

REQUEST FOR AN ADVISORY OPINION

**OBLIGATIONS OF STATES
IN RESPECT OF CLIMATE CHANGE**

**WRITTEN STATEMENT
OF THE RUSSIAN FEDERATION**

21 MARCH 2024

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Introduction

On 29 March 2023 the General Assembly adopted resolution 77/276 entitled «Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change». As it has been made by the General Assembly, a body authorized to request such an opinion on any legal question¹, there is no doubt that the Court has jurisdiction to render an advisory opinion on this matter.

In this resolution the General Assembly decided to request the International Court of Justice to render an advisory opinion pursuant to Article 65 of the Statute of the Court, on the following questions:

«Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or

¹ Article 96, paragraph 1, of the UN Charter.

specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?»

The resolution was introduced by a core group of States that includes Angola, Antigua and Barbuda, Bangladesh, Costa Rica, Germany, Liechtenstein, the Federated States of Micronesia, Morocco, Mozambique, New Zealand, Portugal, Romania, Samoa, Sierra Leone, Singapore, Uganda, Vanuatu and Viet Nam. The resolution was co-sponsored by 134 States and adopted by consensus².

The Russian Federation has supported this resolution as we believe that combating negative impacts of climate change, which is a global challenge facing humanity, requires clear international legal norms on obligations of States in this field.

Advisory opinions of the International Court of Justice – the principal judicial organ of the United Nations – are of significant importance and may have an impact on the development of international law. We see the role of the Court in providing clarification on existing international legal norms, which would assist United Nations Member States in taking climate action.

The Russian Federation is a Party to the United Nations Framework Convention on Climate Change, the Kyoto Protocol thereto, the Paris Agreement, and is an active participant in the «climate» process.

Hereby the Russian Federation is submitting its preliminary general considerations on the matters relevant for the advisory proceedings on the obligations of States in respect of climate change.

² The General Assembly official records A/77/PV.64.

1. What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?

Obligations of States under international law to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases are enshrined in the specialized treaties dedicated to climate change – the United Nations Framework Convention on Climate Change of 9 May 1992 (hereinafter – the UNFCCC), the Kyoto Protocol to the UNFCCC of 11 December 1997, and the Paris Agreement of 12 December 2015 (hereinafter – the Paris Agreement). These relevant treaties provide a solid basis for large-scale international cooperation in this area and play a primary role in the management of climate change and its adverse effects related to greenhouse gas emissions. It is important to note that those treaties are binding only for their respective States Parties and cannot create obligations for third States.

In this context, the advisory opinion of the International Court of Justice (hereinafter – the Court) should be based on applicable norms of international law. It cannot change them or create new international legal norms in this regard, nor should it undermine or put pressure on the ongoing negotiation process under the Conference of the Parties to the UNFCCC.

1.1 United Nations Framework Convention on Climate Change, Paris Agreement, the principle of prevention of significant harm to the environment

UNFCCC

Among the fundamental principles of the UNFCCC is the principle of "common but differentiated responsibilities." It implies that since "the largest share of historical and current global emissions of greenhouse gases has

originated in developed countries,"³ the latter "should take the lead in combating climate change and the adverse effects thereof" (Article 3 (1)). This principle is embodied, for instance, in financial commitments by developed States to assist developing countries in combating climate change (Article 4 (3) and (4)).

Moreover, the UNFCCC sets out the principle of "respective capabilities,"⁴ which implies that "policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party" (Article 3 (4)). In addition, "the specific needs and special circumstances of developing country Parties" as well as of those Parties that, under the UNFCCC, "would have to bear a disproportionate or abnormal burden <...> should be given full consideration" (Article 3 (2)).

Therefore, in implementing climate change policies and measures, each Party has the prerogative to determine its national goals and ways to achieve them, including taking into account its other sustainable development goals,⁵ in particular poverty eradication.

Paris Agreement

Article 2 (1) of the Paris Agreement reads as follows: "This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty..." This provision shows that the Paris Agreement is an implementing treaty to the UNFCCC, as it is intended to enhance its implementation.

Article 2 (1) (a) of the Paris Agreement (the so-called "long-term global temperature goal")⁶ requires from Parties "holding the increase in the global

³ The third preambular paragraph of the UNFCCC.

