INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

WRITTEN COMMENTS OF THE PEOPLE'S REPUBLIC OF BANGLADESH ON THE WRITTEN STATEMENTS SUBMITTED TO THE COURT

15 AUGUST 2024

CONTENTS

INTRODUCTION

1. These Written Comments are filed by the People's Republic of Bangladesh ("***Bangladesh***") pursuant to the Court's Orders of 20 April 2023 and 30 May 2024 in the *Obligations of States in respect of Climate Change* advisory proceedings.

2. Bangladesh welcomes the written statements submitted by a total of 91 States and international organizations ("***IOs***")—the highest number ever to be filed in advisory proceedings before the Court. This widespread engagement underscores both the global catastrophic consequences of climate change and the critical role of the Court in clarifying the obligations of States.

3. As one of the States most severely impacted by climate change, Bangladesh also welcomes the near-universal consensus reflected in the written statements that: (*i*) climate change is caused by anthropogenic greenhouse gas ("***GHG***") emissions; (*ii*) that it is already having a devastating impact on a global scale; (*iii*) that it disproportionately affects Least Developed Countries ("***LDCs***"), low-lying coastal States, and other climate vulnerable States; and (*iv*) that climate impacts impede the exercise of fundamental human rights. A majority of States and IOs, including Bangladesh, also agree that States have binding legal obligations in respect of climate change under both customary international law as well as relevant treaties such as the United Nations Convention on the Law of the Sea ("***UNCLOS***").

4. Bangladesh focuses its statement on the following points. *First*, in **Part I**, Bangladesh describes the well-established principle of customary international law that States must "*ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control*". This includes—as reflected *inter alia* in Article 194 of UNCLOS—the

obligation to prevent transboundary harm to the marine environment. States are also subject to customary international law obligations to: take positive action to preserve the marine environment, to conduct environmental impact assessments ("***EIA***"), and to cooperate to address the risk of transboundary environmental harms. Each of these obligations applies in the climate change context and entails a duty of due diligence, pursuant to which States are required to take steps to mitigate GHG emissions to limit global warming to 1.5°C above pre-industrial levels.

5. *Second*, in **Part II** Bangladesh addresses the advisory opinion delivered on 21 May 2024 by the International Tribunal for the Law of the Sea ("***ITLOS***") in *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* ("***COSIS* Advisory Opinion**"), in which a total of 45 States and IOs participated. The Court's consideration of the *COSIS* Advisory Opinion will be a critical opportunity to ensure the consistency and coherence of international law in respect of the climate-related obligations of States Parties to UNCLOS. It also underscores the crucial role of the Court, as the principal judicial organ of the United Nations, in the unification and harmonization of international law.

6. *Third*, in **Part III** Bangladesh describes how States' obligations under customary international law and UNCLOS are distinct from, and consistent with, treaty-based obligations under the United Nations Framework Convention on Climate Change ("***UNFCCC***"), Kyoto Protocol, and Paris Agreement (together, the "***UN Climate Treaty Regime***" or "***UN Climate Treaties***"). Contrary to the arguments of some States and IOs, the UN Climate Treaty Regime does not constitute *lex specialis* to the exclusion of other rules of international law. Neither is the fulfillment of States' obligations under the UN Climate Treaty Regime sufficient to meet obligations under customary international law or UNCLOS.

7. *Fourth*, in **Part IV**, Bangladesh describes the broad consensus of States and IOs in their written statements that climate change is already having a devastating impact on the exercise of fundamental human rights around the world. This impact is disproportionately suffered by the peoples of LDCs, low-lying coastal States, and climate vulnerable States, who are also the least culpable for climate change, and engages States' obligation under international law to refrain from actions that would impede another State's ability to protect and ensure the human rights of individuals in its jurisdiction or control.

8. *Finally*, in **Part V**, Bangladesh explains that the ordinary rules of State responsibility will be engaged when a State breaches its obligations in respect of climate change.

I.

STATES' OBLIGATIONS UNDER CUSTOMARY INTERNATIONAL LAW IN RESPECT OF CLIMATE CHANGE

9. Bangladesh welcomes the near-universal consensus in the written statements on the existence of customary international law principles regarding protection of the environment and the associated duty of due diligence. In this chapter, Bangladesh sets out the scope of agreement in the written statements as to States' obligations and their application in the climate change context.

10. Bangladesh's Written Statement describes a number of customary international law obligations and principles related to the environment that apply in the climate change context, including: (*i*) the obligation to prevent transboundary environmental harm; (*ii*) the obligation to protect and preserve the marine environment; (*iii*) the obligation to conduct EIAs; and (*iv*) the obligation to cooperate to address the risk of transboundary environmental harms. The written

statements of States and IOs reveal near-universal recognition of these obligations and their applicability in the climate change context.

11. *First*, the well-established principle of customary international law that States must "*ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control*"[1]—which is reflected *inter alia* in Article 194(2) of UNCLOS in respect of the marine environment—enjoys broad agreement. Of the 91 written statements submitted to the Court by 95 States and IOs, 82 agree that the principle of prevention is part of customary international law[2]. Notably, seven of the States and IOs that do not

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[1] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 29.

[2] *See* written statements of: African Union, paras. 90, 95; Albania, para. 65; Alliance of Small Island States ("***AOSIS***"), Annex 3, paras. 3-6; Antigua and Barbuda, paras. 125–142; Argentina, p. 26; Australia, para. 4.8; Bahamas, para. 94; Bangladesh, Section IV.A.1; Barbados, para. 207; Belize, paras. 35–36; Bolivia, paras. 34–36; Brazil, para. 70; Burkina Faso, paras. 69, 79, 95; Cameroon, para. 13; Canada, para. 19; Chile, para. 39; Colombia, para. 3.10; Commission of Small Island States ("***COSIS***"), para. 81; Cook Islands, paras. 166–170; Costa Rica, paras. 45–49; Democratic Republic of Congo, p. 11, para. b(i); Denmark, Finland, Iceland, Norway, and Sweden, para. 73; Dominican Republic, paras. 4.31, 5.1; Ecuador, paras. 3.15, 3.18; Egypt, paras. 90–96; El Salvador, paras. 32–34; European Union, paras. 297–298; France, paras. 56–59; Germany, para. 77; Ghana, para. 25; Grenada, paras. 38, 41; India, para. 15; Indonesia, paras. 60, 64; International Union for Conservation of Nature ("***IUCN***"), para. 305; Japan, para. 11; Kenya, para. 5.81; Kiribati, para. 127; South Korea, paras. 33–40; Kuwait, para. 76; Latvia, paras. 51–61; Madagascar, paras. 36–37; Marshall Islands, para. 23; Mauritius, para. 189; Melanesian Spearhead Group, para. 323; Mexico, paras. 40–47; Micronesia, paras. 59–60; Namibia, paras. 53, 60; Nauru, para. 28; Nepal, para. 26; Netherlands, para. 3.55; New Zealand, para. 96; Organization of African, Caribbean and Pacific States ("***OACPS***"), para. 101; Organization of the Petroleum Exporting Countries, para. 82; Pakistan, paras. 29, 31–33; Palau, paras. 3, 14, 17; Parties to the Nauru Agreement Office, para. 40; Peru, para. 69; Philippines, paras. 55–61; Portugal, para. 72; Romania, paras. 97–98; Russian Federation, p. 8; Saint Lucia, para. 66; Saint Vincent and the Grenadines, paras. 95, 101–108; Samoa, paras. 87–94; Seychelles, para. 108; Sierra Leone, para. 3.11; Singapore, para. 3.1; Slovenia, paras. 17–20; Solomon Islands, para. 1.6; South Africa, para. 74; Spain, para. 8; Sri Lanka, para. 95; Switzerland, paras. 14–16; Thailand, para. 8; Timor Leste, para. 83; Tonga, para. 122; Tuvalu, para. 73; United Arab Emirates, paras. 93–94; United States of America, para. 4.5; Uruguay, para. 89; Vanuatu, para. 235; Vietnam, para. 15.

address this rule do not reject it[3]. The vast majority of States and organizations—84 in total—also agree with Bangladesh that this principle applies in the climate change context[4].

12. *Second*, numerous States and IOs recognize—both in this proceeding and before ITLOS—that the obligation set forth in Article 192 of UNCLOS to "*protect and preserve the marine environment*" reflects a general principle of international law and applies in respect of climate change[5]. As set out in

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[3] *See* Written Statement of The Gambia; Written Statement of Iran; Written Statement of the Pacific Islands Forum; Written Statement of the Pacific Islands Forum Fisheries Agency; Written Statement of Saudi Arabia; Written Statement of the United Kingdom; Written Statement of the World Health Organization.

