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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Wednesday 4 December 2024, at 3 p.m., at the Peace Palace,

President Salam presiding,

***on the* Obligations of States in respect of Climate Change**
(Request for advisory opinion submitted by the General Assembly of the United Nations)

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le mercredi 4 décembre 2024, à 15 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

***sur les* Obligations des États en matière de changement climatique**
(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

COMPTE RENDU

Present:	President	Salam
	Vice-President	Sebutinde
	Judges	Tomka
		Abraham
		Yusuf
		Xue
		Bhandari
		Iwasawa
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
	Registrar	Gautier

Présents : M. Salam, président
M^me^ Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^me^ Xue
MM. Bhandari
Iwasawa
Nolte
M^me^ Charlesworth
MM. Brant
Gómez Robledo
M^me^ Cleveland
MM. Aurescu
Tladi, juges

M. Gautier, greffier

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Mr Yasir Alnaqbi, Second Secretary, Embassy of the United Arab Emirates in the Kingdom of the Netherlands,

Ms Maryam Alnuaimi, Attaché, International Law Department, Ministry of Foreign Affairs,

Mr Alessandro Pizzuti, Legal Adviser, International Law Department, Ministry of Foreign Affairs,

Mr Simon Olleson, Barrister, Lawyer, Legal Advisor/Presidential Court,

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Ms Vishakha Choudhary, Legal Expert, International Law Department, Ministry of Foreign Affairs.

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For the complete list of delegations of all participants, please refer to CR 2024/35.

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Pour consulter la liste complète de toutes les délégations, prière de se reporter au CR 2024/35.

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The PRESIDENT: Good afternoon. Please be seated. The sitting is now open.

The Court meets this afternoon to hear the United Arab Emirates, Ecuador, Spain, the United States of America, the Russian Federation and Fiji on the questions submitted by the United Nations General Assembly. Each of the delegations has been allocated 30 minutes for its presentation. The Court will observe a short break after Spain's presentation.

I shall now give the floor to the delegation of the United Arab Emirates. I call His Excellency Mr Abdulla Ahmed Balalaa to the podium. You have the floor, Sir.

Mr BALALAA:

I. INTRODUCTION

1. Mr President, distinguished Members of the Court, it is an honour and a privilege to address you today on behalf of the United Arab Emirates.

2. The United Arab Emirates recognizes and supports the importance of the advisory role of the Court in clarifying the international obligations of States with respect to climate change.

3. By providing this advisory opinion, the Court will surely assist the General Assembly in the performance of its functions. In addition, it will provide guidance to States in shaping and strengthening their collective action to protect the global climate system and will support ongoing negotiations and new initiatives.

4. Your Excellencies, there can be no doubt that climate change poses an existential threat to humanity, an unprecedented challenge that requires States to work together to deliver common and co-ordinated responses. We are already experiencing its devastating consequences: extreme weather events, sea-level rise, advancing desertification and water stress.

5. There is also no doubt that human activities are the main driver of climate change and of these adverse effects. This is a matter not of opinion, but of scientific evidence. The United Arab Emirates reiterates its full support for the conclusions of the Intergovernmental Panel on Climate Change, the IPCC, and urges the Court to adopt its findings in this regard as the starting point for its opinion.

6. Mr President, my statement today will focus on three points.

7. My first topic will be the interplay between the international customary principle of no harm and the United Nations climate change régime.

8. Second, I will address the relevance and scope of the principle of common but differentiated responsibilities and respective capabilities.

9. Finally, I will emphasize the importance of international co-operation in climate action, particularly in the context of the United Nations climate change régime.

II. NORMATIVE INTERPLAY BETWEEN THE NO-HARM PRINCIPLE AND THE UNITED NATIONS CLIMATE CHANGE RÉGIME

10. On the first topic, the United Arab Emirates' position is that the United Nations climate change régime gives effect to and informs the obligations of States pursuant to the no-harm principle under customary international law.

11. In line with that principle, there exists a general obligation on States to ensure that activities within their jurisdiction respect the environment of other States, and more broadly areas beyond national control[1].

12. As the IPCC has concluded, climate change constitutes a threat of grave, and potentially irreparable, harm to the environment: anthropogenic greenhouse gas emissions accumulate over time and mix globally[2], causing changes in the atmosphere, ocean, cryosphere and biosphere. This, in turn, results in widespread and increasingly irreversible damage to humans and to nature[3].

13. Clearly, climate change engages the no-harm principle: activities within the jurisdiction of one State produce greenhouse gases, which interfere with the climate system and cause harm to the environment of other States as well as to areas beyond national control.

14. The no-harm principle entails an obligation of conduct, not of result, and therefore is subject to a standard of due diligence. What is required of each State in this regard will inevitably vary and is determined by reference to the specific environmental threat, its likelihood of occurring,

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[1] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I),* pp. 241-242, para. 29; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I),* pp. 55-56, para. 101.

[2] IPCC, 2014: Summary for Policymakers. In: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, p. 17.

[3] 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, p. 5, paras. A.2, A.2.3.

the severity of the harm anticipated, the capabilities of a particular State, and its available means, among other factors.

15. As this Court has identified, States are required to both adopt appropriate measures of prevention, as well as to exercise vigilance in their enforcement[4], such as through continuous monitoring. Moreover, in circumstances where failing to take action today may cause severe and irreversible damage tomorrow, States may be required to adopt a precautionary approach, even in the absence of scientific certainty. States may also be required to exchange information, consult, negotiate and co-operate in each of these matters.

16. Above all, this principle is characterized by its flexibility and variability. In requiring that States take appropriate steps to avoid environmental harm, the principle must be able to adapt to the circumstances of the harm in question. This applies fully in the context of climate change.

17. States established the United Nations climate change régime in light of the inherent complexities of this phenomenon, and their shared understanding that it is a matter of global concern[5]. This régime articulates the customary duty of States with respect to the harms caused by greenhouse gas emissions. It establishes the benchmarks, processes and tools necessary for States to understand what is required under the no-harm principle and to calibrate their actions accordingly. That the no-harm principle is the guiding norm of the United Nations climate change régime can be readily seen in both its text and overarching purpose[6].

18. The goal of the UNFCCC is the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system"[7]. The Paris Agreement sets a related goal of holding the increase in global average temperature to well below 2°C above pre-industrial levels, and to endeavour to limit the increase to

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[4] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I),* p. 83, para. 204, see also pp. 76-77, paras. 185 and 188; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J Reports 1997*, p. 78, para. 140.

[5] See United Nations Framework Convention on Climate Change, 9 May 1992, *UNTS*, Vol. 1771, p. 107 ("UNFCCC"), preamble, recital 1; Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, *UNTS*, Vol. 3156, p. 79 ("Paris Agreement"), preamble, recital 11.

[6] See UNFCCC, preamble, recital 8, recalled in Paris Agreement, preamble, recital 3.

[7] UNFCCC, Article 2; see also the Kyoto Protocol to the United Nations Framework Convention on Climate Change, 10 December 1997, *UNTS*, Vol. 2303, p. 162 ("Kyoto Protocol"), preamble, recital 2.

1.5°C above pre-industrial levels[8]. These goals are clearly aimed at preventing harm to the environment.

19. Preventing such harm demands that States pursue mitigation measures to reduce greenhouse gas emissions in a responsive, multi-sectoral and collective manner. Alongside mitigation measures, significant adaptation measures must be taken to alleviate the harm already unfolding. The United Nations climate change régime gives content to these demands of the no-harm principle. It additionally complements them through mechanisms for co-ordination and co-operation between States, without which measures of mitigation and adaptation are likely to be disparate, disjointed, and ultimately ineffectual in preventing harm.

20. Mr President, distinguished Members of the Court, our written statement expands on how the United Nations climate change régime operationalizes the no-harm principle and preserves the inherent variability of the due diligence standard[9]. Rather than repeat our written submissions, I would simply highlight that the United Nations climate change régime is a living framework, responsive to the evolving impacts of climate change. It does not substitute or displace the no-harm principle, but instead informs its content, by giving States the tools and standards necessary to comply with their obligations under that principle.

III. THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES AND RESPECTIVE CAPABILITIES

21. Mr President, there is widespread agreement among States on their duty to pursue climate action with the highest possible ambition. Like many others, the United Arab Emirates considers that this duty does not require developing countries to act without regard to their developmental needs. Nor does it compel them to assume the costs of the historical climate degradation caused by others.

22. Here, the principle of common but differentiated responsibilities, or CBDR, plays a fundamental role, and this is the second topic I will be addressing.

23. Your Excellencies, climate change is a uniquely challenging problem for developing countries. Their contributions to global anthropogenic greenhouse gas emissions are among the lowest, but their vulnerabilities are among the highest. Their capabilities are more limited, due to

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[8] Paris Agreement, Article 2 (1) *(a)*.

[9] Written Statement of the United Arab Emirates, 22 March 2024, Sections IV.B-C.

their level of development, and cannot be channelled towards combatting climate change without having regard to the subsistence and development needs of their populations.

24. Against this background, we have elaborated on the logic and the necessity of differentiated responsibilities in our written statement. Moreover, we have traced how differentiation, specifically as between developed and developing countries, is a common thread running throughout the United Nations climate change régime. We have also explained that the CBDR principle articulates fundamental notions of equity and sustainable development, and therefore is of relevance beyond the terms of any specific treaty[10]. In our view, the proposition that this principle informs the relevant obligations of States cannot be reasonably questioned, and this view appears to be shared by the vast majority of States before the Court.

25. Despite the broad agreement on the relevance of the CBDR principle, it has been suggested that the UNFCCC and the Paris Agreement conflict in their approach to this principle, particularly in distinguishing between the obligations of developed and developing countries. In this respect, I will make three points.

26. *First*, the Paris Agreement was expressly adopted under the "framework" provided by the United Nations Framework Convention on Climate Change and for the achievement of the same "ultimate objective"[11]. Rather than being in conflict, the two treaties are mutually reinforcing. The UNFCCC, and the basis of the differentiation identified in that treaty, guides the interpretation and implementation of the Paris Agreement.

27. *Second*, key operative provisions of the Paris Agreement distinguish between the duties of developed and developing countries[12]. Therefore, like the UNFCCC, the Paris Agreement takes into consideration the different development status and needs of individual States.

28. *Third*, the addition of the reference to "national circumstances" in the Paris Agreement does not undermine the basis of differentiation under the UNFCCC. When read with the UNFCCC, the Paris Agreement underscores the differentiation between developed and developing countries, keeping in mind their varying circumstances and capabilities.

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[10] Written Statement of the United Arab Emirates, 22 March 2024, paras. 133-145.

[11] UNFCCC, Article 2; Paris Agreement, preamble, recital 3 and Article 2 (1).

[12] Paris Agreement, Articles 4 (4)-(6), 7 (13) and 9-11.

29. With this understanding, it is important to appreciate the CBDR principle in a manner that gives it meaningful content. In our view, the differentiation of responsibilities under this principle necessarily requires that the historic greenhouse gas emissions of developed countries are taken into account.

30. Your Excellencies, the work of the IPCC demonstrates that, historically, developed countries have contributed disproportionately to global cumulative anthropogenic greenhouse gas emissions[13]. We should also note that their emissions were a product of their rapid industrialization, which has in turn equipped them with greater capabilities to combat the climate crisis.

31. In line with this reality, the United Nations climate change régime embraces an equitable burden-sharing arrangement of the kind first envisaged under the Rio Declaration[14]. It does so by recognizing that developed countries have produced "the largest share of historical and current global emissions" and calls on them to take immediate and commensurate action[15].

32. Under the UNFCCC and the Kyoto Protocol, this recognition is expressed through the categorization of countries in annexes and the imperative placed upon developed countries to reduce their emissions below 1990 levels[16]. Under the Paris Agreement, it is reflected most obviously in the acknowledgment that peaking of emissions will take longer for developing countries, and in aiming to secure an equitable share of the remaining carbon budget for them[17].

33. In essence, the CBDR principle is no more than the legal expression of a conclusion based in equity and, we believe, logic: that is, owing to their greater historic emissions, developed countries have a responsibility to take the lead to combat climate change. This means adopting emission reduction targets that are absolute and economy wide, and providing support to developing countries through financial and technological assistance.

34. To be clear, the UAE does not take the position that the CBDR principle can be utilized as a pretext by developing countries to avoid their responsibilities. For its part, despite being a

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[13] IPCC, 2022: Summary for Policymakers. In: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, p. 10; see also p. 7.

[14] Rio Declaration, Principle 7.

[15] UNFCCC, preamble, recitals 3 and 18.

[16] UNFCCC, Article 4 (2) *(b)*; Kyoto Protocol, Article 3 (1).

[17] Paris Agreement, Articles 4 (1) and 4 (4).

non-Annex I country, the UAE has played an active leadership role in the global fight against climate change through ambitious domestic and international action.

35. At the same time, the CBDR principle is vital to protect the right of developing countries to pursue sustainable development. In particular, it ensures that it is not hampered by developing countries having to shoulder disproportionate costs of offsetting the harm caused by historic emissions, to which their contribution was marginal. The United Nations climate change régime, with its consistent focus on equity, permits only this interpretation of the CBDR principle.

IV. INTERNATIONAL CO-OPERATION

36. Mr President, distinguished Members of the Court, I now turn to my last topic, concerning the mechanism of co-operation embodied in the United Nations climate change régime.

37. As emphasized by the IPCC, international co-operation is a "critical enabler"[18] and a fundamental element of effective climate action[19].

38. The very nature of climate change makes international co-operation an imperative both for the purpose of implementing relevant States' obligations and for developing new rules and standards.

39. *First*, climate change is a collective action problem, which cannot be solved by unco-ordinated and unilateral action. *Second*, climate change can only be understood and addressed in light of the evolving science and technological advances. It thus requires a dynamic response, including through the continuous development of common rules and standards. *Third*, co-operation through international mechanisms ensures sustained engagement among States for sharing experience and technologies, and is crucial in amplifying the efficiency of mitigation and adaptation efforts.

40. These considerations inform the legal infrastructure of the United Nations climate change régime, which recognizes that international co-operation is a principal duty of States. We recall that under customary international law, co-operation is indispensable in orienting States' conduct to

[18] IPCC, 2023: 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, p. 112.

[19] IPCC, 2014: Summary for Policymakers. In: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, p. 17.

address and prevent the risk of significant environmental harm. Here again, the customary principle is reflected in the United Nations climate change régime.

41. A defining feature of the régime is the institutionalized process of negotiation and decision-making through the Conferences of the Parties, or COPs. These annual gatherings are a forum for States to elaborate specific commitments for climate action and to exchange information on measures implemented to address climate change. Within this framework, and pursuant to their obligations of co-operation under the United Nations climate change régime, States have successfully negotiated hundreds of decisions to promote the effective implementation of the régime.

42. The UAE is a staunch supporter of this co-operative process. We recognize that there exists an inherent complexity in adopting these solutions by consensus, but it is clear that States are indeed able to find common ground in the face of seemingly insurmountable differences. We have witnessed the successes of this process, and their transformative potential, first hand during COP28, where, under the UAE's presidency, States agreed to raise their climate ambition.

43. Crucial outcomes reached at COP28 include the decision to operationalize the Loss and Damage Fund, a targeted funding arrangement that assists developing countries particularly vulnerable to the adverse effects of climate change[20]. This is an essential step forward addressing the effects of locked-in levels of global warming, and to enable the parties to focus on the strongest possible responses to climate change.

