

INTERNATIONAL COURT OF JUSTICE

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

Written Replies of the  
Republic of the Philippines

20 December 2024

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### Question of 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?”*

### Reply of the Republic of the Philippines:

1. States within whose jurisdiction fossil fuels are produced have obligations under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.
2. For those States that are Parties to the UN Framework Convention on Climate Change (UNFCCC)<sup>1</sup> and its Paris Agreement,<sup>2</sup> their obligations under international law stem primarily (but not exclusively) from these international law instruments.
3. Under Article 4, paragraph 1 of the UNFCCC, “[a]ll Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall”, inter alia:

“(a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12 [of the UNFCCC], national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;

“(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

“(c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors.”

4. Taken together, the commitments above oblige State Parties to the UNFCCC to protect the climate system from anthropogenic greenhouse gas emissions through, inter alia: (1) having national inventories of anthropogenic greenhouse gas emissions; (2) having national programmes containing measures to mitigate climate change by addressing anthropogenic

<sup>1</sup> UNFCCC, at [https://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf)

<sup>2</sup> Paris Agreement, at [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf)

emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol; and (3) working together with other States in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors.” As clearly indicated in the chapeau of this provision, these obligations apply to “all” States that are Parties of the UNFCCC, including those within whose jurisdiction fossil fuel production occurs; that is, Article 4, paragraph 1, of the UNFCCC does not make any distinction between UNFCCC Parties within whose jurisdiction fossil fuels are produced and those that do not have such production with respect to the applicability of the provisions that create obligations to reduce domestic anthropogenic greenhouse gas emissions.

5. Additionally, under Article 4, paragraph 2(a) of the UNFCCC, specifically for States that are Parties of the UNFCCC which are “developed country Parties and other Parties included in Annex I [of the UNFCCC],” they have specific treaty commitments to “adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs.” This specific obligation applies only to all such States that are Parties to the UNFCCC which are included in Annex I of the UNFCCC, including those within whose jurisdiction fossil fuel production occurs.
6. It should be noted that under Article 4, paragraph 7, of the UNFCCC, “the extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.”<sup>3</sup>
7. Furthermore, with respect to the implementation of the commitments under Article 4 of the UNFCCC, the Parties, under Article 4, paragraph 8(h) of the UNFCCC, “shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on: ... (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products ...”, with such consideration to be taken through appropriate actions that the Conference of the Parties of the UNFCCC may decide upon. Furthermore, under Article 4, paragraph 10, of the UNFCCC, the Parties “shall, in accordance with Article 10 [of the UNFCCC], take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing State Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably

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<sup>3</sup> The commitments of developed country Parties under the Convention related to financial resources and transfer of technology are set out in Article 4, paragraphs 3, 4 and 5 of the UNFCCC. The developed country Parties that have such commitments to provide finance and technology under these provisions are those Parties included in Annex II of the UNFCCC.

to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.” Article 4, paragraphs 8(h) and 10 of the UNFCCC therefore mandate the Parties to take into consideration the situation of, inter alia, fossil fuel production-dependent States, particularly developing States, in the implementation of commitments under the UNFCCC. Doing so, however, is not unilateral; rather, such consideration is to be made through the deliberations and decisions of the Conference of the Parties, as clearly indicated in these cited provisions.

8. Read together, Article 4, paragraphs 1(a) to (c), 2(a), 7, 8(h), and 10 of the UNFCCC lay out the treaty law obligations of States that are Parties to the UNFCCC in whose jurisdictions fossil fuels are produced to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases in a manner that is consistent with Article 3, paragraph 1 thereof, which states that:

“In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

“1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.”

