INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

REQUEST FOR ADVISORY OPINION

WRITTEN COMMENTS OF THE REPUBLIC OF COLOMBIA

14 August 2024

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GENERAL INTRODUCTION

Colombia again welcomes the request by the United Nations General Assembly ("UNGA") to the International Court of Justice ("ICJ or the Court") to clarify, through this advisory opinion, the obligations and responsibilities of all members of the international community regarding climate change and the legal consequences derived from breaches thereof.

The Written Comments of Colombia is divided into five chapters. Chapter 1 provides an introduction, highlighting the urgency of the matter placed before the Court. Chapter 2 briefly reiterates Colombia's views as to the Court's jurisdiction to render the advisory opinion requested of it. Chapter 3 contains Colombia's comments on the main themes addressed in the Written Statements submitted to the Court with regard to the obligations to ensure the protection of the climate system and the environment, including the obligation to protect and prevent harm to the climate system and due diligence, the principle of highest possible ambition and progression enshrined in the Paris Agreement, the duty to cooperate, and the inextricable linkages between human rights and climate change. Chapter 4 addresses arguments made in the Written Statements submitted to the Court with regard to the legal consequences for States causing significant harm to the climate system and other parts of the environment, including questions of attribution, the applicability of the general law of state responsibility, and anthropogenic GHG emissions as internationally wrongful acts. Lastly, Chapter 5 offers concluding remarks.

WRITTEN COMMENTS OF THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA

CHAPTER 1 - INTRODUCTION

1.1. The triple planetary crisis, i.e., climate change, biodiversity loss and pollution, is the watershed issue of our time. Life on Earth as we know it and the natural world, we inhabit are changing before our very eyes. For several decades, humankind has been worrying about the world future generations would inherit. For working-age individuals and children today, the outlook on their lifetime is even more dire and grim. Intergenerational equity, while often mentioned, is still woefully unaddressed.

1.2. Developed and developing countries alike are witnessing extreme weather events and natural disasters of unprecedented magnitude and frequency. Several written statements submitted to the Court are evidence of these climate change-related impacts.[1] Civilization is in graver danger of collapse unless the international community takes urgent and definitive action. As UN Secretary-General Antonio Guterres said during the COP28 in Dubai in December 2023, while calling for negotiators to "negotiate in good faith and rise to the challenge" with an increased focus on the reduction of GHG emissions and climate justice: "We can't keep kicking the can down the road", "we are out of road and almost out of time."[2]

1.3. President Gustavo Petro has repeatedly emphasized that humanity cannot continue on its current path. The overreliance on fossil fuels and disregard for natural limits must cease:

> "Today, 12% more CO2 is emitted in the world than in 2010. That means, the richest sectors of humanity have expanded their carbon consumption and therefore CO2 emissions, leading humanity and life to crisis.

[1] *See, e.g.*, Vanuatu, Written Statement, annex B and E; Melanesian Spearhead Group, Written Statement, Exhibits 35 and 37; Grenada, Written Statement, Annex 1; Democratic Republic of the Congo, Written Statement, para. 95, notes 122 and 123, Chile, Written Statement, paras. 27 and 28, notes 19-21.
[2] United Nations (11 Dec. 2023) *UN Secretary-General's press encounter at COP28*. Available at: https://www.un.org/sg/en/content/sg/press-encounter/2023-12-11/un-secretary-generals-press-encounter-cop28 (Last visited: 31 Dec. 2024).

> In addition to such aberration, the Climate Fund was not financed as promised to protect non-CO2 emitting populations, which means poor populations.
>
> Rich countries' capitalism withstands devaluing the wealth of their societies based on carbon production and consumption. The states of rich countries cannot and do not wish to devalue their fossil capital, capital based on oil, coal and gas (…)
>
> Fossil energy has been essential in the enormous growth of work productivity, therefore, in the profits of the richest people on the planet. Those who dominate political power do not allow the very basis of their wealth to extinguish (…)
>
> The consumption of the richest part of humanity on the planet, based on carbon, is a consumption based on the death of others (…)"[3]

1.4. Speaking of a possible scenario of the extinction of the human race is no longer hypothetical. Central and South America are "highly exposed, vulnerable and strongly impacted by climate change, a situation amplified by inequality, poverty, population growth and high population density, land use change particularly deforestation with the consequent biodiversity loss, soil degradation, and high dependence of national and local economies on natural resources for the production of commodities"[4]. In a few years, we will witness the exodus of millions of people because their lands will no longer be cultivable or because atmospheric changes will make certain areas of the planet uninhabitable.

> "On the other hand, the transfer of wealth from the North to the South to adapt non-CO2-emitting populations to the increasingly deadly contingencies of climate impacts are seen outside the market. In the South, in their tropical areas, liquid water decreases, causing an exodus.
>
> The emptying of populations from the South to the North and the march of entire populations to the North is underway. The enormous social inequality

[3] Colombia, Written Statement Annex 2, pp. 180-181.
[4] Castellanos, E., M.F. Lemos, et al. In: *2022: Central and South America. Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the IPCC* (2022), pp. 1689–1816. Available at:
https://www.ipcc.ch/report/ar6/wg2/chapter/chapter-12/

> regarding carbon consumption and the rise in carbon [consumption] in the wealthy North population causes the exodus from the south to the north.
>
> There are tens of million people today; tomorrow they will be hundreds of millions. What will happen with this exodus? What will happen to democracy? What will happen to international law? What will happen to humanity?
>
> (…)
>
> If the wealth bearers from the North, with intensive carbon consumption, do not allow the emitting chimneys to be turned off, that means, they do not stop consuming oil, coal and gas, the supporting pillars of human existence in the planet will be irreversibly broken. That breakdown will be uneven.
>
> Most of the climate victims, which will increase in billions, will be in countries that do not emit at all or emit very little CO2. Without transfers of wealth from the North to the South, climate victims will have less liquid water in their habitats and will move towards the North, where melting ice will allow fresh water. The exodus will become billions."[5]

1.5. Colombia is already experiencing the effects of climate change. Internal and cross-border displacement is an undeniable reality. Droughts followed by floods, landslides, and wildfires are part of our daily lives. Internal violence is influenced by factors directly related to the climate crisis and cannot be resolved until the impacts of global climate system degradation are mitigated.[6] Colombia's peace and the world's peace also depend on understanding how to make peace with nature and all its resources and ecosystems. That, "Making Peace with Nature", is precisely the theme for the COP 16 to the UN Convention on Biological Diversity ("CBD") that Colombia will be hosting later this year.

1.6. Colombia has declared itself a global power of life. It has taken decisive steps to move away from an economy dependent on the exploitation of fossil fuels. The country has made decisions to halt oil and coal exploration and to gradually transition to clean energy sources.

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[5] Colombia, Written Statement Annex 2, pp. 181-182.

[6] United Nations, *Gustavo Petro Urrego, President of the Republic of Colombia, addresses the general debate of the 77th Session of the General Assembly of the UN (New York, 20-26 September 2022)*. Available at: https://gadebate.un.org/en/77/colombia (20 September 2022)

Significant domestic public investments have been made to safeguard major ecological systems and to promote a culture of life while protecting the country's flora and fauna. In President Petro's own words at the COP 28 in December 2023:

> "Colombia has stopped signing coal, oil and gas exploration contracts. Colombia has dismantled the gasoline subsidies, and we are encouraging the world for a global ban on fracking.
>
> Colombia has reached 70% of its clean energy sources. Colombia has contributed by 70% the reduction of deforestation of the Amazon rainforest with its own resources." [7]

1.7. Colombia has consistently emphasized its interest in initiating a comprehensive discussion on the urgent need to reform the multilateral banking and global financial system. This includes highlighting the responsibility of major polluters and sources of capital in addressing the climate crisis. It is crucial to urgently address the barriers to accessing climate finance, such as high capital costs, currency risks, transaction expenses, and high levels of debt. There is a significant need for innovative financing options that can tailor debt management to the specific circumstances of each country, including debt swaps for environmental initiatives. Currently, Colombia's water sources, forests, and ecosystems provide vital services to the world but are threatened by pollution, climate change, and the undervaluation of natural capital. This poses risks to sustainable development, especially due to the fiscal challenges associated with transitioning away from extractive and highly industrialized activities. The fiscal revenues from these activities are crucial for repaying the national debt, funding social policies and services, and maintaining minimum standards of dignity and protection for our communities and societies. To recall President Petro's words at COP 28:

> "Colombia has proposed overcoming the climate crisis through multilateralism, through international law, making the COP plans binding on all parties, creating a space of global public powers that plans the transition to a decarbonized economy.
>
> Colombia has proposed the restructuring of the global financial system, the debt-for-nature swaps and the issuance of Special Drawing Rights to finance

[7] Colombia, Written Statement Annex 2, p. 184.

climate crisis mitigation and adaptation plans. The strengthening and reform of the United Nations." [8]

1.8. Colombia reiterates its alarm, as expressed in its Written Statement, that the measures taken so far are not only insufficient to stop the effects of the climate crisis but also reflect the slow and inadequate compliance with the goals agreed upon within the framework of the climate change regime.

1.9. In its Written Statement, Colombia has not only demonstrated the impact of climate change on its ecosystems and communities but also argued that there are sufficiently established principles and relevant norms in international law to advance toward a clear definition of responsibilities and consequences for the breach of conventional obligations and customary rules within the framework of the international *corpus juris*.

1.10. Colombia insists on the need for practical meaning of the principle of due diligence and the importance of materializing the principle of Common but Differentiated Responsibilities and Respective Capabilities ("CBDR–RC"). Finally, Colombia calls for recognition of the impact that the climate crisis has on the infringement of human rights and the degradation of the universal system of human rights as a whole.

1.11. Colombia holds that its arguments are based not only on the substantial scientific evidence demonstrating the catastrophic impact of climate change upon the most vulnerable communities but also on the risks it poses to developing countries. It has also demonstrated that the issues discussed here are not unrelated to the concerns of the Court. In the advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, as well as in the *Pulp Mills* case, this Court has reiterated that there is a common interest in preserving the environment and that actions taken in this regard should not be considered in isolation nor are they abstract.

1.12. In addition to the jurisprudence of this Court, other regional and specialized tribunals such as the Inter-American Court of Human Rights ("IACtHR"), the European Court of Human Rights ("ECtHR"), and the International Tribunal for the Law of the Sea[9] ("ITLOS")

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[8] Colombia, Written Statement Annex 2, p. 183.

