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CR 2024/46

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Monday 9 December 2024, at 3 p.m., at the Peace Palace,

President Salam presiding,

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

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le lundi 9 décembre 2024, à 15 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

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

COMPTE RENDU

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

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

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Hon. Russ Joseph Kun, Deputy Minister for Foreign Affairs and Trade,

HE Mr David Aingimea, Ambassador-at-Large,

Mr Janmai Jay Udit, Secretary for Justice and Border Control, Department of Justice and Border Control,

Ms Joanie Hartman, Chargé d'affaires, Permanent Mission of the Republic of Nauru to the United Nations Office and other international organizations in Geneva,

Mr Tilson Ephraim, Director for Legal Affairs, Department of Foreign Affairs and Trade,

Mr Eirik Bjorge, Counsel, Professor of Law, University of Bristol,

Ms Ludovica Chiussi, Counsel,

Ms Kuni Teimitsi, Personal Assistant to the Minister,

Mr Titus Jeremiah, Personal Assistant to the Deputy Minister,

Ms Joy Wawa, Adviser to the Minister,

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Ms Loretta Teueli, Director of Legislative Drafting.

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Mr Udaya Raj Sapkota, Secretary, Ministry of Law, Justice and Parliamentary Affairs,

Mr Suvanga Parajuli, Under-Secretary, Ministry of Foreign Affairs,

Mr Kamal Rawal, Personal Secretary to the Minister for Foreign Affairs,

Mr Rooush Karki, Second Secretary.

The Government of New Zealand is represented by:

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

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S. Exc. M. Russ Joseph Kun, ministre adjoint des affaires étrangères et du commerce,

S. Exc. M. David Aingimea, ambassadeur extraordinaire,

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M. Kamal Rawal, secrétaire particulier de la ministre des affaires étrangères,

M. Rooush Karki, deuxième secrétaire.

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

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Ms Floriane Lavaud, Legal Counsel,

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HE Mr Suljuk Mustansar Tarar, Ambassador of the Islamic Republic of Pakistan to the Netherlands,

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M^me^ Hannah Frost, cheffe de mission adjointe, ambassade de la Nouvelle-Zélande au Royaume des Pays-Bas.

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M. Syed Azmat Hussain Babar, consultant, département des différends internationaux, bureau de l'*Attorney General* du Pakistan.

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

For reasons duly made known to me, Judge Abraham is unable to join us for this afternoon's sitting.

The Court meets this afternoon to hear Nauru, Nepal, New Zealand, the State of Palestine and Pakistan on the questions submitted by the United Nations General Assembly. Each of the delegations has been allocated 30 minutes for its presentation. The Court will observe a short break after the presentation of New Zealand.

I shall now give the floor to the delegation of Nauru. I call His Excellency Mr Lionel Rouwen Aingimea to the podium. You have the floor, Sir.

Mr AINGIMEA:

INTRODUCTION

1. Mr President, Members of the Court, it is an honour to appear before you as the Representative of the Republic of Nauru in these vital proceedings. I stand before you on behalf of the people of my country not only as their representative. I stand here also bearing witness to their struggle, their resilience, and the trust and confidence they put in you, "the principal judicial organ of the United Nations"[1].

2. As Nauru has emphasized time and again, we consider the most important obligations of States in respect of climate change to be the obligations found in "the principles of general international law"[2]. In common with many other States, Nauru has consistently held that no provision of the UNFCCC or the Paris Agreement "can be interpreted as derogating" from these principles[3].

3. Current events remind us that there is an element of truth to General de Gaulle's remark that "treaties are like roses . . . [t]hey last while they last"[4] and treaty régimes — and the membership of powerful States to them — may come and go; the principles of general international law, however,

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[1] Art. 92, Charter of the United Nations.

[2] See "Declaration made upon signature — Nauru", 1771 *UNTS* 318 (tab 1, Nauru's judges' folder); "Declaration made upon Ratification — Nauru", 3156 *UNTS* 95 (tab 2, Nauru's judges' folder); see also Written Statement of Nauru, paras. 6, 26.

