INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
(REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY FOR AN ADVISORY OPINION)

WRITTEN COMMENTS

THE REPUBLIC OF ALBANIA

15 August 2024

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I. INTRODUCTION

1. In accordance with the Order of the International Court of Justice (the "**ICJ**" or "**Court**") of 30 May 2024, Albania provides these written comments ("**Written Comments**") responding to written statements filed by other States and participants ("**Written Statements**").

2. There are three critical issues to be distilled from the Written Statements before the Court:

   a. *First*, the identification of applicable sources of obligations of States regarding the protection of the climate system;

   b. *Second*, the interaction of the United Nations Framework Convention on Climate Change (the "**UNFCCC**"),[1] the Kyoto Protocol to the UNFCCC (the "**Kyoto Protocol**"),[2] and Paris Agreement[3] (collectively, the "**UN Climate Change Treaty Regime**") with applicable customary international law and other international conventions; and

   c. *Third*, the applicability of general rules of State responsibility to the protection of the climate system in case of breach, and whether the large-scale and non-linear nature of climate change and multiplicity of States involved in the wrongful conduct preclude the establishment of liability.

3. Taking each of these points in turn, Albania's position on these issues, in summary, is as follows:

   a. Although the UN Climate Change Treaty Regime constitutes a key source of environmental obligations, it is not the *sole* source. As outlined in Albania's Written Statement dated 22 March 2024 ("**Albania's Written Statement**"), climate change obligations derive from a broad corpus of law, encompassing both international treaties and customary international law.

   Therefore, Albania dismisses the notion that the UN Climate Change Treaty Regime forms a *lex specialis* regime, apart from other sources of law (**Section II.A.**). Instead, the UN Climate Change Treaty Regime coexists alongside a series of fundamental rules of customary international law and other relevant treaties, which impose complementary obligations and apply in full within their respective scope. It is this wider corpus of legal rules, *taken together*, that form the *lex specialis* of applicable environmental obligations. A detailed review of these obligations has been provided in Albania's Written Statement. In this submission, Albania does not reiterate those points, except for specific issues from other Written Statements that require reply (**Section II.B.**).

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1 United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

2 Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

3 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) TIAS No. 16-1104.

b. Given the interdependent nature of these legal regimes, the Court should rely on the principle of 'systemic integration' as reflected in Article 31(3)(c) of the Vienna Convention on the Law of Treaties 1969 ("**VCLT**"),[4] which mandates a holistic interpretation of such interrelated norms. Consequently, customary international law – and particularly the obligation to prevent transboundary harm and its due diligence considerations – and relevant treaty obligations, play a key role in informing States' obligations in respect of anthropogenic greenhouse gas ("**GHG**") emissions as reflected in the UN Climate Change Treaty Regime. The same applies *vice versa*: the UN Climate Change Treaty Regime informs the customary international law and treaty obligations and principles operating alongside it (**Section II.D.**).

c. Finally, the general rules of State responsibility apply to breaches of the obligations to prevent transboundary harm. Additionally, liability is not eliminated by challenges in determining causation. Article 47 of the Articles on the Responsibility of States for Internationally Wrongful Acts ("**ARSIWA**")[5] efficiently addresses some of these difficulties. Consequently, the existence of such damages and causation should be assessed based on a rebuttable presumption resulting from general scientific evidence, and any victim shall be entitled to claim compensation from each co-perpetrator State in proportion to their contribution to anthropogenic GHG emissions (**Section II.E.**).

4. Before developing these propositions, some introductory observations are warranted:

a. *First*, Albania reiterates its recognition of the importance of these proceedings as a significant opportunity to catalyse meaningful action in response to the climate crisis. The large-scale participation of States serves to underscore the vital importance of the questions before the Court, and the immediacy of the shared global threat of climate change. Albania has welcomed the contributions of States in these proceedings that recognise the urgency of the ongoing climate crisis, many of which have acknowledged the fundamental inequity between the contributions made by – and the deleterious consequences affecting – States with a proportionately lower impact on global GHG emissions and environmental degradation.[6]

b. *Second*, the Court has the opportunity to provide a harmonious interpretation of the presently fragmented legal landscape surrounding States' obligations to respond to climate change. Following the recent Advisory Opinion of International Tribunal for the Law on the Sea ("**ITLOS**") on climate change and international law ("**ITLOS'**

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4 United Nations, *Vienna Convention on the Law of Treaties*, United Nations, Treaty Series, Vol. 1155, p. 331, 23 May 1969.

5 ILC, "*Articles on Responsibility of States for Internationally Wrongful Acts", with commentaries*, Yearbook of the International Law Commission, 2001, Vol. II, Part Two.

6 Albania's Written Statement, para. 62. Taking data from 2021, Albania is the world's 153th largest emitter of GHG emissions, contributing a total share of 0.02% of global emissions (*see* https://www.climatewatchdata.org/countries/ALB?end_year=2021&start_year=1990#ghg-emissions). *See also, for example*, Tonga's Written Statement, para. 269; Micronesia's Written Statement, paras. 70-71; Timor-Leste's Written Statement, para. 159; DRC's Written Statement, paras. 56 and 94; The International Union for Conservation of Nature's ("**IUCN**") Written Statement, paras. 328-330; Sierra Leone's Written Statement, para. 3.30; Commission of Small Island States on Climate Change and International Law's ("**COSIS**") Written Statement, para. 5.

Advisory Opinion"),[7] the Court can provide further legal clarity for galvanising an equitable and urgent global response to the climate emergency. These advisory proceedings should not be understood as inviting the Court to make general statements as to the obligations of States in respect of climate change but rather as a mandate to clarify the scope of existing international legal obligations. After clarifying the parameters of the existing obligations under international law, the Court must translate the overwhelming scientific consensus as to the causes and negative effects of climate change – and the developing convergence of legal positions among States – into a clear and authoritative statement of the content of States' obligations. This should be done in a way that remains adaptable to the rapidly evolving nature of climate change.

II. WRITTEN COMMENTS

A. WHILE CRITICALLY IMPORTANT, THE UN CLIMATE CHANGE TREATY REGIME IS NOT *LEX SPECIALIS* BUT PART OF A BROAD CORPUS OF INTERNATIONAL LAW

5. The Written Statements have shown a divergence of views on the sources of international law that give rise to climate change obligations, with some States – mainly comprising developed and oil-producing, or otherwise large-scale GHG emitting States – arguing that the UN Climate Change Treaty Regime is *lex specialis* and that, therefore, climate change obligations arise from it exclusively, i.e., to the exclusion of other sources of international law.[8]

6. Albania differs with this position for the following reasons:

7. *First*, questions of *lex specialis* do not properly arise in the present context. Such questions arise only when two or more norms deal with the same subject matter and there is a conflict of norms,[9] and when the allegedly *lex specialis* regime comprehensively regulates the

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7 ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Case 31), Advisory Opinion, 21 May 2024.

8 *See*, e.g., USA's Written Statement, Chapter IV and para. 4.1 ("*In the implementation of their respective obligations under the UN climate change regime, there is no indication of any widely held belief of Parties that they are subject to non-treaty-based international obligations to mitigate the risks posed by climate change. To the extent other sources of international law, such as customary international law, might establish obligations in respect of climate change, these obligations would be, at most, quite general*"); *See also*, e.g., Kuwait's Written Statement, Chapter II.B; Saudi Arabia's Written Statement, Chapter IV; *See also*, Russian Federation's Written Statement, p. 8; Korea's Written Statement, para. 51; Japan's Written Statement, para. 14; South Africa's Written Statement, para. 14; Australia's Written Statement, para. 3.19.

For Written Statements aligned with Albania's position, *see* e.g., EU's Written Statement, para. 68; Mauritius' Written Statement, Section V.E; Samoa's Written Statement, Section III; the Solomon Islands' Written Statement, paras. 52-58.8; Antigua and Barbuda's Written Statement, Section III.A; Dominican Republic's Written Statement, para. 4.21; Vanuatu's Written Statement, para. 206; the Bahamas' Written Statement, para. 89; COSIS' Written Statement, para. 123; Grenada's Written Statement, para. 37; Barbados' Written Statement, paras. 153-166; the Cook Islands' Written Statement, para. 135; Seychelles' Written Statement, paras. 62-67; Micronesia's Written Statement, para. 92; Saint Lucia's Written Statement, paras. 79-79(iv); Saint Vincent and the Grenadines' Written Statement, para. 94; Kiribati's Written Statement, para. 109; Colombia's Written Statement, paras. 3.8-3.12; Peru's Written Statement, paras. 70-74.

