INTERNATIONAL COURT OF JUSTICE

# OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

## (REQUEST FOR AN ADVISORY OPINION)

**SECOND WRITTEN SUBMISSION BY THE ORIENTAL REPUBLIC OF URUGUAY**

**15 August 2024**

## Table of Contents


**I. Introduction and background ..... 1**

**II. The ICJ has jurisdiction to render the requested advisory opinion and there are no compelling reasons for the ICJ to exercise its discretion not to issue an advisory opinion ... 2**

**III. Uruguay's written comments on other written statements on the questions put to the ICJ ... 4**

A. States' obligations in respect of climate change are not limited to those arising from international treaties ..... 7

1. Additional comments on the duty of States to apply due diligence to prevent serious or irreversible transboundary environmental damage ..... 8
2. Additional comments with respect to the articulation of the different treaties that form part of the UN regime applicable to climate change ..... 21
3. Additional comments on the principle of sustainable development ..... 23
4. Additional comments on the obligation of States to cooperate financially and technically in the fight against climate change ..... 26
5. Additional comments on States' Human Rights obligations with respect to climate change ..... 28

B. The legal consequences for States which have caused significant harm to the climate system and other parts of the environment ..... 37

1. Additional comments on the application of the law on State responsibility to determine the legal consequences for States which, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment ..... 38
2. Additional comments on the obligations to cease the wrongful conduct and to offer appropriate assurances and guarantees of non-repetition ..... 42
3. Additional comments on the obligation to make full reparation ..... 44
4. Additional comments on the principles of attribution and causation ..... 47
5. Comments on State responsibility for acts or omissions which do not cause harm ..... 50
6. Comments on the invocation of responsibility by a State other than an injured State ..... 51
7. Comments on State responsibility for injurious consequences arising out of acts not prohibited by international law ..... 52

**IV. Conclusions ..... 53**

## I. INTRODUCTION AND BACKGROUND

1. On 22 March 2024, the Oriental Republic of Uruguay ("**Uruguay**") submitted a first submission before this Court, in accordance with the Orders of the President of the Court of 20 April 2023 and 15 December 2023 (the "**First Submission**").

2. In its First Submission, Uruguay described the gravity of existing and projected climate change and its deleterious consequences for its landscape and population. Uruguay also provided a brief overview of the actions undertaken by the country to mitigate climate change by reducing GHG emissions and adapt to the effects of climate change, despite Uruguay's meagre contributions to the overall worldwide volume of GHG emissions and the limited financial and technical resources available to this effect.

3. Uruguay further submitted that, in accordance with Article 65(1) of the Statute of the International Court of Justice (the "**ICJ**" or the "**Court**"), the Court has jurisdiction to issue the advisory opinion requested by the General Assembly of the United Nations in its Resolution 77/276 of 29 March 2023. Furthermore, Uruguay argued that the Court should not exercise its discretion not to render the requested advisory opinion. To the contrary, the Advisory Opinion requested of the Court by consensus will bring much needed clarity on the current state of international law as regards legal questions that are of utmost importance to the well-being of present and future generations, and which will undoubtedly contribute to the discussion of a post-2030 Agenda for Sustainable Development.

4. As regards the questions before the Court, Uruguay provided its answers on the basis that States have specific obligations to ensure the protection of the climate system and other parts of the environment which arise both from treaty law and customary international law. Uruguay also made its submissions as regards the legal consequences for States which have caused significant harm to the climate system and other parts of the environment.

5. Uruguay observes that, as informed by the Court in its press release of 12 April 2024, an unprecedented 91 written statements were filed by States and non-State actors within the time-limit prescribed by the Court. This only underscores the crucial importance of these proceedings for the international community.

6. In this regard, Uruguay also notes the wide consensus among the parties to these proceedings that anthropogenic greenhouse gas ("**GHG**") emissions are the main cause of climate change, as well as their agreement on the gravity of the current and potential effects of climate change on States and individuals. Despite the general agreement, Uruguay has

identified certain disagreements with respect to the States' obligations and legal consequences, which it addresses in this submission.[1]

7. Thereby, pursuant to the Court's Order of 30 May 2024, Uruguay respectfully submits its written comments on other written statements.

8. In this regard, Uruguay first briefly addresses the existing consensus on the Court's jurisdiction to issue the Advisory Opinion and on the lack of compelling reasons for the Court not to exercise this jurisdiction (**Section II**).

9. Subsequently, Uruguay provides additional comments on its answers to the questions before the Court, both as regards existing obligations under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions and the legal consequences under these obligations for States that have caused significant harm to the climate system (**Section III**).

10. Finally, Uruguay provides brief conclusions summarizing the key elements of its submission before the Court (**Section IV**).

## II. THE ICJ HAS JURISDICTION TO RENDER THE REQUESTED ADVISORY OPINION AND THERE ARE NO COMPELLING REASONS FOR THE ICJ TO EXERCISE ITS DISCRETION NOT TO ISSUE AN ADVISORY OPINION

11. Uruguay observes the existing consensus among States and non-State actors in these proceedings as to the Court's jurisdiction under Article 65(1) of the Statute of the Court to issue the requested Advisory Opinion, consistent with the unanimous agreement reached in the General Assembly of the United Nations in this regard. As noted by Barbados, this circumstance is relevant to distinguish these proceedings from other Advisory Opinions sought from the Court:

> [U]nlike States before this Court in the *Nuclear Weapons Advisory Opinion*, the international community agrees about the climate emergency and the need for international courts to clarify international law. It is no coincidence that UN Member States unanimously agreed to request this Court for an advisory opinion on this topic too.[2]

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1 As noted in Uruguay's First Submission (the "**First Submission**"), Uruguay does not intend to comprehensively address all the questions submitted to the Court nor all the written submissions filed by States and non-State actors. In this submission, Uruguay provides its views on certain specific aspects which Uruguay considers of utmost relevance, and which it respectfully submits should be considered by the Court as part of the answers to be provided by the Court in its Advisory Opinion.

2 Written Submission of Barbados, ¶ 130.

12. The wide agreement on the need for the Court to provide clarification on the international law regime applicable to GHG emissions shows the centrality of this concern in the international agenda. As stated by Colombia:

> Colombia highlights the significance of Resolution 77/276 which was adopted by consensus. This reflects the collective agreement among States that climate change is one of the most pressing challenges that the international community confronts. The Court should exercise its advisory jurisdiction to the fullest extent to provide clarity on legal rights and obligations under international law regarding climate change.[3]

13. Uruguay agrees with the view that the Court's task, pursuant to Article 65 of the Statue of the Court, is to declare the existence of any obligations arising from international law as it exists as of today.[4] In other words, the Court's mission is not to create new rules or principles, but merely to "*ascertain*[] *the existence or otherwise of legal principles and rules*".[5] In this regard, as previously stated by the Court, "*the Court states the existing law and does not legislate*".[6] In line with this, Uruguay also considers that, as expressed by Vanuatu, the Court is in a "*unique position*" to accomplish this task:

> It is axiomatic that the ICJ is the only international court of general competence, which is uniquely positioned to provide the UN General Assembly with authoritative guidance on the obligations of States and their legal consequences where they have caused significant harm to climate system and other parts of the environment under the corpus of international law as a whole.[7]

14. In this regard, Uruguay shares the hope that, in addition to clarifying the rights and obligations of Member States as regards the protection of the environment from GHG emissions and its effects, the Advisory Opinion will also enhance States' compliance with their international undertakings.[8]

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3 Written Submission of the Republic of Colombia, ¶ 1.21.

4 Statute of the International Court of Justice (adopted 26 June 1945, entry into force 24 October 1945) 33 UNTS 993 ("**Statute of the International Court of Justice**"), Article 65; *see also* Statute of the International Court of Justice, Article 36(2).

5 *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion*, *I.C.J. Reports 1996 (I)*, p. 237, ¶ 18.

6 *Legality of threat or the use of nuclear weapons*, Advisory Opinion, ICJ Reports 1996, p. 237, ¶ 18. *See also* Written Submission of the Argentine Republic, ¶ 35.

7 Written Submission of the Republic of Vanuatu, ¶ 49. *See also* Written Submission of the Republic of Colombia, ¶ 3.7.

8 *See* Written Submission of the Republic of Colombia, ¶ 1.11. *See also* Written Submission of the Argentine Republic, ¶ 28.

## III. URUGUAY'S WRITTEN COMMENTS ON OTHER WRITTEN STATEMENTS ON THE QUESTIONS PUT TO THE ICJ

15. Prior to addressing the content and scope of existing obligations under international law in respect of 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 and their related legal consequences, Uruguay respectfully draws the Court's attention to a few general remarks.

16. ***First***, the written submissions made in these proceedings have confirmed the need for the Court to consider the entire corpus of international law. As Uruguay emphasized in its First Submission, this arises clearly from Resolution 77/276 itself, which uses the terms "*among other instruments*" and "*including*", as well as references to principles and obligations of customary law,[9] to make it abundantly clear that the questions put to the Court should be addressed in light of any and all relevant sources of international law as reflected in Article 38 of the Statute of the Court, namely international treaties, customary international law, general principles of law and, to the extent relevant, judicial decisions and commentary.[10]

17. Uruguay notes that, accordingly, most States and non-State actors in these proceedings have considered the panoply of sources of international law, albeit with differing approaches—particularly, as regards the importance and relevance of customary international law with respect to climate change and the existence of non-treaty-based obligations. While some States are of the position that the relevant obligations arise exclusively[11] or at least

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9 UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023), ¶ 5 ("*Emphasizing the importance of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the United Nations Convention on the Law of the Sea, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, <u>among other instruments, and of the relevant principles and relevant obligations of customary international law</u>, including those reflected in the Declaration of the United Nations Conference on the Human Environment and the Rio Declaration on Environment and Development, to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects*." (emphasis added)).

10 Statute of the International Court of Justice, Article 38(1).

11 *See* e.g. Written Submission of the United Sates of America, Chapter IV ("Other sources of international law do not establish additional obligations of States in respect of climate change"), ¶ 4.1. The United States of America argues that, while certain obligations could potentially arise from customary international law, these "*would be satisfied in the climate change context by States' implementation of their obligations under the climate change-specific treaties they have negotiated and joined, which embody the clearest, most specific, and most recent expression of their consent to be bound by international law in respect of climate change.*"

primarily[12] from international treaties on climate change, other States point to the existence of other obligations that arise from international customary law and general principles of law.[13]

18. As explained in its First Submission, Uruguay's position is that States' obligations under international law to protect the environment from anthropogenic emissions arise from treaty law (including climate change and other environmental protection treaties and other sources, such as human rights treaties) and from customary international law (as often also codified in treaty law). Uruguay firmly believes that none of the sources of international law set forth in Article 38(1) of the Statute of Court may be overlooked as regards international obligations regarding climate change. As detailed in the Statement and as further explained below, there is ample evidence of the existence of several obligations which find their basis in both treaty law and customary international law.

19. On this point, Uruguay shares the views espoused, *inter alia*, by Colombia, that:

> [I]nternational law addressing climate change is not confined to the UNFCCC regime. In fact, measures relating to climate change have developed in a variety of forums. The UNFCCC and other multilateral regimes establish rules applicable to specific issue areas but, in addition to these rules, international law comprises some norms of a customary nature and of a general application. These norms of general international law apply to any issue-area in international law unless their exclusion is explicitly provided or necessarily implied by any set of *lex specialis*.[14]

20. Concordantly, Uruguay does not consider that customary international law and treaty law should always be necessarily applied as *lex generalis* and *lex specialis*, respectively—rather,

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12 *See* e.g. Written Submission of the People's Republic of China, ¶¶ 19-20 ("*Other branches of international law are not specially made to address climate change and its adverse effects, could only serve a complementary role, and be interpreted and applied in conformity with the provisions of the UNFCCC regime, following the principles of harmonization and systemic integration. As a tailor-made body of law, the UNFCCC regime is the primary legal basis for addressing climate change and its adverse effects, establishing objectives, principles and norms in respect of climate change for States*."); Written Submission of the Kingdom of Tonga, ¶ 124 ("*Due to their subject matter, Tonga submits that the UNFCCC and the Paris Agreement are the principal sources of law relevant to the Request before the Court. Additionally, other areas of law may inform the correct interpretation of States' obligations under the UNFCCC and the Paris Agreement, and vice versa*."); Written Submission of the Russian Federation, p. 8 ("*This principle and the norms of specialized climate treaties correlate as lex generalis and lex specialis. They do not contradict each other. Therefore, treaty norms are not an exception to this general principle and do not cancel its effect.*").

13 *See* e.g., Written Submission of Barbados, ¶¶ 134, 154; Written Submission of the Republic of Colombia, ¶ 3.9; Written Submission of the Republic of Korea, ¶ 14 ("*Such obligations may be found in treaties (which are binding only on the parties thereto) as well as customary international law.*").

14 Written Submission of the Republic of Colombia, ¶ 3.9.

to the extent that there are no contradictions, these should be applied systemically, in a joint and supplementary manner.[15]

21. ***Second***, and relatedly, Uruguay also shares the view that the international law of climate change is highly fragmentated, which entails obstacles for States to fully comply with their obligations. In this regard, Uruguay shares the concerns expressed by other States and joins them in emphasizing the importance that international adjudicatory bodies, including international investment tribunals, duly consider the breadth of sources of international law applicable to climate change and aim to harmonize any potential tensions.[16]

22. ***Third***, Uruguay shares the views of other States that international law, as it exists in the present, is sufficiently conclusive on the questions put before the Court for the Court to issue a definitive opinion on States' obligations as regards climate change and the legal consequences of any potential breaches. While this opinion will be naturally subject to any further developments that may take place in the future, Uruguay submits that there is sufficient basis for the Court to unambiguously ascertain the existence of legal principles and rules with respect to States' conduct in relation to climate change. In this regard, Uruguay refers to Barbados' written submission:

> As the principal judicial organ of the UN, the Court should answer this Request on the basis of international law as it exists, in light of all relevant sources of law. It should do so notwithstanding the prevailing policy considerations of large and developed States on climate change.
>
> This advisory opinion is not like the *Nuclear Weapons Advisory Opinion*. In that advisory opinion, this Court decided that the threat or use of nuclear weapons would "generally" be contrary to international law but could not conclude "definitively" whether such weapons would be unlawful. It did so only because the relevant legal principles were not yet fully established in international law. The opposite is true in respect of this advisory opinion.[17]

23. The same is true as regards the scientific evidence of the deleterious effects of GHG emissions on the environment. As expressed by Vanuatu:

> [I]t is difficult to imagine a more voluminous dossier than the six Assessment Reports of the IPCC, published between 1990 and 2023 on the latest climate science, plus a series of Special Reports addressing specific causes and adverse effects of climate change, as well as other reports emanating from

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15 *See also* Written Submission of the Kingdom of Spain, ¶¶ 5 et seq.

