INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

WRITTEN COMMENTS OF THE REPUBLIC OF ECUADOR

15 AUGUST 2024

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Introduction

1. The Republic of Ecuador ('Ecuador') submits the present Written Comments in accordance with the Court's orders dated 20 April 2023, 4 August 2023, 15 December 2023, and 30 May 2024. These Comments relate to the Written Statements submitted in the present proceeding by other participants, and address some of the issues raised therein.

2. Ecuador reaffirms what it said in its Written Statement of 22 March 2024, including the summary of its position[1]. The fact that it does not in the present Written Comments address or otherwise respond to all that others have said does not mean that it necessarily agrees. Only selected points are addressed below.

3. Ecuador notes the unprecedented level of participation in the present proceeding, with 82 States and 11 international organizations having submitted Written Statements. This attests to the importance of the questions put to the Court by the General Assembly in resolution 77/276, as well as the confidence that the participants have in the Court being well-placed to answer those questions. Virtually all participants accept that the Court has jurisdiction to entertain the request for an advisory opinion and that it should not decline to exercise it.

4. Ecuador further notes that there is wide agreement among the participants as regards the scope of the questions on which the Court's opinion is sought. Ecuador reiterates its understanding that Question (*a*) asks the Court to identify the obligations of States under international law in respect of climate change, irrespective of their source (treaties, customary international law, or general principles of law) or the field of law where they are found. Question (*b*), for its part, relates to matters of State responsibility in the context of potential breaches of some of those obligations. The Court, consistent with the fundamental principle of consent to jurisdiction, is not called upon to determine the international responsibility of any particular State or States when responding to Question (*b*).

5. There is also broad consensus among the participants that climate change is a common concern of mankind that poses serious risks to the environment and to human life, and that

[1] Written Statement of Ecuador, pp. 75-76.

urgent action by the international community (and in particular by developed countries) is needed to overcome it. In this regard, virtually all participants agree that the reports of the Intergovernmental Panel on Climate Change ('IPCC') reflect the best available science on climate change at present. The Court can rely on the IPCC reports, as necessary, to ascertain the facts that may be relevant to answering to Questions (*a*) and (*b*).

6. Ecuador has furthermore taken note of the *COSIS Advisory Opinion* rendered by the International Tribunal for the Law of the Sea ('ITLOS') on 21 May 2024[2], which clarifies the content and scope of several obligations relating to climate change under the United Nations Convention on the Law of the Sea ('UNCLOS'), in particular its Part XII. Ecuador considers that the advisory opinion is in many respects a significant step towards clarifying States' obligations under international law in respect of climate change, and may thus be relevant in the present advisory proceedings. While the *COSIS Advisory Opinion* is not legally binding even on the States Parties to UNCLOS and the Court is of course not obliged to follow it, the findings of ITLOS may be relied upon, as appropriate, in keeping with Article 38, paragraph 1(*d*), of the Court's Statute.

7. All that said, there are differences of view among participants concerning various legal issues that arise under Questions (*a*) and (*b*) that warrant commenting on. These Written Comments address some of them in turn, in particular as regards: the relationship between the obligations of States in respect of climate change arising from different sources (**Section I**); the principle of common but differentiated responsibilities ('CBDR') (**Section II**); the principle of inter-generational equity (**Section III**); the principle of prevention under customary international law (**Section IV**); the obligations of States under UNCLOS and corresponding obligations under customary international law (**Section V**); the obligations of States under international human rights law (**Section VI**); the scope and content of the duty to cooperate (**Section VII**); and the applicability of the law on State responsibility (**Section VIII**).

[2] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and Internaitonal Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported). Ecuador did not participate in the case.

I. The relationship between the obligations of States in respect of climate change arising from different sources

8. As Ecuador demonstrated in its Written Statement, States have various obligations under international law in respect of climate change and its adverse effects. These obligations derive from different sources (most notably treaties, customary international law and general principles of law). Ecuador put emphasis, in particular, on the following key obligations:

- Obligations relating to the adoption and implementation of measures aimed at reducing anthropogenic greenhouse gas ('GHG') emissions (*i.e.*, mitigation measures) arising from, *inter alia*, the principle of prevention under customary international law, the duty to protect and preserve the marine environment under UNCLOS and customary international law, the United Nations Framework Convention on Climate Change ('UNFCCC') and the Paris Agreement, and the obligations to ensure respect for the right to life, the right to privacy and family life, and the right to a heathy environment under human rights instruments such as the International Covenant on Civil and Political Rights ('ICCPR'), the Inter-American Convention on Human Rights, and customary international law;

- Obligations relating to the adoption and implementation of measures to adapt to the adverse effects of climate change arising from, *inter alia*, the duty to protect and preserve the marine environment under customary international law, the UNFCCC, the Paris Agreement, UNCLOS, and human rights instruments;

- Obligations relating to cooperation in the context of both mitigation and adaptation, including through financing, capacity-bulding, and technology transfer, arising from, *inter alia*, the duty to cooperate under customary international law, the UNFCCC and the Paris Agreement, as well as UNCLOS;

- Obligations relating to cooperation in the elaboration and adoption of new international rules and standards to counter climate change, arising from customary international law, the UNFCCC, the Paris Agreement, and UNCLOS.

9. Some participants in the present proceeding have suggested that the UNFCCC and the Paris Agreement constitute the primary instruments that govern climate change issues, and that, even if other rules of international law may in principle also be applicable to the same issues, the UNFCCC and the Paris Agreement constitute a *lex specialis* that displaces or otherwise prevails over their application. The argument is sometimes formulated in somewhat different terms by those saying, for example, that even if States have obligations in respect of climate change arising from rules of international law other than the UNFCCC and the Paris Agreement, those obligations would be complied with if States adhere to the latter. This view is sometimes accompanied by a statement to the effect that reliance on obligations outside the UNFCCC and the Paris Agreement might undermine the cooperation mechanisms envisaged by these treaties[3].

10. This position, which apparently seeks to minimize States' obligations in respect of climate change (given the flexible nature of the rules contained in the UNFCCC and Paris Agreement, which are also limited in scope and are often broadly formulated, leaving States considerable discretion in deciding how to implement them[4]), should not be countenanced by the Court. The various obligations of States in the present context are self-standing and complement each other for purposes of their interpretation and application. There is no discernable conflict of norms that would require applying the *lex specialis* principle so as to liberate those States that are parties to the UNFCCC and the Paris Agreement from their obligations arising outside these instruments.

11. The Conclusions of the Study Group of the International Law Commission ('ILC') on the topic Fragmentation of International Law recall that international law is a legal system and that "[i]ts rules and principles … act in relation to and should be interpreted against the background of other rules and principles"[5]. The Conclusions distinguish in this context between: (1) relationships of interpretation, where one norm may assist in the interpretation of another norm, and where both norms are applied in conjunction; and (2) relationships of

[3] See, for example, Written Statement of China, paras. 92-96; Written Statement of Japan, para. 14; Written Statement of OPEC, paras. 62 ff; Written Statement of Saudi Arabia, paras. 5.5-5.10; Written Statement of the United States of America, paras. 4.22-4.28.

[4] Written Statement of Ecuador, para. 3.17.

[5] Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, *Yearbook of the International Law Commission, 2006*, vol. II, Part Two, pp. 177-178, Conclusion 1.

conflict, where two norms are valid and applicable but lead to incompatible decisions so that a choice has to be made between them[6].

12. The Conclusions of the Study Group further refer to the principle of harmonization, according to which "when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations"[7]. This also is consistent with the general rule enshrined in Article 31(3)(c) of the Vienna Convention on the Law of Treaties ('VCLT'), according to which treaties must be interpreted taking into account "any relevant rules of international law applicable in the relations between the parties". The Court itself has had occasion to observe that "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. With respect to the principle *lex specialis derogat legi generali*, the Conclusions of the Study Group note that, as a technique of interpretation and conflict resolution in international law, it applies to give priority to the more specific norm, where two or more norms deal with the same subject-matter[9]. At the same time, the Conclusions point to some particular situations in which the maxim may not apply to displace the applicability of more general norms, notably: (1) where the application of the special law might frustrate the purpose of the general law; (2) where the balance of rights and obligations established in the general law would be negatively affected by the special law; and (3) where third party beneficiaries may be negatively affected by the special law[10].

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[6] *Ibid*., p. 178, Conclusion 2. See also 'Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', Report of the Study Group finalized by Mr. Martti Koskenniemi (A/CN.4/L.682), para. 19.