9 *See* ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (with Commentaries), 2001, on Article 55, para. 4 ("[I]*t is not enough that the same subject matter is dealt with by two provisions; there must be some* ***actual inconsistency between them or else a discernible intention that one provision is to exclude the other.***" (emphasis added)); ILC, *"Fragmentation of International Law: Difficulties Arising from the*

relevant area of law, in which circumstances priority should be given to the norm that is more specific.[10] Notably, there is a "*strong presumption against normative conflict*."[11]

8. Albania echoes this comment in the European Union's ("**EU**") Written Statement that:

> "[T]*here is no conflict between the treaty-based international climate change regime, on one hand, and customary international law relating to human rights, the duty to protect and preserve the marine environment and the principle of prevention of significant harm, on the other hand. Rather, the relationship between these bodies of law is one of 'interpretation', whereby 'one norm assists in the interpretation of another'*." [12]

9. The interpretative role of these norms is further described in **Section II.D**., below.

10. Further, the UN Climate Change Treaty Regime does not comprehensively regulate core and extensive issues relevant to climate change.[13] International law is not silent in relation to those issues that are not regulated by the UN Climate Change Treaty Regime – multiple obligations, arising across a robust corpus of public international law, intersect with issues such as harm, loss and damage.[14] Those include the obligations to prevent transboundary harm and customary and treaty obligations to protect and preserve the environment, as well as international human rights law obligations and the law of State responsibility, addressed further below.[15]

Diversification and Expansion of International Law," Report of the Study Group of the International Law Commission, UN Doc. A/CN.4/L.682 (2006), Guideline 14(5); and EU's Written Statement, fn. 275.

[10] ILC, *"Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law,"* Report of the Study Group of the International Law Commission, UN Doc. A/CN.4/L.682 (2006), Guidelines 14(5) and 14(7).

[11] *See*, e.g., ILC, *"Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law,"* Report of the Study Group of the International Law Commission, UN Doc. A/CN.4/L.682 (2006), para. 37. *See also Case concerning right of passage over Indian territory*, Preliminary Objections, Judgment of 26 November 1957, I.C.J. Reports 1957, p. 125, and p. 142.

[12] EU's Written Statement, para. 227. *See also* Switzerland's Written Statement, para. 68 ("*Insofar as the conventions relating to climate change do not contain norms derogating from the general rule, they do not constitute a lex specialis. By definition, a lex specialis presupposes a normative conflict between the general rule and the more specific rules. This is clearly not the case regarding the relationship between the no-harm rule and the conventions on climate change and human rights*." (Footnotes omitted)).

[13] By way of example: **(i)** the UN Climate Change Treaty Regime provides no specific rules regarding the legal consequences for States breaching obligations. Therefore, the general rules on State responsibility apply; **(ii)** the UNFCCC and Kyoto Protocol expressly make their commitments inapplicable to "*greenhouse gases* [] *controlled by the Montreal Protocol*" (*see* UNFCCC, Article 4; Kyoto Protocol, Articles 2, 5, 7 and 10), while the Paris Agreement remains silent on that instrument. Therefore, the full spectrum of State obligations to protect the climate system and parts of the environment from GHG emissions cannot be understood by reference to the UN Treaty Regime only; and **(iii)** the UN Treaty Regime does not elaborate on human rights obligations or provide for remediation of violations, despite acknowledging States' obligations to respect and promote human rights (*see* Paris Agreement, Preamble, para. 12). Therefore, States must also observe other sources of law to meet their human rights obligations in connection with climate change (*See* Albania's Written Statement, para. 96 quoting to UNHRC, *Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016, 24 October 2019 and UNHRC, *Billy et al. v. Australia*, Communication No. 3624/2019, UN Doc. CCPR/C/135/D/3624/2019, 18 September 2023 (views adopted on 21 July 2022) and Section **II.C** below). *See also*, e.g., Bahamas' Written Statement, para. 89; Netherlands' Written Statement, para. 3.2.

[14] *See*, for example, Switzerland's Written Statement, para. 58; Vanuatu's Written Statement, para. 223(b) and (c).

[15] Another pertinent point is that the UNFCCC and Paris Agreement impose horizontal obligations (i.e., inter-State obligations), whereas other relevant areas of law such as human rights impose vertical obligations (i.e., obligations between States and individuals within their jurisdiction). Thus, as correctly noted by Vanuatu, "[i]*t*

11. <u>*Second*</u>, the very wording of the UN Climate Change Treaty Regime indicates that there was no "*discernible intention*"[16] that these instruments would deviate from general international law.[17] The UNFCCC Preamble (*inter alia*) recalls:

    a. Pertinent provisions of the Stockholm Declaration[18];

    b. States' "*responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment*" in accordance with the United Nations Charter and the principles of international law;

    c. Other treaty regimes relevant to the protection of the climate system (the Vienna Convention for the Protection of the Ozone Layer, 1985,[19] and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987[20]); and

    d. Provisions of various General Assembly Resolutions.[21]

12. The Paris Agreement also mandates – among others – that its implementation will "*reflect equity and the principle of common but differentiated responsibilities and respective capabilities*".[22]

13. References to other instruments and principles that form part of the corpus of international law are persuasive evidence that the UN Climate Change Treaty Regime was not *lex specialis*, apart from other sources of law.[23] They suggest that those instruments were agreed upon considering States' existing obligations as well as established principles of international law without any intention to displace them. Thus, contrary to what some

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would not be sound in principle or logic to say that, by satisfying a horizontal obligation under, say, the Paris Agreement, a vertical obligation under the Convention will necessarily also be satisfied in the context of climate change." (*see* Vanuatu's Written Statement, para. 223(b)).

16 ILC, *"Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law,"* Report of the Study Group of the International Law Commission, UN Doc. A/CN.4/L.682 (2006), para. 89.

17 As argued, for example, by Saudi Arabia. *See* Saudi Arabia's Written Statement, para. 5.5.

18 Declaration of the United Nations Conference on the Human Environment, A/CONF.48/14/Rev.1, 16 June 1972.

19 Vienna Convention for the Protection of the Ozone Layer, United Nations Treaty Series, Vol. 1513 (1985).

20 Montreal Protocol on Substances that Deplete the Ozone Layer, United Nations Treaty Series, Vol. 1522 (1987).

21 UNFCCC Preamble, paras. 8, 9, 12 and 13. The Preamble also recalled the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990.

22 Paris Agreement, Article 2. 2. Further, the Paris Agreement Preamble acknowledges that Parties should respect, promote, and consider intergenerational equity; and Article 14 stipulates that the implementation of the Paris Agreement shall be done "*in the light of equity and the best available science*". The concept of equity and good faith in international law is a well-recognised principle under customary international law. *See, inter alia*: *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010*, p. 14, para 145; *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 268, para. 46; *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3, at pp. 46– 47, para. 85.

23 In this respect, *see* ILC, *"Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law,"* Report of the Study Group of the International Law Commission, UN Doc. A/CN.4/L.682 (2006), Guideline 14(20): customary international law and general principles of law are of particular relevance to treaty interpretation under the VCLT, especially where "*the terms used in the treaty have a recognised meaning in customary international law or under general principles of law*."

participants have argued,[24] the UN Climate Change Treaty Regime is not a 'self-contained' regime. The commitments made under the UN Climate Change Treaty Regime complement and reinforce, rather than replace, the broader framework of international environmental obligations that States are bound by.

14. *Finally*, Albania notes that ITLOS recently expressly rejected a similar *lex specialis* argument put before it in the context of a request for an advisory opinion on climate change.[25]

15. In light of the above, Albania submits that the UN Climate Change Treaty Regime is not *lex specialis*, apart from other sources of law. Therefore, rather than limiting its analysis to that regime, the Court should interpret States' obligations under part (a) of the question referred to the Court (the "**Question**")[26] by reference to the multiplicity of sources on climate change obligations identified in the preamble of UNGA Resolution 77/276. The practical consequence of this is that: (i) climate change obligations encompass a wide variety of obligations, which arise from a wide variety of sources, and include the customary obligation to prevent transboundary harm; and (ii) as discussed in **Section II.D**., below, the relationship between these multiple sources of law is one of "*interpretation*", whereby "*one norm assists in the interpretation of another*",[27] pursuant to the principle of systemic integration codified in Article 31(3)(c) of the VCLT.

B. OBLIGATIONS TO PROTECT THE CLIMATE SYSTEM

16. Albania's identification of the relevant norms and its interpretation of the obligations they give rise to are detailed in Albania's Written Statement. In brief:

    a. The Paris Agreement is the most recent and comprehensive international treaty on climate change, establishing a temperature increase threshold of 1.5°C above pre-industrial levels and well below 2°C. Key obligations arising under the Paris Agreement include: (i) the obligation to prepare, communicate, and maintain a Nationally Determined Contribution (NDC) that reflects its "*highest possible ambition*" and is informed by the results of the Global Stocktake in order to remain below this threshold (Article 4(2));[28] and (ii) express obligations on developed countries to facilitate capacity-building and provide financial support and transfer technology to developing countries with respect to both mitigation and adaptation

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24 *See*, for example, Organization of the Petroleum Exporting Countries' ("**OPEC**") Written Statement, paras. 62, 119, 126.

