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CR 2024/41

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Thursday 5 December 2024, at 10 a.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 jeudi 5 décembre 2024, à 10 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
		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
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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Ms Sophie Grosbon, Lecturer in Public Law, University Paris Nanterre,

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HE Mr Alpha Sesay, Deputy Minister of Justice,

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Le PRÉSIDENT : Bonjour. Veuillez vous asseoir. L'audience est ouverte.

Pour des raisons dont il m'a dûment fait part, M. le juge Yusuf n'est pas en mesure de participer à l'audience de ce matin.

La Cour se réunit pour entendre des participants sur les questions que lui a soumises l'Assemblée générale des Nations Unies, à savoir la France, la Sierra Leone, le Ghana, la Grenade et le Guatemala. Chaque délégation dispose de 30 minutes pour sa présentation. La Cour observera une courte pause après celle du Ghana.

Je donne maintenant la parole à M. Diégo Colas, qui s'exprime au nom de la France. Vous avez la parole.

M. COLAS :

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un honneur de représenter la France devant la Cour. Mon pays mesure la gravité du phénomène à l'origine de cette procédure consultative. Le fait qu'une centaine d'États et organisations internationales participent aux audiences en illustre l'importance.

2. Le contexte d'urgence dans lequel s'inscrit la demande de l'Assemblée générale des Nations Unies est connu. Pour « assurer un avenir vivable et durable pour tous »[1], nous devons infléchir — immédiatement et drastiquement — les trajectoires des émissions actuelles. Sans action résolue en faveur de l'atténuation et de l'adaptation, nous allons vers une aggravation des conséquences climatiques, environnementales et humaines désastreuses causées par l'accumulation des gaz à effet de serre dans l'atmosphère.

3. Les effets des changements climatiques n'épargnent aucun État. Ainsi, les territoires français du Pacifique, des Caraïbes et de l'océan Indien sont, en raison notamment de leurs caractéristiques biophysiques, géographiques mais aussi socioéconomiques, particulièrement exposés aux risques générés par les changements climatiques. L'impact de ce phénomène sur les écosystèmes et les activités humaines y est déjà perceptible et documenté. Ces conséquences, ainsi que les moyens

[1] GIEC, *Climate Change 2023: Synthesis Report – Summary for Policymakers*, 2023, accessible à l'adresse suivante : https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, p. 24 (les italiques sont de nous).

entrepris pour y remédier, font l'objet de plusieurs rapports que la France a estimé utile de transmettre à la Cour en annexes de ses observations écrites.

4. En tant que phénomènes globaux, les changements climatiques exigent une action coordonnée de l'ensemble de la communauté internationale. Cette action collective doit nécessairement tenir compte des circonstances propres à chaque État. En effet, en raison de leurs besoins et situations spécifiques, certains États sont particulièrement vulnérables aux effets néfastes des changements climatiques.

5. La France est convaincue que cette procédure consultative constitue une occasion unique pour la Cour de contribuer à l'identification et à la clarification du droit international relatif à la lutte contre les changements climatiques. Comme de nombreux pays, la France place des attentes élevées dans cette procédure et dans l'avis qui sera rendu. L'influence qu'aura ce dernier, pour l'interprétation et l'application par les États de leurs obligations en la matière, ne fait aucun doute. Cette conviction appelle deux précisions.

6. Premièrement, un avis clair permettra aux États de connaître, avec certitude et sans ambiguïté, la nature et la portée de leurs obligations juridiques en la matière. Ces obligations trouvent avant tout leur source dans le droit applicable « qui est le plus directement pertinent »[2] pour répondre aux questions posées à la Cour, à savoir la CCNUCC, le protocole de Kyoto et l'accord de Paris. Ces trois instruments constituent les textes de référence. La clarté attendue de la Cour suppose qu'elle précise les modalités d'une interprétation systémique et harmonieuse de ces textes de référence avec les autres « règle[s] pertinente[s] de droit international applicable[s] dans les relations entre les parties »[3]. Cela implique, par exemple, de tenir compte du droit international coutumier, du droit international des droits de l'homme ou du droit international de la mer tel qu'interprété, notamment, par le TIDM dans son avis de mai dernier.

7. Deuxièmement, un avis utile sera immédiatement opérationnel. Dans l'exercice de sa fonction consultative, la Cour a pour office de prêter « assistance à l'Assemblée générale pour la solution d'un problème qui se pose à elle »[4]. En pratique, l'autorité juridique des avis de la Cour

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[2] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 243, par. 34.

[3] Article 31, paragraphe 3, alinéa *c)*, de la convention sur le droit des traités, Vienne, 23 mai 1969, Nations Unies, *Recueil des traités*, vol. 1155, n° 18232, laquelle codifie pour partie le droit international coutumier en la matière.

[4] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 21, par. 23.

n'est pas limitée aux Nations Unies. Les effets de ces avis sont également tangibles aux niveaux régional et national. Il importe donc que la Cour offre un avis dont les acteurs de la communauté internationale, mais aussi des ordres juridiques internes, puissent *utilement* se saisir pour exiger des États une ambition à la hauteur des enjeux. Il appartient donc à la Cour de dire le droit existant, d'en préciser la portée et, le cas échéant, d'en constater l'évolution[5].

8. Monsieur le président, Mesdames et Messieurs les juges, à la lumière de ces éléments introductifs, ma plaidoirie s'articulera en deux parties correspondant aux deux questions posées à la Cour.

I. LES OBLIGATIONS

9. Pour ce qui est des obligations des États en matière de changements climatiques, le temps étant compté, je centrerai ma présentation sur l'article 4, paragraphe 2, de l'accord de Paris.

10. En vertu de cette disposition essentielle, les parties ont l'obligation de prendre des mesures internes d'atténuation afin de réaliser les objectifs établis et actualisés dans leurs contributions déterminées au niveau national, conformément au paragraphe 1 de ce même article 4.

11. Le choix de la France de mettre l'accent sur cette obligation est fondé sur trois types de considérations.

1. L'importance de l'article 4, paragraphe 2, de l'accord de Paris

12. Premièrement, il s'agit d'une obligation centrale de la lutte contre les changements climatiques. Sa mise en œuvre est une condition *sine qua non* du respect de l'objectif de limiter le réchauffement de la planète à 1,5 °C. Comme indiqué dans le premier bilan mondial, chaque État doit agir pour « réduire nettement, rapidement et durablement les émissions mondiales de gaz à effet de serre … de 60 % d'ici à 2035 par rapport au niveau de 2019, et parvenir à des émissions nettes nulles d'ici à 2050 »[6].

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[5] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 237, par. 18.

[6] 1/CMA.5, « Premier bilan mondial », doc. FCCC/PA/CMA/2023/16/Add.1, (ci-après, le « Premier bilan mondial »), par. 27.

2. Le niveau d'ambition de l'article 4, paragraphe 2, de l'accord de Paris

13. Deuxièmement, comme de nombreuses obligations de protection du système climatique et de l'environnement, l'article 4, paragraphe 2, de l'accord de Paris est une obligation dite « de comportement ». La France l'a dit devant le TIDM : « Les obligations de comportement présentent, de par leur nature, le double avantage d'engager juridiquement l'État et de le faire de manière à la fois évolutive et adaptable aux situations. »[7] Cette nature ne peut en aucun cas justifier l'inaction ou l'inertie. Au contraire, l'interprétation de ces obligations doit refléter l'ambition des États en la matière, ce qui exige un niveau *élevé* de diligence dans leur mise en œuvre. Ce niveau découle de l'accord de Paris lui-même, ainsi que de l'interprétation de ce dernier à la lumière du droit international coutumier.

14. En vertu de l'accord de Paris, les mesures internes adoptées par chaque partie doivent être fonction de l'objectif de « limitation de l'élévation de la température moyenne à 1,5 °C par rapport aux niveaux préindustriels ». Cela implique que les mesures en question contribuent effectivement à cet objectif collectif. Par ailleurs, l'article 4, paragraphe 1, de l'accord de Paris exige que le niveau de la contribution nationale déterminée de chaque État soit « le plus élevé possible » et soit en constante progression. L'importance de ce principe de constante progression mérite pleinement d'être rappelée dans votre avis.

15. En vertu du droit international coutumier, le principe de prévention, qui est aujourd'hui applicable dans le contexte global des changements climatiques, trouve, selon les termes de la Cour, « son origine dans la diligence requise … de l'État sur son territoire »[8]. Il oblige tout État à prendre les mesures nécessaires, adéquates et effectives pour prévenir un dommage significatif sur le territoire d'autres États. Le niveau de diligence que requiert ce principe doit « être plus rigoureux pour les activités les plus risquées »[9]. Or, pour ce qui est des émissions de gaz à effet de serre et des changements climatiques qui en résultent, le risque de dommages significatifs est maximal. Dès lors,

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[7] *Demande d'avis consultatif soumise par la Commission des petits États insulaires sur le changement climatique et le droit international*, TIDM/PV.23/A31/18/Rev.1, 25 septembre 2023, p. 13.

[8] *Usines de pâte à papier sur le fleuve Uruguay (Argentine c. Uruguay), arrêt, C.I.J. Recueil 2010 (I)*, p. 55-56, par. 101.

[9] *Responsabilités et obligations des États dans le cadre d'activités menées dans la Zone, avis consultatif, 1er février 2011, TIDM Recueil 2011*, p. 43, par. 117.

le principe général de prévention conforte une interprétation ambitieuse du niveau de diligence requise des États dans la mise en œuvre de leur obligation d'atténuation.

3. Le contenu de l'article 4, paragraphe 2, de l'accord de Paris

16. Troisièmement, le choix de se concentrer sur l'article 4, paragraphe 2, de l'accord de Paris se justifie par les marges d'appréciation que recèle son libellé quant au contenu exact des « mesures internes » attendues des États pour s'y conformer.

17. Chaque État définit le contenu et le rythme de ses mesures d'atténuation en tenant compte de l'évolution des connaissances scientifiques, de ses capacités et de sa situation nationale. En cela, l'article 4, paragraphe 2, de l'accord de Paris constitue une expression concrète du principe « des responsabilités communes mais différenciées et des capacités respectives, eu égard aux différentes situations nationales ». Structurant, ce principe permet d'adapter la mise en œuvre des obligations de l'accord de Paris aux circonstances propres de chaque État. Il participe, en cela, au dynamisme et à l'effectivité globale du système. *Tous* les États doivent agir et doivent le faire au niveau d'ambition le plus élevé dont ils sont capables. Les États en ayant les moyens ont donc l'obligation d'adapter le contenu de leurs engagements en fonction de l'évolution de leur niveau de développement et de la capacité de chacun à peser sur la courbe globale des émissions.

18. D'autre part, si ces indications n'apparaissent pas explicitement dans l'article 4, paragraphe 2, de l'accord de Paris, les États bénéficient de nombreuses orientations quant au contenu des mesures internes attendues. J'en mentionnerai deux.

19. En premier lieu, les décisions des Conférences des Parties permettent d'interpréter et de préciser les obligations des États en vertu de l'accord de Paris. En particulier, les États ont consensuellement indiqué, lors de la COP 28, que le respect des trajectoires acceptables exigeait d'« opérer une transition juste, ordonnée et équitable vers une sortie des combustibles fossiles dans les systèmes énergétiques »[10].

20. En second lieu, l'interprétation de l'article 4, paragraphe 2, de l'accord de Paris, à la lumière d'autres dispositions de l'accord et, plus généralement, d'autres règles de droit international, permet d'apporter quelques indications sur le contenu des mesures internes attendues. Par exemple,

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[10] Premier bilan mondial, par. 28, al. *d)*.

ces mesures doivent être articulées avec l'article 5, paragraphe 1, de l'accord de Paris, relatif à la protection des puits et réservoirs de gaz à effet de serre. À ce titre, lors de la COP 28, les États ont souligné l'importance « de préserver, de protéger et de restaurer la nature et les écosystèmes, notamment de redoubler d'efforts pour mettre fin au déboisement et à la dégradation des forêts d'ici à 2030 »[11]. Il serait illusoire de lutter contre les effets des changements climatiques sans intégrer, au titre des mesures d'atténuation indispensables, la protection des puits et réservoirs de gaz à effet de serre que sont les forêts et les océans. La nécessité de telles synergies ressort d'ailleurs du cadre mondial de la biodiversité de Kunming-Montréal[12] ou de l'accord BBNJ[13].

21. De plus, les mesures de l'article 4, paragraphe 2, de l'accord de Paris doivent être compatibles avec les obligations, négatives *et positives*, des États en matière de droits de l'homme et tenir compte de la nécessité de préserver l'équité entre les générations. Comme l'a jugé le Conseil constitutionnel français, il s'agit en cela de « veiller à ce que les choix destinés à répondre aux besoins du présent ne compromettent pas la capacité des générations futures à satisfaire leurs propres besoins, en préservant leur liberté de choix à cet égard »[14].

22. Pour résumer, Monsieur le président, Mesdames et Messieurs les juges, en vertu de l'article 4, paragraphe 2, de l'accord de Paris, les États doivent prendre des mesures internes d'atténuation adéquates, propres à remplir leurs objectifs fixés dans leurs contributions nationales déterminées. Il s'agit là d'une disposition juridiquement contraignante à la charge de tous les États dont l'ambition et la teneur découlent de l'accord de Paris ainsi que de son interprétation à la lumière d'autres normes du droit international.

23. J'en viens maintenant à la seconde partie de mon exposé, sur les conséquences juridiques en cas de dommages significatifs causés au système climatique et à d'autres composantes de l'environnement.

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[11] *Ibid.*, par. 33.

[12] Décision 15/4, « Cadre mondial de la biodiversité de Kunming-Montréal », CBD/COP/DEC/15/4, 19 décembre 2022.

[13] Traité international pour la protection de la haute mer et de la biodiversité marine, New York, 20 septembre 2023.

[14] (France) Conseil constitutionnel, 27 octobre 2023, *Association Meuse nature environnement et autres*, décision nº 2023-1066 QPC, accessible à l'adresse suivante : https://www.conseil-constitutionnel.fr/decision/2023/20231066QPC.htm, par. 6.

II. LES CONSÉQUENCES JURIDIQUES

24. En présence de dommages climatiques, les conséquences juridiques pour les États peuvent certes s'analyser au regard du droit de la responsabilité internationale tel que codifié par la CDI en 2001. Toutefois, ce régime ne peut être considéré comme apportant, à lui seul, l'ensemble des réponses nécessaires et satisfaisantes pour la prise en compte de ces dommages. En outre, la formulation de la seconde question posée par l'Assemblée générale à la Cour permet de ne pas réduire le débat juridique au seul champ du droit de la responsabilité internationale. Il existe d'autres mécanismes, distincts mais complémentaires que j'aborderai dans un second temps.

