

REQUEST FOR ADVISORY OPINION

OBLIGATIONS OF STATES
IN RESPECT OF CLIMATE CHANGE

**WRITTEN RESPONSES
OF THE RUSSIAN FEDERATION
TO JUDGES' QUESTIONS**

20 DECEMBER 2024

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?”

The energy sector, including the topic of fossil fuels, is not regulated by the UNFCCC and the Paris Agreement. It is also not addressed in the questions put before the Court in UNGA Resolution 77/276.

There is no direct legal link between the scope of States' obligations to protect the climate system from anthropogenic greenhouse gas emissions and their production of fossil fuels. The scope of States' obligations depends on 1) the ultimate objective of the UNFCCC, taking into account the temperature goal of the Paris Agreement; 2) the principles of the UNFCCC and the Paris Agreement, including the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances; 3) other components of these international treaties, including, in particular, the provisions of Article 4 of the UNFCCC and Article 4 of the Paris Agreement.

The international climate process, in its “mitigation” part, is aimed at reducing greenhouse gas emissions, rather than combating sources of emissions. Based on this, the task of a State is to reduce the amount of greenhouse gas emissions in the atmosphere produced from its territory. The sources of emissions are various sectors of the economy: in addition to energy, it can be transport, agriculture and other sectors. At the same time, a number of measures may be taken in the energy sector that do not involve the abandonment of hydrocarbons. This includes the introduction of technologies for carbon capture, utilization and storage, infrastructure modernization, and energy efficiency improvement. In addition, emissions in one sector of the economy can be offset by absorption in another. For example, the

nationally determined contribution of the Russian Federation to the implementation of the Paris Agreement provides for taking into account “the highest possible absorption capacity of forests and other ecosystems”, and the Paris Agreement itself provides for the task of achieving “a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century”¹.

There are no grounds to believe that the State where fossil fuels are produced (extracted) has a greater scope of obligations than, for example, the State that buys fossil fuels from abroad and produces other goods from them.

According to a widely acknowledged point of view, States have a wide margin of appreciation in choosing specific measures aimed at achieving national and global climate goals. If a State can achieve these goals by taking measures in other areas of economic activity (for example, in forestry), then it is not obliged to take measures affecting the extraction of fossil fuels, including subsidies for it.

In this context, it should be noted that in paragraph 28 of decision 1/CMA.5 “Outcomes of the first global stocktake” (December 13, 2023, Dubai, UAE) “accelerating efforts towards the phase-down of unabated coal power” (b), “transitioning away from fossil fuels in energy systems” (d) and “phasing out inefficient fossil fuel subsidies” (h) are mentioned as a possible contribution to global efforts that States can make “in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches”. This wording clearly shows the significant degree of discretion of States in choosing measures to mitigate the impact on the climate system.

Thus, it is the exclusive prerogative of the Parties to the UNFCCC and the Paris Agreement to choose the means of implementing their relevant obligations.

It should also be noted that the above-mentioned and other decisions that outline possible mitigation measures and are adopted by the UNFCCC Conference of the Parties and the meeting of the Parties to the Paris Agreement indicate the political expediency of certain measures, but not their legal binding nature. There are also no

1 Article 4 (1) of the Paris Agreement.

grounds to give such decisions the status of “subsequent agreements” or “subsequent practice” within the meaning of Articles 31 (3) (a)-(b) of the Vienna Convention on the Law of Treaties².

We further note that States have not only obligations to mitigate climate change, but also the right to sustainable socio-economic development³, as well as to a “just transition”⁴ to a low-emission future, which is recognized under the Paris Agreement.

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 a 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 the other human rights which you consider relevant for this advisory opinion?”

We reiterate our position expressed during the public hearings in the Court⁵. We believe that the “right to a clean, healthy and sustainable environment” has not crystallized in customary international law.

2 Oral Statement of the Russian Federation, paras. 14-15 (Verbatim record 2024/40).

3 Para. 9 of the preamble, Article 2 (1) of the Paris Agreement.

4 Para. 11 of the preamble of the Paris Agreement.

5 Oral Statement of the Russian Federation, paras. 36-37 (Verbatim record 2024/40).