[9] *See e.g.*, Colombia, Written Statement, Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17 and contentious case, *Caso Habitantes La Oroya vs Peru*, Judgment of 27 November 2023; European Court of Human Rights, *Verein Klimaseniorinnen Schweiz and others v. Switzerland*, Application 53600/20, Judgment of April 9, 2024; and ITLOS*, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024.

have pronounced on several legal aspects of the interplay of environmental obligations writ large, but also on climate change-related human rights obligations.

1.13. These decisions have sought to reconcile climate change regime provisions with regional human rights treaties or specialized treaties such as UNCLOS. However, as evident from the request for this advisory opinion in resolution 77/276 of the United Nations General Assembly, there is a need for the international legal framework to be interpreted holistically and systematically - thereby avoiding legal fragmentation. The Court, as the main judicial organ of the United Nations with global general jurisdiction, is uniquely positioned to address this need.

1.14. It is precisely in the cracks of fragmentation where the arguments of countries requesting that commitments regarding the protection of the environmental, ecological, and climatic systems, and obligations under human rights and state responsibility not be merged or confused, take shelter. Through those cracks seeps the current incapacity of the international legal framework to make specific and definitive commitments enforceable, as well as to determine the responsibilities of those who seriously endanger the global climate system.

1.15. In several instances, including in investment arbitrations concerned with the apparent tension between States' obligation under international investment law, climate change law and human rights international law, Colombia has advanced the view that pursuant to the principle of systemic integration, as consistently applied by the ICJ[10] and the ECtHR,[11] tribunals must take into account all relevant rules of international law. The ICJ has sustained in Gabčíkovo-*Nagymaros* case that, "[O]wing to new scientific insights and to a growing awareness of the risks for mankind (…,) new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past". [12] In this context, an investment arbitration tribunal has noted that "[t]he category of materials for the assessment in particular of fair and equitable treatment is not a closed one, and may include, in appropriate circumstances, the consideration of common standards under other international regimes

[10] *Case Concerning Oil Platforms* (Islamic Republic of Iran v. United States of America), ICJ, Judgment, 6 November 2003, para. 41.
[11] *Case of Al Adsani v. United Kingdom*, ECtHR Application No. 35763/97, Judgment, 21 November 2001, para. 55.
[12] *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, ICJ, Judgment, 25 September 1997, para. 140.

(including those in the area of human rights)"[13]. As noted by an arbitral tribunal in *Urbaser v Argentina*, in certain circumstances, the human right to health and access to water "must prevail over the Contract and are therefore also part of the law applicable to the investment under the … BIT."[14] The tribunal noted, crucially by relying on Article 31.3.c of the VCLT,[15] that "[w]hen measures had been taken that have as their purpose and effect to implement such fundamental rights protected under the Constitution, they cannot hurt the fair and equitable treatment standard because their occurrence must have been deemed to be accepted by the investor when entering into the investment and the Concession Contract"[16]

1.16. The UNGA, acknowledging the irrefutable scientific evidence regarding the risk of leading the planet to the brink of an environmental and climatic collapse, and consequently to the imminent danger to the sustainability of the human race, has requested the Court to provide its legal opinion regarding the existing obligations in this matter, as well as the legal consequences for the breach of those obligations.

1.17. As long as the idea persists that States' obligations regarding climate change are narrowly defined and confined strictly within the climate change regime, without integrating a holistic and systemic interpretation, the substantive progress in States' actions and the ambition in climate negotiations, which is urgently needed, will be indefinitely postponed.

1.18. The Court's mandate in this regard is significant. It holds the possibility of taking that first step to shape a new era of international law. An era that puts life, not only individual but collective and planetary, at the centre of its efforts. An era where the very purpose of multilateralism is reinterpreted to prevent the catastrophe of witnessing the extinction of our race and doing nothing despite having all the mechanisms and the will of the majority of States that are part of the international community to do so.

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[13] *Saluka Investment BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006 (Watts, Yves Fortier, Behrens), para. 254 and fn. 6, which cites RL-0225, VCLT, Art. 31(3)(c).
[14]*Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26, Award, 8 December 2016 (Bucher, Martinez-Fraga, McLachlan), para. 622.
[15] *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26, Award, 8 December 2016 (Bucher, Martinez-Fraga, McLachlan), para. 1200
[16] *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26, Award, 8 December 2016 (Bucher, Martinez-Fraga, McLachlan), para. 622.

1.19. As Colombia has recalled at the UN General Assembly and the latest COPs,[17] today the world faces an immense paradox: it is the countries that pollute the least that have made the most significant commitments to prevent climate change. These countries also suffer the most directly and tangibly from the consequences of the climate system crisis. These States form the majority, and they demand to be heard. They demand that their needs be recognized, and that solidarity prevails to stop the catastrophic consequences arising from inaction in controlling GHG emissions, which consequently lead to an increase in global temperatures and rising sea levels.

1.20. The climate crisis poses a systemic threat that disproportionately affects countries and communities least responsible for it and with the highest social and economic vulnerability. Moreover, the crisis will further deepen as the global financial and banking system, with a high cost of capital, debt and interest mechanisms, imposes an extraordinary burden that prevents these countries from balancing the scales in terms of protecting ecosystems and other environmental surroundings. As a result, climate change presents a new "development trap" that worsens if timely actions are not taken to halt climate change.

1.21. In the current situation, rising sea levels caused by climate change pose a serious threat to islands and coastal States. In the case of Colombia, its low-lying coastal areas are in danger, as particularly evidenced in the Archipelago of San Andrés, Providencia and Santa Catalina, home to a distinct ethnic and cultural community with a strong connection to their land. When addressing its legal effects, Colombia believes that the existing baselines and the resulting maritime rights should be preserved, regardless of the physical changes caused by sea-level rise. First, there is an extensive and widespread practice by a significant majority of island and coastal States on fixed baselines.[18] Secondly, the Court has considered the principle of territorial integrity as a central part of the international legal order,[19] concluding in the *Jan Mayen* case that "the attribution of maritime areas to the territory of a State is, by its nature, destined to be

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[17] *See, e.g.,* United Nations General Assembly*, Statement by His Excellency Gustavo Petro Urrego, President of the Republic of Colombia* (New York, 2023). Available at: https://gadebate.un.org/en/78/colombia;
see also, Presidencia de la República de Colombia, *Statement of the President of Republic of Colombia, Gustavo Petro Urrego, at the COP28 Fossil Fuel Non-Proliferation Treaty negotiating mandate High-Level Party event*, 12 Dec. 2023. Available at:
https://petro.presidencia.gov.co/prensa/Paginas/Colombia-supports-climate-action-through-the-Fossil-Fuel-Non-Proliferation-Treaty-231202.aspx

[18] *See e.g.,* Tonga, Written Statement, para. 234.

[19] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403, at p. 437, para 80.

permanent". [20] Similarly, the International Law Commission ("ILC") has reviewed the issue.[21] Specifically, it has noted that State practice —including that of States parties to UNCLOS— shows there is no obligation for States to update their baselines when the sea-level rises or falls. It is, however, a prerogative of a State to do so.[22] In view of the above, Colombia submits this observation in support of the preservation of the existing baselines and the derived maritime entitlements of island and coastal States in the context of sea-level rise.

1.22. Climate change has become the greatest risk to the exercise of human rights. The effects of climate change and the threat it poses to the human race are already being felt in the proliferation of armed conflicts, displacement, and the escalation of global tensions with geopolitical impacts. Colombia calls upon States and international organizations participating in these proceedings as well as on the Court, when rendering its opinion, to ensure that the protection of life is not just an empty slogan but a real and measurable commitment. Time is of the essence.

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[20] *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Judgment, I.C.J. Reports 1993, p. 38, at pp. 73-74, para. 80.
[21] United Nations, International Law Commission, 72nd Session (24 April–2 June and 3 July–4 August 2023), *Sea-level rise in relation to international law, Add. paper to the First issues paper* (2020) UN Doc A/CN.4/761, para. 88 and 89.; *see also,* El Salvador, Written Statement, para. 58.
[22] *Ibid.* at para. 98.

CHAPTER 2 - THE COURT HAS JURISDICTION TO GIVE THE ADVISORY OPINION

2.1. Colombia submits that there is a wide convergence amongst the Written Statements made by States regarding the jurisdiction of the Court to render the Advisory Opinion as requested by the UNGA. States have considered that the question submitted is a *legal question* and there exists no compelling or justifiable reason for the Court not to exercise its jurisdiction in this matter.[23]

2.2. A vast majority of the participating States have expressed support for an advisory opinion to be rendered by the Court and share the view that the present proceedings did not give rise to any compelling reasons for the Court to exercise its discretion to decline to give an advisory opinion. Similar to Colombia,[24] several States have drawn the attention of the Court to the urgency of the threat of climate change and also to the collective interest of States in emphasizing that there are compelling reasons for the Court to proceed urgently to answer the questions.

2.3. The questions put to the Court are clear and precise. Their wording allows the Court to consider a wide range of legal principles and agreements, enabling it to render a comprehensive advisory opinion in light of the challenges posed by climate change.

2.4. Colombia submits that by answering the questions posed, the ICJ will undeniably contribute to clarifying the law applicable to climate change, thereby ensuring the protection of a "common concern of humankind". As the principal judicial organ of the United Nations with general jurisdiction, the Court's contribution is of paramount importance. Its advisory opinion will provide essential legal guidance, reinforcing the international legal framework and supporting global efforts to address the urgent threat of climate change.

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[23] *See for e.g.,* Gambia, Written Statement, para. 1.9; Nepal, Written Statement, para. 6; Ghana, Written Statement, para. 22; Dominican Republic, Written Statement, paras. 3.7-3.8.
[24] Colombia, Written Statement, paras. 1.7-1.9.

CHAPTER 3 - OBLIGATIONS TO ENSURE THE PROTECTION OF THE CLIMATE SYSTEM AND THE ENVIRONMENT

3.1. Colombia submits that addressing climate change necessitates a unified approach to avoid fragmentation. The interpretation and application of various relevant bodies of law must be mutually supportive to ensure coherence and effectiveness. In responding to the questions posed in the Request, the Court should consider the evolution of international environmental law and the climate change regime, which has developed through a series of international treaties and related instruments. Colombia considers the United Nations Framework Convention on Climate Change ("UNFCCC") and the Paris Agreement, as a crucial framework for international law on climate change. This regime includes instruments adopted to address climate change and decisions made by the parties to these treaties to promote their implementation. However, Colombia believes that international law addressing climate change goes beyond the UNFCCC and the Paris Agreement regime.