1. Les conséquences juridiques en droit de la responsabilité internationale

25. La France l'a affirmé lors de la phase écrite de la procédure : le droit de la responsabilité de l'État pour fait internationalement illicite est susceptible de s'appliquer en matière climatique. En revanche, son application à un État, ou à un groupe d'États, déterminé(s) n'est pas de la compétence de la Cour dans la présente procédure consultative. Au-delà de ces constats de principe, un éclairage de la Cour serait, de l'avis de mon pays, utile sur deux questions en particulier.

26. La première question concerne ce que l'on appelle la « date critique », à savoir la date exacte à partir de laquelle il existe, pour les États, une obligation de prévenir les dommages significatifs en matière climatique. Autrement dit, depuis quand le droit international contient-il une obligation coutumière de prendre les mesures internes nécessaires, adéquates et effectives pour prévenir les dommages causés par l'accumulation de gaz à effet de serre dans l'atmosphère ? La réponse à cette interrogation n'implique pas seulement de rechercher la date à partir de laquelle le droit international a reconnu l'existence d'un principe général de prévention. Elle suppose aussi d'identifier deux choses. D'une part, il faut identifier les manifestations d'une évolution depuis la prévention des dommages transfrontières entre États voisins vers la prévention de dommages d'une tout autre nature que sont les dommages globaux au système climatique. D'autre part, il s'agit d'identifier à quel moment la communauté internationale a pris conscience de la nécessité d'adopter des mesures pour prévenir les risques causés par l'accumulation des gaz à effet de serre dans l'atmosphère. La résolution de l'Assemblée générale sur la « Protection du climat mondial pour les

générations présentes et futures » de 1988[15], la déclaration de Rio et la convention-cadre de 1992 paraissent particulièrement pertinentes pour établir l'émergence d'une *opinio juris* au plan universel.

27. L'identification d'une norme coutumière a pour conséquence logique que tout État n'ayant pas pris de mesures internes, ou ayant pris des mesures insuffisantes, pour prévenir les dommages causés par l'accumulation de gaz à effet de serre dans l'atmosphère en violation d'une telle norme verrait sa responsabilité engagée.

28. La deuxième question sur laquelle un éclairage de la Cour présenterait un intérêt significatif pour les États est celle des critères relatifs à l'établissement du lien de causalité *juridique* « suffisamment direct et certain »[16] entre le fait illicite d'un État et les dommages subis par un autre État. Sur ce point, la nature particulière des changements climatiques, qui découlent de l'accumulation des émissions de gaz à effet de serre au niveau mondial, soulève plusieurs difficultés qui appellent clarification.

29. La jurisprudence de la Cour fournit des indications précieuses sur l'établissement du lien de causalité. Dans la mesure où elles seraient pertinentes en l'espèce, ces indications pourraient être rappelées dans l'avis. Toutefois, comme certaines ont été formulées vis-à-vis de situations et dommages d'une nature différente de celle des problématiques et dommages climatiques, elles ne leur sont pas nécessairement, ou pas facilement, transposables. Par exemple, les indications données par la Cour dans l'affaire des *Activités armées sur le territoire du Congo* en 2022 concernaient une situation de contrôle effectif sur un territoire étranger, c'est-à-dire de toutes autres circonstances que celles qui nous occupent présentement.

30. Par ailleurs, toute précision qui pourrait être apportée au régime de la causalité dans le contexte particulier des dommages climatiques devrait tenir compte de trois paramètres fondamentaux. Premièrement, toute évolution devrait être fondée sur un raisonnement tiré d'une interprétation largement consensuelle du droit international positif. Deuxièmement, seule une appréciation au cas par cas, en fonction des données factuelles de chaque affaire, pourrait permettre de relier la violation d'une obligation de prévention à des dommages déterminés. Une telle

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[15] Résolution 43/53 de l'Assemblée générale des Nations Unies du 6 décembre 1988.

[16] *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 234, par. 462.

appréciation serait inévitablement très complexe. Troisièmement, passé un certain point, en l'absence d'indications clairement établies dans le droit international positif, c'est par la coopération internationale qu'il conviendrait de développer et préciser le droit de la responsabilité pour fait internationalement illicite.

31. Ceci ne peut justifier le refus de faire dès maintenant preuve de solidarité face aux dommages causés au système climatique et aux autres composantes de l'environnement. Il n'est pas envisageable de laisser les pays les plus vulnérables en affronter seuls les conséquences.

32. Cela amène aux derniers développements de mon propos, sur les conséquences juridiques découlant des dommages climatiques en dehors du droit de la responsabilité. Deux points peuvent être soulevés à cet égard.

2. Les conséquences juridiques en dehors du droit de la responsabilité internationale

33. Premièrement, l'accord de Paris retient une approche innovante fondée non pas sur la responsabilité pour fait internationalement illicite, mais sur la solidarité. En ce sens, il prévoit notamment un régime dédié aux « pertes et préjudices ». Afin de financer les mesures à prendre pour éviter, réduire et faire face à ces pertes et préjudices, les États ont institué des modalités de financement, dont un fonds indépendant. Son objectif est

> « d'aider les pays en développement qui sont particulièrement vulnérables aux effets néfastes des changements climatiques à [répondre] aux pertes et préjudices économiques et [non économiques] liés à ces effets, notamment aux phénomènes météorologiques extrêmes et aux phénomènes qui se manifestent lentement »[17].

Dès son adoption formelle, le fonds a fait l'objet de nombreuses promesses de contributions dont une promesse de contribution d'un montant allant jusqu'à 100 millions d'euros faite par la France.

34. Sur la question, plus générale, du financement de l'action climatique, la France a joué un rôle moteur en vue d'atteindre l'objectif collectif des 100 milliards de dollars. En 2022 et 2023, elle a même dépassé l'engagement financier qu'elle avait pris. Mon pays prend par ailleurs acte du nouvel objectif collectif quantifié adopté par la COP 29.

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[17] 1/CP.28 5/CMA.5, « Mise en place des nouvelles modalités de financement, y compris d'un fonds, permettant de faire face aux pertes et préjudices visés aux paragraphes 2 et 3 des décisions 2/CP.27 et 2/CMA.4 », doc. FCCC/PA/CMA/2023/16/Add.1, annexe 1, par. 2.

35. Deuxièmement, les conséquences juridiques des obligations des États en matière climatique doivent nécessairement s'apprécier au regard du rôle joué en la matière par les juridictions nationales et régionales. Celles-ci pourront, au regard des spécificités de leurs ordres juridiques, se fonder sur les principes généraux dégagés par la Cour dans l'avis à venir. Cette justice climatique se développe, notamment, grâce au renforcement du droit de recours individuel et à l'accès à la justice en matière climatique.

36. Monsieur le président, Mesdames et Messieurs les juges, pour conclure, je tiens à réitérer toute la confiance qu'a la France dans votre Cour. Mon pays ne doute pas que l'avis qui sera rendu en la présente procédure permettra d'améliorer la clarté et la lisibilité des obligations pesant sur les États pour lutter contre les changements climatiques. Il contribuera ainsi à renforcer de manière décisive notre cadre multilatéral commun pour faire face au principal défi de notre temps.

37. Je vous remercie pour votre attention.

Le PRÉSIDENT : Je remercie le représentant de la France pour sa présentation. I now invite the next participating delegation, Sierra Leone, to address the Court and I call upon His Excellency Mr Mohamed Lamin Tarawalley to take the floor.

Mr TARAWALLEY:

1. Mr President, distinguished Members of the Court, it is an honour to appear before you in these historic advisory proceedings. We come before you — for the first time — to speak for our people. People who have been bearing the brunt of a climate crisis not of our own making. One that fundamentally threatens our lives and our livelihoods. It is for this reason that Sierra Leone, driven by the knowledge that the African continent is the most vulnerable continent to the ravages of climate change, proudly joined the core group of States, led by Vanuatu, to request an advisory opinion from the Court.

2. Sierra Leone, with a population of 8 million people perched on the beautiful coast of West Africa, is classified among the 10 per cent of countries in the world that are most vulnerable to climate change. This, despite our country being among the lowest contributors to global greenhouse gas emissions — historically and currently.

3. As a low-lying coastal State, Sierra Leone is extremely susceptible to the sea-level rise, which is eroding our homes, our territory and our cultural heritage. Several islands — some of which are home to Sierra Leone's most historic sites — are sinking and displacing thousands[18].

4. Our country is also experiencing intense heatwaves, accompanied by more frequent and prolonged dry spells[19].

5. Mr President, just last February, Sierra Leone was hit by an unusually intense and early heatwave. Climate change made it 4°C hotter[20]. Without human-induced global warming, such a heatwave would happen less than once a century. Now it is expected every decade. According to the World Bank, "Sierra Leone is prone to natural disasters, namely recurrent floods, droughts, and landslides, which are likely to be exacerbated by climate change"[21].

6. When the rains come, they are torrential, washing away our homes. And overwhelming our limited infrastructure. Mr President, on 14 August 2017, on a Monday that Sierra Leone will never forget, intense rainfall caused a massive mudslide and flash flooding on Sugarloaf Mountain in Freetown, our capital city. A total of 6,000 Sierra Leoneans were directly affected. Half of them, that is 3,000 people, were rendered homeless overnight. More than 1,140 people died. The World Bank had estimated that Sierra Leone needs US$82 million to pay for the damage and destruction caused by the mudslide[22]. That is a huge cost for any country. Let alone a low-income developing country.

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[18] See A. Bruma, "Sierra Leone's sinking islands", *Dialoaue Earth* (6 October 2021), available at https://dialogue.earth/en/ocean/19162-sea-level-rise-sierra-leone-sinking-islands/; M. Konneh, "Sierra Leone Turtle Island on The Brink of Sinking", *Sierraloaded* (20 February 2022), available at https://sierraloaded.sl/news/turtle-island-brink-of-sinking/; T. Trenchard, "A disappearing island: 'The water is destroying us, one house at a time'", *NPR* (19 November 2023), available at https://www.npr.org/sections/goatsandsoda/2023/11/19/1213548231/climate-change-disappearing-island-sierra-leone-africa. See also M. Kardas-Nelson, "Yelibuya: Why is this town in Sierra Leone sinking?", *Al Jazeera* (24 August 2018), available at https://www.aljazeera.com/features/2018/8/24/yelibuya-why-is-this-town-in-sierra-leone-sinking.

[19] G. Kpaka, "Loss and damage from climate change has pushed Sierra Leoneans far beyond their ability to adapt", *Prevention Web* (2 December 2020), available at https://www.preventionweb.net/news/loss-and-damage-climate-change-has-pushed-sierra-leoneans-far-beyond-their-ability-adapt; S. K. Dehghan, "Stop talking, start acting, says Africa's first extreme heat official", *The Guardian* (15 November 2021), available at https://www.theguardian.com/global-development/2021/nov/15/eugenia-kargbo-freetown-sierra-leone-first-chief-heat-officer-climate-crisis.

[20] D. Carrington, "West Africa heatwave was supercharged by climate crisis, study finds", *The Guardian* (21 March 2024), available at https://www.theguardian.com/environment/2024/mar/21/west-africa-heatwave-climate-crisis-study.

[21] World Bank, *Sierra Leone: Rapid Damage and Loss Assessment of August 14th, 2017 Landslides and Floods in the Western Area* (2017), available at https://documents1.worldbank.org/curated/en/523671510297364577/pdf/Sierra-Leone-Rapid-damage-and-loss-assessment-of-August-14th-2017-landslides-and-floods-in-the-western-area.pdf, p. 12.

[22] *Ibid.*, p. iii; I. Bruce, "A preventable disaster: Landslides and flooding disaster in Freetown, Sierra Leone", *World Bank Blogs* (2 May 2019), available at https://blogs.worldbank.org/sustainablecities/preventable-disaster-landslides-and-flooding-disaster-freetown-sierra-leone; World Bank, *Freetown: Options for Growth and Resilience* (2020), available at https://documents1.worldbank.org/curated/en/994221549486063300/pdf/127039-REVISED-PUBLIC2-14-19-Freetown-Report-Final-web2.pdf, p. 14.

7. But there is more.

8. Agriculture and fisheries, which represent a major lifeline for Sierra Leone as a recovering post-civil war society, are highly sensitive to climate change. Our farmers have seen significant reductions in their crop yields due to extreme weather events[23]. Because we are a coastal State that is partly dependent on fisheries for our economy, we are literally feeling the heat of climate change in our waters as it is causing a huge decline in our fish stocks. Indeed, with the ocean warming at 4°C, Sierra Leone will also see a 51 to 60 per cent decrease in the maximum catch potential of our marine fisheries.

9. What does all this mean in practical terms? It means hunger and disease. It means loss of life. It means loss of homes and livelihoods. It means diversion of scarce national resources to fund adaptation and mitigation needs stemming from climate change. It means loss of generations of traditions, knowledge and memories. Above all it means loss of our cultural heritage.

10. Mr President, the science is clear and is uncontested. Climate change is not just a major threat to the environment — it is a serious threat to humankind. It undermines the fundamental human rights of our citizens. The right to life, the right to health, the right to food, the right to water and, of course, the right to self-determination, are all among the fundamental rights that are under siege.

11. And the science shows that we are all approaching a point of no return. The World Meteorological Organization confirmed that "2023 was the warmest year on record", with temperatures rising beyond 1.4°C above the pre-industrial levels[24]. Going above 1.5°C means that catastrophic and irreversible consequences will ensue. The time to act is now.

12. Like many other States, Sierra Leone places great hope in the promise of the historic General Assembly Request for guidance to address the existential threat. For Sierra Leone and many others around the world, international law is a vital equalizer of States, regardless of size or power. We are here because we believe that strong international law obligations are part of the solutions the world needs to combat climate change.

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[23] Third National Communication of Sierra Leone to the UNFCCC (2018), available at https://unfccc.int/documents/64690, pp. 17, 221.

[24] World Meteorological Organization, *State of the Global Climate 2023* (March 2024), available at https://library.wmo.int/viewer/68835/download?file=1347_Global-statement-2023_en.pdf&type=pdf&navigator=1, p. ii.

13. Mr President, honourable Members, whilst I thank you for your kind attention and appreciate your efforts, I request that you call Professor Charles Chernor Jalloh to the podium for Sierra Leone's legal arguments. Thank you.

The PRESIDENT: I thank His Excellency Mr Mohamed Lamin Tarawalley. I now give the floor to Professor Charles Chernor Jalloh.

Mr JALLOH:

RESPONSES TO QUESTIONS *(A)* AND *(B)*

1. Mr President, distinguished Members of the Court, it is a singular honour to appear before you on behalf of Sierra Leone.

2. With respect to question *(a)*, I will first address the proper approach to interpreting the obligations of States in respect of climate change under different régimes of international law.

3. With respect to question *(b)*, I will address the scope of the question and why the Court should determine when and how the obligations established under question *(a)* can be breached and the remedies to apply to such breaches.

4. I turn first to question *(a)*.

I. Question *(a)*: obligations of States with respect to climate change under international law

5. Mr President, given the cross-cutting nature of climate change, the Court's opinion must take into account all the relevant specialized sub-régimes of international law. What the Request seeks is clarity on the totality of legal obligations imposed by an *integrated* system of international law. This approach is consistent with Article 31 (3) *(c)* of the VCLT[25].