[7] Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, *Yearbook of the International Law Commission, 2006*, vol. II, Part Two, p. 178, Conclusion 4.

[8] *Interpretation of Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 76, para. 10 (adding that "[a]ccordingly, if a question put in the hypothetical way in which it is posed in the request is to receive a pertinent and effectual reply, the Court must first ascertain the meaning and full implications of the question in the light of the actual framework of fact and law in which it falls for consideration").

[9] Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, *Yearbook of the International Law Commission, 2006*, vol. II, Part Two, p. 178, Conclusion 5.

[10] *Ibid*., p. 179, Conclusion 10.

14. The Court has also had occasion to explain how the *lex specialis* principle might apply, albeit in the context of relationship between international human rights law and international humanitarian law, as follows:

> "The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis,* namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself"[11].

15. Additonally, in the *Southern Bluefin Tuna Arbitration*, the respondent attempted to characterize the Convention for the Conservation of Southern Bluefin Tuna as a *lex specialis* that had "subsumed, discharged and eclipsed" the relevant provisions under UNCLOS[12]. On this point, the UNCLOS Annex VII Arbitral Tribunal stated that:

> "… there is support in international law and in the legal systems of States for the application of a *lex specialis* that governs general provisions of an antecedent treaty or statute. But the Tribunal recognizes as well that it is a commonplace of international law and State practice for more than one treaty to bear upon a particular dispute. There is no reason why a given act of a State may not violate its obligations under more than one treaty. There is frequently a parallelism of treaties, both in their substantive content and in their provisions for settlement of disputes arising thereunder. The current range of international legal obligations benefits from a process of accretion and cumulation; in the practice of States, the conclusion of an implementing convention does not necessarily vacate the obligations imposed by the framework convention upon the parties to the implementing convention"[13].

16. The Court itself has also had occasion to recall that "[c]ertain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the 'interpretation and application' of more than one treaty or other instrument"[14].

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[11] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 240, para. 25.

[12] *Southern Bluefin Tuna Case (New Zealand-Japan, Australia-Japan)*, Award of 4 August 2000, RIAA, vol. XXIII, para. 51.

[13] *Ibid.*, para. 52.

[14] *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 27, para. 56.

17. Ecuador does not dispute that the UNFCCC and the Paris Agreement (to which, it must be remembered, not all States are parties) contain rules that address the issue of climate change specifically, including those laying down obligations relating to the adoption of mitigation and adaptation measures, and corresponding procedural obligations, such as the obligation to prepare, communicate and maintain successive Nationally Determined Contributions ('NDC'), as well as cooperation obligations in various fields[15]. This does not mean, however, that these treaties constitute for their parties a *lex specialis* with respect to all other norms of international law, so as to displace the application of the latter and depriving them of legal effect. There is no basis in the treaties themselves or elsewhere for such a sweeping conclusion.

18. The relationship between the UNFCCC and the Paris Agreement, on the one hand, and other rules of international law, on the other, must be assessed on a case-by-case basis, taking into account the specific content and scope of the rule in question, including its object and purpose. UNCLOS, for example, is for the parties thereto the primary framework convention concerning the oceans, including the protection and preservation of the marine environment under Part XII. The UNFCCC and the Paris Agreement, for their part, do not deal with the oceans generally, nor with the protection and preservation of the marine environment specifically. It cannot be maintained, therefore, that the UNFCCC and the Paris Agreement constitute a *lex specialis* in relation to States' obligations under Part XII of UNCLOS and the corresponding rules of customary international law. The relationship between these treaty regimes must rather be understood as one of interpretation and mutual supportiveness[16].

19. This position was recently confirmed by the ITLOS in the *COSIS Advisory Opinion*, where it was determined that Article 237 of UNCLOS[17] "reflects the need for consistency and

[15] Written Statement of Ecuador, paras. 3.68-3.85.

[16] See also 'Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', Report of the Study Group finalized by Mr. Martti Koskenniemi (A/CN.4/L.682), para. 412.

[17] Article 237 of UNCLOS, entitled 'Obligations under other conventions on the protection and preservation of the marine environment', reads as follows:

"1. The provisions of this Part are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.

2. Specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of this Convention".

mutual supportiveness between the applicable rules"[18]. More specifically, the Tribunal was of the view, *inter alia*, that the UNFCCC and the Paris Agreement inform (but do not supersede) the obligations under Part XII of UNCLOS; that complying with the obligations and commitments under the UNFCCC and the Paris Agreement would not necessarily satisfy States' obligations under Part XII of UNCLOS; and that, even if, *arguendo*, the UNFCCC and Paris Agreement were considered *lex specialis*, the principle should in any event be applied in a manner that does not frustrate the object and purpose of UNCLOS. As recorded in that advisory opinion:

> "In the view of the Tribunal, the UNFCCC and the Paris Agreement, as the primary legal instruments addressing the global problem of climate change, are relevant in interpreting and applying the Convention with respect to marine pollution from anthropogenic GHG emissions. In particular, the temperature goal and the timeline for emission pathways set out in the Paris Agreement inform the content of necessary measures to be taken under article 194, paragraph 1, of the Convention. However, the Paris Agreement does not require the Parties to reduce GHG emissions to any specific level according to a mandatory timeline but leaves each Party to determine its own national contributions in this regard.
>
> The Tribunal does not consider that the obligation under article 194, paragraph 1, of the Convention would be satisfied simply by complying with the obligations and commitments under the Paris Agreement. The Convention 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. 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.
>
> 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"[19].

[18] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 133.

[19] *Ibid.*, paras. 222-224.

20. The same reasoning applies *a fortiori* with respect to obligations arising under universal human rights treaties like the ICCPR and the Convention on the Rights of the Child ('CRC'), as well as regional instruments such as the Inter-American Convention on Human Rights. The goal of these instruments is to ensure the protection of individuals through specific obligations, which have their own requirements and scope of application. The UNFCCC and the Paris Agreement, for their part, do not deal with human rights specifically, and so cannot constitute *lex specialis* in this respect; nor can it be argued that a State may satisfy its human rights obligations simply by complying with their commitments under the UNFCCC and the Paris Agreement. In this regard, the European Court of Human Rights, in the case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, recently concluded that States Parties to the European Convention on Human Rights ('ECHR') have certain obligations in respect of climate change under that Convention, both in terms of mitigation and adaptation; at no point did the Court consider that the UNFCCC and Paris Agreement could supersede the obligations under the ECHR[20].

21. Adopting a different position would risk frustrating the object and purpose of human rights treaties by depriving individuals from the protection due to them (including reparation for harm suffered as a result of climate change). The UNFCCC and the Paris Agreement may in some cases be relevant for purposes of interpretation of relevant human rights instruments, and indeed other treaties, but States still bear responsibility for potential breaches of other rules where applicable[21].

22. States' obligations under customary international law – such as those arising from the principle of prevention and the duty to protect and preserve the marine environment – are also independent obligations that are not superseded by the UNFCCC and the Paris Agreement. Indeed, there is no conflict between the relevant rules and no intention to displace customary rules can be discerned from the UNFCCC and the Paris Agreement. To the contrary, the preamble of the UNFCCC expressly recalls, for example, that "States have, in accordance with

[20] *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland,* Application No. 53600/20, Judgment, 9 April 2024*,* paras. 544-554. The European Court of Human Rights noted moreover that it "… cannot ignore the above-noted developments and considerations. On the contrary, it should be recalled that the Convention is a living instrument which must be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies" (*ibid*., para. 434).

[21] See further paras. 73-85 below.

the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and 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".

23. Finally, as regards the claim by some participants that a finding by the Court that the UNFCCC and the Paris Agreement do not constitute *lex specialis* would undermine existing cooperation mechanisms, Ecuador considers that it is speculative. Indeed, a reaffirmation by the Court that States do have obligations in respect of climate change beyond the UNFCCC and the Paris Agreement can equally enhance those mechanisms, as cooperation to date has clearly not been sufficient in combatting climate change.

24. The Court has already considered and rejected similar speculative arguments before, even if in a different context. Notably, in the *Nuclear Weapons* advisory opinion, the Court was of the view that:

> "It has … been submitted that a reply from the Court in this case might adversely affect disarmament negotiations and would, therefore, be contrary to the interest of the United Nations. The Court is aware that, no matter what might be its conclusions in any opinion it might give, they would have relevance for the continuing debate on the matter in the General Assembly and would present an additional element in the negotiations on the matter. Beyond that, the effect of the opinion is a matter of appreciation. The Court has heard contrary positions advanced and there are no evident criteria by which it can prefer one assessment to another" [22].

