


ORIGINAL ARTICLE

INTERNATIONAL LAW AND PRACTICE

The challenge of phasing out fossil fuels for highly fossil fuel-dependent countries in international law

Hojjat Salimi Turkamani^{1,2*} 

¹Department of law, Azarbaijan Shahid Madani University, Tabriz, Iran and ²Research Center for Sustainable Development Law, Heidelberg University, Heidelberg, Germany
Email: Salimi@azaruniv.ac.ir

Abstract

Policies on the demand side of fossil fuels are not enough to fight against climate change, and policies on the supply side should be adopted as supplements. The idea of phasing out fossil fuels at the starting point of the energy chain, despite the fact that it has not yet been legally binding, has been seriously discussed in the Conference of the Parties. In this regard, the special situation of highly fossil fuel-dependent countries (HFFDCs), such as Iraq and Azerbaijan, should be fully considered under Article 4.8 of the United Nations Framework Convention on Climate Change. This article seeks to analyse the legal approach and arguments of the HFFDCs and the non-fossil fuel-dependent countries (NFFDCs), such as Austria and Sweden, towards policies and initiatives to phase out fossil fuels. The NFFDCs, relying on the just transition stemming from principle of Common but Differentiated Responsibilities and Respective Capabilities, have put forward the initiatives of creating a non-binding coalition and a binding treaty in analogy with the Non-Proliferation of Nuclear Weapons. In contrast, the HFFDCs, based on the principle of permanent sovereignty over natural resources, have presented the Net Avoided Emission and phasing out fossil fuel emissions initiatives. Each party has a fundamental criticism of the legal arguments and the initiative of the other party. The idea of the Office of the High Commissioner for Human Rights in 2018 to promote the human right to equitable development can reconcile the parties' arguments. This idea requires the NFFDCs to cooperate with the HFFDCs in improving the level of human development and reducing the economic and social effects rising from phasing out fossil fuels in the HFFDCs.

Keywords: climate change law; highly fossil fuel-dependent countries (HFFDCS); just transition; phasing out fossil fuels; right to development

1. Introduction

Fossil fuels are the dominant form of energy used in the world (86 percent) and emit about 75 percent of current anthropogenic CO₂ emissions.¹ In other words, fossil fuels are responsible for most of the annual and cumulative anthropogenic greenhouse gas (GHG) emissions.² Efforts

*The author would like to thank Prof. Ute Mager, Prof. Nilufer Oral, Prof. Ebrahim Afsah, and Mr. Arne Riedel for providing the opportunity to carry out this recent project. The author also acknowledges the Alexander von Humboldt Foundation for its financial support of this project.

¹B. Metz et al. (eds.), *IPCC Special Report on Carbon Dioxide Capture and Storage* (2005), 55.

²O. Edenhofer et al. (eds.), *Climate Change 2014: Mitigation of Climate Change - Working Group III Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2014), Summary for Policymakers, at 6.

to limit the long-term increase in average global temperature to 1.5 degrees Celsius require reducing global CO₂ emissions to Net Zero by 2050.³ If the temperature increase is to be kept below two degrees Celsius, a large proportion of fossil fuels must not be produced.⁴ In fact, achieving Net-Zero by 2050 requires a huge decline in the use of fossil fuels.⁵

The international climate change law, including the UN Framework Convention on Climate Change (UNFCCC)⁶ and Paris Agreement,⁷ has mainly focused on the consumption of fossil fuels and on the demand side rather than the supply side of fossil fuels.⁸ As damage to the environment caused by fossil fuels begins with extraction,⁹ managing the decline in fossil fuel supply can reduce GHG emissions not at the end of the energy chain but at the beginning.¹⁰ Where demand-side policies have failed, supply-side approaches are likely to succeed.¹¹ Therefore, supply-side measures are increasingly seen as a necessary complement to demand-side measures.¹² In the past few years, the emergence of supply-side policies has arisen in different ways, such as the phase out of fossil fuels, ending public funding for fossil fuels, and reforming fossil fuel subsidies.¹³ In the present study, phasing out fossil fuels means eliminating the production and supply of fossil fuels.

The willingness of states to cooperate in phasing out fossil fuels is a function of the impact of the transition process on them. Country characteristics largely determine the economic impact of the global energy transition on them.¹⁴ The economies of some states are highly dependent on the production and supply of fossil fuels, so any restrictions may lead to severe economic crises for them. According to a UNDP study, states that produced an average of more than three percent of their annual GDP from fossil fuel exports from 2015 to 2019 were considered highly fossil fuel-dependent countries (HFFDCs).¹⁵ The degree of dependence of these states varies and includes 95 percent (Iraq) to 11 percent (Suriname).¹⁶ Approaches of the HFFDC and non-fossil fuel-dependent countries (NFFDC) to phase out fossil fuels can differ due to their dependence on the production of fossil fuels. This ambivalence can lead to different legal arguments and initiatives based on different principles to solve the climate change problem. Since both the HFFDCs and the NFFDCs simultaneously include developing and developed states, the division between them does not necessarily correspond to the division of states between the developed and developing states. Group of NFFDCs is wide-ranging (more than 150 states) and includes many developing and developed states. Nevertheless, since the HFFDCs consist of 40 states, which, except for Norway, are all developing states,¹⁷ the approach and legal arguments of the HFFDCs are closer to those of developing states.

³International Energy Agency, *Net Zero by 2050: A Roadmap for the Global Energy Sector* (2021), 2.

⁴C. McGlade and P. Ekins, 'The Geographical Distribution of Fossil Fuels Unused When Limiting Global Warming to 2°C', (2015) 517(7533) *Nature* 187, 190.

⁵See IEA, *supra* note 3, 9.

⁶1992 United Nations Framework Convention on Climate Change, 1771 UNTS 107.

⁷2015 Paris Agreement, 3156 UNTS 79.

⁸G. B. Asheim et al., 'The Case for a Supply-Side Climate Treaty', (2019) 365(6451) *Science* 325.

⁹T. Q. Donaghy et al., 'Fossil Fuel Racism in The United States: How Phasing Out Coal, Oil, and Gas Can Protect Communities', (2023) 100 *Energy Research & Social Science* 103104, at 6.

¹⁰G. Piggot et al., 'Curbing Fossil Fuel Supply to Achieve Climate Goals', (2020) 20(8) *Climate Policy* 881.

¹¹A. Macintosh and A. Constable, 'Supply-Side Climate Policies and the Yasuni-ITT Initiative', (2017) 34 *Environmental and Planning Law Journal* 79, 80.

¹²P. Lujala, P. Le Billon, and N. Gaulin, 'Phasing Out Fossil Fuels: Determinants of Production Cuts and Implications for an International Agreement', (2022) 22(4) *Global Environmental Politics* 95, 96.

¹³A. Nazareth et al., *The Equity Dimensions of Anti-Fossil Fuel Norms* (2022), 4.

¹⁴D. M. Puyo et al., 'Key Challenges Faced by Fossil Fuel Exporters during the Energy Transition', (2024) 2024/001 *IMF Staff Climate Note* 1, 7.

¹⁵L. Jensen, *Global Decarbonization in Fossil Fuel Export-Dependent Economies: Fiscal and Economic Transition Costs* (2023), 27.

¹⁶*Ibid.*

¹⁷*Ibid.*

Under Article 7 of the UNFCCC, the Conference of the Parties (COP) is regarded as the supreme body of the UNFCCC, which regularly reviews the implementation of it. The COP shall adopt decisions necessary to promote the effective implementation of the UNFCCC. At COP28, the NFFDCs wanted the final decision to call for a fossil fuel phase out. However, OPEC, on behalf of the oil-exporting states, declared its firm and strong opposition to including language on phasing out fossil fuels in the final text entitled ‘Outcome of the First Global Stocktake’.¹⁸ Consequently, without clear reference to the phasing out fossil fuels, Paragraph 28(b) merely recognized ‘accelerating efforts towards the phase-down of unabated coal power’. At COP 29 in Baku in 2024, because the main agenda was climate finance, the issue of phasing out fossil fuels was not addressed directly. At this COP, ‘the United Arab Emirates dialogue on implementing the global stocktake outcomes’ was adopted which confirmed ‘the Outcome of the First Global Stocktake’ of COP 28 regarding the need for energy transition.¹⁹ Given the existing disagreement between the HFFDCs and the NFFDCs, it seems that phasing out fossil fuels, especially oil and gas, will continue to be one of the most important and challenging issues at COPs in the next decade.

To understand the positions and legal consequences of arguments of the NFFDCs and the HFFDCs about phasing out fossil fuels, legal analysis is needed. To this end, Section 2 of the article examines the evolutionary process of the idea of phasing out fossil fuel production in the source country in the climate change law, along with the categorization of highly fossil fuel-dependent countries. In Section 3 and Section 4 of the article, I set out, respectively, the legal Principles and initiatives of both the HFFDC and the NFFDCs as well as their corresponding critiques. Finally, the idea of equitable development is examined to reconcile the legal arguments of the parties, and conclusions are presented.

2. The evolution of the idea of phasing out fossil fuel production in the climate change law

In the climate change law, the focus has always been on limiting use, but not production, of fossil fuels.²⁰ In other words, it has focused on where GHG omissions occur rather than where fossil fuels are initially located.²¹ Although the climate change treaties, especially the UNFCCC and the Paris Agreement, do not contain specific provisions to prevent the production and supply of fossil fuels, their general goals for mitigating climate change can be seen as promoting low-carbon alternatives.²² Therefore, the starting point of this evolutionary path has been the lack of recognition of the need for eliminating production and supply of fossil fuels.