3.2. Colombia submits that addressing climate change necessitates a unified approach to avoid fragmentation. The interpretation and application of various relevant bodies of law must be mutually supportive to ensure coherence and effectiveness. In responding to the questions posed in the Request, the Court should consider the evolution of international law on climate change, which has developed through a series of international treaties and related instruments.

3.3. Colombia notes that in at least one written statement, it is alleged that "since the obligation to ensure the protection of the climate system and other parts of the environment is not solidly rooted in the cited instruments, the Court would be obliged to enter lex ferenda which departs from its functions and precedent"[25]. Colombia considers existing obligations under the Climate Change regime – the UNFCCC and the Paris Agreement, and other international instruments such as environmental and human rights treaties, are worded in terms of explicit commitments for States to mitigate climate change and protect the environment and human rights. Therefore, the Court can base its opinion on those existing legal frameworks and clarify the interplay of other relevant principles and rules of international law applicable to state actions regarding climate change, without delving into *lex ferenda*.

[25] *See for e.g.* Iran, Written Statement, para. 22.

3.4. Firstly, measures relating to climate change have developed in various forums, establishing rules applicable to specific issue areas and comprising norms of a customary nature and general application.

3.5. States support the need for the Court to clarify legal obligations to strengthen international climate action.[26] Colombia submits that while the Court should consider the norms specified in the question, it is not strictly confined to them and may refer to other relevant international environmental law and other pertinent instruments as necessary. In this regard, Peru rightly noted that the Court should not "limit itself to construe and apply the legal provisions expressly mentioned in the Request.[27]

3.6. Secondly, Colombia agrees with Canada that "climate change is relevant to a variety of international legal obligations" and that all "existing international legal obligations" must be considered when taking action to combat climate change.[28] Colombia also posits that the Court is not asked to create new and additional obligations but to ascertain and clarify the law applicable to climate change as a whole. Moreover, Colombia shares the view that the Court should not interpret the obligations of States regarding climate change under different treaties as "imposing contradictory obligations on States"[29] and should be "reconciled with each other without diminishing their respective content".[30] This entails interpreting and harmonizing States' obligations under different legal regimes, e.g., under human rights law, that are triggered by an issue which, by its very nature, places those rights at risk of irreparable harm and threatens not only livelihoods but a host of other vital interests on a massive scale.

3.7. Colombia submits that there is a wide convergence across written interventions regarding the relevance of interpretation and application of State's obligations by virtue of the *principle of intergenerational equity*[31]. Colombia considers that within the climate emergency

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[26] *See for e.g.* Switzerland, Written Statement, para. 8; Australia, Written Statement, para. 1.31.
[27] *See for e.g.* Peru, Written Statement, para. 71; Dominican Republic, Written Statement, para. 4.8.
[28] Canada, Written Statement, paras. 19 and 22.
[29] Colombia, Written Statement, para. 3.5; Canada, Written Statement, paras. 19 and 22.
[30] Germany, Written Statement, para. 36.

[31] *See for e.g,* France, Written Statement, para 282; Tonga, Written Statement, para 283; Vanuatu, paras 480-481; Kenya, para 388-389; Sierra Leona, Written Statement, para 5.26; St. Vicent and the Grenadines, Written Statement, para 123; Bahamas, Written Statement, paras 177,180; Timor-Leste, Written Statement, paras 199-210; Ecuador, Written Statement, paras 3.56-3,57; Cameroon, Written Statement, para 19; Costa Rica, Written Statement, para 56; Nepal, Written Statement, para 36; Burkina -Fasso, Written Statement, para 82-83; Marshall Islands, Written Statement, para 125; Bangladesh, Written Statement, para 124; Perú, Written Statement, para 83; African Union, Written Statement, para 116; European Union, Written Statement, para 184; IUCN, Written Statement, para 388-389.

context, States must strive for justice in accordance with the use and conservation of the environment and its natural resources, which requires to take into account the inequities across generations. This emerging principle, of *intergenerational equity*, has solid roots, *inter alia*, in the Stockholm Declaration, the UNFCCC, the Paris Agreement, United Nations General Assembly's resolutions, the Convention on Biological Diversity, the Rio Declaration[32]. Moreover, domestic[33] and international courts have acknowledged duties to the future, specifically to future generations and their environment. The IACtHR has also recognized it as part of the right to a healthy environment[34]. The Court, in the *Legality of the Threat or Use of Nuclear Weapons* Advisory Opinion, recognized the direct threat to the interests and rights of future generations and environment with respect to phenomena of catastrophic power, that "cannot be contained in either space or time".[35] Colombia invites the Court to find that *intergenerational equity*, as an enforceable legal norm of customary international law, is central to climate change obligations, policies, and negotiations.

3.8. Against this context, this section will address the obligations of States to address climate change, in particular relating to the obligation to protect and prevent harm to the climate system and due diligence (A), the principle of highest possible ambition and progression (B), the duty to cooperate (C), and human rights and climate change (D). In the end, Colombia will offer remarks on the issue of fragmentation of international law on climate change. (E)

A. OBLIGATION TO PROTECT AND PREVENT HARM TO THE CLIMATE SYSTEM AND DUE DILIGENCE

1. OBLIGATION TO PROTECT, AND PREVENT HARM TO, THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

3.9. Colombia asserts that customary international law mandates States to act both preventively and proactively to protect the environment including the climate system.[36] This obligation encompasses both positive and negative duties, requiring States to take affirmative steps to safeguard the environment and to abstain from actions that degrade it. Colombia posits

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[32] *See, e.g.,* The United Nations Framework Convention on Climate Change (UNFCCC) art. 3; the Convention on Biological Diversity, preamble and art. 2; Stockholm Declaration, principles 1 and 2; Rio Declaration, principle 3.

[33] Corte Suprema de Justicia de la República de Colombia, *Generaciones Futuras STC4360-2018*, Judgement, 5 April 2018.

[34] Inter-American Court of Human Rights (Advisory Opinion), OC-23/17, paras. 22, 59.

[35] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, at p. 244, para 35.

[36] *See for e.g.* Thailand, Written Statement, para. 15; Pakistan, Written Statement, paras. 33, 36 and 37.

that the duty to "protect" obliges States to avert future environmental harm, necessitating measures to prevent damage caused by their agents and individuals under their control. Consequently, Colombia also believes that States are responsible for protecting against current and foreseeable impacts of climate change, including human rights impacts arising from business activities within their territory or jurisdiction.

3.10. Colombia understands that the principle of prevention is relevant in addressing the irreversible impacts of climate change. States and other participants in their Written Statements share the same view. For instance, this principle has been recognised as a core tenet of international environmental law and is particularly relevant in the context of climate change, where the potential for irreversible harm necessitates both protective and preventive action.[37] States have also recognised that preventive measures are essential to avoid crossing critical thresholds in the climate system that could lead to catastrophic and irreversible impacts.[38] States have collectively stressed the importance of the principle of prevention as a foundational aspect of international efforts to combat climate change.

3.11. Colombia, however, contends that solely applying the principle of prevention including the duty to prevent significant transboundary environmental harm—is inadequate when addressing both known and unknown effects of the climate crisis. States cannot justify inaction based on the unpredictability of specific causation or the consequences of activities likely to exacerbate the climate crisis. Instead, they must adopt measures to mitigate the harmful effects of such activities. Furthermore, the duty to prevent applies, as noted by Belize, to "all phases of decision-making (including, non-exhaustively, planning, impact assessment, the decision to proceed with the conduct in question, implementation, and post-implementation monitoring)."[39]

3.12. The duty to prevent is important in the relationship between climate change, human rights, and foreign investment protection. Colombia has successfully argued in investment arbitration cases that states have the right under international law to use their police powers to achieve public policy goals, including through legislation and regulation. Except in rare circumstances where the measure cannot reasonably be viewed as having been adopted in good faith, with the standard for proving that a regulation pursuant to legitimate objectives lacks

[37] *See for e.g.* Switzerland, Written Statement, para. 15; Thailand, Written Statement, para. 9.
[38] *See* EU, Written Statement, paras. 180 and 301.
[39] Belize, Written Statement, para. 37.

good faith being a high one,[40] the non-discriminatory implementation of public policy objectives, such as an absolute ban against mining in sensitive ecosystems, including those most vulnerable to the effects of climate change, even if severely impacting the investment, does not amount to expropriation and does not trigger an obligation to compensate. Importantly, an arbitral tribunal, when assessing a decision by the *Colombian Constitutional Court* to revoke transitional regimes that allowed mining activities to continue despite the scientifically supported concern over the fragility of paramo ecosystems, considered the reversal to contain elements of arbitrariness. Nonetheless, the tribunal noted that such a change did not entail a manifest arbitrariness, and accordingly did not constitute an internationally wrongful act, because "judicial bodies across the globe are widely recognized to validly lead the way in the development of the law according to society's evolving values."[41]

2. APPLICABILITY OF THE OBLIGATION TO PREVENT SIGNIFICANT HARM TO CLIMATE CHANGE

3.13. Several States have highlighted the necessity for adopting preventive measures to mitigate significant environmental harm, particularly from anthropogenic greenhouse gas emissions. For instance, it has been recognised that the global community must urgently adopt measures to reduce GHG emissions and to prevent significant harm to the environment and protect vulnerable ecosystems and populations.[42]

3.14. There is also a rather wide consensus among States in their Written Statements that the principle of prevention is a general principle of international environmental law that applies broadly to all forms of significant environmental harm, including those resulting from global climate change.[43] As rightly observed this principle "cast in wide terms" is "capable of applying in diverse factual situations and applied with respect to various types of environmental harm".[44] Colombia also shares the view that the principle of prevention should inform the UNFCCC and the Paris Agreement, requiring States to take all necessary measures to prevent

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[40] *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, para 793. See also *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, November 30, 2017, para 350.
[41] *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, para 812.
[42] *See for e.g.,* UAE, Written Statement, paras. 9-13. India, Written Statement, paras. 79 and 90; Nepal, Written Statement, para. 25.
[43] *See for e.g.,* El Salvador, Written Statement, para. 34; Costa Rica, Written Statement, paras. 43 and 49; Pakistan, Written Statement, paras. 36-37.
[44] Belize, Written Statement, para. 36.

significant harm to the climate system.[45] The principle of prevention under customary international law is also applicable to the global issue of climate change, necessitating preventive measures to mitigate significant environmental harm on a global scale.

