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State Responsibility and Corporate Accountability for Transboundary Haze Pollution: a Comparative Analysis of International and Indonesian Law

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ABSTRACT

Transboundary haze pollution from forest and land fires raises two distinct legal questions: when a State may incur international responsibility for harm originating within its territory, and how private corporations responsible for fire-related conduct may be held accountable under domestic law. This study analyzes those questions through a normative juridical method using treaty, statute, conceptual, case, and comparative approaches. The analysis focuses on the ASEAN Agreement on Transboundary Haze Pollution (AATHP), the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), relevant international jurisprudence, and Indonesia's environmental and plantation laws. The study finds that corporate land burning is not automatically attributable to Indonesia under the law of State responsibility. International responsibility requires an applicable primary obligation, conduct attributable to the State, and a breach of that obligation; in this context, the relevant State conduct may consist of a failure by public authorities to exercise the due diligence required for prevention, supervision, information exchange, cooperation, or enforcement. ARSIWA supplies the secondary rules governing the consequences of an established breach rather than the primary environmental duty itself. The AATHP is a binding regional treaty with substantial preventive and cooperative duties, but its enforcement architecture remains limited because disputes are confined to consultation or negotiation. Indonesian law, by contrast, can impose administrative, civil, and criminal consequences directly on corporations. The article develops a two-layer accountability framework linking international State responsibility with domestic corporate accountability and identifies evidence-sharing, source attribution, and enforcement coordination as the principal interface gaps that must be addressed.

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1. INTRODUCTION

Transboundary haze pollution is a recurring environmental governance problem in Southeast Asia because smoke generated by forest and land fires can move across national borders and affect air quality, public health, transportation, ecosystems, and economic activity in neighboring States. The legal problem is therefore not exhausted by identifying the private actor that started or controlled a fire. It also concerns the preventive duties of the territorial State, regional cooperation under ASEAN law, and the capacity of domestic law to impose responsibility directly on corporations. This multi-level character makes haze pollution particularly suitable for an analysis that separates, but then reconnects, international State responsibility and domestic corporate accountability.

International environmental law provides an important normative foundation. Principle 21 of the 1972 Stockholm Declaration and Principle 2 of the 1992 Rio Declaration express the proposition that States retain sovereign rights over their natural resources while bearing responsibility to ensure that activities within their jurisdiction or control do not cause environmental damage to other States [1], [2]. These declarations are not treaties and should therefore be distinguished from binding treaty obligations. In Southeast Asia, the specific regional treaty is the ASEAN Agreement on Transboundary Haze Pollution (AATHP), adopted in 2002 and in force since 2003 [3]. Indonesia approved the AATHP through Law Number 26 of 2014, thereby completing the domestic ratification process [6].

The climate regime must also be distinguished from the haze regime. The Kyoto Protocol and the Paris Agreement are relevant to the broader climate consequences of forest and peatland fires because such fires can produce substantial greenhouse-gas emissions, but those instruments primarily regulate climate mitigation and related commitments rather than the specific prevention, monitoring, emergency response, and regional cooperation architecture for transboundary haze [4], [5]. For the legal issues examined in this article, the AATHP is therefore the principal treaty framework, while the Stockholm and Rio principles and general international law provide broader interpretive context.

Previous scholarship has examined important parts of this problem. Nurhidayah, Lipman, and Alam evaluated ASEAN regional environmental governance and emphasized the limits of a framework that relies heavily on prevention, cooperation, and national implementation [11]. Heilmann assessed the AATHP after Indonesia's ratification and concluded that the agreement's institutional design constrains direct enforcement [12]. Fitriyanti and Gunawan focused on State responsibility and the weakness of dispute settlement under the AATHP [13]. Muhammad analyzed the agreement through the lenses of legalization and ASEAN non-interference, showing that the agreement contains meaningful obligations but limited delegation to third-party adjudication [14]. More recently, Chong and Schacherer examined extraterritorial liability and enforcement, particularly Singapore's Transboundary Haze Pollution Act, and highlighted the continuing practical difficulties of cross-border enforcement [15].