2.1. Clarifying the concept of phasing out fossil fuels

In contrast to renewable resources, fossil fuels, including oil, natural gas, and coal, are non-renewable resources whose combustion produces large amounts of energy and CO₂. According to the sixth report of the IPCC, Net-Zero CO₂ energy systems require a significant reduction in

¹⁸UNFCCC, Decision -/CMA.5, Outcome of the First Global Stocktake (13 December 2023), available at unfccc.int/documents/636584.

¹⁹Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement Sixth Session Baku, 11–22 November 2024, United Arab Emirates Dialogue on Implementing the Global Stocktake Outcomes, Draft Decision -/CMA.6, FCCC/PA/CMA/2024/L.21 (24 November 2024), para. 14, available at unfccc.int/sites/default/files/resource/cma2024_L21_adv.pdf.

²⁰C. Verkuijl et al., *Aligning Fossil Fuel Production with the Paris Agreement* (2018), 2.

²¹D. Shapovalova, ‘Climate Change and Oil and Gas Production Regulation: An Impossible Reconciliation?’, (2023) 26(4) *Journal of International Economic Law* 817, 822.

²²H. Van Asselt, *Governing the Transition Away from Fossil Fuels: The Role of International Institutions* (2014), 6.

overall fossil fuel consumption and minimal use of unabated fossil fuels.²³ The International Energy Agency (IEA) claims that Net-Zero emissions by 2050 requires the timely phasing out of oil and gas.²⁴ The success of the climate change law in phasing out fossil fuels depends on an effective combination of supply-side and demand-side measures.²⁵ It makes sense to pursue supply-side policies that limit the extraction and supply of fossil fuels as a complement to traditional demand-side policies that aim to limit their consumption. While mitigation in fossil fuel consumption must be made by all states, the economic consequences of reduced production will mainly be directed at producing states.²⁶

Generally, fossil fuel phase out means the immediate cessation of new extraction, infrastructure construction, and the managed reduction of existing production.²⁷ In fact, it means committing to no new oil and gas exploration or development of new oil and gas fields.²⁸ By moving away from fossil fuels, states are expected to sacrifice their short-term national development gains for international goals. Therefore, phasing out fossil fuels is necessary to achieve climate goals.²⁹ Phase out policies have been discussed primarily in relation to coal, but the key insights apply equally to oil and gas as well.³⁰

Regarding phasing out fossil fuels, two distinctions should be considered. First, ‘unabated’ refers to fossil fuels produced and used without interventions that substantially reduce the amount of GHG emitted throughout the life cycle.³¹ In contrast, ‘abated’ refers to the burning of fossil fuels along with the permanent absorption and storage of a portion of the resulting GHGs.³² However, there is no clarity about what counts as unabated or abated.³³ Second, ‘phasing down’ refers to a slow transition, while ‘phasing out’ refers to a rapid and complete elimination. In other words, while phasing out is explicitly about the end goal, phasing down simply indicates reduction.³⁴ There is disagreement over the difference between them as well.

The speed of phasing out fossil fuels can be related to the type of fossil fuel and the type of economy of the producing state. In fact, the phase out process does not proceed at the same speed for all fossil fuels. Phasing out coal occurs faster than oil and gas. Due to their lower carbon intensity and higher energy value, oil and gas should also be phased out more slowly in the decarbonization process.³⁵ Similarly, the process of phasing out natural gas will be slower than oil. Many developed and developing states support gas as a ‘bridge fuel’, the continued exploitation of which is essential to achieving a low-carbon transition.³⁶ Regardless of the type of fuel, among

²³P. R. Shukla et al. (eds.), *Climate Change 2022: Mitigation of Climate Change-Working Group III Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022), Summary for Policymakers, at 32.

²⁴International Energy Agency, *Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach* (2023), 16.

²⁵See Shapovalova, *supra* note 21, 824.

²⁶D. Calverley and K. Anderson, *Phase out Pathways for Fossil Fuel Production Within Paris-compliant Carbon Budgets* (2022), 10.

²⁷See Donaghy et al., *supra* note 9, 1.

²⁸We Mean Business Coalition, *Fossil to Clean: Principles for Global Fossil Fuel Phase-Out* (2023), 8.

²⁹T. Laan and A. G. Maino, *Boom and Bust: The Fiscal Implications of Fossil Fuel Phase-Out in Six Large Emerging Economies-GSI Report* (2022), v.

³⁰M. Jakob et al., *How the Net-Zero Transformation Affects Fossil Fuel Exporters - Security Implications and Policy Options for the EU* (2023), 15.

³¹Core Writing Team, H. Lee and J. Romero (eds.), *Climate Change 2023: Synthesis Report-Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023), 28.

³²C. Bataille et al., ‘Defining “Abated” Fossil Fuel Emissions’, SSRN, 30 September 2024, available at ssrn.com/abstract=5001529.

³³Q&A: Why Defining the “PhaseOut” of “Unabated” Fossil Fuels Are so Important at COP28’, *Carbon Brief*, 5 December 2023, available at www.carbonbrief.org/qa-why-defining-the-phaseout-of-unabated-fossil-fuels-is-so-important-at-cop28/.

³⁴H. van Asselt and F. Green, ‘COP26 and the Dynamics of Anti-Fossil Fuel Norms’, (2023) 14(3) *WIREs Climate Change* e816, 4.

³⁵E. Kriegler et al., *Phasing out Fossil Fuels - How to Achieve a Just Transition? Background Paper for the Forum Climate Economics* 7 (2020), 1.

³⁶IEA, *The Role of Gas in Today’s Energy Transitions* (2019).

fossil fuel-producing states, developed states can have a faster transition due to greater economic diversity than developing states.³⁷ For example, Denmark is the first oil and gas-producing state to announce a legally binding deadline for oil and gas exploration and production by 2050.³⁸ Notwithstanding, there is no simple recipe for a just energy transition.³⁹

2.2. Identifying the characteristics of highly fossil fuel-dependent countries (HFFDCs)

Based on the UNDP study,⁴⁰ the states that on average have generated fossil fuel revenue worth more than three percent of GDP annually from 2015 to 2019 were considered HFFDCs. The dependency index has been determined by the average of the fossil fuel share of exports and the fossil fuel share of revenue. The highest dependence is for Iraq (95 percent), and the lowest is for Suriname (11.1 percent).⁴¹ According to the study, three characteristics of HFFDCs are significant: a significant share of their export earnings from fossil fuels in GDP; high vulnerability to fossil fuel phase out; and low levels of human development.

First, fossil fuel export revenues represent a significant share of GDP and export earnings for many of them.⁴² In these states, on average, fossil fuels generate annual revenue of 14.3 percent of GDP and 61.2 percent of total exports.⁴³ Hence, a sharp drop in revenue from fossil fuel exports can potentially undermine the state's ability to provide access to social services and fulfil human rights obligations such as those under the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁴ The high level of dependence on oil and gas income makes it seem fiscally impossible to phase out fossil fuel production, despite the urgency of responding to climate change.⁴⁵

Second, most of them are among the most affected and vulnerable states to phase out fossil fuels.⁴⁶ In addition to dependency on income, vulnerability is determined by lack of economic diversity, human capital, institutions, and a country's governance.⁴⁷ Most of the HFFDCs suffer from the problem of 'carbon entanglement', making it both politically and economically challenging to phase out fossil fuels.⁴⁸ The number of HFFDCs is 40, 31 of which are low- and middle-income states, and 13 of them are on the list of 39 'fragile and conflict-affected situations' of the World Bank.⁴⁹ While, political stability and security are prerequisites for economic diversification, some HFFDCs, such as Iraq and Libya, are affected by wars that severely disrupt economic activities and threaten lives of people.⁵⁰

Third, there is a strong correlation between the Human Development Index and the GDP per capita.⁵¹ Many HFFDCs have low current human development levels because of low GDP per

³⁷G. Muttitt, and S. Kartha, 'Equity, Climate Justice and Fossil Fuel Extraction: Principles for a Managed Phase Out', (2020) 20(8) *Climate Policy* 1024, 1035.

³⁸P. T. Madsen et al., 'Abandoning Fossil Fuel Production: What Can Be Learned From the Danish Phase-Out of Oil and Gas?', (2023) 103 *Energy Research & Social Science* 103211, at 1.

³⁹G. Piggot et al., *Realizing a Just and Equitable Transition away from Fossil Fuels* (2019), 7.

⁴⁰See Jensen, *supra* note 15, 27.

⁴¹*Ibid.*

⁴²See Jakob et al., *supra* note 30, 5.

⁴³See Jensen, *supra* note 15, 7.

⁴⁴1966 International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3.

⁴⁵S. Steadman et al., *Indebted: How to Support Countries Heavily Reliant on Oil and Gas Revenues to Secure Long-Term Prosperity* (2023), 3.

⁴⁶See Jensen, *supra* note 15, 5.

⁴⁷A. Rempel and J. Gupta, 'Equitable, Effective, and Feasible Approaches for a Prospective Fossil Fuel Transition', (2022) 13(2) *WIREs Climate Change* e756, 2.

⁴⁸See Piggot et al., *supra* note 10, 882.

⁴⁹See Jensen, *supra* note 15, 8.

⁵⁰IMF, 'Economic Diversification in Oil-Exporting Arab Countries, Annual Meeting of Arab Ministers of Finance, Manama, Bahrain, April 2016', 4.

