

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

URUGUAY

**ANSWERS TO QUESTIONS PUT BY JUDGES
CLEVELAND, TLADI, AURESCU AND CHARLESWORTH**

20 December 2024

I. Question put by Judge Cleveland

1. *“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?”*

Answer to question put by Judge Cleveland:

2. In its written submissions, Uruguay did not specifically address the particular issue of fossil fuels in the *context* of climate change. However, Uruguay considers that any action carried out by a State on the matter shall be consistent with its obligations under international law to ensure the protection of the climate system and other parts of the environment, including the duty to prevent serious or irreversible environmental damage even in the absence of full scientific certainty, in accordance with the precautionary principle, and the duty to comply with their existing obligations to mitigate GHG emissions. Uruguay respectfully refers, in this regard, to its previous submissions.
3. Uruguay further notes that, as explained in its submissions, in specific circumstances, legal consequences may also arise with respect to harm caused to the climate system or other parts of the environment as a result of acts or omissions not prohibited by international law.

II. Question put by Judge Tladi

4. *“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?”*

Answer to question put by Judge Tladi:

5. As previously stated by Uruguay in its two written submissions to the Court, Article 4 of the Paris Agreement establishes a series of binding commitments for States.
6. Particularly, the Paris Agreement provides that States have an obligation to determine and communicate their Nationally Determined Contributions (“NDCs”) and to adopt domestic mitigation measures aimed at achieving the objectives established therein, as unambiguously provided by its Article 4.2:

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.¹

7. Article 4.2 of the Paris Agreement does not prescribe the specific measures that States should include in their NDCs, nor does it bind States to achieving a specific result as regards the objectives set out in their NDCs.² However, this does not mean that States are free to choose whether to comply with their NDCs. To the contrary, NDCs must be implemented in good faith, and in accordance with the duty of care applicable under the standard of due diligence under international law.
8. In that regard, Uruguay reaffirms that “every treaty in force is binding upon the parties to it and must be performed by them in good faith”,³ as enshrined in Article 26 of the Vienna Convention on the Law of Treaties (“VCLT”), comprising a fundamental principle of international law. This was also explained by the Court in the case concerning the *Gabčíkovo-Nagymaros Project*, where the Court stated that the principle of *pacta sunt servanda* implies that “it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application”.⁴ Thus, the Court held that the principle of good faith “obliges the Parties to apply [treaties] in a reasonable way and in such a manner that its purpose can be realized”.⁵ Uruguay considers that the States’ obligations in connection with the climate system and other parts of the environment — in particular under the various climate-related treaties which the Court has been called by the General Assembly to have in “particular regard” when rendering its advisory opinion—should be assessed in light of this fundamental principle of law.
9. Furthermore, Uruguay reiterates that customary obligations concerning the protection of the environment have an *erga omnes* character, in that they are not obligations owed to one particular State but to the international community of States as a whole, and that can

¹ *Conference of the Parties, Adoption of the Paris Agreement to the United Nations Framework Convention on Climate Change* (adopted 12 December 2015, entered into force 4 November 2016) UN Doc. FCCC/CP/2015/10/Add.1 Decision 1/CP.21 (“**Paris Agreement**”), Article 4.2.

² See Written Submission of the United States of America, ¶ 3.17 (“*Although Parties have an obligation to formulate, communicate, and maintain successive NDCs, the Paris Agreement deliberately does not require Parties to achieve their NDCs*”).

³ Vienna Convention on the Law of Treaties (1969), Article 26; See also, Jean Salomon, “Volume I, Part III Observance, Application and Interpretation of Treaties, s.1 Observance of Treaties, Art.26 1969 Vienna Convention”, in Olivier Corten, Pierre Klein (eds), *The Vienna Convention on the Law of Treaties* (Oxford University Press, 2011), ¶ 6.

⁴ *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 142.

⁵ *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 142.

be enforced by any State on behalf of that community.⁶ This *erga omnes* character arises from the shared nature of the natural resources potentially affected by State actions that are harmful to the environment. Against this background, Uruguay respectfully understands that, in accordance with the entire body of international law, States have obligations vis-à-vis other States to ensure the protection of the climate system and other parts of the environment.

