

RESOLUTION 2/2014

DECLARATION OF LEGAL PRINCIPLES RELATING TO CLIMATE CHANGE

Committee on Legal Principles Relating to Climate Change International Law Association

The 76th Conference of the International Law Association, held in Washington D.C., the United States of America, 7-11 April 2014:

HAVING CONSIDERED the three consecutive reports (2010-2014) of the Committee on Legal Principles Relating to Climate Change and its efforts to identify existing and emerging principles of international law relating to climate change,

CONCERNED that climate change represents an urgent and potentially irreversible threat to human societies and the planet's ecosystems,

MINDFUL that nations are engaged in negotiations to strengthen the multilateral, rules-based regime under the Framework Convention on Climate Change, 1992,

CONVINCED that an equitable and effective climate change regime should continue to be anchored in international legal principles,

ADOPTS the ILA Declaration on Legal Principles Relating to Climate Change, as annexed to this resolution,

REQUESTS the Secretary-General to forward the Report of the Committee and this Declaration to the UN Secretary-General, the UNFCCC Secretariat, the Chair of the Intergovernmental Panel on Climate Change, the Global Environment Facility, UNDP, UNEP, the WTO, the World Bank and other relevant intergovernmental and non-governmental organisations for their consideration, including organisations at the regional level.

RECOMMENDS to the Executive Council that the Committee on the Legal Principles Relating to Climate Change, having accomplished its mandate, be dissolved.

ANNEX

ILA Legal Principles Relating to Climate Change

DRAFT ARTICLES

Draft Article 1. Scope

1. The present draft Articles apply to the conduct of States in managing and regulating human activities that directly or indirectly affect climate change and have or are likely to have significant adverse effects on human life and health and the Earth's natural environment.
2. The draft Articles refer to the foundational legal principles relating to climate change as well as to their inter-relationship.

Draft Article 2. Objectives

The purpose of the present draft Articles is to set out legal principles applicable to States in addressing climate change and its adverse effects, bearing in mind that change in the Earth's climate and its adverse effects are a common concern of humankind.

Draft Article 3. Sustainable Development

1. States shall protect the climate system as a common natural resource for the benefit of present and future generations, within the broader context of the international community's commitment to sustainable development.
2. In the sustainable and equitable use of natural resources, including the climate system as a common natural resource, States shall anticipate, prevent and minimise the causes of climate change, and mitigate its adverse effects for the benefit of present and future generations in accordance with FCCC Article 3.4.
3. In the context of addressing climate change and its adverse effects, sustainable development requires States to balance economic and social development and the protection of the climate system and supports the realisation of the right of all human beings to an adequate living standard and the equitable distribution of the benefits thereof. To that extent, policies and measures taken in response to climate change must integrate environmental, economic and social matters.
4. Social and economic development plans, programs and projects must be integrated with climate change responses in order to avoid adverse impacts on the latter, taking into account the priority needs of developing countries for the achievement of sustainable economic growth and poverty eradication.

5. Where social and economic development plans, programs or projects may result in significant emissions of greenhouse gases or cause serious damage to the environment through climate change, States have a duty to prevent such harm or, at a minimum, to employ due diligence efforts to mitigate climate change impacts.

Draft Article 4. Equity

1. States shall protect the climate system on the basis of equity, of which the principle of common but differentiated responsibilities and respective capabilities, laid out in draft Article 5, is a major expression.

2. States shall protect the climate system in a manner that equitably balances the needs of present and future generations of humankind, keeping in mind that:

(a) Present generations in developing States have a legitimate expectation of equitable access to sustainable development. This recognises that to the extent that per capita emissions in developing countries are still low, these will grow, within reason and in a sustainable manner, to meet their social and development needs.

(b) Future generations in all States have a legitimate expectation of equitable access to the Earth's resources. This requires that current generations hold the increase in global average temperature to the multilaterally agreed global goal.

3. States shall protect the climate system as a matter of urgency, keeping in mind that to the extent that they delay taking adequately ambitious mitigation action to meet the multilaterally agreed global goal, the locus of action will shift, of necessity, to adaptation and the burden of responsibility to the most vulnerable and least responsible States.

