

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)



Saint Vincent and the Grenadines' Replies to Questions



December 20, 2024

Introduction

The proceedings focus on a composite act: the large-scale, long-term anthropogenic emissions of greenhouse gases by certain States, conducted with knowledge of their harmful effects since at least the 1960s. This conduct has caused substantial harm, disproportionately affecting vulnerable States and peoples least responsible for climate change. The wrongful conduct violates several international obligations, including self-determination, as massive emissions undermine the territorial integrity and survival of States, particularly Small Island Developing States (SIDS), contravening the right of peoples to self-determination; the principle of prevention and due diligence, as States are obligated to prevent harm beyond their jurisdiction or control, as affirmed in the *Trail Smelter Arbitration* and *Pulp Mills on the River Uruguay* case; and human rights obligations, as the adverse impacts of climate change violate the right to life, health, and an adequate standard of living under instruments such as the ICCPR and ICESCR.

The “ultimate objective” of the UNFCCC—stabilising greenhouse gas concentrations to prevent dangerous interference with the climate system—has not been met. The Paris Agreement’s call to “enhance implementation” highlights the ongoing failure of responsible States to fulfil their obligations. This failure exacerbates harm, necessitating urgent action and accountability. They are constituents of the broader international regime and work in tandem with all aspects of international law to create a holistic framework to tackle climate change.

Given the breach of international obligations, the law of State responsibility is engaged. Responsible States must cease wrongful conduct, with immediate and substantial reductions in greenhouse gas emissions required to halt further harm; provide guarantees of non-repetition, with mechanisms implemented to prevent recurrence of harmful emissions; and make full reparation, including restitution to restore the climate system to the extent possible, compensation for monetary remedies for losses and damages incurred, and satisfaction through acknowledgment of responsibility and assurances of compliance.

The escalating loss and damage caused by dangerous climate interference must be addressed. This is not merely a prospective issue; the wrongful conduct has already caused severe injuries.

The law of State responsibility requires rectifying historical breaches to restore compliance and ensure justice for injured States and individuals.

It is emphasised that the climate crisis involves the failure of certain States to fulfil their obligations under international law, resulting in severe harm to vulnerable populations. The principles of equity and common but differentiated responsibilities (CBDR) must guide corrective measures, ensuring that those responsible for historic emissions take immediate, science-based action to mitigate harm and provide reparations. The remedies sought are essential to uphold the integrity of the international legal order and protect the rights of affected peoples.

Question put 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 to the Honourable Judge's Question

The declarations made by some States upon becoming parties to the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement—asserting that no provision in these treaties may be interpreted as derogating from principles of general international law or claims concerning compensation or liability—serve as a significant reaffirmation of the complementary nature of these treaties within the broader corpus of international law. This response elaborates on the legal and practical implications of these declarations, with particular reference to the principles of treaty law, customary international law, the law of State responsibility, and the interplay between *lex specialis* and *lex posterior derogat legi priori* doctrines.

1. Core Message: A Reaffirmation of Legal Remedies

These declarations underscore that the climate treaties do not displace or replace existing obligations or remedies under general international law. Rather, they clarify that:

- Participation in these treaties does not constitute a waiver of States' rights to pursue reparations for harm caused by climate change.
- All harm attributable to conduct contributing to climate change remains subject to remedial measures, including cessation, non-repetition, and compensation, as articulated in international law.

2. Treaty Law Considerations

Under Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT), treaties are to be interpreted in good faith in accordance with the ordinary meaning of their terms, their context, and their object and purpose. The UNFCCC and Paris Agreement aim to combat climate change collectively, with an emphasis on cooperation, equity, and differentiated responsibilities. However, declarations serve as unilateral expressions of intent under Article 19 of the VCLT, provided they do not undermine the purpose of the treaty.

These declarations explicitly preserve the applicability of general international law, which includes principles of State sovereignty, jurisdiction, and responsibility, as well as claims for harm caused by internationally wrongful acts. Their inclusion signals that parties do not view the climate change treaties as exhaustive legal frameworks, thereby maintaining the relevance of broader international law.

3. Relevance of the Lex Specialis and Lex Posterior Principles

The *lex specialis* principle posits that specialised legal regimes prevail over more general ones in their specific domain, while *lex posterior derogat legi priori* suggests that newer laws may override older ones. These principles, however, are inapplicable in the context of the climate regime, as the UNFCCC, Kyoto Protocol, and Paris Agreement must work in tandem with general international law:

- **Complementary Frameworks:** The climate treaties do not replace general international law but exist alongside it, supplementing its principles. For instance, obligations under the treaties do not negate broader rules such as the no harm rule or the right to a remedy protected under international human rights law.
- **Interconnected Obligations:** Both treaty-based and general law mechanisms are essential to addressing the multifaceted challenges posed by climate change, reinforcing the indivisibility of the international legal order.

4. Customary International Law and State Responsibility

The declarations affirm the continued relevance of customary principles, including:

- **The No Harm Rule:** This foundational principle requires States to prevent transboundary environmental harm, particularly significant in addressing the global nature of climate change.
- **State Responsibility:** Under the International Law Commission’s Articles on State Responsibility, conduct causing harm to the climate system or the environment is unlawful, and legal consequences—including full reparation—are triggered.

5. Significance for Remedies and Compensation

The declarations emphasise that:

- Specialised mechanisms within the climate treaties, such as compliance mechanisms or climate finance funds, are complementary and do not diminish the obligation of responsible States to provide full reparation under general international law.
- Remedies such as cessation, guarantees of non-repetition, and compensation remain integral to ensuring accountability for climate-related harm.

