

Question put by the 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 which whose jurisdiction fossil fuels are produced to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, if any?”

Response: A number of States have produced and subsidized fossil fuels since the 1960s and such production has created negative impacts on climate system. Production of Fossil fuels today has resulted in over seventy-five per cent of global greenhouse gas emissions and nearly ninety per cent of all carbon dioxide emissions. ¹ According to the studies of Intergovernmental Panel on Climate Change (IPCC) and the World Meteorological Organization (WMO), a significant proportion of worldwide greenhouse gas emissions, accounting for over sixty percent, may be linked to the industrial activity of a select group of nations. Massive production of greenhouse gas leads to global warming and climate change.

Today, global temperature is rising faster than at any point in recorded history. Warmer temperatures change the weather patterns and disrupting the ecosystem causing significant harms. The effects of climate change have unequal effects on countries around the world. Developing countries, including Myanmar, are more vulnerable to the effects of climate change than wealthier and resourceful countries. Rural population of Myanmar, that rely heavily on climate-vulnerable business sectors such as agriculture, fisheries, and forestry sectors for their livelihoods, bear the full forces of the effects of climate change.

Therefore, the production and subsidizing the production of fossil fuels undeniable have transboundary effects. Production of fossil fuels in one state causes

¹ [Causes and Effects of Climate Change | United Nations](#)

dangerous interference with the climate system and negative impacts on the environment causing significant harm to the environment of another country or to areas beyond its national control.

This conduct of states, production and subsidizing the production of fossil fuels should be interpreted as an outright breach of international obligation imposed by general international law, international human rights law and relevant treaties concerning the protection of climate change and environment. The wrongful characteristics of these conducts triggers the law of state responsibility.

According to the Draft Articles on the responsibilities of states for internationally wrongful Act (2001) of the International Law Commission, the wrongful conduct of the State which constitutes an international obligation should be ceased and offered the appropriate assurances and guaranteed the non-repetition of the conduct.² The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act for environmental damage.³

The principle of cooperation should be applied here, particularly in order to minimize the risk of significant transboundary harm.⁴ The standard of due-diligence, the principle of common but differentiated responsibilities, the precautionary principle should be taken into account in considering/ defining the specific obligations under international law of States within which whose jurisdiction fossil fuels are produced to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.

² Draft articles on the Responsibilities of States for Internationally Wrongful Act (2001), Art 30.

³ Ibid, Art 31.

⁴ Draft articles on Prevention of Transboundary Harm from Hazardous Activities, 2001, Art 4.

Question put by Judge Tladi

In their written and oral pleadings, participants have generally engaged in an interpretation of the various paragraph of Article 4 of the Paris Agreement. Many participants have, on the basis of this interpretation, come to the conclusion that, to the extent that Article 4 imposed any obligations in respect of Nationally Determined Contributions, these are procedural obligations. Participants coming to this conclusion have, in general, relied on the ordinary meaning of the words, context and sometimes some elements in Article 31 (3) of the Vienna Convention on the Law of Treaties. I would like to know from the participants whether, according to them, “the object and purpose” of the Paris Agreement, the object and purpose of the climate change treaty framework in general, has any effect on this interpretation and if so, what effect does it have?”

Response: Under the Article 31 (3) of the Vienna Convention on the Law of Treaties, the interpretation of a treaty shall be done in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.⁵ Within the context of interpretation, the object and purpose of the UNFCCC and its subsidiary treaties is to stabilize greenhouse gas concentrations in the atmosphere to prevent dangerous human interference with the climate system.

The Paris Agreement’s object and purpose is integrally intertwined to the UNFCCC’s unmet objective aiming to reduce the greenhouse gas emission and limit global warming. The aim and objective of the agreement reflects in the article – 2 of the Paris Agreement providing to maintain the increase of global temperature, to increase the climate resilience and reduce greenhouse gas emission development, to provide the financial flow towards low greenhouse gas emissions in accordance with the principle of common but differentiated responsibilities and respective capacities.

⁵ Vienna Convention on the Law of Treaties, opened for signature 23 Mar 1963 1155 UNTS 331, (entered into force 27 Jan 1980), art 31 (1).

Article 4 of the Paris Agreement sets procedural (e.g., preparing and communicating NDCs), these obligations are inseparable from substantive obligations arising from the climate regime and other sources of international law. In their NDCs, states communicate actions to reduce their greenhouse gas emissions to reach the goal of the Paris Agreement.