44. A further notable example in the UAE is the UAE Consensus, also adopted during COP28, which includes the outcome of the first global stocktake under the Paris Agreement[21]. This decision designs a roadmap to meet the Paris Agreement's temperature goal of 1.5°C, and for the very first time, includes a call for States to transition away from fossil fuels, to accelerate efforts towards the phase-down of unabated coal and to substantially reduce non-carbon-dioxide emissions globally.

45. Finally, we must not forget that the Paris Agreement itself is a successful example of the adoption of negotiated solutions at COPs.

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[20] COP-CMA, Decision 1/CP.28 - 5/CMA.5, Operationalization of the new Funding Arrangements, including a Fund, for Responding to Loss and Damage Referred to in Paragraphs 2-3 of Decisions 2/CP.27 and 2/CMA.4, UN docs. FCCC/CP/2023/11/Add.1− FCCC/PA/CMA/2023/16/Add.1, 15 March 2024.

[21] CMA, Decision 1/CMA.5, Outcome of the first Global Stocktake, UN doc. FCCC/PA/CMA/2023/16/Add.1, 15 March 2024.

46. It is true that such solutions are generally the outcome of lengthy and complex negotiations, but such is the nature of a decision-making process that takes account of the interests of a myriad of States in the context of an ever-evolving global challenge. At times, this may mean a regrettable failure to reach an agreement that *fully* satisfies *all* parties. In all cases, however, these solutions represent a step forward, even when they may not be the stride we had hoped for. These co-operative processes are essential because they are responsive, and so reduce the risk of commitments becoming obsolete. They further allow for the elaboration of targeted international rules and facilitate States' implementation of relevant commitments in an effort to meet the overall goal of preventing harm to the environment.

47. The UAE's submissions, both today and in our written statement, highlight the demonstrable centrality of co-operation in developing effective climate action. We hope that, in rendering its advisory opinion, the Court will take account of, and give the necessary prominence to, the duty to co-operate and any related duties which facilitate such co-operation.

V. CONCLUSION

48. Mr President, distinguished Members of the Court, we are at a pivotal moment in our collective fight against climate change. The UAE is steadfast in its commitment to this effort. Sustainability and environmental preservation are values that are fundamental to our country; they guide our national trajectory and are an enduring feature of our identity. In that spirit, the UAE reiterates its unconditional support for the present advisory proceedings, which will assist States by clarifying their obligations, and guide us in future negotiations aimed at the protection of the climate system and the environment. We firmly believe that through its opinion the Court will materially contribute to shaping global climate action.

49. Mr President, Madam Vice-President and Members of the Court, I thank you for your kind attention.

The PRESIDENT: I thank the representative of the United Arab Emirates for his presentation. I now invite the next participating delegation, Ecuador, to address the Court and I call upon His Excellency Mr Marcelo Vázquez-Bermúdez to take the floor.

Mr VÁZQUEZ-BERMÚDEZ:

INTRODUCTION

1. Mr President, distinguished Members of the Court, it is an honour to appear before you today on behalf of the Republic of Ecuador.

2. At a time when climate change and its adverse effects can no longer be seriously questioned, Ecuador attaches great significance to these proceedings. In co-sponsoring the resolution seeking the Court's advisory opinion, and actively participating in the written and oral phases of this case, Ecuador has expressed its confidence that the Court can make an important contribution to global efforts to combat the climate crisis.

3. A clear statement from this Court as to the international obligations of States, and the legal consequences in case of breach, can, we believe, encourage the international community to do more — indeed much more than what has been done to date — to halt the alarming increase in global temperatures and prevent catastrophe.

4. Mr President, Members of the Court, Ecuador is a mega-diverse country due to its wide variety of climates, microclimates and terrestrial and marine biodiversity. Many of our ecosystems, including the fragile Galapagos Islands, are highly vulnerable to changing climate patterns resulting from anthropogenic greenhouse gas emissions and have already shown great sensitivity to their devastating effects.

5. I need not elaborate on the related losses and damages to nature and to individuals, which are as widespread and significant as they are indisputable. But I must emphasize that Ecuador, which generates between 0.18 and 0.20 per cent of global emissions[22], is indeed specially affected by climate change. Its population, its environment and its economy are hurting. Despite our limited resources as a developing country, we have been deeply committed to the fight against climate change. But if the major emitters do not scale up their mitigation efforts and meaningfully co-operate with other States, as required by international law, no real progress can be achieved.

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[22] See: Ministry of the Environment, Water and Ecologic Transition of Ecuador, "Ecuador celebró el el Día Mundial por la Reducción de las Emisiones de CO2", Press Release No. 032, 29 January 2021 (https://www.ambiente.gob.ec/ecuador-celebro-el-dia-mundial-por-la-reduccion-de-las-emisiones-de-co2/, accessed on 7 March 2024); UNDP, "Climate Promise: Ecuador" (available at: https://climatepromise.undp.org/what-we-do/where-we-work/ecuador, accessed on 7 March 2024).

6. On this point, allow me to recall that last year, during the COP28, States agreed on the need for deep, rapid and sustained reductions of emissions, including by transitioning away from fossil fuels in a just, orderly and equitable manner, to achieve net zero by 2050[23]. As explained in our written submissions, phasing out fossil fuels is one of the main mitigation measures that States must adopt. However, at the COP29, some States managed to prevent including any update on the specific progress made in implementing this critical mitigation commitment[24].

7. Mr President, further to Ecuador's written submissions, which are maintained in full, I will focus my brief remarks this afternoon on three issues. I will first address the sources of international law giving rise to obligations to protect the climate system, including the relationship between those sources. I will next comment on some specific obligations under the law of the sea and international human rights law, and then on the relevance of the rules on State responsibility. I will be followed by Dr Crosato, who will present in some detail Ecuador's views on the applicable principles of equity. Dr Sender will then focus on the obligations of States to co-operate.

THE SOURCES OF INTERNATIONAL LAW GIVING RISE TO OBLIGATIONS IN RESPECT OF CLIMATE CHANGE

8. Turning first to the sources of international law giving rise to obligations in respect of climate change, it is clear that the United Nations Framework Convention on Climate Change and the Paris Agreement lay down such obligations for the parties thereto, in particular those of mitigation, adaptation and co-operation. But these climate treaties are by no means the only relevant source of obligations, for both parties and non-parties alike. Question *(a)*, which is drafted in broad terms, indicates this much. The *chapeau* to the questions put before the Court makes that clear as well.

9. Indeed, any argument that the climate treaties constitute the exclusive source of obligations in respect of climate change — an argument that regrettably seeks to minimize States' obligations in combatting this common concern of mankind — cannot be accepted.

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[23] UNFCCC, Decision 1/CMA.5, Outcome of the first global stocktake (FCCC/PA/CMA/2023/16/Add.1), 13 December 2023, para. 28.

[24] UNFCCC, "Sharm el-Sheikh mitigation ambition and implementation work programme" (2024) advanced unedited version.

10. Recourse to the general principle *lex specialis* is of no avail in this regard. To begin with, there is no discernible conflict of norms that would require applying this principle. The various obligations of States in the climate treaties and beyond are self-standing and complement each other for purposes of their interpretation and application.

11. It may be recalled that ITLOS determined last May that the Paris Agreement is not *lex specialis* to UNCLOS[25]. The Tribunal also stated that even if it had an element of *lex specialis*, "it nonetheless should be applied in such a way as not to frustrate the very goal of the Convention"[26]. This sound approach is consistent with the conclusions of the ILC Study Group on Fragmentation, which recognized that there are circumstances in which *lex specialis* may not apply to displace the applicability of more general norms.

12. These circumstances easily relate to the present case. They concern those situations: (1) where the application of the special law might frustrate the purpose of the general law; (2) where the balance of rights and obligations established in the general law would be negatively affected by the special law; and (3) where third-party beneficiaries may be negatively affected by the special law[27].

13. If any further support is necessary for the position that the climate treaties are not the end of the matter, the Framework Convention itself refers to the applicable general international law in recalling, in its preamble, the principle of prevention[28].

14. Among other obligations in respect of climate change that derive from customary international law, specific mention may be made of the obligation to conduct environmental impact assessments; the precautionary principle; and the duty to co-operate. Importantly, there is also the obligation to protect and preserve the marine environment.

15. Mr President, in the present context general principles of law in the sense of Article 38.1 *(c)* of the Statute of the Court have an essential role to play as well. Chief among them

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[25] *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024 (unreported), para. 224.

[26] *Ibid*.

[27] Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, *Yearbook of the International Law Commission*, 2006, Vol. II, Part Two, p. 179, Conclusion 10.

[28] United Nations Framework Convention on Climate Change, 9 May 1992, 1771 *UNTS* 107.

is the principle of equity. As the Court has recognized long ago, "the legal concept of equity is a general principle directly applicable as law"[29]. The same can be said of the general principle of due diligence that applies in various areas of international law, including climate change.

Obligations under UNCLOS and human rights treaties

16. Turning to other treaty obligations concerning the protection of the climate system, a whole host of international agreements come to mind. I will briefly address two of them: UNCLOS and human rights treaties.

17. Mr President, consistent with the ITLOS advisory opinion of this year, Ecuador considers that anthropogenic greenhouse gas emissions constitute pollution of the marine environment within the meaning of Article 1 (1) (4) of UNCLOS, thereby triggering various obligations under the Convention, in particular under Part XII[30]. Ecuador also considers that many of these obligations reflect customary international law.

18. In keeping with our view on the multiple sources of international legal obligations in respect of climate change, we also support the Tribunal's finding that the obligation to prevent, reduce and control marine pollution, cannot be satisfied simply by complying with the Paris Agreement[31]. We moreover agree that the Paris Agreement does not modify or limit obligations under UNCLOS[32].

19. Human rights instruments, such as the 1966 Covenants, likewise contain obligations in respect of climate change. This is because realization of the rights enshrined in these treaties may well require States to adopt and implement measures to reduce greenhouse gas emissions as well as to adapt to the adverse effects of climate change. Equally, States must comply with their human rights obligations when implementing their climate change commitments.

20. As Ecuador has explained, States cannot escape their human rights obligations by claiming that the harm occurs beyond their borders, especially when the harm is a result of their acts or omissions[33]. This has been made clear by the Inter-American Court of Human Rights and the

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[29] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 60, para. 71.

[30] *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024 (unreported), para. 179.

[31] *Ibid.*, para. 223.

[32] *Ibid.*, para. 224.

[33] Written Comments of Ecuador, para. 74.

Committee on the Rights of the Child[34]. In Ecuador's view, this is the correct approach to the question of extraterritorial jurisdiction.

21. One additional point must be made in this context. Some Participants have claimed that human rights obligations, as well as other obligations, were never intended to apply to climate change, and thus are not applicable. This surely cannot be right. As in other situations, nothing should prevent the application of general rules to new sets of facts.

The applicability of the rules of State responsibility

22. Mr President, I turn finally to the rules of State responsibility. These fall within the scope of question *(b)*, which concerns the legal consequences for States that cause significant harm to the climate system in violation of their legal obligations. The relevance of these rules in the present context is hard to deny, despite some efforts to the contrary.

23. States that cause significant harm to the climate system, including through private corporations subject to their jurisdiction, incur responsibility for such internationally wrongful act. They must cease their unlawful conduct, including by adopting all necessary measures to reduce their emissions in accordance with internationally agreed standards.

24. It further bears mention that, due to the nature of climate change, there may well be a plurality of responsible States. However, the situation of plurality of responsible States is well known to international law, as confirmed by Article 47 of the ILC Articles on State responsibility.

25. It should be noted that the loss and damage mechanism envisaged under Article 8 of the Paris Agreement "does not involve or provide a basis for any liability or compensation"[35]. However, this does not prevent the application of the law of State responsibility. States must also make full reparation for the injury caused by their internationally wrongful act.

26. A combination of restitution and compensation should be in order, with regard to a State that is injured, specially affected or particularly vulnerable. Ecuador is among those States. Compensation may be awarded in a global sum where evidence "does not allow a precise evaluation

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[34] *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, paras. 73-74; *Sacchi et al.* v. *Argentina*, Communication No. 104/2019, Decision of 22 September 2021 (CRC/C/88/D/104/2019), para. 10.7.

[35] UNFCCC, Decision 1/CP.21 (FCCC/CP/2015/10.Add.1), 29 January 2016, para. 51.

of the extent or scale of [the] injury"[36]. These remedies are, indeed, of critical importance to developing States, particularly those with low or very low levels of greenhouse gas emissions, but that have been put in such a vulnerable position.

27. As regards legal consequences with respect to peoples and individuals of the present generation, they too may invoke the responsibility of the wrongdoing State. Doing so, and obtaining redress for the harm caused, may depend on various considerations, not least those of jurisdiction and standing. In appropriate cases, a State may and should exercise diplomatic protection for such purposes. The interest of future generations must be paid due regard as well.

28. Mr President, Members of the Court, I thank you for your kind attention. I now ask, Mr President, that you invite Dr Crosato to the podium.

The PRESIDENT: I thank His Excellency Marcelo Vázquez-Bermúdez. I now give the floor to Mr Alfredo Crosato Neumann.

Mr CROSATO NEUMANN:

GENERAL PRINCIPLES OF EQUITY

1. Thank you, Mr President, Members of the Court, it is an honour to appear before you on behalf of the Republic of Ecuador.

2. In the time available to me I shall address one specific issue that is of special interest for Ecuador: the role of the general principle of equity in the context of climate change, as manifested in the principles of common but differentiated responsibilities ("CBDR") and intergenerational equity. These principles permeate the entire climate change régime under international law and deserve close attention by the Court.

3. Let me start by briefly recalling, Mr President, what the Court has said about equity in previous cases. In *Tunisia/Libya*, you defined equity as a "legal concept" that is a "direct emanation of the idea of justice" and a "general principle directly applicable as law"[37].

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[36] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 52, para. 106; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, pp. 26-27, para. 35; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 334, para. 21, pp. 334-335, para. 24, and p. 337, para. 33.

[37] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 60, para. 71.

4. The Court also distinguished equity as a general principle of law from the exercise of jurisdiction *ex aequo et bono*. It was noted, in the specific case, that the Court was "bound to apply [equity] as part of international law" and to balance relevant considerations "in order to produce an equitable result"[38].

5. The Court again applied equity in *Libya/Malta*, where it clarified that this general principle does not concern "abstract justice but justice according to the rule of law"; its application, therefore "should display consistency and a degree of predictability". The Court recalled that "equitable principles" are a "means to an equitable result in a particular case", but that they also have "more general validity"[39].

6. These findings, Mr President, are highly relevant in these advisory proceedings. As Ecuador has shown, the principles of CBDR and intergenerational equity are concrete expressions of the more general principle and they constitute the foundation in which States' rights and obligations are grounded. In no other area of international law have States expressly given equity such a prominent role, and there is good reason for this.

7. These principles have been incorporated in multilateral treaties and other instruments, such as the Rio Declaration, the UNFCCC and the Paris Agreement, all requiring their observance by States. They can therefore be qualified as reflecting equity *infra legem* or, in the words of this Court, that "form of equity which constitutes a method of interpretation of the law in force"[40].

8. Where equity operates *infra legem*, it is the "rule of law which itself requires the application of equitable principles". In the present context, such application must be assessed in accordance with "the ideas that have always underlain the development of the legal régime"[41] of climate change.

9. These principles, Mr President, do not by themselves create distinct rights or obligations under international law. But their nature and formulation make clear that they mainly serve as an interpretative tool when determining the content of existing rights and obligations in respect of climate change — the law in force. They must also be observed when formulating new rules.

