INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
(REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF
OXFAM:
EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS

22 MARCH 2024
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I. INTRODUCTION

1. This statement provides a legal analysis of extraterritorial human rights obligations under international human rights treaties that are relevant to the questions before this Court in the request for an Advisory Opinion on Obligations of States in respect of Climate Change. Specifically, this statement shows that these obligations require States to:

   a) Limit all activities within their jurisdiction that cause greenhouse gas emissions as rapidly as possible in order to respect human rights of people both in their own countries and other countries, doing so through means that are consistent with human rights standards,

   b) Ensure that corporate actors within their jurisdiction limit all activities that cause greenhouse gas emissions as rapidly as possible,

   c) Provide support, including financial and technical, to the extent of their capability to other States, and engage in cooperative international action to address climate change and its impacts on human rights,

   d) Cooperate to remedy extraterritorial harm from climate impacts caused by States’ failure to abide by their obligations.

2. In order to limit overlap with submissions by other civil society organizations, this statement is not intended to provide a complete picture of international law or international human rights law relevant to this question. Notably, this submission does not focus on customary international law provisions or the human rights of future generations. ¹

II. STATES HAVE EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS

3. This briefing uses the term “extraterritorial obligations” to refer to two distinct sources of human rights obligations that States have towards individuals outside of their sovereign territory:

   a) First, human rights instruments require States to take action, separately and jointly through international assistance and cooperation, to contribute to the realization of

¹ For example, on the rights of future generations, see Center for International Environmental Law, Memo on the Rights of Future Generations, in Written Statement submitted to the International Court of Justice, in the context of the Advisory Opinion on Climate Change, March 2024.
human rights universally. Obligations to engage in international assistance and cooperation for the realization of human rights necessarily require States to refrain from conduct that harms the realization of human rights in other States.

b) Second, a State has international human rights obligations to ensure that its conduct (whether through acts or omissions), within or beyond its territory, does not infringe on the enjoyment of human rights outside of that State’s territory.

The obligations borne out of each of these sources – cooperation and effective control – will be considered in turn.

A. Human rights instruments require States to take action, separately and jointly through international assistance and cooperation, to realize human rights universally

4. The United Nations Charter sets out an explicit obligation of international cooperation, supported by a purposive reading of universal human rights instruments, such as the Universal Declaration on Human Rights (“UDHR”). For example, within the UN Charter:

a) Article 1 establishes that the purpose of the United Nations is to achieve “international cooperation in solving international problems” and in “promoting and encouraging respect for human rights and for fundamental freedoms for all”.

b) Article 56 provides that Members pledge themselves to take joint and separate action in cooperation with the UN for the achievement of the purposes set forth in Article 55. The latter article includes “universal respect for, and observance of, human rights and fundamental freedoms for all”.

c) These provisions in the UN Charter recognize that States must respect, protect and fulfil human rights, not only for the people in their own territory, but universally. 2011 Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, including Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon and Ian Seiderman, “Commentary to the Maastricht principles on extraterritorial obligations of states in the area of economic, social and cultural rights” (2012) 34(4) Human Rights Quarterly 1084 (the “Maastricht Principles”), available here.


4 See, for example, Ibrahim Kanalan, “Extraterritorial State Obligations Beyond the Concept of Jurisdiction” (2018) 19 German Law Journal 43, pp 51-52, available here: “If the universal validity of human rights rests on the assumption
Expert commentary on the UN Charter recognizes that Article 56 implies a duty of States to take action “jointly” to implement, *inter alia*, “universal respect for, and observance of, human rights”.  

5. This provision is paraphrased in the preamble of the UDHR. The UDHR confirms many of the general principles set out in the UN Charter, including the importance of universal respect for human rights. For example:

a) The preamble establishes that “Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms”; and

b) Article 22 provides that everyone “is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

c) Article 28 recognizes that everyone “is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” This Article sets out a right that due to its nature could not be achieved by States acting individually and necessarily requires joint action.

6. Thus, the UN Charter and the UDHR recognize that States must cooperate to ensure that fundamental human rights are guaranteed. These instruments were adopted well before the recognition of climate change as a pressing and serious threat to the enjoyment of human rights. Nonetheless, a purposive reading of these two foundational instruments supports the recognition of extraterritorial application of human rights obligations, particularly in the context of climate change, and the uniquely shared responsibility that States have for addressing its fundamental transboundary challenges.

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that human rights are valid in all countries, and that all states are bound to respect human rights everywhere, then the limitation of the application and, thus, the obligations of states to the sphere of jurisdiction, must be questioned. The traditional notion that human rights are binding only within a state’s jurisdiction is altogether too narrow, and is therefore incompatible with the idea that human rights must be realized universally”.

7. The duty of international cooperation and assistance is also recognized in most international human rights instruments. For example, Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”) provides that States parties undertake:

[T]o take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant […].

8. This article does not limit the realization of economic, social and cultural rights (and corresponding State obligations) to persons within the territory of the State. The United Nations Committee on Economic, Social and Cultural Rights (the “CESCR”) has consistently confirmed this extraterritorial interpretation. For example, in a 2018 statement on climate change, it affirmed that States Parties are required to respect, protect and fulfil all human rights for all and that “[t]hey owe such duties not only to their own populations, but also to populations outside their territories, consistent with articles 55 and 56 of the [UN] Charter”.

9. This interpretation also accords with General Comment No 14 on the right to the highest attainable standard of health, where the CESCR provided that:

States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law.

10. Article 2 (1) of the Convention on the Rights of the Child (“CRC”) states that “States Parties shall respect and ensure the rights set forth in the present Convention to each child

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within their jurisdiction without discrimination of any kind […]”.\textsuperscript{9} Moreover, Article 4 of the CRC specifies that:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.\textsuperscript{10}

11. Similar to the ICESCR, the undertaking to take all necessary measures to implement the recognized rights does not limit a State’s obligations to its own people or territory. This is confirmed by General Comment No 16 on State obligations regarding the impact of the business sector on children’s rights, which confirms that “the Convention does not limit a state's jurisdiction to ‘territory’”.\textsuperscript{11}

12. The CRC Committee has also confirmed that cooperation is a prerequisite to respect children’s rights abroad, observing that “States have an obligation to take action, separately and jointly, through international cooperation, to respect, protect and fulfill children’s rights”.\textsuperscript{12}

B. A State has extraterritorial obligations resulting from conduct emanating from its jurisdiction that impacts the realization of human rights of people outside that State’s territory

13. States’ extraterritorial obligations arise not only from the duty to cooperate, but also from the duty to ensure respect for the human rights of individuals who are affected by conduct over which States’ exercise effective control. Accordingly, a State’s control over acts or omissions causing harm extraterritorially provides a sufficient basis for finding that the

\textsuperscript{9} CRC (adopted on 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 2(1), available \url{here}.

