

**INTERNATIONAL COURT OF JUSTICE**  
**OBLIGATIONS OF STATES IN RESPECT OF**  
**CLIMATE CHANGE**

**(REQUEST FOR AN ADVISORY OPINION)**

**WRITTEN RESPONSE ON BEHALF OF THE REPUBLIC OF**  
**COLOMBIA TO THE QUESTIONS POSED BY JUDGE CLEVELAND,**  
**JUDGE TLADI, JUDGE AURESCU AND JUDGE CHARLESWORTH ON**  
**FRIDAY, 13 DECEMBER 2024**

**Question 1 - 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. Under the UNFCCC and the Paris Agreement, States are bound by explicit commitments to mitigate climate change. Article 2 of the Paris Agreement sets the overarching goal of limiting global temperature rise to well below 2°C, with efforts to limit it to 1.5°C. According to the International Energy Agency (IEA) 2020 report, if humankind continues to burn all of the existing fossil fuel reserves without any reduction in emissions, it will emit three times more CO<sub>2</sub> than what is allowed in order to meet the 2°C target set by the

Paris Agreement.<sup>1</sup> Therefore, while the Paris Agreement does not mention fossil fuels in its text, regulation and phasing out of fossil fuels production, including subsidies, is an inherent part of the goals and objectives of the Paris Agreement.

2. Article 4 requires States to prepare, communicate, and implement nationally determined contributions (NDCs) to achieve these goals. Article 4(3) and (4), for instance, mandate that States abide by the principle of progression and the highest possible ambition in their climate commitments. Colombia argues that this includes transitioning away from fossil fuels as a major source of GHG emissions and transitioning to renewable energy sources, understanding that this goal entails phasing out fossil fuel subsidies.<sup>2</sup> These obligations must be performed in light of national capacity and available resources, recognizing the differentiated responsibilities incumbent on States under the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC).
3. Colombia's submissions emphasize the necessity of transitioning from fossil fuels to achieve climate stabilization, including through international cooperation and adherence to clear timelines for decarbonization. As noted, Colombia is an advocate for a fossil fuel non-proliferation treaty and supports economically rational transitions to ensure that such measures do not generate economic crises, particularly for developing and vulnerable nations.<sup>3</sup>

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<sup>1</sup> Colombia's, Written Statement, para. 2.6.

<sup>2</sup> Statement of the President of Republic of Colombia, Gustavo Petro Urrego, at the COP28 Fossil Fuel Non-Proliferation Treaty negotiating mandate High-Level Party event, 12 Dec. 2023, At: <https://petro.presidencia.gov.co/prensa/Paginas/Colombia-supports-climate-action-through-the-Fossil-Fuel-Non-Proliferation-Treaty-231202.aspx>

<sup>3</sup> Colombia's Written Statement, para. 3.15.

4. Colombia submits that customary international law obligates States to prevent significant harm to the environment, including transboundary harm.<sup>4</sup> This principle, recognised in the *Trail Smelter case* and reflected in Principle 21 of the Stockholm Declaration, requires States to ensure that activities within their jurisdiction or control do not cause environmental damage beyond their borders.<sup>5</sup> In the context of fossil fuel production, this obligation entails ensuring that extraction, processing, and combustion activities do not contribute to excessive greenhouse gas emissions, which exacerbate climate change and cause transboundary harm to ecosystems and communities.
5. States also have a due diligence obligation to regulate activities that contribute to climate change, such as fossil fuel extraction and combustion. Such an obligation is part of the duty to implement “appropriate rules and measures” to prevent significant harm, including transboundary harm, to the climate system but also to ensure “vigilance in the enforcement” of those measures, such as by monitoring activities likely to cause harm.<sup>6</sup> This obligation requires States to take appropriate measures, including enacting and enforcing domestic regulations, conducting environmental impact assessments, and adhering to the precautionary principle, to minimize risks associated with excessive GHG emissions flowing from the production of fossil fuels.
6. Colombia has argued that the damage caused and continuing to be caused by the climate crisis constitutes transboundary harm in violation of general international law.<sup>7</sup> It follows that States are bound by an obligation of achieving the cessation of fossil fuel production

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<sup>4</sup> Colombia’s Written Statement, para. 3.15.

