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STATE RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACTS RELATED TO CLIMATE CHANGE

AZ ÁLLAM FELELŐSSÉGE A NEMZETKÖZILEG JOGSÉRTŐ CSELEKMÉNYEKÉRT A KLÍMAVÁLTOZÁSSAL KAPCSOLATBAN

MUHANAD ALAMRO¹

ABSZTRAKT ■ Ez a tanulmány az államok nemzetközi jogi felelősségeit vizsgálja a klímaváltozás kezelésében, különös figyelmet fordítva olyan kulcsfontosságú szerződésekre, mint az UNFCCC és a Párizsi Megállapodás. A tanulmány elemzi az államok kibocsátáscsökkentési és alkalmazkodási kötelezettségeit, valamint nemzetközi szokásjogi elveket, mint a kártiltás elve és a gondosság elve. A kutatás kiemeli a nemzetközi jog alapvető forrásait, amelyek előírják az államok számára a klímaváltozás kezelését, különös figyelmet fordítva az üvegházhatású gázok kibocsátásának csökkentésére. E kötelezettségek elsősorban a nemzetközi szokásjogból és a nemzetközi szerződésekből erednek.

KULCSSZAVAK: állami felelősség, klímaváltozás, nemzetközi szokásjog, UNFCCC, Párizsi Megállapodás

ABSTRACT ■ This study explores the international legal responsibilities of states in addressing climate change, focusing on key treaties like the UNFCCC and the Paris Agreement. It examines state obligations to mitigate emissions and adapt to climate impacts, alongside customary international law principles such as the no-harm rule and due diligence. The research highlights the primary sources of international law that require states to address climate change, with a focus on reducing greenhouse gas emissions. These obligations predominantly stem from customary international law and treaties.

KEYWORDS: state responsibility, climate change, customary international law, UNFCCC, Paris Agreement

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1. INTRODUCTION

State responsibility in environmental protection remains a significant challenge, despite being a foundational issue in international environmental law. Determining principles of state responsibility for climate change is particularly urgent, as climate change represents one of the most substantial human-caused damages in history. This urgency is underscored by the growing focus on climate change in both domestic and international law.

Highly developed countries have significant obligations towards developing countries, which often suffer disproportionately from climate change impacts despite contributing less to the greenhouse effect². Therefore, it's crucial to analyze how general principles of international legal liability for environmental damage apply to climate change-related damages.

One of the core principles of international law is the obligation to make reparation for damage caused by violations of its norms. As articulated by the Permanent Court of International Justice, this principle requires that the state be returned to the condition it was in before the damage occurred³.

The Articles on State Responsibility, drafted by the International Law Commission as a non-binding proposal, aim to comprehensively outline the principles of state responsibility in international law. Article 31, paragraph 1, emphasizes the need for full reparation of damage, which is broadly defined to include both material and non-material aspects⁴. Similarly, the commission interprets the concept of reparation expansively. It encompasses various forms, including restitution, compensation, rehabilitation, and guarantees of non-repetition of violations⁵.

The topic of international environmental accountability for states has been regarded as complex and controversial due to both legal and policy challenges, particularly because most international treaties do not directly address state liability for environmental harm⁶. However, the situation is different today, as many international courts are dealing with a growing number of cases related to

² JUTTA BRUNNÉE – STEPHEN J. TOOPE: Climate Change: Building a global legal regime. In: JUTTA BRUNNÉE – STEPHEN J. TOOPE (eds.): *Legitimacy and Legality in International Law. An International Account*. Cambridge, Cambridge University Press, 2010, 128.

³ Permanent Court of International Justice: Factory at Chorzów (Germany v. Poland). P.C.I.J., Ser. A, No. 17, 1928 (Sept. 13).

⁴ International Law Commission: Draft Articles on Responsibility of States for Internationally Wrongful Acts. Supplement No. 10 (A/56/10), November 2001.

⁵ The Draft, article 34.

⁶ ALAN BOYLE – JAMES HARRISON: Judicial Settlement of International Environmental Disputes: Current Problems. *Journal of International Dispute Settlement*, 2013 (2), 245–276.

environmental issues, which highlights the need to harness all legal mechanisms to address state responsibility in this regard.⁷

In general, state responsibility refers to a state's accountability for breaching international law, based on the occurrence of an internationally wrongful act that can be attributed to that state⁸. The rules for strict liability for environmental harm resulting from lawful activities are not well established and remain rare and exceptional. In general, states have shown limited interest in creating a comprehensive liability framework for environmental damage, and only a few international environmental regimes impose liability and compensation schemes on states.⁹

2. BREACHING OF AN INTERNATIONAL OBLIGATION

Committing a wrongful act by a state is the core of state responsibility. The International Law Commission concluded that a state's responsibility is applicable only if the conduct of a State constitutes a breach of primary international obligations¹⁰.

