

**INTERNATIONAL COURT OF JUSTICE**

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

**WRITTEN REPLY OF JAPAN**

**20 December 2024**

## **Written reply of Japan to the questions put by Judge Cleveland and Judge Tladi**

### **Question put by 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?”

### **Written reply of Japan:**

Parties shall pursue domestic mitigation measures with the aim of achieving the objectives of nationally determined contributions (NDCs) (Article 4, Paragraph 2 of the Paris Agreement). The NDCs under Article 4 of the Paris Agreement should be understood as having an evolving scope. The Parties in updating and enhancing NDCs shall be informed by the outcome of the global stocktake (Article 4, paragraph 9 and Article 14, paragraph 3). The global stocktake under Article 14 of the Paris Agreement does not impose fixed obligations on specific groups, but rather takes into account the different circumstances and capabilities of each country in cooperating to achieve the objectives of the UNFCCC and the Paris Agreement. As a result, collective progress should be made in line with the first global stocktake (FCCC/PA/CMA/2023/L.17, in particular para. 28) towards achieving the purpose and long-term goals of the Paris Agreement, including for those countries producing fossil fuels such as oil, natural gas, and coal. Individual producing countries should have certain discretion in reflecting the outcome of the global stocktake to their next evolving NDCs, but should also take necessary measures not to hamper the collective efforts in achieving the long-term goals of the Paris Agreement.

### **Question put 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?”

### **Written reply of Japan:**

1. Article 4, paragraph 2 of the Paris Agreement, according to the “ordinary meaning” of the term, provides for procedural obligations of the Parties to prepare and communicate successive nationally determined contributions (NDCs), etc., and for the obligation to pursue domestic mitigation measures with the view to achieving the purpose of this Agreement as set out in Article 2<sup>1</sup> of the Agreement. These obligations represent the obligation of conduct, but are not merely procedural obligations. Indeed, Article 4, paragraph 2 contains a combination of substantive obligations, such as the obligation to take mitigation measures (“Parties shall pursue domestic mitigation measures...”) and procedural obligations (“Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve”). The Court has emphasized on several occasions the complementarity between substantive and procedural obligations: indeed, substantive obligations relating to the protection of the environment “are accompanied and complemented by narrower and more specific procedural obligations, which facilitate the implementation of the substantive obligations incumbent

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<sup>1</sup> Paris Agreement (UN Dossier No. 16), article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding 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, recognizing that this would significantly reduce the risks and impacts of climate change; ((b) and (c) are omitted)

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

on (...) States”<sup>2</sup>. The same reasoning can be transposed to Article 4, paragraph 2 of the Paris Agreement: the procedural obligations consisting in the adoption of the NDC are there to guarantee the implementation of the more substantive obligations of mitigation. Naturally, the nature and scope of these obligations must be understood in light of the discretion which States enjoy individually regarding the adoption of the domestic measures. The object and purpose of the Paris Agreement is referred to in the preamble as being the objective of the Convention<sup>3</sup>. It is further defined in Article 2, which sets out the long-term temperature goal. Several provisions of the Paris Agreement refer back to this central provision as being part of the purpose of the Paris Agreement (See Article 3 and Article 4, paragraph 1).

2. As Japan underlined in its written comments<sup>4</sup> all States have individual obligations of mitigation under Article 4 of the Paris Agreement, the first sentence of which applies to “each Party”. Furthermore, Article 2 defines a common objective, which must be implemented following the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), in the light of different national circumstances. Thus, the core obligations under the Paris Agreement underscore a careful balance between the “common responsibilities” incumbent upon Parties in general (i.e. all States having concluded the treaty) and the differential pace at which “developed and developing” States are expected to comply with their obligations.<sup>5</sup> Under Article 4, paragraph 1, all Parties are required to contribute to the objective of the Agreement, it being again understood that developing countries will need more time. Thus the common objective in Article 2 implies that all States have an obligation of conduct to work towards its implementation. Therefore, the CBDR-RC cannot constitute a basis for imposing mitigation obligation solely on developed States, while avoiding constraints deriving from climate change treaties for other States.

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<sup>2</sup> Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia), ICJ Reports 2022, p. 649, para. 100.

<sup>3</sup> “In pursuit of the objective of the Convention”; Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge”.

<sup>4</sup> Japan’s written comments on 15 Aug, 2024, paragraph 46  
46. Under the customary duty of due diligence, States enjoy a large margin of discretion to determine the content of the domestic legislative measures. While they continue to enjoy a margin of appreciation under the Paris Agreement, the treaty also provides for objective parameters to be taken into account when the NDCs are adopted. Among these, there is the global temperature goal and the timeline for emission pathways set forth in the Paris Agreement (Article 2, paragraph 1, Article 3, Article 4, paragraphs 1 and 3); the best available scientific knowledge to inform the decisions to be adopted at the domestic level<sup>85</sup>; or the international standards further adopted during different COPs.

<sup>5</sup> Japan’s written comments on 15 Aug, 2024, paras. 29-31.