/Add.1, 2, para 45.

[24] See 'Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage', UNFCCC Decision 2/CMA.4 (20 November 2022) UN Doc FCCC/PA/CMA/2022/10/Add.1, 13, paras 2–3; 'Operationalisation of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2-3 of decisions 2/CP.27 and 2/CMA.4', UNFCCC Decision 5/CMA.5 (6 December 2023) UN Doc FCCC/PA/CMA/2023/16/Add.1, 35, para 12.

general norms,[25] and the courts' unwillingness to make decisions that 'necessarily would entail a broad range of policymaking'.[26] The Federal Court of Australia, for instance, held that the duty of the government to mitigate climate change was 'a political duty, not a legal duty of care'.[27]At the same time, in Canada, the Federal Court rejected similar claims on the ground that they involved 'an incursion into the policy-making function of the executive and legislative branches',[28] and the High Court of England and Wales denied permission to apply for judicial review of the government's alleged lack of mitigation action, finding that the request related to 'high-level economic and social measures involving complex and difficult judgments' beyond the court's 'sphere of competence' in light of 'the constitutional separation between the Courts, Parliament and the executive.'[29]

By contrast, Dutch courts have applied tort and human rights law as the source of an open-ended obligation of States and corporations to mitigate climate change. In *Urgenda v the Netherlands*, the Supreme Court of the Netherlands applied the European Convention on Human Rights as requiring the national government to achieve at least a 25 per cent reduction in national GHG emissions by 2020, compared with 1990 levels.[30] The decision has inspired plaintiffs in several other civil law jurisdictions, although few courts have followed their Dutch counterparts.[31] In some other cases, in France and Germany, plaintiffs were only successful in securing the implementation of national climate policies or ordering the government to ensure the internal consistency of these policies.[32]

While few courts have identified any stringent mitigation obligations, even fewer have ordered any compensation for any breach of these obligations.[33] In the unique case of *Oxfam v France*, the Administrative Court of Paris ordered the French government to compensate ecological damage from excess GHG emissions by taking measures to reduce its future emissions.[34] Another case, *Luciano Lliuya v RWE*, was filed by a Peruvian farmer seeking a declaratory finding that the respondent, a German public utility company, was liable for nuisance, in proportion to its share of global GHG emissions, for the cost of protecting the plaintiff's property from risks of glacial lake outburst flood allegedly caused by climate change.[35] In May 2025, the Higher Regional Court of Hamm rejected the claims on factual grounds, noting that the risk of glacial lake outburst was under the control of local authorities.[36]

---

[25] *American Elec Power Co, Inc v Connecticut* 564 US 410, 424 (2011).
[26] *Juliana v United States* 947 F3d 1159, 1172 (9th Cir 2020).
[27] *Minister for the Environment v Sharma* [2022] FCAFC 35, [266].
[28] *La Rose v Canada* 2020 FC 1008, para 55. See also *Misdzi Yikh v Canada* 2020 FC 1059, para 72. The two decisions are under appeal before the Canadian Federal Court of Appeal.
[29] *R (Plan B Earth) v Prime Minister* [2021] EWHC 3469 (Admin), [2021] All ER (D) 92, paras 50, 51, 54.
[30] *Urgenda v the Netherlands* [Supreme Court, 20 December 2019] ECLI:NL:HR:2019:2007.
[31] For a notable exception, Tribunal de Première Instance (Bruxelles, 4th ch), 17 June 2021, *Klimaatzaak v Belgium*, No 2015/4585/A (finding that the national government had not taken sufficiently ambitious mitigation action to comply with its duty of care and its human rights obligation, but declining to determine what level of ambition would be sufficient for the government to fulfil its legal obligation).
[32] *Grande-Synthe v France* [1 July 2021] decision No 427301, ECLI:FR:CECHR:2021:427301.20210701, at 6 (arts 1-2); BVerfG, *Neubauer v Germany* [24 March 2021] ECLI:DE:BVerfG:2021:rs20210324.1bvr265618.
[33] Maria Antonia Tigre and Margaretha Wewerinke-Singh, 'Beyond the North–South Divide: Litigation's Role in Resolving Climate Change Loss and Damage Claims' (2023) 32 (3) Review of European, Comparative and International Environmental Law 439, 440. Noting that, 'there is, as yet, no precedent of plaintiffs succeeding in an L&D case'.
[34] Tribunal Administratif (Paris) *Oxfam v France* [3 February 2021] No 1904967, 37.
[35] See LG (Essen), *Luciano Lliuya v RWE AG* [23 October 2015] Case No 2 O 285/15, 2.
[36] OLG (Hamm), *Luciano Lliuya v RWE AG* [28 May 2025] Case No 5 U 15/17.