⁴ This and the above-mentioned principles are often combined into one – "the principle of common but differentiated responsibilities and respective capabilities."

⁵ Art. 3 (4) of the UNFCCC.

⁶ The wording contained in Article 4 (1) of the Paris Agreement.

average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels."

Since it is not possible for any single State alone to achieve the goal of limiting global warming within prescribed limits, the temperature goal clause can only be an obligation of conduct (rather than an obligation of result): for its fulfilment by a Party, it is required from that Party to make efforts to limit the temperature increase to well below 2°C above pre-industrial levels. The "well below" is a deliberate choice of language. The respective clause of the Agreement does not specify how much lower the resulting increase shall be. This is another indication that the Parties intended to establish an obligation of conduct.

Therefore, making efforts to hold the increase in global average temperature between 1.5°C and 2°C is what is required from States to fulfil their obligations under Article 2 (1) (a) of the Paris Agreement.

The "temperature goal" provision should be read in conjunction with the obligations set out in Articles (3) and (4) of the Paris Agreement.

Through nationally determined contributions to the global response to climate change, States are to undertake and communicate ambitious efforts (as required by Article 3) with the view to achieving the purpose of the Agreement (as set out in Article 2).

One of the key commitments contained in the Paris Agreement is the obligation to take domestic measures to achieve the objectives of nationally determined contributions (NDCs) (Article 4 (2)). This obligation exists in the context of several other provisions of the Paris Agreement, so its content is partly dependent on them. They include: (1) Article 2 (1) (a) – "temperature goal"; (2) Article 3 – NDC; (3) Article 4 (1) – global peaking of greenhouse gas emissions and a balance between anthropogenic emissions and removals (carbon neutrality); and (4) Article 4 (3) – "progression beyond the Party's then

current nationally determined contribution” in light of “highest possible ambition.”

The Paris Agreement does not establish direct responsibility of every Party for the achievement of the objectives established under the NDCs, but provides monitoring mechanisms with regard to the implementation of national objectives, as well as for the assessment of collective progress in achieving common objectives.

Determining the goals and ways to achieve its NDC is the prerogative of each individual State. Establishing any universal criteria for determining whether an NDC is sufficiently ambitious would be contrary to this principle. The NDCs should be developed taking into account the common “temperature goal,” but guided by the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances⁷ and appropriate for the specific conditions of each Party.⁸

Principle of the prevention of significant harm to the environment

The above discussion concerned treaty-based obligations, only binding for States Parties to the respective treaties. As opposed to those, the principle of the prevention of significant harm to the environment⁹ is a fundamental principle of international environmental law and has become a customary norm. This principle and the norms of specialized climate treaties correlate as *lex generalis* and *lex specialis*. They do not contradict each other. Therefore, treaty norms are not an exception to this general principle and do not cancel its effect. Thus, the principle of the prevention of significant harm to the environment is applied subsidiarily to the norms of climate treaties (UNFCCC, the Kyoto Protocol, the Paris Agreement).

⁷ Fourth preambular paragraph of the Paris Agreement.

⁸ Art. 3 (4) of the UNFCCC.

⁹ Transboundary harm is meant.

1.2 Human Rights

According to one opinion, the implementation of States' human rights obligations (e.g., the right to life, to an adequate standard of living, to be free from hunger, to the enjoyment of the highest attainable standard of physical and mental health) may in certain cases require measures to combat climate change. This logic has led to a number of judicial proceedings and decisions in various jurisdictions, including international ones. Yet, guided by best intentions, this approach is erroneous as a matter of law and policy.

First, human rights law is based on the idea of individual human rights being opposable to the government of the respective State. A violation of human rights entails State responsibility vis-à-vis the individual concerned. This logic of “individual vs government” is not applicable in the climate change context. The climate change problem is not to be seen as an arena of conflict of interests between the State and the individual. Rather, it is an area where solidarity between governments and citizens nationally, as indeed between States internationally, should be the guiding principle of policy and legal regulation.