\textsuperscript{10} See also CRC Committee, General Comment No 26 on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 72, available \url{here}.


\textsuperscript{12} CRC Committee, General Comment No 26 on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 91, available \url{here}. 

\url{here}.
State’s jurisdiction includes individuals whose human rights were violated by that harm, even if these individuals are outside of a State’s territory or territorial control.

14. Many seminal international instruments do not contain language setting out restrictions based on jurisdiction. This includes the Universal Declaration of Human Rights, the Geneva Conventions and Protocol I, the Genocide Convention, and the ICESCR and the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”).\(^{13}\) This Court’s decision in *Georgia v Russia* (Provisional Measures) assessed the scope of CERD finding that obligations arise with respect to state action that reaches beyond national borders:

Whereas the Court observes that there is no restriction of a general nature in CERD relating to its territorial application; whereas it further notes that, in particular, neither Article 2 nor Article 5 of CERD, alleged violations of which are invoked by Georgia, contain a specific territorial limitation; and whereas the Court consequently finds that these provisions of CERD generally appear to apply, like other provisions of instruments of that nature, to the actions of a State party when it acts beyond its territory;\(^{14}\)

15. Consequently, human rights treaties that do not contain a specific territorial limitation apply to State conduct with extraterritorial effects.

16. As will be shown below, UN human rights treaty bodies for core international human rights treaties, the Inter-American Court of Human Rights (“IACtHR”), and the African Commission on Human and Peoples’ Rights (the “ACHPR”) have interpreted their respective instruments to apply when States Parties are in a position to harm the rights of people outside their borders, or to regulate private actors whose conduct can impact the rights of people outside their borders. This includes situations in which the State neither exercises physical control over the affected persons nor control over the territory where the

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\(^{13}\) CERD (adopted on 7 March 1966, entered into force 4 January 1969) 660 UNTS 195, available here. Jurisdiction is mentioned only with regard to the obligation to eradicate apartheid in territories under their jurisdiction, Article 3, and to ensure protection and remedies against racial discrimination, Article 6.

affected persons are present. These bodies have confirmed that extraterritorial obligations apply both when the treaty expressly states that treaty obligations apply with the State’s jurisdiction, as well is when the treaty text is silent as to jurisdictional reach. These bodies have interpreted a State Party’s jurisdiction as encompassing not just a State’s sovereign territory but also circumstances where a State exercises effective control or authority over territory or over a person’s rights.

17. This Court has held that States are responsible for their human rights obligations in cases where they have effective control over territory of other States, as well as situations in which a State did not have effective control over the territory or physical custody over the affected persons. For example, in the case of *Armed Activities in Congo*, this Court held Uganda responsible for human rights violations in the Democratic Republic of Congo even outside of the parts of the DRC over which this Court determined Uganda had effective control as the Occupying Power. Some of the violations for which Uganda was held responsible were abuses endured by people who were not under Uganda’s physical custody, for example, including harms inflicted on people whose villages were indiscriminately shelled by Ugandan forces. Similarly, in its Provisional Measures in *Georgia v Russia*, the Court, “reminding the Parties of their duty to comply with their obligations under” CERD, ordered them to refrain from any act of racial discrimination “within South Ossetia and Abkhazia and adjacent areas in Georgia,” to “abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations,” and to “do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions”.

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17 Ibid ¶ 206-8.

18 *Georgia v Russia, Provisional Measures* ¶ 149. The use of the term “influence” indicates that the Court was referring to Abkhaz and South Ossetian public institutions whose conduct could not be attributed to Russia. The Court has previously distinguished between a State’s direction and control of militia, whose conduct is thereby attributable to that State, and a State’s influence over and links to a militia, which does not lead to that militia’s conduct being attributed to the State. See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43, ¶ 435, available [here](#).
notably referred to conduct by Russia that could have effects outside of its span of effective control over territory, such as its influence over public institutions or its sponsoring, defending or support for any persons or organizations.

18. This Court has found that obligations towards populations outside of a State’s territory similarly apply in the context of transboundary environmental harm. In *Costa Rica v Nicaragua*, the ICJ observes that “to fulfil its obligation to exercise due diligence in preventing significant transboundary environmental harm, a State must, before embarking on an activity having the potential adversely to affect the environment of another State, ascertain if there is a risk of significant transboundary harm, which would trigger the requirement to carry out an environmental impact assessment.”19 Though distinct from the climate change context, the decision confirms that States must take into account the impacts that operations at home have on the enjoyment of environmental rights extraterritorially.

19. This obligation to conduct due diligence on activities that may have environmental impacts in foreign territories has been echoed by other international authorities. In referencing “this Court’s judgment in *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, the International Tribunal on the Law of the Sea (“ITLOS”) expounded on the “requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have significant adverse impact in a transboundary context.”20 This obligation applies “to activities with an impact on the environment in an area beyond the limits of national jurisdiction; and the Court’s references to ‘shared resources’ may also apply to resources that are the common heritage of mankind.”21

19 International Court of Justice, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica) (Judgment)* [2005] ICJ Rep 665 ¶104, available here. See also Separate Opinion of Judge Donoghue, ¶¶1, 8 available here (noting “States have an obligation under customary international law to exercise due diligence in preventing significant transboundary harm”).

20 ITLOS, *Responsibilities and obligations of States with respect to activities in the Area. Advisory Opinion (Request for Advisory Opinion Submitted to The Seabed Disputes Chamber)*, 1 February 2011, ¶¶ 147, 148, available here.