Other courts, particularly in common law jurisdictions, have rejected claims for damages from GHG emissions. In *Native Village of Kivalina v ExxonMobil Corp.*, the Court of Appeals for the Ninth Circuit relied on *American Electric Power Co.* to find that the Clean Air Act 'displaces federal common law public nuisance actions seeking damages, as well as those actions seeking injunctive relief.'[37] The plaintiffs in *City of New York v Chevron Corp.* sought to circumvent this objection by focusing on foreign GHG emissions, which are not regulated under the Clean Air Act. Still, the Second Circuit found that foreign policy concerns foreclosed the extraterritorial application of tort law in this case.[38] Courts repeatedly reminded plaintiffs that '[g]lobal warming and solutions thereto must be addressed by the two other branches of government.'[39] As the New Zealand Court of Appeal once noted, '[p]rivate litigation against a small subset of emitters, requiring them to comply with requirements that are more stringent than those imposed by statute, will not be effective to address climate change at a national level, let alone globally.'[40]

In this context, some plaintiffs have sought to bring claims for climate reparations to international courts and tribunals, including quasi-judicial bodies created by human rights treaties, regional human rights courts, and inter-state courts.[41] Some cases were found inadmissible on the grounds that the plaintiffs lacked standing[42] or had not exhausted internal remedies.[43] While the UN Human Rights Committee found that Australia had failed to take enough action on adaptation to protect its own population against the impacts of climate change,[44] the Committee rejected claims regarding the State's alleged lack of action on climate change mitigation.[45]

Over the last few years, several international courts have identified and applied obligations of states to mitigate climate change under various sources of international law. In *Verein KlimaSeniorinnen v Switzerland*, the European Court of Human Rights found that, in application of the European Convention on Human Rights, 'each Contracting State undertakes measures for the substantial and progressive reduction of its respective GHG emission levels, with a view to reaching carbon neutrality within, in principle, the next three decades'.[46]

Subsequently, three international courts and tribunals have adopted advisory opinions interpreting international law on climate change mitigation. First, the International Tribunal for the Law of the Sea found that the Parties to the UN Convention on the Law of the Sea have a 'stringent' due diligence obligation to mitigate climate change in order to prevent the pollution

---

[37] *Native Village of Kivalina v ExxonMobil Corp* 696 F3d 849, 858 (9th Cir 2012).
[38] *City of New York v Chevron Corp* 993 F3d 81, 101 (2d Cir 2021).
[39] *City of New York v BP* 325 F Supp 3d 466, 475 (SDNY 2018).
[40] *Smith v Fonterra Co-operative Group* [2021] NZCA 552 [33], but note the successful appeal against this decision. See *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5.
[41] For an overview of international climate litigation and an assessment of its prospects, Benoit Mayer and Harro van Asselt, 'The rise of international climate litigation' (2023) 32 (2) Review of European, Comparative and International Environmental Law 175.
[42] *Carême v France* [9 April 2024] ECtHR, Application 7189/21.
[43] *Chiara Sacchi v Argentina* (8 October 2021), UN Committee on the Rights of the Child, Communication No 104/2019, UN Doc CRC/C/88/D/104/2019, para 10.21.
[44] *Daniel Billy v Australia* (22 September 2022), UN Human Rights Committee, Communication No 3624/2019, UN Doc CCPR/C/135/D/3624/2019, paras 8.12, 8.14.
[45] ibid para 8.11.
[46] *Verein KlimaSeniorinnen v Switzerland* [9 April 2024] Application No 53600/20 [548] <https://hudoc.echr.coe.int/?i=001-233206> accessed 13 March 2026.