16 Written Submission of the Republic of Colombia, ¶ 3.5. As an example of this, Uruguay favourably notes the application by certain tribunals of the doctrine of police powers, as applied for instance by the arbitral tribunals in *Chemtura v. Canada* (*see Crompton (Chemtura) Corp. v. Canada* (PCA Case No. 2008-01), Award of 2 August 2010, ¶ 266) and *Philip Morris v. Uruguay* (*see Philip Morris Brand SARL et al v. Uruguay* (ICSID Case No. ARB/10/7), Award of 8 July 2016, ¶ 306).

17 Written Submission of Barbados, ¶¶ 127-128.

UN programmes and agencies, included in the dossier communicated by the UN Office of Legal Affairs.[18]

24. In the ensuing sub-sections, Uruguay respectfully addresses each of the questions before the Court in turn, providing its additional comments on other parties' submissions where relevant reiterate that, in accordance with the entire body of international law, States have obligations vis-à-vis other States to ensure the protection of the climate system and other parts of the environment, including human rights obligations. As Uruguay explains, these obligations arise both from treaty law and from international customary law (**A**).

25. Furthermore, Uruguay submits its additional comments on the legal consequences for breaches of obligations by States which have caused significant harm to the climate system and other parts of the environment (**B**).

## A. STATES' OBLIGATIONS IN RESPECT OF CLIMATE CHANGE ARE NOT LIMITED TO THOSE ARISING FROM INTERNATIONAL TREATIES

26. As Uruguay addressed in its Statement and further shows below, there is ample evidence of various obligations in respect of climate change. The duty to prevent transboundary harm and the duty of due diligence under international law undoubtedly apply to the protection of the climate system from the negative effects of GHG emissions, including to treaty obligations (**1**).

27. Further, Uruguay provides additional comments on the articulation of some of the treaties applicable to the protection of the environment from the effects of climate change, including the UNCLOS, the UNFCCC and the Paris Agreement (**2**).

28. Subsequently, Uruguay provides further views on the principle of sustainable development, which entails that the adoption of climate actions should not be an obstacle to the development of States and, in particular, developing States such as Uruguay (**3**).

29. Moreover, Uruguay stresses the importance of international cooperation regarding climate change and reiterates its concern for developed States' compliance with their financial obligations towards developing countries (**4**).

30. Finally, Uruguay provides additional comments on States' Human Rights obligations in relation to climate change, including the right to a clean, healthy and sustainable environment and the need to ensure the effective enjoyment of other human rights (**5**).

[18] Written Submission of the Republic of Vanuatu, ¶ 54.

### 1. Additional comments on the duty of States to apply due diligence to prevent serious or irreversible transboundary environmental damage

31. As explained by Uruguay in its First Submission, under customary international law, States have the duty to use all means at their disposal to prevent serious or irreversible damage to the environment of another State. This is generally known as the "*prevention principle*".[19]

32. Uruguay primarily notes the widespread agreement among States as to the existence of this duty under customary international law, as evidenced by the recurrent references to the duty of prevention in a vast number of written statements.[20] Indeed, references to the *Trail Smelter* arbitration, the advisory opinion of the Court on the *Legality of the Threat or Use of Nuclear Weapons* and its judgments in the cases of *Gabčikovo-Nagymaros* and the *Pulp Mills on the River Uruguay*, Principle 21 of the Stockholm Declaration, as well as to several instruments of international law recognizing the principle of prevention, are pervasive through many of the written statements submitted before the Court.[21] Therefore, the existence of the duty of prevention and its formulation by the Court is peacefully accepted.

33. This notwithstanding, the written statements evince differing views among States as to (**a**) whether the principle applies to the protection of the climate system and other parts of the environment and, if it does, (**b**) whether the application of the principle entails obligations in addition to those provided under the UN framework for the protection of the environment and the fight against climate change (centrally, the UNFCCC and the Paris Agreement). Uruguay addresses each of these questions in turn, as well as the question of the articulation of the principle of prevention and the duty of due diligence with States' treaty obligations (**c**).

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19 First Submission, ¶¶ 89 et seq.

20 Submission of the African Union, ¶ 95; Submission of the Arab Republic of Egypt, ¶ 87, 97-98; Submission of the People's Republic of China, ¶ 127 ("*The well-established principle of prevention of significant harm to the environment as mentioned in the request for an advisory opinion, also known as the "no-harm rule", addresses transboundary harm to the environment in international law.*")Submission of the European Union, ¶ 224; Submission of the United States of America, ¶ 4.11 (footnote 291); Submission of the Swiss Federation, ¶ 16 ("*Although the paragraph preceding the questions submitted to the Court in the request for an advisory opinion refers to the 'principle' of prevention of significant harm to the environment*, *Switzerland notes that the no-harm rule is not just a 'principle' under customary international law. It also comprises an obligation to prevent significant environmental harm*"); Submission of the Democratic Republic of Timor-Leste, ¶ 83.

21 *See e.g.* Written Submission of the Republic of Chile, Section III(A), ¶¶ 35-37; Submission of the Republic of Colombia, ¶¶ 3.19, 3.24, ¶¶ 97-98; Written Submission of the Kingdom of Spain, ¶ 7; Submission of the Democratic Republic of Timor-Leste, ¶¶ 121, 147, 194, 207, 239. For a comprehensive overview of the references to the principle of prevention in ancient law, including ancient Roman law, ancient Chinese and Hindu legal codes and the *hadith* in Islamic law, *inter alia*, *see* Written Submission of Barbados, ¶¶ 135 et seq.

### a. Additional comments on the application of the prevention principle under international law to conducts that can lead to the protection of the climate system and other parts of the environment

34. As demonstrated in Uruguay's First Submission, Uruguay shares the view that the duty to prevent transboundary harm, as a well-established principle of customary law, is a crucial component of the international law of climate change. [22]

35. The duty of prevention, as formulated by the Court, does not distinguish between the nature or source of the damage. Rather, it "*has its origins in the due diligence that is required of a State in its territory*" and entails that "[a] *State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State*".[23]

36. As also demonstrated by Uruguay in its First Submission, there is scientific consensus that greenhouse gas emissions generated within the territory of a State can cause grave climate change phenomena that may damage a third State.[24] Moreover, the evidence shows that countries are disproportionately affected by climate change—in this regard, it has been proven with a high degree of confidence that communities who have historically contributed the least to climate change have been most gravely affected by its consequences.[25] Uruguay submits that this is precisely the scenario in which the duty of prevention, as described by the Court and existing international legal instruments, should apply.

37. Additionally, the notion that the environment is a shared asset that must be preserved from damage for the benefit of future generations lies at the core of the principle of prevention. In this regard, Uruguay stresses that the concept of "future generations" derives directly from the Charter of the United Nations, as revealed by the Preamble of the Charter.[26] In this

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22 Sharing the same view, *see* Written Submission of Barbados, ¶ 134 ("*It is well-established in customary international law that States cannot cause transboundary harm, i.e., they cannot conduct or even permit activities in their own territory that harm the territories of other States. This well-established principle applies to climate change.*")

23 *Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, I.C.J. Reports 2010, ¶ 101.

24 *See* First Submission, Section II(A).

25 IPCC, 2023: *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, statement A.2.

26 *See* Charter of the United Nations, Preamble ("*to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind*").

regard, "*it was with today and tomorrow in mind - shaped by future generations - that the United Nations was created*".[27]

38. The protection of future generations from environmental damage has been considered by the Court as part of the basis of the principle of prevention. The Court has acknowledged the importance of preventing environmental damage, considering the "*often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage*".[28] In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court reasoned that:

> [T]he environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities 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.[29]

39. Uruguay submits that this rationale is currently more relevant than ever, particularly given the ample scientific evidence showing the grave consequences that climate change could have for the sustainability and preservation of the global environment for future generations.[30]

40. Uruguay is mindful of the views of other States, according to which the duty to prevent transboundary harm is not applicable to climate change. Among the arguments for this position, States have mainly pointed to three differences between previous cases in which the Court has applied the duty of prevention and climate change, which may be summarised as follows: (***i***) while the Court has previously addressed the application of the principle of prevention to environmental harm that could be traced to specific, identifiable sources, the emission of greenhouse gases is a diffuse, universal activity;[31] (***ii***) while the relevant

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27 *See* Héctor Gros Espiell, "*Las declaraciones de la Unesco en materia de bioética, genética y generaciones futuras. Su importancia y su incidencia en el desarrollo del derecho internacional* [The Unesco declarations on bioethics, genetics and future generations. Their importance and impact on the development of international law]" (2006), p. 1415.

28 *Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 140. *See also*, *e.g.*, International Law Commission (ILC), *'Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (and Commentaries)'* (2001), General commentary (2) ("*Prevention should be a preferred policy because compensation in case of harm often cannot restore the situation prevailing prior to the event or accident*").

29 International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 29.

30 *See* IPCC, 2023: *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, statement B.2.1.

31 *See* e.g. Written Submission of the People's Republic of China, ¶ 128; Written Submission of the United States of America, ¶ 4.17.

precedents concerned harm caused to neighbouring or nearby States, the effects of GHGs and climate change are global;[32] and (***iii***) while in past cases the link was "*relatively direct in time and space*", the link between GHG emissions and environmental harm is "*very long and complex*".[33] Uruguay respectfully disagrees with the three points, as explained below.

41. As regards points (***i***) and (***ii***), Uruguay notes that the question of whether environmental damage can be traced to a certain point with a degree of certainty is, if anything, a matter of causation under the current liability regime, as Uruguay addresses below.[34] Any potential issues of causation should not have an impact on the content and scope of State's obligations under international law, namely as regards the applicability of the duty to prevent transboundary harm.[35] While the existing challenges to establish a causal link between certain environmental damage and its source could potentially affect questions of liability, these should have no bearing on whether a State has duly exercised an adequate level of due diligence to prevent any potential harm. In other words, States should not rely on any difficulties to establish causation to excuse their lack of adequate and timely due diligence.

42. This is in line with the Advisory Opinion recently issued by the International Tribunal on the Law of the Sea ("**ITLOS**") as regards the specific obligations of State Parties to the United Nations Convention on the Law of the Sea ("**UNCLOS**"): (**a**) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere and (**b**) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification.[36] Uruguay considers that the ITLOS Advisory Opinion, issued on 21 May 2024, is a milestone as regards the interpretation and application of international law with respect to States' obligations to protect and preserve the environment—specifically, the marine environment—from the deleterious effects of climate change. In this regard, Uruguay respectfully submits that the ITLOS Advisory Opinion is highly relevant to these proceedings before the Court.

43. In its Advisory Opinion, the ITLOS reasoned that the difficulty to ascertain the precise causes and effects of climate change should be distinguished from Member States' obligations to

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32 *See* e.g. Written Submission of the People's Republic of China, ¶ 128; Written Submission of the United States of America, ¶ 4.18

33 *See* e.g. Written Submission of the People's Republic of China, ¶ 128; Written Submission of the United States of America, ¶ 4.19.

34 *See* Section III.B.4.

35 *See* First Submission, ¶¶ 166-174 and below ¶¶ 168-171.

36 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024.

adopt measures to prevent, reduce and control pollution of the marine environment under Article 194, which the ITLOS found applies to the mitigation of GHG emissions:

> It is acknowledged that, given the diffused and cumulative causes and global effects of climate change, it would be difficult to specify how anthropogenic GHG emissions from activities under the jurisdiction or control of one State cause damage to other States. However, this difficulty has more to do with establishing the causation between such emissions of one State and damage caused to other States and their environment. This should be distinguished from the applicability of an obligation under article 194, ¶ 2, to marine pollution from anthropogenic GHG emissions.[37]

44. Similarly, as regards the argument that the obligation under Article 192(2) of the UNCLOS to "*protect and preserve the marine environment*" did not apply "*given the diffused and cumulative causes and global effects of climate change*", the ITLOS found this unconvincing, in the understanding that "*this difficulty has more to do with establishing the causation between such emissions of one State and damage caused to other States and their environment*."[38]

45. Moreover, as explained by Uruguay in its Statement, States' duty to prevent serious or irreversible environmental damage exists even in the absence of full certainty with respect to the potential damage to be prevented, in accordance with the well-established precautionary principle.[39] As explained by Vanuatu, the precautionary principle is a corollary of the duty of due diligence under international law.[40] Uruguay agrees with Colombia's understanding in this respect, as reflected in Colombia's written statement:

> [T]he sole application of the principle of prevention is insufficient when dealing with both known and unknown effects of the climate crisis. It is not acceptable, nor sufficient, for States to excuse themselves based on the unpredictability of the actual causation of effects or consequences of activities reasonably likely to worsen or accelerate the climate crisis, in order to refrain from adopting measures to mitigate the harmful effects of such activities. In this regard, Colombia draws the attention of the Court to the

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37 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 25.

38 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 252.

39 As previously addressed by Uruguay, this principle is provided in treaty law. *See* United Nations Framework Convention of Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, 165 ("**UNFCCC**"), Article 3.3 ("[t]*he Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects*"). *See also* Rio Declaration on Environment and Development (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 ("**Rio Declaration**"), Principle 15 "*In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation*"; First Submission, ¶¶ 101, 106; Written Submission of the Arab Republic of Egypt, ¶¶ 109-110.

40 Written Submission of the Republic of Vanuatu, ¶ 246.

> precautionary approach, an integral part of the general obligation of due diligence, which seeks to provide guidelines on the application and interpretation of environmental law when there is no scientific certainty regarding the production or risk of environmental harm.[41]

46. Therefore, a lack of scientific certainty as the causal link between certain conducts and activities and the environmental damage potentially generated by them does not exclude the application of the prevention principle.

47. As regards point (***iii***), *i.e.*, that the relevant precedents concerned harm caused to neighbouring or nearby States, Uruguay notes that this was not always the case. For instance, the Court's Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* concerned the use of nuclear weapons, whose potential consequences are not necessarily limited to neighbouring or nearby States. In fact, the Court stated that the effects of the use of nuclear weapons "*would be widespread and would have transboundary effects*" and that "*the use of nuclear weapons could constitute a catastrophe for the environment*".[42]

48. Uruguay further notes that the varying formulation of the duty of prevention in the jurisprudence of the Court and instruments of international law simply refers to "*transboundary environmental harm*",[43] "*significant transboundary harm"*,[44] damages to "*another State*",[45] "*other States*",[46] "*other States or areas beyond national control*",[47] "*other States or areas beyond the limits of national jurisdiction*",[48] or "*areas beyond the limits of national jurisdiction*", [49] thereby not limiting the applicability of the principle to "*neighbouring or nearby States*". Uruguay notes the submission made by France in this

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41 Written Submission of the Republic of Colombia, ¶¶ 3.25-3.26.