6. You have heard from some Participants that the UNFCCC and the Paris Agreement should dictate the Court's answer to question *(a)*[26]. Respectfully, Sierra Leone disagrees[27]. As ITLOS

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[25] O. Dorr, "Article 31" *in* O. Dorr & K. Schmalenbach (eds.), *Vienna Convention on the Law of Treaties: a Commentary* (2nd Ed., Springer 2018), pp. 604-605. *See, e.g.*, *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)* ("*Pulp Mills Judgment*"), p. 46, para. 65.

[26] Written Comments of the United Kingdom, paras. 10-11.

[27] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971* ("*Namibia Advisory Opinion*"), p. 31, para. 53.

recently confirmed, while the climate change treaties are the "primary legal instruments" with respect to climate change[28], they are "not *lex specialis* to the [UNCLOS]" and are certainly not the only sources of States' obligations regarding climate change[29]. The same is true regarding the relationship between climate change treaties, on the one hand, and human rights law and customary international law rules regarding the environment, on the other.

7. Applying a systemic integration of relevant legal régimes, States have a due diligence obligation, arising under international environmental law, the law of the sea, and human rights law, to adopt all necessary measures to limit the increase in global average temperatures to 1.5°C above pre-industrial levels. In this regard, we wish to stress *four* critical points.

8. *First*, under the well-established principle of prevention, States are required to take all appropriate measures to prevent the risk of significant environmental harm to other States or in areas beyond national jurisdiction. As this Court has stressed, "in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage"[30].

9. Contrary to what certain States have argued, prevention is a duty of due diligence and a rule of customary international law that applies in the context of climate change[31]. It is an obligation that complements, but is independent from, the commitments under the climate change treaties. For instance, due diligence entails broader obligations. These include the duty to take preventive measures — and additional procedural duties — such as the obligation to undertake environmental impact assessments[32].

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[28] *Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024* ("ITLOS Climate Advisory Opinion"), para. 222.

[29] ITLOS Climate Advisory Opinion, para. 224.

[30] *See Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 78, para. 140.

[31] *Pulp Mills Judgment*, p. 56, para. 101. *See also Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)* ("*Nuclear Weapons Advisory Opinion*"), pp. 241–242, para. 29.

[32] *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)*, pp. 706-707, para. 104; *Pulp Mills Judgment*, pp. 79-80, para. 197; ITLOS Climate Advisory Opinion, para. 238. *See also* International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, *in Yearbook of the International Law Commission, 2001*, Vol. II, Part Two ("ILC Draft Articles on Prevention of Transboundary Harm"), Art. 7.

10. Some States have suggested that due diligence is context-specific and allows for broad discretion. Thus, the argument goes, in the context of climate change, there can be no *ex ante* prescriptions of what States must do to act diligently, nor an objective metric to assess compliance[33].

11. However, the "context-specific" nature of due diligence does not make it malleable. As ITLOS concluded, "the standard of due diligence States must exercise in relation to marine pollution from anthropogenic GHG emissions *needs to be stringent*"[34].

12. It is true that due diligence affords States a margin of appreciation. But it is equally true that discretion must be exercised in accordance with the best available science[35], which, for climate change, is found in the IPCC's reports[36]. All climate change treaties reflect that States' obligations must be "progressive" and "continually re-evaluated" in light of new scientific findings[37].

13. In fact, States have committed since 2015 to hold the increase in the global average temperature to "well below 2°C", and in any event, to "1.5°C above" pre-industrial levels, based on the "best available science"[38]. That temperature goal is a science-backed international standard which enjoyed near-unanimous support even when the impacts of climate change were not yet understood to be as dire and existential as it is recognized today.

14. Sierra Leone's *second point* is this: the due diligence obligation to meet the Paris temperature goal also arises under human rights law.

15. No one contests that the climate crisis is a human rights crisis[39]. This nexus is made

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[33] *See* Written Comments of the United States of America, paras. 3.38-3.41; Written Comments of New Zealand, para. 24.

[34] ITLOS Climate Advisory Opinion, para. 241 (emphasis added).

[35] *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015 ("SRFC Advisory Opinion*"), p. 59, para. 208 (ii); *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280, at p. 296, paras. 77-80.

[36] ITLOS Climate Advisory Opinion, para. 208.

[37] Paris Agreement (12 December 2015, entered into force 4 November 2016), 3156 UNTS 79 (Dossier No. 16) ("Paris Agreement"), Preamble; UNFCCC, Preamble. *See also* Paris Agreement, Arts. 4 (1), 7(5); Kyoto Protocol (11 December 1997, entered into force 16 February 2005), 2303 UNTS 162 (Dossier No. 11) ("Kyoto Protocol"), Art. 9.

[38] Paris Agreement, Arts. 2 (1), 4 (1).

[39] *See* IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (CUP 2022), *available at* https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf, pp. 9-13; IPCC, *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* (2023), *available at* https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf, p. 98.

explicit in the Paris Agreement[40]. Year after year, the UN Human Rights Council recalls, with increasing urgency, that States must consider their respective human rights obligations in all climate change-related actions[41]. These obligations also arise from the right to a clean, healthy and sustainable environment[42].

16. Despite this, some maintain that human rights law is not relevant to the climate system[43]. With respect, that is misguided. The word "climate change" does not appear in UNCLOS either. Nevertheless, ITLOS determined that UNCLOS codifies obligations in relation to climate change[44].

17. Human rights instruments protect the rights of individuals, regardless of the source of the harm. There is no indication — in the text of the instruments, the jurisprudence of the courts, or the decisions of treaty bodies — that the treaties should be interpreted restrictively, let alone in a manner that excludes protection from climate-caused impacts[45]. While some posit that the traditional framework of human rights is not well suited to address climate change[46], none shows that human rights law is actually incompatible with the climate change-related legal régime.

18. International human rights instruments codify fundamental rights that are not merely universal in character, but are also peremptory norms or exist under customary international law[47]. The right to life in Article 6 of the ICCPR is fundamental in this regard. It ensures that all persons within the jurisdiction of a State are not arbitrarily deprived of their life without legal protection. This broad rule protects from impairment of the right to life regardless of the source of the deprivation, including, we submit, when the source of the harm is the emission of anthropogenic greenhouse gases.

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[40] Paris Agreement, preamble.

[41] *See* UN OHCHR, "Human Rights Council resolutions on human rights and climate change" (last accessed 2 December 2024), *available at* https://www.ohchr.org/en/climate-change/human-rights-council-resolutions-human-rights-and-climate-change.

[42] *See* Human Rights Council, Resolution 52/23, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/HRC/RES/52/23 (13 April 2023).

[43] *See, e.g.*, Written Comments of the United Kingdom, para. 49; Written Comments of Saudi Arabia, para. 4.45; Written Comments of the United States of America, para. 4.51; Written Statement of Australia, paras. 3.58-3.59.

[44] ITLOS Climate Advisory Opinion, para. 441. *See also* Written Statement of Sierra Leone, paras. 3.3-3.4.

[45] Written Statement of Sierra Leone, para. 3.64; Written Comments of Sierra Leone, paras. 3.21-3.24.

[46] *See, e.g.*, Written Comments of Saudi Arabia, para. 4.48; Written Comments of the United States of America, paras. 4.35, 4.38; Written Comments of Australia, paras. 4.14-4.16; Written Comments of New Zealand, para. 33.

[47] Written Comments of Sierra Leone, para. 3.26 (citing W. Schabas, *The Customary International Law of Human Rights* (OUP 2021), Chapters 4 & 9).

19. Sierra Leone's *third point* is this: a small minority of Participants have argued that binding climate change obligations would interfere with the right to development, an element of the right of self-determination[48]. Not so. The UNFCCC clarifies that a State's "sovereign right to exploit [its] own resources" must be exercised "pursuant to [its] . . . environmental and developmental policies", which in turn must comply with customary international law and other treaty obligations[49]. ITLOS likewise confirmed that the sovereign right to exploit natural resources under Article 193 of UNCLOS is *constrained* by States' obligations to protect the marine environment[50].

20. *Finally*, obligations of States to adopt measures to combat climate change will only be effective if a corresponding right to take such measures is recognized. The Court should affirm that States enjoy a margin of appreciation to regulate in the public interest, including the conduct of private actors within a State's jurisdiction. Explicit recognition of the deference owed to the judgment of States in adopting appropriate environmental regulations would give States greater confidence in taking steps to address climate change without fear of facing spurious claims by foreign investors in reaction to climate change legislation[51]. In this regard, Sierra Leone concurs with the views expressed just this week by Albania and Cameroon during these oral proceedings[52].

II. The CBDR-RC principle and the duty to co-operate

21. Mr President, I move to the CBDR principle and the duty of co-operation.

22. Most States and organizations agree that the CBDR principle must inform the content of the due diligence obligation. Not only is the principle enshrined in many climate change treaties[53], it is recognized in other well-known instruments such as the Stockholm Declaration[54]. The statement

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[48] Written Statement of Timor-Leste, paras. 337, 339. *See also* Written Comments of Saudi Arabia, para. 4.51.

[49] UNFCCC, preamble (emphasis added).

[50] *See* ITLOS Climate Advisory Opinion, para. 187.

[51] Sierra Leone's oral statement on the Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (19 Sept. 2023), Verbatim Record ITLOS/PV.23/C31/12/Rev.1, pp. 34-38.

[52] CR 2024/37 (Cameroon), pp. 58-60, paras. 29-34 (Savoie); CR 2024/35 (Albania), p. 133, para. 25 (Blair).

[53] UNFCCC, preamble and Arts. 3 and 4; Kyoto Protocol, Art. 10; Paris Agreement, preamble and Arts. 2 and 4.

[54] UNGA, Report of the United Nations Conference on the Human Environment (Stockholm, 5-16 June 1972), UN doc. A/CONF.48/14/Rev.1 (1973) (Dossier No. 136), Chapter I: Declaration of the UN Conference on the Human Environment (Stockholm Declaration), Principle 12; UNGA, Report of the UN Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), UN doc. A/CONF.151/26 (Vol. 1) (1993) (Dossier No. 137), Annex I: Rio Declaration on Environment and Development (Rio Declaration), Principles 6 and 7. See also Written Statement of Sierra Leone, para. 3.39; Written Comments of Sierra Leone, para. 3.51.

of the G-77 States as recently as COP29 expressly reiterated the importance of the principle[55]. As ITLOS confirmed, even when the principle is not specifically mentioned in a treaty, it informs the obligations of States regarding the environment[56].

23. In Sierra Leone's view, the CBDR principle must reflect what can be fairly and reasonably expected from each State. Standards that are *fair* for developed countries may be *unfair* for developing countries[57]. Standards that are *fair* for high-emitting countries may be *unfair* for low-emitting countries.

24. There are two elements to the CBDR principle which must be borne in mind. Critically, developed States pledged to take the lead in combating climate change. They also committed to providing the necessary assistance to developing States with less capacity to do so. These legal obligations must be translated into practical support actions to ensure adaptation and mitigation to properly address climate change.

25. International law also obliges States to co-operate in good faith to jointly manage and prevent the risks of climate change[58]. There is near-universal consensus on this point[59]. ITLOS confirmed that States have a "wide range of *specific*" and "*concrete*" obligations to co-operate in preventing, reducing, and controlling marine pollution from anthropogenic greenhouse gas emissions[60]. This point, in our humble submission, is broadly applicable beyond the law of the sea context.

26. The CBDR principle and the duty to co-operate both require the provision of technical and financial assistance to countries in need. Not as a matter of charity. But as a matter of legal obligation. Article 9 of the Paris Agreement leaves no doubt that "[d]eveloped country Parties *shall* provide

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[55] G77 and China Opening Statement, UNFCCC/COP29 (11 Nov. 2024), available at https://tinyurl.com/bdcs59a6, p. 2.

[56] ITLOS Climate Advisory Opinion, para. 326.

[57] ILC Draft Articles on Prevention of Transboundary Harm, commentary to Article 3, para. 13, p. 155.

[58] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 49, para. 77; *ibid.*, p. 67, para. 145; *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22. See also *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 110, para. 82; *Land Reclamation by Singapore in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 25, para. 92; *SRFC Advisory Opinion*, p. 43, para. 140; ILC Draft Articles on Prevention of Transboundary Harm, Art. 4.

[59] UNFCCC, preamble; *ibid.*, Arts. 3 (5), 4 (1), 5, 6 *(b),* 7 (2), and 9 (2); Kyoto Protocol, Art. 10; Paris Agreement, Arts. 4 (5), 7-12, 14. See also ITLOS Climate Advisory Opinion, para. 295.

[60] ITLOS Climate Advisory Opinion, para. 297, emphasis added.

financial resources to assist developing country Parties with respect to both mitigation and adaptation"[61]. Article 10 then provides that the Parties "*shall* strengthen cooperative action on technology development and transfer" and that "financial support, *shall* be provided to developing country Parties" to this end[62]. This obligation is of particular importance given the onerous debt burdens that developing countries are labouring under. The debt burden will only grow worse as developing States need to secure more funds to address climate change. The use of "shall" in the provisions of the Paris Agreement confirms that these are legally binding obligations. The Court's opinion should therefore give effect to the CBDR principle and the duty to co-operate as rules of customary international law.

III. Legal consequences, remedies and climate debt justice

27. Mr President, I turn now to question *(b).* Here, the views of Sierra Leone align with most States in their written submissions[63], ITLOS[64] and the European Court of Human Rights[65]. Put simply, the breach of a climate change-related obligation triggers State responsibility, including the obligation to provide appropriate remedies, as established under customary international law.

28. We offer *three* main observations.

A. Question *(b) c*oncerns primary and secondary rules of international law

29. The *first* concerns the scope of question *(b),* which addresses *both* primary and secondary rules. It concerns *primary* rules because the UNFCCC and the Paris Agreement establish primary

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[61] Paris Agreement, Art. 9 (1), emphasis added.

[62] *Ibid.*, Art. 10 (2) and (6), emphasis added.

[63] See, e.g., Written Statement of Sierra Leone, para. 3.135; Written Statement of Palau, para. 26; Written Statement of Burkina Faso, paras. 266, 269, 273; Written Statement of Egypt, paras. 315-331; Written Statement of Mauritius, para. 124; Written Statement of the Marshall Islands, paras. 55-58; Written Statement of Tuvalu, paras. 126-142; Written Statement of Democratic Republic of Congo, paras. 296-304; Written Statement of India, paras. 81-82; Written Statement of El Salvador, paras. 50-51; Written Statement of the Bahamas, para. 233; Written Statement of Saint Vincent & the Grenadines, para. 128; Written Statement of Saint Lucia, para. 97(vi); Written Statement of Kiribati, paras. 178-196; Written Statement of Portugal, para. 114; Written Statement of Tonga, paras. 289-301; Written Statement of Uruguay, para. 164; Written Statement of Vanuatu, para. 557; Written Statement of France, para. 169; Written Statement of Melanesian Spearhead Group, para. 292; Written Statement of OACPS, paras. 143-144; Written Comments of Sierra Leone, para. 4.7; Written Comments of The Gambia, para. 5.1; Written Comments of Albania, para. 62; Written Comments of Antigua & Barbuda, paras. 94-100; Written Comments of Australia, para. 6.2; Written Comments of the Bahamas, para. 106.

