

INTERNATIONAL COURT OF JUSTICE

WRITTEN COMMENT OF

THE ISLAMIC REPUBLIC OF IRAN

in advisory proceedings concerning

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

August 2024

Introduction

1. This written comment is submitted pursuant to the Order of the International Court of Justice (the “Court”) of 31 May 2024 in proceedings concerning “Obligation of States in respect of Climate Change” upon the request for an advisory opinion made by the United Nations General Assembly (“UNGA”) in its Resolution 77/276 on 29 March 2023.

2. The Islamic Republic of Iran has carefully considered the written statements submitted to the Court by Member States and international organizations. While maintaining all points made in its written submission, the Islamic Republic of Iran deems it necessary, in view of the statements submitted before the Court, to further elaborate upon a number of issues particularly on Common but Differentiated Responsibilities and Relevant Capabilities (CBDR-RC).

3. The Islamic Republic of Iran wishes to focus this written comment on specific issues raised by several States. Iran believes that, when applying the principle of CBDR-RC and Equity, a distinction should be made between the obligations and responsibilities of developed countries and those of developing countries. Any attempt to modify the nuances of the terms agreed upon by countries such as the principle of CBDR is an attempt to diminish the historical responsibility of the countries mainly responsible for the adverse effects of climate change we witness today, thus hindering the ongoing climate change efforts in place.

A. THE PRINCIPLE OF “*COMMON BUT DIFFERENTIATED RESPONSIBILITIES AND RELEVANT CAPABILITIES-RC*”

4. Not all States have the same abilities and capacities to reduce the amount of their GHG emissions, and also Equity requires taking into account the actual capacity of a State to prevent damage. It is understood that the degree of care expected of a State with a well-developed economy and human and material resources and with a highly evolved system of governance is different from a State lacking the same. This is in line with the principle of CBDR-RC included in Article 3.1 UNFCCC. Accordingly, differentiated standards with regard to the type, stringency and effectiveness of climate mitigation measures have to be applied to different States based on their level of economic development and historic emission levels.

5. In addition, the concept of CBDR-RC in international environmental law entails that while pursuing a common goal, States take on different obligations, depending on their socio-economic situation and their historical contribution to the environmental problem at stake as reflected in the provisions of most multilateral environmental agreements. For instance, in the preamble of the Paris Agreement, the concept of CBDR-RC is referred to in several instances.¹ It provides that the parties to the Paris Agreement are guided by the principles of equity and CBDR-RC as stated in article 2:

“... This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”²

6. Moreover, there is no question that CBDR-RC is an indispensable part of Multilateral Environmental Agreements, becoming an underlying principle pivotal for combating the adverse effects of climate change.

7. It is clear that the said effects are not limited to sea-level rise and global warming, and phenomena such as drought, dust storms and landslides; and social crises such as forced migration and famine are some of the other consequences thereof. Therefore, effective implementation of the CBDCR-RC principle as reflected in all Multilateral Environmental Agreements cannot be neglected. Hence, all legal efforts to implement climate change policies will be fruitful only if consistent with the principle of CBDR-RC. As such, this serves the cornerstone of treaty law and soft law instruments.

B. THE LEADERSHIP OBLIGATION OF DEVELOPED COUNTRIES

8. Developed countries bear a moral responsibility for leading the efforts aimed at combating the adverse effects of climate change, as per Article 3, paragraph 1 of the UNFCCC³ to which they are parties. The term “leadership” for developed countries in this context pertains to taking the lead in public actions to achieve the climate change goals. To fulfill this role, developed countries and other developed parties have specific obligations under Article 4 that obviously stipulates the following:

“...developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions...”⁴

¹ Paris Agreement, 2015, preamble, para, 3.

² Paris Agreement, 2015, art 2,2.

³ UNFCCC, Article 3,1.

⁴ Ibid, Article 4.

9. In the same vein, we witness that the Paris Agreement recognizes sustainable lifestyles and sustainable patterns of consumption and production, with developed country Parties taking the lead, which plays an important role in addressing climate change.⁵ Moreover, by expressing the importance of the role of developed parties, the necessity of their leadership is pointed out. According to Article 4 of the Paris Agreement:

“...Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets.”⁶

10. Based on the above-mentioned, Iran believes that any cooperation to address climate change issues is not effective without taking into account the responsibility of developed countries, which are responsible for the current situation, and who are provided with more capabilities to tackle the adverse effects of climate change due to long-term use of resources. This leadership obligation could be inferred from the earliest expression of the CBDRC-RC in Principle 7 of the 1992 Rio Declaration as follows:

“(...) In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. (...)”

11. In other words, it requires that developed countries not only take the lead in combating adverse effects of climate change, but also assist developing countries with (i) financial support, (ii) transfer of technology as well as (iii) capacity-building.

i. The developed Parties should take the lead in combating climate change through financial support

12. Generally, Multilateral Environmental Agreements emphasize provision of financial support by developed countries and other developed parties. Such an emphasis shows the clear obligation of developed parties (developed countries and other developed parties) to create favorable conditions in order to combat the adverse effects of climate change.

13. In this regard, Article 4 (3) of the UNFCCC stipulates that:

“[The developed country Parties] ... shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures”.

⁵ Paris Agreement, preamble.

⁶ Ibid, Article 4, para 4.

