

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

**WRITTEN REPLY OF THE REPUBLIC OF SLOVENIA
TO THE QUESTIONS PUT BY MEMBERS OF THE COURT
DURING THE ORAL PROCEEDINGS**

19 December 2024

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Introduction

1. On 13 December 2024, after the oral presentations of the participants, some members of the Court put questions to the participants¹. The Republic of Slovenia observes that all four questions expressly or implicitly concern the important linkages between obligations in preventing and addressing climate change and international human rights.

2. For example, the question asked by Judge Cleveland concerns “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”². In this respect, it is important to refer to the final report of the United Nations Human Rights Council Advisory Committee on the Impact of new technologies for climate protection on the enjoyment of human rights, adopted by the Human Rights Council in 2023³, which in relation to geoengineering noted:

“The main way for States to be human rights compliant is to rapidly phase out fossil fuels through viable, scientifically proven technologies and approaches. Rapid emission cuts, minimization of the negative impacts of livestock farming and some nature-based solutions, such as peatland, mangrove and forest management, should form the core of a sustainable, rights-based pathway to mitigate climate change. Proposals to phase out fossil fuels, including those for a fossil fuel non-proliferation treaty, are in accordance with the obligation of States to respect and protect human rights from the adverse effects of climate change.

States should rigorously apply the precautionary principle and develop and conduct meaningful, comprehensive risk, human rights and environmental impact assessments. Such assessments should be conducted by independent and

¹ CR 2024/54, 13 December 2024, p. 39-41. See also Circular Letter of the Registrar, No. 163418, 13 December 2024.

² CR 2024/54, 13 December 2024, p. 39.

³ United Nations, Report of the Human Rights Council Advisory Committee, Impact of new technologies intended for climate protection on the enjoyment of human rights, A/HRC/54/47, 10 August 2023 [Dossier No. 293A].

impartial bodies (paying particular attention to avoid conflicts of interest) and with public participation and oversight. Their results should be made public and inform measures to prevent any potential harm resulting from the development and use of NTCPs or those to halt the use of such technologies and remedy their effects where applicable.”⁴

3. Given the scope of its interventions and contributions, which, for the reasons provided during its oral observations⁵, were limited to the question of the right to a clean, healthy and sustainable environment as a human right and an integral part of international law⁶, the Republic of Slovenia avails itself of the opportunity to provide some answers to the question put by Judge Aurescu.

4. Judge Aurescu asked the following question:

“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?”⁷

5. Although the question does not concern the existence of the right to a clean, healthy and sustainable environment as such, the Republic of Slovenia reiterates its position that this right, as a human right, is an inherent element of the existing human rights legal framework⁸. It constitutes a “prerequisite for the enjoyment of a wide range of fundamental human rights, including the right to life, health, food, water, and development”⁹. Therefore, as explained during the oral observations of the Republic of Slovenia:

“the right to a clean, healthy and sustainable environment, as well as other fundamental human rights, for which the realization of the former is a necessary prerequisite, are the relevant benchmark for States to duly and diligently

⁴ United Nations, Report of the Human Rights Council Advisory Committee, Impact of new technologies intended for climate protection on the enjoyment of human rights, A/HRC/54/47, 10 August 2023, paras. 71-72 [Dossier No. 293A].

⁵ CR 2024/50, 11 December 2024, pp. 19-21, paras. 6-7 (Rakovec).

⁶ *Ibid.*, p. 19, para. 5 (Rakovec). See also Written statement of the Republic of Slovenia, paras. 20-48.

⁷ CR 2024/54, 13 December 2024, p. 40.

⁸ CR 2024/50, 11 December 2024, p. 23, para. 4 (Sancin); *ibid.*, p. 24, para. 7 (Sancin). See also Written statement of the Republic of Slovenia, para. 34.

⁹ Written statement of the Republic of Slovenia, para. 20. See also CR 2024/50, 11 December 2024, p. 27, para. 6 (Müller).

implement their respective obligations under the relevant legal framework to adequately address adverse impacts of climate change”¹⁰.

6. In order to respond to Judge Aurescu’s question, the Republic of Slovenia addresses, *first*, the relationship between the right to a clean, healthy and sustainable environment and other relevant human rights (I), and, *second*, the legal content of that right (II).

I. The relationship between the right to a clean, healthy and sustainable environment and other relevant human rights

7. The right to a clean, healthy and sustainable environment is closely interrelated with other human rights that are relevant in addressing climate change.