[4] *See* written statements of Sierra Leone, para. 3.19; Barbados, para. 150; Thailand, para. 17 African Union, paras. 56–57; Albania, paras. 76–78; AOSIS, Annex 3, para. 4; Antigua and Barbuda, para. 298; Argentina, pp. 23–26; Australia, para. 4.9; Bahamas, para. 100; Bangladesh, paras. 91–92; Barbados, para. 207; Belize, paras. 35–36; Bolivia, paras. 42, 68–69; Brazil, para. 70; Burkina Faso, para. 160; Cameroon, para. 13; Chile, para. 88; Colombia, para. 3.15; COSIS, para. 79; Cook Islands, para. 171; Costa Rica, para. 44; Democratic Republic of Congo, paras. 221–27; Denmark, Finland, Iceland, Norway, and Sweden, paras. 72–75; Dominican Republic, paras. 4.5–4.7, 4.14; Ecuador, para. 3.25; Egypt, para. 96; El Salvador, para. 37; European Union, para. 93; France, para. 56; Ghana, para. 26; Grenada, para. 41; IUCN, paras. 39, 135; Kenya, paras. 5.19–5.16; Kiribati, para. 145; South Korea, para. 37; Kuwait, para. 74; Latvia, para. 61; Liechtenstein, para. 74; Madagascar, paras. 36–37; Marshall Islands, paras. 21, 23–24, 70, 72; Mauritius, paras. 189–192; Melanesian Spearhead Group, para. 314; Mexico, para. 37; Micronesia, paras. 57–62; Namibia, para. 57; Nauru, para. 26; Nepal, paras. 25–26; Netherlands, para. 26; New Zealand, para. 96; OACPS, p. 52; Pakistan, p. 18; Palau, p. 9; Parties to the Nauru Agreement Office, paras. 40, 44; Peru, para. 69; Philippines, paras. 55–61; Portugal, para. 72; Romania, paras. 97–98; Russian Federation, p. 8; Saint Lucia, para. 39; Saint Vincent and the Grenadines, paras. 95, 101–08; Samoa, paras. 134–40; Seychelles, p. 34; Sierra Leone, para. 3.19; Singapore, p. 20; Slovenia, para. 9; Solomon Islands, para. 150; South Africa, para. 74; Spain, para. 8; Sri Lanka, para. 95; Switzerland, para. 25; Thailand, para. 9; Timor Leste, paras. 196–98; Tonga, para. 122; Tuvalu, para. 156; United Arab Emirates, para. 99–102; Uruguay, para. 41; Vanuatu, paras. 261, 266–68; Vietnam, paras. 25–26.

[5] *See* written statements of: Burkina Faso, para. 149; African Union, para. 57; Albania, para. 67; Argentina, p. 27; Australia, para. 3.8 n. 169; Bangladesh, para. 97; Barbados, paras. 150–52; Cameroon, paras. 13, 15; COSIS, para. 79; Cook Islands, para. 5(a); Costa Rica, para. 68; Denmark, Finland, Iceland, Norway, and Sweden, para. 90; Dominican Republic, para. 4.7; Ecuador, para. 3.90; European Union, para. 224; IUCN, para. 175; Japan, para. 11; Kiribati, para. 128; Micronesia, para. 99; OACPS, para. 105; Netherlands, para. 2.8; New Zealand,

Bangladesh's Written Statement, this obligation requires States to take "*active measures*" to protect and preserve the marine environment, and also entails the "*negative obligation not to degrade the marine environment*"[6].

13. *Third*, as the Court has recognized, these obligations incorporate the procedural requirement to carry out an EIA before embarking on any activity that may cause transboundary harm[7]. The obligation to conduct an EIA also forms part of customary international law and is relevant in the climate change context[8], as 47 States recognize in their written statements[9].

Annex A, para. 50; Peru, para. 86; Saint Lucia, para. 73; Saint Vincent and the Grenadines, para. 102; Seychelles, para. 63; Singapore, para. 3.52; Slovenia, para. 9; Solomon Islands, para. 53; Sri Lanka, pp. 39–40; Switzerland, paras. 22–23; Timor Leste, para. 223; Tonga, paras. 122, 246–48; Tuvalu, para. 73; Vanuatu, para. 280; Vietnam, para. 15. *See also* ITLOS Advisory Opinion, written statements of: African Union, para. 247; Brazil, para. 21; COSIS, para. 368; Djibouti, para. 51; IUCN, paras. 137, 151; Micronesia, para. 60; Netherlands, para. 4.2; New Zealand, para. 50; Rwanda, para. 157.

6 Written Statement of Bangladesh, para. 97 (citing *South China Sea Arbitration (Philippines v. China*), PCA Case No 2013-19, Award on Merits (12 July 2016), para. 941).

7 Written Statement of Bangladesh, para. 94.

8 *See, e.g*., *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 204 ("*Pulp Mills*").

9 *See* written statements of: African Union, para. 96(c); Albania, para. 82 n. 99; Antigua and Barbuda, para. 366 n.448; Australia, paras. 4.8, 4.10; Bahamas, paras. 92, 94; Bangladesh, paras. 94, 132; Barbados, paras. 144(c) – (d), 163(b); Belize, paras. 39, 59; Burkina Faso, paras. 69, 71, 176; Chile, paras. 81–84; Colombia, paras. 156–71; COSIS, para. 88; Cook Islands, paras. 153, 243–44; Costa Rica, paras. 42–44; Democratic Republic of Congo, para. 217; Ecuador, paras. 3.15, 3.32–3.35; Egypt, para. 283; European Union, paras. 86–87; France, para. 71; Ghana, paras. 25–26; Grenada, para. 39; IUCN, paras. 4.18–4.28; Kenya, para. 5.9–5.16; South Korea, para. 36; Latvia, para. 53; Marshall Islands, para. 37; Mauritius, para. 202; Mexico, para. 46; Micronesia, paras. 59–62; Namibia, paras. 53, 163; Nepal, para. 26; Netherlands, paras. 3.55, 3.58; New Zealand, para. 100; Philippines, paras. 64–70; Romania, para. 98; Saint Lucia, para. 67; Saint Vincent and the Grenadines, para. 102; Samoa, paras. 94, 139; Seychelles, para. 130; Sierra Leone, para. 3.13; Singapore, para. 3.20; Solomon Islands, para. 58.4; Thailand, para. 16; Timor Leste, para. 196; Tonga, para. 248; Uruguay, paras. 89–94, 149; Vanuatu, paras. 231, 261.

14. *Fourth*, States have an obligation to cooperate to address the risk of transboundary environmental harms, which likewise reflects customary international law[10]. The duty to cooperate is critical to effectively and equitably manage the risks that unilateral action by one State could result in damage to the environment of another State, and entails the procedural obligations of "*informing, notifying and negotiating*" to prevent such harms[11]. A number of States and IOs recognize in the written statements the general duty to cooperate, as well as its application in the climate change context[12].

15. These customary international law obligations entail a specific duty to act with due diligence, as also acknowledged by a vast majority of participating States and IOs[13]. In the climate context, the scope and content of the duty of due diligence are determined by the following factors:

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10 Written Statement of Bangladesh, para. 127.

11 Written Statement of Bangladesh, para. 128 (quoting *Pulp Mills*, para. 81).

12 *See* written statements of: African Union, para. 96(d); Albania, para. 83; AOSIS, para. 6; Antigua and Barbuda, para. 402–03; Argentina, para. 50; Australia, paras. 4.2–4.6; Bahamas, paras. 170–75, 208; Bangladesh, para. 128; Barbados, para. 208; Belize, para. 59; Brazil, para. 97; Burkina Faso, para. 350; Chile, para. 129; Colombia, paras. 3.62, 5.3; COSIS, para. 88; Costa Rica, para. 128; Democratic Republic of Congo, para. 136–44, 229–33, 241; Dominican Republic, paras. 1.4, 4.42, 4.67; Ecuador, paras.3.50–3.53; Egypt, para. 110; Germany, para. 77; Grenada, para. 43; Indonesia, paras. 64, 86; IUCN, paras. 447–56; Iran, paras. 85, 145; Kenya, paras. 5.17–5.18; South Korea, para. 32; Latvia, para. 60; Marshall Islands, para. 37; Mauritius, paras. 206–07; Micronesia, para. 65–66; Netherlands, para. 3.73; New Zealand, para. 90; OACPS, para. 63; Pacific Islands Forum, para. 33; Pacific Islands Forum Fisheries Agency, para. 36; Peru, para. 87; Philippines, para. 71; Portugal, paras. 128, 136; Romania, para. 98; Saint Lucia, paras. 75–78; Saint Vincent and the Grenadines, para. 102; Sierra Leone, paras. 3.26–3.32; Singapore, paras. 3.73, 5.1(x); Solomon Islands, para. 1.3; Switzerland, para. 7; Thailand, para. 16 n.20; Timor Leste, para. 180–87; Tuvalu, para. 103; United Arab Emirates, paras. 72–75; Uruguay, para. 114; Vanuatu, paras. 308–13; Vietnam, paras. 30–36.

