

INTERNATIONAL COURT OF JUSTICE

**OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
(REQUEST FOR ADVISORY OPINION)**

**WRITTEN COMMENTS OF
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM**

15 August 2024

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I. INTRODUCTION

1. Pursuant to the Order of the President of the Court of 30 May 2024, and having presented its written statement on 22 March 2024, the Government of the Socialist Republic of Viet Nam hereby submits its comments on the written statements presented in connection with the request for an advisory opinion contained in UN General Assembly Resolution 77/276, adopted by consensus on 29 March 2023.
2. The comments address certain specific issues as follows: (A) The Advisory Opinion would not affect or interferes with the on-going negotiation process on climate change, (B) The responsibility of States applies in the context of historical emissions under the principle of common but differentiated responsibilities – respective capabilities ('**CBRD-RC**'), (C) The legal consequences of cessation and reparation entail the responsibility to transfer relevant technologies to developing countries with limited resources.

II. ISSUES ARISING FROM THE WRITTEN STATEMENTS SUBMITTED TO THE COURT

A. The Advisory Opinion would not affect or interferes with the on-going negotiation process on climate change

3. In response to the argument that the Court's decision to exercise its advisory jurisdiction in this case would interfere with the ongoing negotiations under the United Nations Framework Convention on Climate Change (UNFCCC), Viet Nam submits that there is no compelling reason for the Court to decline to give an advisory opinion to the questions contained in UN General Assembly Resolution 77/267.¹
4. Throughout history, the exercise of the Court's advisory jurisdiction has been on some occasions applied against the backdrop of ongoing political negotiations. However, there have been no instances where the rendering of an advisory opinion by the Court was found to impede or prejudice the outcome of a negotiation. Rather, it may "*present an additional element in the negotiations on the matter*", subject to appreciation.² Indeed, the fact of an ongoing negotiation had been used to supplement and provide authoritative guidance for the Court in rendering its opinion on a question of interpretation of general international law, which is potentially broader in scope than a treaty-based process. In other words, where the

¹ Para 14 Viet Nam's written statement

² *Case Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion 1996, page 226, para 17.*

Court may pronounce on the obligation of respective parties in its opinion³, such determination would be guided by the fact of, *inter alia*, an ongoing negotiation and serves as to clarify the law and its applications.

5. Therefore, Viet Nam submits that the on-going negotiation on climate change does not constitute a compelling reason for the Court to decline to exercise its advisory jurisdiction in this case.

B. The responsibility of states which caused significant harm to the climate system applies in the context of historical emissions under the principle of common but differentiated responsibilities – respective capabilities

6. As mentioned in the ITLOS’s Advisory Opinion on Climate Change on 21 May 2024 (**‘ITLOS Advisory Opinion’**), the works of Intergovernmental Panel on Climate Change (**‘IPCC’**) “deserve particular consideration” because they reflect the best available science and scientific consensus on climate change”.⁴ On this basis, Viet Nam submits that the Court should attach great weight to the assessments and considerations rendered by the IPCC, a leading scientific authority on climate change. The Synthesis Report of the Sixth Assessment concluded that: “*human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020*”.⁵ Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals”.⁶ There has been solid evidence-based research concluding that anthropogenic emissions of carbon dioxide, methane and nitrous oxide are key components responsible for climate change since the pre-industrial period.⁷

³ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, para. 182.

⁴ Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, para. 208.

⁵ <https://www.ipcc.ch/ar6-syr/>

⁶ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1.

⁷ IPCC. Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V. et al (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 3–32.

7. Given the existence of the duty of due diligence and the principle of prevention of significant harm to the environment, which indeed form part of customary international law⁸, the fact that many developed states have historically contributed to the emission of greenhouse gas should be given serious consideration when the Court evaluates the responsibility of states which caused significant harm to the climate system. With historical contributions to anthropogenic greenhouse gas emissions (“AGHGE”), based on CBDR-RC, developed countries should take greater responsibility in preventing the emission of greenhouse gases.
8. ITLOS Advisory Opinion also follows this approach by stating that measures to prevent, reduce, and control pollution of the marine environment may vary depending on different national circumstances and capabilities.⁹
9. Viet Nam again submits that the principle of CBDR-RC as enshrined in various international agreements must be considered in determining the legal consequences for states which caused significant harm to the climate system. Due to historical contributions, responsibility should not be evenly shared among states. The fact that the UNFCCC and the Paris Agreement recognized the principle of CBDR-RC shows the agreement among states in requiring countries that emit more greenhouse gases, over longer periods of time, and cause greater impacts on the environment, to bear greater responsibilities.

C. The legal consequences of cessation and reparation entails the responsibility to transfer technologies to developing countries with limited resources

10. States which caused “significant harm” to the climate system and other parts of the environment in breach of the abovementioned obligations, particularly those with significant emission footprints in the last two centuries, should be held legally accountable, in accordance with international law on responsibility of states for internationally wrongful act.
11. The damage to the environment is indeed compensable. The Court in its reparation judgment in *Costa Rica v Nicaragua* case in 2018 held that “*damage to the environment, and the consequent impairment or loss of the ability of the environment [...] is compensable under international law. Such compensation may include indemnification for the impairment or loss [...] in the period prior to recovery and payment for the restoration of the damaged environment [...]. Payment for restoration accounts for the fact that natural recovery may*

⁸ Viet Nam statement on 22 March 2024.

⁹ Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, para. 229.

not always suffice to return an environment to the state in which it was before the damage occurred.” This means that the list of measures for compensation is not exhaustive and can contain appropriate measures to address the harms, such as technology transfer, which will contribute to the adaptation to climate change as recognized by the Subsidiary Body for Scientific and Technological Advice in the Report no. FCCC/SBSTA/2024/7 dated 30 July 2024.

12. The urgency of technology transfer for Viet Nam cannot be overstated. As climate change accelerates, the country faces immediate threats such as intensified storms, rising sea levels, and widespread flooding. Without prompt access to advanced technologies, Viet Nam risks falling further behind in its efforts as well as those of the international communities to adapt and mitigate these impacts. Immediate technology transfer is crucial to providing the tools and solutions needed to address these pressing challenges effectively. By securing and implementing innovative technologies now, Viet Nam can better protect its communities, safeguard its infrastructure, and ensure a more resilient future against the growing threats of climate change.

III. CONCLUSIONS

13. Considering the analyses presented, the Court’s advisory opinion on the matters raised in UN General Assembly Resolution 77/276 would provide crucial clarity and guidance without disrupting ongoing international negotiations. As demonstrated by past advisory opinions, the Court’s insights can complement and enhance the negotiation process rather than hinder it.
14. The principle of CBDR-RC underscores the importance of addressing historical emissions with fairness and accuracy. Developed states, given their significant historical contributions to greenhouse gas emissions and advanced technological capabilities, bear a primary responsibility for leading climate action and supporting developing nations through technology transfer.
15. The urgency of technology transfer for developing countries like Viet Nam cannot be overstated. Immediate and substantial support in the form of advanced technologies is essential for mitigating the severe impacts of climate change and achieving sustainable development goals. Developed states, especially those with historical emissions, have an obligation under international law to facilitate this transfer, ensuring that all nations have the means to address the climate crisis effectively.

16. The Court's advisory opinion, therefore, holds the potential to reaffirm and strengthen the global commitment to climate action. It is imperative that the Court proceeds with its advisory opinion, as this will not only clarify legal obligations but also foster a more just and effective global response to the climate emergency.

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Embassy of the Socialist Republic of Viet Nam
in the Kingdom of the Netherlands