⁵¹K. Pekarčíková and L. Prachařová, 'Correlation between Human Development Index and Economic Growth of Major Oil and Gas Producers', (2023) 69(1) *GeoScience Engineering* 105, 111.

capita.⁵² Statistics show that more than 40 percent of people in Angola, Chad, Nigeria, and South Sudan live in extreme poverty.⁵³ In these states, phasing out fossil fuels could significantly worsen conditions for millions of people and disrupt development prospects for decades.⁵⁴ Development through oil is the dream of many HFFDCs, but the reality of daily life for many in these states is far from that goal.⁵⁵ Without international support to mitigate the socio-economic impacts of decarbonization, these states could experience low levels of development, along with devastating consequences for their populations due to their high dependence on fossil fuels.⁵⁶

Therefore, economic problems, vulnerabilities, political instability, and low human development in the HFFDCs should remain key considerations when elaborating national phase out plans. The process of phasing out fossil fuels should be done in a way that takes into account their characteristics.⁵⁷ Due to their vulnerabilities, the HFFDCs have demanded special consideration in the phase out process of fossil fuels.⁵⁸ Under Article 4.8(h) of the UNFCCC, the Parties shall give full consideration to the ‘specific needs and concerns’ of the HFFDCs. Nevertheless, due to the escalation in global energy supply and consumption in the past decades and the accompanying rise in global GHGs emissions, full consideration was not specified in the Paris Agreement.⁵⁹ Instead, Article 4.15 implicitly recognizes the need to take into account the concerns of developing states in response measures without referring to fossil fuels.

2.3. Rules governing fossil fuels in the climate change treaties

In general, recognition of the need to reduce fossil fuel production is completely absent from international climate change treaties.⁶⁰ In the UNFCCC, the special economic situation of the HFFDCs is considered in the Preamble and in Articles 4.8(h) and 4.10. This special economic situation involves high dependence on the production and export of fossil fuels. In fact, the article requires giving full consideration to the specific needs and concerns of the HFFDCs. However, the special consideration of the HFFDCs is not limited to developing states only.⁶¹ According to Article 4.10, developed states such as Norway and Australia, which produce and export fossil fuels, can be subject to this special consideration to qualify their commitments under Article 4(2).⁶²

The term ‘fossil fuels’ does not appear in the Kyoto Protocol⁶³ and the Paris Agreement. Although reducing fossil fuel supply is essential to achieving the Paris Agreement’s goal of keeping warming ‘well below 2 degrees Celsius’, the agreement is silent on the issue of fossil fuels.⁶⁴ The Paris Agreement is a demand-side treaty that focuses on GHG emissions rather than fossil fuel supply.⁶⁵

⁵²M. Coffin and A. Grant, ‘Beyond Petrostates: The Burning Need to Cut Oil Dependence in the Energy Transition’, *Carbon Tracker*, 11 February 2021, 36.

⁵³Available at worldpoverty.io/.

⁵⁴See Jensen, *supra* note 15, 24.

⁵⁵G. Bridge and P. Le Billon, *Oil* (2013), 125.

⁵⁶See Jensen, *supra* note 15, 26.

⁵⁷S. Kartha et al., *The Carbon Inequality Era: An Assessment of the Global Distribution of Consumption Emissions Among Individuals from 1990 to 2015 and Beyond* (2020), 27.

⁵⁸N. Chan, ‘The “New” Impacts of the Implementation of Climate Change Response Measures’, (2016) 25(2) *Review of European, Comparative & International Environmental Law* 228, 229.

⁵⁹G. van Calster and L. Reins, *The Paris Agreement on Climate Change: A Commentary* (2021), 49.

⁶⁰H. van Asselt and P. Newell, ‘Pathways to an International Agreement to Leave Fossil Fuels in the Ground’, (2022) 22(4) *Global Environmental Politics* 28, 28.

⁶¹F. Yamin and J. Depledge, *International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (2004), 251.

⁶²D. Bodansky, ‘The United Nations Framework Convention on Climate Change: A Commentary’, (1993) 18 *Yale Journal of International Law* 451, 531.

⁶³1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change 2303 UNTS 162.

⁶⁴G. Piggot et al., ‘Swimming Upstream: Addressing Fossil Fuel Supply under the UNFCCC’, (2018) 18(9) *Climate Policy* 1189, 1189.

⁶⁵See Asheim, *supra* note 8.

While it does not include any direct obligation to limit or report fossil fuel production, it indirectly addresses the fossil fuel industry by, for example, discussing carbon prices rather than coal, oil, or gas prices.⁶⁶ The failure to mention fossil fuels in international climate change treaties is a reflection of the concern of major fossil fuel-producing states about the impact of mitigation measures on their economies.⁶⁷ However, the Paris Agreement can provide several new opportunities for parties to address fossil fuel supply, like Nationally Determined Contributions (NDCs) and long-term strategies. State parties can ‘domesticate’ their international climate commitments and NDCs to facilitate the phase out of fossil fuel production.⁶⁸

The origin of discussions related to phasing out fossil fuel production and supply is the COPs.⁶⁹ In their final statement at COP23 in 2017, the world’s 47 least developed states called for the ‘Talanoa dialogue’ to include ‘managing a phase out of fossil fuels’.⁷⁰ Consequently, in the Glasgow Climate Pact, adopted at COP26 in November 2021, states explicitly recognized the importance of phasing out fossil fuels for the first time in a UNFCCC decision. The parties committed to ‘[accelerate] efforts towards the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies’.⁷¹ A year later, at COP27 in Sharm el-Sheikh, some states, led by India, tried to include a proposal to phase down all fossil fuels in the COP decision. The attempt was blocked by some oil and gas-producing states, which instead support the use of carbon capture technology. At COP28, ‘the Outcome of the First Global Stocktake’ called for ‘transitioning away from fossil fuels in energy systems’ without clear reference to the phasing out of oil and gas.⁷² Likewise, its Paragraph 28(b) merely recognized ‘accelerating efforts towards the phase-down of unabated coal power’. In COP28, key divisions remained on the approach to phasing out or down unabated or abated fossil fuels. Before the COP 28 in November 2023, there was intense debate about ‘phasing out’ or ‘phasing down’ fossil fuels, but the COP statement does not use these terms. Finally, COP 29 did not make any progress in the phasing out fossil fuel production and supply, and only the provisions of the COP28 were re-confirmed.

In short, international climate change law was slow to address the issue of phasing out fossil fuels. None of the climate treaties set out specific obligations that directly regulate fossil fuel production. In other words, while climate change treaties encourage actions to promote low-carbon energy, they do not specifically mention phasing out fossil fuels production and supply.

3. The approach of the NFFDCs to phasing out fossil fuels

The norms for the energy transition are expressed in simple, uncomplicated language in the final statements of the COPs to encourage the participation of the entire international community since even a small group of opposing states can block the process because decision-making at the COPs is based on consensus.⁷³ However, all this simplicity of language can ignore some of the

⁶⁶See Rempel and Gupta, *supra* note 47, 1.

⁶⁷See Piggot et al., *supra* note 64, 1190.

⁶⁸I. Gerasimchuk et al., *Fossil Fuel Phase-Out and a Just Transition: Learning From Stories Of Coal Phase-Outs – IISD Report* (2018) 1, 5.

⁶⁹In addition to the discussions in COPs, the second IPCC working group in its 2022 report refers to the ‘Cap and Share System’. In this system, fossil fuel production and consumption are reduced each year, and thus the number of fossil fuel production permits is reduced to eventually eliminate fossil fuel production. Meanwhile, revenue from license sales should be distributed in a way that empowers people around the world to invest in their future and, more generally, to fight poverty. See R. A. Begum et al., ‘Point of Departure and Key Concepts’, in H.-O. Pörtner et al. (eds.), *Climate Change 2022: Impacts, Adaptation and Vulnerability – Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022), 121 at 173.

⁷⁰See Gerasimchuk et al., *supra* note 68, at 2.

⁷¹Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement on its Third Session, Held in Glasgow, from 31 October to 13 November 2021, FCCC/PA/CMA/2021/10/Add.1 (8 March 2022), para. 36.

⁷²See UNFCCC, *supra* note 18.

⁷³See Nazareth et al., *supra* note 13, 8.

complexities faced by the HFFDCs as mentioned above. Failure to consider these differences can lead to the use of norms to promote policies that have inequitable effects for the HFFDCs, such as reduced export income and increased poverty.⁷⁴ For this reason, the NFFDCs base their legal initiatives on equitable and just transition in order to consider the special situation of the HFFDCs.

3.1. Just transition as the legal basis of NFFDCs' arguments for phasing out fossil fuels

The dominant discourse on phasing out fossil fuels is the just transition, which is supported by most states, mainly the NFFDCs. Just transition seeks to ensure that the move towards sustainable energy systems takes into account the needs and concerns of all affected communities.⁷⁵ In other words, the transition should be implemented in a way that does not disproportionately affect communities.⁷⁶ This approach is included in the Paris Agreement to maximize the participation of developing states especially the HFFDCs in achieving the climate change goals. The NFFDCs believe that this approach aims to take into account the special situation of the HFFDCs in the energy transition. The benefit of this approach for the NFFDCs is that it can realize the environmental goals of the Paris Agreement through phasing out fossil fuels over two or three decades, despite the long-term need of the HFFDCs to fossil fuels to realize the right to development and the right to energy access.

In the context of fossil fuels, just transition is defined as the process of ensuring fairness and equity in the transition from fossil fuels to renewable energies and low-carbon technologies.⁷⁷ An equitable approach to the problem of climate change is about how to fairly distribute the burden of mitigation.⁷⁸ Without an equitable perspective, policies aimed at promoting the global energy transition could exacerbate energy poverty, climate change incompatibility, and human rights violations around the world.⁷⁹ The equity applies within states as well as between them.⁸⁰ At the national level, the HFFDCs must implement programs and policies to diversify their economies, along with employment policies for a transition. In this regard, a call for a 'just transition of the workforce' was included as an imperative in the Preamble of the Paris Agreement to address the importance of minimizing the negative social and economic effects of fossil fuels at the national level.⁸¹

In relation to equity at the international level, differentiation concerns should be addressed on Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC).⁸² The NFFDCs claim that the CBDR-RC principle will be key to supporting states that phase out fossil fuel production and consumption.⁸³ The doctrine of CBDR-RC has, largely, been applied to the emission of GHGs, and there has been much less focus on the extraction of fossil fuels.⁸⁴ Though the concepts of 'responsibility' and 'capability' that apply to mitigation do not directly apply to

⁷⁴G. A. Lenferna, 'Can We Equitably Manage the End of the Fossil Fuel Era?', (2018) 35 *Energy Research & Social Science* 217.

