

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
(REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY FOR AN
ADVISORY OPINION)

WRITTEN REPLIES TO QUESTIONS

**THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND**

20 DECEMBER 2024

TABLE OF CONTENTS

I. QUESTION PUT BY JUDGE CLEVELAND1

II. QUESTION PUT BY JUDGE TLADI.....3

III. QUESTION PUT BY JUDGE AURESCU5

IV. QUESTION PUT BY JUDGE CHARLESWORTH6

I. QUESTION PUT BY JUDGE CLEVELAND

1. In response to the question put by Judge Cleveland, the position of the United Kingdom ('UK') is that the Paris Agreement, through the obligation on Parties to inform, update and enhance their nationally determined contributions ('NDCs') by reference to the outcome of the global stocktake, contains specific requirements for 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*", including with respect to subsidies.
2. While fossil fuel production and subsidies are not expressly addressed in the Paris Agreement, the outcome of the first global stocktake, adopted by the Conference of the Parties to the Paris Agreement ('CMA') in Decision 1/CMA.5 at COP28 in 2023, calls on Parties to contribute to global efforts, "*in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches*",¹ including, *inter alia*, by:
 - 2.1. "*[t]ransitioning 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*";² and
 - 2.2. "*[p]hasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible*".³
3. The outcome of the global stocktake is to inform each Party's NDCs.⁴ Each Party is required by Article 4(9) of the Paris Agreement to communicate its NDCs in accordance

¹ UNFCCC, Decision 1/CMA.5 (13 December 2023) UN Doc FCCC/PA/CMA/2023/16/Add.1 ('**Decision 1/CMA.5**'), para. 28.

² Decision 1/CMA.5, para. 28(d).

³ Decision 1/CMA.5, para. 28(h).

⁴ Oral submissions of UK, CR 2024/48, p. 46 (para. 22(a)) (Hermer); Written Statement of the United Kingdom of Great Britain and Northern Ireland, 18 March 2024 ('**UK Written Statement**'), para. 82; Written Comments of the United Kingdom of Great Britain and Northern Ireland, 12 August 2024 ('**UK Written Comments**'), para. 26. See also oral submissions of Australia, CR 2024/36, pp. 40-41 (paras. 3-4) (Donaghue); Bahamas, CR 2024/36, p. 62 (paras. 22-23) (Blake); Denmark, Finland, Iceland, Norway and Sweden, CR 2024/39, pp. 46-47 (paras. 8-14) (Jervell); International Union for the Conservation of Nature ('**IUCN**'), CR 2024/54, p. 33 (para. 25) (Voigt).

with any relevant CMA decisions and “*informed by the outcomes of the global stocktake referred to in Article 14*”. Article 14(3) further provides that “[t]he outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.”

II. QUESTION PUT BY JUDGE TLADI

4. In response to the question put by Judge Tladi, the UK emphasises the following two points.
5. **First**, the UK’s position is that Article 4 of the Paris Agreement contains procedural and substantive obligations.⁵ The fact that the relevant obligations are, for the most part, ‘obligations of conduct’ rather than ‘obligations of result’ does not mean that the obligations are not substantive. In its submissions to the Court, the UK advanced a good faith interpretation of the core obligations under the Paris Agreement pursuant to which those obligations are robust and meaningful, such that compliance with them is capable of generating serious change.⁶
6. By way of illustration, Article 4(2) imposes a procedural obligation on every Party to prepare, communicate and maintain successive NDCs to the global response to climate change.⁷ However, Article 4(2) goes further, and provides that States must “*intend to achieve*” their NDCs,⁸ and must pursue domestic mitigation measures with the aim of achieving the objectives of their NDCs.⁹ These are obligations of conduct that are governed by a due diligence standard.¹⁰ Article 4(3) goes even further, and provides that a Party’s NDC must objectively represent a progression beyond its previous one, and objectively reflect the Party’s highest possible ambition.¹¹ This is a substantive obligation which must be carried out in good faith, and by reference to “*best available science*” (*per* Article 4(1)).¹²

⁵ See oral submissions of Comoros, CR 2024/51, p. 65 (para. 10) (Ntwari); IUCN, CR 2024/54, p. 33 (para. 23) (Voigt); Timor-Leste, CR 2024/51, pp. 30 (para. 10), 32 (paras. 17, 20) (Sthoeger).

⁶ Oral submissions of UK, CR 2024/48, pp. 43-44 (paras. 13-16) (Hermer). *Contra* oral submissions of Antigua and Barbuda, CR 2024/36, p. 17 (para. 6) (Phillips); Bangladesh, CR 2024/36, p. 68 (para. 7) (Akhavan); Saint Lucia, CR 2024/48, p. 63 (para. 11) (Wilson); Seychelles, CR 2024/49, pp. 45-46 (paras. 2, 6) (Thouvenin).

⁷ UK Written Comments, paras. 22.1-22.3.

⁸ UK Written Comments, paras. 22.4-22.5.

⁹ UK Written Comments, para. 23.

