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To those wondering what the next round of nationally determined contributions (NDCs) under the Paris Agreement will bring, the day's statements dampened hopes. Participants heard rebuttals against transitioning away from fossil fuels and attempts to muddy the water as to what constitutes sufficient ambition.

Statements

COSTA RICA underlined that the international obligation of States to reduce their greenhouse gas (GHG) emissions and to provide finance for loss and damage caused by climate change can be found not only in treaty law, but also in well-established rules of international law, particularly the due diligence and no-harm obligations.

They rejected the argument that the no-harm obligation only applies between neighboring States, noting no State is permitted to damage the environment of another, regardless of proximity. They further highlighted the Court's previous confirmation that States are responsible for human rights breaches even if committed outside their territories, and underlined this applies to all acts and omissions of States that infringe human rights.

On causation, COSTA RICA said science proves that anthropogenic GHG emissions are responsible for global warming. They recalled the ILC's commentary to Article 47 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), stipulating that each State is separately responsible for the conduct attributable to it, and that this responsibility is not diminished because other States are also responsible for the same act. They further stated that individual responsibility is to be subsequently determined on the basis of historical and current emission contributions.

On applicable remedies, COSTA RICA recommended cessation, guarantees of non-repetition, reparation, and compensation, among others.

CÔTE D'IVOIRE emphasized that international obligations on climate change must be interpreted in light of the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC).

Highlighting the importance of harmonious legal interpretation, they noted the specific regime of the climate treaties (*lex specialis*) does not exclude customary law but should apply simultaneously with, *inter alia*, the no-harm principle, environmental impact assessments, and due diligence obligations.

On obligations under the Paris Agreement, CÔTE D'IVOIRE underscored that while the collective goal not to surpass global warming of 1.5°C is not legally binding, it provides the "internal context" for individual parties' obligations to develop and progressively enhance NDCs. These NDCs, they said, should be based on an effective regulatory framework including a national carbon budget.

They emphasized that the duty of due diligence, as recognized in international case law, requires States to vigilantly enforce rules and assess environmental impacts. CÔTE D'IVOIRE stressed that due diligence extends to indirect (scope 3) emissions, as seen in various countries' domestic cases on crude oil extraction and coal mining projects. They suggested mitigation obligations can support counterclaims in international investment disputes, including in cases of denial of permits to extract fossil fuels.

CÔTE D'IVOIRE advocated for a dynamic interpretation of CBDR-RC, adjusted to reflect national circumstances and capacities and rejected fossil fuel-dependent States' claims for slower decarbonization.

They called for recognition of statehood continuity for submerged States due to sea level rise, asserting that maritime entitlements should remain intact. On causality, they also rejected strict liability and instead supported a proximity test based on scale and seriousness to establish legal causation.

In a joint statement, the NORDIC COUNTRIES (Denmark, Finland, Iceland, Norway, and Sweden) underlined that the climate change regime is the principal body of law governing anthropogenic GHG emissions. They asserted that the decisions of the Conference of the Parties (COP) to the UNFCCC and the COP serving as the Meeting of the Parties to the Paris Agreement (CMA) are also part of this regime.

The NORDIC COUNTRIES characterized the Paris Agreement as containing a mix of political targets, such as the long-term temperature goals, and legal obligations, which are primarily procedural in nature. They noted these obligations include the

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duty to prepare NDCs, which is an obligation of conduct, with every NDC constituting a progression beyond the previous one and reflecting the highest possible ambition. They highlighted the role of the Global Stocktake in this process, and noted that parties must submit new NDCs in 2025 to put the "world back on track" towards the long-term temperature goals and protect current and future generations.

On differentiation, the NORDIC COUNTRIES reiterated that the Paris Agreement establishes obligations for all parties, and that it prevails over the UNFCCC and Kyoto Protocol in case of conflict by virtue of being the latest (*lex posterior*) and more precise (*lex specialis*) treaty. They further said that CBDR-RC is not a static concept, and that parties' obligations evolve in line with their changing capacities and national circumstances.

On the interaction between different legal regimes, they noted that the Court is invited to consider the law of the sea, human rights, and customary law, next to the climate regime. Nevertheless, they asserted the "systemic relevance" of the climate regime in determining, for instance, the extent of due diligence obligations arising from other legal instruments.