⁷⁵V. Johansson, 'Just Transition as an Evolving Concept in International Climate Law', (2023) 35 *Journal of Environmental Law* 229, 235.

⁷⁶D. McCauley et al., *The Future of Just Transitions: Theory and Implementation* (2024), 4–12.

⁷⁷D. Kraal et al., *A Just Transition to Decarbonization Themes of Loss and Damage, Transport, Nature and Youth* (2023), 44.

⁷⁸D. Bodansky et al., *International Climate Change Law* (2017), 7.

⁷⁹D. S. Olawuyi, 'The Role of Natural Gas in a Just and Equitable Energy Transition', in D. S. Olawuyi and E. G. Pereira (eds.), *The Palgrave Handbook of Natural Gas and Global Energy Transitions* (2022), 73 at 90.

⁸⁰See Coffin and Grant, *supra* note 52, 15.

⁸¹See Paris Agreement, *supra* note 7, Preamble, Recital.10.

⁸²H. Salimi Turkamani, 'The Trend of Changes in the Differentiation in Climate Change Law: Towards Intensifying, Not Weakening', (2024) 26 *International Community Law Review* 503, 508.

⁸³M. Lazarus and H. van Asselt, 'Fossil Fuel Supply and Climate Policy: Exploring The Road Less Taken', (2018) 150 *Climatic Change* 1, 8.

⁸⁴S. Caney, *Climate Change, Equity, and Stranded Assets* (2016), 14.

extraction,⁸⁵ they can also reasonably be applied to the production side. The main difference in using CBDR-RC in production is that while all states consume fossil fuels, only a few states produce fossil fuels.

According to the principle of equity, wealthy states with more diverse economies, states with more historical responsibility for emissions from fossil fuels, and states with the largest fossil fuel reserves that they have historically exploited should start the process of phasing out fossil fuels sooner and more rapidly.⁸⁶ Instead, the HFFDCs should stop the production and supply of fossil fuels with delay. The first group must phase out fossil fuels by 2034, while the HFFDCs must phase out until 2050.⁸⁷ However, the distinctive pace of phasing out fossil fuels will not be sufficient to fully address equity concerns among states. The HFFDCs must be supported for a just transition as a part of the fossil fuel phase out process. Under Articles 2.1.c, 11, 12, and 9 of the Paris Agreement, financial support, technology transfer, and technical assistance are needed to help developing states participate in a just transition. However, from the perspective of the NFFDCs, the international community has every reason to want fossil fuel producers to successfully transition, whether for justice or better climate outcomes.⁸⁸

3.2. Initiatives of the NFFDCs for phasing out fossil fuels

Regarding phasing out fossil fuels, two initiatives have been presented by the NFFDCs. The first initiative is to create a coalition called Beyond Oil and Gas Alliance (BOGA). The creation of an international organization with the ability to make legally binding decisions for its member states on the phasing out fossil fuels was the inspiration behind this initiative. In November 2021, at COP-26 in Glasgow,⁸⁹ several like-minded states came together to create a non-binding international agreement to limit fossil fuel production. The BOGA is the first government coalition aimed at facilitating the phasing out of oil and gas production.⁹⁰ It is mobilizing national and local actors willing to phase out oil and gas production before global consensus is reached.⁹¹ Its focus is on reducing fossil fuel extraction and leaving fossil fuels in the ground, not on promoting on-demand collaboration.⁹² The BOGA proposes that advanced economies should commit to reaching 100 percent decarbonized power systems by 2035 and other states by 2040 at the latest.⁹³ Its six full member states, including Denmark, Costa Rica, France, Greenland, Ireland, and Sweden, have pledged to phase out oil and gas production in line with the Paris Agreement. This pledge would not only prevent them from issuing new fossil fuel production licenses but also require them to phase out any existing production.⁹⁴ The BOGA can engage its second and third tier members, the Associate Members and the Friends of BOGA, to progressively align with the

⁸⁵See Muttitt and Kartha, *supra* note 37, 1038.

⁸⁶A. Scott, *A Managed Decline of Fossil Fuel Production: The Paris Goals Require No New Expansion and a Managed Decline of Fossil Fuel Production* (2018), 17; see Muttitt and Kartha, *supra* note 37, 1035.

⁸⁷See Calverley and Anderson, *supra* note 26, 7.

⁸⁸See Coffin and Grant, *supra* note 52, 9.

⁸⁹The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its Third Session, held in Glasgow, from 31 October to 13 November 2021.

⁹⁰Available at beyondoilandgasalliance.org/who-we-are/.

⁹¹O. Bois von Kursk et al., *Transitioning away from Oil and Gas: A Production Phase-Out Prime– IISD Report* (2024), 14.

⁹²A. Burke, 'An Architecture for a Net Zero World: Global Climate Governance Beyond the Epoch of Failure', (2022) 13(Suppl. 3) *Global Policy* 24, 29.

⁹³See We Mean Business Coalition, *supra* note 28, 5.

⁹⁴C. Whyte, 'Phasing Out Fossil Fuels, Supporting Climate Justice', Working Paper, 18 April 2024, available at [Feasta-Phasing-Out-Fossil-Fuels-Supporting-Climate-Justice.pdf](https://www.feastafund.org/Phasing-Out-Fossil-Fuels-Supporting-Climate-Justice.pdf), 3.

requirements of full membership and, beyond that, with science.⁹⁵ Its founders believe that it can form a steppingstone towards creating a binding agreement in the future.⁹⁶

The second initiative is the conclusion of the Fossil Fuel Non-Proliferation Treaty (FFNPT),⁹⁷ which aims to stop the expansion of fossil fuel use and wind down existing production by imitating the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).⁹⁸ Under this initiative, states would enter into a legally binding treaty to limit fossil fuel production through a fossil fuel non-proliferation treaty.⁹⁹ In fact, the nuclear NPT was invoked ‘as a useful analogy for efforts to multilateralize supply-side policy on climate change’.¹⁰⁰ One of the purposes of invoking the NPT was ‘to draw parallels with the principles and structure that might underpin the proposed initiative’.¹⁰¹ It emerged in 2019 as a movement promoting an orderly phase out of coal, oil, and gas production with a focus on ‘just transition’. The three key pillars of the NPT— non-proliferation, disarmament, and peaceful use — have been parallelized, respectively, by agreeing not to exploit new reserves, the managed reduction of existing fossil fuel infrastructure, and the financing of low-carbon alternatives through the Global Transition Fund.¹⁰² The treaty obliges states to submit supply-side pledges, following the example of the Paris Agreement’s NDCs.¹⁰³ Although this initiative could be attractive to states vulnerable to the effects of climate change,¹⁰⁴ as well as to states that want to prevent others from free riding, the challenges that such a treaty would have to overcome should not be underestimated.¹⁰⁵ Vulnerable small island-states and the European Parliament supported it.¹⁰⁶ It is claimed that even if sufficient consensus on oil and gas phase out is not reached quickly enough to conclude the non-proliferation treaty on fossil fuels, a coal phase out treaty alone could follow.¹⁰⁷

3.3. HFFDCs criticisms of the arguments and initiatives of the NFFDCs

Based on just transition, the NFFDCs have given the HFFDCs two options for considering their economic needs and concerns on the path to phase out fossil fuels: delaying the phasing out fossil fuels compared to other states and providing them with international support. Since the HFFDCs have little desire to limit fossil fuel production as its revenue forms a large part of their economy,¹⁰⁸ both options have been criticized by the HFFDCs.

Regarding the first option, the HFFDCs argue that the NFFDCs reached their emission peak after two centuries and now expect them to reach their peak within two to three decades. In their

⁹⁵R. Ioualalen, ‘From Creation To Delivery: How The Beyond Oil And Gas Alliance And Its Members Can Catalyze Climate Action In An Era Of Energy Upheaval And Escalating Climate Impacts’, September 2022, 6.

⁹⁶H. van Asselt and E. Harrould-Kolieb, ‘Toward an Intergovernmental Transparency Arrangement for Fossil Fuel Production’, (2022) 16(3) *Carbon and Climate Law Review* 161, 163.

⁹⁷The Fossil Fuel Non-Proliferation Treaty Initiative, 2022, available at fossilfuel treaty.org/.

⁹⁸1968 Treaty on the Non-Proliferation of Nuclear Weapons, 729 UNTS 161.

⁹⁹H. van Asselt et al., ‘The Environmental and Economic Effects of International Cooperation on Restricting Fossil Fuel Supply’, (2024) 24 *International Environmental Agreements* 141, 144.

¹⁰⁰P. Newell and A. Simms, ‘Towards a Fossil Fuel Non-Proliferation Treaty’, (2020) 20(8) *Climate Policy* 1043, 1046.

¹⁰¹*Ibid.*

¹⁰²*Ibid.*, 1052.

¹⁰³See van Asselt and Newell, *supra* note 60, 37.

¹⁰⁴Furthermore, higher education can cooperate with this initiative as well: see A. Kinol et al., ‘Climate Justice in Higher Education: A Proposed Paradigm Shift Towards a Transformative Role for Colleges and Universities’, (2023) 176(15) *Climatic Change* Article 15, at 15.

¹⁰⁵See Newell and Simms, *supra* note 100, 1052.