8. The United Nations Human Rights Council recognized in its resolution 48/13 that:

“sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to housing, to safe drinking water and sanitation and to participation in cultural life, for present and future generations”¹¹,

and that, conversely:

“the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment, and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights”¹².

¹⁰ CR 2024/50, 11 December 2024, p. 25, para. 11 (Sancin). See also Written statement of the Republic of Slovenia, para. 48.

¹¹ United Nations, Human Rights Council, resolution 48/13, The human right to a clean, healthy and sustainable environment, 8 October 2021, preamble [Dossier No. 279].

¹² *Ibid.*

9. The United Nations General Assembly endorsed these considerations in its resolution 76/300 on the right to clean, healthy and sustainable environment¹³ and reaffirmed that:

“States have the obligation to respect, protect and promote human rights, including in all actions undertaken to address environmental challenges, and to take measures to protect the human rights of all, as recognized in different international instruments, and that additional measures should be taken for those who are particularly vulnerable to environmental degradation, noting the framework principles on human rights and the environment”¹⁴.

It also affirmed:

“the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights”¹⁵.

10. In responding to the question asked, it is necessary to recall in full the operative paragraphs of this landmark United Nations General Assembly resolution, adopted by the United Nations membership with no votes against it¹⁶. They state that the United Nations General Assembly:

1. *Recognizes* the right to a clean, healthy and sustainable environment as a human right;
2. *Notes* that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. *Affirms* that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
4. *Calls upon* States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation,

¹³ United Nations, General Assembly, resolution 76/300, The human right to a clean, healthy and sustainable environment, 28 July 2022 [Dossier No. 260].

¹⁴ *Ibid.*, preamble.

¹⁵ *Ibid.*

¹⁶ *Official Records of the General Assembly*, seventeen-seventh session, 64th plenary meeting, 29 March 2023, A/77/PV.64, p. 4 [Dossier No. 3].

strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.”¹⁷

11. The decisions of human rights courts and treaty bodies confirm the relevance and the relationship between a clean, healthy and sustainable environment, on the one hand, and the realization and full enjoyment of fundamental human rights, on the other hand.

12. The Human Rights Committee confirmed the close relationship between the right to a clean, healthy and sustainable environment and the effective enjoyment of the right to life.

(a) It considered in its General comment No. 36 that:

“Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, *inter alia*, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”¹⁸

(b) In *Portillo Cáceres et al. v. Paraguay* the Human Rights Committee observed that:

“The Committee also takes note of developments in other international tribunals that have recognized the existence of an undeniable link between the protection of the environment and the realization of human rights and that have established that environmental degradation can adversely affect the effective enjoyment of the right to life. Thus, severe environmental degradation has given rise to findings of a violation of the right to life.”¹⁹

¹⁷ United Nations, General Assembly, resolution 76/300, The human right to a clean, healthy and sustainable environment, 28 July 2022, paras. 1-4 [Dossier No. 260].

¹⁸ United Nations, Human Rights Committee, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 1999, para. 62 [Dossier No. 299].

¹⁹ United Nations, Human Rights Committee, *Portillo Cáceres et al. v. Paraguay*, communication No. 2751/2016, views adopted on 25 July 2019, CCPR/C/126/D/2751/2016, para. 7.4. A similar position was adopted by the Human Rights Committee in *Benito Oliveira et al. v. Paraguay*, communication No. 2552/2015, views adopted on 14 July 2021, CCPR/C/132/D/2552/2015.

(c) In *Daniel Billy and others v. Australia*, the Human Rights Committee confirmed that:

“that environmental degradation can compromise effective enjoyment of the right to life and that severe environmental degradation can adversely affect an individual’s wellbeing and lead to a violation of the right to life”²⁰.

It further recalled that:

“environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”²¹.

13. The Committee on the Rights of the Child’s General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change, explained that:

“Children have the right to a clean, healthy and sustainable environment. This right is implicit in the Convention [on the rights of the Child] and directly linked to, in particular, the rights to life, survival and development, under article 6, to the highest attainable standard of health, including taking into consideration the dangers and risks of environmental pollution, under article 24, to an adequate standard of living, under article 27, and to education, under article 28, including the development of respect for the natural environment, under article 29.”²²

The Committee provided further clarification and demonstrated how environmental degradation and climate change can have a detrimental and often significant impact on the rights of children, such as the right to life, survival and development²³, the right to freedom of all forms of violence²⁴, the right to the highest attainable standard of health²⁵, the right to

²⁰ Human Rights Committee, *Daniel Billy and others v. Australia*, communication No. 3624/2019, views adopted on 21 July 2022, CCPR/C/135/D/3624/2019, para. 8.5.

