

INTERNATIONAL COURT OF JUSTICE

**ADVISORY OPINION REGARDING “OBLIGATIONS OF STATES IN RESPECT OF
CLIMATE CHANGE”**

MEXICO’S RESPONSES TO THE QUESTIONS PUT FORWARD BY JUDGES OF THE
HONORABLE COURT

December 2024

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I. INTRODUCTION

1. On 13 December 2024, the Registrar of the International Court of Justice (“ICJ”) transmitted the questions put by Judges Cleveland, Tladi, Aurescu and Charlesworth, in connection with the oral proceedings concerning the request for an advisory opinion on the *Obligations of States in respect of Climate Change*. Since the President of the Court invited all participants to the oral proceedings to provide written replies to the questions by 20 December 2024, Mexico hereby submits its responses.

II. QUESTION PUT BY JUDGE CLEVELAND

2. Judge Cleveland’s question refers to 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.

3. The transition away from fossil fuel production is central to mitigating climate change, but it also poses significant economic and social challenges, particularly for developing countries. States are obligated to design and implement strategies that ensure a just and equitable transition. This includes creating green jobs, transforming fossil fuel-dependent industries, and providing economic and social alternatives to communities reliant on these industries.

4. These efforts should be carried out in line with the Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) principle, which recognizes the historical inequities in greenhouse gas emissions and the varying capacities of States to address climate change.

III. QUESTION PUT BY JUDGE TLADI

5. Judge Tladi’s question focuses on the implications of interpreting Article 4 of the Paris Agreement in line with the object and purpose of said instrument, and the broader climate change treaty framework. Specifically, it addresses how such interpretation might influence the view that obligations under Article 4 regarding Nationally Determined Contributions (NDC) are procedural in nature.



6. The object and purpose of the Paris Agreement and the broader climate treaty framework significantly influence the interpretation of their provisions. This principle is central to treaty interpretation, as conceived under Article 31(1) of the Vienna Convention on the Law of Treaties.

7. The object and purpose of the Paris Agreement and the UNFCCC are similar, as stated in its respective Preambles and second Articles, considering that both: i) aim to combat climate change and its impacts; ii) emphasize the need to stabilize greenhouse gas concentrations and prevent dangerous anthropogenic interference with the climate system; iii) uphold the principle of CBDR-RC, and iv) rely on collective action.

8. NDC are one of the main mechanisms that States Parties to the Paris Agreement hold to achieve the long-term temperature goal set out in Article 2. As stated by Mexico in the hearings of this process, NDC must manifest the highest possible ambition of each State, reflecting the CBDR-RC principle, in light of different national circumstances,¹ in a manner that does not threaten food production and considering its “scientific, technical, economic and financial capabilities”.²

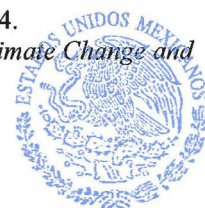
9. Article 4, paragraphs 2 and 3 of the Paris Agreement outlines procedural obligations, such as preparing, communicating and updating NDC. These duties are instrumental in achieving its substantive goals. These procedural obligations must be interpreted in a way that ensures the collective fulfilment of the Agreement’s ultimate objective.

10. Procedural obligations under Article 4 must be interpreted as aiming to promote substantive outcomes in respect of the climate system. This purpose-driven interpretation advocates that while States retain discretion in determining the content of their NDC, the procedural requirements are not neutral; they are designed to ensure progress toward the Agreement’s goals.

11. Additionally, as Mexico recently stated in the oral hearings, the compliance of obligations under Article 4 of the Paris Agreement ensures that States must achieve specific results that substantiate their actions as being aligned with their due diligence obligations.

¹ Paris Agreement, Dec. 12, 2015, art. 8, U.N.T.S. 79, entered into force Nov. 4, 2016, Article 4.

² *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, ITLOS, Case No. 31 (May 21, 2024), para. 225.



12. Thus, analyzing Article 4 in light of the object and purpose of the Paris Agreement, as well as the broader framework on climate change, has significant effects for its interpretation. A narrow interpretation that limits obligations to mere procedural compliance could undermine the Agreement’s objectives. In contrast, an interpretation that views procedural obligations as tools to achieve substantive outcomes aligns more effectively with the collective ambition of the climate regime.

IV. QUESTION PUT BY JUDGE AURESCU

13. The question posed by Judge Aurescu regards the legal content of the right to a clean, healthy and sustainable environment in international law, and its relationship with other human rights relevant for the advisory opinion.

14. In its initial written statement submitted to the Court, Mexico asserted that the human right to a healthy environment embodies both substantive and procedural elements, reflecting its unique legal content and its interrelation with other human rights.

15. Substantively, this right encompasses clean air, access to safe water, sustainable food production, and healthy ecosystems, all of which are essential for the enjoyment of life, health, and personal integrity. Procedurally, it requires access to environmental information, public participation in decision-making, and access to effective remedies.

16. As the ICJ stated in its advisory opinion regarding the *Legality of the Threat or Use of Nuclear Weapons*, “the environment is not an abstraction but represents the living space, the quality of life, and the very health of human beings, **including generations unborn.**”³ (emphasis added).