¹⁰⁶European Parliament Resolution of 21 November 2023 on the UN Climate Change Conference 2023 in Dubai, United Arab Emirates (COP28) (2023/2636(RSP)), P9_TA (2023)0407, C/2024/4210 (2024).

¹⁰⁷See Burke, *supra* note 92, 32.

¹⁰⁸See Van Asselt et al., *supra* note 99, 147.

opinion, this is completely inequitable¹⁰⁹ because the HFFDCs and the NFFDCs have started their development processes at different times.¹¹⁰ They should have different deadlines for the transition to renewable energy.¹¹¹ Energy transition strategies must be long-term and aligned with commitments to improve social equity and human rights specifically, as stated in the Preamble of the Paris Agreement.¹¹² Otherwise, it is not fair to expect the HFFDCs to forego their expected economic returns and development programs based on them.¹¹³

As for the second option, they claim that that despite the fact that international cooperation is essential to ensuring a just transition for the HFFDCs, international commitments on climate finance have so far been disappointing, providing far less than is needed and justifiable.¹¹⁴ At COP29 in Baku 2024, developed states agreed upon the new collective quantitative target to mobilize 300 billion dollars annually to support developing states by 2035.¹¹⁵ However, the HFFDCs believe that it is very difficult for them to not extract fossil fuels, as there is currently no dedicated funding mechanism to help them move away from fossil fuel extraction and supply, while a significant portion of their budget depends on fossil fuel revenues.¹¹⁶

According to the HFFDCs, the BOGA initiative is a very simple one that so far covers very little global oil and gas production and has not received much support from the COPs.¹¹⁷ None of the top oil and gas producers is a member of BOGA. In total, associate and core members produce relatively little oil and gas, and are responsible for less than one percent of global oil and gas production.¹¹⁸ Some of its core members that produce oil and gas, such as France, Denmark, and Sweden, which have little economic dependence on oil and gas, have an easier transition process ahead.¹¹⁹ They bear little cost in committing to phase out oil and gas.¹²⁰ Furthermore, this initiative is based solely on a political declaration rather than a statute and does not create any legal rights or obligations. This organization has not yet emerged as an international organization especially consisting of major oil and gas-producing states, but is still a political coalition consisting of ineffective states in the formation of legal norms in the field of oil and gas. Therefore, although the BOGA fund provides a precedent in supporting the HFFDCs in phasing out fossil fuels,¹²¹ it cannot complement the legal commitments contained in the Paris Agreement to achieve Net-Zero goals.

The FFNPT initiative is based on using the analogy method. Analogy is a tool through which the laws governing one situation can be applied to a similar situation.¹²² It is correct to use the

¹⁰⁹'Fossil Fuel Phase out in Developing Countries Requires New Economic Order', *Third World Network*, 11 December 2023, available at twn.my/title2/climate/news/Dubai01/TWN%20update%2017.pdf.

¹¹⁰L. Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics', (2016) 65(2) ICLQ 493, 501.

¹¹¹See McCauley et al., *supra* note 76, 18.

¹¹²A. R. Harrington, *Just Transitions and the Future of Law and Regulation* (2022), 6.

¹¹³G. Lahn and S. Bradley, *Left Stranded? Extractives-Led Growth in a Carbon-Constrained World* (2016).

¹¹⁴See Jensen, *supra* note 15, 24.

¹¹⁵Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement Sixth Session Baku, 11–22 November 2024, Agenda Item 11(a), Matters Relating to Finance, New Collective Quantified Goal on Climate Finance, FCCC/PA/CMA/2024/L.22 (24 November 2024), Para. 8.

¹¹⁶See Nazareth et al., *supra* note 13, 9.

¹¹⁷See Burke, *supra* note 92, 29.

¹¹⁸'Fact Sheet: Beyond Oil and Gas Alliance', July 2022, at 2, available at www.germanwatch.org/sites/default/files/germanwatch_boga_factsheet_g7-g20_track-2.pdf.

¹¹⁹See Madsen et al., *supra* note 38, 1.

¹²⁰F. Green, 'Anti-Fossil Fuel Norms', (2018) 150(2) *Climatic Change* 103, at 111.

¹²¹BOGA provided an initial 1 million dollars grants in 2023 to support Kenya and Colombia to plan for a just transition from dependence on oil and gas. Available at beyondoilandgasalliance.org/wp-content/uploads/2023/12/BOGA-Press-Release-COP28.pdf.

¹²²F. Lusa Bordin, *The Analogy between States and International Organizations* (2018), 25.

method of analogy when, according to the ‘principle of equality’, two legal fields have a significant similarity and the difference between them is insignificant.¹²³ The context, and object and purpose are the determining factors in the degree of similarity between a source and target situations. In general, the adoption of analogies in the codification and development of international law requires caution,¹²⁴ because relevant dissimilarities between a source and target situations are often overlooked, and their similarities are exaggerated.¹²⁵ The HFFDCs can claim that the similarities between nuclear weapons and fossil fuels have been exaggerated and differences between them have been ignored. Therefore, the success of the fossil fuel non-proliferation treaty is not guaranteed by analogy with the NPT.¹²⁶

In short, the approach of the NFFDCs to the phase out of fossil fuels is based on the concept of just transition in light of the principles of equity and CBDR-RC. Under these principles, they have presented two initiatives, the BOGA and the FFNPT, each of which has been criticized in some way by the HFFDCs. The HFFDCs have another basis and initiatives for their approach to phasing out fossil fuels, which will be assessed in the next section.

4. The approach of the HFFDCs to phasing out fossil fuels

In response to the initiatives to phase out fossil fuels by the NFFDCs, the HFFDCs present their own legal arguments and initiatives. In general, in these states, the fossil fuel story is less about transition and more about development.¹²⁷ They base their legal arguments to benefit from their natural resources on the right to development and present initiatives to guarantee this right.

4.1. Right to develop as a legal basis of HFFDCs arguments for phasing out fossil fuels

According to the HFFDCs, the initiatives proposed by the NFFDCs to phase out fossil fuels have been largely contrary to their sovereignty right over natural resources.¹²⁸ Under the Resolution on Permanent Sovereignty over Natural Resources (1962),¹²⁹ this right is an inalienable right of states. This resolution was a response by newly independent countries to former colonial laws, under which their natural resources were exploited by colonial states. They were keen to end this process and sought to exploit natural resources in their territory.¹³⁰ With the beginning of the process of gaining independence, most developing countries with natural resources claimed national sovereignty over their natural resources, especially the nationalization of their oil and gas industries. They still consider the production and extraction of their natural resources, including oil and gas, as a manifestation of their sovereignty. Furthermore, Article 25 of the International Covenant on Economic, Social, and Cultural Rights (1966) recognizes the right of people to fully and freely use their natural resources without directly referring to the term right to development. In addition, under Article 1.1 of the Declaration on the Right to Development (1986),¹³¹ the right to development is ‘an inalienable human right by virtue of which every human person and all

¹²³S. Vöney, ‘Analogy in International Law’, *Max Planck Encyclopedias of Public International Law*, February 2008, available at opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1375?prd=MPIL, Para. 172.

¹²⁴See Bordin, *supra* note 122, 37.

¹²⁵See A. M. Khan, ‘Misuse and Abuse of Legal Argument by Analogy in Transjudicial Communication: The Case of *Zaheeruddin v. State*’, (2011) 10(4) *Richmond Journal of Global Law & Business* 497, 506.

¹²⁶P. Newell, H. van Asselt, and F. Daley, ‘Building a Fossil Fuel Non-Proliferation Treaty: Key Elements’, (2022) 14 *Earth System Governance* 100159, 8.

¹²⁷See We Mean Business Coalition, *supra* note 28, 16.

¹²⁸J. Gilbert, ‘The Right to Freely Dispose of Natural Resources: Utopia or Forgotten Right?’, (2013) 31(3) *Netherlands Quarterly of Human Rights* 314, 338.

¹²⁹UNGA, Resolution 1803(XVII) ‘Permanent Sovereignty over Natural Resources’ (14 December 1962).

¹³⁰A. Banai, ‘Sovereignty over Natural Resources and its Implications for Climate Justice’, (2016) 7(2) *WIREs Climate Change* 238, 240.

¹³¹UNGA, Declaration on the Right to Development, UN Doc. A/RES/41/128 (4 December 1986).

peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.’ According to Article 1.2 of the Declaration, the right to development includes the exercise of the inalienable right to full sovereignty over all wealth and natural resources. In 2018, the Human Rights Council called for drafting of a legally binding treaty on the right to development.¹³² On 20 January 2020, the UN Working Group on the Right to Development released the first draft of the Convention on the Right to Development.¹³³ This draft not only makes the right to development binding, but also contains more precise and concrete norms compared to the Declaration on the Right to Development.¹³⁴ However, at the regional level of Africa, the right to development has become a legal right. According to Article 22 of the African Charter on Human and Peoples’ Rights,¹³⁵ states shall have the duty to ensure the exercise of the right to development. Despite the fact that, to date, the right to development has been mainly included in non-binding declarations at the international level, a process has begun at the international level, particularly with the preparation of a draft Convention on the Right to Development, which attempts to give this right a binding aspect. In the context of climate change law, the ‘sovereign right to exploit their own resources’, as one of the examples of the right to development, is explicitly recognized in the preamble of the UNFCCC. Likewise, under the Preamble of the Paris Agreement, states should respect, promote, and consider the right to development when taking action to address climate change. Based on these articles, the HFFDCs consider the right to development as one of their fundamental rights.