25. In conclusion, the UNFCCC and the Paris Agreement do not constitute for the parties thereto *lex specialis vis-à-vis* rules of international law arising under other sources that also address aspects of climate change and its adverse impacts. The relationship between the relevant rules is one of complementarity and mutual supportiveness, serving for the most part as an aid in the interpretation and application of the rules in question. In all cases, States remain responsible for breaches of each of those rules, and recourse may be had to the applicable dispute settlement procedures.

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[22] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 237, para. 17. See also *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024 (unreported), paras. 38-40; *Accordance with International Law of the Unilateral Declaration of Independence of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 418, para. 35; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 160, para. 53.

II. The principle of common but differentiated responsibilities

26. In its Written Statement, Ecuador addressed the principle of CBDR in some detail, emphasizing its central importance in the context of States' obligations under international law in respect of climate change[23]. This principle, which is at the heart of the UNFCCC and the Paris Agreement and forms today part of general international law, serves to strike an equitable balance between developing and developed countries, recognizing their different historical contributions to climate change, as well as their respective capabilities to mitigate climate change and to adapt to it. The principle of CBDR does not impose independent obligations on States, but is rather taken into account when determining the specific content and scope of States' obligations in terms of mitigation, adaptation and cooperation. It prescribes that developed countries bear, in this context, the more burdensome obligations and must take the lead in combatting climate change.

27. The participants in the present proceedings overwhelmingly recognize the relevance of the principle of CBDR when assessing States' obligations in respect of climate change. There exist nonetheless certain points where different views have been expressed, in particular as regards the applicability of the principle beyond the UNFCCC and the Paris Agreement; the relevance of historical contributions to climate change; and the effect to be given to CBDR in the context of mitigation measures.

28. As a general remark, Ecuador notes that arguments aimed at limiting the content and scope of the principle of CBDR appear to be driven by the fact that a few countries that may have previously been considered 'developing' have by now reached a certain level of development and, in doing so, have emitted significant amounts of GHGs in the past decades through their activities under their jurisdiction. This is not, however, the situation of most States around the world. Caution is needed, therefore, in seeking to draw any general conclusions on the law in this context.

29. Some participants argue that the principle of CBDR does not have a normative status independent from the UNFCCC and the Paris Agreement; in other words, that the principle

[23] Written Statement of Ecuador, paras. 3.59-3.62.

would have no bearing beyond the provisions of these treaties[24]. This argument cannot be upheld for at least four reasons. First, CBDR is one of the principles already reflected in the 1992 Rio Declaration, which concerns the protection of the environment and sustainable development more generally. Principle 7 of the Rio Declaration is indeed drafted in broad terms, covering not only climate change-related issues:

> "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command"[25].

30. Second, the principle of CBDR, in addition to being reflected in the UNFCCC and the Paris Agreement, to which 195 and 198 States are parties respectively, has been reaffirmed on several occasions by, *inter alia*, the UN General Assembly[26], the Conference of the Parties ('COP') under the UNFCCC[27], and States within their domestic legal systems. This constitutes State practice and evidence of *opinio juris* supporting a finding that the principle of CBDR is firmly established as part of customary international law.

31. Third, as explained above, the obligations of States in respect of climate change beyond the UNFCCC and the Paris Agreement must be interpreted and applied in the light of these latter treaties[28], which incorporate CBDR as a general principle with the same function. Such an interpretative function is particularly important when assessing, for example, States' obligations under international law having a due diligence character, such as those arising from

[24] See, for example, Written Statement of Canada, para. 29; Written Statement of Germany, para. 79.

[25] UN General Assembly, Report of the United Nations Conference on Environment and Development (A/CONF.151/26) (Vol. I), Rio Declaration on Environment and Development, 12 August 1992 ('Rio Declaration'), Principle 7.

[26] See, for example, UN General Assembly resolution 70/1 ('Transforming our world: the 2030 Agenda for Sustainable Development') (A/RES/70/1), 25 September 2015, para. 12; UN General Assembly resolution 77/165 ('Protection of global climate for present and future generations of humankind') (A/RES/77/165), 21 December 2022, third preambular paragraph and paras. 2, 5.

[27] UNFCCC, Decision 1/CMA.3, Glasgow Climate Pact (FCCC/PA/CMA/2021/10/Add.1), 13 November 2021, paras. 4 and 23; UNFCCC, Decision 1/CP.27, Sharm el-Sheikh Implementation Plan (FCCC/PA/CMA/2022/L.21), 20 November 2022, para. 12; UNFCCC, Decision 1/CMA.5, Outcome of the first global stocktake (FCCC/PA/CMA/2023/16/Add.1), 13 December 2023, para. 7.

[28] See paras. 17-22 above.

the principle of prevention under customary international law, or the duty to protect and preserve the marine environment under UNCLOS and customary international law[29].

32. Fourth, and relatedly, the applicability of the principle of CBDR beyond the framework of the UNFCCC and the Paris Agreement has already been recognized by, *inter alia*, the ITLOS[30], the European Court of Human Rights[31], and the Committee on the Rights of the Child[32].

33. It has also been contended by some participants that, with the adoption of the Paris Agreement, the principle of CBDR is now limited to the interpretation and application of States Parties' commitment to reduce GHG emissions within their respective current and future NDCs[33]. There is, however, nothing in the text, object and purpose or drafting history of the Paris Agreement that could lead to such a narrow interpretation of the principle. The latter permeates the entire Paris Agreement, as well as the UNFCCC.

34. A number of participants have also suggested, as a separate argument, that the principle of CBDR should not be understood as relating to a historical responsibility of particular States, in the sense that the extent of historical GHG emissions should not by itself be considered as a basis of either obligations or responsibility. Some of these participants also stress that international law contained no obligations in respect of climate change before the 1990s, before the UNFCCC was adopted[34].

35. Ecuador has explained the inequitable and paradoxical situation that results from climate change, as the States that have contributed the least to the troubling current state of affairs are at the same time the most vulnerable to its adverse effects and often do not have the

[29] See also *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), paras. 227, 229, 326.

[30] *Ibid*.

[31] *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland,* Application No. 53600/20, Judgment, 9 April 2024*,* paras. 442-443, 571.

[32] *Sacchi et al. v. Argentina*, Communication No. 104/2019, Decision of 22 September 2021 (CRC/C/88/D/104/2019), para. 10.10.

[33] See, for example, Written Statement of Germany, para. 80.

[34] See, for example, Written Statement of Germany, paras. 40, 59; Written Statement of Japan, paras. 27, 31; Written Statement of the United States of America, paras. 3.25-3.28.

means and resources that are necessary to adapt[35]. The principle of CBDR, as a manifestation of the general principle of equity, serves to strike a proper balance in this context. It requires taking historical contributions into account when determining whether a State has satisfied its obligations in respect of climate change today. Any other position would be manifestly unreasonable, perpetuating the disadvantaged position in which developing countries find themselves.

36. Finally, in relation to the obligation to adopt and implement mitigation measures under the UNFCCC and Paris Agreement specifically, there is wide agreement among participants that the principle of CBDR operates so as to determine what is to be expected from each State in the light of its own circumstances and capabilities. In particular, most participants recognize that developed countries must take the lead in reducing GHG emissions[36], while others suggest that those countries must rapidly phase out fossil fuels[37] and set more ambitious targets aligned with the Paris Agreement pathways[38].

37. Some participants interpret the principle of CBDR in the sense that it limits substantive mitigation obligations, particularly for developing countries, arguing that they should have more flexibility so as to allow for economic development and poverty eradication[39]. It has been suggested in this regard that developed countries' mitigation ambitions and actions are inadequate given their historical emissions[40]. Certain participants similarly interpret the principle of CBDR as requiring differentiation, while criticising developed countries' failure to reduce emissions and to fully cooperate in accordance with their obligations[41]. Finally, some participants acknowledge differentiation based on CBDR but interpret the principle within the context of "highest possible ambition" and "progression" in the Paris Agreement, recognizing CBDR while emphasizing the need for all States to increase their ambition over time[42].

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[35] Written Statement of Ecuador, paras. 3.59-3.61.

