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Many statements touched upon the static *versus* dynamic interpretation of States' obligations, be it with regard to evolving scientific insights or national circumstances and capacity. Several speakers again rebutted the view that States' obligations are only or mainly related to the climate treaties, especially as they question the effectiveness of the Paris Agreement.

Statements

SAINT VINCENT AND THE GRENADINES called climate change "colonization on repeat," recalling the forced exile and cultural annihilation of the country's native population in the 1700s.

On applicable law, they "firmly" refuted any argument that the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement replaced existing customary international law. They placed particular emphasis on the right to self-determination, which holds a peremptory *ius cogens* status and allows no derogation, and asked the Court to confirm this right's "systematic significance" in the context of climate change. SAINT VINCENT AND THE GRENADINES noted that international financial institutions are ill-aligned to address the needs of vulnerable States, with funding taking years to materialize and States of the Global North being able to borrow at much lower interest rates than Global South countries. Pointing to the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), they denounced the new climate finance goal as inadequate, questioning whether the climate negotiations are still fit for purpose. They urged increased support in the form of technology transfer, capacity building, and pledges to the Loss and Damage Fund.

SAINT VINCENT AND THE GRENADINES supported applying the no-harm rule to climate change, recalling its solid foundations in international law, and saying that the scope of the rule is evolutionary, not static. Moreover, they invited the Court to clarify the meaning of the principle of common concern of humankind in relation to climate change, asserting that the atmosphere is such a common concern and that no State has the right to use it as a "personal dumping ground." Rather, they said, it must be held in collective trust for the benefit of present and future generations.

SAMOA outlined constant threats of relocation due to climate impacts, noting this disrupts social structures and Indigenous ways of life. They emphasized that this harm is not an unfortunate accident but the foreseeable result of actions and omissions by those who have long known about the consequences of their conduct. They lamented that decades of scientific warnings and advocacy by vulnerable States were ignored in favor of short-term economic interests, denouncing the casting aside of the prevention and due diligence principles in violation of international law and neighborly responsibility.

Regarding legal obligations, they refuted some States' argument in favor of *lex specialis* and submitted that the UNFCCC and Paris Agreement are not the only nor the primary elements of international law that apply to the conduct at hand. They underscored that States had the requisite knowledge of the causal link between greenhouse gas (GHG) emissions, observed climate change, and related risks since at least the 1960s—long before the entry into force of the climate treaties. They emphasized other treaties and general principles of international law were in place at the time, such as the obligation to prevent transboundary harm to the environment of other States and areas beyond national jurisdiction, and the obligation of due diligence.

SAMOA underscored the wrongful conduct of some States violates the right to self-determination, cultural rights, the right to family life, and the right to life. They cited the findings of the Intergovernmental Panel on Climate Change (IPCC) on increased ill-health and premature deaths related to climate change, underscoring that this violates children's rights and the rights of future generations.

On legal consequences, they rejected others' claim that establishing causation is too complex, and underscored that science can identify, with precision, the contribution of individual States to total GHG emissions, global mean temperature rise, and sea-level rise. They urged the Court to adopt a "material contribution" approach and view conduct as a composite act, with contributions apportioned to individual States. They emphasized the importance of immediate cessation of wrongdoing and said that while reparations are important, they will not "assure our survival."

SAMOA considered that the Court is the final bastion of hope for those seeking justice when their rights are being "ignored and trampled on" and asked the Court for a fair application of sound and well-established legal principles.

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SENEGAL affirmed the existence of a number of international legal rules, both general and specific, that give rise to State obligations relevant to climate change. On general rules of international law, they asserted the applicability of the no-harm rule and the precautionary approach. They argued that the no-harm rule is customary in nature and that, in theory, applies to all States. They noted in particular the Court's previous ruling that the no-harm rule is an obligation to act with due diligence, which, *inter alia*, entails adopting and vigilantly enforcing appropriate rules and measures.

SENEGAL further affirmed the applicability of human rights laws and obligations, highlighting in particular the right to life, which is threatened by climate change. They cited the jurisprudence of the African Commission on Human and Peoples' Rights to illustrate that the violation of the right to a healthy environment has cascading effects, compromising other human rights.

