

DECEMBER 2024

The International Court of Justice's legal proceedings on the Obligations of States in Respect of Climate Change - Brief Overview



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With a growing focus on the legal obligations of States to combat climate change and address climate justice for vulnerable communities and future generations, in March 2023 the United Nations General Assembly adopted a Resolution requesting the International Court of Justice (ICJ) to issue an advisory opinion on States' obligations in respect of climate change. (A/RES/77/276). More specifically, the Resolution requests the ICJ opinion on the following:

- 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;
- 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?

This is the first time the ICJ addresses the issue of climate change and the responsibilities of countries in tackling it. For this, States and international organizations were invited to present written statements to the Court by 22 March 2024 (later extended to 24 June 2024) and to also submit written comments on the other written statements. The Court received a record of 91 initial written submissions by States and international organizations offering their inputs and arguments related to the questions above. The ICJ then extended the date to submit written comments by 15 August 2024. Following this, public hearings were held from 2 to 13 December 2024, during which, States, and international organizations were able to offer their oral statements on this matter. During the hearings, 96 States and 11 international organizations presented oral statements on this. Now, the Court will begin its deliberation and is expected to issue their opinion in 2025, which will hopefully clarify what obligations States have under international law on this matter.

While there is a judgment yet to be delivered, it is interesting to view the several interpretations of legal responsibilities of the States under the international law, such as on "the long-term environmental impact of their acts and omissions on the wellbeing of future generations."

Across the ICJ submissions, numerous valuable contributions and principles emerged. In any case, this process is expected to elevate understanding and the importance of

climate justice. For ECI, it is pleasing to see how Grenada (in their written and oral contributions) have explicitly referred to global commons, The Earth Charter and other key international instruments as the basis for trusteeship for present and future generations. It is also observed how principles like common but differentiated responsibility, intergenerational equity, the polluter pays principle, due diligence, no-harm rule, sacred trust doctrine, and many other principles which are a part of the Earth Charter, are being acknowledged and identified as legal obligations by several countries.



Photo credit: The International Court of Justice

During the public hearing, Dr. Justin Sobion, intervened twice before the Court, first on behalf of Grenada, on 5 December and then Saint Vincent and the Grenadines as External Counsel and Senior Tutor, Faculty of Law, University of Auckland on 11 December. He highlighted Grenada's position that to restore the climate system, States have an obligation to jointly act as trustees. And argued that,

“...The principle of trusteeship of the environment is as old as humanity and it has its roots in ancient cultures and religion, Such an ancient principle has been codified in modern international law instruments such as the Earth Charter (2000), the Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship (2018), and the Maastricht Principles on the Human Rights of Future Generations (2023). These international instruments that I have mentioned are just restating the trusteeship obligations that have already been recognised under international law.”

And therefore, asked the Court to declare that “States have an obligation to act as trustees of the climate system and the environment.” See [here](#) the recording of this intervention in minute 2:11:10

When speaking on behalf of St. Vincent and the Grenadines, Dr. Sobion stressed that:

“States have a responsibility to collectively act as trustees for the atmosphere” and that “intergenerational equity forms part of the conventional wisdom of international environmental law.” He referred to Judge Weeramantry highlighting that: “the principle of trusteeship of earth resources” is the “first principle of modern environmental law”. He concluded his intervention by asking the Court to “recognize that states have collective responsibility to the atmosphere... States have a responsibility to collectively act as trustees for the atmosphere... when it comes to a State’s obligation to protect the atmosphere from harmful greenhouse gas emissions, it must have due regard to future populations”

See [here](#) the recording of this intervention in minute 21:40.

Following are some highlights from the written submissions:

Grenada, a Small Island Developing State (SIDS), a State which has been affected extremely despite their negligible contribution to global greenhouse emissions, made a compelling case that States have “a duty to act as a trustee for the environment for present and future generations;” And “have an obligation to hold the environment – including the Earth – in trust for the present and future generations” (paragraph 34 and 36) They stressed that “States must exercise trusteeship responsibilities for the global commons which are res nullius and located outside national jurisdictions (such as the atmosphere, Antarctica, the oceans, outer space and the Earth” (paragraph 49) and referred to the Earth Charter in that context.

Saint Vincent and the Grenadines (SVG) also highlighted the importance to recognize the Obligation of States to Protect the Climate System for Future Generations, and affirmed that “Our responsibility to conserve and protect the climate system and the other parts of the environment (including biological diversity and ecosystems) for the benefit of future generations is highlighted in a number of treaties and international law instruments.” (paragraph 122) they point out three key breaches – (1) failure to prevent harm to the climate system; (2) inadequate remedies; and (3) neglecting to provide redress and compensation. They also also frame climate change as a matter of climate justice for SIDS. SVG refers to the Earth Charter as a declaration that broadens State obligations beyond climate protection and links the principle of intergenerational equity with State duties to safeguard ecosystems for future generations, by quoting the following line from Earth Charter preamble. “The protection of Earth’s vitality, diversity, and beauty is a sacred trust” and that the Earth’s bounty and beauty must be secured “for present and future generations.”