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[38] *Ibid*. See also *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 33, para. 78.

[39] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 39, para. 45.

[40] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, pp. 567-568, para. 28.

[41] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 47, para. 85.

10. Turning to the principle of CBDR specifically, which is of mandatory application under the UNFCCC[42] and the Paris Agreement[43], it establishes a key differentiation between States. On the one hand, all States have common "responsibilities" — or primary obligations. CBDR cannot be used as a justification for inaction.

11. On the other hand, those "responsibilities" are not to be implemented in exactly the same manner. What is to be expected from each State must be determined by reference to three interdependent factors: the contribution of that State to climate degradation over time, its capabilities and its national circumstances.

12. There can be no confusion as to the *rationale* underlying this agreed differentiation. It is an uncontested fact that not all States have contributed equally to causing climate degradation — most emissions have historically originated in certain regions of the world. Their industrial and economic development came at the cost of creating a crisis that has become existential for many around the world. Principle 7 of the Rio Declaration contains a clear acknowledgment by developed countries of their historical responsibility for this state of affairs[44].

13. Paradoxically, States like Ecuador, which produce very marginal emissions, are the most vulnerable to the adverse effects of climate change. They did not cause the problem and yet they face the most serious consequences, which can only deepen the stark inequalities that already exist among States.

14. This situation is evidently at odds with any notion of reasonableness or justice, and this is where equity comes to the fore. The principle of CBDR is aimed at correcting the disproportionate burden created for those States that have not contributed to climate degradation or have only done so very marginally.

15. A due diligence obligation to reduce greenhouse gas emissions, for example, will require considering whether a State has taken the necessary measures to achieve a particular goal. In determining what measures are necessary, various factors need to be assessed, including equitable considerations under CBDR. A State with high emissions which does not account for its historical

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[42] UNFCCC, Article 3.

[43] Paris Agreement, Article 2.

[44] 1992 Rio Declaration on Environment and Development, Principle 7.

contribution to climate degradation when adopting mitigation measures would not be acting consistently with the relevant due diligence obligation.

16. An important point to highlight, Mr President, is that CBDR allows to overcome difficulties arising from intertemporal law limitations, as well as from any lack of scientific consensus on or otherwise awareness of the unfolding crisis in the past. A State with historically high emissions may of course not be held responsible under international law for the breach of an obligation that did not exist or which could not be triggered at a particular point in time. However, to achieve an equitable solution, CBDR still requires that State to take ambitious climate action today — indeed to lead efforts — in accordance with the obligations it has assumed.

17. Contrary to what some have suggested, the application of CBDR is not limited to the framework of the UNFCCC and the Paris Agreement. As a manifestation of the general principle of equity, and consistent with the Vienna rules on treaty interpretation, CBDR is relevant when applying *all* obligations concerning the same subject-matter, irrespective of their source. This approach ensures complementarity and harmony between these various separate obligations, as has been recently confirmed by the ITLOS[45], the Committee on the Rights of the Child[46] and the European Court of Human Rights[47].

18. A caveat is needed here, however: Ecuador notes that, in its advisory opinion, ITLOS stated that "some elements common to" CBDR are reflected in UNCLOS[48], without specifying what those elements are. Ecuador understands that all the elements of CBDR that we have described, including historical contributions, must be taken into account when interpreting and applying obligations under UNCLOS concerning climate change.

19. It would indeed make no sense to apply equitable considerations only under the UNFCCC framework, but not in other contexts where more burdensome obligations may be found.

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

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

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

[48] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (COSIS),* Advisory Opinion of 21 May 2024 (unreported), para. 229.

20. Mr President, the second applicable general principle is that of intergenerational equity. Like CBDR, this is a form of equity *infra legem* — a method of interpretation of the law in force.

21. However, in contrast to CBDR, intergenerational equity is forward-looking. It requires that States' action in the context of climate change be undertaken while considering the interests of future generations.

22. Equity is essential here because those generations — whether not yet born or still in childhood — lack the ability to speak up or engage in today's decisions, even though they will be affected by them[49]. This makes it crucial for all of us — the present generations — to carefully balance our needs against future interests, maintaining a long-term outlook.

23. Intergenerational equity is also relevant in assessing whether a State has properly discharged a particular obligation of due diligence. For example, failure to consider the interests of future generations when authorizing polluting activities might lead to a finding that the State has breached a mitigation commitment[50]. The Committee on the Rights of the Child and the European Court have applied intergenerational equity in such a manner, with respect to obligations arising under human rights treaties[51].

24. Before concluding, Mr President, a word of caution. One cannot fail to note that arguments by some developed countries aimed at minimizing the role of equity, in particular CBDR, appear to be driven by the fact that a few States have reached certain level of development and significantly increased their emissions in recent decades.

25. This is however not the case of most developing countries, and Ecuador urges the Court not to draw general conclusions from such specific situations. There is no legal basis whatsoever to set aside the equitable principles that States have expressly agreed upon. Many Participants have recalled that the Court must apply the *lex lata*. These principles are also *lex lata*.

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[49] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I),* p. 241, para. 29, and p. 244, para. 35.

[50] See, for example, *Gloucester Resources Limited* v. *Minister for Planning*, New South Wales Land and Environment Court, Judgment, 8 February 2019 (NSWLEC 7), para 415; *Neubauer* v. *Germany, Order of the First Senate of 24 March 2021*, German Federal Constitutional Court – 1 BvR 2656/18, para. 183; *Bentley* v. *BGP Properties Pty Limited*, New South Wales Land and Environment Court, Judgment, 6 February 2006 (NSWLEC 34), para. 69; *Gray* v. *Minister for Planning*, New South Wales Land and Environment Court, Judgment, 27 November 2006 (NSWLEC 720), paras. 122, 126, 134.

[51] Committee on the Rights of the Child, General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change (CRC/C/GC/26), May 2023, para. 75-77; *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland,* Application No. 53600/20, Judgment, 9 April 2024*,* paras. 420, 484, 489, 549.

26. Mr President, Members of the Court, this concludes my brief remarks this afternoon. I thank you for your attention. May I ask you, Mr President, to invite Dr Sender to the podium.

The PRESIDENT: I thank Mr Alfredo Crosato Neumann and I now give the floor to Mr Omri Sender. You have the floor, Sir.

Mr SENDER:

THE DUTY OF CO-OPERATION

1. Mr President, Madam Vice-President, Members of the Court, it is an honour to appear before you today on behalf of the Republic of Ecuador.

2. In the time available, I shall address one of the most critical obligations of States in respect of climate change: that of co-operation. Since the applicability of this obligation is widely accepted by participants in this proceeding, greater clarity as to its scope and effect would be of significant value. Five key points merit particular attention.

3. Mr President, a first point to note is that the duty to co-operate in respect of climate change derives both from applicable conventions and from customary international law. The UNFCCC acknowledges expressly that "the global nature of climate change calls for the widest possible co-operation by all countries"[52]. Together with the Paris Agreement, it requires co-operation as regards particular matters such as the development and transfer of technologies[53]; the conservation and enhancement of sinks and reservoirs of greenhouse gases[54]; research related to the climate system[55]; as well as education, training, and public awareness related to climate change[56].

4. As ITLOS has confirmed, co-operation in addressing climate change is also mandated under the United Nations Convention on the Law of the Sea, in particular its Part XII[57]. International co-operation is further required by other treaties, including international human rights instruments

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[52] United Nations Framework Convention on Climate Change ("UNFCCC"), preamble.

[53] See UNFCCC, Article 4; Paris Agreement, Articles 6, 10 and 12.

[54] See UNFCCC, Article 4; Paris Agreement, Article 5.

[55] See UNFCCC, Articles 4, 5 and 9; Paris Agreement, Articles 7 and 10.

[56] See UNFCCC, Articles 4 and 6; Paris Agreement, Article 12.

[57] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, paras. 296, 419.

such as the International Covenant on Economic, Social and Cultural Rights[58], and indeed by the UN Charter[59].

5. These conventional obligations correspond, or give further definition, to the duty to co-operate in respect of climate change that is incumbent upon States — all States — under customary international law. The General Assembly reaffirmed already in 1972 "the responsibility of the international community to take action to preserve and enhance the environment and, in particular, the need for continuous international co-operation to this end"[60]. ITLOS, for its part, has consistently held that "the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment" not only under UNCLOS, but also under general international law[61]. Co-operation to address the climate crisis is, therefore, in no way a matter of discretion.

6. Secondly, it will already be clear that the obligation to co-operate in respect of climate change extends to mitigation as well as adaptation. The Paris Agreement expressly recognizes, in Article 7, "the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties". Being essential for the ability of developing States to effectively fulfil their obligations in respect of climate change[62], co-operation must address matters of loss and damage, including financial assistance, not least assistance to those States that are specifically injured, specially affected, or particularly vulnerable. We further recall that the Stockholm Declaration included the principle that "States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction"[63].

7. Thirdly, the obligation to co-operate in respect of climate change is an obligation of a continuing nature[64]. Compliance requires ongoing efforts, at multiple levels and avenues, that must

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[58] See Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights.

[59] UN Charter, Articles 1 (3), 56; see also General Assembly resolution 2625 (XXV), the "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations", with its reference to "[t]he duty of States to co-operate with one another in accordance with the Charter".

[60] Resolution 2994 (XXVII) of 15 December 1972.

[61] *Supra* note 57, para. 296.

[62] See UNFCCC, Article 4 (7).

[63] Declaration of the United Nations Conference on the Human Environment, 16 June 1972, Principle 22.

[64] See also *supra* note 57, paras. 273 and 311.

take into account, with due diligence, the changing needs and circumstances, including the evolving science. The risk of harm and the urgency involved may, as ITLOS has considered, make the standard of due diligence more stringent[65]. In any event, States are required to keep existing co-operation mechanisms under review and to adopt new ones in so far as this may be required.

8. Mr President, a fourth point is this. Even if the obligation of co-operation is essentially one of conduct rather than result, that does not render it any less onerous. It is neither vague nor hollow. Co-operation as a positive obligation requires concrete action by States, who must pursue it by all means reasonably available to them.

9. Co-operation must, of course, be carried out in accordance with international law. Thus it must respect the principle of sovereign equality. It must also be conducted in good faith: as the Court has repeatedly said, "[t]rust and confidence are inherent in international co-operation"[66]. This implies that States must not frustrate efforts at international co-operation. Where the duty of co-operation in respect of climate change requires States to enter into negotiations, these must be pursued "as far as possible, with a view to concluding agreements"[67]. As this Court further had occasion to make clear, States "are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification"[68].

10. Finally, Mr President, it must also be clear that States can incur international responsibility for a breach of the obligation to co-operate, be it through their actions, omissions, or a combination thereof. In other words, even if co-operation is a complement to other obligations in respect of climate change, it nonetheless constitutes a distinct obligation with all the ensuing consequences.

11. Mr President, it is only through international co-operation that meaningful action could be taken to alleviate the problem of climate change. The importance of the duty to co-operate, and of taking it seriously, cannot be overstated. Bearing in mind that commitments made so far have failed

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[65] *Ibid.*, at para. 239.

[66] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 67, para. 145 (citing earlier case law).

[67] *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece), Judgment, I.C.J. Reports 2011 (II)*, p. 685, para. 132 (citing earlier case law).

[68] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Judgment, I.C.J. Reports 2018 (II)*, p. 538, para. 86 (citing earlier case law).

to prevent the global increase in greenhouse gas emissions across all major sectors since 2010[69], as well as the setbacks at the recent COP29, the Court can be of particular assistance in clarifying the specific content of the duty to co-operate and the benchmarks for assessing whether or not it has been satisfied.

12. Mr President, Members of the Court, that concludes my presentation and the submissions of Ecuador. We thank you for your kind attention.

The PRESIDENT: I thank the representatives of Ecuador for their presentation. I now invite the delegation of Spain to address the Court and I give the floor to Ms Consuelo Castro Rey. You have the floor, Madam.

Ms CASTRO REY:

1. INITIAL REMARKS

1. Mr President, distinguished Members of the Court, it is an honour to address this Court on behalf of the Kingdom of Spain. As invited by the International Court of Justice, pursuant to Article 66 of its Statute, Spain submitted a written statement to the Court on 22 March 2024.

2. In this oral statement, Spain seeks to supplement said written statement and inform the Court of some elements that Spain considers may assist the Court in rendering the advisory opinion requested by the General Assembly of the United Nations in resolution 77/276.

3. Spain is one of the most vulnerable countries to climate change, and has recently suffered one of the worst natural disasters in its history. More than 220 people have died and, according to preliminary investigations, the disaster would have been less probable and less intense without the effects of climate change.

4. Our oral statement is structured as follows.

5. Firstly, Dr Oriol Solà Pardell, legal adviser at the International Legal Office of the Ministry of Foreign Affairs, European Union and Cooperation, will argue that the obligations of States in respect of climate change must be interpreted following a human rights-based approach and explain the fundamental role of the concept of human dignity in this request for an advisory opinion.

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[69] IPCC, *Climate Change 2022: Mitigation of Climate Change*, Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, p. 8, paras. B.2-B.2.4.

6. Secondly, Professor Dr Santiago Ripol Carulla, Head of the International Legal Office of the Ministry of Foreign Affairs, European Union and Cooperation, will describe the obligations of States in this area, based on the principle of systemic integration.

7. Mr President, Madam Vice-President, I now request the Court to call Dr Oriol Solà Pardell, legal adviser at the International Legal Office, to address the Court.

The PRESIDENT: I thank Ms Consuelo Castro Rey. I now give the floor to Mr Oriol Solà Pardell. You have the floor, Sir.

Mr SOLÀ PARDELL:

1. Mr President, distinguished Members of the Court, it is an honour to address the International Court of Justice on behalf of the Kingdom of Spain.

2. Spain takes part in this hearing with the greatest consideration for the importance of this request for an advisory opinion from the Court, which reflects the nature of environmental protection as a common concern of all humankind. Preserving the environment consists of safeguarding the dignity and prosperity of present and future generations, making it a question that goes beyond the interests of individual States.

3. According to the synthesis report of the Sixth Assessment Report published by the Intergovernmental Panel on Climate Change (IPCC) in 2023, humanity can still prevent the worst effects of climate change and secure "a liveable and sustainable future for all", although it warns that the window of opportunity is closing, and it is vital to take swift action, with a greater sense of urgency.

2. HUMAN RIGHTS AND CLIMATE CHANGE

4. Five decades of discussions on the link between human rights and the environment have helped the international community better understand this close relationship.

5. The three-pronged crisis of climate change, biodiversity loss and pollution are increasingly affecting human rights all around the world. This climate emergency constitutes a powerful multiplier of threats that heightens vulnerabilities and injustices, and disproportionately affects groups that are already vulnerable, such as women, children, older people, people with disabilities, coastal

communities, indigenous peoples, people living in small island States, people living in poverty. The environmental crisis is a global social crisis with a direct impact on the protection and enjoyment of human rights, the eradication of poverty and implementation of the 2030 Agenda for Sustainable Development.

6. In its judgment of 9 April 2024 on *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland*, the European Court of Human Rights understood climate change to be a common concern of humankind, reaffirmed climate change science and the need to foster intergenerational burden-sharing, and confirmed that governments have human rights obligations in relation to the response to climate change. In this regard, Spain believes the European Court of Human Rights citing of Ruling STS 3556/2023 of the Supreme Court of the Kingdom of Spain to be particularly pertinent, as it recognizes the discretionary powers of States when meeting their climate-related obligations.