On customary law, the NORDIC COUNTRIES affirmed the relevance of the prevention and due diligence principles in cases of transboundary harm, but doubted whether these customary rules—which were developed in the context of bilateral State practice—could also apply to GHG emissions. They noted lack of agreement on a specific standard to govern the causal attribution of harm to individual States, and reminded the Court that any assessment of due diligence would need to take States' compliance with its obligations under the climate regime into account.

The NORDIC COUNTRIES rejected that State responsibility includes historical responsibility, noting that such framing, along with the notion of fair share, were explicitly rejected during the negotiation of the Paris Agreement. They further said climate finance is governed by the Paris Agreement and COP and CMA decisions, and does not constitute climate reparations. Recognizing the customary status of ARSIWA, they doubted that climate change could satisfy the causation and legal breach requirements laid out therein, and said that States "assume both the roles of the injured and the responsible party."

EGYPT requested the Court to consider the entire corpus of international law, asserting that the climate change regime does not address climate change in a comprehensive manner and therefore cannot be deemed the sole source of obligations. They specified that the regime does not address the protection of human rights or of the marine environment from climate change. They also affirmed that the existence of treaties dealing with climate change does not preclude the application of general rules of international law or other treaty rules, as there is no conflict and inconsistency between these rules.

Regarding temporal aspects, EGYPT underscored that knowledge of the adverse impacts of climate change predates the adoption of the UNFCCC in 1992, and that States' conduct was, and continues to be, guided by international law, including the no-harm and due diligence obligations.

On State responsibility, EGYPT highlighted Article 15 of ARSIWA, which deals with breaches of international obligations consisting of a composite act. They asserted that developed countries' cumulative GHG emissions have reached the threshold of causing significant harm to the climate system and therefore amount to a composite act sufficient to constitute an internationally wrongful act. As such, they affirmed that developed countries have individually and collectively violated their international obligations, and are separately responsible for this breach.

Regarding legal consequences, EGYPT stated that since restitution of the climate system to its original condition is materially impossible, the appropriate remedy is compensation. They further expounded that neither the provision of financial assistance nor addressing loss and damage under the climate change regime is a substitute for reparations.

EL SALVADOR called on the Court to clarify the linkages between human rights obligations and climate change, referencing UN General Assembly Resolution 76/300 on the human right to a clean, healthy, and sustainable environment.

Expressing concerns about maritime zones and statehood continuity in scenarios where territories are rendered uninhabitable due to sea-level rise, EL SALVADOR noted that several States have urged the Court to affirm that sovereign jurisdictional rights remain intact despite such climate impacts. They invited the Court to consider principles of legal certainty, stability, territorial integrity, self-determination, and permanent sovereignty over natural resources as critical to supporting the presumption of statehood continuity. Citing the ICJ's 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, they reaffirmed the fundamental right of every State to survival, and the necessity of adapting international law to address the physical impacts of climate change.

EL SALVADOR highlighted State practice aligning with these principles, including two Pacific Island Forum's Declarations of 2021 and 2023, which recognize the rights of Pacific Island States to maintain their maritime zones and associated rights despite sea-level rise, and address implications for statehood and displaced populations. They concluded by urging the Court to provide a general framework of principles to guide on these issues, should the need arise.

The United Arab Emirates (UAE) emphasized that the UN climate regime gives effect to, and informs, the obligations of States in line with the no-harm principle, whereby States have to ensure that activities within their jurisdiction respect the environment of other States and areas beyond national jurisdiction. They underscored that climate change clearly engages the no-harm principle, considering that GHG emissions mix in the atmosphere and therefore interfere with the climate system as a whole. They highlighted the no-harm principle entails an obligation of conduct,

not result, and is therefore subject to the standard of due diligence. What is required of each State, they said, depends on the severity of the harm and the State's capacity, among others.

The UAE identified widespread agreement on the duty to pursue climate action with the highest possible ambition, emphasizing that this duty does not compel developing countries to act without regard to their development needs. They underscored the CBDR principle and the differentiated obligations under the UNFCCC, Kyoto Protocol, and Paris Agreement reflect equity in light of varying historic emissions and current capabilities, emphasizing that the CBDR principle cannot be used by developing countries as a pretext to avoid responsibility.

They recalled that the Intergovernmental Panel on Climate Change (IPCC) identified international cooperation as a critical enabler of effective climate action and emphasized that the negotiations under the climate regime are crucial to elaborate, and facilitate the implementation of, relevant commitments.