21 Ibid. ¶ 148.
20. UN human rights treaty body decisions reflect parallel understandings of states’ extraterritorial human rights obligations. In 2019, the CESCRR, the Committee on Elimination of All Forms of Discrimination Against Women (the “CEDAW Committee”), the CRC Committee and the Committee on the Rights of Persons with Disabilities (the “CRPD Committee”) (together with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (“CMW”)) issued a joint statement on human rights and climate change that affirmed State parties to their treaties have obligations, including extraterritorial obligations, to respect, protect and fulfil human rights of all peoples.22 This joint statement is consistent with previous decisions of the Human Rights Committee (the “HRC”), the CESCRR, the CEDAW Committee, the CRC Committee and the CRPD Committee in terms of its grounding obligations in situations of effective control. For instance, in its General Comment No 36 on the right to life, the HRC interpreted the term "jurisdiction" in Article 2 of the ICCPR as follows:

[A] State party has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner.23

Notably, the HRC referred to power or effective control over persons’ enjoyment of the right to life and did not limit this to control over persons or the territory on which they were located. This approach has also been applied in the Committee’s practice, whereby the Committee considered that a State exercised jurisdiction when it had direct or indirect control over the right of a person outside of its borders, such as targeted killings in extraterritorial counter-terrorism operations using unmanned aerial vehicles in another country over which that State did not exercise effective control;24 backing of military


23 HRC, General Comment No 36 on the right to life, CCPR/C/GC/36, 3 September 2019, ¶ 63, available here.

24 HRC, Concluding Observations on the United States of America, CCPR/C/USA/CO/4, 23 April 2014 ¶ 9. The Committee also applied the Covenant to the country’s surveillance of communications “both within and outside the United States”, ¶ 22, available here.
factions in another country who were carrying out human rights abuses;\textsuperscript{25} and
pronouncement of a death sentence on a non-national resident in another country; and
general appeals made or condoned by that country for the execution of this sentence outside
its territory.\textsuperscript{26}

21. The CRC Committee further affirmed an understanding of jurisdiction based on control
over activities that lead to harm to rights in \textit{Sacchi}. In this case, 16 children filed a
complaint against Argentina, Brazil, France, Germany and Turkey on the grounds that the
States knowingly disregarded scientific evidence on climate change and violated the
petitioners' rights to life and health.\textsuperscript{27} Although the CRC Committee declared the
communication inadmissible because of failure to exhaust local remedies, it recognized
that when transboundary harm occurs, children are under the jurisdiction of the State on
whose territory the emissions originated if (1) there is a causal link between the acts or
omissions of the State in question and the negative impact on the rights of children located
outside its territory; and (2) the State of origin exercises effective control over the sources
of the emissions in question.\textsuperscript{28}

22. In addition to international authorities, a similar approach is taken by regional human rights
bodies. Under Article 1(1) of the American Convention on Human Rights, States undertake
to ensure for “all persons subject to their jurisdiction the free and full exercise of [the]
rights and freedoms”,\textsuperscript{29} a concept which the Inter-American Commission on Human Rights
(“IACHR”) has long recognized applies to the need for States to respect and protect human
rights extraterritorially.\textsuperscript{30} In its 2017 Advisory Opinion on the Environment and Human

\textsuperscript{25} HRC, Concluding Observations on Croatia, CCPR/C/79/Add.15, 28 December 1992, ¶ 7; available \url{here}. HRC, Concluding Observations on Yugoslavia, CCPR/C/79/Add.16, 28 December 1992, ¶ 5, 8 available \url{here}.

\textsuperscript{26} HRC, Concluding Observations on Iran, CCPR/C/79/Add.25, 3 August 1993, ¶ 9 available \url{here}.

\textsuperscript{27} CRC Committee, Decision on communication No 104/2019, CRC/C/88/D/104/2019, 11 November 2021, available \url{here}.

\textsuperscript{28} Id., ¶ 10.7.

\textsuperscript{29} American Convention, Article 1(1), available \url{here}.

\textsuperscript{30} The Saldaño case (\textit{Saldaño v Argentina}, IACHR, Report No 38/99, 11 March 1999, ¶ 21, available \url{here}) involved
the first petition decided by the IACHR on extraterritorial responsibility under the American Convention. The
petitioner, an Argentine national who had been sentenced to death in the United States, alleged that Argentina had an
obligation to lodge a complaint against the United States and that the failure to do so was a breach of its human rights
obligations. Although the IACHR declared that Argentina had no such obligation, it recognized that “\textit{jurisdiction}” in
Rights, the IACtHR stated that the term “jurisdiction” encompasses State obligations that apply with respect to every person (1) within the State’s territory, or (2) who is in any way subject to its authority, responsibility or control.\(^{31}\) The IACtHR recognized that the meaning of “jurisdiction” is not limited to the concept of national territory, but covers a “broader concept that includes certain ways of exercising jurisdiction beyond the territory of the State in question”.\(^{32}\) This is because:

\[\text{[T]he fact that a person is subject to the jurisdiction of a State does not mean that he or she is in its territory. According to the rules for the interpretation of treaties, as well as the specific rules of the American Convention […] the ordinary meaning of the word ‘jurisdiction,’ interpreted in good faith and taking into account the context, object and purpose of the American Convention, signifies that it is not limited to the concept of national territory, but covers a broader concept that includes certain ways of exercising jurisdiction beyond the territory of the State in question.}\(^{33}\]

23. The African Charter on Human and Peoples’ Rights (“Banjul Charter”) similarly does not contain language limiting the scope of States’ human rights obligations to its territory.\(^{34}\) In its General Comment No. 3 on the right to life, the ACHPR elaborated that the treaty applies where a State has control over territory, perpetrator or a victim or the victim’s rights as follows:

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\(^{31}\) IACtHR, Advisory Opinion OC-21/14, 19 August 2014, ¶ 61, available here.

\(^{32}\) IACtHR, Advisory Opinion OC-23/17, 15 November 2017, ¶ 74, available here.


A State shall respect the right to life of individuals outside its territory. A State also has certain obligations to protect the right to life of such individuals. The nature of these obligations depends for instance on the extent that the State has jurisdiction or otherwise exercises effective authority, power, or control over either the perpetrator or the victim (or the victim's rights), or exercises effective control over the territory on which the victim's rights are affected, or whether the State engages in conduct which could reasonably be foreseen to result in an unlawful deprivation of life. In any event, customary international law prohibits, without territorial limitation, arbitrary deprivation of life. 35

24. The ACHPR has recognized extraterritorial State obligations in several cases where States were in effective control of parts of the territory of another or when measures affected the rights of people in other countries. 36 Thus, the Banjul Charter applies where a State has effective authority, power, or control over either the perpetrator or the victim (or the victim’s rights) or exercises effective control over the territory on which the victim's rights are affected.

25. The European Court on Human Rights (“ECtHR”) 37 has similarly recognized that its jurisdiction can encompass “acts of the Contracting Parties performed, or producing effects, outside their territories”. 38 The ECtHR recognizes the principle that domestic activities with transboundary or extraterritorial effects may engage State responsibility. 39

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37 The ECtHR has held that jurisdiction under the ECHR applies to situations in which a State exercises physical power and control over a person, but also when a State exercises effective control of an area outside its national territory, whether such control is exercised directly by its own armed forces, or through a subordinate local administration. See Al-Skeini and others v The United Kingdom (2011), Application 55721/07, Judgment, 7 July 2011, ¶¶ 136-38, available here.