25 Indeed, the ITLOS' Advisory Opinion emphasised that the Paris Agreement is not *lex specialis* in respect of the interpretation of UNCLOS and that, in any event, the Paris Agreement cannot be applied so as to frustrate the protection and preservation of the marine environment. ("*The Tribunal also does not consider that the Paris Agreement modifies or limits the obligation under the Convention. In the Tribunal's view, the Paris Agreement is not* lex specialis *to the Convention and thus, in the present context,* lex specialis derogat legi generali *has no place in the interpretation of the Convention. Furthermore, as stated above,* ***the protection and preservation of the marine environment is one of the goals to be achieved by the Convention. Even if the Paris Agreement had an element of* lex specialis *to the Convention, it nonetheless should be applied in such a way as not to frustrate the very goal of the Convention***." (Emphasis added), *see* ITLOS' Advisory Opinion, para. 224).

26 ICJ, *Request for an advisory opinion of the ICJ on the obligations of States in respect of climate change*, 1 March 2023, p. 3.

27 *Report of the International Law Commission on the Work of its Fifty-Eight Session* (2006), Chapter XII, page 178, para. (2).

28 Albania's Written Statement**,** para. 134.

(Article 9(1)).[29] The commitments from States in Article 2(1)(c) to facilitate the transition from high-emission investment to low-emission investment, and of developed States in Article 11(3) to "*cooperate to enhance the capacity of developing country Parties to implement this Agreement*", are also critically relevant.[30]

b. States are obliged under customary international law to prevent significant harm to the climate system, [31] with harm to the climate system considered to be significant if anthropogenic changes in atmospheric GHG concentrations cause the global average temperature to increase beyond 1.5°C above pre-industrial levels.[32] The obligation to prevent significant harm to the climate system is a due diligence obligation and, given the urgency of addressing climate change and the magnitude of risk, States must act with a significantly heightened level of due diligence.[33]

c. This obligation requires States to: take all appropriate and necessary measures - in light of the best available science and in proportion to the risk - to prevent significant harm;[34] to cooperate with each other in good faith;[35] and to carry out environmental impact assessment(s) for planned activities that may cause significant harm to the climate system.[36] States must also regulate the conduct of private actors by putting in place laws, policies and regulations and to enforce them with the necessary vigilance.[37]

d. Climate change also threatens the enjoyment of fundamental human rights, including the rights to life, health, food, water, and housing.[38] States have obligations under international human rights law to protect these rights from the adverse effects of climate change. [39] This includes taking effective measures to mitigate climate change, adapt to its impacts, and ensure that all actions taken are consistent with human rights principles, such as non-discrimination, participation, and access to justice.[40]

e. Finally, the UN Convention on the Law of the Sea ("**UNCLOS**") imposes obligations on States to protect the marine environment from climate change and its impacts. This includes obligations to protect and preserve the marine environment (Article 192), prevent, reduce, and control pollution of the marine environment from any source (Article 194), and conduct environmental impact assessments for activities that may cause significant harm to the marine environment (Article 206).[41]

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29 Albania's Written Statement**,** para. 91.

30 Albania's Written Statement, paras. 91, para. 115, 117, 134.

31 Albania's Written Statement**,** para. 129.

32 Albania's Written Statement**,** para. 59.

33 Albania's Written Statement**,** paras. 70-82.

34 Albania's Written Statement**,** para. 145(b).

35 Albania's Written Statement**,** paras. 87-90.

36 Albania's Written Statement**,** para. 83.

37 Albania's Written Statement**,** para. 102.

38 Albania's Written Statement**,** paras. 95-99.

39 Albania's Written Statement**,** paras. 98-111.

40 Albania's Written Statement**,** paras. 100-110.

41 Albania's Written Statement, paras. 67, 85, 88 (fn. 99), 91, 93.

17. Some Written Statements have expressed opposing views on the foregoing. Some of these arguments go to the crux of the issues before the Court and thus require a response; these are addressed below. For the avoidance of doubt, Albania's silence on additional contradictory positions expressed in other Written Statements should not be interpreted as an endorsement of these viewpoints.

1. The prohibition of transboundary harm *does* apply to climate change

18. Albania challenges the position expressed by some States that the customary international law duty to prevent transboundary harm does not apply to climate change matters.[42]

19. *First*, the response to part (a) of the Question requires consideration of customary international law, and, foremost, of the duty to prevent significant transboundary harm from anthropogenic GHG emissions.

20. In this respect, Albania agrees with the position expressed in the EU's Written Statement:

> *"*[T]***he duty under general international law to prevent significant transboundary harm is applicable with regard to the protection of the international climate system***. As an obligation of conduct and due diligence* […] *it requires States to take appropriate measures to prevent significant harm or in any event to minimize the risk thereof. This involves positive obligations on States to adopt and implement suitable national legislation incorporating accepted international standards*." [43]

21. Indeed, while this principle was *initially* developed in a transboundary context, it applies regardless of whether the States concerned share a border, as "*the ecological unity of the planet does not correspond to political boundaries*".[44] As acknowledged by numerous States in these advisory proceedings[45] and discussed in detail in Albania's Written Statement,[46] there is compelling evidence that the customary duty to prevent transboundary

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42 OPEC's Written Statement, para. 22; USA's Written Statement, paras. 4.5, 4.15-4.21; China, para. 128.

43 EU's Written Statement, para. 317 (emphasis added). *See also*, Netherlands' Written Statement, para. 3.65. *See also*, ILA, *Committee on Legal Principles Relating to Climate Change, 'Second Report', Sofia, Seventy-Fifth Session*, 2012, at 25; R. Verheyen, *Climate Change Damage and International Law: Prevention Duties and State Responsibility* (Martinus Nijhoff 2005), 166–69: "[N]*either the decades of ILC debates on the issue of prevention of environ mental harm nor international jurisprudence provide evidence that complex instances of environmental change are not to be covered by the general duty to prevent harm and minimise the risk thereof*."

44 ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (with Commentaries), 2001, p. 152, Commentary (5). See also Nauru's Written Statement, para. 32.

45 See for e.g.,: EU's Written Statement, paras. 221-231; The Netherlands' Written Statement, para. 3.45-3.75; Belize's Written Statement, para. 36 and Chapter 2, Section II; Barbados' Written Statement, paras. 133-134; Solomon Islands' Written Statement, paras. 146-162; Vanuatu's Written Statement, paras. 261-287; Kiribati's Written Statement, paras. 110-171; Singapore's Written Statement, paras. 3.21-3.26; DRC's Written Statement, paras. 128-165; Seychelles' Written Statement, paras. 97-146; Uruguay's Written Statement, paras. 89-109; Antigua and Barbuda's Written Statement, paras. 298-346. See also B. Mayer, *A Review of the International Law Commission's Guidelines on the Protection of the Atmosphere* (Melbourne Journal of International Law, Vol. 20, No. 2, 2019), p. 476; S. Maljean-Dubois, *The No-Harm Principle as the Foundation of International Climate Law* in B. Mayer and A. Zahar (ed.), *Debating Climate Law* (Cambridge University Press 2021).

46 Albania's Written Statement, paras. 65-93.

environmental harm has evolved to apply to climate change.[47] This is demonstrated, *inter alia*, by the near-universal participation of States in multiple treaties - including the UN Climate Change Treaty Regime, the Vienna Convention on the Protection of the Ozone Layer - as well other multilateral instruments[48] that all reference the customary duty of prevention, and in which States commit to substantive efforts to address climate change.[49] Further, Albania notes that only one participant in these proceedings has mentioned former 'persistent objections' to the applicability of customary rules and did so without providing supporting evidence.[50]

22. *Second*, the obligation of States to prevent and mitigate *climate change* is supported by the principles of territorial sovereignty and equality of States,[51] which require States to avoid harm that would significantly affect the territory or livelihood of other States and their populations. Since climate change affects all States and threatens the existence of civilisations and ecosystems generally (even threatening the future existence of some State parties to these proceedings),[52] this strongly "*suggests that the obligation to prevent atmospheric degradation is a corollary of premises of the international legal order*".[53]

23. *Third*, as noted in Albania's Written Statement[54] and mentioned at paragraph 21 above, the content of the duty to prevent transboundary environmental harm *evolves* over time. The International Law Commission ("**ILC**") itself has noted that it cannot forecast all the possible future forms of transboundary harm.[55] Therefore, in the context of climate change, the organised international community must continually assess scientific developments to identify forms of 'significant harm' to climate systems and other parts of the environment and take all appropriate and possible measures to prevent such harm. For example, recent reports of the Intergovernmental Panel on Climate Change ("**IPCC**") observed with "*high confidence*" that anthropogenic climate change: "*is already affecting many weather and climate extremes in every region across the globe*", and has led to "*irreversible losses*", and

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47 *See* EU's Written Statement, para. 308.