42 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 27.

43 *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, I.C.J. Reports 2015, ¶ 153.

44 "Draft Articles on Prevention of Transboundary Harm from Hazardous Activities", Report of the Commission to the General Assembly on the work of its fifty-third session, Yearbook of the International Law Commission, A/CN.4/SER.A/2001/Add.1 (Part 2), *International Law Commission*, 10 August 2001, Article 3.

45 *Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, I.C.J. Reports 2010, ¶ 101.

46 *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v Albania), Merits, Judgment of 9 April 1949, I.C.J. Reports 1949*, p. 4, page 22.

47 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 29.

48 Declaration of the United Nations Conference on the Human Environment (1972), Principle 21.

49 The Strasbourg Principles of International Environmental Human Rights Law, Principle 36.

regard: "[s]*'agissant du caractère transfrontière du dommage d'une part, il n'est pas précisé que celui-ci soit limité aux frontières adjacentes des États en cause*".[50]

49. Consequently, Uruguay submits that the prevention principle under international customary law is applicable to determine States' obligations with respect to climate change.

### b. Additional comments on the duty of due diligence to prevent environmental damage

50. Uruguay also notes the existence of differing views as regards the content of the prevention principle as regards climate change, if it were applicable. In this regard, some States share the understanding that the prevention principle does not create any additional obligations on States as regards climate change, given that the relevant standard of due diligence would be determined by the parameters established in the UN climate change regime.[51] Conversely, Uruguay submits that the prevention principle, as developed by the jurisprudence of the Court, applies jointly with and illustrates States' obligations under the UNFCCC and the Paris Agreement.

51. In accordance with the jurisprudence of the Court, the prevention principle should be applied in accordance with the general duty of due diligence under international law, which entails both (***i***) preventative and proactive conduct, and (***ii***) procedural and substantive obligations.[52] Specifically, according to the Court, the duty to act with due diligence entails (***i***) the adoption of appropriate rules and measures,[53] (***ii***) the exercise of vigilance in their enforcement and control,[54] and (***iii***) the conduct of a timely environmental impact assessment.[55]

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50 Written Submission of the French Republic, ¶ 59.

51 *See*, *e.g.*, Written Submission of the People's Republic of China, ¶¶ 129-130; Written Submission of the United States of America, Chapter IV(A)(iii).

52 *See* Written Submission of the Republic of Colombia, ¶ 3.15 ("*Colombia submits that customary international law imposes an obligation on States to act in both a preventative and a proactive way in order to protect the environment. This obligation has both positive and negative dimensions, requiring States to take positive action to protect the environment, as well as to refrain from degrading the environment.*"), ¶ 3.22.

53 *Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, I.C.J. Reports 2010, ¶ 197.

54 *Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, I.C.J. Reports 2010, ¶ 197; *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, I.C.J. Reports 2015, ¶ 104.

55 *Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, I.C.J. Reports 2010, ¶ 204; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v.*

52. As stated by the Court in *Pulp Mills*, as regards the interpretation of the precise scope of the obligations undertaken by Argentina and Uruguay in the 1975 Statute of the River Uruguay:

> [T]he obligation to "preserve the aquatic environment, and in particular to prevent pollution by prescribing appropriate rules and measures" is an obligation to act with due diligence in respect of all activities which take place under the jurisdiction and control of each party. It is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party. The responsibility of a party to the 1975 Statute would therefore be engaged if it was shown that it had failed to act diligently and thus take all appropriate measures to enforce its relevant regulations on a public or private operator under its jurisdiction. […]
>
> In this sense, the obligation to protect and preserve, under Article 41 (a) of the Statute, has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource. Moreover, due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if a party planning works liable to affect the regime of the river or the quality of its waters did not undertake an environmental impact assessment on the potential effects of such works.[56]

53. In addition, Uruguay agrees with the view expressed *inter alia* by France that the level of due diligence required is to be determined in accordance with the gravity of the risks potentially associated with certain activities. In this regard, the gravity of the damages that could result from climate change imposes on States an elevated standard of due diligence, particularly considering the irreversible nature of certain deleterious effects.[57]

54. As expressed by the ITLOS in its recent Advisory Opinion: "[i]*t is difficult to describe due diligence in general terms, as the standard of due diligence varies depending on the particular*

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*Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, ¶ 104. *See also* Written Submission of the Republic of Colombia, ¶ 3.23, referring to the emphasis placed on the conduct of an environmental risk assessment by the Framework Principles on Human Rights and the Environment.

56 *Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, I.C.J. Reports 2010*,* ¶¶ 197, 204; *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, I.C.J. Reports 2015, ¶ 104.

57 *See* Written Submission of the French Republic, ¶ 63. *See also* Written Submission of the Arab Republic of Egypt, ¶¶ 106 et seq. *See also* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 239.

*circumstances to which an obligation of due diligence applies*".[58] Accordingly, the standard of due diligence may evolve over time.

### c. Additional comments on the interaction between the principle of prevention and the duty of due diligence and States' treaty-based obligations

55. Uruguay submits that, similarly to what the Court did in *Pulp Mills*, as described above, the prevention principle and the standard of due diligence under international customary law must be applied to illustrate the specific content of States' treaty-based obligations, including those undertaken by under the UNFCCC and the Paris Agreement and UNCLOS.

56. In this regard, the Paris Agreement provides that States have an obligation to determine and communicate their Nationally Determined Contributions ("**NDCs**") and to adopt domestic mitigation measures aimed at achieving the objectives established therein, as unambiguously provided by its Article 4.2:

> Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.[59]

57. Notoriously, Article 4.2 of the Paris Agreement does not prescribe the specific measures that States should include in their NDCs, nor does it bind States to achieving a specific result as regards the objectives set out in their NDCs.[60] This is clearly evinced by the reference in Article 4.2 of the Paris Agreement to the mitigation contributions that the Party "*intends to achieve*". However, this does not mean that States are free to choose whether to comply with their NDCs. To the contrary, NDCs must be implemented in good faith, and in accordance with the duty of care applicable under the standard of due diligence under international law.

58. In this regard, Uruguay shares the views expressed *inter alia* by France in its written statement:

> Si l'Accord de Paris n'indique pas le contenu des mesures attendues des États en vertu de son article 4, ¶e 2, la nature de cette obligation, éclairée par le

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58 ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 239.

59 *Conference of the Parties, Adoption of the Paris Agreement to the United Nations Framework Convention on Climate Change* (adopted 12 December 2015, entered into force 4 November 2016) UN Doc. FCCC/CP/2015/10/Add.1 Decision 1/CP.21 ("**Paris Agreement**"), Article 4.2.

60 *See* Written Submission of the United States of America, ¶ 3.17 ("*Although Parties have an obligation to formulate, communicate, and maintain successive NDCs, the Paris Agreement deliberately does not require Parties to achieve their NDCs*").

> droit international coutumier, permet d'apporter quelques éléments à cet égard.[61]

59. Uruguay considers Spain's remarks to a similar effect to be also apposite:

> Spain argues that the climate change obligations designed by the Paris Agreement (2015), are aligned with *the due diligence obligations* recognized in international law. […] The NDC structure within the Paris Agreement incorporates the principle of due diligence by requiring States to successively prepare, communicate and maintain the commitments they will seek to fulfil. This process reflects the due diligence obligation to take all appropriate measures to avoid significant climate damage.[62]

60. A similar reasoning has been recently followed by ITLOS to determine the relevant standard of compliance of the obligations of Member States under Articles 192 and 194 of the UNCLOS. After determining that the definition of "*pollution of the marine environment*" under Article 1(1)(4) of the UNCLOS should be construed to include anthropogenic GHG emissions into the atmosphere,[63] ITLOS applied the standard of due diligence to determine the obligations emanating from Articles 192 and 194 of UNCLOS as regards the adoption of mitigation and adaptation measures. In this context, the ITLOS found that Member States' obligations of conduct were to be construed in accordance with the standard of due diligence under international law.

61. As regards States' obligations to adopt measures to prevent, reduce and control marine pollution under Article 194(1) of the UNCLOS, the ITLOS reasoned as follows:

> Since article 194, ¶ 1, of the Convention provides for an obligation of conduct, it requires States to act with "due diligence" in taking necessary measures to prevent, reduce and control marine pollution. […]

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61 Written Submission of the French Republic, ¶ 64.

62 Written Submission of the Kingdom of Spain, ¶ 7.

63 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶¶ 178-179. ITLOS referred, *inter alia* to the scientific evidence that, "*through the introduction of carbon dioxide and heat into the marine environment, anthropogenic GHG emissions cause climate change and ocean acidification, which results in the deleterious effects illustrated in the definition of pollution of the marine environment*.". Uruguay notes that some States have put forth a diverging interpretation, which Uruguay does not share, according to which UNCLOS would not apply to climate change issues, given (**a**) the absence of specific references to climate change, GHGs and ocean acidification (as one of the main detrimental effects of the marine absorption of GHG) indicate that the UNCLOS was not intended to apply to such issues. This view relies on the historical context of the negotiations leading to the adoption of UNCLOS in 1982, during which time climate change and its effect had not yet been assessed (*see e.g.* Written Submission of the People's Republic of China, ¶ 104) and (**b**) the specialized nature of the UNFCCC regime to argue that the application of UNCLOS to issues of climate change would be counter-productive, since it might duplicate the work of specialized platforms and could potentially interfere with the mandate of the UNFCCC and the Paris Agreement (*see e.g.* Written Submission of the Russian Federation, p. 13).

> The obligation of due diligence requires a State to put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective.[64]

62. Accordingly, the ITLOS found that States' obligations under Article 194(1) UNCLOS would not be superseded nor satisfied by the commitments in the Paris Agreement:

> The Tribunal does not consider that the obligation under article 194, ¶ 1, of the Convention would be satisfied simply by complying with the obligations and commitments under the Paris Agreement. The Convention and the Paris Agreement are separate agreements, with separate sets of obligations. While the Paris Agreement complements the Convention in relation to the obligation to regulate marine pollution from anthropogenic GHG emissions, the former does not supersede the latter.[65]

63. Further, the ITLOS analysed States' obligation under Article 194(2) of the UNCLOS to "*take* […] *all measures necessary to ensure that activities* […] *are so conducted as not to cause damage by pollution to other States*",[66] which it found to "*bear*[] *a close resemblance to the well-established principle of harm prevention*."[67] Yet again, the ITLOS concluded that this obligation is also one of due diligence in accordance with the applicable standard under customary international law, which implementation varies in accordance with the capabilities of each State.[68]

64. The ITLOS reached a similar conclusion regarding the general obligation to protect and preserve the marine environment pursuant to Article 192 of the UNCLOS. Crucially, the ITLOS found that, while Article 194 entailed obligations directed at the mitigation of climate change by reducing anthropogenic GHG emissions, the wider scope of Article 192 also required the adoption of adaptation measures:

> The obligation to take mitigation measures to reduce anthropogenic GHG emissions has been addressed in the response to Question (a). Article 192 of the Convention also requires States to implement measures to protect and preserve the marine environment in relation to climate change impacts and

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64 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 235 (emphasis added).

65 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 223. This should be contrasted to the views held by certain States in these proceedings, which Uruguay does not share, according to which "*the Paris Agreement constitutes the most relevant measure within the meaning of Article 194 of the Convention, although UNCLOS does not itself create a legal obligation to implement other international agreements concerning climate change*." (*see* Written Submission of the Republic of Korea, ¶ 27).

66 Convention on the Law of the Sea, (10 December 1982, entered into force 1 November 1994) 1833 UNTS 397 ("**UNCLOS**"), Article 194(2).

67 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 246.

68 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 249.

> ocean acidification that include resilience and adaptation actions as described in the climate change treaties.[69]

65. Yet again, the ITLOS found that the applicable standard for this obligation is one of due diligence, in accordance with customary international law.[70]

66. Therefore, according to the ITLOS, the mitigation and adaptation measures required by the UNCLOS are subject to an evolving standard of due diligence, which is State-specific and depends on the available means and capabilities of the State concerned.[71] Uruguay submits that the same approach should be adopted to illustrate the scope of States' obligations under other treaties.

67. In this regard, the application of the standard of due diligence under customary international law to determine the precise content of State's obligations under the relevant treaties, including the UNFCCC and the Paris Agreement, is consistent with the principles of common but differentiates responsibilities and related capabilities ("**CBDR-RC**") and highest possible ambition under the UNFCCC.[72]

68. Uruguay refers to its previous statements as regards the relevance of the CBDR-RC as an underlying principle of international environmental law, as well as of the UNFCCC and the Paris Agreement.[73] Furthermore, Uruguay shares the view expressed by several other States that the joint application of the duty of due diligence and the principle of common but differentiated responsibilities in the context of the UNFCCC and the Paris Agreement results in the principle of highest possible ambitions,[74] which is expressly embedded in the Paris Agreement.

69. Namely, Article 3 of the Paris Agreement provides that States should "*undertake and communicate <u>ambitious efforts</u>*" as part of their NDCs, which are to represent "*a progression over time*".[75] In addition, Article 4(3) of the Paris Agreement provides:

> Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common

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69 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 391.

70 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 396.

71 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 207.

72 *See* below, ¶¶ 73-74.

73 *See* First Submission, Section IV(6).

74 Written Submission of Barbados, ¶ 207; Written Submission of the Republic of Colombia, ¶¶ 3.36, 3.38.

75 UNFCCC, Article 3 (emphasis added).

> but differentiated responsibilities and respective capabilities, in the light of different national circumstances.[76]

70. In this regard, Uruguay shares the view expressed *inter alia* by Barbados:

> Taken together, the principle of common but differentiated responsibilities and the due diligence standard require States to set their national climate mitigation targets at the level of their highest possible ambition and to pursue effective mitigation measures with the aim of achieving those targets. The same applies with equal force to adaptation measures, which must be set at the level of each State's highest possible ambition.[77]

71. In accordance with the above, Uruguay submits that, pursuant to the UNFCCC and the Paris Agreement, States are required to make their best efforts to comply with their NDCs in accordance with each States' capabilities, in line with the prevention principle and the principle of good faith under international law.