Second, human rights obligations, both customary and treaty-based, operate primarily within the territory of each respective State, or otherwise within that State's jurisdiction. Thus, in accordance with Article 2 (1) of the International Covenant on Civil and Political Rights (ICCPR), “each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. This provision establishes the territorial scope of the ICCPR: a State assumes obligations to ensure the rights of individuals within its territory and subject to its jurisdiction.

Besides well known limited exceptions, jurisdiction of a State is strictly territorial. However, even taking into account the exceptions, the scope of its obligations to enforce the provisions of human rights treaties is linked to a particular territory or particular persons.

In contrast, a fundamental principle of the UNFCCC is the protection of the climate system for the benefit of present and future generations of humankind (Article 3 (1)). Consequently, the States' obligations to protect the climate system from anthropogenic greenhouse gas emissions, also referred to as mitigation obligations, are global in nature: they exist for the benefit of all humankind.

Moreover, this includes not only those living today, but also future generations (the latter even more so). Meanwhile, human rights obligations are sometimes described as obligations that should be fulfilled "here and now". A State cannot, in principle, guarantee the rights of individuals outside its jurisdiction, nor can it guarantee the rights of individuals not yet born. Indeed, no international human rights treaty requires States to do so.

This is where the fundamental difference between climate change mitigation obligations and human rights obligations lies: the former are of a global nature and are largely aimed at the future, the latter are territorial in nature and focus on the present.

As a matter of human rights law, a State might in theory be required to take climate change mitigation measures in order to fulfil its human rights obligations if such measures contribute to the implementation of the rights of individuals currently under the jurisdiction of that State. However, in practice, any tangible contribution to the implementation of human rights will be felt only many years later. Furthermore, the beneficiary of such measures will be humanity as a whole, while the distribution of benefits (in terms of quality of human rights enjoyment) among individuals living in different States will be uneven.

Moreover, the adoption of climate change mitigation measures may, on the contrary, have a negative impact on the realization of human rights of those living today in a particular State, since (1) these measures require significant resources (including financial resources) that a State could instead channel towards other measures, programs and projects that could have a much more rapid, immediate and tangible positive contribution to the implementation of human rights in that State; (2) these measures per se may have negative effects on human rights.

For these reasons, it is highly doubtful that human rights obligations of a State might imply adoption of climate change mitigation measures. Mitigation measures are unlikely to contribute to the realization of the rights of individuals currently living in a particular State because of their delayed nature (the current generation may not feel their effects, especially the elderly), the uneven distribution of benefits across the globe (there may be a situation where mitigation measures applied by a State will not benefit its inhabitants at all), and their high cost (the resources required could be used more efficiently to ensure human rights).

That said, in addition to mitigation measures, the UNFCCC and the Paris Agreement provide for obligations of States to take measures of adaptation to climate change (Article 4 (1) (e) of the UNFCCC; Article 7 of the Paris Agreement). Unlike mitigation measures, climate change adaptation measures can contribute to the realization of human rights "here and now" because they have a direct impact (in the short or medium term) on a specific group of individuals currently living under the jurisdiction of a particular State (the entire population of a State, the inhabitants of a region or a social group).

Therefore, the implementation by States of their human rights obligations may require that they apply climate change adaptation measures.

1.3 United Nations Convention on the Law of the Sea 1982

The Russian Federation as a major maritime power attaches great importance to the issue of proper ocean governance. Russia is Party to the 1982 Convention. The 1982 Convention sets out the comprehensive legal framework within which the activities in the oceans are carried out. Many of the provisions of the 1982 Convention are considered as reflecting customary international law.

As for the issue of climate change the 1982 Convention does not contain any provisions that directly refer to this particular issue.

Part XII of the 1982 Convention is titled “Protection and preservation of the marine environment”. Its Article 192 stipulates the general obligation “to protect and preserve the marine environment”. It is formulated in a rather abstract way that potentially allows including in its scope the infliction of any harm to the marine environment, *inter alia*, through negative effects of climate change.

Article 194 of the 1982 Convention stipulates that the States shall take “all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source”. Article 194 (3) (a) – (d) indicates several possible sources of pollution: the release of toxic, harmful or noxious substances from land-based sources, from or through the atmosphere or by dumping; pollution from vessels; pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil; pollution from other installations and devices operating in the marine environment. Anthropogenic emissions of greenhouse gases are not mentioned in this list.