Regarding the legal consequences of breaching these obligations, SENEGAL identified two key terms in the question before the Court: "significant harm" and "adverse effects." On "significant harm," they referred to the International Law Commission's definition that "significant harm" is something more than "detectable" but need not be at the level of "serious" or "substantial." On "adverse effects," they: referred to the definition in Article 2 of the Vienna Convention for the Protection of the Ozone Layer, which is replicated in Article 1 of the UNFCCC; and highlighted a Human Rights Council resolution emphasizing that the adverse effects of climate change have a range of implications, both direct and indirect, for the effective enjoyment of human rights.

SEYCHELLES urged the Court to confirm that States have a legal obligation to take urgent action to limit global warming to 1.5°C above pre-industrial levels and to recognize that all States have an individual obligation to take objectively necessary measures to prevent further harm, including by implementing their nationally determined contributions (NDCs). They said these obligations are owed to all (*erga omnes*), and any conduct contrary to the Paris Agreement's goals constitutes a breach of the obligation of prevention. They described the obligation of undertaking ambitious efforts as an obligation of conduct, assessed against the due diligence standard. A State's failure to meet its own NDC, they said, constitutes non-compliance with its self-imposed due diligence. However, they emphasized that NDCs can only serve as a standard for non-compliance, not compliance with due diligence obligations, considering the inadequacy of current NDCs.

SEYCHELLES requested the Court to confirm that States' responsibility to protect human rights from climate harm is not territorially limited. On State responsibility, they referenced Articles 14, 15, 42, and 46 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), which address composite and continuous wrongful acts. They stressed that identifying responsible States for climate harm should be guided by law, facts, and science, clarifying that small island developing States (SIDS) had no role in causing the climate disaster.

On Article 8 of the Paris Agreement not providing a basis for liability or compensation for loss and damage, they recalled that several parties, in the context of their ratification of the Agreement, explicitly declared that they were not renouncing rights under international law related to State responsibility or reparations.

SEYCHELLES said each high-emitting State can be attributed a share of climate injuries. They stressed cessation and non-repetition as urgent and critical remedies. Compensation, they remarked, could be determined based on equitable considerations, while lack of adequate evidence as to the extent of material damage cannot preclude compensation.

The GAMBIA laid out its specific vulnerabilities to climate change as a small, low-lying, coastal least developed country: "Every single death is a reminder of the price we are paying for the failure to take immediate, coordinated, and ambitious climate action."

On applicable law, they argued the Court should pay attention to a wide variety of principles and rules, including resolutions adopted by human rights bodies and decisions of the Conference of the Parties to the UNFCCC. They emphasized the need for systemic integration when interpreting different norms governing States' obligations, and recalled the close link between human rights and environmental harm, as explicitly recognized by Article 24 of the African Charter on Human and Peoples' Rights.

In relation to the transboundary harm principle, the GAMBIA said the only instance where this principle does not apply is where harm is exclusively confined to one State—by extension, it does apply to climate change. On prevention and due diligence, they asserted these principles serve to interpret treaty obligations, including the obligation to prepare NDCs under the Paris Agreement. Warning against "fossilizing" duties from three decades ago, they argued for a dynamic evolution of the due diligence standard in line with IPCC reports, and also rejected the Paris Agreement's long-term goal of limiting global warming to 2°C as outdated in light of recent science.

The GAMBIA maintained that compliance with the Paris Agreement does not automatically satisfy human rights obligations, as highlighted by the UN Human Rights Committee and the European Court of Human Rights, among others. On legal consequences, they underscored that any breach of obligations must cease, and supported granting States a wide margin of appreciation in regulating activities under their jurisdiction to combat climate change.

SINGAPORE noted the country's unique geographical characteristics—such as its small territory, low wind speeds, and lack of major river systems—limit the country's access to alternative energy sources such as wind and hydropower.

SINGAPORE acknowledged the "primary" obligations contained within the UNFCCC and the Paris Agreement, including submitting NDCs and undertaking domestic mitigation measures. However, these obligations, they argued, do not exclude the

application of obligations under other treaties or customary international law. Emphasizing the multifaceted impacts of climate change, including on terrestrial, freshwater, and marine ecosystems, as well as human health and wellbeing, they said the international response must address these different facets.

Regarding the prevention principle, SINGAPORE identified the procedural obligation to conduct environmental impact assessments of planned activities that may have significant adverse effects on the environment. They requested the Court to elaborate how this obligation can be discharged in practical terms, noting that individual projects are unlikely to make a significant difference to overall GHG emission levels.