3.15. Some States, however, note a distinction between transboundary harm and global climate change, arguing that "the principle of prevention of significant harm to the environment is inapplicable to the issue of climate change."[46] However, this interpretation is an outlier and not correct as the principle of prevention is not limited to transboundary contexts but is also applicable to global environmental challenges, including climate change.[47] This also fails to consider the inherently interconnected nature of the different parts of the environment and the ecosystem.[48]

3.16. In a similar vein, Denmark, Finland, Iceland, Norway and Sweden in their joint Written Statement incorrectly – in Colombia's view – observed that the principle of transboundary harm "may not be transposed to the case of climate change" and that there is no "generally accepted standard, scientific or legal, for determination of the effects of a specific act of anthropogenic emissions on the climate system and other parts of the environment." [49] They further claim that "[n]or is there any specific standard developed for the apportionment and causal interrelationship of the combined emissions of the States".[50]

3.17. Colombia submits that given the global and interconnected nature of climate change impacts; this principle logically extends to the obligations of States to mitigate climate change effects. The Court in the *Pulp Mills* case has recognised the duty of States to prevent significant harm to the environment of other States.[51] Colombia notes that various international treaties and legal instruments, such as the UNFCCC, the Kyoto Protocol, and the Paris Agreement, implicitly support the application of the transboundary harm principle to climate change. These agreements emphasize the responsibility of States to reduce greenhouse gas emissions, which contribute to global climate change and its transboundary impacts.

3.18. Contrary to the assertion of Denmark, Finland, Iceland, Norway, and Sweden, there is a robust and evolving scientific consensus on the effects of anthropogenic emissions.

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[45] EU, Written Statement, para. 321.
[46] *See for e.g.,* China, Written Statement, para. 128; Russia, Written Statement, p. 19.
[47] *See for e.g.,* Nauru, Written Statement, para. 32.
[48] *See for e.g.,* Costa Rica, Written Statement, para. 54.
[49] Denmark, Finland, Iceland, Norway and Sweden, Written Statement, paras. 69-72.
[50] Denmark, Finland, Iceland, Norway and Sweden, Written Statement, paras. 69-72.
[51] *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, para. 101.

The Intergovernmental Panel on Climate Change ("IPCC") has developed comprehensive reports detailing the impacts of specific greenhouse gases on the climate system. As noted by the Alliance of Small Islands States (consisting of 39 small island and low-lying developing States) in its Written Statement, the "Court is not being asked to render an opinion on any disputed question of fact, even in relation to the science of climate change. There is clear scientific consensus on the facts of climate change as reflected in the IPCC reports".[52] In this regard, Colombia notes that in the context of a specific activity emitting anthropogenic GHGs, the input of scientific experts might be required in ascertaining significant harm. To clarify, this is not what is being requested of the Court – nor could it be – in these proceedings.

3.19. Furthermore, the assertion that there is no generally accepted legal standard for determining the effects of emissions is also flawed. The precautionary principle, enshrined in the Rio Declaration on Environment and Development, obligates States to take preventive measures even in the absence of complete scientific certainty. This principle supports the adoption of stringent climate policies to mitigate the risks associated with anthropogenic emissions.

3.20. In this regard, the recent advisory opinion delivered by the ITLOS is instructive. In relation to the specific obligations to take "all necessary measures" to prevent, reduce and control existing marine pollution from anthropogenic GHG emissions, ITLOS noted that this obligation required State Parties to endeavour to harmonise their policies in this respect and act both at a joint global level as well as at the individual State level, as appropriate. [53] The Tribunal stated that while UNCLOS left it to each State Party to determine what measures are necessary to prevent, reduce and control marine pollution from anthropogenic GHG emissions, such measures "should be determined objectively".[54] The Tribunal found that there are various factors that States should consider in objectively assessing the "necessary measures".[55] Colombia submits that these factors guide the contours of obligations to prevent reduce and control climate

[52] AOSIS, Written Statement, para. 13.
[53] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024, paras. 197-224.
[54] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024, para. 243.
[55] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024, paras. 197–243.

change under customary international law.[56] Similar to ITLOS, Colombia notes that in the absence of scientific certainty, States must apply the precautionary approach in addressing climate change measures. [57] States, such as Belize, Ecuador and Mexico, have adopted a similar position regarding the applicability of the precautionary approach and principle.[58]

3. OBLIGATION OF DUE DILIGENCE

3.21. Colombia argues that the primary benchmark for assessing customary international law obligations to protect and prevent harm to the climate system and other parts of the environment is the obligation to act with due diligence.[59] In the context of climate change, this duty must be understood in light of the objectives and purposes of international climate change law, the discretion granted to parties, the differentiated nature of obligations, the potential harm in the absence of due diligence, and the principle of good faith. For instance, Mexico also notes that "due diligence in preventing environmental harm requires States to proactively assess and mitigate risks before significant harm occurs."[60]

3.22. Colombia emphasizes the importance of the precautionary approach as a fundamental aspect of the general obligation of due diligence, which, as Singapore noted, will be informed by "obligations of States under the UNFCCC and the Paris Agreement as well as other relevant international treaties".[61] As Article 3 of the UNFCCC states, "[t]he Parties should take precautionary measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects." Colombia maintains that States should be guided by the precautionary principle outlined in the Rio Declaration on Environment and Development, which stipulates that "where there are threats of serious or irreversible damage, lack of full scientific

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[56] Peru, Written Statement, para. 84 ("Peru emphasis the general obligation to protect and conserve the marine environment as a rule of customary international law").
[57] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024, para. 213. (The obligation under Article 194(1) requires States to take necessary measures using "the best practicable means at their disposal" and "in accordance with their capabilities". The Tribunal stated States with greater means and capabilities must do more to reduce anthropogenic GHG emissions than those with lesser means and capabilities. In doing so, the Tribunal expressly endorsed the principle of "common but differentiated responsibilities", which is recognised under both the UNFCC and the Paris Agreement.).
[58] Belize, Written Statement, para. 51(d); Mexico, Written Statement, paras. 54-57; Ecuador, Written Statement, para. 3.48.
[59] *See for e.g.,* Thailand, Written Statement, para. 11; Viet Nam, Written Statement, para. 25.
[60] Mexico, Written Statement, para. 43.
[61] Singapore, Written Statement, para. 3.20.

certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

3.23. Colombia submits that this Court must provide authoritative guidance on the duty of due diligence, as outlined in Question (a) of the Request, as an obligation of States to protect the climate system and other parts of the environment from anthropogenic GHG emissions, benefiting States, peoples, and individuals of present and future generations. Particularly useful for the UN General Assembly and its Members would be the clarification of when reasonably foreseeable harms caused by States, trigger an obligation to take measures. Notably, the duty of due diligence must be exercised in proportion to the degree of risk and does not include any inherent threshold of significant harm before the duty is triggered. Colombia shares the view that this duty also includes taking practicable steps to prevent harm from any acts or omissions that occurred before the risk became reasonably foreseeable; failure to do so may result in these earlier acts and omissions being part of a composite wrongful act.[62] Moreover, the standard of due diligence varies in the context of national circumstances, particularly those of developing countries.[63]

3.24. Some States and participants seem to suggest that the general duty of due diligence has either no application as a source of additional obligations,[64] or that it has been encompassed, subsumed or displaced by the principle of prevention regarding environmental harm, insofar as it can be traced to a specific and identifiable source and not from a "variable and diffuse series of activities"[65]. However, Colombia submits that two main points of distinction are well established, one concerning the material scope of the obligations and the other their respective thresholds of harm.

3.25. First, the duty of due diligence has a wider material scope than the prevention principle.[66] States must not only prevent significant harm in their activities, and those undertaken by those under their jurisdiction and control, but also act with a precautionary focus, and display a proactive conduct to protect individuals and the environment.[67]

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[62] Vanuatu, Written Statement, paras. 530-535.
[63] Tonga, Written Statement, para. 160.
[64] OPEC, Written Statement, chapeau to para. 88.
[65] USA, Written Statement, para. 4.15.
[66] Vanuatu, Written Statement, para. 245.
[67] Colombia, Written Statement, para. 3.15.

3.26. Second, the duty of due diligence cannot be subjected to the same threshold requirement of "significant" harm as does the obligation not to cause transboundary damage. A State is always required to exercise due diligence in conducting its activities and regulating those under its jurisdiction and control.[68] It is worth recalling that the ITLOS observed in relation to the obligation of due diligence that given that anthropogenic GHG emissions "pose a high risk in terms of foreseeability and severity of harm to the marine environment"[69], States must exercise "stringent" due diligence in taking all necessary measures to prevent, reduce and control marine pollution.

B. THE PARIS AGREEMENT – THE PRINCIPLE OF HIGHEST POSSIBLE AMBITION AND PROGRESSION

3.27. Colombia reiterates that the principle of highest possible ambition and progression, as articulated in Articles 3 and 4 of the Paris Agreement, stands as a cornerstone to ensure the protection of the climate system from anthropogenic emissions of GHG. For Colombia, the principle of the highest possible ambition, which aligns with the duty of due diligence in international law, essentially requires that Parties deploy their best efforts in setting their national mitigation targets and in pursuing domestic measures to achieve them.

3.28. In this regard, Colombia submits that Article 2 of the Paris Agreement reflects the purposes of the Paris Agreement. As mentioned in Colombia's Written Statement, Article 2 sets forth the aim - "in enhancing the implementation of the UNFCCC" to "strengthen the global response to the threat of climate change". For Colombia, the purposes in Article 2 including "holding the increase in the global average temperature" and "making finance flows consistent with a pathway towards low greenhouse gas emissions" are to be achieved, for example, through the setting of nationally determined contributions ("NDCs") (article 4), and through developed countries providing financial resources to assist developing countries (article 9). In this regard, the ITLOS has correctly observed in its advisory opinion that the "dual temperature goal" in Article 2 has been "further strengthened by the successive decisions of the Parties to the Paris Agreement" and Article 4 "sets timelines for emission pathways to achieve the long-term

[68] Vanuatu, Written Statement, para. 246.
[69] ITLOS*, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024, para. 241.

temperature goal set out in Article 2."[70] While the nature of this obligation is "collective"[71], each State also remains independently under an obligation to ensure that its NDCs are designed and implemented in a way that furthers the goals outlined in Article 2, including the dual temperature goal. Colombia agrees with Tonga that "action on all three goals is necessary to make meaningful progress in pursuit of the UNFCCC and the Paris Agreement objectives."[72]

3.29. In Article 4 of the Paris Agreement, the Parties agreed to reduce their GHG emissions as quickly as possible. Developed countries must set targets to reduce their emissions economy-wide. To achieve the overall goal of limiting temperature, each Party must prepare and communicate their NDC and take domestic actions to meet their commitments. At the same time, developing countries are encouraged to make economy-wide efforts to limit or reduce their emissions over time. Colombia submits that it should be done in line with the objectives of, and the collective commitments expressed in, Articles 2(1) and 4(1) of the Paris Agreement. Colombia submits that the due diligence standard of conduct applies, in particular, to the realisation of Parties' NDCs. According to Article 4(2), second sentence, the "Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such NDCs". At the same time, it also establishes a standard of conduct according to which Parties ought to do as well as they can in designing, implementing and enforcing domestic measures aiming at achieving the objective of their respective NDC.

