



**OBLIGATIONS OF STATES IN RESPECT OF
CLIMATE CHANGE
(REQUEST FOR ADVISORY OPINION)**

**RESPONSES SUBMITTED BY
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
TO THE INTERNATIONAL COURT OF JUSTICE
JUDGES' QUESTIONS**

20 DECEMBER 2024

The Government of the Republic of Indonesia wishes to share its perspective on the questions posed by Judge Tladi, Judge Aurescu and Judge Charlesworth.

A) On question from 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?”

Response:

1. Indonesia is of the view that the “object and purpose” of the Paris Agreement¹, and the object and purpose of the climate change treaty framework in general, have effects on the interpretation of Article 4 of the Paris Agreement. While Article 4 of the Paris Agreement imposes procedural obligations related to Nationally Determined Contributions/NDCs (preparation, communication, and maintenance of NDCs)², these obligations must be interpreted in light of the object and purpose of the Paris Agreement. The procedural aspects of such Article 4 are intrinsically linked to its substantive goals. They are not ends in themselves, but critical means to achieve the agreements’ overarching objectives.
2. In such regards, an interpretation grounded in the object and purpose of the Paris Agreement supports a feasible and meaningful approach to the interpretation of Article 4 of the Paris Agreement. Further, such approach of interpretation imbues these procedural obligations with substantive effects to ensure feasible and meaningful steps toward the object and purpose of the agreement.
3. Additionally, Indonesia is of the opinion that the Paris Agreement cannot be interpreted in isolation from the broader climate treaty framework. The Customary International

¹ The overarching goals of the Paris Agreement, as outlined in its Article 2, represent not only the object and purpose of the Paris Agreement but also reflect the cumulative aims of the broader climate change treaty framework, including the UNFCCC.

² While Parties have the obligations to prepare, communicate, and maintain their NDCs as well as pursue domestic mitigation measures to achieve such NDCs, the Article does not make it compulsory for the targets to be achieved. The use of the word “intends to achieve” in this paragraph clarifies this interpretation, putting emphasis on the intention of the State Party. While the next sentence underlines the obligation to take action towards achieving the objectives as set out in the particular NDC referred to in the previous sentence. Namely the particular NDC prepared by each party. In other words, the obligation in relation to NDCs can be construed as legal obligations of conduct, and not obligations of result. This interpretation of Article 4 is one that we make based on the Customary International Law on the general rule of interpretation of treaties (as embodied in Article 31 of the VCLT).

Law on the general rule of interpretation of treaties (as embodied in Article 31 of the 1969 Vienna Convention on the Law of Treaties/VCLT) also emphasizes the context for the purpose of the interpretation of a treaty which shall comprise any other agreement in connection with the conclusion of such treaty. Thus, it is worth to recall the expressly stipulated object and purpose of the United Nations Framework Convention on Climate Change (UNFCCC)³. The UNFCCC and the Paris Agreement are legally linked, with the Paris Agreement operating as a subsidiary agreement under the overarching framework of the UNFCCC. This relationship creates continuity and ensures coherence in international climate governance while allowing for progressive and enhanced commitments to address the global climate crisis.

4. In light of the above, Indonesia views that the object and purpose of the Paris Agreement and the broader climate change treaty framework under the UNFCCC, require an interpretation of Article 4 that gives NDCs real and meaningful effect. Procedural obligations cannot be viewed in isolation; as they are instrumental in achieving substantive outcomes aligned with the object and purpose of the agreements.

B) On the 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?”

Response:

1. In our view, the legal content and scope of the right to clean, healthy and sustainable environment is referred to in the UN General Assembly Resolution 76/300⁴. Its operational paragraph mentioned that such right to a clean, healthy and sustainable environment is related to other rights and existing international law. This statement gives rise to the understanding that this particular right derived from other rights already established under international law.
2. Paragraph 11 of the Paris Agreement (as the sole paragraph in the agreement which makes reference to human rights) guides our interpretation on other rights already established under international law, as well as the relationship between environmental

³ The UNFCCC expressly stipulates its object and purpose in Article 2, stating: *“The ultimate objective of this Convention and any related legal instruments is to achieve, in accordance with the relevant provisions of the Convention, the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”* emphasis added. The achievement of the abovementioned objective shall be guided by, among others, certain principles under its Article 3, including equity and CBDR-RC.

⁴ Indonesia had asserted in the written and oral statements before the Court, recalling the international recognition of this right to a clean, healthy and sustainable environment. At the international level, such right was indeed recognised through the UN Human Rights Council resolution 48/13 in 2021, and subsequently the UN General Assembly resolution 76/300 in 2022.

obligations and human rights. It enumerates two particular rights, namely the right to health, and the right to development, while also make reference to, not a singular right, but the specific categories of people that can be understood as having particular needs when faced with climate change, namely indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations.