of the marine environment.[47] Second, the Inter-American Court of Human Rights held that, '[p]ursuant to the general obligation to guarantee rights, States have the obligation to act in accordance with the standard of enhanced due diligence to counteract the human causes of climate change'.[48]

Third, the ICJ interpreted climate treaties, customary international law, and some other sources of international law as implying that 'States have a duty to prevent significant harm to the environment by acting with due diligence'.[49] The ICJ further observed that a breach of this obligation by a State would 'constitute … an internationally wrongful act entailing the responsibility of that State', in relation to which an obligation to make full reparation may arise.[50]

III. AN ASSESSMENT

This section engages critically with the claims for climate reparations made by or on behalf of the Maldives. The first subsection considers the factual grounds for responsibility claims. Rather than a passive victim of climate change, the Maldives appears in fact to have contributed to global GHG emissions and to have benefited from activities that have caused such emissions. The second subsection turns to the legal grounds for responsibility. Rather than reparation for all impacts of climate change, the law and ethics of responsibility would support a much narrower approach to reparations for the consequences of wrongful emissions.

A. Victim or Accomplice?

The Maldives has consistently presented itself as, essentially, a victim of climate change. It has emphasised the widespread impacts of sea-level rise, extreme weather events, and changes in precipitation patterns. During his first tenure as Minister of Environment and Energy, Thoriq Ibrahim wrote that '[c]limate change not only poses a development challenge, but an existential threat for Maldives and many other small island states'.[51] His successor, Dr Hussain Rasheed Hassan, wrote that 'Maldives is among the most vulnerable and least defensible countries to the projected impacts of climate change'.[52] President Ibrahim Mohamed Solih told COP26 that if not enough is done to mitigate climate change, 'the Maldives will cease to exist by the end of this century'.[53]

The Maldives contributes a very small proportion of global GHG emissions. Its own national emission inventories, relying on national statistics, suggest that the country emitted 0.15 Mt

[47] Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Advisory Opinion) ITLOS Case No 31 (21 May 2024).
[48] Advisory Opinion OC-32/25, Climate Emergency and Human Rights, Inter-American Court of Human Rights, Series A No 32 (29 May 2025), operative para 3.
[49] *Obligations of States in Respect of Climate Change*, Advisory Opinion, ICJ (23 July 2025) para 457(3)(B)(a) <https://www.icj-cij.org/case/187/advisory-opinions> accessed 13 March 2026.
[50] ibid, para 457(4).
[51] Maldives (Ministry of Environment and Energy), *Second National Communication of Maldives to the UNFCCC* (October 2016) ('Maldives NC2') iv.
[52] Maldives First BUR (n 1).
[53] 'Remarks by His Excellency Ibrahim Mohamed Solih, President of the Republic of Maldives, at COP26' *The President's Office* (1 November 2021) <https://presidency.gov.mv/Press/Article/25643> accessed 13 March 2026.

CO2e in 1994,[54] 1.54 Mt CO2e in 2015,[55] and 2.4 Mt CO2e in 2022,[56] in the energy and waste sectors alone. A separate, more comprehensive estimate by the European Commission, relying on trade and other data from international sources, suggests that the Maldives' emissions in all sectors grew from 0.14 Mt CO2 in 1990 to 1.74 Mt CO2e in 2015 and 2.09 Mt CO2e in 2024.[57] These numbers confirm the Maldives' claim that its emissions represent only a tiny fraction of global GHG emissions,[58] despite a significant increase over time. The European Commission's estimates, for instance, suggest that the emissions of the Maldives increased from 4 millionths of global GHG emissions in 1990 to 39 millionths in 2024.[59]

However, a collective action problem such as climate change can only be addressed through cooperation.[60] Thus, states have long recognised that mitigating climate change is a 'common' responsibility (albeit also a differentiated one) of all States[61] and requires a 'global response'.[62] Accordingly, the fact that the Maldives' emissions represent only a tiny fraction of global emissions cannot be used to discount the need for mitigation action in the Maldives. To assess the degree of responsibility of the Maldives, the absolute level of emissions needs to be compared with relevant national circumstances, in particular the country's population. The average GHG emissions of a Maldivian increased from 10 per cent of the world's average in 1990 to 66 per cent in 2024; that year, a Maldivian caused about as many emissions as an average Swiss citizen.[63]

