

The First Conference on Transitioning Away from Fossil Fuels: Reclaiming Multilateralism for a Just Transition

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Abstract:

The First Conference on Transitioning Away from Fossil Fuels, co-hosted by Colombia and the Netherlands, serves as a necessary platform for reclaiming multilateralism for a just transition. This paper analyses how the conference addresses the ‘judicialization’ of climate obligations following landmark 2025 advisory opinions from the **International Court of Justice (ICJ)**, the **International Tribunal for the Law of the Sea (ITLOS)**, and the **Inter-American Court of Human Rights (IACtHR)**. It highlights critical barriers facing developing countries, specifically the ‘regulatory chill’ caused by Investor-State Dispute Settlement (ISDS) mechanisms and the ‘debt-fossil fuel trap’ that binds extractive economies to external risks. It also recognises that integrating the ‘People’s Summit’ outcomes into the official Conference could promote a reparative financial model and strengthen the principle of Free, Prior, and Informed Consent (FPIC). Ultimately, Santa Marta should provide a blueprint for systemic reform, ensuring that global decarbonisation respects resource sovereignty and human dignity while moving toward a coordinated, legally backed effort for collective survival.

Introduction

Co-hosted by Colombia and the Netherlands, the First Conference on Transitioning Away from Fossil Fuels is organised outside the consensus-based UN climate architecture, although it aims to complement its efforts. Its main objective is to create a ‘coalition of the willing’ focused on defining clear mandates for practical energy-transition strategies.¹ The fact that Colombia is co-leading these efforts is significant, as the energy transition requires consideration of broader structural asymmetries of the global economic order to avoid increasing current disparities and exacerbating climate colonialism by shifting the burden of mitigation to developing countries.²

¹ Patrick Greenfield, ‘Colombia Convenes “Coalition of the Willing” to Break Global Fossil Fuel Deadlock’ *The Guardian* (17 April 2026) <https://www.theguardian.com/environment/2026/apr/17/colombia-convenes-climate-coalition-of-the-willing-to-break-global-fossil-fuel-deadlock> accessed 24 April 2026.

² Oxfam, ‘Unjust Transition: Reclaiming the Energy Future from Climate Colonialism’ (Briefing Paper, 24 September 2025) https://webassets.oxfamamerica.org/media/documents/Briefing_Paper_-_Unjust_Transition_Reclaiming_the_Energy_Future_from_Climate_n1zmk9K.pdf accessed 24 April 2026.

Efforts towards energy transition must consider the historical responsibility and sovereign policy frameworks anchored in the principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC), ensuring that the transition is just, orderly, and financed, rather than imposed through coercive economic or legal mechanisms.³ This principle, enshrined in Article 2(2) of the Paris Agreement, has also been recognised by recent landmark advisory opinions from the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), and the Inter-American Court of Human Rights (IACtHR).⁴ These opinions have crystallised climate pledges into binding legal obligations under customary international law and human rights frameworks.

This note provides a short analysis of how the Santa Marta Conference has the potential to become a leading initiative from developing countries to examine the intersection of new international legal obligations, the chilling effect of Investor-State Dispute Settlement (ISDS), and the socioeconomic prerequisites for an equitable transition that respects resource sovereignty and the rights of marginalised communities.

The Judicialization of Climate Obligations

The year 2025 witnessed an unprecedented judicialization of international climate change law. Advisory opinions from the ICJ, ITLOS and IACtHR have reshaped the legal obligations of States arising from climate change, including on strict legal liability, state responsibility, and human rights enforcement.⁵

The ITLOS advisory opinion established that greenhouse gas emissions constitute marine pollution under UNCLOS, mandating a rigorous due diligence standard beyond the Paris Agreement and incorporating an independent, objective standard measured against the best available science.⁶ At the same time, the IACtHR considered that human rights obligations arising from climate change, particularly by turning Nationally Determined Contributions (NDCs) into enforceable legal duties, could be enforced by domestic judges through the doctrine of 'conventionality control.'⁷

The ICJ solidified climate obligations as part of customary international law, rejecting attempts to isolate climate duties within narrow frameworks.⁸ It confirmed the right to full reparations for climate harm and that the CBDR-RC principle for calibrating legal obligations based on individual State capabilities. The ICJ created a universal, binding framework for state accountability.

