INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE (REQUEST FOR ADVISORY OPINION)

WRITTEN COMMENTS OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE

15 AUGUST 2024

CONTENTS

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE (REQUEST FOR ADVISORY OPINION)

CHAPTER I. INTRODUCTION

1. On 29 March 2023, Resolution 77/276 was adopted by consensus by the United Nations General Assembly (**UNGA**) requesting the International Court of Justice (**Court**) to render an advisory opinion on the obligations of States in respect of climate change, specifically:

> "*Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,*
>
> *(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?*
>
> *(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:*
>
> *(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?*
>
> *(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?*"[1] (**Request**)

2. By letters dated 17 April 2023, the Deputy-Registrar gave notice of the Request to all States entitled to appear before the Court, pursuant to Article 66(1) of the Statute of the International Court of Justice (**Statute**).

[1] *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, GA Res 77/276, UN Doc A/Res/77/276 (4 April 2023, adopted 29 March 2023) ('*Request*').

3. In its Order of 20 April 2023, the Court decided that "*the United Nations and its Member States are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion and may do so within the time-limits fixed in this Order*", and fixed 20 October 2023 as the time-limit within which written statements on the question could be presented to the Court.

4. In its Order of 4 August 2023, the Court extended:

   4.1 to 22 January 2024 "*the time-limit within which all written statements on the questions may be presented to the Court in accordance with Article 66, paragraph 2, of the Statute*"; and

   4.2 to 22 April 2024 "*the time-limit within which States and organizations having presented written statements may submit written comments on the other written submission in accordance with Article 66, paragraph 4, of the Statute*".

5. In its Order of 15 December 2023, the Court further extended:

   5.1 to 22 March 2024 "*the time-limit within which all written statements on the questions may be presented to the Court in accordance with Article 66, paragraph 2, of the Statute*"; and

   5.2 to 24 June 2024 "*the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements in accordance with Article 66, paragraph 4, of the Statute*".

6. In its Order of 30 May 2024, the Court further extended to 15 August 2024 "*the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute*".

7. Pursuant to the Order of 30 May 2024, and having presented its written statement on 22 March 2024, the Democratic Republic of Timor-Leste (**Timor-Leste**) wishes to avail itself of the opportunity to furnish written comments on the other written

statements received. Timor-Leste submits these written comments within the time limit so fixed by the Court.

8. Timor-Leste confirms that these written comments are without prejudice to its rights under international law unrelated to the current Request.

9. Timor-Leste's written comments proceed as follows:

9.1 **Chapter II** provides an overview of the key principles of common but differentiated responsibilities (**CBDR-RC**) and permanent sovereignty over natural resources (**PSNR**) that inform all of Timor-Leste's submissions in its written statement and these written comments;

9.2 **Chapter III** further clarifies Timor-Leste's approach towards the law applicable to the Request. It considers that the Court should conclude the Climate Change Regime is *lex specialis* with respect to the rights and obligations of States concerning climate change. Furthermore, of the sources of law the Court determines are applicable, it must interpret and apply the law as it exists;

9.3 **Chapter IV** addresses law of the sea including the presumption that maritime entitlements remain fixed, and addresses the recent findings of the International Tribunal for the Law of the Sea (**ITLOS or The Tribunal**) in its advisory opinion on climate change;

9.4 **Chapter V** considers State responsibility flowing from breaches of States' climate change obligations; and

9.5 **Chapter VI** briefly concludes.

CHAPTER II. KEY THEMES

10. Timor-Leste's written statement stressed the importance of two key concepts that are interrelated and reflected throughout the **Climate Change Regime** (being the United

Nations Framework Convention on Climate Change (**UNFCCC**), the Kyoto Protocol, and the Paris Agreement), namely:

10.1 *first*, CBDR-RC;[2] and

10.2 *second*, PSNR.[3]

11. Timor-Leste's detailed submissions on these principles are discussed at **paragraphs 128 to 145, 272 to 281, and 365 to 368** of its written statement.

12. An overwhelming number of States and intergovernmental organisations have stressed the central role of CBDR-RC in the Climate Change Regime,[4] as well as the importance of PSNR[5] in its interpretation and implementation. These principles play an integral role in shaping States' obligations under the Climate Change Regime in a manner that allows developing States to participate in the transition to net zero without compromising the basic social security of its citizens.

13. *First*, CBDR-RC is a core structural element of the Climate Change Regime.[6] In industrialising early, developed and high-emitting countries have gained significant economic and technological advantages. On the contrary, developing States,

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2 See for example United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, UN Doc A/CONF.151/26 (vol I) (12 August 1992), preamble; *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994), preamble, arts 3(1), 4(1) ('*UNFCCC*'); *Paris Agreement*, opened for signature 22 April 2016, 1155 UNTS 146 (entered into force 4 November 2016), arts 2(2), 4(3), and 4(19) ('*Paris Agreement*').

3 United Nations Conference on the Human Environment, *Stockholm Declaration: Declaration on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (16 June 1972), principle 21 ('*Stockholm Declaration*').

4 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [109]-[115], Antigua & Barbuda [143]-[160], Argentina [39], Australia [2.14]-[2.15], Bahamas [88], [138], Bangladesh [127]-[131], Barbados [207], Brazil [12]-[29], Cameroon [15]-[16], China [35]-[38], Colombia [3.42]-[3.59], Cook Islands [137], Commission of Small Island States [142]-[144], Costa Rica [58]-[64], Democratic Republic of Congo [191]-[195], Dominican Republic [4.24], Ecuador [3.59]-[3.62], Egypt [139]-[151], El Salvador [38]-[41], European Union [185]-[220], France [43]-[48], Germany [78]-[81], Grenada [23], [43], India [37]-[42], Indonesia [65]-[71], Iran [33]-[42], International Union for the Conservation of Nature [8]-[10], Japan [22]-[31], Kenya [5.22]-[5.25], Kiribati [146]-[154], Kuwait [17], [29], Madagascar [49]-[52], Namibia [74]-[77], Nepal [25], Netherlands [3.5]-[3.6], New Zealand [16], [47], Nordic Countries [54], Pakistan [40]-[46], Philippines [92]-[96], Portugal [45]-[50], Romania [61]-[76], Saint Lucia [58]-[65], Saint Vincent & the Grenadines [97], Samoa [144], [151], Saudi Arabia [4.49]-[4.50], Seychelles [151], Sierra Leone [3.39]-[3.43], Singapore [3.31]-[3.33], Solomon Islands [87]-[100], South Africa [75]-[78], Sri Lanka [115], Switzerland [45]-[46], Thailand [18]-[25], Timor-Leste [128]-[145], Tonga [161]-[175], Tuvalu [109], United Arab Emirates [133]-[152], United Kingdom [143]-[147], United States of America [3.23]-[3.30], Uruguay [133]-[145], Vanuatu [312], and Viet Nam [16]-[17].

5 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [198(a)], Argentina [48], Bolivia [36], Cook Islands [237], Commission of Small Island States [70], Costa Rica [72], European Union [236]-[237], France [98], Grenada [38], International Union for the Conservation of Nature [308], [409], [486], Kiribati [86], [152]-[153], [169], [187], Korea [26], Kuwait [10(3)], [14(3)], [29(3)], [137(3)(iii)], Melanesian Spearhead Group [236], Mexico [40], Pacific Islands Forum Fisheries Agency [36], Saint Vincent & the Grenadines [99], Samoa [96], Sri Lanka [94(d)], Timor-Leste [272]-[281], Tonga [178]-[193], Uruguay [99] [146], [149], and Vanuatu [293]-[294].

6 *UNFCCC* (n 2) preamble, arts 3(1), 4(1); *Paris Agreement* (n 2) preamble, arts 2(2), 4(3), 4(19).

particularly Least Developed Countries (**LDCs**) and Small Island Developing States (**SIDS**), face significant challenges including poverty eradication, sustainable economic development, and pollution control. Developing States also suffer from a significant resource imbalance. They lack the necessary resources and capacity to deliver a comprehensive response to climate change without compromising their country's development needs. States' obligations under the Climate Change Regime must be commensurate to each States' level of development, available resources, and historic and ongoing contributions to climate change.[7] Developed States are obligated to provide technical, financial, and human resources, including technology transfer and capacity-building to bridge this gap.[8] Therefore, developed and high-emitting States have assumed obligations and responsibilities different from those of developing States when these factors are accounted for.

14. *Second,* States are entitled to develop their natural resources to deliver basic needs to their citizens. An interpretation of the Climate Change Regime that curtails this right would have the effect of penalising those States that did not industrialise early and fails to account for the history of colonisation (and in Timor-Leste's case also foreign occupation) and its lasting effects on developing economies.[9] The Intergovernmental Panel on Climate Change in its Sixth Assessment Report concluded that "[v]*ulnerability of ecosystems and people to climate change differs substantially among and within regions (very high confidence), driven by patterns of intersecting socioeconomic development, unsustainable ocean and land use, inequity,*

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7 Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, *Compilation of Texts Related to Principles, Submitted by the Bureau of Working Group I*, UN DocA/AC.237/Misc.6 (13 August 1991) first session, part I.E.7; Harald Winkler et al, 'What Factors Influence Mitigation Capacity' (2007) 35 *Energy Policy* 692-703; see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Antigua & Barbuda [146], Bangladesh [129]-[131], Brazil [26], Cameroon [15], China [34]-[38], [66], Democratic Republic of Congo [192], El Salvador [39], France [45], India [28], [37]-[42], International Union for the Conservation of Nature [133], Iran [79], Saudi Arabia [4.13], Sierra Leone [3.34]-[3.35], [3.40], Singapore [3.33]-[3.34], Solomon Islands [88]-[100], Switzerland [52], Timor-Leste [126]-[145], Tonga [163]-[170], Tuvalu [307], United Kingdom [143], Uruguay [133], and Vanuatu [415].

8 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [144]-[148], Albania [91], Antigua & Barbuda [115], [1169], [445], [508]-[509], Argentina [39], Australia [2.33], Bahamas [111], [209], [211], Bangladesh [118], [140]-[141], Barbados [216], [218], [282], [296]-[298], Bolivia [26], [28], Brazil [53], [64], Burkina Faso [123], [126]-[127], Cameroon [17], China [72], Colombia [3.48], Commission of Small Island States [128], Cook Islands [263], Ecuador [4.38(7)], Egypt [151], [165], [170]-[171], France [235], India [48]-[60], Iran [44]-[49], [65]-[71], Korea [21], Kuwait [45]-[50], Latvia [23], Madagascar [54], [91], New Zealand [63(a)], [66]-[68], Organisation of Petroleum Exporting Countries [82], Pakistan [57]-[60], Peru [79], Saint Lucia [65], Saudi Arabia [4.25]-[4.26], Sierra Leone [3.29], Singapore [3.36]-[3.43], Solomon Islands [103]-[108], South Africa [111]-[123], Switzerland [53], Timor-Leste [161]-[177], Tonga [194]-[205], Tuvalu [148], United Kingdom [72], [162], [165], United States of America [3.20], Uruguay [125]-[132], Vanuatu [424], and Viet Nam [49].