¹⁰ Oral submissions of UK, CR 2024/48, p. 45 (paras. 17(a), 18) (Hermer).

¹¹ Oral submissions of UK, CR 2024/48, pp. 45-46 (para. 19) (Hermer); UK Written Comments, paras. 24-27.

¹² Oral submissions of UK, CR 2024/48, pp. 45-46 (para. 19) (Hermer); UK Written Comments, para. 27.2.

7. **Second**, the UK's position is that Article 4 must be interpreted in the light of the object and purpose of the Paris Agreement, including, in particular, the objectives set out in Article 2, to which Article 4(1) expressly refers.¹³ In particular, the obligations in Article 4 must be interpreted by reference to the long-term temperature goal set out in Article 2. That temperature goal, although not a concrete legal obligation of result, records the Parties' collective object and purpose. It is a relevant factor which informs the assessment of measures that should be included in a Party's NDC to comply with the obligation in Article 4(3).

¹³ UK Written Comments, paras. 15-20.

III. QUESTION PUT BY JUDGE AURESCU

8. In response to the question put by Judge Aurescu, the UK refers to its position, set out in its Written Comments, that there is no existing customary international law right to a clean, healthy and sustainable environment.¹⁴

¹⁴ UK Written Comments, para. 53.

IV. QUESTION PUT BY JUDGE CHARLESWORTH

9. In response to the question put by Judge Charlesworth, the UK's understanding is that the declarations by some States to the UNFCCC¹⁵ and the Paris Agreement¹⁶ “*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*” (‘**declarations**’) do not assist the Court in answering the questions before it.
- 9.1. The UK's position, as set out in its written and oral submissions, is that the second Question is not about State responsibility. The Paris Agreement does not exclude the rules of State responsibility: breach of obligations in the Paris Agreement will entail State responsibility in the ordinary way.¹⁷
- 9.2. Insofar as the declarations may be said to concern primary “*principles of general international law*” separate from the rules of State responsibility, none of the declarations identifies any customary rule or general principle of international law from which the treaties might otherwise be said to ‘derogate’. Practice at such a high level of generality is insufficiently specific to be relevant to establishing the existence or content of any potentially applicable customary international law rule.
- 9.3. It follows that the effect of the declarations would turn on the formulation and circumstances of any claim, including the particular customary rules, general principles or treaty provisions invoked in a specific claim. Determining the effect of the declarations in any such case would raise complex issues,

¹⁵ See United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UN **Dossier No. 4**) (‘UNFCCC’), at 1771 UNTS pp. 317-318, 321 (declarations by Fiji, Kiribati, Nauru, Papua New Guinea and Tuvalu).

¹⁶ See Paris Agreement (adopted 12 December 2015, opened for signature 22 April 2016, entered into force 4 November 2016) 3156 UNTS 79 (UN **Dossier No. 16**), at 3156 UNTS pp. 94, 99, 101-105 (declarations by the Cook Islands, Marshall Islands, Micronesia, Nauru, Solomon Islands, Tuvalu and Vanuatu); UN Treaty Collection, Depositary Notification (28 October 2016), Reference C.N.807.2016.TREATIES-XXVII.7.d (declaration by Niue); UN Treaty Collection, Depositary Notification (23 March 2017), Reference C.N.149.2017.TREATIES-XXVII.7.d (declaration by the Philippines).

¹⁷ UK Written Statement, paras. 134-138; UK Written Comments, paras. 65-68; oral submissions of UK, CR 2024/48, p. 51 (para. 44) (Hermer).

including: the identification or content of any customary rule or general principle relied on; the interpretation of, respectively, the relevant declarations (which are not identically framed)¹⁸ and the treaty provisions relied on; other States' understanding of and responses to the declarations;¹⁹ the relevance if any of declarations being small in number compared to the wide membership of the treaties; the impact of subsequent practice under the treaties on their interpretation and the declarations as evidenced in, for example, decisions of the Conference of the Parties and States' ongoing cooperation, consultation and information exchange through the UNFCCC framework; and any relationship between the no-reservations clauses in the UNFCCC and the Paris Agreement and the declarations.²⁰ These issues cannot be determined in the abstract and the few participants to address them in these proceedings have done so at a high level of generality.

- 9.4. For the avoidance of doubt, the UK's position is not that the declarations have or may have no significance in claims concerning the adverse effects of climate change, but that their effect and significance would fall to be determined on a case-by-case basis based on the formulation and circumstances of the particular claim.

¹⁸ International Law Commission, 'Guide to Practice on Reservations to Treaties' (2011) UN Doc A/66/10 ('**ILC Guide to Practice**'), paras. 1.3, 1.3.1; Richard Gardiner, *Treaty Interpretation* (2nd edn, OUP 2015) ('**Gardiner**'), pp. 100-101.

¹⁹ ILC Guide to Practice, paras. 2.9.1-2.9.2, 2.9.4; Gardiner, pp. 102-104.

²⁰ UNFCCC (**UN Dossier No. 4**), Art. 24; Paris Agreement (**UN Dossier No. 16**), Art. 27. See generally Gardiner, pp. 93-112.