13 *See* written statements of: African Union, para. 95; Albania, paras. 75–78; AOSIS, Annex, p. 20, para. 3; Antigua and Barbuda, para. 134; Argentina, p. 27; Australia, paras. 4.12–4.15; Bahamas, paras. 92–94, 100, 104; Bangladesh, paras. 84, 87– 95, 115, 132; Barbados, para. 144(c)-(d), 207, 229; Belize, paras. 33(b) 35, 40(b); Burkina Faso, paras. 69, 160; Cameroon, paras. 11, 13; Chile, paras. 39, 83, 90; China, paras. 130–31; Colombia, Annex I, para. 124;

- *The specific circumstances, including the nature and gravity of the potentially harmful activity, and the inherent risk that it will cause transboundary harm* [14]. Activities that entail a high risk of transboundary harm are subject to a higher due diligence standard[15]. As confirmed by the best available science manifest in the conclusions of the IPCC, both the catastrophic nature of climate change and the gravity

COSIS, para. 79; Cook Islands, para. 161, 175–176, 180; Costa Rica, paras. 37–40; Democratic Republic of Congo, para. 124; Denmark, Finland, Iceland, Norway, and Sweden, paras. 65, 76; Dominican Republic, para. 4.31; Ecuador, para. 1.21, 3.20, 3.23, 3.34; Egypt, paras. 97–117; European Union, paras. 78–89; France, para. 57, 71; Ghana, paras. 25–26; Grenada, para. 41; India, paras. 12, 14–15; IUCN, paras. 39, 427, 429; Kenya, paras. 5.9–5.16, 5.32, 5.81; Kiribati, para. 114, 142, 149; South Korea, paras. 26, 33–37, 40; Kuwait, para. 72 n. 48; Latvia, paras. 45, 51–56, 59–61; Liechtenstein, para. 74; Marshall Islands, paras. 23, 124; Mauritius, paras. 193–195, 198, 200–201; Melanesian Spearhead Group, para. 298; Mexico, paras. 42–47, 78, 107–108; Micronesia, paras. 57, 62, 106; Namibia, paras. 51, 53; Nauru, paras. 28–30 Netherlands, paras. 3.52, 3.59, 3.66, 3.70; New Zealand, paras. 90, 97–100; OACPS, paras. 96–101; Pakistan, paras. 31–39; Parties to the Nauru Agreement Office, paras. 37–39; Philippines, paras. 58, 62–64, 68, 82; Portugal, para. 55 n. 35; Romania, paras. 98–99, 102–104, 106, 112; Saint Lucia, paras. 66–68, 72, 88–90; Saint Vincent and the Grenadines, paras. 101, 108; Samoa, paras. 12, 93–95, 98–104, 112, 114–118, 134, 193, 202; Seychelles, para. 62; Sierra Leone, para. 3.11–3.16, 3.19, 3.50, 3.126; Singapore, paras. 3.4–3.14, 3.55–3.56, 3.62; Solomon Islands, paras. 139, 146, 153, 162; South Africa, para. 74; Spain, para. 6–7; Sri Lanka, para. 96; Switzerland, paras. 37–47, 70; Thailand, paras. 11–14, 16–17, 42(a), 42(c); Timor-Leste, paras. 195–198, 227; Tonga, para. 122; United Arab Emirates, paras. 93–95, 119, 145; United States of America, para. 4.5, 4.12–4.15, 4.23; Uruguay, paras. 91–94; Vanuatu, paras. 235–248; Vietnam, paras. 25–29.

[14] *See, e.g.*, Report of the International Law Commission on Prevention of Transboundary Harm from Hazardous Activities, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), Commentary to Article 3, para. 11 ("The standard of due diligence against which the conduct of the State of origin [of transboundary environmental harm] should be examined is that which is generally considered to be appropriate and proportional to the degree of risk of transboundary harm in the particular instance.").

[15] *See*, *e.g.*, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)*, International Tribunal for the Law of the Sea ("***ITLOS***"), Case No. 17, Advisory Opinion (1 February 2011) ("ITLOS Deep Seabed Mining Advisory Opinion"), para. 117 ("[T]he standard of due diligence has to be more severe for the riskier activities.").

of the harm caused by excessive GHG emissions[16], as well as the inherent risk that they will cause transboundary harm, clearly require the *most stringent* measures necessary to prevent such harm.

- *The relevant State's level of development, experience with environmental protection policies and actions, and financial and technical capabilities*[17]. As noted in Bangladesh's first Written Statement[18] and reflected in Article 194(1) of UNCLOS, which takes account, in relevant part, of "*the best practicable means at [States'] disposal and in accordance with their capabilities*"[19], States must comply with their mitigation obligations consistent with the principle of common but differentiated responsibilities and respective capabilities ("***CBDR-RC***"). This principle of basic equity is echoed in Article 4(4) of the Paris Agreement[20]. Accordingly, while *all* States are obliged to make mitigation efforts, States with greater means and capabilities due to their level of development, financial and technical resources, and

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16 Intergovernmental Panel on Climate Change ("***IPCC***"), AR6 Synthesis Report, "Headline Statements" (2023), https://www.ipcc.ch/report/ar6/syr/resources/spm-headline-statements/, p. 42.

17 *See*, *e.g.*, Report of the International Law Commission on Prevention of Transboundary Harm from Hazardous Activities, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), Commentary to Article 3, paras. 13, 14 ("The economic level of States is one of the factors to be taken into account in determining whether a State has complied with its obligation of due diligence. . . . An efficient implementation of the duty of prevention may well require upgrading the input of technology in the activity as well as the allocation of adequate financial and manpower resources").

18 *See* Written Statement of Bangladesh, paras. 127–31.

19 U.N. Convention on the Law of the Sea 397 (hereinafter "("***UNCLOS***"), Dec. 10, 1982, 1833 U.N.T.S. 397, Art. 194.

20 Article 4(4) of the Paris Agreement provides: "Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances." *See also* ITLOS Advisory Opinion, paras. 227–229.

environmental expertise *must do more* to reduce anthropogenic GHG emissions[21].

- *International rules and standards, including the State's other specific obligations under relevant international agreements*[22]. The direct obligations of States under UNCLOS and the UN Climate Treaties, which collectively account for all United Nations Member States as States Parties[23], are directly relevant to meeting due diligence obligations related to climate change. As described in Section IV, the UN Climate Treaties are consistent with—and do not contradict—the obligations of States under customary international law and / or UNCLOS.

- *The best available technology and science at the relevant time*. The standard and content of the State conduct necessary to meet due

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21 Written Statement of Bangladesh, paras. 91–93, 129–30; ITLOS Advisory Opinion, para. 227 ("States with greater means and capabilities must do more to reduce [anthropogenic GHG] emissions than States with less means and capabilities."); *id*., para. 229 ("[T]he scope of a State's obligation" under UNCLOS, "in particular those measures to reduce anthropogenic GHG emissions causing marine pollution, may differ between developed States and developing States.").

22 *See*, *e.g.*, ITLOS Deep Seabed Mining Advisory Opinion, para. 123 (noting that the "direct obligations" of States under international agreements are "a relevant factor in meeting the due diligence" obligation).

23 Of the 193 UN Member States, all 193 are party to UNFCCC, 191 are party to the Kyoto Protocol, 193 are party to the Paris Agreement. *See* U.N. Climate Change, UNFCCC Status of Ratification of the Convention, https://unfccc.int/process-and-meetings/the-convention/status-of-ratification-of-the-convention. U.N. Climate Change, The Kyoto Protocol - Status of Ratification, https://unfccc.int/process/the-kyoto-protocol/status-of-ratification; U.N. Climate change, Paris Agreement – Status of Ratification, https://unfccc.int/process/the-paris-agreement/status-of-ratification#:~:text=195%20Parties%20out%20of%20198,Parties%20to%20the%20Paris%20Agreement; U.N. Treaty Collection, Paris Agreement Depositary, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en.

diligence obligations must be objectively determined and concrete, taking account of the **best available science** in terms of technological advancements and other developments [24]. As such, "*measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge*"[25]. In the climate context, the best available science is manifest in the internationally accepted conclusions of the IPCC, as well as the relevant international rules and standards contained in the UN Climate Treaties. The best available climate science includes the need to limit global temperature increase to 1.5°C above pre-industrial levels and the timeline for emission pathways to achieve that goal contained in the Paris Agreement[26].

16. Accordingly, the customary legal obligations to prevent transboundary harm, protect and preserve the marine environment, conduct EIAs, and cooperate—as well as the related application of the duty of due diligence—require States to take the steps necessary or indispensable to prevent or mitigate GHG emissions in line with the 1.5°C temperature limit[27]. Subject to the principle of CBDR-RC, such obligations also take account of a State's respective technical and financial

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[24] *See Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Rep. 1997 (hereinafter, "***Gabčíkovo-Nagymaros Project***"), para. 140 ("Owing to new scientific insights and to a growing awareness of the risks for mankind—for present and future generations—of pursuit of [environmental] interventions at an unconsidered and unabated pace, 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.").

[25] *See* Written Statement of Bangladesh, para. 90 (describing the factors that influence whether State conduct meets the due diligence obligation to prevent harm) (quoting ITLOS Deep Seabed Mining Advisory Opinion, para. 117).

[26] *See* Written Statement of Bangladesh, paras. 34–38.

[27] *See* Written Statement of Bangladesh, paras. 87–99, 127–139, 143.

capabilities[28]. This requires developed and high-emitter States to urgently transition away from fossil fuels and towards "*clean*" forms of energy[29], including by regulating or restricting GHG emissions emanating from within the State's territory[30]. States must also: ascertain the risk of harm to the environment related to climate change before commencing or authorizing an activity within their territory; carry out an environmental impact assessment; inform, notify and negotiate with other States to reach an equitable solution, in accordance with the duty to cooperate; and continually monitor environmental impacts[31].

17. Importantly, Bangladesh takes this opportunity to stress that mitigation, not adaptation, must be the top priority of all States. Only by taking measures to mitigate GHG emissions can the international community successfully *prevent* catastrophic climate impacts and avert grave loss and damage resulting from those impacts. Adaptation measures are then necessary to reduce the risk of harms resulting from climate impacts that cannot be prevented; in this way, adaptation measures may help minimize loss and damage, though they are not sufficient to avert it entirely.

