



ATTORNEY GENERAL FOR CIVIL AFFAIRS

To the European Court
of Human Rights

OSLO, 23.09.2025

Supplementary written observations by the Kingdom of Norway

represented by Henriette Busch, advocate at the Office of the Attorney General for Civil Affairs, as agent, and by Gøran Østerman Thengs, advocate at the same office, in

app. no. 34068/21, Greenpeace Nordic and others v. Norway

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1 INTRODUCTION

- (1) Reference is made to the Court's letter 19 August 2025, requesting the Government of the Kingdom of Norway to present its written comments on the supplementary written observations by the applicants 15 August 2025 regarding new developments in international law. Following a request by the Government, the time-limit has been extended to 23 September 2025. The Government's observations will be limited to the Advisory Opinions of the ICJ and the EFTA Court respectively, cf. the Vienna Convention on the Law of Treaties art. 34, see section 2.

2 THE GOVERNMENT'S COMMENTS TO THE APPLICANTS' ADDITIONAL OBSERVATIONS OF 15 AUGUST 2025

2.1 On the applicability of new developments in international law

- (2) The applicants argue that the merits of this case should be considered "in light of new developments in international law".
- (3) Providing that the complaint is considered admissible and that any of the invoked articles are considered applicable in this case, it is the Government's general and principal view that any potential examination on the merits of the application must be limited to any state

obligations of Norway at the time of the acts in question, cf. Draft Articles on Responsibility of States for Internationally Wrongful Acts Article 13, cf. the ICJ Advisory Opinion para. 97. The scope of this case is limited to a decision made in 2016 (awarding of licenses, all of which were later relinquished), following an opening decision in 2013.¹ At the time of the impugned decision, the Paris Agreement had not yet entered into force for the parties that had ratified it, including Norway.²

2.2 The ICJ Advisory Opinion of 23 July 2025

2.2.1 Introduction and general remarks

- (4) Norway supported the decision to request an advisory opinion by the ICJ on the matter and was a co-sponsor of the resolution in the UN General Assembly that referred the matter to the Court. Together with Denmark, Finland, Iceland, and Sweden, Norway submitted a joint written and oral statement in the proceedings, outlining the Nordic countries' views on the international obligations of States in respect of climate change.
- (5) In its Advisory Opinion, the ICJ unanimously determines that States have legally binding obligations under international law to protect the climate system from greenhouse gas emissions (GHG) and to limit the global temperature increase to 1.5°C as the agreed primary temperature goal. In short, the Court concluded that States are obligated under international law to limit emissions, engage in climate adaptation and to cooperate.
- (6) The Advisory Opinion underlines the collective responsibility to solve the global challenge of climate change, which constitutes an existential threat to present and future generations. It is the Government's view that Norway adheres to the obligations outlined by the ICJ. Norway is a responsible energy producer and a strong advocate for ambitious global climate policy and fully committed to fulfilling its obligations under the Paris Agreement. To this end, Norway recently submitted an ambitious climate target to the UN, committing to reduce emissions by at least 70 to 75 per cent by 2035 compared to 1990 levels, cf. also para. 15 below.³
- (7) Norway's ambitious domestic and international climate policy is in full conformity with the critical role Norway has played and will continue to play in ensuring Europe's energy security for decades to come through – albeit decreasing – production of oil and gas, almost all of which is exported to the EU and the UK.⁴ Norway and the EU are *"particularly close partners*

¹ On the issue of scope, the Government also reiterates that the applicants explicitly did not allege before the Supreme Court – as they now do before the ECtHR – any procedural errors regarding the awarding of licenses in the Barents Sea South (BSS), cf. the Government's written observations 26 April 2022 para. 33.

² The Paris Agreement entered into force on 4 November 2016.