⁷ Inter-American Court of Human Rights: Advisory Opinion OC-23/17 on Environment and Human Rights. 15 November 2017. Permanent Court of Arbitration: In the Matter of the South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China). Award of 12 July 2016. PCA Case No. 2013-19. International Tribunal for the Law of the Sea: Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Case No. 21). Advisory Opinion of 2 April 2015. ITLOS Reports 2015, 4. International Court of Justice: Whaling in the Antarctic (Australia v. Japan: New Zealand intervening). Judgment of 31 March 2014. ICJ Reports 2014, 226.

⁸ JAMES CRAWFORD: Historical development. In: *State Responsibility: The General Part*. Cambridge Studies in International and Comparative Law. Cambridge, Cambridge University Press, 2013, 3–44.

⁹ CHRISTINA VOIGT: International Environmental Responsibility and Liability. 2021 (February 23), <https://ssrn.com/abstract=3791419>. However, these treaties often focus on the liability of private entities without providing specific compensation schemes for states. For example: International Convention on Civil Liability for Oil Pollution Damage (CLC), Imposes liability on ship owners for oil pollution damage but does not establish compensation for states, although affected parties can seek compensation. The article 3/1 states: "Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or where the incident consists of a series of occurrences at the time of the first such occurrence, shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as a result of the incident". International Convention on Civil Liability for Oil Pollution Damage, concluded at Brussels on 29 November 1969, treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations, Volume 973, 1975, I. Nos. 14097-14108. Another example is Basel Convention on the Control of Transboundary Movements of Hazardous Wastes Addresses the responsibilities of private entities but lacks a comprehensive compensation mechanism for states impacted by illegal waste shipments.

¹⁰ The Draft, article 1-3.

It was argued that the outcomes of international unlawful act are limited to be bilateral legal relations, concerning only the responsible State and the affected State¹¹. Nevertheless, now, it has been accepted that certain wrongful acts can establish a state responsibility towards more than one state, or even to the international community as a whole¹². An internationally wrongful act of a State arises when its conduct, whether an action or omission: (a) constitutes a breach of an international obligation of the State and (b) is attributable to the State under international law¹³.

This part of the study will address the main sources of international law that obligate states to combat climate change, primarily through the reduction of greenhouse gas emissions. Generally, these obligations arise from customary international law and treaties.

2.1. Treaties

International treaties establish various rights and obligations concerning environmental issues, including climate change, differing in their objectives, purposes, and spatial or temporal scope. Some treaties, such as the 1992 UNFCCC, the 2015 Paris Agreement, and the 1992 Biodiversity Convention, address global environmental concerns. Others focus on specific issues or tackle environmental challenges within particular regions.¹⁴

¹¹ GORDANA N. PRERADOVIĆ: *The International Legal Responsibility of States for Climate Change. Novi Sad Faculty of Law: Collected Papers / Zbornik Radova: Pravni Fakultet u Novom Sadu*, 2018 (2), 749–774.

¹² The International Court of Justice in *Barcelona Traction case* of 1964, in which the Court stated that the essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis other countries in the field of diplomatic protection.

¹³ The Permanent Court of International Justice (PCIJ), in the *Phosphates in Morocco* case, specified these two elements. The Court explicitly connected the establishment of international responsibility to the existence of an act attributable to the State and deemed contrary to the treaty rights of another State. See *phosphates in Morocco*, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 10, at p. 28. ICJ has also referred to the two elements on several cases. See *United States Diplomatic and Consular Staff in Tehran*, Judgment, I.C.J. Reports 1980, 3, at 29, para. 56. Cf. page 41, para. 90. See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, 117–118, para. 226.

¹⁴ VOIGT 2021, note 8.

2.1.1.1. *The UNFCCC and Paris Agreement: Framework and Obligations*

The UNFCCC sets out, in Article 2, the ultimate objective ‘to prevent’ dangerous anthropogenic interference with the climate system.¹⁵ It serves as a cornerstone of the climate regime framework, emphasizing key principles such as intergenerational equity, common but differentiated responsibilities (CBDR-RC), the precautionary principle, and sustainable development in guiding Parties toward the Convention’s objectives.¹⁶

Neither the UNFCCC nor the Paris Agreement establishes specific rules on international responsibility, however, the term “responsibilities” emerges in terms of States’ common but differentiated responsibilities and respective capabilities, shaping the application and implementation of the primary obligations set forth in these agreements.¹⁷

The European Court of Human Rights (ECtHR) in *Verein KlimaSeniorinnen Schweiz v. Switzerland* acknowledges that while climate change is a global issue requiring collective action, each State has its own responsibilities under the principle of “common but differentiated responsibilities”, as outlined in the UNFCCC and the Paris Agreement¹⁸. The court in the previous case relied on UNFCCC and the Paris Agreement to establish a positive obligation to mitigate the adverse effects of climate change.