38 Al-Skeini and others v The United Kingdom, Application No 55721/07, Judgment, 7 July 2011, ¶¶ 109 and 131, available here. See also Banković and Others v Belgium and Others, Application No 52207/99, Admissibility decision, 12 December 2001 (elucidating well-settled principle that jurisdiction is territorial and centers on exclusive control and authority by State agents over persons or activities abroad), available here.

39 See Soering v United Kingdom, Application No 14038/88, Judgment, 7 July 1989, ¶¶ 88, 90-91 (one State exposes an applicant to human rights violations in another), available here; Ben El Mahi v Denmark, Application No 5853/06, Admissibility decision, 11 December 2006 (where jurisdiction is necessary to preclude States from committing rights violations abroad that they could not commit at home), available here; Andreou v Turkey, Application No 45653/99,
Specifically, extraterritorial obligations under the European Convention on Human Rights (“ECHR”) arise when a State’s action (or inaction) “ha[s] sufficiently proximate repercussions on rights guaranteed by the Convention”. While the Court has not defined “sufficiently proximate”, in Soering the ECtHR explained that liability arises when a State’s action “has as a direct consequence the exposure of an individual to proscribed” human rights violations.  

26. The ECtHR has affirmed that the ECHR applies in cases where the State Party it has control over persons or territory outside its sovereign territory, but has not consistently recognized extraterritorial application of ECHR obligations in some situations of armed conflict in which the State did not exercise custody over the alleged victim or control over the territory on which they were present. Such cases raise unique consideration relating to armed conflict, and thus can be distinguished from cases of environmental harm occurring outside armed conflict.

27. The ECtHR has not yet explicitly ruled on the obligations of Member States to the ECHR concerning the impact of climate change on human rights. At present, there are three applications on this issue pending before the ECtHR. In one case, civil society has filed a written submission on the matter, focusing on why the term “jurisdiction” in the ECHR must be interpreted “in the light of the urgency of climate change and its foreseeable, continuous and severe impact on the enjoyment of human rights within and beyond borders”. This is in line with the ECtHR’s previous interpretation that the ECHR applies

Admissibility decision, 3 June 2008, ¶ 25 (where “direct and immediate” cause of the harm concerned took place on the territory of the first State), available here.


41 Al-Skeini and others v The United Kingdom, Application No 55721/07, Judgment, 7 July 2011, ¶¶ 109 and 131, available here. See also Banković and Others v Belgium and Others, Application No 52207/99, Admissibility decision, 12 December 2001 (elucidating well-settled principle that jurisdiction is territorial and centres on exclusive control and authority by State agents over persons or activities abroad), available here.

42 See Banković and Others v Belgium and Others, Application No 52207/99, Admissibility decision, 12 December 2001, available here; Georgia v Russia (II), Application No 38263/08, Judgment, 21 January 2021, available here.

43 Currently, these cases are: Verein KlimaSenorinnen Schweiz and Others v Switzerland, Application No 53600/20, Carême v France, Application No 7189/21 and Duarte Agostinho and Others v Portugal and 32 Other States, Application No 39371/20.

44 Written Submission to the ECtHR in the case of Duarte Agostinho and Others v Portugal and Others on behalf of the Extraterritorial Obligations Consortium; Amnesty International; the Center for Legal and Social Studies; the
to “situations in which a Contracting Party has exercised a form of power, authority or control over an individual or the territory in which that individual is present”. 45 With regard to climate change, although the Contracting Parties to the ECHR are not assumed to have full control over individuals or territory abroad, they do have such control over activities within their territory that emit greenhouse gases, and the ability to regulate activities within their jurisdiction that exacerbate emissions in other States and, consequently, on the fulfilment of a range of rights found in the ECHR. 46

28. Accordingly, standard interpretations of international human rights conventions and regional human rights treaties by the relevant Courts and treaty bodies affirm that States have extraterritorial obligations to persons outside their borders.

III. STATES HAVE EXTRATERRITORIAL OBLIGATIONS IN REGARD TO HUMAN RIGHTS IMPACTED BY CLIMATE CHANGE

A. States have obligations to limit as rapidly as possible all activities within their jurisdiction that cause greenhouse gas emissions using human rights-consistent means

29. Both of the legal bases for extraterritorial obligations discussed in the previous section apply to activities within a State’s jurisdiction that cause greenhouse gas emissions. First, a State’s violates its obligation to engage in international cooperation for the realization of human rights if it carries out or permits activities within its jurisdiction that have a negative impact on the human rights of people in other States. Second, a State’s obligations to those over whose human rights it has power or control require it to control activities within its jurisdiction that, by failing to limit activities that cause greenhouse gas emissions, harm the rights of people both within and outside its territory.

Center for Transnational Environmental Accountability; the Economic and Social Rights Centre; FIAN International; the Great Lakes Initiative for Human Rights and Development; the University of Antwerp Law and Development Research Group; Prof Dr Mark Gibney; Dr Gamze Erdem Turkelli; Dr Sara Seck; Prof Dr Sigrun Skogly; Dr Nicolas Carrillo-Santarelli; Prof Dr. Jernej Letnar Cernic; Tom Mulisa ; Dr Nicholas s Orago; Prof Dr Wouter Vandenhole; Jingjing Zhang, 6 May 2021 (the “Agostinho Amicus Submission”), ¶ 14, available here.

45 Agostinho Amicus Submission, ¶ 15, available here.

30. Most UN human rights treaty bodies have confirmed that States have extraterritorial obligations for activities emanating from their territory that contributes to climate change. The CESCR, the CEDAW Committee, the CRC Committee, the CRPD and the CMW have jointly stated:

State parties have obligations, including extra-territorial obligations, to respect, protect and fulfil all human rights of all people. Failure to take measures to prevent foreseeable human rights harm caused by climate change or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.

States should also discontinue financial incentives or investments in activities and infrastructures which are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors as a mitigation measure to prevent further damage and risk.47

31. Notably, the above statement refers to prevention of human rights harm and regulation of activities contributing to such harm—it does not limit itself to reduction of emissions within a State’s territory. As such, States’ obligations extend to activities within their jurisdiction that contribute to harm to human rights within their borders and extraterritorially, including production and export of fossil fuels and goods that are carbon-intensive. In line with these obligations and as recognized by the CRC Committee in its General Comment No 26, States should take urgent collective action to mitigate greenhouse gas emissions.48 Mitigation measures should reflect each State’s respective capabilities and national circumstances. For example, high-income States should undertake significant and ambitious absolute greenhouse gas reduction targets. Nonetheless, all States should enhance their greenhouse gas mitigation measures in the light of their national circumstances and in a manner that protects human rights to the maximum possible extent.49

32. The CRC Committee further specifies that States should prioritize rapid and effective emissions reductions now in order to support children’s full enjoyment of their rights in

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48 CRC Committee, General Comment No 26 on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 95, available here.