SINGAPORE further highlighted States' duty to cooperate in the context of climate change, which arises under the UN Charter, the UN Convention on the Rights of the Child, UNCLOS, and the UNFCCC, as well as under customary international law. They asserted that, although this duty is not one of result, it must be fulfilled continuously, meaningfully, and in good faith, either directly or through participation in relevant international cooperative processes such as the UNFCCC. Pointing to the "inequalities of the past, diversity of the present, and uncertainties of the future," they asserted that historical responsibility remains an essential element of the CBDR-RC principle and continues to determine how States act to address climate change.

SLOVENIA emphasized the need for a holistic, rights-based approach to addressing legal obligations concerning climate change. They underlined that States must align their climate actions with their human rights obligations and proactively protect the climate system and environment in ways that enhance human rights.

Highlighting the right to a clean, healthy, and sustainable environment as a dynamic and essential element of the international legal framework, SLOVENIA pointed to its explicit recognition in agreements such as the Aarhus Convention and the Escazú Agreement. They stressed that this right obliges States, individually and collectively, to respect and promote it. They highlighted this spans negative obligations, such as refraining from unjustified environmental interventions, and positive obligations, such as defining and implementing measures to safeguard the climate system, adapt to its impacts, and provide financial assistance, technology transfer, and capacity building to vulnerable populations.

They underscored the interoperability between international environmental law and human rights law, asserting that decisions by human rights bodies should carry significant weight in ensuring consistent interpretation of international law. They emphasized the right to a clean, healthy, and sustainable environment as a precondition for the enjoyment of other rights, with two key implications:

- it requires systematic consideration when interpreting States' obligations under international law related to climate change; and
- it entails compliance with due diligence, obliging States to prevent, control, and address environmental harm, not only when it affects other States but also when it threatens individuals within their jurisdiction.

SLOVENIA stressed that due diligence, along with vigilance and prevention, cannot be considered fulfilled unless States engage in robust efforts to prevent adverse climate impacts, aligned with the CBDR-RC principle.

They said the Court is not requested to delve into issues of State responsibility but to clarify primary obligations of States to protect the climate system, which are incumbent on all States in line with the CBDR-RC principle. The aim, they concluded, is not to condemn past conduct but to foster collective action to protect humanity from the impacts of climate change.

SUDAN underscored that rising temperatures, drought, land degradation, and water scarcity foster competition over limited resources and exacerbate tension and conflict among communities, as manifested in the Darfur crisis. They lamented that ongoing economic and political sanctions restrict their access to bilateral climate finance and have left the country increasingly vulnerable to climate impacts.

They called upon the Court to ground its advisory opinion in the entire body of international law, rejecting the existence of *lex specialis* in the context of climate change. They recalled the history and evolution of the CBDR-RC principle, and noted that the Paris Agreement builds on a more nuanced approach to the distinction between developed and developing countries, through the reference to CBDR-RC "in the light of different national circumstances." They underscored that the categorization agreed upon in the UNFCCC and Paris Agreement should be respected and any attempt to introduce new categorizations without international consensus should be avoided.

They asserted that any assessment of whether a State breached its obligations must take into account the respective capabilities and circumstances of the State in question, as well as developed countries' failure to provide adequate means of implementation.

SRI LANKA pointed to relevant obligations, such as: the right to health, saying that clean water, air, and food are crucial to good health; the right to a healthy environment, recalling its history up until UN General Assembly Resolution 76/300; the no-harm rule, referencing its recognition in the Court's jurisprudence; and the "foundational" duty to refrain from depriving people of their subsistence, mentioning extreme heat preventing outdoor work as an example. They said these principles and rules extend beyond national territories and present generations, and rejected restricting the advisory opinion to the UNFCCC and the Paris Agreement only.

They said climate harm must trigger legal consequences in line with ARSIWA, underscoring three main consequences: cessation, specifying cutting down fossil fuel subsidies and phasing out fossil fuel production as potential remedies while rejecting geoengineering as "highly speculative and counterproductive"; restitution, where this is not wholly impossible or grossly disproportionate; and compensation, but stressed this does not absolve States from fulfilling their other financial obligations.

SWITZERLAND explained that the customary obligation of due diligence in preventing significant transboundary harm arises when a State can reasonably foresee the risk of significant harm and the causal link between its activities and the harm. In

the context of climate change, they invited the Court to confirm the obligation has been binding on all States since 1990, when the IPCC concluded that anthropogenic emissions "could lead to irreversible climate change." They suggested this applies to States' present and future, but not past, emissions.