³ Norway's NDC for 2035: [Communication from Norway 26 June 2025 in the UNFCCC NDC Registry](#)

⁴ Norway was the *"UK's primary supplier of energy imports"* in 2024, cf. [Digest of UK Energy Statistics 2024](#).

sharing fundamental values, climate objectives and a common regulatory framework".⁵ Since 2008, Norway has been part of the comprehensive regulatory regime for managing emissions covered by the EU Emissions Trading System (EU ETS), encompassing emissions from both production on the Norwegian continental shelf and emissions from the combustion of oil and gas in Europe. Norway's critical role in ensuring Europe's energy security has been emphasized by the EU Commission several times, most recently in the "Roadmap towards ending Russian energy imports" dated 12 May 2025,⁶ cf. also the 2024 "Draghi report" on the future of EU competitiveness.⁷ For the EU and the UK, alternative energy sources most likely entail higher prices and/or emissions (LNG or coal) from alternative global suppliers that do not offer the same level of long-term stable energy security.

- (8) In connection with the above, the Government reiterates that the opening of the Barents Sea Southeast was made with the expectation of finding large reservoirs of natural gas, which was expected to be subject to increased demand by EU states over the coming decades, while one of the other arguments was that it would facilitate preserving national interests in the border area towards Russia, cf. inter alia the additional observations 16 August 2024 paras. 32-37. Russia's full-scale invasion of Ukraine and the ensuing energy crisis in Europe is a subsequent development that has entirely validated the relevance of these considerations.

2.2.2 Comments to the applicants' observations on the ICJ Advisory Opinion

- (9) As a general note, the Government observes that the applicants' claims of various breaches in paras. 3-9 seem to rely upon an erroneous legal premise that general obligations of treaty- and customary law described by the ICJ, constitute an independent legal basis for the ECtHR to *apply* in the present case, ctr. ECHR Art. 32. In any case, the applicants' various inferences from the ICJ Advisory Opinion are either incorrect or go substantially too far.
- (10) At the outset, the applicants in para. 3 refer to para. 403, inferring that the ICJ's "reasoning implies" that Art. 2, 8 and 14 of the ECHR apply to the case at hand and have been violated.
- (11) In the Government's view, this claim is not supported by the ICJ's reasoning. Firstly, the ICJ's legal analysis is based on the UN treaties and rules of general international law, notably not the ECHR. Furthermore, the ICJ clearly states that it "need not determine" the specific circumstances under which a State can be regarded as exercising its jurisdiction outside its

⁵ [Joint statement](#) 6 October 2022 between President von der Leyen and Norwegian Prime Minister Støre.

⁶ [Available here](#), see section 3.1: "*Securing alternative supplies from reliable partners is critical to limiting any market or security of supply impact. For example, Norway, the EU's largest gas supplier (...)*"

⁷ [Draghi report part B p. 25](#): "*Long-term agreements with partners should be explored (e.g. Norway) to secure preferential fixed prices and guaranteed volumes over several years to be contracted by private companies.*"

own territory in relation to a treaty, and that the scope of a treaty must be based on an interpretation of that treaty (see para. 402).

- (12) Moreover, in para. 4 of their observations, the applicants reference the 1.5°C temperature target mentioned, inter alia, in para. 224 of the Advisory Opinion, alleging that the impugned 2016 decision “breached” an alleged individual state obligation to reach this target in various ways, see paras. 5-9.
- (13) In the Government’s view, this is not a well-founded legal starting point, the result of which is that the specific claims of “breaches” in paras. 5-9 are neither well-founded. First, the Government notes that the decisions referred to by the ICJ in para. 224, underlining the importance of limiting the global temperature increase to 1.5°C, were adopted in 2021 and 2023.⁸
- (14) Furthermore, the relevant general conclusion of the ICJ is provided in para. 229, following the discussion in paras. 224-229, outlining an *obligation of means* – to exercise due diligence – under the Paris Agreement. In the subsequent discussion on pages 75-80, the Court elaborates that this obligation includes a duty to set climate targets in the form of nationally determined contributions, cf. para. 236, that are capable of fulfilling the parties’ obligations under the Paris Agreement, cf. para. 245, and thus, when taken together, are capable of achieving the current primary target of limiting the global temperature increase to 1.5°C above pre-industrial levels.
- (15) As is thoroughly described in the Government’s previous written observations to the ECtHR, Norway fully adheres to its obligations under the Paris Agreement. To that end, Norway recently submitted its NDC for 2035 which comprises a fair and ambitious contribution to limit the global temperature increase to 1.5 degrees above pre-industrial levels.⁹ The outcome of the first global stocktake for assessing global progress on the Paris Agreement goals, undertaken in 2023 at the COP28 conference, recognises that limiting global warming to 1.5 °C with no or limited overshoot requires deep, rapid and sustained reductions in global greenhouse gas emissions of 60 per cent by 2035 relative to the 2019 level. Norway’s NDC goes beyond this collective milestone.
- (16) In para. 5, the applicants claim that there is an obligation of conduct and result under UNFCCC Article 4 (2) for states to “preserve GHG reservoirs on its territory”, and that the impugned decision of 2016 breached this obligation. The ICJ does not, however, outline such a far-reaching obligation to “preserve” GHG reservoirs. The Government also notes that the UNFCCC entered into force in 1994, and that state practice within the international