Moreover, the emissions reported by or attributed to the Maldives in application of international conventions do not fully reflect the causal responsibility of the Maldives. Under the Guidelines adopted by the Intergovernmental Panel on Climate Change, which guide international emission accounting, the emissions attributed to a state are, in principle, those occurring within its territory.[64] In particular, emissions from bunker fuels used for international transportation are not attributed to any State.[65] An insular nation such as the Maldives depends heavily on economic activities that take place in other countries. For instance, as the Maldives imports 90 per cent of its food,[66] the emissions caused by land use and agriculture to feed the Maldives are mainly accounted for in other countries.

Overall, the Maldives' main economic sector, luxury tourism, generates high levels of international bunker fuel emissions for the transportation of tourists via long-haul flights, which

[54] Maldives NC2 (n 51) 53.
[55] Maldives (n 1) 31. Emissions in the other sectors were not included in national inventories.
[56] Maldives (Ministry of Climate Change, Environment and Energy), *First Biennial Transparency Report* (November 2024, BTR1) Common Reporting Table, Summary 1.
[57] See, for example, European Commission, 'GHG emissions of all world countries' Edgar (2023) <https://edgar.jrc.ec.europa.eu/report_2023> accessed 13 March 2026.
[58] The Maldives (Ministry of Environment and Energy), Maldives' Intended Nationally Determined Contribution (September 2015, INDC) 1; Maldives NC2 (n 51) 4; Maldives (n 1); The Maldives (Ministry of Environment), Update of Nationally Determined Contribution of the Maldives (2020) ('Updated NDC') i.
[59] European Commission, 'GHG emissions of all world countries' *EDGAR – The Emission Database for Global Atmospheric Research* (2025) <https://edgar.jrc.ec.europa.eu/report> accessed 13 March 2026.
[60] Garrett Hardin, 'The Tragedy of the Commons' (1968) 162 (3859) Science 1243.
[61] UNFCCC (n 8) art 3(1).
[62] Paris Agreement (n 18) art 2(1), 3(1).
[63] European Commission (2025) (n 59).
[64] 2006 IPCC Guidelines for National Greenhouse Gas Inventories (IPCC, 2006); 'Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement', UNFCCC Decision 18/CMA.1 (15 December 2018) UN Doc FCCC/PA/CMA/2018/3/Add.2, 18 ('MPGs'), Annex para 17.
[65] MPGs (n 64) Annex para 53.
[66] Maldives NC2 (n 51) 5.

are not reflected in national GHG emission inventories. The emissions caused by international civil aviation (flights departing from and arriving in the country) represented 1.73 Mt CO2e in 2024,[67] representing an 83 per cent increase in national GHG emissions.[68] Accounting for international civil aviation emissions from departing flights only, the Maldives' per capita emissions represent 120 per cent of the global average (i.e. 20 per cent above it). [69]If reliable data were available, accounting for international maritime emissions[70] would further show the Maldives' higher-than-average per capita causal responsibility for climate change, given its strong reliance on shipping.

The Maldives has presented itself as a state 'determined to lead by example by taking the most ambitious climate actions and committing to achieve a low-emission development'.[71] But while it has announced multiple pledges and commitments on climate change mitigation, some of which were very ambitious, implementation has been lagging. In 2010, the Maldives made an 'unconditional' pledge, under the mechanism established by the Copenhagen Accord and subsequently endorsed by the Cancun Agreements, that it would '[a]chieve carbon neutrality as a country by 2020'.[72] The Maldives clearly has not achieved this target; to the contrary, its annual emissions have continued to increase rapidly.[73]