9. Article 4, paragraph 1(a) to (c) of the UNFCCC provide key common obligations of “all Parties” relating to mitigation actions. Article 4, paragraph 2(a) of the UNFCCC states a specific obligation of “developed country Parties and other Parties included in Annex I” of the UNFCCC to limit their anthropogenic emissions of greenhouse gases. Article 4, paragraphs 8(h) and 10 of the UNFCCC provide a mandate for the Parties through the Conference of the Parties of the UNFCCC to consider how the specific needs, concerns and situation of those States, in particular developing States, that are fossil fuel production-dependent, among others, could be addressed through the provision of finance and technology transfer. In this context, Article 4, paragraph 7 of the UNFCCC is extremely important because it makes clear that the extent to which developing State Parties implement their commitments under the UNFCCC depends on the effective implementation by developed State Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing State Parties.
10. In this regard, reading Article 4, paragraphs 1(a) to (c), 2(a), 7, 8(h), and 10 of the UNFCCC together in responding to Judge Cleveland’s question, developed State Parties and other Parties included in Annex I of the UNFCCC, including those that may be producing fossil fuels within their jurisdictions (such as, but not limited to, the United States, the United Kingdom, Norway, France, Canada, Australia) have to take the lead in limiting their anthropogenic emissions of

greenhouse gases, including having national greenhouse gas inventories and undertaking domestic mitigation measures and programmes. The developing State Parties, on the other hand, including those that may be producing fossil fuels within their jurisdictions, have to put in place domestic mitigation measures and programmes to the extent that they have the resources to do so, including such financial and technological resources as may be provided by developed State Parties included in Annex II of the UNFCCC.

11. The Paris Agreement has added another dimension to these UNFCCC obligations, given that the Paris Agreement's purpose under the chapeau of Article 2, paragraph 1, of the Paris Agreement is "enhancing the implementation of the Convention." Going directly to how the Paris Agreement seeks to enhance the implementation of, inter alia, the UNFCCC's provisions relating to mitigation to be undertaken by States, including especially those within whose jurisdictions fossil fuels are produced, i.e., Article 4, paragraphs 1(a) to (c) and 2(a) in the context of Article 4, paragraphs 7, 8(h) and 10 of the UNFCCC, the relevant provisions that lay out mitigation obligations for Parties to the Paris Agreement to enhance their implementation of their mitigation obligations under the UNFCCC would be Article 4, paragraphs 2 and 4 of the Paris Agreement.
12. Under Article 4, paragraph 2 of the Paris Agreement, "each Party" to the Paris Agreement is obliged to "prepare, communicate and maintain successive nationally determined contributions that it intends to achieve" and "shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions." This obligation requires such State Parties to incorporate domestic measures to reduce anthropogenic emissions of greenhouse gases as part of the nationally determined contributions (NDCs) that they are required to prepare, communicate and maintain as Parties to the Paris Agreement. This obligation applies to all States that are Parties to the Paris Agreement, including those within whose jurisdiction fossil fuel production occurs.
13. The manner whereby such obligation under Article 4, paragraph 2 of the Paris Agreement is to be implemented is guided by Article 4, paragraph 4 of the Paris Agreement, which states that "[d]eveloped country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances."
14. The NDCs that all Parties to the Paris Agreement are required to prepare, communicate and maintain under Article 4, paragraph 2, of the Paris Agreement are, according to Article 3 of the Paris Agreement, "with the view to achieving the purpose of this Agreement as set out in Article 2."
15. Article 2 of the Paris Agreement in its entirety states as follows:
  - "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) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

“(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

“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.”