²¹ *Ibid.*, para. 8.3.

²² Committee on the Rights of the Child General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, para. 63 [Dossier No. 302A].

²³ *Ibid.*, paras. 20-25.

²⁴ *Ibid.*, paras. 35-36.

²⁵ *Ibid.*, paras. 37-44.

an adequate standard of living²⁶, the right to education²⁷, and the right to rest, play, leisure and recreation²⁸.

14. In their Joint statement on human rights and climate change, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities also recalled, relying on findings of the International Panel on Climate Change in a 2019 report, that:

“That report confirms that climate change poses significant risks to the enjoyment of the human rights protected in the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities. The adverse impacts identified in the report threaten, among others, the rights to life, to adequate food, to adequate housing, to health and to water, and cultural rights. These negative impacts are also illustrated in the damage suffered by ecosystems, which in turn affect the enjoyment of human rights.”²⁹

They further considered that:

“Under the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities, States parties have obligations, including extraterritorial obligations, to respect, protect and fulfil all human rights of all peoples. Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to

²⁶ Committee on the Rights of the Child General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, paras. 45-50 [Dossier No. 302A].

²⁷ *Ibid.*, paras. 51-57.

²⁸ *Ibid.*, paras. 59-62.

²⁹ United Nations, Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of the Child and Committee on the Rights of Persons with Disabilities, Joint statement on Human rights and Climate change, HRI/2019/1, 14 May 2020, para. 3 [Dossier No. 300].

regulate activities contributing to such harm, could constitute a violation of States' human rights obligations."³⁰

15. The work of several special procedures, such as in particular, the reports of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, focusing on climate change and human rights³¹ and on air pollution and human rights³², and the reports of the Special Rapporteur on the promotion and protection of human rights in the context of climate change³³, but also the work of the Special Rapporteur on trafficking in persons, especially women and children, focusing on addressing the gender dimensions of trafficking in persons in the context of climate change, displacement and disaster reduction³⁴, the Special Rapporteur on the right to food, focusing on the right to food in the context of natural disasters and on the impact of climate change on the right to food³⁵, and of the Special Rapporteur on extreme poverty and human rights, on climate change and poverty³⁶, has highlighted the inherent links between

³⁰ United Nations, Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of the Child and Committee on the Rights of Persons with Disabilities, Joint statement on Human rights and Climate change, HRI/2019/1, 14 May 2020, para. 10 [Dossier No. 300].

³¹ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Right to a healthy environment: good practices, A/HRC/43/53, 30 December 2019 [Dossier No. 313]; Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/74/161, 15 July 2019 [Dossier No. 312].

³² Report of the Special Rapporteur, Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/40/55, 8 January 2019 [Dossier No. 311].

³³ Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation, A/77/226, 26 July 2022 [Dossier No. 320]; Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Providing legal options to protect the human rights of persons displaced across international borders due to climate change, A/HRC/53/34 and Add.1, 18 April 2023 [Dossier No. 321]; Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Access to information on climate change and human rights, A/79/176, 18 July 2024.

³⁴ Report of the Special Rapporteur on trafficking in persons, especially women and children, Addressing the gender dimensions of trafficking in persons in the context of climate change, displacement and disaster risk reduction, A/77/170, 15 July 2022 [Dossier No. 335].

³⁵ Interim report of the Special Rapporteur on the right to food, Right to food, A/70/287, 5 August 2015 [Dossier No. 323].

³⁶ Report of the Special Rapporteur on extreme poverty and human rights, Climate change and poverty, A/HRC/41/39, 17 July 2019 [Dossier No. 325].

the right to a clean, healthy and sustainable environment and relevant human rights stemming from the existing international human rights legal framework.

16. Human rights courts and commissions acting on the regional level have adopted comparable views.

(a) The Inter-American Court of Human Rights explained in its Advisory Opinion on the environment and human rights:

“This Court has recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights.”³⁷

(b) The African Commission on Human and Peoples’ Rights considered that the right of all peoples to a general satisfactory environment favourable to their development, expressly recognized under Article 24 of the African Charter³⁸, recognizes:

“the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, ‘an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.’”³⁹

³⁷ Inter-American Court of Human Rights, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4 (1) and 5 (1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, para. 47 (referring to *Kawas Fernández v. Honduras, Merits, reparations and costs*, Judgment, 3 April 2009, Series C No. 196, para. 148). See also Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources – Norms and jurisprudence of the inter-American human rights system*, 30 December 2009, OEA/Ser.L/V/II, Doc. 56/09, para. 190 (“[S]everal fundamental rights require, as a necessary precondition for their enjoyment, a minimum environmental quality, and are profoundly affected by the degradation of natural resources”).