³ South Centre, 'Fossil Fuel-based Economy and Human Rights: Inputs to Inform the Thematic Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change' (South Centre 2025) <https://www.southcentre.int/wp-content/uploads/2025/03/SC-Submission-to-the-SR-on-Climate-Change-Fossil-Fuel-based-Economy-and-Human-Rights.pdf> accessed 24 April 2026.

⁴ Daniel Uribe Terán, 'The Role of Advisory Opinions in Shaping International Climate Change Law' (Climate Policy Brief No 30, South Centre, 18 November 2025) https://www.southcentre.int/wp-content/uploads/2025/11/CPB30_The-Role-of-Advisory-Opinions-in-Shaping-International-Climate-Change-Law_EN.pdf accessed 24 April 2026.

⁵ Ibid.

⁶ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion of 21 May 2024) ITLOS Case No 31.

⁷ *The Climate Emergency and Human Rights* (Advisory Opinion OC-32/25) Inter-American Court of Human Rights Series A No 32 (29 May 2025).

⁸ *Obligations of States in respect of Climate Change* (Advisory Opinion of 23 July 2025) ICJ Reports 2025.

Together, these rulings close long-standing legal loopholes, ensuring that states can no longer hide behind procedural compliance while the best available science dictates more urgent action.

Risks Arising from Investor-State Dispute Settlement (ISDS)

ISDS mechanisms have been included in most international investment agreements,⁹ granting foreign investors the right to bypass domestic judicial systems and initiate international arbitration against host States for regulatory changes that allegedly harm their profits.¹⁰ While advisory opinions have affirmed States' binding duty to phase out fossil fuels to address climate change, the ISDS system poses a major challenge for the adoption of measures intended to phase out fossil fuels, as this sector remains the most litigious within the ISDS system, accounting for nearly 20 per cent of all known cases.¹¹

The financial implications of ISDS are severe, as the average amount awarded in fossil fuel-related ISDS cases exceeds USD 600 million, which is five times higher than awards in non-fossil fuel disputes.¹² In fact, companies have historically secured at least USD 82.8 billion in damages through this system.¹³ This situation generates a profound 'regulatory chill' as the threat of multi-billion-dollar arbitration is sufficient to deter resource-constrained developing countries from adopting ambitious climate policies, such as halting offshore licensing or phasing out coal plants.¹⁴

In addition, arbitral tribunals often function as autonomous, supranational legal systems that consistently disregard domestic constitutional constraints and international environmental norms.¹⁵ The IACtHR recognised that ISDS mechanisms cause a regulatory chilling effect that deters climate action, unequivocally directing States to prioritise the protection of human rights over "investor predictability".¹⁶ Therefore, systemic reform at the international level must move beyond procedural tweaks to address the fundamental imbalance of the IIAs regime.¹⁷ The Santa

⁹ UNCTAD, 'IIA Mapping Project: Methodology' (Investment Policy Hub) <https://investmentpolicy.unctad.org/international-investment-agreements/iaa-mapping/Content#section-103> accessed 24 April 2026.

¹⁰ South Centre (2025).

¹¹ UNCTAD, *IIA Mapping Project: IIA Reform and Sustainable Development* (UNCTAD/DIAE/PCB/INF/2024/5, 2024) https://unctad.org/system/files/official-document/diaepcbinf2024d5_en.pdf accessed 24 April 2026.

¹² Pierre Sewpal and others, 'Submission to the COP30 Presidency Roadmap: The Cost of Capital Asymmetry and the ISDS Architecture' (March 2026) https://unfccc.int/sites/default/files/resource/COP30_ENRE_Submission_Pierre_Sewpal.pdf accessed 24 April 2026.

¹³ Lise Johnson and others, 'Climate Action and Investment Treaty Reform' (Policy Brief, IIED, November 2023) <https://www.iied.org/sites/default/files/pdfs/2023-11/21971iied.pdf> accessed 24 April 2026.

¹⁴ South Centre (2025).

¹⁵ Daniel Uribe Terán, 'Advancing Responsible Foreign Investment through a Legally Binding Instrument on Transnational Corporations and Other Business Enterprises' (Investment Policy Brief No 27, South Centre, 23 October 2025) https://www.southcentre.int/wp-content/uploads/2025/10/IPB27_Advancing-Responsible-Foreign-Investment-through-a-Legally-Binding-Instrument-on-Transnational-Corporations-and-Other-Business-Enterprises_EN.pdf accessed 24 April 2026.

