INTERNATIONAL COURT OF JUSTICE

Obligations of States in respect of Climate Change

(Request for an advisory opinion)

WRITTEN COMMENTS OF THE REPUBLIC OF COSTA RICA

15 August 2024

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A. Introduction

1. The present Written Comments (hereinafter "WCCR") are filed pursuant to the Orders dated 20 April 2023, 4 October 2023, 15 December 2023, and 30 May 2024, in which the Court fixed time-limits for the States and international organizations having presented written statements to submit written comments on the written statements made by the other participants in the advisory proceedings concerning the *Obligations of States in Respect to Climate Change*.
2. On 22 March 2024, the Republic of Costa Rica (hereinafter "Costa Rica") filed its Written Statement (hereinafter "WSCR"). Ninety other States and Organisations also produced written statements ("WS"). Many of them are in line with the ideas advanced in the WSCR. Participants have overwhelmingly recognised that the Court has jurisdiction to render the requested advisory opinion on the basis of Article 96 of the Charter of the United Nations and Article 65 of the Statute of the Court, and that there are no compelling reasons for the Court not to exercise it.[1] However, some participants have suggested that the Court could limit the scope of the answers in the exercise of such jurisdiction.[2] Arguments advanced in this regard are linked with the discussion of the applicable law and consequently they will be treated in the WCCR below. For Costa Rica, it is quite clear that the Court has jurisdiction, that there are no "compelling reasons" not to exercise it and, on the contrary, that the contribution of the Court by rendering its advisory opinion is urgently needed.
3. Following the Court's instructions, Costa Rica, while confirming its views as developed in the WSCR, will not repeat them here. Thus, this WCCR will be limited to briefly refer to some positions invoked in other written statements that reflect different viewpoints on matters that are under the consideration of the Court in the present advisory proceedings.
4. The WCCR will address the following points:

- The applicable law, to show that all relevant principles and rules of international law are applicable and, in particular, that the "*lex specialis* argument" is not tenable (B)
- The applicability of the law of State responsibility to the examination of the relevant conduct, which may be contrary to international obligations (C)

[1] The exception is the WS of the Islamic Republic of Iran, para. 24
[2] See the OPEC WS, paras 15–23

- The specific consequences that result from the breaching of the international obligations as a result of the anthropogenic climate change (D)
- The final considerations and submissions (E)

5. Since the filing of the written statements on 22 March 2024, two important international decisions were issued with direct impact on the matters under consideration by the Court in these advisory proceedings: the judgment in the *Verein Klimaseniorinnen Schweiz v. Switzerland* by the Grand Chamber of the European Court of Human Rights of 9 April 2024 (hereinafter "the ECtHR's 2024 Judgment")[3] and the advisory opinion in the *Request for an Advisory Opinion submitted by the Commission of Small Island States* on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal) by the International Tribunal for the Law of the Sea of 21 May 2024 (hereinafter "the ITLOS' Advisory Opinion")[4]. Costa Rica respectfully draws the attention of the Court to these international judicial decisions and will refer to them in the following sections.

B. All relevant principles and rules of international law are applicable

6. Once the Court asserts its jurisdiction and determines that it will exercise it, it will consider first the questions submitted to it and determine the applicable law to answer them.

a) There is no need to rephrase the questions

7. The two questions formulated by General Assembly Resolution 77/276 where carefully drafted after extensive reflexion and discussion within and outside the Core Group. Notably the resolution was co-sponsored by 132 States and adopted by consensus of the UN Member States. The questions have been drafted in a concrete, clear and legal manner. There can be no doubt about what the General Assembly requests the Court to answer. What is basically requested to the Court is to identify the existing obligations under international law on a given area, taking into account a given conduct of States,

[3] *Case of Verein Klimaseniorinnen Schweiz and others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024).
[4] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, Advisory Opinion, 21 May 2024, Case N° 31.

and what are the legal consequences under these obligations if by that conduct significant harm to the climate system and other parts of the environment is caused.