³⁸ African Charter on Human and Peoples’ Rights, Nairobi, 27 June 1981, United Nations, *Treaty Series*, vol. 1520, p. 217.

³⁹ African Commission on Human and Peoples’ Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96, Decision, 27 October 2001, para. 51.

(c) Recently, the European Court for Human Rights underlined, on the basis of an extensive review of international and regional instruments and decisions⁴⁰, that:

“[t]here has also been a recognition that environmental degradation has created, and is capable of creating, serious and potentially irreversible adverse effects on the enjoyment of human rights. This is reflected in the scientific findings, international instruments and domestic legislation and standards, and is being recognised in domestic and international case-law ...

.....

The Court cannot ignore the above-noted developments and considerations. On the contrary, it should be recalled that the Convention is a living instrument which must be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies ... Indeed, an appropriate and tailored approach as regards the various Convention issues which may arise in the context of climate change ... needs to take into account the existing and constantly developing scientific evidence on the necessity of combating climate change and the urgency of addressing its adverse effects, including the grave risk of their inevitability and their irreversibility, as well as the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights.”⁴¹

In the same case, the European Court also confirmed that climate change related circumstances may amount to violations of the right to life⁴² and the right to respect for private and family life⁴³. In respect of the later, it explained that:

“Article 8 [of the Convention for the Protection of Human Rights and Fundamental Freedoms] must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.”⁴⁴

⁴⁰ European Court of Human Right, Grand Chamber, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, App. No. 53600/20, Judgment, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, paras. 133-231.

⁴¹ *Ibid.*, para. 431.

⁴² *Ibid.*, para. 507-513.

⁴³ *Ibid.*, paras. 514-519.

⁴⁴ *Ibid.*, para. 519.

17. In light of these considerations and findings of international and regional human rights bodies and courts, to which the Court must pay due regard⁴⁵, it is evident that the right to a clean, healthy and sustainable environment is inherent in other human rights relevant in the context of climate change and thus forms part of general international law. Its promotion and realization are a necessary and indispensable prerequisite for the full enjoyment of all human rights as an indivisible whole as the highest aspiration of people and the United Nations.

18. The General Assembly and the Human Rights Council thus considered – for good reasons – that “the right to a clean, healthy and sustainable environment is related to other rights and existing international law”⁴⁶. Indeed, the right to a clean, healthy and sustainable environment is “a human right that is important for the enjoyment of human rights”⁴⁷. It is only by respecting the right to a clean, healthy and sustainable environment, including taking affirmative action to promotion of that right, that the full enforcement of other human rights, including the right to life, to health, to private and family life, to housing, to development and self-determination, can be ensured⁴⁸. Failure to respect the right to a clean, healthy and sustainable environment and the obligations incumbent on States under this human right is likely to result in violations of these other human rights. As the Inter-American Court of Human Rights stated:

“That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to

⁴⁵ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment*, *I.C.J. Reports 2010 (II)*, para. 66. See also CR 2024/50, 11 December 2024, p. 24, para. 8 (Sancin).

⁴⁶ United Nations, General Assembly, resolution 76/300, The human right to a clean, healthy and sustainable environment, 28 July 2022, para. 2 [Dossier No. 260]; United Nations, Human Rights Council, resolution 48/13, The human right to a clean, healthy and sustainable environment, 8 October 2021, para. 2 [Dossier No. 279].

⁴⁷ United Nations, Human Rights Council, resolution 48/13, The human right to a clean, healthy and sustainable environment, 8 October 2021, para. 1 [Dossier No. 279].

⁴⁸ See also Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59, 24 January 2018, Annex, para. 4 [Dossier No. 308].

human beings; thus, a healthy environment is a fundamental right for the existence of humankind.”⁴⁹

19. Moreover, as the same Court explained in its 2017 Advisory Opinion:

“the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.”⁵⁰

The International Court of Justice already found that “the environment is not an abstraction”. It “represents the living space, the quality of life and the very health of human beings, including generations unborn”⁵¹.