48 The UNFCCC, Kyoto Protocol, and Paris Agreement currently have 198, 192, and 195 parties respectively (see https://unfccc.int/).

49 In addition to the UN Treaty Regime, see the Vienna Convention for the Protection of the Ozone Layer; UNCLOS; Convention on Biological Diversity; Stockholm Convention on Persistent Organic Pollutants; Minamata Convention on Mercury; among others. *See Urgenda Foundation v. The State of The Netherlands* [2019] ECLI:NL:HR:2019:2006, 4.42. *See also* S. Maljean-Dubois, *The No-Harm Principle as the Foundation of International Climate Law* in B. Mayer and A. Zahar (ed.), *Debating Climate Law* (Cambridge University Press 2021); B. Mayer, *A Review of the International Law Commission's Guidelines on the Protection of the Atmosphere* (Melbourne Journal of International Law, Vol. 20, No. 2, 2019), p. 476.

50 OPEC's Written Statement, para. 22.

51 B. Mayer, A Review of the International Law Commission's Guidelines on the Protection of the Atmosphere, p. 476. Second report on the protection of the atmosphere by Shinya Murase, Special Rapporteur, UN Doc A/CN.4/681 31–2 [51]–[52].

52 *See* e.g., Mauritius' Written Statement, paras. 20-34; the Solomon Islands' Written Statement. para. 215; the Dominican Republic's Written Statement, para. 37; Tuvalu's Written Statement, para. 5; Barbados' Written Statement, paras. 103; 112-126; 313-322.

53 B. Mayer, A Review of the International Law Commission's Guidelines on the Protection of the Atmosphere, p. 476.

54 Albania's Written Statement, para. 69.

55 ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (with Commentaries), 2001, Article 2, Point 9. *See also* EU's Written Statement, para. 314.

"*damages to nature and people*".[56] In turn, the IPCC concluded with "*very high confidence*" that adverse impacts "*escalate with **every** increment of global warming*". [57]

24. Albania therefore maintains its assertion that States have a customary international law duty to prevent transboundary environmental harm, including harm from anthropogenic GHG emissions that – if not significantly contained and limited – will cause devastating damage to the planet and to its present and future inhabitants.

2. Human Rights and climate change

25. This section addresses two matters relating to the applicability of international human rights law in the context of climate change, namely: (a) the status and relevance of human rights obligations to part a of the Question; and (b) the extent to which human rights obligations extend extraterritorially. The nexus between human rights and the environment is already addressed extensively in Albania's Written Statement and requires no further elaboration.[58]

a. States owe obligations under international human rights law ("IHRL") to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions

26. As noted above, Albania's position is that the UN Climate Change Treaty Regime is <u>not</u> the sole body of law that applies to issues of climate change. Rather, there is a network of relevant international obligations that applies and must be interpreted harmoniously. IHRL is a crucial strand in this web.[59]

27. Albania reaffirms, and does not repeat, the position it advanced in its Written Statement:[60] in summary, there is ample evidence that IHRL obligations are owed in at least three senses. <u>*First*</u>, States have prevention obligations in respect of significant harms to the climate system and parts of the environment which would foreseeably violate human rights.[61] <u>*Second*</u>, States have an obligation to ensure that measures taken in response to climate change impacts do not result in human rights violations.[62] <u>*Third*</u>, States have an obligation to provide redress for human rights violations that result from significant harms to the climate systems and parts of the environment.[63]

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56 IPCC, 2023 Synthesis Report on Climate Change, Point A. *See also*, EU's Written Statement, para. 316.

57 IPCC, 2023 Synthesis Report on Climate Change, Point B (emphasis added). *See also*, EU's Written Statement, para. 316.

58 Albania's Written Statement, paras. 94-111.

59 *See*, e.g., Tuvalu's Written Statement, para. 98-104; Costa Rica's Written Statement, para. 65-67; COSIS' Written Statement, para. 129-141; Bolivia's Written Statement, para. 40-42; Dominican Republic's Written Statement, para. 4.43-4.48; Timor-Leste's Written Statement, Chapter IX; IUCN's Written Statement, Chapter 8; Kiribati's Written Statement, para. 171; Mauritius' Written Statement, para. 155; Solomon Islands' Written Statement, para. 164. DRC's Written Statement, 145-157; Mauritius' Written Statement, paras. 155-187; EU's Written Statement, paras. 231-257.

60 Albania's Written Statement, paras. 94-111.

61 Albania's Written Statement, paras. 100-102.

62 Albania's Written Statement, paras. 103-108.

63 Albania's Written Statement, para. 109.

28. Albania recalls the sources of law addressed in its Written Statement,[64] not least the decisions of UN human rights treaty bodies (e.g., the UNHRC's decision in *Billy et al.* and the Committee on the Rights of the Child in the *Saachi et al* cases),[65], decisions by national courts (e.g., *Urgenda*, *Neubauer* and *VZW Klimaatzaak*),[66] and numerous soft law instruments.[67] It recalls with particular emphasis its position on climate vulnerable groups.[68]

29. Further brief remarks are made here relating to developments which post-dated Albania's Written Statement.

30. *First*, on 21 June 2024, the incumbent Special Rapporteur on the promotion and protection of human rights in the context of climate change[69] published her scene-setting report.[70] The report acknowledges the strong recognition across sources of international law that there is a clear link between climate and environmental degradation, and human rights, and that States owe obligations to mitigate and adapt to climate change.[71] The Special Rapporteur cited the widespread recognition by a range of international bodies and clearly emphasised the need to phase out fossil fuels in the context of mitigating climate change.[72]

31. Notably, the Report draws a central conclusion, grounded, *inter alia*, in the guidance provided by the Committee on the Elimination of Discrimination Against Women ("**CEDAW**"), the Committee on Economic, Social and Cultural Rights ("**CESCR**"), the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families ("**CMW**"), the Committee on the Rights of the Child ("**CRC**"), and the Committee on the Rights of Persons with Disabilities ("**CRPD**"), namely that:

> "*It is essential to implement recommendations on intersectionality to prevent further discrimination from climate change impacts and response measures. It is also critical for the effectiveness of all climate action to recognize – on the same level as technical expertise – and to respectfully and genuinely engage with the lived*

64 Albania's Written Statement, paras. 94-111.

65 UNHRC, *General Comment No. 36 "The right to life"*, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 62; UNHRC, *Billy et al. v. Australia*, Communication No. 3624/2019, UN Doc. CCPR/C/135/D/3624/2019, 18 September 2023 (views adopted on 21 July 2022); UN Committee on the Rights of the Child in five cases: *Sacchi et al v. Brazil, Argentina, Tűrkiye, France, and Germany*.

66 Respectively, *Urgenda Foundation v. The State of The Netherlands* [2019] ECLI:NL:HR:2019:2006; *Neubauer, et al. v. Germany*, Bundesverfassungsgericht [BVerfG]; and Brussels Court of First Instance, *VZW Klimaatzaak v. Kingdom of Belgium & Others*, 17 November 2021 (*see* Albania's Written Statement, fn. 147).

67 Albania's Written Statement, Section IV.B. Albania concurs with the sources set out in the following Written Statements: EU's Written Statement, paras 226-285; African Union's Written Statement, paras 61-65; Colombia's Written Statement, paras 3.66-3.72; Ecuador's Written Statement, paras 3.97-3.118; Bolivia's Written Statement, paras 13-22; Chile's Written Statement, paras 67-70; Solomon Islands' Written Statement, paras 164-204; Cook Islands' Written Statement, paras 183-194; Kiribati's Written Statement, paras 155-171; Vanuatu's Written Statement, paras 217-230. See also IUCN's Written Statement, paras 467-469.

68 Albania's Written Statement, paras. 105-107.

69 Ms Elisa Morgera, second mandate holder, who took office on 1 May 2024.

70 OHCHR, *Scene-Setting Report: Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change – advance unedited version*, A/HRC/56/46, 21 June 2024.

71 See also EU's Written Statement, paras. 231-263.

72 See OHCHR, *Scene-Setting Report: Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change – advance unedited version*, A/HRC/56/46, 21 June 2024, paras. 7-10 on references to CESCR, CEDAW, CRC, CERD and CCPR, as well as to multiple UN Special Rapporteurs.