⁸ The decisions were adopted pursuant to the 2018 IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels: [IPCC, 2018: Global Warming of 1.5°C](#).

⁹ Norway’s NDC for 2035: [Communication from Norway 26 June 2025 in the UNFCCC NDC Registry](#)

community during the last 30 years clearly demonstrates that the developing of petroleum reserves as such has never been considered incompatible with that Convention.

- (17) In paras. 6 and 7, the applicants' claims of breaches of state obligations seem to rest upon the legal premise described in para. 9 above, namely that general obligations of treaty- and customary law described by the ICJ, constitute an independent legal basis for the ECtHR to *apply* in the present case. The applicants also wrongly conflate the opening of an area for exploration and the "opening of a reservoir", which notably has not happened in the relevant areas. For the sake of good order, the Government also notes that the CO₂ quantity described by the applicants is unfounded and incorrect insofar as no petroleum has been produced from the relevant areas.
- (18) Furthermore, in para. 7, the applicants seemingly seek to attribute to Norway all emissions resulting from the combustion abroad of oil and gas extracted in Norway, after it has been refined, sold and then used in other countries for the benefit of interests within their jurisdiction and control. The ICJ does not, however, establish such a principle of attribution, which is neither founded in any relevant treaties. Rather, the ICJ *inter alia* states that the risk associated with climate change is a "*consequence of a combination of activities by different States*", and that states "*need to avert the risk through a co-ordinated and co-operative response*", cf. para. 277.
- (19) In paras. 301-308 the ICJ, moreover, explains in detail how the specific character of climate change requires States to take individual measures in co-operation with other States. Not merely as a matter of fact, but also as a matter of law (cf. para 308). And not merely as a matter of a separate obligation to be understood in isolation from other rules of international law, but as an obligation that must be read in relation with the other relevant rules of international law relating to the issue of climate change and that affects the interpretation of said rules. As set forth by the ICJ in para. 305, the "*duty to co-operate takes on a special importance in the context of the need to reach a collective temperature goal*". Further, the ICJ also holds that "*States must co-operate to achieve concrete emission reduction targets or a methodology for determining contributions of individual States, including with respect to the fulfilment of any collective temperature goal*". This is a duty that befalls all States, and it reflects the fact that a global challenge must be addressed through effective global responses implemented by all States. Co-operation by all States is also a core aspect of the UN climate change treaties. As highlighted by the ICJ in para 216, "*the rationale for co-operation is found in the preamble of the UNFCCC which provides that 'the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response'*". Norway is determined to diligently fulfil its obligations under the Paris Agreement and other applicable rules of international law, and to do its part in resolving the global challenge of climate change, as is amply demonstrated by the climate target recently submitted to the UN (cf. para. 15 above).