<sup>5</sup> *See also* Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 56, para. 101.

<sup>6</sup> Colombia’s, Written Statement, para. 3.17; *See also*, Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 56, para. 101.

<sup>7</sup> Colombia’s Written Comments, para 5.3

to address ongoing harm, including the elimination of subsidies that enable emissions to intensify. The non-observance of this obligation may be understood, under certain circumstances, as a violation of States' obligations under the framework of international law. This duty also requires States to take appropriate measures, including enacting and enforcing domestic regulations, conducting environmental impact assessments, and adhering to the precautionary principle, to minimize risks associated with excessive GHG emissions flowing from the production of fossil fuels. To clarify, this is related to the recognition of the breach of international law and not an issue related to attribution.

7. Lastly, States also have obligations under international human rights law to address the impacts of fossil fuel production on human rights, including the right to a clean, healthy, and sustainable environment, as discussed below. These obligations require States to mitigate climate change impacts that disproportionately harm vulnerable populations, such as indigenous communities, women, and children, who are often the most affected by environmental degradation and extreme weather events linked to fossil fuel-related activities. As the *Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities* noted, “[i]n [States’] efforts to reduce emissions, States parties should contribute effectively to phasing out fossils fuels, promoting renewable energy and addressing emissions from the land sector, including by combating deforestation.”<sup>8</sup>

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<sup>8</sup> Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of

8. Colombia submits that fulfilling these obligations is critical not only for addressing the climate crisis but also for safeguarding the rights and livelihoods of present and future generations.

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Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, UN Doc. HRI/2019/1 (14 May 2020), para. 12.

**Question 2 - 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?”*

1. Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT) establishes that the terms of the treaties shall notably be interpreted in light of their object and purpose. The Paris Agreement’s object and purpose are set out in its preamble and Article 2 and other provisions. These provisions emphasise strengthening the global response to the threat of climate change, including efforts to limit temperature rise to well below 2°C and to pursue efforts to limit it to 1.5°C.<sup>9</sup>
2. Colombia submits that the object and purpose of the Paris Agreement strongly inform the interpretation of Article 4, highlighting that the obligations imposed therein are not merely procedural but also substantive. Procedural obligations, such as the submission, updating, and implementation of Nationally Determined Contributions (NDCs), operationalise the substantive goal of limiting global temperature rise.<sup>10</sup>
3. Far from being merely procedural, Article 4 imposes substantive obligations on States to pursue ambitious climate actions that align with the Agreement’s temperature and resilience goals. The due diligence standard, combined with the principles of highest possible ambition and CBDR-RC, underscores the need for States to act progressively and

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<sup>9</sup> Colombia, Written Statement, para. 3.35.

<sup>10</sup> Colombia, Written Statement, para. 3.36.

equitably in fulfilling their NDC commitments.<sup>11</sup> Article 4(2) imposes a duty to “pursue domestic mitigation measures” to achieve their NDC objectives. This provision also reflects a due diligence standard, requiring States to adopt all reasonable measures to fulfil their commitments under Article 4.<sup>12</sup> Article 4(3), on the other hand, requires that each Party’s successive NDC reflect its “highest possible ambition” and represent a progression beyond previous commitments. This aligns with the overarching goal of the Paris Agreement to enhance collective action and ambition over time.<sup>13</sup> A narrow procedural interpretation of Article 4 would frustrate the Agreement’s object and purpose, undermining its intent to drive substantive mitigation efforts.

4. Colombia requests the Court to interpret the Paris Agreement in line with the UNFCCC and broader principles of international environmental law. Such an interpretation ensures that procedural and substantive obligations under Article 4 work in tandem to advance the goals of the Paris Agreement. Interpreting Article 4 solely as a procedural obligation would undermine the Paris Agreement’s systemic and purposive framework, contrary to its object and purpose.