Those studies provide a strong foundation but leave a narrower doctrinal issue insufficiently integrated: the distinction between (i) a private corporation's responsibility for burning or failing to control fire under domestic law and (ii) an internationally wrongful act attributable to a State under the law of State responsibility. Treating the two as identical risks attributing private conduct automatically to the State; treating them as entirely separate overlooks the State's own due-diligence obligations to regulate, supervise, exchange information, cooperate, and enforce its laws. The novelty of this study is therefore a two-layer accountability framework. The first layer evaluates State responsibility by separating primary environmental obligations from the secondary rules in ARSIWA. The second evaluates the direct accountability of corporations under Indonesian environmental and plantation law. The two layers are then compared through common legal parameters to identify the points at which evidence, source attribution, supervision, and enforcement must interact.

On that basis, this study addresses three research questions:

1. What primary obligations and conditions determine when transboundary haze pollution may engage the international responsibility of a State?

2. How do international and regional law and Indonesian national law differ and converge in regulating prevention, supervision, enforcement, liability, remedies, and dispute settlement?

3. What normative and institutional gaps hinder the effective connection between State responsibility and corporate accountability for forest and land fires with transboundary effects?

Accordingly, the objectives are to clarify the legal threshold for State responsibility, conduct a structured comparison between the international-regional and Indonesian legal frameworks, and formulate operational recommendations for strengthening the interface between regional haze governance and domestic enforcement.

2. METHOD

This research is a normative juridical or doctrinal legal study. It uses five complementary approaches. First, the statute approach examines Indonesian legislation governing environmental protection, plantation activities, environmental approvals, supervision, sanctions, corporate liability, and restoration. Second, the treaty approach examines the AATHP

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and distinguishes it from non-binding declarations and climate-specific treaties. Third, the conceptual approach analyzes the no-harm principle, due diligence, attribution, breach, State responsibility, corporate accountability, strict liability, and reparation. Fourth, the case approach examines the Trail Smelter Arbitration, the International Court of Justice judgment in Pulp Mills on the River Uruguay, and Indonesian environmental litigation involving PT Kallista Alam. Fifth, the comparative approach evaluates the international-regional and national frameworks using identical parameters rather than describing them in separate, non-comparable categories.

Primary legal materials comprise the Stockholm and Rio Declarations, the AATHP, the Kyoto Protocol and Paris Agreement for contextual differentiation, the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), the ILC Articles on Prevention of Transboundary Harm from Hazardous Activities, relevant international decisions, the 1945 Constitution of the Republic of Indonesia, Law Number 26 of 2014, Law Number 32 of 2009 concerning Environmental Protection and Management as amended by the Job Creation legislation including Law Number 6 of 2023, Law Number 39 of 2014 concerning Plantations, Government Regulation Number 22 of 2021, current rules on the authority to issue environmental approvals, and relevant Indonesian court decisions [1]-[10], [16]-[21], [23], [24]. Secondary materials consist of peer-reviewed legal scholarship selected for direct relevance to AATHP effectiveness, State responsibility, ASEAN dispute settlement, extraterritorial enforcement, and the debate surrounding strict liability [11]-[15], [22].

The comparative analysis uses the following parameters: legal source and binding character; regulated subjects; nature of obligations; preventive instruments; monitoring and information exchange; attribution or liability rules; enforcement mechanisms; dispute settlement; remedies and restoration; and principal implementation gaps. The materials are interpreted textually, systematically, and purposively. Case law is used to identify the legal reasoning concerning due diligence, evidentiary thresholds, causal proof, and environmental enforcement. The analysis is prescriptive in its final stage: it identifies how the international-regional and national layers should be connected without converting unsupported empirical assertions into legal findings. Broad factual claims concerning the frequency of sanctions, investment pressure, or the statistical contribution of particular sectors are therefore not treated as findings unless supported by authoritative evidence.

3. RESULTS AND DISCUSSION

3.1. Legal Status of the International Framework and the Central Role of the AATHP

A sound analysis begins by distinguishing the legal character of the relevant instruments. The Stockholm and Rio Declarations are influential soft-law instruments. Their no-harm, precautionary, polluter-pays, environmental-impact-assessment, and cooperation principles have shaped international environmental law, but their provisions do not have the same treaty status as the AATHP [1], [2]. The AATHP, by contrast, is a treaty in force among ASEAN Member States. Indonesia ratified it through Law Number 26 of 2014 [6]. It is therefore more precise to describe the AATHP as a binding treaty with comparatively weak enforcement and delegation mechanisms, rather than to collapse it into the same category as non-binding declarations.