49 Ibid, ¶ 98(b), available here.
the shortest possible period of time and to avoid irreversible damage to nature, should not delay a rapid phase out of fossil fuels, and should not rely on removing greenhouse gases from the atmosphere in the future through unproven technologies.\textsuperscript{50} Furthermore, States should discontinue subsidies to public or private actors for investments in activities and infrastructure that are inconsistent with low greenhouse gas emission pathways.\textsuperscript{51}

33. The CRC Committee indicates that States should set out mitigation objectives and measures which transparently and explicitly indicate how they respect, protect and fulfil human rights.\textsuperscript{52} The CRC Committee indicates that States should incentivize sustainable investment in and use of renewable energy, energy storage and energy efficiency, enforce progressive taxation schemes, and adopt strict sustainability requirements for public procurement contracts.\textsuperscript{53}

34. In its 2017 Advisory Opinion on the Environment and Human Rights, the IACtHR noted the “interdependence and indivisibility of human rights and environmental protection”\textsuperscript{54} and stipulated that “States have the obligation to avoid transboundary environmental damage that can affect the human rights of individuals outside their territory”.\textsuperscript{55} It recognized the obligation of States to avoid transboundary environmental damage that could violate the human rights of persons outside their territory:

[W]hen transboundary damage occurs that affects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin, if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory. The exercise of jurisdiction arises when the State of origin exercises effective control over the activities carried out that caused the harm and consequent violation of human rights.

In cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective

\textsuperscript{50}Ibid, ¶ 98, available here.
\textsuperscript{51} Ibid, ¶ 99, available here.
\textsuperscript{52} Ibid, ¶ 98(a), available here.
\textsuperscript{53} Ibid, ¶ 109, available here.
\textsuperscript{54} IACtHR, Advisory Opinion OC-23/17, 15 November 2017, ¶ 55, available here.
\textsuperscript{55} Ibid, ¶ 101, available here.
control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory. The potential victims of the negative consequences of such activities are under the jurisdiction of the State of origin for the purposes of the possible responsibility of that State for failing to comply with its obligation to prevent transboundary damage. […]\textsuperscript{56}

Therefore, a State’s activities contributing to climate change beyond its borders can fall within its jurisdiction if the State exercised effective control over the activities that caused the harm.\textsuperscript{57}

35. States’ obligation to cooperate on combating transboundary environmental harm entails cooperating both to remedy existing damage caused by climate change and to prevent further damage from climate change. States’ national circumstances should be taken into account in the collective effort to address climate change to ensure effective, equitable climate action that upholds human rights, in line with the international climate-related commitments that States have made.

36. The obligations set out in this section require distinct and additional action as compared to States obligations under the Paris Agreement. Whereas the latter treaty sets out an objective of “[h]olding the increase in 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”;\textsuperscript{58} the above-listed human rights obligations require States to address human rights harms that occur and have occurred at current global average temperatures of 1.1-1.3 °C. States obligations to prevent human rights harm caused by climate change would not be satisfied by keeping the global temperature at 1.5°C, even if this met the Paris Agreement’s mitigation goals, as this temperature would continue to cause significant harm. A 2018 Special Report from the Intergovernmental Panel on Climate Change stated:

“Warming of 1.5°C is not considered ‘safe’ for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems as compared to the current warming of 1°C (high confidence). [...] The impacts of 1.5°C of warming would disproportionately affect disadvantaged and vulnerable populations through food insecurity, higher

\textsuperscript{56} Ibid, ¶¶ 101-102, available here.

\textsuperscript{57} See ibid, ¶ 82, available here.

\textsuperscript{58} Paris Agreement, Article 2(1).
food prices, income losses, lost livelihood opportunities, adverse health impacts and population displacements (medium evidence, high agreement). [...] Some of the worst impacts on sustainable development are expected to be felt among agricultural and coastal dependent livelihoods, Indigenous people, children and the elderly, poor labourers, poor urban dwellers in African cities, and people and ecosystems in the Arctic and Small Island Developing States (SIDS) (medium evidence, high agreement).”

Scientific consensus on what is a safe limit for climate change generally is assessed in terms of the concentration of carbon dioxide (CO2) in the atmosphere. A safe amount constitutes 350 parts per million (ppm), whereas the level in 2022 was 419 ppm.

37. Given that the level of greenhouse gases currently emitted are beyond a safe level for humanity, each State must take every feasible step to limit greenhouse gas emissions, and would be accountable should it fail to adopt all of the human rights-respecting steps that it can to reduce and eliminate greenhouse emissions. A State’s ambition in this regard cannot be limited to its pledges in its Nationally Determined Contribution (NDC). Under the Paris Agreement, States themselves determine the extent of their commitment to reduce the activities within their jurisdiction and control that are causing climate change, and are not necessarily designed in order to meet human rights obligations. Certain quantitative tools aim to address capacity and responsibility for greenhouse gas emissions in order to determine the 'fair share' of each country to limit emissions. The most widely utilised are Climate Action Tracker (CAT) and the Climate Equity Reference Project (CERP). CAT’s effort sharing benchmarks are broadly derived from the effort sharing studies in academic literature and algorithmically combining the datasets of these studies into a single


60 As compared to the global temperature average, the concentration of carbon dioxide in the atmosphere assesses more precisely the Earth’s energy imbalance that drives climate change. For detailed explanation, see Our Children’s Trust, Oxfam, the Centre for Climate Repair at Cambridge, Centre for Child Law at University of Pretoria (2022). Intervention in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Carême v. France, and Duarte Agostinho and Others v. Portugal and 32 others. European Court of Human Rights, available here.

61 These two tools are available here (CAT) and here (CERP).
effort sharing benchmark. The CERP effort sharing framework determines each country’s fair share of the global effort to limiting global temperature increase to 1.5°C in proportion to the country’s responsibility for causing the climate emergency (expressed as a country’s responsibility for historical GHG emissions) and its capacity to act to address it (expressed as a country’s GDP). In Oxfam’s view, the CERP approach more closely reflects international human rights standards and international principles such as common but differentiated responsibilities and respective capabilities. Both measures, however, treat 1.5°C as the global target and therefore should be read with the caveat that they do not discuss the fair share required to reduce greenhouse gas emissions to a safe level for humans.