18. Indeed, the written statements submitted to the Court illustrate the extent and the severity of the loss and damage that has already been caused—and that will continue to be caused—by climate change, particularly in LDCs, low-lying coastal States, and climate-vulnerable States. In its Written Statement, Bangladesh described in detail the significant financial cost of climate change: among other things, Bangladesh faces annual losses of up to 9.4% of its GDP by 2100, and requires at least $10 billion per year to cope with current and projected impacts.

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28 *See* Written Statement of Bangladesh, para. 90.

29 *See* Written Statement of Bangladesh, para. 91.

30 *See* Written Statement of Bangladesh, para. 92.

31 *See* Written Statement of Bangladesh, paras. 94–95.

Worsening climate impacts will far exceed Bangladesh's adaptive capacity and financial resources. As the Conference of the Parties to the Paris Agreement recognized in its Decision on funding arrangements for responding to loss and damage, it is now well understood that "*the gravity, scope, and frequency of loss and damage will continue to increase with every additional fraction of a degree of temperature increase*"[32]. In these circumstances, developed States must take steps to operationalize and make effective the means of implementation, including the Loss and Damage Fund agreed under the UNFCCC, as part of their customary obligations discussed above[33].

II.

OBLIGATIONS UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA IN RESPECT OF CLIMATE CHANGE

19. This Part describes aspects of the *COSIS* Advisory Opinion that are relevant to the Request.

20. The Court will recall that the Request of the General Assembly explicitly refers to UNCLOS in respect of the question concerning "*obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases*". This

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[32] Decision 2/CMA.4: Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage, U.N. Doc. FCCC/PA/CMA/2022/10/Add.1 (17 March 2023), Preamble.

[33] Written Statement of Bangladesh, para. 143. Subsequent decisions of the COP detail specific steps that may be taken by developed States in this regard, including: providing support, and encouraging other States to provide support, for activities to address loss and damage; making financial contributions in accordance with the principle of CBDR-RC; and upholding any existing commitments to contribute to the Fund. *See* Decision 5/CMA.5: Operationalization of the new funding arrangements for responding to loss and damage and the fund established in paragraph 3 of decisions 2/CP.27 and 2/CMA.4, U.N. Doc. FCCC/CP/2023/9–FCCC/PA/CMA/2023/9 (28 November 2023), paras. 12–14.

is for good reason; UNCLOS sets out specific obligations for States Parties aimed at protecting and conserving a vital component of the environment—the Earth's oceans and seas. As such, and as Bangladesh described in its Written Statement, UNCLOS is a critical element of the international environmental law framework that imposes binding obligations on States in respect of climate change.

21. The Court's consideration of the *COSIS* Advisory Opinion will be a critical opportunity to ensure, in the words of the Court in *Diallo*, "*the necessary clarity and the essential consistency of international law, as well as legal security*"[34]. ITLOS is the jurisdiction established by UNCLOS to adjudicate disputes and render advisory opinions concerning the interpretation and application of UNCLOS[35]; as such, its Advisory Opinion is an important step towards achieving clarity and consistency with respect to States Parties' climate-related obligations under UNCLOS. Notably, the judgements of the Court have previously referred to ITLOS jurisprudence[36].

22. The majority of States acknowledge in their written statements that the obligations contained in UNCLOS generally reflect customary international law[37]. With respect to the environmental protections contained in UNCLOS Part XII, it is

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[34] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*, Judgment, I.C.J. Reports 2010, para. 66; *see also id.* (affording "great weight" to the "*interpretation adopted by [an] independent body that was established specifically to supervise the application of [a] treaty*").

[35] UNCLOS, Arts. 186, 288, 293, & Annex VI.

[36] *See, e.g.*, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, para 178–179 (citing to the ITLOS holding in the *Bay of Bengal* case as support for the contention that States' entitlement to a 12-nautical-mile territorial sea is established in international law); *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2018, paras. 153–154 (quoting the ITLOS *Bay of Bengal* case to support the conclusion that "it is appropriate to give [the Corn Islands] only half effect.").

[37] *See supra*, fn. 5.

well accepted that *at least* the obligations contained in Article 192 requiring States to take positive action to protect and preserve the marine environment and to refrain from degrading the marine environment, as well as the obligation in Article 194(2) to prevent transboundary harm, reflect customary international law[38]. Accordingly, those obligations bind not only the 168 States Parties to UNCLOS, but also the handful of States not parties to UNCLOS[39].

23. In its *COSIS* Advisory Opinion, ITLOS found that:

- Anthropogenic GHG emissions constitute "*pollution of the marine environment*" as defined in UNCLOS[40];

- Under Article 194(1) UNCLOS "*States Parties to the Convention have the specific obligations to take all necessary measures to prevent, reduce, and control marine pollution from anthropogenic GHG emissions and to endeavour to harmonize their policies in this connection*"[41];

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38 *See supra*, fns. 2, 5.

39 Colombia, El Salvador, Iran, Liechtenstein, Peru, the United Arab Emirates, and the United States are not parties to UNCLOS. Of those non-Parties, Colombia and Peru have accepted the general obligation to protect and conserve the marine environment as reflecting customary international law. *See Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Verbatim Record, 29 September 2021, CR 2021/18, p. 22 (Colombia) ("*Le régime de la zone économique exclusive ne peut, en effet, être lu en isolation clinique des règles pertinentes en matière de protection de l'environnement marin de la partie XII de la convention, laquelle lie le Nicaragua et reflète le droit coutumier.*"); Written Statement of Peru, paras. 74, 86 (noting that "*Peru accepts and applies the rules of customary international law of the sea as reflected in the Convention*" and emphasizing that the "*general obligation to protect and conserve the marine environment as a rule of customary international law, the effects of which are erga omnes*").

40 *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion (21 May 2024) ("*COSIS* Advisory Opinion"), para. 179.

41 *COSIS* Advisory Opinion, para. 243.

- "*The necessary measures include, in particular, those to reduce GHG emissions*"[42], and while the "*scope of measures*" required under this provision may differ between developed States and developing States, "*[a]ll States must make mitigation efforts*."[43] This includes regulating the conduct of private parties under their jurisdiction or control[44];

- The obligation to take all necessary measures under Article 194(1) UNCLOS "*requires States to act with 'due diligence' in taking necessary measures to prevent, reduce and control marine pollution*"[45], and in the climate context, "*the standard of due diligence States must exercise in relation to marine pollution from anthropogenic GHG emissions needs to be stringent*" in light of the serious risks and irreversible harm posed by GHG emissions[46];

- States "*are required to take measures as far-reaching and efficacious as possible*" to mitigate climate change.[47]

- The determination of what measures are "*necessary*" to meet States Parties' obligations under Article 194(1) "*should be determined objectively*," taking into account the **best available science** and relevant international rules and standards contained in the UNFCCC and Paris Agreement[48]—"*in particular the global temperature goal of limiting the*

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42 *COSIS* Advisory Opinion, para. 243.

43 *COSIS* Advisory Opinion, para. 229.

44 *COSIS* Advisory Opinion, paras. 236, 247.

45 *COSIS* Advisory Opinion, para. 234.

46 *COSIS* Advisory Opinion, para. 241.

47 *COSIS* Advisory Opinion, para. 399.

48 *COSIS* Advisory Opinion, paras. 206-208.

temperature increase to 1.5°C above pre-industrial levels and the timeline for emission pathways to achieve that goal."[49]

24. ITLOS also determined that States Parties must comply with their mitigation obligations consistent with the principle of CBDR-RC. Specifically, ITLOS read Article 194(1) of UNCLOS in the context of the equity principle discussed in Article 4(4) of the Paris Agreement[50]. The Tribunal found that while all States Parties to UNCLOS are obliged to make mitigation efforts, "*States with greater means and capabilities must do more to reduce [anthropogenic GHG] emissions than States with less means and capabilities*"[51]. The Tribunal further considered, in light of CBDR-RC, that the scope of a State's obligation under UNCLOS, "*in particular those measures to reduce anthropogenic GHG emissions causing marine pollution, may differ between developed States and developing States*"[52]. For example, "*in the context of marine pollution from anthropogenic GHG emissions*", the main recipients of assistance under Article 202 of UNCLOS "*should be those developing and least developed States that are most directly and severely affected by the effects of such emissions on the marine environment*"[53]. ITLOS also recognized that "*scientific, technical, educational and other assistance to developing States*" are means of addressing the "*inequitable situation*" in which States that have contributed the least to climate change suffer most severely from its effects[54].

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49 *COSIS* Advisory Opinion, para. 243.

50 *COSIS* Advisory Opinion, paras. 228–229.

51 *COSIS* Advisory Opinion, para. 227.

52 *COSIS* Advisory Opinion, para. 229.

53 *COSIS* Advisory Opinion, para. 330.

54 *COSIS* Advisory Opinion, para. 327.

25. Finally, with respect to adaptation, ITLOS referred to Article 2 of the Paris Agreement, which aims to strengthen the global response to climate change by, *inter alia*, "*[i]ncreasing the ability to adapt to the adverse impacts of climate change and foster climate resilience*", and explained that the provisions of the Paris Agreement addressing adaptation strategies "*are compatible with the obligations of [UNCLOS] and exemplify how science and other relevant considerations are taken into account by States in implementing adaptation measures*"[55].

26. Accordingly, UNCLOS is a critical piece of the international legal framework, and the ITLOS Advisory Opinion represents an important clarification of that framework in the context of climate change.

III.