8. This is not the first time that the Court has to deal with these clear-cut questions. "In the present instance, the Court will only have to do what it has often done in the past, namely 'identify the existing principles and rules, interpret them and apply them…, thus offering a reply to the question[s] posed based on law' *(Legality of the Threat or Use of Nuclear Weapons, I. C.J. Rcports1996 (I)* , p. 234, para. 13)."[5]
9. The conditions under which in the past the Court felt obliged to reformulate the questions submitted to it are not met here:

> "Both the Permanent Court and the present Court have observed in some cases that the wording of a request for an advisory opinion did not accurately state the question on which the Court's opinion was being sought. *(Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, 1928, P.C.I.J., Series B, No. 16 (I),* pp. 14-16), or did not correspond to the "true legal question"' under consideration *(Interpretation* of' *the Agreement of 2 5 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980,* pp. 87-89, paras. 34-36). The Court noted in one case that "the question put to the Court is, on the face of it, at once infelicitously expressed and vague" *(Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982,* p. 348, para. 46)."[6]

10. For the reasons mentioned above, it cannot be advanced that the questions raised by the general Assembly in these proceedings are not clear enough, or are not precise or too broad, or that they would impose the Court to statute *de lege ferenda*. There is no reason to rephrase those questions, whose content and scope are clear and can be answered within the realm of existing international law

b) The invocation of "lex specialis" is not a reason to limit the scope of the applicable rules

11. Some WS invited the Court to limit the scope of the applicable law to what they call "*the lex specialis*" of the case, i.e. the conventional regime of climate change: the

[5] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, I.C.J. Reports 2004, p. 154, para. 38.
[6] *Ibid.*

UNFCCC, the Kyoto Protocol and the Paris Agreement (hereinafter: "the conventional regime").[7] The purpose of this proposal is to exclude from the analysis the principles and rules of general international law and other treaties which, nevertheless, are all relevant for an overall legal analysis of climate change caused by the GHG emissions.

12. This "*lex specialis"* argument presupposes a misunderstanding of the use of this legal term of art and furthermore neglects the basic idea that international law is not just a mishmash of rules, but a necessary coordinated legal system. As the Court stated: "[…] a rule of international law, whether customary or conventional, does not operate in a vacuum; it operates in relation to facts and in the context of a wider framework of legal rules of which it forms only a part".[8]
13. The consideration of the "*lex specialis*" operates in legal systems in two ways: in case of a conflict of rules and as a tool for the interpretation of a wider rule. In case of conflict of rules, the maxim "*Lex specialis derogat legi generali"* applies. The elementary consideration here is that in the case of the applicable law to the issues raised by this request of an advisory opinion, *there is no contradiction at all* among the conventional regime and the principles and rules of general environmental law, such as the obligation not to cause significant environmental transboundary harm, the duty of due diligence or the prevention principle, or among other areas of international law, such as the law of the sea or human rights. Even less, there could be a contradiction with the fundamental principles of international law, such as the right of peoples to self-determination or the respect for the territorial integrity of States and peoples. Indeed, nothing prevents the Court from applying, to the same facts, rules of a more general scope and those of a particular nature, or even several rules of a particular nature if they are not contradictory and can be well integrated.
14. The second way in which a *lex specialis* can be employed is by interpreting the scope of a wider rule, as the Court did with regard to the right not be deprived of life contained in Article 6 of the International Covenant of Civil and Political Rights in the context of an armed conflict.[9] Here again, the duty of cooperation and the obligations enshrined in the conventional regime by no means derogate the obligations of States under general international environmental law, human rights, the law of the sea or any other area of

[7] See WS United States of America, WS OPEC (para. 22, IV.A-B), WS Saudi Arabia (paras. 1.7-1.10, 3.3; Ch. 4; Ch. 5), WS Republic of Korea (para. 51), WS Kuwait (para. 76), WS China (para. 92), WS Japan (paras. 14, 18)
[8] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt,* Advisory opinion, I.C.J. Reports 1980, p. 76, para. 10.
[9] *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion, I.C.J. Reports 1996, p. 240, para. 25

international law, even less fundamental and peremptory norms of international law. Rather, it could be said that the conventional regime should be in accordance, and not in contradiction, with those general principles and rules.