The main aim of these instruments is to outline the obligations that should be followed to protect the climate, while the rules of state responsibility remain applicable, as the climate agreements do not replace or undermine these rules, but rather work in harmony with them to ensure that States fulfill their obligations.

The negotiating history of the UNFCCC indicates that the exclusion of any provision explicitly addressing State responsibility for the adverse effects of climate change was deliberate, as developed countries to explicitly include reference to State responsibility within the text¹⁹. As a result, the customary

¹⁵ UNFCCC, Art. 2.

¹⁶ Ibid. Art. 3.

¹⁷ Article 3(1) of the UNFCCC states: “*The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities*”.

¹⁸ *Verein Klima Seniorinnen Schweiz and Others v. Switzerland* [GC], Application No. 53600/20, European Court of Human Rights, Judgment of 9 April 2024.

¹⁹ Preparation of a Framework Convention on Climate Change: Set of informal papers provided by delegations, related to the preparation of a Framework Convention on Climate Change, UN doc. A/AC.237/Misc.1/Add.3 (18 June 1991), at 22. See RICHARD S. J. TOL – RODA VERHEYEN: State Responsibility and Compensation for Climate Change Damages: A Legal and Economic Assessment. *Energy Policy*, 2004 (32), 1109–1114.

international law of State responsibility applies to breaches of the UNFCCC and Paris Agreement²⁰.

The UNFCCC preamble emphasizes the duty to prevent transboundary harm, reaffirming States' responsibility to ensure activities within their jurisdiction do not damage the environment of other States or areas beyond national jurisdiction, in alignment with established international law principles²¹. The Vienna Convention on the Law of Treaties (VCLT) classifies preambles as primary interpretive resources under Article 31, considering them part of a treaty's text and essential for contextual analysis²². Additionally, The International Law Commission (ILC) regards the preamble as an essential part of a treaty, meaning it plays a key role in interpreting the treaty's purpose and scope²³. Therefore, the ICJ has often referred to the preambles of treaties to assist in interpreting the specific obligations outlined in the main provisions²⁴.

From the author's point of view, the UNFCCC preamble has a practical function in interpreting the nature of mentioned obligations and their legal value, particularly those obligations serve the customary rule to prevent transboundary harm, as stated in the preamble.

Notably, the Paris Agreement preambular establishes a link between mitigating climate change and international human rights law, stating: "[A]cknowledg[es] that climate change is a common concern of humankind, [and] Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights...". Thus, several human rights bodies have addressed the adverse effects of climate change in relation to particularly vulnerable rights. For instance,

²⁰ A number of states declared that signature and/or ratification of the Convention shall in no way constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law. See Declarations by Parties, United Nations Climate Change, <https://unfccc.int/process-and-meetings/the-convention/status-of-ratification/declarations-by-parties>.

²¹ UNFCCC, at pmb1.

²² The VCLT's article 31, entitled "General Rule of Interpretation" reads: "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes..."

²³ See ILC, Rep. on the Work of the Second Part of its Seventeenth Session, U.N. Doc. A/6309/Rev.1 (1966), at 221. Also, ELISABETH SHIRLOW – KIMBERLEY GORE: Chapter 6: An Introduction to the VCLT and Its Role in ISDS: Looking Back, Looking Forward. In: ELISABETH SHIRLOW – KIMBERLEY GORE (eds.): *The Vienna Convention on the Law of Treaties in Investor–State Disputes: Evolution and History*. Kluwer Law International, 2022, 206.

²⁴ See Rights of Nationals of the United States of America in Morocco (Fr. v. U.S.), Judgment, 1952 I.C.J. 176 (Aug. 27), at 183-184, 197-198.

the European Court of Human Rights has incorporated environmental protection through the safeguarding of rights such as the right to life, the right to respect for private and family life, and the right to property²⁵.

The inter-American Court of Human Rights acknowledges the undeniable link between environmental protection and human rights, as environmental degradation and climate change impact the enjoyment of fundamental rights. Remarkably, it relied on the preamble to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights to support its argument²⁶.

While Article 4, paragraph 1, outlines general commitments for all Parties to the UNFCCC, paragraph 2 sets forth specific commitments applicable only to Parties listed in Annex I, which includes developed country Parties and those undergoing a transition to a market economy.

The general commitments for All Parties, whether developed or developing, include: develop national policies to address climate change, cooperate in research and data sharing, promote sustainable management of resources, and take steps to adapt to climate change impacts. Meanwhile, the specific Commitments for Annex I Parties include: take the lead in reducing greenhouse gas (GHG) emissions, adopt national policies with concrete measures to reduce emissions, and report progress through regular National Communications.