ECUADOR affirmed the applicability of general rules of customary international law to climate change, countering arguments that the international climate change regime is *lex specialis*. They identified the principle of equity and the due diligence obligation as two applicable customary rules.

ECUADOR called for using the CBDR and intergenerational equity principles as interpretative tools when determining the content of existing rights and obligations under climate change. They concluded that: CBDR operates to correct the disproportionate burden on those States that have not contributed, or have only marginally contributed, to climate change; and intergenerational equity requires States' actions to be undertaken while considering the interests of future generations.

ECUADOR also emphasized the applicability of the duty of cooperation, noting it is acknowledged in the UNFCCC and is also part of customary international law. They affirmed that cooperation must address matters of loss and damage, including through the provision of financial assistance. They further asserted that although it complements other obligations, cooperation is also a distinct obligation and its breach entails State responsibility with the ensuing legal consequences.

Regarding legal consequences, ECUADOR urged cessation of the unlawful conduct, combined with restitution and compensation in respect of States that are injured, specially affected, or particularly vulnerable.

SPAIN referenced the human right to a clean, healthy, and sustainable environment, stressing that protecting the environment is critical for safeguarding the dignity and prosperity of present and future generations. They highlighted disproportionate climate change impacts on marginalized groups, including women, children, Indigenous Peoples, persons with disabilities, coastal communities, and those in small island developing States (SIDS). They underlined the dual nature of environmental rights, comprising substantive elements like clean air, a stable climate, water access, and biodiversity conservation, alongside procedural elements like access to information, public participation, and access to justice. They also underscored the domestic recognition of the Mar Menor lagoon's legal personality as a pioneer citizen-led legislative initiative.

SPAIN advocated for a systemic approach to interpreting obligations under the UNFCCC and Paris Agreement, emphasizing their alignment with principles of cooperation, progression, and harm prevention. They noted that no single legal regime suffices to address climate change, requiring coordination across international environmental law, the prevention of transboundary harm, and human rights law.

SPAIN also cited the European Court of Human Rights' *Klimaseniorinnen* ruling recognizing that climate change is a common concern of humankind, reaffirming climate science and the need to foster intergenerational burden sharing, and confirming that governments have human rights obligations in relation to the response to climate change.

On due diligence, SPAIN cited the International Tribunal for the Law of the Sea (ITLOS) and ARSIWA, stressing that:

- the due diligence standard evolves with scientific and technological advancements;
- transboundary harm prevention necessitates cooperation frameworks, including notification and information sharing with potentially affected States; and
- legal responsibility arises from wrongful acts under these frameworks, requiring case-specific analysis of causality.

The US said the climate regime provides the primary legal framework applicable to climate change. They argued that a party does not breach the Paris Agreement if it fails to achieve its NDC, and that the Agreement does not set any standard that would allow judging the sufficiency of an NDC or allow for apportioning fair shares of the "so-called global carbon budget." They stressed the differentiation provisions of the Paris Agreement must be interpreted on their own terms, and stated that the CBDR principle is not an overarching principle of the Agreement, does not constitute customary law, and is not a general principle of international law. They also denied that the right to a healthy environment constitutes customary law.

On the prevention principle, the US noted that the customary obligation to prevent transboundary harm has only applied in cases where harm can be traced to specific, identifiable sources, which is unlike anthropogenic climate change. They also said the existence of such an obligation depends on States' awareness of harm or the risk thereof, and rejected historical assessment of when States gained awareness, saying "what matters is that States have that awareness today." They further submitted that prevention imposes an obligation of effort, the applicable standard being that of due diligence, which is context-specific and varies over time. They advocated granting countries a wide margin of appreciation as to what constitutes due diligence.

While recognizing the application of ARSIWA to climate change, the US said emissions that occurred before the creation of specific climate obligations do not constitute internationally wrongful acts. They pointed out that establishing a causal link between a given State's internationally wrongful act and a specific injury would be complicated, and that the IPCC reports cannot replace such a legal assessment.

The RUSSIAN FEDERATION asserted that the international legal obligations of States to protect the climate system are enshrined exclusively in the specialized treaties, specifically the UNFCCC and Paris Agreement. They added that the only exception is the no-harm obligation, which is customary international law, and should apply subsidiarily and only from the point at which the adverse effects of climate change were scientifically established, making such harm foreseeable.