15. Even the UNFCCC and the Paris Agreement refer to the other relevant rules of international law. For instance, the preamble of the latter expressly states the following:

> *"The Parties to this Agreement (...) [a]cknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,"

16. These references indeed support the application of wider obligations to the relevant conduct, including human rights obligations, obligations under the law of the sea, and other obligations of general international law, among them obligations arising from the right to self-determination, the duty of due diligence, and the prevention principle.
17. Furthermore, it must be taken into account that different rules may have identic or different addressees. While conventional rules only bind the parties to the relevant agreements, customary rules of general character bind the entire international community. The questions raised by the General Assembly have in mind all States. The answer to them necessarily requires taking into account not only what some considered to be the *lex specialis*, but also any rule that may be relevant to tackle the issues concerned.
18. The *ITLOS Advisory Opinion* is telling in this regard. While no doubt UNCLOS is the "*lex specialis*" in this case, and ITLOS was exclusively requested to render an advisory opinion on the obligations of States Parties under the UNCLOS, ITLOS took into account other relevant rules of international law not incompatible with the UNCLOS.[10] Analysing Article 237 of UNCLOS referring to obligations under other conventions on the protection and preservation of the marine environment, the ITLOS Advisory Opinion explained:

> "Article 237 of the Convention reflects the need for consistency and mutual supportiveness between the applicable rules. On the one hand, Part XII of the

[10] ITLOS Advisory Opinion, para. 127.

> Convention is without prejudice to the specific obligations of States under special conventions and agreements concluded previously in this field and to agreements which may be concluded in furtherance of the general principles of the Convention. On the other hand, such specific obligations should be carried out in a manner consistent with the general principles and objectives of the Convention."[11]

19. The ITLOS Advisory Opinion also referred to the rule of interpretation of Article 31 (3) (c) of the Vienna Convention on the Law of Treaties, which requires to take into account, together with the context, any relevant rules of international law applicable between the parties.[12]

20. Also telling is the fact that ITLOS did not consider that the obligation to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions can be satisfied by complying with the commitments of the Paris Agreement:

> "The Convention [UNCLOS] and the Paris Agreement are separate agreements, with separate sets of obligations. While the Paris Agreement complements the Convention in relation to the obligation to regulate marine pollution from anthropogenic GHG emissions, the former does not supersede the latter".[13]

21. By way of conclusion, the ITLOS Advisory Opinion rejected the *lex specialis* argument in a categoric manner:

> "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."[14]

22. It can also be noted that ITLOS considered applicable the precautionary approach, the duty of due diligence and the principle of common but differentiated responsibilities, even if they are not explicitly mentioned in its "*lex specialis*".[15]

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[11] *Ibid.*, para. 133.
[12] *Ibid.*, para. 135
[13] *Ibid.*, para. 223
[14] ITLOS Advisory Opinion, para. 224
[15] *Ibid.*, paras 213, 229 and 234

23. The ITLOS Advisory Opinion has recognized that anthropogenic GHG emissions constitute pollution of the marine environment. Its analysis, however, allows to consider that the introduction of those GHGs constitutes pollution to the ecosystems and the environment in general, producing climate change. [16]

24. That anthropogenic climate change also has an impact on human rights and that State conduct responsible of GHG emissions may imply a breach of international obligations in this field is clearly demonstrated in the *ECtHR's 2024 judgment*. The European Court found Switzerland responsible for breaches of Article 8 of the European Convention of Human Rights.[17] To reach this conclusion the European Court followed a reasoning based on four causal dimensions that can also be helpful to the task of the Court in the current advisory proceedings:

> "The first dimension of the question of causation relates to the link between GHG emissions – and the resulting accumulation of GHG in the global atmosphere – and the various phenomena of climate change. This is a matter of scientific knowledge and assessment. The second relates to the link between the various adverse effects of the consequences of climate change, and the risks of such effects on the enjoyment of human rights at present and in the future. In general terms, this issue pertains to the legal question of how the scope of human rights protection is to be understood as regards the impacts arising for human beings from an existing degradation, or risk of degradation, in their living conditions. The third concerns the link, at the individual level, between a harm, or risk of harm, allegedly affecting specific persons or groups of persons, and the acts or omissions of State authorities against which a human rights-based complaint is directed. The fourth relates to the attributability of responsibility regarding the adverse effects arising from climate change claimed by individuals or groups against a particular State, given that multiple actors contribute to the aggregate amounts and effects of GHG emissions".[18]

25. This case demonstrates that violations of human rights may be the result of lack of taking positive action in respect of climate mitigation obligations, whether in terms of specific GHG emissions reduction targets or by failing to put in place an appropriate legislative and administrative framework. It has been noticed in particular that