The 1982 Convention does not specify the obligations stipulated by Articles 192 and 194 with respect to climate change impacts.

At the same time, the issue of climate change is the subject of relevant universal international treaties such as the UNFCCC, the Kyoto Protocol, and

the Paris Agreement. The Conference of the Parties to the UNFCCC is a specialized global platform for discussing the issues of climate change. Regarding the prevention of climate change, the Parties to the UNFCCC and the Paris Agreement speak primarily about reducing the emissions of greenhouse gases.

As it is the UNFCCC treaties that specifically address climate change, the matters of protection of marine environment in the context of climate change (in particular, “from anthropogenic emissions of greenhouse gases”) should be considered within this specialized treaty regime. Their examination within the framework of the 1982 Convention may lead to duplication of work of specialized platforms, interference with the mandate of the UNFCCC and the Paris Agreement and influence the fulfilment by the Parties to these treaties of their respective obligations thereunder.

It can also be assumed that the States can comply with their obligations under Part XII of the 1982 Convention by implementing the measures required by the UNFCCC and the Paris Agreement, but not vice versa.

International climate change law is the foundation and has primacy in dealing with climate change, whereas the 1982 Convention contains general obligation to protect and preserve marine environment. The 1982 Convention can apply in this case to the extent that its provisions do not contradict those of the UNFCCC regime, and shall not impose any obligations relating to the reduction of greenhouse gas emissions.

On this basis, the position of the Russian Federation is that combating the negative effects of climate change should not be seen as falling within the scope of the 1982 Convention States Parties’ obligations related to the prevention, reduction and control of pollution of the marine environment. Adverse impacts of climate change and pollution of the marine environment are separate issues that are addressed within the framework of different international legal

instruments¹⁰. According to the decisions adopted by the Conference of the Parties, this is an independent task deriving from the objectives set by the UNFCCC and the Paris Agreement and is not viewed as combating environmental pollution¹¹. Consequently, the negative effects of climate change should not influence the content and scope of the States' obligations related to the prevention, reduction and control of pollution of the marine environment under the 1982 Convention.

As for the general obligation to protect and preserve the marine environment under Article 192 of the 1982 Convention, first of all, it is important to consider the context provided by other relevant provisions in Part XII of the 1982 Convention. It is crucial to take into account the UNFCCC regime as part of «any relevant rules of international law applicable in the relations between the parties».

The provisions of Article 197 are also relevant in interpreting and implementing the general obligation to protect and preserve the marine environment. It stipulates that "States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features".

The UNFCCC platform may be regarded as an example of such global cooperation of States because the solution of the tasks falling within its

¹⁰ The UNFCCC, the Paris Agreement and the Kyoto Protocol address the impacts of climate change. Such treaties as, for example, the International Convention for the Prevention of Pollution from Ships (1973) (MARPOL), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972), the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972, as well as a number of regional treaties (for example, the Convention on the Protection of the Black Sea against Pollution (1992), the Convention on the Protection of the Marine Environment of the Baltic Sea Area (1992) (the Helsinki Convention) etc.), address the pollution of marine environment.

¹¹ See, for example, Decision 1/CP.27, para. 14-19

competence also promotes protection and preservation of the marine environment in relation to climate change.

Thus, by cooperating within the UNFCCC, the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO)¹², the States Parties to the 1982 Convention fulfil their obligation under Article 197.

Besides, by cooperating and abiding by the provisions of relevant treaties (UNFCCC, the Paris Agreement), implementing the decisions of competent bodies of these treaties (the Conference of the Parties to the UNFCCC), as well as the decisions of the organizations dealing with the regulation of greenhouse gas emissions from various sources (ICAO, IMO), the States Parties to the 1982 Convention simultaneously fulfil the general obligation under Article 192 in relation to the impacts of climate change.

This is what is implied by the obligation of the States Parties to the 1982 Convention to protect and preserve the marine environment in relation to negative impacts of climate change – international cooperation, both directly, including on specialized platforms, and through competent international organizations in accordance with Article 197 of the 1982 Convention.