[64] ITLOS Climate Advisory Opinion, para. 223.

[65] *Verein KlimaSeniorinnen Schweiz and others* v. *Switzerland*, ECtHR [GC], Application No. 53600/20, Judgment (9 April 2024), paras. 442-444.

obligations of developed States to provide financial support to developing States[66]. These obligations derive from ongoing harm caused by climate change.

30. Question *(b) a*lso concerns secondary rules because, as the Court explained in the *Wall* and *Palestine* Advisory Opinions, the use of the term "legal consequences" in a request for an advisory opinion "necessarily encompasses an assessment of whether [an act or omission] is or is not in breach of certain rules and principles"[67].

B. The Court should establish when international law could be violated and what remedies would be appropriate

31. That takes me to our third observation. Some have argued that, even if the Court could opine on potential violations, it cannot find "*any* . . .liability" because question *(b)* is abstract[68].

32. Sierra Leone respectfully disagrees. Question *(b)* does not ask the Court to make any findings regarding the liability of any State for any alleged breach. Instead, the question seeks the Court's opinion on the *legal consequences* of a breach. In *Nuclear Weapons*, the question similarly concerned the legality of the threat of the use of nuclear weapons in general, not a specific threat by a specific State. The Court nonetheless established *when* and *how* such a general, abstract threat violated international law[69].

33. Indeed, every time the General Assembly has asked the Court to determine the "legal consequences" of a measure, the Court has not only decided if it violates international law. It has also described the applicable remedies, for instance in the *Namibia*, *Wall*, *Chagos* and *Palestine* Advisory

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[66] UNFCCC, Art. 4(5); Paris Agreement, preamble, Arts. 9, 11; UNFCCC, Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, UN doc. FCCC/PA/CMA/2023/16/Add.1 (15 March 2024), Decision 1/CMA.5, "Outcome of the first global stocktake" (13 December 2023), para. 88; Committee on Economic, Social and Cultural Rights, "General comment No. 26 (2022) on land and economic, social and cultural rights", UN doc. E/C.12/GC/26 (24 January 2023), paras. 57-58; 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", UN doc. CRC/C/GC/26 (22 August 2023), para. 106; Written Statement of France, paras. 233-240.

[67] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)* ("*Wall Advisory Opinion*"), p. 154, para. 39; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, *including East Jerusalem, Advisory Opinion of 19 July 2024* ("*Palestine Advisory Opinion*"), para. 74.

[68] Written Comments of the United States of America, para. 5.3 (emphasis added). See also Written Statement of France, para. 173*;* Written Statement of the Nordic Countries, para. 109; Written Statement of Peru, para. 95; Written Statement of Saudi Arabia, para. 6.2; Written Statement of Slovenia, para. 15.

[69] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996 (I),* p. 266, para. 105 (2) (E).

Opinions[70]. Those remedies include, *inter alia*, performing the obligations breached by an act or omission[71] and ending as rapidly as possible those acts and omissions[72].

34. The Court should also determine that anthropogenic greenhouse gas emissions cause material and non-material damage, and that States responsible for such damage are obligated to provide full reparation[73]. This aligns, of course, with the Articles on State Responsibility.

35. The fact that establishing causation in any particular case may prove difficult provides no basis for rejecting *a priori* that remedy, as some participants have suggested[74]. Indeed, in the *Certain Activities* and *Armed Activities* cases, the Court adopted a relaxed standard of causation, and applied principles of equity to ensure such environmental damage was repaired[75]. The same must be done, and has been done[76], with respect to climate change harm[77].

36. It is critical that the Court's advisory opinion confirm that reparation is available to persons that have suffered climate change harm[78]. In August 2024, the United Nations Secretary-General reported on the effects of climate change loss and damage on human rights. The Secretary-General acknowledged that this crisis impairs the fulfilment of fundamental rights[79] and, notably, amongst

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[70] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 58, paras. 133 (1)-(3); *Wall Advisory Opinion*, p. 197, para. 149; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, ("*Chagos Advisory Opinion*"), p. 139, para. 178; *Palestine Advisory Opinion*, paras. 270 and 272.

[71] *Palestine Advisory Opinion*, para. 272; *Wall Advisory Opinion*, para. 149.

[72] *Palestine Advisory Opinion*, para. 267; *Chagos Advisory Opinion*, para. 178; *Wall Advisory Opinion*, p. 197, para. 150.

[73] *Palestine Advisory Opinion*, para. 269.

[74] Written Comments of Saudi Arabia, paras. 5.20-5.22; Written Comments of Timor Leste, para. 109.

[75] *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; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, pp. 126-127, paras. 364-365.

[76] *Case of Verein Klimaseniorinnen Schweiz and others* v. *Switzerland*, ECtHR, Application No. 53600/20, Judgment (9 April 2024), paras. 442-444; Human Rights Committee, *Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019*, UN Doc. CCPR/C/135/ D/3624/2019 (22 September 2022).

[77] See e.g., Human Rights Council, Report of the Secretary-General: Analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based approaches and solutions to addressing the same, UN doc. A/HRC/57/30 (28 August 2024), para. 20 (citing Human Rights Committee, general comment No. 36 (2018), para. 4).

[78] *Palestine Advisory Opinion*, para. 269; *Wall Advisory Opinion*, paras. 152-153.

[79] Human Rights Council, Report of the Secretary-General: Analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based approaches and solutions to addressing the same, UN doc. A/HRC/57/30 (28 August 2024), paras. 6-8.

the solutions, recommended, that States provide "debt relief and debt restructuring for developing countries"[80].

37. Mr President, the importance of debt relief and debt restructuring, as called for by the Secretary-General, cannot be understated. Because *both* climate change harm and the resources that developing countries need to address it are ever growing, 93 per cent of developing countries most vulnerable to climate change are already in debt distress or at significant risk thereof[81]. This is particularly burdensome because the interest needed to service such debts is particularly high for developing countries[82].

38. Indeed, in Africa, many countries spend more on servicing debt than serving their people[83]. When governments struggle to feed their people, it should not surprise anyone that it becomes near impossible for them to address the climate crisis. Nor should anyone be surprised when such highly indebted States feel compelled to engage in polluting activities to secure funds to pay their debts. *This cycle must be broken*[84].

39. Mr President, honourable judges, the General Assembly has once again sought legal guidance on a matter of fundamental importance. The world once again eagerly awaits the Court's response. For the sake of humanity, both present and future generations. For the sake of the environment. And for the sake of our planet.

40. This concludes Sierra Leone's submissions. We thank you very much for your kind attention.

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[80] *Ibid.*, para. 58 *(b)*.

[81] Human Rights Council, Report of the Secretary-General: Analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based approaches and solutions to addressing the same, UN doc. A/HRC/57/30 (28 August 2024), para. 44; ActionAid International, *The Vicious Cycle: Connections Between the Debt Crisis and Climate Crisis* (April 2023), available at https://actionaid.org/sites/default/files/publications/The_vicious_cycle.pdf, pp. 2, 6-7.

[82] UNCTAD, *A world of debt: A growing burden to global prosperity* (2024), available at https://unctad.org/publication/world-of-debt, pp. 14, 16.

[83] *Ibid.*, pp. 18-19; Statement by His Excellency Dr. Julius Maada Bio, President of the Republic of Sierra Leone at the General Debate of the 79th Session of the United Nations General Assembly High Level Week (24 September 2024), available at https://gadebate.un.org/sites/default/files/gastatements/79/sl_en.pdf, para. 57.

[84] See e.g. African Union, The African Leaders Nairobi Declaration on Climate Change and Call to Action (6 September 2023), available at https://www.afdb.org/sites/default/files/2023/09/08/the_african_leaders_nairobi_declaration_on_climate_change-rev-eng.pdf, paras. 53-55; Written Comments of African Union, para. 88; Written Comments of Barbados, paras. 8, 18; Written Statement of Kenya, para. 6.111 *et seq*; Written Statement of Colombia, para. 4.15.

The PRESIDENT: I thank the representatives of Sierra Leone for their presentation. I now invite the delegation of Ghana to address the Court and I give the floor to His Excellency Mr Francis Danti Kotia.

Mr KOTIA:

1. Mr President, distinguished Members of the Court, it is my honour to address you today on behalf of the Republic of Ghana, at this critical moment when the world is faced with numerous catastrophic events, both humanitarian and economic.

2. Ghana has a profound interest in these proceedings as it is one of the African States that is suffering from coastal erosion due to sea-level rise, as well as flooding and droughts that are affecting our agriculture, tourism, infrastructure and causing climate-induced migration.

3. Despite Ghana's extensive efforts to meet its obligations under international law, from mitigation to adaptation, there is a need to enhance international co-operation to meet our demands for climate finance and technology as well as climate justice.

4. Ghana is a low emitter of greenhouse gas emissions, yet it is disproportionately affected by climate change. Ghana decided to join these proceedings seeking clarity on the legal obligations of emitters that have caused these sufferings and by what means the developing countries may be compensated in order to assist in reaching our aspirations for sustainable development in the global transition to net zero.

5. Unpleasantly, high-income emitting nations, which bear a historical responsibility for global emissions, remain distant from the inestimable sufferings of the adverse impact of climate change in the least developed countries and developing nations such as Ghana. As highlighted in Ghana's written submission and comments in these proceedings, there are clear legal obligations on States arising from anthropogenic causes of climate change since the industrial revolution and based on customary international law and international treaty law.

6. Addressing the existential threat of climate change requires significant financial support — that is an estimated US$5.9 trillion by 2030 — to adapt, mitigate and recover from climate impacts,

notably in the least developed and developing States[85]. Developed nations must take a lead role in this regard by contributing significantly to this funding to achieve equity in global climate action.

7. To lay the roadmap for the structure of the legal intervention of Ghana, Dr Sylvia Adusu will address the effects of rising sea levels, followed by Dr Namira Negm, who will address the first question on State obligations. Finally, Dr Muin Boase will address question 2 and the legal consequences.

8. Mr. President, I invite you respectfully to call upon Dr Sylvia Adusu. I thank you very much.

The PRESIDENT: I thank His Excellency Mr Francis Danti Kotia. I now give the floor to Ms Sylvia Adusu. You have the floor, Madam.

Ms ADUSU:

1. Mr President, Members of the Court, it is my singular honour to appear before you on behalf of the Republic of Ghana.

2. States hold a sacred trust of civilization to protect the environment so that beneficiaries of international law and other species, may be able to survive and prosper for generations to come. The climate is part of the common heritage of humankind. The appeal to law is one of the last resorts to build consensus and political will by building on legal principles which unite us all. This is why this appeal to the Court for an advisory opinion is so important if legislation around climate change is to be more than just a box within a box, with the concrete content of the innermost box left undefined and the entire edifice meaningless.

3. As a coastal State, Ghana is particularly prone to rising sea levels, which is causing flooding, loss of territory and making land uninhabitable. Data from the Ghana Statistical Service indicates that about 25 per cent of Ghana's population live along the coast. The coast hosts most of Ghana's national strategic investments, which are threatened by sea level rise. The ITLOS advisory opinion has determined that greenhouse gases amounted to "pollution of the marine environment" thus triggering the obligation under Article 194 (1) of the Law of the Sea to take "all necessary measures"

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[85] UNFCCC Standing Committee on Finance (2021) *First report on the determination of the needs of developing country parties related to implementing the Convention and the Paris Agreement*, para. 16, https://unfccc.int/topics/climate-finance/workstreams/determination-of-the-needs-of-developing-country-parties/first-report-on-the-determination-of-the-needs-of-developing-country-parties-related-to-implementing (accessed 4.12.24).

to prevent, reduce and control existing marine pollution caused by greenhouse gases. ITLOS also confirmed that Article 194 (2) contained an obligation to prevent transboundary pollution described as "emissions originating from activities in one State's jurisdiction or under that State's control, which causes damage in another" to protect and preserve the marine environment.

4. In 2021, Ghana submitted updated nationally determined contributions to the United Nations encompassing 47 programmes to mitigate and adapt to climate impacts. As His Excellency the President of Ghana Nana Addo Dankwa Akufo-Addo said at COP29, Ghana's goal is to cut emissions by 64 million tons absolutely by 2030, requiring investment of between US$10 and $15 billion. Despite financial and technical hurdles, we are determined to meet the Paris Agreement goals across agriculture, transport, forestry, energy, gender and other sectors. Ghana has also taken steps to reduce greenhouse gas emissions significantly, cutting them by 43 per cent since 2021. We cannot reach our climate goals alone, so we call on our global partners to honour their commitments ensuring accessible financing for sustainable development in Africa without unsustainable debt.

5. What Ghana is asking for is concrete action. The climate régime developed in Rio, Tokyo and Paris has given procedures for transparency and accountability, but after almost thirty years, it has not delivered. Greenhouse gas emissions are still increasing year by year. The obligation to limit global warming to 1.5°C above pre-industrial levels is not being fulfilled by many States. If the conduct is not achieving the result, then countries are obliged to change their conduct. This advisory opinion is important not only to establish the obligations as legal facts, but also to serve as a legal source for domestic courts. The world is watching.

6. Mr President, thank you very much for your attention. I respectfully invite you to call on Dr Negm to set out Ghana's legal position.

The PRESIDENT: I thank Ms Sylvia Adusu. I now give the floor to Ms Namira Negm.

Ms NEGM:

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

2. Let me begin by drawing parallels between this request and the Advisory Opinion on *Nuclear Weapons*[86]. Both represent existential threats to the survival of civilization. In that Opinion, this Court recognized that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn"[87].

3. Likewise, ecological debt is not an abstraction, but a moral and legal imperative to finance the survival of nations most harmed by an unsustainable global system. It is not charity but a legal obligation of restitution for transboundary harm. Unlike some States, Ghana is of the position that the entire corpus of law should be considered by the Court to render this opinion, as the climate change régime is part of a whole and it did not start with the Paris Agreement. A narrow approach is not the right approach!

4. Developing States, especially Africans, cannot be sacrificial zones for the rich countries of the world to wall off. Let me recall that this Court in the *Nuclear Weapons* case reaffirmed the doctrine of transboundary environmental harm, namely, "the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control"[88].

5. Turning now to the principles of international law governing States' obligations, I shall start with common but differentiated responsibility, which is meant to protect the environment.

I. COMMON BUT DIFFERENTIATED RESPONSIBILITY

6. This principle underpins both Article 3 of the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and Article 2 of the 2016 Paris Agreement.