> "[i]ncreasing weather and climate extreme events have exposed millions of people to acute food insecurity and reduced water security, with the *largest*

[16] ITLOS Advisory Opinion, paras 162-179.
[17] ECtHR's 2024 Judgment, paras. 555-573
[18] *Ibid.*, para. 425

impacts observed in many locations and/or communities in Africa, Asia, Central and South America, Small Islands and the Arctic."[19]

C. The law of State responsibility is applicable while considering the legal consequences

26. Costa Rica believes that cooperation and responsibility are not opposite. As a matter of international relations and international law, both can and must go together. Cooperation is the key element for collective and multilateral responses. Responsibility is the basic tool of international law. There cannot be a legal system if compliance with the law or its disregard does not bear different consequences. Cooperation is the basis for joint action. Legal obligations are individual: each State must comply with them. If not, it bears responsibility.
27. The idea advanced by some participants to exclude the analysis of the international law of State responsibility does not have any ground.[20] Indeed, it is enough to read the preamble of the UNFCCC to disregard this argument. It itself recalls that "*States have, in accordance with the Charter of the United Nations and the principles of international law, […] the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*". If States do have this responsibility, it is because there is an obligation not to cause environmental damage from activities within their jurisdiction or control and because the breach of this obligation constitutes an internationally wrongful act producing State responsibility.
28. In this regard, a distinction between the advisory opinion requested to the Court and that requested to ITLOS must be mentioned. The advisory opinion requested to ITLOS exclusively concerned primary obligations, not issues of responsibility. However, even under this circumstance, ITLOS considered that "to the extent necessary to clarify the scope and nature of primary obligations, the Tribunal may have to refer to responsibility and liability."[21] It went on explaining:

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[19] IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability.* Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers (2022), statement B.1.3 (emphasis added)

[20] WS Australia, ch. 5; WS China, paras. 134-136, 139-142; Joint WS Denmark, Finland, Iceland, Norway and Sweden, ch. V; WS Japan, paras 40–41; WS Republic of Korea, paras 41–49; WS New Zealand, paras. 138–140; WS OPEC, ch. V; WS Russia, pp. 16–17; WS Saudi Arabia, ch. 6; WS UK, paras. 136-137.

[21] ITLOS Advisory Opinion, para. 148.

> "While the importance of joint actions in regulating marine pollution from anthropogenic GHG emissions is undisputed, it does not follow that the obligation under article 194, paragraph 1, of the Convention is discharged exclusively through participation in the global efforts to address the problems of climate change. States are required to take all necessary measures, including individual actions as appropriate."[22]

29. Indeed, ITLOS explicitly mentioned the consequence of not complying with the obligations under the UNCLOS:

> "Article 194, paragraph 1, imposes upon States a legal obligation to 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*."[23]

30. Equally, the ECtHR's 2024 Judgment applied the rules of State responsibility for the determination that anthropogenic emissions of greenhouse gases from States may lead to breaches of human rights:

> "The Court notes that while climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, the global climate regime established under the UNFCCC rests on the principle of common but differentiated responsibilities and respective capabilities of States (Article 3 § 1). This principle has been reaffirmed in the Paris Agreement (Article 2 § 2) and endorsed in the Glasgow Climate Pact (cited above, paragraph 18) as well as in the Sharm el-Sheikh Implementation Plan (cited above, paragraph 12). It follows, therefore, that each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State (see Duarte Agostinho and Others, cited above, §§ 202-03). The Court considers that a respondent State should not evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not […]This position is consistent with the Court's approach in cases involving a concurrent responsibility of States for alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach in question (see, albeit in other contexts, M.S.S. v. Belgium and Greece, cited above,

[22] *Ibid.*, para. 202
[23] *Ibid.*, para. 223 (emphasis added)

> §§ 264 and 367, and Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia, nos. 75734/12 and 2 others, §§ 160-61 and 179-81, 19 November 2019). It is also consistent with the principles of international law relating to the plurality of responsible States, according to which the responsibility of each State is determined individually, on the basis of its own conduct and by reference to its own international obligations (see ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Commentary on Article 47, paragraphs 6 and 8). Similarly, the alleged infringement of rights under the Convention through harm arising from GHG emissions globally and the acts and omissions on the part of multiple States in combating the adverse effects of climate change may engage the responsibility of each Contracting Party"[24]

