

**INTERNATIONAL COURT OF JUSTICE**

**REQUEST FOR AN ADVISORY OPINION FROM  
THE GENERAL ASSEMBLY OF THE UNITED NATIONS**

***OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE***

**WRITTEN STATEMENT BY THE REPUBLIC OF CAMEROON**

**21 MARCH 2024**



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1. The Republic of Cameroon hereby submits its written statement in the context of the Request by the United Nations General Assembly for an advisory opinion on the obligations of States in respect of climate change.
2. This written statement sets out the question referred to the Court (I), considers the Court's jurisdiction and the admissibility of the opinion (II) and then provides observations on the answers to be given to the questions (III) and (IV).

## **I. THE QUESTION BEFORE THE COURT**

3. The General Assembly of the United Nations, at its plenary session of 29 March 2023, adopted resolution 77/276, in which it decided to request the Court to give an advisory opinion on the following questions:

Having regard in particular to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

a) What are the obligations of States under international law to ensure the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and present and future generations?

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant damage to the climate system and other parts of the environment, with respect to:

i) States, including in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to, the adverse effects of climate change?

ii) Peoples and individuals of present and future generations affected by the harmful effects of climate change?



## II. JURISDICTION OF THE COURT AND ADMISSIBILITY OF THE OPINION

4. The Court is competent to receive this Request for an Advisory Opinion from the General Assembly of the United Nations, pursuant to Article 96(1) of the Charter, which provides :

The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

5. A question put by the General Assembly may therefore be on "*any legal question*", as in this case.

6. Article 65 of the Statute of the Court, in principle, allows the Court to exercise its discretion as to whether it should respond to a request for an advisory opinion :

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

7. However, it is settled case law that the Court responds to any request for an advisory opinion. This is particularly the case when it is a matter of assisting the General Assembly in the exercise of its functions. In any event, it is up to the General Assembly, i.e. "*the requesting organ, the General Assembly, to determine 'whether it needs the opinion for the proper performance of its functions'*", as the Court has pointed out on several occasions.<sup>1</sup>
8. There is no doubt that the present request for an opinion concerns universal issues of vital importance to humanity. Member States are therefore entitled to expect the Court, as the principal judicial organ of the United Nations, to contribute to the life of the organisation by responding to such a request for an opinion.
9. Cameroon therefore raises no objection to the Court's jurisdiction or in respect of the admissibility of the request.

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<sup>1</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, pp. 115-116, paras. 76-78; *Accordance with International Law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports, 2010 (II)*, p. 417, para. 1; *I.C.J. Reports 2010 (II)*, p. 417, para. 34; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 16.



**III. FIRST QUESTION RELATING TO THE IDENTIFICATION, IN INTERNATIONAL LAW, OF THE OBLIGATIONS INCUMBENT ON STATES WITH REGARD TO THE PROTECTION OF THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT AGAINST ANTHROPOGENIC EMISSIONS OF GREENHOUSE GASES FOR STATES AND FOR PRESENT AND FUTURE GENERATIONS**

10. This question requires a two-stage response. First, the Court is asked to identify the obligations under international law to protect the climate system and other components of the environment from anthropogenic emissions of greenhouse gases (A). It will then be necessary to determine the relevant obligations, firstly for States, and secondly for present and future generations (B).
11. The preamble to the question refers "*in particular*", but not exclusively, to the following obligations under international law: the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognised in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment. It may be necessary to refer to other relevant international law obligations, for example the African Charter on Human and Peoples' Rights, signed in Nairobi on 18 June 1981, which enshrines the right of peoples, relevant in the context of climate change.

