

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

PEOPLE'S REPUBLIC OF CHINA

WRITTEN REPLIES TO JUDGES' QUESTIONS

20 December 2024

I. 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?”

1. This question concerns whether there are specific legal obligations under international law of States within whose jurisdiction fossil fuels are produced.

2. Neither the United Nations Framework Convention on Climate Change (UNFCCC), its Kyoto Protocol, nor the Paris Agreement (collectively, the UNFCCC regime) imposes specific obligations on fossil fuel producers. Similarly, no specific obligations arise from other relevant sources of international law concerning the request for the advisory opinion, including the United Nations Convention on the Law of the Sea, international human rights treaties, or customary international law.

3. Decision 1/CMA.5 adopted by the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Paris Agreement at its fifth session, known as the “Outcome of the first global stocktake” , “calls on Parties to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches”, including “[t]ransitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner”.¹

¹ Report of the Conference of the Parties on its 28th session, held in the United Arab Emirates from 30 November to 13 December 2023, Part Two: Action taken by the Conference of the Parties serving as the meeting of the Parties to the Paris

Although this represents the international community’s consensus on the direction of advancing energy transition, it is neither legally binding nor does it create legal obligations for States.

4. Under the UNFCCC regime, the general obligations to pursue domestic mitigation measures apply to all Parties, including fossil fuel producers, and cover all anthropogenic emissions, including the greenhouse gases from fossil fuel production. Article 4 of the UNFCCC requires all Parties to pursue measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol.² Article 4(2) of the Paris Agreement requires each Parties to pursue domestic mitigation measures, with the aim of achieving the objectives of nationally determined contributions.³

5. While setting out the general obligations on mitigation measures, the UNFCCC also requires Parties to respect the States’ sovereign rights to exploit their own resources. The preamble of the UNFCCC recognizes that “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies”.⁴ Meanwhile, the UNFCCC requires Parties to take into full account the special difficulties and requirements of countries whose economies are highly dependent on the production, consumption and export of fossil fuels. The preamble of the UNFCCC states that “[r]ecognizing the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a

Agreement at its fifth session, Decision 1/CMA.5, Outcome of the first global stocktake, adopted at COP28 on 13 December 2023, UN doc. FCCC/PA/CMA/2023/16/Add.1, para. 28.

² See UNFCCC, Article 4(1)(b).

³ See Paris Agreement, Article 4(2).

⁴ UNFCCC, Preambular para. 8.

consequence of action taken on limiting greenhouse gas emissions”.⁵ Article 4(8) and 4(10) require that Parties shall give full consideration to “[c]ountries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products”.⁶

⁵ UNFCCC, Preambular para. 20.

⁶ UNFCCC, Articles 4(8) and 4(10).

II. Question put by Judge Tladi

“In their written and oral pleadings, participants have generally engaged in an interpretation of the various paragraphs of Article 4 of the Paris Agreement. Many participants have, on the basis of this interpretation, come to the conclusion that, to the extent that Article 4 imposes any obligations in respect of Nationally Determined Contributions, these are procedural obligations. Participants coming to this conclusion have, in general, relied on the ordinary meaning of the words, context and sometimes some elements in Article 31 (3) of the Vienna Convention on the Law of Treaties. I would like to know from the participants whether, according to them, “the object and purpose” of the Paris Agreement, and the object and purpose of the climate change treaty framework in general, has any effect on this interpretation and if so, what effect does it have?”

6. This question relates to how the “object and purpose” of the UNFCCC regime, including the Paris Agreement, may affect the interpretation of nationally determined contribution obligations under Article 4 of the Paris Agreement.

7. Article 31 of the Vienna Convention on the Law of Treaties, which codifies customary international law on treaty interpretation, establishes that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. The interpretation of treaty provisions requires a holistic approach that explicitly incorporates consideration of the treaty’s object and purpose. The “ordinary meaning” of the relevant terms must be ascertained “in the light of its object and purpose”. At the same time, the interpretation must proceed “in the light of the object and purpose of the treaty

as a whole”,⁷ rather than through selective consideration of individual provisions’ objects and purposes. Meanwhile, the object and purpose of the treaty has its own legal significance.⁸