38. Both of these two measures show, however, that the G20 countries who make up the world’s largest 20 economies are collectively, and almost all of them individually, failing to commit in their NDCs to achieve their fair share of ambitious global mitigation required to limit global heating to 1.5°C. Additionally, the assessment shows that the high-income G20 member countries are pledging to do a much smaller fraction of their fair share as compared to middle-income countries.

39. The Paris Agreement can be contrasted to the Vienna Convention for Protection of the Ozone Layer (Vienna Convention) and the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The latter treaties effectively addressed the human rights impacts caused by Chlorofluorocarbon (CFCs) and other ozone depleting chemicals (Ozone Depleting Substances - ODS) that have begun to destroy the ozone layer and allow a massive influx of ultraviolet rays onto the Earth’s surface that cause cancer, destroy crops and have other life-threatening consequences to human rights around the world. These treaties included firm phase-down deadlines, differentiated for developed and developing countries.

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62 Oxfam. Are G20 Countries Doing Their Fair Share of Global Climate Mitigation?: Comparing ambition and fair shares assessments of G20 countries’ Nationally Determined Contributions (NDCs) (Oxfam, 2023), 11, available here. This publication describes and applies key fair share methodologies.

63 Ibid., 12.

64 Ibid.

65 Ibid., 1, 34. Note that this assessment does not include the African Union which had not yet joined the G20 at that time.

66 Ibid., 1. See also figures for these countries listed in a single chart here.
countries, and a fund to support the latter countries, and were successful in reducing banned ODS levels by 99% from 1990 levels.\textsuperscript{67} This stands in contrast to the Paris Agreement which does not set deadlines for each State to reduce greenhouse gas emissions and has not been successful in significantly reducing greenhouse gas emission levels, which continue to rise.

\textbf{B. States have obligations to ensure that corporate actors within their jurisdiction limit as rapidly as possible all activities that cause greenhouse gas emissions}

40. International law requires States to protect people from human rights abuses committed by third-party actors. To ensure such respect, “international law has established state obligations to prevent and punish violence perpetrated by private actors,” and to provide harmed individuals with redress.\textsuperscript{68}

41. The UN Guiding Principles on Business and Human Rights, adopted by the UN Human Rights Council in 2011, affirms that “[s]tates must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”\textsuperscript{69} This reflects the understanding of treaty bodies like the CESCR, which in General Comment 12 recognized that “the private business sector – ha[s] responsibilities“ to ensure the fulfilment of human rights....The private business sector – national and transnational – should pursue its activities within the framework of a conduct conducive to respect” human rights.\textsuperscript{70}

42. The obligation to protect individuals from abuses committed by third-party actors extends into the climate space. The CESCR, the CEDAW Committee, the CRC Committee, the CRPD and the CMW have jointly stated that in the context of human rights and climate

\textsuperscript{67} UN Environmental Programme, Ozone layer recovery is on track, helping avoid global warming by 0.5°C, 9 January 2023, available \url{here}.


\textsuperscript{70} CESCR, General Comment 12 on the right to adequate food, E/C.12/1999/5, 12 May 1999, ¶ 20, available \url{here}.
change States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially.\textsuperscript{71}

43. As set out by the CRC Committee, States have obligations to address any harm and climate change-related risks to human rights in the context of extraterritorial activities of businesses. This includes cooperation to ensure the compliance of business enterprises operating transnationally with applicable environmental standards, and the provision of international assistance and cooperation with investigations and enforcement of proceedings in other States.\textsuperscript{72}

44. Several treaty bodies have referenced this obligation individually. For example, in General Comment No 15 on the right to water, the CESCR confirmed that States should take steps to “prevent their own citizens and companies from violating the right to water of individuals and communities in other countries”.\textsuperscript{73} In the periodic reporting process under the ICESCR, the CESCR has emphasized States’ obligations to curtail the excesses of fossil fuel companies; for example, the Committ[ed has asked Australia how continued operations of coal mines and coal exports could be reconciled with its obligations under the ICESCR both domestically and extraterritorially.\textsuperscript{74} In its Concluding Observations following Bahrain's periodic reporting to the CESCR, the Committee encouraged Bahrain to “promot[e] alternative and renewable energy sources and respecting its human rights obligations in its natural resource exploitation and export policies.”\textsuperscript{75} In its Concluding Observations to Germany, the CRC Committee encouraged “adopt[ing] a child rights-based approach in respect of its trade agreements and development aid policy and programmes, including on climate change.”\textsuperscript{76} It also recommended “[u]ndertak[ing]
legislative and other measures to uphold its extraterritorial obligations concerning impacts on the environment, including in the context of international cooperation”.77 This has been a trend on the rise: human rights treaty bodies have been increasingly focusing on states obligations to protect populations abroad against GHG emissions and the adverse impacts these have on the enjoyment of fundamental human rights, with 2022 seeing “fourteen outputs from the State reporting procedure mention fossil fuels, issued by the CRC (six), the CESCR (four), the CEDAW (three), and the CERD (one).”78

45. The Inter-American Court has recognized that States must, at a minimum, regulate, supervise, and monitor activities under their jurisdiction that could cause significant harm to the environment and mitigate any significant harm to the environment in line with the best available science.79 Further, the IACtHR has found that these obligations apply in the case of communities who were denied remedy following a violation of the right to a healthy environment.80

46. This understanding is similarly reflected by national authorities interpreting States human rights obligations to protect from the adverse impacts of climate change. In addressing a petition filed against forty-seven carbon majors from high-emitting states, the Commission on Human Rights in the Philippines (the “CHR”) found that States’ duty to protect under international human rights law is not confined to physical territory,81 that it “logically follows that States are obliged to act if activities in their territory cause serious human rights violations” abroad,82 and that “a State’s failure to perform [its duty to enact and enforce appropriate laws to ensure that corporate actors respect human rights] does not render business enterprises free from the responsibility of respecting human rights.”83

77 Ibid, ¶ 33(e), available here.


80 Ibid. ¶ 237.


82 Ibid. ¶ 75.

83 Ibid. ¶ 88.
C. States have obligations to cooperate with and assist other States to address climate change and its impacts on human rights

47. Section II A above, paragraphs 4 to 12, set out the legal authority for States’ obligations to engage in international cooperation and to provide assistance for the purposes of realizing human rights, as they form one legal basis for a State’s duty to restrict activities that lead to greenhouse gas emissions. The present Section addresses the element of these obligations that requires them to take positive steps to address climate change in cooperation with other States. The duty based in human rights law corresponds in part to the duty to cooperate in environmental matters, which is also contained in customary international law. As held by this Court, the duty to cooperate is derived from the principle of good faith in international relations, is essential for protection of the environment, and allows States jointly to manage and prevent risks of environmental damage that could result from projects undertaken by one State.