7. We believe it is necessary for the International Court of Justice to provide, in its advisory opinion, a response that is based on a human rights approach to the fight against climate change and environmental protection.

3. THE HUMAN RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

8. Mr President, in July 2022, the General Assembly of the United Nations recognized the human right to a clean, healthy and sustainable environment in resolution 76/300, as a means of contributing to recognition of the importance of the environment for the enjoyment of all human rights and ensuring protection against the environmental crisis. Spain considers that the human right to a clean, healthy and sustainable environment can crucially contribute to the Court's response to the questions asked in this request for an advisory opinion, as it increases the coherence of the system of human rights. As a right to life, it imposes positive obligations on States; as an economic and social right, it fosters progress that must necessarily be much more inclusive and sustainable; and, lastly, as a collective right and right to solidarity, it protects the environment; all while its democratic nature enables the model for protecting and managing ecosystems to be decided by everyone and for everyone. In this respect, Spain considers that General Assembly resolution 76/300 should be taken into account as one of the key elements when interpreting instruments of conventional and customary law under Article 31 of the Vienna Convention on the Law of Treaties.

9. In Spain, the human right to the environment is set out in Article 45 of the Constitution, which states that everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it, and that the public authorities shall safeguard rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on essential collective solidarity. This is regarded as a guiding principle of economic and social policy. Furthermore, at the international level there is widespread support for this right around the world, with recognition of it by 161 States at either at the national level in their constitutions or through regional conventions, representing over 80 per cent of all Member States of the United Nations.

10. The United Nations itself has argued that this right includes substantive and procedural elements. The substantive elements include clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems. The procedural elements include access to information, the right to participate in decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation.

4. ENVIRONMENTAL RULE OF LAW AND ENVIRONMENTAL DEMOCRACY

11. These procedural elements of the human right to a clean, healthy and sustainable environment together enable construction of the environmental rule of law and implementation of environmental democracy.

12. In this regard, we will refer to the development of international environmental law and its contribution of two innovative aspects, which reflect the principle of environmental rule of law and environmental democracy, namely:

— The necessity of public participation in environmental matters as an expression of environmental democracy. It is essential that citizens have access to information, that they can participate in decision-making on issues that affect them, and that they are able to go to court to defend their rights. For example, the gender division of labour, unequal access to resources and less or no participation by women in decision-making all have significant repercussions in terms of their vulnerability and capacity to adapt to environmental degradation and climate change; and

— The linking of environmental protection to human rights, by granting environmental rights to civil society (as individuals or groups).

5. HUMAN DIGNITY AND RECOGNITION OF LEGAL PERSONALITY TO THE MAR MENOR LAGOON

13. Spain also agrees that there is an urgent need to identify innovative means of improving environmental protection. One example of development of pioneering and innovative safeguarding mechanisms is Spain's Act 19/2022 of 30 September, to recognize legal personality to the Mar Menor lagoon and its basin, which originated from a popular legislative initiative, making the Spanish people the subject of the legislative initiative, pursuant to Article 87.3 of the Spanish Constitution and has recently been upheld by the Constitutional Court (Ruling STC 8583/2022 of 21 November 2024).

14. Notably, in its ruling, the Court explained that recognition of the legal personality of the Mar Menor lagoon contributed to human dignity, linked to the notion that dignified life is only possible in ideal natural environments, with consideration for the lives of current and future generations. The Constitutional Court added that the concept of human dignity in the case was not one that viewed humankind as the centre around which all natural and constructed reality revolves and those realities as serving humankind, but rather one that viewed humankind as being in symbiosis with an environment that it can transform but must not destroy if it wishes to maintain that dignity. Furthermore, the ruling also noted the duty of public authorities to develop mechanisms to protect and defend the environment, but also to improve, restore and recover spaces or biodiversity that had been degraded or lost.

15. For all these reasons, Spain would consider it opportune for the International Court of Justice to take into account, in its advisory opinion, in the words of the Constitutional Court of Spain referring to Act 19/2022, the close link between the protection of ecosystems, the natural environment, non-human life and human life and the full development of the latter.

Thank you very much for your attention on these historical proceedings. I would kindly ask Mr President to call upon Professor Dr Santiago Ripol Carulla, Head of the International Legal Office, to take the floor in the second part of this statement.

The PRESIDENT: I thank Mr Pardell. I now give the floor to Professor Santiago Ripol Carulla.

Mr RIPOL CARULLA:

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour to address the International Court of Justice on behalf of the Kingdom of Spain.

6. THE NEED FOR A SYSTEMIC INTERPRETATION

2. What are the obligations of States in respect of climate change? This is the question that resolution 77/276 of the United Nations General Assembly has put to the International Court of Justice, asking the Court to respond thereto on the basis of a selection of legislative instruments and principles originating from different international régimes, namely:

— general international law;

— international protection of human rights;

— the law of the sea; and

— international environmental law itself.

3. At a time when several international courts are deliberating on different aspects of States' obligations in respect of climate change, the International Court of Justice stands out due to its wide general remit. This is why Spain asks the Court to respond to the questions put to it, with the aim of offering clarity regarding the obligations of States in respect of the climate, on the basis of the principle of systemic integration, as permitted by its broad remit.

4. The selection of instruments referred to in resolution 77/276, while initially appearing rather heterogeneous, in fact makes perfect sense. It makes sense because protection of the environment is a common concern of humankind. This is why the compilation of treaties, declarations and principles belonging to different legal régimes is entirely appropriate, given that none of them — none of these legal régimes alone — seem sufficient to address the multiple, and serious problems of climate change in all full complexity.

5. Because of this, Spain recognizes the importance of principles of co-operation and progression and the duty to safeguard and prevent stemming from General Assembly resolution 77/276, to the extent that they serve as channels linking, on the one hand, the

aforementioned different international legal régimes to one another, and, on the other hand, international law to domestic law.

7. ENVIRONMENTAL PROTECTION AS A DRIVER OF INTERNATIONAL CO-OPERATION

6. Mr President, as a common concern of humankind, the protection of the environment is a driver of co-operation between States.

7. The United Nations Framework Convention on Climate Change and the Paris Agreement are probably the clearest expressions of the obligation to international co-operation in this area. They are complex treaties, which avail of diverse regulatory techniques, such as:

— oversight and reporting of activities that could affect the quality of the environment;

— application of the best technology or use of the best resources to prevent harm to the environment;

— establishment of caps on dangerous emissions.

8. Under these agreements (whereby States parties assume targets and multi-year commitments), different levels of co-operation co-exist, with means for making the commitments assumed more flexible co-existing with formulas for enhanced co-operation. One characteristic of these agreements is the inclusion of mechanisms to support States parties and monitor the level of fulfilment of the obligations assumed. The dispute settlement mechanisms provided for in these agreements have a facilitating rather than a contentious and punitive objective.

8. PRINCIPLE OF PROGRESSION AND DUTY TO CARRY OUT MONITORING IN THE PARIS AGREEMENT

9. Mr President, in addition to the long-term goals set forth in its Articles 2 and 4.1, the Paris Agreement establishes the obligation of each party to specify the measures they will adopt to reduce national emissions and adapt to the effects of climate change. This obligation goes hand in hand with the duty of the parties to review, every five years, their nationally determined contributions. Moreover, Article 4.3 provides that: "Each Party's successive *nationally determined contribution* will represent a progression beyond the Party's then current NDC contribution and reflect its highest possible ambition".

10. Governments enjoy the autonomy to establish their own commitments and implement domestic law. This discretionary power that governments enjoy is justified by the need to take into

account their national circumstances and respective capacities to meet the social costs of the transition to a decarbonized economy.

11. The Paris Agreement, therefore, reflects all the principles set forth in resolution 77/276 of the United Nations General Assembly.

9. THE DUTY OF DUE DILIGENCE AND THE PRINCIPLE OF PREVENTION

12. Mr President, outside these multilateral agreements, international co-operation is also required in the context of prevention of transboundary harm from activities that are dangerous, but not necessarily prohibited under international law.

13. As stated in Principle 21 of the Stockholm Declaration, States which "have . . . the sovereign right to exploit their own resources pursuant to their own environmental policies" are also responsible "to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of other areas beyond the limits of national jurisdiction".

14. Although recognition of the principle of prevention and of the obligations of due diligence is widespread, their precise scope and content vary due to the very nature of due diligence.

15. In fact, as noted by the International Tribunal for the Law of the Sea, the content of due diligence "may change over time, as measures considered sufficiently diligent at a given time may no longer be so in light of, for example, new scientific or technological knowledge". Moreover, the content of due diligence may vary depending on the area which was harmed. Therefore, the standard of due diligence with regards to cross-border pollution which affects the environment of other States, may be stricter than the due diligence required when adopting the necessary measures to prevent, reduce and monitor pollution of marine environments.

16. Pursuant to the International Law Commission 2001 Draft Articles, the obligation to prevent transboundary harm requires the establishment of a framework of co-operation between the State of origin and the State or States likely to be affected.

17. Under this co-operation framework, the State of origin must establish a procedure for mandatory prior authorization and has the obligation to notify and inform, before initiating the hazardous activities, the States that are likely to be affected by said activities.

18. In several Judgments, the ICJ has made reference to these two procedural obligations[70]. Similarly, the International Law Commission stresses this procedural nature of the duty to prevent, qualifying it as an obligation of conduct.

19. The dispute resolution mechanisms provided for in these co-operation frameworks are direct negotiations and establishment of a fact-finding commission. The *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities* (2006) opt for compensation as a remedy.

20. However, it should be borne in mind that the international responsibility of a State arises from the performance of a specific illegal act in a specific situation, and potentially under a specific co-operation framework. Furthermore, it is also essential to determine the causality between the harm caused and the conduct of the State, which is to say attributing failure to fulfil the duty of due diligence to the State of origin. Therefore, this issue of legal consequences must be examined on a case-by-case basis.

10. DISCRETION OF STATES

21. Mr President, allow me to refer back to Spanish law. Article 39 of Spain's Climate Change and Energy Transition Act, which was adopted in 2021, ensures that the plans, programmes, strategies, instruments and general provisions adopted in combating climate change are carried out using open formulas and accessible channels that guarantee the participation of social and economic stakeholders and the general public. The Act also recognizes the right of non-profit environmental organizations to file lawsuits in the common interest.

22. This legislative advance is a result of the transposition into Spanish law of several European Union directives, reflects the commitments assumed by Spain in ratifying the Aarhus Convention, and is in line with the goal of public participation in decision-making in environmental matters, as set out in the Paris Agreement.

23. In this respect, Mr President, Madam Vice-President, Spanish practice incorporates into domestic law values that are shared by the international community, values such as the right to life

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[70] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*, *Judgment, I.C.J. Reports 2010 (I)*; *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 (II)*.

and human dignity. Certainly, as indicated by the International Court of Justice in 1996: "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn". Thank you once again, Mr President.

The PRESIDENT: I thank the representatives of Spain for their presentation. Before I invite the next delegation to take the floor, the Court will observe a short break of 15 minutes. The hearing is suspended.

The Court adjourned from 4.20 p.m. to 4.40 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, the United States of America, to address the Court and I call Ms Margaret Taylor to the podium.

Ms TAYLOR:

I. INTRODUCTION

1. Thank you, Mr President, Madam Vice-President and Members of the Court. I am honoured to appear before you today on behalf of the United States of America.

2. The United States recognizes the climate crisis as one of the gravest challenges humanity has ever faced. It is global in its causes, resulting from a wide variety of human activities worldwide that emit carbon dioxide and other greenhouse gases, including "super pollutants" such as methane[71]. Such activities include not only the burning of fossil fuels for energy production but also agriculture, deforestation and industrial processes[72]. The climate crisis is also global in its effects. And the economic transformations required to address it are without parallel in history.

3. These attributes make climate change the quintessential collective action problem. Addressing it requires global action and co-operation by all States — and in particular, by all major greenhouse gas emitters[73]. States collectively designed the treaty-based United Nations climate

[71] US Written Statement, Chap. II.A; US Written Comments, Chap. II.

[72] US Written Statement, Chap. II.A; US Written Comments, Chap. II.

[73] US Written Statement, paras. 2.1-2.2, 2.28, 6.1-6.3; US Written Comments, Chap. II and paras. 1.4-1.6.

change régime to deal with this uniquely complex global problem in a co-operative manner[74]. That régime provides the primary framework for States' international obligations in respect of climate change — and in our view should be central to the Court's advice to the General Assembly in this proceeding[75].

4. The United States joins the vast majority of other States in underscoring the need for urgent action in this critical decade and beyond to achieve deep, rapid and sustained reductions in greenhouse gas emissions. This is critical to keep 1.5°C within reach, to achieve global net-zero emissions by 2050, and to avoid the most catastrophic impacts of the climate crisis.

5. As a major economy, the United States recognizes the important role it has to play in addressing climate change and takes its international obligations seriously. As detailed in our written statement, the United States has been doing its part, both at home and abroad, and is on track to cut national greenhouse gas emissions in half by the end of 2030, on the way to achieving its goal of net-zero emissions no later than 2050[76].

6. Mr President, Members of the Court, my statement will proceed in two parts, aligned with the questions posed and focusing on some key issues implicated by them. I refer the Court to our written submissions for a full presentation of US views.

7. With respect to the General Assembly's *first question*, I will focus on key features of the United Nations climate change régime, which sets forth the primary international legal framework for addressing this global challenge, including with respect to mitigating anthropogenic greenhouse gas emissions. Any other legal obligations relating to climate change mitigation identified by the Court should be interpreted consistently with the obligations States have under this treaty régime.

8. The United States encourages the Court to ensure that its opinion preserves and promotes the centrality of this régime. States designed this international legal framework to address the uniquely complex collective action problem posed by anthropogenic global warming, and it embodies the clearest, most specific, and most current expression of States' consent to be bound by international law in respect of climate change.

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[74] US Written Statement, Chap. II.B; US Written Comments, paras. 1.3-1.6.

[75] US Written Statement, para. 1.3 and Chaps. II.B, III, and IV.A.iii; US Written Comments, paras. 1.4-1.7, 3.1, 6.2, 6.6.

[76] US Written Statement, paras. 1.10-1.13.

9. With respect to the General Assembly's *second question*, which concerns the legal consequences that would flow from any breaches of States' obligations in respect of climate change, I will briefly address the nature of the question itself and highlight two key points regarding the classic principles of State responsibility that are relevant.

II. STATES' PRIMARY OBLIGATIONS IN RESPECT OF CLIMATE CHANGE

The United Nations climate change régime

10. Mr President, Members of the Court, I begin with the United Nations climate change régime.

11. Ever since the General Assembly's adoption of its first resolution on climate change in 1988, States have pursued a co-operative approach to climate action[77]. This started with the 1992 United Nations Framework Convention on Climate Change, or UNFCCC, and continued with the 2015 Paris Agreement[78]. Each is a free-standing international agreement and must be interpreted according to its own terms[79].

12. The US Written Statement details the history of this régime and the provisions of the UNFCCC and the Paris Agreement[80]. Today, I will focus on features that are critical to the Paris Agreement's framework for addressing climate change — namely, the role of "nationally determined contributions" under the Agreement; the Agreement's "ambition mechanism"; and the approach taken to differentiation of obligations in the Agreement. These features underpin the Agreement's carefully calibrated approach to attracting widespread participation while also promoting the necessary ambition to address the climate crisis[81].