Article 4 of the AATHP contains general obligations to cooperate in developing and implementing measures to prevent and monitor transboundary haze pollution, control fire sources, develop monitoring and early-warning systems, exchange information and technology, provide mutual assistance, respond to requests for information or consultation, and take legislative, administrative, or other measures to implement the agreement [3]. Articles 5 to 8 establish institutional, monitoring, assessment, and information functions. Article 9 is particularly important because it requires Parties to undertake preventive and control measures related to land and forest fires, including regulatory measures, fire-prone-area monitoring, community participation, education, and measures to control open burning and prevent land clearing by fire [3], [14]. Articles 12 to 15 regulate cooperation and emergency response, while Articles 16 and 17 concern technical cooperation, scientific research, and information exchange. Article 25 requires implementation reporting.

The AATHP's principal weakness is not the total absence of substantive duties but the limited machinery for compelling compliance. Article 27 provides that disputes concerning interpretation, application, or compliance are to be settled amicably by consultation or negotiation [3]. It does not create compulsory adjudication, a sanctions procedure, or a direct mechanism through which affected States can obtain compensation. The literature therefore identifies a delegation and enforcement deficit even though the treaty contains specific cooperative and preventive obligations [12]-[15]. This distinction matters: weak enforcement does not erase the legal character of the treaty, but it affects how breaches are identified, pursued, and remedied in practice.

3.2. State Responsibility: Primary Duties, Due Diligence, Attribution, and ARSIWA

State responsibility must be analyzed in two stages. The first stage identifies the primary rule that requires or prohibits particular State conduct. In the haze context, primary obligations may arise from the AATHP, other applicable treaties, and relevant rules of general international law concerning prevention and cooperation. The ILC Articles on Prevention of Transboundary Harm also illuminate the due-diligence logic of prevention, authorization, risk assessment, notification, information exchange, and consultation for activities involving a risk of significant transboundary harm [8]. Due diligence is an obligation of conduct: it requires a State to take reasonably appropriate measures in light of the risk and its capacity, rather than guaranteeing that no transboundary harm will ever occur.

The second stage applies the secondary rules of State responsibility. Article 2 of ARSIWA requires conduct attributable to the State and a breach of an international obligation [7]. ARSIWA therefore does not itself create a primary environmental duty. Nor does a forest or land fire started by a private corporation automatically become conduct of the Indonesian State. Attribution of private conduct requires a recognized basis under the rules of attribution, such as the exercise of governmental authority, State direction or control, or later acknowledgment and adoption in the circumstances contemplated by ARSIWA. In the ordinary case of a private plantation company, the more legally coherent inquiry is whether conduct of State organs - for example, licensing, monitoring, enforcement, emergency response, or cross-border notification - fell below an applicable due-diligence obligation. The omission of a competent State organ is attributable to the State even though the underlying fire was privately caused.

This distinction also clarifies the role of harm and causation. ARSIWA Article 2 does not impose a universal requirement that material damage be proven before any internationally wrongful act can exist; whether injury is an element of breach depends on the content of the primary obligation. However, proof of transboundary harm, source attribution, and a sufficiently established causal connection becomes crucial when an affected State seeks compensation or relies on an obligation framed by reference to significant harm. In haze disputes, meteorological transport, multiple fire sources, peat-fire persistence, concession boundaries, and multiple private actors can make causal proof significantly more difficult than in a single point-source pollution case. Consequently, reliable satellite data, hotspot verification, concession maps, ground investigations, air-mass trajectories, and interoperable regional evidence protocols are legally important, not merely technically useful.

Only after an internationally wrongful act has been established should the consequences under ARSIWA be addressed. The responsible State may be required to cease continuing wrongful conduct and, where appropriate, offer assurances or guarantees of non-repetition; full reparation may take the form of restitution, compensation, and satisfaction as applicable [7]. Reparation should therefore not be treated as an automatic consequence of every transboundary haze episode. A legally defensible claim requires identification of the primary obligation, attributable State conduct or omission, breach, and the injury and causal link relevant to the remedy sought.