72. Moreover, the application of a standard of due diligence allows for an interpretation of the obligations under the UNFCCC that may evolve over time in accordance with each States' capabilities. Uruguay refers to the Republic of Korea's submissions on this point:

> In the context of ensuring the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, it can be said that States are under a customary obligation to take all appropriate measures to prevent significant harm to the climate system or to minimize the risk thereof. This is an obligation of due diligence requiring States not just to adopt appropriate rules and measures but also to maintain a certain level of vigilance in their enforcement. As a duty of care, it requires States to exercise their best possible efforts. In this regard, it ought to be noted that "measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge.[78]

73. In light of the above, Uruguay respectfully submits that the prevention principle arising from customary international law is not displaced by States' obligations under the UNFCCC, the Paris Agreement, UNCLOS and other treaties relevant to climate change. To the contrary, the duty to prevent transboundary harm is a standalone obligation under customary international law. Moreover, the standard of due diligence required under the prevention principle should be applied to provide greater clarity as to the specific conduct that may be

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76 Paris Agreement, Article 4(3).

77 Written Submission of Barbados, ¶ 207. *See also* United Nations Human Rights Committee, *Daniel Billy and others v. Australia (Torres Strait Islanders Petition)*, Decision of 23 September 2022 (CCPR/C/135/D/3624/2019), Individual opinion of Committee member Gentian Zyberi (concurring),¶ 3; Written Submission of the Republic of Colombia, ¶¶ 3.36, 3.38; Written Submission of the Russian Federation, p. 7 ("*Therefore, making efforts to hold the increase in global average temperature between 1.5°C and 2°C is what is required from States to fulfil their obligations under Article 2 (1) (a) of the Paris Agreement.*").

78 Written Submission of the Republic of Korea, ¶ 37.

expected from States in compliance with their undertakings. This is fully consistent with the principles of CBDR-RC and of highest possible ambition, which are central to the UNFCCC and the Paris Agreement.

### 2. Additional comments with respect to the articulation of the different treaties that form part of the UN regime applicable to climate change

74. Uruguay has described above certain aspects of the obligations arising from the UNFCCC, the Paris Agreement and UNCLOS as regards the mitigation and adaptation obligations undertaken by States and the relevant compliance standard. In this sub-section, Uruguay briefly makes a few remarks as regards the interaction between the UNFCCC and the Paris Agreement and the relationship between these treaties and the UNCLOS. Uruguay considers that these elements are relevant for the correct interpretation and application of these treaties.

75. ***First***, Uruguay notes that certain States have advanced that, to the extent that the provisions of the Paris Agreement could be considered to conflict with those of the UNFCCC, the Paris Agreement, as *lex posterior*, would prevail as among States that are party to both agreements, pursuant to Article 30 of the Vienna Convention on the Law of Treaties ("**VCLT**").[79] Consequently, certain States have argued that an analysis of the UN climate change should be primarily focused on the Paris Agreement.[80] However, as noted by South Africa, there is no provision in the Paris Agreement stating that it supersedes the UNFCCC or the Kyoto Protocol.[81]

76. Uruguay shares the view that, theoretically, the existence of any conflicts between the UNFCCC and the Paris Agreement should be resolved in favour of the application of the Paris Agreement, following Article 30 of the VCLT. However, Uruguay does not share the view that this entails that the Paris Agreement should be afforded more weight in the construction of the UN climate change regime. Rather, Uruguay submits that the UNFCCC and the Paris Agreement should be interpreted and applied jointly.[82] This is compatible with the UNFCCC's role as a framework agreement, which provides the general principles and obligations that subsequent agreements are meant to further specify, and further demonstrated by the provision in the Paris Agreement of measures to "*enhanc*[e] *the implementation of the Convention*".[83] The existence of any conflicts or contradictions between the UNFCCC and the

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79 *See e.g.* Written Submission of Canada, ¶ 22; Written Submission of the United States of America, ¶ 3.3.

80 *See* Written Submission of the United States of America, ¶ 3.3.

81 Written Submission of the Republic of South Africa, ¶ 35.

82 *See* Written Submission of the French Republic, ¶ 13.

83 *See* Paris Agreement, Article 2. *See also* Written Submission of the Republic of South Africa, ¶ 36.

Paris Agreement is unlikely and, were it to potentially exist, a harmonizing interpretation should be preferred.

77. ***Second***, Uruguay agrees with the view expressed *inter alia* by Argentina,[84] according to which there must be no further categories of countries than those agreed in the UNFCCC. In accordance with the UNFCCC, the main categories of countries for purposes of the commitments undertaken under both treaties are "developed countries" (listed in Annex I) and "developing countries" (not listed in Annex I). In accordance with Article 4(4) of the Paris Agreement, which is in turn in line with the principle of common but differentiated responsibilities that lies at the core of the international climate change regime, the conduct expected from each category as regard the mitigation efforts undertaken is differentiated as follows:

> Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.[85]

78. In this regard, Uruguay does not share the view that the CBDR-RC, as formulated in the Paris Agreement (i.e., "*the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances*") substitutes the clean-cut categories of the UNFCCC for a "*spectrum of differentiation*".[86] While it is true that the CBDR-RC (which is included in, yet not unique to, the UNFCCC,[87] and should rather be considered as a general principle of the international law of climate change)[88] mandates that a State's capabilities be considered to determine that State's expected contribution to global climate action, this is not incompatible with the categories provided in the UNFCCC. To the contrary, the differentiation between developed countries and developing countries in the UNFCCC embodies the importance of CBDR-RC within the framework of the Convention.

79. ***Third***, as regards the interaction between the UNFCCC and the Paris Agreement and the mitigation and adaptation measures arising from UNCLOS, as described above,[89] Uruguay

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84 *See* Written Submission of the Argentine Republic, ¶ 40.

85 Paris Agreement, Article 4(4).

86 *See* Written Submission of the United States of America, ¶¶ 3.29-3.30.

87 *See* UNFCCC, Preamble ("[T]*he global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions*.").

88 *See* below, ¶ 82. *See also* First Submission, ¶ 133.

89 *See* Section III.A.1.

shares the view that all instruments should, to the extent possible, be systemically applied.[90] This is in line with the view expressed by the ITLOS in its Advisory Opinion, according to which "*coordination and harmonization between the Convention and external rules are important to clarify, and to inform the meaning of, the provisions of the Convention and to ensure that the Convention serves as a living instrument*."[91] On this point, the ITLOS also referred to Article 237 of the UNCLOS, which provides that the Convention's provisions on the protection and preservation of the marine environment are without prejudice to those arising from "*special conventions and agreements*".[92] According to the ITLOS, this provision "*reflects the need for consistency and mutual supportiveness between the applicable rules*."[93]

80. Moreover, Uruguay submits that the provisions of the UNFCCC regime and the UNCLOS can and should be readily harmonized, particularly considering that the obligations under UNCLOS are consistent with the underlying principles of the UNFCCC and the customary international law of climate change. As correctly noted by Argentina[94] the UNFCCC expressly consecrates the CBDR-RC, by providing that States shall take all measures to prevent the pollution of the marine environment "*using for this purpose the best practicable means at their disposal and in accordance with their capabilities"*,[95] and provides for international cooperation to adopt rules for the protection and preservation of the marine environment in its Article 197.[96]

81. In sum, as stated above, while the international regime applicable to climate change is highly fragmentated and comprises a wide array of legal instruments, Uruguay submits that international law and, specifically, the relevant treaties, contain mechanisms for their harmonization that allow for a systemic and coherent regulation of the matter.

### 3. Additional comments on the principle of sustainable development

82. Uruguay explained in its Statement that in line with the concept of sustainable development, environmental policies should not be applied in a way that hinders developing States' ability to further their economic development and to increase the prosperity and wellbeing of their populations.[97] Uruguay observes that a wide number of States share the understanding that

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90 *See e.g.* Written Submission of the Kingdom of Spain, Section C.

91 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 130.

92 UNCLOS, Article 237.

93 *See* ITLOS, Case No. 31, Advisory Opinion of 21 May 2024, ¶ 133.

94 Written Submission of the Argentine Republic, ¶ 48.

95 UNCLOS, Article 194(1).

96 UNCLOS, Article 197.

97 *See* First Submission, ¶¶ 146 et seq.

this concept, together with the CBDR-RC, should be a guiding principle that the Court should consider to clarify the scope of obligations regarding the protection of the climate system and other parts of the environment, particularly as to how the obligations should apply differently to developing States.[98]

83. In this regard, as expressed by Argentina: "[w]*hen considering the different obligations of States, the urgent need of developing countries to eradicate poverty in all its forms and dimensions and to achieve sustainable development must be taken into account*".[99]

84. On this basis, Uruguay wishes to make two further remarks:

85. ***First***, that, as a corollary of the principle of sustainable development, States' obligations regarding the protection of the environment from anthropogenic GHG emissions should not jeopardize food production. In this regard, Uruguay shares the views expressed by Argentina, that "[a]*ny response to climate change, in line with the UNFCCC and its Paris Agreement, must recognize and take into account the fundamental priorities of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change*."[100]

86. This concern is in line with the UNFCCC, which objectives, as provides in Article 2, expressly include the need to preserve food production and enable sustainable development:

> The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not

98 *See* Written Submission of the Republic of Colombia, ¶ 3.11; Written Submission of Written Submission of Argentina, ¶ 50(h); Submission of the African Union, Section IV.B.4; Written Submission of Arab Republic of Egypt, ¶¶ 138-151; Submission of the Netherlands, ¶¶ 5.29-5.30; Submission of Saint Lucia, ¶ 58 ("*The equitable principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) is a core principle given expression under the UNFCCC and the Paris Agreement*"). *See also* on the principle of CBDR-RC: Submission of the European Union, section 4.5.3; Submission of the Swiss Federation, ¶ 152 ("*The absence of a definition of developed or developing countries in the UNFCCC annexes is compensated for by the principle of common but differentiated responsibilities and respective capabilities, which provides the criteria by which the two categories of countries should be distinguished. By stressing that all countries take action in accordance with their common but differentiated responsibilities, respective capabilities and social and economic circumstances, the UNFCCC establishes that a country should be considered as developed or developing in accordance with its responsibilities, its respective capabilities and its specific social and economic circumstances.*"); Submission of the United Kingdom, ¶ 143.

99 *See* Written Submission of the Argentine Republic, ¶ 50(h).

100 Written Submission of the Argentine Republic, ¶ 41. *See also* Written Submission of the Federative Republic of Brazil, ¶ 33; Written Submission of the Republic of Colombia, ¶ 3.33.

> threatened and to enable economic development to proceed in a sustainable manner.[101]

87. A similar concern finds its echo in the preamble to the Paris Agreement, which states:

> Recognizing the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change[102]

88. Accordingly, Article 2(1)(b) of the Paris Agreement provides:

> 1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: […]
>
> (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production;[103]

89. As a developing country whose economy is strongly reliant on agricultural production and farming,[104] Uruguay strongly believes that this aspect of the international regulation of climate change should not be overlooked. This notwithstanding, as addressed by Uruguay in its First Submission, Uruguay has with great effort adopted various mitigation measures in the rural sector.[105]

90. ***Second***, and relatedly, Uruguay shares the concerns raised by other developing countries as regards the risk that concerns related to climate change may be raised to justify discriminatory measures or undue restrictions on international trade.[106]

91. Uruguay emphasizes that any such measures would be contrary to the principle of sustainable development, which underlies international environmental law, including the UNFCCC and the Paris Agreement. This view is accurately expressed in Principle 12 of the Rio Declaration on the Environment and Development:

> States should co-operate to promote a supportive and open international economic system that would lead to economic growth and sustainable

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101 UNFCCC, Article 2 (emphasis added).

102 Paris Agreement, Preamble.

103 Paris Agreement, Article 2(1)(b).

104 *See* First Submission, ¶¶ 34 et seq.

105 *See* First Submission, ¶¶ 53 et seq.

106 *See* Written Submission of the Argentine Republic, ¶ 44; Written Submission of the Federative Republic of Brazil, ¶¶ 62 et seq. *See also* Outcome Document of the Third South Summit of the Group 0f 77 and China of January 2024, ¶¶ 61 et seq; United Nations General Assembly Resolution No. 78/135 on "Unilateral Measures as a Means of Political and Economic Coercion against Developing Countries".

> development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.[107]

92. In the same vein, the UNFCCC in its Article 3(5) provides as follows:

> The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.[108]

93. In this context, and in accordance with the principle of sustainable development, Uruguay shares other States' views on the importance of avoiding a "green protectionism" on grounds related to climate change.[109] Accordingly, Uruguay invites States to negotiate and endeavour to agree on measures for the protection of the environment in relation to GHG emissions that might impact international trade, which must be adopted on the basis of scientific evidence.

### 4. Additional comments on the obligation of States to cooperate financially and technically in the fight against climate change

94. Uruguay notes that another point of broad agreement is the existence of a duty to cooperate in the protection of the climate system and other parts of the environment. As explained by Uruguay in its First Submission, this is a general principle of public international law that has been recognized by States and by the Court in numerous occasions.[110] In this sub-section, Uruguay briefly refers to some of these points of agreement, for the benefit of the Court:

95. ***First***, States broadly agree on the existence under international law of the duty to cooperate, which derives from the principle of good faith in international relations. As stated by Barbados:

> Under international law, States are obligated to cooperate to protect and preserve the climate system and other parts of the environment. The duty

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107 Rio Declaration, Principle 12 (emphasis added).

108 UNFCCC, Article 3(5).

109 *See* Written Submission of the Argentine Republic, ¶ 44.

110 *See* First Submission, Section IV(A)(4).

> to cooperate derives from the principle of good faith in international relations and is essential for the protection of the environment.[111]

96. This duty should be considered a "*fundamental pillar of international environmental law*", particularly given the need for collective action to adequately and promptly respond to the magnitude of the challenges raised by climate change, which threatens the common interests of the international community as a whole.[112] As simply put by the Republic of Korea: "*without effective collective action to confront the multifaceted risks posed by climate change, the efforts of a single State would be insufficient or even meaningless*."[113] For the same reason, the duty of cooperation as regards the protection of the climate system and other parts of the environment from anthropogenic GHG emissions is closely connected to the principle of prevention.[114]

97. ***Second***, and in accordance with the CBDR-RC, this cooperation must primarily be seen as flowing from developed to developing States, particularly as regards the provision of technical and financial support. In this regard, Uruguay shares the submission made by Argentina:

> International cooperation has an essential role in assisting developing countries, including highly indebted poor countries, least developed countries, landlocked developing countries, Small Island Developing States, as well as the specific challenges faced by middle-income countries, in strengthening their human, institutional and technological capacity.[115]

98. As previously described by Uruguay in its First Submission, these obligations have been expressly provided for in many international agreements, including the UNFCCC,[116] the Paris

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111 Written Submission of Barbados, ¶ 208.

112 *See* Written Submission of the Republic of Colombia, ¶¶ 3.61-3.63.

113 Written Submission of the Republic of Korea, ¶ 16.

114 *See* Written Submissions of the Republic of Korea, ¶ 38.