¹⁶ IACtHR (2025).

¹⁷ Daniel Uribe Terán, 'Advancing Responsible Foreign Investment through a Legally Binding Instrument on Transnational Corporations and Other Business Enterprises' (Investment Policy Brief No 27, South Centre, 23 October 2025) https://www.southcentre.int/wp-content/uploads/2025/10/IPB27_Advancing-Responsible-Foreign-Investment-through-a-Legally-Binding-Instrument-on-Transnational-Corporations-and-Other-Business-Enterprises_EN.pdf accessed 24 April 2026.

Marta conference could serve as a platform for countries to align IIAs dispute resolution with their climate obligations and promote sovereignty over their natural resources. For example, Colombia has recently denounced its IIAs to safeguard its páramo ecosystems from ISDS.¹⁸ Similarly, Bolivia's constitution mandates that disputes in key sectors such as hydrocarbons and lithium be resolved through national arbitration rather than international tribunals.¹⁹ In addition, to support this transition, countries could focus on sector-specific carve-outs to exclude fossil fuel investments from ISDS protections, preventing climate-related phase-outs from causing significant compensation claims.²⁰ These experiences could shift traditional IIAs from investor-focused protections toward investor responsibilities and strengthening domestic remedies, focusing on guaranteeing the policy space needed to achieve environmental and social objectives.

Economic Perspectives: Escaping the Debt-Fossil Fuel Trap

A just transition requires reforming structural economic inequalities that bind developing countries to extractive economic models. Many developing countries remain fossil fuel dependent due to financial obligations arising from sovereign debt and the global financial architecture.²¹ Several developing countries are caught in a pernicious "debt-fossil fuel trap," in which a high level of external debt obligates them to generate foreign exchange to service their liabilities, expanding fossil fuel production to generate necessary revenue, effectively locking them into further borrowing to build extractive infrastructure.²²

At the same time, the financial cost of the energy transition is quite high, requiring up to 7 to 10 per cent of Gross Domestic Product (GDP).²³ If developing countries have already dedicated substantial portions of their national budgets to debt servicing and implemented austerity measures, finding the fiscal space to invest in decentralised renewable grids and green industrialisation is almost impossible. The Santa Marta conference should increase efforts towards catalysing a radical restructuring of climate finance. The current paradigm, which heavily relies on lending to developing countries, only exacerbates the debt crisis. A genuine transition requires that the financial architecture pivot towards mechanisms grounded in historical responsibility and global climate justice.

The Conference could also consider other means for moving away from market-based loans and toward non-debt-creating instruments, such as direct grants and financial support. Climate finance should be considered a restorative obligation, as the international community should ensure that the most climate-vulnerable communities are not forced to choose between

¹⁸ Colombia saldrá del régimen de arbitraje internacional de inversión: presidente Petro' (Presidencia de la República de Colombia, 25 March 2026) <https://www.presidencia.gov.co/prensa/Paginas/Colombia-saldra-del-regimen-de-arbitraje-internacional-de-inversion-presidente-260325.aspx> accessed 27 April 2026.

¹⁹ Daniel Uribe Teran, 'Contract-based Arbitration: Lessons Learned from Bolivia's Extractives Industries' (SouthViews No 281, South Centre 31 January 2025) https://www.southcentre.int/wp-content/uploads/2025/01/SV281_250131.pdf accessed 27 April 2026.

²⁰ Lukas Schaupp and Suzy Nikiéma, 'Investor-State Dispute Settlement and Fossil Fuels: What Role for a Carve-Out?' (IISD Investment Treaty News, 2 April 2024) <https://www.iisd.org/itn/2024/04/02/investor-state-dispute-settlement-and-fossil-fuels-what-role-for-a-carveout/> accessed 27 April 2026.

²¹ Sebastian Rodriguez, 'To phase out fossil fuels, developing countries need exit route from "debt trap"' *Climate Home News* (22 April 2026) <https://www.climatechangenews.com/2026/04/22/to-phase-out-fossil-fuels-developing-countries-need-exit-route-from-debt-trap/> accessed 24 April 2026.

²² Ibid.

²³ Ibid.

ecological survival and economic stability. This approach would replace the current cycle of "green" debt with a model of reparative investment, allowing developing nations to build resilient, decentralised energy systems that serve their people rather than their creditors.