2. What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

– States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change;

– Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

¹² The reduction of greenhouse gas emissions from maritime navigation falls within its competence.

It appears that legal consequences referred to in the question posed can arise only in the event of a breach by a State of its international legal obligations, which constitutes grounds for state responsibility. The specialized treaties of the UNFCCC system do not establish special norms on state responsibility. Consequently, in case of a breach by a State of its obligations under these treaties, the norms of general international law on state responsibility shall apply.

The said norms are to be applied in the case of a breach of climate-related obligations in the same way as they apply to a breach of international legal obligations in any other area.

International legal norms on responsibility make no distinction between States and shall apply to all of them in the same way, regardless of the category a State belongs to (developed, developing, small island, etc.).

A State is responsible only for the breach of obligations that are in force for it at the moment. Hence, any legal consequences arising from the breach of climate-related obligations in connection with harm caused to the climate system can only be invoked from the moment of entry into force for a State of the relevant UNFCCC system treaties.

When it comes to the customary legal obligation to prevent significant harm to the environment, it is necessary to bear in mind that mankind learnt about the impact of anthropogenic emissions of greenhouse gases on the climate with a sufficient degree of certainty only in the 1990s.¹³ Consequently, in as much as greenhouse gas emissions are covered by that obligation, no State may be held responsible for such emissions produced in the preceding period.

However, when discussing responsibility, it is important to take account of the difficulties in establishing causality in the context of causing harm to the climate system and other parts of the environment through greenhouse gas emissions.

¹³ The first reports of the Intergovernmental Panel on Climate Change date back to 1990.

First, virtually all States are now emitters of greenhouse gases, and it is impossible to identify, with any legally meaningful degree of precision, the role of each State in the global climate change process which, besides, is driven not only by anthropogenic but also by natural factors.

Second, climate change is an indirect process. Greenhouse gas emissions do not have a direct negative impact on humans and ecosystems at the location where they are emitted.¹⁴ The effect of emissions is "spread" all over the planet. As a result, certain processes in the atmosphere take place, which in turn lead to negative consequences (droughts, floods, etc.) that affect (a) particular State(s). It is impossible to identify which sources of emissions have ultimately led to which consequences in a particular State.

Third, climate change is a global process that is driven by the actions of the entire global community, rather than just a few countries, and the mitigation of its consequences also requires a global response through reduction of greenhouse gas emissions by all States. This approach is enshrined in the treaties of the UNFCCC system.¹⁵ All States cause some degree of harm to the climate system and other parts of the environment through greenhouse gas emissions and, at the same time, suffer from climate change impacts.

In other words, from the perspective of the international legal rules on international responsibility, in every particular situation of harm caused by climate change it is virtually impossible to identify the responsible State, the exact internationally wrongful act that has led to the negative consequences and sometimes even the injured State.

In addition, state responsibility in the context of causing harm may only arise vis-à-vis affected States and currently living individuals, rather than "future generations". First, the latter cannot act as subjects of law in principle. Second, it is impossible to establish the fact that harm has been caused to

¹⁴ Greenhouse gases as a global environmental resource. Reference Manual. Moscow, 2004. P. 6.

¹⁵ For example, the temperature goal of the Paris Agreement (Art. 2 (1) (a)) can only be achieved through a global effort.

individuals who have not yet been born: the harm has simply not yet occurred, and it is impossible to predict it with required accuracy.

For these reasons, one is to conclude that, even if in theory international law of state responsibility might be applicable to climate-related violations, its application would be highly unpractical. It is suggested that developing inter-State cooperation, including within mechanisms established by the relevant treaties, is incomparably more expedient as a means of achieving the goals of the international community regarding climate change.

One further element that needs to be addressed in the context of responsibility is the principle of "common but differentiated responsibilities and respective capabilities" established by the UNFCCC and the Paris Agreement.¹⁶ It is understood that this principle is not a matter of state responsibility for wrongful acts, but rather reflects the varied scope of States' (developed and developing ones) obligations in the area of combating climate change.¹⁷ Developed States, for example, undertake to provide financial and technical support to developing countries to combat climate change,¹⁸ and developed States have higher requirements for greenhouse gas emission reduction targets¹⁹ and reporting on actions taken in this regard.²⁰

Furthermore, the principle of "common but differentiated responsibilities", being unrelated to the law of state responsibility, does not mean that developed States' responsibility for non-compliance for their treaty obligations should be regulated in a manner different from responsibility of developing States.