115 Written Submission of the Argentine Republic, ¶ 45. *See also e.g.* Written Submission of Barbados, ¶ 216; Written Submission of the Republic of Colombia, ¶ 3.57 ("*Colombia considers that one of the important issues that require collective action from the Parties, especially the developed ones, is the need for means of implementation, such as finances, technology, and capacity building to implement measures to combat the climate and environmental crisis*").

116 UNFCCC, Article 4(1)(c) ("*All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:* […] *(c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors"*).

Agreement,[117] the Kyoto Protocol,[118] and UNCLOS.[119] Unfortunately, Uruguay is compelled to reiterate its concern, as expressed in its First Submission and as shared by other States,[120] as regards the delay to meet the financial obligations undertaken by developed countries towards the "USD 100 billion by 2020" goal and the replenishment of the Adaptation Fund in the context of the UNCCC and the Paris Agreement.[121] Uruguay shares the views of Brazil that this failure to comply with financial commitments has negatively affected the global response to climate change, and that developed States have failed to provide a valid reason to justify their non-compliance.[122]

99. ***Third***, Uruguay shares the view that, by providing developed States' obligation to support developing countries, the Paris Agreement confirms the obligation to repair climate change regardless of whether a specific State has caused such harm.[123]

### 5. Additional comments on States' Human Rights obligations with respect to climate change

100. Uruguay shares the view that international human rights law plays an important role in the international protection of the climate system and other parts of the environment from anthropogenic emissions of GHG.[124] Indeed, the close connection between international environmental law and human rights was clearly stated in Principle 1 of the Stockholm Declaration, noting that "[m]*an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being*."[125] Along the same line, the Rio Declaration reaffirmed that human beings "*are entitled to a healthy and productive life in harmony with nature*".[126]

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117 Paris Agreement, Articles 9, 10, 11.

118 Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162, Article 10.

119 UNCLOS, Article 197.

120 *See e.g.* Written Submission of the Arab Republic of Egypt, ¶ 187.

121 *See* First Submission, ¶ 165.

122 *See* Written Submission of the Federative Republic of Brazil, ¶¶ 52-54.

123 *See* Written Submission of Barbados, ¶ 196.

124 *See, e.g.* Written Submission of the Republic of Colombia, Chapter 3(G); Written Submission of the Kingdom of Spain, Section E; Written Submission of the Kingdom of Tonga, Chapter IX.

125 Declaration of the United Nations Conference on the Human Environment (1972), Principle 1. *See also* Written Submission of the Republic of Colombia, ¶ 3.67.

126 Rio Declaration, Principle 1. *See* Written Submission of the Republic of Colombia, ¶ 3.67.

101. In light of the above, Uruguay wishes to make certain preliminary remarks as regards the articulation of international human rights law and international environmental law and, in particular, the international law of climate change:

102. ***First***, Uruguay is mindful of the view according to which the application of human rights law to "r*equire measures to combat climate change* […] *is erroneous*", given that "*human rights law is based on the idea of individual human rights being opposable to the government of the respective State*" and that "[t]*his logic of "individual vs government" is not applicable in the climate change context. The climate change problem is not to be seen as an arena of conflict of interests between the State and the individual. Rather, it is an area where solidarity between governments and citizens nationally, as indeed between States internationally, should be the guiding principle of policy and legal regulation*."[127] Uruguay respectfully disagrees with this view. The application of human rights law to the protection of the climate system from the deleterious effects of GHG emissions is not incompatible with the existence of solidarity between States and citizens and among States—to the contrary, the international law of human rights is based on the recognition of the minimum standards that States should comply with as a matter of human dignity.[128] Given the grave effects that climate change currently has and will likely continue to have on individuals, recourse to human rights is not only convenient, but inevitable.

103. ***Second***, Uruguay also notes the view that opposes the application of the law of human rights to issues of climate change given that human rights obligations "*operate within the territory of each respective State*" and "*should be fulfilled 'here and now*'", while the obligations under the UNFCCC are "*of a global nature and are largely aimed at the future*", given that these obligations are adopted for the benefit of future generations.[129] Uruguay respectfully dissents with this view. As described in detail below, international human rights treaties and customary international law, as the UNFCCC, establish international undertakings in accordance with which States are (***i***) to adopt measures within their own territories and areas within their control and (***ii***) cooperate with other States. Uruguay respectfully submits that there is no difference among both regimes in this regard. Moreover, given that the mitigation of the effects of climate change largely depends on the adoption of preventative action, the

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127 Written Submission of the Russian Federation, Section 1.2, page 9.

128 *See e.g.* Universal Declaration of Human Rights, Preambular paragraph 1 ("*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world* […]").

129 Written Submission of the Russian Federation, Section 1.2, page 10.

measures adopted by States in the present may be necessary to ensure future compliance of their international human rights obligations towards future generations.[130]

104. In this regard, Uruguay agrees with Brazil and Vanuatu (*inter alia*) that the protection of the rights of future generations arises from the principle of intergenerational equity.[131] Accordingly, several UN Human rights bodies have interpreted human rights treaties to encompass the rights of future generations.[132] Uruguay shares the statement made by Vanuatu, that:

> [T]he principle of intergenerational equity and existing international law require that States take into account future generations when discharging their obligations under international law. Put another way, the interests of future generations are to be factored into the analysis of state obligations arising across the corpus of international law. Accordingly, in the context of the question referred to this Court in the present advisory proceedings, Vanuatu submits that the Relevant Conduct is governed by an overarching obligation to protect the climate system and other parts of the environment from significant harm for the benefit of persons, individuals and people of future generations.[133]

105. ***Third***, and relatedly, Uruguay does not share the view that "*international human rights law can play a subsidiary role in addressing climate change and its adverse effects*", as expressed in these proceedings.[134] Uruguay respectfully submits that the international law of human rights should be applied jointly with the UNFCCC, not subsidiarily. In this regard, Uruguay notes that the UNFCCC and the Paris Agreement do not expressly provide any human rights obligations in relation to climate change and therefore does not, and could not, displace any human rights commitments in this regard. This is consistent with the spirit of the Paris Agreement, as further explained below, that climate action should be adopted in a manner which is mindful and respectful of human rights.

106. Having established the foregoing preliminary points, Uruguay addresses in the ensuing sub-sections the existence and scope of the right to a clean, healthy and sustainable environment, which is well-established as a matter of international customary law (**a**). Further, Uruguay extends on the potential impact of climate change on certain human rights,

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130 *See* United Nations General Assembly Resolution 76/300 of 28 July 2022, "*Recognizing further that environmental degradation, climate change, biodiversity loss, desertification and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights*".

131 *See* Written Submission of the Federative Republic of Brazil, ¶ 99; Written Submission of the Republic of Vanuatu, ¶ 480.

132 *See* Written Submission of the Republic of Vanuatu, ¶¶ 480-481(a).

133 Written Submission of the Republic of Vanuatu, ¶ 482.

134 Written Submission of the People's Republic of China, ¶ 119.

including the right to life, health, and social and cultural rights (**b**). Finally, Uruguay refers to States' obligations to adopt climate action that is respectful of human rights (**c**).

### a. Right to a clean, healthy and sustainable environment

107. Uruguay respectfully agrees with the view that the existence of a human right to a clean, healthy and sustainable environment is undeniable as a matter of international law.[135]

108. Particularly noteworthy is the leading role that the Inter-American system has played in this area, both in terms of standards and advisory opinions. For instance, the Protocol of San Salvador to the American Convention on Human Rights expressly recognises in its Article 11 that "[e]*veryone has a right to live in a healthy environment and to have access to basic public services*", and that the State Parties shall "*promote the protection, preservation, and improvement of the environment*."[136]

109. More recently, the "*Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*", adopted in Escazú, Costa Rica, on 4 March 2018,[137] provides in its Article 1:

> The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, <u>contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development</u>.[138]

In this regard, it is also necessary to keep in mind the fundamental role of environmental defenders and to understand how the degradation of their environments implies an impact

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135 *See* Written Submission of the Argentine Republic, ¶ 38; Written Submission of Barbados, ¶ 165; Written Submission of the Republic of Colombia, ¶¶ 2.3, 3.67; Written Submission of the Kingdom of Spain, Section E, ¶ 15; Written Submission of the Netherlands, ¶ 3.34. For different views on this matter, *see* Written Submission of the People's Republic of China, ¶¶ 115-119; Written Submission of the Kingdom of Tonga, ¶ 244.

136 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (entered into force 16 November 1999) OAS Treaty Series No 69 (1988), Article 11. *See also* Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, ¶¶ 56 et seq.

137 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ("**Escazú Agreement**"). To date, the Escazú Agreement has been signed to date by 24 Latin American and Caribbean States.

138 Escazú Agreement, Article 1 (emphasis added).

on the effective enjoyment of individual and collective rights, substantially affecting future generations.[139]

110. Other regional instruments that expressly recognize the right to a healthy environment include the American Declaration on the Rights of Indigenous Peoples;[140] the African Charter on Human and Peoples' Rights;[141] the ASEAN Human Rights Declaration;[142] the Arab Charter on Human Rights[143] and the Aarhus Convention.[144] These instruments show that the express recognition of the right to a clean, healthy and sustainable environment in international treaties already exists in several regional treaties worldwide, which trend will likely continue in the coming years.[145]

111. At an international level, both the United Nations Human Rights Council and the United Nations General Assembly have recently adopted resolutions that are relevant to this issue.

112. Notably, the Human Rights Council Resolution 48/13 of 8 October 2021, entitled "*The human right to a clean, healthy and sustainable environment*", recognized "t*he right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights."* In addition, Resolution 48/13 affirmed that "*the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law*", and encouraged States to "*adopt policies for the enjoyment of the right to a clean,*

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139 *See* Human Rights Council, Resolution 40/11 of 21 March 2019, ¶ 2 ("*Stresses that human rights defenders, including environmental human rights defenders, must be ensured a safe and enabling environment to undertake their work free from hindrance and insecurity, in recognition of their important role in supporting States to fulfil their obligations under the Paris Agreement and to realize the 2030 Agenda for Sustainable Development, including the pledge that no one will be left behind and to reach the furthest behind first* […]").

140 American Declaration on the Rights of Indigenous Peoples, Article 19.

141 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 ("**African Charter on Human and Peoples' Rights**"), Article 24.

142 Association of Southeast Asian Nations, *ASEAN Human Rights Declaration* (signed 19 November 2012), Article 28(f).

143 League of Arab States, *Arab Charter on Human Rights* (adopted 22 May 2004, entry into force 15 March 2008), 12 International Human Rights Reports 893, Article 38.

144 United Nations Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (adopted 25 June 1998, entry into force 30 October 2001) 2161 UNTS 447, Preamble.

145 *See* e.g. European Parliament Resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030, ¶ 143 ("*considers that the right to a healthy environment should be recognised in the Charter and that the EU should lead the initiative to recognise a similar right internationally*").

*healthy and sustainable environment as appropriate, including with respect to biodiversity and ecosystems*".[146]

113. More recently, the Resolution No. 76/300 of the United Nations General Assembly, of 28 July 2022, recognises "*the right to a clean, healthy and sustainable environment as a human right*" which is "*related to other rights and existing international law*". It also provides that the promotion of this right "*requires the full implementation of the multilateral environmental agreements under the principles of international environmental law*" and calls upon actors to "*enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.*"[147]

114. In light of the above, Uruguay shares the view expressed by Spain, as follows:

> [T]he human right to a clean, healthy and sustainable environment offers greater coherence to the human rights system. Due to its cohesive nature, the human right to a clean, healthy and sustainable environment is pertinent to several categories of rights: as a right to life, it imposes positive obligations on States; as an economic and social right, it promotes progress that should be much more inclusive; and finally as a collective and solidary right it protects the environment, while its democratic nature allows the ecosystem protection and management model to be decided by and for all.[148]

115. Therefore, Uruguay submits that the existence of a human right to a clean environment under international law has been sufficiently established, contrary to certain views advanced in these proceedings.[149]

### b. Impact of climate change on other human rights

116. In addition to the existence of a human right to a clean environment, as explained above, Uruguay submits that GHG emissions and their impact on the climate system may adversely affect the enjoyment of other numerous human rights. Therefore, the obligation to preserve these human rights should be construed to entail the adoption of climate action, including mitigation and adaptation measures. In this regard, Uruguay agrees that the effective enjoyment of human rights necessarily requires a clean, healthy and sustainable

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146 Human Rights Council Resolution 48/13 of 8 October 2021.

147 Resolution No. 76/300 of the United Nations General Assembly, of 28 July 2022.

148 Written Submission of the Kingdom of Spain, ¶ 12.

149 *See* Written Submission of the United States of America, ¶ 4.39.

environment, as recognized by the Inter-American Court of Human Rights in its Advisory Opinion 23/17 on the Environment and Human Rights.[150]

117. As explained by Uruguay in its First Submission, there is conclusive scientific evidence of the current and prospective severe effects of climate change, including droughts and difficulties in the supply of drinking water, effects on public health,[151] damage to infrastructure and displacements.[152] Therefore, it cannot be denied that the adverse effects of climate change have and will continue to have an impact on the enjoyment of human rights,[153] including *inter alia* the rights to life, to food, to work, to the highest attainable physical and mental health, housing, and cultural rights.[154]

118. This was also recognized, for instance, by the Human Rights Council in its Resolution 47/24 of 14 July 2021, on "Human Rights and Climate Change":

> Emphasizing that the adverse effects of climate change have a range of implications, both direct and indirect, that can increase with greater global warming, for the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the rights to safe drinking water and sanitation, the right to work and the right to development, and recalling that in no case may a people be deprived of its own means of subsistence[155]

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150 *See* Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, ¶ 47. *See also* Written Submission of the Arab Republic of Egypt, ¶ 210.

151 On the interaction of climate change and human health, *see* the Decision FCTC/COP10(14) of the Conference of the Parties to the WHO Framework Convention on Tobacco Control of 10 February 2024, deciding *inter alia* to "*invite Parties, under Article 19 of the WHO FCTC, to hold the tobacco industry accountable for the damage it causes to the environment and the adverse health effects on workers involved in the cultivation and manufacture of tobacco products, and the disposal and treatment of waste resulting from their manufacture and consumption*".

152 *See* First Submission, ¶¶ 22, 34.

153 *See* Written Submission of the Netherlands, ¶¶ 3.23, 3.25, 3.31.