17. Mexico reaffirms its position regarding that this right operates as both an individual entitlement and a collective universal value, ensuring that environmental protection benefits current and future generations alike. For instance, the Inter-American Court of Human Rights (IACHR) has emphasized its dual nature, affirming its link to foundational human rights such as the right to life, personal integrity and health.⁴ That Court has also highlighted the

³ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 ICJ Reports, para. 29.

⁴ *Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-American Court of Human Rights, Advisory Opinion OC-23/17, *Environment and Human Rights* (Nov. 15, 2017), paras. 62 and 63.



application of the precautionary and preventive principles as central tools to safeguard this right.⁵

18. In practice, the right to a healthy environment necessitates robust State measures, including regulation, supervision, and environmental impact assessments. For example, the IACHR's decision in the *Lhaka Honhat* case underscored States' obligations to prevent harm caused by third parties, thereby protecting broader human rights from environmental degradation.⁶ Similarly, regarding State practice, the Mexican Supreme Court of Justice has interpreted this right as foundational to sustainable development and intergenerational equity, stressing that environmental protection supports the realization of other human rights.⁷

19. The interdependence between environmental rights and broader human rights frameworks, such as non-discrimination and the best interests of the child, illustrates their inseparability. In this sense, the UN Committee on the Rights of the Child and the Special Rapporteur on Human Rights and the Environment have further linked environmental harm to violations of rights such as health, life, and access to information.⁸

20. Mexico requests the Court to consider the intrinsic and instrumental dimensions of the right to a healthy environment in its advisory opinion. This perspective aligns with international legal principles, emphasizing the collective and individual stakes in addressing the climate crisis effectively and equitably. By doing so, the Court can reinforce a holistic approach to human rights and environmental protection, ensuring accountability and advancing international justice.

⁵ *Ibidem*, paras. 47, 66 and 242; *see also* Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, Merits, Reparations and Costs, Judgment of Feb. 6, 2020, Inter-Am. Ct. H.R. (Ser. C) No. 400, para. 208 and ICCPR, Portillo Cáceres v. Paraguay, CCPR/C/126/D/2751/2016 (25 July 2019), para. 7.4. (January 12, 2022) United Nations Document A/HRC/49/53, paragraph 54 and 89.

⁶ Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, Merits, Reparations and Costs, Judgment of Feb. 6, 2020, Inter-Am. Ct. H.R. (Ser. C) No. 400, para. 208.

⁷ Mexican Supreme Court of Justice, Amparo Proceedings under Review 307/2016 (Nov. 7, 2018), paras. 76-77.

⁸ United Nations Committee on the Rights of the Child, *General Comment No. 26 (2023) on Children's Rights and the Environment, with a Special Focus on Climate Change*, U.N. Doc. CRC/C/GC/26 (2023) and Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, U.N. Doc. A/HRC/49/53 (Jan. 12, 2022).



V. QUESTION PUT BY JUDGE CHARLESWORTH

21. Judge Charlesworth's question seeks States' understanding on the significance of declarations made upon joining the UNFCCC⁹ and the Paris Agreement,¹⁰ stating that no provision in these instruments may be interpreted as derogating from general international law or any claims or rights related to compensation or liability due to adverse effects of climate change.

22. Declarations made upon ratification, accession, acceptance or approval purport to clarify the meaning or scope attributed to the treaty or certain of its provisions. When these declarations are made and no objection is advanced, they may be considered in interpreting the treaty, particularly in accordance with Article 31(2)(a) or 31(3)(a) of the Vienna Convention on the Law of Treaties.

23. The declarations under consideration confirm that the obligations under the climate treaties coexist with, rather than supplant, obligations arising under general international law.¹¹ As advanced by Mexico in the oral and written proceedings, the principle of *lex specialis* does not apply to exclude general international law in this context, as there is no inherent conflict between the climate regime and the broader corpus of international law.

24. Likewise, the declarations underscore that the treaties' provisions do not waive or undermine the rights of States to seek remedies for harm caused by climate change. Mexico strongly supports this interpretation, highlighting that the climate regime lacks binding mechanisms for reparation and, therefore, cannot be interpreted to exclude general principles of responsibility and liability.

25. While the establishment of specialized mechanisms such as the Santiago Network and the Fund for responding Loss and Damage are critical, Mexico recognizes that these mechanisms do not replace States' obligations under general international law to provide full reparation for contributing to the adverse effects of climate change.

⁹ Fiji, Kiribati, Nauru, Papua New Guinea, and Tuvalu.


¹⁰ Cook Islands, Marshall Islands, Micronesia, Nauru, Niue, Philippines, Solomon Islands, Tuvalu, and Vanuatu.

¹¹ Report of the Study Group of the International Law Commission, finalized by Mr. Martti Koskenniemi, Yearbook of the International Law Commission 2006, Vol. II, Part One, A/CN.4/SER.A/2006/Add.1 (Part 1/Add.2), p. 105



26. In conclusion, Mexico understands that these declarations reflect a commitment by States to uphold the integrity and unity of international law. By affirming the compatibility of the climate treaties with general international law, they safeguard the rights of States to pursue remedies for harm caused by climate change. This interpretative stance reinforces the comprehensive framework necessary to address the global challenge of climate change while maintaining accountability.

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