[36] Written Statement of Brazil, para. 26; Written Statement of China, para. 35; Written Statement of Colombia, paras. 3.40, 3.50; Written Statement of Egypt, para. 67.

[37] Written Statement of Antigua and Barbuda, paras. 481-482; Written Statement of Colombia, para. 4.10; Written Statement of Vanuatu, paras. 272-273.

[38] Written Statement of Vanuatu, paras. 317, 319, 408-411.

[39] Written Statement of China, paras. 54-59.

[40] Written Statement of India, paras. 64-67.

[41] Written Statement of Brazil, para. 53.

[42] Written Statement of the European Union, paras. 150, 153.

38. It is unquestionable, as noted above, that the principle of CBDR informs the interpretation and application of all obligations of States in respect of climate change. However, this does not mean that the principle may be invoked to render these obligations meaningless. Nor may it be invoked, within the framework of the UNFCCC and the Paris Agreement, to lower the level of ambition in any State's NDC. All States, including developing ones, must strive to enhance their NDCs over time, commensurate with their respective capacities. This interpretation aligns with the object and purpose of the Paris Agreement, particularly its emphasis on "highest possible ambition" and "progression", and is most consistent with the principle of equity in which CBDR is grounded.

39. The European Court of Human Rights, in the case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, recently elaborated on the point, noting that, under the principle of CBDR, 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"[43]. The Court further underscored that the principle of CBDR "requires the States to act on the basis of equity and in accordance with their own respective capabilities"[44].

40. In conclusion, Ecuador submits that the CBDR principle is a fundamental part of international law applicable to climate change obligations. It serves to balance responsibilities between developed and developing countries, taking into account their different historical contributions to climate change and their respective capabilities to address it.

III. The principle of inter-generational equity

41. In its Written Statement, Ecuador explained that the principle of inter-generational equity is relevant for the interpretation and application of States' obligations in respect of climate change. This principle, enshrined in numerous international instruments, including the Rio Declaration, the UNFCCC and the Paris Agreement, mandates that a just balance be drawn between the needs of present and future generations when adopting measures to combat climate

[43] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20, Judgment, 9 April 2024, para. 442.

[44] *Ibid.*, para. 571.

change[45]. Like the principle of CBDR, the principle of inter-generational equity is closely linked to the general principle of equity and informs the obligations of States in respect of climate change, including beyond the UNFCCC and the Paris Agreement[46].

42. Ecuador notes the widespread recognition of this principle in the Written Statements of other participants in the present proceeding. However, these submissions also reveal a spectrum of approaches regarding the status and legal implications of inter-generational equity in relation to the questions on which the opinion of the Court is sought.

43. First, some participants have advanced varying arguments as to the legal status of the principle of inter-generational equity. For example, the view has been put forward that it should be considered a rule of customary international law[47] or emerging principle of general international law[48] capable of generating independent obligations under international law. Other participants have made reference to their domestic law (including judicial decisions) to illustrate how they incorporate the principle of inter-generational equity at the national level[49].

44. Ecuador considers that the principle of inter-generational equity is a general principle of law within the meaning of Article 38, paragraph (1)(*c*), of the Court's Statute. It submits that in the context of the determination of States' obligations in respect of climate change, the principle serves for purposes of interpretation and application of those obligations.

45. Second, some participants have suggested that, irrespective of its legal status, the application of inter-generational equity as a principle and, more broadly, any reference to the interests and needs of future generations, would be unhelpful given an alleged vagueness of the concept[50]. Ecuador does not share this view. The principle of inter-generational equity is connected with the international protection of the rights of children, which necessitates that

[45] Written Statement of Ecuador, paras. 3.57-3.58.

[46] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 166.

[47] Written Statement of the IUCN, paras. 388-390; Written Statement of Vanuatu, paras. 480-481.

[48] Written Statement of the European Union, paras. 177-182.

[49] Written Statement of Barbados, paras. 786-799; Written Statement of Colombia, paras. 2.82-2.84; Written Statement of Germany, paras. 17-21; Written Statement of Mexico, para. 100; Written Statement of Saint Vincent and the Grenadines, para. 52-55.

[50] Written Statement of Thailand, paras. 36-38.

their best interest be taken into account in the adoption of measures relating to climate change. In this vein, the European Court of Human Rights has recently stated that:

> "… By their commitment to the UNFCCC, the States Parties have undertaken the obligation to protect the climate system for the benefit of present and future generations of humankind … This obligation must be viewed in the light of the already existing harmful impacts of climate change, as well as the urgency of the situation and the risk of irreversible harm posed by climate change"[51].

46. It must be recalled in this context that children, being particularly vulnerable to climate change, are entitled to specific protection under the CRC[52]. Article 3(1) of the CRC refers to the standard of the best interest of the child, mandating that States prioritise this principle in all actions concerning children. This requirement extends to climate-related decisions and policies. As the Committee on the Rights of the Child put it in its General Comment No. 26, "[e]nvironmental decisions generally concern children, and the best interests of the child shall be a primary consideration in the adoption and implementation of environmental decisions, including laws, regulations, policies, standards, guidelines, plans, strategies, budgets, international agreements and the provision of development assistance"[53]. The Committee has further determined that, "[w]hile the rights of children who are present on Earth require immediate urgent attention, the children constantly arriving are also entitled to the realization of their human rights to the maximum extent"[54].

47. The European Court of Human Rights has similarly acknowledged the enduring consequences of climate change for generations to come. In addressing a violation of Article 8 of the ECHR, the Court stated:

> "In the present context, having regard to the prospect of aggravating consequences arising for future generations, the intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs

[51] *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland,* Application No. 53600/20, Judgment, 9 April 2024*,* para. 420.

[52] *Ibid.* See also Committee on the Rights of the Child, General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change (CRC/C/GC/26), May 2023, para. 40.

[53] Committee on the Rights of the Child, General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change (CRC/C/GC/26), May 2023, para. 16.

[54] *Ibid*. para. 11.

for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review" [55].

48. In sum, Ecuador submits that the principle of inter-generational equity is a fundamental interpretive tool for climate change obligations under international law. The principle requires States to take into account the interests and needs of future generations when implementing those obligations, and may give rise to more specific rights and obligations of States.

IV. The principle of prevention

49. As Ecuador explained in its Written Statement, the principle of prevention, as a rule of general international law binding on all States, is applicable in the context of climate change. It requires States to adopt and effectively implement measures to reduce GHG emissions originating from territory under their jurisdiction or control, having due regard to the due diligence character of the obligation, the best available science, international rules and standards, and the principles of CBDR and inter-generational equity. States must do so to prevent significant harm to the environment of other States or to areas beyond national jurisdiction[56].

50. Some participants in these proceedings have advanced the view that the principle of prevention is not relevant or suitable for application in the context of climate change. It has been argued, for example, that climate change issues cannot be treated as pollution of the environment[57]; that the emission of GHGs is a diffuse activity around the world and cannot be traced to a specific source[58]; that the harm caused by climate change is not transboundary but global[59]; that the link between the harm caused by GHG emissions and the source-activity is not sufficiently direct in time and space[60]; and that the principle of prevention cannot contradict or "enhance" the the Paris Agreement[61].

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[55] *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland,* Application No. 53600/20, Judgment, 9 April 2024*,* para. 420.

[56] Written Statement of Ecuador, para. 3.25.

[57] Written Statement of India, para. 17.

[58] Written Statement of Indonesia, para. 61; Written Statement of the United States of America, paras. 4.15, 4.17.

[59] Written Statement of the United States of America, para. 4.18.

[60] Written Statement of the United States of America of America, para. 4.19.

[61] Written Statement of OPEC, para. 82.

51. These suggestions cannot be upheld. First, as already noted above, the scope of the first question submitted to the Court is that of clarifying States' obligations to protect the environment and the climate system "from anthropogenic emissions of greenhouse gases". In this regard, Ecuador shares the views of other participants that the question is broad enough to address activities, pollutants or the protection of particular objects or subjects[62], including pollution and degradation[63].

52. There is no doubt that anthropogenic GHG emissions constitute a form of pollution of the environment. The IPCC has stressed that human activities have caused global warming through such emissions[64], leading to widespread adverse impacts and related loss and damage to nature and people[65]. Moreover, as further explained below, the ITLOS has characterized anthropogenic GHG emissions as a type of 'pollution to the marine environment' within the meaning of Article 1(1)(4) of UNCLOS, in light of the available scientific evidence produced by the IPCC[66].