[3] "Declaration made upon signature — Nauru", 1771 *UNTS* 318; "Declaration made upon Ratification — Nauru", 3156 *UNTS* 95.

[4] *Time*, 12 July 1963, available at: https://time.com/archive/6873384/western-europe-the-unvisit/.

remain. They continue to be binding vis-à-vis all States. And it is precisely under the principle of *jura novit curia* that the Court is empowered to apply such principles[5].

4. This matters greatly to Nauru because climate change is the single most destructive threat to the security and to the well-being of our population[6]. It endangers life, livelihood, food security, stability, and the enjoyment of human rights, most prominently the "fundamental human right"[7] of self-determination. Nauru's main concern is the threat that climate change poses to its security. The Secretary-General was correct to observe in 2009 that, in the case of small island developing States, "sea-level rise presents perhaps *the ultimate security threat*"[8]. He was also correct to state this year that "[r]ising seas are a crisis entirely of humanity's making"[9].

5. Climate change affects the entire planet. But Nauru and other small island developing States bear a uniquely heavy burden. We are, in the words of the General Assembly's Request to this Court, "specially affected" by the adverse effects of climate change[10].

6. The impact of climate change on Nauru's security is not a distant concern to our people. Rising sea levels pose severe threats that violate our right to sovereignty, to territorial integrity, and the right of our people not to "be deprived of its own means of subsistence"[11].

7. Coastal erosion, intensifying droughts, and other environmental disasters are already pushing our island to the limits of habitability. And as habitable land shrinks, much of Nauru's population is forced to cluster in the higher ground of our island[12]. A significant percentage of our population and infrastructure is forced to migrate to the higher-elevation interior of the island[13]. In

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[5] *Cf.* CR 2024/36, p. 29, para. 8 (Saudi Arabia, Wood).

[6] General Assembly resolution A/RES/63/281 (2009), *Climate change and its possible security implications.*

[7] *Cf. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 131, para. 144; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, *Advisory Opinion of 19 July 2024*, para. 233.

[8] *Climate change and its possible security implications*, Report of the Secretary-General, A/64/350, 11 September 2009, para. 71 (emphasis added).

[9] "Secretary-General's press conference on sea level rise", 27 August 2024, available at: https://www.un.org/sg/en/content/sg/press-encounter/2024-08-27/secretary-generals-press-conference-sea-level-rise.

[10] General Assembly resolution 77/276, 29 March 2023, Question (*a*) (i).

[11] Art. 1 (2) common to International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, 999 *UNTS* 171 and International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, 993 *UNTS* 3; see Written Statement of Nauru, paras. 41–44; Written Comment of Nauru, paras. 69–73.

[12] See Written Statement of Nauru, paras. 19–20.

[13] *Ibid.*

the north, coastal erosion steadily claims the beaches, leaving families with fewer places to live. Periodic king tides submerge the only road on our island. Saltwater intrusion into the groundwater is worsening. We are indeed seeing — in the words of Shakespeare — but in a way that could not have been imagined by the Bard himself! — the "hungry ocean gain advantage on the kingdom of the shore"[14].

THE WISDOM OF THE COURT'S GENERAL JURISPRUDENCE

8. We come before the Court today fully cognizant of its important legacy in environmental matters. It is a jurisprudence based on the principles of general international law[15]. In the *Corfu Channel* case, the Court inferred from general principles "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States"[16].

9. On that basis, in the transboundary context of the *Threat or Use of Nuclear Weapons*, it later recognized "[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States"[17]. Since then, the obligation has only acquired further application in environmental matters[18]. This way, the Court has demonstrated its vital role in clarifying obligations that arise not only from international treaty régimes, but from the principles of general international law binding on all States.