THE RELATIONSHIP BETWEEN THE UN CLIMATE TREATY REGIME AND STATES' OTHER OBLIGATIONS IN RESPECT OF CLIMATE CHANGE

27. This Part responds to the arguments, made by a minority of States and IOs in their written statements, that the UN Climate Treaty Regime constitutes *lex specialis* and is exhaustive of States' obligations in respect of climate change. In **Section A**, Bangladesh explains that the UN Climate Treaty Regime does not displace or limit States' other obligations in respect of climate change, either under UNCLOS or customary international law. In **Section B**, Bangladesh demonstrates that the fulfillment of States' obligations under the UN Climate Treaties is not sufficient to meet their other climate change-related obligations.

[55] *COSIS* Advisory Opinion, paras. 393–394.

A. The UN Climate Treaty Regime Does Not Displace or Limit States' Obligations under Customary International Law or UNCLOS

28. Eight States and IOs that submitted written statements suggest that the principles of prevention of transboundary harm and due diligence do *not* apply in the climate context because the UN Climate Treaties are *lex specialis* that govern States' obligations in respect of climate change, to the exclusion of all other obligations under international law[56]. Bangladesh respectfully submits that this is not the case. In fact, the doctrine of *lex specialis* only applies where there is an inconsistency or conflict between different sets of international law obligations[57]. States' obligations under the UN Climate Treaty Regime complement—and do not conflict with—other applicable obligations under international law, rendering the principle of *lex specialis* irrelevant.

29. States' obligations under the UN Climate Treaties, and in particular the Paris Agreement, are largely procedural in nature, requiring that States communicate and maintain nationally determined contributions ("***NDCs***") that reflect their highest possible ambition, and that each successive NDC "*represent a progression*" of the State's efforts over time[58].

30. There is no conflict between these procedural obligations and the obligations under general international law described above in respect of climate change. To the contrary, the UNFCCC explicitly recognizes that States have

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[56] *See*, Written Statement of India, para. 17; Written Statement of Indonesia, para. 61; Written Statement of Iran, para. 23; Written Statement of Japan, paras. 14–15; Written Statement of Kuwait, paras. 3.1, 60; Written Statement of the Organization of Petroleum Exporting Countries, paras. 79-81; Written Statement of Russian Federation, p. 8; Written Statement of Saudi Arabia, para. 5.5.

[57] International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law - Report of the Study Group of the International Law Commission, U.N. Doc. A/CN.4/L.682 and Add.1, paras. 57, 61.

[58] Paris Agreement, Articles 3, 4(3); see also Articles 4(2), 4(10, and 4(19).

obligations "*in accordance with the Charter of the United Nations and the principles of international law*", and recalls States' "*responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States*"[59]. Indeed, upon signing the UNFCCC, Fiji declared its understanding "*that signature of the Convention shall, in no way, constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law*"[60]. Similar declarations to the UNFCCC were made by Kiribati, Nauru, Papua New Guinea, and Tuvalu in near-identical terms[61], and to the Paris Agreement by Cook Islands, the Federated States of Micronesia, Nauru, Niue, Solomon Islands, and Tuvalu[62].

31. The Court previously rejected the argument that subsequent treaty provisions "*subsume and supervene related principles of customary and general*

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59 UNFCCC, Preamble. *See also* UNFCCC Article 3(3) (referring to the precautionary principle, stating that "Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures").

60 Declaration of Fiji to the United Nations Framework Convention on Climate Change, (9 May 1992), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en.

61 Declarations to the United Nations Framework on Climate Change of Kiribati (13 June 1992), Nauru (8 June 1992), Papua New Guinea (13 June 1992), and Tuvalu (8 June 1992), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en.

62 Declarations to the Paris Agreement of Cook Islands (24 June 2016), the Federated States of Micronesia (22 April 2016), Nauru (22 April 2016), Niue (28 October 2016), Solomon Islands (22 April 2016), and Tuvalu (22 April 2016), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en.

international law"[63]. In *Military and Paramilitary Activities*, the Court explained that even where customary international law and treaty law are comprised of the exact same content, "*there are no grounds for holding that . . . treaty law . . . 'supervenes' [customary international law], so that the customary international law has no further existence of its own*"[64]. In *Pulp Mills*, the Court confirmed that the principle of prevention and duty of due diligence were not displaced by treaties dealing with environmental protection. When considering the content of the Parties' treaty-based obligation to inform an administrative body of planned construction on the banks of the River Uruguay, the Court recalled that "*[a] State is obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State*"[65]. The Court thus interpreted the treaty-based obligation to inform in light of the Parties' additional "*obligation of prevention*"[66].

32. ITLOS also confirmed in its recent Advisory Opinion that "*the Paris Agreement is not lex specialis to [UNCLOS]*", and further observed that:

> *[UNCLOS] and the Paris Agreement are separate agreements, with separate sets of obligations. While the Paris Agreement complements the Convention . . . the former does not supersede the latter. [UNCLOS] imposes upon States a legal obligation to*

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63 *Military and Paramilitary Activities (Nicaragua v. United States of America)*, Judgment, I.C.J. Reports 1986, para. 173.

64 *Military and Paramilitary Activities (Nicaragua v. United States of America)*, Judgment, I.C.J. Reports 1986, para. 177.

65 *Pulp Mills*, para. 101.

66 *Pulp Mills*, paras. 102, 105 ("*In the view of the Court, the obligation to inform . . . allows for the initiation of co-operation between the Parties which is necessary in order to fulfil the obligation of prevention. . .The Court considers that the State planning activities . . . is required to inform . . . as soon as it is in possession of a plan which is sufficiently developed to enable . . . a preliminary assessment . . .of whether the proposed works might cause significant damage to the other party*.").

> *take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions, including measures to reduce such emissions. If a State fails to comply with this obligation, international responsibility would be engaged for that State*[67].

33. ITLOS thus found that the principle of *lex specialis derogate legi generali* "*has no place in the interpretation of [UNCLOS]*" and does not operate to exclude the applicability of UNCLOS in the climate context[68].

34. In short, the UN Climate Treaties are a separate set of obligations and do not subsume or supersede States' existing obligations under UNCLOS and customary international law. To the contrary, States' obligations under the UN Climate Treaties complement their other obligations in respect of climate change. Because there is no conflict, the UN Climate Treaties do not operate as *lex specialis* to exclude other applicable obligations under international law.

B. Implementation of the UN Climate Treaties Is Not Sufficient to Meet States' Obligations Under International Law

35. While the largely procedural obligations under the UN Climate Treaties are consistent with States' international law obligations, they are clearly inadequate to prevent or mitigate transboundary climate impacts, and thus are not sufficient to meet those obligations, contrary to the suggestion of certain States[69]. ITLOS likewise found that the obligation under Article 194(1) UNCLOS would not be

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67 *COSIS* Advisory Opinion, para. 223.

68 *COSIS* Advisory Opinion, para. 224.

69 *See* Written Statement of the United States, para. 3.45; Written Statement of Canada, paras. 36-38; Written Statement of Australia, para. 3.58.

satisfied "*simply by complying with the obligations and commitments under the Paris Agreement*"[70].

36. As Bangladesh described in its Written Statement, current State commitments to reduce GHG emissions, including in NDCs submitted under the Paris Agreement, are insufficient to limit warming to 1.5°C above pre-industrial levels—though scientists and the international community agree this is necessary to prevent further catastrophic and irreversible climate impacts[71]. In its Sixth Assessment Report, the IPCC found that: "*[g]lobal GHG emissions in 2030 associated with the implementation of NDCs announced prior to COP26 would make it likely that warming will exceed 1.5°C during the 21st century and would make it harder to limit warming below 2°C if no additional commitments are made or actions taken*"[72]. And according to the 2023 Global Stocktake, full implementation of the latest NDCs under the Paris Agreement would result in a global temperature increase "*in the range of 2.1-2.8°C*"[73].

37. The best available science thus directly contradicts the suggestion by some States that the Paris Agreement's ambition mechanism suffices to prevent or mitigate the high risk of catastrophic harm related to climate change.

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70 *COSIS* Advisory Opinion, para. 223.

71 *See* Written Statement of Bangladesh, paras. 30–41.

72 IPCC, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)], Geneva, Switzerland, https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf (hereinafter, "***IPCC Sixth Assessment Report***"), p. 57 (emphasis in original).

73 UNFCCC, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fifth session, held in the United Arab Emirates from 30 November to 13 December 2023, FCCC/PA/CMA/2023/16/Add.1 (15 March 2024), para. 18.

IV.