2.1.2. *The Precautionary Principle under the UNFCCC and Paris Agreement*

One of the key obligations under the UNFCCC is the duty of parties to adopt precautionary measures in order to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects²⁷. Consequently, most states agreed to adopt the Kyoto Protocol to the UNFCCC in 1997²⁸, aiming to make

²⁵ See for example, Case of *Tătar v. Romania*, No. 67021/01. Judgment of January 27, 2009, para. 107.

²⁶ The Court in its advisory opinion stated : “*In addition, the preamble to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights , emphasizes the close relationship between the exercise of economic, social and cultural rights – which include the right to a healthy environment – and of civil and political rights, and indicates that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human being. They therefore require permanent promotion and protection in order to ensure their full applicability; moreover, the violation of some rights in order to ensure the exercise of others can never be justified*”. See Inter-American Court of Human Rights advisory opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia, The Environment and Human Rights, para 47.

²⁷ UNFCCC, Art. 3.3.

²⁸ Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997, 2303 UNTS 148 (entered into force 16 February 2005).

the obligations of limiting the use of fossil fuels under the UNFCCC more definitive. While the term ‘precautionary measures’ does not appear in the protocol, paragraph 4 of its preamble addresses that this protocol should refer to article 3 of the UNFCCC which addresses precautionary measures.

Pursuant to the Paris Agreement, States recognized the importance of aligning climate action with the best available science. They acknowledged the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge, and committed to taking mitigation measures, including reducing anthropogenic GHG emissions, “*in accordance with best available science*”.²⁹

These measures are classified under the standard of conduct that reflects what a responsible State should do under normal conditions using its best available means to fulfill its international obligations. In international law, this concept is known as the best effort standard or due diligence. Due diligence does not impose a strict obligation of result, allowing States significant flexibility in its application³⁰.

Under the Paris Agreement, Parties are required to prepare, communicate, and maintain successive nationally determined contributions (NDCs) (Article 4.2) and provide the necessary information for clarity, transparency, and understanding (Article 4.8). Every five years, they must submit a new NDC that shows progress beyond the previous one (Articles 4.3, 4.9). Additionally, Parties must account for their NDCs to ensure environmental integrity and prevent double counting (Article 4.13). They are also obligated to regularly submit greenhouse gas inventories and report on progress toward their NDC commitments (Article 13.7). NDCs are defined as ambitious efforts aligned with the Agreement’s commitments to fulfill its purpose.³¹

All of these obligations are legally binding for Parties and are considered an obligation of result³². On the other hand, the obligation of conduct specifically applies to the achievement of Parties’ nationally determined contributions (NDCs). The legal nature of NDCs was among the most debated issues during negotiations. The controversy over their legal status was seemingly resolved in Article 4(2).

²⁹ Paris Agreement, at art. 4.1; see also Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, 26th session, Glasgow Climate Pact, 1/CMA.3, U.N. Doc. FCCC/PA/CMA/2021/10/Add.1, art. 1.

³⁰ JAMES CRAWFORD: Revising the Draft Articles on State Responsibility. *European Journal of International Law*, 1999 (3), 441-459.

³¹ *Ibid.* at Art. 3 and 4.2.

³² CHRISTINA VOIGT: The Paris Agreement: What is the standard of conduct for parties? *Questions of International Law*, 2016 (26), 17-28.

This provision has been interpreted as not imposing an individual obligation on each Party to implement or achieve its NDC³³.

Article 4.2 of the Paris Agreement restates parties' obligation under the UNFCCC to "*pursue domestic mitigation measures*" but adds that this pursuit should aim to achieve NDC objectives. However, this does not impose a legal obligation to implement or meet NDCs, as the term "pursue" indicates an effort rather than a requirement, and the use of "aim" is not generally seen as creating a binding obligation³⁴.

Although parties have some discretion in defining and implementing measures to achieve their nationally determined contributions (NDCs), Article 4(2) sets a standard of conduct requiring them to make their best efforts. While achieving NDCs is not legally binding, Parties are under the obligation to design necessary, meaningful, and effective measures to work toward this goal.

The concept of "*highest possible ambition*" in the Paris Agreement sets a standard for Parties' conduct when designing their Nationally Determined Contributions (NDCs). It requires Parties to exercise due diligence, meaning they must act to the best of their ability to progressively achieve the agreement's goals, such as limiting global temperature rise to well below 2°C and pursuing efforts to limit it to 1.5°C.³⁵

Regarding adaptation and means of implementation, the Paris Agreement imposes relatively few legal obligations on parties. Parties are required to engage in adaptation planning and take appropriate actions (Article 7.9), strengthen cooperative efforts on technology development and transfer (Article 10.2), regularly report on actions taken to enhance the capacity of developing countries (Article 11.4), and cooperate to improve climate change education, training, public awareness, participation, and access to information (Article 12).

While the Paris Agreement emphasizes cooperation, it also includes mandatory obligations, particularly for developed countries. The text specifies that "*developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation*". This article bears a binding obligation, particularly the Vienna Convention reaffirms that treaties shall be interpreted

³³ DANIEL BODANSKY: Legal Character of the Paris Agreement. *Review of European, Comparative & International Environmental Law*, 2016 (2), 142-150.