53. Second, whether significant harm to the environment of other States or of areas beyond national jurisdiction can be traced back to specific sources of pollution for purposes of applying the principle of prevention is primarily a question of scientific evidence and causation. The science is clear that the climate change affects both the environment of States and the environment of areas beyond national jurisdiction, and the principle of prevention applies with respect to significant harm that may be caused to either of them. Furthermore, as Ecuador has noted, the Court is not called upon to determine the responsibility of a particular State or States in these proceedings, and thus need not make an *a priori* determination of whether

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[62] Written Statement of Vanuatu, para. 215.

[63] Draft guidelines on the protection of the atmosphere, with commentaries, *Yearbook of the International Law Commission, 2021,* vol. II, Part Two, pp. 13-51, p. 27, Guideline 1 (b) and (c), paras. 6-12.

[64] IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (CUP, 2021), p. 4, para. A.1; *Climate Change 2023: Synthesis Report* (2023), p. 10, paras. A.1 and A.4 .

[65] IPCC, Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (CUP, 2022), p. 5, para. A.2. See also pp. 5-6, paras. A.2.1-A.2.7.

[66] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), paras. 159 to 179. See also paras. 60-61 below.

demonstrating causation is possible or not[67]. In responding to a similar argument, the ITLOS noted in the *COSIS Advisory Opinion* that:

> "In the Tribunal's view, there appears to be no convincing reason to exclude the application of article 194, paragraph 2, to such pollution. It is acknowledged that, given the diffused and cumulative causes and global effects of climate change, it would be difficult to specify how anthropogenic GHG emissions from activities under the jurisdiction or control of one State cause damage to other States. However, this difficulty has more to do with establishing the causation between such emissions of one State and damage caused to other States and their environment. This should be distinguished from the applicability of an obligation under article 194, paragraph 2, to marine pollution from anthropogenic GHG emissions" [68].

54. While it is true that the principle of prevention has been applied in past legal proceedings before the Court and other international tribunals with respect to transboundary harm arising from specific activities, this does not mean that the principle is not applicable to pollution through anthropogenic GHG emissions, diffuse as the latter may be. The formulation of the principle of prevention, be it in international instruments or in judicial and arbitral decisions, has always been broad, referring to "activities" that may cause significant transboundary harm generally. The fact that the principle of prevention is expressly mentioned in the UNFCCC attests to the fact that the principle is, as noted above, indeed relevant in the context of climate change.

55. The ITLOS has confirmed the above position in the *COSIS Advisory Opinion* with respect of Article 194(2) of UNCLOS, which reflects the principle of prevention under customary international law. The Tribunal concluded that, under that provision, "States Parties have the specific obligation to take all measures necessary to ensure that anthropogenic GHG emissions under their jurisdiction or control do not cause damage to other States and their environment, and that pollution from such emissions under their jurisdiction or control does not spread beyond areas where they exercise sovereign rights …"[69].

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[67] See also *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024 (unreported), para. 77.

[68] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 252.

[69] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 252. See further paras. 66-67 below.

56. In sum, Ecuador reaffirms that the principle of prevention is applicable in the context of climate change; it requires all States – considering the due diligence character of the obligation – to reduce GHG emissions originating from activities under their jurisdiction or control so as to prevent significant harm to the environment of other States or of areas beyond national jurisdiction.

V. Obligations under UNCLOS and corresponding rules of customary international law

57. As Ecuador explained in its Written Statement, UNCLOS contains various obligations, largely reflective of rules of customary international law, that are relevant in the context of climate change[70]. Those obligations are to be found mainly in Part XII of the Convention and include, *inter alia*, the duty to protect and preserve the marine environment (Article 192), the obligation to take measures to prevent, reduce and control pollution of the marine environment (Article 194), the obligation to cooperate on a global or regional basis (Article 197), and the obligation to provide scientific and technical assistance to developing States (Articles 202 and 203).

58. Ecuador also referred in its Written Statement to the advisory proceedings before the ITLOS at the request of the Commission of Small Island States on Climate Change and International Law, which were pending at the time[71]. As already noted above, the Tribunal has since then rendered the *COSIS Advisory Opinion* on 21 May 2024, and it contains several statements of fact and law that are relevant for the present proceeding. The following findings of the opinion are particularly worth highlighting at this stage, as they serve to respond to the positions advanced by some participants in their Written Statements.

59. First, contrary to the position previously expressed by a few participants[72], the ITLOS confirmed that the definition of "pollution of the marine environment" in Article 1(1)(4) of UNCLOS includes pollution through anthropogenic GHG emissions. Interpreting this provision in accordance with Articles 31 and 32 of the VCLT and in the light of the relevant

[70] Written Statement of Ecuador, paras. 3.86-3.96.

[71] *Ibid*., para. 3.87.

[72] See, for example, Written Statement of China, paras. 102, 104-107; Written Statement of the Russian Federation, para. 20.

IPCC reports, the Tribunal came to the conclusion that GHGs are a type of substance and energy[73] that is introduced by man directly and indirectly into the marine environment[74], resulting or likely to result in deleterious effects on the marine environment, such as ocean warming, sea-level rise, and ocean acidification[75].

60. The key legal consequence of this finding by the Tribunal is that the obligations under Part XII of UNCLOS, which are for their most part triggered in cases of pollution of the marine environment, are applicable to anthropogenic GHG emissions.

61. Second, as explained above, and in contrast to what some participants have advanced in these proceedings[76], the Tribunal confirmed that the UNFCCC and the Paris Agreement do not constitute a *lex specialis* superseding the provisions of UNCLOS[77].

62. The Tribunal also made important clarifications concerning the nature and content of, among others, the obligations under Articles 194, 192, 197, 202 and 203 of UNCLOS, some of which warrant a few words.

63. As regards Article 194, which Tribunal characterized as the "primary provision in the marine pollution regime set out in Part XII"[78], it was determined that the obligation under its first paragraph is comprehensive in nature as it requires both prevention of pollution that has not yet occurred and reduction and control of pollution that has already occurred[79]. Importantly, the Tribunal clarified that the obligation is not discharged exclusively through participation in

[73] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), paras. 163-164.

[74] *Ibid*., para. 172.

[75] *Ibid*., paras. 176-178.

[76] See, for example, Written Statement of China, paras. 92-96; Written Statement of Japan, paras. 14-15 and 18; Written Statement of the United States of America, paras. 3.1-3.52.

[77] See paras. 17-25 above.

[78] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 193.

[79] *Ibid*., para. 198.

global efforts to combat climate change[80]; rather, "States are required to take all measures, including individual actions as appropriate"[81].

64. The Tribunal also stated that the "necessary measures" that must be taken under Article 194(1) of UNCLOS to prevent, reduce and control pollution through GHG emissions must be determined on the basis of objective criteria, in particular the best available science (notably that found in the relevant IPCC reports), international rules and standards (such as the UNFCCC, the Paris Agreement, Annex VI to the International Convention for the Prevention of Pollution from Ships, Annex 16 of the Convention on International Civil Aviation, and the Montreal Protocol on Substances that Deplete the Ozone Layer with its Kigali Amendment), and the available means and capabilities of each State[82].

65. The Tribunal further confirmed that the obligation under Article 194(1) is one of due diligence, which "requires a State to put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance to make such system function efficiently, with a view to achieving the intended objective"[83]. The standard of due diligence, which may vary over time, must be determined taking into account, *inter alia*, scientific and technological information, international rules and standards, and the risk of harm and the urgency involved[84].

66. The Tribunal confirmed, in addition, that Article 194(2) of the Convention applies to anthropogenic GHG emissions in the context of transboundary pollution, and that the obligation is distinct from that found in Article 194(1)[85]. The Tribunal rejected the suggestion, also advanced in the present proceedings[86], that given the diffuse and cumulative causes and global effects of climate change, it would be difficult to specify how the GHG emissions originating from one State could cause damage to other States and their environment. Instead,

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[80] *Cf.* Written Statement of China, para. 142; Written Statement of Japan, para. 13; Written Statement of the United States of America, paras. 3.34-3.35.

[81] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 202.

[82] *Ibid.*, paras. 207-229.

[83] *Ibid*., para. 235.

[84] *Ibid.*, paras. 239 ff.

[85] *Ibid*., paras. 244-246.