STATES' OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW IN RESPECT OF CLIMATE CHANGE

38. Bangladesh welcomes the widespread recognition in the written statements submitted to the Court that climate change adversely affects the exercise and enjoyment of fundamental human rights. In particular, 62 States and IOs expressly recognize that climate change is a threat to the right to life[74]. 75 States and IOs also acknowledge the impact of climate change on the rights to health and a healthy environment[75]. This broad consensus underscores the urgency of the

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[74] *See* written statements of: African Union, paras. 204–206; Albania, para. 96(a); Antigua and Barbuda, para. 190; Argentina, p. 12; Australia, para. 3.61; Bahamas, para. 146; Bangladesh, paras. 108, 111; Barbados, paras. 164(k) n.362, 203; Bolivia, para. 14; Burkina Faso, para. 219; Canada, para. 25; Chile, paras. 64, 66, 127; Colombia, 5.7; COSIS, para. 132; Cook Islands, para. 217; Costa Rica, para. 92; Democratic Republic of Congo, para 149, ; Denmark, Finland, Iceland, Norway, and Sweden, para. 78; Dominican Republic, para. 4.44; Ecuador, paras. 3.109–3.114; Egypt, paras. 206–211; European Union, paras. 232–233; France, para. 124; Germany, para. 110; Indonesia, para. 38; IUCN, para. 473; Kenya, paras. 5.54–5.57; Kiribati, paras. 163–164; Republic of Korea, para. 29; Liechtenstein, paras. 37–41; Madagascar, para. 65; Marshall Islands, para. 107; Mauritius, paras. 170–172; Melanesian Spearhead Group, paras. 266, 270, 272; Mexico, para. 88; Micronesia, para. 80; Namibia, para. 113; Nepal, para. 31; Netherlands, paras. 3.26–3.27, 3.31; New Zealand, para. 112; OACPS, para. 119; Philippines, paras. 106(d), (e); Portugal, para. 74; Samoa, para. 178; Seychelles, paras. 141–142, 145–146; Sierra Leone, paras. 3.66; Singapore, para. 3.77; Slovenia, para. 20; Solomon Islands, para. 170; Spain, para. 15; Sri Lanka, para. 6; Switzerland, para. 59; Thailand, paras. 26–28; Timor-Leste, para. 298; Tonga, paras. 246–250; Tuvalu, para. 101; Uruguay, paras. 111–113; Vanuatu, paras. 345–346.

[75] *See* written statements of Netherlands, para. 3.26; Singapore, para. 3.87; Chile, paras. 64, 66-67; Egypt, paras. 198-204; Namibia, para. 82; France, para. 120; Australia, para. 3.61; Samoa, paras. 178, 185; African Union, para. 188; Albania, para. 67; Antigua and Barbuda, paras. 186–197; Argentina, para. 38; Bahamas, paras. 144–158; Bangladesh, paras. 103–115; Barbados, para. 162; Bolivia, paras. 14, 34; Burkina Faso, paras. 195–219; Cameroon, para. 20; China, para. 117; Colombia, para. 3.70; COSIS, paras. 82, 113, 132; Cook Islands, paras. 100–07, 138; Costa Rica, para. 75–85, 92; Democratic Republic of Congo, paras. 145–157; Denmark, Finland, Iceland, Norway, and Sweden, para. 78; Dominican Republic, para. 5.1; Ecuador, paras. 3.97–3.124; El Salvador, paras. 42–43; European Union, paras. 234, 241, 256; Ghana, paras. 23, 37; Grenada, para. 24; India, paras. 78–79, 103; Indonesia, para. 42; IUCN, p. 77; Iran, paras. 131–142; Kenya, paras. 5.28–5.29, 5.75, 5.82; Kiribati, paras. 10, 53; South Korea, para. 29; Latvia, paras. 64, 67–68; Liechtenstein, para. 79; Madagascar, paras. 61–64; Marshall Islands, paras. 32, 46, 85–95, 118; Mauritius, paras. 173, 184; Mexico, paras. 86–101;

climate crisis and the need for immediate action to prevent further catastrophic harms to human life and well-being across the globe. As the IPCC warned in its Sixth Assessment Report: "*There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all"*[76]. To that end, and in accordance with well-established principles of international cooperation, all States have the obligation to promote and respect human rights on a global scale. As described below, this includes the obligation not to impede another State's ability to protect and ensure the rights of its population in the context of climate change.

39. As many States recognize, the residents of LDCs and members of vulnerable populations—including children, the elderly, and people with disabilities—are most severely affected by climate change[77]. In its 2021 Resolution on Human rights and climate change, the United Nations Human Rights Council recognized that "*the rights of people in vulnerable situations and people living in small island developing States and least developed countries . . . are disproportionately affected by the negative impact of climate change*"[78]. It further

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Micronesia, paras. 79–80; Nauru, paras. 11, 20, 24; Nepal, para. 13; New Zealand, paras. 5, 97, 112; OACPS, paras. 116–119, 124; Palau, paras. 4, 23; Peru, paras. 14, 53–56, 88 n. 60; Philippines, paras. 55–61; 106; Portugal, paras. 69–83; Romania, paras. 81, 102 n. 57; Saint Lucia, paras. 24, 47, 66 n. 94; Saint Vincent and the Grenadines, paras. 76–78, 120; Seychelles, paras. 143–145; Sierra Leone, paras. 3.117, 3.78–3.84; Slovenia, para. 21–32; Solomon Islands, paras. 174–77; Spain, para. 15; Sri Lanka, paras. 94, 108; Switzerland, para. 59; Thailand, para. 27; Timor Leste, paras. 36, 60, 67.1, 80.1; Tonga, paras. 68, 132, 211; Tuvalu, paras. 98–100, 104; United Arab Emirates, paras. 31, 153–54; Uruguay, paras. 25, 34, 80; Vanuatu, paras. 249, 378–96; Vietnam, paras. 11, 33, 37. *See also* UN HRC Resolutions 29/15 (July 2015); 50/9 (July 2022).

[76] IPCC, *AR6 Synthesis Report*, "Headline Statements" (2023), https://www.ipcc.ch/report/ar6/syr/resources/spm-headline-statements/, p. 24 (emphasis added).

[77] Written Statement of Argentina, para. 38; Written Statement of Burkina Faso, paras. 123-28; Written Statement of Colombia, paras. 3.70, 4.2; Written Statement of the Democratic Republic of the Congo, paras. 239-50; Written Statement of Denmark, Finland, Iceland, Norway, and Sweden, para. 78; Written Statement of Egypt, paras. 206, 221, 227-28.

[78] The resolution was driven by the core group on human rights and climate change, comprising Bangladesh, the Philippines, and Viet Nam. *See* United Nations Human Rights Council,

emphasized the urgent need to address, "*as they relate to States' human rights obligations, the adverse consequences of climate change for all, particularly in developing countries and for the people whose situation is most vulnerable to climate change*"[79]. The IPCC, too, has warned that LDCs are "*at disproportionately higher risk*" of impacts to "*health, livelihoods, food security, water supply, human security, and economic growth*", *even if the global average temperature increase is limited to 1.5°C* above pre-industrial levels[80].

40. The human impact of climate change is evidenced in the lived experiences of people living in Bangladesh, whose rights to life, health and a healthy environment have been severely impeded by climate change[81]. In particular, extreme weather events caused or exacerbated by climate change have displaced millions of people in Bangladesh. In 2020, for example, 2.5 million Bangladeshis had to leave their homes to escape the devastating effects of cyclone Amphan, which damaged more than 55,000 dwellings and 149,000 hectares of agricultural land[82]. In 2023, more than 700,000 people in Bangladesh were evacuated to cyclone shelters or makeshift facilities to escape Cyclone Mocha[83]. Most recently, in June 2024, Cyclone Remal prompted the evacuation of around a million people in Bangladesh, and placed millions more "at high health, nutrition, sanitation and

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Resolution 47/24, *Human Rights and Climate Change*, U.N. Doc. A/HRC/RES/47/24 (26 July 2021), preamble. *See also* United Nations Human Rights Council, Resolution 10/4, *Human Rights and Climate Change*, U.N. Doc. A/HRC/RES/10/4 (25 March 2009), preamble; United Nations Human Rights Council, Resolution 42/21, *Human Rights and Climate Change*, U.N. Doc. A/HRC/RES/41/21 (12 July 2019), preamble; United Nations Human Rights Council, Resolution 44/7, *Human Rights and Climate Change*, U.N. Doc. A/HRC/RES/44/7 (16 July 2020), preamble.

79 United Nations Human Rights Council, Resolution 47/24, *Human Rights and Climate Change*, U.N. Doc. A/HRC/RES/47/24 (26 July 2021), para. 2.

80 IPCC Sixth Assessment Report, p. 71.

81 Written Statement of Bangladesh, paras. 106–107, 111–15, 122.

82 Written Statement of Bangladesh, para. 54.

83 *Ibid*.

safety risks"[84]. These are not isolated incidents; increasingly severe storms and flooding hit vulnerable communities across the country year after year.

41. Millions more are at risk of climate displacement in the near future[85]. Indeed, recent estimates suggest that by 2050, one in every 45 people in the world and one in every seven people in Bangladesh will be displaced by climate change[86]. For many, displacement will be long-term or even permanent, as sea-level rise, flooding, and recurring severe weather events can render areas uninhabitable. These impacts have also damaged or destroyed key industries in Bangladesh, threatening the national economy and exacerbating further displacements as climate-sensitive livelihoods become untenable due to the loss of or damage to cultivable land, crops, fisheries, and other natural resources[87].

42. Climate-induced disasters and the resulting large-scale displacement place an enormous strain on the availability of necessary resources, while also negatively impacting the rights to life, health and a healthy environment, and associated rights to clean water and food, as well as the rights to sustainable development and self-determination[88]. The Ministry of Disaster Management and Relief, Government of Bangladesh, describes myriad potential dangers faced by persons affected by climate disaster:

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84 *See* New York Times, "Cyclone Remal Tears Through India and Bangladesh, Killing at Least 23" (28 May 2024), https://www.nytimes.com/2024/05/28/world/asia/cyclone-remal-bangladesh-india.html.

85 *See* Written Statement of Bangladesh, para. 68 *et seq*.

86 International Organization for Migration, "Migration and Climate Change", p. 11, https://publications.iom.int/system/files/pdf/mrs-31_en.pdf; Written Statement of Bangladesh, para. 68.