³⁴ DANIEL BODANSKY: The United Nations Framework Convention on Climate Change: A Commentary. *Yale Journal of International Law*, 1993 (2), 451, at 516 -517.

³⁵ VOIGT 2016, 25. Article 4(3) of the Paris Agreement reads: "*Each Party's successive nationally determined contribution (NDC) will represent a progression beyond the Party's previous NDC and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances*".

in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose³⁶. So, the immediate context of the treaty includes the grammatical structure and syntax of the provision in which the interpreted word appears³⁷.

That said, in certain situations, “should” may be viewed as creating a legal obligation if the surrounding provisions support this interpretation, but it is not as definitive as more forceful terms like “shall” or “must”. It is clear that the International Court of Justice considers the ordinary meaning of the text to be an indispensable element in its interpretative process. Indeed, the Court has stated on various occasions that “*interpretation must be based above all upon the text of the treaty*”³⁸.

2.1.3. Individual and Collective Obligations Under the Paris Agreement

The Paris Agreement contains two types of obligations: first, collective obligations, which are shared by all Parties as a group, and second, individual obligations, which are specific to each State party. The essence of the Paris Agreement’s collective obligation is reflected in the wording of Article 2.1.: “*This Agreement ... aims to strengthen the global response to the threat of climate change ... including by: (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels*”.

According to the International Law Commission (ILC), collective obligations are those owed to a group of States and established to safeguard a collective interest. In such cases, States other than the injured State may invoke responsibility if two conditions are met: first, the breached obligation must have been owed to a group that includes the State invoking responsibility; and second, the obligation must have been created to protect a collective interest.³⁹

³⁶ Article 31 of the Vienna Convention. See RICHARD GARDINER: *Treaty Interpretation*. 2nd ed., Oxford University Press, 2015, 198.

³⁷ See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* Judgement, 11 September 1992, ICJ Rep. 351, paras. 373–374. The issue in this case was whether the phrase ‘determination of a legal situation’ in the agreement between the disputing parties was synonymous with ‘delimitation’.

³⁸ See *Application of the Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates) (Preliminary Objections)*, International Court of Justice, [2021] ICJ Rep 71, para. 81. Also, *Territorial Dispute (Libya/Chad)*, International Court of Justice, Judgment, [1994] ICJ Rep 6, para. 41.

³⁹ The Draft, art 48. A distinction is drawn between obligations owed to a group of States and established to protect a collective interest of the group (paragraph 1 [a]), which states “*the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group*”, and obligations owed to the international community as a whole (paragraph 1 [b] that provides “*the obligation breached is owed to the international community as a whole*”).

However, there is a debate over the nature of obligations under the Paris Agreement revolves around whether its commitments are primarily individual or collective. On one hand, it is argued that the key obligation is found in Article 4(2), which requires each party to pursue domestic mitigation measures to achieve its own nationally determined contribution (NDC). This means that each country has separate, self-imposed obligations, and the Agreement functions by coordinating these individual commitments rather than imposing a shared legal duty⁴⁰. On the other hand, it is contended that the core obligation in Article 3, which requires all parties to undertake and communicate “ambitious efforts” as part of the global response to climate change. This interpretation suggests that the Agreement does not just coordinate individual efforts but also creates a broader, collective responsibility to achieve the mitigation goals in Article 2., consequently, the point of the Paris Agreement is to create and coordinate a collective “result” obligation.⁴¹

After having discussed the key international agreements that impose positive obligations on States to mitigate the impacts of climate change, it is now essential to explore the obligations arising from international customary law.

2.2. Customary law

Under customary international law, states are obligated not to cause harm or violate the rights of other states. In environmental law, this duty extends to preventing environmental damage to other states and areas beyond national jurisdiction. The no-harm rule is also enshrined in Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration.

2.2.1. *The No-Harm Principle in International Environmental Law*

The arbitral decision in the *Trail Smelter* underpin the role of no-harm rule in terms of environmental cases, it stated: “*Under the principle of international law... no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another state or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence*”.⁴²

⁴⁰ BENOIT MAYER: Obligations of Conduct in the International Law on Climate Change: A Defence. *Review of European, Comparative & International Environmental Law*, 2018 (130), 135.

⁴¹ ALEXANDER ZAHAR: Collective Obligation in the Paris Agreement. September 6, 2018. Available at SSRN: <https://ssrn.com/abstract=3245139> or <http://dx.doi.org/10.2139/ssrn.3245139>.

⁴² *Trail Smelter (USA v. Canada)*, Award of 1941, III RIAA 1911, at 1965.