- (20) It appears highly improbable that any *unilateral* supply-side reduction in Norway would be capable of any substantial reduction of global GHGs and thereby on its own having a real prospect of mitigating the risks imposed by climate change, as there is not a lack of global supply.¹⁰ There is a broad agreement within the international community that any feasible solution lies in a substantial reduction in the *global demand* for fossil fuels. The main driver of climate change is not the production of fossil fuels (supply), but the burning of fossil fuels (demand), cf. also *Duarte Agostinho and Others v. Portugal and 32 Others* § 207: “... *the major sources of GHG emissions are in fields such as industry, energy, transport, housing, construction and agriculture and arise in the context of basic human activities within a given territory*”. The detrimental climate effects from the use of fossil energy for the purposes of such “basic human activities” are well-known and acknowledged. Until sufficiently stable renewable energy sources are available to meet global energy demand, however, curbing access to oil and gas would have serious societal consequences.
- (21) The applicants claim that the ICJ in paras. 53, 72 and 81 conversely has stated that fossil fuel extraction is the main driver of climate change, but this appears as a misrepresentation as the ICJ does not appear to make any such inference in those paragraphs.
- (22) The ICJ does, however, interpret the General Assembly’s referral in such a way that it also includes fossil fuel production, licensing and subsidizing among the “*full range of human activities that contribute to climate change*”, cf. paras. 94 and 427. This interpretation was based on account of most of the answers from the participants who chose to reply to a question from judge Cleveland, where the majority submitted that “*obligations do not rest exclusively with consumers and end users*”, cf. para. 94.
- (23) However, beyond establishing at an overarching level that the rules of state responsibility also apply in the climate change context – encompassing in principle the full range of human activities – the Advisory Opinion does not provide any concrete basis for identifying any specific violations or corresponding obligations. This is all the more evident considering the joint declaration from Judges Cleveland and Bhandari, expressing the view that “*given the outsized influence of fossil fuels in the fight against anthropogenic emissions*”, the ICJ “*could have been more forceful in addressing these specific issues*”.¹¹
- (24) The applicants invoke the ICJ’s reasoning in para. 427, but the ICJ underscores that the potential wrongful act is “*not the emission of GHG per se*” (para 427), and not the emissions “*in and of themselves*” (para. 429), but “*actions or omissions causing significant harm to the climate system in breach of a State’s international obligations*”.

¹⁰ Norway’s total production accounts for approx. 2 % of global oil production and 3 % of global gas production.

¹¹ [Joint Declaration of Judges Bhandari and Cleveland](#), see para. 4.

- (25) Furthermore, in para. 8, the applicants claim that there has been a breach of an obligation to undertake an environmental impact assessment. The Government does not agree with neither the claim nor the legal premises the claim is based upon.
- (26) The obligation to undertake an impact assessment is derived from the due diligence standard, needing to take the specific character of the respective risk into account, cf. para. 297. The specific content of the environmental impact assessment required in each case is, however, for *“each State to determine”* in its domestic legislation or in the authorization process for a project, cf. para. 298. Furthermore, the ICJ is of the view that the risks posed by climate change have *“certain features that may affect the appropriateness of certain forms of environmental risk assessment”*, and it may *“therefore be reasonable for States to conduct their assessments of the risk caused by GHG emissions by way of general procedures covering different forms of activities”*, cf. para. 298.
- (27) Norwegian practice is in line with the above. As described by the Supreme Court in paras. 208-246, the global effects of combustion were thoroughly assessed through general procedures at the opening of the southeast Barents Sea, they were brought up in the public consultations and the issue was repeated and discussed several times during the years that followed. The Government refers further to its written observations 26 April 2022 section 2.2, presenting a detailed overview of the relevant documents and discussions.
- (28) The ICJ further notes in para. 298, however, that such general procedures as described above, *“do not exclude that possible specific climate-related effects must be assessed as part of EIAs at the level of proposed individual activities, e.g. for the purpose of assessing their possible downstream effects”*.
- (29) In the Government’s view, this consideration is also ensured through the case-handling established at the later project-stage (PDO stage). As the Supreme Court further considered, downstream combustion emissions would more appropriately be addressed at the later stage of approving plans for actual production of oil or gas. In other words, the majority argued that a more specific analysis of anticipated climate effects of combustion abroad of exported petroleum would be more sensible to undertake at the stage where the level of certainty is greater. Following the Supreme Court judgment, the Government adjusted its case handling procedures (*“saksbehandlingen”*) in 2021 when considering an application for the approval of PDO for a new field, making information on combustion emissions publicly available.¹² As far as the Government is aware, at that point in time no European countries required project-related impact assessments of downstream emissions abroad, cf. also section 2.3 below.