13. *First*, in recognition of the need for mitigation action by all States, the Paris Agreement requires *each* party — regardless of its development status — to prepare, submit and maintain successive "nationally determined contributions", or NDCs, to climate change mitigation[82].

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[77] US Written Statement, Chap. II.B.

[78] *Ibid.*

[79] US Written Statement, paras. 3.2-3.4; US Written Comments, para. 3.8.

[80] US Written Statement, Chaps. II and III.

[81] US Written Statement, paras. 2.49-2.56 and Chaps. III.B, III.C, and III.E; US Written Comments, paras. 3.9-3.22, 4.12.

[82] Paris Agreement, Art. 4.2, 12 Dec. 2015, *Treaties and Other International Acts (TIAS)* 16-1104, *UNTS*, Vol. 3156, p. 79 (entered into force 4 Nov. 2016) ("Paris Agreement") [Dossier No. 16].

Importantly, it allows each party to determine its own NDC. In providing for such self-differentiation, the Agreement reflects parties' "common but differentiated responsibilities and respective capabilities, in light of different national circumstances"[83].

14. A party does not breach the Agreement if it fails to achieve its NDC. This is clear from Article 4.2's description of each party's NDC as something "that it *intends* to achieve"[84].

15. That said, Article 4.2 also requires all parties to "pursue domestic mitigation measures, with the aim of achieving the objectives of [their NDCs]". As our written submissions explain, this is an important binding obligation of *effort* that must be performed in good faith. It does not, however, convert a party's NDC into a binding obligation of result[85].

16. Mr President, Members of the Court, a critical feature of the Paris Agreement is the nationally determined nature of NDCs. This feature recognizes that a State's mitigation contribution will be most effective if it grows out of the State's domestic policy process and reflects the State's national circumstances, including its capacities.

17. Consistent with this design, the Agreement does not provide any legal standard against which to judge the sufficiency of a party's NDC. It also does not set forth any standards or other legal requirements for allocating among States efforts to reduce anthropogenic greenhouse gas emissions. For example, it does not apportion among parties respective "shares" of a so-called "global carbon budget" for a particular limit on warming[86].

18. My *second* point concerns the Agreement's "ambition mechanism", an iterative, five-year process that drives progressively ambitious climate action over time. We explain this in detail in our written statement[87]. I will highlight just a few features:

— To begin with, each party must submit public reports regarding national greenhouse gas emissions and their *individual* progress in implementing and achieving their NDCs. Those

[83] See Paris Agreement, Art. 2.2; US Written Statement, paras. 3.22-3.30; US Written Comments, paras. 3.15, 4.12.

[84] US Written Statement, para. 3.17; US Written Comments, paras. 3.13, 3.20-3.22.

[85] US Written Statement, para. 3.17; US Written Comments, paras. 3.17-3.19.

[86] US Written Comments, paras. 3.13-3.16.

[87] US Written Statement, Chaps. III.B and III.E and paras. 3.15, 4.26.

reports are subject to expert review to ensure they comply with the Agreement's transparency requirements[88].

— Every five years, parties must undertake a "global stocktake" to assess *collective* progress toward meeting the Paris Agreement's goals[89].

— Informed by each stocktake, each party must communicate its next NDC, with Article 4.3 stating the non-binding expectation that "[e]ach Party's successive [NDC] will represent a progression beyond the Party's then current [NDC] and reflect its highest possible ambition"[90].

— For example, the outcome of the first global stocktake, adopted in December 2023, set out a roadmap for keeping a limit on warming of 1.5°C within reach and called on parties to contribute to certain global efforts toward that end, including transitioning away from fossil fuels in energy systems so as to achieve net-zero emissions by 2050[91].

— It also established a non-legally binding — but very important — expectation that parties' next NDCs, due early next year, should include "ambitious, economy-wide emission reduction targets" that are "aligned with limiting global warming to 1.5 [degrees Celsius]"[92].

— Finally, in addition to the global stocktake, the parties meet annually to drive collective ambition to address climate change. This provides diplomatic momentum to push States to do more[93].

19. Mr President, for my *third* point, I turn to the concept of "common but differentiated responsibilities and respective capabilities." The Paris Agreement's provisions themselves were drafted to reflect the principle "in the light of different national circumstances"[94]. Those provisions that reflect differentiation do so in different ways and must be interpreted according to their own terms. Such provisions were very carefully drafted and indicate both the extent to which and how the

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[88] US Written Statement, paras. 2.55, 3.16, 3.22, 3.42.

[89] US Written Statement, paras. 2.53, 3.39-3.40, 3.43.

[90] US Written Statement, paras. 2.53, 3.40-3.41.

[91] US Written Statement, para. 3.39; CMA Dec. 1/CMA.5, paras. 28, 33, UN doc. FCCC/PA/CMA/2023/16/Add.1 (13 Dec. 2023) ("CMA5 Global Stocktake Decision").

[92] US Written Statement, paras. 3.39, 3.43-3.44; CMA5 Global Stocktake Decision, para. 39.

[93] US Written Statement, paras. 2.57-2.58, 3.43, 4.26, and fn. 21.

[94] US Written Statement, Chaps. II.B, III.B, and III.C.

parties intended "common but differentiated responsibilities" to apply in the context of the Agreement[95].

20. I want to emphasize, however, that "common but differentiated responsibilities and respective capabilities" is not an overarching principle of the Paris Agreement or customary international law, nor is it a general principle of law[96]. It also does not imply any bifurcated or other categorical differentiation of commitments, such as between "developed" and "developing" countries[97].

21. Mr President, Members of the Court, the United Nations climate change régime, with the Paris Agreement at its core, is the only international legal régime specifically designed by States to address climate change. Co-operative efforts through that régime provide the best hope for protecting the climate system for the benefit of present and future generations.

Customary international environmental law

22. Mr President, having addressed the United Nations climate change régime, I want to turn to a topic raised in many Participants' submissions: the nature and content of a customary international law obligation regarding significant transboundary environmental harm.

23. At the outset, I note that Participants' submissions reflect a lack of consensus among States on whether such an obligation would apply to global harm caused by anthropogenic greenhouse gas emissions[98]. Past cases in which this Court or other international tribunals have identified such a customary obligation have involved transboundary environmental harm that could be traced to specific, identifiable "point" sources[99]. Those cases involved facts that are unlike the global challenge posed by anthropogenic climate change[100].

24. To the extent the Court addresses a customary obligation regarding transboundary harm, however, it should, at most, be the obligation the Court first identified in respect of transboundary

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[95] US Written Statement, Chaps. II.B, III.B, and III.C.

[96] US Written Statement, paras. 2.50, 3.30 and Chaps. III.B and III.C; US Written Comments, para. 3.8 and Chap. IV.A.

[97] US Written Statement, paras. 2.37, 2.50, 3.22 and Chap. III.C; US Written Comments, para. 3.43.

[98] US Written Comments, para. 3.23 and fn. 63.

[99] US Written Statement, para. 4.15 and the examples and authorities cited therein.

[100] US Written Statement, Chap. IV.A.ii.

environmental harm in its 1996 Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, which it later addressed and elaborated in *Pulp Mills* and other cases[101].

25. It should be emphasized that any such obligation to prevent or at least minimize significant transboundary environmental harm depends upon States gaining general awareness of such harm or the risk thereof[102]. While there is a range of views regarding when States gained this awareness with respect to greenhouse gas emissions[103], it is not necessary to make such a factual determination in order to provide an opinion on States' *current* obligations in respect of climate change. What is important for this proceeding is that States clearly have the requisite awareness today[104].

26. With respect to the nature of such an obligation, the Court has clarified, in *Pulp Mills* and later, that it is one of effort, not result, with the standard being "due diligence"[105]. To assess compliance with such an obligation, the question is whether a State was duly diligent in taking reasonable or appropriate measures to address existing significant transboundary environmental harm or the risk thereof[106]. The fact of harm, even significant harm, would not be determinative of breach[107].

27. Due diligence is inherently context-specific, since what effort is appropriate or reasonable depends on the particular circumstances and may vary over time and between countries, based on their national circumstances[108]. The due diligence standard provides States with a wide margin of

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[101] US Written Comments, paras. 3.23-3.26; US Written Statement, Chap. IV.A (citing *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 242, para. 29; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 55, para. 101 ("*Pulp Mills*"); *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 (II)*, p. 711, para. 118 ("*Certain Activities* and *Construction of a Road*"); and *ibid.*, p. 706, para. 104 and p. 724, para. 168).

[102] US Written Comments, Chap. III.B.ii.

[103] US Written Comments, fn. 86. See also US Written Statement, paras. 1.4, 2.3, 2.12, 6.2; US Written Comments, paras. 3.34-3.37.

[104] US Written Comments, para. 3.37 and fn. 78.

[105] *Pulp Mills*, p. 55, para. 101; *Certain Activities and Construction of a Road*, p. 706, para. 104; see also *ibid.* p. 711, paras. 118 and 724, 168. See also US Written Statement, Chap. IV.A.i; US Written Comments, para. 3.38.

[106] *Certain Activities and Construction of a Road*, pp. 706-707, paras. 104 and 724, 168. See also ILC, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, Art. 3, comment, para. 7, UN doc. A/56/10, reprinted in *YILC*, 2001, A/CN.4/SER.A/2001/Add.1, Part Two; *ibid.* Art. 3, comment, para. 10; US Written Statement, para. 4.23; US Written Comments, Chap. II.B.iii.

[107] US Written Comments, Chap. III.B.i.

[108] US Written Statement, Chap. IV.A.i; US Written Comments, para. 3.40.

appreciation in determining what measures fulfil the obligation[109]. Relevant factors for determining appropriate or reasonable measures might include:

— the nature of the activity in question and the degree of risk of transboundary harm, as informed by the best available science;

— the social and economic costs of possible steps to prevent or minimize such harm; and

— the availability and feasibility of methods to mitigate such risk.

28. Although the context-dependent character of due diligence takes into account different national circumstances, I want to underscore that there is no basis to apply any bifurcated or other categorical differentiation of duties among States, such as between those characterized as "developed" and those sometimes characterized as "developing." There is simply no legal foundation for such an approach[110].

29. Finally, in light of the context-specific nature of the standard, such an obligation would not be susceptible to general, *ex ante* prescriptions of what States must do to act diligently. This is the case with respect to not only the *substantive* measures due diligence would require, but also *procedural* steps that some suggest are mandatory. Similarly, any *ex post* examination of alleged non-compliance of States with such an obligation would need to be fact-specific and could not be performed in the abstract[111].

International human rights law

30. Mr President, I turn now to international human rights law. The United States has long recognized that a healthy environment supports the enjoyment of human rights. We join others in acknowledging that the adverse effects of climate change and the transformations required to address it can impact individuals' enjoyment of their human rights.

31. States must comply with their respective human rights obligations when taking action to address climate change. States also must respect the human rights and fundamental freedoms of individuals within their territory and jurisdiction who advocate for greater climate action. The

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[109] US Written Comments, para. 3.41.

[110] US Written Comments, para. 3.43.

[111] US Written Comments, paras. 3.41 and fn. 92 (citing *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 (I)*, pp. 43, 221, para. 430 ("*Crime of Genocide*")).

freedom of expression, which includes the freedom to seek, impart and share information, for example, is critical for the promotion of greater climate ambition[112].

32. As explained in the US submissions and those of others, international human rights law, however, does not obligate States to mitigate anthropogenic greenhouse gas emissions[113]. Nor does it currently provide for a human right to a healthy environment, although the United States remains open to participating in a State-led process to develop such a right[114]. No treaty of global application provides for such rights or obligations, nor are they supported by the extensive and uniform State practice and *opinio juris* necessary for the creation of a rule of customary international law[115]. Moreover, there would be no legal basis to extend any such obligations extraterritorially[116].

III. THE LEGAL CONSEQUENCES OF BREACH OF A PRIMARY OBLIGATION IN RESPECT OF CLIMATE CHANGE

33. Mr President, I now turn to question *(b)* concerning legal consequences. I will begin with a brief comment on the nature of the question itself.

34. As a number of States made clear at the time resolution 77/276 was adopted, the questions presented to the Court seek a forward-looking response to guide the General Assembly and United Nations Member States on their future conduct[117]. An advisory proceeding is not the means to litigate whether individual States or groups of States have violated obligations pertaining to climate change in the past or bear responsibility for reparations, as some Participants have suggested[118].

35. Nor would it be appropriate to do so. Such determinations would be fact-specific and cannot be made in the abstract. Most Participants' written submissions have rightly not approached these proceedings in this manner.

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[112] US Written Statement, Chap. IV.C.i.

[113] See e.g. U.S. Written Statement, Chapter IV.C.ii-iii; U.S. Written Comments, Chap. IV.D; Australia Written Statement, paras. 3.58-3.59; Canada Written Statement, paras. 24-25; Indonesia Written Statement, paras. 43-44; New Zealand Written Statement, para. 114; Saudi Arabia Written Statement, paras. 1.15, 3.3, 4.97; Switzerland Written Statement, paras. 59-62; United Kingdom Written Statement, paras. 122-23.

[114] US Written Statement, Chap. IV.C.iii; US Written Comments, paras. 4.57-4.59.

[115] US Written Statement, Chap. IV.C.ii-iii; US Written Comments, Chap. IV.D.

[116] US Written Comments, paras. 4.38-4.41.

[117] See US Written Comments, fn. 78; see also *ibid.* at fn. 1.

[118] See e.g. Vanuatu Written Statement, para. 644; Melanesian Spearhead Group (MSG) Written Statement, para. 340; Kiribati Written Statement, para. 206.

36. In our view, question *(b)* is an opportunity for the Court to describe and reinforce in a generalized way the well-established framework of the law of State responsibility that would apply to the analysis of consequences of any breaches of States' obligations in respect of climate change. Our written submissions have addressed that framework in detail[119]. I will highlight just two points today.

37. My *first* point relates to some Participants' characterization of historical greenhouse gas emissions as a composite breach within the meaning of Article 15 of the International Law Commission's Draft Articles on State Responsibility. It has been suggested that, at the moment a State's cumulative emissions pass a certain threshold, a composite breach has occurred, and therefore all of its past emissions become internationally wrongful — even those occurring before a legal obligation was in place[120]. We disagree.

38. Composite obligations are those that prohibit systematic policies or practices, with the relevant intention, such as the prohibitions against genocide or apartheid[121]. As the ILC explained, one must distinguish between breach of that type of obligation from a very different situation: when a simple, non-composite obligation was breached by multiple acts[122]. Here, the asserted primary obligations are not of a composite nature, and therefore are not capable of leading to a composite breach.

39. Moreover, and importantly, even in the case of a composite breach, a State cannot have international responsibility for acts that take place prior to the date on which its international legal obligation came into existence[123]. This follows directly from the intertemporal principle of international law[124].

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[119] US Written Statement, Chap. V; US Written Comments, Chap. V.

[120] See e.g. MSG Written Comments, paras. 192-94; Commission of Small Island States Written Comments, para. 105; Cook Islands Written Comments, paras. 35, 82; Vanuatu Written Statement, paras. 532-33; African Union Written Comments, para. 51.

[121] US Written Comments, para. 5.6. See ILC, Draft Articles on State Responsibility for Internationally Wrongful Acts, with Commentaries, Art. 15, comment, paras.3 and 4, UN doc. A/56/10, reprinted in *YILC,* 2001, Vol. 2, Part Two, p. 31, A/CN.4/SER.A/2001/Add.1, [see Dossier No. 82] ("ILC Draft Articles on State Responsibility"); Jean Salmon, "Duration of the Breach" *in The Law of International Responsibility,* pp. 390-391 (James Crawford et al. eds., 2010) (US Written Comments, Annex 5).