10. In *Corfu Channel*, moreover, the Court also confirmed a fundamental principle of *justice*. It observed that there are certain activities, which, unless international justice was properly administered, would "from the nature of things . . . be reserved for the most powerful States"[19]. Such a situation, where powerful States did as they pleased, had, "in the past, given rise to most serious

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[14] Sonnet 64 (1609).

[15] See Speech by His Excellency Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the General Assembly of the United Nations, 30 October 2002, p. 6, para. 9.

[16] *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22; see also Speech by His Excellency Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the General Assembly of the United Nations, 30 October 2002, p. 6, para. 9.

[17] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 241–242, para. 29.

[18] See e.g. *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II)*, p. 648, para. 99.

[19] *Corfu Channel (United Kingdom* v. *Albania), Merits, I.C.J. Reports 1949*, p. 35.

abuses and such as cannot, whatever be the present defects in international organization, find a place in international law"[20].

11. Again, the wisdom of the Court's general jurisprudence becomes obvious in the particular case now before it. For exactly the same applies to obligations of States in respect of climate change. Who is it that have been causing climate change, and that have been benefiting from it through industrial and technological revolutions[21]? It is the powerful States. Who, conversely, have been made to suffer the consequences, without being to blame and without reaping the benefits? One needs hardly say it. It is the States that, owing to their geographical circumstances and level of development, are particularly vulnerable, notably "small island developing States"[22].

12. The ancient Greek historian Thucydides commented, in the context of relations between the powerful city State of Athens and the small island State of Melos, that "the strong do what they can and the weak suffer what they must"[23]. The logic of the *Melian Dialogue* has no place in today's international legal order. Might does not make right, especially not as regards the existential threat posed by man-made climate change.

DUE DILIGENCE, SELF-DETERMINATION, TERRITORIAL INTEGRITY

13. In this spirit, Nauru affirms that the exacting due diligence obligation, stemming from the principle confirmed in *Corfu Channel*, requires States to take "all necessary measures" to mitigate environmental harm[24]. It has long since been established that the requirement of due diligence applies in connection with the activities of the territorial State in relation to the security of others[25]. Already in the nineteenth century, it was recognized by the *Alabama Claims* tribunal that due diligence must

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[20] *Ibid*.

[21] See R.E. Fife, "Sea-Level Rise in Relation to International Law: How to Protect Coastal State Rights by Operationalizing Legal Analysis" in *The International Legal Order in the XXIst Century: Essays in Honour of Professor Marcelo Gustavo Kohen* (2023), p. 781.

[22] General Assembly resolution 77/276, 29 March 2023, Question (*a*) (i).

[23] Thucydides, *The History of the Peloponnesian War*, book 5, ch. 89 (trans. R. Crawley, 1874).

[24] X. Hanqin, *Transboundary Damage in International Law* (2003), p. 163; see also, *mutatis mutandis*, Special Commission of Jurists, *Tellini* case, League of Nations, *Official Journal*, 5th year, No. 4 (April 1924), p. 524.

[25] M. Bourquin, "Crime et délits contre la sûreté des États étrangers" (1927), vol. 16, *Recueil des cours*, pp. 236–242; P. M. Dupuy, "Due Diligence in the International Law of Liability" in *Legal Aspects of Transfrontier Pollution* (1977), p. 372.

be exercised "in *exact proportion* to the risks" to which other States might be exposed[26]. More recently, the International Tribunal for the Law of the Sea clarified in its *COSIS* advisory opinion that, in the context of greenhouse emissions, the standard of due diligence is "stringent"[27].

14. As I indicated, the threat posed by climate change must be refracted through the lens of the right of self-determination, a principle of general international law codified in Article 1 common to the human rights Covenants[28].

15. By virtue of that right, all peoples "freely determine their political status and freely pursue their economic, social and cultural development"[29]. It ensures furthermore that "[i]n no case may a people be deprived of its own means of subsistence"[30]. That is a principle reflected in your jurisprudence in cases such as *Anglo-Norwegian Fisheries*[31] and *Gulf of Maine*[32].