According to the HFFDCs, development cannot happen logically without burning fossil fuels.¹³⁶ They consider the revenues from oil and gas extraction as a way to support economic and social development.¹³⁷ Thus, phasing out fossil fuels is a complex and major challenge for them.¹³⁸ They believe that with phasing out fossil fuels, the opportunity for their sustainable development will be lost¹³⁹ because it will inevitably affect their ability to meet their development needs.¹⁴⁰ The HFFDCs resist prohibitions that deny them the ‘right to develop’.¹⁴¹ They argue that the development of norms that call for the phasing out fossil fuels should be accompanied by the development of norms that are based on meeting the development and energy needs of low-income states.¹⁴² While Article 21 of the Stockholm Declaration¹⁴³ seeks to balance the responsibility of states to prevent harm to other states and the sovereign right to exploit the environment, they consider the right to economic development to be superior to environmental protection.¹⁴⁴ They believe that to solve the problem of climate change, methods should be

¹³²Human Rights Council, Resolution Adopted by the Human Rights Council on 27 September 2018, A/HRC/RES/39/9, Thirty-Ninth Session, 10–28 September 2018, Agenda Item 3, UN Doc. A/HRC/RES/39/9 (27 September 2018).

¹³³Human Rights Council, Draft Convention on the Right to Development, UN Doc. A/HRC/WG.2/21/2 (17 January 2020).

¹³⁴R. G. Teshome, ‘The Draft Convention on the Right to Development: A New Dawn to the Recognition of the Right to Development as a Human Right?’, (2022) 22 *Human Rights Law Review* 1, 24.

¹³⁵1981 African Charter on Human and Peoples’ Rights, 1520 UNTS 217.

¹³⁶F. Soltau, *Fairness in International Climate Change Law and Policy* (2009), 157.

¹³⁷See Nazareth et al., *supra* note 13, 8.

¹³⁸S. Thielges, ‘The Global Shift Away from Fossil Energy: A Blind Spot in Climate Foreign Policy’, *SWP Comment No. 38*, July 2023, available at www.swp-berlin.org/10.18449/2023C38/, at 5.

¹³⁹See TWN, *supra* note 109, 3.

¹⁴⁰See Verkuijl et al., *supra* note 20, 3.

¹⁴¹J. Gupta and E. Chu, ‘Inclusive Development and Climate Change: The Geopolitics of Fossil Fuel Risks in Developing Countries’, (2018) 17 *African and Asian Studies* 90.

¹⁴²See Nazareth et al., *supra* note 13, 4.

¹⁴³Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) UN Doc. A/CONF.48/14/Rev.1 (16 June 1972), Art. 21.

¹⁴⁴V. P. Nanda, ‘Climate Change and Developing Countries: The International Law Perspective’, (2010) 16(2) *ILSA Journal of International & Comparative Law* 539, 546.

adopted that do not conflict with their right to economic development and the principle of permanent sovereignty over natural resources. In short, the HFFDCs argue that a new economic order is a prerequisite for phasing out fossil fuels.¹⁴⁵

4.2. Initiatives of the HFFDCs for phasing out fossil fuels

Concerning phasing out fossil fuels, the HFFDCs have presented two initiatives based on the right to development and the principle of permanent sovereignty over natural resources. The first initiative is Net Avoided Emission (NAE), which refers to GHG emissions that can occur in any country's economy but are avoided. It is a voluntary mechanism to provide incentives to keep fossil fuels in the ground.¹⁴⁶ One of the feasibility conditions for phasing out oil and gas production is the allocation of resources to compensate for their lost opportunity to develop national resources.¹⁴⁷ This innovative concept addresses the root of the problem by preventing CO₂ emissions in the first place.¹⁴⁸ In this regard, the size of proven reserves is still a good indication of the economic value that any country would have to give up if it were to phase out oil and gas extraction immediately.¹⁴⁹ This initiative, known as the Yasuní-ITT initiative, was introduced by Ecuador to not extract oil from Yasuní National Park provided that it receive international financial support for environmentally friendly development projects in return for half of the forgone revenues. This is an interesting case of stranding fossil fuel assets and helping to mitigate climate change while compensating Ecuador.

In spite of attracting international attention, the Yasuní-ITT initiative ultimately failed to generate the level of funding sought from the international community and was never adopted by the international community. As a result, the Yasuní-ITT initiative was officially suspended in August 2013, and in October 2013, Ecuador began oil extraction in the park.¹⁵⁰ This project failed because the necessary funds were never provided due to a variety of national and international obstacles, external to the initiative itself.¹⁵¹ In addition, its failure can be partially attributed to the pioneering and ambitious aspects of the model, which lacked sophisticated international coordination due to its novelty. There were also concerns about the potential for extortion by countries with abundant oil and gas resources.¹⁵² However, an important lesson from the Yasuní-ITT proposal is that it was met with a warmer reception than previous claims of the HFFDCs for compensation.¹⁵³ It seems that this proposal can be redesigned to be operational in achieving climate change mitigation on a smaller scale to overcome economic constraints.¹⁵⁴ In such cases, even alongside the states, the possibility of paying compensation by international financial institutions such as the World Bank can also be proposed.¹⁵⁵

¹⁴⁵See TWN, *supra* note 109, 1.

¹⁴⁶M. Köhler and A. Michaelowa, 'Limiting Climate Change by Fostering Net Avoided Emissions: Reducing Fossil Fuel Supply and Emissions from Fuel Exploitation', (2014) 8 *Carbon and Climate Law Review* 55, at 64.

¹⁴⁷See Rempel and Gupta, *supra* note 47, 16.

¹⁴⁸T. Vallejo Silva and P. M. Calisto Esquetini-Friant, 'Ecuador's Yasuní-ITT Initiative for Mitigating the Impact of Climate Change', (2015) 32 *Environmental and Planning Law Journal* 278, 282.

¹⁴⁹See Madsen et al., *supra* note 38, 2.

¹⁵⁰Yasuní: Ecuador Abandons Plan to Stave off Amazon Drilling', *The Guardian*, 16 August 2013, available at www.theguardian.com/world/2013/aug/16/ecuador-abandons-yasuni-amazon-drilling.

¹⁵¹S. G. Laastad, 'Leaving Oil in the Ground: Ecuador's Yasuní-ITT Initiative and Spatial Strategies for Supply-Side Climate Solutions', (2024) 56(1) *EPA: Economy and Space* 172, 173.

¹⁵²See Van Asselt, *supra* note 22, 5.

¹⁵³D. H. Claes and G. Garavini, *Handbook of OPEC and the Global Energy Order: Past, Present and Future Challenges* (2020), 344.

¹⁵⁴M. Peck, 'Ecuador's Yasuní-ITT Initiative: A Case Study on International Climate Change Mitigation Narratives', (2015) 8(1) *Oregon Undergraduate Research Journal* 17, 23.

¹⁵⁵K. Rosendal et al., *International Payment for Forest Conservation. Special Case: Compensation for Leaving the Oil in the Ground in Yasuní National Park, Ecuador - A Report to the Norwegian Ministry of the Environment* (2008), 11.

The second initiative is 'phasing out fossil fuel emissions' instead of phasing out fossil fuels themselves. The HFFDCs claim that the production and supply of fossil fuels is not so worrying. The main concern is the emission of GHGs caused by the consumption of fossil fuels. According to them, fighting climate change means fighting unnecessary GHG emissions, not fighting oil and gas.¹⁵⁶ Some of them believe that trying to reduce GHG emissions by producing states from fuel burned by consumer states is simply a losing battle.¹⁵⁷ The end of fossil fuels has been clearly addressed through the GHG neutrality goal and the temperature goal.¹⁵⁸ Therefore, it is necessary to increase efficiency in different ways. Technological innovation, including capture and storage, can improve energy efficiency and must be part of the solution, as it has been identified by the Intergovernmental Panel on Climate Change (IPCC) as one of the most promising technologies for an option in the portfolio of mitigation actions.¹⁵⁹ For example, the UAE intends to continue producing oil and gas by phasing out fossil fuel emissions instead of phasing out fossil fuels.¹⁶⁰ Through this strategy, it tries to combine new investments in oil production with measures to reduce GHG emissions from its extraction process.¹⁶¹

4.3. Criticisms of the NFFDCs of the arguments and initiatives of the HFFDCs

The NFFDCs have not welcomed the legal arguments of the HFFDCs and their initiatives. Some of them claim that since the Declaration of the Right to Development has not yet become a legal treaty to contain legal rights and obligations, the right to development is merely an aspiration and not a right at all.¹⁶² Despite the fact that the right to development has been legalized at the African regional level, states still have no legal obligation at the international level to provide assistance to developing states for their economic development.¹⁶³ Furthermore, the right to development in its classical sense is not explicitly recognized in the climate change law. Rather, Article 3.4 of the UNFCCC merely recognizes the right to promote sustainable development.¹⁶⁴ In contrast to the right to development, the right to promote sustainable development has environmental dimensions in addition to economic dimensions and requires governments to comply with environmental considerations in their development processes. The NFFDCs emphasize the necessity of changing the internal structures of developing states in order to achieve the right to development for their citizens.¹⁶⁵

Concerning the principle of permanent sovereignty over natural resources, the NFFDCs believe that states do not have an absolute and unlimited right to explore and exploit their natural resources, in the sense that they are obliged to respect the rights of other states and not to cause transboundary harm.¹⁶⁶ Under the no-harm principle, when fossil fuel production is harmful to

¹⁵⁶OPEC, *OPEC 60 Years and Beyond* (2020), 348.

¹⁵⁷I. Ozdemir et al., *COP28 Progress or Regression? An Empirical and Historical Comparative Analysis of COP Summits* (2023), 17.

¹⁵⁸D. Klein et al., *The Paris Agreement on Climate Change: Analysis and Commentar* (2017), 384.

¹⁵⁹See Metz et al., *supra* note 1, 'Summary for Policymakers - A Special Report of Working Group III of the Intergovernmental Panel on Climate Change', 3.