8. During the oral proceedings, China emphasized that “the rights, obligations and responsibilities of States under the regime must be determined fully and accurately in accordance with the ordinary rules of treaty interpretation”. Regarding the purpose of the UNFCCC system, it was noted that “[c]limate action under the regime requires an integrated approach that coordinates multiple objectives. They aim not only to address climate change threats but also to be ‘in the context of’⁹ ‘promote’¹⁰ and ‘achieve’¹¹ sustainable development and poverty eradication,¹² on the basis of equity.^{13,14}

9. Article 2 of the UNFCCC sets out multiple objectives, including an ultimate objective of stabilizing atmospheric greenhouse gas concentrations.¹⁵ Article 2 of the Paris Agreement further specifies three goals aimed at strengthening the global response to the threat of climate change: establishing a long-term temperature goal of “[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”,¹⁶ addressing adaptation measures, and aligning financial flows. These goals are collective, applying to Parties as a whole

⁷ Vienna Convention on the Law of Treaties, Article 41(1)(b)(ii).

⁸ See *Oil Platforms (Iran v US)*, Judgment on Preliminary Objections (12 December 1996), I. C. J. Reports 1996, p. 803, para.31.

⁹ Paris Agreement, Articles 2(1) and 4(1).

¹⁰ UNFCCC, Article 3(4); Kyoto Protocol, Article 2(1); Paris Agreement, Articles 6(1), 6(2) and 10(5).

¹¹ UNFCCC, Preambular paras. 21 and 22.

¹² See UNFCCC, Articles 2 and 4(7); Paris Agreement, Preambular paras. 8 and 9, Articles 2(1), 4(1) and 6(8).

¹³ See UNFCCC, Article 3(1); Paris Agreement, Articles 2(2), 4(1), 14(1); Report of the Conference of the Parties on its 16th, held in Cancun from 29 November Part Two: Decisions adopted by the COP, Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the COP. The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, UN doc.

¹⁴ Oral statement of China, para. 13.

¹⁵ See UNFCCC, Article 2.

¹⁶ Paris Agreement, Article 2.

rather than individual Parties. They constitute shared political commitments, not concrete legal obligations. They combine temperature limits, adaptation and finance goals, rather than focusing solely on one temperature goal. The long-term temperature goal sets a range from 1.5°C to 2°C, rather than a singular 1.5°C target.

10. The interpretation of the obligations regarding nationally determined contributions under Article 4 of the Paris Agreement should also be consistent with the object and purpose of the UNFCCC regime as a whole, including the Paris Agreement.

11. Article 4 of the Paris Agreement establishes mitigation obligations for all Parties. Article 4(1) establishes the time frame for the global mitigation goal, stating that “in order to achieve the long-term temperature goal set out in Article 2”,¹⁷ Parties are committed to reaching global carbon peaking as soon as possible and to achieving carbon-neutral in the second half of this century, with an emphasis on giving developing countries a longer period of time. Article 4(2) requires that “[e]ach Party shall prepare, communicate and maintain the successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions”.¹⁸ The aforementioned measures include that Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases.¹⁹ Article 4(9) also requires Parties to communicate their nationally determined contributions every five years.²⁰ Article 4(3) further requires that the “successive nationally determined contributions” will “represent a progression” beyond the current level and reflect the Party’s “highest possible ambition”.²¹ Article 4(19)

¹⁷ Paris Agreement, Article 4(1).

¹⁸ Paris Agreement, Article 4(2).

¹⁹ See Paris Agreement, Article 5(1).

²⁰ See Paris Agreement, Article 4(9).

²¹ Paris Agreement, Article 4(3).

requires that all Parties “shall strive to formulate and communicate long-term low greenhouse gas emission development strategies”.²²

12. These obligations of conduct are reinforced through various international mechanisms. The Paris Agreement ensures the effectiveness of the nationally determined contribution system through a combination of facilitative multilateral consideration,²³ communication of information on implementation,²⁴ the global stocktake of collective progress,²⁵ and a compliance mechanism.²⁶

13. It should be emphasized that the above-mentioned obligation of nationally determined contributions constitutes a legally binding obligation of conduct at the international level. All Parties undertake this obligation with the objective of realizing their nationally determined contributions, and this obligation is of a continuing character. The assessment of whether the obligation of conduct is fulfilled shall also be based on the standard of due diligence and whether appropriate measures to mitigate climate change have been taken. Meanwhile, the assessment whether the obligation of conduct is fulfilled shall be conducted in conformity with the principle of “common but differentiated responsibilities”, taking into account countries’ historical contributions to greenhouse gas emissions, their capacity to tackle climate change, and their national circumstances. The specific content of nationally determined contributions, including their scope and form, is generally left to the discretion of each Party.