14. And also paragraph 5 reads:

“The developed country Parties and other developed Parties [...] shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.”

15. In addition, Article 9 (1) of the Paris Agreement reads as follows:

“Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.”

16. But the important point is reflected in the second paragraph of this Article where it is stated that:

“Other Parties are encouraged to provide or continue to provide such support voluntarily.”

17. In other words, it can be concluded that financial support for developed parties is recognized as an obligation rather than a voluntary commitment. As the leadership obligation is clearly entrusted to the developed parties, *a fortiori*, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources⁷ and support, including financial support.⁸

ii. The developed Parties should take the lead in combating climate change through technology transfer

18. Another aspect of taking lead, by developed countries, in combating climate change, in line with financial support, is facilitating the transfer of technology and resources needed to protect the environment. Differential measures in international environmental law have taken various forms over the years. This may be based explicitly or implicitly on Common But Differentiated Responsibility and Relevant Capabilities and obligation of leadership as mentioned above. These also include differences concerning the ways in which

⁷ See Paris Agreement, Article 9, Para, 3.

⁸ See Ibid, Article 10, para 6.

similar or different commitments are to be implemented, as well as specific differential tools, such as implementation aid and technology transfer.

19. The Convention on Biological Diversity, for example, clearly conditions the effective implementation of commitments by developing countries upon financial resources and technology transfer by developed countries stating that “economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties”.⁹ A similar obligation contains in other Multilateral Environmental Agreements.¹⁰

20. According to the UNFCCC, developed parties should provide facilities for transferring technology and essential resources to the developing parties. Article 4 (2) of UNFCCC requires that these countries “provide such financial resources, including for the transfer of technology, needed by the developing country Parties”. In addition, Article 5 thereof further requires the developed parties to “take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies for developing countries”. The Paris Agreement, for its part, requires them, in its Article 10 (6) to support developing country Parties “for the implementation and strengthening cooperative action on technology development and transfer at different stages of the technology cycle”.

21. As a result, In order to build mutual trust and confidence and to promote effective implementation based on the Leadership obligation of the developed countries, their support on technology development and transfer to developing country Parties is indispensable.¹¹ Hence, any action that leads to obstruction of this obligation or includes discriminatory actions will be considered as measures constituting a violation of international environmental law.

iii. The developed Parties should take the lead in combating climate change through capacity-building

22. Capacity-building is a critical corollary of the principle of The CBDR-RC. In tandem with financial support and technology transfer, it underpins the main obligations of States with respect to climate change.

⁹ Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, UNTS 1760, 79., Article 20, 4.

¹⁰ Minamata Convention, 2013: Arts 13.4, 14.3; Stockholm Convention, 2001: art 13.4; Montreal Protocol (1987), Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987, UNTS 1522, 3.

¹¹ See Paris Agreement, Article 13, para 9.

23. The main climate change instruments including the UNFCCC, the Kyoto Protocol, and the Paris Agreement have recognized the responsibility of developed countries in supporting developing countries in terms of capacity-building. The UNFCCC highlights education, training, and public awareness in addressing climate change as important factors in capacity-building in its Article 6. Furthermore, the Capacity Building Initiative for Transparency (CBIT) was established under The Kyoto Protocol to assist developing countries in meeting their reporting requirements, and the Paris Agreement reaffirmed capacity-building as a critical component of climate action in its Article 11 and established a framework to enhance the transparency of action and support.

24. The key pillars of capacity-building include human resources, institutional frameworks and as well as technology transfer and encompasses development on humane, institutional and infrastructural levels. Capacity-building is overarching and inclusive. In that sense, it can include financial support, technology transfer and technical assistance. However interpreted, it goes without saying that capacity-building is the backbone of the CBDR-RC.

25. Despite the above, imposition of Unilateral Coercive Measures (UCM) by certain countries hinder transfer of finance, technology and technical assistance to certain countries including the Islamic Republic of Iran. This undermines the principle of CBDR-RC and hinders contributions of countries to climate change efforts. Effective implementation of climate change commitments requires facilitation of financial support, technology transfer, and technical assistance, or in a sense, capacity-building at large.

C. REQUESTING ANY RESTRICTIONS ON INTERNATIONAL TRADE IS INCONSISTENT WITH UNFCCC

26. Under Article 3 (5) of the UNFCCC, “Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade”. Establishment of a Carbon Border Adjustment Mechanism (CBAM), as mentioned in some written statements, is a clear example of restriction of international trade, and as such is against UNFCCC.

27. In this regard, any decision concerning management, production and consumption of fossil fuels is within the national jurisdiction and sovereignty of

each State. As such, decisions reached through consensus during COP or CMA meetings, are without prejudice to such sovereign decisions.

28. By the same token, any reference to elimination or reduction of production of fossil fuels outside relevant (UNFCCC/Paris Agreement) negotiations are not consistent with the obligation to respect national sovereignty of other States and therefore absolutely unacceptable. The same is true about unjustified references to non-expansion of oil and gas fields or the consequences of non-transition from dependence on fossil fuels.

29. On a more general note, any attempts aimed at modifying the nuances the well accepted principles of CBDRC-RC and Equity as enshrined by the UNFCCC and other relevant climate change and environmental instruments undermine efforts to combat the adverse effects of climate change.