¹² Available [here](#).

- (30) To ensure further transparency, input from the public and stakeholders, and to shed even greater light on the consequences of combustion emissions from projects for extraction of oil and gas from the Norwegian continental shelf, the Ministry of Energy in May 2024¹³ initiated a process to develop an expert report on combustion emissions from oil and gas extracted in Norway. The report has now been prepared and has been subject to public consultation¹⁴, and the input received is currently being assessed. The report will enable a uniform approach to the issue in the public debate. The intention is also to provide a model to be used by licensees in their impact assessments related to oil and gas developments on the Norwegian continental shelf.
- (31) Following the EFTA Court's Advisory opinion 21 May 2025 (in a pending case before domestic courts between the Norwegian State and Greenpeace Nordic and Nature and Youth Norway, cf. section 2.3 below), Norway will ensure that combustion emissions from future projects will be assessed by the project developer. New and detailed rules regulating this will not be issued until domestic courts have come to a legally binding decision in the pending case, in order to secure that the final judgement is reflected in the new rules. The Government however observes that the developers voluntarily already are including such impact assessments in reports submitted for public consultation, and as such this has already become practice. Once the new regulations have come into effect, Norway will be among the countries that has imposed the most comprehensive requirements for assessing and describing effects on the climate from downstream combustion emissions.
- (32) Lastly, in para. 9, the applicants' claim that the alleged "*above violations constitute internationally wrongful acts*", is misguided. In para. 447, the ICJ outlines a duty of cessation under the rules of state responsibility for internationally wrongful acts. This does not however inform the question of what constitutes an internationally wrongful act. The question of what is to be considered as an internationally wrongful act, is determined on the basis of the primary rules applicable in each specific case, and not by the rules on state responsibility. Notably, the ICJ has not expressed any view on what may or may not be inferred from the ECHR.

2.3 The EFTA Court Advisory opinion of 21 May 2025

2.3.1 Introduction and general remarks

- (33) Following a decision of the UK Supreme Court on 20 June 2024¹⁵ on the interpretation of the EIA Directive,¹⁶ the Norwegian Government asked the Borgarting Court of Appeal to

¹³ Available [here](#).

¹⁴ Available [here](#).

¹⁵ The UK Supreme Court's [Judgment 20 June 2024](#)

¹⁶ Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU.

request an Advisory Opinion from the EFTA Court on the interpretation of the EIA Directive in a pending domestic case between the Norwegian State and Greenpeace Nordic and Nature and Youth Norway which raises similar questions as the case before the UK Supreme Court.

- (34) In short, the EFTA Court found that GHGs emitted from later combustion of oil and gas abroad is to be considered an “effect” of a construction project to develop a petroleum deposit for extraction, within the meaning of the EIA Directive. According to the Advisory Opinion, developers are required to *“provide for a reasoned estimate of the greenhouse gas emissions that are likely to result from the subsequent combustion...”*, cf. para 89, and to include this in the report to be made available for public hearing.¹⁷ Furthermore, the EFTA Court clarified that EEA law allows for *“the conducting of such an assessment while the project is under way or even after it has been completed”*, subject to two conditions, cf. para. 110.
- (35) As explained in para. 30-31 above, the inclusion of climate effects from combustion in future environmental impact assessment reports at the PDO stage, subject to public hearings, has already become practice in Norway and will also be formalised through new regulations. In the Government’s view, this means that Norwegian practice complies with the requirements advised by the EFTA Court.
- (36) Turning to the present case, it is the Government’s view that the Advisory Opinion requested in connection to the pending domestic case should have no bearing on the interpretation of the ECHR in the present case. Firstly, that case concerns environmental impact assessment requirements at the “PDO” (project) stage, which is not the subject of the present case. Notably, the EFTA Court explicitly did not consider the SEA Directive that is applicable at the opening stage, cf. para. 38 below.
- (37) Secondly, it is also of relevance to note that the interpretation advised by the EFTA Court departs from state practice in the EU, UK and Norway for the past 40 years.¹⁸
- (38) In light of the above, any potential examination on the merits taking into consideration the EFTA Court’s Advisory Opinion, should also take into account that i) the Opinion does not relate to the SEA Directive and ii) that at the time of the impugned decision, the assessment of later downstream emissions from projects was neither practiced nor perceived as a procedural requirement under the EIA Directive in any EEA country.