16. Read together, Article 4, paragraphs 2 and 4, in relation to Articles 2 and 3, of the Paris Agreement set out the obligation for Paris Agreement Parties to pursue domestic mitigation measures that will contribute to achieving the goals set out in Article 2 of the Paris Agreement, with such measures to be differentiated between developed States and developing States on the basis of Article 4, paragraph 4 of the Paris Agreement. This obligation would apply to all Parties to the Paris Agreement, including those States within whose jurisdiction fossil fuel production occurs.
17. However, according to the United Nations Environment Programme (UNEP), in its 2023 Production Gap Report, planned fossil fuel production by States exceeded levels consistent with meeting the Paris Agreement temperature goals, given that “governments plan to produce around 110% more fossil fuels in 2030 than would be consistent with limiting warming to 1.5°C, and 69% more than would be consistent with 2°C.”<sup>4</sup> This is an important data point because, according to the Intergovernmental Panel on Climate Change’s (IPCC) Sixth Assessment Report, “[g]lobal net anthropogenic GHG emissions have been estimated to be 59 ± 6.6 GtCO<sub>2</sub>-eq<sup>9</sup> in 2019, about 12% (6.5 GtCO<sub>2</sub>-eq) higher than in 2010 and 54% (21 GtCO<sub>2</sub>-eq) higher than in 1990, with the largest share and growth in gross GHG emissions occurring in CO<sub>2</sub> from fossil fuels combustion and industrial processes (CO<sub>2</sub>-FFI).”<sup>5</sup>
18. Hence, in the context of implementing the mitigation-related obligations under the UNFCCC and its Paris Agreement as discussed above, it is important to note that the best available scientific assessments regarding the role of fossil fuel production in the anthropogenic emission of greenhouse gases highlight the need to reduce and eventually eliminate such production. Doing so would entail having States reduce fossil fuel production and use within their jurisdiction as part of the domestic mitigation measures that need to be incorporated in

<sup>4</sup> UNEP, Production Gap Report 2023, at <https://www.unep.org/resources/production-gap-report-2023>

<sup>5</sup> IPCC, AR6 Synthesis Report: Summary for Policymakers, para. A.1.4, at [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)

their NDCs in compliance with their mitigation obligations under the Paris Agreement and the UNFCCC to meet Paris Agreement goals and the objective of the UNFCCC.

19. To reach net zero CO<sub>2</sub> and GHG emissions levels that would be consistent with the Paris Agreement goals and the objective of the UNFCCC, global modelled mitigation pathways assessed by the IPCC “include transitioning from fossil fuels without carbon capture and storage (CCS) to very low- or zero-carbon energy sources, such as renewables or fossil fuels with CCS, demand-side measures and improving efficiency, reducing non-CO<sub>2</sub> GHG emissions, and CDR.”<sup>6</sup> And the IPCC has noted that “[n]et zero CO<sub>2</sub> energy systems entail: a substantial reduction in overall fossil fuel use, minimal use of unabated fossil fuels, and use of carbon capture and storage in the remaining fossil fuel systems; electricity systems that emit no net CO<sub>2</sub>; widespread electrification; alternative energy carriers in applications less amenable to electrification; energy conservation and efficiency; and greater integration across the energy system.”<sup>7</sup>
20. In a decision relevant to this discussion, the Parties to the Paris Agreement, acting through the Conference of the Parties Meeting as the Parties to the Paris Agreement (CMA) at its fifth session held in Dubai, UAE, in December 2023, recognized in its Decision 1/CMA.5, paragraph 28, “the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5 °C pathways” and called on Parties “to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches:

“(a) Tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030;

“(b) Accelerating efforts towards the phase-down of unabated coal power;

“(c) Accelerating efforts globally towards net zero emission energy systems, utilizing zero- and low-carbon fuels, well before or by around mid-century;

“(d) Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science;

“(e) Accelerating zero- and low-emission technologies, including, inter alia, renewables, nuclear, abatement and removal technologies such as carbon capture and utilization and storage, particularly in hard-to-abate sectors, and low-carbon hydrogen production;

“(f) Accelerating the substantial reduction of non-carbon-dioxide emissions globally, in particular methane emissions by 2030;

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<sup>6</sup> IPCC, AR6 Synthesis Report: Summary for Policymakers, para. B.6.3, at [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)

<sup>7</sup> IPCC, AR6 Synthesis Report: Summary for Policymakers, para. C.3.2, at [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)



“(g) Accelerating the reduction of emissions from road transport on a range of pathways, including through development of infrastructure and rapid deployment of zero- and low-emission vehicles;

“(h) Phasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible.”<sup>8</sup>

21. Hence, as discussed above, States that are Parties to the UNFCCC and its Paris Agreement have the obligation to undertake domestic mitigation measures to reduce anthropogenic greenhouse gas emissions, consistently with the principle of common but differentiated responsibilities and respective capabilities, in light of national circumstances, with developed States taking the lead in undertaking economy-wide absolute emission reduction targets, including by undertaking nationally determined efforts to contribute to global greenhouse gas emission reduction efforts such as those indicated in Decision 1/CMA.5, paragraph 28, of the CMA.