The International Court of Justice, in the *nuclear weapons* and *Gabcikovo-Nagymaros*, affirmed that the general obligation of states to ensure that activities within their jurisdiction and control do not harm the environment of other states or areas beyond national jurisdiction is now a recognized principle of international environmental law⁴³. Since the no-harm principle has become a fundamental pillar of international environmental law⁴⁴, a state's failure to prevent activities within its jurisdiction from causing cross-border environmental harm results in its international responsibility.

A violation of the no-harm principle arises when three conditions are met: (1) cross-border environmental damage, (2) a causal link to specific activities within a state's jurisdiction, and (3) the state's failure to take reasonable preventive measures.⁴⁵

It is argued that the application of the no-harm principle to climate change presents challenges due to its unclear scope, the complexity of defining state obligations. Additionally, not only the shared responsibility of multiple states, but also the scattered and indirect nature of the resulting harm, and the high complexity of the relation between greenhouse gas emissions and such harms⁴⁶. However, these challenges do not to completely impede reliance on this rule to establish state responsibility for the adverse effects of climate change.

One potential objection is that state responsibility for violating the no-harm principle is excluded by specific norms within the climate regime. It could be argued that the CBDR (Common But Differentiated Responsibilities) principle prevents the no-harm principle from applying to climate change issues, or that the Kyoto Protocol acts as a *lex specialis*, displacing the application of the no-harm principle⁴⁷.

That said, there is no contradiction in applying both principles harmoniously. The no harm rule should first be applied to assess whether a state's responsibility arises from a specific act or omission. Once responsibility is established under the no-harm, the CBDR principle is then applied to assess whether the state has met its obligations according to its capacity and resources. If the state has done so, it may be exempt from liability for the harm.

⁴³ Nuclear weapons ICJ Report 241, 1996, para. 29; and Gabcikovo-Nagymaros Project ICJ Report 7, 1997, 41.

⁴⁴ PHILIPPE SANDS – JACQUELINE PEEL: *Principles of International Environmental Law*. 3rd ed., Cambridge, CUP, 2012, 195-200.

⁴⁵ BENOIT MAYER: State Responsibility and Climate Change Governance: A Light through the Storm. *Chinese Journal of International Law*, 2014 (3), 539-575.

⁴⁶ BENOIT MAYER: The relevance of the no-harm principle to climate change law and politics. *Asia Pacific Journal of Environmental Law*, 2016 (19), 79-104.

⁴⁷ ALEXANDER ZAHAR: Mediated versus Cumulative Environmental Damage and the International Law Association's Legal Principles on Climate Change. *Climate Law*, 2014 (4), 270.

2.2.2. *The applicability of the no-harm principle as a due diligence obligation*

The no-harm principle is best understood as a due diligence obligation rather than strict liability. This interpretation is supported by the language used in the Stockholm and Rio Declarations, which describe the obligation as one “to ensure...” — a phrase commonly associated with due diligence rather than automatic liability. To establish State responsibility for climate change damages, legally relevant State actions or attributable private activities must be identified. While greenhouse gas emissions largely originate from private actors, they are not automatically attributable to the State. However, the State’s duty of control remains crucial. In this context, the due diligence standard serves as a key test to assess whether the State has taken adequate measures to prevent or mitigate environmental harm⁴⁸. In the Pulp Mills case, the International Court of Justice held that a State is obligated to utilize all available means to prevent activities within its territory or jurisdiction from causing significant environmental harm to another State, stating in *Silala* case “[a] State is... obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State”⁴⁹.

International courts and tribunals have clarified that due diligence in the environmental context entails not only adopting appropriate regulations and measures but also ensuring their effective enforcement. This includes maintaining vigilance and exercising administrative control over both public and private operators, such as monitoring their activities to prevent environmental harm⁵⁰. Furthermore, ITLOS’s Seabed Disputes Chamber ended that due diligence is an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result⁵¹.

Due diligence involves both substantive and procedural obligations. Substantively, it requires the adoption and active enforcement of measures to prevent transboundary environmental harm. Procedurally, it includes obligations

⁴⁸ CHRISTINA VOIG: State Responsibility for Climate Change Damages. *Nordic Journal of International Law*, 2008 (77), 1-22.

⁴⁹ Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia), Judgment, I.C.J. Reports 2022, 614, at 648, para. 99, Pulp Mills on the River Uruguay (Argentina v Uruguay) [2010] ICJ Rep 14 [101].

⁵⁰ Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, Case No. 21, Advisory Opinion, ITLOS Reports 2015, 4.

⁵¹ Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Request for Advisory Opinion Submitted to the Seabed Disputes Chamber), Advisory Opinion of 1 February 2011, ITLOS Reports 2011, 110.

such as conducting environmental impact assessments and notifying and consulting other States⁵².