9 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Burkina Faso [210], Kiribati [152]-[153], Organisation of African, Caribbean & Pacific States [41]-[49], Saudi Arabia [4.16], Timor-Leste [321], [328], [338]-[342], and Vanuatu [640].

marginalization, historical and ongoing patterns of inequity such as colonialism, and governance".[10] The IPCC's acknowledgment of the connection between climate change and acts of colonisation recognises that historic injustices are not consigned to history: their legacies continue into the present. The lasting impacts of colonialism have significantly hindered developing States' ability to achieve an acceptable level of economic independence, and in turn, their ability to adequately respond to the adverse effects of climate change. Climate justice cannot be achieved without accounting for the inequality and injustice arising from former colonial rule and racial discrimination.

15. Balancing States' national development needs with limiting anthropogenic greenhouse gas emissions adheres to the texts of the Climate Change Regime.[11] It is fundamental that developing States – and in particular LDCs and SIDS – are given the time and means to make sustainable adjustments to their economies whilst preventing the exacerbation of poverty by using the resources currently available to them.

16. The principles of CBDR-RC and PSNR remain a necessary guarantee for developing countries to achieve equitable development. The careful and meticulous negotiation of the Climate Change Regime ensured that the safeguards of CBDR-RC and PSNR were reflected in the texts of the agreements to achieve equitable burden-sharing of States' common efforts to achieve the temperature goal,[12] and to ensure the right to self-determination is fulfilled in allowing States to pursue sustainable economic development using their natural resources.[13]

17. As reflected in the UNFCCC and the Paris Agreement, recognition of PSNR in the context of climate change is particularly important for former colonial States' "*ability to adopt the social and economic system of its choice and to pursue economic*

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10 Intergovernmental Panel on Climate Change, 'Summary for Policymakers' in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) [B.2], [B.2.4].

11 *Stockholm Declaration* (n 3) principle 21; *UNFCCC* (n 2) preamble, arts 4(7), 4(10), *Paris Agreement* (n 2) preamble, art 4(15), art 6(8).

12 *UNFCCC* (n 2) art 3(2).

13 Ellen Hey and Sophia Paulini, 'Common but Differentiated Responsibilities' in *Max Planck Encyclopedia of Public International Law* (Oxford University Press) (Web Page) [19] <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1568>; see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [198(a)], Bahamas [155], Bangladesh [121], Costa Rica [72], Kiribati [169], Kuwait [37], Melanesian Spearhead Group [236]-[237], Saudi Arabia [4.16], Timor-Leste [273]-[280], Tonga [176]-[188], and Vanuatu [293].

independence from a former colonial power"[14] and takes into "*full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty*".[15]

18. The permanent right of a State to exploit its natural resources in accordance with international law is necessarily intertwined with peoples' right to self-determination. Timor-Leste's submissions on the right to self-determination are considered in detail at **paragraphs 333 to 345** of its written statement. The characterisation of the right to self-determination in the context of climate change is important. Timor-Leste stresses that PSNR is a key component to the right to self-determination, allowing a State to freely dispose of its natural wealth and resources and to not deprive its people of their own means of subsistence.[16] Alternatively some States and intergovernmental organisations have limited the characterisation of self-determination in these proceedings to its effects on a States' territorial integrity and its impact on cultural heritage.[17] A characterisation of self-determination limited to recognition of territorial integrity overlooks the interaction of self-determination with the right to development and other economic rights, and the rights of States to fulfil their self-determination by freely exploiting their natural resources.

19. The Court must ensure that the principles of CBDR-RC and PSNR are considered paramount in defining and interpreting States' climate change obligations. Further, the climate response must not disproportionately affect developing States, and in particular LDCs, from freely developing their natural resources, and in exercising their right to self-determination, particularly those that are highly dependent on the production and exploitation of a singular resource.

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[14] Idriss Paul-Armand Fofana, 'Afro-Asian Jurists and the Quest to Modernise the International Protection of Foreign-Owned Property, 1955–1975' (2021) 23 *Journal of the History of International Law/Revue d'histoire du droit international* 80, 103.

[15] *UNFCCC* (n 2) preamble, art 4(7); *Paris Agreement* (n 2) preamble, arts 2(1), 4(1), 6(8).

[16] Timor-Leste, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [336] ('*Written statement of Timor-Leste*'). See also the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [198(b)], Bahamas [155], Barbados [328], Costa Rica [71]-[72], European Union [237]-[238], Kiribati [86], [132], [169], Liechtenstein [27], [32], Marshall Islands [94], Melanesian Spearhead Group [236]-[237], Nauru [38], [40]-[43], and Vanuatu [293]-[294].

[17] See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Burkina Faso [211]-[212], Cook Islands [345], Commission of Small Island States [75], Dominican Republic [4.44]-[4.46], Kenya [5.68], Kiribati [138], Madagascar [59], Mauritius [167]-[169], Melanesian Spearhead Group [242], Organisation of African, Caribbean & Pacific States [67]-[69], Pacific Islands Forum [33], Philippines [106(a)]-[106(b)], Saint Vincent & the Grenadines [109], Sierra Leone [3.90]-[3.92], Singapore [3.81], Solomon Islands [172]-[173], Tuvalu [78], [95], and Vanuatu [292].

CHAPTER III. APPLICABLE LAW

20. Timor-Leste's position on applicable law and the relevant rules of interpretation are set out in **paragraphs 81 to 93** of its written statement. This Chapter provides further clarification on Timor-Leste's approach to the legal framework that should guide the Court in answering the questions in the Request.

21. Timor-Leste maintains its position that the Climate Change Regime is the central source of law relevant to the issues before the Court, while other bodies of law may inform its correct interpretation and vice versa.

22. In light of the submissions received from other States on how the question of applicable law should be approached, Timor-Leste wishes to address the following key considerations:

    22.1 *first*, the Climate Change Regime is *lex specialis* with respect to the rights and obligations of States concerning climate change; and

    22.2 *second*, regardless of the sources of law the Court determines are applicable, it must interpret and apply the law as it exists. The Court cannot alter nor weaken the standards, requirements, or thresholds of relevant rules of international law in order to make such laws workable with the Climate Change Regime, anthropogenic greenhouse gas emissions, or current climate science.

A. The Climate Change Regime is *lex specialis* with respect to the rights and obligations of States concerning climate change

23. The written statements received demonstrate that most States have taken one of two basic positions on the issue of applicable law to determine "*the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions*".[18] Some States, such as Timor-Leste, have referred to the Climate Change Regime as the specialised regime – the *lex specialis* – applicable to the questions in hand.[19] Other States take the view that the Court should apply simultaneously various treaties and rules of customary international

[18] Request (n 1) question (a).

[19] *Written statement of Timor-Leste* (n 16) [81]-[93].

law – 'the whole or entire corpus' of international law – as climate change is a phenomenon regulated by many legal regimes under international law.[20]

24. According to the latter view, on top of the Climate Change Regime, other such regimes include rules of customary international law such as the right of self-determination, territorial integrity, and transboundary harm, as well as treaties such as the United Nations (**UN**) Charter, universal human rights treaties, environmental treaties, and even rules governing the commission of atrocities.[21]

25. Timor-Leste's position is that the Court is being asked to identify the obligations of States under international law. Applying international law does not mean that all rules of international law govern every State act or omission. Some rules may apply, and some may not, to a given issue or act. With respect to the obligations of States to address climate change, the Climate Change Regime, specifically the UNFCCC, Kyoto Protocol, and the Paris Agreement, govern the rights and obligations of States. These virtually universal treaties were negotiated by States specifically to address the questions before the Court.[22] This is their sole objective. Other more general bodies of law – insomuch as they apply – are applied through the application of the more specific provisions of the Climate Change Regime. Furthermore, they may inform the correct interpretation of rights and obligations of States under the Climate Change Regime in accordance with the rules of treaty interpretation in Article 31(3)(c) of the Vienna Convention on the Law of Treaties (**VCLT**).[23] In this way, 'harmonious interpretation' or 'systematic integration' of States' obligations will be achieved.

26. The Climate Change Regime is therefore the international law that applies to the questions asked by the General Assembly. Some written statements note that the

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20 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Vanuatu [202], African Union [39]-[50], Micronesia [41]-[49], Ecuador [1.20]-[1.22], and Sierra Leone [3.5].

21 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [50]-[63], Argentina [34]-[36], Barbados [129], Burkina Faso [70], Cameroon [11]-[13], Colombia [3.7]-[3.11], Commission of Small Island States [65], Cook Islands [131]-[135], Costa Rica [32]-[35], Dominican Republic [4.20], Egypt [68]-[70], El Salvador [26]-[28], International Union for the Conservation of Nature [152]-[154], Kenya [2.8], Latvia [16]-[17], Madagascar [17], Melanesian Spearhead Group [323]-[325], Micronesia [42]-[48], Organisation of African, Caribbean & Pacific States [60]-[61], Parties to the Nauru Agreement Office [22]-[24], [31], Peru [69]-[71], Samoa [85], Saint Lucia [16], Saint Vincent & the Grenadines [94]-[96], Seychelles [64]-[65], Sierra Leone [3.2]-[3.9], Solomon Islands [54]-[56], Spain [2], [5], Switzerland [13], Thailand [4], Uruguay [81]-[82], and Vanuatu [204]-[234].

22 *Written statement of Timor-Leste* (n 16) [86]-[93].

23 *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) ('*VCLT*').

preamble to the Request before the Court refers to various bodies of law that may be relevant to assessing the legal obligations of States with respect to climate change. But as the majority of participants agree, the preamble to the questions does not dictate to the Court what sources and rules of international law are applicable.[24] The General Assembly – the plenary political organ of the UN[25] – has drafted questions for the Court to answer. The Court may answer these questions as they are or amend them.[26] It is for the Court as the principal judicial organ of the UN[27] to ascertain the law and provide its opinion as to the rights and obligations of States under international law.

27. To complement its written statement and in response to the submissions of others, Timor-Leste wishes to make the following points with respect to the applicable law.

1. Climate change is an unprecedented and unique phenomenon requiring a specialised legal response

28. Climate change and its causes, effects, and implications are of a particular nature. The challenges climate change poses for people and States are unprecedented and extraordinary. Such recognition appears to be common to virtually all participants. In other words, climate change is different, i.e., 'special', and special situations necessitate a specialised response.

29. Specialised regimes are indispensable for the international legal order. Specialised regimes do not emerge by accident. Rather, they "*seek to respond to new technical and functional requirements*"[28] and "*have highly specific objectives and rely on principles that may often point in different directions*"[29] than general international law. Specialised regimes, like the Climate Change Regime, can therefore take "*better*

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[24] See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [42], Cameroon [11]-[13], Dominican Republic [4.8], France [13], Latvia [16]-[17], Madagascar [17], Micronesia [42], Namibia [79], Organisation of African, Caribbean & Pacific States [60], Saint Lucia [38], Samoa [85], Sierra Leone [3.2], Solomon Islands [54], Timor-Leste [83], Uruguay [81]-[82], and Vanuatu [204].

[25] *Charter of the United Nations*, opened for signature 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945), art 9 ('*UN Charter*').

[26] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (Advisory Opinion)* [1980] ICJ Rep 73, [35]; *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal (Advisory Opinion)* [1982] ICJ Rep 325 [46]; *Western Sahara (Advisory Opinion*) [1975] ICJ Rep 12 [15] ('*Western Sahara*').

[27] UN Charter (n 25) art 92.