In the run-up to the adoption of the Paris Agreement, however, the State communicated an intended nationally determined contribution (NDC) that was far less ambitious than its Copenhagen pledge. The NDC announced that, by 2030, the Maldives would limit its emissions to 10 per cent below a business-as-usual scenario, or by 24 per cent conditional on the country receiving an unspecified amount of international support.[74] Associated with a business-as-usual scenario predicting a very fast increase in national emissions, these targets suggested that carbon dioxide emissions in the energy sector could increase by 160 to 190 per cent between 2010 and 2030.[75]

---

[67] 'Air transport emissions' *OECD Data Explorer* (updated 5 June 2025) <https://stats.oecd.org/Index.aspx?DataSetCode=AIRTRANS_CO2> (Inventories: international aviation: 865 KtCO2 for flights departing from the Maldives, multiplied by two to account for flights arriving in the Maldives) accessed 22 February 2026. These data are significantly higher than the data reported by the Maldives as a separate item in its BTR1, see (n 56) Common Reporting Table, Summary 2 (414.45 Kt CO2e in 2022). The national inventory relies on the fuel sold, whereas the OECD relies on traffic activities. As such, the difference appears due to the fact that planes do not always refuel fully in the Maldives, presumably due to higher fuel prices and higher alternate fuel requirements on flights to the Maldives (due to the distance of alternate airports).

[68] Calculated from data in European Commission (2025), see (n 59).

[69] ibid.

[70] The Maldives report that these emissions amounted to 71 kt CO_2e in 2022. See BTR1 (n 56), Common Reporting Table, Summary 2. Yet, as for aviation data, these national data are based on fuel sold in the Maldives, and may thus significantly underestimate emissions from shipping, as ships are likely to refuel in larger ports, where fuel will generally be more affordable.

[71] Solih (n 53).

[72] Maldives (Minister of Foreign Affairs), 'Letter including nationally appropriate mitigation actions of developing country Parties' UNFCCC (29 January 2010) 1, 3 <https://unfccc.int/process/conferences/pastconferences/copenhagen-climate-change-conference-december-2009/statements-and-resources/4> accessed 13 March 2026. See also UNFCCC (SBI), Revised note by secretariat, Compilation of information on nationally appropriate mitigation actions to be implemented by developing country Parties, UN Doc FCCC/SBI/2013/INF.12/Rev3 (19 January 2015), para 142.

[73] European Commission (n 57), estimating that the Maldives emitted 2.28 MtCO2e in 2020, significantly more than any previous year estimated.

[74] Maldives INDC (n 58) 3.

[75] ibid 2 (from 1,000 to 2,600 or 2,900 KtCO2).

The Paris Agreement allows a Party to 'adjust' its NDC 'with a view to enhancing its level of ambition',[76] a provision which is largely understood as excluding the possibility of regressive NDC updates.[77] In 2020, the Maldives submitted an updated NDC, committing to a 26 per cent emission reduction compared with a business-as-usual scenario, conditional on receiving international support.[78] The Maldives noted that this conditional target 'is higher than the target submitted in 2015'.[79] Yet the NDC update no longer contains the unconditional target of 10 per cent emission reduction compared with a business-as-usual scenario, which could be considered an unlawful regression in the level of ambition. Notably, the NDC update mentions that the State 'will strive to achieve net zero by 2030',[80] an objective that would be far more demanding than what the business-as-usual target suggests.

The NDC update suggests that the 'Maldivian government will develop a plan with consultation of development partners, donors and other stakeholders' to map out a net-zero strategy,[81] but it does not seem that this plan has been developed. In particular, the Maldives has not communicated a long-term low greenhouse-gas emission development strategy as invited by the Paris Agreement and subsequent COP decisions.[82] The measures on climate change mitigation that the Maldives reported to the UNFCCC Secretariat are broadly consistent with the State's initial unconditional target of 10 per cent reduction below a business-as-usual scenario by 2030, but not with its initial or updated conditional targets of 24 or 26 per cent reduction,[83] in spite of the Maldives having received some international support.[84] A new NDC, communicated in 2025, no longer mentions any net-zero target, but commits to a 25 per cent reduction below a business-as-usual scenario, this time, by 2035, still conditional on an unspecified level of international support.[85]

