
Question put by Judge Cleveland

“During these proceedings, a number of participants have referred to the production of fossil fuels in the context of climate change, including with respect to subsidies. In your view, what are the specific obligations under international law of States within whose jurisdiction fossil fuels are produced to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, if any?”

India's Response:

With respect to question raised above, India’s understanding of the general international law is as follows:

1. States have an inalienable right to utilize natural resources, including fossil fuels, within their territory/jurisdiction, for their economic and social development, with the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction. Examples of some of such references to this inalienable right in the United Nations Charter, UN Declarations, and UN General Assembly Resolutions are in Annex-I.

As contended in India’s written submission to the International Court of Justice (ICJ) as well as oral statement before the Court, climate change and its effects is a larger developmental issue, and cannot be conflated as a pure transboundary pollution or transboundary harm.

2. It should also be noted that, throughout history, while the production of fossil fuels may have occurred in a particular territory, they have been utilized around the world. This is true even today, and applicable in case of most natural resources, not just fossil fuels. Therefore, the question on the obligations of States in this context should not be limited to the jurisdictions where fossil fuels are produced.

3. States have no specific obligations under international law to reduce or eliminate fossil fuel subsidies. Fossil fuel subsidies are often necessitated by the national circumstances in the developing States in their efforts to alleviate poverty and pursue sustainable development and domestic energy security. Subsidizing cooking fuel subsidies to poor households, for example, are unavoidable in some countries for fighting hunger and poverty, while also actually reducing greenhouse gases (GHG) emissions from domestic cooking as compared to the use of traditional domestic cooking fuels, like wood, biomass, charcoal, etc.

In due recognition of such necessities, the decisions adopted at the recent UN Climate Change conferences (including COP 26, COP27, and COP28), instead of putting any specific obligations on the States, simply *“Calls on Parties to contribute to the global efforts to transition towards low-emission energy systems, **in a nationally determined manner**, taking into account the Paris Agreement..... including accelerating efforts towards.....phase-out of inefficient fossil fuel subsidies, **while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition”***.

Annex-I:

Select references to inalienable right to utilize natural resources in the UN Charter, UN Declarations, and the UNGA Resolutions

- i) Principle 21 of the Declaration of the United Nations Conference on Human Environment, 1972 and Principle 2 of the Rio Declaration on Environment and Development, 1992 and preambular paragraph 8 of the United Nation Framework Convention on Climate Change recognises that *“States have, in accordance with the Charter of the United Nations and the principles of international law , the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction”*.
- ii) United Nation’s General Assembly Resolution 1803 of 14 December 1962 titled *“Permanent Sovereignty over Natural Resources”* in preambular para 5 recognises *“...the inalienable right of all states freely to dispose off their natural wealth and resources in accordance with their national interest, and on respect for the economic independence of states”*.
- iii) The UN General Assembly Resolution 41/128 of 4 December 1986 provides for a Declaration on the Right to Development, wherein Article 1, paragraph 2 of this Declaration provides that *“the human right to development also implies the full realisation of the right of peoples to self determination, which includes, subject to the relevant provisions of both International Instruments on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources”*.