[86] See, for example, the Written Statement of Indonesia, para. 61; Written Statement of the United States of America, paras. 4.15-4.17.

the Tribunal found that "this difficulty has more to do with establishing the causation between such emissions of one State and damage caused to other States and their environment", which "should be distinguished from the applicability" of the obligation under Article 194(2)[87]. As explained above, similar considerations apply with respect to the principle of prevention under customary international law, which is reflected in Article 194(2) of UNCLOS[88].

67. Article 192 of UNCLOS, in the Tribunal's view, contains an independent obligation both to protect and to preserve the marine environment. The obligation to protect includes an obligation to prevent significant harm, in accordance with Articles 194, 207, 211 and 212 of the Convention. The obligation to preserve the marine environment, for its part, requires in the context of marine pollution from anthropogenic GHG emissions that States adopt measures "that include resilience and adaptation actions as described in the climate change treaties"[89]. This includes the adoption and implementation of adaptation measures to restore the ocean and enhace its capacity as a carbon sink.

68. The Tribunal also noted, consistent with the relevant IPCC reports, that most anthropogenic GHG emissions originate from land-based sources, vessels and aircraft, which are sources of pollution of the marine environment regulated by Articles 207, 211, 212, 213, 217 and 222 of the Convention[90]. The Tribunal underscored that these articles "complement and elaborate the obligations to all sources of pollution set out in article 194", and that their interpretation must therefore be compatible with that of the latter[91].

69. The Tribunal also made important clarifications regarding the obligations to cooperate under UNCLOS. As regards Article 197, it noted that it is aimed at the formulation and elaboration of rules, practices and procedures (binding or non-binding) for the protection of the marine environment, and that it provides for flexibility as to the forms of cooperation[92]. The

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[87] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 252.

[88] See paras. 66-67 above. See also *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 246.

[89] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 391.

[90] *Ibid*., paras. 263-264.

[91] *Ibid*., para. 265.

[92] *Ibid*., para. 302.

Tribunal added that Article 197 "does not obligate States to achieve a normative outcome but to participate meaningfully in the formulation and elaboration" of such rules, practices and procedures (*i.e.*, it is an obligation of conduct)[93].

70. The Tribunal further emphasized that this obligation is of a continuing nature: the adoption of a particular treaty (like the UNFCCC or the Paris Agreement), "does not discharge a State from its obligation to cooperate". Rather, States must make a continued effort to develop "new or revised regulatory instruments, in particular in light of the evolution of scientific knowledge"[94]. This finding is significant as it underscores the need to ensure that international standards are consistent with the best available science on climate change – indeed, divergences between such standards and scientific evidence may lead to undesired results.

71. Finally, the Tribunal addressed the scope and content of Article 202, concerning scientific and technical assistance to developing States, and Article 203, relating to the preferential treatment that must be given to developing States[95]. Ecuador recalls that, for developing countries, the implementation of many of the obligations under UNCLOS – as well as other rules of international law relating to climate change – require significant financial, technical and scientific resources to design and implement the best possible mitigation and adaptation measures.

VI. Obligations under international human rights law

72. In its Written Statement, Ecuador explained that States' obligations in respect of climate change arise also from international human rights law, putting emphasis on the ICCPR, the Inter-American Convention on Human Rights, the CRC, and customary international law. Without wishing to be exhaustive, Ecuador noted that States are required to adopt mitigation and adaptation measures so as to ensure protection of the right to life, the right to privacy and family life, and the right to a clean, healthy and sustainable environment. When fulfilling these obligations, other rules of international law may need to be taken into account, including those

[93] *Ibid.*, para. 307.

[94] *Ibid*., para. 311.

[95] *Ibid*., paras. 322 ff.

set out in the UNFCCC and the Paris Agreement, for purposes of interpretation and application[96].

73. Some participants have suggested that the application of human rights instruments in the context of climate change may be of limited value based on the view that those instruments have a limited territorial scope of application. It is argued that, subject to a few exceptions, States' obligations do not extend beyond the territory under their jurisdiction or control under the relevant instruments[97].

74. Ecuador does not share this view. In its Written Statement, Ecuador drew attention to advisory opinion on *The Environment and Human Right*s rendered by the Inter-American Court of Human Rights. There the Court clarified that, under the Inter-American Convention of Human Rights, "the State obligation to respect and to ensure human rights applies to every person who is within the State's territory or who is in any way subject to its authority, responsibility or control"[98], and that a person does not need to be in the territory of a State to be subject to the latter's jurisdiction. The term 'jurisdiction', therefore, "contemplates circumstances in which the extraterritorial conduct of a State constitutes an exercise of its jurisdiction"[99]. This interpretation, which is substantially shared by other human rights bodies[100], recognizes that States cannot escape their human rights obligations by claiming that the harm occurs beyond their borders, especially when the harm is a result of their acts or omissions.

75. In light of the question before it, the Inter-American Court of Human Rights went a step further from previous case law and indicated that States' obligations under the Convention

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[96] Written Statement of Ecuador, paras. 3.97-3.102. As noted at paras. 17-25 above, the UNFCCC and the Paris Agreement do not constitute a *lex specialis vis-à-vis* human rights treaties.

[97] Written Statement of China, para. 119; Written Statement of the Russian Federation, pp. 9-10; Written Statement of the United States, para. 4.48.

[98] *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, paras. 73-74.

[99] *Ibid*., para. 78.

[100] See HRC, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Convention (CCPR/C/21/Rev.1/Add.13). 26 May 2004, paras. 10-11; *Sacchi et al. v. Argentina*, Communication No. 104/2019, Decision of 22 September 2021 (CRC/C/88/D/104/2019), para. 10.7. See also *Al-Skeini and Others v. the United Kingdom*, Application No. 55721/07, Judgment, 7 July 2011, paras. 130-142; *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, Judgment, 23 February 2012, paras. 70-82; *Jaloud v. the Netherlands*, Application No. 47708/08, Judgment, 20 November 2014, paras. 139-153; *Güzelyurtlu and Others v. Cyprus and Turkey*, Application No. 36925/07, Judgment, 29 January 2019, paras. 178-197; *Hanan v. Germany*, Application No. 4871/16, Judgment, 16 February 2021, paras. 134-145.

are triggered not only when the State exercises direct control over a person outside its territory, but also when a person's human rights are impaired outside the territory of the State as a result of an activity under the jurisdiction or control of that State which causes transboundary environmental damage[101]. This finding was partly based on reasoning that applies to other human rights treaties as well, such as the ICCPR and CRC. Notably, the Court relied on the principle of *pacta sunt servanda* to determine that treaties must be applied in a reasonable way and in such manner that their purpose can be realized, and that States must accordingly act in a way that does not hinder other States from complying with their obligations under the relevant treaties, including through acts or omissions that could have effects on the territory or inhabitants of another State[102].

76. The Inter-American Court also put emphasis on the principle of prevention under customary international law, requiring States to prevent significant transboundary harm to the environment of other States or to areas beyond national jurisdiction[103]. As already noted by Ecuador, the threshold of 'significant transboundary harm' requires assessing, *inter alia*, whether harm has been caused to the life or health of individuals, which may need to be analyzed against the background of human rights. There is thus a close link between the principle of prevention and the notion of 'jurisdiction' under human rights treaties. Thus when interpreted in the light of principle of prevention, the notion of 'jurisdiction' encompasses acts or omissions within the territory of a State that impair human rights abroad through environmental damage.

77. It is to be noted that, if a different position were to be adopted, individuals would be seriously deprived of protection under relevant human rights treaties: they would have limited or no recourse against the State or States that bear most of the responsibility for climate degradation. Individuals may seek to uphold their rights *vis-à-vis* the State in the territory of which they may be, but the damage caused may not be attributable to that State. Cooperation at the international level in terms of adaptation is crucial in this context so as to prevent harm

[101] *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, para. 101 ("… States have the obligation to avoid transboundary environmental damage that can affect the human rights of individuals outside their territory. For the purposes of the American Convention, when transboundary damage occurs that affects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin, if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory").

[102] *Ibid*., paras. 94, 101.

[103] *Ibid*., para. 103.

to individuals as much as possible, but it may not be enough in certain circumstances (notably when the mobilization of financial resources has been far from sufficient, as the facts show).