3.30. Tonga has argued that Article 4(2) of the Paris Agreement, in its second sentence, constitutes an obligation of conduct, meaning that States will not be sanctioned if their domestic mitigation measures fail to achieve the objectives of their NDCs due to external circumstances.[73] Colombia concurs that Article 4(2) functions as an obligation of conduct and should be interpreted in conjunction with other provisions, such as Article 3. However, the fact that Article 4(2) is an obligation of conduct does not imply that States are exempt from sanctions if their domestic mitigation measures fall short of their objectives. Instead, while external circumstances beyond the State's control may be factored, such conduct will be assessed against the due diligence standard, including the obligation to demonstrate progression over time. In this regard, Ecuador has also adopted the same position that "compliance by a State with [Article 4(2)] will

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[70] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024, paras. 216-217

[71] *See for e.g.,* Portugal, Written Statement, para. 53; *See also* Singapore, Written Statement, para. 3.30.

[72] *See for e.g.,* Tonga, Written Statement, para. 144.

[73] Tonga, Written Statement, para. 144.

not depend on whether the aims of their NDC were actually achieved but on whether the measures adopted have been meaningful, timely and effective, taking into account, inter alia, the capabilities of that State and the principle of CBDR."[74]

3.31. In the context of the Paris Agreement, Colombia submits that the Court should interpret this standard as one requiring Parties to act in proportion to the risk at stake and to their individual capacity, considering that those efforts must progress over time.

3.32. Colombia submits that the "highest possible ambition" as a standard of conduct and due diligence needs to be adopted by the Parties while formulating and communicating their NDCs every five years. States must act with care and use appropriate measures in matters of international importance. The level of care required is proportional to the degree of risk they may face or are exposed to. As the level of potential harm increases, so does the duty of care required to prevent it.

3.33. In their Written Statements, States have consistently expressed concerns regarding the insufficiency of current Nationally Determined Contributions (NDCs) and have called for greater ambition in reducing greenhouse gas emissions to meet global climate goals. States have underscored that the NDCs put forward under the Paris Agreement, while a significant step forward, are collectively insufficient to meet the long-term temperature goals of the Agreement.[75] The current NDCs are projected to result in global warming of around 2.7°C by 2100, far above the Paris Agreement's objectives to limit the temperature increase to well below 2°C and pursue efforts to limit it to 1.5°C. Moreover, the collective level of ambition of current NDCs is inadequate to put the world on a pathway consistent with the Paris Agreement's temperature goals and significant gaps remain between the emissions trajectories foreseeable under current NDCs and those required to achieve net-zero global emissions by mid-century.[76]

3.34. When addressing the concept of the highest possible ambition in their Written Statements, some participants affirmed that there is no conventional definition, which made it context dependent. Colombia agrees with this position in principle; however, it should not be interpreted to mean, as some participants seem to suggest, offering the possibility to downgrade their NDCs when updating them, positing that this degree of flexibility is currently needed to organize pragmatic transitions. This interpretation would jeopardize the objectives of the UN

[74] Ecuador, Written Statement, para. 3.80.
[75] *See for e.g.,* Seychelles, Written Statement, para. 87.
[76] Mauritius, Written Statement, para. 206 and 221(b).

framework of climate change, particularly the Paris Agreement.[77] Colombia agrees that States have the sovereign choice of means while implementing mitigation and adaptation strategies to achieve their NDCs. Colombia also agrees that it is important to implement pragmatic transitions, guided by the principle of CBDR-RC stated in the Paris Agreement. However, even if it is possible to adjust NDCs at any time, it remains an obligation to maintain or enhance the level of ambition reflected therein and ultimately follow the guidance adopted by the Conference of Parties[78]. The UN framework does not entertain NDCs downgrade while updating, since progression is an obligation under the Paris Agreement.[79] A breach to this obligation frustrates the main objective of the UN climate change regime.

3.35. States have recognised that the current NDCs do not yet put us on a track to meet the Paris Agreement's temperature goals, let alone pursuing efforts to limit it to 1.5°C. Colombia agrees that all countries, especially those with the highest historical and current emissions, must significantly and differentially enhance their NDCs to close the gap between current trajectories and the required emission reductions.

3.36. The written statements reflect a clear consensus among States on the need for enhanced ambition and more stringent actions to reduce emissions, while also ensuring that the principles of equity and CBDR-RC are upheld to avoid imposing undue burdens on developing countries. Colombia submits that the approach aims to close the gaps left by current NDCs and to align with the Paris Agreement's objectives to mitigate the worst impacts of climate change.

3.37. While the developed countries are under an obligation, as explicitly mentioned in Article 4(4) of the Paris Agreement, to take the "lead by undertaking economy-wide absolute emission targets" and continue "enhancing their mitigation efforts", Colombia stresses that the principle of ("CBDR–RC") should not be interpreted in a way that Article 4 and other provisions of the Paris Agreement creates an exception permitting States to avoid the adoption and implementation of measures aimed at environmental protection and combating climate change.[80]

3.38. Colombia submits, however, as further explained in the following section, that the costs of mitigation and adaptation for developing countries impose a significant fiscal burden, impacting essential social investments. Therefore, these efforts require much more than

[77] OPEC, Written Statement, par. 70, 72; USA written statement, Par chap 3.18 (note 54 of the annex).
[78] Paris Agreement, articles 4(2) and 4(11).
[79] Ibid., article 4 (3).
[80] Colombia, Written Statement, para. 3.56.

discretionary goodwill gestures from developed States, which have historically contributed more to global GHG emissions.

C. DUTY TO COOPERATE

3.39. Several States emphasize that while national efforts are crucial, they are insufficient to address the global climate crisis. The scale and complexity of climate change necessitate a concerted international response. Efforts by individual countries, though important, cannot alone meet the challenge posed by global climate change. States have recognised that collective action is essential to ensure that the cumulative impact of national measures aligns with the overarching goal of limiting global temperature rise.

3.40. Colombia shares the view that while national commitments and actions are vital, they must be complemented by robust international cooperation to achieve the necessary scale of emission reductions and climate resilience. The call for enhanced international cooperation is a recurring theme in the Written Statements submitted by States and other participants recognising that the global community, including the developed States that have historically contributed more to global GHGs emissions, must urgently scale up its climate ambition and action through strengthened international cooperation, solidarity and support through finance, technology transfer and capacity building. [81]

3.41. States and other participants also view the role of the Court as critical in guiding future negotiations on state obligations and climate action. States acknowledge that the advisory opinion of the Court can provide much-needed legal clarity on the obligations of States under international law, thereby guiding future climate negotiations and enhancing the coherence of international efforts.[82] This collectively highlights the anticipated role of the Court in not only providing legal clarity but also in catalysing enhanced international cooperation and collective action to protect the climate system and the environment.

3.42. The ITLOS in its recent advisory opinion on climate change also affirmed that provisions of Part XII of UNCLOS impose specific and concrete obligations on State Parties to cooperate on a global and/or regional level.[83] Colombia submits that "specific" and concrete

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[81] *See for e.g.,* Indonesia, Written Statement, para. 65; Argentina, Written Statement, p. 15.
[82] *See for e.g.,* EU, Written Statement, para. 35.
[83] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024, para. 297.

obligations on States relating to the protection of the climate system are not limited to any particular treaty but also extend to the duty to cooperate under international law and other applicable treaties.

3.43. In this context, special attention should be given to the principle of common but differentiated responsibilities and respective capabilities, cooperation and the need for financial contributions and technical assistance to the developing countries. This is recognised by States in their Written Statements. For example. Mexico notes that the duty to cooperate is "associated with the cooperation channels that exist within the framework of the UNFCCC, such as those related to technology transfer, creation and strengthening of capacities, climate finance mobilization, as well as in various sectors related to mitigation and adaptation to climate change."[84] Similarly, Colombia noted in its Written Statement that "[a]ccording to the UNFCCC and its Paris Agreement, international cooperation is necessary for effectively achieving climate goals. The developing countries, which often face significant development challenges, require support in terms of finance, low-carbon technology transfer, and capacity-building in order to fully realize these goals. The developed countries are obligated to provide this support." [85]

3.44. In this regard, Article 4(7) of the UNFCCC stipulates that the ability of developing countries to fulfil their commitments under the UNFCC is contingent upon developed countries meeting their commitments regarding financial resources and technology transfer. It emphasizes that economic and social development, along with poverty eradication, are the primary priorities for developing countries. Similarly, Article 4(10) mandates that the implementation of the UNFCCC commitments should consider the specific circumstances of parties, especially developing countries, which are vulnerable to the negative effects of climate response measures. This consideration is particularly relevant for countries whose economies heavily rely on the production, processing, export, and/or consumption of fossil fuels and related energy-intensive products, and for those facing significant challenges in transitioning to alternative energy sources.

3.45. For its part, Colombia is committed to phasing-out fossil fuel and the energy transition but faces the challenge of bridging the revenue gap resulting from the expected

[84] Mexico, Written Statement, para. 83.
[85] Colombia, Written Statement, para. 3.65.

shortfall of main exports[86] such as fossil fuels. These exports are also significant sources of direct foreign investment. This shortfall impacts Colombia's fiscal capacity to promote the country's socioeconomic development. Therefore, Colombia advocates for innovative approaches to climate financing, such as debt-swaps for climate action and calls for an overhaul of the international framework of development financing that reflects these urgent realities.

3.46. Colombia submits that while individual national efforts are indispensable, a vast number of States consistently stress the necessity of enhanced international cooperation and collective action to effectively tackle the global climate crisis. The role of the Court in providing legal guidance is seen as crucial in shaping future climate negotiations and ensuring a coordinated global response.