[122] ILC Draft Articles on State Responsibility, Art. 15, comment, paras. 4, 6.

[123] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia)*, *Preliminary Objections*, *Judgment of 12 November 2024*, para. 62.

[124] *See generally ILC Draft Articles on State Responsibility*, Art. 13; *Island of Palmas (Netherlands/United States of America)*, 2 RIAA 829, 845 (Apr. 4, 1928), https://perma.cc/H45V-AA8H.

40. It is for this reason that, in its commentary to Draft Article 15, the ILC made very clear that

> "where the relevant obligation did not exist at the beginning of the course of conduct but came into being thereafter, the 'first' of the actions or omissions of the series for the purposes of State responsibility will be the first occurring *after the obligation came into existence*"[125].

41. Put simply, acts or omissions that preceded the crystallization of international obligations with respect to climate change cannot be internationally wrongful acts.

42. I turn now to my *second* point, concerning the requirement to establish a causal link between a claimed injury and an internationally wrongful act.

43. Establishing responsibility to make reparations for a specific climate-related injury would be particularly complicated because international law requires a "sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered"[126]. Our overarching point is that complexity is not a reason to relax or dispense with this basic legal requirement.

44. It has been suggested that the General Assembly's use in question *(b)* of the phrase "significant harm to the climate system and other parts of the environment" makes it unnecessary to establish a causal link between an injury for which reparations are sought and the wrongful conduct of any given State[127]. If the suggestion is that some — but not all — States are entitled as a matter of international law to reparations simply upon a showing that the climate system has been harmed, we do not see a basis for such a conclusion.

45. In this respect, we note that a number of Participants have suggested entitlement to a wide range of reparations, all of which would appear designed to remedy specific injuries caused by specific events, such as flooding or hurricanes. For that to be the case, it would have to be established with the requisite directness and certainty that those specific events were caused by *internationally*

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[125] *ILC Draft Articles on State Responsibility*, Art. 15, comment. para. 11 (emphasis added).

[126] *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 (I)*, p. 234, para. 462; *see also Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations*, *Judgment, I.C.J. Reports 2022 (I)*, p. 48, para. 93; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*, *Compensation, Judgment, I.C.J. Reports 2018 (I),* p. 26, para. 32; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, *Compensation, Judgment, I.C.J. Reports 2012 (I),* pp. 331-32, para. 14. *See also* US Written Statement, para. 5.7; US Written Comments, paras. 5.11-5.12.

[127] See e.g. Vanuatu Written Comments, paras. 74-75, 205-6.

wrongful acts — and would not have happened had breaches of applicable international legal obligations not occurred.

46. This causation requirement cannot be assumed away. Nor can generalized conclusions of the Intergovernmental Panel on Climate Change be used to close the gap, as has been suggested[128]. The Panel's assessment reports focus on the totality of anthropogenic greenhouse gas emissions. They do not draw any conclusions about a subset of *internationally wrongful* emissions and their effect on climate-related events.

47. Mr President, customary international law is clear that States committing internationally wrongful acts are responsible for injuries caused by those acts, but only when that causation is shown with the requisite directness and certainty. The urgency of the climate crisis is cause for collective action. It is not, however, a basis for dispensing with this fundamental principle of international law.

IV. CONCLUSION

48. Mr President, Madam Vice-President, Members of the Court, I want to underscore a few points in closing. First, the global climate crisis can be solved only through international co-operation. The submissions to the Court illustrate the vast spectrum of national circumstances and perspectives the problem implicates. They demonstrate that the international legal framework for a solution must be flexible and effectively universal, yet ambitious. That is the approach States have chosen in the UN climate change régime, and particularly in the Paris Agreement.

49. Second, whether under the Paris Agreement or customary international law on transboundary environmental harm, States' current obligations in respect of mitigating greenhouse gas emissions do not vary based on differentiation between categories of States, such as those characterized as "developed" and "developing"[129]. Moreover, States' capacities to mitigate national greenhouse gas emissions have evolved since the 1992 adoption of the UNFCCC, and continue to evolve[130]. All major economies have this capacity today — a capacity that has only increased over

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[128] See e.g. Vanuatu Written Comments, para. 205 *(a)-(b)*.

[129] United States Written Statement, Chaps. II.B, III.B, and III.C; United States Written Comments, para. 3.43 and Chap. IV.A.

[130] US Written Statement, para. 3.27.

time with the availability of low and zero-emission technologies and the dramatic decrease in their costs. This is important context[131].

50. The Court has an opportunity to reinforce the ongoing negotiations in the UN climate change régime, including the Paris Agreement's ambition mechanism. It can do so by affirming the centrality of States' obligations, properly understood, under this régime. It is the collective efforts of States through this régime that provide the best means for protecting the climate system for the benefit of present and future generations.

51. Mr President, Madam Vice-President, Members of the Court, this concludes the statement of the United States. I thank you for your kind attention.

The PRESIDENT: I thank the representative of the United States of America for her presentation. I now invite the next participating delegation, the Russian Federation, to address the Court and I call upon Mr Maksim Musikhin to take the floor.

Mr MUSIKHIN:

INTRODUCTION

1. Mr President, Madam Vice-President, distinguished Members of the Court, the issue of climate change represents a critical global challenge that humanity is facing today. This problem impacts all nations to varying degrees. Global challenges require global solutions. Only by uniting efforts can States prevent the devastating consequences of climate change and protect the climate system for the benefit of present and future generations. Russia is a party to the United Nations Framework Convention on Climate Change, its Kyoto Protocol and the Paris Agreement, and for over three decades, it has been an active participant in the international "climate" process, being a leader in both reducing greenhouse gas emissions and fostering a universal climate régime under the UNFCCC.

2. In 2020, the Russian President Vladimir Putin signed a decree on the national goal of reducing greenhouse gas emissions by 2030. The target is set at no more than 70 per cent of the 1990 level.

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[131] US Written Statement, paras. 2.18-2.19.

3. Speaking at the 29th session of the Conference of the Parties to the UNFCCC (Baku, this November), the Prime Minister of the Russian Federation, Mikhail Mishustin highlighted Russia's priorities. These include agreeing on a new collective goal for climate financing to benefit developing countries, transitioning to low-emission energy without harming low-income countries' development, creating a unified system for assessing the quality of climate projects, and strengthening co-operation among scientific communities.

4. Under the Paris Agreement, Russia has approved a strategy for the socio-economic development up to 2050 with low greenhouse gas emissions. In October 2023, a new Climate Doctrine of the Russian Federation was adopted, which, in particular, provides for achieving carbon neutrality by 2060 at the latest.

5. Distinguished Members of the Court, the Russian Federation supported General Assembly resolution 77/276, which requests an advisory opinion from the Court on the nature of States' obligations concerning climate change.

6. Advisory opinions of the International Court of Justice, the principal judicial organ of the United Nations, hold substantial importance and influence the development of international law. We see the Court's role as clarifying the existing legal norms to assist the UN Member States in taking action to combat climate change.

7. We consider it appropriate for the advisory opinion to be based on applicable international legal norms. We believe that these norms should not be altered by the opinion, nor new rules should be created either. An impact on the ongoing political negotiations under the Conference of the Parties of the UNFCCC should be avoided.

UNFCCC TREATY SYSTEM

8. The first question put before the Court concerns the international legal obligations of States to protect the climate system and other components of the environment from anthropogenic greenhouse gas emissions in the interests of States, as well as present and future generations.

9. These obligations are enshrined in specialized treaties addressing climate change — the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement. These treaties provide a solid foundation for extensive international co-operation and

play a major role in regulating climate change and its adverse effects related to greenhouse gas emissions. This position is widely supported by the States that have presented their written submissions to the Court.

10. The fundamental position of Russia is that States' obligations concerning climate change exist exclusively within the framework of the treaty régime under the UNFCCC system. Other multilateral international treaties do not contain specific "climate obligations", especially treaties adopted long before the global problem of climate change was recognized by science and the international community.

11. A possible exception is the customary principle of preventing significant transboundary harm to the environment, which aligns with the norms of climate treaties and can be applied subsidiarily, but only from the point at which the adverse effects of anthropogenic greenhouse gas emissions on the environment were scientifically established, making such harm foreseeable.

12. States agree that the Paris Agreement is the principal legal instrument in combating climate change today. In its text, we deem it pertinent to highlight the two key aspects that shape the States' obligations regarding climate change: the temperature goal and the required level of effort to mitigate climate change impacts.

13. As noted by Russia in its written statement[132], the temperature goal set in Article 2 (1) *(a)* of the Paris Agreement ranges between 1.5°C and 2°C. It does not specify precise metrics, using the language "well below 2°C above pre-industrial levels". The reference to 1.5°C serves only as an "ideal" benchmark. Thus, to fulfil their obligations under the Paris Agreement, States are required to make efforts to keep the rise in global average temperature between 1.5°C and 2°C.

14. Some States argue that all necessary measures must be taken to limit global average temperature rise to 1.5°C, citing decisions of the Conference of the Parties to the UNFCCC. However, the Paris Agreement itself does not impose such an obligation. The Paris Agreement provides for the need to adopt and comply with decisions on some issues directly specified in it. However, this does not apply to provision on the temperature goal. Consequently, the decisions of the Conference of the

[132] Written Statement of the Russian Federation, paras. 20-21.

Parties acting as the meeting of the Parties to the Paris Agreement, in which 1.5°C is referred to, do not affect the scope and contents of States' obligations under the Paris Agreement.

15. We do not share the point of view that such decisions may be considered as the subsequent agreement of the parties in the meaning of Article 31 (3) *(a)* of the Vienna Convention on the Law of Treaties. The language of such decisions does not indicate the intention to make them legally binding. An example of this is the Decision 1/CMA.5 (2023), paragraph 4 of which reads: "Underscores that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C and resolves to pursue efforts to limit the temperature increase to 1.5°C". This wording does not have typical signs of the subsequent agreement, but expresses only a political aspiration, emphasizing the relevance of further efforts to limit temperature growth within 1.5°C.

16. Consequently, there is no basis to consider that States are obligated to adopt measures to limit the global average temperature increase to 1.5°C.

17. For similar reasons, the "transition from fossil fuels" is not a legal obligation but rather a political appeal to States recorded in a decision of the 28th session of the Conference of the Parties to the UNFCCC[133]. The Paris Agreement neither prohibits the use of certain energy sources nor mandates the use of specific ones.

18. Another question pertains to the required level of effort necessary to mitigate the effects of climate change.

19. One of the views is that each State should undertake a level of effort that would ensure the achievement of the Paris Agreement's temperature goal if the same effort were undertaken by all other States. This level is often referred to as a "fair share".

20. However, it should be noted that neither the UNFCCC nor the Paris Agreement contains the concept of a "fair share" or any similar notions. No universal definition of a State's "fair share" exists in international law, State practice, or doctrine, nor is there a consensus on the criteria and methodology for determining it.

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[133] COP28, Outcome of the First Global Stocktake, decision -/CMA.5 (Advance Unedited Version) (13 December 2023), para. 28.

21. Article 3 of the Paris Agreement requires States to undertake and communicate ambitious efforts in the form of nationally determined contributions (NDCs) to the global response to climate change.

22. As Russia noted in its written statement[134], establishing goals for, and pathways to, achieving NDCs is the prerogative of each individual State. Establishing universal criteria for determining the adequacy of NDC ambitions would contradict this principle. NDCs should be developed considering the overall "temperature goal" but must also be based on the principle of common but differentiated responsibilities and respective capabilities in light of differing national circumstances[135], and align with the specific conditions of each party[136].

23. Regarding the principles of equity, as well as common but differentiated responsibilities and respective capabilities[137], the views of States on their substance vary significantly.

24. As for the latter principle, we note that the current reality reflects a trend toward increasing "commonality" rather than differentiation of responsibilities and capabilities, as developing countries are narrowing the gap with developed countries in economic indicators. At the same time, production facilities are being actively relocated from developed to developing countries, with companies from developed nations that relocate their factories continuing to profit, while developing States bear the additional burden of increased environmental pollution and greenhouse gas emissions. These factors must be considered in further implementation of UNFCCC instruments.

HUMAN RIGHTS

25. Distinguished Members of the Court, some delegations, in their written submissions and comments, expressed the view that fulfilling States' human rights obligations may, in certain cases, require measures to combat climate change, including reducing anthropogenic greenhouse gas emissions.

26. In this regard, we emphasize the fundamental differences between international legal regulation in the fields of human rights and climate change.

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[134] Written Statement of the Russian Federation, para. 26.

[135] Preamble to the Paris Agreement, para. 4.

[136] UNFCCC, Article 3 (4).

[137] UNFCCC, Article 3 (1); preamble to the Paris Agreement, para. 4.

27. First, international human rights law is based on the idea of opposition between individual human rights and the government of a respective State. Violations of human rights result in State accountability to the affected individual. This "individual versus government" logic does not apply to climate change. The issue of climate change should not be viewed as a domain of conflicting interests between a State and an individual. Instead, solidarity between governments and citizens at the national level, as well as among States at the international level, should guide policy and legal regulation.

28. Second, human rights obligations are territorial in nature. For instance, Article 2 (1) of the International Covenant on Civil and Political Rights stipulates that a State undertakes to ensure the rights of individuals within its territory and jurisdiction.

29. Apart from well-known limited exceptions, State jurisdiction is strictly territorial. However, even considering these exceptions, the scope of a State's obligations to ensure compliance with human rights treaties is tied to specific territory or individuals.

30. Conversely, the UNFCCC's fundamental principle is the protection of the climate system for the benefit of present and future generations of humanity. Consequently, States' obligations to protect the climate system from anthropogenic greenhouse gas emissions, commonly referred to as mitigation obligations, are global in nature: they exist for the benefit of all humanity, including not only those alive today but also the future generations.

31. Meanwhile, human rights obligations are often described as obligations to be fulfilled "here and now". States, in principle, cannot guarantee the rights of individuals outside their jurisdiction, or those of persons not born yet. No international human rights treaty requires this of States.

32. This is precisely the fundamental distinction between climate change mitigation obligations and human rights obligations: the former are global and largely forward-looking, while the latter are territorial and focused on the present.

33. In our written statement, we listed the reasons why taking mitigation measures does not contribute to the realization of human rights[138]. Therefore, we highly doubt that States' human rights obligations could imply a requirement to adopt climate change mitigation measures.

34. That said, in addition to mitigation measures, the UNFCCC and the Paris Agreement provide for States' obligations to take adaptation measures to address climate change. Unlike mitigation measures, adaptation measures can contribute to the realization of human rights "here and now", as they have a direct impact.

35. At the same time, failure to take adaptation measures is in itself a violation of the climate treaties, which codify this obligation — the UNFCCC and the Paris Agreement, but it is not a violation of human rights treaties or customary norms in the field of human rights, since in the latter case, it would be necessary to determine that failing to adapt has resulted in a breach of specific rights of an individual (or groups). Adopting adaptation measures is not a precondition for a State fulfilling its human rights obligations. Human rights treaties do not mandate such measures, leaving them at the discretion of each State, depending on the circumstances.

36. Among all the treaties under the UNFCCC system, only the Paris Agreement mentions human rights. Its preamble states that Parties should, when taking actions 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, as well as the right to development, gender equality, the empowerment of women, and intergenerational equity".

37. Overall, paragraph 12 of the preamble merely reminds States that they should respect the existing human rights obligations while addressing climate change. The preamble does not establish new obligations.