87 *See* Written Statement of Bangladesh, para. 119.

88 Written Statement of Bangladesh, paras. 69, 108–123.

> their safety and security is compromised; they experience gender-based violence, unequal access to assistance, basic goods and service and discrimination in aid provision; abuse, neglect and exploitation of children, orphan[s], pregnant women, senior citizens, population[s] with special needs; family separation, particularly for children, older persons, persons with disabilities and other individuals who may rely on family support for their survival; loss / destruction of personal documentation and difficulties to replace them, in particular due to inadequate birth registration mechanism[s]; inadequate law enforcement mechanism[s] and restricted access to a fair and efficient justice system; lack of effective feedback and complaint mechanisms; unequal access to employment or livelihood opportunities; forced relocation; unsafe or involuntary return or resettlement of persons displaced by the disaster; or lack of property restitution and access to land[89].

43. To address these concerns, the Government of Bangladesh has implemented a National Strategy to address internal displacement with a rights-based approach, focusing on risk reduction; strengthening humanitarian and disaster relief assistance; and implementing durable solutions for the return, local integration, and resettlement of displaced persons[90].

44. The financial cost of these and other climate adaptation measures in Bangladesh has been difficult for the Government to sustain. While Bangladesh has invested approximately US$ two billion into climate adaptation, its actual needs are much higher[91]. In these circumstances, the Government has been forced to re-direct

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89 Ministry of Disaster Management and Relief of Bangladesh, National Strategy on Internal Displacement Management (2021), https://www.rmmru.org/newsite/wp-content/uploads/2021/08/National-Strategy-on-Internal-Displacement-Managment-2021.pdf, p. 14.

90 Ministry of Disaster Management and Relief of Bangladesh, National Strategy on Internal Displacement Management (2021), https://www.rmmru.org/newsite/wp-content/uploads/2021/08/National-Strategy-on-Internal-Displacement-Managment-2021.pdf, p. 18.

91 Written Statement of Bangladesh, para. 71.

funding for healthcare, education, and other social programs that would support and advance the exercise of human rights in Bangladesh towards climate mitigation and adaptation, in turn undermining the rights to sustainable development and self-determination[92]. Notably, the devastating impacts of climate change on the rights of Bangladeshis is inversely proportionate to Bangladesh's own negligible contribution to the climate crisis, of less than 0.47% of global emissions[93].

45. In short, the sheer scale of the climate impacts that Bangladesh faces critically impedes its ability to ensure the fundamental human rights of its population, through no fault of its own. Notably, Bangladesh is not alone in facing the interconnected human rights challenges arising from climate-change related impacts, including large scale displacement. According to a study endorsed by the World Bank, by 2050, "*as many as 216 million people could be internal climate migrants*", with most affected "*in the poorest and most climate vulnerable regions*"[94]. Individuals will be displaced by "*slow-onset climate change impacts acting through water availability, crop productivity, and sea-level rise augmented*

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92 *See* Bangladesh Written Statement, paras. 78, 119.

93 Ministry of Environment, Forest and Climate Change of Bangladesh, "Climate Change Initiatives of Bangladesh: Achieving Climate Resilience", https://moef.portal.gov.bd/sites/default/files/files/moef.portal.gov.bd/page/8401345e_0385_4979_8381_801492e3b876/1.%20Brochure%20on%20CC%20Initiatives%20of%20Bangladesh%20-%20Final_compressed.pdf.

94 Groundswell, "Acting on Internal Climate Migration, Part II", p. xxii (2021), https://openknowledge.worldbank.org/entities/publication/2c9150df-52c3-58ed-9075-d78ea56c3267. *See also* World Bank, "Millions on the Move in Their Own Countries: The Human Face of Climate Change" (13 September 2021), https://www.worldbank.org/en/news/feature/2021/09/13/millions-on-the-move-in-their-own-countries-the-human-face-of-climate-change.

by storm surge", as well as sudden onset natural disasters associated with climate change[95].

46. A handful of States argue in their written statements that international human rights law does not explicitly require States to address climate change, and that it only provides for State obligations to respect, protect and fulfill human rights within the State's own territory or jurisdiction[96]. Such arguments miss the point. Longstanding principles of international cooperation and the related obligation of all States, as members of the international community, to promote and respect human rights necessarily entail an inter-State dimension in the context of a global crisis such as climate change[97]. The duty to cooperate with other States towards the progressive realization of fundamental human rights requires, at a minimum, that a State not impede another State's ability to protect and ensure the rights of its population[98]. This obligation to cooperate is reflected in the core human rights

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95 Groundswell, "Acting on Internal Climate Migration, Part II", pp. xxii, 2 (2021), https://openknowledge.worldbank.org/entities/publication/2c9150df-52c3-58ed-9075-d78ea56c3267.

96 Written Statement of China, para. 115. *See also* Written Statement of Canada, paras. 27–28; Written Statement of Germany, paras. 91–94.

97 *See* Written Statement of Bangladesh, para. 105; UN Charter, Article 1(3).

98 *See* Written Statement of Bangladesh, para. 105; Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), U.N. Doc. E/C.12/2000/4, para. 39 ("States parties have to respect the enjoyment of the right to health in other countries"); ICESCR, Article 2(1) ("Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant"); United Nations Office of the High Commissioner of Human Rights, "Understanding Human Rights and Climate Change" (2021), p. 7, https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf ("The Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Declaration on the Right to Development all make clear that human rights obligations of States require both individual action and international cooperation").

treaties and is integral to their realization[99]. For example, the International Covenant on Economic, Social and Cultural Rights ("***ICESCR***") provides in Article 2(1) that:

> *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.*

47. Similarly, the Court has recognized States' "*duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples*"[100].

48. This inter-State dimension to international human rights law is clearly engaged in the climate context, where there is *unprecedented* scientific consensus that climate change is caused by anthropogenic GHG emissions and is inherently global, with its effects felt far beyond the borders of the emitting State, and where climate impacts are *already* adversely affecting the exercise of fundamental human rights—with LDCs, low-lying coastal States, and other climate vulnerable States suffering a disproportionate share of that impact despite being the least culpable[101].

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[99] United Nations Office of the High Commissioner of Human Rights, "Understanding Human Rights and Climate Change" (2021), p. 7, https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf ("The Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Declaration on the Right to Development all make clear that human rights obligations of States require both individual action and international cooperation").

[100] See Written Statement of Bangladesh, para. 121 (quoting *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, [2019] I.C.J. Rep. 95 (25 February 2019), para. 180).

[101] *See* Written Statement of Bangladesh, Sections II.A.1.a and II.A.1.b.

In such circumstances, all States must adopt measures individually and jointly, through cooperation and coordination, in order to prevent or mitigate climate impacts to promote the full realization of human rights globally.

V.

THE GENERAL PRINCIPLES OF STATE RESPONSIBILITY APPLY TO CLIMATE CHANGE

49. The legal consequences of a State's failure to comply with its obligations under international law are well-established as a matter of customary international law, as codified by ARSIWA[102]. As Bangladesh explained in its Written Statement, the breach of an international obligation triggers secondary obligations to: (*i*) cease the wrongful act; and (*ii*) offer appropriate assurances and guarantees of non-repetition[103]. States must also make full reparation for injuries caused by an internationally wrongful act, which may take the form of restitution, compensation (if restitution is not possible) and / or satisfaction[104]. These rules also apply to breaches of States' obligations in respect of climate change[105].

50. A minority of States suggest in their written statements that State responsibility rules have limited applicability in the context of climate change. In that regard, Bangladesh emphasizes that the Request does not concern the responsibility of any specific State for climate change or its impacts, but rather

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102 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, I.C.J. Reports 2022, p. 13, para. 70.

103 Written Statement of Bangladesh, para. 146; International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission vol. II (2001) (hereinafter, "***ARSIWA***"), Articles 30–31.

104 ARSIWA, Articles 2, 31, 34; Written Statement of Bangladesh, para. 147. *See also Factory at Chorzów (Germany v. Poland)*, Merits, Judgment No. 13, 1928 P.C.I.J. Series A No. 17, 13 September 1928, p. 47.

105 Written Statement of Bangladesh, paras. 144-147.

seeks to identify the general legal framework that applies to all States in this context. There is no principled reason why the rules of State responsibility—meant to cover "*the whole field*" of the international obligations of States[106]—should not apply.

51. In this Chapter, Bangladesh explains that none of the objections raised in relation to the application of State responsibility rules is either novel or insurmountable. In particular, it is possible to establish a causal link—as both a factual and legal matter—between the acts and omissions of a specific State and a specific adverse climate impact (**Section A**). There is also a well-established legal framework for addressing State responsibility where multiple States have participated in wrongful conduct (**Section B**).

A. Difficulties in Establishing Causation Do Not Preclude Application of Well-Established Rules of State Responsibility

52. A few States and organizations—11 in total—suggest in their written statements that, because the causes of climate change do not stem from the actions or omissions of any single State but from the collective actions or omissions of all States, it is not possible to establish a causal link between a given State's emissions and adverse climate impacts[107]. This argument is misplaced for two main reasons.

53. *First*, the Court is not called upon in the context of advisory proceedings to adjudicate a specific set of factual circumstances as to whether certain harms are attributable to a single or multiple State(s) or if they involve concurrent causes. This is particularly important where, as here, consideration of such specific factual

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106 ARSIWA, General Commentary, p. 32, para. 5.