D. HUMAN RIGHTS AND CLIMATE CHANGE

3.47. In its Written Statement, Colombia underscored the adverse impact of climate change on its population, including local communities and indigenous peoples in the Americas and the Caribbean region.[87] For the full realization of the human rights and well-being of its people, including particularly vulnerable population groups such as children, women, indigenous populations, Afro-descendant communities, and the *Raizales* in the Caribbean region, the protection of the environment, and the mitigation and combating of climate change are prerequisites.[88] This position finds strong support in international legal frameworks and in Written Statements from various States.[89] A number of States have underscored the significant threats climate change poses to human rights and the necessity of integrating human rights considerations into climate policies to protect vulnerable communities.[90] This was one of the paramount considerations for Colombia and Chile's joint request to the IACtHR for an advisory opinion on Climate Emergency and Human Rights, which is currently under deliberation.[91] This

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[86] Ministerio de Comercio, Industria y Turismo de Colombia. *Informe de Exportaciones de Colombia, April 2024.* pp. 9, 20, 23, 25 and 38. Consulted at https://www.mincit.gov.co/getattachment/estudios-economicos/estadisticas-e-informes/informes-de-exportacion/2024/abril/oee-ma-informe-de-exportaciones-abril-2024.pdf.aspx.
[87] Colombia, Written Statement, paras. 3.66-3.72.
[88] Colombia, Written Statement, paras. 2.49-2.70 and 3.66-3.72.
[89] *See for e.g.,* Tonga, Written Statement, paras. 240-242; Colombia, Written Statement, para. 3.70; Nepal, Written Statement, para. 19; Germany, Written Statement, para. 84.
[90] *See for e.g.,* Bangladesh, Written Statement, paras. 4 and 103; *See also* India, Written Statement, paras. 77-79; European Union, Written Statement, paras. 68 and 92; Nepal, Written Statement, para. 31.
[91] Inter-American Court of Human Rights. *Request for an Advisory Opinion OC-32 Climate Emergency and Human Rights. Written Observations submitted by States, NGOs, academia, individuals and companies*. Available at: https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634 .

aligns with Colombia's emphasis on protecting the human rights of diverse populations affected by climate change and the need to safeguard living conditions for future generations.

3.48. Colombia agrees with some written statements recalling that States are under an obligation to respect, guarantee, and adopt human rights measures against the current and imminent impacts of climate change.[92] Moreover, the IACtHR has stated that certain obligations extend towards any person who is within a State's territory or who is in any way subject to authority, responsibility, or control (within or outside the State territory).[93]

3.49. Colombia submits that the integration of human rights considerations into climate actions is not only essential but also a legal necessity, as underscored by various international legal instruments and Written Statements of States.[94] The protection of human rights, particularly for vulnerable and historically marginalized populations, is intrinsically linked to effective climate mitigation and adaptation measures. This underscores the need for robust international cooperation and clear legal frameworks to ensure that climate actions are aligned with human rights principles, thereby advancing both climate justice and human dignity.

3.50. While States acknowledge the impact of climate change on human rights, a few States that submitted written statements in these proceedings suggest that climate change should be addressed within its specific regime, distinct from human rights treaties and obligations. They have argued that human rights treaties lack universality and do not deal with the obligations of States under international law to ensure the protection of the climate system from anthropogenic GHG emissions.[95] This misses the point that certain universal human rights such as the right to a healthy environment may be directly relevant to the protection of the climate system and other parts of the environment.[96] It is also argued that adverse effects of anthropogenic emissions are indirect in nature and the causal relationship between anthropogenic GHG emissions and their adverse effects on human rights is complex.[97]

3.51. Some States stress that a violation of the positive obligation of a State under a human rights instrument requires causality between the State's emissions of GHGs and

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[92] *See for e.g.,* Antigua and Barbuda, Written Statement, paras. 348-349.
[93] Colombia, Written Statement, para. 3.72; *See* Colombia, Written Statement, Annex 1: Inter-American Court of Human Rights Advisory Opinion, OC-23/17, para. 101.
[94] *See for e.g.,* Costa Rica, Written Statement, para. 75.
[95] Saudi Arabia, Written Statement, paras. 4.97-4.98.
[96] *See for e.g.,* El Salvador, Written Statement, para. 42; Portugal, Written Statement, para. 70; Costa Rica, Written Statement, para. 82; Iran, Written Statement, para. 141.
[97] China, Written Statement, para. 118.

interference with the climate system creating and causing specific and sufficiently severe impairment of human rights.[98] Arguing for a limited scope of human rights, it has been suggested that States are only required to take domestic actions for climate change mitigation and adaptation to address climate change and its adverse effects aiming to respect, protect and fulfil human rights, and to avoid impeding their realisation when taking such actions and to engage in international cooperation.[99]

3.52. Colombia submits that these concerns overlook the intrinsic connection between environmental protection and human rights. The adverse effects and risks of climate change on specific individuals or groups stem from aggregate global GHG emissions, and the emissions from any single jurisdiction contribute to the overall harm. Although the causal link between State actions and climate harm may seem indirect, the positive human rights obligations of a State also require reducing the risk of harm to individuals. In this regard, the IACtHR in its recent decision in *La Oroya vs Peru* is helpful where it noted that:

> "where: a) it is proven that certain environmental pollution is a significant risk to the health of persons; b) the persons were exposed to such pollution under conditions that placed them at risk, and c) the State is responsible for the breach of its duty to prevent such environmental pollution, it is not necessary to prove direct causality between the acquired diseases and their exposure to the pollutants. In these cases, in order to establish State liability for violations of the right to health, it is sufficient to establish that the State allowed the existence of pollution levels that put the health of persons at significant risk and that the persons were indeed exposed to environmental pollution, in such a way that their health was at risk. In any event, in these cases, it will be up to the State to demonstrate that it was not responsible for the existence of high levels of contamination and that this did not constitute a significant risk to people."[100]

3.53. Colombia understands that the harm from climate change does not originate from a single source but from a multitude of global emissions. Therefore, Colombia requests the Court

[98] Denmark, Finland, Iceland, Norway and Sweden, Written Statement, paras. 85-86.
[99] China, Written Statement, para. 121.
[100] Inter-American Court of Human Rights, *Caso Habitantes La Oroya vs Peru*, Judgment of 27 Nov. 2023, para. 204 (Original in Spanish).

to consider an approach tailored to the specific characteristics of climate change while interpreting obligations under the human rights treaties to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of GHGs. Rather than focusing solely on direct causation, the Court should consider the cumulative effects of GHG emissions and the resultant harm to human rights. Certain human rights, such as the right to health, including the right to a healthy environment, and the right to life, are engaged by climate change due to its adverse effects not only on physical health but also on mental health, well-being, and quality of life.[101] Moreover, as Colombia explained in its Written Statement, among others, the rights of indigenous and local communities often share a special relationship with the environment including the climate system, intrinsic to their belief systems and very way of life as stewards of nature, which needs to be taken into account in the interpretation of relevant human rights.[102] These rights are impacted not only by actual harm but also by sufficiently severe risks of harm. Colombia believes that the Court does not need to evaluate the causality between the adverse impacts of climate change and specific violations of human rights in distinct geographic regions, as this may subsequently be addressed on a case-by-case basis. However, the Court is well-positioned to determine the legal scope of human rights protection concerning the potential impacts of climate change on individuals, particularly regarding the risk of degradation in their living conditions.

3.54. Colombia notes that some participants exclude the application of rules that demand actions beyond international cooperation, as called for under the UN climate change regime to address global GHG emissions and their effects on individual rights[103]. Other participants have recognized that a healthy environment supports the well-being of people around the world as well as the enjoyment of human rights.[104] However, even their acknowledgement is tempered by assertions to the effect that neither ICCPR nor ICESCR provides for any obligation to mitigate GHG emissions, protect the right to life, or ensure the right to a clean, healthy, and sustainable environment. As stated previously, Colombia understands that the UN climate change regime and the universal regime of human rights are complementary since the fulfilment of the obligations contained in the climate change regime is conducive, indeed a necessary condition, for the effective realization and guarantee of individual and collective rights. In that

[101] *See for e.g.,* Bangladesh, Written Statement, para. 105.
[102] Colombia, Written Statement, paras. 2.60-2.74.
[103] OPEC, Written Statement, para. 92.
[104] USA, Written Statement, para. 4.23.

sense, mitigation of GHG emissions effects is directly related to the obligation to respect, fulfil and protect human rights at both the regional and international levels.

3.55. To respect, fulfil and protect the right to life and to a clean healthy and sustainable environment, the fulfilment of the obligations to reduce GHG emissions and to mitigate their effects is a necessary condition. In other words, human rights obligations and obligations to reduce GHG emissions are co-dependent. As the Human Rights Committee noted:

> "The right to life is a right that should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity."

Furthermore,

> "[…] States parties [to the ICCPR] must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State. The obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life". [105]

3.56. Thence, the protection of the right to life also imposes a positive obligation of due diligence to States parties to the ICCPR and other similar treaties. This entails proactive conduct against actions and omissions that could cause premature deaths and to prevent activities of private and public agents whose impact could deprive individuals of their lives – that can be interpreted to include those directed against the impact of GHG emissions and other sources of contamination.

3.57. This interpretation was confirmed in the *Portillo Cáceres and others v. Paraguay* case, where the Human Rights Committee stated:

> "The Committee observes that a narrow interpretation does not adequately convey the full concept of the right to life and that States must take positive

[105] Human Rights Committee, *General Observation N°36, Right to life, CCPT/C/GC/36*, 3 Sept. 2019, paras. 3 and 7.

> action to protect that right. The Committee recalls its general comment No. 36, in which it has established that the right to life also concerns the entitlement of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death. States parties should take all appropriate measures to address the general conditions in society that may give rise to threats to the right to life or prevent individuals from enjoying their right to life with dignity, and these conditions include environmental pollution. In that respect, the Committee observes that the State party is also bound by the Stockholm Convention on Persistent Organic Pollutants. Furthermore, the Committee recalls that States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in loss of life*"*.[106]

3.58. Moreover, Colombia understands that while the right to a clean, healthy and sustainable environment has not yet been enshrined as a conventional right, it is explicitly recognised in the, *inter alia,* UNGA Resolution 76/300, that:

> "[…] the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights"[107]

3.59. Similarly, the Committee on Economic, Social and Cultural Rights, recalled that States must deploy all the necessary efforts, including reducing GHG emissions and mitigation of their effects, as a condition to ensure "[…] the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health."[108]

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[106] Human Rights Committee, *Case Portillo Cáceres and others v. Paraguay*, 2016, para. 7.3.
[107] UN General Assembly, *Res 76/300, 26 July 2022*, para. 8.
[108] CESCR *General Comment N°14, E/C.12/2000/4*, 11 Aug. 2000, para. 9.