¹⁶⁰Climate Action Track, *Countdown to COP28: Time for World to Focus on Oil and Gas Phase-Out, Renewables Target – Not Distractions Like CCS* (2023).

¹⁶¹See Puyo et al., *supra* note 14, 12.

¹⁶²K. Arts and A. Tamo, 'The Right to Development in International Law: New Momentum Thirty Years Down the Line?' (2016) 63 *Netherlands International Law Review* 221, 235

¹⁶³A. Masum, 'The Right to Development and its Corresponding Obligations on Developing Countries', (2020) 9 *Journal of International Studies* 33, 40.

¹⁶⁴See Bodansky et al., *supra* note 78, 93.

¹⁶⁵See Masum, *supra* note 163, 40.

¹⁶⁶R. Pereira and O. Gough, 'Permanent Sovereignty Over Natural Resources in the 21st century: Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples Under International Law', (2013) 14 *Melbourne Journal of International Law* 451, 458.

others and endangers the sovereignty of other states over their atmospheres and ecosystems, the implementation of this powerful and legitimate prerogative should be limited.¹⁶⁷ The origin of the principle of no harm is *sic utere tuo ut alienum non laedas* and good neighborliness.¹⁶⁸ The International Court of Justice (ICJ) confirmed this principle in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996)¹⁶⁹ and in its decisions in the *Gabčíkovo-Nagymaros* case¹⁷⁰ (1997) and the *Pulp Mills* case (2010).¹⁷¹ As long as development activities cause harm due to the accumulated use of fossil fuel resources and GHG emissions, the principle of no harm should be used to redefine what development itself is. Also, the due diligence principle requires a balance between permanent sovereignty over natural resources and the duty to do no harm, thereby balancing economic development and environmental protection.¹⁷²

Thus, developing states must follow the path of sustainable development and green their economies in the light of custodial sovereignty.¹⁷³ The general obligation of a state is not only to refrain from harming the environment of other states but also to areas outside national jurisdiction of states, such as high seas.¹⁷⁴ Some even go further and claim that regardless of the limitation related to the no harm principle, the limitation of the principle of permanent sovereignty over natural resources is inherent in the concept itself because development itself can be a major cause of harm.¹⁷⁵ Therefore, a state's freedom of action regarding common concern like climate change can be limited, even in the absence of transboundary harm to another state's rights.¹⁷⁶ In short, the NFFDCs argue that permanent sovereignty over natural resources does not override other principles of international law¹⁷⁷ contained in the UNFCCC and the Paris Agreement.¹⁷⁸ Rather, the severe effects of climate change reduce the intensity and scope of the principle of permanent sovereignty over natural resources.

The NFFDCs are critical of the first initiative proposed by the HFFDCs, compensation for the NAE. Although this initiative could be replicated in the future as a climate change strategy for oil-rich developing states, it was argued that this method could be very dangerous because other states with huge resources can use this method to extort money.¹⁷⁹ Moreover, many HFFDCs may conclude that they no longer have a responsibility to protect the environment within their borders unless they are paid to do so.¹⁸⁰ In this case, claims for compensation by the HFFDCs can undermine the legitimate demands of the least developed states.¹⁸¹ Even this initiative may be

¹⁶⁷See Banai, *supra* note 130, 247; see Muttitt and Kartha, *supra* note 37, 1034.

¹⁶⁸V. Barral, 'National Sovereignty over Natural Resources: Environmental Challenges and Sustainable Development', in E. Morgera and K. Kulovesi (eds.), *Research Handbook On International Law and Natural Resources* (2016), 3 at 15.

¹⁶⁹*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, [1996] ICJ Rep. 226, 242, Para. 29.

¹⁷⁰*Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment of 25 September 1997, [1997] ICJ Rep. 7, 41, Para. 53.

¹⁷¹*Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, [2010] ICJ Rep. 14, 55, Para. 101.

¹⁷²See Barral, *supra* note 168, 19.

¹⁷³W. Scholtz, 'Greening Permanent Sovereignty through the Common Concern in the Climate Change Regime: Awake Custodial Sovereignty!', in O. C. Ruppel, C. Roschmann, and K. Ruppel-Schlichting (eds.), *Climate Change: International Law and Global Governance: Volume II: Policy, Diplomacy and Governance in a Changing Environment* (2013), 201 at 202–10.

¹⁷⁴L. A. Duvic-Paoli and J. E. Viñuales, 'Principle 2. Prevention', in J. E. Viñuales (ed.), *The Rio Declaration on Environment and Development: A Commentary* (2015), 107 at 117.

¹⁷⁵F. X. Perrez, 'The Relationship between "Permanent Sovereignty" and the Obligation Not to Cause Transboundary Environmental Damage', (1996) 26(4) *Environmental Law* 1187, 1212.

¹⁷⁶See Barral, *supra* note 168, 12.

¹⁷⁷N. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (1997), 377.

¹⁷⁸B. Barton, 'Fossil Fuel Mineral Wealth and Climate Change Law: Expectations of Coal Mine Development in a time of Decarbonisation', (2021) 39(4) *Journal of Energy and Natural Resources Law* 469, 485.

¹⁷⁹See Macintosh and Constable, *supra* note 11, 91.

¹⁸⁰*Ibid.*, 89.

¹⁸¹K. R. Gray, R. Tarasofsky, and C. P. Carlarne (eds.), *The Oxford Handbook of International Climate Change Law* (2016), 746.

problematic for other areas already designated as protected areas.¹⁸² The NFFDCs consider the Yasuní-ITT proposal as setting a precedent for other states to abuse their fossil fuel reserves as a basis for demanding payment.¹⁸³ The NAE initiative may not reduce CO₂ emissions globally but rather shift the location of fossil fuel production from one country to another. For instance, if Ecuador cuts its oil production, another country can produce more oil to make up for the shortfall. This problem, known as leakage, was also one of the other reasons for not accepting this initiative.¹⁸⁴ However, it can be redesigned in the future, provided it does not lead to a carbon leakage problem. Likewise, based on the principle of permanent sovereignty over natural resources, there is no guarantee that the state has permanently given up its right to extract.¹⁸⁵ In this regard, a major practical challenge is estimating the market effects of any decision to leave fossil fuel reserves in the ground.¹⁸⁶

The second initiative is also criticized by the NFFDCs in that it does not help to solve the problem in practice. The method that emissions should be phased out rather than the fossil fuels themselves has proven ineffective to date because the emission of GHGs in the world is still increasing.¹⁸⁷ Fossil fuels emit GHGs from the moment of production to the moment of consumption. In fact, the fossil fuel chain contributes to the emission of GHGs in upstream and downstream processes.¹⁸⁸ GHGs emissions from extractive projects are increasingly a matter of public interest.¹⁸⁹ Oil and gas reserves contain toxic chemicals, and the drilling, development, and production processes can result in human exposure to hazardous pollutants and air pollutants. Fifteen percent of global energy-related emissions today come from oil and gas extraction operations themselves.¹⁹⁰ In addition, Carbon capture and storage is very expensive and risky.¹⁹¹ Considering that many HFFDCs do not have access to the required carbon storage technology, it is necessary to prevent activities that pollute the environment in the first point according to the prevention principle.

5. Future perspective: Towards equitable sustainable development

Fossil fuel supply-side initiatives are subject to the same problems and limitations as demand-side initiatives.¹⁹² They have become the subject of different and conflicting interests and values of both the HFFDCs and the NFFDCs. To take a stronger global path towards Net Zero by 2050, different interests, values, and worldviews should be reconciled.¹⁹³ The 'right to equitable sustainable development' could be a proposed solution to reconcile the legal bases of the arguments of the parties about energy transition. It means that the people of a society can truly enjoy the benefits of

¹⁸²See Rosendal et al, *supra* note 155, 23.

¹⁸³B. Sovacool and J. Scarpaci, 'Energy Justice and the Contested Petroleum Politics of Stranded Assets: Policy Insights from the Yasuní-ITT Initiative in Ecuador', (2016) 95 *Energy Policy* 158, 165.

¹⁸⁴R. Haddad, 'An Un-conventional Approach: Ecuador's Yasuní-ITT Initiative Is in Discord with the UNFCCC', (2012) 12 *Sustainable Development Law & Policy* 15, at 16.

¹⁸⁵L. Pellegrini et al., 'The Demise of a New Conservation and Development Policy? Exploring The Tensions of the Yasuní ITT Initiative', (2014) 1(2) *The Extractive Industries and Society* 284, at 289.

¹⁸⁶See van Asselt, *supra* note 22, 14.

¹⁸⁷See Core Writing Team, Lee and Romero (eds.), *supra* note 31, 42.

¹⁸⁸See Shapovalova, *supra* note 21, 820.

¹⁸⁹EITI (Extractive Industries Transparency Initiative) International Secretariat, 'Preparing for the Energy Transition: Key Questions for Countries Dependent on Oil, Gas and Mining', Policy Brief, 2021, 16.

¹⁹⁰See We Mean Business Coalition, *supra* note 28, 8.

¹⁹¹J. Gupta et al., *Leaving Fossil Fuels Underground: Actors, Arguments and Approaches in the Global South and Global North* (2024), 205.

¹⁹²See Macintosh and Constable, *supra* note 11, 93.

¹⁹³- IPCC, 'Climate Change: A Threat to Human Wellbeing and Health of the Planet. Taking Action Now Can Secure Our Future', *IPCC Press Release*, 28 February 2022, 2.

other human rights when there is equity-based development in the society.¹⁹⁴ This concept, as a human-centered approach to the right to development, has emerged in response to the apparent failure of the traditional state-centered approach to the right to development.¹⁹⁵ This right is different from the right to development, which is derived from the Declaration on the Right to Development (1986) and is included in Article 4 of the draft of the Convention on the Right to Development (2020). The right to development is primarily economic in nature, and recalls the new economic order and the realities of the 1980s. However, the right to equitable sustainable development seeks to reconcile the economic rights and environmental obligations of developing states.