> *experiences and distinctive knowledge of the human rights holders in situations of vulnerability, as agents of change*".[73]

32. This is consistent with Albania's position, detailed further in its Written Statement, namely that there is an urgent need for States to act consistently with their IHRL obligations to prevent the further intensification of discriminatory climate impacts, and to positively act to address and reduce the unequal impacts of climate change (both in the mitigation and adaptation contexts).[74]

33. <u>*Second*</u>, the European Court of Human Rights ("**ECtHR**") has recently confirmed in *Verein KlimaSeniorinnen Schweiz v Switzerland* ("***KlimaSeniorinnen***"), on the basis of its assessment of the IPCC's scientific findings, that a link between climate change and human rights is indisputable. Indeed, the ECtHR took it

> "*as a matter of fact that there are sufficiently reliable indications that anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States are aware of it and capable of taking measures to effectively address it, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5°C above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target*".[75]

34. The ECtHR consequently held in *KlimaSeniorinnen* that States have positive obligations to:

a. Adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;[76]

b. Set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;[77]

c. Provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see sub-paragraphs (a)-(b) above); [78]

d. Keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; [79] and

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73 OHCHR, *Scene-Setting Report: Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change – advance unedited version*, A/HRC/56/46, 21 June 2024, para. 76.

74 Albania's Written Statement, paras. 94-111.

75 ECtHR, *KlimaSeniorinnen*, Judgment, 9 April 2024, para. 436.

76 ECtHR, *KlimaSeniorinnen*, Judgment, 9 April 2024, para. 550(a).

77 ECtHR, *KlimaSeniorinnen*, Judgment, 9 April 2024, para. 550(b).

78 ECtHR, *KlimaSeniorinnen*, Judgment, 9 April 2024, para. 550(c).

79 ECtHR, *KlimaSeniorinnen*, Judgment, 9 April 2024, para. 550(d).

e. Act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures. [80]

35. *Finally*, Albania urges the Court to consider the wide range of other States' Written Statements that have referred to long-lasting national and regional recognitions of the right to a healthy environment.[81] As noted by the former Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, "*more than 80 per cent of Member States (156 of 193) legally recognise this right*".[82]

36. The right to a healthy environment has also long been recognised by the IACtHR, in accordance with Article 11 of the Protocol of San Salvador of the American Convention,[83] as well as by the African Commission on Human and Peoples Rights, in accordance with Article 24 of the African Charter on Human and Peoples' Rights (the "**African Charter**"),[84] which provides that "*all peoples shall have the right to a general satisfactory environment favourable to their development*".[85]

37. Albania therefore maintains that IHRL forms an indispensable and key part of the relevant sources of law required to respond to part a of the Question.

b. States' obligations under IHRL may extend extraterritorially

38. Albania notes that some States have contended that human rights obligations are limited to a State's territory.[86] Albania endorses the position adopted by the EU (and others) in its Written Statement.[87]

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80 ECtHR, *KlimaSeniorinnen*, Judgment, 9 April 2024, para. 550(e).

81 Mauritius' Written Statement para. 184; EU's Written Statement, paras. 241-257; Barbados' Written Statement, para. 164; Tonga's Written Statement, para. 244; Bolivia's Written Statement, para. 56; Ecuador's Written Statement, paras. 3.104-3.105.

82 UNGA 77th Session, Note by the UN Secretary-General, *"Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment"*, 10 August 2022, para. 26, available at https://digitallibrary.un.org/record/3988295. See also Mauritius' Written Statement, para. 184.

83 IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, paras. 56-70.

84 African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre v. Nigeria*, Communication No. 155/96 (2001) (*Ogoniland case*), paras. 51-54.

85 African Charter, Article 24.

86 *See e.g.*, Russian Federation's Written Statement, pp. 9-10; USA's Written Statement, para. 4.48; Singapore's Written Statement, para. 3.74; Indonesia's Written Statement, para. 44.

87 Namely, EU's Written Statement, paras. 275-278: *"In the European Union's view, States' human rights obligations as regards the detrimental effects of climate change may apply extraterritorially, within the limits of States' jurisdiction/effective control* […] *This conclusion is particularly relevant in the context of the detrimental effects of climate change since climate phenomena and the effects thereof are of a transboundary nature, and are linked to the duty of prevention of significant harm* […] *In addition, certain human rights norms constitute obligations* erga omnes*, which States have "towards the international community as a whole" and which "are the concern of all States"* […] *Regional human rights courts and specialised human rights bodies consistently held that States' human rights obligations are not necessarily constrained within their own national borders but extend to the scope of their 'jurisdiction'. In particular, there is a certain convergence in the case-law of the HRC, the CESCR, the ECtHR and the IACtHR on the fact that human rights obligations extend to cases where the State has exercised sufficient "effective control" – either over a certain territory, over certain people by agents of the State, but also over activities which have effects on human rights abroad*". See also DRC's Written Statement, paras. 184-190.

39. As various Written Statements have emphasised,[88] extraterritorial jurisdiction in IHRL has long been recognised in contexts other than climate change. For instance, the exercise of such jurisdiction has been recognised:

    a. By the ICJ, for e.g., in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[89] and in *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*;[90]

    b. By several other international bodies, including the CESCR, the Human Rights Committee, the CRC and CEDAW;[91] and

    c. By regional bodies and courts, and in particular the Inter-American Commission and Inter-American Court of Human Rights ("**IACtHR**").[92]

40. Furthermore, the IACtHR has expressly recognised the relevance of extraterritorial jurisdiction in the context of climate change,[93] holding that "*the obligations to respect and to ensure human rights require that States abstain from preventing or hindering other States Parties from complying with the obligations derived from the Convention*."[94] It held further that "[i]*n cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory*".[95]

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88 *See e.g.*, EU's Written Statement, paras. 275 and 282-284; Cook Islands' Written Statement, paras. 184-187; Vanuatu's Written Statement, para. 253; the Melanesian Spearhead Group's Written Statement, para. 257; Bangladesh's Written Statement, para. 118; Ecuador's Written Statement, paras. 3.112-3.114; Bolivia's Written Statement, para. 53; Chile's Written Statement, para. 69; Kiribati's Written Statement, para. 157; African Union's Written Statement, para. 208.

89 *See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, 2004 ICJ Reports 136, para. 109 ("[W]*hile the jurisdiction of States is primarily territorial, it may be sometimes exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, States parties to the Covenant should be bound to comply with its provisions*.").

90 *See Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment, 19 December 2005, 2005 ICJ Reports 168.

91 *See, e.g.,* ICESCR, *General Comment No. 24, "On State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities"*, UN Doc. E/C.12/GC/24, 10 August 2017, para. 10; UNHRC, *General Comment No. 36 "The right to life"*, UN Doc. CCPR/C/GC/36, 3 September 2019, paras. 22 and 62; CRC, *General Comment No. 26, "On children's rights and the environment, with a special focus on climate change*", UN Doc. CRC/C/GC/26, 22 August 2023, paras. 84, 88 and 108; CEDAW, *General Recommendation No. 37, "Gender-related dimensions of disaster risk reduction in the context of climate change"*, paras. 43, 45, and 49.

92 IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, para. 79; IACtHR, *Case of Salas et al. v. United States,* Admissibility Report No. 31/93 of 14 October 1993, paras. 14, 15 and 17; IACtHR, *Case of Coard et al. v. United States*, Merits Report No. 109/99 of 29 September 1999, para. 37; IACtHR, *Case of Armando Alejandre Jr. et al. v. Cuba*, Merits Report No. 86/99 of 29 September 1999, para. 23; IACtHR, *Franklin Guillermo Aisalla Molina (Ecuador v. Colombia)*, Admissibility Report No. 112/10 of 21 October 2010, para. 98; IACtHR, *Djamel Ameziane v. United States*, Admissibility Report No. 17/12 of 20 March 2012, para. 35.

93 IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, paras. 78-82.

94 IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, para. 101.

95 IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, para. 102.

41. Albania is mindful that extraterritorial jurisdiction should not be unlimited, and of the risk of opening the floodgates should that be the case.[96] However, in Albania's view, such concerns do not arise here. Indeed, it can be deduced from the IHRL judgments, decisions and soft law instruments cited above (and in Albania's Written Statement) that extraterritorial jurisdiction would be established solely where:

    a. There is a *clear causal link* between the alleged violation and the respondent State's action or failure to act;[97] and

    b. The State's action or failure to act had a *direct and reasonably foreseeable* impact on the applicant(s)' human rights.

42. Whilst the establishment of causation may differ from other factual contexts, a dynamic approach to causation is urged, as discussed further in **Section II.E.**, below.

3. UNCLOS and climate change

43. The previous section addressed States' obligations to protect the climate system in human rights treaties. Focusing on the hydrosphere and marine biosphere, this section addresses the obligations of States to protect the ocean, and specifically the marine environment, from anthropogenic GHG emissions, as set out under UNCLOS.