SWITZERLAND underscored that the standard of due diligence evolves with scientific insights and technological advancements; and is more stringent for current and future larger emitters and for States with significant capacities, such as those "launching rockets into space or producing nuclear weapons." They stressed that no State can avoid its obligations by invoking the responsibility of others.

On the relationship between the due diligence obligation and climate treaty obligations, SWITZERLAND stated that the two are distinct but complementary. They noted that while both sets of obligations aim to combat climate change, compliance with the Paris Agreement does not automatically fulfill the customary due diligence obligation, which requires a case-by-case assessment of measures taken by States.

SWITZERLAND argued that while obligations of cessation and non-repetition are enforceable, attributing specific, quantifiable compensation obligations to individual States is impossible under current international law. They explained that there is no agreed threshold on how the remaining emissions budget should be allocated to individual States, "a matter that politics but not international law can determine." They added that damage arises from both lawful emissions and those that, based on due diligence, should have been avoided, and that the lack of an agreed threshold makes it difficult to determine when emissions exceed due diligence standards. Additionally, they emphasized that national policies or actions in affected States, such as poor planning, often significantly contribute to the damage caused by climate change.

SWITZERLAND supported the polluter-pays principle as a framework to guide considerations of responsibility and future negotiations. They highlighted that Western industrialized countries were responsible for 43% of global GHG emissions between 1850 and 2019 but, as of 2023, represented only three of the ten largest emitters. They argued that the CBDR-RC principle must reflect current realities, emphasizing that it should not be seen as a static concept that absolves today's largest emitters and States with significant capacities, from addressing climate change.

SERBIA affirmed that States' obligations in the context of climate change are contained in the climate treaties, but that these are without prejudice to States' obligations and responsibilities under other international environmental treaties.

Regarding the classification of climate change as a common concern of humankind, they argued this identifies climate change as a problem requiring international cooperation, but does not create rights and obligations nor entail judicial *erga omnes* obligations. Rather, they contended, it is a policy issue containing some legal elements that oblige States to address climate change in order to protect peoples and individuals of present and future generations. They submitted that CBDR-RC underlies States' commitments and obligations under the climate regime, but does not constitute customary international law, as its normative status is closely tied to the UNFCCC and Paris Agreement.

SERBIA asserted that States' obligations with respect to climate change, as set out in the Paris Agreement, are obligations of conduct, not result. They interpreted the due diligence obligation as requiring States to make their best efforts in good faith and in accordance with national circumstances. They argued that even when significant adverse effects materialize, these do not constitute failure of due diligence, but that such failure is limited to States' negligence to take all appropriate measures to prevent, reduce, or control human activities that have or are likely to have significant adverse effects. They said States should hold non-state actors within their territories responsible for their actions or omissions that may have negative effects on the climate system.

On State responsibility, SERBIA submitted that this is governed by customary international law as codified in ARSIWA, and that the climate regime does not contain any specific rules deviating from custom. However, they affirmed that due regard should be had to the mechanisms for correcting deviations from mandatory requirements contained in the climate regime.

In the Corridors

With temperatures in The Hague nearing the freezing point, some speakers warned against freezing—or in the words of the Gambia "fossilizing"—international law in time. In this regard, the work of the Intergovernmental Panel on Climate Change (IPCC) was invoked several times, mostly to underscore the need for a dynamic interpretation of due diligence duties and that 1.5°C should prevail over the outdated 2°C goal. Switzerland, on the other hand, cited the IPCC First Assessment Report to pinpoint 1990 as the year in which the adverse effects of greenhouse gas (GHG) emissions were reasonably well-established. "I cannot believe they went as far as to recall fossilized hopes about the beneficial effects of global warming being entertained prior to 1990," expressed an astounded observer.

Speakers diverged on what point in time they hope to freeze the interpretation of common but differentiated responsibilities and respective capabilities, and the notion of "developed" and "developing" countries. Switzerland discounted the inequality of the past in favor of current circumstances: "If we take past emissions into account, both our countries would be effectively de-responsibilized, given our limited historical contributions," they told Singapore, who had underscored that "the present is a function of the past and the future is not a given."

Preserved for eternity are the contributions of two former and now deceased judges of the Court that speakers brought to the fore during the day: the Brazilian Antônio Cançado Trindade, who was one of the drivers behind the concept of common concern of humankind; and the Sri Lankan Christopher Weeramantry, a central figure in the development of the principle of intergenerational equity. "Surely, the two of them would have a lot to say about States' obligations in respect of climate change," noted an admirer.