The measures that the Maldives is taking to mitigate climate change do not systematically address its main contributions to global GHG emissions. As noted by the team of technical experts during the technical analysis of the Maldives' first biennial update report, '[m]ost of the mitigation actions are in the power generation sector'.[86] By contrast, the Maldives' development strategy continues to rely heavily on the tourism sector,[87] despite the sector's dependence on international civil aviation—a high-emitting, hard-to-decarbonise sector. While

---

[76] Paris Agreement (n 18) art 4(11).
[77] See Lavanya Rajamani and Jutta Brunnée, 'The Legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons from the US Disengagement' (2017) 29 (3) Journal of Environmental Law 537.
[78] Maldives Updated NDC (n 58) 3.
[79] ibid 12.
[80] ibid i, 3.
[81] ibid 3.
[82] Paris Agreement (n 18), art 4(19); 'Outcome of the first global stocktake' UNFCCC Decision 1/CMA.5 (13 December 2023) UN Doc FCCC/PA/CMA/2023/16/Add.1, para 42.
[83] Maldives (n 1) 46; UNFCCC Secretariat, Summary report by the team of technical experts, Technical analysis of the first biennial update report of the Maldives, UN Doc FCCC/SBI/ICA/2020/TASR.1/MDV (20 October 2020) ('TTE report') para 55 (The Party indicated that it is on track to achieve its unconditional target of a 10 per cent reduction in emissions compared with the "business as usual" scenario; however, a significant increase in mitigation efforts across all sectors will be required to achieve its conditional target of a GHG emissions reduction of 24 per cent below the baseline.); Maldives BTR1 (n 56) 79.
[84] Maldives (n 1) 58, 64–66. See also UNFCCC, TTE report (n 83), para 74.
[85] Maldives' Third Nationally Determined Contribution (February 2025) 11 (committing to reduce 1.52 Mt CO2e by 2035, with a BAU scenario at 6.03 Mt CO2e).
[86] UNFCCC TTE report (n 83) para 55.
[87] 'Maldives: Economic Indicators - Moody's Analytics' *Economy* <https://www.economy.com/maldives/indicators#ECONOMY> accessed 13 March 2026 (noting 'the rapid growth of [the country's] tourism and fisheries sectors').

rightly pointing out the adverse consequences of climate change for society and ecosystems, the Maldives is also—like any other country—benefitting tremendously from at least some of the activities that cause climate change. The Maldives is not simply a passive victim of the GHG emissions of other States, but very much also a contributor to, and beneficiary of, the activities that cause climate change.

B. Legal Foundations

Following decades of work on the topic, the ILC adopted the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (DARSIWA) in 2001.[88] DARSIWA is widely viewed as an authoritative codification of the general international law on the topic.[89] This document affirms that '[e]very internationally wrongful act of a State entails the international responsibility of that State.'[90] An internationally wrongful act of a State is an action or omission attributable to the State that constitutes a breach of an international obligation of that State.[91] The main consequence of the responsibility of a State is an obligation to make reparation for any injury that the internationally wrongful act may have caused.[92] Therefore, an argument on climate reparations based on the law of State responsibility needs to identify an internationally wrongful act—the breach of an obligation on the mitigation of climate change—and demonstrate that this climate wrong has caused an injury.

A climate wrong could result from the breach of one of the obligations that climate treaties define for the mitigation of climate change. In particular, Article 4(1)(b) of the UNFCCC requires its Parties to '[f]ormulate, implement, publish and regularly update national … programmes containing measures to mitigate climate change.'[93] This 'pivotal'[94] commitment creates a general obligation of due diligence.[95] More specific obligations arise, for instance, from the Paris Agreement, which requires Parties to communicate NDCs and to take measures with a view to achieving their objectives.[96] Besides, more demanding obligations could be invoked from other sources, including human rights treaties, multilateral environmental agreements, or customary international law.[97] Among these sources, customary international law is arguably the most promising legal basis because it allows broader consideration of the impacts of climate change than either human rights or environmental treaties. This is because a State's rights under customary international law include the right to protection of the human