Some aspects of the no-harm principle may be unsuitable for addressing climate change, potentially justifying interpretations that diverge from existing rules. This is particularly relevant to the obligation of full reparation, a well-established principle in state responsibility law, but one that may impose excessive burdens when negligence leads to widespread environmental harm. However, state practice suggests that derogations from full reparation are sometimes accepted, as seen in war reparations and investment disputes, to avoid placing undue demands on responsible states.⁵³

The obligation arises when the risk of harm is both foreseeable and significant. In its Articles on Prevention of Transboundary Harm from Hazardous Activities, the ILC clarified that “significant” refers to harm that is more than detectable but does not necessarily reach the level of being serious or substantial⁵⁴. The foreseeability of climate change impacts due to increased GHG concentrations is well established, given the longstanding scientific consensus, notably articulated by the IPCC⁵⁵. As a result, States cannot plausibly deny awareness of the consequences of their emissions. Under the no-harm principle, the obligation to prevent transboundary harm — such as mitigating emissions — is assessed in light of the best available scientific knowledge.

2.2.3. *The Obligation to Cooperate in Addressing Climate Change*

States have an *erga omnes* obligation to prevent environmental harm, particularly when it affects areas beyond national jurisdiction or has serious and far-reaching consequences. This reflects the shared interest of the international community in environmental protection. As the International Court of Justice has affirmed, *erga omnes* obligations are those owed “by a State towards the international community as a whole,” recognizing that “all States have a legal interest in their protection”⁵⁶.

The Court has further concluded that cooperation is necessary in order to fulfil the obligation of prevention⁵⁷, therefore the obligation to cooperate has

⁵² See Pulp Mills Judgment, 204; ILC Articles on Transboundary Harm, Art. 7.

⁵³ MAYER 2016, 90.

⁵⁴ Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, Yearbook of the International Law Commission, 2001, Vol. II (Part Two), document A/56/10 (2001).

⁵⁵ IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the IPCC [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, 184.

⁵⁶ Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Judgment, I.C.J. Reports 1970, para 33.

⁵⁷ Silala case (Chile v. Bolivia), Judgment ICJ, para 101.

played a key role in the development and implementation of environmental law regimes⁵⁸. Principle 24 of the Stockholm Declaration and Principle 7 of the Rio Declaration affirm that cooperation is a fundamental component of effective environmental protection and planning. Regarding the prevention of pollution of the marine environment, the International Tribunal for the Law of the Sea (“ITLOS”) has affirmed that “*the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of [UNCLOS] and general international law*”.⁵⁹

The obligation of States to cooperate should be implemented in good faith, as Article 2(2) of the UN Charter requires all Members to fulfill their obligations in good faith. The ICJ, in *the Nuclear Tests case*, affirmed that good faith is a fundamental principle governing the creation and performance of legal obligations, noting “[o]ne of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith”.⁶⁰

If a specific activity within a state’s territory generates GHG emissions on a large scale, establishing a direct causal link to climate harm, the state has a clear obligation to take all necessary measures to mitigate its impact. However, Anthropogenic GHG emissions have inherently diffuse impacts, making it difficult to attribute specific climate-related harm to a particular state’s emissions. Unlike traditional transboundary pollution cases, where harm results from direct discharges into neighboring territories, climate damage arises from the cumulative effect of global emissions rather than individual contributions. Therefore, the cooperation principle should be highlighted in combating the diffuse consequences of Anthropogenic GHG emissions as a climate change a common concern of humankind.

The cumulative impact of global anthropogenic GHG emissions and their severe consequences necessitate shared responsibility based on prevailing scientific knowledge and technology. Accordingly, fulfilling the customary international law obligation of due diligence in the context of climate change requires every state to take all necessary measures to reduce anthropogenic GHG emissions and fully participate in international collective efforts.

⁵⁸ RÜDIGER WOLFRUM: Cooperation, International Law of. In: *Max Planck Encyclopedias of International Law*, April 2010, para. 28.

⁵⁹ MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, 95 (“MOX Plant”), at 110, para 82.

⁶⁰ Nuclear Tests, New Zealand v France, Admissibility, Judgment, [1974] ICJ Rep 457, ICGJ 137 (ICJ 1974), 20th December 1974.

3. CONCLUSION

International law holds states responsible for addressing climate change through both treaty obligations, like the UNFCCC and Paris Agreement, and customary law principles, such as the no-harm rule. International environmental treaties establish a framework of obligations for States to mitigate climate change impacts. These treaties highlight key principles, including common but differentiated responsibilities, precautionary measures, and the need for collective action. While the treaties themselves do not explicitly address State responsibility for climate change harm, customary international law, including the duty to prevent transboundary harm, applies to breaches of these agreements.

The no-harm principle is vital in international environmental law, obligating states to prevent cross-border environmental harm. While applying it to climate change is challenging due to the diffuse nature of greenhouse gas emissions, the principle remains crucial to assess state responsibility. Interpreted as a due diligence obligation, it requires states to take preventive measures. The principle of cooperation, as emphasized in international frameworks, underscores the need for collective action to tackle climate change. Ultimately, the no-harm principle, combined with cooperation, remains crucial in addressing global environmental challenges.