3.60. At the regional level, the European Court of Human Rights ("ECtHR"), in its recent decision,[109] provided a clear example of an integrative interpretation between the European framework of protection and promotion of human rights and the provisions of the UN climate change regime, as it considered that:

> "(…) the interpretation and application of the rights provided for under the Convention can and must be influenced both by factual issues and developments affecting the enjoyment of the rights in question and also by relevant legal instruments designed to address such issues by the international community. The Court has consistently held that the Convention should be interpreted, as far as possible, in harmony with other rules of international law […]. Moreover, a failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement (…)"[110]

3.61. The ECtHR confirmed that a State's failure to comply with the obligations of mitigation under the framework of the UN climate change regime had triggered a breach of the right to life and right to respect for private and family life, as enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR").[111] In that sense, the ECtHR stated that there is a breach of the right to life when there is a serious risk of inevitable and irreversible adverse effects of climate change that can increase in frequency and severity and be considered a genuine and sufficiently ascertainable threat to life.[112] Colombia shares this interpretative approach as it guarantees both rights; by holding that States have a positive obligation to prevent risks to life and those that could have a strong adverse impact on people's right to the respect for private and family life.

E. FRAGMENTATION OF INTERNATIONAL LAW AND CLIMATE CHANGE

3.62. Colombia reiterates that the development of international law dealing with climate change runs the risk of leading to fragmentation. Moreover, as mentioned earlier, Colombia considers that the legal obligations of States with respect to Climate Change are not

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[109] *See* European Court of Human Rights, *Verein Klimaseniorinnen Schweiz and others v. Switzerland*, Application 53600/20, Judgment of April 9, 2024.
[110] Ibid., para. 455.
[111] European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Articles 2 and 8.
[112] European Court of Human Rights, *Verein Klimaseniorinnen Schweiz and others v. Switzerland*, Application 53600/20, Judgment of April 9, 2024, paras. 513, 516 and 518.

confined to the UNFCCC and the Paris Agreement. While these instruments are indeed crucial components of the international climate change regime, they are not exhaustive. Limiting the climate change obligations to those agreements ignores the broader context of international law regarding the legal obligations of States and the legal consequences derived from State responsibility for breaches of those obligations in relation to effectively addressing climate change.

3.63. Colombia highlights the need for a broader and more integrated approach to international law in addressing climate change as it, by its very character, intersects with various areas of international law. Other regimes such as human rights, or international economic law including investment law and treaty arbitration play a major role in regulating the climate crisis. Therefore, an effective harmonization among different legal principles originating from different sources is required.[113]

3.64. Some participants agree that the climate change regime is complemented by, and should be interpreted with, other sources of obligations, others consider that this framework is to be understood as *lex specialis*. The latter argues that even if, in principle, the existence of treaties on a given topic does not exclude the application of other sources of international law, highly divisive and controversial matters such as those related to GHG emissions where agreements have been reached after protracted negotiations, indicate that the States intended and consented to regulate the subject solely under this *lex specialis*.[114]

3.65. Nevertheless, as stated, and further developed in the following sections, it is Colombia's view that the applicability of other rules of international law has not been expressly excluded, nor has it even been discussed to any meaningful extent by the Parties to the UN climate change regime. What is evidenced from the various positions on the matter is, precisely, that the Court's guidance on the appropriate broader interpretation is much needed to understand the scope of State's obligations to fulfil the avowed objectives of this regime.

3.66. Therefore, in accordance with Article 31 (3)(c) of the Vienna Convention on the Law of Treaties ("VCLT"), the UN climate change regime shall be interpreted harmoniously with other applicable rules of international law, under the principle of systemic integration, to

[113] *See for e.g.,* Thailand, Written Statement, para. 5.
[114] OPEC, Written Statement, Chap. 2, para. 9.

give to the obligations of States regarding climate change their proper scope, thus assuring their compatibility with the regime's stated objectives and purposes.

3.67. For instance, the ITLOS, in its recent advisory opinion, similarly observed that "coordination and harmonization between the Convention and external rules are important to clarify, and to inform the meaning of, the provisions of the Convention and to ensure that the Convention serves as a living instrument".[115] Colombia considers that these considerations equally apply to other international treaties and customary international law. To this extent, Colombia requests the Court to consider the interplay of different relevant principles with each other in the context of climate change. For instance, the principle of prevention should include harm caused by excessive anthropogenic GHG emissions. A detailed understanding of the application of different norms to climate change will provide much-needed clarity for States in the regulation and governance of the climate change crisis.

3.68. The Court is therefore being asked, in the present proceedings, to provide its authoritative guidance in pronouncing the *lex lata* of climate change including other applicable treaty rules as well as rules and principles of customary international law in accordance with the UN climate change regime's stated objectives. The Court is not being requested to identify "new" obligations or to pronounce whether there is – or resolves – a conflict between *lex specialis* and *lex generali*. As shown, the applicable rules and principles setting out these obligations are clearly established, consistent and coherent with those defined in the UN climate change regime.[116] Colombia emphasizes that by unravelling this entanglement between regimes the Court will contribute immensely to the coherence of international law, and to the plight against climate change.

[115] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024, para. 130.
[116] New Zealand, Written Statement, para. 85-86.

CHAPTER 4 - LEGAL CONSEQUENCES FOR STATES FOR CAUSING SIGNIFICANT HARM TO THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

4.1. The second part of the present request for an advisory opinion relates to 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". The focus of Question (b), thus, centres on the consequences of the existence of an internationally wrongful act that *has already materialised*.[117] Additionally, Colombia also notes that in at least one written statement it is alleged that the general law of State responsibility does not apply to loss and damage caused by anthropogenic GHG emissions specifically because 'anthropogenic GHG emissions are not internationally wrongful acts".[118]

4.2. In this section, Colombia will first explain why it considers that currently, several primary obligations are being breached, which in themselves give rise to internationally wrongful acts. Colombia will then explain why attribution, although being an integral element of an internationally wrongful act, does not bar the Court from rendering an answer to the questions presented.

A. BREACHES OF PRIMARY OBLIGATIONS FALLING UNDER THE SCOPE OF RESOLUTION 77/276

4.3. Colombia considers it important to stress once again that to answer the queries posed, several obligations under international law must be taken into consideration.[119] This is particularly true when considering the multiple consequences of the internationally wrongful acts that are currently being committed. Two of these obligations, which are outside the UNFCCC regime, are distinctively important to highlight.

1. GHG EMISSIONS AS A BREACH OF THE OBLIGATION NOT TO CAUSE TRANSBOUNDARY HARM

4.4. As mentioned earlier, States have a well-established obligation under international law to prevent significant transboundary harm.[120] This obligation mandates that

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[117] *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 15, commentary, para. 2.
[118] China, Written Statement, paras. 134–136.
[119] Peru, Written Submission, para. 95.
[120] Belize, Written Submission, para. 36.

States must ensure activities within their jurisdiction or control do not cause significant environmental damage to other States or areas beyond national jurisdiction. As affirmed by the Court, States are required to take appropriate measures to prevent environmental harm, including enacting legislation, regulating potentially harmful activities, and applying the precautionary principle. This principle is particularly relevant to activities such as emissions of GHGs that contribute to climate change and cause cross-border impacts. This duty of prevention aligns with the principle of due diligence, which requires States to take all necessary measures to mitigate and prevent harm from activities within their control.

4.5. Failing to prevent transboundary harm, by neglecting to take proper steps of international cooperation and mitigation as required by the obligations under the Paris Agreement, the UNFCCC, principles of international law, and customary law, constitutes a breach of the obligation to prevent transboundary harm.

4.6. Also, Colombia shares the view expressed in some of the written statements regarding the concept of anthropogenic GHG emissions as encompassing a series of acts or omissions which have, over time, aggregately caused significant harm to the climate system as part of the environment (the Relevant Conduct), thus entailing the notion of a composite wrongful act. Therefore, the Relevant Conduct underlying Questions (a) and (b) of the request for an advisory opinion should necessarily be interpreted as a breach arising from a composite act, in terms of Article 15(1) of Articles on Responsibility of States for Internationally Wrongful Act ("ARSIWA") – "a series of actions or omissions defined in aggregate as wrongful".

4.7. On the other hand, the ILC's commentary to ARSIWA makes it clear that a composite breach arises whenever an act or omission is sufficient to constitute the breach, without that act or omission necessarily being the last in the series. Rather, the breach extends back to the first act or omission in the series which together are internationally wrongful, even if that isolated act or omission would not in and of itself constitute a breach.[121]

4.8. In its Written Statement, Colombia argued that a pattern of acts and omissions by States, contrary to international legal obligations, which resulted in escalating emissions of GHG when viewed collectively, can itself be considered as conduct that substantially disrupts the climate system. The continuing environmental damage at the heart of the climate crisis has had such an impact on States, in particular, on their environment and their ability to assure human

[121] *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 15, commentary, paras. 7-8.

rights, that it constitutes significant harm.[122] This conduct is an international breach that has a continuous character, which persists over time and encompasses both acts and omissions of responsible States.[123]

4.9. Failing to take adequate measures to stop anthropogenic GHG emissions over time has aggregately caused significant harm to the climate system, which is an integral part of the global environment. The fact that this prolonged inaction continues to the present date, implies that this act has a continuing character. As long as the ongoing failure to mitigate emissions results in transboundary environmental damage, adversely affecting the rights and interests of other States and their populations, it will continue to have this character.

2. GHG EMISSIONS AS A BREACH OF HUMAN RIGHTS OBLIGATIONS

4.10. In its Written Statement, Colombia highlighted the severe impact of climate change on its population, including vulnerable communities such as indigenous peoples, Afro-descendant communities, and children. It also highlighted that protecting the environment by, amongst others, combating climate change, are prerequisite for the enjoyment of human rights such as the right to health and the right to life among others.[124]

4.11. Consequently, States have an obligation to respect, promote, and protect human rights against the impacts of climate change, which extends to all persons under their jurisdiction. The integration of human rights into climate actions is essential and legally required, particularly for vulnerable populations. Colombia's request for an advisory opinion from the IACtHR on Climate Emergency and Human Rights underscores the importance of this integration.

4.12. However, some States suggest that climate change should be addressed separately from human rights treaties, arguing that human rights obligations do not cover the protection of

[122] Colombia, Written Statement, para. 4.2; Colombia, Written Statement, paras. 2.14–2.15 ("Colombia is not a major contributor to GHG emissions, contributing only 0.6% of global emissions. Nevertheless, climate change in Colombia is expected to bring about higher temperatures and more frequent extreme weather events, with increasing flood risks and societal and economic damage.")