16. In its *Chagos Archipelago* Advisory Opinion, the Court recognized that it is the duty of every State "to promote, through joint and separate actions, realization of the principle of equal rights and self-determination of peoples"[33].

17. The Court also advised that respect for territorial integrity "is a key element of the exercise of the right to self-determination under international law"[34]. This means that territorial sovereignty,

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[26] *Alabama claims of the United States of America against Great Britain* (1871), Vol. XXIX, *RIAA*, p. 129 (emphasis added); see also P. Reuter, *Droit international public* (6th edn., 1983), p. 259.

[27] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, 21 May 2024, pp. 86-87, para. 241.

[28] Art. 1 common to ICCPR and ICESCR; see Written Statement of Nauru, paras. 37–41; Written Comment of Nauru, paras. 74–76.

[29] Art. 1 (1) common to ICCPR and ICESCR.

[30] *Ibid.*, Art. 1 (2).

[31] *Fisheries (United Kingdom* v. *Norway), Judgment, I.C.J. Reports 1951*, p. 142; A. Pellet and B. Samson, "La délimitation des espaces marins" in M. Forteau and J.M. Thouvenin (eds.), *Traité de droit international de la mer* (2017), p. 589.

[32] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 342, para. 237; see also *Case Concerning Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre and Miquelon)* (1992), Vol. 95, *ILR*, p. 675, para. 84; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 126, para. 198; *Abyei (Government of Sudan and the Sudan People's Liberation Movement/Army)* (2009), Vol. XXX, *RIAA*, p. 408, para. 754, fn. 1253; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 706, para. 223; Written Statement of Nauru, para. 44.

[33] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 139, para. 180, quoting resolution 2625 (XXV), "Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations"; see also Written Statement of the Commission of Small Islands States on Climate Change and International Law, para. 67; Written Statement of Bangladesh, para. 121; Written Statement of Sierra Leone, para. 3.88; Written Statement of Liechtenstein, para. 74; Written Comments of Nauru, para. 79.

[34] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 134, para. 160.

"an essential foundation of international relations"[35], is also at stake in these proceedings. In fact the obligation of every State not to allow its territory to be used for acts contrary to the rights of other States is *inherent* in the more fundamental principle of State sovereignty. One State cannot, relying on its own sovereignty, violate that of another[36]. The *right* of one State to sovereignty "has as a corollary a *duty*: the obligation to protect within the territory the rights of other States, in particular their right to integrity"[37].

18. Mr President, Members of the Court, ours is the last generation that still has the ability to take decisive action to avert the most severe consequences of the climate crisis. We urge this Court to clarify the scope of the existing obligations of States in respect of climate change: no more, but certainly no less. We seek your affirmation that the law protects the vulnerable and that our fundamental rights under general international law — to exist, to thrive, to safeguard our land — are upheld and respected.

19. Your advice will carry weight not only in the high echelons of courts and chancelleries, but also in communities and collectivities of all kinds all over the world, whose attention is squarely directed at you. We urge you to seize this moment to deliver an advisory opinion that reflects the urgency, the dignity and the right of all peoples to exist in security. Nauru has every confidence that this Court will be equal to the task of "ensur[ing] respect for international law, of which it is *the* organ"[38].

20. Mr President, Members of the Court, that concludes my remarks. I ask you to invite Professor Eirik Bjorge to the podium.

The PRESIDENT: I thank His Excellency Lionel Rouwen Aingimea. I now give the floor to Professor Eirik Bjorge.

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[35] *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 35.

[36] See e.g. A. C. Kiss, *Répertoire de la pratique française en matière de droit international public,* Tome II (1966), p. 31; see also Written Statement of Nauru, para. 34; Written Comments of Nauru, para. 64.

[37] *Island of Palmas (Netherlands, United States of America)* (1928), Vol. II, *RIAA*, p. 839 (emphasis added.)