78. Some participants have further suggested that international human rights treaties do not impose a specific obligation on States to mitigate climate change through GHG emissions reductions[104]. It has been further argued in this regard that mitigation measures may have a negative impact on human rights given that they require the allocation of significant resources, or that such measures may themselves have negative effects on human rights; that mitigation measures are unlikely to contribute to the realization of human rights because of their delayed nature; and that it would be difficult to establish a causal link between harm suffered by an individual and the failure by a State to adopt and implement mitigation measures.

79. As to the first point, it is well known that human rights instruments are generally drafted in broad terms so as to cover the widest possible range of situations in which the protected rights might be impaired. Moreover, as Ecuador and other participants have already shown in their Written Statements, the effects of anthropogenic GHG emissions on the climate system and other parts of the environment are demonstrably capable of hindering the enjoyment of the human rights recognized under the relevant treaties and customary international law[105]. States are thus under an obligation to adopt both mitigation and adaptation measures in order to ensure respect for human rights, as applicable.

80. The recent judgment of the European Court of Human Rights in *Verein Klimaseniorinnen and Others v. Switzerland* is illustrative in this regard. The Court generally recognized that:

> "In line with the international commitments undertaken by the member States, most notably under the UNFCCC and the Paris Agreement, and the cogent scientific evidence provided, in particular, by the IPCC … the Contracting States need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human

[104] See, for example, Written Statement of China, para. 115; Written Statement of New Zealand, paras. 114-116; Written Statement of the Russian Federation, p. 11; Written Statement of United Kingdom, paras. 122-130; Written Statement of the United States of America, paras. 4.39, 4.42-4.47.

[105] Written Statement of Ecuador, paras. 3.97-3.98.

rights, notably the right to private and family life and home under Article 8 of the Convention"[106].

81. The European Court of Human Rights further found that Article 8 of the ECHR, relating to the right to privacy and family life, includes "a right for individuals to effective protection by the State authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life"[107]. While acknowledging a certain margin of appreciation for States in choosing the means to achieve climate objectives, the Court stressed the need to reduce GHG emissions and setting appropriate aims and objectives in this respect[108]. Specifically, the Court found that a failure to quantify national GHG emission limitations (through a carbon budget or otherwise), together with inadequate and inconsistent action to adopt and implement climate legislation, may constitute a critical failure in a State's climate policy framework and a violation of the ECHR[109].

82. As noted above, some participants further suggest that mitigation measures may have a negative impact on human rights given that they require the allocation of significant resources[110]. While mitigation measures can indeed necessitate significant resource allocation (lest even more severe and wide-ranging damage be caused to the climate system, with the ensuing consequences for human life), this fact has no bearing on the issue at hand. The obligation to mitigate climate change, whatever the source, is one of due diligence that must be fulfilled take into account, *inter alia*, the principle of CBDR. Furthermore, the preamble of the Paris Agreement recalls that States must "respect, promote and consider their respective obligations on human rights" when "taking action to address climate change", including mitigation measures. Thus, States undoubtedly must have due regard to their various obligations under applicable human rights treaties when adopting mitigation measures, but this cannot be used as an excuse not to adopt such measures.

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[106] *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland,* Application No. 53600/20, Judgment, 9 April 2024, para. 546.

[107] *Ibid*., para. 519.

[108] *Ibid*., paras. 549-550.

[109] *Ibid*., paras. 550, 570, and 572-573.

[110] Written Statement of the Russian Federation, p. 11; Written Statement of the United States, para. 121.

83. As regards the suggestion that mitigation measures are unlikely to contribute to the realization of human rights because of their "delayed nature", it fails to account for the long-term and cumulative nature of climate change impacts, as well as the preventative aspect of human rights protection. While the effects of mitigation measures may not be immediate or easily quantifiable in the short term, they are crucial for preventing further deterioration of the environment and associated human rights impacts. In its General Comment No. 36, the Human Rights Committee clarified in this regard that "[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life", thereby stressing the importance of taking preventative action to protect human rights in the context of climate change[111].

84. Finally, with respect to the view that it would be difficult to establish a causal link between harm suffered by an individual and the failure by a State to adopt and implement mitigation measures[112], this is a matter that concerns both the facts and causality under the law of State responsibility in individual cases, and has no bearing on the primary obligations that arise under the relevant human rights instruments.

VII. The duty to cooperate

85. Ecuador clarified in its Written Statement that the duty to cooperate constitutes an integral part of both general international law and the international law relating to the environment. In this regard it cited the Charter of the United Nations, the Rio Declaration, the UNFCCC, the Paris Agreement, and pronouncements by the Court and by the ITLOS[113].

86. Since then, as noted above, the ITLOS has emphasized the importance of cooperation in addressing pollution of the marine environment caused by anthropogenic GHG emissions into the atmosphere. The Tribunal observed in the *COSIS Advisory Opinion* that "almost all of the participants in the present proceedings shared the view that countering the effects of

[111] HRC, General comment No. 36 on Article 6 of the International Convenant on Civil and Political Rights, on the right to life (CCPR/C/GC/36), 30 October 2018, para. 62.

[112] Written Statement of the Russian Federation, p. 11.

[113] Written Statement of Ecuador, paras. 3.50-3.53.

anthropogenic GHG emissions on the marine environment necessarily requires international cooperation"[114]. It moreover "recall[ed] its finding in the *MOX Plant Case* that 'the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law'"[115].

87. The ITLOS further expressed the view that "the duty to cooperate is reflected in and permeates the entirety of Part XII of the [UN] Convention [on the Law of the Sea]. This duty is given concrete form in a wide range of specific obligations of States Parties, which are central to countering marine pollution from anthropogenic GHG emissions at the global level"[116]. It added that "[m]ost multilateral climate change treaties, including the UNFCCC and the Paris Agreement, contemplate and variously give substance to the duty to cooperate"[117].

88. Having surveyed the relevant provisions of the Convention, the ITLOS found that:

> "… articles 197, 200 and 201, read together with articles 194 and 192 of the Convention, impose specific obligations on States Parties to cooperate, directly or through competent international organizations, continuously, meaningfully and in good faith in order to prevent, reduce and control marine pollution from anthropogenic GHG emissions. In this regard, first, States Parties are required to cooperate in formulating and elaborating rules, standards and recommended practices and procedures, consistent with the Convention and based on available scientific knowledge, to counter marine pollution from such emissions. Second, States Parties are required to cooperate to promote studies, undertake scientific research, and encourage the exchange of information and data on marine pollution from anthropogenic GHG emissions, its pathways, risks and remedies, including mitigation and adaptation measures. Third, States Parties are required to establish appropriate scientific criteria on the basis of which rules, standards and recommended practices and procedures are to be formulated and elaborated to counter marine pollution from such emissions"[118].

89. ITLOS further opined that beyond the obligation on cooperation in addressing climate change impacts and ocean acidification, there was the obligation to cooperate in conserving

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[114] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climte Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 295 (adding that "[i]n this context, reference was made to the existence of a duty to cooperate under general international law, which informs Part XII of the [UN] Convention [on the Law of the Sea], and it was argued that this duty is central to the examination of the Request").

[115] *Ibid.*, para. 296.

[116] *Ibid.*, para. 297.

[117] *Ibid.*, para. 298.

[118] *Ibid.*, para. 321.

living marine resources, which was "found not only in articles 61, 117 and 119 but also in other provisions of the Convention, in particular, articles 63, 64 and 118"[119]. These latter provisions were found to:

> "… impose specific obligations on States Parties to cooperate, directly or through appropriate international organizations, in implementing conservation and management measures with regard to straddling and highly migratory species and other living resources of the high seas. This obligation requires States Parties, *inter alia*, to consult with one another in good faith with a view to adopting effective measures necessary to coordinate and ensure the conservation and development of shared stocks, taking into account the impacts of climate change and ocean acidification on living marine resources"[120].

90. Ecuador agrees with the observations of the ITLOS, including that "the duty to cooperate is a fundamental principle in ... general international law"[121]. As such, the duty to cooperate binds all States, whether or not they are parties to international conventions that bear upon climate change, including the UNFCCC, the Kyoto Protocol, the Paris Agreement, and UNCLOS.

91. Ecuador moreover accepts that the duty to cooperate requires States to act with due diligence[122]. The standard of due diligence, in turn, may vary over time, not least in view of the assessment of the risk and level of harm, and in relation to climate change is therefore a stringent one[123]. It follows that the duty to cooperate in respect of climate change cannot at present be limited to mere abstract consideration of further joint efforts in responding to climate change, as some participants in these proceedings appear to suggest[124]. Rather, the duty to cooperate must entail a firm commitment to "the widest possible international cooperation aimed at accelerating the reduction of global greenhouse gas emissions and addressing

[119] *Ibid.*, para. 419.