3.3. Lessons and Limits of Trail Smelter and Pulp Mills

The Trail Smelter Arbitration remains an important reference for transboundary pollution. The dispute concerned fumes emitted by a smelter in Trail, British Columbia, which caused

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damage across the border in the United States. The tribunal imposed responsibility on Canada in a bilateral arbitral setting after the transboundary injury had been established on a demanding evidentiary record [9]. The case supports the proposition that a State may not permit activities within its territory to cause serious transboundary environmental injury. Its relevance to Southeast Asian haze, however, must not be overstated. Trail Smelter involved a relatively identifiable point source, a bilateral dispute, and a specially constituted arbitral regime. Regional haze can involve dispersed fires, multiple concessions and actors, changing winds, peat combustion, and a multilateral institutional setting without compulsory adjudication.

Pulp Mills on the River Uruguay provides a more contemporary illustration of due diligence, procedural cooperation, and proof. The International Court of Justice held that Uruguay had breached procedural obligations to cooperate and notify under the applicable bilateral statute, while concluding that the evidence did not establish a breach of the substantive environmental obligations alleged by Argentina [10]. The Court's reasoning is relevant to haze governance in two ways. First, preventive environmental duties require active regulatory and monitoring conduct rather than passive reliance on private compliance. Second, even where a procedural breach is established, a claimant seeking to prove substantive transboundary damage must still meet the applicable evidentiary burden. The case therefore cautions against moving directly from the existence of haze to a conclusion of State responsibility without separately proving the legal and factual elements.

3.4. Indonesian National Law and Direct Corporate Accountability

At the domestic level, the legal structure is different because Indonesian law can regulate and sanction private actors directly. Article 28H paragraph (1) of the 1945 Constitution recognizes the right to a good and healthy environment [16]. Law Number 32 of 2009 concerning Environmental Protection and Management, as amended by the Job Creation framework including Law Number 6 of 2023, provides the principal statutory basis for environmental planning, control, approvals, supervision, administrative sanctions, dispute settlement, restoration, and criminal enforcement [17], [18]. Government Regulation Number 22 of 2021 operationalizes environmental approvals, environmental-quality management, damage control, supervision, restoration-related instruments, and administrative sanctions [20]. The current distribution of authority for issuing environmental approvals is further regulated by Minister of Environment/Environmental Control Agency Regulation Number 22 of 2025 [21].

The prohibition on burning must be stated with precision. Article 69 paragraph (1) letter h of Law Number 32 of 2009 prohibits land clearing by burning. Article 69 paragraph (2) requires serious attention to local wisdom, and the statutory explanation limits this exception to traditional practices under specified conditions, including a maximum area of two hectares per household for local varieties and the use of firebreaks [17]. This limited exception should not be generalized into a corporate entitlement to use fire for industrial land clearing. For plantation business actors, Article 56 of Law Number 39 of 2014 expressly prohibits opening or cultivating land by burning and requires fire-control systems, facilities, and infrastructure [19]. The legal treatment of traditional local practices must therefore be distinguished from the obligations imposed on corporate plantation operations.

Corporate accountability also differs from corporate social responsibility (CSR). CSR may support ethical and sustainable business conduct, but compliance with fire-prevention duties, environmental approvals, supervision requirements, restoration obligations, and prohibitions on burning is not voluntary CSR; it is a matter of legal obligation. Indonesian environmental law provides administrative measures against permit or approval violations, civil mechanisms for compensation and environmental restoration, and criminal responsibility where statutory elements are met. Articles 116 to 119 of Law Number 32 of 2009 provide a framework for criminal responsibility where environmental offences are committed by, for, or on behalf of business entities, including consequences for persons who order or lead the offence and additional measures against business entities [17].

Article 88 of Law Number 32 of 2009 is also relevant to civil environmental liability for activities involving hazardous substances, hazardous waste, or serious threats to the environment. The Job Creation amendments altered the wording that had expressly stated that proof of fault was unnecessary, generating substantial doctrinal debate over the contemporary formulation and operation of strict liability [17], [18], [22]. For that reason, this article does not describe Article 88 as an automatic liability rule detached from the current statutory text and judicial interpretation. Rather, it recognizes Article 88 as a special civil-liability provision whose application must be assessed together with the applicable elements, current amendments, evidentiary rules, and jurisprudence.