[28] International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, 58th sess, Agenda Item 11, UN Doc A/CN.4/L.682 (13 April 2006) 11 [15] ('*ILC Report on the Fragmentation of International Law*').

[29] Ibid.

account of the particularities of the subject matter to which they relate; they regulate it more effectively than general law and follow closely the preferences of their members".[30]

30. The Climate Change Regime is just that: the international community's response to the complex particularities and technicalities of the climate crisis. Its purpose is "*to protect the climate system for present and future generations*".[31] The Climate Change Regime provides the legal definition of 'climate change' and other key terms of the Regime, such as 'climate system', 'emissions', and 'greenhouse gasses'.[32] It sets out the specialised objective of the Climate Change Regime,[33] some of its core principles such as CBDR-RC,[34] as well as very specific and complex procedural and substantive obligations and non-obligations.[35] The Climate Change Regime created a framework for cooperation and further development of the regime by States Parties, which continues to evolve. Such development was demonstrated at COP28 with respect to loss and damage.

31. This complex web of rights, obligations, and aspirations on mitigation, adaptation, transfer of technology and finances, and loss and damage, described in Timor-Leste's written statement,[36] is a result of lengthy and complex negotiations among States. The result reflects a compromise that balances the varying interests of States. As one author described the Paris Agreement:

> "*The Paris Agreement, a product of a deeply discordant political context, rife with fundamental and seemingly irresolvable differences between Parties, is an unusual Agreement. It contains a carefully calibrated mix of hard, soft and non-obligations, the* boundaries *between which are blurred. Each of these types of obligations plays a distinct and valuable role. The 'hard obligations' of conduct in mitigation and finance, in conjunction with a rigorous oversight system, form the core of the Paris Agreement. The 'soft obligations' peppered throughout the instrument in relation to mitigation, adaptation and means of implementation create good faith expectations of Parties. And the non-obligations, albeit unusual in operational provisions of treaties, provide*

30 Ibid 44 [191].

31 *UNFCCC* (n 2) preamble.

32 Ibid art 1.

33 Ibid art 2; *Paris Agreement* (n 2) art 2(1).

34 *UNFCCC* (n 2) preamble, arts 3(1), 4(1); *Paris Agreement* (n 2) preamble, arts 2(2), 4(3), 4(19).

35 *Written statement of Timor-Leste* (n 16) Chapter VI.

36 Ibid.

valuable context, construct narratives and offer mutual reassurances. This delicate and un- usual mix of obligations (hard and soft) and non-obligations— years in the making— was crucial in delivering the Paris Agreement".[37]

32. Similar to the CO_2 Emissions Certification Standard adopted by the International Civil Aviation Organization[38] or the regulations to be adopted under the International Maritime Organization Strategy on Reduction of Greenhouse Gas Emissions from Ships,[39] the Climate Change Regime is the specific legal regime that States have negotiated and tailored to the particularities and 'functional requirements' of the climate crisis. The international community shares this understanding.

33. In General Assembly Resolution 78/153 on *Protection of global climate for present and future generations of humankind international community*, adopted without a vote on 19 December 2023, States acknowledged that the UNFCCC and the Paris Agreement "*are the primary international, intergovernmental forums for negotiating the global response to climate change, expressing determination to address decisively the threat posed by climate change and environmental degradation*".[40] In the General Assembly resolution containing the current Request before the Court, States described the treaties forming part of the Climate Change Regime "*as expressions of the determination to address decisively the threat posed by climate change*".[41]

34. This understanding is exemplified by the written statements of some States and international organisations that reject this very legal conclusion. These participants refer to the treaties of the Climate Change Regime as "*the core instruments of the*

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37 Lavanya Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations' (2016) 28(2) *Journal of Environmental Law* 352, 358.

38 International Civil Aviation Organization, 'Climate Change Technology Standards' *ICAO Environment* (Web Page) <https://www.icao.int/environmental-protection/Pages/ClimateChange_TechnologyStandards.aspx>. ICAO has also, for example, adopted a Carbon Offsetting and Reduction Scheme for International Aviation under the Chicago Convention: International Civil Aviation Organization, 'Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)' *ICAO Environment* (Web Page) <https://www.icao.int/environmental-protection/CORSIA/Pages/default.aspx>.

39 *2023 IMO Strategy on Reduction of GHG Emissions from Ships*, MEPC.377(80), MEPC/80/17/Add.1 Annex 15, 1 (7 July 2023) <https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/annex/MEPC%2080/Annex%2015.pdf>; see also *Protocol of 1978 relating to the International Convention for the prevention of pollution from ships*, opened for signature 17 February 1978, 1340 UNTS 61 (entered into force 2 October 1983); see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Australia [3.46], Marshall Islands [44], Netherlands [3.22], New Zealand [80]-[82], and United Kingdom [3.22].

40 *Protection of global climate for present and future generations*, GA Res 78/153, UN Doc A/Res/78/153 (21 December 2023, adopted 19 December 2023) preamble.

41 *Request* (n 1) preamble.

climate change treaty regime",[42] the "*pillars of the global climate regime*",[43] "*the international agreements on climate change*",[44] the "*international treaties on climate change*",[45] "*the climate change treaties*",[46] and the '*Climate Change Regime*'.[47] The terminology used reflects the unavoidable and self-evident conclusion that treaties *about* climate change form the specific legal regime through which the international community has chosen to address the legal aspects of climate change. If the Climate Change Regime is not *lex specialis* when it comes to the obligations of States with respect to climate change, then the concept of '*lex specialis*' is meaningless.

35. The particularities of the climate crisis require a *lex specialis*. The Climate Change Regime was adopted in response to this crisis which continues to evolve. While other rules of international law may inform the correct interpretation of the Regime, the UN Charter,[48] recognised rules of *jus cogens*,[49] or rules concerning atrocity crimes[50] do not govern States' obligations with respect to climate change. Applying these legal regimes instead of, or on equal footing with, the *lex specialis* leads to the erosion of the regime that States have consented to, and tailored, to address the climate crisis. The Climate Change Regime was created precisely because the pre-existing international legal rules did not govern the issue or provide an appropriate framework through which to address the legal aspects of the problem, as will be shown below.

36. As a global phenomenon, the Climate Change Regime reflects a global consensus, with necessary compromise. As Timor-Leste has acknowledged, the Regime is imperfect. It is lacking and inadequate in some ways, for example with respect to loss and damage,

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42 Ecuador, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [3.68].

43 Commission of Small Island States, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [123] ('*Written statement of COSIS*').

44 Colombia, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [3.12].

45 Bangladesh, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [30].

46 Vanuatu, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [29] ('*Written statement of Vanuatu*').

47 Chile, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [74].

48 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Bolivia [15], [36], Burkina Faso [232], Costa Rica [71], Democratic Republic of the Congo [135]-[146], Dominican Republic [4.42], Ecuador [3.50], Mauritius [131]-[140], Nauru [27], [34]-[35], Nepal [21], Parties to the Nauru Agreement Office [23]-[24], Philippines [72], Portugal [129]-[130], Singapore [3.81], [3.90], [3.95], Sri Lanka [94], [98], Vanuatu [325]-[328], and Viet Nam [30].

49 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Burkina Faso [389]-[401], Commission of Small Island States [196], Kiribati [197], Melanesian Spearhead Group [300], [340], Organisation of African, Caribbean & Pacific States [191], and Sierra Leone [3.138].

50 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Organisation of African, Caribbean & Pacific States [72]-[80], and Vanuatu [577].

as will be discussed below, and States must continue to work to adjust the Regime to address the growing climate crisis.[51] States, particularly industrialised and high-emitting States, have not implemented elements of the Climate Change Regime such as the transfer of finance and technology. However, the need for States to improve the Climate Change Regime through further cooperation and coordination, or the fact that some States have not met their obligations under the Climate Change Regime, does not entail the non-existence of a legal framework. Rather, it demonstrates that States must implement their obligations and cooperate to improve and potentially modify the *lex specialis* in response to the worsening crisis.

2. The appropriate role of other international legal regimes

37. It is undeniable that the impacts of climate change affect the human condition and raise human rights concerns, as ITLOS recently noted.[52] This is true with respect to all rights and obligations of States on some level, such as under trade law, foreign investment law, the law of the sea, and so on. For example, the location of a maritime boundary and the resulting allocation of resources may directly impact the livelihood of many people that are dependent on resources, such as fisheries. However, that does not mean that human rights govern maritime delimitation. Rather, such realities may be accounted for when considering whether there are relevant circumstances for adjusting the boundary during the delimitation process.[53] The recent ITLOS Climate Change Advisory Opinion confirms this point. When the Tribunal assessed States' rights and obligations under the United Nations Convention on the Law of the Sea (**UNCLOS**), and considering the principle of 'harmonious interpretation', it did not consider legal regimes outside of the environmental treaties in its analysis. This is despite some participants' submissions that the Tribunal should consider human rights and other legal

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51 *Written statement of Timor-Leste* (n 16) [41]-[45], [371].

52 *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal) (Advisory Opinion)* (International Tribunal for the Law of the Sea, Case No 31, 21 May 2024) [66] ('*ITLOS Climate Change Advisory Opinion*').

53 *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v United States of America) (Judgment)* [1984] ICJ Rep 246, [41], [237]; *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway) (Judgment)* [1993] ICJ Rep 38, [75].

regimes.[54] Rather, the Tribunal only considered those legal regimes that focussed on environmental issues to interpret UNCLOS, first and foremost the Climate Change Regime.[55]

38. Similarly, when the Court concluded that international humanitarian law was the *lex specialis* through which human rights are applied in the *Legality of the Threat or Use of Nuclear Weapons* and *Wall* advisory opinions, it did so cognisant of the fact that the issues involved affected the lives of individuals.[56] That acts or omissions of States affect individuals does not mean that human rights law is the controlling body of law.

39. As noted in Timor-Leste's written statement, the Paris Agreement expressly recognises the need for States to bear in mind their human rights obligations in their response to climate change.[57] The negotiators of the Climate Change Regime were thus fully aware of the potential impact of the climate crisis on individuals, which in turn informs the correct interpretation of the Regime. However, that does not entail that obligations with respect to climate change are human rights obligations.

40. Timor-Leste demonstrated how the interpretation of climate change mitigation and adaptation obligations needs to take into account the right to work, the right to development, the right of self-determination, and the rights of the child, in a way that coincides with the guiding principle of CBDR-RC.[58] Timor-Leste also articulated how the interpretation of these human rights needs to take into account the rights and obligations of States under the Climate Change Regime.[59]

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54 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [50]-[63], Argentina [34]-[36], Barbados [129], Burkina Faso [70], Cameroon [11]-[13], Colombia [3.7]-[3.11], Commission of Small Island States [65], Cook Islands[131]-[135], Costa Rica [32]-[35], Dominican Republic [4.20], Egypt [68]-[70], El Salvador [26]-[28], International Union for the Conservation of Nature [152]-[154], Kenya [2.8], Latvia [16]-[17], Madagascar [17], Micronesia [42]-[48], Organisation of African, Caribbean & Pacific States [60]-[61], Parties to the Nauru Agreement Office [22]-[24], [31], Peru [69]-[71], Samoa [85], Saint Lucia [16], Saint Vincent & the Grenadines [94]-[96], Seychelles [64]-[65], Sierra Leone [3.2]-[3.9], Solomon Islands [54]-[56], Spain [2], [5], Switzerland [13], Thailand [4], Uruguay [81]-[82], and Vanuatu [204]-[234].

