

The Legal Foundations for Fossil Fuel Phaseout: An Open Letter to the Co-Hosts and Participants of the First Conference on Transitioning Away from Fossil Fuels

We, the undersigned 252 legal scholars, jurists, and practitioners from around the world, in our collective expert assessment, recognize that States have binding obligations under multiple sources of international law to phase out fossil fuels. The International Court of Justice (ICJ) unanimously confirmed that every State must use all means at its disposal to prevent significant harm to the climate system, including by avoiding the principal activities driving it: fossil fuel production and use.

As you prepare to engage in the First Conference on Transitioning Away from Fossil Fuels in Santa Marta, Colombia, we urge you to ensure the discussions are rooted in and guided by States' clear legal obligations to move beyond oil, gas, and coal, and to cooperate effectively and in good faith toward that end.

The science is irrefutable: Fossil fuels are the primary source of carbon dioxide (CO₂) and other human-caused greenhouse gas (GHG) emissions accumulating in the atmosphere, with increasingly severe and irreversible consequences for people and the environment. According to the Intergovernmental Panel on Climate Change (IPCC), whose reports constitute the best available science,¹ fossil fuels account for nearly 90% of cumulative CO₂ emissions and a majority of non-CO₂ GHGs.² The climate change caused by those emissions is “an existential problem of planetary proportions that imperils all forms of life and the very health of our planet,”³ with disproportionate impacts on communities most vulnerable to and least responsible for the crisis.⁴

The legal duty to phase out fossil fuels stems from multiple sources of international law – both treaties and custom – which must be interpreted harmoniously.⁵ The ICJ affirmed that the climate change treaties (the UN Framework Convention on Climate Change, Kyoto Protocol, and Paris Agreement) are *not* the only sources of international law requiring State action on climate change.⁶ Obligations also arise from customary international law, human rights law, international environmental law, and the law of the sea.

The longstanding duty under customary international law to prevent significant harm to the environment beyond a State's borders predates the climate treaties and binds all countries – regardless of whether they are party to any climate agreement.⁷ Under that

¹ [International Court of Justice Advisory Opinion on the Obligations of States in Respect of Climate Change](#), paras. 81, 82, 85, 137, 278, 283-284 [hereinafter ICJ AO].

² IPCC, Sixth Assessment Report (AR6), [WGI, Technical Summary](#), Box TS.5, p. 80; Shaye Wolf, Robert Bullard, Jonathan J. Buonocore, Nathan Donley, [Scientists' warning on fossil fuels](#), Oxford Open Climate Change, 2025, 5(1), <https://doi.org/10.1093/oxfclm/kgaf011>, at 3.

³ ICJ AO, para. 456.

⁴ ICJ AO, para. 77.

⁵ ICJ AO, para. 404.

⁶ ICJ AO, paras. 171-172, 168, 419.

⁷ ICJ AO, paras. 132, 134, 315, 409.

customary duty, **States must use all means at their disposal to avoid activities within their jurisdiction or control causing transboundary damage,⁸ through measures capable⁹ of preventing such harm,¹⁰ including effective regulation of public and private actors,¹¹ to avert harm at its source. In the case of climate change, that requires curbing fossil fuel production, consumption, licensing, and subsidies** – activities known to generate significant transboundary harm to the climate, sometimes individually and always cumulatively.¹²

Properly interpreted, the UNFCCC and Paris Agreement also require fossil fuel phaseout.

Their relative silence on fossil fuels does not mean States have no obligations to phase them out. The achievement of the ultimate objective of the UNFCCC – stabilization of GHG concentrations at a level that would “prevent dangerous anthropogenic interference with the climate system”¹³ – and the scientifically based, consensus aim of the Paris Agreement – limiting temperature rise to 1.5°C¹⁴ – is simply not possible without rapidly reducing the production and use of oil, gas, and coal. State Parties to those treaties must do their utmost to achieve those ends, including by ceasing financing for and licensing of fossil fuel activities.¹⁵ Continuing subsidies and other public funding for fossil fuels – let alone increasing them – is at odds with the Paris Agreement’s stated aim of aligning financial flows with low-GHG pathways.¹⁶

Because climate change impairs the enjoyment of human rights,¹⁷ and fossil fuels are known to be its primary cause, human rights law also requires States to phase them out.