10. Uruguay shares the view that, theoretically, the existence of any conflicts between the UNFCCC and the Paris Agreement should be resolved in favour of the application of the Paris Agreement, following Article 30 of the VCLT. However, Uruguay does not share the view that this entails that the Paris Agreement should be afforded more weight in the construction of the UN climate change regime. Rather, Uruguay submits that the UNFCCC and the Paris Agreement should be interpreted and applied jointly.⁷ This is compatible with the UNFCCC's role as a framework agreement, which provides the general principles and obligations that subsequent agreements are meant to further specify, and further demonstrated by the provision in the Paris Agreement of measures to "*enhanc[e] the implementation of the Convention*".⁸ The existence of any conflicts or contradictions between the UNFCCC and the Paris Agreement is unlikely and, were it to potentially exist, a harmonizing interpretation should be preferred.

III. Question put by Judge Aurescu

11. *"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?"*

Answer to question put by Judge Aurescu:

12. Uruguay respectfully agrees with the view that the existence of a human right to a clean, healthy and sustainable environment is undeniable as a matter of international law.⁹

⁶ Patricia Birnie, Alan Boyle, and Catherine Redgwell, *International Law and the Environment* (3rd ed., Oxford University Press, 2009), p. 131; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001) Article 48 ("*Article 48. Invocation of responsibility by a State other than an injured State 1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if: [...] (b) the obligation breached is owed to the international community as a whole.*")

⁷ See Written Submission of the French Republic, ¶ 13.

⁸ See Paris Agreement, Article 2. See also Written Submission of the Republic of South Africa, ¶ 36.

⁹ See Written Submission of the Argentine Republic, ¶ 38; Written Submission of Barbados, ¶ 165; Written Submission of the Republic of Colombia, ¶¶ 2.3, 3.67; Written Submission of the Kingdom

13. Particularly noteworthy is the leading role that the Inter-American system has played in this area, both in terms of standards and advisory opinions. For instance, the Protocol of San Salvador to the American Convention on Human Rights expressly recognizes in its Article 11 that “everyone has a right to live in a healthy environment and to have access to basic public services”, and that the State Parties shall “promote the protection, preservation, and improvement of the environment.”¹⁰
14. More recently, the “Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean”, adopted in Escazú, Costa Rica, on 4 March 2018¹¹, provides in its Article 1:

The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development.¹²
15. Other regional instruments that expressly recognize the right to a healthy environment include the American Declaration on the Rights of Indigenous Peoples,¹³ the African Charter on Human and Peoples’ Rights,¹⁴ the ASEAN Human Rights Declaration,¹⁵ the Arab Charter on Human Rights¹⁶ and the Aarhus Convention.¹⁷ These instruments show that

of Spain, Section E, ¶ 15; Written Submission of the Netherlands, ¶ 3.34. For different views on this matter, see Written Submission of the People’s Republic of China, ¶¶ 115-119; Written Submission of the Kingdom of Tonga, ¶ 244.

- ¹⁰ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (entered into force 16 November 1999) OAS Treaty Series No 69 (1988), Article 11. See also Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, ¶¶ 56 et seq.
- ¹¹ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (“**Escazú Agreement**”). To date, the Escazú Agreement has been signed to date by 24 Latin American and Caribbean States.
- ¹² Escazú Agreement, Article 1.
- ¹³ American Declaration on the Rights of Indigenous Peoples, Article 19.
- ¹⁴ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (“**African Charter on Human and Peoples’ Rights**”), Article 24.
- ¹⁵ Association of Southeast Asian Nations, *ASEAN Human Rights Declaration* (signed 19 November 2012), Article 28(f).
- ¹⁶ League of Arab States, *Arab Charter on Human Rights* (adopted 22 May 2004, entry into force 15 March 2008), 12 International Human Rights Reports 893, Article 38.

the express recognition of the right to a clean, healthy and sustainable environment in international treaties already exists in several regional treaties worldwide, which trend will likely continue in the coming years.

16. Additionally, at an international level, both the United Nations Human Rights Council and the United Nations General Assembly have recently adopted resolutions that are relevant to this issue.
17. Notably, the Human Rights Council Resolution 48/13 of 8 October 2021, entitled "*The human right to a clean, healthy and sustainable environment*", recognized "*the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights.*" In addition, Resolution 48/13 affirmed 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*", and encouraged States to "*adopt policies for the enjoyment of the right to a clean, healthy and sustainable environment as appropriate, including with respect to biodiversity and ecosystems*".¹⁸
18. More recently, the Resolution No. 76/300 of the United Nations General Assembly, of 28 July 2022, recognizes "*the right to a clean, healthy and sustainable environment as a human right*" which is "*related to other rights and existing international law*". It also provides that the promotion of this right "*requires the full implementation of the multilateral environmental agreements under the principles of international environmental law*" and calls upon actors to "*enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.*"¹⁹
19. Therefore, Uruguay states that the existence of a human right to a clean environment under international law has been sufficiently established, contrary to certain views advanced in these proceedings.
20. Furthermore, beyond the undeniable existence of the human right to a clean environment under international law, Uruguay reiterates that GHG emissions and their impact on the climate system may adversely affect the enjoyment of other numerous human rights. As noted by Spain in its written submission:

[T]he human right to a clean, healthy and sustainable environment offers greater coherence to the human rights system. Due to its cohesive nature, the human right to a clean, healthy and sustainable environment is pertinent to several categories of rights:

¹⁷ United Nations Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (adopted 25 June 1998, entry into force 30 October 2001) 2161 UNTS 447, Preamble.