55 *ITLOS Climate Change Advisory Opinion* (n 52) [135]-[137], [142].

56 *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, [25] ('*Nuclear Weapons Advisory Opinion*').

57 *Written statement of Timor-Leste* (n 16) [296]; see also for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Albania [95], Antigua & Barbuda [188], Australia [3.56], Bolivia [42], Chile [67], Colombia [3.70], Commission of Small Island States [129], Cook Islands [346]-[348], Ecuador [3.101], Egypt [198], European Union [241], Ghana [27], India [77], Latvia [65], Mauritius [159], Samoa [185], Sierra Leone [3.58], Slovenia [22], Timor-Leste [297], and Tonga [242].

58 *Written statement of Timor-Leste* (n 16) Chapter IX.

59 Ibid; Germany, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [88]-[89].

41. International environmental law and international human rights law may influence each other's interpretation:

> "*The obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of State parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law*".[60]

42. This statement by the Human Rights Committee, referred to by other participants, is an example of the operation of 'harmonisation' or 'systematic integration'.[61] This is different, however, than finding that the Climate Change Regime should set aside States' human rights obligations. Similarly, when considering States' obligations with respect to climate change, other legal regimes cannot set aside the Climate Change Regime.

43. Furthermore, even if applicable, it is questionable if the rights and obligations of other legal regimes can effectively govern the acts of States with respect to climate change. These rights and obligations were not designed to address the climate crisis and are difficult to apply to it. This results in attempts to alter these legal regimes to 'square the circle'. Such an exercise not only undermines the Climate Change Regime, but also these other legal regimes.

44. With respect to the obligation to prevent significant transboundary harm, some States have taken the position that transboundary harm is irrelevant in the context of climate change,[62] while others consider this principle of customary international law as central to answering Question (a) or even governing it.[63]

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60 Human Rights Committee, *General Comment No 36: The Right to Life (On Article 6 of the International Covenant on Civil and Political Rights)*, CCPR/C/GC/36 (2019) [62].

61 *Written statement of Vanuatu* (n 46) [225].

62 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Australia [4.10]-[4.11], China [128]-[129], Indonesia [61], Kuwait [64], Nordic Countries [68]-[72], Organisation of Petroleum Exporting Countries [88]-[92], and United States of America [4.16]-[4.22].

63 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [92]-[95], Albania [65], Antigua & Barbuda [125], Bahamas [92], Bangladesh [88], Barbados [133]-[134], Belize [36], Burkina Faso [160], Colombia [3.15], Commission of Small Island States [82], Ecuador [3.18], Egypt [83]-[90], El Salvador [33]-[37], European Union [308], France [60]-[63], International Union for the Conservation of Nature [308], Kenya [5.13], Kiribati [144], Korea [34]-[37], Latvia [53], [58]-[59], Madagascar [57], Mauritius [189]-[192], Micronesia [53]-[57], Namibia [49]-[57], Nauru [26]-[33], Pakistan [34]-[37], Parties to the Nauru Agreement Office [40]-[44], Philippines [56], Saint Lucia [66], Samoa [105]-[106], Seychelles [100], Sierra Leone [3.10], Spain [7]-[8], Solomon Islands [133], [136], Switzerland [14], Thailand [9], United Arab Emirates [91]-[92], Uruguay [99], and Vanuatu [267].

45. Timor-Leste addressed the obligation to cooperate to avoid significant transboundary harm under the Climate Change Regime in its written statement.[64] The negotiators of the UNFCCC were aware of, and took into account, the obligation under customary international law with respect to transboundary harm when formulating the precise obligations under the Regime. As reflected in the preamble, "*States have ... 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*".[65] Thus, the Climate Change Regime has already incorporated the obligation as part of the rights and obligations of the *lex specialis*.[66] As with other bodies of law, the rule on transboundary harm may inform the interpretation of the Climate Change Regime but does not apply independently of it.

46. It is unclear whether the rule on transboundary harm was intended to apply to greenhouse gas emissions. The International Law Commission (**ILC**) Draft Articles on Prevention of Transboundary Harm from Hazardous Activities from 2001 only mentions the UNFCCC twice, including to note that the precautionary principle is already incorporated into the regime.[67]

47. It is further worth noting that the rule on transboundary harm has three elements:

    47.1 the existence of significant transboundary damage;

    47.2 a causal relation between the significant damage to the specific transboundary activity; and,

    47.3 the failure of the acting State to take reasonable measures to prevent the significant damage.[68]

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64 *Written statement of Timor-Leste* (n 16) [192]-[198].

65 *UNFCCC* (n 2) preamble.

66 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Australia [4.11], China [129], and Japan [15].

67 International Law Commission, 'Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (and Commentaries)' in *Report of the International Law Commission on the Work of its 53rd Session* (23 April 2001–1 June 2001 and 2 July 2001–10 August 2001) UN Doc A/56/10, 162, 166, fn.924 ('*Transboundary Harm Articles*').

68 Benoit Mayer, 'The Relevance of the No-Harm Principle to Climate Change Law and Politics' (2016) 19 *Asia-Pacific Journal of Environmental Law* 79, 85; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) (Judgment)* [2015] ICJ Rep 665, [104] ('*Costa Rica v Nicaragua*').

48. For a State to be liable for significant transboundary damage, all three elements must be satisfied. In other words, there must be significant specific damage that can be shown to be directly caused by the specific act of a State. This is equally true if applicable to greenhouse gas emissions. The need to meet these requirements (if greenhouse gas emissions can be said to cause significant transboundary harm) will be further explained below.

49. Applying the prevention or transboundary harm rule in the context of climate change must consider one further point. As the ILC explained, the rule regarding transboundary harm applies to "*activities not prohibited by international law*".[69] In his Separate Opinion in *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (**ITLOS Climate Change Advisory Opinion**),[70] Judge Jesus notes the illogic of applying the rule on transboundary harm to an activity already prohibited by another rule of international law, in the context of anthropogenic greenhouse gasses.[71] Thus, the legal framework for assessing liability for prohibited acts, including ones that affect the environment, is not the rule on prevention of transboundary harm.

50. This interaction of different legal regimes with respect to an issue clearly intended to be addressed by a special regime is further reflected in the jurisprudence of the Court.

51. When considering the relevance of the potential environmental impact of nuclear weapons in *Legality of the Threat or Use of Nuclear Weapons*, the Court recognised that "*the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment*".[72] Several written statements, including that of Timor-Leste, have quoted this paragraph[73] where the Court added that:

> "*the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. Existence of the general obligation of States to ensure that activities*

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69 *Transboundary Harm Articles* (n 67) art 1 (emphasis added).

70 *ITLOS Climate Change Advisory Opinion* (n 52).

71 *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal) (Advisory Opinion)* (International Tribunal for the Law of the Sea, Case No 31, 21 May 2024) (Judge Jesus); see also France, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [175] ('*Written statement of France*').

72 *Nuclear Weapons Advisory Opinion* (n 56) [25].

73 *Written statement of Timor-Leste* (n 16) [207].

> *within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment*".[74]

52. This is a seminal statement by the Court. Notwithstanding the catastrophic impact of nuclear weapons on the environment, given the existence of a *lex specialis* the Court continued in the next paragraph and stated the following:

> "*However, the Court is of the view that the issue is not whether the treaties relating to the protection of the environment are or are not applicable during an armed conflict, but rather whether the obligations stemming from these treaties were intended to be obligations of total restraint during military conflict.*
>
> *The Court does not consider that the treaties in question could have intended to deprive a State of the exercise of its right of self-defence under international law because of its obligations to protect the environment. Nonetheless, States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. Respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality*".[75]

53. In *Legality of the Threat or Use of Nuclear Weapons*, environmental considerations informed States' obligations under the *lex specialis*. Here, the Climate Change Regime determines the rights and obligations of States with respect to climate change. Other international legal regimes may inform the correct interpretation of the rights and obligations under the *lex specialis* but do not replace it or render it redundant.[76]

3. The relevance of the ITLOS Climate Change Advisory Opinion

54. On 21 May 2024, ITLOS issued its Climate Change Advisory Opinion.[77]

55. On the issue of applicable law, ITLOS took the view that "*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*".[78] It added that it did

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74 *Nuclear Weapons Advisory Opinion* (n 56) [29].

75 Ibid [30] (emphasis added).

76 See also Canada, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [10]-[38] ('*Written statement of Canada*').

77 *ITLOS Climate Change Advisory Opinion* (n 52).

78 Ibid [224].

not consider that "*the Paris Agreement modifies or limits the obligation under the Convention*".[79]

56. Timor-Leste remains of the view that insomuch as climate change is concerned, the Climate Change Regime is *lex specialis*, including in its relationship with UNCLOS.[80] Nevertheless, it is important to note that ITLOS' jurisdiction is confined to the application and interpretation of rights and obligations under UNCLOS, including those concerning the protection of the environment.[81] Within the circumscribed scope of its jurisdiction, it may consider "*other rules of international law*" only as far as they are "*not incompatible with this Convention*".[82]

57. It is therefore understandable that the Tribunal would not consider rules external to UNCLOS' provisions on the protection of the environment – which it rightly concluded apply to anthropogenic greenhouse gas emissions – as the applicable law, instead of the provisions of UNCLOS, which are the rules it has the jurisdiction to apply.

58. The Court, however, is in a different position. The Court is a court of general competence and has been asked to assess the rights and obligations of States under international law. When considering the obligations of States with respect to climate change under international law (as opposed to under one treaty regime such as UNCLOS) it is the Climate Change Regime that contains the specific and specialised rules, and forms the natural starting point to assess States' rights and obligations.

59. As aforementioned, one of the guiding principles of the Climate Change Regime is CBDR-RC.[83] It is important to ensure that applying law external to the Climate Change Regime does not undermine the principle of CBDR-RC which is critical for LDCs and SIDS like Timor-Leste.[84]

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79 Ibid.

80 *Written statement of Timor-Leste* (n 16) [86]-[93]; 'Verbatim Record' *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (International Tribunal for the Law of the Sea, 20 September 2023, ITLOS/PV.23/C31/14/Rev.1) (Democratic Republic of Timor-Leste), 16-17 ('*Oral statement of Timor-Leste in ITLOS Climate Change Advisory Opinion*').

81 *United Nations Convention on the Law of the Sea* (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, art 288(1) ('*UNCLOS*').

82 Ibid art 293.

83 See paragraphs [10] to [19] above; see also *Written statement of Timor-Leste* (n 16) [128]-[145].

84 See also *Written statement of Canada* (n 76) [29].

60. The ITLOS Climate Change Advisory Opinion exemplifies the risk of eroding the application of CBDR-RC with respect to States' actions relating to climate change. The Opinion noted the principle of CBDR-RC is recognised in the UNFCCC and the Paris Agreement and concluded that "*States with greater means and capabilities must do more to reduce such emissions than States with less means and capabilities*".[85] Specifically, the Tribunal noted that while the obligation in Article 194(1) of UNCLOS does not refer to CBDR-RC, it does "*contain some elements common to this principle*".[86] Additionally, the Tribunal noted that the "*scope of measures taken by States to reduce anthropogenic greenhouse gas emissions may differ between developing and developed States*".[87]

61. Critically, however, ITLOS considered that "*the reference to available means and capabilities should not be used as an excuse to unduly postpone, or even be exempt from, the implementation of the obligation to take all necessary measures under article 194, paragraph 1*".[88] The Opinion takes the view that States' capabilities may influence 'the implementation' of their due diligence obligations, but not the legal standard of due diligence.[89]

62. It is possible that ITLOS recognised a limited and lesser role for CBDR-RC within UNCLOS in the context of mitigation than the Climate Change Regime does. As a qualified consideration among others, its relevance becomes significantly diminished.