[123] *See for e.g.,* Bangladesh, Written Statement, paras. 105 and 115 ("high-emitter States are largely responsible for the climate impacts suffered in Bangladesh, and thus for Bangladesh's difficulties in ensuring the rights of its population to life and an adequate standard of living, to health, and to a healthy environment. The conduct of these States—in particular, the failure to exercise due diligence to prevent harmful GHG emissions (including by entities within their control), or to meet their obligations under UNCLOS or the Paris Agreement—directly impedes the exercise of human rights in Bangladesh and contravenes States' obligations under international law to promote and encourage respect for human rights and to refrain from interfering with Bangladesh's efforts to protect and ensure the human rights of its population").

[124] Colombia, Written Statement, para. 4.2. Iran, Written Submission, paras. 134-138.

the climate system from anthropogenic emissions.[125] Colombia does not share this view as it there is an intrinsic connection between environmental protection, including addressing climate change, and human rights. The cumulative effects of global GHG emissions result in significant risks to human rights, even if at first the causal link could seem indirect. In fact, the IACtHR has supported this view, stating that States can be held liable for environmental pollution when it poses a significant health risk, even without direct causality between pollution and specific diseases.[126] Moreover, the InterAmerican Court has gone on to explain that failing to comply with environmental obligations can prevent other States from being able to assure human rights to their own population.[127]

4.13. Consequently, acts which may affect the climate system, causing significant harm, and prevent other States from fulfilling their human rights obligations towards peoples under their jurisdiction, constitute a breach of international law.

B. ATTRIBUTION TO A PARTICULAR STATE OR GROUP OF STATES

4.14. In their Written Statements, certain States have expressed their concern that Question (b) and sub-Questions (i) and (ii) in the Request are "abstract" and require an "individual and specific assessment of State responsibility". Colombia submits that the actual determination of responsibility vis-à-vis individual States is not at issue in the present Request. Rather, Colombia supports the view that the scope of Question (b) requires from the Court a determination of the existence of breaches to international norms, and the consequences for States that have committed them, even if the actual allocation of responsibility is a matter to be dealt with separately, on a case-by-case basis, be it in actual contentious procedures, or other appropriate forums. In this sense, the Court is not required to determine the attribution of the breaches, but rather assist in ascertaining their commission, and aid in determining the legal consequences of such acts.

4.15. Without prejudice to the above, Colombia holds a different view regarding the assertion that 'loss and damage from the adverse effects of climate change can hardly be attributed to a particular State'.[128] Conversely, the conduct to be evaluated can be assessed at various levels of responsibility. This includes the actions of individual States, specific groups of

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[125] Iran, Written Submission, paras. 134-138. The United States of America, Written Statement, paras. 4.38-4.58

[126] Inter-American Court of Human Rights. *Caso Habitantes de La Oroya Vs. Perú*, Judgement of 27 November 2023, para. 204. (Original in Spanish).

[127] Inter-American Court of Human Rights. *Advisory Opinion, OC-23/17*, 15 November 2017, para. 101.

[128] China, Written Statement paras. 134–136.

States – particularly historically and current high GHG emitters, or, more broadly the conduct as such: whether it is, in principle, consistent or inconsistent with international law. In fact, the "acts and omissions" referred to in Question (b) do not preclude the assessment of individual and collective responsibility of States for breaches in different degrees whereby these, constituting the Relevant Conduct, "have caused significant harm to the climate system and other parts of the environment".[129]

4.16. The Court has been presented with substantial evidence showing which States have significantly harmed the climate system.[130] However, the General Assembly is not asking the Court to determine the specific link between emissions from individual countries and their global impacts. Instead, the General Assembly Resolution seeks authoritative guidance from the Court on the legality of the relevant conduct and the possible consequences for States that do not comply with it. Therefore, the Court may choose to address the legality of the relevant conduct in general terms, treating it as a matter of principle.

4.17. The causality between emissions and damage requires a thorough examination of both past and current emissions.[131] As highlighted earlier, the current procedure is non-adversarial and advisory, limiting the Court's role to only clarifying the law instead of finding specific breaches of obligations. Consequently, responses to inquiries can remain abstract, confined to outlining the applicable secondary rules and mechanisms under treaty law and customary international law.[132]

4.18. In this sense, there is no need in these proceedings to provide evidence at the individual level, demonstrating the causal link between a State and climate change. Rather, the Court may leave the determination of the attribution criteria to contentious proceedings, and in the interest of answering Question b (ii), recognise the existence of acts in breach of international law, and the consequences attached to them.

C. LEGAL CONSEQUENCES IN QUESTION (B) REFER TO THE GENERAL LAW OF STATE RESPONSIBILITY

4.19. In a few written statements, it is alleged that the 'legal consequences' in Question (b), properly interpreted, refer not to the general law of State responsibility but to the legal

[129] Vanuatu, Written Statement paras. 533-535.
[130] OPEC, Written Statement para. 117.
[131] Brazil, Written Statement paras. 84-85.
[132] EU, Written Statement paras. 322-325

consequences ‘under’ the primary obligations of States addressed in Question (a), which they then confine to mean the climate change regime.[133]

4.20. Nonetheless, contrary to such submissions, the Court has reaffirmed in several advisory opinions that the very phrase ‘legal consequences’ refers to those consequences arising from the general law of State responsibility for internationally wrongful acts.[134] Colombia regards the express terms of Question (b), as clearly drawing from phrases directed towards the general law of State responsibility as a touchstone for legal consequences where a State breaches an applicable obligation by the Relevant Conduct.[135] Resolution 77/276 of the General Assembly uses the same language as Part II of ARSIWA, which sets out ‘legal consequences for the responsible State’ of its internationally wrongful act, including cessation and reparation for injury. Also, the General Assembly in using the terms ‘acts and omissions’ – paraphrases the key elements of an internationally wrongful act under Part I of ARSIWA, namely ‘actions or omissions’ that are attributable to the State and constitute a breach of an international obligation. It is also noted that the terms ‘injured’ States and ‘specially affected’ States are borrowed from Article 42 of ARSIWA.

4.21. Colombia considers that the secondary rules of State responsibility apply to all primary rules.[136] The ARSIWA will only defer to special secondary rules if they are included in the primary rules. Even then, only specific aspects addressed in those rules will apply (e.g. specific rules of attribution of State conduct, etc.).[137] Neither the UNFCCC including the Paris Agreement, nor any other international instrument, contain special secondary rules defining the specific content of State responsibility as regards breaches of their obligations in this regard.

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[133] UK, Written Statement, para. 136.

[134] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, I.C.J. Reports 1971, p. 16, paras. 117-118; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion,* I.*C.J. Reports 2004*, p. 136, paras. 148-153; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, paras. 175-177.

[135] UNGA Res. 77/276 (29 March 2023).

[136] Iran, Written Submission, para. 158.

[137] *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 55, commentary, paras. 4-5.

CHAPTER 5 - CONCLUDING REMARKS

5.1. The delicate situation the planet is facing requires the international community to find urgent and holistic solutions. Colombia reiterates that the legal consequences and ramifications of the triple crisis must be analysed, not from the perspective of a single legal discipline, but rather in a harmonious way integrating all relevant areas of international law. Colombia recognizes the relevance of the UNFCCC and the Paris Agreement as cornerstone instruments, and their centrality in the present discussion on the legal obligations of States and consequences regarding climate change. However, it would be crucial if the Court would elucidate how these two instruments are not the only source of obligations in this matter.

5.2. As demonstrated throughout Colombia's Written Statement and Written Comment, the obligations of States to specifically address and mitigate the climate crisis are embedded in diverse international law regimes. Therefore, it is crucial for the Court to not only recognize this fact but, moreover, elucidate how to avoid further fragmentation. This will be essential for States to tackle climate change effectively and will shed light on how to alleviate the climate change crisis.

5.3. It is also essential for this Court to identify, as the IACtHR has been requested and, more recently, as the ITLOS did in its advisory opinion, that the damage this crisis has caused and continues to cause, is of a significant character and therefore constitutes transboundary damage in violation of general international law. Recognizing this will signal to all States their obligation of cessation, which, if unobserved, could be understood as a violation of their commitments under the framework of international law.

5.4. Additionally, Colombia considers it vital that the Court recognize that the climate emergency constitutes an intolerable risk to human dignity and is already impacting human rights in a significant manner. In this context, the Court must acknowledge that certain groups, such as women, children, indigenous peoples, afro-descendants, and other underrepresented and

historically vulnerable or marginalized ethnic or subnational communities, as is the case inter alia of Colombia's Raizal community, are experiencing a differentiated adverse effect on their way of life and impairment on the full exercise of their human rights, as a consequence of the impacts of climate change. The Court's advisory opinion will also assist States by providing legal clarity on the scope of their obligations to materialize the principle of inter-generational equity, which is at the heart of the UNFCC and Paris Agreement regime.

5.5. In light of the foregoing, Colombia requests the Court to declare the relevant international legal obligations which are already being breached. Highlighting this fact will lead States to understand that their conduct amounts to internationally wrongful acts. Although Colombia understands that in the present proceedings, the Court is not being asked to allocate responsibility to individual States, expressly recognizing the aforementioned breaches will give notice to States about the consequences of their actions, and will open the door for, where appropriate, contentious proceedings in the corresponding forums where attribution to specific States is to be done.

5.6. Historical emissions from developed States have significantly contributed to the existing inequalities and vulnerabilities of developing nations regarding climate change impacts. Addressing these emissions is not merely a matter of equity but a legal obligation owed to the international community as a whole. Reparation, including cessation of wrongful conduct, compensation, and satisfaction, is required to rectify the lingering effects of these emissions.

5.7. For Colombia, it is important to recall that although the actions taken must be inspired by the principle of CBDR-RC, most States in the South American region are not major polluters but do have the potential to be major mitigators. Therefore, all of those States with the capacity and means to contribute to solving this situation must cooperate in the protection of ecologically important territories by taking concrete and ambitious actions, including significant debt-swaps for environmental action initiatives.

5.8. Finally, Colombia respectfully requests the Court to provide a detailed explanation of the consequences of internationally wrongful acts, including ongoing breaches and potential future violations. This is not a futile effort; understanding the actual consequences of their actions in advance will incentivize States to take more decisive action to address climate change. Efforts such as international cooperation and climate negotiations will undoubtedly be conducted with greater boldness and commitment.

LUIS GILBERTO MURILLO URRUTIA
Minister of Foreign Affairs
Representative of the Republic of Colombia
14 August 2024