38. Concluding on human rights, we would like to note that, in their written submissions and comments, some States have referred to the "right to a clean, healthy, and sustainable environment" as a presumable part of customary international law.

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[138] Written Statement of the Russian Federation, paras. 35-37.

39. The Russian Federation contends that this "right" has not crystallized in customary international law yet. Neither universal environmental agreements nor international human rights treaties contain concepts such as a clean environment, a healthy environment, etc. The language of the existing international legal instruments varies significantly. We note that General Assembly resolution A/76/300 refers to this right; however, it was not adopted by consensus and is not a legal affirmation. Eight States, including the Russian Federation, abstained. The Russian delegation recorded its objection to such a recognition and we continue to believe that currently there is no basis for such a recognition.

THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

40. Distinguished Members of the Court, the request for an advisory opinion mentions also the United Nations Convention on the Law of the Sea.

41. As a major maritime power, Russia attaches great importance to the proper management of the world's oceans. Russia is a Party to the UNCLOS, which establishes a comprehensive legal régime governing activities in the oceans.

42. A number of delegations, in their written statements, have referred to the recent Advisory Opinion issued by the ITLOS in response to the Request from the Commission of Small Island States on Climate Change and International Law[139]. Russia abstained from participating in that proceeding due to jurisdictional concerns.

43. We regret that, in issuing that Advisory Opinion, the Tribunal essentially engaged in lawmaking, attempting to derive new obligations from the Convention that are not codified by it.

44. The competence of ITLOS is narrower than that of the International Court of Justice. Therefore, we expect the Court to address the issue at hand in a more comprehensive manner.

45. Participation in the ITLOS proceedings was limited compared to the current ICJ proceedings, which indeed involve a record number of States. Here, States have presented a far more diverse range of perspectives on issues related to their obligations under the 1982 Convention. We hope the Court will duly consider this diversity of views and reach balanced conclusions.

46. The 1982 Convention does not contain provisions directly addressing climate change.

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[139] COSIS Request for an Advisory Opinion, 2024.

47. Part XII of the Convention concerns the protection and preservation of the marine environment. Article 192 establishes a general obligation to "protect and preserve the marine environment".

48. Article 194 of the Convention obligates States to take measures to prevent, reduce, and control pollution of the marine environment from any source. Subparagraphs *(a)-(d)* of Article 194 (3) list certain potential sources of such pollution. Anthropogenic greenhouse gas emissions are not mentioned in this list.

49. The Convention does not specify obligations under Articles 192 and 194 of UNCLOS in relation to the effects of climate change.

50. Regarding Article 194, it is our position that the scope of States' obligations to prevent, reduce, and control pollution of the marine environment does not automatically extend to combating the adverse effects of climate change. There are several reasons for that.

51. Anthropogenic greenhouse gas emissions are not pollutants per se. They affect the climate system under certain conditions (depending on the volume and duration of emissions) and impact the marine environment indirectly.

52. Accordingly, within the framework of the UNFCCC régime — a specialized treaty régime — anthropogenic greenhouse gas emissions are not regarded as pollution of the maritime environment[140].

53. Regarding UNCLOS and the general obligation to protect and preserve the marine environment under Article 192, it should be noted that, in the absence of climate-related provisions in the Convention, it is not possible to determine the scope of this obligation with relation to climate change solely based on the norms of UNCLOS.

54. In this case, reference should be made to the specialized UNFCCC régime, which forms part of "any relevant rules of international law applicable in the relations between the parties"[141], which is consistent with the general rules of interpretation codified in the Vienna Convention on the Law of Treaties.

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[140] Written Statement of the Russian Federation, para. 49.

[141] Vienna Convention on the Law of Treaties, Article 31 (3) *(c)*.

55. Moreover, the provisions of the UNFCCC, the Kyoto Protocol, and the Paris Agreement serve as "internationally agreed rules, standards, and recommended practices and procedures" that States must consider when fulfilling their obligations under UNCLOS[142].

56. Since climate change falls within the scope of the UNFCCC régime, issues concerning the protection of the marine environment in the context of climate change should also be addressed within this specialized treaty régime. Addressing these issues under the 1982 Convention risks duplicating the work of specialized platforms, encroaching on the mandates of the UNFCCC and the Paris Agreement, and undermining States' performance of their respective obligations under these treaties.

57. It can be assumed that States fulfil their obligations under Part XII of UNCLOS by implementing measures prescribed by the UNFCCC and the Paris Agreement, but not vice versa. The UNFCCC treaty system provides the foundation for State co-operation in combating climate change.

58. Article 197 of UNCLOS is also relevant for interpreting and fulfilling the general obligation to protect and preserve the marine environment. It requires States to "co-operate on a global basis".

59. The UNFCCC platform can be regarded as an example of such global co-operation, as addressing the issues within its mandate also contributes to protecting and preserving the marine environment in relation to climate change. Other examples include the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO), which address greenhouse gas emissions from maritime and air transport, respectively.

60. Thus, by co-operating within the frameworks of the UNFCCC, IMO, ICAO, and relevant regional platforms, States parties to the 1982 Convention fulfil their obligations under Article 197.

61. Furthermore, by engaging in such co-operation and complying with the provisions of relevant treaties, implementing the decisions of competent bodies of these treaties (such as the Conference of the Parties to the UNFCCC), as well as the decisions of organizations with jurisdiction over greenhouse gas emissions from specific sources (IMO, ICAO), the State parties to the

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[142] United Nations Convention on the Law of the Sea, Articles 207 and 212.

1982 Convention also fulfil the general obligation under Article 192 with respect to the consequences of climate change.

62. Concluding on the matter, we do not believe that the 1982 Convention contains specific independent obligations of States concerning climate change.

LEGAL CONSEQUENCES

63. Mr President, the second question presented to the Court concerns the legal consequences under climate change obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment.

64. It would appear that the legal consequences in question can arise only in cases where a State has breached its international legal obligations, thereby triggering its international responsibility. The rules of international law on State responsibility do not differentiate between States; they apply uniformly to all States regardless of their classification.

65. A State bears responsibility only for breaches of obligations in force for it at the relevant time. Therefore, any legal consequences arising from breaches of "climate obligations" due to harm caused to the climate system can only be invoked from the moment the relevant treaties of the UNFCCC system entered into force for that State.

66. Regarding the customary obligation to prevent significant environmental harm, it should be noted that humanity became sufficiently aware of the impact of anthropogenic greenhouse gas emissions on climate only in the 1990s[143]. Thus, to the extent that anthropogenic emissions fall under this obligation, a State cannot be held responsible for emissions that occurred before this period.

67. In its written statement, Russia highlights numerous difficulties in establishing causal links between harm to the climate system and other environmental components, and emissions of greenhouse gases[144]. Based on this, we conclude that under the norms of international law on State responsibility, it is virtually impossible in individual cases of harm caused by climate change to identify the responsible State, the specific internationally wrongful act that led to that harm, and, in some cases, even the affected State[145].

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[143] The first reports of the Intergovernmental Panel on Climate Change date back to 1990.

[144] Written Statement of the Russian Federation, paras. 61-64.

[145] Written Statement of the Russian Federation, para. 65.

68. Furthermore, a State's responsibility for harm may arise only with regard to affected States and currently living individuals, not "future generations". First, future generations cannot act as subjects of law. Second, it is impossible to establish harm to individuals not yet born: the harm has not yet occurred, and its precise prediction is not feasible.

69. Distinguished Members of the Court, based on the above, we can conclude that even if, in theory, international law on State responsibility could be applicable to breaches in the climate sphere, advancing intergovernmental co-operation, including through mechanisms established by the relevant treaties, is far more appropriate and beneficial for achieving the international community's climate goals. This approach has received support from many States in their written submissions and comments.

THE ROLE OF REGIONAL CO-OPERATION

70. Mr President, while considering the implementation of States' international legal obligations to co-operate, we would like to highlight the importance of both global and regional intergovernmental co-operation.

71. Russia actively engages in this area with regional platforms such as the Eurasian Economic Union (EAEU), the Shanghai Cooperation Organization (SCO) and the Commonwealth of Independent States (CIS).

72. The EAEU has adopted and is implementing a corresponding "Roadmap", which includes several initiatives in low-carbon development and "green" financing. In June 2024, the Union adopted Approaches to Regulating Climate Agenda Issues, promoting co-operation within the Union on low-carbon development and aligning positions on adaptation to climate change.

73. The SCO has devoted significant attention to climate change, including through technology transfer and resource mobilization.

74. Climate-related co-operation is also pursued within the CIS. A statement by the Heads of States of the CIS on Cooperation in the Climate Sphere was adopted in Astana in 2022. Notably, the statement emphasizes that "the emergence of trade, financial, and other barriers and restrictions may undermine international and national efforts to address climate challenges and hinder sustainable socio-economic development of the States".

75. Mr President, honourable Members of the Court, the above examples demonstrate that regional co-operation should play a significant role in combating climate change and contribute to States' fulfilment of their relevant international legal obligations.

UNILATERAL COERCIVE MEASURES AND CLIMATE CHANGE

76. In contrast to the positive impact of this co-operation we wish to draw the Court's attention to another important but negative aspect concerning States' obligations to reduce environmental impact.

77. As some States noted in their written statements, unilateral, illegitimate coercive measures imposed by certain States on other States in violation of international law not only contradict the United Nations Charter but also breach the relevant climate obligations. The Russian Federation fully supports this view.

78. By refusing to engage in joint scientific research, excluding politically disfavoured States from international environmental co-operation, and by imposing restrictive measures, the imposing governments jeopardize the expansion of knowledge about the effects of anthropogenic impacts on the environment. Such actions hinder the formation of an objective understanding necessary to respond effectively to the challenges posed by the adverse consequences of climate change.

79. By obstructing States' access to modern technologies, including those for upgrading treatment systems on land and aboard marine vessels and aircrafts, the States imposing unilateral coercive measures bear responsibility for causing harm to the environment.

80. Russia views such unilateral, illegitimate coercive measures by certain States as blatant violations of their climate-related obligations, primarily under the UNFCCC (Articles 3 and 4), the Paris Agreement (Articles 7, 8 and 10) and other co-operation obligations.

81. Russia respectfully requests the International Court of Justice, as one of the principal organs of the United Nations, to address the impermissibility of unilateral restrictions and barriers, including financial and economic ones, from the point of view of climate obligations.

CONCLUSION

82. Mr President, distinguished Members of the Court, allow me to formulate the conclusions reflecting the position of my country on the questions posed to the Court.

83. States' obligations related to climate change are defined within the specialized treaties of the UNFCCC system. When providing its advisory opinion, we respectfully ask the Court to refrain from formulating new international legal norms or new obligations for States. Moreover, we hope the Court would be cautious not to undermine or exert any pressure on the ongoing negotiation process under the Conference of the Parties to the UNFCCC.

84. The fulfilment of States' human rights obligations may require adaptation measures to address climate change. By contrast, mitigation measures do not contribute to realizing the rights of individuals currently under States' jurisdiction and may even hinder their implementation. Therefore, international human rights law neither requires nor should require States to implement mitigation measures.

85. There are no compelling arguments to support the view that the 1982 United Nations Convention on the Law of the Sea imposes obligations concerning climate change or that addressing the adverse effects of climate change falls within its scope. The treaties of the UNFCCC system should be considered the legal basis for regulation and *lex specialis* in the area of combating climate change. Addressing climate-related environmental issues, States should co-operate primarily within the UNFCCC system, which would be consistent with Article 197 of UNCLOS.

86. Legal consequences arising from States' obligations regarding climate change in cases of non-compliance involve the application of general rules of international law on State responsibility.

87. A State can only be held responsible for breaches of its treaty-based climate obligations from the moment the relevant treaty entered into force for that State. Due to the numerous challenges in establishing causal links in the context of harm to the climate system and other parts of the environment by specific anthropogenic emissions, fostering international co-operation, including through mechanisms established by the relevant climate treaties, is a preferable approach to ensure to a greater extent that the international community can achieve its climate objectives.

88. In this regard, it is especially important to reject unilateral coercive measures that prevent the States targeted by them from effectively fulfilling their climate obligations and properly responding to the challenges posed by the negative consequences of climate change. As a result, such measures not only fail to contribute to achieving the goals of the UNFCCC and the Paris Agreement

but also cause harm to the environment and violate the principle of international co-operation, for which the States imposing them must bear international legal responsibility.

89. Mr President, Madam Vice-President, distinguished Members of the Court, I thank you for your attention.

The PRESIDENT: I thank the representative of the Russian Federation for his presentation. I now invite the next participating delegation, Fiji, to make its oral statement before the Court and I call upon His Excellency Mr Luke Daunivalu to take the floor.

Mr DAUNIVALU:

INTRODUCTION

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour to stand before you in these historic advisory proceedings on behalf of the Government and the people of the Republic of Fiji.

2. As a Pacific small island developing State with a population of just under one million, Fiji is on the frontlines of the most severe and devastating impacts of climate change.

3. Over the past decade, increasingly powerful cyclones and frequent flash floods have devastated our nation. In 2016 alone, the most powerful cyclone ever recorded in the southern hemisphere ravaged Fiji, leaving 44 dead, nearly 130 injured and 45 hospitalized. Tropical Cyclone Winston wiped out one third of the value of our GDP within 36 hours.

4. Fiji's economy, heavily reliant on agriculture and tourism, is in a constant state of recovery, grappling with the dual burden of rebuilding from natural disasters and adapting to the worsening impacts of climate change. The economic toll of these events is staggering, eroding development gains and straining already limited fiscal resources.

5. These climate shocks cascade into broader challenges: food and water insecurity, biodiversity loss, health crises, and more importantly forced displacement.

6. In our case, the first village to be relocated was Vunidogoloa, situated along a bay area in the northern island of Fiji, with 26 houses in which 32 families lived.

7. In 2006, after enduring decades of worsening conditions, the villagers sought government assistance to relocate. They chose a new site 2 km further inland and at a higher altitude. With government support, they built 30 new houses, a church, a community hall and other essential infrastructure.

8. While the relocation offered a safer place to live, the villagers described their experience as "the saddest event of their lives". It is a sentiment echoing the importance of Fijian's attachment to their *vanua* or land. To lose that robs them of their identity and purpose.

9. This is just one example. Today, we have 42 local communities at risk from rising seas and earmarked to be relocated.

10. These climate change impacts reflect our lived experiences. Entire villages have been uprooted from their traditional lands and moved to new locations, forcing whole communities to change their way of life. We cannot help but think of our neighbouring Pacific countries, some of which do not have the luxury of relocating within their own borders and face the untenable prospect of completely losing their statehood due to rising sea levels.

11. *This is a crisis of survival*. It is also a crisis of equity. Fiji contributes 0.004 per cent of global emissions but our people bear the brunt of climate impacts. In climate-vulnerable nations, marginalized groups — women, children and the poor — are disproportionately affected.

12. Mr President, I turn next to the wider context that frames the severe challenges confronting Fiji and the bleak forecast it presents for our people.

13. Fiji and other vulnerable nations had reason to hope when developed nations made a commitment at COP15 in Copenhagen, to provide US$100 billion annually in climate finance by 2020. The failure to meet that climate finance target underscores the persistent gaps in international support. It also undermines the trust that countries have in such arrangements.

14. While COP29 recently announced a new goal of US$300 billion annually by 2035, this remains insufficient to meet the needs of vulnerable developing States like Fiji. Moreover, it does not cover loss and damage.