107 See written statements of: Australia, para. 5.9; China, para. 138; Germany, paras. 97–99; Indonesia, para. 61; Republic of Korea, paras. 16, 46–47; Kuwait, paras. 120–121; Netherlands, paras. 5.11–5.12; Portugal, para. 124; Russian Federation, p. 17; Saudi Arabia, para. 6.7; United Kingdom, para. 137.4.

circumstances continues to evolve in light of recent developments in the field of attribution science[108]. In any event, as Bangladesh described in its Written Statement, the science in this area already makes it possible to identify the specific contribution of particular States to global GHG emissions as well as the role of climate change in relation to "*specific extreme events*"[109].

54. *Second*, the Court has rejected the notion that "*uncertainty*" associated with both the existence of damage and causation poses an insuperable obstacle to State responsibility. In *Certain Activities*, the Court recognized that:

> *In cases of alleged environmental damage, particular issues may arise with respect to the existence of damage and causation. The damage may be due to several concurrent causes, or the state of science regarding the causal link between the wrongful act and the damage may be uncertain. These are difficulties that must be addressed as and when they arise in light of the facts of the case at hand and the evidence presented to the Court.*[110]

55. The Court proceeded to hold the respondent State responsible for environmental damage and awarded compensation[111]. In *Armed Activities*, the Court addressed difficulties arising in a case of alleged damage resulting from war. There, it acknowledged that, "*for some injuries, the link between the internationally wrongful act and the alleged injury may be insufficiently direct and certain to call*

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108 Written Statement of Bangladesh, para. 26. *See also* Written Statement of Vanuatu, para. 497 (citing Written Statement of Vanuatu, Exhibit B: Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023), para. 17).

109 Written Statement of Bangladesh, Section II.A.1.b.

110 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, para. 34.

111 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, para. 157.

for reparation", including because damage could be attributable to multiple causes and different actors[112]. Again, the Court explained that it would address questions of causation on a case-by-case basis[113].

56. Regional courts have developed approaches for addressing questions of causation and evolving scientific evidence in the climate change context. For example, in the recent *Klimaseniorinnen v. Switzerland* case, the ECtHR recognized the "*fundamental differences*" between climate change and other environmental harms, particularly in respect of causation, and adopted "*a more appropriate and tailored approach*" to address these issues. Among other things, this climate-tailored approach took into account "*the existing and constantly developing scientific evidence*" as well as "*the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights*"[114]. Specifically, the ECtHR explained 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 . . . have acknowledged the adverse effects of climate change and have committed themselves . . . to take the necessary mitigation measures and adaptation measures . . . These considerations indicate that a legally relevant relationship of causation may exist between State actions or omissions (causing or failing to address*

112 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, I.C.J. Reports 2022, p. 13, para. 94.

113 *Ibid*.

114 *Klimaseniorinnen v. Switzerland*, App. No. 53600/20, 2024 Eur. Ct. H.R. 304 (2024), para. 434.

climate change) and the harm affecting individuals[115].

57. Ultimately, the ECtHR held the respondent State liable for climate impacts, taking into account the specific policy actions of the State, the State's GHG inventory, and evidence concerning the State's ability to determine a national carbon budget[116].

58. In short, causation-related uncertainty is no basis on which to exclude State responsibility where a State is alleged to have breached its climate-related obligations. Bangladesh notes that 45 States and IOs that submitted written statements to the Court appear to agree with this position[117].

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115 *Klimaseniorinnen v. Switzerland*, App. No. 53600/20, 2024 Eur. Ct. H.R. 304 (2024), para. 478.

116 *Klimaseniorinnen v. Switzerland*, App. No. 53600/20, 2024 Eur. Ct. H.R. 304 (2024), paras. 570-571. Domestic courts have similarly accepted that a causal link *can* be established between State conduct, climate change, and resulting adverse impacts. For example, the United States Supreme Court found in *Massachusetts v. E.P.A.* that "*the existence of a causal connection between manmade greenhouse gas emissions and global warming*" meant that, "*at a minimum*", the EPA's refusal to regulate GHG emissions from the United States transportation sector—which make a "*meaningful contribution to greenhouse gas concentrations*"—"*'contributes' to Massachusetts' injuries*". 549 U.S. 497, p 524. In *Urgenda v. Netherlands*, the Hague District Court relied on the scientific consensus that "*any anthropogenic greenhouse gas emission, no matter how minor, contributes to an increase of CO2 levels in the atmosphere and therefore to hazardous climate change*". It proceeded to note that "*the Dutch per capita emissions are one of the highest in the world*", and concluded that "*a sufficient causal link can be assumed to exist between the Dutch greenhouse gas emissions, global climate change and the effects (now and in the future) on the Dutch living climate*". *Urgenda Foundation v. The Netherlands* [2015] HAZA C/09/00456689 (24 June 2015), paras. 4.79–4.80 (aff'd 20 December 2019, Supreme Court of the Netherlands).

117 See written statements of: African Union, para 206; Albania, para. 130; Antigua and Barbuda, para. 550; Bahamas, para. 235; Barbados, paras. 270–287; Belize, para. 47; Brazil, paras 84–85; Burkina Faso, para. 272; Chile, paras. 69–70; Colombia, para. 4.3; COSIS, para. 185; Costa Rica, para. 103; Democratic Republic of Congo, para. 293; Ecuador, para. 4.10; Egypt, paras. 346–349; France, para. 206 ; India, para. 90; IUCN, para. 339; Kenya, para. 6.105; Kiribati, para. 206(2)(b); Madagascar, para. 74; Marshall Islands, para. 60; Mauritius, para. 210; Melanesian Spearhead Group, paras. 297, 312; Micronesia, para. 120; Namibia, para. 139;

59. Further, while some of the written statements submitted to the Court argue that States may have been unaware of potential climate impacts when they began to emit GHGs over a century ago, and that such activities were not regulated or prohibited under international law at that time[118], that does not preclude the application of well-accepted rules of State responsibility to the context of climate change—including established rules for addressing uncertainty as to the timing of a breach of international law, for example where the relevant conduct occurs over a span of many years[119].

B. There is a Well-Established Framework for Addressing the Plural Responsibility and Plural Injury of States

60. The fact that climate change both implicates and injures multiple States does not prevent the application of the customary international law rules of State responsibility. Indeed, the international law framework for addressing plural injury and plural responsibility of States is well-established in Articles 46 and 47 of ARSIWA, which read together confirm that any injured State or group of injured States may invoke the responsibility of any responsible State or group of responsible States for the same internationally wrongful conduct. Each State may also be held separately responsible for the conduct attributable to it[120].

OACPS, para. 171; Philippines, paras. 121, 129–131; Saint Lucia, para. 87; Saint Vincent and the Grenadines, para. 133; Samoa, para. 211; Seychelles, para. 155; Sierra Leone, para. 3.145; Singapore, para. 3.14; Slovenia, para. 14; Solomon Islands, paras. 232–233; Sri Lanka, para. 28; Switzerland, paras. 28–29; Thailand, para. 32; Timor-Leste, para. 357–359; Tonga, paras. 286–287; Tuvalu, para. 114; Uruguay, para. 173; Vanuatu, para. 562; Vietnam, para. 44.

118 *See*, *e.g*., Written Statement of Japan, paras. 26–27; Written Statement of Kuwait, para. 123; Written Statement of Liechtenstein, para 80.

119 *See, e.g.,* ARSIWA Article 14, Commentary para. 3.

120 ARSIWA, Article 47.

61. In *Certain Phosphate Lands in Nauru*, the Court recognized that a State may be held individually responsible for an internationally wrongful act committed by multiple States, depending on the circumstances and the nature of the obligation breached. In that case, Australia administered Nauru as a trust territory on behalf of itself and two other States. Australia argued that its responsibility was "*joint and several (solidaire)*" with the two other administering States such that a claim brought against Australia alone must be dismissed[121]. The Court rejected that argument, noting that it did not "*consider that any reason has been shown why a claim brought against only one of the States should be declared inadmissible [. . .] merely because that claim raises questions*" regarding the conduct of the two other States[122]. Australia "*had obligations*" under the relevant treaty and there was nothing in that treaty "*which debars the Court from considering a claim of a breach of those obligations by Australia*"[123].

62. Bangladesh respectfully submits that there is no reason why the same well-established concepts cannot apply to a breach of States' legal obligations in respect of climate change, including the obligation to set and enforce the GHGs emissions reduction targets necessary to keep global average temperature increase to 1.5°C.

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121 *Certain Phosphate Lands in Nauru (Nauru v. Australia)* (Preliminary Objections), Judgment, I.C.J. Reports 1992, p. 240, para. 48.

122 *Ibid*.

123 *Ibid*. *See also Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 4, pp. 22–23 (finding States may be held individually responsible when they engage in different internationally wrongful conduct that contributes to the same damage).

VI.

CONCLUSION

63. The international community will benefit greatly from the Court's clarification of States' obligations under international law in respect of climate change. Bangladesh considers that such clarification will assist States in fulfilling their climate obligations and thereby encourage the urgent global action necessary to prevent future catastrophic harms. To that end, on the basis of its Written Statement and these Written Comments, Bangladesh respectfully requests that the Court make the findings at paragraphs 148 and 149 of Bangladesh's Written Statement in respect of the questions posed.

64. Bangladesh reserves the right to supplement its position on the questions posed in the Request in oral submissions in due course.

Respectfully submitted,

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15 August 2024