BIBLIOGRAPHY

Books & Chapters in Books

JUTTA BRUNNÉE – STEPHEN J. TOOPE: Climate Change: Building a global legal regime.

In: JUTTA BRUNNÉE – STEPHEN J. TOOPE (eds.): *Legitimacy and Legality in International Law. An International Account*. Cambridge, Cambridge University Press, 2010.

JAMES CRAWFORD: Historical development. In: *State Responsibility: The General Part. Cambridge Studies in International and Comparative Law*. Cambridge, Cambridge University Press, 2013.

RICHARD GARDINER: *Treaty Interpretation*. 2nd ed., Oxford University Press, 2015.

PHILIPPE SANDS – JACQUELINE PEEL: *Principles of International Environmental Law*. 3rd ed., Cambridge, CUP, 2012.

Journal Articles

BENOIT MAYER: Obligations of Conduct in the International Law on Climate Change: A Defence. *Review of European, Comparative & International Environmental Law*, 2018 (130).

BENOIT MAYER: State Responsibility and Climate Change Governance: A Light through the Storm. *Chinese Journal of International Law*, 2014 (3).

- BENOIT MAYER: The relevance of the no-harm principle to climate change law and politics. *Asia Pacific Journal of Environmental Law*, 2016 (19).
- DANIEL BODANSKY: Legal Character of the Paris Agreement. *Review of European, Comparative & International Environmental Law*, 2016 (2).
- ALAN BOYLE – JAMES HARRISON: Judicial Settlement of International Environmental Disputes: Current Problems. *Journal of International Dispute Settlement*, 2013 (2).
- CHRISTINA VOIGT: The Paris Agreement: What is the standard of conduct for parties? *Questions of International Law*, 2016 (26).
- DANIEL BODANSKY: The United Nations Framework Convention on Climate Change: A Commentary. *Yale Journal of International Law*, 1993 (2).
- JAMES CRAWFORD: Revising the Draft Articles on State Responsibility. *European Journal of International Law*, 1999 (3).
- RÜDIGER WOLFRUM: Cooperation, International Law of. In: *Max Planck Encyclopedias of International Law*, April 2010.
- ALEXANDER ZAHAR: Collective Obligation in the Paris Agreement. September 6, 2018. Available at SSRN: <https://ssrn.com/abstract=3245139> or <http://dx.doi.org/10.2139/ssrn.3245139>.
- ALEXANDER ZAHAR: Mediated versus Cumulative Environmental Damage and the International Law Association's Legal Principles on Climate Change. *Climate Law*, 2014 (4).

Reports & Documents

- International Law Commission (ILC). Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10).
- IPCC. Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the IPCC [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, 184.
- United Nations Framework Convention on Climate Change (UNFCCC), 1992.

Treaties & International Agreements

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, 1989.
- International Convention on Civil Liability for Oil Pollution Damage, 1969.
- Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997, 2303 UNTS 148 (entered into force 16 February 2005).
- Paris Agreement, 2015.
- Vienna Convention on the Law of Treaties (VCLT), 1969.

Cases & Advisory Opinions

- Advisory Opinion OC-23/17 on Environment and Human Rights, Inter-American Court of Human Rights, 15 November 2017.
- Application of the Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates) (Preliminary Objections), International Court of Justice, [2021] ICJ Rep 71, para. 81.
- Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Judgment, I.C.J. Reports 1970, para. 33.
- Factory at Chorzów (Germany v. Poland), 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13).
- Gabcíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997.
- In the Matter of the South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China), Award of 12 July 2016, PCA Case No. 2013–19.
- Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992, paras. 373–374.
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment, I.C.J. Reports 1986, paras. 117–118.
- MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, 95.
- Nuclear Tests (New Zealand v. France), Judgment, [1974] ICJ Rep 457.
- Pulp Mills on the River Uruguay (Argentina v. Uruguay), [2010] I.C.J. Reports 14.
- Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (Case No. 21), ITLOS Reports 2015, p. 4.
- Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Request for Advisory Opinion Submitted to the Seabed Disputes Chamber), Advisory Opinion of 1 February 2011, ITLOS Reports 2011, 110.
- Rights of Nationals of the United States of America in Morocco (France v. U.S.), Judgment, 1952 I.C.J. Reports 176, at 183–184, 197–198.
- Silala (Chile v. Bolivia), Judgment, I.C.J. Reports 2022, p. 614, para. 101.
- Tătar v. Romania, No. 67021/01, Judgment of 27 January 2009, para. 107.
- Trail Smelter (USA v. Canada), Award of 1941, III RIAA 1911, at 1965.
- United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, 3, para. 56.
- Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC], Application No. 53600/20, European Court of Human Rights, Judgment of 9 April 2024.