

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

Grenada's Written Response to the Question
from Judge Dire Tladi

20 December 2024

Question: Participants have engaged in interpretation of various paragraphs of Art 4 Paris Agreement. Many have come to the conclusion that to the extent that Art 4 imposes any obligations re NDCs, these are procedural obligations. Their interpretation relies mostly on ordinary meaning, context, and elements of 31(3) VCLT. Do the object and purpose of the Paris Agreement and UNFCCC have any effect on this interpretation and if so, what effect does it have?

Article 31 of the Vienna Convention on the Law of Treaties (VCLT)

1. 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.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was 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.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

In response to this question Grenada would like to submit the following points for the consideration of the Court:

1. In accordance with Article 31 of the VCLT the interpretation of Article 4 of the Paris Agreement must take into account its ordinary meaning, in context and in the light of the object and purpose of the treaty. All these components must be considered, and excluding any one of them would result in an incomplete and accurate interpretation of Article 4.
2. The ordinary meaning of Article 4 of the Paris Agreement is inextricably linked to the object and purpose of the Paris Agreement as set out in its Article 2 with specific reference to Article 2.1(a). The scientific understanding of pathways for achieving this sub article has advanced since the signing of the Paris Agreement. These advancements and

specifications are relevant for understanding the scope and nature of Party commitments in Article 4.

3. The context for understanding the scope and nature of obligations in Article 4 can be derived from the provisions of Article 4 itself, other Articles of the Paris Agreement, as well as subsequent practice in the application of the Paris Agreement through decisions that have been taken since its adoption. Decisions taken every year since 2021 are highly relevant for this consideration and significantly contribute to the understanding of the scope and nature of commitments contained in Art 4.
4. The foregoing submissions are not inconsistent with Grenada's written and oral submissions to the ICJ that underscore the UNFCCC and Paris Agreement as core elements of the ecosystem of treaties and general principles of international law that are relevant for understanding States obligations to address climate change.

1. Context, object and purpose as an aid to interpretation of Article 4

Article 31 of the VCLT is commonly held as representing customary international law and has been applied by international courts, including the ICJ, as such in

previous cases of *Avena Case*¹ and *Maritime Delimitation and Territorial Questions between Qatar and Bahrain Case*².

Article 31 emphasises the focus on interpreting a treaty in good faith based on the ordinary meaning of the terms of the treaty, in their context, and in the light of the treaty's object and purpose. Aust (Cambridge, 2012) submits that Article 31 VCLT does not in fact set out a hierarchy of legal norms but instead a 'logical progression' of applicable rules and Shaw (Cambridge, 2008) notes that 'any true interpretation' of international law 'will have to take into account all aspects of the agreement, from the words employed to the intention of the partes and the aims of the particular document' and goes on to note that 'it is not possible to exclude completely any one of these components'.

Grenada therefore submits that Article 4 of the Paris Agreement cannot be properly interpreted without reference to the ordinary meaning of the provisions *in their context and in the light of the Paris Agreement's object and purpose* which can be found in its Article 2.

¹ *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C. J. Reports 2004, p. 12 at 48.

² *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility*, Judgment, I.C. J. Reports 1995, p. 6 at 18.

2. Article 4 and its ordinary meaning in the light of context and object and purpose

For the ordinary meaning of Article 4 the Court must consider the structure of the Article and the nature and progression of the different clauses.

The opening paragraph of Article 4 establishes the relationship of Article 4 and Article 2.1(a) and sets up Article 4 as a vehicle to facilitate the implementation of Article 2.1(a).

In the Paris Agreement of 2015, the international community adopted an ambitious long-term temperature goal, resolving to strengthen the global response to the threat of climate change, by “*[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.*”³ This goal is operationalized in Article 4.1 of the Paris Agreement inter alia via a global emissions pathway whose key parameters are to be determined based on the best available science:

³ See UNFCCC Decisions 10/CP.21 (adopting this goal under the Convention) and 1/CP.21, Annex (embedding this goal in Article 2.1 of the Paris Agreement).

“ In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties and to undertake rapid reductions ... in accordance with best available science... to achieve a balance between anthropogenic emissions by sources and [anthropogenic] removals by sinks of greenhouse gases in the second half of this century... in the context of sustainable development and efforts to eradicate poverty” (Art. 4.1) [emphasis added].

Grenada further submits that since 2021 Parties to the Paris Agreement have refined their interpretation of Article 2.1(a) as one goal i.e. – to limit warming to 1.5°C above pre-industrial levels in recognition that the impacts of climate change will be much lower at the temperature increase of 1.5C compared with 2C. Parties have resolved to ‘pursue efforts to limit the temperature increase to 1.5°C’ and have reaffirmed this resolve in subsequent decisions⁴. Decision 1/CMA.5 on the outcome of the Global Stocktake makes this very clear in its paragraph 39 that encourages Parties to come forward with NDCs that are, inter alia, ‘aligned with limiting global warming to 1.5°C’.

⁴ See decisions 1/CMA.3 paragraph 21; 1/CMA.4 paragraph 11 and 1/CMA.5 paragraphs 4, 5, 27, 28, 39

With these Paris Agreement goals in place, attention turns to how the required temperature limit and the emissions pathway required under Art. 4.1 can be operationalized, including defining how, and when the referenced “balance” is to be achieved.