31. Contrary to the request to ITLOS, under the current request for an advisory opinion, the Court is explicitly requested to determine "the legal consequences" for States having caused significant harm to the climate system, referring to "injured States". There is no doubt that the law of State responsibility for internationally wrongful acts is by necessity applicable to answer the second question raised by the General Assembly.
32. It is important to insist upon the fact that the Court has not been asked to determine the causal link between the specific emissions of every State and their impacts on specific States. The task of the Court should be to assist all international actors to define what is legal or illegal in the conduct of States in the field, and the legal basis for State responsibility in general.
33. In order to apply the law of State responsibility it is necessary to attribute consequences of climate change to State conduct and to attribute loss and damages to climate change. The fact that the conventional regime does not contain specific secondary rules of State responsibility does not mean that international responsibility does not apply. On the contrary, the consequence of this is that the general rules of international responsibility do apply.
34. Indeed, Article 8 of the Paris Agreement does not contain any provision that would exclude the secondary rules of state responsibility, including the legal consequences that may arise. It even stresses the importance of addressing loss and damage associated with climate change impacts. It does not prevent responsibility in the various forms of cessation or non-repetition and reparations, including compensation, under the rules of State responsibility.

[24] ECtHR's 2024 Judgment, paras. 442-443

35. Scientific evidence shows that it is possible to determine a causal relationship between GHG emissions of given States and climate change.[25] It is then possible to determine responsibility not only for those emissions, but also for lack of compliance with mitigation and necessary domestic regulatory measures. State responsibility cannot be determined just for the current GHG emissions but rather for the historical contributions since the industrial era and the awareness of their impact on climate change.
36. The "*unequal historical and ongoing contributions* arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals" has been recognized by the IPCC.[26]
37. In the 2023 UAE Consensus, the 195 Parties to the Paris Agreement recognized a distinction among States depending on their contribution to climate change:

> "That human-caused climate change impacts are already being felt in every region across the globe, with those who have contributed the least to climate change being most vulnerable to the impacts, and, together with losses and damages, will increase with every increment of warming".[27]

38. It is then important for the Court to distinguish between States historically responsible for the current situation and those States that are the principal victims of that conduct. Article 15 of the Articles on Responsibility of States for Internationally Wrongful Acts is of particular relevance here.[28] The conduct at stake which breaches obligations can be a series of acts and omissions that have been ongoing over time and which, taken together, constitute a composite act, even if some elements are not in and of themselves unlawful under the rules of State responsibility. The cumulative contributions of anthropogenic GHG emissions resulting in significant harm to the climate system and other parts of the environment made by historical polluters are an example of composite acts and omissions inconsistent with obligations.

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[25] UNEP, *The Closing Window. Emissions Gap Report 2022*, Executive Summary, p. V
[26] IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1) (emphasis added)
[27] Decision _/CMA.5, Outcome of the first global stocktake, 13 December 2023, para. 15
[28] "**Article 15. Breach consisting of a composite act** 1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act. 2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation."

39. In sum, question (b) raised by the General Assembly requests the Court to determine the "legal consequences" arising under the relevant obligations for States having caused significant harm to the environment. The Court has always understood that when requested to determine the "legal consequences", the law of State responsibility is concerned.[29]

D. Specific consequences resulting from significant harm caused by anthropogenic climate change

40. In the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua),*the Court has clearly recognized that the general rules of reparation must be read in the light of the specific circumstances arising from the nature of environmental harm.[30] These rules include Articles 30 (cessation and non-repetition), 31 (reparation), 33 (scope of the international obligations set out in this part), 34 (forms of reparation), 35 (restitution) and 36 (compensation). Insofar as breaches of peremptory rules are concerned, States have the duty to cooperate in order to obtain the cessation of these breaches (Article 41). Specific aspects relating to the application of those general rules on reparation, including the assessment of the required causal nexus, "*may vary depending on the primary rule violated and the nature and extent of the injury*".[31]
41. A specific aspect of the legal consequences attached to anthropogenic climate change is the impact of sea level rise on maritime delimitations and entitlements. Contrary to the request for an advisory opinion to ITLOS, nothing precludes the Court to address the question of the impact of sea level rise caused by climate change on maritime delimitations and entitlements in the present advisory proceedings. In the ITLOS advisory proceedings, the question of sea level rise was exclusively related to the

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[29] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),* Advisory Opinion, I.C.J. Reports 1971, p. 16, paras 117-118; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, I.C.J. Reports 2004, p. 136, paras 148-153; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965,* Advisory Opinion, I.C.J. Reports 2019, p. 95, paras 175-177; *Legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem,* ICJ, advisory opinion of 19 July 2024, paras. 265-266 among others.