[88] ILC, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, in Report of the ILC on the work of its 53rd session, UN Doc A/56/10 (2001) ('DARSIWA') 31.
[89] Yifeng Chen, 'Between Codification and Legislation: A Role for the International Law Commission as an Autonomous Law-Maker' in *Seventy Years of the International Law Commission: Drawing a Balance for the Future* (UN 2020) 254.
[90] ILC, DARSIWA (n 88) art 1.
[91] ibid art 2.
[92] ibid art 28, 31, commentary on art 31, para 6.
[93] UNFCCC (n 8), art 4(1)(b). See also art 4(2)(a) (applicable to Annex I Parties).
[94] Farhana Yamin and Joanna Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (CUP 2004) 95.
[95] Benoit Mayer, *International Law Obligations on Climate Change Mitigation* (OUP 2022) 41.
[96] Paris Agreement (n 18) art 4(2).
[97] On the various sources of international law obligations on climate change mitigation, see Benoit Mayer, 'Climate Change Mitigation as an Obligation under Customary International Law' (2023) 48 (1) Yale Journal of International Law 105; Benoit Mayer, 'Climate Change Mitigation as an Obligation Under Human Rights Treaties?' (2021) 115 (3) American Journal of International Law 409.

rights of its citizens[98] and to the protection of its environmental resources,[99] and, among others, to territorial integrity,[100] survival,[101] and self-determination.[102] By capturing a wider range of climate impacts than either human rights or environmental treaties, customary law can justify more ambitious mitigation action to avoid these impacts.

One of the main consequences of a State's responsibility for an internationally wrongful act is an obligation to make reparation for the injury caused by the internationally wrongful act.[103] As interpreted by the ILC, the obligation to make reparation 'arises automatically upon commission of an internationally wrongful act and is not, as such, contingent upon a demand or protest by any State.'[104] More than one State might be held responsible for a breach of mitigation obligations and might have concurrent remedial obligations. However, the ILC's study on the law of State responsibility concluded that under such circumstances of a 'plurality of responsible States,' 'each State is separately responsible for the conduct attributable to it.'[105]

The obligation to make reparation, however, is contingent on the existence of an injury—that is, 'any damage, whether material or moral, caused by the internationally wrongful act of a State.'[106] In other words, as the ICJ noted in its advisory opinion on climate change, 'to establish reparation, causation must be established between the wrongful act of a State … and particular damage suffered by the injured State'.[107] Not every breach of an international obligation necessarily results in an injury,[108] and, in particular, the breach of a due diligence obligation to mitigate climate change—an obligation for a state to make its best efforts, without guaranteeing a particular outcome—does not necessarily translate into any additional emissions.[109] To be sure, there is no doubt that climate change causes harm[110] and that '[e]very increment of global warming will intensify multiple and concurrent hazards.'[111] This harm, however, is extremely diffuse, being scattered through time and space, so that it is difficult, perhaps impossible, to identify an individual victim of climate change, let alone to attribute

[98] Mavrommatis Palestine Concessions *(Greece v United Kingdom)* [1924] PCIJ Ser A No 2, 12; ILC, 'Draft articles on Diplomatic Protection' in Report on the International Law Commission, 58th session (1 May–9 June and 3 July–11 August 2006) UN Doc A/61/10, para 45, art 2.
[99] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 1(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 1(2); Armed Activities on the Territory of the Congo *Dem Rep Congo v Uganda* [2005] ICJ Rep 168, para 244.
[100] This right is implied by the right of States to exploit their natural resources. See Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 2(4); *Corfu Channel (United Kingdom v Albania)* (Merits) [1949] ICJ Rep 4, 35; Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion [2010] ICJ Rep 403, para 80.
[101] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion [1996] ICJ Rep 226, para 96.
[102] Natalie Jones, 'Prospects for Invoking the Law of Self-Determination in International Climate Litigation' (2023) 32 (2) Review of European, Comparative and International Environmental Law 250.
[103] ILC, DARSIWA (n 88) art 31(1); Factory at Chorzów *(Germany v Poland)* (Jurisdiction) [1927] PCIJ Ser A No 9, 21. Other consequences of a state's responsibility may include the continued duty of performance, as well as cessation and non-repetition obligations. See ILC, DARSIWA (n 88) art 29-30.
[104] ILC, DARSIWA (n 88), commentary on art 31, para 4.
[105] ibid, commentary on art 47, para 1 and also para 3, which states that 'the general principle in the case of a plurality of responsible States is that each State is separately responsible for conduct attributable to it in the sense of article 2. The principle of independent responsibility reflects the position under general international law, in the absence of agreement to the contrary between the States concerned.'
[106] ibid art 31(2).
[107] ICJ Advisory Opinion (n 49) para 449.
[108] ILC, DARSIWA (n 88) commentary on art 2, para 9.
[109] ICJ Advisory Opinion (n 49), Declaration of Judge Nolte, para 21.
[110] Lee and others (n 15) 5.
[111] ibid 12.

