

Climate Justice Policy Brief (DRAFT)

Advisory Opinion of the ICJ on State Responsibilities for Climate Change Impacts: Context of the Submissions made by Bangladesh



International Court of Justice (ICJ),
the Judicial Body of the United Nations

Key Policy Pointers

- The International Court of Justice (ICJ) is going to deliver an Advisory Opinion (AO) concerning countries' legal obligation regarding climate change.
- Bangladesh has actively participated at this procedure.
- The AO is expected to be delivered within 2025.

Context

On 29 March, 2023, the United Nations General Assembly (UNGA) adopted a unanimous resolution by requesting an Advisory Opinion ((AO) from the International Court of Justice (ICJ) concerning legal obligations of countries for climate change. It was adopted according to Article 96 of the Charter of the United Nations in consonance with Article 65 of the Statute of the ICJ.¹ Series of submissions of the State parties were made in 2024 containing both written and oral proceedings. The process of deliberation is continuing now and the ultimate AO on the responsibilities of the States for climate change is expected to be delivered within 2025.²

The Questions

“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

¹ ICJ (2023). The General Assembly of the United Nations requests an advisory opinion from the Court on the obligations of States in respect of climate change. Press Release No. 2023/20, Published on 19 April 2023. International Court of Justice, The Hague, Netherlands. Web link: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230419-PRE-01-00-EN.pdf>

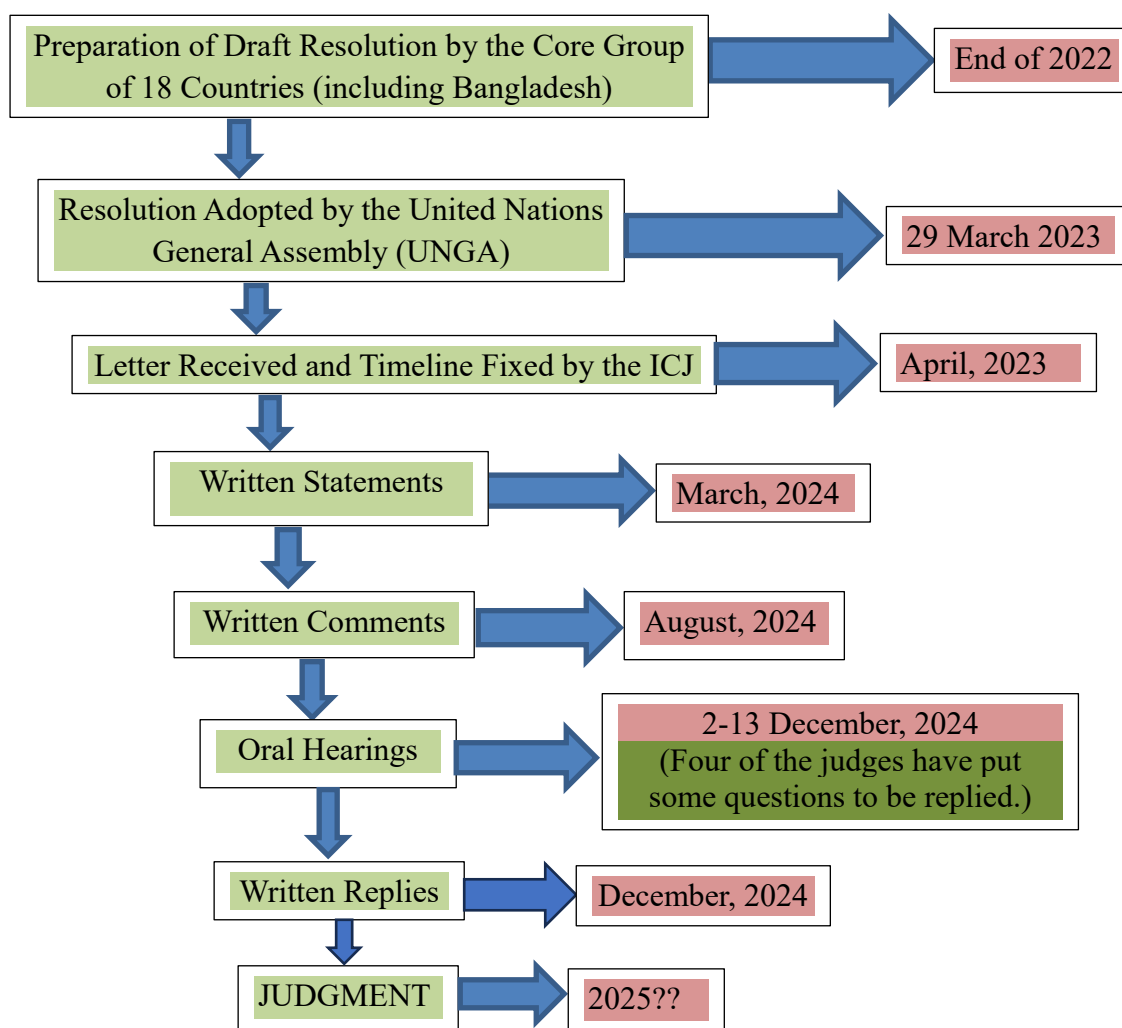
² ICJ (2024a). Obligations of States in Respect of Climate Change (Request for Advisory Opinion), Conclusion of the public hearings held from 2 to 13 December 2024. Press Release No. 2024/81, Published on 13 December, 2024. International Court of Justice, The Hague, Netherlands. Web link: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20241213-pre-01-00-en.pdf>

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”³

The Process



³ UNGA Seventy-seventh Session, Agenda item 70, Report of the International Court of Justice; 4 April, 2023, A/RES/77/276. <https://documents.un.org/doc/undoc/ltd/n23/094/52/pdf/n2309452.pdf>

Written Statement of Bangladesh

Bangladesh has submitted the written statement on 22 March, 2024. Bangladesh emphasized –

- Scientific consensus is there at the global level regarding causes and consequences of climate change.
- Consequently, Bangladesh is now facing adverse health impacts, increased mortality, destruction of infrastructure, loss of traditional livelihoods and large-scale displacement. Also, Bangladesh is uniquely vulnerable to future devastations
- Bangladesh has already committed to take significant actions for mitigation of greenhouse gas emission and also committed significant resources for implementation of adaptation measures.