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<sup>11</sup> Colombia, Written Statement, para. 3.36.

<sup>12</sup> Colombia, Written Statement, para. 3.36.

<sup>13</sup> Colombia, Written Statement, para. 3.37.

**Question 3 - 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?”*

1. The right to a clean, healthy, and sustainable environment has been recognized at the universal and regional level. At the international level, the Preamble to the Paris Agreement clearly recognizes the obligations of States to respect, protect, and fulfil human rights, which includes the right to health and to a clean, healthy, and sustainable environment, when taking climate action. This also reinforces the need to integrate human rights into climate policies and measures. Furthermore, the UN General Assembly Resolution 76/300 (2022) explicitly affirm this right as a fundamental human right.<sup>14</sup> It highlights its relevance to other rights and existing international legal frameworks, calling for the implementation of multilateral environmental agreements under the principles of international environmental law. It also emphasizes the necessity of enhanced international cooperation, capacity building, and the adoption of robust policies to realize this right globally.<sup>15</sup>
2. Colombia submits that the right to a clean, healthy, and sustainable environment includes both procedural and substantive dimensions. Procedural rights include access to environmental information, participation in decision-making processes, and access to

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<sup>14</sup> See Human Rights Council, The human right to a clean, healthy and sustainable environment, UN Doc. A/RES/76/300; See also UN Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, December 24, 2012, UN Doc. A/HRC/22/43.

<sup>15</sup> See Human Rights Council, The human right to a clean, healthy and sustainable environment, UN Doc. A/RES/76/300.

judicial or administrative remedies for environmental harm. The substantive elements of this right includes protection of ecosystems, promotion of climate stability, reduction of pollution, and mitigation of environmental degradation. As the Inter-American Court of Human Rights (IACtHR) noted in its Advisory Opinion, requested by Colombia, the right to a healthy environment is “an autonomous right” and “unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.”<sup>16</sup>

3. The IACtHR also noted that “[t]he human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.”<sup>17</sup>

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<sup>16</sup> Advisory Opinion OC-23/17, Inter-American Court of Human Rights, para. 62.

<sup>17</sup> Advisory Opinion OC-23/17, Inter-American Court of Human Rights, para. 59.

4. As Colombia highlighted in its Written Statement, this right serves as an umbrella encompassing measures necessary to protect fundamental human rights, particularly those threatened by climate change. For instance, the Colombian Supreme Court recognized that fundamental rights to life, health, and human dignity are integrally linked to environmental protection, noting that without a healthy environment, life itself and other rights cannot be guaranteed.<sup>18</sup> The Colombian Constitutional Court also noted that the purpose of this right is “to ensure health, life and the availability and constant offer of environmental elements for present and future generations.”<sup>19</sup>
  
5. Furthermore, the right to a clean, healthy, and sustainable environment is inherently cross-cutting, underpinning and reinforcing other fundamental human rights. It is closely linked to the right to life, as environmental degradation driven by climate change heightens risks to life through natural disasters, displacement, and the destruction of livelihoods.<sup>20</sup> The right to health is similarly impacted, as climate change exacerbates air and water pollution, compromises food security, and increases the spread of vector-borne diseases, severely affecting human well-being.<sup>21</sup> Additionally, the right to culture is directly affected, particularly for indigenous and coastal communities, as environmental harm threatens their traditional livelihoods, cultural identity, and their ability to exercise control over their future.<sup>22</sup>

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<sup>18</sup> See Supreme Court of Justice of the Republic of Colombia, *Future Generations v. Ministry of the Environment and Others* (“*Demanda Generaciones Futuras v. Minambiente*”), Judgment STC4360-2018, 4 April 2018.

<sup>19</sup> Constitutional Court of Colombia, Decision T-257/1996 , II/1 , para. 1

<sup>20</sup> Supreme Court of Colombia, Decision T-622 of 2016; Stockholm Declaration, Principle 1.