7. Its origins date back to the Maltese Ambassador, Arvid Pardo, who, in 1967, proposed that the resources found in the ocean bed should be considered part of the "common heritage of mankind". This is the idea that all States have a common interest in the global commons, but also recognizing that States have different capacities to exploit those resources. Hence, the obligation to protect the environment started way before the Paris Agreement and Ghana is of the position not to limit the Court in that direction.

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[86] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I).*

[87] *Ibid.*, p. 241, para. 29.

[88] *Ibid.*, p. 242, para. 29.

8. The "common" part of CBDR refers to the shared responsibility of States to preserve shared resources that are beyond the jurisdiction of any one State but are the "patrimony of all humanity". The differentiated responsibility entails two aspects. First, it would not be fair to impose the same obligations on historic polluters as on those who historically contributed very little to the problem. Those States that have contributed more greatly to the problem have to bear a greater share of the burden. The second aspect concerns the respective capabilities of different nations. It is recognized that different States possess "different national circumstances" based on different levels of development that affect their capacity to mitigate climate change through technology and financial resources.

9. Underpinning the notion of common but differentiated responsibility is the notion of equity, climate justice, the right to development and what Thomas Franck called "fairness".

10. Now I will turn to loss and damage.

II. LOSS AND DAMAGE

11. Time has proved that human and economic losses and damages can be measured. So, Ghana refutes arguments against State responsibility due to lack of quantification or causality, or even that climate treaties do not address State responsibility. In fact, "loss and damage" is mentioned in Article 8 of the Paris Agreement, without mentioning liability or compensation for the harmful effects of climate change. Yet, this omission is not meant to displace other sources of international law on climate change. Indeed, many States, when ratifying these conventions, made express declarations confirming that nothing therein superseded or displaced obligations from other sources of international law and Ghana is of the same position.

12. Turning now to the widely accepted customary international standard of due diligence.

III. CUSTOMARY INTERNATIONAL LAW STANDARD OF DUE DILIGENCE

13. Ghana takes the view that customary international law on climate change runs alongside climate change treaties as they complement each other, together with other international legal obligations applicable thereto.

14. As Mauritius puts it, "where the current treaty régime has not yet succeeded in putting the world on track to protect the climate system from GHG emissions . . . the customary duty of prevention remains relevant and applicable"[89].

15. One of the most important obligations in customary international law is the duty of due diligence of a State "not to allow knowingly its territory to be used for acts contrary to the rights of other States"[90]. This is a long-established principle of customary international law that is widely accepted by States participating in these proceedings[91]. This can be traced back to the *Trail Smelter* case and was repeated in *Pulp Mills* to be established as customary international law and reaffirmed in the *Nuclear Weapons* case[92]. The duty includes the obligation to prevent environmental harm through emissions of greenhouse gases from a State's territory.

16. As early as 1979, air pollution was defined by the Long-Range Transboundary Air Pollution Convention as

> "the introduction by man, directly or indirectly, of substances or energy into the air resulting in deleterious effects of such nature as to endanger human health, harm living resources and ecosystems and material property, and impair or interfere with amenities and other legitimate uses of environment"[93].

Knowledge of the harmful effects of air pollution and their effect on the climate is therefore not a new phenomenon, but one established for a long time.

17. Ghana, contrary to what the Nordic States mentioned yesterday, and others, agrees with Vanuatu's submission that it is scientifically possible to establish what share of global warming has been caused by which States and whether such emissions have caused significant harm to the climate system. Ghana holds that the causality exists and that the responsibility arose once States became aware that greenhouses gases cause global warming.

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[89] Mauritius Written Comments, para. 93.

[90] *Trail Smelter (United States* v. *Canada)*, 3 RIAA 1905, 1965.

[91] Written Statement of Pakistan, para. 30; Written Statement of Sierra Leone, para. 3.10.

[92] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 242, para. 29.

[93] Convention on Long-Range Transboundary Air Pollution, adopted 13 November 1979, entered into force 16 March 1983.

18. As expressed by the Nairobi Declaration on Climate Change Call to Action, the African Heads of State and Government "*[r]ecognise* that Africa is not historically responsible for global warming but bears the brunt of its effects, impacting lives, livelihoods, and economies"[94].

19. The reality is that in failing to control air pollution, the sovereignty of polluting States have violated the sovereignty of other States as well as impacting their fundamental rights, which I turn to next.

IV. HUMAN RIGHTS OBLIGATIONS

20. The Paris Agreement in its preamble expressly refers to obligations under human rights law and the right to development as impacted by climate change[95]. More recently, the law has evolved to recognize that humans enjoy a "right to a healthy environment".

21. General Assembly resolution 76/300 recognized the "right to a clean, healthy and sustainable environment". Whilst some might be dismissive of this as a recommendation, we can see how in the past, General Assembly resolutions were declaratory of customary international law as well as many crystallized as hard law, including the Universal Declaration of Human Rights, the Crime of Genocide and the right to self-determination[96], just to name a few.

22. The right to a healthy environment reflects a particularly African conception of international law, as reflected in Article 24 of the Banjul Charter, which provides that: "All peoples shall have the right to a general satisfactory environment favourable to their development."[97]

23. This third generation right reflects the manner in which human rights are indivisible and cannot be separated as recognized by the activist Ken Saro-Wiwa, who criticized the way that oil exploration polluted water sources and gas flaring poisoned the air destroying fish and wildlife, and rendering land infertile. The facts of this case culminated in the ground-breaking decision of the

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[94] The African Leaders Nairobi Declaration on Climate Change and Call to Action, 4-6 September 2023 ("Nairobi Declaration"), para. 8.

[95] Paris Agreement, para. 11 of the preamble.

[96] General Assembly resolution 217 (III), International Bill of Human Rights, A Universal Declaration of Human Rights, 10 December 1948 (A/RES/217); General Assembly resolution 96 (I), "The Crime of Genocide", 11 December 1946 (A/RES/96); General Assembly resolution 1514 (XV), "Declaration on the Granting of Independence to Colonial Countries", 14 December 1960 (A/RES/1514).

[97] Africa Charter on Human and People's Rights ("Banjul Charter"), adopted 27 June 1981, entered into force 21 October 1986, 21 ILM 58 (1982), OAU Doc. CAB/LEG/67/3 rev. 5.

African Commission in *SERAC* v. *Nigeria* finding violations of life, property, environment and health[98].

24. The declaration of this right expresses a truth that is self-evident, namely that without a healthy environment, other rights will become impossible to enjoy and the survival of humans and other species becomes at risk.

25. The link between environmental protection and health is also recognized in Goal 3 of the Sustainable Development Goals[99], which was also confirmed by Article 2 of the Convention on Biological Diversity and resolutions of the WHO which emphasized the link between biodiversity loss and human health[100].

26. Just as humans have evolved to a higher state of knowledge, the law must evolve to reflect our current state of scientific knowledge and understanding.

27. The consequences of rising sea levels and desertification will not only be the loss of life, detrimental consequences to health and the loss of subsistence, but also that the very survival of nations and States whose existence is threatened erodes their right to self-determination.

28. States have positive obligations to protect rights. For example, the obligation to protect the right to life extends to foreseeable and life-threatening situations[101]. Failure to act can constitute a breach where threats to life pose a "real and imminent" risk before life is lost. A "real and imminent risk to life" was defined in *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland* by the European Court of Human Rights as "a serious, genuine and sufficiently ascertainable threat to the life of a specific applicant, containing an element of material and the threat to the harm impugned by the applicant"[102]. In the African context, which recognizes both collective rights and *actio popularis*, this would be broadly interpreted as a threat to a population or a group of people[103].

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[98] *The Social and Economic Rights Action Center, et al* v. *Nigeria*, African Commission on Human and Peoples' Rights, Ref No. 155/96 (2001).

[99] Goal 3: Ensure healthy lives and promote well-being for all ages and groups.

[100] WHA77.14 (May 2024), WHA76.17 (2023), WHA68.8 (2015), WHA61.19 (2008).

[101] General Comment 36, Right to Life.

[102] *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland* (App No. 53600/20), para. 513. The case found no violation of the right to life, but a breach of the right to family life.

[103] Africa Charter on Human and People's Rights ('Banjul Charter'), adopted 27 June 1981, entered into force 21 October 1986 21 ILM 58 (1982), OAU Doc. CAB/LEG/67/3 rev. 5.

29. Finally, with regard to future generations and peoples, Ghana notes that States today are the present custodians for "present and future generations" as set out in the preamble of the General Assembly resolution on a right to a healthy environment. The principle of sustainable development and the precautionary principle are relevant here. In particular, we should be mindful that the air and environment have a sacred quality in a plurality of legal systems. Nature is not something to be tamed by humans or simply exploited for commercial gain. Indigenous understanding of the atmosphere, like land, is based on cultural and spiritual respect for life to preserve and transmit to future generations[104]. In short, humans must walk gently on this earth.

30. Thank you, Mr President, Members of the Court, for your attention. I respectfully request you to call upon Dr Muin Boase, who will address the legal consequences.

The PRESIDENT: I thank Ms Namira Negm. I now give the floor to Mr Muin Boase. You have the floor, Sir.

Mr BOASE:

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

2. I would like to focus your attention on the second question put before the Court on legal consequences that arise from States breaching their obligations by causing significant harm to the climate system to injured States or specially affected States.

3. We heard yesterday from our friends in the United States delegation that "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"[105]. But we cannot look forward without first understanding past responsibility and how we have reached the present state of affairs.

4. Whilst the climate treaty régime creates obligations, for example, of transparency, whose breach can constitute an international wrongful act, it is the obligations in customary international law, such as not to cause transboundary harm, that are broader in scope and create additional

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[104] In relation to land use, see *Mayagna (Sumo) Awas Tigni Community* v. *Nicaragua*, Judgment of 31 August 2001, Series C, No. 79, para. 149.

[105] CR 2024/41, p. 47, para. 34 (Taylor).

responsibilities not limited to those set out in the climate treaty régime. To be clear, Ghana does not accept that State responsibility is excluded by that treaty régime. There is no intention based on the text of those treaties to exclude State responsibility and therefore, we reject as misguided the argument that State responsibility is displaced by a *lex specialis* régime.

5. Certain States have argued that difficulties in proving causation preclude the payment of reparations[106]. Indeed, the obligation to provide reparation to a State requires proving that damage was "caused" by an international wrongful act[107]. However, as was stated in the case of *Certain Activities Carried Out by Nicaragua in the Border Area*,

> "[t]he damage may be due to several concurrent causes, or the state of science regarding the causal link between the wrongful act and the damage may be uncertain . . . it is for the Court to decide whether there is a sufficient causal nexus between the wrongful act and the injury suffered"[108].

6. And we can see from Article 47 of the Articles on State Responsibility that it does not prevent the invocation of State responsibility where multiple States are involved. The responsibility of each State may be invoked in relation to acts suffered by each injured State. Moreover, a plurality of acts or omissions over a period of time can amount to a composite act pursuant to Article 15.

7. Turning now to what are the consequences under those Articles on State Responsibility.

8. First, cessation and non-repetition require that States cease and desist from laws, policies and practices that support the emission of greenhouse gases, and in particular fossil fuel production. Because the climate is part of the global commons, all States who have an interest, including non-injured States, may demand cessation and non-repetition[109].

9. Turning now to reparations for States injured by climate change, it may take the form of restitution, which is given priority, followed by compensation and satisfaction when compensation is not possible[110].

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[106] Article 31, ARSIWA.

[107] Article 31 (2), ARSIWA.

[108] *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. 34.

[109] Article 48 (2) *(a)*, ARSIWA.

[110] Reparations are ordered in a hierarchy that gives preference to restitution.

10. Restitution, the re-establishment of the situation which existed before an internationally wrongful act, could take the form of finance, capacity building and technology transfer. Although full restitution may never be possible because the effects of climate change are often irreversible.

11. *Gabčíkovo-Nagymaros* also recognized that "[i]t is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act"[111].

12. But compensation alone will not bring back nature, habitats or lives that are lost by climate change. So, we must conclude that the rules on State responsibility, whilst applicable, are no panacea.

MASSIVE POLLUTION AS A BREACH OF *JUS COGENS*

13. Ghana argues that there are basic principles of a *jus cogens* character that are violated by massive pollution of the atmosphere.

14. If we go back to the drafting of the Articles on State Responsibility, Professor Robert Ago and the deleted Article 19 spoke of State crimes in which he included aggression, self-determination, prohibition of slavery, genocide and apartheid. He also included that a "serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment such as the prohibition of massive pollution of the atmosphere" also violated that norm, and it is of a similar character to those other *jus cogens* norms.

OBLIGATIONS TO INDIVIDUALS

15. Turning now to the legal consequences on individuals, States are under an obligation to respect individual rights, ensuring their availability by taking positive steps to implement legislation and provide an effective remedy[112]. But those are often frustrated by the treaty régimes and the territoriality of those treaty régimes, and the extraterritorial application of human rights treaties are limited to when States control territory or persons.

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[111] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 81, para. 152.

[112] General Comment 31, 'The Nature of the General Legal Obligation Imposed on State Parties to the Covenant' 29 March 2004, (CCPR/C/21/Rev.1/Add.13) in relation to the ICCPR.

CONCLUSION

16. Let me conclude by saying this. Climate change is one of the most important issues of our lifetime that will determine the lives of our children and future generations. Left unchecked, it will cause untold suffering across the world, making large parts of our world uninhabitable, affecting poorer areas disproportionately.

17. The traditional paradigm of international law as determined by co-existing States often finds itself unable to translate a law of co-operation based on communal responsibilities that transcend the narrow self-interest of individual States. As one of the great jurists of this hallowed institution, Sir Hersch Lauterpacht said "the State . . . has no justification and no valid claim to obedience except as an instrument for securing the welfare of the individual human being"[113].

18. But individual rights themselves cannot exist in the absence of a healthy environment.

19. Now is not the time for equivocation or prevarication in the face of disaster. The Court must be an active agent in the development of the law.

20. Let me end Ghana's submission with the words of the late great poet Ken Saro-Wiwa:

> "But while the land is ravaged
> And our pure air poisoned.
> When streams choke with pollution
> Silence would be treason".

21. Thank you, Mr President, Members of the Court.

The PRESIDENT: I thank the representatives of Ghana for their presentation and 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 11.35 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, Grenada, to address the Court and I call Ms Rae Thomas to the podium. You have the floor, Madam.

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[113] Hersch Lauterpacht, *International Law and Human Rights* (FA Praeger, 1950), p. 80.

Ms THOMAS:

I. INTRODUCTION

1. Mr President, Madam Vice-President, honourable judges of this Court, I greet you from the Spice Isle of the Caribbean, a tri-island developing State, Grenada. It is an honour to be here as Grenada makes its first ever appearance before the International Court of Justice. Mr President, Members of the Court, Grenada seeks your leave to play the video submitted to the Court.

[On screen: pre-recorded statement by the Honourable Dickon Mitchell.]

Transcript of statement by the Honourable Dickon Mitchell, Prime Minister of Grenada

[Transcript provided by Grenada.]