Bangladesh has acknowledged the jurisdiction of the ICJ for entertaining the request for AO and submitted that the ICJ requires to exercise this jurisdiction. International human rights law is marked to be relevant in determining obligations of the States. Bangladesh states that the States are obligated to prevent any significant harm to the environment under fundamental international law and have duty of due diligence. If any State or group of States fails to comply with these obligations it will make that State or group of States responsible under the Articles on the Responsibility of States for Internationally Wrongful Acts (“ARSIWA”). Also, Bangladesh has relied on the United Nations Convention on the Law of the Sea (UNCLOS) to ascertain the obligations of the States for protection and conservation of oceans and seas.

Bangladesh has emphasized on obligations of the States for ensuring climate finance, elaborated on responsibilities and claimed that the responsibility of the States consists of –

- Obligation to cease continuation of the act (or omission),
- Obligation to appropriate guarantee of non-repetition and
- Obligation to make full reparation. The assurance of “full reparation” can be made –
 - Through restoration,
 - Through compensation and
 - Through satisfaction; which may include –
 - Acknowledgment of breach of obligation,
 - Expression of regret and
 - Seeking formal apology among others.

Written Comments of Bangladesh

Bangladesh has submitted the written statement on 15 August, 2024. Bangladesh has again emphasised on the obligations of the States in respect of climate change under customary international law and in respect of the UNCLOS.

- Bangladesh underlined that application of the well-established rules of State responsibility cannot be precluded by difficulties in establishing causation in respect of climate change.
- It is clearly indicated by Bangladesh that for addressing plural injury and plural responsibility of States a well-established framework is there under the ARSIWA.
- Bangladesh has specifically mentioned about the advisory opinion delivered by the International Tribunal for the Law of the Sea (ITLOS) regarding climate change and

international law as relevant for determining the obligations of the States Parties in a consistent and coherent manner.

Oral Submission of Bangladesh

Bangladesh has presented the oral submission on 2 December, 2024. The submission was introduced by ambassador Tareque Muhammad (Ambassador of Bangladesh to the Netherlands) and carried forward by Dr. Payam Akhavan and Ms. Catherine Amirfar. Through this oral submission Bangladesh has pointed that –

- The doctrine of due diligence applies to international environmental law as human rights are being adversely impacted by the conducts of other countries.
- The United Nations Declaration on Right of Development is applicable in this respect.
- Under the principle of Common But Differentiated Responsibility and Respective Capabilities (CBDR-RC) all the States are bound to mitigate according to their respective capabilities.
- In spite of least contribution of Bangladesh in global emission the limit to adaptation is already reached. No measure will prevent loss and damage.
- Measures for adaptation and for loss and damage are not alternatives to measures for mitigation but parallel to each other.

Written Reply of Bangladesh

Bangladesh has submitted the written reply on 20 December, 2024. To outline the replies –

Question put by 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?

Bangladesh confirmed that the fossil fuel producing countries are bound to ensure transition to sustainable energy sources without causing any significant harm.

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?

Bangladesh argued that the Article 4 of the Paris Agreement, or the procedural obligation to submit Nationally Determined Contribution (NDC) does not displace the core obligation for mitigation.

Question put by 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?

Bangladesh claimed that States are bound to ensure protection from climate change within their territory and prevention of transboundary impacts of climate change that violates the right to healthy environment.

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 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?

Bangladesh affirms that the climate change regime is not a *lex specialis*. Thus, principles of general international law are to be applied in this respect.

While stating about the obligations of the States at the written statement, Bangladesh has covered the Principle of Inter-Generational Equity. Yet, while describing the legal consequences, Bangladesh has stated more clearly regarding States' obligations to the climate vulnerable States. No additional prayer(s) or insight(s) can be found regarding obligations for the present and future generations though this question claims a separate and specific concentration on it.

To sum up, Bangladesh has made very extensive arguments on obligations of the States regarding anthropogenic climate change and legal consequences of those obligations. It is expected that the ICJ will deliver the judgement within 2025 by considering all the arguments and by ensuring equity and justice for the climate vulnerable countries of the world.

CONTRIBUTORS

1. M. Hafijul Islam Khan, Advocate, Supreme Court of Bangladesh; Director, Centre for Climate Justice – Bangladesh (CCJ-B) & One of the Lead Climate Negotiators for the Least Developed Countries (LDCs) Group at the UNFCCC.
2. Moumita Das Gupta, Advocate, Supreme Court of Bangladesh; Research Fellow, Centre for Climate Justice – Bangladesh (CCJ-B); Coordinator of Bangladesh National Front of the Asian Front, World Youth for Climate Justice (WYCJ) & National Rapporteur for Bangladesh and Regional Leader for Asia, Sabin Center for Climate Change Law of Columbia University.

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