<sup>21</sup> Rio Declaration, Principle 1; UN General Assembly Resolution 76/300, para 2.

<sup>22</sup> See Advisory Opinion OC-23/17, Inter-American Court of Human Rights.

6. In the case of Colombia, the significant harm caused to the climate system casts a dire prospect for the cultural heritage of the native community of the Archipelago of San Andrés, Providencia and Santa Catalina<sup>23</sup>. Their identity and survival are intrinsically linked to the land and the sea. However, drastic changes in these environments, such as coastal erosion, the coral reefs' severe degradation caused by ocean acidification and rising water temperatures depleting this essential ecosystem for fishing and marine biodiversity, as well as the increasingly frequent and intense storms, jeopardize traditions, ancestral knowledge, and their special ways of life. Sadly, this is happening to communities worldwide.<sup>24</sup>
7. As for the indigenous communities, The IACtHR has established that the right to a healthy environment and the enjoyment of human rights derived from it are to be viewed from a different perspective when it comes to the context of this populations <sup>25</sup>. In particular, the Court has highlighted that emphasis is to be placed on safeguarding the special relationship between these communities and their environment.<sup>26</sup> This relationship holds profound significance within indigenous cultures, serving as a cornerstone that shapes the political, social, economic, and spiritual dimensions of life. <sup>27</sup>

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<sup>23</sup> Colombia, Written Statement, para. 2.73.

<sup>24</sup> Colombia, Oral Statement, para 10. Intervention by the Minister of Foreign Affairs.

<sup>25</sup> Colombia, Written Statement, para. 2.61.

<sup>26</sup> Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, par 48.

<sup>27</sup> IACtHR, *Jurisprudence Booklet of the Inter-American Court of Human Rights No.11: Indigenous and Tribal Peoples*.

**Question 4 - Judge Charlesworth:** *“My question is addressed to any of the Participants in the proceedings that may wish to answer it: 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?”*

1. Colombia submits that the declarations made by some States upon becoming parties to the UNFCCC and the Paris Agreement, affirming that no provisions in these treaties may derogate from principles of general international law or claims concerning compensation or liability due to climate change, serve as interpretative declarations under international law.<sup>28</sup> Such declarations are non-binding but aim to clarify the relationship between specific treaty obligations and overarching principles of general international law, including State responsibility and the prohibition of harm. Colombia submits that these declarations underscore the applicability of general international law principles, such as the obligation to prevent significant harm and State responsibility for internationally wrongful acts. They also preserve the right of States to claim compensation for damage caused by climate change, ensuring that treaty provisions do not restrict the application of customary principles, including the obligation to provide reparations for harm.<sup>29</sup>
2. The declarations ensure that the interpretation of the UNFCCC and Paris Agreement aligns with customary international law principles. For Colombia, they reinforce the systemic

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<sup>28</sup> See UN International Law Commission, ‘Guide to Practice on Reservations to Treaties’ UN Doc A/66/10/Add.1; UN International Law Commission, Third report on reservations to treaties by Mr. Alain Pellet, Special Rapporteur, UN Doc. A/CN.4/491/Add.4, para. 361.

<sup>29</sup> Colombia, Written Statement, para. 4.1.

integration approach under Article 31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT), which requires treaties to be interpreted with other applicable rules of international law. These declarations do not conflict with the object and purpose of the UNFCCC or the Paris Agreement, which aim to combat climate change and enhance climate resilience. Instead, they ensure that obligations under these treaties are interpreted in a manner consistent with broader international law, including obligations to protect vulnerable populations and the environment.

3. Colombia requests that the Advisory Opinion of the Court should clarify that these declarations highlight the complementary nature of climate change treaties and general international law. They reinforce the idea that States cannot use treaty-specific provisions to evade broader obligations under customary international law, such as the duty to provide reparations for environmental harm.<sup>30</sup>

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<sup>30</sup> Colombia, Written Statement, para. 4.3.