II. The legal content of the right to a clean, healthy and sustainable environment

20. It has not been, nor can it be, argued that States have an obligation to guarantee the effective enjoyment of a specific state of the environment vis-à-vis other States or vis-à-vis individuals. Other rights, including elementary human rights, as for instance the right to health or the right to life, are not different in this respect. A State cannot be held to guarantee the longevity or the wellbeing of an individual. A State – and indeed nobody – could not be held to obligations that are beyond its capabilities and that it cannot respect.

21. However, the state of the environment or the climate system does not constitute a fatality. States and human activities have shaped and influenced the environment and the

⁴⁹ Inter-American Court of Human Rights, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4 (1) and 5 (1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, para. 59.

⁵⁰ *Ibid.*, para. 62.

⁵¹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 241-242, para. 29; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 41, para. 53; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*, p. 132, para. 72. See also ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, 21 May 2024, para. 166.

climate system as part of it and continue to do so. The right to a clean, healthy and sustainable environment ensures that States cannot avoid their obligations or duties to protect the environment and to guarantee the full enjoyment and implementation of other human rights by hiding behind the environment or the climate system and by attributing responsibility to alleged external factors. They bear concrete and specific obligations aimed at the preservation of the environment as a living space of humankind, including generations unborn. The environment is not simply an abstraction⁵².

22. As explained by the Republic of Slovenia in its oral presentation⁵³, the content of the right to a clean, healthy and sustainable environment, as well as the obligations incumbent on States in this respect, is naturally and necessarily evolving. What is required and expected by States depends, changes and evolves with the progress of science, knowledge, data and available technologies. Changing scientific knowledge about the processes, the causes and the effects of climate change on the environment or other adverse impacts on the environment led to a shift in understanding what constitutes a clean, healthy and sustainable environment or not. This shift also leads inevitably to an evolution and change in the content of the right to a clean, healthy and sustainable environment and the obligations States must fulfill to implement and realize this right.

23. The concrete definition of what is required of States in order to fulfill their obligations under the right to a clean, healthy and sustainable environment is therefore part of this evolving process. It is dependent on the available science, data and technology, as well as the necessary common consensus among States. In the opinion of the Republic of Slovenia, this consensus is currently reflected in the treaty regime relating to climate change and the protection of the environment. The United Nations General Assembly stressed that “the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of

⁵² See fn. 51 above.

⁵³ CR 2024/50, 11 December 2024, p. 26, para. 2 (Müller).

international environmental law”⁵⁴. To this end, it urged States “to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all”⁵⁵. International cooperation is a key element in the realization of the right to a clean, healthy and sustainable environment and in addressing climate change, as a global phenomenon and challenge to the international community and humankind as a whole, in a comprehensive and effective manner. An effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge can only be achieved through effective international cooperation, and vigorous, ambitious national and international efforts that take due account of the common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. The preamble of the United Nations Framework Convention on Climate Change acknowledges that:

“the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions”⁵⁶.

It is the responsibility of the States to maintain and develop this régime and to adapt it when necessary to ensure the realization of the right to a clean, healthy, and sustainable environment, as well as the full implementation and enjoyment of human rights as a whole.

⁵⁴ United Nations, General Assembly, resolution 76/300, The human right to a clean, healthy and sustainable environment, 28 July 2022, para. 3 [Dossier No. 260]; United Nations, Human Rights Council, resolution 48/13, The human right to a clean, healthy and sustainable environment, 8 October 2021, para. 3 [Dossier No. 279]

⁵⁵ United Nations, General Assembly, resolution 76/300, The human right to a clean, healthy and sustainable environment, 28 July 2022, para. 4 [Dossier No. 260]; United Nations, Human Rights Council, resolution 48/13, The human right to a clean, healthy and sustainable environment, 8 October 2021, para. 4 [Dossier No. 279].

⁵⁶ United Nations Framework Convention on Climate Change, New York, 9 May 1992, preamble, United Nations, *Treaty Series*, vol. 1771, p. 107.

24. Beside the aforementioned duty to cooperate, on the international level, the right to a clean, healthy and sustainable environment imposes, in principle, negative and positive obligations on States⁵⁷.

25. The respect of the right to a clean, healthy and sustainable environment imposes obligations entailing that State authorities refrain from any unjustifiable interference with the environment or the climate system in a way that would jeopardize the right to a clean, healthy and sustainable environment in itself and as a prerequisite for the realization of other human rights, including the right to life, to the highest standard of health, to adequate housing, to food security, to safe and clean drinking water and sanitations. These obligations include the general duty of States not prevent the use of their territories for acts and activities that are likely to infringe the rights of people and those of other States. This entails compliance with the inherent due diligence requirement in relation to obligations of States, which include preventing, controlling and addressing environmental harm, not only when the harm threatens the territory of other States and other people, but also, importantly, when it threatens the individuals within their own jurisdiction⁵⁸.