48. The duty to cooperate has been reaffirmed as a basis for extraterritorial human rights obligations in numerous UN human rights treaty body decisions. In General Comment No 3 on the nature of obligations under the ICESCR, the CESCR stated:

The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. […].

84 ITLOS, MOX Plant case (Ireland v United Kingdom), Order on provisional measures, 3 December 2001, ¶ 82, available here: "the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under […] general international law”.


49. Article 24 of the CRC, addressing the right to the enjoyment of the highest attainable standard of health, also provides for an extraterritorial obligation of cooperation with particular regard being taken for the “needs of developing countries”.

50. The CRC Committee also confirmed in General Comment No 16 that “States have obligations to engage in international co-operation for the realization of children’s rights beyond their territorial boundaries”.

51. The CESC, the CEDAW Committee, the CRC Committee, the CRPD and the CMW have jointly stated that in the context of human rights and climate change:

As part of international assistance and cooperation towards the realization of human rights, high-income States should support adaptation and mitigation efforts in developing countries by facilitating transfers of green technologies and by contributing to financing climate mitigation and adaptation. In addition, States must cooperate in good faith in the establishment of global responses addressing climate-related loss and damage suffered by the most vulnerable countries, paying particular attention to safeguarding the rights of those who are at particular risk of climate harm and addressing the devastating impact of climate disruptions, including on women, children, persons with disabilities and indigenous peoples.

52. In General Comment No 26, the CRC Committee reaffirmed the duty of cooperation particularly as it applies to rights in light of climate change:

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89 See also CRC, Article 24(4), available here.

90 CRC Committee, General comment No 16 on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, ¶ 41, available here.

a) “Climate change, pollution and biodiversity loss clearly represent urgent examples of global threats to children’s rights that require States to work together, calling for the widest possible cooperation by all countries and their participation in an effective and appropriate international response”.  

b) “In the context of climate change, such obligations are appropriately guided by taking into account the historical and current emissions of greenhouse gases and the concept of common but differentiated responsibilities and States’ respective capabilities, in the light of different national circumstances, while requiring the provision of technical and financial assistance from developed States to developing States consistent with article 4 of the Convention”.  

c) “Developed States should assist developing countries in planning and implementing mitigation measures, in order to help children in vulnerable situations. The assistance could include providing financial and technical expertise and information and other capacity-building measures that specifically contribute to the prevention of harm to children caused by climate change”.  

53. Similarly, commenting on international cooperation to combat climate change, the Office of the UN High Commissioner for Human Rights has said that such cooperation “is not only expedient but also a human rights obligation and that its central objective is the realization of human rights”.  

54. International human rights law does not specify the precise amount of resources that should be allocated for the realization of rights, whether domestically or for international assistance and cooperation, other than stating that States should take steps to the maximum of available resources. However, their obligations under their respective treaties comprises a process-based obligation to formulate appropriate policies. For example, the CESCR has quoted:  

92 CRC Committee, General Comment No 26 on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 95, available here.  

93 Ibid.  

94 Ibid.  

indicated that each State Party to the ICESCR is required to develop a detailed plan of action for the progressive realisation of the rights concerned and to establish clearly-stated and carefully-targeted policies to reflect its obligations under the Covenant.96 One objective of the periodic reporting process is to demonstrate that such principled policy-making has in fact been undertaken.97 Each State has a “margin of appreciation” to determine the optimal use of its resources in how it meets its rights obligations.98 However, this discretion is not absolute. The CESCR has indicated has described some of the considerations that determine whether steps taken by States are adequate or reasonable for the purposes of the ICESCR:

[T]he extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights; ... whether the State party exercised its discretion in a non-discriminatory and non-arbitrary manner; ... where several policy options are available, whether the State party adopts the option that least restricts Covenant rights; ... whether the steps had taken into account the precarious situation of disadvantage and marginalized individuals and groups and, ... whether they prioritized grave situations or situations of risk.99

The implication is that in the context of climate change, States are required to assess the requirements globally for assistance and cooperation that would protect the rights of affected people globally in the context of climate change. This should take into account the capacities of States whose people are affected by climate change and who may not be in a position to marshal adequate resources to protect them. High-income and other countries in a position to assist should then assess their own capacity to contribute resources and other forms of international cooperation in developing national and international plans for international cooperation.

55. Aside from treaty-based obligations to engage in international cooperation and assistance, a State’s obligation to respect the rights of those individuals under its power or control may

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97 Ibid.
99 Ibid. ¶ 8.
require international cooperation. In some situations, a State may not be able to restrict activities within its jurisdiction that cause greenhouse gas emissions, or limit the harm thereof unilaterally, but could only do so in cooperation with other States. The 2017 IACtHR Advisory Opinion on the Environment and Human Rights recognizes that:

In the specific case of activities, projects or incidents that could cause significant transboundary environmental harm, the potentially affected State or States require the cooperation of the State of origin and vice versa in order to take the measures of prevention and mitigation needed to ensure the human rights of the persons subject to their jurisdiction. In addition, compliance by the State of origin with its duty to cooperate is an important element in the evaluation of its obligation to respect and to ensure the human rights of the persons outside its territory who may be affected by activities executed within its territory.¹⁰⁰

56. As held by the IACtHR, this duty of cooperation includes the duty to notify States that are likely to be affected by damaging activities conducted within a State;¹⁰¹ the duty to consult and negotiate with potentially affected States in order to minimize adverse impacts, including the duty not to execute activities in question while the parties are consulting in good faith;¹⁰² and a duty to exchange information.¹⁰³ When read in conjunction with the timeliness requirements in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the “Protocol of San Salvador”),¹⁰⁴ it is clear that States have an obligation to act immediately to the extent of their resources.