44. At least one Written Statement says that UNCLOS does not provide for specific obligations of States in relation to climate change, with that State asserting that the limits of action required from States are restricted to those as established under the UN's Climate Change Treaty Regime.[98]

45. Such positions have been plainly rebutted by ITLOS' recent Advisory Opinion, which has established that Part XII of UNCLOS applies to climate change,[99] and that anthropogenic GHG emissions constitute pollution of the marine environment as defined under UNCLOS, thereby triggering the obligations under Article 194 of UNCLOS.[100] In that regard, Albania notes that while the Court does not formally defer to ITLOS, it regularly gives considerable weight in its reasoning to ITLOS' interpretations on matters relating to the application of UNCLOS, ensuring consistency (and avoiding fragmentation) when considering the international legal regime governing maritime issues.[101]

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96 ECtHR, *Duarte Agostinho and Others v Portugal and Others*, App. No. 39371/20, 9 April 2024 ("***Duarte Agostinho***"). Six Portuguese children claimed that Portugal, along with 32 other States, exercised a significant degree of control over their rights to life and privacy threatened by anthropogenically produced heatwaves and forest fires, by governing their land and resources in a GHG-heavy manner and extracting or importing undue amounts of fossil fuels. Although the ECtHR held the application inadmissible, in part on the basis of jurisdiction, it considered that "[t]*he scope of the extraterritorial jurisdiction sought by the applicants would in effect be* ***without any identifiable limits***" and that "*accepting the applicants' arguments would entail an* ***unlimited expansion*** *of States' extraterritorial jurisdiction under the Convention and responsibilities under the Convention towards people practically anywhere in the world*". *Duarte Agostinho*, paras. 207 and 208 (emphasis added).

97 In this respect, Albania concurs with the *dicta* on causation provided by the ECtHR in *KlimaSeniorinnen* and discussed further below in **Section II.E**.

98 Russian Federation's Written Statement, pp. 12-15.

99 ITLOS' Advisory Opinion, paras. 384-388.

100 ITLOS' Advisory Opinion, paras. 401-406. See also DRC's Written Statement, Section III.B..

101 *See for e.g., Maritime Delimitation in the Indian Ocean (Somalia v Kenya)*, Judgment, 12 October 2021. Albania also referred in its Written Statement to the case of *Pulp Mills on the River Uruguay (Argentina v Uruguay)*. Albania drew the Tribunal's attention towards that case's treatment of EIAs as "*a distinct and freestanding*

46. Four points from ITLOS' Advisory Opinion are particularly relevant.

47. *First*, ITLOS recognised that the Paris Agreement (and the broader UN Climate Change Treaty Regime) does not constitute the full extent of States' obligations to respond to climate change.[102] Instead, ITLOS concluded that States' requirements under UNCLOS *exceed* those established under the UN Climate Change Treaty Regime.[103]

48. Accordingly, ITLOS' Advisory Opinion affirms that UNCLOS obligations go beyond those as set out in the UN Climate Change Treaty Regime. Indeed, State Parties to UNCLOS are under specific legal obligations under UNCLOS to respond to the climate emergency, which are *not* superseded by the Paris Agreement, the Kyoto Protocol or the UNFCCC, but are rather compatible with and complementary to the obligations mandated by UNCLOS.[104]

49. *Second*, ITLOS affirmed that UNCLOS State Parties have an obligation under Article 192 of UNCLOS to "*protect and preserve the marine environment*",[105] which "*may include restoring marine habitats and ecosystems*" where the marine environment has been degraded,[106] taking measures necessary to protect and preserve the marine environment, and ensuring non-State actors under their jurisdiction or control adhere to these measures.[107]

50. Further, having responded to the critical threshold question of defining 'pollution of the marine environment', ITLOS concluded that "*anthropogenic GHG emissions into the atmosphere constitute pollution of the marine environment within the meaning of Article 1, paragraph 1, subparagraph 4, of* [UNCLOS]".[108] As such, State Parties to UNCLOS have an obligation to "*take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions and to endeavour to harmonize their policies*" to do so.[109] These obligations include the responsibility to implement "*mitigation measures*", such as the "*reduction of anthropogenic GHG emissions into the atmosphere*".[110]

51. *Third*, ITLOS identified the nature of these obligations as obligations of due diligence,[111] specifying that such due diligence must be "*stringent*", given the risks of harms, while the implementation of said due diligence may vary between States according to available capabilities and resources.[112] In fulfilling this obligation to conduct necessary due diligence,

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transboundary obligation in international law", also reflected in Articles 204-206 of UNCLOS (Albania's Written Statement, fn. 99).

102 ITLOS' *dicta* refuted an argument advanced by some States in the first round of submissions for these advisory proceedings. ITLOS concluded that it did "*not consider that the Paris Agreement modifies or limits the obligation under* [UNCLOS]*"*, finding that "*the Paris Agreement is not* lex specialis *to* [UNCLOS]*"* and that even if the Paris Agreement "*had an element of* lex specialis *to* [UNCLOS]*, it nonetheless should be applied in such a way as not to frustrate the very goal of the* [UNCLOS]". *See* ITLOS' Advisory Opinion, para. 224.

103 ITLOS held that that "[w]*hile the Paris Agreement complements* [UNCLOS] *in relation to the obligation to regulate marine pollution from anthropogenic GHG emissions, the former does not supersede the latter*". *See*, ITLOS' Advisory Opinion, para. 223.

104 ITLOS' Advisory Opinion, paras. 393-394.

105 ITLOS' Advisory Opinion, para. 396. This obligation "*applies to all maritime areas and can be invoked to combat any form of degradation of the marine environment, including climate change impacts, such as ocean warming and sea level rise, and ocean acidification.*" (*see* ITLOS' Advisory Opinion, para. 400).

106 ITLOS' Advisory Opinion, para. 386.

107 ITLOS' Advisory Opinion, para. 396.

108 ITLOS' Advisory Opinion, para. 179.

109 ITLOS' Advisory Opinion, para. 243.

110 ITLOS' Advisory Opinion, para. 205.

111 ITLOS' Advisory Opinion, para. 242.

112 ITLOS' Advisory Opinion, paras. 241-243.

the Advisory Opinion specified that the "*obligation of due diligence is also closely linked with the precautionary approach*", stipulating that "*States would not meet their obligation of due diligence* […] *if they disregarded or did not adequately account for the risks involved in the activities under their jurisdiction or control*." ITLOS further stated that "[w]*hile the precautionary approach is not explicitly referred to in* [UNCLOS], *such approach is implicit in the very notion of pollution of the marine environment, which encompasses potential deleterious effects.*"[113]

52. *Fourth*, ITLOS highlighted the varying requirement of due diligence between States and their respective capabilities and resources,[114] clarifying that in relation to the protection of the marine environment from anthropogenic GHG emissions, States with "*greater means and capabilities must do more to reduce such emissions than States with less means and capabilities*".[115] ITLOS' view aligns with points made in Albania's Written Statement that, while the scientific community has established that "*the largest share of historical and current emissions of greenhouse gases has originated in developed countries*", it is developing States such as Albania that are "*disproportionately affected to the point where some are facing an* 'existential threat'."[116]

53. In sum, the ITLOS Advisory Opinion is an authoritative declaration on the subject of States' obligations under UNCLOS with regards to the protection of the marine environment.

C. THE INTERACTION OF THE UN CLIMATE CHANGE TREATY REGIME WITH APPLICABLE CUSTOMARY INTERNATIONAL LAW AND OTHER INTERNATIONAL CONVENTIONS

54. As set out in Albania's Written Statement and above (see **Section II.A**.) the obligations to protect the climate system and parts of the environment arise from a broad corpus of international law that is not limited to the UN Climate Change Treaty Regime. Thus, rather than limiting the Court's analysis to the UN Climate Change Treaty Regime as suggested by certain States, the Court should carry out a holistic interpretation of those norms when addressing part (a) of the Question.

55. In that regard, Albania reiterates that the relationship between these sources of law is one of "*interpretation*", whereby "*one norm assists in the interpretation of another*",[117] pursuant to the principle of systemic integration codified in Article 31(3)(c) of the VCLT.[118]

56. Therefore, customary international law – particularly the obligation to prevent transboundary harm and its due diligence considerations – is key in informing States' obligations in respect of anthropogenic GHG emissions, as reflected in the UN Climate Change Treaty Regime. The same applies *vice versa*, in the sense that the UN Climate Change Treaty Regime informs the customary international law, treaty obligations and principles of international

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113 ITLOS' Advisory Opinion, para. 213.

114 ITLOS' Advisory Opinion, para. 339.

115 ITLOS' Advisory Opinion, para. 227.

116 Albania's Written Statement, para. 144; *see also* UNFCCC, Preamble.

117 *Report of the International Law Commission on the Work of its Fifty-Eight Session* (2006), Chapter XII, p. 178, para. (2).