[120] *Ibid.*, para. 428.

[121] *Ibid.*, para. 296.

[122] *Ibid*., para. 309.

[123] See also *ibid*., paras. 397-400. Ecuador explained in its Written Statement that cooperation must take into account the best available scientific evidence. See Written Statement of Ecuador, para. 3.53.

[124] Written Statement of the United States of America, para. 3.33.

adaptation to the adverse impacts of climate change"[125]. It must, in the present context, have actual meaning and effect as well as specific functions.

92. Significantly, in extending to mitigation and adaptation efforts alike, the duty to cooperate is furthermore informed by the principles of equity, CBDR and due diligence, in that developed States must cooperate with developing States in addressing climate change, including by facilitating capacity building, offering financial support, and transferring and developing technology[126]. In other words, the duty to cooperate must be carried out not only meaningfully and in good faith, but with the specific aim of assisting developing States. This also applies in the event of disasters caused by climate change[127], to which developing States are particularly vulnerable.

93. Ecuador maintains that cooperation is also essential for the fulfilment of obligations under international human rights law, however widely these obligations may be considered to apply. Giving concrete meaning to the duty of cooperation is of critical importance for this reason, too.

VIII. The law of State responsibility

94. In its Written Statement, Ecuador offered its view on the appropriate construction of the second question on which the opinion of the Court is sought (Question (*b*)), which relates to the legal consequences for States that caused significant harm to the climate system (and other parts of the environment) in violation of their legal obligations[128]. Ecuador then dealt in turn with the consequences with respect to States (including specially affected States, such as Ecuador) and to peoples and individuals, both of the present and future generations[129].

[125] UN General Assembly resolution 70/1 ('Transforming our world: the 2030 Agenda for Sustainable Development') (A/RES/70/1), 25 September 2015, para. 31.

[126] The Paris Agreement envisages precisely such cooperation. See Articles 6(1), 7(6) and (7), 10(2) and (6), and 12. See also ILA, 'Resolution 2/2014 - Declaration of Legal Principles relating to Climate Change' (2014), Article 8.

[127] See also Draft articles on the protection of persons in the event of disasters, with commentaries, *Yearbook of the International Law Commission, 2016*, vol. II, Part Two, Articles 7 and 8.

[128] Written Statement of Ecuador, paras. 4.1-4.6.

[129] *Ibid.*, paras. 4.8-4.37.

95. Ecuador notes that some participants who addressed Question (*b*) sought to minimize or disregard the application of the general rules on State responsibility in relation to violations of obligations concerning climate change. For these participants, the legal consequence of any breach of relevant obligations must be determined by reference to the UNFCCC, the Kyoto Protocol and the Paris Agreement alone[130].

96. In Ecuador's view, this position is untenable. In the first place, and most clearly, not all States are parties to the relevant treaties. And even for States parties, the non-compliance mechanisms established under the Kyoto Protocol[131] and the Paris Agreement[132] are facilitative in nature and exist without prejudice to the dispute settlement mechanisms established under Article 14 of the UNFCCC. Thus, while non-compliance mechanisms may assist in the correct implementation of a treaty, the determination of State responsibility for breach of an obligation – and the specific legal consequences thereof – does not necessarily come within their purview[133].

97. In the second place, as already shown by Ecuador, the obligations of States in respect of climate change emanate not only from the climate treaties, but also from general international law and other relevant treaties. In this regard it may be recalled that, from the standpoint of their applicability, "even if two norms belonging to two sources of international law appear identical in content, and even if the States in question are bound by these rules both on the level of treaty-law and on that of customary international law, these norms retain a separate existence"[134]. Moreover, two rules of the same content may be subject to separate

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[130] Written Statement of China, paras. 139-142; Written Statement of Indonesia, para. 76; Written Statement of Japan, para. 41; Written Statement of the Russian Federation, p. 18; Written Statement of Saudi Arabia, paras. 6.3-6.7.

[131] Kyoto Protocol, Article 16; UNFCCC, Decision 27/CMP.1, Procedures and mechanisms relating to compliance under the Kyoto Protocol (FCCC/KP/CMP/2005/8/Add.3) 9-10 December 2005, Section I and XVI.

[132] The Paris Agreement Implementation and Compliance Committee "shall neither function as an enforcement or dispute settlement mechanism, nor impose penalties or sanctions, and shall respect national sovereignty". See UNFCCC, Decision 20/CMA.1, Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement (FCCC/PA/CMA/2018/3/Add.2), 15 December 2018, para. 4.

[133] See Draft guidelines on the protection of the atmosphere, with commentaries, *Yearbook of the International Law Commission, 2021,* vol. II, Part Two, pp. 13-51, p. 27, Guideline 11, para. 6. See further C. Foster, "Lessons from the Paris Agreement for International Pandemic Law and Beyond", in Ch. Voigt and C. Foster (eds.), *International Courts versus Non-Compliance Mechanisms: Comparative Advantages in Strengthening Treaty Implementation* (CUP, 2024), p. 44.

[134] *Military and Paramilitary Activities in und against Nicaragua (Nicaragua* v. *United States of America). Merits, Judgment. I.C.J. Reports 1986*, pp. 95-96, para. 178.

treatment as regards the organs competent to verify their implementation, depending on whether they are customary rules or treaty rules[135].

98. In the third place, the climate treaties themselves do not necessarily displace or otherwise render inapplicable the rules on State responsibility. These rules continue to govern matters not addressed in those treaties; and they may also constitute the background against which those treaties are to be interpreted. Thus the rules on State responsibility operate alongside and may well inform and/or complement remedies that may be available under the international climate agreements.

99. Ecuador again highlights the significance, in the present context, of the obligation of cessation. Putting an end to the internationally wrongful acts is indeed of particular and immediate importance given the present state of climate change as demonstrated by the indisputable science.

100. Ecuador further reiterates that where restitution is inapplicable, or the damage is not made good by restitution, reparation ought to take the form of compensation. This remedy is of critical important to developing States, in particular those among them that are specially affected by climate change and have been forced to adapt to it.

101. In this connection, it has been suggested that the determination of the form of reparation should take into account the principle of inter-generational equity[136]. As explained above, however, this principle serves as an interpretative tool when determining the scope and content of the primary obligation that may have been breached[137]. Thus the form of reparation continues to be governed by general rules of State responsibility, including the principle whereby the responsible State must endeavour to"wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed"[138].

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[135] *Ibid*.

[136] Written Statement of Kenya, para. 6.114. See also, considering future generations as a factor to be considered in the context of environmental compensation: Written Statement of Barbados, paras. 309-342; Written Statement of Brazil, para. 98; Written Statement of Solomon Islands, para. 240.

[137] See paras. 42-49 above.

[138] *Factory at Chorzów*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47.

102. While demonstrating a causal nexus between the internationally wrongful act and the injury suffered may sometimes be challenging in the context of climate change, these difficulties are evidentiary rather than legal[139]. In any event, there are no insurmountable hurdles in establishing the existence of an injury, not least because scientific evidence has conclusively shown that wide-ranging damage suffered by economies and populations is the result of climate change.

103. As human rights climate change litigation in domestic courts has already shown, difficulties that may arise in relation to attribution can be overcome[140]. In this regard it ought to be observed that such litigation has had the effect of making available various remedial avenues and potentially enhancing States' compliance with their international obligations.

104. Moreover, Ecuador is in agreement with the view that harm caused by private corporations and other non-State entities operating within the State may be attributed to the State concerned, especially in circumstances where that State has knowledge of the activity in question but fails to stop or otherwise limit it. States must give effect to their international legal obligations at the national level, and it is of course the case that States may not invoke their internal law as a justification for failure to comply with their international obligations[141].

[139] See also Written Statement of France, paras. 180-182.

[140] See, for example, Federal Constitutional Court of Germany, *Neubauer et al v. Germany (2020)*; Supreme Court of Colombia, *Future Generations v Ministry of the Environment and others (2018)*; Written Statement of Colombia, paras. 2.82-2.84.

[141] See also Article 32 of the Articles on Responsibility of States for Internationally Wrongful Acts, entitled 'Irrelevance of internal law', according to which "[t]he responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part" (*Yearbook of the International Law Commission, 2001*, Vol. II (Part Two), p. 94).

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