Draft Article 5. Common but Differentiated Responsibilities and Respective Capabilities

1. States shall protect the climate system in accordance with their common but differentiated responsibilities and respective capabilities.

2. All States have a common responsibility to cooperate in developing an equitable and effective climate change regime applicable to all, and to work towards the multilaterally agreed global goal. In exercise of this common responsibility all States shall, subject to their national circumstances:

(a) Take policies and measures to address climate change and its adverse effects, and report periodically on these;

(b) Promote sustainable development, as laid out in draft Article 3;

(c) Cooperate as laid out in draft Article 8, in particular in:

- i. development, application and diffusion of relevant mitigation and adaptation technologies;
 - ii. exchange of scientific and technological information relating to the climate system, and to information relating to their response measures to address climate change; and,
 - iii. preparation for adaptation to the impacts of climate change.
3. Since States have differing historical, current and future contributions to climate change, differing technological, financial and infrastructural capabilities, as well as diverse economic fortunes and other national circumstances, States have differentiated responsibilities to address climate change and its adverse effects. In determining if a State's commitments have been adequately tailored to its differentiated responsibilities, the following shall be taken into account:
- (a) Developed States, in particular the most advanced amongst them, shall take the lead in addressing climate change by adopting more stringent mitigation commitments and in assisting developing States, in particular the least developed among them, small island developing States, and other vulnerable States, to the extent of their need, in addressing climate change and adapting to its adverse effects.
 - (b) Developing States, in particular the least developed among them, small island developing States, and other vulnerable States shall be subject to less stringent mitigation commitments, and benefit from, *inter alia*, delayed compliance schedules and financial, technological and other assistance.
4. States' commitments, given their differentiated responsibilities, shall fall along a spectrum of commitments, and these commitments shall evolve over time as their contributions, capabilities, economic fortunes and national circumstances evolve.

Draft Article 6. Special Circumstances and Vulnerability

1. States shall take full account of the special circumstances and needs of developing countries particularly vulnerable to the effects of climate change, specifically but not limited to the Least Developed Countries and Small Island Developing States.
2. The rights and obligations of developing countries with regard to climate change and its impacts shall be differentiated based on their special circumstances and vulnerability.
3. Developed States shall assist in developing insurance mechanisms to support, in accordance with draft Article 5.3, developing countries that are particularly vulnerable to the effects of climate change.

Draft Article 7. Prevention & Precaution

Draft Article 7A. Obligation of prevention

1. States have an obligation to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction, including damage through climate change.
2. States shall exercise due diligence to avoid, minimise and reduce environmental and other damage through climate change, as described in draft Article 7A.1. In exercising due diligence, States shall take all appropriate measures to anticipate, prevent or minimise the causes of climate change, especially through effective measures to reduce greenhouse gas emissions, and to minimise the adverse effects of climate change through the adoption of suitable adaptation measures.
3. In determining whether a State has exercised due diligence in accordance with draft Article 7A.2, economic development and available resources, scientific knowledge, the risks involved in an action, and the vulnerability of affected states shall be taken into account. Measures taken by States to anticipate, prevent or minimise the causes and adverse effects of climate change must be proportionate.

Draft Article 7B. Precautionary principle

1. Where there is a reasonably foreseeable threat of serious or irreversible damage, including serious or irreversible damage to States vulnerable to the impacts of climate change, measures to anticipate, prevent or adapt to climate change shall be taken by States without waiting for conclusive scientific proof of that damage.
2. Precautionary measures for the purposes of draft Article 7B.1 shall include proactive and cost-effective measures which enable sustainable development, maintain the stability of the climate system and protect the climate system against human-induced change.
3. As new scientific knowledge relating to the causes or effects of climate change becomes available, States must continuously assess their obligation of prevention and the necessity for precautionary measures. Where scientific knowledge about damage from climate change improves sufficiently, protective measures shall be continued by States pursuant to their obligation to prevent environmental damage, as described in draft Article 7A.1 above.
4. In light of new scientific knowledge, States must strengthen their emission reduction standards and other preventative and adaptation measures, taking into account the factors listed in draft Article 7A.3.
5. Where there is a reasonably foreseeable threat that a proposed activity may cause serious damage to the environment of other States or areas beyond national jurisdiction, including serious or irreversible damage through climate change to vulnerable States, an environmental impact assessment on the potential impacts of such activity is required.
6. If the assessment indicates a reasonably foreseeable threat of such serious damage, the State under whose jurisdiction or control the activity takes place shall notify and consult with States likely

to be affected, shall make available relevant information, and cooperate with a view to reaching a joint decision.