118 See also EU's Written Statement, paras. 226-230; Switzerland's Written Statement, paras. 66-71.

law that co-exist, including the obligation to prevent transboundary harm, and the *common but differentiated responsibilities* ("**CBDR**") and precautionary principles.[119]

57. The Court's clarification of these interactions is critically needed. Albania maintains that the Court should conclude that these interactions strengthen – not weaken or relativise – the relevant obligations.[120] It should also dismiss any argument suggesting that compliance with the Paris Agreement would *ipso jure* satisfy separate, independent obligations under customary international law or relevant treaties.[121] As noted by Professor Lowe in respect of the interaction between the Paris Agreement and UNCLOS:

> "*No doubt there will be instances where steps taken pursuant to the Paris Agreement are completely sufficient to satisfy the obligations under UNCLOS. But there may also be instances where such steps do not completely fulfil all UNCLOS obligations.*"[122]

58. This approach has been endorsed by ITLOS.[123]

59. Furthermore, as Professor Lowe stated, "[c]*limate change is a moving target*".[124] Predictions need to be updated to take account of new data.[125] For example, few would have anticipated some decades ago the current rate of increased frequency and intensity of extreme heatwaves and their impacts on human health and agriculture, by which Albania is particularly affected.[126] Similarly, scientific understanding of the adverse impacts of climate change, and the technologies and adaptive mechanisms to address these issues, develop over time. International law, through the Court's Advisory Opinion, should recognise and enable the importance of dynamic interpretation and application in the future.[127]

60. The extent of obligations in any particular case will therefore depend upon the need for action at the relevant *time* and in the *place* concerned, and will be decided on a case-by-case basis from time to time. [128] What is required at present is the identification of the key principles

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119 See for e.g., Mauritius' Written Statement, para. 219: "*The international climate regime reflects customary international law, including the principles of prevention, precaution, due diligence and cooperation, which are in turn relevant to the implementation of UNFCCC and the Paris Agreement*." See also Switzerland's Written Statement, paras. 66-71.

120 Albania's Written Statement, paras. 112-114. See also Switzerland's Written Statement, paras. 66-71.

121 *See,* e.g., Russian Federation's Written Statement, pp. 12-15; USA's Written Statement, para. 327.

122 ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Case 31), Verbatim Record, Statement of Professor Lowe, 12 September 2023, p. 28, lines 23-25.

123 ITLOS' Advisory Opinion, para. 223. See also, COSIS' Written Statement, para. 125; EU's Written Statement, paras. 272-274.

124 ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Case 31), Verbatim Record, Statement of Professor Lowe, 12 September 2023, p. 30, lines 10-11.

125 ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Case 31), Verbatim Record, Statement of Professor Lowe, 12 September 2023, p. 30, lines 10-11.

126 Albania's Written Statement, paras. 53-58.

127 *See* Mauritius' Written Statement, paras. 163-165.

128 ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Case 31), Verbatim Record, Statement of Professor Lowe, 12 September 2023, p. 30, lines 25-27.

that will inform these measures, such as the CBDR and precautionary principles,[129] and that these measures must be determined on the basis of generally accepted scientific evidence, pointing to the sources of that scientific evidence.

D. LEGAL CONSEQUENCES FOR STATES THAT HAVE CAUSED SIGNIFICANT HARM TO THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

61. This section addresses two critical points:

a. The argument raised in some Written Statements that the general international law on State responsibility does not apply in respect of part (b) of the Question;[130] and

b. Causation and the applicability of Article 47 of ARSIWA.

1. General rules of State responsibility apply to breaches of climate change obligations

62. As noted in Albania's Written Statement,[131] and accepted by numerous States in these proceedings,[132] the general rules of State responsibility apply to breaches of the customary obligation to prevent transboundary harm. Albania addresses here four general points of dispute arising in this respect.

63. *First*, some States have argued that the UN Climate Change Treaty Regime is *lex specialis* and that as such it is the most suitable regime for regulating legal consequences flowing from breaches of climate change obligations.[133] As noted, the premise underlying these submissions is incorrect. Rather, and specifically in relation to part (b) of the Question, the UN Climate Change Treaty Regime cannot be taken as displacing ARSIWA.[134]

64. Further, the UN Climate Change Treaty Regime does not regulate – let alone deal with the legal consequences of – critical matters such as human rights violations (in which respect Albania refers to paragraph 109 of its Written Statement and to **Section II.B.2.** above), the right of peoples to self-determination, the principle of prevention of significant environmental harm, or the law of the sea. Those matters are governed by various international treaties and conventions (including the UN Charter) as well as customary international law, and the legal consequences flowing from breaches of those sources of law

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129 *See* Albania's Written Statement, paras. 8; 17.

130 *See*, e.g., Kuwait's Written Statement, Chapter III.A; Saudi Arabia's Written Statement, Chapter 5.I.

131 Albania's Written Statement, fn. 195.

132 *See*, e.g., Vanuatu's Written Statement, para. 559; Grenada's Written Statement, para. 74; Barbados' Written Statement, para. 271; Mauritius' Written Statement, para. 210; COSIS' Written Statement, paras. 148-151; DRC's Written Statement, paras. 268-270.

133 *See*, e.g., Kuwait's Written Statement, para. 88; Russian Federation's Written Statement, p. 8. *See also* OPEC's Written Statement, para. 9.

134 *See* e.g., the discussion in M. Happold, *The relationship between the United Nations Framework Convention on Climate Change and other rules of public international law, in particular on States' responsibility for the adverse effects of climate change*, 31 January 2013, available at https://legalresponse.org/wp-content/uploads/2013/07/BP43E-Briefing-paper-UNFCCC-and-Lex-specialis-31-January-2013.pdf.

must be determined by reference to those very same sources – not the UN Climate Change Treaty Regime.

65. *Second*, some States have argued, in the alternative, that if the Court were to apply the "*residual*" general rules of State responsibility, it should do so exclusively for alleged breaches of obligations contained within the UN Climate Change Treaty Regime.[135] This argument fails for the same reason previously outlined: the UN Climate Change Treaty Regime is not designed to address the legal consequences of all existing climate obligations. Consequently, many climate obligations are not covered by the UN Climate Change Treaty Regime and must be governed by other sources of international law, including customary international law. One of the primary purposes of the general corpus of international law is precisely to fill gaps left by specific legal frameworks that do not comprehensively address particular subjects. The international legal system can only effectively regulate State behaviour and address the multifaceted consequences of climate change via the application of general rules of State responsibility.

66. *Third*, and relatedly, certain States contended that the limited application of the rules on State responsibility to the obligations set out in UN Climate Change Treaty Regime would preclude any claims for "*compensation*," arguing that compensation can only arise from breaches of customary international law.[136] Again, this argument fails for the same reasons outlined previously, but more importantly, because many climate obligations indeed arise from customary international law, including the obligation to prevent transboundary harm.

67. As noted in Written Statements,[137] international law does not preclude a State from seeking compensation against another State for breaches of such obligations in the context of protecting the climate system and the environment. States have agreed to operationalise the obligations to compensate through the establishment of funds and facilities (e.g., the Adaptation Fund and the Loss and Damage Fund).[138] In that regard, and for the avoidance of doubt, Albania agrees with those participants that have argued that the obligation to compensate does not displace other more specific obligations with respect to loss and damage that may apply under relevant primary rules.[139]

68. *Lastly*, at least one State has argued that establishing legal consequences outside of the UN Climate Change Treaty Regime would undermine international cooperation in respect of climate change.[140] This argument is unconvincing. In the absence of legal consequences, international law becomes meaningless and undermines State motivations to cooperate in agreeing obligations at the international level. Consequences arising from treaties outside

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135 *See*, e.g., Kuwait's Written Statement, para. 108.

136 *See*, e.g., China's Written Statement, para. 107; USA's Written Statement, paras. 3.31-3.33; OPEC's Written Statement, paras. 99-103.

137 *See*, e.g., Barbados' Written Statement, paras. 252-278.

138 *See* https://www.adaptation-fund.org/ and https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat.

139 *See*, e.g., COSIS' Written Statement, para. 189. Albania submits that States that contribute to such funds not only provide critical resources for adaptation and mitigation efforts, but also actively demonstrate their commitment to combating the negative effects of climate change. This financial contribution can be viewed as fulfilling a portion of their international legal obligations under various climate agreements and frameworks, including the Paris Agreement, which emphasises the CBDR principle and respective capacities.

140 Saudi Arabia's Written Statement, para. 5.22.

the UN Climate Change Treaty Regime and from customary international law act as a deterrent against violations of international law, thereby reinforcing – rather than undermining – the cooperative spirit of the UN Climate Change Treaty Regime. These legal consequences ensure that States remain accountable not only within the UN Climate Change Treaty Regime but also in a broader legal context, fostering a more robust, more resilient, and fairer international order.

69. In sum, general rules on State responsibility apply to climate change obligations, particularly those that arise from customary international law such as the obligation to prevent transboundary harm.