1. Mr President and honourable judges, Grenada is a small island developing State with a landmass of 344 sq km and home to approximately 113,000 people.

2. On 1 July 2024, the lives of citizens were turned upside down. Hurricane Beryl, one of the earliest category five hurricanes to develop since 1900, made landfall in Grenada and decimated the northern parts of the island and in particular our sister islands of Carriacou and Petite Martinique.

3. The destruction was heartbreaking. Every sector of our economy felt Beryl's wrath. Our infrastructure, homes, schools, churches, public hospitals and even our newly built solar farm were destroyed.

4. Sea-level rise has caused even the graves of our loved ones to be swallowed up by the ocean. We face the vicious financial cycle of having to rebuild our nation every time an extreme climatic event occurs.

5. The international community must recognize this debt and take decisive action to address this harm through financial compensation, reparations and technical support.

6. I thank you, Mr President, and I wish you and your fellow judges all the best in your deliberations.

Ms THOMAS:

2. Mr President, honourable judges, I also bring greetings from the Prime Minister of Grenada, whom you have just heard, the Honourable Dickon Mitchell, a leading advocate in the region for

climate justice and who was recently selected in the November 2024 issue of the TIME magazine 100 Climate List.

3. Grenada has played an active role in the region in the prelude of these advisory opinion proceedings. Our country was the host of the first regional ICJ climate change workshop in February 2024. Following this workshop, Grenada submitted a written statement (dated 21 March 2024) and subsequently a written comment (dated 15 August 2024). These two written submissions are now before this honourable Court for its consideration.

4. This factual background and our presence here today, demonstrate our profound commitment — as a small island developing State — to tackle this crippling issue of climate change.

5. Mr President, honourable Judges, our delegation takes this opportunity to thank the Government of Vanuatu for taking up this initiative to bring climate change to the world's highest Court. We also would like to thank the Pacific Island students, who acted as the proverbial spark that ignited these proceedings. Without Vanuatu and the Pacific Island students, we would not be here today deliberating the world's biggest problem of climate change.

6. Mr President, honourable judges: today, the Attorney General of Grenada will address the importance of this advisory opinion to small island developing States, sea level rise, science and extreme weather events, the recent loss sustained by Hurricane Beryl and legal consequences and debt relief.

7. The honourable Attorney General will be followed by Dr Justin Sobion who will address part *(a)* of the legal question before this Court.

8. Mr President, Madam Vice-President, honourable judges, I thank you for the opportunity to appear before you today. With your leave, I respectfully ask the Court to invite the Attorney General of Grenada, Senator the Honourable Claudette Joseph to address you.

The PRESIDENT: I thank Ms Thomas. I now give the floor to Ms Claudette Joseph.

Ms JOSEPH:

II. IMPORTANCE OF ADVISORY OPINION TO SIDS, SEA LEVEL RISE, THE SCIENCE AND EXTREME WEATHER EVENTS, LOSS SUSTAINED BY HURRICANE BERYL, LEGAL CONSEQUENCES AND DEBT RELIEF

Introduction

1. Mr President, Madam Vice-President, honourable judges of the Court, I am honoured and privileged to lead my country's delegation in presenting our oral statement in these proceedings requesting an advisory opinion on the *Obligations of States in respect of Climate Change*.

The importance of this advisory opinion to SIDS

2. Mr President, Members of the Court, I draw your attention to the importance of these proceedings, and its outcome to the State of Grenada and all small island developing States (SIDS). SIDS were at the forefront among States negotiating resolution 77/276. This is evidenced by the text at part *(b)* (i) of the legal question on the legal consequences for breaches of climate obligations to small island developing States, which, "due to their geographical circumstances and level of development" are "specially affected by or are particularly vulnerable to the adverse effects of climate change". This question implicitly acknowledges that climate change does not affect every State equally. SIDS, for example, have contributed negligibly to the total global greenhouse gas emissions, yet we bear a disproportionate share of its devastating impacts. Mr President, I note that even some States in these proceedings who are not keen on the Court rendering a fulsome opinion acknowledge that while climate change is a great threat to all States, States do not make equal contributions to greenhouse gas emissions.

3. The *Science of Climate Change and the Caribbean* report notes that emission of greenhouse gases that have been tracked since 1850 illustrate wide disparities among States. SIDS contribute approximately only 0.5 per cent of total historical emissions[114]. Grenada's share of global greenhouse gas emissions is a paltry 0.01 per cent[115]. Grenada therefore aligns itself with the view expressed by

[114] Adelle Thomas, Michelle Mycoo and Michael Taylor, "Science of Climate Change and the Caribbean: Findings from the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Cycle (AR6)" (5 March 2024) at 4.

[115] "Grenada — Latin America and the Caribbean", UNDP, www.climatepromise.undp.org/what-we-do/where-we-work/grenada.

the Organisation of African, Caribbean and Pacific States (OACPS) that small island States have contributed very little to the climate crisis, yet they bear the full brunt of climate change[116].

4. It is incontrovertible that Grenada falls squarely within the scope of part *(b)* (i) of the legal question before this Court. Our vulnerability to climate change has been observed and documented by the IPCC. A 2022 report on climate change shows that Grenada is prone to coastal erosion, with recent studies confirming increasing shoreline retreat and beach loss over the past decades, mainly due to hurricanes, in combination with the impacts resulting from accelerated sea level rise[117].

Sea level rise and Tibeau cemetery

5. On the question of shoreline retreat, Grenada highlights the dire situation at Tibeau cemetery on the dependent island of Carriacou. The cemetery is now mostly engulfed by the sea. Families with loved ones buried at Tibeau mourn doubly. They are not able to engage in the Tombstone Feast, a traditional cultural practice that pays homage to their ancestors, neither can they take part in the annual All Saints tradition common throughout Grenada. For our people, losing Tibeau to climate change is not just about losing graves. It is losing cultural and traditional practices that connect us to our ancestors and define who we are.

6. Kennisha Douglas in her impact statement filed in these proceedings sums it up well in saying: "Bearing in mind our obligation to respect our elders during their lifetime and even in the afterlife, the loss of the graves of my ancestors represents a failure on my part to uphold their legacies. It also represents a cultural loss and a loss of my family's identity and history."[118] She adds: "Tell me why must we suffer like this? Not even our loved ones can get a final resting place because of global warming."[119]

7. Mr President, Members of the Court, this is an account of the lived experience of an ordinary Grenadian on the forefront of the impacts of climate change. The science corroborates this account. Losses such as these are unquantifiable and, unfortunately, too frequently overlooked.

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[116] Grenada's Written Comments (WC) dated 15 August 2024 at paragraph 32.

[117] *Climate Change 2022: Impacts, Adaptation and Vulnerability.* Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Chap. 15, p. 2056. See also Thomas, Mycoo and Taylor, above fn. 3, at 16.

[118] Grenada's Written Statement dated 21 March 2024 at Annex 3 at paragraph 19.

[119] Grenada's Written Comments dated 15 August 2024 at Annex 5 — Victim impact statement of Kennisha Douglas dated 13 August 2024.

The science and extreme weather events

8. Mr President, Members of the Court, I now turn to examine how hurricanes and extreme weather events — such as are experienced by Grenada — are inextricably linked to the phenomenon of climate change.

9. Evidence of the link between climate change and hurricanes is largely grounded in IPCC science. On this point, it is worth noting that the International Tribunal for the Law of the Sea, in its May 2024 advisory opinion, heavily relied on various IPCC reports[120]. Grenada humbly invites this honourable Court to similarly act in rendering your advisory opinion.

10. The ITLOS advisory opinion, after applying IPCC science, confirmed that the warming of the seas is connected with the anthropogenic emissions of greenhouse gases. ITLOS cited the IPCC 2021 Report[121], which stated that the dominant effect of human activities is apparent not only in the warming of global surface temperatures, but also in warming oceans[122]. Furthermore, ITLOS considered and accepted the IPCC 2019 Report which states that: "it is *virtually* certain that the global ocean has warmed unabated since 1970 and has taken up more than 90% of the excess heat in the climate system"[123].

11. A key ingredient for a hurricane's rapid intensification is warm water[124]. The IPCC 2019 Report notes that North Atlantic hurricanes have increased in intensity over the last 30 years, with climate projections showing an increasing trend in hurricane intensity, especially in the Caribbean region[125]. The IPCC 2023 Report states it plainly — the intensification of tropical cyclones and extratropical storms is a climatic impact driver[126].

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[120] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, 21 May 2024 at [48].

[121] The Working Group I report entitled "Climate Change 2021: The Physical Science Basis", finalized on 6 August 2021.

[122] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, at [58].

[123] At [58]. See also IPCC, 2019: *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* [H.-O. Pörtner, D. C. Roberts,V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegría, M. Nicolai, A. Okem, J. Petzold, B. Rama, N. M. Weyer (eds.)], Cambridge University Press, Cambridge, UK and New York, NY, USA at 9.

[124] Brian Tang, "Hurricane Beryl's rapid intensification, Category 5 winds so early in a season were alarming: Here's why more tropical storms are exploding in strength" (3 July 2024), The Conversation, www.theconversation.com.

[125] IPCC, 2019: *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate*, above fn. 12, at 516-517.

[126] *IPCC Climate Change 2023 Summary for Policymakers: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the IPCC* at [B.1.4].

12. What the IPCC is saying today could not be more accurate for us in the context of Grenada. In fact, we only need to look back 20 years when Grenada faced two devastating hurricanes in the space of nine months: Ivan in September 2004 and Emily in June 2005. Grenada's experience supports the observation made in the IPCC's report on the increased intensity of hurricanes. The impact of Hurricanes Ivan and Emily on Grenada's economy, especially the agricultural sector, was devastating.

13. Mr President, Members of the Court, the science is clear and noting submissions made by some States in these proceedings, Grenada takes care to urge the Court to reject all arguments that tend to deny the science. While science does not tell us what our legal obligations are, it does provide clear evidence on the causes and the adverse impacts of climate change.

Loss sustained by Hurricane Beryl

14. Hurricane Beryl set the record as being the earliest category five hurricane ever experienced in the Atlantic season[127]. Beryl made landfall on 1 July 2024 with sustained winds of 240 km per hour. Carriacou, Petite Martinique and the northern part of mainland Grenada took a direct hit[128]. Mr President, 3,736 households were affected, with 2,764 on the island of Carriacou alone. Of that amount, 1,708 sustained catastrophic levels of damage. Our solar farm at Limlair, Carriacou, completed just months before, was completely destroyed.

15. An October 2024 report from our Ministry of Economic Development and Planning indicates that the loss and damage to our national infrastructure from Beryl amounts to US$220 million.

16. Mr President, Members of the Court, Grenada produces more than 20 per cent of the world's nutmeg[129]. After Hurricanes Ivan and Emily, nearly 85 per cent of the nutmeg crop was affected[130]. A nutmeg tree takes 10 to 12 years to mature, and up to 30 years to yield maximum. As such, our export revenue from nutmeg never recovered after Hurricane Ivan. And, while our farmers were recovering, Hurricane Beryl struck, sending the sector backwards once more in just a few hours.

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[127] Grenada's Written Comments dated 15 August 2024 at paragraphs 5-15.

[128] Grenada's Written Comments dated 15 August 2024 at paragraph 14.

[129] Grenada's Written Statement dated 21 March 2024 at paragraphs 13-14.

[130] Roxanne Bonaparte, "Impact of Natural Disasters on Grenada" (National Disaster Management Agency).

Mr President, Members of the Court, this is not misfortune. This is injustice. And Grenada asks the question: how can this be allowed to continue?

17. The significant loss and damage to Grenada's nutmeg industry are detailed more in our written comments[131]. And, Mr President, and Members of the Court, this is just one crop, within one sector of Grenada's economy. The total loss to Grenada's agricultural industry due to Beryl alone is estimated at US$49 million.

18. Climate change is also associated with other costs and consequences that are often overlooked. Some of these consequences impact the basic human rights of our people. After Hurricane Beryl, 1,984 children were deprived of their education. Their schools were either damaged or destroyed. Carriacou's lone hospital was damaged, and 5,000 people had limited or no access to health care. Two thousand eight hundred and forty-eight people were without water.

19. Mr President, Members of the Court, on 12 November and again on 19 November 2024 — one week apart — Grenada faced torrential rains resulting in severe flash flooding and landslides. On 12 November, 65 mm of rainfall was recorded in six hours[132] — enough for 14 days. Many citizens and businesses sustained loss and damage. A young teacher lost her life while trying to navigate the flood waters.

20. These examples demonstrate that climate change bears a heavy toll on the mental and physical health of the most vulnerable, especially the women and children, and in addition to the economic loss, their basic human rights are infringed. A recent study identified new categories of psychological syndromes emerging due to climate change, including eco-anxiety, ecological grief, climate worry and climate trauma[133]. We identify particularly with the latter two.

Legal consequences and debt relief

21. Mr President, honourable judges of the Court, on legal consequences and debt relief, Grenada seeks to demonstrate to the Court the inextricable link between climate change and the hurricanes and other extreme weather events that Grenada has been facing. In the aftermath of these

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[131] Grenada's Written Comments dated 15 August 2024 at paragraph 20.

[132] Meteorological department at the Grenada Airport Authority, Point Saline, St. George, Grenada.

[133] Paolo Cianconi and others, "Eco-emotions and Psychoterratic Syndromes: Reshaping Mental Health Assessment Under Climate Change" (2023) 96 (2), Yale Journal of Biology and Medicine 211.

events, Grenada experienced a vicious financial cycle of borrowing at commercial interest rates to rebuild, and then waiting for the next weather event to occur. This leaves us highly indebted and without the fiscal space to ever fully recover or to properly prepare for escalating climate events. Worse yet, these events contribute significantly to Grenada and other SIDS being hindered in our efforts to grow our economies and advance our peoples.

22. It took Grenada 20 years after Ivan to reduce our national debt to around 70 per cent of GDP[134]. Our Prime Minister has formed a CARICOM taskforce focused on securing climate justice and compensation for nations most vulnerable to devastating storms[135]. We advocate for: debt restructuring for all SIDS; improved access to climate funds; and scaled-up support to the Loss and Damage Fund[136].

23. For these reasons, Grenada aligns itself with Vanuatu, the Commonwealth of Dominica, and Colombia, and other States that advanced arguments which recognize the overarching framework governing legal consequences of States for the breach of their climate obligations as the Articles on Responsibility of States for Internationally Wrongful Acts. These include, but are not limited to: cessation and non-repetition; reparations; restitution; compensation; satisfaction[137]. In the premises, and to further address these unequal historical and ongoing contributions of greenhouse gases, Grenada supports the calls for compensation and reparations to ensure that the major polluters pay for the harm that they are causing to the climate system[138].

24. Mr President, Madam Vice-President, Members of the Court, I request the Court to invite Dr Justin Sobion to make further submissions on behalf of Grenada. May it please the Court.

The PRESIDENT: I thank Ms Claudette Joseph. I now give the floor to Mr Justin Sobion.