The 2018 IPCC 1.5°C Report makes clear how rapidly reductions need to be achieved to avoid or limit any overshoot of the 1.5°C temperature limit. CO₂ emissions will need to be approximately halved by 2030, and reach zero, or lower, by 2050. The report also shows that total GHG emissions will need to peak by around 2020 and be significantly below present levels by 2030 to reach zero by about 2070, thereby defining the timeframe within the second half of this century by which a balance has to be achieved.⁵ These elements have the effect of determining an emissions budget envelope within which Parties collectively must operate in order to meet the Paris Agreement’s temperature goal.

In its 6th Assessment Report from 2022 the IPCC found that: “[g]lobal modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot or limit warming to 2°C (>67%) are characterized by deep, rapid and, in most cases, immediate GHG emissions reductions”. The report goes on to reiterate that:

⁵ This applies to a 50% chance to limit warming to 1.5°C (median) or with a limited overshoot to 1.6°C, accounting for uncertainties in the climate system, non-CO₂ greenhouse gases, aerosol pollutants and carbon cycle. Zero emissions would need to be achieved earlier for a 66% chance to limit warming to 1.5°C (a “likely” chance in IPCC terms).

“[g]lobal GHG emissions are projected to peak between 2020 and at the latest before 2025 in global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot and in those that limit warming to 2°C (>67%) and assume immediate action. (*high confidence*)”.

The plain meaning of Article 4 establishes clear binding procedural obligations for each Party to prepare, communicate and maintain successive NDCs every five years containing information to facilitate clarity, transparency and understanding in accordance with future decisions. These are described as obligations of conduct by Bodansky, Brunnée and Rajamani (Oxford, 2017) and constitute some of the most specific legal obligations contained in the Paris Agreement as a whole.

Grenada submits that these obligations, without more, would not be sufficient to meet the object and purpose of the Paris Agreement as set out in its Article 2 and with specific reference to its Article 2.1(a) and further that it was not the intention of Parties to the Paris Agreement to create a regime designed to fail in delivering on its stated objective.

Accordingly, the Court’s attention is drawn to Article 4.3 which provides that each Party’s Nationally Determined Contributions is to reflect “its highest possible ambition”, in the context of the object and purpose of the Paris

Agreement, and with the awareness that “deep, rapid and, in most cases, immediate GHG emissions reductions” are needed to meet this goal.

This information is highly relevant for understanding the actions that will be required from Parties in their specific NDCs if they are to have any chance of achieving the object of the Paris Agreement as set out in its Article 2, with specific reference to Article 2.1(a).

3. Other relevant Articles and Decisions of the Paris Agreement

Grenada submits that a full understanding of the scope and nature of Article 4 requires an interpretation of the plain meaning of the clauses of the article in the context of the object and purpose of the Paris Agreement as well as in the context of other Articles of the Agreement and subsequent decisions of the Agreement that have implications for Party actions in the implementation of the Paris Agreement.

The text of Article 4 itself contains a clear obligation for Parties to “pursue domestic mitigation measures with the aim of achieving the objectives of such contributions” (art 4.2). The pursuit of domestic measures here amounts to more than a procedural requirement as it is of a different nature than the preparation, communication and maintenance of successive NDCs. These domestic mitigation

measures are subject to scrutiny and must be accounted for in Parties' mandatory reports submitted to the Secretariat of the UNFCCC on a biennial basis as set out in Article 13 of the Paris Agreement.

Parties have in recent years taken decisions that give some guidance on what these domestic mitigation measures should entail:

In 2022, in decision 1/CMA.4, 'Sharm el-Sheikh Implementation Plan', Parties recognised 'that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 relative to the 2019 level' and consequently, issued a call to 'accelerate the development, deployment and dissemination of technologies, and the adoption of policies, to transition towards low-emission energy systems, including by rapidly scaling up the deployment of clean power generation and energy efficiency measures, including accelerating efforts towards the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies'.

In 2023 in decision 1/CMA.5 'Outcome of the First Global Stocktake' Parties: "[f]urther recognize[d] the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5 °C pathways and *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:

- (a) Tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030;
- (b) Accelerating efforts towards the phase-down of unabated coal power;
- (c) Accelerating efforts globally towards net zero emission energy systems, utilizing zero- and low-carbon fuels well before or by around mid-century;
- (d) Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science;
- (e) Accelerating zero- and low-emission technologies, including, inter alia, renewables, nuclear, abatement and removal technologies such as carbon capture and utilization and storage, particularly in hard-to-abate sectors, and low-carbon hydrogen production;
- (f) Accelerating the substantial reduction of non-carbon-dioxide emissions globally, including in particular methane emissions by 2030;
- (g) Accelerating the reduction of emissions from road transport on a range of pathways, including through development of infrastructure and rapid deployment of zero- and low-emission vehicles;
- (h) Phasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible.

CONCLUSION

Based on the foregoing, Grenada submits that any interpretation of Article 4 that asserts that obligations in relation to NDCs are exclusively procedural is incompatible with the object and purpose of the Paris Agreement as such an interpretation would render the objective of the agreement unachievable. Amongst the mix of obligations set out in Article 4 is the requirement to include the preparation, communication and maintenance of an NDC *that represents a Party's highest possible ambition* as a contribution to substantive actions and activities that support the achievement of the goal in Article 2.1(a).

Parties are also required to pursue domestic measures for the implementation of their NDCs, and decisions outlined at point 3 above have provided increasing clarity on what the nature of these domestic measures should entail. As such, where Parties do not demonstrate that they have pursued domestic measures with the aim of achieving their NDCs, and where those domestic measures do not feature sectors or actions that align with subsequent decisions taken under the Paris Agreement there may be a breach of obligations under Article 4.2 of the Paris Agreement.