3. Further, we are of the view that the right to adequate standard of living has a close link with, and cannot be separated from, the realization of a clean, healthy and sustainable environment, noting that this right may only be fully enjoyed when the environment is clean, healthy and sustainable. This particular right includes adequate food, clothing and housing and continuous improvement of living conditions.
4. We would like to add that the resolutions and declarations of the UN General Assembly as well as the Human Rights Council in which the right to clean, healthy and sustainable environment is referred to are an expression of the views of the community of states of a certain matter that does not establish enforceable legal rights and obligations for states. In other words, those resolutions stand as political declarations and does not constitute a legally binding right under international law. This view is based on the stipulation of Articles 10 and 11 of the UN Charter, which employ the phrase “recommendations” when referring to the output of the discussion or consideration of the General Assembly, as well as based on the general understanding regarding the stipulation of the function and powers of the General Assembly within the UN Charter.
5. The nature of the abovementioned right to clean, healthy and sustainable environment under such resolutions is different with the other rights which are legally established through covenants on human rights (i.e. the International Covenant on Civil and Political Rights/ICCPR as well as the International Covenant of Economic, Social and Cultural Rights/ICESCR). Those Covenants are signed and ratified/acceded by states. Noting the legal nature of the instruments and the process through which such covenants entered into force, whereby they clearly sets out the manner for states to express their consent to be bound⁵, the legally binding power of these instruments are irrefutable.⁶ These core human rights covenants are declaratory in nature with law-creating effect.
6. The Government of Indonesia has long recognised the right of the Indonesian people to healthy environment as stipulated in the Constitution of the Republic of Indonesia. In this regard, we assert that the full implementation of multilateral environmental agreements will complement the promotion of the human right to a clean, healthy and sustainable environment at the national level.

⁵ Part VI of the International Covenant on Civil and Political Rights and Part V of the International Covenant of Economic, Social and Cultural Rights.

⁶ Resolutions from international organizations must be read and assessed in light of circumstances as well as statements or actions taken by states relevant to the content of the resolution. The adoption of the UN General Assembly resolution on the right to a clean, healthy and sustainable environment was not unanimous and was accompanied by a number of explanatory statements from several states, elucidating their opinion of the non-legally binding character of the resolution.

C) On the 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?”

Response:

1. Indonesia is of the view that the declarations made by several States upon becoming Parties to the UNFCCC and Paris Agreement provide insight on the perspective of the states making such declaration on certain issues relating to global climate governance by recognizing the aspects of historical contribution and the CBDR-RC principle and ensuring that the treaty obligations are not undermined by States in their application of such treaties.
2. Furthermore, such declarations can be read as an interpretative declaration to affirm those States’ intention to maintain their right concerning compensation or liability under international law, due to the adverse effect of climate change without affecting the applicability of the principles under general international law to the other State Parties.
3. It is important to note that declarations on the non-derogation rights to seek compensation under the general principles of international law should not be taken as modifying the effect of the treaty to the States making the declarations, nor does it apply to the States Parties not making such declarations. This view is taken with particular consideration to the principles guiding the negotiation and the conclusion of the treaty, including the CBDR-RC and the equity principles.
4. In this regard, Indonesia wishes to refer to the concept of declaration under the international law of treaties as codified in the VCLT which stipulates declaration as an interpretive tool for certain provisions of a treaty. An interpretive declaration⁷ serves as a supplementary tool for the State making the declaration to affirm their position regarding the treaty, but should not be seen as modifying the application of a treaty of

⁷ According to the International Law Commission, an interpretive declaration is a “*unilateral declaration, however phrased or named, made by a State or by an international organization whereby that State or that organization purports to clarify the meaning or scope attributed by the declarant to the treaty or to certain of its provisions*”. See International Law Commission, Third report on reservations to treaties by Mr. Alain Pellet, Special Rapporteur, UN Doc. A/CN.4/491/Add.4, para. 354.

While the VCLT does not contain specific provision regulation declaration, we note that in practice, declarations by States when signing, ratifying, accepting, approving, or acceding to a treaty in general is used as a statement to clarify a number of situations based on the context of their circumstances or their position during the treaty making process. This may include their interpretive declaration, or reservations (as governed under Article 11 of the VCLT on Formulation of reservations).

certain provisions within. Nonetheless, as elaborated in our response to the other question *supra*, the VCLT states 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 light of its object and purpose*”.⁸

We thank the Court for its attention, and remain committed to working collaboratively with the international community to fulfil the goals of the international legal framework to prevent and address the impact of climate change.

⁸ Article 31 of the VCLT, which stipulates the general rule of interpretation.