specific harm to a State's GHG emissions, or, among these emissions, to those that result from a wrongful act. A given State's excess GHG emissions, for instance, contribute only marginally to the impacts of climate change affecting the Maldives.

The ILC noted that reparation for the injury caused by the internationally wrongful act must 'take the form of restitution, compensation and satisfaction, either singly or in combination.'[112] Compensation, in practice, is 'perhaps the most commonly sought [remedy] in international practice.'[113] Compensation may appear as an attractive option for the reparation of the harm caused by wrongful emissions. Indeed, most discussions on climate reparations have focused on compensation as the preferred remedy.[114] Yet an important practical issue concerns the quantification of the compensation that responsible States would have to pay. It is difficult to assess climate harm in general because a large part of this harm is of a non-economic nature (e.g., human casualties, cultural loss, and ecological degradation).[115] It is even more difficult to assess the present value of harms that will unfold over a very long term—centuries or millennia.[116] The ICJ suggested that, on 'an exceptional basis', compensation could take 'the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations'.[117] Yet there are a number of issues with this approach—not least, as Judge Nolte observed in his declaration appended to the advisory opinion of the ICJ, the fact that 'the quantum of compensation arrived at by a court would need to be apportioned among all States concerned.'[118]

IV. CONCLUSION

There is no question that the Maldives is a vulnerable country disproportionately affected by the impacts of climate change, a fact relevant to the disbursement of international development assistance. However, an argument invoking moral or legal responsibility of GHG emitters is more difficult to sustain. The Maldives is not merely a victim of climate change; it also contributes to GHG emissions and benefits from GHG-emitting activities, most obviously through international civil aviation. If arguments could be made for compensation of the Maldives, any such compensation is to be limited to a small fraction of the harm suffered by the Maldives as a consequence of breaches of international law obligations on the mitigation of climate change.

---

[112] ILC, DARSIWA (n 88) art 34.
[113] ibid, commentary on art 36, para 2.
[114] Noémie R Kugler and Pilar M Sariego, '"Climate Change Damages", Conceptualization of a Legal Notion with Regard to Reparation under International Law' (2016) 13 (1) Climate Risk Management 103; Christina Voigt, 'State Responsibility for Climate Change Damages' (2008) 77 (3) Nordic Journal of International Law 1, 18; Margaretha Wewerinke-Singh, 'Remedies for Human Rights Violations Caused by Climate Change' (2019) 9 (4) Climate Law 224, 239; Adoption of the Paris Agreement (n 17) para 51. Noting that art 8 of the Paris Agreement 'does not involve or provide a basis for any liability or compensation', without explicitly considering reparation for wrongful acts.
[115] These difficulties are not unique to climate change. See Philippe Sands and Richard B Stewart, 'Valuation of Environmental Damage: US and International Law Approaches' (1996) 5 (6) Review of European, Comparative and International Environmental Law 290.
[116] Brian O'Neill and others, 'Key Risks across Sectors and Regions' in Hans-Otto Pörtner and others (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability: Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (CUP 2022) 2495; William Nordhaus, 'Climate Change: The Ultimate Challenge for Economics' (2019) 109 (6) American Economic Review 1991, 1997–2006.
[117] ICJ Advisory Opinion (n 49) para 454.
[118] ibid, Declaration of Judge Nolte, para 30.