The PT Kallista Alam litigation illustrates the capacity of domestic civil environmental law to reach corporate conduct associated with land burning and ecological damage. In Decision Number 651 K/Pdt/2015, the Supreme Court rejected PT Kallista Alam's cassation, and the subsequent judicial review in Decision Number 1 PK/Pdt/2017 was also rejected; both decisions are recorded as final [23], [24]. The significance of these decisions for the present analysis is institutional rather than transboundary: they demonstrate that domestic courts can impose consequences on a corporation without first converting the company's conduct into an internationally attributable act of the State. This confirms the need to keep corporate accountability and State responsibility analytically distinct.

3.5. Structured Comparison of International-Regional and Indonesian Law

The comparison below applies identical parameters to both legal layers. This avoids the earlier descriptive approach in which international law and national law were discussed independently without a common analytical framework.

Table 1. Comparative legal framework for transboundary haze pollution control.

Parameter	International / Regional Law	Indonesian National Law
Primary sources	AATHP; applicable treaty duties; relevant general international law; Stockholm/Rio as interpretive soft law.	1945 Constitution; Law 32/2009 as amended; Law 39/2014; PP 22/2021; environmental-approval and sectoral rules.
Legal subjects	Primarily States as treaty parties; private companies are not automatically subjects of inter-State responsibility.	Government bodies, individuals, business actors, and corporations may bear direct statutory duties and liabilities.
Nature of duties	Prevention, monitoring, due diligence, information exchange, consultation, cooperation, assistance, and implementation measures.	Environmental approval, fire prevention, supervision, prohibition of corporate burning, compliance, restoration, and sectoral fire-control duties.
Attribution / liability	ARSIWA requires attributable State conduct plus breach; private corporate conduct is not automatically attributable to the State.	Corporate administrative, civil, and criminal responsibility may arise directly when statutory elements are satisfied.
Monitoring and evidence	AATHP monitoring, assessment, early warning, information exchange, and regional cooperation; cross-border proof remains challenging.	Domestic inspections, concession and approval records, environmental monitoring, investigative evidence, and judicial proof mechanisms.
Enforceme nt	No dedicated coercive sanctions mechanism under AATHP; implementation depends heavily on national measures and diplomacy.	Administrative sanctions, civil litigation and restoration, and criminal enforcement are available under applicable statutes.
Dispute settlement	AATHP Article 27: consultation or negotiation; no compulsory third-party adjudication created by the treaty.	Administrative review and domestic judicial processes, including civil and criminal environmental proceedings.
Remedies	Cessation and reparation under general State-responsibility rules only after an internationally wrongful act is established.	Compensation, restoration, administrative corrective measures, criminal sanctions, and additional corporate measures as legally applicable.
Principal gap	Weak compliance delegation, no compulsory adjudication, and difficulty proving source, breach, and transboundary causation.	Fragmented implementation and the need to connect domestic evidence and enforcement outcomes with regional information and cooperation mechanisms.

3.6. Normative Gaps and the Interface Between the Two Accountability Layers

The structured comparison identifies a gap that is more specific than a general claim that international law is weak and national law is operational. The first gap is an enforcement-interface gap. The AATHP requires national implementation and regional cooperation but does not itself create a coercive regional forum capable of imposing liability on companies or compelling a State to pay compensation. Domestic law can sanction companies, yet the results of domestic licensing, monitoring, investigation, litigation, and restoration are not automatically converted into evidence of an internationally wrongful act. A functional system therefore requires a

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deliberate bridge between domestic enforcement data and regional cooperation.

The second gap is evidentiary. Corporate accountability may be established by evidence focused on a particular concession, operator, fire event, permit obligation, or restoration duty. State responsibility asks a different question: whether a State organ's conduct or omission breached an applicable international obligation and, where relevant to the claim, whether transboundary injury and causation are established. Regional mechanisms should therefore improve common standards for hotspot verification, concession mapping, air-mass trajectory analysis, source apportionment, ground confirmation, and preservation of evidence. Such coordination would strengthen both national cases and inter-State consultation without presuming State responsibility before the legal elements are proven.