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<sup>8</sup> UNFCCC, Decision 1/CMA.5, paragraph 28, at [https://unfccc.int/sites/default/files/resource/cma2023\\_16a01E.pdf](https://unfccc.int/sites/default/files/resource/cma2023_16a01E.pdf)

## Question of 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?"*

## Reply of the Republic of the Philippines:

1. The object and purpose of the UNFCCC and its related legal instruments, including the Paris Agreement, is to prevent dangerous anthropogenic interference with the climate system, based on States' common but differentiated responsibilities and respective capabilities.

2. Article 2 of the UNFCCC states its objective as follows:

"The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, 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."

3. The purpose of the Paris Agreement is set out in its Article 2 as follows:

"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) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

“(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

“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.”

4. As can be clearly seen, as a related legal instrument to the UNFCCC adopted by the Conference of the Parties of the UNFCCC pursuant to Article 9, paragraph 2 thereof, the Paris Agreement is an instrument that is intended to enhance the implementation of the UNFCCC. Therefore, the Paris Agreement’s purpose and provisions have to be read, understood, and implemented in a manner that is consistent with the objective, provisions and principles of the UNFCCC. This context frames how the provisions of Article 4 of the Paris Agreement should be read, interpreted and implemented.
5. As this Honorable August Chamber has long recognized, the object and purpose of a treaty serve to guide the interpretation and application of treaty obligations. In its 1951 Advisory Opinion on Reservations to the Genocide Convention,<sup>9</sup> the Court stated that “[i]t is also a generally recognized principle that a multilateral convention is the result of an agreement freely concluded upon its clauses and that consequently none of the contracting parties is entitled to frustrate or impair, by means of unilateral decisions or particular agreements, the purpose and *raison d’être* of the convention.”<sup>10</sup> Applying this long-held principle to the instant case with respect to the Paris Agreement, it follows then that interpretation and implementation of the provisions of the Paris Agreement, including Article 4 thereof, must be consistent with the Agreement’s purpose and object as set out in Articles 2 and 3 thereof, respectively.
6. This approach is fully consistent with Article 31(1) of the 1969 Vienna Convention on the Law of Treaties<sup>11</sup> (VCLT) which requires 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 the light of its object and purpose.” Thus, while the language of Article 4 emphasizes procedure, its context within the Paris Agreement and the object and purpose of the Paris Agreement as indicated in Articles 2 and 3 thereof implies that the Parties to the Paris Agreement have substantive commitments to undertake mitigation efforts. This approach requires viewing procedural obligations (e.g., preparing and submitting NDCs) as inherently linked to the Agreement’s goals, object, and purpose. Furthermore, Article 31(3)(c) of the VCLT requires that when interpreting a treaty, “relevant rules of international law applicable to the relations between the parties” shall be taken into account, together with the context. This means that substantive provisions of the Paris Agreement and the UNFCCC can be considered as such “relevant rules of international law applicable to the relations between the parties,” and, hence, must be taken into account when interpreting Article 4 of the Paris Agreement.

<sup>9</sup> ICJ, Advisory Opinion on Reservations to the Genocide Convention (1951), at <https://www.ici-cij.org/sites/default/files/case-related/12/012-19510528-ADV-01-00-EN.pdf>

<sup>10</sup> ICJ, Advisory Opinion on Reservations to the Genocide Convention (1951), p. 10, at <https://www.ici-cij.org/sites/default/files/case-related/12/012-19510528-ADV-01-00-EN.pdf>

<sup>11</sup> UN, 1969 Vienna Convention on the Law of Treaties, at [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

7. Article 4 of the Paris Agreement contains certain “procedural” obligations for Parties, as follows:

“2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

...