154 *See* Written Submission of Canada, ¶ 25; Written Submission of the Republic of Colombia, ¶ 3.68; Written Submission of the Republic of Korea, ¶ 29; Written Submission of the Kingdom of Tonga, ¶ 245. *See also* Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, *Promotion and protection of human rights in the context of climate change*, U.N. Doc. A/77/226 (26 July 2022), ¶ 88. As regards cultural rights, the provisions of the Declaration of the UNESCO World Conference on Cultural Policies and Sustainable Development - MONDIACULT 2022 (Mexico City, September 28-30, 2022) are of particular relevance (*see* Final Declaration, ¶ 15 ("*We stress the importance of integrating cultural heritage and creativity into international discussions on climate change, given its multidimensional impact on the safeguarding of all forms of cultural heritage and expressions and acknowledging the role of culture for climate action, notably through traditional and indigenous knowledge systems* […]")).

155 Human Rights Council Resolution 47/24 of 14 July 2021

119. Contrary to some of the views expressed in these proceedings,[156] Uruguay submits that States' obligations to protect and guarantee the enjoyment of human rights entail an obligation to act diligently in relation to climate change, which may involve the adoption of mitigation and adaptation measures, including reduction of GHG emissions.[157] This includes *inter alia*, States' human rights obligations under the International Covenant on Civil and Political Rights.[158]

120. The above position is in line with recent decisions adopted by the UN Human Rights Committee and the European Court of Human Rights, which Uruguay considers to be of great relevance to these proceedings.

121. For instance, in the Decision from the UN Human Rights Committee in the case of *Billy et al. v. Australia*, of 23 September 2022, the Committee addressed the case of eight Torres Strait Islanders and their children, who claimed *inter alia* that severe flooding caused by changing weather patterns had impaired their right to a central element of their culture, by depriving them of access to family graves. The Committee found that Australia's failure to protect the Islanders from the effects of climate change violated the Islanders' rights to privacy, family and home, as well as the right of indigenous peoples to enjoy their traditional territories and continue to enjoy the natural resources traditionally used for their cultural identity.[159] The Committee also considered that "*the obligation of States Parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life*", and that "*such threats may include adverse climate change impacts*",[160] although it ultimately found that there was not sufficient evidence that Australia had indeed breached this obligation.

122. A similar reasoning was recently followed by the European Court of Human Rights in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, a leading case in the matter of State liability for the infringement of human rights obligations due to a lack of effective climate action. The case concerned a complaint filed by four women and a Swiss association concerning the risks posed by life-threatening heatwaves caused by climate change, which they claimed violated their right to life and the right to private and family life. In its Decision

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156 *See* Written Submission of the United States of America, ¶ 4.39 ("*A recognition that anthropogenic climate change can adversely affect the enjoyment of human rights, however, does not mean that States have international human rights obligations to mitigate anthropogenic GHG emissions*").

157 *See* Written Submission of the Republic of Korea, ¶ 31.

158 This differs from other views (*see* e.g. Written Submission of the United States of America, ¶¶ 4.39, 4.47).

159 United Nations Human Rights Committee, *Daniel Billy and others v. Australia (Torres Strait Islanders Petition)*, Decision of 23 September 2022 (CCPR/C/135/D/3624/2019), ¶ 8.12.

160 United Nations Human Rights Committee, *Daniel Billy and others v. Australia (Torres Strait Islanders Petition)*, Decision of 23 September 2022 (CCPR/C/135/D/3624/2019), ¶ 8.3.

of 9 April 2024, the European Court of Human Rights found the claim to be inadmissible as regards the four women, it admitted the claim by the Swiss association. This notwithstanding, as regards the violation of the right to private and family life, the Court concluded as follows:

> In conclusion, there were some critical lacunae in the Swiss authorities' process of putting in place the relevant domestic regulatory framework, including a failure by them to quantify, through a carbon budget or otherwise, national GHG emissions limitations. Furthermore, the Court has noted that, as recognised by the relevant authorities, the State had previously failed to meet its past GHG emission reduction targets […]. By failing to act in good time and in an appropriate and consistent manner regarding the devising, development and implementation of the relevant legislative and administrative framework, the respondent State exceeded its margin of appreciation and failed to comply with its positive obligations in the present context.
>
> The above findings suffice for the Court to find that there has been a violation of Article 8 of the Convention.[161]

123. Based on the foregoing, Uruguay submits that, even in the absence of a right to a clean, healthy and sustainable environment under international law, States are under the obligation to adopt mitigation and adaptation measures to protect the climate system and other parts of the environment from the deleterious effects of GHG emissions under their commitments to guarantee other human rights, including the right to life, the right to health, and the right to culture, as well as States' commitments as regards gender equality.

### c. States should comply with the international law of human rights when adopting climate action

124. Finally, Uruguay notes the principle according to which States should be mindful of their human rights in the adoption of measures to protect the climate system from the deleterious effects of GHG emissions.

125. As stated in the Preamble to the Paris Agreement:

> Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.[162]

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161 European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20, Judgment of 9 April 2024, ¶¶ 573-574.

162 Paris Agreement, Preamble.

126. Uruguay agrees with Canada, that this language should be interpreted to the effect that: "

> In responding to climate change, States should adopt a human-rights based approach to adaptation and mitigation measures and ensure that the measures adopted do not violate their obligations under international human rights treaties or pursuant to customary international law. This includes the obligation to ensure that measures taken do not discriminate against any group, including indigenous peoples, women, children and persons belonging to minority groups.[163]

This understanding is widely shared by other States.[164]

127. In this regard, Uruguay also stresses the importance of contemplating the differential impact that climate change has on men and women in the adoption of mitigation and adaptation measures under the UNFCCC and the Paris Agreement, which has been already considered by the Conference of the Parties.[165]

### B. THE LEGAL CONSEQUENCES FOR STATES WHICH HAVE CAUSED SIGNIFICANT HARM TO THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

128. In its First Submission, Uruguay submitted that every internationally wrongful act of a State entails the international responsibility of that State. The international responsibility of a State involves a series of legal consequences, including the obligation to cease the wrongful conduct, the obligation to offer appropriate assurances and guarantees of non-repetition and the obligation to make full reparation for the injury caused by the internationally wrongful act. In addition, if the internationally wrongful act constitutes a serious breach of an obligation arising under a peremptory norm of general international law, the breach may entail further consequences including the obligation to cooperate to bring the breach to an end, the obligation not to recognize as lawful the situation created by the breach and the obligation not to render aid or assistance to the responsible State in maintaining the situation so created.[166]

129. Uruguay also submitted that the law of international responsibility of States applies to the breach of any of the obligations to ensure the protection of the climate system and other parts of the environment, as set out in Section III.B.2 below. Accordingly, as acknowledged

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163 Written Submission of Canada, ¶ 26.

164 *See e.g.,* Written Submission of the Republic of Colombia, ¶ 3.70; Written Submission of the French Republic, ¶ 128; Written Submission of the Kingdom of Tonga, ¶ 242; Written Submission of the United States of America, ¶ 4.40.

165 *See* Conference of the Parties to the UNFCCC, Decision 3/CP.25, "Enhanced Lima work programme on gender and its gender action plan" ("*Acknowledging the continuing need for gender mainstreaming through all relevant targets and goals in activities under the Convention as an important contribution to increasing their effectiveness, fairness and sustainability*").

166 *See* First Submission, ¶¶ 155-159.

by this Court in *Certain Activities Carries Out by Nicaragua in the Border Area*, in case of an internationally wrongful act of a State, "*compensation is due for damage caused to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage*".[167]

130. Finally, Uruguay addressed the States' continued duty to perform any obligation breached[168] and the issue of causation, noting that any difficulties in establishing a causal link between the States' conduct and the significant harm to the climate system and other parts of the environment cannot preclude the legal consequences for the States which have caused significant harm to the climate system and other parts of the environment.[169]

131. In this Second Submission, Uruguay respectfully submits additional comments on the application of the law on State responsibility to determine the legal consequences for States which, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment (**1**), the obligations to cease the wrongful conduct and to offer appropriate assurances and guarantees of non-repetition (**2**), the obligation to make full reparation (**3**), the principles of attribution and causation (**4**), the responsibility of States for internationally unlawful conduct which does not cause harm (**5**), the invocation of responsibility by a State other than an injured State (**6**), and the responsibility of States for injurious consequences arising out of acts not prohibited by international law (**7**).

132. For the avoidance of doubt, Uruguay notes that the above is without prejudice to the States' continued duty to perform any obligation breached—as well as any other obligation applicable, including with respect to adaptation and mitigation.

### 1. Additional comments on the application of the law on State responsibility to determine the legal consequences for States which, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment

133. It is generally agreed that a breach of a State's international obligation which is attributable to the State results in its international responsibility.[170] There is disagreement among States,

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167 *See* First Submission, ¶¶ 160-161.

168 *See* First Submission, ¶¶ 163-165.

169 *See* First Submission, ¶¶ 166-174.

170 *See*, *e.g.*, Written Submission of the Commonwealth of Australia, ¶ 5.6; Written Submission of the Federative Republic of Brazil, ¶ 78; Written Submission of Canada, ¶ 30; Written Submission of the Republic of Chile, ¶ 93; Written Submission of the Federated States of Micronesia, ¶ 121; Written Submission of the Netherlands, ¶¶ 5.4-5.5; Written submission of New Zealand, ¶ 139;; Written Submission of the Commission of Small Island States on Climate Change and International Law ("**COSIS**"), ¶ 148; Written Submission of the Democratic Republic of Timor-Leste, ¶ 354; Written

however, as to whether the regime on State responsibility applies to determine the legal consequences for States which, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment.[171]

134. As set out in Uruguay's First Submission, Uruguay's position is that the law on State responsibility, as codified in the Articles on Responsibility of States for International Wrongful Acts ("**Articles on State Responsibility**"), is generally applicable to determine the legal consequences where the significant harm to the climate system and other parts of the environment have been caused by an act or omission of a State which is attributable to the State under international law and constitutes a breach of an international obligation of the State.[172] State responsibility may arise from a breach of either treaty obligations or non-treaty obligations.[173]

135. In this respect, Uruguay respectfully submits that nothing prevents the application of the Articles on State Responsibility when assessing the legal consequences of States which, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment.

136. ***First***, the Articles on State Responsibility apply regardless of the nature of the wrongful act. This was confirmed by the International Law Commission in its Commentaries on the Articles, noting that international responsibility may arise with respect to the breach of both treaty

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Submission of the United Kingdom, ¶ 134; Written Submission of the United States of America, ¶ 5.5;. Notably, this rule of customary international law has been widely acknowledged and applied, including by this Court. *See*, *e.g.*, International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001), Article 1; *Corfu Channel*, Merits, Judgment, I.C.J. Reports 1949, p. 23; *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, ¶¶ 283, 292; *Case concerning the Gabcíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 47; *M/V "Virginia G" (Panama / Guinea-Bissau)*, Judgment of 14 April 2014, ITLOS Reports 2014, ¶ 430 (noting that Article 1 of the ARSIWA reflects customary international law).

171 *See*, *e.g.*, Written Submission of Canada, ¶ 32; Written Submission of the People's Republic of China, ¶¶ 134-136; Written Submission of the European Union, ¶ 350-355; Written Submission of the United Kingdom, ¶¶ 135-138.

172 *See also*, *e.g.*, Written Submission of the Commonwealth of Australia, ¶¶ 5.4-5.6; Written Submission of the Republic of Chile, ¶¶ 92-93; Written Submission of the Republic of Colombia, ¶¶ 4.1-4.4; Written Submission of the Republic of Costa Rica, ¶ 95; Written Submission of the Netherlands, ¶ 5.5; Written Submission of the Russian Federation, p. 16; Written Submission of the Kingdom of Tonga, ¶¶ 284-292; Written Submission of the Republic of Vanuatu, ¶ 559. *Cf. e.g.*, Written Submission of the African Union, ¶ 45; Written Submission of the People's Republic of China, ¶¶ 133; Written Submission of the Arab Republic of Egypt, ¶ 288; Written Submission of the European Union, ¶¶ 353-355; Written Submission of the Republic of Palau, ¶ 19; Written Submission of the United Kingdom, ¶¶ 135-137.

173 *See*, *e.g.*, Written Submission of the Arab Republic of Egypt, ¶ 287; Written Submission of the Federated States of Micronesia, ¶ 121; Written Submission of the Kingdom of Tonga, ¶ 289.

and non-treaty obligations.[174] The International Law Commission further clarified that fault, understood as "*an intention to harm*", is not required as a matter of principle. Rather "*it is only the act of a State that matters, independently of any intention*".[175]

137. There is no exclusion in the Articles on State Responsibility—be it explicit or implicit—to climate-related actions or omissions by a State. Accordingly, the law on State responsibility is applicable in the case of a breach of climate-related obligations in the same way it applies to a breach of international legal obligations in any other area. Any particularity with respect to the nature of the breach or the loss and damage caused by GHG emissions does not affect this conclusion, as explained further below.

138. ***Second***, nothing in the Articles on State Responsibility—including Article 55—excludes the application of the regime on State responsibility to climate-related actions or omissions by a State.

139. To recall, Article 55 provides that the Articles "*do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law*".[176] As explained by the International Law Commission, the provision "*reflects the maxim* lex specialis derogate legi generali".[177] For the principle to apply, however, "*it is not enough that the same subject matter is dealt with by two provisions; there must be some actual inconsistency between them, or else a discernible intention that one provision is to exclude the other*".[178]

140. For example, in the case of human rights violations arising from or in connection with a State's acts and omissions which have caused significant harm to the climate system and other parts of the environment, the applicable human rights instruments may provide for specific legal consequences for the breaching States.[179] Nevertheless, to the extent that

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174 International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 2, Commentary (7).

175 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 2, Commentary (10).

176 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 55.

177 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 55, Commentary (2).

178 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 55, Commentary (4).

179 *See*, *e.g.*, *Universal Declaration of Human Rights*, Article 8; American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948) reprinted in Basic Documents Pertaining to Human Rights in the InterAmerican System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992), Article 25(1); Convention for the Protection of Human Rights and

there is no inconsistency with the general rules on State responsibility, the Articles on State Responsibility would still be applicable.[180]

141. In the case of the specialized treaties of the UNFCCC system, however, these do not establish special norms on state responsibility. Indeed, as explained by Chile, the mechanisms established in the UNFCCC "*are not meant to regulate liability for damages arising from breaches of obligations under the treaties, but rather to strengthen the capacity of the Parties and, in particular, developing States, to manage climate risk and implement adequate strategies*".[181] Accordingly, the provisions on compliance and damages in the treaties of the UNFCCC system do not prevent the application of the rules on State responsibility set forth in the Articles on State Responsibility.

142. This does not mean that the legal consequences for States which, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, are exclusively governed by the Articles on State Responsibility. Indeed, to the extent they may be applicable, the provisions of the UNFCCC coexist with—and may be applied concurrently with—the rules on State responsibility. Similarly, legal consequences may also arise from other climate-related treaties, including human rights treaties, as mentioned above.[182]

143. ***Third***, as noted in the First Submission, in *Certain Activities Carried Out by Nicaragua in the Border Area*, the Court already confirmed that the rules on State responsibility apply in case of "*damage caused to the environment*":

> [I]t is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage.