The third gap is institutional coordination. AATHP prevention, early warning, assistance, and information exchange should be connected more systematically with national environmental-approval authorities, forestry and plantation regulators, local governments, law-enforcement institutions, and courts. This does not require collapsing national sovereignty into a supranational ASEAN enforcement system. It requires predictable protocols through which domestic compliance information and fire-control failures can be shared, verified, and acted upon quickly when a transboundary risk emerges.

The resulting two-layer framework produces a more precise legal conclusion. A corporation may be directly liable under Indonesian law without Indonesia necessarily incurring international responsibility. Conversely, a State may breach an international procedural or due-diligence obligation through the conduct of its organs even when attribution of the private company's underlying conduct is unavailable. The layers are legally distinct but operationally connected through prevention, supervision, evidence, information exchange, and enforcement. This connection is the central contribution of the study.

4. CONCLUSION

First, international responsibility for transboundary haze should not be inferred automatically from the existence of a forest or land fire within Indonesian territory. The correct sequence is to identify a primary international obligation, determine whether conduct of the State - including an attributable omission by a competent organ - is inconsistent with that obligation, and only then apply ARSIWA to the consequences of the breach. Due diligence is a conduct-based standard requiring reasonable preventive, supervisory, information, consultation, cooperation, and enforcement measures appropriate to the risk. Private corporate burning is not, by itself, automatically attributable to the State.

Second, the AATHP and Indonesian law are complementary but structurally different. The AATHP is a binding regional treaty containing meaningful prevention, monitoring, information, cooperation, and implementation duties. Its weakness lies primarily in enforcement and delegation: Article 27 confines treaty disputes to consultation or negotiation and provides no dedicated sanctions or compulsory adjudication mechanism. Indonesian law, by contrast, can regulate corporations directly through environmental approvals, supervision, the prohibition of burning by plantation business actors, administrative measures, civil remedies and restoration, and criminal responsibility where statutory elements are satisfied.

Third, the principal legal-policy gap lies at the interface between these systems. Effective control requires reliable source attribution and causal evidence, systematic exchange of domestic compliance and enforcement data, and institutional coordination that allows regional early-warning and cooperation mechanisms to trigger timely national action. The study's two-layer accountability framework therefore avoids conflating State responsibility with corporate liability while showing precisely where both layers must interact to make transboundary haze governance more effective.

5. RECOMMENDATIONS AND POLICY IMPLICATIONS

Indonesia should strengthen an integrated compliance protocol for high-risk forest, peatland, and plantation areas by linking environmental approvals, concession information, fire-prevention obligations, hotspot monitoring, inspections, administrative enforcement, civil restoration, and criminal investigations. Corporate operators should be required to maintain verifiable fire-control systems and auditable prevention records, particularly where Law Number 39 of 2014 prohibits plantation business actors from opening or cultivating land by burning [19]. The limited local-wisdom exception under environmental law should be applied only within its statutory conditions and should not be used to justify industrial-scale burning [17].

At the ASEAN level, Member States should develop common evidentiary and information-sharing standards for hotspot verification, source attribution, concession mapping, air-mass trajectories, and cross-border impact assessment. The ASEAN mechanisms established under the AATHP should be used to create a rapid information protocol through which an affected State can request verified data and the source State can document preventive and enforcement measures taken. This would give practical content to the AATHP's duties of monitoring, information exchange, consultation, and cooperation [3].

The Conference of the Parties and ASEAN Secretariat should also strengthen compliance follow-up through transparent implementation reporting, peer review of preventive measures, and publication of non-confidential progress indicators. Such mechanisms would not replace Article 27 but could reduce the gap created by the absence of compulsory adjudication. National enforcement outcomes, including corporate sanctions and restoration orders, should be reflected in AATHP implementation reports so that regional cooperation is informed by actual domestic compliance results.

Finally, policymakers should preserve the conceptual distinction between State responsibility and corporate accountability. Legislative reform should focus on clear corporate fire-prevention duties, coherent environmental-restoration mechanisms, and consistent evidentiary standards, while regional legal development should focus on due diligence, verifiable information exchange, and cooperation. Reparations between States should be discussed only where the underlying internationally wrongful act and the injury relevant to the claimed remedy have been legally established.

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