**A. WHAT OBLIGATIONS DO STATES HAVE UNDER INTERNATIONAL LAW TO PROTECT THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT FROM ANTHROPOGENIC GREENHOUSE GAS EMISSIONS?**

12. As implied by the General Assembly question, there are obligations on States regarding or relevant to the protection of the climate system and other components of the environment from anthropogenic emissions of greenhouse gases in the following instruments:
- the Charter of the United Nations
  - the International Covenant on Civil and Political Rights
  - the International Covenant on Economic, Social and Cultural Rights
  - the United Nations Framework Convention on Climate Change
  - the Paris Agreement
  - the United Nations Convention on the Law of the Sea



13. There are also the following relevant obligations of States to protect the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases:
- the duty of due diligence
  - the rights recognised in the Universal Declaration of Human Rights
  - the principle of preventing significant damage to the environment
  - the duty to protect and preserve the marine environment
14. A related issue may be the hierarchy between these obligations, or some of these obligations, and other international obligations, for example in relation to the protection of foreign investment.
15. The obligations listed above should be interpreted in the light of one of the fundamental aspects of the Paris Agreement and obligations concerning the protection of the climate system, namely the "*common but differentiated responsibilities and respective capabilities*". These obligations are set out in Articles 2(2), 4(3) and 4(19) of the Paris Agreement. It is in the light of these principles that the following obligations should be interpreted and applied: the obligation of due diligence; the principle of prevention of significant harm to the environment; and the duty to protect and preserve the marine environment.
16. The principle of "*common but differentiated responsibilities and respective capabilities*" recognises that developed countries have made a historically greater contribution to global environmental problems, due to their industrialisation, which has resulted in greater financial and technological resources. By contrast, African and other developing countries did not cause the climate crisis, nor did they enjoy the economic benefits resulting from high levels of industrialisation. At the same time, despite their limited contribution to climate change, developing countries bear a disproportionate burden in managing the effects of climate change.
17. Developed countries must also provide financial support to developing countries to help them meet their climate objectives. The Court is invited to clarify as far as possible the financial obligations of developed countries in this respect.

**B. UNDER INTERNATIONAL LAW, WHICH OBLIGATIONS ARE INCUMBENT ON STATES AND WHICH ARE INCUMBENT OR BELONG TO PRESENT OR FUTURE GENERATIONS?**

18. The first question put to the Court draws a distinction between the rights or obligations of States and those applicable to present and future generations.
19. In the context of the Court's answer to the first question, there is no doubt that international law recognises the right of future generations. The Court must therefore take it into account.



20. The Court itself stressed the importance of taking future generations into account in its opinion on the *Legality of the Threat or Use of Nuclear Weapons* in 1996:<sup>2</sup>

The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes that the environment is not an abstraction, but represents the living space, the quality of life and the very health of human beings, including for generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment. ...

In consequence, in order correctly to apply to the present case the Charter law on the use of force and the law applicable in armed conflict, in particular humanitarian law, it is imperative for the Court to take account of the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come.

[Underlined]

21. The Court also referred to the principle of intergenerational equity in its 1997 *Gabčíkovo-Nagymaros* judgment:<sup>3</sup>

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risk for mankind – for present and future generations – of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weigh, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

[Underlined]

22. Judge Cançado Trindade reconfirmed the existence of this principle in 2010:<sup>4</sup>

The need has thus been keenly felt to give clear expression to inter-generational equity, so as to fulfil the pressing need to assert and

<sup>2</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, pp. 241-242, 244, para. 29, para. 36.

<sup>3</sup> *Gabčíkovo-Nagymaros Project (Hungary-Slovakia), Judgment, I.C.J. Reports 1997*, p. 78, para. 140.

<sup>4</sup> Separate opinion of Judge Cançado Trindade, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, para. 122.



safeguard rights of present as well as future generations, pursuant to – in my perception – an essentially anthropocentric outlook. Here, in the face of likely risks and threats, the precautionary principle once again comes into play. Nowadays, in 2010, it can hardly be doubted that the acknowledgement of inter-generational equity forms part of the conventional wisdom in International Environmental Law.

[Underlined]

23. A large number of treaties confirm the existence of this principle, such as :

- The United Nations Framework Convention on Climate Change (1992)<sup>5</sup>
- The Convention on Biological Diversity (1992)<sup>6</sup>
- The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1997)<sup>7</sup>
- The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1997)<sup>8</sup>
- The Paris Agreement (2015)<sup>9</sup>

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<sup>5</sup> United Nations Framework Convention on Climate Change, Preamble, Article 3 (“The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.”).