Although the ultimate objective of the UNFCCC and the goals of responsible countries to reduce greenhouse gas emissions were not achieved, the effect of climate change treaties as soft law instruments increase the efficiency of public action to fight against climate change by comprising a key component of public policy of state parties.

Responsible industrialized nations, as historical emitters and major energy consumers, are responsible and accountable to have an obligation to support developing countries with the finance, technology transfer and capacity-building to contribute maximally to global climate action, including the support needed to fully implement conditional NDCs.

However, the object and purpose of the UNFCCC, Paris Agreement and article 4 of the Paris Agreement shall be interpreted, science-based action and international cooperation to correct the ongoing breach and prevent further harm.

Question put by Judge Aurescu

“Some participants have argued, during the written and/or oral stages of the proceedings, that there exists the right to clean, healthy and sustainable environment in international law. Could you please develop what is, in your view, the legal content of this right and its relation with other human rights which consider relevant for this advisory opinion?”

Response: The right to clean, healthy and sustainable environment in international law is widely recognized in the context of general and customary international law and is intrinsically linked to human rights which are expressly provided in the International Covenant to Economic, Social and Cultural Rights (ICESCR) such as the right to health covering the right of everyone to an adequate standard of living⁶ covering the right to the highest attainable standard of physical and mental health, and the right to health care, the right to an adequate standard of living⁷ including the right to adequate food, clothing, and housing and the right to culture⁸ covering the right to take part in cultural life, and the right to benefit from scientific progress.

The above-mentioned rights mentioned in the ICESCR and the right to clean, healthy and sustainable environment are interdependent, inalienable and mutually reinforcing. The sustainable environment cannot be achieved if human rights are being denied. The situation of essential human rights, the economic, social and cultural rights as well as political and civil rights in the Sustainable Development Goals recognizes human rights are universal and essential for the human beings and maintaining ecosystem for present and future generations.

In 1968, the General Assembly expressed its concern “about the consequent effects [of environmental degradation] on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as

⁶ 1966 International Covenant to Economic, Social and Cultural Rights, opened for signature 16 Dec 1966, 993 UNTS 3 (entered into force 03 Jan 1976), art 12.

⁷ Ibid, art 11.

⁸ Ibid, art 15.

well as developed countries.”⁹ Numerous UN bodies, Special Rapporteurs, and regional agreements (such as the Escazú Agreement) reaffirm this right. The UNGA’s recognition of the right in Resolution 76/300 (2022) and the UN Human Rights Council’s Resolution 48/13 confirm its acceptance as a universal human right. The interrelatedness of human rights and environment is mentioned in the separate opinion of Judge Weeramantry in the *Gabčíkovo-Nagymaros* judgment. He opined that:

“The protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.”¹⁰

The right to clean, healthy and sustainable environment has continued to evolve as a moral obligation to maintain the environmental development to meet the needs of present without compromising the needs of future generations. Integration of sustainable environment into the existing human rights can have positive impacts on the development progress of the countries in social and cultural dimension.

⁹ General Assembly res. 2398 (December 3, 1968).

¹⁰ *Gabčíkovo-Nagymaros Case*, ICJ Report 1997, Separate Opinion of Vice-President Weeramantry, p. 91–2

Question put by Judge Charlesworth

“In your understanding what is significance of declarations made by some States on becoming parties to the UNFCCC and the Paris Agreement to the effect that no provision in these agreements may be interpreted as derogating from principles of general international law or any claims or rights concerning compensation or liability due to the adverse effects of climate change?”

Response: The declarations made by some States upon joining the UNFCCC and the Paris Agreement are significant for several reasons: Clarification of Legal Standing: These declarations clarify that the agreements do not override existing principles of general international law. This means that States remain bound by other international obligations, including those related to compensation and liability for climate-related damages. Protection of State Rights: By making these declarations, States ensure that their rights to seek compensation or hold others accountable for climate-related damages are preserved. Myanmar noted that UNFCCC and the Paris Agreement to the effect of provisions in principles of general international law as it covers several points leading to enhancing climate change tackling through a unique principle Common but Differentiated Responsibilities and Respective Capabilities.

Legal binding was not observed but ethic and compliance-based agreement and commitments were observed. Furthermore, Articles 6.2, 6.4, and 6.8 of the Paris Agreement establish carbon offsetting mechanisms that allow all countries, including LDCs, developed, and developing nations, to participate, promoting fairness in climate action. However, small countries including small island states and those with limited natural resources face challenges in joining these mechanisms. To address this, alternative options, platforms, or targeted support are needed to help these nations effectively mitigate and adapt to climate change, ensuring fairness and equity in global climate governance.