

INTERNATIONAL COURT OF JUSTICE

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

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WRITTEN REPLIES OF THE GOVERNMENT OF NEW ZEALAND TO  
QUESTIONS OF THE COURT

20 DECEMBER 2024

## INTRODUCTION

1. On 13 December 2024, at the end of the final day of the public sittings in which participants delivered their oral statements to the Court, Judges Cleveland, Tladi, Aurescu and Charlesworth addressed questions to the participants. Participants were invited to provide replies, if they wish to do so, by 20 December 2024. New Zealand welcomes this opportunity to provide replies to three of the four questions.

## 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?”*

2. In response, New Zealand refers to paragraphs 48 – 54 of its written statement.

## QUESTION FROM 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?”*

3. In response, New Zealand refers to paragraph 114 of its written statement and paragraph 32 of its written comment. To conclude that a right to a clean, healthy and sustainable environment had crystallised as a right under customary international law, the Court would need to be satisfied that there was sufficiently

widespread and consistent State practice combined with *opinio juris*.<sup>1</sup> As evidenced through the written statements and written comments in these proceedings, a significant number of States deny the existence of such a customary international law right at all,<sup>2</sup> and there are others who recognise it only as an emerging right or norm.<sup>3</sup> There is, furthermore, no consistent articulation as to its content, even amongst the limited number of States who advocate its customary international law status.

#### QUESTION FROM 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?”*

4. In response, New Zealand refers to paragraphs 86 and 138-140 of its written statement, paragraph 34 of its written comments, and Part 2 and paragraph 30 of its oral submissions delivered on 9 December 2024. It is New Zealand’s position that the climate change treaty regime is not *lex specialis* and does not displace general international law, including the law of state responsibility. Therefore, New Zealand does not consider it necessary for the Court to have recourse to the interpretative declarations referred to in Judge Charlesworth’s question.



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<sup>1</sup> As for the detailed requirements of customary international law, see ILC, ‘Draft Conclusions on the Identification of Customary International Law, with Commentaries’ (2018) UN Doc A/73/10.

<sup>2</sup> See e.g. Written Statement of Canada, para. 24; Written Statement of Germany, para. 104; Written Statement of Indonesia, para. 43; Written Statement of Latvia, para. 64; Written Statement of the Kingdom of Tonga, para. 244; Written Comments of the United Kingdom, para. 53; Written Statement of the United States of America, para. 4.39.

<sup>3</sup> See e.g. Written Comments of Australia, para. 4.18; Written Statement of the European Union, paras. 258-263; Written Comments of the European Union, para. 85; Written Statement of Vanuatu, para. 379.