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[134] Letter from Gaston Browne (Prime Minister of Antigua and Barbuda), Ralph E. Gonsalves (Prime Minister of Saint Vincent and the Grenadines), Dickon Mitchell (Prime Minister of Grenada) and others to David Lamy (Secretary of State for Foreign, Commonwealth and Developmental Affairs of the UK) (11 July 2024), https://media.odi.org/documents/The_Rt_Hon_David_Lammy_MP_18_July_2024.pdf.

[135] "TIME100 Climate", Time Magazine (online), www.time.com/7172447/dickon-mitchell.

[136] Letter from Gaston Browne, Ralph E. Gonsalves, Dickon Mitchell (Prime Minister of Grenada) and others to David Lamy, above fn. 22.

[137] Vanuatu Written Statement dated 21 March 2024, paras. 556-557. See also Grenada's Written Statement dated 21 March 2024, para. 74.

[138] Grenada's Written Comments dated 15 August 2024, para. 33.

Mr SOBION:

III. WHAT ARE THE OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW TO PROTECT THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT FROM ANTHROPOGENIC EMISSIONS OF GREENHOUSE GASES FOR PRESENT AND FUTURE GENERATIONS?

1. Mr President, Members of the Court, it is an honour to appear before you for the very first time.

2. Humanity faces a triple planetary crisis comprising the climate emergency, the collapse of biodiversity and pervasive pollution[139]. According to the Executive Director of UNEP, this triple planetary crisis is threatening the foundations of prosperity, peace and security[140].

3. This submission will explain why — in the face of this triple planetary crisis — States have a fiduciary obligation to act as trustees of the climate system and the environment on behalf of future generations[141].

4. Mr President, the 2023 IPCC report warns that "rapid and deep" cut in greenhouse gases is required within this decade[142]. This is consistent with the UN Decade on Ecosystem Restoration (2021-2030) which pledges to "scale up efforts to prevent, halt, and reverse the degradation of ecosystems worldwide"[143]. This decade is the make-or-break decade for us to avert the climate crisis. As the UN Secretary-General warned, "humanity faces a stark and urgent choice: a breakdown or a breakthrough"[144]. This choice is ultimately ours — a "breakdown", in the climate system, or a "breakthrough", in a healthy, liveable and sustainable planet for all.

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[139] 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" UN doc. CRC/C/GC/26 (22 Aug. 2023), para.1.

[140] Inger Andersen "The law as a shield against the triple planetary crisis" (COP29 Official Side Event on Climate Change and Courts: Judicial Perspectives on Climate Litigation, Baku, Azerbaijan, 16 November 2024), accessible at www.unep.org/news-and-stories/speech/law-shield-against-triple-planetary-crisis.

[141] Grenada's Written Statement, 21 March 2024, paras. 48–65 and Grenada's Written Comments, 15 August 2024, paras. 34–58.

[142] 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* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland at 20 (para. B.6).

[143] UNGA res/73/284 (2019), titled "United Nations Decade on Ecosystem Restoration (2021-2030)", UN doc. A/RES/73/284, para.1.

[144] *Our Common Agenda – Report of the Secretary-General* (The United Nations, New York, 2021), p. 3.

5. It is noted that the temperature goal of 1.5°C is not a climate utopia. IPCC scientists warn, with high confidence, that even at 1.5°C warming, small island States, like Grenada, are projected to experience high multiple interrelated climate risks[145].

6. Humanity can no longer negotiate the physical conditions that life on Earth depends upon. To quote German Professor Klaus Bosselmann: "To think that global warming can be negotiated is like thinking rainfall and sunshine could be negotiated."[146] The climate, therefore, is not negotiable and should not be susceptible to political compromises that serve the interests of a few. As this Court said in 1997, "international law subserves not only the interests of individual States, but looks beyond them and their parochial concerns to the greater interests of humanity and planetary welfare"[147].

7. Mr President, unlike the recent COP negotiations and COP conferences, this august tribunal is not a negotiating table. This is the International Court of Justice. Your role as judges is to dispense justice. As the Honourable Prime Minister said — your role is to "right the wrong" that have and will come upon SIDS, the most vulnerable, and future generations.

8. I will now turn to the issue of future generations.

9. When we speak about future generations, we are speaking about the persons who are not yet born. But why would this Court care or be interested in an abstract group of persons who do not exist? The answer is founded in the long-standing principle of intergenerational equity. According to this principle: each generation is entitled to inherit a planet at least as good as that of previous generations and all generations are entitled to at least the minimum level that the first generation in time had[148]. This principle is steeped in equity because future generations did nothing to cause the climate crisis, nor did they consent to the harm caused by it. The purpose of the principle is not to burden disproportionately young persons and future generations[149].

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[145] 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,* Cambridge: Cambridge University Press (UK and New York), p. 10 (para. B.6.2).

[146] Klaus Bosselmann, "Environmental Trusteeship and State Sovereignty: Can They be Reconciled?", *Transnational Legal Theory*, Vol. 11, Issue 1-2, (2020), p. 55.

[147] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, separate opinion of Vice-President Weeramantry, p. 118.

[148] Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (The United Nations University, Tokyo and Transnational Publishers Inc, New York, 1989), pp. 24–25.

[149] *Dejusticia* v. *Presidencia de la República* [2018] STC4360-2018 (SC), pp. 8–9.

10. In the *Nuclear Weapons* Advisory Opinion, this Court recognized the danger posed to future generations, when it held that nuclear weapons constitute a catastrophe for the environment and that the environment represents "the living space, the quality of life and the very health of human beings, including generations unborn"[150]. Later, in *Pulp Mills*, this Court went on to confirm that "it can hardly be doubted that the acknowledgement of inter-generational equity forms part of conventional wisdom of International Environmental Law"[151].

11. The Pacific Island students and the World's Youth for Climate Justice (WYCJ), who are the closest in nexus to the future generations, have the moral authority to demand that "not one more tonne" of harmful greenhouse gases be emitted into the atmosphere[152]. Similarly, it is within the youth's prerogative to say "no" to fossil capitalism.

12. The climate system, just like the natural environment, is a collective good and the patrimony of all humanity[153]. The climate system has been gravely damaged by irresponsible State behaviour.

13. Grenada submits that to restore the climate system, States have an obligation to jointly act as trustees. Why? Because the climate system is not the dumping ground of any one particular State. It is a global common; it provides the gift of life itself that we must protect for future generations — simple as that.

14. Mr President, a trust is an equitable obligation binding on one person (the State) to deal with property (the climate system) for the benefit of persons (the present and future generations)[154]. As a trustee, when it comes to the climate system, States must fulfil the obligations of "good management" and a fiduciary obligation of "good conscience"[155].

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

[151] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, separate opinion of Judge Cançado Trindade, p. 181, para. 122.

[152] Prue Taylor, School of Architecture and Planning and New Zealand Centre of Environmental Law, Auckland (Presentation on "Future Generations", ICJ climate change Workshop, Grenada, February 2024). This PowerPoint, presentation is available to the Court on request.

[153] Pope Francis, *Laudato Si' — On Care For Our Common Home* (Our Sunday Visitor Publishing Division, Huntington, 2015), p. 95, available at https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html

[154] David J. Hayton *Underhill and Hayton —Law Relating to Trusts and Trustees* (14th ed., London: Butterworths, 1987), p. 3. See also Lynton Tucker, Nicholas Le Poidevin and James Brightwell *Lewin on Trusts* (19th ed., London: Thomas Reuters, 2015), p. 4.

[155] Geraint Thomas and Alastair Hudson *The Law of Trusts* (2nd ed., Oxford: Oxford University Press, 2010), p. 31.

15. Examples of States acting as trustees, in the form of the public trust doctrine, are found in the United States[156], India[157], Uganda[158] and South Africa.

16. Although trusts are regarded as one of the hallmarks of the legal systems of the common law family, there are similar trust-like arrangements which exist in civil law — such as the *Treuhand* in Germany[159] or the *fiducie*[160] in France[161].

17. Judge Weeramantry, a former Vice-President of this Court, referred to the "principle of trusteeship of earth resources" three times in his separate opinion in the *Gabčíkovo* case[162]. Judge Weeramantry added that this is the "first principle of modern environmental law"[163].

18. Mr President, Members of the Court, the principle of trusteeship of the environment is as old as humanity and it has its roots in ancient cultures and religion[164]. Such an ancient principle has been codified in modern international law instruments such as the Earth Charter (2000)[165], the Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship (2018)[166], and the Maastricht Principles on the Human Rights of Future Generations (2023)[167]. These

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[156] Joseph L. Sax "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention" (1970), 68 *Michigan Law Review*, Vol. 68, p. 471.

[157] *Mehta* v. *Kamal Nath* (1997) 1 SCC 388. See also *Miglani* v. *State of Uttarakhand* [2017] (PIL) No 140 of 2015 (HC) which acknowledged that because the past generations handed over the Earth to the present generation in its pristine glory, the present generation are morally bound to reciprocate this to the next generation (at page 65).

[158] *Advocates Coalition for Development and Environment* v. *Attorney General* HC No. 0100 of 2004, 13 July 2005, pp. 13–14. See also the Constitution of Uganda 1995 (with amendments), Art. 237 (2) *(b)*.

[159] Irina Gvelesiani "German 'Treuhand' Vis-à-Vis Austrian 'Treuhand' (Terminological Study)" (2015), *European Scientific Journal*, p. 134.

[160] Marius J. De Waal "Comparative Succession Law" in Mathias Reimann and Rienhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd ed.) (Oxford: Oxford University Press, 2019), p. 1081.

[161] Peter H. Sand "The Rise of Public Trusteeship in International Environmental Law", *Environmental Policy and Law*, Vol. 44, Issue1–2 (2014), p. 210.

[162] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, separate opinion of Vice-President Weeramantry, pp. 102, 108 and 110.

[163] *Ibid.,* p. 102. See also *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway), Judgment, I.C.J. Reports 1993*, separate opinion of Judge Weeramantry, p. 240 and *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand v France) *Case (New Zealand v. France), Order of 22 September 1995, I.C.J. Reports 1995*, dissenting opinion of Judge Sir Geoffrey Palmer, p. 114).

[164] C.G. Weeramantry *Tread Lightly on the Earth – Religion, The Environment and the Human Future* (Stamford Lake (Pvt) Ltd, Pannipitiya, 2014) at 137 and 201. See also Christopher Weeramantry "Justice can be Shortsighted", United Nations Environment Programme, *Our Planet*, Vol. 15, No. 3, 2005.

[165] The Earth Charter (2000), preamble.

[166] *The Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship* (2018) available at www.earthtrusteeship.world. See also Justin Sobion and Hans van Willenswaard (eds.) *Reflections on Earth Trusteeship — Mother Earth and a New 21st-Century Governance Paradigm* (INI Books, Nonthaburi, 2023). Available at the Peace Palace Library.

[167] *The Maastricht Principles on the Human Rights of Future Generations* (2023), Principle 8.

international instruments that I have mentioned are restating the trusteeship obligations that have already been recognized under international law.

19. In summary, I ask this honourable Court for:

(i) a declaration that the international community recognizes the harm done to SIDS by extreme weather events in the form of intense hurricanes and tropical cyclones;

(ii) the provisions of ARSIWA apply in these advisory proceedings, and that SIDS could rely on reparations pursuant to part *(b)* of the legal question; and

(iii) a declaration that States have an obligation to act as trustees of the climate system and the environment pursuant to part *(a)* of the legal question.

20. Mr President, Members of the Court, we ask you to remember that "[w]e do not inherit the Earth from our ancestors, we borrow it from our children".

21. With that, Mr President, Members of the Court, I hereby thank you for your kind attention.

The PRESIDENT: I thank the representatives of Grenada for their presentation. I will now invite the next participating delegation, Guatemala, to address the Court and I call upon Her Excellency Ms Ana Cristina Rodríguez Pineda to take the floor.

Ms RODRÍGUEZ PINEDA:

1. Mr President, Members of the Court, it is an honour and a privilege to appear before you and deliver the oral statement of the Republic of Guatemala in these proceedings.

2. Guatemala recalls that this process derives from General Assembly resolution 77/276 of 29 March 2023. This resolution was adopted by consensus, which Guatemala was pleased to join.

3. The importance of this advisory opinion cannot be overstated. As many Participants have already highlighted, climate change is one of the defining crises of our time, and one that the General Assembly has called a "challenge of civilizational proportions".

4. While climate change impacts every single square metre of this Earth, it does not impact everyone equally. Developing States are more vulnerable to the effects of climate change, and Guatemala is no exception. In fact, due to its geographical location and its socio-economic conditions, my country has been recognized as highly vulnerable.

5. Climate change is altering rain and temperature patterns; causing the fragmentation of natural habitats; and prompting the loss of endemic species. Studies conducted by our National Council for Protected Areas have documented the reduction of key species populations throughout our territory. Many of them are migrating to higher altitudes or colder zones, in search of more favourable weather conditions.

6. Climate variations also disproportionately affect Guatemala's indigenous communities, especially those that rely on natural resources for sustenance. Climate change is thus a threat that directly impacts the livelihoods of our indigenous peoples.

7. Guatemala has rolled out measures to tackle these vulnerabilities. One example is the establishment of the National Council on Climate Change in 2013. Under the leadership of the Guatemalan Ministry of Environment and Natural Resources, this body is entrusted with the adoption of adaptation and mitigation measures. The Council is part of a broad specialized legal framework for the reduction of vulnerability, compulsory adaptation and the mitigation of greenhouse gas emissions.

8. This Request, therefore, represents a plea from the international community as a whole, for the Court to clarify the applicable rules, and to address these challenges in accordance with international law.

9. Mr President, Members of the Court, Guatemala welcomes the opportunity to weigh in on these issues. During this presentation, I shall offer my country's observations regarding, *first*, the scope of the General Assembly's Request; *second*, the applicable law and existing international obligations relating to climate change; and *finally*, the legal consequences of these obligations, including State responsibility.

I. SCOPE OF THE REQUEST

10. I shall first address the scope of the General Assembly's Request for an advisory opinion. This issue is highly consequential, as it defines the extent of the Court's jurisdiction in these proceedings. Moreover, as affirmed in the *Voting Procedure* Advisory Opinion, "it is . . . essential that the Court should keep within the bounds of the question put to it"[168].

[168] *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa, Advisory Opinion, I.C.J. Reports 1955*, pp. 71-72.

11. In addition, Guatemala submits that there is no need for the Court to reformulate the questions. They are clear and unambiguous; and they were submitted to the Court through a resolution which had over one hundred and thirty co-sponsors and adopted by consensus. It is undeniable that the wording of the questions faithfully reflects the will of the General Assembly.

12. Guatemala offers the following three observations as to the scope of the questions, in relation to the relevant conduct to be analysed by the Court, the concept of the climate system, and the adverse impacts that should be taken into account when rendering the opinion.

