



Federal Foreign Office, Kurstrasse 36, 11013 Berlin

To the Registrar of the International Court of Justice
Mr. Philippe Gautier
Peace Palace, Carnegieplein 2
2517 KJ The Hague
Netherlands

Subject: Obligations of States in respect of Climate Change (Request for advisory
opinion of the International Court of Justice)

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Berlin, December 20th, 2024

Excellency,

Following up on the questions put to the participants in the above-mentioned proceedings at the end of the oral proceedings by various judges¹, and conveyed to the participants of the oral hearing under cover of your letter dated 13 December 2024, Germany would like to provide written replies to the questions of Judge Tladi, Judge Aurescu and Judge Charlesworth:

Question 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?”

¹ See CR 2024/54, p. 39-40.

Reply by Germany:

“Germany does *not* take the position that Art. 4 Paris Agreement and the obligation to provide for NDCs are of a merely procedural character.

As a matter of fact, Art. 4, para. 3 Paris Agreement obliges State parties not only to establish successive nationally determined contributions but that such successive NDCs must represent a progression beyond the Party’s current nationally determined contribution, and must also reflect such party’s highest possible ambition. Those constitute substantive obligations in the sense that States must then also endeavor to act in line with their respective NDCs.

Besides, Art. 2, para. 1 (a) Paris Agreement sets a binding goal that all Member States are obliged to achieve jointly, and Art. 4, para. 1 contains the goal to reach global peaking of greenhouse gas emissions as soon as possible². These goals are to be reached by the combination of the individual NDCs. The obligation to reach these goals are, once again, substantive obligations to be fulfilled by the community of State parties.

Moreover, Art. 4 Paris Agreement must be read in conjunction with Arts. 2 and 3 Paris Agreement as per Art. 31, para. 1 Vienna Convention on the Law of Treaties.

Art. 3 Paris Agreement in turn provides that “(...) all Parties are to undertake and communicate *ambitious* efforts as defined in Articles 4 (...) with the view to achieving the purpose of this Agreement (...)”³. This again confirms that the obligation to set up NDCs is not only of a procedural character but that State parties of the Paris Agreement have to set up NDCs that not only must represent a progression, but that must also be ambitious.

Question 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?”

Reply by Germany:

² *Ibid.*, para. 13 (Rückert).

³ Emphasis added.

As was already set out in Germany's written and oral submissions⁴ in more detail, the 2022 General Assembly resolution on the right to a clean, healthy, and sustainable environment recognized that "(...) the right to a clean, healthy and sustainable environment is related to other rights and existing international law". Germany was an active supporter of this resolution.

The right to a clean, healthy, and sustainable environment, was perceived in this legally non-binding instrument as constituting a specific manifestation of other previously established human rights. The right was understood as deriving from, and inherent in, already existing international human rights obligations, in particular under the ICCPR and the ICESCR. It must, just like other environment-related human rights, be interpreted in line with the obligations States have undertaken under international environmental law. A growing number of States recognize a right to a healthy environment in national legislation and it forms part of an ongoing legal debate in different human rights contexts. However, in Germany's view, it does not form part of current customary international law.

Question 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 by Germany:

Germany notes that when becoming parties of the UNFCCC *five* States (out of 198 State parties thereof) and when becoming parties of the Paris Agreement *nine* States (out of 195 State parties thereof) have made declarations to which the question of *Judge Charlesworth* refers.

Those *unilateral* declarations do neither represent instruments which were made by one or more parties in connection with the conclusion of the treaty *and accepted by the other parties as an instrument related to the treaty* (Art. 31, para. 1 lit. b Vienna Convention on the Law of Treaties). Nor does their content constitute any subsequent agreement or any subsequent practice in the application of the treaty *which establishes the agreement of the parties regarding its interpretation* (Art. 31, para. 3 Vienna Convention on the Law of Treaties). Their content cannot, thus, as such be binding upon other State parties.

⁴ See Written Statement Germany, p. 39-40; CR 2024/35, p. 152, paras. 29-32 (Zimmermann).

Accordingly, they may only have legal effect to the extent their content reflects, and is consistent with, the interpretation of the treaty to which they were submitted. In particular, they may neither establish nor extend obligations vis-à-vis other State parties beyond those otherwise already existing under international law.

Finally, it also goes without saying that to the extent that the respective treaty has any legal effect on pre-existing obligations under international law, and notably by requiring the interpretation of general international law in line with the respective specific treaty obligations undertaken, such effect cannot be excluded by way of such unilateral declarations.

Germany takes this opportunity to, once again, thank the Court and its Registry for the organization of the proceedings.

Sincerely,



Dr. Wiebke Rückert