2. Difficulties in establishing causation should not preclude the establishment of liability for breaches of climate obligations

70. Some States have argued that difficulties in establishing causation in relation to breaches of certain climate change obligations – due to the large-scale and non-linear nature of climate change and multiplicity of States involved in the wrongful conduct – preclude the establishment of liability.[141] Albania disagrees for the following reasons.

71. *First*, as noted in Albania's Written Statement and the Written Statements of several other participants,[142] Article 47 of ARSIWA applies. That provision dictates that where multiple States are responsible for the "*same internationally wrongful act*" (in this case, causing significant harm to the climate system and other parts of the environment), injured States "*can hold each responsible State to account for the wrongful conduct as a whole*", and "*each State is separately responsible for conduct attributable to it*".[143] Albania concurs with the COSIS that:

> "*Because the obligations to cooperate to prevent environmental harm and to protect human rights from the effects of climate change by definition require the concerted conduct of two or more States, a breach of either of those obligations by two or more States would ipso facto be the "same" act for purposes of Article 47 of the ARSIWA.*"[144]

72. Albania notes that the CRC has already reached that same conclusion with respect to violations of children's rights caused by GHG emissions, citing Article 47 ARSIWA and

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141 *See*, e.g., Kuwait's Written Statement, paras. 120-124.

142 *See*, e.g., Albania's Written Statement, para. 130(d); Vanuatu's written statement, para. 535; COSIS' Written Statement, para. 167.

143 For example, in the *Armed Activities* case, the Court found that Uganda was "*responsible*" for damage that occurred in the Democratic Republic of the Congo as a result of fighting between Ugandan and Rwandan troops, even though Rwanda was not party to the case. *See DRC* v. *Uganda* Reparations Judgment, paras. 98, 221 (citing Art. 47 of the ARSIWA). *See also Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Judgment (Preliminary Objections), I.C.J. Reports 1992*, p. 240 at 258–262 (finding that Nauru could invoke Australia's responsibility alone even in the absence of the United Kingdom and New Zealand, even though all three constituted the Administering Authority under a trusteeship agreement).

144 COSIS' Written Statement, para. 167.

explaining that the contribution of multiple States to the violation does not preclude any individual State from being held responsible.[145]

73. <u>*Second*</u>, as anticipated in Albania's Written Statement and various other Written Statements,[146] mere difficulties in establishing causation should not preclude the establishment of liability. The establishment of causation is possible in circumstances where there is significant scientific consensus (reflected *inter alia* in the IPCC's reports) relating to the effect of GHG emissions on the climate system, and where appropriate inferences can be drawn – consistently with principles such as CBDR, equity and good faith – to apportion liability for loss and damage.

74. In this respect, Albania recalls that the standard of proof in the context of cases involving the breach of the obligation to prevent harm to the climate should not be the "*but-for*" test suggested by certain States,[147] but a lower "*sufficiently direct and certain*" test used by the Court in the *Armed Activities* case, where it made clear that "*the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury*".[148]

75. The ECtHR's recent *dicta* in *KlimaSeniorinnen*, discussed above at **Section II.B.2.** has explained that the "*but-for*" test is inapposite.[149] Rather, having considered the effects of the IPCC's evidence before it, the ECtHR held as follows:

> "*The Court notes that there is cogent scientific evidence demonstrating that climate change has already contributed to an increase in morbidity and mortality, especially among certain more vulnerable groups, that it actually creates such effects and that, in the absence of resolute action by States, it risks progressing to the point of being irreversible and disastrous* […] *At the same time, the States, being in control of the causes of anthropogenic climate change, have acknowledged the adverse effects of climate change and have committed themselves – in accordance with their common but differentiated responsibilities and their respective capabilities – to take the necessary mitigation measures (to reduce GHG emissions) and adaptation measures (to adapt to climate change and reduce its impacts). These considerations indicate that a legally relevant relationship of causation may exist between State actions*

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145 *See* OHCHR, *UN Child Rights Committee rules that countries bear cross-border responsibility for harmful impact of climate change*, 11 October 2021 (available at https://www.ohchr.org/en/press-releases/2021/10/un-child-rights-committee-rules-countries-bear-cross-border-responsibility#:~:text=GENEVA%20(11%20October%202021%20%20%2D,within%20and%20outside%20its%20territory.)

146 *See*, e.g., Albania's Written Statement, para. 130(b); Uruguay's Written Statement, paras. 87 and 166-174; Egypt's Written Statement, paras. 371-373; DRC's Written Statement, paras. 296-304.

147 *See*, e.g., Kuwait's Written Statement, para. 118.

148 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, ICJ Reports 2022, p. 13, para. 93.

149 *See* ECtHR, *KlimaSeniorinnen*, Judgment, 9 April 2024, para. 444 (where the Court held that "*the relevant test does not require it to be shown that "but for" the failing or omission of the authorities the harm would not have occurred. Rather, what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm*").

or omissions (causing or failing to address climate change) and the harm affecting individuals [...]"[150]

76. Additionally, when it comes to the evidentiary standard to prove causation, this Court found in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* that the absence of sufficient evidence does not exclude the granting of compensation in equity.[151] This principle acknowledges the difficulties in obtaining precise evidence in cases involving harm to the environment and allows for equitable considerations to ensure that compensation is fair and just, even when exact quantification is not possible.

77. Albania respectfully invites this Court to adopt the ECtHR's aforementioned *dicta* on causation. Specifically, it invites the Court to find that, in the climate change context, the existence of damage and the causal link between anthropogenic GHG emissions and damage to the climate system and to States, peoples, and individuals is well-established via the IPCC reports, among others.[152] Furthermore, the development of attribution science, as discussed in Albania's Written Statement,[153] assists in the establishment of a causal chain between anthropogenic GHG emissions and specific climate change-induced harms, as well as in the apportionment of liability between emitters based upon their present and historical contributions to GHG emissions.

78. Thus, the general scientific consensus provided by the IPCC and the best available evidence on attribution can serve as a robust foundation for attributing responsibility and assessing damage. It creates a rebuttable presumption of the existence of specific damage and causation.[154] Equitable principles can then be relied upon, consistent with the Court's jurisprudence[155] to determine liability (for higher emitting States) and compensation (for particularly vulnerable States), ensuring that justice is served even in the face of complex causation challenges.

79. In conclusion, difficulties in establishing causation do not preclude liability: Article 47 of ARISWA usefully resolves some of the difficulties. The existence of such damages and causation should be assessed based on a rebuttable presumption resulting from general scientific evidence, and any victim shall be entitled to claim compensation from each co-perpetrator State in proportion to their contribution to anthropogenic GHG emissions.

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150 ECtHR, *KlimaSeniorinnen*, Judgment, 9 April 2024, para. 478.

151 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment of 2 February 2018, I.C.J. Reports 2018, p. 15, para. 35.

152 *See* Albania's Written Statement, paras. 48-52.

153 Albania's Written Statement, para. 69. *See* also, e.g., Brazil's Written Statement, paras. 84-85; Uruguay's Written Statement, paras. 166-174.

154 For States expressing similar views, see, e.g., Chile's Written Statement, para. 97 ("*Therefore, while it is not possible to attribute specific climate change-induced events to particular emissions, reasonable inferences can be accomplished by quantifying States' individual contributions to climate change*.").

155 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment of 2 February 2018, I.C.J. Reports 2018, p. 15, para. 35.

III. SUBMISSIONS

80. For the reasons set out in Albania's Written Statement, and further elaborated in these Written Comments, Albania respectfully submits that:

a. Although the UN Climate Change Treaty Regime is a key source of environmental obligations, it is not the *sole* source. Climate change obligations derive from a broad corpus of law, encompassing both international treaties and customary international law;

b. The UN Climate Change Treaty Regime coexists alongside a series of fundamental rules of customary international law and other relevant treaties, which impose complementary obligations and apply in full within their respective scope. Pursuant to the principle of systemic integration, customary international law (particularly the obligation to prevent transboundary harm and its due diligence considerations), and relevant treaties obligations play a key role in informing States' obligations in respect of anthropogenic GHG emissions, as reflected in the UN Climate Change Treaty Regime. The same applies *vice versa*, with the UN Climate Change Treaty Regime informing the customary international law obligations and principles that exist alongside it; and

c. The general rules of State responsibility apply to breaches of the customary obligation to prevent transboundary harm. Additionally, liability is not eliminated by challenges in determining causation. The existence of such damages and causation should be assessed based on a rebuttable presumption resulting from general scientific evidence, and any victim shall be entitled to claim compensation from each co-perpetrator State in proportion to their contribution to anthropogenic GHG emissions.

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His Excellency Mr Artur Kuko

Ambassador of the Republic of Albania to the Kingdom of The Netherlands