Draft Article 8. International Cooperation

1. States shall cooperate with each other and competent international organisations in good faith to address climate change and its adverse effects.
2. In order to contribute to the effective and appropriate international response to climate change, all States and other relevant actors shall cooperate in good faith and a spirit of partnership in the fulfilment of the principles embodied in these draft Articles and in the further development and more effective implementation of the international legal and governance framework relating to climate change.
3. The international cooperation on climate change shall reflect the responsibility of developed countries to assist developing countries as laid out in draft Article 5.3.
4. All States shall cooperate in further enhancing scientific knowledge relating to the causes and impacts of climate change and in developing and strengthening emission reduction standards and other preventative and adaptation measures based on such scientific knowledge. States shall facilitate the transfer of such scientific knowledge to the States most vulnerable to climate change, if requested.
5. States shall jointly monitor, through an appropriate international or regional organisation, whether emission reduction standards are fulfilled and whether other preventative and adaptation measures are taken to address climate change.
6. To the extent a disaster attributable to climate change exceeds a State's response capacity, States shall cooperate with each other and competent international organisations to provide assistance.
7. In order to respond to new threats to international peace and security attributable to climate change and its adverse effects, States shall adopt new legal frameworks to deal adequately with all aspects of the resulting situation.
8. States shall continuously review and develop the legal and institutional framework of international law to ensure its adequacy to address climate change and its adverse effects.

Draft Article 9. Good Faith

1. States commit themselves to act in good faith in addressing climate change and its adverse effects and to achieve internationally agreed objectives. This includes their good faith commitment to engage in constant monitoring and supervision both at the domestic and international levels to ensure that these objectives are met.

2. The principle of good faiths commits States in negotiations on further legal instruments on climate change and its adverse effects not to insist on their own position without contemplating any modification of it. A State shall faithfully execute unilateral statements declarative of that State's climate policies and measures that generate legitimate expectations among other States.

Draft Article 10. Inter-Relationship

1. In order to effectively address climate change and its adverse effects, States shall formulate, elaborate and implement international law relating to climate change in a mutually supportive manner with other relevant international law.

2. States, in cooperation with relevant international organisations, shall ensure that consideration of climate change mitigation and adaptation is integrated into their law, policies and actions at all relevant levels, in accordance with draft Article 3.

3. According to draft Article 8, States shall cooperate with each other to implement the inter-relationship principle in all areas of international law, whenever necessary, as illustrated in the following areas:

(a) *Climate Change and International Trade and Investment*: States may take measures to address climate change and its adverse effects, provided that they shall not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. In order to prevent any inconsistency or potential conflict, States shall ensure that legal progress regarding climate, trade, and investment in ongoing negotiations conforms to the principle of mutual supportiveness.

(b) *Climate Change and International Human Rights Law*: States and competent international organisations shall respect international human rights when developing and implementing policies and actions at international, national, and subnational levels regarding climate change. In developing and implementing these policies and actions, States shall take into account the differences in vulnerability to climate change of their populations, particularly indigenous peoples, within their borders and take measures to ensure that all their peoples' rights are fully protected.

(c) *Climate Change and Law of the Sea*: States and competent international organisations shall apply, interpret, implement and enforce their rights and obligations under the Law of the Sea in such a manner so as to effectively addressing climate change and its adverse effects. States and competent international organisations shall elaborate and implement international rules as well as national and regional policies and measures relevant to climate change in a manner consistent with rights and obligations under the law of the sea related instruments.