63. Timor-Leste is of the view that the Court must recognise the central role that CBDR-RC and PSNR play when considering States' obligations with respect to climate change. The Court cannot allow the principles CBDR-RC and PSNR to erode.

4. Other legal regimes cannot nullify the Climate Change Regime

64. Finally, it is important to note that with respect to the law of the sea, the Convention on Biological Diversity, human rights law, and customary international law rules such as that on transboundary harm, the Paris Agreement is later in time. As noted above, these

85 *ITLOS Climate Change Advisory Opinion* (n 52) [227].

86 Ibid [229].

87 Ibid [229], [249], [441].

88 Ibid [226].

89 Ibid [243].

regimes were taken into account within the drafting of the Climate Change Regime and are incorporated into the Regime.

65. However, the legal standard some participants have advocated in relation to mitigation, being an obligation of result requiring States to limit global warming to 1.5 °C, and in some cases, an obligation not to approve any projects resulting in additional emissions,[90] essentially nullifies this aspect of the Climate Change Regime.

66. From a practical standpoint, this position (which will affect all industries which produce greenhouse gas emissions) will have devastating effects, particularly on LDCs and SIDS. As ITLOS noted, such emissions emanate from a variety of sources:

> "*In this regard, the Tribunal notes that the IPCC defines the term "anthropogenic" as "[r]esulting from or produced by human activities" which "include the burning of fossil fuels, deforestation, land use and land use changes …, livestock production, fertilisation, waste management, and industrial processes," and the term "anthropogenic emissions" as "[e]missions of greenhouse gases (GHGs), precursors of GHGs, and aerosols, caused by human activities" (2019 Report, p. 679)*".

67. Relatedly, it is important to recall UNFCCC Article 4(10) which recognises the inability of vulnerable developing States with economies that are highly dependent on fossil fuels to shift seamlessly to other energy sources:

> "*The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives*".[91]

68. In this context, Timor-Leste recalls the distinction made in its written statement between subsistence pollution – that necessary for survival – and luxury pollution,

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[90] See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Dominican Republic [4.30], Colombia [4.8]-[4.9], Commission of Small Island States [113]-[114], Kenya [5.36], Tuvalu [105], [110], and Vanuatu [401].

[91] *Written statement of Timor-Leste* (n 16) [307]-[308].

which is reflected in Article 4(10).[92] This distinction is in accordance with States' obligations under the Climate Change Regime and is consistent with the CBDR-RC principle. States' obligations with respect to mitigation of anthropogenic greenhouse gas emissions should be interpreted to allow LDCs and developing countries a wide margin for subsistence emissions to provide a decent standard of living and achieve a threshold of sufficient sustainable economic growth.

69. In contrast, taking the position that States are obligated to refrain from any emissions is not only impractical, but will also lead to catastrophic economic and social impacts, especially for the most vulnerable States. That is why the objective of the Paris Agreement is threefold. On par with the temperature goals, the objective is also to increase States' abilities to "*adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development*", and make "*finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development*".[93]

70. There is no legal basis for the position that all anthropogenic greenhouse gas emissions must be stopped immediately.[94] As explained in Timor-Leste's written statement, States' mitigation efforts "*will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement*", in the words of the Paris Agreement.[95]

71. From a legal standpoint, as far as substantive mitigation obligations go, the above approach leads to the same result as if the Climate Change Regime did not exist. However, the correct application of international law on climate change cannot overtake later agreements specific to climate change and render their mix of obligations and non-obligations redundant. Such a result negates the express consent of States and

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92 Ibid [331]; see also China, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [30], [60].

93 *Paris Agreement* (n 2) art 2(1); *Written statement of Timor-Leste* (n 16) [96]-[102]; see also Latvia, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [18]; Bangladesh, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [3.5].

94 See for example, Egypt, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [137]: "*It is also noteworthy that neither the UNFCCC, nor the Paris Agreement make the production, and or use of fossil fuels illegal per se. This was clearly intentional – namely to focus on emissions' reduction, rather than on the source of emissions- in acknowledgment of the fact that fossil fuels have been essential to economic growth and development, and hence the need for a gradual, just transition away from the use of fossil fuels*".

95 *Paris Agreement* (n 2) art 3.

renders their continued participation in the Conference of the Parties (**COP**) process pointless.

72. Timor-Leste explained in its written statement that States' substantive obligations under the Climate Change Regime with respect to mitigation are obligations of conduct.[96] These obligations of conduct require States to act with due diligence. As explained, the specific content of this 'due diligence' is reflected in the texts of the Climate Change Regime itself, mainly Article 4(2) of the Paris Agreement and other Articles which inform its correct interpretation.[97]

B. The Court must interpret and apply the law as it exists, and cannot disregard nor weaken the standards, requirements, or thresholds of existing laws in order to make such laws workable with the Climate Change Regime, anthropogenic greenhouse gas emissions, or current climate science

73. Timor-Leste wishes to reiterate that whatever position the Court adopts with respect to the applicable law, in light of some submissions, it is important to stress that the Court is being asked to elucidate "*the obligations of States under international law*" and their "*consequences*".[98] In other words, the questions posed concern States' *existing* obligations under international law.[99]

74. In its recent Advisory Opinion, ITLOS acknowledged that:

> "*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…*".[100]

75. Timor-Leste agrees that evidentiary difficulties do not exclude the application of a rule as such. That it is not possible to prove that particular emissions emanating from one

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96 *Written statement of Timor-Leste* (n 16) [104]-[117].

97 Ibid [118]-[127] and Chapter VI more broadly.

98 *Request* (n 1).

99 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Australia [1.30]-[1.31], Argentina [35], Barbados [2], [127], China [11], European Union [20], India [7]-[8], Indonesia [73], Korea [4], Nordic Countries [22], Organisation of Petroleum Exporting Countries [15]-[16], Russia [5], Saudi Arabia [1.6], Seychelles [11], Slovenia [11], Solomon Islands [56], Timor-Leste [82], Thailand [3], United Kingdom [27.3], and United States of America [1.2]; see also *Nuclear Weapons Advisory Opinion* (n 56) [18], *Western Sahara* (n 26) [33], and *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)(Advisory Opinion*) [2015] ITLOS Rep 4, [73]-[74].

100 *ITLOS Climate Change Advisory Opinion* (n 52) [252].

State cause specific damage to another State, does not necessarily mean that transboundary harm cannot, in theory, apply to anthropogenic greenhouse gas emissions. At the same time, for establishing a breach, the necessary elements of the rule on transboundary harm must be proven.

76. In *Certain Activities and Construction of a Road*, the Court emphasised the need to prove – "*on the basis of the evidence before it*" – the necessary elements of the rule on significant transboundary harm in order to establish a breach.[101] Thus, the Court noted that sediments flowing into the San Juan River from the construction in question contributed two percent of the total sediment flow at most, which cannot be considered 'significant'.[102] With respect to causation, the Court emphasised that there is not a causal link when several factors may be the cause of transboundary harm, and the harm cannot be said to be caused by the act of the State 'alone'.[103] Thus, if it is not possible to establish a causal link between the act of one State to specific significant damage caused to another State (such as emissions from its agricultural or energy sectors) then the rule on transboundary harm has not been breached.

77. In the same vein, if human rights law applies to States' obligations with respect to climate change, then the requirements to prove a breach must be met. These include proving that a particular action was either taken within the territory of a State or under its jurisdiction.[104] It also includes proving the casual link between the specific act of a State and its failure to respect and ensure the rights of the affected individuals under its jurisdiction.[105] As the European Court of Human Rights (**ECtHR**) noted, the existence of damage cannot be the basis of jurisdiction itself.[106] Rather, jurisdiction needs to be established to evaluate a State's liability for any alleged violation.[107] To bring an

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101 *Costa Rica v Nicaragua* (n 68) [194].

102 Ibid.

103 Ibid [204], [212].

104 See for example, *International Convention on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 2(1).

105 See for example, *Vilnes and others v Norway* (European Court of Human Rights, Application No 52806/09 and 22703/10, 5 December 2013) [269] ("*the indispensable condition for making an award in respect of pecuniary damage is the existence of a causal link between the damage alleged and the violation found*"); *Case of L.C.B v The United Kingdom* (European Court of Human Rights, Application No. 14/1997/798/1001, 9 June 1998) [39]-[40].

106 *Banković and others v. Belgium and others* (European Court of Human Rights, Chamber, Application No 52207/99, 12 December 2001) [75].

107 Ibid; see also *Duarte Agostinho & others against Portugal & 32 others* (European Court of Human Rights, Grand Chamber, Application No 39371/20, 9 April 2024) [212].

international claim against the State for a violation of their rights, an individual would still need to meet the procedural requirements such as exhaustion of local remedies, as applicable in international human rights regimes. Both the Committee on the Rights of the Child[108] and the ECtHR[109] have confirmed this position.

78. Therefore, if a rule is relevant, then it is to be applied – as it exists – to assess the legality of the acts or omissions of a State. If that application fails to prove a breach, then there is no breach and liability cannot be established. If the argument is made that applying the rule without its alteration may never result in a finding of breach, then the obvious conclusion is that the rule is ill-suited to address the issue, while a more specific rule may be more appropriate.[110] The opposite conclusion, that difficulties in proving a breach means that the rule must be altered in order to be relevant, is counterintuitive, particularly where an applicable rule tailored to the specifics of the action in question already exists. This is precisely why special regimes, such as the Climate Change Regime, have been agreed upon.

79. Thus, even if applicable, it is questionable if the rights and obligations of other legal regimes are capable of governing the acts of States with respect to climate change. These rights and obligations were not designed to address the climate crisis, and are difficult to apply to it. This results in attempts to alter these legal regimes to 'square the circle'. This exercise not only undermines the Climate Change Regime, but also the rights and obligations of these other legal regimes.

CHAPTER IV. LAW OF THE SEA

A. The Court should adopt the presumption that maritime entitlements are fixed

80. As noted in Timor-Leste's written statement, international law, and the support of the international community, has been instrumental in Timor-Leste's quest for sovereignty and self-determination.[111] More recently, Timor-Leste has vindicated its rights under international law by initiating the first Compulsory Conciliation under Annex V of

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108 Committee on the Rights of the Child, *View: Communications No. 104/2019,* UN Doc CRC/C/88/D/104/2019 (8 October 2021).

109 *Duarte Agostinho and Others v. Portugal and 32 Other States* (European Court of Human Rights, Chamber, Application No 39371/20, 13 November 2020).

110 See also New Zealand, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [116].

111 *East Timor (Portugal v Australia) (Judgment)* [1995] ICJ Rep 90, [31].

UNCLOS. As such, Timor-Leste is a strong supporter of States seeking to delimit their maritime boundaries to promote sovereignty, certainty, and security in relation to a States' maritime entitlements.