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Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), Article 13; African Charter on Human and Peoples' Rights, Article 26.

180 For the sake of completeness, Uruguay notes that States have also undertaken, through various international conventions, to pay for loss and damage to the environment in specific contexts. *See*, *e.g.*, Written Submission of Barbados, ¶ 266. The application of the general law on State responsibility in those cases where *lex specialis* applies should be assessed on a case-by-case basis in light of Article 55 of the Articles on Responsibility of States for Internationally Wrongful Acts.

181 Written Submission of the Republic of Chile, ¶ 107. *See also*, *e.g.*, Written Submission of the Russian Federation, p. 16.

182 *See*, *e.g.*, *The Environment and Human Rights*, *Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶¶ 5-8; European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20, Judgment of 9 April 2024, ¶¶ 519, 545-554.

> The Court if therefore of the view that damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law.[183]

144. In light of the above, Uruguay respectfully submits that, when considering Question (b), the Court should consider the rules of State responsibility as crystalized in the Articles on State Responsibility, in addition to any other applicable rules of international law.

145. Uruguay notes that Question (b) refers to the legal consequences with respect to small island developing States, which due to their geographical circumstances and level of development are injured or specifically affected by or are particularly vulnerable to the adverse effects of climate change. This notwithstanding, other developing States, including Uruguay, are also highly vulnerable to the adverse effects of climate change.[184] In any event, for the purpose of establishing the legal consequences under the obligations set out in Question (a), no distinction should be made between categories of States based on their vulnerability or exposure to harm.[185]

### 2. Additional comments on the obligations to cease the wrongful conduct and to offer appropriate assurances and guarantees of non-repetition

146. As noted in the First Submission, States have the obligation to put an end to any continuing violation of international law and, if the circumstances so require, to offer appropriate

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183 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, ¶¶ 41-42. In 1941, the Arbitral Tribunal in the *Trail Smelter Arbitration* had ordered Canada to pay compensation to the United States of America for environmental harm. *See Trail Smelter Case (United States, Canada)*, 16 April 1938 and 11 March 1941, RIAA Volume III, pp. 1980-1981.

184 *See* First Submission, Section II(C) (*Uruguay's geography and economy make it particularly vulnerable to the deleterious effects of climate change*). *See also* Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012, Addendum: Part Two: Action taken by the Conference of the Parties at its eighteenth session, Decision 3/CP.18: 'Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity', UN DOC FCCC/CP/2012/8/Add.1 (8 December 2012); UNFCCC, Draft-Decision -/CMA.5: The UAE Consensus, FCCC/PA/CMA/2023/L.17 (adopted 13 December 2023), 3 [11]; Written Submission of the Democratic Republic of Timor-Leste, ¶¶ 360-361.

185 While the International Law Commission has recognized that "*individual States may be specially affected by the breach of* [an] *obligation, for example a coastal State specifically affected by pollution in breach of an obligation aimed at protection of the marine environment in the collective interest*", no particular legal consequences may be drawn from this fact. *See* International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 48, Commentary (10). *See also*, *e.g.*, Written Submission of the Argentine Republic, ¶ 49; Written Submission of the Republic of Chile, ¶ 121; Written Submission of the Netherlands, ¶ 5.4; Written Submission of the Russian Federation, p. 16. As explained in Section III.A.2 above, the primary rules are applied differently to developed and developing States, with the developing States having the duty to lead international climate action and provide support to developing States.

assurances and guarantees of non-repetition. The two obligations are aimed at restoring and repairing the legal relationship affected by the breach.[186]

147. The obligation to cease the wrongful conduct has been described by the International Law Commission as "*the first requirement in eliminating the consequences of wrongful conduct*".[187] As noted by Timor-Leste, the obligation of cessation applies to breaches by actions or omissions.[188] In the case of actions or omissions which have caused significant harm to the climate system and other parts of the environment—and will potentially continue causing significant harm to the climate system and other parts of the environment—the obligation to cease the wrongful conduct becomes crucial. As explained by Colombia:

> Compliance with existing obligations is a prerequisite to the restoration and repair of the legal relationships affected by the breach. As the failure of many States to prevent excessive GHG emissions within their jurisdiction and other international legal obligations appears to be continuing, Colombia submits that cessation is as relevant as the taking of appropriate assurances and guarantees of non-repetition. States responsible for a continuing internationally wrongful act, such as a breach of the no-harm principle, have a crucial obligation to put an end to it. It is a matter of avoiding harm and preventing more serious damages.[189]

148. The obligation to cease applies to any wrongful act extending in time, "*regardless of whether the conduct of a State is an action or an omission* […] *since there may be cessation consisting in abstaining from certain actions*".[190] To meet the obligations to cease a wrongful act, States may be required to "*make changes to significant parts of its laws, regulatory system and levels of assistance requested from, or provided to, other States in order to restore compliance with the substantive obligation that was violated*".[191]

149. In addition to the obligation to cease the wrongful acts, States found in violation of their environmental obligations should be required to provide assurances and/or guarantees of non-repetition, in order to mitigate the risk of further significant harm to the climate system and other parts of the environment. As explained by the International Law Commission,

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186 International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 30, Commentary (1).

187 International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 30, Commentary (4).

188 Written Submission of the Democratic Republic of Timor-Leste, ¶ 362.

189 Written Submission of the Republic of Colombia, ¶ 4.6.

190 *Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior affair*, UNRIAA, vol. XX (Sales No. E/F.93.V.3), p. 215 (1990), ¶ 113.

191 Written Submission of the Republic of Colombia, ¶ 4.7.

assurances and guarantees are warranted "*when the injured State has reason to believe that the mere restoration of the pre-existing situation does not protect it satisfactorily*".[192]

150. As noted by COSIS, the obligation to cease any ongoing conduct that resulted in a violation of international law, in addition to the continued obligation to perform the breached obligation "*is especially powerful in the climate change context*", given the catastrophic effects of the continued violation of the obligations to protect the climate system and other parts of the environment, which "*will worsen dramatically if urgent action is not taken*".[193]

### 3. Additional comments on the obligation to make full reparation

151. As noted in the First Submission, States have the obligation to make full reparation for the injury caused by an internationally wrongful act. Full reparation may take the form of restitution, compensation or satisfaction.[194]

152. Restitution involves the obligation to re-establish the situation which existed before the wrongful act was committed.[195] To the extent possible, efforts should be made to achieve restitution.[196] With respect to the breach of obligations concerning the climate system and other parts of the environment, Uruguay agrees with Colombia that "*while some effects on the climate system may have reached irreversible levels, certain circumstances can still be remediated and returned to their previous state*".[197] In those cases, restitution should be pursued.

153. Nevertheless, as noted by Barbados, environmental damage, as well as other damage resulting from climate change, "*is frequently irreversible, making restitution impossible*".[198] This is in line with the findings of the Court in *Gabčíkovo-Nagymaros*, with respect to the "*often irreversible character of damage to the environment*".[199]

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192 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 30, Commentary (9).

193 Written Submission of COSIS, ¶ 174. *See also*, *e.g.*, Written Submission of the African Union, ¶ 264.

194 First Submission, ¶¶ 158-161.

195 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, Article 35.

196 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 35, Commentary (3).

197 Written Submission of the Republic of Colombia, ¶ 4.12.

198 Written Submission of Barbados, ¶ 259.

199 *Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 140.

154. When restitution is not materially possible, or if it imposes a disproportionate burden, compensation or other forms of satisfaction may be sought.[200]

155. In *Certain Activities Carried Out by Nicaragua in the Border Area Compensation*, the Court acknowledged that "*compensation is due for damage caused to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage*".[201] In particular, the Court held that compensation for environmental damage includes "*indemnification for the impairment or loss of environmental goods and services in the period prior to recovery and payment for the restoration of the damaged environment*".[202] The Court added that "*payment of restoration accounts for the fact that natural recovery may not always suffice to return an environment to the state in which it was before the damage occurred*", in which case active restoration measures "*may be required in order to return the environment to its prior condition, in so far as that is possible*".[203]

156. Uruguay endorses the Courts' holdings and notes that any difficulties which may arise due to the special nature of environmental damage and climate change do not affect the general obligation to make full reparation for said damage. As explained by Barbados:

> The obligation to make full reparations is not diminished by the complexities of climate change. Reparations of environmental harm raise various complexities, such as how to quantify the harm, causation, the significant amount of compensation required, attribution of the harm among polluting States, the ongoing and unpredictable nature of the harm and other evidentiary difficulties. None of these complexities, however, excuse a State from meeting its international law obligation to make reparations.[204]

157. Uruguay further submits that any such challenges may be overcome by application of general principles of law. For example, with respect to the challenges to obtain evidence as to the extent of material damage, the Court has held that when the victim of a breach of international law is "*unable to furnish direct proof of facts giving rise to responsibility*", it "*should be allowed a more liberal recourse to inferences of fact and circumstantial evidence*",

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200 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, Article 35. *See also Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 152.

201 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, ¶ 41.

202 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, ¶ 42.

203 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, ¶ 43.

204 Written Submission of Barbados, ¶ 260. *See also* Written Submission of the Republic of Vanuatu, ¶¶ 560-562.

which "*must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion*".[205]

158. More recently, in *Certain Activities Carried Out by Nicaragua in the Border Area Compensation*, the Court confirmed that "*the absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage*".[206] The Court referred with approval to the holding of the Tribunal in the *Trail Smelter Arbitration*:

> Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate.[207]

159. The Court ultimately ordered Nicaragua to pay for the restoration costs claimed by Costa Rica, as well as the costs and expenses incurred by Costa Rica as a direct consequence of Nicaragua's unlawful activities in Costa Rican territory.[208]

160. With respect to the nature of reparation, Uruguay agrees with Brazil that it may be "*effected by a range of measures, all and each of which is to be adopted in close coordination with developing countries and with maximum climate ambition*", including stepping up national and international mitigation and adaptation efforts, channelling mitigation and adaptation finance to developing countries and "*negotiating in earnest in climate change fora – including, in particular, financial mechanisms relevant for climate change – with a view to*

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205 *The Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Merits, Judgment, 9 April 1949, p. 18.

206 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, ¶ 35. *See also Armed Activities Reparations Judgment*, ¶¶ 106, 360; *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo), Compensation, Judgment of 19 June 2012, I.C.J. Reports 2012*, ¶ 33; *Judgments of the Administrative Tribunal of the ILO upon complaints made against the UNESCO, Advisory Opinion of 23 October 1956, I.C.J. Reports 1956*, p. 77, page 100; *Eritrea-Ethiopia Claims Commission,* Final Award, 17 August 2009, PCA Case No. 2001-02, ¶¶ 37,40; *Case of the Kichwa Indigenous People of Sarayaku v Ecuador*, ¶ 315; *Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v. Albania)*, *Compensation*, *Judgment of 15 December 1949*, *I.C.J. Reports 1949*, p. 244, page 260, Annex 385 (the Court accepted the UK's "figures and estimates" of its damages, adjudging whether these figures were "reasonable").

207 *Trail Smelter Case (United States, Canada)*, 16 April 1938 and 11 March 1941, RIAA Volume III, pp. 1905-1982, page 1965.

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

*achieving maximum climate ambition in light of CBDR-RC, and ensuring ample participation of developing countries in relevant decision-making bodies*".

161. Uruguay also agrees with Costa Rica that compensation may adopt a variety of forms:

> Reparation for the loss and damage caused by anthropogenic climate change requires compensation that may adopt a variety of forms. It can be a monetary compensation but also include transfer of technology, capacity-building and the contribution to a fund by the States that have contributed the most to the global warming in favour of the injured States. The creation of the Loss and Damage Fund by the Parties of the UNFCCC is an example.[209]

162. As also noted by Colombia, the emission of green bonds may also constitute "*a form of reparation through which* [States] *are contributing to the cessation of environmental impacts, while creating a sustainable financial system aligned with the environmental purposes to be protected at a global level*".[210]

163. With respect to difficulties to quantify environmental damage, the International Law Commission has noted that "*environmental damage will often extend beyond that which can be readily quantified in terms of clean-up costs or property devaluation. Damage to such environmental values (biodiversity, amenity, etc. – sometimes referred to as "non-use values") is, as a matter of principle, no less real and compensable than damage to property, though it may be difficult to quantify*".[211]

164. With respect to peoples and individuals of the present and future generations affected by the adverse effects of climate change, legal consequences may include – in addition to material damage – moral damage and satisfaction as deemed appropriate in each case.[212]

165. Uruguay will address the challenges invoked in the written statements filed in these proceedings with respect to attribution and causation separately, in Section III.B.4 below.

### 4. Additional comments on the principles of attribution and causation

166. As noted in the First Submission, due to the diffuse nature of the harm to the climate system and other parts of the environment, and the several historical and concurrent causes, establishing a link between the conduct of a specific State and a specific harm may present

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209 Written Submission of the Republic of Costa Rica, ¶ 122.

210 Written Submission of the Republic of Colombia, ¶ 4.16.

211 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001), Article 36, Commentary (15). *See also* Written Submission of the Arab Republic of Egypt, ¶ 384.

212 *See*, *e.g.*, Written Submission of the Federative Republic of Brazil, ¶ 98; Written Submission of COSIS, ¶ 82.

practical difficulties. These difficulties, however, cannot preclude the legal consequences for the States which have caused significant harm to the climate system and other parts of the environment.[213]

167. Various States have raised concerns with respect to the difficulties in establishing a causal link or attributing the act or omission causing significant harm to a specific State.[214] For the avoidance of doubt, Uruguay notes that while the term "attribution" refers to one of the elements of an internationally wrongful (*i.e.*, used "*to denote the operation of attaching a given action or omission to a State*"),[215] the element of "causation" is relevant to determine whether reparation for a harm may be awarded (*i.e.*, "*compensation can be awarded only if there is 'a sufficiently direct and certain causal link between the wrongful act* […] *and the injury suffered by the Applicant, consisting of all damage of any type, material or moral*").[216] In *Armed Activities on the Territory of the Congo*, the Court confirmed that the question of causation arises at the reparation stage and confirmed that "*the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury*".[217]

168. Uruguay confirms its position that any challenges to attribute a conduct to a State or to establish the causal link between a State's conduct and the harm to the climate system and other parts of the environment could not preclude the legal consequences for the States which, by their acts and conduct, have caused significant harm to the climate system and other parts of the environment.

169. With respect to the difficulties in establishing the causal link between the State conduct and the significant harm to the climate system and other parts of the environment, Uruguay refers to its First Submission.[218] Uruguay also refers to the Written Submission of Chile, noting that the current state of scientific evidence has made it possible to determine the

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213 First Written Submission, ¶¶ 169-170.