The right to equitable development was raised by Chair-Rapporteur of the Intergovernmental Working Group on the Right to Development, Zamir Akram, during the drafting of the Convention on the Right to Development.¹⁹⁶ Although this concept is not explicitly mentioned in the draft, it can be implicitly inferred from its provisions. In this regard, Article 3 of the draft stipulates that the right to development should be realized in a manner that includes equity as a universal principle common to all human rights. This document, while mentioning in its preamble that climate change is a serious obstacle to the realization of the right to development, clarifies in Article 2 that developing and vulnerable states affected by climate change may require special or remedial measures to ensure that all human persons and peoples enjoy the same right to development. Further, in Article 3(e), while establishing a direct and strong relationship between sustainable development and the right to development, it explicitly stipulates: ‘development cannot be sustainable if its realization undermines the right to development, and the right to development cannot be realized if development is unsustainable’.

Any decision to phase out fossil fuels has inevitable impacts on the interests and responsibilities of various human beings.¹⁹⁷ In fact, the transition from fossil fuels will not only involve huge changes in the energy production and infrastructure of the HFFDCs, but will also affect their human beings, including the people living in those states, the workers of these industries, and their families.¹⁹⁸ Therefore, the legal basis for phasing out fossil fuels can be the human right to equitable sustainable development, which ultimately depends on the cooperation of today’s global community in relation to climate change.

One of the main decisive factors in realizing equitable sustainable development is the level of human development based on the Human Development Index.¹⁹⁹ As human development levels improve, states will have the opportunity to act with strong public support for energy transitions.²⁰⁰ Most of the the HFFDCs have a low or medium Human Development Index.²⁰¹ They cannot improve their Human Development Index without the revenue generated by the production and export of fossil fuels. In this case, there are no more than two options left for the HFFDCs: either they should not extract fossil fuels and keep them in the ground, provided they are compensated, or they should be allowed to extract fossil fuels to meet their survival development needs.²⁰²

¹⁹⁴‘New Treaty Would Codify Right to Development’, *OHCHR*, 11 May 2023, available at www.ohchr.org/en/stories/2023/05/new-treaty-would-codify-right-development.

¹⁹⁵See K. Decker, S. McInerney-Lankford, and C. Sage, ‘Human Rights and Equitable Development: “Ideals”, Issues and Implications’, *The World Bank Open Knowledge Repository*, 2005, available at hdl.handle.net/10986/9132, at 43.

¹⁹⁶See HRC, *supra* note 132.

¹⁹⁷See Caney, *supra* note 84, 20.

¹⁹⁸S. Pai, K. Harrison, and H. Zerriffi, ‘A Systematic Review of the Key Elements of a Just Transition for Fossil Fuel Workers’ *Smart Prosperity Institute, Clean Economy Working Paper Series*, April 2020, available at institute.smartprosperity.ca/sites/default/files/transitionforfossilfuelworkers.pdf, at 2.

¹⁹⁹See Caney, *supra* note 84, 41.

²⁰⁰See Madsen et al., *supra* note 38, 2.

²⁰¹Available at hdr.undp.org/data-center/country-insights#/ranks.

²⁰²See Caney, *supra* note 84, 31.

Regarding the first option, the experience of the failure of the Yasuní Park proposal due to the lack of global acceptance of leaving fossil fuels underground, indicates the fact that states have not yet concluded on the need for compensation for unextracted fossil fuels. The lack of a revised version of the Yasuní Park proposal or similar proposals during the last decade, especially at COP29, which was on climate finance, shows that this initiative faces many challenges, especially due to financial constraints. The new collective quantitative target to mobilize 300 billion dollars by 2035 for all climate actions (including adaptation, mitigation, loss and damage) with the aim of increasing climate finance to at least 1.3 trillion dollars per year by 2035²⁰³ is not enough for compensating for the unextracted fossil fuels of the HFFDCs. This is because it would require a loss of revenues between 16 and 295 trillion dollars globally and an investment of 115 trillion dollars in low-carbon technologies and renewable energy by 2050.²⁰⁴ In any case, if the necessary financial resources are to be provided for compensation, an initiative should be presented that simultaneously takes into account both the degree of dependence on fossil fuels and the level of the Human Development Index. In fact, priority should be given to proposals from states that have both a high economic dependence on fossil fuels and a low Human Development Index.

Concerning the second option, it is noteworthy that due to the reliance of the improvement of the Human Development Index on revenues from the production and export of fossil fuels in the HFFDCs, the HFFDCs energy transition process can be different from that of the NFFDCs. For NFFDCs with high Human Development Index, the energy transition will be horizontal. The energy transition process for them should begin and be completed as soon as possible.²⁰⁵ Since the Human Development Index of the HFFDCs is low in most cases,²⁰⁶ the energy transition pattern for them is vertical. In fact, for them the immediate priority is not energy transition but increasing energy access.²⁰⁷ According to the opinion of the European Committee of Social Rights (ECSR) 'stable, consistent and safe access to adequate energy is both a prerequisite for and a key element of the enjoyment of the human rights'.²⁰⁸ In order for the energy transition to become horizontal for them, it is necessary to first reach the minimum desirable level of Human Development Index through access to energy and revenues from its exports. This requires the realization of the energy progression before the realization of the energy transition, whereby the HFFDCs must be allowed to develop and produce fossil fuels in order to gain the necessary potential for a leap in the path of energy transition.²⁰⁹

However, to achieve equitable sustainable development, developed states should cooperate in enhancing the capacity-building of the HFFDCs to implement the Agreement, in accordance with Article 11.3 of the Paris Agreement. Providing international assistance to the HFFDCs to improve their Human Development Index can accelerate phasing out production and supply of fossil fuel by them.

²⁰³See FCCC/PA/CMA/2024/L.22, *supra* note 115, Para. 27.

²⁰⁴See Gupta et al., *supra* note 191, 19.

²⁰⁵M. Kitetu et al., *Decarbonising Africa's Grid Electricity Generation: Practical Thinking on Investing for Development* (2021), 13.

²⁰⁶- Available at hdr.undp.org/data-center/country-insights#/ranks.

²⁰⁷G. Awuah, 'Rethinking African Electrification and Power Sector Decarbonisation Strategies and Support in an Era of Just Transition Partnerships', *PRISM Working Paper Series Number 2023-4*, available at commerce.uct.ac.za/sites/default/files/media/documents/commerce_uct_ac_za/869/PRISM%20Working%20Paper%202023-4_Awuah.pdf, at 7.

²⁰⁸Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), Magistrats Européens pour la Démocratie et les Libertés (MEDEL), Confederación Sindical de Comisiones Obreras (CCOO) and International Movement ATD Fourth World v. Spain, Decision on the Merits of 11 September 2024, European Committee of Social Rights, Complaint No. 206/2022, Para. 205.

²⁰⁹M. T. Ladan, I. Okukpon, and N. C. Maduekwe, 'Energy Transitions and the Future of Natural Gas Law, Policy, and Research', in Olawuyi and Pereira, *supra* note 79, 567 at 586.

6. Conclusion

Scientific research shows that the main cause of climate change is the combustion of fossil fuels, and until fossil fuels are abandoned, the process of fighting climate change will not reach a positive result. Following the failure of fossil fuel demand-side policies, there has been a lot of emphasis on supply-side policies, phasing out fossil fuels production and supply. It has been emphasized that demand-side policies will be favorable when they are accompanied by supply-side policies. Therefore, in order to combat climate change, in addition to the cooperation of major consumers of fossil fuels, the cooperation of the states that produce and supply fossil fuels is considered necessary.

The HFFDCs, especially developing states, have a special situation under Article 4.8(h) of the UNFCCC. The economies of these states are mono-product economies, and the political situation in some of them is fragile. Although people in most HFFDCs are more aware of and concerned about climate change than before, climate change has not yet become as serious an issue for them as it is for the people in European states. Still, their main priority is the issue of economic development and the reduction of public poverty, and the phasing out fossil fuel production and supply creates a serious problem for the realization of these goals.

The NFFDCs, relying on the idea of just transition and based on the principle of CBDR-RC, want to phase out fossil fuels by 2050, and for the special situation of the HFFDCs, they consider delay in reducing and providing technical and financial assistance. They offer a non-binding solution, the creation of the BOGA coalition, and a binding solution, the conclusion of a Fossil Fuel Non-Proliferation Treaty. However, these solutions, especially concluding a binding treaty, have not been welcomed by the HFFDCs due to severe restrictions on their economy. The change and adjustment of their economic development path within the next two decades in light of the experience of the non-fulfillment of the obligations related to the necessary technical and financial assistance by the developed states will severely hinder their economic development. By contrast, on the right to development and permanent sovereignty over their natural resources, the HFFDCs have presented solutions that are based on the idea of compensation for abandoning the extraction and phasing out fossil fuel emissions through carbon capture technology. These initiatives have not been taken very seriously by the NFFDCs. In particular, the NFFDCs have considered the Yasuní-ITT initiative a way to extort and abuse by some states with huge fossil fuel reserves.

As long as a balance between the HFFDCs and the NFFDCs on the levels of development is not established, the HFFDCs will likely continue to provide for the basic needs of their nations by producing oil and gas. Instead of directly emphasizing the phasing out fossil fuels production and supply, the focus should be on realizing the right to equitable sustainable development in the HFFDCs through international cooperation, so that for their nations, the issue of climate change becomes a public demand of their governments as much as economic development and poverty reduction. In this case, while achieving sustainable development in the HFFDCs, the grounds for phasing out fossil fuels are provided.