81. UNCLOS addresses the delimitation of maritime boundaries and the exercise of a coastal State's sovereignty and sovereign rights in respect of maritime areas under its jurisdiction. However, UNCLOS was concluded in 1982, a time where the implications of climate change-induced sea-level rise, including compromising the permanency of maritime boundaries of some States, was not contemplated.

82. An interpretation of UNCLOS to the effect that maritime entitlements are ambulatory in nature is inconsistent with global and regional State practice supporting the view that once maritime boundaries are established pursuant to UNCLOS,[112] those maritime entitlements are not subject to any such reduction.[113]

B. The Tribunal's lack of consideration of CBDR-RC and Article 193 of UNCLOS in the ITLOS Climate Change Advisory Opinion threatens to undermine the importance of these matters in the context of climate change

83. Timor-Leste has stated its position on the relevance of UNCLOS to the current proceedings more broadly in its written statement, as well as in its oral submissions before ITLOS in the ITLOS Climate Change Advisory Opinion.[114] On 21 May 2024, ITLOS issued its Advisory Opinion. In light of the Opinion, Timor-Leste simply wishes to emphasise the following points.

84. *First*, in order to interpret States' obligations under UNCLOS with respect to climate change, the Tribunal exclusively considered treaties that specifically address climate change, first and foremost the Climate Change Regime:

> "*there is an extensive treaty regime addressing climate change that includes the UNFCCC, the Kyoto Protocol, the Paris Agreement, Annex VI to MARPOL,*

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112 David D. Caron, 'When law makes climate change worse: rethinking the law of baselines in light of a rising sea level' (1990) 17 *Ecology Law Quarterly* 621, 635-636.

113 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Albania [136], Australia [1.17], Bahamas [221], Burkina Faso [345], [374], Commission of Small Island States [71], Costa Rica [126], Dominican Republic [4.40]-[4.41], El Salvador [55], European Union [237], Kenya [5.68], Kiribati [188]-[189], Korea [8], Marshall Islands [105], Organisation of African, Caribbean & Pacific States [194], Pacific Islands Forum [23]-[24], Pacific Islands Forum Fisheries Agency [39], Parties to the Nauru Agreement Office [57], Solomon Islands [209], [212], [214], Tonga [234], [236], Tuvalu [149], and Vanuatu [588].

114 *Written statement of Timor-Leste* (n 16) Chapter VII; *Oral statement of Timor-Leste in ITLOS Climate Change Advisory Opinion* (n 80).

> *Annex 16 to the Chicago Convention, and the Montreal Protocol, including the Kigali Amendment. The Tribunal considers that, in the present case, relevant external rules may be found, in particular, in those agreements*".[115]

85. The Tribunal added that:

> "*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*".[116]

86. *Second*, just like the obligations under the Climate Change Regime with respect to mitigation, the obligations to prevent pollution of the marine environment, which includes anthropogenic greenhouse gas emissions, is an obligation of conduct, not result, as some argued before the Tribunal.[117]

87. *Third*, as under the Climate Change Regime, developed States have an obligation to provide scientific, educational, technical, financial, and other forms of assistance under Article 202 of UNCLOS[118] for the purpose of "*protection and preservation of the marine environment and the prevention, reduction and control of marine pollution*".[119] The Tribunal further confirmed that assistance "*may include financial assistance aimed at providing developing States with assistance to promote the programmes and undertake the activities indicated in article 202 of the Convention*".[120]

88. The assistance is:

> "*to developing States that are particularly vulnerable to the adverse effects of climate change is a means of addressing an inequitable situation. Although they contribute less to anthropogenic GHG emissions, such States suffer more severely from their effects on the marine environment. In this regard, the Tribunal notes the relevance of the UNFCCC and the Paris Agreement, which expressly recognize and take into account the specific needs and special circumstances of developing countries, 'especially those that are particularly vulnerable to the adverse effects of climate change'*".[121]

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115 *ITLOS Climate Change Advisory Opinion* (n 52) [137].

116 Ibid [222].

117 Ibid [233]-[243], [258].

118 Ibid [327]-[339], [441(k)].

119 Ibid [330].

120 Ibid [336].

121 Ibid [327], [441(k)].

89. *Fourth*, ITLOS recognised the importance and centrality of the principle of CBDR-RC within the Climate Change Regime.[122] It considered the principle integral to shaping States' obligations under UNCLOS with respect to climate change:

> "*The Tribunal considers that while the obligation under article 194, paragraph 1, of the Convention does not refer to the principle of common but differentiated responsibilities and respective capabilities as such, it contains some elements common to this principle. Thus, the scope of the measures under this provision, in particular those measures to reduce anthropogenic GHG emissions causing marine pollution, may differ between developed States and developing States*".[123]

90. Nevertheless, as explained above, Timor-Leste is of the view that the way ITLOS treated this principle falls short of recognising its central role with respect to defining States' climate change obligations .[124]

91. *Fifth*, the Tribunal noted the rights of States to freely develop their natural resources under Article 193 of UNCLOS:

> "*It should be noted that, while article 193 of the Convention recognizes the sovereign right of States to exploit their natural resources pursuant to their environmental policies, it further provides that States must exercise such right 'in accordance with their duty to protect and preserve the marine environment.' This article thus places a constraint upon States' exercise of their sovereign right. This shows the importance the Convention attaches to the protection and preservation of the marine environment*".[125]

92. However, as Judge Kulyk noted in his Separate Opinion, the Opinion was lacking in its consideration of the:

> "*balance under article 193 of the Convention between the sovereign right of States to exploit their natural resources pursuant to their environmental policies*

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122 Ibid [227]-[228].

123 Ibid [229], [258].

124 *Written statement of Timor-Leste* (n 16) [128]-[145]; see also paragraphs [10] to [19] above; see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [109]-[115], Antigua & Barbuda [143]-[160], Argentina [39], Australia [2.14]-[2.15], Bahamas [88], [138], Bangladesh [127]-[131], Barbados [207], Brazil [12]-[29], Cameroon [15]-[16], China [35]-[38], Colombia [3.42]-[3.59], Cook Islands [137], Commission of Small Island States [142]-[144], Costa Rica [58]-[64], Democratic Republic of Congo [191]-[195], Dominican Republic [4.24], Ecuador [3.59]-[3.62], Egypt [139]-[151], El Salvador [38]-[41], European Union [185]-[220], France [43]-[48], Germany [78]-[81], Grenada [23], [43], India [37]-[42], Indonesia [65]-[71], Iran [33]-[42], International Union for the Conservation of Nature [8]-[10], Japan [22]-[31], Kenya [5.22]-[5.25], Kiribati [146]-[154], Kuwait [17], [29], Madagascar [49]-[52], Namibia [74]-[77], Nepal [25], Netherlands [3.5]-[3.6], New Zealand [16], [47], Nordic Countries [54], Pakistan [40]-[46], Philippines [92]-[96], Portugal [45]-[50], Romania [61]-[76], Saint Lucia [58]-[65], Saint Vincent & the Grenadines [97], Samoa [144], [151], Saudi Arabia [4.49]-[4.50], Seychelles [151], Sierra Leone [3.39]-[3.43], Singapore [3.31]-[3.33], Solomon Islands [87]-[100], South Africa [75]-[78], Sri Lanka [115], Switzerland [45]-[46], Thailand [18]-[25], Timor-Leste [128]-[145], Tonga [161]-[175], Tuvalu [109], United Arab Emirates [133]-[152], United Kingdom [143]-[147], United States of America [3.23]-[3.30], Uruguay [133]-[145], Vanuatu [312], and Viet Nam [16]-[17].

125 *ITLOS Climate Change Advisory Opinion* (n 52) [187], [380].

> *and their duty to* protect *and preserve the marine environment and how it is to be applied in relation to pollution from anthropogenic GHG emissions*".[126]

93. Timor-Leste fully agrees with Judge Kulyk's views in this regard. It is unclear if and what role Article 193 played in the Tribunal's analysis. As with the marginalisation of the principle of CBDR-RC, ITLOS regrettably downplayed the rights and interests of LDCs and SIDS to develop their natural wealth and resources, free of foreign intervention, while taking into account their responsibilities to protect and preserve the environment.

94. *Sixth*, the Tribunal considered the application of rights and obligations under UNCLOS to anthropogenic greenhouse gas emissions as a matter of principle. At the same time, it:

> "*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*".[127]

95. The Opinion is an important development, providing the Tribunal's view on the interpretation of the rights and obligations of States under UNCLOS with respect to anthropogenic greenhouse gas emissions. The Court should take the Opinion into consideration, bearing in mind, as mentioned above, that as opposed to ITLOS, it is a court of general jurisdiction, tasked with identifying States' obligations with respect to climate change more broadly, not specifically under UNCLOS. In doing so, the Court must ensure that the principles of CBDR-RC and PSNR, as enshrined in the Climate Change Regime, are not eroded.

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126 *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal) (Advisory Opinion)* (International Tribunal for the Law of the Sea, Case No 31, 21 May 2024) (Judge Kulyk) 2, [3].

127 *ITLOS Climate Change Advisory Opinion* (n 55) [252].

CHAPTER V. STATE RESPONSIBILITY

A. The Court must ensure the core requirements for establishing State responsibility are satisfied prior to establishing responsibility for the adverse effects of climate change

96. Question (b) concerns "*the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment*".[128]

97. As did many other participants, Timor-Leste addressed this issue in its written statement.[129] Timor-Leste wishes to further elaborate on particular issues in relation to State responsibility in response to the positions other States have adopted.

98. With respect to the legal consequences themselves, some written statements have highlighted the dispute settlement mechanisms that States have agreed to within the Climate Change Regime.[130]

99. In terms of invoking responsibility, Timor-Leste agrees with those States that, in the context of climate change, have confirmed that LDCs and SIDS, including Timor-Leste, are specially affected and particularly vulnerable to climate change.[131] Moreover, some obligations under the Climate Change Regime are owed to specific actors. For example, developed States owe to developing States obligations relating to transfer of technology and finances with respect to climate change under Article 4(3) of the UNFCCC.

100. The commission of an internationally wrongful act entails State responsibility, which is to be determined in accordance with the rules of State responsibility under customary

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128 *Request* (n 1).

129 *Written statement of Timor-Leste* (n 16) [353]-[373]. For the sake of clarification, though the wording of question (b) references States that have caused significant harm to the climate system, Timor-Leste has addressed the legal consequences of breaches of the obligations it identified in response to question (a), see also Nordic Countries, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [100]-[101].

130 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Canada [34]-[35], Indonesia [78], Kuwait [101]-[104], Latvia [76], New Zealand [134], and Saudi Arabia [4.32].