“8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement.

“9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14.

...

“13. Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

8. However, these “procedural” obligations are not stand-alone provisions. Their interpretation and implementation are linked to the substantive provisions contained in the Paris Agreement, including within Article 4 itself and the other provisions of the Paris Agreement to which Article 4 is linked.
9. Article 4 of the Paris Agreement is intended to operationalize Article 3 of the Paris Agreement which sets out what Paris Agreement Parties are committed to undertake and communicate as their nationally determined contributions (NDCs) to the global response to climate change referred to in Article 2 of the Paris Agreement. Under Article 3 of the Paris Agreement, these NDCs are “ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.” Various provisions of Article 4 of the Paris Agreement, i.e., paragraphs 2, 3, 8, 9, and 13 thereof, then set out certain

procedural obligations for Parties with respect to the preparation, communication, maintenance and content of these NDCs; while other paragraphs, such as paragraphs 1, 4, 14, and 15 of Article 4, outline some key considerations that Parties may take into account when preparing, communicating and maintaining their NDCs.

10. In short, the procedural obligations under Article 4 (e.g., submission of NDCs) are the means through which Parties contribute to the achievement of the substantive goals set out in Article 2 of the Paris Agreement and the objective set out in Article 2 of the UNFCCC, including through, for example, the substantive obligation in Article 4, paragraph 2's second sentence that "Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions" and the substantive obligation in Article 4, paragraph 3, of the Paris Agreement that "[e]ach Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."
11. Together, the provisions of Article 4 of the Paris Agreement, both those of a procedural nature and those of a substantive character, aim to progressively align national actions with the substantive purpose, object and goals of the Paris Agreement under Articles 2 and 3 thereof, i.e., together, they ensure that the Parties' NDCs progressively increase in ambition through the use of procedural obligations (such as periodic preparation, communication and maintenance of successive NDCs) to achieve substantive outcomes that align with the Paris Agreement's overarching purpose, object and goals and the objective of the UNFCCC.

### Question of 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?”*

### Reply of the Republic of the Philippines:

1. The right to a clean, healthy, and sustainable environment is now fully a part of international law. Its existence is well established and well recognized by States. Numerous international instruments, such as UN General Assembly Resolution 76/300<sup>12</sup> and Human Rights Council Resolution 48/13,<sup>13</sup> recognize this right as universal and foundational to other human rights. The Human Rights Council resolution noted that “more than 155 States have recognized some form of a right to a healthy environment in, inter alia, international agreements or their national constitutions, legislation or policies” while the UN General Assembly resolution noted that “a vast majority of States have recognized some form of the right to a clean, healthy and sustainable environment through international agreements, their national constitutions, legislation, laws or policies.”

2. The Human Rights Council’s Resolution 48/13 states, inter alia, that the Council:

“1. Recognizes the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights;

“2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law; [and]

“3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.”

3. In its Resolution 76/300, the UN General Assembly stated that it, inter alia:

“1. Recognizes the right to a clean, healthy and sustainable environment as a human right;

“2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;

“3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral

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<sup>12</sup> UNGA, The human right to a clean, healthy and sustainable environment (A/RES/76/300, 28 July 2022), at <https://documents.un.org/doc/undoc/gen/n22/442/77/pdf/n2244277.pdf>

<sup>13</sup> Human Rights Council, The human right to a clean, healthy and sustainable environment (A/HRC/RES/48/13, 8 October 2021), at <https://documents.un.org/doc/undoc/gen/p21/289/50/pdf/p2128950.pdf>

environmental agreements under the principles of international environmental law.”