Anthropogenic greenhouse gas emissions

13. First, the questions identify with precision the relevant conduct, which is set to be evaluated by the Court in accordance with international law. Both questions concern the protection of the environment "from anthropogenic emissions of greenhouse gases", that is, the release into the atmosphere of gases that absorb and re-emit infrared radiation, caused by human beings and their activities[169]. The focus on this conduct is consistent with the existing scientific consensus on climate change. Guatemala submits that the Court should not entertain arguments which seek to obscure or misconstrue the object of the questions.

Climate system

14. Second, the questions require the Court to analyse the aggregate effect of greenhouse gas emissions, in respect of the climate system in its entirety. The Court is not asked to make findings regarding specific instances of emissions, individual breaches of particular obligations, or harm caused to certain parts of the environment in isolation.

15. The General Assembly's Request refers to the legal duties of States in respect of "the climate system and other parts of the environment". This language is derived from the United Nations Framework Convention on Climate Change, hereafter the "Framework Convention", which defines "climate system" as "*the totality* of the atmosphere, hydrosphere, biosphere and geosphere and their interactions"[170].

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[169] Article 1, paragraphs 3 to 5, of the Framework Convention.

[170] Article 1, paragraph 3, of the Framework Convention, emphasis added.

16. In addition to the "climate system", the questions mention "other parts of the environment". This would allow the Court to consider the impacts suffered by components of the environment *other than* what the Framework Convention calls the climate system. Guatemala is aware, for instance, that the cryosphere (corresponding to ice) is on occasion studied distinctly from the hydrosphere. The reference to "other parts of the environment" would prevent such cases from being excluded from the Court's analysis.

17. Guatemala's conclusion is strengthened by the fact that the second question refers to acts and omissions which have caused "significant harm" to the environment.

Adverse effects

18. Third, in answering the two questions, the Court should be as inclusive as possible when determining which adverse effects of climate change are relevant. The General Assembly's resolution itself refers to a wide range of phenomena, such as extreme weather events, the sea level rise, ocean acidification and the retreat of mountain glaciers. These consequences can cause catastrophic damage, including the submersion of territory, the displacement of affected persons and food insecurity.

19. Guatemala invites the Court to bear these impacts in mind when interpreting and applying the rules at issue. Particularly, it is proposed that the Court rely on the concept of "adverse effects of climate change" used by the Framework Convention. This definition has two key elements which would allow the Court to obtain a more accurate view of these impacts:

(a) It refers to any "changes" to the physical environment or biota caused by climate change. This would also include effects caused to living and non-living parts of nature.

(b) It also links these changes to "significant deleterious effects" for natural and managed ecosystems; the operation of socio-economic systems; and even human health and welfare.

20. Another important aspect is that the questions expressly refer to the impacts "for present and future generations". This inter-generational consideration should influence both the extent of the obligations at issue, as well as the scope of the legal consequences arising from the failure to perform them. According to this principle, the protection of the climate system is organized for the benefit of present and future generations of humankind. The legal obligations of developed States with regard

to greenhouse gas emissions are not only of concern to the living beings of today: they also have repercussions for those that will succeed us, who may be deprived of vital resources if sustainable action is not implemented immediately.

II. OBLIGATIONS RELATING TO CLIMATE CHANGE

21. I will now address the legal obligations of States relating to climate change. In this respect, I will first refer to the applicable law; second, to the question of binding and non-binding commitments; third, to the protection of the marine environment; fourth, to human rights law; and finally, the duty to co-operate.

Applicable law

22. Borrowing the language of the *Nuclear Weapons* Advisory Opinion, the "most directly relevant applicable law"[171] comes from two treaty sources: the Framework Convention and the Paris Agreement. Other relevant obligations may flow from instruments aimed at the protection of certain parts of the environment. For instance, the United Nations Convention on the Law of the Sea, hereafter "UNCLOS", is the pertinent instrument governing the marine environment. Other examples include the 1985 Vienna Convention and 1987 Montreal Protocol, relating to the protection of the ozone layer.

23. It should be clarified that, contrary to what others have asserted in these proceedings, these treaties do not necessarily exclude or replace other relevant rules, including the law of State responsibility, as well as international human rights law.

24. Given the limited time, Guatemala does not intend to recite in detail the obligations set out in the text of the aforementioned treaties. As the principal organ of international law, the Court is aware of these conventional duties. The Court is in an advantageous position in this regard. The Charter and the Statute confer upon it a general competence over all areas of international law. When exercising this competence, the Court should interpret the relevant provisions harmoniously, to mitigate the risk of fragmentation.

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[171] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 243, para. 34.

Binding and non-binding commitments

25. Other Participants in these proceedings have advanced the view that the Court's opinion should distinguish between binding legal duties and non-binding political commitments. Guatemala admits that such a distinction exists, especially in the area of environmental law, where non-binding provisions, self-determined contributions and obligations of means play an important role by encouraging States to engage in these political processes according to their national priorities.

26. However, it would be incorrect to conclude that, due to their non-binding nature, these provisions fall outside of international law. Otherwise, the ambitious commitments envisioned in the climate change instruments would be ineffectual.

27. Even if a treaty provision is phrased in exhortative terms, or some aspects of its content are self-determined, it is still a treaty provision. The fulfilment of treaty provisions conferring a degree of discretion, even if that discretion is considerable, is subject to the obligation of good faith enshrined in Article 26 of the Vienna Convention on the Law of Treaties. This fact was recognized by the Court in the case concerning *Mutual Assistance in Criminal Matters*[172]. States cannot rely on the non-binding nature of some commitments to defeat the object and purpose of these treaties and undermine the existing legal framework.

28. Moreover, one of the principles that informs the assumption and performance of non-binding commitments is that of "common but differentiated responsibilities and respective capabilities", or "CBDR-RC". This principle is formalized in numerous environmental instruments, including Article 3 of the Framework Convention, and Article 2 of the Paris Agreement.

29. Unlike what we have heard this week, this is not an evolving principle. Guatemala submits that the CBDR-RC principle is a well-established one in international climate change law. Any attempt to dilute its normative content, suggesting it somehow absolves industrial States, should be disregarded by the Court.

30. According to this principle, while all States share the obligation to prevent, address and mitigate environmental degradation, the responsibility is not shared equally. The disparity of economic development and industrialization requires developed States to take the lead and assume a

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[172] *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 229, para. 145.

greater burden. Likewise, the circumstances of developing States must be given full consideration, especially those that are particularly vulnerable to the adverse effects of climate change.

31. At the core of this legal principle is the historical responsibility of industrial States for the significant harm to the climate system, and the duty that they must assume to restore it. Principle 7 of the Rio Declaration, for example, is clear that responsibility is "differentiated" according to the contributions of States to global environmental degradation. The liability of industrial States originates, *inter alia*, from the "pressures their societies place on the global environment".

32. By giving full meaning to CBDR, the Court can acknowledge the profound and palpable injustice of the climate crisis, where the States that are least developed, that have contributed the least to this crisis and that are most vulnerable, suffer the most severe impacts.

The marine environment

33. Turning to the marine environment, it should be noted that UNCLOS contains certain obligations which are relevant for the stabilization of greenhouse gas emissions.

34. During the recent advisory proceedings before the International Tribunal for the Law of the Sea, "ITLOS", Guatemala expressed the view, now confirmed by that Tribunal, that the obligations under Part XII of UNCLOS may apply to anthropogenic greenhouse gas emissions.

35. Guatemala contends that the burdens and costs arising from these obligations cannot fall all upon States equally. Here again, we find the principle of CBDR, as I will now explain.

36. Under Article 194, paragraph 1, the duty to adopt measures to prevent, reduce and control greenhouse gas emissions is qualified by two elements. One is that, to perform this duty, States must use "the best practicable means at their disposal". The other is that these means must be used "in accordance with their capabilities". This is an assessment that must be undertaken on a case-by-case basis.

37. Additionally, Article 203, subparagraph *(a)*, of UNCLOS contributes to this principle in a meaningful way. Under this provision, developing States must be "granted preference" by international organizations in the allocation of funds and technical assistance, for the purpose of "prevention, reduction and control of pollution".

38. Moreover, it should be emphasized that the duties arising from the prevention, reduction and control of greenhouse gas emissions under UNCLOS are based on due diligence. They are obligations of conduct. ITLOS recognized this at paragraph 234 of its *Climate Change* Advisory Opinion.

39. The Tribunal added that when emissions occur as a result of activities of private persons or entities, "it would not be reasonable to hold a State, which has acted with due diligence, responsible simply because such pollution has occurred"[173].

40. Significantly, ITLOS recognized that, although Article 194 of UNCLOS does not refer expressly to CBDR,

> "[I]t contains some elements common to this principle. . . . [T]he scope of the measures under this provision, in particular those measures to reduce anthropogenic emissions causing marine pollution, may differ between developed States and developing States"[174].

41. Later, ITLOS affirmed that the implementation of due diligence "may vary according to States' capabilities and available resources. Such implementation requires a State with greater capabilities and sufficient resources to do more than a State not so well placed". On the other hand, the latter State is obligated to "do whatever it can in accordance with its capabilities and available resources"[175].

International human rights law

42. Turning to international human rights law, during these advisory proceedings numerous relevant treaties have already been mentioned, including the 1966 Covenants. In addition to these instruments, Guatemala emphasizes that the General Assembly has already recognized the right to a clean, healthy and sustainable environment in resolution 76/300. My country resists the view, expressed by some, that fundamental human rights, including the right to life, are irrelevant for the Court's opinion.

43. The Court should not ignore the tangible implications of this climate crisis. The debates on cooperation, financial assistance and concerted international action do not exist in a legal vacuum.

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[173] ITLOS, *Advisory Opinion on Climate Change and International Law*, 21 May 2024, para. 236.

[174] ITLOS, *Advisory Opinion on Climate Change and International Law*, 21 May 2024, para. 229.

[175] ITLOS, *Advisory Opinion on Climate Change and International Law*, 21 May 2024, para. 241.

The outcomes of these debates can prolong or alleviate the suffering of people whose rights are at risk due to the effects of climate change. The human dimension at the centre of these proceedings should not be overlooked. For these rights to be protected, the application of climate change treaties is indispensable. As resolution 76/300 declares, the promotion of the human right to a clean, healthy and sustainable environment requires fully implementing multilateral environmental agreements.

Duty to co-operate

44. Finally, Guatemala notes that, according to the preamble to the Framework Convention, "the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response". The same principle is enshrined in Article 3, paragraph 5, of the Convention.

45. For its part, the Paris Agreement contemplates the duty of developed States to provide financial resources to assist developing States with respect to both mitigation and adaptation, in continuation of their obligations under the Framework Convention. Article 9 of the Paris Agreement sets out the contours of this duty to co-operate. Moreover, Article 10 highlights the importance of fully realizing the development and transfer of technology to improve resilience and reduce emissions.

46. It should be noted that the United Nations Charter, mentioned in the General Assembly's Request, already foresees a role for the Organization to co-operate with Member States.

47. Article 2, paragraph 5, sets out the duty of Member States to give the United Nations assistance in any action it takes in accordance with the Charter. Already in the *Reparation* Advisory Opinion, the Court emphasized the central character of this provision, stressing its importance among the duties of Members: "It must be noted that the effective working of the Organization — the accomplishment of its task, and the independence and effectiveness . . . of its agents — require that these undertakings should be strictly observed."[176]

[176] *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 183.

III. LEGAL CONSEQUENCES

48. I will now turn to the question of the legal consequences for States that "by their acts and omissions, have caused significant harm to the climate system and other parts of the environment".

49. These legal consequences are to be defined in accordance with the international law of responsibility for wrongful acts, as codified in relevant part by the International Law Commission's Articles on State Responsibility. Contrary to what some have stated in these proceedings, the substantive obligations stemming from environmental treaties, including the Framework Convention and the Paris Agreement, do not replace the law of State responsibility. In the ILC's nomenclature, these substantive provisions, including those regulating compliance processes, are the primary law. The law of responsibility is a different matter altogether: it contains secondary norms describing the consequences of a violation. These two discrete bodies of law can, and do, operate concurrently, serving different purposes.

50. In any event, the Court should not be persuaded by attempts to rephrase the question. The Court is not asked to link specific emissions of greenhouse gases to specific environmental impacts. The General Assembly's Request concerns the aggregate, cumulative effects of greenhouse gas emissions on the natural environment. This matter is not only scientifically and factually ascertainable, as many other Participants in this process have shown; there exists, too, a legal framework to assess this aggregate effect. Article 15 of the Articles on State Responsibility regulates composite acts. The ILC's commentary corroborates that this provision was intended to analyse complex State conduct, where the focus is on the accumulation of numerous and interconnected behaviours, and not individual acts[177].

51. The Court should also not be persuaded by other arguments we have heard this week, which purport to invent new requirements for the establishment of an internationally wrongful act. Some contend that to find attribution, the Court must first establish causation. This is plain error. Under Article 2 of the ILC's Articles on State Responsibility, two elements are needed to establish wrongfulness: attribution and breach. For these elements to be satisfied, there is no requirement under international law for the claimant to make a showing of injury. According to the ILC,

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[177] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *YILC*, 2001, Vol. II, Part Two, p. 62, commentary to Article 15, paras. (2) *et seq.*

> "[i]t is sometimes said that international responsibility is not engaged by conduct of a State in disregard of its obligations unless some further element exists, in particular, 'damage' to another State. But whether such elements are required depends on the content of the primary obligation, and there is no general rule in this respect."[178]

52. The ILC goes on to give an example of a treaty requiring the enactment of a uniform law. The wrongful act would be the failure to legislate: "[I]t is not necessary for another State party to point to any specific damage it has suffered by reason of that failure."[179]

53. To that extent that a showing of causation is needed for full reparation[180], the Court's findings should align with the existing scientific consensus regarding climate change.

54. When apportioning responsibility for environmental harm to the climate system, the Court should be mindful of the limited capabilities of developing States, as well as their vulnerabilities to the adverse impacts of climate change. The Court should also be mindful of the consequences of climate change for future generations, as well as the historical responsibility of industrial States for their greenhouse gas emissions.

IV. CONCLUSION

55. Mr President, in conclusion, Guatemala reaffirms its commitment to the defence of national sovereignty; the protection of democracy; human rights; and full respect for nature and for the rights of present and future generations.

56. We must address the accelerating crisis seeking an inclusive adaptation to climate change and behaving as responsible international actors.

57. The Court has the unique opportunity to provide the necessary legal tools for developing States to vindicate their rights and hold those that have destroyed our natural environment to account.

58. With this, I conclude the submission of the Republic of Guatemala. Mr President, Members of the Court, I thank you for your attention.

The PRESIDENT: I thank the representative of Guatemala for her presentation. This concludes this morning's sitting. The oral proceedings will resume this afternoon at 3 p.m., in order for the

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[178] *Ibid.*, p. 36, commentary to Article 2, para. (9).

[179] *Ibid*.

[180] Article 31 of the Articles on State Responsibility.

Cook Islands, the Marshall Islands, the Soloman Islands, India, the Islamic Republic of Iran and Indonesia to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 12.50 p.m.

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