

**INTERNATIONAL COURT OF JUSTICE**

***OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE***

**(REQUEST FOR AN ADVISORY OPINION)**

**Responses of the Republic of Guatemala to the questions posed by Members of the  
Court to the Participants**

**20 DECEMBER 2024**

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**SECOND QUESTION:**

The Republic of Guatemala (“Guatemala”) does not share the view that the obligations in respect of nationally determined contributions (NDCs) under the Paris Agreement are merely procedural. Article 4 (2) of the Agreement does not only require each Party to “prepare, communicate and maintain” successive NDCs, but also to “pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions”. This is a substantive obligation, not a formality, that extends beyond simply observing the procedure for communicating NDCs, and shows that declaring the intended contribution is not enough. The Party must adopt tangible measures to fulfill the commitment it has assumed.

The object and purpose of the Paris Agreement confirms this conclusion. Guatemala notes that both the Vienna Convention on the Law of Treaties (VCLT)<sup>1</sup> and the jurisprudence of this Court<sup>2</sup> have endorsed the need to refer to the object and purpose during treaty interpretation. In this respect, Article 2 of the Paris Agreement provides that its objective is to “strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty”. This aim would be impossible to achieve if the obligations relating to NDCs were merely procedural.

The duty to bring into reality the content of NDCs is naturally an obligation of conduct rather than of results. In this regard, Guatemala reiterates the position it expressed during its oral submission in these advisory proceedings on 5 December 2024<sup>3</sup> that, as commitments assumed pursuant to treaty provisions, NDCs must be fulfilled in good faith, in accordance with VCLT Article 26. This is in line with the Court’s reasoning in the case concerning *Certain Questions of Mutual Assistance in Criminal Matters*, where it stated that, when a treaty provision confers “very considerable discretion”, “this exercise of discretion is still subject to the obligation of

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<sup>1</sup> Article 31.

<sup>2</sup> *Case concerning Rights of Nationals of the United States of America in Morocco*, Judgment of August 27th, 1952, *ICJ Reports 1952*, p. 197; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, *ICJ Reports 2008*, p. 218, para. 109; *Maritime Delimitation and Territorial Questions between Qatar and Bahrein*, Jurisdiction and Admissibility, Judgment, *ICJ Reports 1995*, pp. 18-19, para. 35; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, *ICJ Reports 2014*, pp. 250-251, para. 55.

<sup>3</sup> Verbatim Record 2024/41 at p. 59

good faith codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties”.<sup>4</sup> Arguing that the duties related to NDCs are merely procedural and entail no substantive obligations defeats the object and purpose of the Paris Agreement.

The notion that a Party shall not frustrate the object and purpose of the treaty is well established in the Court’s jurisprudence. In *Nicaragua*, the Court found that the United States of America had “committed acts calculated to deprive of its object and purpose the Treaty of Friendship, Commerce and Navigation between the Parties”,<sup>5</sup> noting that,

“there are certain activities of the United States which are such as to undermine the whole spirit of a bilateral agreement directed to sponsoring friendship between the two States parties to it. (...) Any action less calculated to serve the purpose of ‘strengthening the bonds of peace and friendship traditionally existing between’ the Parties, stated in the Preamble of the Treaty, could hardly be imagined.”<sup>6</sup>

In that case, the Court acknowledged expressly the existence of “the obligation not to defeat the object and purpose” of a treaty.<sup>7</sup>

Similarly, in the case concerning the *Gabčíkovo-Nagymaros Project*, the Court stated that “[t]he principle of good faith obliges the Parties to apply [the treaty] in a reasonable way and in such a manner that its purpose can be realized”.<sup>8</sup>

### **THIRD QUESTION:**

During the oral hearings, Guatemala was among the Participants that referred to the human right to a clean, healthy and sustainable environment, recognized by the United Nations General Assembly in its resolution 76/300 of 28 July 2022.<sup>9</sup> This is a right regulated in Guatemala’s Political Constitution, which enshrines the duty to “foster social, economic and technological development that prevents environmental pollution and preserves ecological equilibrium.”<sup>10</sup> At the Inter-American level, the right to a healthy environment is recognized in the Protocol of San Salvador, which requires States Parties to “promote the protection, preservation, and improvement of the environment”.<sup>11</sup>

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<sup>4</sup> *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, *ICJ Reports 2008*, p. 229, para. 145.

<sup>5</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, *ICJ Reports 1986* (hereinafter **Nicaragua**), p. 148, operative para. (10).