D. States have obligations to cooperate to remedy damage caused by climate change

57. In the unique context of climate change, States’ obligations to cooperate to bring about compliance with human rights imperilled by climate change does not mean that a State can

¹⁰¹ Ibid. ¶ 187-196.
¹⁰² Ibid. ¶ 197-205.
¹⁰³ Ibid. ¶ 206-208. Member States to the American Convention also have a series of procedural obligations such as access to information, public participation, and access to justice. See ¶¶ 213-240, available here.
elude its individual responsibility. As the International Law Commission recognizes, any breach of conventional obligations such as those contained in human rights treaties gives rise to State responsibility. 105 If a State has committed an internationally wrongful act leading to State responsibility, then the State has an obligation to repair that damage. 106

58. This obligation to repair damage applies in the situation of climate change. As recognized in the 2017 IACtHR Advisory Opinion:

The State must mitigate significant environmental damage if it occurs. Even if the incident occurs despite all the required preventive measures having been taken, the State of origin must ensure that appropriate measures are adopted to mitigate the damage and, to this end, should rely upon the best available scientific data and technology. Such measures should be taken immediately, even if the origin of the pollution is unknown. Some of the measures that States should take are: (i) clean-up and restoration within the jurisdiction of the State of origin; (ii) containment of the geographical range of the damage to prevent it from affecting other States; (iii) collection of all necessary information about the incident and the existing risk of damage; (iv) in cases of emergency in relation to an activity that could produce significant damage to the environment of another State, the State of origin should, immediately and as rapidly as possible, notify the States that are likely to be affected by the damage […]; (v) once notified, the affected or potentially affected States should take all possible steps to mitigate and, if possible, eliminate the consequences of the damage, and (vi) in case of emergency, any persons who could be affected should also be informed. 107

59. This obligation was echoed by the CRC Committee, which noted in its General Comment No 26 that:

[I]t is critical to acknowledge loss and damage as a third pillar of climate action, along with mitigation and adaptation. States are encouraged to take note that, from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation. States should undertake measures, including through international cooperation, to provide financial


106 ILC Articles on State Responsibility, Article 31, available here.

and technical assistance for addressing loss and damage that have an impact on the enjoyment of the rights under the Convention.\(^{108}\)

60. A State’s responsibility for an internationally wrongful act is not diminished by the fact that other States are also responsible for the same act or effect.\(^{109}\) The ILC Articles on State Responsibility considers circumstances in which several States separately carry out internationally wrongful conduct that contributes to the same damage. A State’s responsibility is not reduced by the concurrent responsibility of a third State since “the responsibility of each participating State is determined individually, on the basis of its own conduct and by reference to its own international obligations”.\(^{110}\) This also accords with recent developments in national case law, which support the general principle that multiple States may bear responsibility for an internationally wrongful act related climate change—courts in Germany, France, the Netherlands, Belgium and Australia have held that these individual States are required to cut their respective global emissions to protect their own residents.\(^{111}\)

61. The duty to cooperate in repairing harm caused by climate change has also been recognized in the 2017 IACtHR Advisory Opinion since “the State of origin and the States potentially affected have the obligation to cooperate in order to take all possible measures to mitigate the effects of the damage […]”.\(^{112}\) The CRC Committee provides that States should undertake measures, including through international cooperation, to provide financial and

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\(^{108}\) CRC Committee, General Comment No 26 on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 106, available [here](#).

\(^{109}\) ILC Articles on State Responsibility, Commentary to Article 47, ¶ 1, available [here]; Corfu Channel Case (UK v Albania) (Merits) [1949] ICJ Rep 4, pp 22-23, available [here](#).

\(^{110}\) ILC Articles on State Responsibility, Commentary to Article 47, ¶ 8, available [here](#).

\(^{111}\) Bundesverfassungsgericht, Neubauer and Others, Order of the First Senate, 1 BvR 2656/18, 24 March 2021, §§ 175-178, available [here]; Commune de Grande-Synthe et al v France, Conseil d'Etat, 1 July 2021, dictum (1) and (2), available [here]; Notre Affaire à Tous and Others v France, Tribunal Administratif de Paris, 14 October 2021, dictum (2), available [here]; Urgenda Foundation v State of the Netherlands, Supreme Court of the Netherlands, 20 December 2019, §§ 5.7.7-5.7.8, available [here]; VZW Klimaatzaak v Kingdom of Belgium & Others, Brussels Court of First Instance Judgment, 17 June 2021, p 61, available [here]; Minister for the Environment v Sharma, Decision from the Federal Court of Australia, 15 March 2022, ¶ 253, available [here](#).

\(^{112}\) IACtHR, Advisory Opinion OC-23/17, 15 November 2017, ¶ 173, available [here](#).
technical assistance for addressing loss and damage that have an impact on the enjoyment of the rights under the Convention.113

62. To account for respective capabilities, States’ national circumstances need to be taken into account in efforts to address climate change. Therefore, high-income States should cooperate with lower-income States in providing financing for climate action that upholds human rights, in line with the international climate-related commitments that States have made.114

63. In the Inter-American system, the 2017 IACtHR Advisory Opinion held that:

[T]he State of origin should have a contingency plan to respond to environmental emergencies or disasters that includes safety measures and procedures to minimize the consequences of such disasters. Even though the State of origin is the main entity responsible for the contingency plan, when appropriate, the plan should be implemented in cooperation with other States that are potentially affected, and also competent international organizations.115

IV. CONCLUSION

64. The foregoing analysis confirms that international and regional courts and human rights bodies find that States have extraterritorial human rights obligations to people outside of their territorial bounds. They have found that jurisdiction under international human rights law is dictated by a State’s control over people’s enjoyment of human rights, not the more antiquated notions of territory that fail to account for the reality of modern international relations.

65. Nowhere is this concept more relevant – and indeed, inimical to humanity’s survival – than with the production of greenhouse gas emissions, which exert significant transboundary impacts on human rights. These extraterritorial obligations take on unique importance in

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113 CRC Committee, General Comment No 26 on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 106, available here.


relation to climate change. Specifically, authorities have found that with respect to climate change, international human rights law requires States to:

65.1 Take every step feasible to limit all activities within their jurisdiction that generate greenhouse gas emissions, which includes ending subsidies for public or private actors engaged in operations that are inconsistent with reducing emissions,

65.2 Cooperate to combat the transboundary harms caused by climate change, taking into account the respective capacity of each State. This requires high-income States to assist low-income states to design and implement mitigation measures through the provision of technical expertise and financing,

65.3 Protect individuals both domestically and extraterritorially from human rights harms created by private sector actors within the State’s jurisdiction. This requires regulating and monitoring private sector activities at home to shield individuals abroad from the adverse human rights impacts fuelled by the fossil fuel industry, and

65.4 Provide remedy and repair damage. In particular, the CRC’s and IACtHR’s more detailed analysis of the precise types of remedy and repair that are warranted in light of climate change are important reference points.