6. Implications for Human Rights Law and Broader Obligations

The declarations highlight that remedies for climate harm intersect with international human rights law, which protects the right to a remedy. Climate change disproportionately impacts vulnerable communities, particularly in Small Island Developing States (SIDS), making the

preservation of legal claims for compensation and liability a critical tool for safeguarding human rights and achieving climate justice.

6. Practical and Normative Impact

These declarations serve multiple purposes:

- **Legal Clarity:** They provide assurance that participation in climate treaties does not foreclose access to broader remedial mechanisms under international law.
- **Reinforcement of Accountability:** By confirming the unlawfulness of harmful conduct under general international law, they strengthen the legal basis for pursuing reparations.
- **Equity and Justice:** Particularly for vulnerable States, these declarations affirm their right to demand accountability and seek remedies for climate-related damage, preserving principles of equity.

Conclusion

The declarations made by States upon joining the UNFCCC, Kyoto Protocol, and Paris Agreement reaffirm the indivisibility and complementarity of international legal frameworks in addressing the adverse effects of climate change. These treaties, far from supplanting general international law, operate within it, ensuring that principles such as State responsibility, the no harm rule, and the right to a remedy remain fully applicable. The inapplicability of *lex specialis* and *lex posterior* arguments reinforces the integrated nature of the climate regime, affirming that all harm caused by climate change remains subject to the full range of remedial measures under international law. This approach ensures coherence, accountability, and justice in the fight against climate change.

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?”

Introduction

The Honourable Judge’s question invites reflection on whether the “object and purpose” of the Paris Agreement and the broader climate change treaty framework impact the interpretation of Article 4 of the Paris Agreement, which governs Nationally Determined Contributions (NDCs). This response argues that the object and purpose of the Paris Agreement and its predecessor, the UNFCCC, are foundational to interpreting Article 4. While the obligations related to NDCs may appear procedural, they are inextricably linked to substantive obligations under the climate change regime and general international law.

1. Object and Purpose of the Climate Change Framework

The object and purpose of the UNFCCC, as set out in its Article 2, is to achieve stabilisation of greenhouse gas concentrations to prevent dangerous anthropogenic interference with the climate system. This goal is underpinned by the principles of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC).

The Paris Agreement builds upon this objective. Its chapeau to Article 2 explicitly states that its purpose is to enhance the implementation of the UNFCCC, including by limiting global temperature increases to well below 2°C and pursuing efforts to limit the increase to 1.5°C. Furthermore:

- The inclusion of **loss and damage** in Article 8 acknowledges that the effects of climate change are already being felt, necessitating mitigation, adaptation, and reparation measures.
- The reference to sustainable development and poverty eradication emphasises the need for equitable and effective action, particularly for vulnerable countries such as Small Island Developing States (SIDS).

2. Interpreting Article 4 in Light of Object and Purpose

While Article 4 of the Paris Agreement establishes procedural obligations, such as the preparation, communication, and maintenance of NDCs, these obligations cannot be understood in isolation. They must be interpreted in light of the overarching object and purpose of the Agreement and the UNFCCC:

- **Procedural Obligations with Substantive Goals:** The procedural steps outlined in Article 4 are intended to operationalise the substantive objectives of the Paris Agreement. NDCs are tools for achieving the Agreement's temperature goals, meaning that States' procedural obligations are inseparable from their substantive obligation to reduce emissions.
- **Imperative for Ambition:** The requirement for each successive NDC to represent a progression beyond the previous one (Article 4.3) reflects the need for increasingly ambitious climate action, consistent with the Agreement's object and purpose.

3. Impact of the Object and Purpose

The object and purpose of the Paris Agreement exert a significant influence on the interpretation of Article 4 in several ways:

- **Substantive Breaches and Corrective Action:** The persistent failure to meet the overarching objective of stabilising the climate system, as evidenced by rising global emissions and the resulting loss and damage, must inform the interpretation of NDC-related obligations. Procedural obligations under Article 4 must be seen as mechanisms to rectify this ongoing breach and ensure compliance with the substantive obligations under the UNFCCC and Paris Agreement.
- **Responsibility of Developed States:** The principle of CBDR-RC implies that developed States, as historical contributors to climate change, bear a heightened obligation to ensure their NDCs reflect ambitious and immediate emission reductions, as well as to provide finance, technology transfer, and capacity-building to developing States.

4. Legal Principles and Interpretative Approaches

The Vienna Convention on the Law of Treaties (VCLT) provides a framework for treaty interpretation, requiring that treaties be interpreted in good faith, in accordance with the ordinary meaning of their terms, in context, and in light of their object and purpose (Article 31). Applying this approach to Article 4:

- **Ordinary Meaning:** While the text of Article 4 outlines procedural obligations, its context and purpose confirm that these obligations are designed to achieve substantive outcomes.
- **Systemic Integration:** Article 31(3)(c) of the VCLT requires that treaties be interpreted in harmony with relevant rules of international law. Thus, Article 4 must be read alongside principles of State responsibility and international environmental law, including the “no harm” rule, which prohibits transboundary harm and necessitates cessation and reparation.

5. Conclusion

The object and purpose of the Paris Agreement and the broader climate change treaty framework are central to the interpretation of Article 4. While procedural in nature, the obligations related to NDCs are tools for achieving the substantive goals of stabilising the climate system and preventing dangerous climate change. These obligations must be interpreted as requiring ambitious, science-based, and equity-driven action to correct ongoing breaches of the climate regime and ensure compliance with its overarching objectives. The principles of equity, CBDR-RC, and systemic integration reinforce this interpretation, ensuring coherence between procedural mechanisms and substantive outcomes in the fight against climate change.

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