15. The geopolitical landscape makes progress even *more complicated*. Multilateral negotiations often settle on the lowest common denominator, which can delay the bold and decisive

actions that are needed to address urgent challenges. Fiji participates in those processes in good faith but acknowledges its limitations in providing immediate solutions.

16. Having said that, Fiji takes much encouragement from these advisory proceedings. *Why?* Because the Court is uniquely positioned to address the gaps in the multilateral system regarding climate change. The legal questions before you are profound. They are grounded in scientific realities of climate change and they touch on the lived experiences of Fijians and the countless number of people in other small island developing States bearing the full brunt of the crisis.

17. We urge the Court to reaffirm the principle of accountability, ensuring that those who have, through their acts and omissions, caused the climate crisis, bear responsibility for halting the crisis and addressing its impacts.

18. Mr President, I turn next to address briefly how Fiji is working to help its climate-vulnerable communities.

19. Fiji's responses are compelled by our realities and a commitment to action. The devastation from cyclones and frequent floods, the loss of homes and livelihoods, and the ongoing struggle for economic recovery have shaped our resolve. In response, Fiji has implemented a robust legal framework, including the Climate Change Act 2021, relocation guidelines and the Climate Relocation of Communities Trust Fund, to address loss and damage and enhance resilience.

20. Our efforts extend beyond our borders. Through the Pacific Island Forum's 2021 Declaration on Preserving Maritime Zones, the 2023 Pacific Climate Mobility Framework, and the Pacific Resilience Facility, we are working with our Pacific neighbours to tackle the impacts of rising seas and ensure rights-based, people-centred responses to climate-induced migration. *Fiji is not standing idly by*. We are taking decisive action both nationally and regionally.

21. *Yet, these efforts are not enough*. Without rapid, deep and sustained reductions in global emissions, the 1.5°C threshold that we aspire to under the Paris Agreement will be exceeded, with catastrophic consequences for the Pacific and the world. Achieving such reductions requires that those who have already breached their obligations cease the wrongful conduct. They also should provide additional assistance to enable a more ambitious global response.

22. Mr President, Members of the Court, Fiji stands before you not only for our people but also for future generations, the ecosystems that sustain us and the biodiversity under threat. As the

UN Secretary-General has reminded us: "Every day we fail to act is a day that we step a little closer towards a fate that none of us wants — a fate that will resonate through generations in the damage done to humankind and life on earth."[146]

23. Our people, and taxpayers in climate-vulnerable countries, are unfairly and unjustly footing the bill for a crisis they did not create. They look to this Court for clarity, decisiveness and justice. Your legal guidance will resonate across generations, shaping a legacy of accountability, protection and hope for our people.

24. With that, Mr President, I respectfully request that you invite the Attorney-General, who will present our substantive legal arguments. I thank you.

The PRESIDENT: I thank His Excellency Mr Luke Daunivalu. I now give the floor to Mr Graham Leung.

Mr LEUNG:

OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW AND LEGAL CONSEQUENCES

1. Mr President, Madam Vice-President, distinguished Members of the Court, I am deeply honoured to present these submissions on behalf of the Republic of Fiji. As the Attorney-General of Fiji, it is my duty to uphold the Constitution and the rule of law. Our Constitution is founded on values grounded on well-established legal principles of international law: the protection of human rights, the effective administration of justice, the promotion of social and economic well-being and the protection of the environment. My submission this evening will demonstrate how these values are being undermined by the impacts of climate change.

2. The submission will focus on three critical areas: (1) the existential threat of climate change; (2) the legal obligations of States with respect to climate change; and (3) the legal consequences of failing to uphold those obligations.

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[146] Secretary-General's remarks on Climate Change (10 September 2018), United Nations, https://www.un.org/sg/en/content/sg/statement/2018-09-10/secretary-generals-remarks-climate-change-delivered.

The existential threat of climate change

3. The existential threat of climate change is based on irrefutable scientific evidence. The Intergovernmental Panel on Climate Change (IPCC) warns that global temperatures are on track to exceed 1.5°C above pre-industrial levels[147].

4. The cause of climate change is clear. It is a particular conduct, that is, the anthropogenic emission of greenhouse gases over time by specific States causing significant harm to the climate system and other parts of the environment. The UN General Assembly identified this conduct in the resolution seeking this advisory opinion and the questions before this honourable Court[148].

5. The evidence on the cause of climate change is also irrefutable. The IPCC has attributed much of the warming and sea-level rise to human-induced greenhouse gas emissions. Studies have shown that industrialized States bear the overwhelming responsibility for cumulative emissions.

States' legal obligations under international law

6. Mr President, honourable Members of the Court, I will now address States' legal obligations. International law imposes clear obligations on States to address climate change.

7. The United Nations Charter establishes principles that form the basis of State obligations. These principles include sovereign equality, good faith, the duty to co-operate and the right to self-determination. These are reflected in State legal obligations in treaties and conventions within the overall architecture of the United Nations legal framework.

8. The United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement impose obligations on States to develop policies for mitigating and adapting to climate change and report on their greenhouse gas emissions. These are founded on the State's continued international obligation to prevent transboundary environmental harm, which pre-dates the UNFCCC and the Paris Agreement. It does not in any way seek to limit or to displace such principles. This was recently affirmed by the International Tribunal for the Law of the Sea (ITLOS) which rejected the

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[147] IPCC, 2018: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty.

[148] Resolution 77/276, question *(a),* preambular paragraph 5, question *(b).*

argument that fulfilling a duty under the Paris Agreement would release a State from its obligations under UNCLOS, that is to say the United Nations Convention on the Law of the Sea[149].

9. Mr President, Members of the Court, we are not here to create new laws but to ensure compliance with existing international laws. The reference to various obligations under general international law unequivocally establishes that the issue before the Court extends beyond one or more treaties, engaging the broader requirements of general international law.

10. The vast majority of Participants in this proceeding agree that the UN climate régime is not *lex specialis*. However, some still maintain that this is the principal source of obligations. We respectfully disagree. Some Participants also maintain that the overall consistency across legal obligations is met by complying with the requirements of the UNFCCC or the Paris Agreement. We submit that these arguments are flawed.

11. Mr President, Members of the Court, the overall consistency of obligations means that a State can fulfil all its obligations at the same time. However, this does not mean that the fulfilment of the requirements of one obligation or treaty automatically fulfils all other obligations, even if the former is useful in interpreting the latter. Treating compliance with the UNFCCC and the Paris Agreement as equivalent to complying with all other obligations would effectively undermine the unique nature and individual content of a wide range of applicable rules.

12. Two specific legal obligations of relevance require further elaboration: (1) the duty to prevent transboundary harm; and (2) the right to self-determination.

13. I now turn to the duty to prevent transboundary harm: The Court has affirmed the State's obligation to prevent causing harm to each other. This principle was applied in the *Trail Smelter Arbitration* case[150], the *Corfu Channel* case[151] and more recently in the *Silala* case[152]. In each of these cases, it was clear that no State has the right to use its territory in a way that causes significant harm to another State.

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[149] Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal), ITLOS Case No. 31, Advisory Opinion (21 May 2024), paras. 220-224.

[150] Trail Smelter Arbitration, *RIAA*, vol. III, pp. 1905–82, at p. 1965.

[151] *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22.

[152] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II)*, p. 614, paras. 83 and 99.

14. Additionally, in the *Pulp Mills* case[153], the Court determined that damage does not have to be "serious" or "substantial", but must exceed being "detectable". It emphasized that a State must use all available means to prevent activities within its territory from causing significant harm to another State's environment.

15. Some States have argued that the duty to prevent transboundary harm does not apply to anthropogenic greenhouse gas emissions. They rely on the distinctive aspects of greenhouse gases and their global, rather than localized impacts.

16. If there is any doubt about the application of the "prevention principle" to climate action, Fiji submits that it is removed by the preamble of the UNFCCC itself. It recalls the duty of prevention in paragraph 8, reflecting the customary understanding of the principle that States must "ensure activities within a State's jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction"[154].

17. Paragraph 7 of the UNFCCC preamble also recalls the "pertinent provisions" of the Declaration of the Stockholm Conference on the Human Environment, including the duty of prevention[155]. It is unthinkable that the duty of prevention does not apply to greenhouse gas emissions. The preamble to the UNFCCC recalls it not only once but twice. This makes it clear that the relevant conduct — that is, anthropogenic emissions — greenhouse gases — over time, was already regulated under international law before the adoption of the UNFCCC.

18. Mr President, Members of the Court, I will now turn to the right to self-determination: the right to self-determination is a "fundamental human right"[156] and "one of the essential principles of contemporary international law"[157]. Its protection has been affirmed by the Court on numerous occasions. For small island developing States, like Fiji, this right is deeply intertwined with sovereignty over land, culture and identity. Our land and resources are increasingly vulnerable to

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[153] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, para. 101.

[154] Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26, principle 2. Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972, A/CONF.48/14/Rev.1, principle 21.

[155] Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972, A/CONF.48/14/Rev.1, principle 21.

[156] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 95, para. 144.

[157] *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 90, para. 29.

climate change, exposing communities to displacement. The rising severity and frequency of cyclones and floods force continued adaptation and keep our economy in a constant state of recovery.

19. Mr President and Members of the Court, I ask you this evening, on this historic occasion: is it just that our people are forced to abandon their ancestral lands and heritage because of the inaction of those most responsible for climate change? Is it? How do we protect the future of our people?

20. Therefore, it is imperative for the Court to urgently clarify State obligations in addressing climate change. State actions, or the lack thereof, must not deprive entire populations of their right to self-determination and their ability to shape their own futures.

21. I will now address the connection between climate change and human rights. The impacts of climate change are threatening fundamental rights already experienced by Fiji and other small island developing States.

22. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) grounds the right to survival. It requires States to protect individuals from foreseeable threats, including those posed by climate change. The Human Rights Committee, in *Teitiota* v. *New Zealand*[158], acknowledged climate change as a direct threat to the right to life. And similarly, in the case of *Billy* v. *Australia*[159], the Committee affirmed that States must take action against those threats.

23. This obligation applies with an extraterritorial dimension to bind polluting States. In the context of anthropogenic greenhouse gases, the Committee on the Rights of the Child in *Sacchi et al.* v. *Argentina et al.*, relying on the reasoning of the Inter-American Court of Human Rights, established that States have jurisdiction over transboundary emissions because they exercise control over the sources of those emissions[160].

24. While some point to the European Court of Human Rights decision in *Duarte Agostinho* v. *Portugal* to argue against extraterritorial obligations, it is crucial to note that this decision was on the

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[158] *Teitiota* v. *New Zealand,* CCPR/C/127/D/2728/2016, 23 September 2020.

[159] *Daniel Billy et al.* v. *Australia,* CCPR/C/135/D/3624/2019, 21 July 2022.

[160] Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: *Chiara Sacchi et al.* v. *Argentina*, Brazil, France, and Germany (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 10.10, see also para. 10.7 (link) (where the Committee sought to adapt the relevant approach to jurisdiction taken by the Inter-American Court of Human Rights in its advisory opinion on human rights and the environment); see Advisory Opinion OC-23/17 ("The Environment and Human Rights"), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 95, 101-102.

specific admissibility requirements of the European Court and that the European Court itself acknowledged that other international treaties might well provide broader protection and referenced the approaches of the Inter-American Court and the Committee on the Rights of the Child[161].

25. Human rights obligations also extend to future generations. The preambles of the Paris Agreement and the UNFCCC stress the importance of intergenerational equity and environmental protection.

26. In Fiji, the right to survival, as a component of the right to life, is directly threatened by climate change. The Vunidogoloa village experience, shared by Ambassador Daunivalu, who spoke before me, is one example of the hardships our people face due to forced displacement. In the words of the village headman of Tukuraki, another Fijian village that has experienced relocation, he said: "I hope that the world can collectively agree to minimize the use of the harmful materials that are causing climate change." Many similar stories have been documented by the Republic of Vanuatu, which addressed this Court on Monday, the Melanesian Spearhead Group and other Pacific States in this proceeding. These lived experiences highlight the urgency of the matter and the Court's critical role in addressing these injustices.

27. Mr President, Members of the Court, may I ask: where else can Fiji turn to seek justice for the serious violations of the people's rights, if not this Court? The Highest Court in the United Nations system, the highest judicial body.

Legal consequences

28. I will now address the legal consequences. The majority of Participants in this proceeding have submitted that the legal consequences attributed to violation of State obligations are governed by the general law of State responsibility.

29. The European Court of Human Rights recently affirmed that States can be held individually accountable for their contributions to climate change[162]. Similarly, ITLOS affirmed that States failing to meet their obligations bear responsibility for their actions. The Court is urged to affirm that a State

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[161] *Duarte Agostinho and Others* v. *Portugal and 32 Others* (ECtHR, Grand Chambers, App no. 39371/20), Decision, 9 April 2024, paras. 209-210.

[162] *Verein Klimaseniorinnen Schweiz & ors* v. *Switzerland*, ECtHR Application no. 53600/20 Judgment of the Grand Chamber (9 April 2024).

causing significant environmental harm violates international law and that the general law of State responsibility applies to the legal consequences of that breach.

30. The legal consequences of the violations should be meaningful and include cessation of harmful actions[163] and enforceable reparations. They should take into account the two vulnerable groups referred to in the resolution, namely (1) States particularly vulnerable to the adverse effects of climate change and (2) peoples and individuals of the present and future generations affected by the adverse effects of climate change[164].

31. Cessation requires States to immediately reduce greenhouse gas emissions in line with scientific recommendations. It should also include dismantling the systemic structures that drive such emissions. Reparation should include support for adaptive capacity, acknowledgment of sovereignty, and compensation for both economic and non-economic losses related to, and proportionate to, the harm caused.

32. For individuals, justice requires effective remedies, structural reforms, and safeguarding their human rights and freedoms. Our situation is personal; members of relocated communities must also have their cultural identities preserved and be able to access their ancestral lands and resources. Our economy must also transition out of its state of recovery.

33. Finally, as I conclude, Mr President, and Members of the Court, there are additional obligations applying for all States and international organizations arising from breaches of the right to self-determination due to its peremptory nature and the *erga omnes* character of relevant obligations. In particular, States and international organizations must not recognize the unlawful situation resulting from the breach. A corollary of that is the obligation to recognize the territory and maritime spaces of small island developing States, as established under the law of the sea, and of their continued sovereignty and statehood despite the effects of climate change[165].

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[163] International Law Commission, Articles on State Responsibility, Article 30.

[164] Resolution 77/276, question *(a),* preambular paragraph 5, question *(b).*

[165] Vanuatu Written Statement, paras. 637-640; Vanuatu Written Comments, para. 231; MSG Written Statement, para. 326; MSG Written Comments, para. 237.

Concluding remarks

34. The evidence is clear. My submission has demonstrated that the rights and freedoms of our people have been undermined.

35. Mr President, Members of the Court: will the law rise to meet its highest calling — to protect the vulnerable, to uphold fundamental rights, and to ensure accountability? Or will it falter, leaving the world's most vulnerable to face this crisis alone?

36. Fiji urges the Court to declare that the failure to act on climate change is a violation of international law and affirm that States have a duty to prevent harm, protect human rights, and secure a liveable future for all. Let this be the moment when the cries of the vulnerable are heard. I thank you, Mr President and Members of the Court, for the singular honour of appearing before you today.

The PRESIDENT: I thank the representatives of Fiji for their presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow at 10 a.m., in order for France, Sierra Leone, Ghana, Grenada and Guatemala to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 6.10 p.m.

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