¹⁶ Art. 3 (1); Art. 4 (1) of the UNFCCC. Fourth paragraph of the preamble; Art. 2 (2); Art. 4, paras. 3 and 19, of the Paris Agreement ("the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances").

¹⁷ Article 3 (1) of the UNFCCC: "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof."

¹⁸ Art. 4, paras. 3-5, of the UNFCCC; Art 9-11 of the Paris Agreement.

¹⁹ Art. 4 (4) of the Paris Agreement.

²⁰ Art. 13 of the Paris Agreement.

In the context of this principle, it should be noted that the current realities are moving towards greater "commonality" rather than differentiation of responsibilities and capabilities, since developing countries are getting closer and closer to developed countries in terms of economic performance and greenhouse gas emissions, catching up with and even outstripping the latter. On the other hand, there is an active relocation of manufacturing from developed to developing States, with companies from developed States that relocate their plants and factories continuing to make profits and developing States facing an additional burden in the form of increasing environmental pollution and greenhouse gas emissions. It is necessary to take these factors into account in further implementation of the UNFCCC instruments.

Conclusions

The climate-related obligations of States are the subject of specialized treaties of the UNFCCC system. They are not part of customary international law.

The Court, when giving its advisory opinion, should not formulate new norms of international law that have not been developed by States. The Court's advisory opinion should not imply new obligations for States, nor should it lead to a review of decisions of the Conference of the Parties to the UNFCCC. Moreover, Court's findings should not undermine or put pressure on the ongoing negotiation process within the framework of the UNFCCC Conference of the Parties.

The customary principle of prevention of significant harm to the environment should be applied subsidiarily to the provisions of climate treaties.

The implementation by States of their human rights obligations may require them to take measures on adaptation to climate change. Climate change mitigation measures, by contrast, do not contribute to the realization of human rights of persons currently under the jurisdiction of States and may even hinder

them. Therefore, human rights law does not require, and should not require, mitigation measures.

There are no convincing arguments in favour of the opinion that the 1982 United Nations Convention on the Law of the Sea provides for obligations in relation to climate change, or that combating the adverse impacts of climate change falls within its scope. Even if the Court comes to the opposite conclusion, the treaties of the UNFCCC system should be considered as the legal basis for regulation and *lex specialis* in the field of combating climate change. When addressing environmental problems caused by climate change, States should cooperate primarily within the framework of UNFCCC system, which would be consistent with Article 197 of the 1982 Convention.

The legal consequences arising from the obligations of States with regard to climate change in the event of a violation by a State of its obligations in this area consist in the application of the norms of general international law on international responsibility. Moreover, the mentioned norms should apply to all States equally, regardless of which category they belong to.

A State may be held responsible for violating its treaty obligations (UNFCCC, the Kyoto Protocol, the Paris Agreement) from the moment the relevant treaty comes into force for it. As for the customary legal obligation to prevent significant harm to the environment, a State can bear responsibility for harm caused to the climate system by greenhouse gas emissions only after the impact of anthropogenic greenhouse gas emissions on the climate system has been reliably established by global science.

In the context of harm to the climate system, the many difficulties that arise in establishing cause-and-effect relationships should be kept in mind. It is almost impossible to determine which specific State's (or States') actions or omissions have caused harm to the climate system or establish a cause-and-effect relationship between actions/omissions and harm.

International responsibility is only legally possible vis-à-vis the affected States and currently living persons, but not vis-à-vis future generations, who, in principle, cannot act as subjects of law before their birth and to whom harm has not yet been caused.

The principle of "common but differentiated responsibilities and respective capabilities" established by the UNFCCC and the Paris Agreement does not refer to international responsibility for wrongful acts, but rather reflects the different scope of obligations of States (developed and developing) in combating climate change. This principle does not mean that developed States should bear responsibility for failure to comply with their treaty obligations in a different manner, or with a different threshold, compared to developing States.

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