²² Paris Agreement, Article 4(19).

²³ See Paris Agreement, Article 13(11).

²⁴ See Paris Agreement, Article 13(7).

²⁵ See Paris Agreement, Article 14.

²⁶ See Paris Agreement, Article 15.

III. Question put by Judge Aurescu

“Some participants have argued, during the written and/or oral stages of the proceedings, that there exists the right to a clean, healthy and sustainable environment in international law. Could you please develop what is, in your view, the legal content of this right and its relation with the other human rights which you consider relevant for this advisory opinion?”

14. This question concerns whether the right to a clean, healthy and sustainable environment constitutes an independent right in international law.

15. Under existing international law, the right to a clean, healthy and sustainable environment does not constitute an independent right. The scope and content of such a purported right remain far from determinate, and no universally accepted treaty provides for this right. Only a limited number of regional treaties, such as the African Charter on Human and Peoples’ Rights (1981), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), the Aarhus Convention (1998), and the Arab Charter of Human Rights (2004), mentioned rights relating to environment. However, the subjects and contents of these rights lack clear definition. There are significant differences between these rights and the right to a clean, healthy and sustainable environment.²⁷ Resolutions adopted by the UN General Assembly, the UN Commission on Human Rights, and the UN Environment Assembly acknowledged “the right to a clean, healthy and sustainable environment as a human right”.²⁸ These

²⁷ See “All peoples shall have the right to a general satisfactory environment favorable to their development”, African Charter on Human and Peoples’ Rights (1981), Article 24; “Everyone shall have the right to live in a healthy environment”, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), Article 11; “Every person has the right to live in an environment adequate to his or her health and well-being”, Aarhus Convention (1998), Preamble; “Every person has the right [...] to a healthy environment”, Arab Charter of Human Rights (2004), Article 38.

²⁸ “The human right to a clean, healthy and sustainable environment”, A/RES/76/300, UN General Assembly; “The human right to a clean, healthy and sustainable environment”, A/HRC/RES/52/23, UN Human Rights Council; “Sound management of chemicals and waste”, UNEP/EA.5/Res.7, UN Environment Assembly of the UNEP.

resolutions, however, are not legally binding and therefore cannot establish the existence of such a right under international law.

16. Customary international law does not recognize a right to a clean, healthy and sustainable environment either. Regarding the existence and contents of the right to a clean, healthy and sustainable environment, there is no consistent state practice nor consensual *opinio juris* among States.

17. The international society at large accord importance to the right to a clean, healthy and sustainable environment, though this right remains in conceptual evolution. While its precise content has not yet crystallized in international law, some likely constituent elements are already reflected in and protected by existing international human rights instruments. These include, inter alia, the right to life,²⁹ the right to health,³⁰ the right to development,³¹ and the right to adequate standard of living.³²

18. The international human rights treaties do not explicitly prescribe specific obligations of States to address climate change. While States' actions to address climate change may have certain adverse effects on human rights indirectly, international human rights treaties play a complementary role to certain extent in this context. This relationship is reflected in the Preamble of the Paris Agreement, which stipulates that Parties “should 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 people in vulnerable situations and the right to development, as well as gender equality, empowerment of woman and

²⁹ See International Covenant on Civil and Political Rights, Article 6; Universal Declaration of Human Rights, Article 3.

³⁰ See International Covenant on Economic, Social and Cultural Rights, Article 12; Universal Declaration of Human Rights, Article 25.

³¹ See International Covenant on Economic, Social and Cultural Rights, Article 1; International Covenant on Civil and Political Rights, Article 1; Declaration on the Right to Development, Article 1.

³² See International Covenant on Economic, Social and Cultural Rights, Article 11; Universal Declaration of Human Rights, Article 25.

intergenerational equity”.³³ Climate actions shall avoid infringement upon human rights within national territory or jurisdiction. In determining whether States’ climate actions adversely affect human rights, the different national circumstances and capabilities between developing and developed countries must be taken into account.

³³ Paris Agreement, Preambular para. 11.