Underscoring that the Paris Agreement is the principal legal instrument for combating climate change, they affirmed that CMA decisions do not affect the scope and content of State obligations under the Paris Agreement, and do not constitute subsequent agreement within the context of Article 31.3(a) of the Vienna Convention on the Law of Treaties. In this regard, they said that transitioning away from fossil fuels is not a legal obligation but a political appeal to States, highlighting the Paris Agreement neither prohibits the use of certain energy sources nor mandates the use of specific ones.

The RUSSIAN FEDERATION noted that climate change mitigation obligations are forward-looking and global in nature, while human rights obligations are territorial and focus on the present. They concluded that human rights obligations cannot imply a requirement to adopt mitigation measures, and also that adopting adaptation measures is not a precondition for a State to fulfil their human rights obligations.

On legal consequences, the RUSSIAN FEDERATION argued these can only arise in cases where States have breached obligations that were in force for them at the relevant time, and therefore consequences can only arise for specific States from when the UNFCCC entered into force for them. They added that the consequences of breaching the no-harm obligation would only arise from when humanity became sufficiently aware of the impacts of anthropogenic GHG emissions on the environment. Asserting this was in the 1990s, they said States cannot be held responsible for GHG emissions they produced before this period.

FIJI highlighted the devastating impacts of climate change on its people, despite their minimal contribution to global emissions. Some nations, they stressed, face existential risks of territorial loss, framing the crisis as one of survival and equity that disproportionately affects marginalized groups.

Based on "irrefutable" scientific evidence from the IPCC, they asserted that anthropogenic GHG emissions are the primary cause of climate change. They said industrialized nations bear the overwhelming responsibility for these emissions and their harmful impacts.

On legal obligations, FIJI emphasized States' international legal duty to address climate change. Citing the UN Charter principles of sovereign equality, good faith, and cooperation, they argued that the duty to prevent transboundary harm predates the UNFCCC and is referenced twice in its preamble. As a result, it does not only apply in this context but also implies that the conduct of GHG emissions was regulated before the adoption of the UNFCCC. They also referenced the ITLOS Advisory Opinion affirming that fulfilling obligations under climate treaties does not absolve States of other international responsibilities.

FIJI underscored the right to self-determination, linking it to sovereignty, culture, and identity. They argued that climate-related displacement threatens this right and others, such as the right to life. They emphasized that the right to survival requires States to protect individuals from foreseeable threats, including those posed by climate change, and that this obligation applies with an extraterritorial dimension. They argued that States' inaction undermines the rights of current and future generations, pointing to the principle of intergenerational equity.

On legal consequences, FIJI listed cessation, reparations, and compensation for, *inter alia*, economic and non-economic losses, and safeguarding cultural identities and access to ancestral lands for displaced communities.

In the Corridors

"It would be really difficult to choose whom to crown the Fossil of the Day," fumed a disappointed observer leaving the Peace Palace on the third day of the hearings. "We heard so many countries doing their most to achieve the least," they added, in keeping with the wording of the award usually assigned by the Climate Action Network during UNFCCC negotiations.

"The US completely shot the Paris Agreement's ratchet mechanism in the foot," concluded a seasoned commentator, "and this is the Biden administration speaking!" While it was not much of a surprise to see the Russian Federation embrace their long-standing rival's stance, many were disappointed about the Nordic countries' position. "They really seem to operate in another universe," considered an activist, noting how the Nordics casually said the Paris Agreement was always "structured to work over time," while vulnerable States like Côte d'Ivoire, El Salvador, and Fiji urged the Court to reflect on the very real, already manifesting encroachment on their territorial integrity through progressive sea-level rise. Spain stood out against its European neighbors in not only highlighting domestic efforts to endow ecosystems with legal personality but also championing the right of environmental NGOs to file lawsuits in the common interest.

Stakeholder participation was also a topic within the sparsely populated corridors of the Peace Palace. Some lamented a seeming lack of public interest in the hearings. Indeed, the dedicated visitors' balcony has mostly remained empty so far. A member of the media shared this should be "no surprise," given the "repetitive," "highly technical," and "legalese" content of many statements. With dozens of statements still to come, though, the hearings can still turn into a blockbuster.