131 *Written statement of Timor-Leste* (n 16) [359]-[361]; see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [240], Albania [92], Antigua & Barbuda [589], Argentina [49], Australia [1.33], [5.2], Bahamas [222], Barbados [310]-[311], Brazil [89], Chile [120], Commission of Small Island States [157]-[158], [203], Cook Islands [144], Costa Rica [113], Dominican Republic [4.54], Ecuador [4.9], [4.16], Egypt [341], European Union [338], Iran [164] France [236], Kiribati [28], Korea [41], Melanesian Spearhead Group [307], Micronesia [132], Nauru [33], Saint Vincent & the Grenadines [131], Sierra Leone [3.146], Singapore [4.22], Thailand [24], Tonga [305]-[307], Tuvalu [120], and Vanuatu [542]-[543].

international law, subject to *lex specialis* rules on State responsibility applicable to the wrongful act.[132] In addition, some international obligations require actual damage to occur to establish a breach,[133] for example, the rule on transboundary harm, the substantive aspect of which cannot be breached without damage to the environment materialising.[134]

101. A State has committed an internationally wrongful act if there is a breach of its international obligations attributable to it.[135] In such circumstances a State is obligated to cease its wrongful act and offer appropriate assurances of non-repetition, if appropriate in the circumstances.[136] Furthermore, State responsibility entails an obligation to make "*full reparation for the injury*".[137]

102. A State is not responsible for damage that it has not caused. The Seabed Disputes Chamber of ITLOS has opined that "[t]*here must be a causal link between the sponsoring State's failure and the damage, and such a link cannot be presumed*".[138] In the *Bosnian Genocide* case, the Court considered the causal link between Serbia's wrongful act and the damage caused from the genocide in Srebrenica that followed:

> "*The question is whether there is a sufficiently direct and certain causal nexus between the wrongful act, the Respondent's breach of the obligation to prevent genocide, and the injury suffered by the Applicant, consisting of all damage of any type, material or moral, caused by the acts of genocide. Such a nexus could be considered established only if the Court were able to conclude from the case as a whole and with a sufficient degree of certainty that the genocide at Srebrenica would in fact have been averted if the Respondent had acted in compliance with its legal obligations. However, the Court clearly cannot do so*".[139]

103. Thus, the Court concluded:

> "*it has not been shown that, in the specific context of these events, those means would have sufficed to achieve the result which the Respondent should have*

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132 Responsibility of States for Internationally Wrongful Acts, GA Res 56/83, UN Doc A/RES/56/83 (28 January 2002, adopted 12 December 2001) annex, art 55('*ARSIWA*').

133 International Law Commission, *Report of the International Law Commission on the Work of Its Fifty Third Session*, UN GAOR, 56th sess, Supp No 10, UN Doc A/56/10 (2001) 36 ('*Commentary to ARSIWA*').

134 *Costa Rica v Nicaragua* (n 68) [113].

135 *ARSIWA* (n 132) art 2.

136 Ibid art 30.

137 Ibid art 31(1).

138 *Responsibilities and obligations of States with respect to activities in the Area (Advisory Opinion)* [2011] ITLOS Rep 10, [184].

139 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro (Judgment)* [2007] ICJ Rep 43, [462] (emphasis added); see also ibid.

> *sought. Since the Court cannot therefore regard as proven a causal nexus between the Respondent's violation of its obligation of prevention and the damage resulting*".[140]

104. In other words, it is necessary to show with a sufficient degree of certainty that without the wrongful act in question, the damage would not have occurred.

105. These fundamental principles – breach, attribution, and reparation for direct damage caused – are equally applicable in cases relating to environmental damage. In determining compensation for significant transboundary harm in *Certain Activities Carried Out by Nicaragua in the Border Area*, the Court emphasised the necessity of establishing a direct causal link:

> "*In order to award compensation, the Court will ascertain whether, and to what extent, each of the various heads of damage claimed by the Applicant can be established and whether they are the consequence of wrongful conduct by the Respondent, by determining 'whether there is a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant'*".[141]

106. As the ILC has similarly explained:

> "*causality in fact is a necessary but not a sufficient condition for reparation. There is a further element, associated with the exclusion of injury that is too 'remote' or 'consequential' to be the subject of reparation. In some cases, the criterion of 'directness' may be used, in others 'foreseeability' or 'proximity'*".[142]

107. Thus, in order to hold a State responsible for an internationally wrongful act relating to anthropogenic greenhouse gasses, it will be necessary to establish that it is in breach of its international obligations. Reparations – if any – will depend on establishing a direct and ascertainable causal link between the wrongful act and the damage incurred.

108. In the context of climate change, as ITLOS noted, this causal link may be hard to establish:

> "*it would be difficult to specify how anthropogenic GHG emissions from activities under the jurisdiction or control of one State cause damage to other*

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140 Ibid (emphasis added).

141 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Compensation) (Judgment)* [2018] ICJ Reports 15, [34]; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Reparations) (Judgment)* [2022] ICJ Rep 13, [349].

142 *Commentary to ARSIWA* (n 133) 92 (emphasis added).

> *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…*".[143]

109. But the existence of this difficulty does not entail that it can be foregone (or significantly diluted) as a prerequisite for a finding of State responsibility.

110. In this context, several written statements have taken the position that the impacts of climate change threaten a State's territorial integrity and its very survival, and negatively impact the right of peoples to self-determination.[144]

111. With respect to the right of peoples' self-determination, Timor-Leste has argued in its written statement,[145] as well as before ITLOS,[146] that it includes the ability to freely dispose of their natural wealth and resources and to not be deprived of their own means of subsistence. In this context, PSNR is a fundamental component of the right to self-determination.[147]

112. Thus, Timor-Leste argued that the interpretation of States' obligations under the Climate Change Regime must take into account that the climate response must not disproportionately affect developing States, and in particular LDCs, from freely developing their natural resources, in exercising their right to self-determination, particularly those that are highly dependent on the production and exploitation of a singular resource.[148] This linkage is also reflected in Article 4(10) of the UNFCCC and Article 4(15) of the Paris Agreement.

113. In the same vein, the Climate Change Regime, PSNR, the right to development, and self-determination should be considered when interpreting the scope of a State's human

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143 *ITLOS Climate Change Advisory Opinion* (n 52) [252].

144 *Written statement of COSIS* (n 43) [68]-[78]; see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [198(b)], Antigua & Barbuda [195], Commission of Small Island States [75], Cook Islands [345], Dominican Republic [4.44]-[4.46], European Union [237], Kenya [5.68], Kiribati [86], [138], [169], Madagascar [59], Mauritius [167]-[169], Melanesian Spearhead Group [236]-[237], Nauru [38], [46], Organisation of African, Caribbean & Pacific States [68]-[69], Philippines [106(b)], Singapore [3.81], Tuvalu [78], [138], and Vanuatu [588], [640].

145 *Written statement of Timor-Leste* (n 16) [333]-[345].

146 *Oral statement of Timor-Leste in ITLOS Climate Change Advisory Opinion* (n 80) 13-15.

147 *Written statement of Timor-Leste* (n 16) [338].

148 Ibid [146]-[160], [338].

rights obligations.[149] In this way both human rights law and the Climate Change Regime can serve as interpretive tools for each other.[150]

114. At the same time, there is a difference between acknowledging the effects of anthropogenic greenhouse gases, including potentially submerging entire SIDS or making their territory uninhabitable, and taking the view that breaches of States' obligations with respect to climate change are also a breach of the right to self-determination.[151] The issue of continuation of statehood is a matter of primary law. It is too significant and consequential to be dependent on findings of breaches of international law relating to climate change by other States.[152]

115. With respect to the nature of the obligations of States relating to climate change, reference has been made in some written statements to Article 15 of the *Articles on the Responsibility of States for Internationally Wrongful Acts* (**ARSIWA**), concerning composite acts.[153] Breach of an international obligation by a State through a "*series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act*".[154] This is known as a 'composite act'. Composite acts are therefore, "*breaches of obligations which concern some aggregate of conduct and not individual acts as such*".[155]

116. This entails that actions that were not initially viewed in isolation as illegal may form part of an internationally wrongful act subsequently as only "*after a series of actions*

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149 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union [199]-[200], Bahamas [158], Bangladesh [117], Bolivia [34], Burkina Faso [209], [238], China [28]-[30], [55]-[66], Dominican Republic [4.47], Egypt [212]-[213], [255]-[256], India [68]-[70], Iran [143]-[146], Marshall Islands [94], Namibia [115]-[119], Saudi Arabia [1.13]-[1.14], Sierra Leone [3.100]-[3.106], Timor-Leste [316]-[331], and Uruguay [146].

150 Human Rights Committee, *General Comment No 36: The Right to Life (On Article 6 of the International Covenant on Civil and Political Rights)*, CCPR/C/GC/36 (2019) [62]; *Written statement of Timor-Leste* (n 16) [302].

151 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Commission of Small Island States [193]-[196], Melanesian Spearhead Group [234], [300], Organisation of African, Caribbean & Pacific States [191]-[194], Saint Vincent & the Grenadines [109], and Sierra Leone [3.99], [3.138], [4.17],

152 See also Bahamas, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [224]: on the need to negotiate a legal framework that "*addresses issues of continued statehood*".

153 *Written statement of Vanuatu* (n 46) [530]-[535]; *Written statement of COSIS* (n 43) [149].

154 *ARSIWA* (n 132) art 15.

155 *Commentary to ARSIWA* (n 133) 62.

or omissions takes place will the composite act be revealed, not merely as a succession of isolated acts, but as a composite act, i.e. an act defined in aggregate as wrongful".[156]

117. Whether or not States' obligations with respect to climate change are composite acts, Timor-Leste wishes to make two points. *First*, the idea that a series of acts may together accumulate to a wrongful act does not entail retroactive application of law. It cannot turn acts considered legal at one point in time into illegal acts because the law has changed. *Second*, Article 15 does not entail that an individual State carrying out legal activities may be committing a wrongful act when combining its actions with that of other States, when these States are not acting jointly.

118. Some States have pointed out that when several States are responsible for the same wrongful act "*the responsibility of each State may be invoked in relation to that act*" in accordance with Article 47 of ARSIWA.[157] Timor-Leste agrees. It would still need to be proven that all States involved are responsible for the same wrongful act, and a causal link between the breach of the State and the relevant damage would need to be established. As the ILC has noted:

> "*Article 47 only addresses the situation of a plurality of responsible States in relation to the same internationally wrongful act. The identification of such an act will depend on the particular primary obligation, and cannot be prescribed in the abstract*".[158]

119. Thus, the components of successfully invoking the responsibility of a State remain consistent regardless of the nature of the act or to whom it is owed and may invoke it.

B. States responsible for historic and ongoing emissions must provide compensation for loss and damage experienced by developing States, and those States that are particularly vulnerable to the effects of climate change such as SIDS and LDCs

120. The adverse effects of climate change that States are experiencing today are the result of substantial emissions generated from developed States dating back hundreds of years.[159] The crux of the climate crisis is not the current emission increase from

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156 Ibid 63.

157 *Written statement of Vanuatu* (n 46) [535]; *Written statement of COSIS* (n 43) [166].

158 *Commentary to ARSIWA* (n 133) 125.