4. The right's legal content includes ensuring clean air, safe and sufficient water, healthy ecosystems, and a stable climate. It is intrinsically linked to the realization of numerous other rights, including the rights to life, health, housing, culture, and self-determination. This linkage to other human rights was highlighted by the UN General Assembly in its Resolution 76/300 in “affirming the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights” as well as by the Human Rights Council in its own Resolution 48/13 in “acknowledging the importance of a clean, healthy and sustainable environment as critical to the enjoyment of all human rights.” This right, hence, intersects with rights to life,<sup>14</sup> health,<sup>15</sup> and an adequate standard of living.<sup>16</sup> Climate change undermines these rights, making the realization of environmental rights integral to upholding broader human rights. For example, the adverse effects of climate change exacerbate threats to the right to life by increasing vulnerability to disasters and climate impacts. A polluted or degraded environment undermines physical and mental well-being as environmental conditions directly impact physical and mental well-being. The Office of the High Commissioner for Human Rights' Framework Principles on Human Rights and the Environment<sup>17</sup> explains the reciprocal relationship between environmental protection and other human rights and the consequential indivisibility of environmental rights and other human rights.
5. The right also has procedural elements relating to the right to information, public participation in environmental decision-making, and access to justice in environmental matters. This was recognized by the Human Rights Council and the UN General Assembly in their respective resolutions recognizing the right.
6. The Republic of the Philippines further submits that the right to a clean, healthy, and sustainable environment is both mutually informing and mutually reinforcing vis-à-vis the “principle of intergenerational equity.”<sup>18</sup> While the Court has yet to expressly declare the principle of intergenerational equity as customary international law, judges of this Court have already proffered that it “forms part of conventional wisdom in International Environmental Law.”<sup>19</sup>
7. The Philippines, in its Written Comment for the instant advisory proceedings, already put forward that intergenerational equity is one of the general principles of law<sup>20</sup> that can be considered as a source of GHG emissions-related obligations of States.<sup>21</sup>

<sup>14</sup> UN, International Covenant on Civil and Political Rights, Article 6, at [https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch\\_IV\\_04.pdf](https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf) and [https://treaties.un.org/PAGES/ViewDetails.aspx?chapter=4&clang=en&mtdsp\\_no=IV-4&src=TREATY](https://treaties.un.org/PAGES/ViewDetails.aspx?chapter=4&clang=en&mtdsp_no=IV-4&src=TREATY)

<sup>15</sup> UN, International Covenant on Economic, Social and Cultural Rights, Article 12, at [https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch\\_IV\\_03.pdf](https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf) and [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsp\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsp_no=IV-3&chapter=4)

<sup>16</sup> UN, International Covenant on Economic, Social and Cultural Rights, Article 11, at [https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch\\_IV\\_03.pdf](https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf) and [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsp\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsp_no=IV-3&chapter=4)

<sup>17</sup> OHCHR, Framework Principles on Human Rights and the Environment (2018), at <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

<sup>18</sup> See *Legality of the Threat or Use of Nuclear Weapons*, I.C.J. Reports 1996, p. 226, Dissenting Opinion of J. Weeramantry.

<sup>19</sup> See *Pulp Mills (Argentina v. Uruguay)*, I.C.J. Reports, 2010, p. 14, Separate Opinion of J. Cancado Trindade, para. 122.

<sup>20</sup> Statute of the International Court of Justice, Article 38(1)(c).

<sup>21</sup> See *Obligation of States in Respect of Climate Change*, Written Comment of the Republic of the Philippines, at para. 93.

8. In its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, this Court described the environment as spanning “the living space, the quality of life and the very health of human beings, including generations unborn.”<sup>22</sup> This pronouncement recognizes that the concept of the environment is inter-temporal, that is, any discussion of State obligation towards or in relation to the environment should include the past, the present, and the future. Inevitably, future generations while yet to be born must necessarily be included in the legal discourse that is happening at present – including in the assessment of the legal content of the right to a clean, healthy, and sustainable environment.
  
