

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

WRITTEN REPLIES BY CANADA

DECEMBER 20TH, 2024

**OBLIGATIONS DES ÉTATS EN MATIÈRE DE CHANGEMENT CLIMATIQUE
(REQUÊTE POUR AVIS CONSULTATIF)**

RÉPONSES ÉCRITES DU CANADA

20 DÉCEMBRE 2024

December 20th , 2024

With regards to the oral proceedings concerning the request for an advisory opinion on the *Obligations of States in respect of Climate Change*, Canada thanks the Honourable Judges Cleveland, Tladi, Aurescu and Charlesworth for the questions put at the end of the public hearings on December 13th, 2024.

Canada would like to take this opportunity to reply to the first and second questions.

Question put by the Honourable 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 by Canada

The starting point of the present analysis is the general principle of international law that States have permanent sovereignty over the natural resources within their territory, originally recognized in the United Nations General Assembly Resolution 523(VI) from 1952. The exploitation and production of fossil fuels therefore falls within a State’s sovereign domain.

The United Nations Framework Convention on Climate Change (UNFCCC) does not contain explicit obligations related to the restriction of fossil fuel production. References to fossil fuel production can be found under the preambular paragraph 20 and under Article 4, paragraphs 8(h) and 10, of the UNFCCC, where one must consider countries whose economies are highly dependent on the production of fossil fuels when undertaking necessary actions.

The Paris Agreement does not contain explicit commitments related to the restriction of fossil fuel production but rather leaves it to each Party to determine which measures to take to meet the climate change goal. Fossil fuel production would need to be aligned with, among others, the Paris Agreement goals and principles (e.g. the temperature and finance goals under Articles 2(1)(a)-(b) and 2(1)(c) of the Paris Agreement), as well as the principle of just transition (preambular paragraph 10 of the Paris Agreement). The Global Stocktake decision (1/CMA.5) adopted at COP28 in 2023, calls on Parties to contribute to transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner. Although not legally binding, this decision shall inform the implementation of the Agreement (Article 14(3) of the Paris Agreement). Further, links

can also be drawn with the different commitments related to technology transfer (Article 10 of the Paris Agreement) and capacity building (Article 11 of the Paris Agreement).

Finally, as stated by many participants in their written and oral statements, the customary principle of cooperation is of relevance when assessing responses to fossil fuel production and its impact on greenhouse gas emissions.

Question put by the Honourable 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 by Canada

In Canada’s view, Article 4 of the Paris Agreement is a key element of the Agreement which contains both substantive and procedural elements. The obligation to prepare and communicate Nationally Determined Contributions (NDCs), and to pursue measures to meet their NDCs, under Article 4, paragraph 2, embodies the object and purpose of the Agreement. The obligation for States to report on their different initiatives and contributions to achieve the goals of the Agreement, and for climate action more generally, is an expression of the collective and forward-looking “global response to the threat of climate change” under Article 2, paragraph 1, of the Paris Agreement. Communicating those initiatives to the international community first increases transparency for climate action, another important objective of the Agreement reflected through, among other things, the Enhanced Transparency Framework under Article 13 of the Paris Agreement. Communicating NDCs it is also a mechanism to evaluate what, collectively, has been done and needs to be done (which can be achieved through the Global Stocktake under Article 14 of the Paris Agreement) to “increas[e] the ability to adapt to the adverse impacts of climate change and foster climate resilience” under Article 2, paragraph 1(b), of the Paris Agreement.

At the same time, the preparation of NDCs gives leeway to all States to develop climate objectives and actions in light of their respective capabilities, different national circumstances and respective national legislations. It is therefore a direct embodiment of the objective found under Article 2,

paragraph 2, which states that the “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.” This objective is also reflected in the preamble of the Agreement (preambular paragraphs 3, 5, 6 and 15).

Finally, Canada reiterates the importance, in Article 4, paragraph 3, of ratcheting up ambition for climate action. Indeed, the paragraph states that “successive [NDCs] will represent a progression” in ambition, which directly embodies the “effective and *progressive* response to the urgent threat of climate change” (preambular paragraph 4 of the Paris Agreement) (our emphasis). Although the wording of paragraph 3 does not lead to a legally binding obligation, not respecting the ambition increase overtime could be understood as not being aligned with the object and purpose of the Agreement.