

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

WRITTEN STATEMENT OF THE REPUBLIC OF THE GAMBIA



29 MARCH 2024

1.1 On 29 March 2023, the United Nations General Assembly adopted Resolution 77/276, requesting the International Court of Justice (“the Court”) to render an advisory opinion pursuant to Article 65 of its Statute on the obligations of States in respect of climate change (“**Request**”). By orders dated 20 April 2023, 4 August 2023, and 15 December 2023, the Court required, in accordance with Article 66, paragraph 2, of the Statute that written statements on the General Assembly’s questions be submitted by 22 March 2024. States that have presented written statements may submit comments on other States’ comments, under Article 66, paragraph 4, by 24 June 2024. This Written Statement is submitted by the Republic of The Gambia (“The Gambia”) in accordance with the Court’s orders. While this submission is outside of the March 22 deadline, albeit by only a few days, The Gambia respectfully requests the Court to exercise its discretion to accept this filing in order to ensure that our national views on this weighty legal issue can be taken into account.

1.2 The Gambia, which is located in West Africa and stretches across 450 km along The Gambia River, is vulnerable to the negative impacts of climate change.¹ These include flooding, droughts, and coastal erosion. Banjul, our national capital, is under threat of inundation and the actual and projected increase in average temperatures and sea level rise are predicted to worsen our national food insecurity, to cause damage to our limited infrastructure and will give rise to a decline or loss of tourism. The negative impacts will also affect our agriculture and our economy more broadly.

1.3 In light of our negligible contribution to global greenhouse emissions, and taking into account the dire negative impacts of climate change on our country and our limited financial capacity to undertake robust adaptation and mitigation measures, The Gambia was proud to be one among the co-sponsoring Group of States in the UN General Assembly that advanced a request for an advisory opinion from the Court on the obligations of States under international law to address the existential threats posed by climate change. The text of the draft resolution giving rise to the Request was transmitted to all UN Member States on 30 November 2022, followed by “three

¹ Xuhei Han and Korolai Kirabaeva, *The Gambia: Climate Change Vulnerabilities and Strategies*, IMF Paper, 24 February 2024 at <https://www.imf.org/en/Publications/selected-issues-papers/Issues/2024/02/15/Climate-Change-Vulnerabilities-and-Strategies-The-Gambia-544897>.

rounds of informal consultations and several informal expert consultations and engagements with the broader [UN] membership” to gather comments and feedback for the final text of the draft resolution.²

1.4 On 29 March 2023, the Republic of Vanuatu, on behalf of the Core Group, co-sponsored by more than 130 States, including the Gambia, introduced to the General Assembly the final text of the draft resolution. The General Assembly adopted the historic draft resolution by consensus.³

1.5 There is no doubt that the Court has jurisdiction to give the requested Advisory Opinion. Under Article 65(1) of its Statute, 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”.⁴

1.6 It is trite that two conditions must be satisfied for the Court’s exercise of jurisdiction: (i) the request for an advisory opinion must be made by a duly authorized organ under the UN Charter; and (ii) the questions posed to the Court must be legal in nature. The Request satisfies both conditions.

1.7 *First*, Article 96(1) of the UN Charter—which provides that “[t]he General Assembly ... may request the International Court of Justice to give an advisory opinion on any legal question”⁵—is clear that the General Assembly is “an organ duly authorized to seek [an advisory opinion from the Court] under the Charter”.⁶ The General Assembly validly exercised that power in respect to the Request when it adopted Resolution 77/276 by consensus.

² UN General Assembly, 77th Session, 64th Plenary Meeting, *Draft resolution (A/77/PV.64)*, UN Doc. A/77/PV.64 (29 March 2023) (Dossier No. 3), p. 3.

³ *Ibid.*, p. 4.

⁴ Statute of the International Court of Justice, art. 65(1).

⁵ UN Charter, art. 96(1).

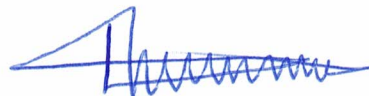
⁶ *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 325, at pp. 333-334, para. 21; *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 325, at pp. 333-334, para. 21; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (“*Wall Advisory Opinion*”), at p. 144, para. 14.

1.8 *Second*, the two questions posed to the Court are legal in nature. The first question concerns the obligations of States under international law to protect the climate system and other parts of the environment from anthropogenic greenhouse gas emissions. The second question concerns the *legal consequences* under these obligations for States arising from acts or omissions which cause significant harm to the climate system and other parts of the environment. Accordingly, the questions are not only “framed in terms of law and raise problems of international law”,⁷ they are “scarcely susceptible of a reply otherwise than on the basis of law”.⁸

1.9 There are no compelling reasons for the Court to decline to exercise its jurisdiction,⁹ which the General Assembly has requested by consensus and which would assist the General Assembly in discharging its functions under the Charter of the United Nations.

1.10 For the foregoing reasons, the Court has jurisdiction to give the requested advisory opinion and there is no reason it should decline to do so. The Gambia, which plans to make further substantive submissions on the questions posed in accordance with the Court’s orders, is confident that the Court, as the principal organ of the United Nations, will provide the much-needed guidance that the General Assembly has requested.

Respectfully submitted,



H.E. Lamin B. Dibba
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
Republic of The Gambia to the United Nations
29 March 2024

⁷ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at p. 18, para. 15.

⁸ *Ibid.*, p. 18, para. 15. *See also Wall Advisory Opinion*, p. 153, para. 37.

⁹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403, at p. 416, para. 30; *Wall Advisory Opinion*, p. 156, para. 44.