Catalysing a Just Transition

Energy transition is not just about swapping one energy source for another; it requires dismantling the underlying structures of social injustice, discrimination, and inequality. The Santa Marta conference includes a "People's Summit" that convenes an estimated 2,800 representatives from Indigenous nations, Afro-descendant communities, and social movements.²⁴ The outcomes of the "Peoples Summit" should not only guide but also be formally incorporated into the high-level intergovernmental segment, ensuring substantive participation in the final conference outcomes

Given that indigenous peoples and rural communities in developing countries are the most impacted by the extraction of transition minerals required for renewable technologies and fossil fuels, a just transition should be guided by the Free, Prior, and Informed Consent (FPIC) principle, included by recognising the cultural and historical nexus between territories and these communities and peoples. Territories must be conceptualised as socio-ecological spaces where cultural identity and sustainable production intersect, not merely as financial assets or carbon sinks.²⁵ Furthermore, any defossilisation strategy should avoid becoming a platform for "green grabbing," in which conservation mechanisms and renewable energy installations dispossess communities of their ancestral lands.²⁶

Likewise, the Conference could catalyse a just transition by bridging the energy gap affecting developing countries through restructuring energy finance and technology transfer to address systemic disparities. Given that developed countries often advocate for immediate decarbonization, it will be important that a just transition consider the development of international legal frameworks that recognise mandatory technology sharing and the cancellation of climate-related debts to support developing countries to move away from fossil fuel extraction. At the same time, effective mechanisms for resolution include the operationalisation of "loss and damage" funds specifically tailored for community-led energy projects and the institutionalisation of Benefit Sharing Agreements (BSAs) that ensure local populations retain a primary share of the economic value generated from transition minerals, which could increase preparedness and mitigation strategies from the energy transition, including "windfall taxes." By increasing quality foreign direct investment, South-South cooperation, and public-led utility models, the international community can ensure that energy justice is not sacrificed for global carbon targets, but rather serves the purpose of providing sufficient stability for a just transition.

Beyond Santa Marta: The Positive Impact of the First Conference on Transitioning Away from Fossil Fuels

The First Conference on Transitioning Away from Fossil Fuels represents a fundamental effort to move from abstract climate pledges toward a real wave of implementation of climate obligations. It might not only serve as a bridge between scientific knowledge, legal accountability, and the

²⁴ Greenfield (2025).

²⁵ South Centre, 'Input for the Working Group on the Rights of Peasants and Other People Working in Rural Areas: Report on Peasant Territories on Land and Sea' (February 2026) https://www.southcentre.int/wp-content/uploads/2026/02/InputUNDROP_TerritoriesLandSea_SouthCentre.pdf accessed 24 April 2026.

²⁶ Ibid.

real-world impact of fossil fuels on climate change but also materialise a necessary reform of international governance.

Objectively, the 2025 advisory opinions of the ICJ, the ITLOS, and the IACtHR could serve as pillars for the Conference to provide a definitive roadmap for translating customary international law into domestic action and empowering a ‘coalition of the willing’ that can tackle the structural barriers of the global economy. By recognising the paralysing effect of the ‘regulatory chill’ of the Investor-State Dispute Settlement (ISDS) system and the extractive ‘debt-fossil fuel trap,’ Santa Marta serves as a robust forum for developing countries to push for a just transition that is not merely a swap of energy sources, but a systemic reform of the financial and legal architectures that have historically favoured profits over human rights and the protection of the planet.

Looking ahead, the outcomes of Santa Marta have the potential, and must, provide critical momentum for the 64th sessions of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation (SB 64) in Bonn, and for the upcoming 2026 United Nations Climate Change Conference (COP 31) in Antalya. The possibility of integrating the ‘People's Summit’ outcomes directly into intergovernmental frameworks could establish a new standard for inclusivity that recognises resource sovereignty and FPIC as prerequisites for the energy transition.

Finally, as the international community moves toward Antalya for COP 31, Santa Marta’s outcomes must serve as a blueprint for a reparative financial model, one that replaces market-based loans with non-debt-creating instruments and "loss and damage" funds tailored for community-led projects, ensuring that the road from Bonn to Türkiye is defined by a coordinated, legally-backed effort to reclaim multilateralism for the collective survival of both the climate and human dignity.

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