<sup>6</sup> Convention on Biological Diversity, 1992, Preamble (“Determined to conserve and sustainably use biological diversity for the benefit of present and future generations” [Emphasis added]); Article 2 (“Sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations” [Emphasis added]).

<sup>7</sup> United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1997, Preamble (“Determined to take appropriate action in combating desertification and mitigating the effects of drought for the benefit of present and future generations”).

<sup>8</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1997, Article 1 (“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provisions of this Convention.” [Emphasis added]).

<sup>9</sup> Paris Agreement, 2015, Preamble (“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and persons in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity” [Emphasis added]).



- The Treaty on the Prohibition of Nuclear Weapons (2017)<sup>10</sup>
24. A large number of other international instruments also refer to it, in particular :
- The Stockholm Declaration (1972)<sup>11</sup>
  - The World Charter for Nature (28 October 1982)<sup>12</sup>
  - The Rio Declaration (1992)<sup>13</sup>
25. The existence of a right of “peoples” in international law also necessarily enshrines the principle of intergenerational equity. A people cannot exist only in the present. A people also must exist in the past and future as well.
26. Cameroon therefore brings to the Court’s attention the African Charter on Human and Peoples’ Rights, signed in Nairobi on 18 June 1981.<sup>14</sup> Cameroon invites the Court to give particular consideration to articles 19 to 24 of this Charter, which deal in particular with equality between peoples, in the context of its response to the obligations and responsibilities relating to present and future generations, which are also linked, in this context, to common but differentiated responsibility.
27. Cameroon refers in particular to Article 24 of the African Charter:

All peoples shall have the right to a general satisfactory environment favourable to their development.

28. If all peoples are to see this right recognized and applied, the Court must consider present and future generations, as well as intergenerational equity, when answering the General Assembly’s questions.
29. These principles will be particularly important when the Court will consider one of the fundamental aspects of the Paris Agreement and obligations concerning the

<sup>10</sup> Treaty on the Prohibition of Nuclear Weapons, 2017, Preamble (“Cognizant that the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate effect on women and girls, including as a result of ionizing radiation” [Emphasis added]).

<sup>11</sup> Stockholm Declaration, 1972, Preamble, para. 7: (“The Conference calls upon Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of peoples and for their posterity” [Emphasis added]); Principle 1: “Man ... has the solemn responsibility to protect and improve the environment for present and future generations”; Principle 2 : “The natural resources of the earth, including the air, water, land, flora and fauna, and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate” [Emphasis added]).

<sup>12</sup> World Charter for Nature, 28 October 1982, Preamble (“Conscious of the spirit and terms of its resolutions 35/7 and 36/6, in which it solemnly invited Member States, in the exercise of their permanent sovereignty over their natural resources, to conduct their activities taking into account the supreme importance of protecting natural systems, maintaining the balance and quality of nature and conserving natural resources, in the interests of present and future generations” [Emphasis added]).

<sup>13</sup> Rio Declaration, Principle 3 (“[t]he right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations” [Emphasis added]).

<sup>14</sup> African Charter on Human and Peoples’ Rights, signed in Nairobi on 18 June 1981, **Exhibit 1**.

protection of the climate system, namely “*common but differentiated responsibilities and respective capabilities*” established for example by Articles 2(2), 4(3) and 4(19) of the Paris Agreement. Common but differentiated responsibilities and respective capabilities must thus be applied taking into account the rights of peoples as well as the related rights of present and future generations, and relevant principles of equity.

**IV. SECOND QUESTION RELATING TO THE LEGAL CONSEQUENCES FOR STATES WHICH, THROUGH THEIR ACTIONS OR OMISSIONS, HAVE CAUSED SIGNIFICANT DAMAGE TO THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT**

30. Cameroon reserves its comments on the second question put to the Court.

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Done at Yaoundé, Cameroon, this 21st day of March 2024.



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