The ICJ and other courts have recognized that the right to a healthy environment is a prerequisite for the enjoyment of other human rights,¹⁸ making action to protect the climate system a human rights imperative. The ICJ clearly stated that “it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right.”¹⁹ The duties to respect and protect human rights require States to take all appropriate measures, including regulation of public and private fossil fuel activity subject to their jurisdiction or control, to prevent foreseeable harm to human rights from the adverse effects of climate change.²⁰

⁸ ICJ AO, paras. 132, 138, 281.

⁹ ICJ AO, paras. 208, 242, 245, 253, 258.

¹⁰ ICJ AO, paras. 132, 135, 273-275, 409.

¹¹ ICJ AO, paras. 95, 252, 282, 428.

¹² ICJ AO, paras. 94, 276, 427.

¹³ [United Nations Framework Convention on Climate Change](#), art. 2.

¹⁴ [Paris Agreement](#), art. 2; ICJ AO, paras. 200, 224, 245.

¹⁵ ICJ AO, paras. 240, 242, 246, 248, 427; Paris Agreement, art. 4.3.

¹⁶ ICJ AO, para. 427; Paris Agreement, art. 2.1(c).

¹⁷ ICJ AO, para. 386.

¹⁸ ICJ AO, para. 393; see also IACtHR Advisory Opinions: [Inter-American Court of Human Rights Advisory Opinion on the Climate Emergency and Human Rights](#), paras. 270, 275 [hereinafter IACtHR AO on the Climate Emergency]; [Inter-American Court of Human Rights Advisory Opinion on 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\(1\) in Relation to Articles 1\(1\) and 2 of the American Convention on Human Rights](#), paras. 59, 63.

¹⁹ ICJ AO, para. 393.

²⁰ ICJ AO, paras. 403-404; IACtHR AO on the Climate Emergency, paras. 276, 296, 321, 345-351.

The law of the sea also requires rapid reduction of fossil fuels, as the chief known source of GHG pollution of the marine environment. The UN Convention on the Law of the Sea (UNCLOS) obliges States to prevent, reduce, and control marine pollution from any source,²¹ taking all necessary measures to do so, with the ultimate aim of preventing the occurrence of pollution altogether.²² As the International Tribunal for the Law of the Sea (ITLOS) has recognized, GHG emissions are a form of marine pollution,²³ and fossil fuels are their chief source, which means States have a duty, pursuant to their ocean protection obligations, to curb fossil fuel production and use.²⁴

States must pursue these fossil fuel-related prevention, protection, and mitigation obligations with due diligence²⁵ – a standard of conduct heightened in stringency given the severity and urgency of climate harm,²⁶ which requires State action to be capable of achieving the objective, informed by and consistent with science,²⁷ effectively implemented and enforced,²⁸ reflective of States’ highest possible ambition,²⁹ and progressively more demanding over time.³⁰

States have a duty to prioritize available measures known to reduce GHGs at their source – which is chiefly fossil fuel activity – eliminating as far as possible the conduct posing a risk to the climate system, not merely attenuating its effects.³¹ Where a risk can be addressed with readily available technologies, States are expected to use them, and when technologies pose further risks, States must employ them with prudence and caution, if at all.³² Proven approaches for eliminating emissions at source must therefore take precedence over speculative interventions whose efficacy is undemonstrated and whose risks remain unquantified. Where a proposed intervention or technological response to climate change threatens irreparable harm or presents unmanageable risks to human rights and the environment, its use would be contrary to legal duties.

States’ obligations in relation to climate change include a duty to assess the cumulative impacts and risks posed by fossil fuel activities through environmental, social, and human rights impact assessments (ESHRIAs) that consider all climate impacts, including scope 3 (downstream) emissions from the use of fossil fuels produced.³³ In setting their climate targets

²¹ [UNCLOS](#), art. 194.

²² ICJ AO, paras. 345-346; [International Tribunal for the Law of the Sea Advisory Opinion on Climate Change and International Law](#), para. 199 [hereinafter ITLOS AO].

²³ ITLOS AO, para. 179.

²⁴ ICJ AO, paras. 340, 346, 347, 349.

²⁵ ICJ AO, paras. 136, 138, 281.

²⁶ ICJ AO, paras. 275, 246.

²⁷ ICJ AO, paras. 208, 245, 283, 284.

²⁸ ICJ AO, para. 282.

²⁹ Paris Agreement, art. 4(3); ICJ AO, paras. 242, 246.

³⁰ ICJ AO, para. 241.

³¹ ICJ AO, paras. 81, 132, 137.

³² ICJ AO, para. 286.