Costa Rica, pointing the role of ecosystems and ocean protection, emphasized that States must meet obligations of ceasing harmful activities and provide reparations and compensation for climate harm, particularly to vulnerable nations. They also focused on identifying legal obligations such as due diligence, no-harm principle, precautionary principle, intergenerational equity and human rights obligations and specified obligations in instruments like the UN Convention on the Law of the Sea (UNCLOS).

Brazil stressed upon the principle of common but differentiated responsibilities (CBDR) to explain that equity is central to addressing climate change and developed

nations must lead in mitigation, finance and technology transfer for developing nations. They brought in IPCC findings on the relationship between historical emissions, temperature rise and environmental damage. With accountability being their focus, they also pointed out that developed nations have failed to meet their obligations under UNFCCC, Kyoto Protocol and Paris agreement.

Mexico urged for a harmonized interpretation of general international law and the climate regime, furthering the discussion of legal consequences of failing to meet the obligations of due diligence, CBDR, intergenerational equity and legal remedies. They suggest to assess compliance on the basis of development and implementation of nationally determined contributions to prevent environmental harm and that States must act in good faith and put in their utmost efforts to meet their obligations. Mexico submitted that the general principles of international law such as attribution of conduct and shared responsibility govern State responsibility for climate harm.

IUCN highlighted that “the principle of intergenerational equity establishes that the present generation holds the Earth on trust for future generations...”

The ICJ advisory proceedings have brought the above-mentioned important principles to a new level of attention. While the world waits for the judgment which is expected in 2025, it is definite that it will provide some legal guidance on the issue of climate action. It shall be interesting to see how the ICJ utilizes the Earth Charter, to broaden obligations of States towards building a just and peaceful world.

We hope the Court will recognize:

- a) Trusteeship, which has its roots in ancient traditions, as a fundamental principle of international law for States to act as fiduciaries of environment;
- b) That States have a legal obligation to the generations unborn (to care for the well-being of future generations);
- c) Principles of the Earth Charter as an ethical foundation to build a more equitable, sustainable and just global community.

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The verbatim records of the hearings can be found on the [case page](#) on the Court’s website at <https://www.icj-cij.org/case/187>

Video clips produced by the Registry during the hearings can also be found on the [Multimedia page](#) on the Court’s website. Click here for that. <https://www.icj-cij.org/multimedia/204420>

Here you can find an overview on this process “Climate Justice Proceedings at the ICJ Top Arguments to Watch for in the Written Submissions” prepared by CIEL Center for International Environmental Law (CIEL), World’s Youth for Climate Justice and Pacific Islands Students Fighting Climate Change. <https://www.ciel.org/project-update/advancing-climate-justice-at-the-icj/>
<https://www.ciel.org/reports/climate-justice-proceedings-at-the-icj/>

Here you can find a detailed IUCN Explainer on this https://iucn.org/story/202412/explainer-international-court-justice-considers-climate-change?fbclid=IwY2xjawHNLw1leHRuA2F1bQIxMQABHboz1H5gfdULs-fihh9rPQjAvDochLHr0j1Gj6_09VBobqGw7WmpPEJePA_aem_xllrD33eeS2K41oVPgusiQ

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Press Release No. 2024/81, 13 December 2024, International Court of Justice. *Obligations of States in respect of Climate Change (request for Advisory opinion) conclusion of the public hearing held from 2 to 13 December 2024.* (<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241213-pre-01-00-en.pdf>)

Written statement of Grenada - 21 March 2024 - <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240321-wri-02-00-en.pdf>

Written statement of Grenada - 14 August 2024 (see paragraph 50) <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-02-00-en.pdf>

Written statement of Saint Vincent and the Grenadines – 21 March 2024 (see paragraph 122) <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240321-wri-01-00-en.pdf>

Written comments of Saint-Vincent and Grenadines – 15 August 2024 <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-07-00-en.pdf>

IUCN work and position - https://iucn.org/story/202412/explainer-international-court-justice-considers-climate-change?fbclid=IwY2xjawHNLw1leHRuA2F1bQIxMQABHboz1H5gfdULs-fihh9rPQjAvDochLHr0j1Gj6_09VBobqGw7WmpPEJePA_aem_xllrD33eeS2K41oVPgusiQ