<sup>6</sup> *Nicaragua*, p. 138, para. 275.

<sup>7</sup> *Nicaragua*, p. 138, para. 276.

<sup>8</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, *ICJ Reports 1997*, pp. 78-79, para. 142.

<sup>9</sup> Verbatim Record 2024/41 at p. 61.

<sup>10</sup> Article 97 of the Political Constitution of the Republic of Guatemala.

<sup>11</sup> Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

In Guatemala's view, the right to a healthy environment entails the duty of States to prescribe the necessary measures to ensure that natural resources are utilized sustainably, in accordance with the standard of due diligence.<sup>12</sup> This may necessitate the conduct of an environmental impact assessment to ensure that these measures are observed in respect of activities conducted in the territory of a State.<sup>13</sup> It should be noted that the measures imposed in this regard should reflect the national capacity of States, in line with the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC),<sup>14</sup> considering that the standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, particularly developing States.<sup>15</sup>

Guatemala also notes that the Inter-American Court of Human Rights (IACtHR) has described some of the human rights obligations arising in the environmental context in its Advisory Opinion of 15 November 2017.<sup>16</sup> The Court can take this Opinion into account in accordance with Article 38 (1) (d) of its Statute, as the relevant provisions of the American Convention on Human Rights are "close in substance" to those within the Court's applicable law in this advisory proceeding,<sup>17</sup> and the IACtHR is competent to issue, with full authority, interpretations of all the provisions of that Convention.<sup>18</sup>

The IACtHR's explanation of the relationship between key environmental duties and international human rights law may be illustrative for this Court.<sup>19</sup> In particular, the IACtHR linked the human rights to life and personal integrity to the principle of prevention, noting that ensuring respect for these rights entails the obligation to regulate activities that could cause significant environmental harm to reduce the risk to human rights; supervise and monitor such

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<sup>12</sup> Principle 11 of the Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26/Rev.1 (Vol. I).

<sup>13</sup> Cf. *Pulp Mills in the River Uruguay (Argentina v. Uruguay)*, Judgment, *ICJ Reports 2010*, p. 82, para. 204.

<sup>14</sup> For Guatemala's views during the oral proceedings on the principle of CBDR-RC in the context of climate change, see Verbatim Record 2024/41, at pp. 59, 60.

<sup>15</sup> Principle 23 of the Declaration of the United Nations Conference on the Human Environment, UN Doc. A/CONF.48/14/Rev.1.

<sup>16</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017: *The Environment and Human Rights* (hereinafter the **IACtHR Advisory Opinion**).

<sup>17</sup> Cf. *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, *ICJ Reports 2010*, p. 664, para. 68 ("The Court also notes that the interpretation by (...) the Inter-American Court of Human Rights (...) of (...) Article 22, paragraph 6, of the American Convention on Human Rights — the said provisions being close in substance to those of the Covenant and the African Charter which the Court is applying in the present case — is consistent with what has been found in respect of the latter provisions in paragraph 65 above"); United Nations General Assembly, Resolution 77/276, 29 March 2023.

<sup>18</sup> IACtHR, Advisory Opinion OC-26/20 of November 9, 2020: *The Obligations in Matters of Human Rights of a State that Has Denounced the American Convention on Human Rights and the Charter of the Organization of American States*, para. 25; IACtHR, Advisory Opinion OC-20/09 of September 29, 2009: *Article 55 of the American Convention on Human Rights*, para. 18; IACtHR, Advisory Opinion OC-25/18, *The Institution of Asylum and Its Recognition as a Human Right in the Inter-American Protection System*, para. 34.

<sup>19</sup> Cf. IACtHR Advisory Opinion, paras. 47 to 55.

activities under their jurisdiction by implementing adequate monitoring and accountability mechanisms; and require environmental impact assessments.<sup>20</sup>

Guatemala also notes that the human right to a healthy environment is inextricably linked to the rights to health,<sup>21</sup> an adequate standard of living<sup>22</sup> and development.<sup>23</sup> Moreover, as is mentioned in United Nations General Assembly resolution 76/300, the right to a healthy environment requires the full implementation of the multilateral environmental agreements.<sup>24</sup>

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<sup>20</sup> IACtHR Advisory Opinion, para. 174.

<sup>21</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights.

<sup>22</sup> Article 11 of the International Covenant on Economic, Social and Cultural Rights.

<sup>23</sup> Articles 1 and 2 of the Declaration on the Right to Development, annexed to United Nations General Assembly resolution 41/128 of 4 December 1986.

<sup>24</sup> See operative para. 3.