26. Furthermore, it is incumbent upon States to proactively promote and advance the realization and enjoyment of the right to a clean, healthy and sustainable environment in itself and as a precondition for the enjoyment of other human rights. As highlighted by the African Commission on Human and Peoples' Rights, this human right imposes clear obligations requiring States not only to take reasonable measures to prevent pollution and ecological degradation, but also to promote conservation, and to ensure an ecologically sustainable development and use of natural resources⁵⁹. The Committee of the Rights of the Child also emphasized that:

⁵⁷ CR 2024/50, 11 December 2024, pp. 2-29, para. 8 (Müller). See also Written Statement of the Republic of Slovenia, paras. 38-48.

⁵⁸ CR 2024/50, 11 December 2024, p. 25, para. 9 (Sancin).

⁵⁹ African Commission on Human and Peoples' Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication 155/96, Decision, 27 October 2001, para. 52. See also Inter-American Court of Human Rights, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the*

“States must take deliberate, specific and targeted steps towards achieving the full and effective enjoyment of children’s rights related to the environment, including their right to a healthy environment, including through the development of legislation, policies, strategies or plans that are science-based and consistent with relevant international guidelines related to environmental health and safety and by refraining from taking retrogressive measures that are less protective of children.

States are obliged to devote financial, natural, human, technological, institutional and informational resources to realize children’s rights in relation to the environment to the maximum extent of their available resources and, where needed, within the framework of international cooperation.”⁶⁰

27. Indeed, the right to a clean, healthy and sustainable environment is not only about protecting individuals against arbitrary interference by the public authorities in their living environment and does not merely compel States to abstain from such interference. The effective respect and the full enjoyment of the right to a clean, healthy and sustainable environment as a universal value owed to both present and future generations require affirmative actions.

28. These positive obligations of States to act are paramount in order to avoid the frustration of the right to a clean, healthy and sustainable environment, particularly in light of climate change and the current acute climate crisis. These obligations pertain to the adoption, implementation and enforcement of efficient and effective legislation and internal measures aimed at reducing environment harm and anthropogenic emissions that are detrimental to the climate system by all relevant parties, including industry and cooperations under the jurisdiction of the States concerned and even when operating abroad⁶¹. It also requires the adoption and implementation of measures, at the national, regional and international level, aimed at mitigating climate change, adapting to climate change, and assisting and supporting those who are the most vulnerable and avoiding that others will

rights to life and to personal integrity – interpretation and scope of Articles 4 (1) and 5 (1) of the American Convention on Human Rights), Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, para. 61.

⁶⁰ Committee on the Rights of the Child General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, paras. 71-72 [Dossier No. 302A].

⁶¹ Comp. United Nations, Human Rights Committee, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 1999, para. 22 [Dossier No. 299]; United Nations, Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017), Business activities and the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/24, 23 June 2017, paras. 30-33.

become vulnerable in the near future through financial assistance, technology transfer, and capacity building for adaptation measures. All States bear these obligations and need to abide by them in accordance with their common but differentiated responsibilities and their respective capabilities. The due diligence obligations mentioned above also include that States assist others in building the capacities and in abiding by their human rights obligations vis-à-vis their people and population and the protection of the environment and the climate system in order to avoid detrimental effects for people under their own jurisdiction. Without engaging in robust international efforts to prevent adverse impacts of climate change, subject to the States' common but differentiated responsibilities and their respective capabilities, the required due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised.

29. States have established international cooperation mechanisms, including through the United Nations Framework Convention on Climate Change and its financial mechanisms, such as the Green Climate Fund⁶² or the most recently operationalized Fund for responding to Loss and Damage⁶³. It is imperative that these mechanisms be actively and efficiently engaged to achieve the desired outcomes.

30. An effective implementation of the right to a clean, healthy and sustainable environment also requires States to act transparently, to exchange information and data, and to promote and bolster scientific research and technology development for the benefit of the international community and humankind as a whole. Conducting research and gathering data and knowledge are necessary to drive the future development and the necessary adaptation of existing measures and obligations in light of changing circumstances and of a better

⁶² See <https://www.greenclimate.fund/>.

⁶³ See <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat>.

understanding of the most effective and most appropriate means to address the negative effects of climate change and measures to combat climate change and its effects.

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