9. In addition to the substantive and procedural elements, then, the right to a clean, healthy, and sustainable environment also necessarily includes the inter-temporal dimension. The stable climate that States owe to individuals because of their right to a clean, healthy, and sustainable environment should extend to unborn generations.

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<sup>22</sup> *Legality of the Threat or Use of Nuclear Weapons*, I.C.J. Reports 1996, p. 226, para. 29.



### Question of 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?"*

### Reply of the Republic of the Philippines:

1. The Republic of the Philippines is among the States that made a declaration upon its accession to the Paris Agreement. In its declaration, the Philippines stated as follows:<sup>23</sup>

"THAT it is the understanding of the Government of the Republic of the Philippines that its accession to and the implementation of the Paris Agreement shall in no way constitute a renunciation of rights under any local and international laws or treaties, including those concerning State responsibility for loss and damage associated with the adverse effects of climate change;

"THAT, the accession to and implementation of the Paris Agreement by the Republic of the Philippines is for the purpose of supporting the country's national development objectives and priorities such as sustainable industrial development, the eradication of poverty and provision of basic needs, and securing social and climate justice and energy security for all its citizens."

2. Twenty-one Parties to the Paris Agreement, including the Philippines, made declarations upon their ratification, acceptance, approval or accession to the Paris Agreement<sup>24</sup> Of these, eight small island development States (Cook Islands, Marshall Islands, Federated States of Micronesia, Nauru, Nieu, Solomon Islands, Tuvalu, Vanuatu) plus the Philippines made declarations that, in essence, stated that their acceptance of the Paris Agreement and its application does not constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Paris Agreement can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation due to the impacts of climate change.
3. Such explicit and clear declarations highlight that the UNFCCC and its Paris Agreement do not constitute a *lex specialis* treaty regime that excludes the application of general rules of State responsibility. The declarations confirm that States have not waived or limited their rights to seek remedies for wrongful conduct by States causing global warming as a result of non-compliance with their international law obligations to prevent transboundary environmental harm, whether such obligations arise from customary international law principles (such as the "no harm" rule coming from the Trail Smelter Arbitration and the ICJ's Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons) or from other treaties.

<sup>23</sup> See UN Treaty Collection, Paris Agreement, at [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsp\\_no=xxvii-7-d&chapter=27&clang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsp_no=xxvii-7-d&chapter=27&clang=en) for the declarations made by the Republic of the Philippines.

<sup>24</sup> See UN Treaty Collection, Paris Agreement, at [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsp\\_no=xxvii-7-d&chapter=27&clang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsp_no=xxvii-7-d&chapter=27&clang=en) for the declarations made by these Parties.

4. These declarations that were made by States upon their ratification or accession of the Paris Agreement should be considered as interpretive declarations that clarify how the declaring States view their obligations as they do not derogate from treaty provisions or the object and purpose of the treaty. These declarations are hence not reservations within the meaning of the Vienna Convention on the Law of Treaties (see Articles 19 to 22 thereof), particularly since Article 27 of the Paris Agreement does not allow any reservations to be made to the Paris Agreement (Article 24 of the UNFCCC likewise does not allow any reservations to be made to the UNFCCC). It should be assumed that the declaring States were aware of Article 27 of the Paris Agreement that no reservations could be made thereto and that they, therefore, did not intend to have their declarations be construed as being reservations.
  
5. Hence, these declarations ensure that States' obligations under general international law remain intact and co-exist with States' obligations under treaties such as the UNFCCC and its Paris Agreement unless explicitly stated otherwise in the treaties. These declarations emphasize that the UNFCCC and Paris Agreement operate alongside customary international law principles, including the no harm rule and State responsibility for transboundary harm, particularly since liability for transboundary harm remains a cornerstone of customary international law, even where explicit compensation mechanisms are absent. Customary international law, as affirmed in the Trail Smelter Arbitration and ICJ jurisprudence, establishes liability for transboundary harm even in the absence of explicit treaty mechanisms.

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