

INTERNATIONAL COURT OF JUSTICE

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

RESPONSES OF BELIZE TO JUDGES' QUESTIONS

20 DECEMBER 2024

Question put by Judge Cleveland

“During these proceedings, a number of participants have referred to the production of fossil fuels in the context of climate change, including with respect to subsidies. In your view, what are the specific obligations under international law of States within whose jurisdiction fossil fuels are produced to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, if any?”

Reply to the question put by Judge Cleveland

1. Belize considers that, with respect to the production of fossil fuels, States within whose jurisdiction fossil fuels are produced do have specific obligations under international law to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.
2. The applicable specific obligations include the customary international law obligation to ensure that activities within such States jurisdiction or control do not cause significant harm to the environment of other States or other areas beyond the limits of their jurisdiction (the **Prevention Obligation**). It is on the Prevention Obligation that Belize has focused in its written and oral submissions (CR 2024/37, pp. 9-19).
3. The Prevention Obligation requires States to exercise due diligence in preventing significant transboundary environmental harm, including with respect to the production (whether by the State or by private actors) of fossil fuels in areas within their jurisdiction or control.¹
4. In order to fulfil their obligation to exercise due diligence, States must comply with their obligation to assess the environmental impact of the production of fossil fuels in areas within their jurisdiction or control (the **Assessment Obligation**).²
5. In assessing whether a given activity or policy concerning the production of fossil fuels poses a risk of significant harm to the environment of another State, a State is required to take into account, *inter alia*, the following:
 - a. The quantity of fossil fuels that have been (or are to be) produced in areas within their jurisdiction or control,
 - b. The emissions that have or would result from the production and any processing of those fossil fuels,

¹ See further Written Statement of Belize, paras. 31-36; Written Comment of Belize, paras. 12-32.

² See further Written Statement of Belize, paras. 41-63; Written Comment of Belize, paras. 6-11; CR 2024/37, pp. 17-19, paras. 26—37 (Sander).

- c. The emissions that have or would result from the combustion of those fossil fuels produced, regardless of whether that combustion occurs or is likely to occur in areas within the State's jurisdiction or control,
 - d. The best available information on the production of fossil fuels by other States, and
 - e. The best available information on cumulative global emissions of anthropogenic greenhouse gases.
6. These last two requirements are critical to ensure that the assessment is meaningful, and they are not onerous given the abundance of information on these matters that is easily accessible.
7. If the environmental assessment confirms that there is a risk of significant transboundary harm, the State is then subject to further and critically important obligations.³
- a. The State must notify in good faith all potentially affected States.⁴
 - b. Belize also considers that, as an attribute of what is to be expected of a good government with respect to the existential threat of climate change, the reports of such environmental assessments must be published such that not only the States concerned but also the public are fully informed as to the potential impacts. Such notification forms a vital part of enhanced transparency enabling public scrutiny, which Belize considers a critical tool in the prevention of environmental harm.⁵
 - c. The State must exert its best possible efforts to minimise the risk.⁶ The necessary measures will fall to be assessed on a case-by-case basis. Belize considers that, so far as concerns those States producing the greater quantities of fossil fuels, such efforts will inevitably require material reductions in production.

³ Written Statement of Belize, paras. 59-63.

⁴ Written Statement of Belize, paras. 59(a)-(b).

⁵ Written Statement of Belize, para. 59(c).

⁶ Written Statement of Belize, para. 61.

Question put by Judge Charlesworth

“In your understanding, what is the significance of the declarations made by some States on becoming parties to the UNFCCC and the Paris Agreement to the effect that no provision in these agreements may be interpreted as derogating from principles of general international law or any claims or rights concerning compensation or liability due to the adverse effects of climate change?”

Reply to the question put by Judge Charlesworth

8. Belize considers that the statements themselves and the reaction of other States are important elements of State practice which support the proposition that the Prevention Obligation applies in the present context.
9. In its Written Comments, Belize explained:

“[T]here is no evidence that the States parties to the UNFCCC treaties intended to displace pre-existing and well established rules of customary international law, such as the Prevention Obligation, when they concluded those treaties. ... In order to dispel any doubt on this issue, a number of States expressly declared upon ratification of the Paris Agreement that ‘no provision of the Paris Agreement can be interpreted as derogating from principles of general international law’. Similar declarations were made by certain States when they ratified the UNFCCC and the Kyoto Protocol.”⁷
10. Belize considers that such statements constitute interpretative declarations; they do not purport to exclude or modify the legal effect of any provision of the UNFCCC or the Paris Agreement as those treaties apply to those States. Consistent with this, both the UNFCCC and the Paris Agreement expressly prohibit the making of any reservations to the provisions of those treaties.⁸
11. Not one State objected to the declarations.⁹ This silence is itself a form of State practice which suggests that the interpretive declarations are accepted as accurately reflecting the meaning of the UNFCCC and the Paris Agreement. This State practice is unsurprising. Any objection would have been inconsistent with other significant elements of State practice.
12. First, there is no express statement of an intention to derogate in the text of the climate change treaties.¹⁰ To the contrary, the preamble to the UNFCCC expressly recalls the Prevention Obligation, thereby acknowledging the relevance and

⁷ Written Comment of Belize, para. 37(c)(iii).

⁸ UNFCCC, Art. 24 (“No reservations may be made to this Agreement”); Paris Agreement, Art. 27 (“No reservations may be made to the Convention”).

⁹ Cf. ILC Guide to Practice on Reservations to Treaties, para. 2.9.2, *Yearbook of the International Law Commission*, 2011, vol. II, Part Two.

¹⁰ See also Written Comment of Belize, para. 37(c).

continued applicability of that specific obligation in the context of climate change.¹¹

13. Second, States have likewise expressly recalled the relevance of the Prevention Obligation in other multilateral treaties which concern the protection of the environment, including the atmosphere, from diffuse forms of transboundary harm. For example:

a. The Convention on Long-Range Transboundary Air Pollution (to which the United States, the United Kingdom and the Nordic countries are contracting parties) contains, in its preamble, an identical express reference to the Prevention Obligation.¹² Thus, the Contracting States recognised the relevance and applicability of the Prevention Obligation in the context of this Convention, which concerns:

“air pollution whose physical origin is situated wholly or in part within the area under the national jurisdiction of one State and which has adverse effects in the area under the jurisdiction of another State at such a distance that it is not generally possible to distinguish the contribution of individual emission sources or groups of sources”.¹³

b. The Vienna Convention for the Protection of the Ozone Layer also expressly recalls the Prevention Obligation in identical terms to the UNFCCC.¹⁴ Thus, the 198 Contracting States recognised the relevance and applicability of the Prevention Obligation in the context of this Convention, which defines “adverse effects” as meaning:

“changes in the physical environment or biota, including changes in climate, which have significant deleterious effects on human health or on the composition, resilience and productivity of natural and managed ecosystems, or on materials useful to mankind.”¹⁵

14. Thus, the declarations and the absence of any objection constitute significant elements of State practice that support the applicability of the Prevention Obligation in the context of climate change.

¹¹ See also CR 2024/37, p. 13, paras. 5 (Sander); Written Comment of Belize, para. 37(c).

¹² Preamble, 13 November 1979, 1302 UNTS 217.

¹³ *Ibid.*, Art. 1(b).

¹⁴ Preamble, 22 March 1985, 1513 UNTS 293.

¹⁵ *Ibid.*, Art. 1(2).