¹⁷ The [UK Guidance of June 2025](#), following the judgment of 20 June 2024, appears consistent with this.

¹⁸ For the sake of good order, the Government also notes that the EU Commission adopted a divergent view on the interpretation of the Directive, cf. [EU Commission Written Observations 4 November 2024](#).

2.3.2 Comments to the applicants' observations on the EFTA Court's Advisory Opinion

- (39) In para. 13, the applicants seem to infer that the EFTA Court's interpretation of the EIA Directive automatically has – wholly or in part – transferable value to the interpretation of the SEA Directive.¹⁹ This is not a tenable starting point. As the EFTA Court states in para. 44:

It should be noted that the questions of the referring court relate to the interpretation of the EIA Directive alone, and the facts of the dispute at issue in the main proceedings do not appear to require an assessment of other EEA acts, such as Directive 2001/42. As such, the Court's examination therefore relates only to the interpretation of the EIA Directive, and not Directive 2001/42. (...)

- (40) The Government reiterates that the ECtHR's jurisdiction is limited to the interpretation and the application of the ECHR, cf. Article 32.
- (41) At this point, the applicants refer to the Supreme Court minority, but that minority indicated that an "overall analysis would have sufficed", cf. para. 274. This appears substantially different from the wide-ranging interpretation envisaged by the applicants in para. 14, an interpretation that also appears to go substantially further than that of the EFTA Court's Advisory Opinion as well as that of the UK Supreme Court on the same issue.
- (42) Furthermore, an important factual premise for the EFTA Court appears to have been that at the PDO stage, *"the release of greenhouse gas emissions is very likely to follow the antecedent action of extraction of petroleum and natural gas in a project such as that at issue"*, cf. para. 69. This premise does not in any case hold concerning the uncertain situation at an opening stage. This is illustrated and confirmed by the facts of the present case, where none of the later awarded licenses led to any commercial discoveries and where all licenses were later relinquished.
- (43) Based on the above, cf. also section 2.3.1 above, the EFTA Court's Advisory Opinion on the interpretation of the EIA Directive cannot inform any potential examination of the applicants' claim of a flawed strategic impact assessment at the opening stage in 2013.
- (44) Lastly, the applicants claim that the EFTA Court has held that analyses of global net effects are "irrelevant to Article 3(1)" of the EIA Directive. Although of no apparent relevance to the present case, the Government observes for the sake of good order that this is a misrepresentation. As the EFTA Court clearly states in para. 98, *"nothing precludes an additional analysis of predicted net effects of the project in question in terms of greenhouse gas emissions"*. The Court's position is rather that an analysis of likely net effects cannot serve as a basis for not requiring an impact assessment at all, cf. para. 97 final sentence.

¹⁹ Directive 2001/42.

3 REGARDING THE APPLICANTS' SUBMISSIONS 16 AUGUST 2024

- (45) On 19 June 2024, the Court invited the parties to submit supplementary observations "in the light of the developments" in the Court's case law, namely the three Grand Chamber "impact case" rulings. On 16 August 2024, the applicants submitted a 60 pages long document as well as a substantial amount of new exhibits. In the Government's view, the applicants' submissions significantly exceeded both the scope of the Court's invitation as well as the scope of the present case.
- (46) Given the scope of the Court's invitation to the parties, the Government assumes that the Court will limit its assessments to the parts of the applicants' supplementary observations that address legal aspects of the three Grand Chamber decisions.
- (47) For the sake of good order, the Government notes that it does not concur with the applicants' wide-ranging presentation of facts and numerous factual claims. Should the ECtHR consider basing its decision on any specific factual claims brought forward by the applicants in their supplementary observations of 16 August 2024, the Government respectfully requests an opportunity to submit a rejoinder.

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Oslo, 23 September 2025

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