¹⁸ Human Rights Council Resolution 48/13 of 8 October 2021.

¹⁹ Resolution No. 76/300 of the United Nations General Assembly, of 28 July 2022.

as a right to life, it imposes positive obligations on States; as an economic and social right, it promotes progress that should be much more inclusive; and finally as a collective and solidary right it protects the environment, while its democratic nature allows the ecosystem protection and management model to be decided by and for all.²⁰

21. Based on the foregoing, Uruguay reiterates its position that, even in the absence of a right to a clean, healthy and sustainable environment under international law, States are under the obligation to adopt mitigation and adaptation measures to protect the climate system and other parts of the environment from the deleterious effects of GHG emissions under their commitments to guarantee other human rights, including the right to life, the right to health, and the right to culture, as well as States' commitments as regards gender equality.

IV. Question put by Judge Charlesworth

22. *"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?"*

Answer to question put by Judge Charlesworth:

23. First of all, Uruguay reiterates that the prevention principle arising from customary international law is not displaced by States' obligations under the UNFCCC, the Paris Agreement, UNCLOS and other treaties relevant to climate change. To the contrary, the duty to prevent transboundary harm is a standalone obligation under customary international law, while the standard of due diligence required under the prevention principle should be applied to provide greater clarity as to the specific conduct that may be expected from States in compliance with their undertakings.
24. When it comes to compensation or liability, it is trite that every internationally wrongful act of a State entails the international responsibility of that State.²¹ In general, the international responsibility of a State involves a series of legal consequences, including:²²

²⁰ Written Submission of the Kingdom of Spain, ¶ 12.

²¹ See, e.g., International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) Article 1; S.S. "Wimbledon", PCIJ, Series A, No. 1, Judgment, August 1923, p. 30; *Phosphates in Morocco*, PCIJ, Series A/B, No. 74, Judgment on Preliminary Objections, 14 June 1938, p. 28; *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 47.

²² In accordance with the International Law Commission's *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001) specific legal consequences may arise from "special rules of international law".

obligation to cease the wrongful conduct,²³ obligation to offer appropriate assurances and guarantees of non-repetition,²⁴ and obligation to make full reparation for the injury caused by the internationally wrongful act²⁵ by restitution,²⁶ compensation²⁷ or satisfaction.²⁸

25. As set out in Uruguay's written submissions, States have the obligation to ensure the protection of the climate system and other parts of the environment. Accordingly, any breach of said obligations by a State would give rise to its international responsibility and the subsequent obligation to make full reparation.²⁹
26. In the case of significant harm to the climate system and other parts of the environment, while there is "*scientific consensus*" that "*anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected*",³⁰ due to the diffuse nature of the harm itself and the several historical and

²³ See International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 30(a).

²⁴ See *Articles on Responsibility of States for Internationally Wrongful Acts*, Article 30(b).

²⁵ *Factory at Chorzów*, PCIJ, Series A, No. 9, Judgment on Jurisdiction, 26 July 1927, p. 21. See also, e.g., *Factory at Chorzów*, PCIJ, Series A, No. 17, Judgment on Merits, 13 September 1928, p. 29.

²⁶ See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 35.

²⁷ See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 36.

²⁸ See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 37.

²⁹ The obligation to compensate may also arise from a rule of international law providing for strict responsibility based on harm or injury only. See, e.g., Resolution by the Institut de Droit International on "*Responsibility and Liability under International Law for Environmental Damage*", Session of Strasbourg, 4 September 1997. See also *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 103.

³⁰ UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023). See also above, Section II.A.

concurrent causes, including the acts and omissions of several States, establishing a link between the conduct of a specific State and a specific harm is particularly challenging.³¹

27. However, Uruguay respectfully reiterates its position, as set out in its written and oral statements, that any alleged difficulties to establish a causal link between a State's conduct and certain environmental harm do not preclude, in principle, the legal consequences for the States that have caused—or contributed to cause—the significant harm.

³¹ See, in this regard, International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Articles 14 and 15.