³³ ICJ AO, paras. 296-298.

and actions, States must address their exported emissions and identify how they will be reduced, consistent with the State's duties and through measures capable of adhering to the 1.5°C temperature limit and preventing significant harm to the climate system.³⁴

States face legal consequences, including the duties of cessation and reparation, for failing to adequately regulate fossil fuel companies and/or for engaging in, authorizing, or financing their GHG-emitting activities.³⁵ States have a duty to regulate both public and private actors, including investor-owned fossil fuel companies and state-owned enterprises (SOEs) whose conduct may constitute State action.³⁶ Climate harm resulting from a State's failure to regulate or provision of support to private actors' polluting conduct, or from the operations of a SOE, may be attributed to the State, triggering State responsibility.³⁷

What measures satisfy each State's obligations with regard to a fossil fuel phaseout will depend on that State's historical responsibilities, capabilities, and resources. As the ICJ said, a State's duty to use all means at its disposal implies that the capabilities of a State are a key factor, as reflected in the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), in determining the diligence due in a particular situation.³⁸ "Developed" States that have contributed more to climate change over time, through their actions and inaction, and that have greater economic means must take more demanding measures to prevent fossil-fueled climate harm, including by regulating the conduct of their corporate nationals domestically and extraterritorially.³⁹ Consistent with their express legal duties, they also must provide finance, technology, and capacity-building to "developing" countries for climate action, including support for a just and equitable transition away from fossil fuels, particularly for least developed countries (LDCs) and small island developing States (SIDS) that are highly dependent on fossil fuels.⁴⁰ Such a transition entails replacing fossil fuel production with other revenue streams, eliminating fossil fuel use across all sectors or meeting underlying needs through alternatives, and financing other associated transition costs.

Halting fossil fuel expansion, however, is a preventive measure available to and required of all States. The urgency and intensity of this obligation is heightened for large fossil fuel producer States. But no State can disregard the reliable scientific evidence that increasing fossil fuel production and use risks causing significant harm, or delay cost-effective measures to prevent the harm – such as refraining from new fossil fuel projects.⁴¹ That makes fossil fuel expansion presumptively contrary to legal duty.

³⁴ ICJ AO, paras. 242, 245, 267, 282.

³⁵ ICJ AO, paras. 427-428.

³⁶ ICJ AO, paras. 282, 403, 427-428.

³⁷ ICJ AO, paras. 427-428.

³⁸ ICJ AO, paras. 290-292.

³⁹ ICJ AO, paras. 291-292.

⁴⁰ ICJ AO, paras. 217-218; UNFCCC, arts. 4.5, 4.8; Paris Agreement, arts. 4.5, 9.

⁴¹ ICJ AO, paras. 292-294.

The customary international law duty to cooperate for the protection of the environment⁴² requires States to take effective collective and coordinated action to phase out fossil fuels, including through new treaty-based obligations when existing forms of cooperation no longer serve their purpose⁴³ Given that “[c]ooperation is not a matter of choice for States but a pressing need and a legal obligation,”⁴⁴ States must consider whether further collective action or a new treaty may be necessary to implement phaseout obligations.

The *erga omnes* nature of States’ obligations to protect the climate system⁴⁵ – the fact that they are owed to the international community as a whole and enforceable by all States – and the existential threat posed by climate change,⁴⁶ should mean that the corresponding duty to phase out fossil fuels cannot be overridden by a legal obligation owed to a select class of actors, such as foreign investors under international investment treaties. Accordingly, Investor-State Dispute Settlement (ISDS) cannot be allowed to impede States’ compliance with their climate obligations by making it prohibitively expensive to regulate and phase out fossil fuels.

The phaseout of fossil fuels is not just scientifically necessary to prevent catastrophic and irreversible harm to the climate system, all peoples and ecosystems; it is legally required. It is also socially, economically, and environmentally beneficial for present and future generations. Legal obligations provide the foundation and the guideposts for international cooperation to end the global addiction to fossil fuels, and secure both a safer present and a livable future for all. The First Conference on Transitioning Away from Fossil Fuels in Santa Marta, Colombia presents a critical opportunity to accelerate the implementation of those legal duties, through a forum dedicated to strengthening cooperative international action on fossil fuels.

Sincerely,
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⁴² ICJ AO, paras. 141-142.

⁴³ ICJ AO, para. 307.

⁴⁴ ICJ AO, para. 308.

⁴⁵ ICJ AO, paras. 440-446.

⁴⁶ ICJ AO, para. 456.

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