214 *See*, *e.g.*, Written Submission of the Commonwealth of Australia, ¶ 5.3; Written Submission of the People's Republic of China, ¶¶ 118, 128, 138; Written Submission of the Republic of Korea, ¶ 46; Written Submission of the Netherlands, ¶ 5.10-5.11; Written Submission of the Russian Federation, ¶ 16; Written Submission of the Swiss Confederation, ¶ 77; Written Submission of the United the Kingdom, ¶ 137.4.3; Written Submission of the United States of America, ¶ 5.10.

215 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 2, Commentary (12).

216 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, ¶ 93; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, ¶ 462; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, ¶ 32; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo),* Compensation, Judgment, I.C.J. Reports 2012, ¶ 14.

217 *See Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment of 9 February 2022, I.C.J. Reports 2022, p. 48, ¶ 93. *See also* ¶ 94.

218 *See* First Submission, ¶¶ 166-174.

amount of current and historic emissions of each country, the consequences of failure to reduce those emissions in the overall warming levels and that a particular harm is a result of climate change.[219]

170. With respect to the element of attribution, the Court has confirmed that acts or omissions that may be attributed to the State, in violation of the norms of international law, engage the international responsibility of the State.[220]

171. The Articles on Responsibility of States for Internationally Wrongful Acts provide a series of acts or omissions which may be attributed to a State, including the acts or omissions of: (***i***) an organ of a State, (***ii***) persons or entities which are "*empowered by the law of that State to exercise elements of governmental authority*"; (***iii***) organs placed at the disposal of a State by another State, provided that the organ "*is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed*"; (***iv***) persons acting "*on the instructions of, or under the direction or control of,*" a State, or (***iv***) any actors, provided that the State adopts of acknowledges the conduct as its own.[221]

172. Accordingly, State responsibility may arise with respect to acts or omissions of State organs, persons or entities exercising elements of the governmental authority of a State, persons acting under the direction or control of a State or private actors which conduct has been adopted or acknowledged by the State. As noted by Barbados, "*States regularly act through* [persons or entities controlled by the State] *(e.g., State-owned corporations), which can be large emitters of greenhouse gases*".[222] As such, a State may be held internationally liable for the conduct of its State-owned corporations (*inter alia*), or for the omissions of regulators in exercising due diligence to prevent activities by non-State actors that are harmful to the environment.

173. Finally, with respect to the difficulties arising from the fact that harm to the climate system and other parts of the environment is not caused by the behaviour of a single State but by the behaviour of several or even the international community as a whole,[223] Uruguay submits that Article 47 of the Articles on Responsibility of States for Internationally Wrongful Acts should apply in principle. To recall, Article 47 provides that "*Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be*

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219 Written Submission of the Republic of Chile, ¶¶ 29, 94.

220 *See*, *e.g.*, *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v Albania)*, Merits, Judgment of 9 April 1949, I.C.J. Reports 1949, p. 4, pages 22–23; *United States Diplomatic and Consular Staff in Tehran*, Judgment of 24 May 1980, I.C.J. Reports 1980, p. 3, ¶¶ 63-67

221 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Articles 4-11. *See also*, *e.g.*, Written Submission of Barbados, ¶ 273.

222 Written Submission of Barbados, ¶ 271.

223 Written Submission of the Swiss Confederation, ¶ 77.

*invoked in relation to that act*".[224] This is because "*each State is separately responsible for the conduct attributable to it, and that responsibility is not diminished or reduced by the fact that one or more other States are also responsible for the same act*".[225]

174. The Guiding Principles on Shared Responsibility in International Law similarly provide that "[t]*he commission by multiple international persons of one or more internationally wrongful acts that contribute to an indivisible injury entails shared responsibility*".[226] The Guiding Principles further provide that each party sharing responsibility for such an internationally wrongful act "*is under an obligation to make full reparation for the indivisible injury caused by the single or multiple internationally wrongful acts, unless its contribution to the injury is negligible*".[227]

175. In light of the above, Uruguay agrees with Chile's conclusion that "*it can be held that all States that have directly contributed with their acts and omissions to harm the climate system could be held liable for compensation for their own contributions to that injury*".[228]

### 5. Comments on State responsibility for acts or omissions which do not cause harm

176. Uruguay shares the view expressed by some States that, subject to the scope of the primary obligation, legal consequences may also arise for States as a result of an act or omission which constitutes a breach of an international obligation of a State, even if no harm—let alone significant harm—is caused.[229] This has been recognized by the International Law Commission in its Commentaries to the Articles on Responsibility of States for Internationally Wrongful Act:

> [T]here is no general requirement, over and above any requirements laid down by the relevant primary obligation, that a State should have suffered material harm or damage before it can seek reparation for breach. The existence of actual damage will be highly relevant to the form and quantum

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224 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 47.

225 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* with commentaries (2001), Article 47, Commentary (1).

226 A. Nollkaemper et al., "Guiding Principles on Shared Responsibility in International Law", *The European Journal of International Law,* 2020 ("**Guiding Principles on Shared Responsibility in International Law**"), Principle 2(1), Annex 530.

227 Guiding Principles on Shared Responsibility in International Law, Principle 10.

228 Written Submission of the Republic of Chile, ¶ 102. *See also* Written Submission of Barbados, ¶ 256; Written Submission of the Republic of Colombia, ¶ 4.14.

229 *See also*, *e.g.*, Written Submission of the Republic of Chile, ¶ 111; Written Submission of the Kingdom of Tonga, ¶ 290.

> of reparation. But there is no general requirement of material harm or damage for a State to be entitled to seek some form of reparation.[230]

177. The International Law Commission further explained that:

> Where two States have agreed to engage in particular conduct, the failure by one State to perform the obligation necessarily concerns the other. A promise has been broken and the right of the other State to performance correspondingly infringed. For the secondary rules of State responsibility to intervene at this stage and to prescribe that there is no responsibility because no identifiable harm or damage has occurred would be unwarranted.[231]

### 6. Comments on the invocation of responsibility by a State other than an injured State

178. Pursuant to Article 48(2) of the Articles on the Responsibility of States for Internationally Wrongful Acts, any State other than an injured State is entitled to invoke the responsibility of another State if the obligation breached is owed to (***i***) a group of States, including that State, and is established for the protection of a collective interest of the group (*i.e.*, obligations *erga omnes partes*), or (***ii***) the international community as a whole (*i.e.*, obligations *erga omnes*).[232]

179. As noted by Uruguay, customary obligations concerning the protection of the environment have an *erga omnes* character.[233] Accordingly, as noted by the Netherlands, responsibility "*cannot only be invoked by any injured State, but also by any other State because the obligation to prevent such harm to shared natural resources, such as the atmosphere, is an obligation* erga omnes".[234]

180. Article 48(3) of the Articles on the Responsibility of States for Internationally Wrongful Acts further provides that any State entitled to invoke responsibility may claim that the responsible State (***i***) cease the internationally wrongful act and provide assurances and

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230 International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 31, Commentary (7).

231 International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 31, Commentary (8).

232 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 48(1), Commentaries (6) to (9).

233 *See* First Submission, ¶ 86.

234 Written Submission of the Netherlands, ¶ 5.8. *See also* Written Submission of Micronesia, ¶ 125; Written Submission of the Democratic Republic of Timor-Leste, ¶ 357; Written Submission of COSIS, ¶¶ 159-161.

guarantees of non-repetition, or (***ii***) perform the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached.[235]

181. Accordingly, any State may request cessation of the wrongful act by a breaching State and, if the circumstances require, assurances and guarantees of non-repetition. Moreover, even if there is no State "*which is individually injured by the breach*", other State or States may "*claim reparation, in particular restitution* […] *in the interest of the injured party, if any, or of the beneficiaries of the obligation breached*".[236] Uruguay respectfully requests the Court to consider that this feature, which the International Law Commission explained as a "*measure of progressive development*", is relevant when assessing a breach of the obligations set out in Section III.A above, as it provides an effective means to protect the individual and collective interests of States with respect to the climate system and other parts of the environment.

### 7. Comments on State responsibility for injurious consequences arising out of acts not prohibited by international law

182. Without prejudice to the responsibility of States for the breach of their obligations set out in Section III.A above, legal consequences may also arise with respect to harm caused as a result of acts or omissions not prohibited by international law.

183. For example, with respect to harm caused by hazardous activities (i.e., an activity which "*involve*[s] *the 'risk of causing significant transboundary harm through* [its] *physical consequences*"[237]) despite the State's compliance with its obligations, the International Law Commission considered that "*it is important* […] *that those who suffer harm or loss as a result of such incidents involving hazardous activities are not left to carry those losses and are able to obtain prompt and adequate compensation*".[238]

184. In this sense, the International Law Commission noted that "*incidents involving hazardous activities may occur despite compliance by the relevant State with its obligations concerning prevention of transboundary harm from hazardous activities*", which may result in harm or

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235 International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 48(2).

236 International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 48, Commentary (12).

237 International Law Commission, *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities with commentaries*, adopted by the International Law Commission at its fifty-eighth session, UN Doc. A/61/10 (2006), General Commentary (2).

238 International Law Commission, *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities with commentaries*, adopted by the International Law Commission at its fifty-eighth session, UN Doc. A/61/10 (2006), General Commentary (3).

serious loss to the nationals of other States.[239] In those cases, "*appropriate and effective measures should be in place to ensure that those natural or legal persons, including States, that incur harm and loss as a result of such incidents are able to obtain prompt and adequate compensation*".[240]

185. In particular, Principle 4 provides that each State should "*take all necessary measures to ensure that prompt and adequate compensation is available for victims of transboundary damage caused by hazardous activities located within its territory or otherwise under its jurisdiction or control*", including the imposition of liability on any person or entity as appropriate regardless of any fault, or the requirement to establish industry-wide funds at the national level.[241]

186. Accordingly, in case of significant harm caused to the climate system or other parts of the environment as a result of hazardous activities, strict liability should apply. This means that, to the extent that GHG emissions by a State result from hazardous activities originating within the territory of that State of a territory under its jurisdiction or control, the State would have certain obligations vis-à-vis the person or entity suffering harm or losses.

187. This is without prejudice to the obligation to compensate for acts or omissions not prohibited by international law which may result from specific treaties.[242]

## IV. CONCLUSIONS

188. On the basis of the foregoing, and in addition to its submissions in its First Submission, Uruguay respectfully submits that the following elements should be considered as part of the answers of the Court to the questions raised by the General Assembly in its request for an advisory opinion contained in Resolution 77/276:

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239 International Law Commission, *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities with commentaries*, adopted by the International Law Commission at its fifty-eighth session, UN Doc. A/61/10 (2006), Preamble.

240 International Law Commission, *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities with commentaries*, adopted by the International Law Commission at its fifty-eighth session, UN Doc. A/61/10 (2006), Preamble.

241 International Law Commission, *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities with commentaries*, adopted by the International Law Commission at its fifty-eighth session, UN Doc. A/61/10 (2006), Principle 4.

242 *See*, *e.g.*, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, 27 January 1967, Article VII; Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty, Liability Arising from Environmental Emergencies, 17 June 2005, Articles 2(b), 2(c), 6(1) and 6(3); Vienna Convention on Civil Liability for Nuclear Damage, 21 May 1963, Article IV (1); Convention on the International Liability for Damage Caused by Space Objects, 29 March 1972, Article II.

189. With respect to the first question:

**(1)** Uruguay respectfully reiterates that, under international law, States have specific obligations to ensure the protection of the climate system and other parts of the environment, including the duty to prevent serious or irreversible environmental damage which is, as developed by the Court, applicable to climate change. Moreover, the standard of due diligence developed by the Court is also applicable to determine States' compliance with their treaty obligations.

**(2)** In addition, Uruguay respectfully submits that the entirety of the corpus of international law, including customary international law and all relevant treaties, should be considered to address the questions before the Court: this includes the UNCLOS, UNFCCC, Paris Agreement, human rights obligations, and any other relevant sources of international obligations. Except strictly by operation of Article 30 of the Vienna Convention on the Law of Treaties, subsequent treaties should not be construed to replace previous agreements.

**(3)** Uruguay also submits that the principle of sustainable development entails that measures adopted to combat climate change should not impact the production of food, nor be used to unjustifiably hinder international trade.

**(4)** As explained in its First Submission, Uruguay also considers that States have the duty to cooperate and provide support for the adoption of adaptation and mitigation measures, including but not limited to financial support.

**(5)** Uruguay submits that international law provides for a right to a clean, healthy and sustainable environment and that, even in the absence of this rights, States must protect the environment from the deleterious effects of GHG emissions to enable the effective enjoyment of other human rights, including the rights to life, culture, health, work, and culture. Further, Uruguay believes that the adoption of climate action should be conducted in full compliance with and respect of human rights, considering also the differential impact that climate change has on different populations, genders, and minorities.

**(6)** Finally, Uruguay stresses the importance that States, and particularly developed States, comply with their obligations under international law for the protection of the climate system and other parts of the environment from anthropogenic GHG emissions to protect and ensure the wellbeing of present and future generations of humankind.

190. With respect to the second question,

**(1)** Uruguay respectfully reiterates that any breach of the obligations to ensure the protection of the climate system and other parts of the environment would give rise to

the international responsibility of the breaching State and the subsequent obligation to make full reparation, in accordance with the Articles on Responsibility of States for Internationally Wrongful Acts. Full reparation may take the form of restitution, compensation or satisfaction.

**(2)** As noted in the First Submission, Uruguay further submits that breaching States have the obligation to put an end to any continuing violation of international law and, if the circumstances so require, to offer appropriate assurances and guarantees of non-repetition.

**(3)** Uruguay also submits that any existing difficulty in establishing a causal link between the conduct of a specific State and a specific harm cannot preclude the legal consequences for the States which have caused significant harm to the climate system and other parts of the environment.

**(4)** Uruguay recalls that certain consequences of the breach of an international obligation, including the obligation to put an end to a continuing violation of international law, may also arise in the absence of harm.

**(5)** Further, in accordance with the *erga omnes* character of customary obligations concerning the protection of the environment, States other than the injured State are entitled to invoke another State's responsibility.

**(6)** Moreover, Uruguay recalls that legal consequences may also arise with respect to harm caused as a result of acts or omissions not prohibited by international law.

191. Finally, Uruguay reiterates its hope that the Court's advisory opinion that may result from these proceedings will become one of the main stepping stones for the negotiations of the post-2030 agenda, which will be of critical importance to further international efforts in the fight against climate change and the preservation of the environment for the benefit of present and future generations.

15 August 2024

Respectfully submitted on behalf of the

Oriental Republic of Uruguay

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