[30] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation*, Judgment, I.C.J. Reports 2018, p. 15, paragraphs 34, 41-43.

[31] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations,* Judgment of 9 February 2022, para. 94. See also *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.

specific obligations concerning the protection and preservation of the marine environment.[32] On the contrary, the second question raised by the General Assembly refers to the legal consequences for States under the obligations to ensure the protection of the climate system and with respect to States (in particular small islands developing States) that are injured or specially affected by the adverse effects of climate change. The request draws the Court to having regard to the United Nations Convention on the Law of the Sea. Consequently, the need to respect existing baselines, maritime delimitations and entitlements notwithstanding changes in the configuration of the costs motivated by anthropogenic climate change falls within the advisory jurisdiction of the Court.

E. Conclusions and Submissions

42. On the basis of the WSCR and the considerations of the WCCR, Costa Rica submits the following conclusions and submissions as a contribution to these advisory proceedings:
    1) The Court has jurisdiction and there are no reasons not to exercise it; There exists sufficient reliable scientific evidence to answer the questions raised by the General Assembly;
    2) The cooperation conventional regime on climate change is applicable together with the general international law of the environment, the conventional and customary law relating to the protection of human rights, the rights of peoples to self-determination and the respect for the territorial integrity of States, the law of the sea and the law of responsibility of States for internationally wrongful acts;
    3) In responding to question (a), international law imposes the following primary obligations to States:
        a) The obligation to employ due diligence when dealing with GHG emissions;
        b) The obligation to prevent environmental harm through the emissions of GHGs from the territory under the State's sovereignty or control;

[32] ITLOS Advisory Opinion, para. 150.

c) The obligation not to cause significant environmental transboundary harm to the territory of another State or to areas beyond national jurisdiction;
d) The obligation to protect ecosystems;
e) The obligation to take into account the consequences of GHG emissions for future generations;
f) The obligation to protect the marine environment;
g) The obligation to respect fundamental human rights, which includes:
    (i) The right to life
    (ii) The right to health
    (iii) The right to food and water
    (iv) The right to a clean, healthy and sustainable environment;
h) The obligation to respect the equality of rights and the right of peoples to self-determination;
i) The obligation to respect the territorial integrity of States and peoples
j) The obligation to repair the consequences of Internationally Wrongful Acts
k) The general obligation to cooperation.

4) In fulfilment of these obligations, States are obliged to duly take into account (i) the ecosystem approach, (ii) the principle of intergenerational equity, (iii) the principle of common but differentiated responsibilities and respective capabilities of States.
5) In responding to question (b):
    a) States responsible for having breached their international obligations mentioned above have the obligation to cease that act and to offer appropriate assurances and guarantees of non-repetition, if circumstances so require and have the continued duty to perform the obligations breached;
    b) Ceasing the relevant conduct includes taking mitigation action to achieve deep cuts in GHG emissions;

c) States responsible, by their actions or omissions, for the commission of internationally wrongful acts, due to their historical emissions of GHG, have the obligation to repair the loss and damages caused to other States, peoples and individuals; this includes, according to the circumstances, restitution, compensation and satisfaction;

d) The effect of sea level rise due to anthropogenic global warming affecting coasts and insular features does not lead to the loss of maritime areas. All States and other international actors are obliged to recognize the maintenance of the existing maritime areas as they were measured and communicated in accordance to international law or as decided by an international court or tribunal;

e) States have the duty of cooperation in order to obtain the cessation of breaches of the international obligations above mentioned and the full reparation of the loss and damages caused.

f) States have the duty of cooperation in relation to the common but differentiated responsibilities in the protection of the environment.

15 August 2024

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Arnoldo Brenes Castro

Ambassador of the Republic of Costa Rica to the Kingdom of The Netherlands