159 Intergovernmental Panel on Climate Change, 'Summary for Policymakers' in *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2023) 4-5.

developing States, but rather the historical over-consumption of atmospheric resources by developed States and their failure to bear their historical and current responsibilities.[160] This was acknowledged as recently as COP28 in the decision on the *Outcome of the first global stocktake*, with the COP stating that it*:*

> "*Expresses concern that the carbon budget consistent with achieving the Paris Agreement temperature goal is now small and being rapidly depleted and acknowledges that historical cumulative net carbon dioxide emissions already account for about four fifths of the total carbon budget for a 50 per cent probability of limiting global warming to 1.5 °C*".[161]

121. Historical and ongoing emissions have fuelled lingering structural inequalities among States, as some States historically achieved high levels of economic and social development at the expense of other peoples.[162] Colonialism and imperialism are therefore at the roots of practices that historically increased global temperatures.[163]

122. Some States have asked the Court to take a 'forward-looking' approach, not aimed at assessment of any historic acts or omissions.[164] However, the concept of 'historical responsibility' forms the basis on which the Climate Change Regime and the climate negotiations are built.[165] Historic responsibility aligns with the clear scientific evidence that demonstrates that developed States have consumed more than their fair share of the carbon budget.[166] The Climate Change Regime calls "*for the acceptance of accountability for the full consequences of an industrialization that relied on fossil fuels* […] *and carbon energy*".[167] These States' industrialisation relied on carbon energy and

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160 Ibid.

161 United Nations Framework Convention on Climate Change, *Draft-Decision -/CMA.5: The UAE Consensus, FCCC/PA/CMA/2023/L.17* (13 December 2023) [2] (emphasis added).

162 *Written statement of Timor-Leste* (n 16) [161]-[162]; see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Brazil [81], Cameroon [16], Colombia [3.53]-[3.54], Commission of Small Island States [143], Mauritius [215], and Vanuatu [170].

163 *Written statement of Timor-Leste* (n 16) [321]-[328]; see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Brazil [81], Burkina Faso [210], [407], Kiribati [152]-[153], Madagascar [85], Organisation of African, Caribbean & Pacific States [41]-[49], [167], Saudi Arabia [4.16], and Vanuatu [640].

164 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Germany [79]-[81], Japan [27], Kuwait [122]-[123], Nordic Countries [98], and United States of America [3.26].

165 See for example, UNFCCC (n 2) preamble, arts 3(1), 4(1); *Paris Agreement* (n 2) preamble, arts 2(2), 4(3), 4(4), 4(19), 9(3); see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Colombia [3.55], Egypt [61]-[62], Kiribati [100]-[101], Saint Lucia [65], Saudi Arabia [5.3], Singapore [3.33], and United Arab Emirates [155].

166 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Brazil [85], Burkina Faso [253], Egypt [61], India [63]-[66], and Kiribati [129]-[130].

167 Henry Shue, 'Historical Responsibility, Harm Prohibition, and Preservation Requirement: Core Practical Convergence on Climate Change' (2015) 2(1) *Moral Philosophy and Politics* 7, 12-13.

they benefitted greatly because they did not bear the costs of the problem thereby created, being excessive greenhouse gas emissions and the resultant climate change.

123. Differentiation of States' obligations stemming from historic and current emissions also forms a fundamental aspect of the Climate Change Regime and accounts for the early technological and financial advancements developed States were able to make at the expense of protecting the climate system from the adverse effects of climate change.[168]

124. Many of the world's major emitters have emphasised several emissions reduction initiatives they have implemented in pursuit of their NDCs. While for some of these States, their current emissions may be lower than their historical emissions. However, this does not absolve States of their responsibility for past actions which are causing climate change in the present. Moreover, it is also the case that a vast majority of these States continue to emit significant quantities of greenhouse gas emissions, well in excess of their fair allocation of the carbon budget. Responsibility for emissions must account for both historical and current levels of emissions. The fact that the relevant combination of acts and omissions may have begun and ended in the past does not make them less of a breach for the purposes of establishing State responsibility – if they were illegal when they were committed – or requiring developed States to satisfy their obligations with respect to technological and financial assistance for mitigation and adaptation measures. States whose historical greenhouse gas emissions were significant cannot simply escape responsibility in contending they may have now taken action to reduce such emissions.[169]

125. Developed States must leave what little remains of the carbon budget for developing States, particularly LDCs and SIDS, to pursue sustainable economic development.[170] Developed States must also make up for cumulative emissions beyond their fair share

168 *Written statement of Timor-Leste* (n 16) [128]-[145]; see also paragraphs [10] to [19] above; see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: China [34], and Colombia [3.48].

169 *Written statement of Vanuatu* (n 46) [528].

170 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Bolivia [42]-[44], Burkina Faso [179], India [63]-[66], and Kiribati [129].

of the global carbon budget and the resulting adverse effects of climate change on developing States.[171]

126. When assessing the legal consequences of States' obligations with respect to climate change, the Court should consider proportionality and equity, accounting for the historical and ongoing responsibility of developed States and their failure to mitigate foreseeable damages to the environment, while bearing in mind that developing States are particularly vulnerable to the adverse effects of climate change.[172]

127. A key consequence for historical and ongoing emissions by industrialised States that have disproportionately affected developing States, particularly LDCs and SIDS, is supporting the operationalisation and further development of the Loss and Damage Fund. Loss and damage, in the context of climate change, refers to economic and non-economic loses that mitigation and adaptation measures cannot address, whether from extreme weather events and/or slow onset events.[173] For this purpose, a Loss and Damage Fund was established and finally operationalised at COP28. The Fund is the "*entity entrusted with the operation of the Financial Mechanism of the Convention, also serving the Paris Agreement, which will be accountable to and function under the guidance of the COP*".[174]

128. Loss and damage is thus part and parcel of the Climate Change Regime with unique features. This should not be confused with the general concept of 'damage' under the ARSIWA.[175] While the former establishes a mechanism for industrialised States to distribute funds to States specially affected by the impacts of climate change, the latter is concerned with compensation for damage that can be shown to be caused by a wrongful act attributable to a State.[176]

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171 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Barbados [232], and India [76(iii)].

172 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Brazil [82], Costa Rica [60], Egypt [62], Kiribati [129], Mauritius [215], and Solomon Islands [244].

173 Conference of the Parties, United Nations Framework Convention on Climate Change, *Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4*, UN Doc FCCC/CP/2023/L.1-FCCC/PA/CMA/2023/L.1 (28 November 2023),10 [17], 14 [2] ('*Loss & Damage Decision*'); United Nations Environment Programme, *Loss and damage: The Role of ecosystem services* (Report, 21 August 2016) <https://www.unep.org/resources/report/loss-and-damage-role-ecosystem-services>.

174 *Loss & Damage Decision* (n 173) 11 [5].

175 *ARSIWA* (n 132) arts 31, 36.

176 Ibid.

129. The distinction is important. Loss and Damage contains special rules regarding compensation of specially affected States by those responsible for the vast majority of the climate crisis. These special rules forego the necessity of proving the essential elements to hold a State responsible under the rules of State responsibility, that of breach, attribution, and causation.[177] The successful implementation of the Loss and Damage Fund will thus be critical to LDCs and SIDS. In this context, it should be noted that the rules on States responsibility are default rules, not applicable when an "*act or the content or implementation of the international responsibility of a State are governed by special rules of international law*".[178]

130. It is with this understanding of loss and damage that Timor-Leste makes the following observations. While the establishment and operationalisation of the Loss and Damage Fund was a positive step towards greater financial support for LDCs and SIDS, it is currently a voluntary, rather than a mandatory, undertaking by developed States. A handful of States have pledged a combined total of just over USD 700 million to the Loss and Damage Fund. This amount reflects approximately 0.2 percent of the irreversible economic and non-economic losses developing States face every year from global warming.[179] These pledges are also one-off commitments. Developing States have no certainty that developed States will continue to contribute to the Loss and Damage Fund.

131. Developing States also have no certainty that financing will be provided in a timely manner. The Organization for Economic Cooperation and Development (**OECD**) confirmed that States had met the goal of providing USD 100 billion in climate finance, two years after the target date.[180] In any event, much of this financial assistance was provided by way of loans, as opposed to grants, placing further pressure on developing States, particularly LDCs and SIDS, where many are already struggling with significant debt levels; often a legacy impact of colonial rule. As further noted in Timor-Leste's

177 See also *Written statement of France* (n 71) [212].

178 *ARSIWA* (n 132) art 55.

179 Nina Lakhani, '$700m pledged to loss and damage fund at Cop28 covers less than 0.2% needed' *The Guardian* (Online, 7 December 2023) <https://www.theguardian.com/environment/2023/dec/06/700m-pledged-to-loss-and-damage-fund-cop28-covers-less-than-02-percent-needed>.

180 Josh Gabbatiss, 'Rich countries meet $100bn climate-finance goal by "relabelling existing aid"' *CarbonBrief* (Online, 20 May 2024) <https://www.carbonbrief.org/rich-countries-met-100bn-climate-finance-goal-by-relabelling-existing-aid/#:~:text=The%20OECD%20has%20now%20published,in%202022%20%E2%80%93%20reaching%20%24115.9bn.>.

written statement, the accounting methods the OECD employs often overstates the true value of financial support provided.[181]

132. Greater commitments from developed States are needed to ensure sufficient finances are made available.[182] Timor-Leste is thus in agreement with the written statements of other States about the centrality of loss and damage within the Climate Change Regime and its utility as one way for States to provide restitution and reparation to developing States.[183]

133. Furthermore, Timor-Leste is of the view that States have a duty to cooperate – through the COP process – in negotiating a mandatory loss and damage scheme that will provide for consistent, effective, and adequate funds to cover the loss and damage experienced by vulnerable States, with a particular emphasis on the needs of those most affected[184] and with the least means to adapt to the impacts of climate change.[185]

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181 *Written statement of Timor-Leste* (n 16) [168]-[174].

182 Ibid [41]-[45], and [371]; see for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Colombia [4.15], Egypt [392]-[393], and Kenya [5.21].

183 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Antigua & Barbuda [599], [615], Australia [2.46], Bahamas [210], Bangladesh [141], Barbados [227]-[232], [246], China [90]-[91], [141], Dominican Republic [4.67], Egypt [258]-[269], European Union [332], France [230], Ghana [28], India [90], Kiribati [196], Kuwait [47], Latvia [38], Madagascar [80]-[88], Marshall Islands [74]-[82], Mauritius [211], Melanesian Spearhead Group [322], Mexico [35], Netherlands [5.27], Organisation of African, Caribbean & Pacific States [188], Peru [96], Portugal [113], Saint Lucia [92]-[94], Saint Vincent & the Grenadines [58]-[59], [93], [134], Samoa [170]-[177], Sierra Leone [3.140]-[3.143], Singapore [4.8], Solomon Islands [247], Tonga [307]-[308], [312], and United Arab Emirates [85].

184 See for example Antigua & Barbuda, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [489]-[494].

185 See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Antigua & Barbuda [115], Australia [2.45]-[2.46], Bahamas [210], Bangladesh [141], Costa Rica [122], France [230], Ghana [28], Korea [49], Madagascar [80]-[81], Marshall Islands [74], [82], Singapore [4.8], Solomon Islands [247], Timor-Leste [371], Tonga [307]-[308], [312], and United Arab Emirates [85].

CHAPTER VI. CONCLUSION

134. Timor-Leste reiterates that the current Request before the Court provides an opportunity to clarify the existing obligations of States under general international law on the issue of climate change at a critical juncture in human history.

Dili, Timor-Leste, 15 August 2024

Respectfully submitted

E. Exposto

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The Government of the Democratic Republic of Timor-Leste

Ms Elizabeth Exposto

Representative of the Democratic Republic of Timor-Leste

Chief of Staff to the Prime Minister of the Democratic Republic of Timor-Leste

Chief Executive Officer of the Land & Maritime Boundary Office of Timor-Leste