[38] *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 35 (emphasis added).

Mr BJORGE:

1. Mr President, Members of the Court, it is a very great honour to appear before you and to do so on behalf of Nauru. You know it well; the Court held in its first case, *Corfu Channel*, that in general international law it is "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States"[39]. That obligation in general international law is central to the case before the Court today.

2. President Sir Robert Jennings explained to the Rio Conference in 1992 the role of the Court as regards the protection of the environment and climate change. He drew the attention of the Conference to the "important elementary principle" laid down in *Corfu Channel*, which, he said, had "originated at a time before global problems such as climatic change were perceived at all"[40]. He explained that, because principles of law were gradually elaborated by the process of interpreting and applying them to unforeseen factual situations, the process of judicial reasoning necessarily worked by way of "'the disengagement from accidental circumstances of the principles underlying rules of law already established'"[41].

3. Last week the Court was told — with the bluff straightforwardness of the Nordic countries — that the obligation of prevention could apply only to "direct and manifest injury in *bilateral* affairs"[42]. You were also told — with a sophistication that could be only that of the French — that, if the general principle applies *today* to climate change, it would be necessary to identify the critical date: the point in time from which the principle of prevention had developed in such detail that it came also to apply in the particular context of climate change[43].

4. But the obligation confirmed in *Corfu Channel* — based on a general principle — has *always* been understood to apply generally and to have application therefore in the full range of factual contexts possible[44]. The practice of States is clear to that effect. Nauru has set this out in its

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[39] *Ibid.*, p. 22.

[40] R. Jennings, "The Role of the International Court of Justice in the Development of International Environment Protection Law", statement by Judge Sir Robert Jennings, President of the International Court of Justice, read to the plenary session of the UN Conference on Environment and Development in Rio de Janeiro on 11 June 1992, (1992), Vol. 1, *Review of European, Comparative & International Environmental Law*, p. 241.

[41] *Ibidem*, citing J. Brierly, *The Law of Nations* (H. Waldock ed., 1963), pp. 66-67.

[42] CR 2024/39, p. 51, para. 6 (Nordic countries, Pasternak Jørgensen).

[43] CR 2024/41, p. 14, para. 26 (France, Colas).

[44] Written Comments of Nauru, para. 42.

written comments[45]. I will mention four instances (which are reproduced in Nauru's judges' folder). They show that the general principle has always applied beyond the bilateral affairs of neighbouring States:

(a) First, Australia referred in 1957 to the obligation in *Corfu Channel* as a "general and well-recognized principle" applicable in the context of freedom of maritime communications[46].

(b) Second, India, relying in 1964 on the obligation in the context of atmospheric testing[47], explained that "[t]he responsibility should extend to every kind of damage whatsoever — biological, meteorological, economic and otherwise — which can be proximately traced to the acts of the State in its own territory"[48].

(c) Third, Uganda expressed the view in 2005 that the principle was "general and well-recognized" and had been given recognition "in instruments concerning the fight against international terrorism and relating to the prohibition on the use of force"[49].

(d) Fourth, Norway observed in 2021, in the context of cyber security, that the principle confirmed in *Corfu Channel* "applies in situations where there is a risk of transboundary harm from hazardous activities, *regardless of the nature of the activity*"[50].

5. It is correct to conclude, therefore, as one eminent publicist did, that in *Corfu Channel*:

> "the *general* rule is confirmed that while the territory remains under the sovereignty of a State it cannot use it — or permit it to be used — in a way which may cause damage and disaster to other States, and that *any such action or negligence* will result in international responsibility"[51].

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[45] Written Comments of Nauru, paras. 35 and 42; see also Written Comments of Pakistan, para. 7.

[46] General Assembly, 638th plenary meeting, 17 January 1957, p. 882, para. 57 (tab 3, Nauru's judges' folder).

[47] Asian-African Legal Consultative Committee, Report of the Sixth Session, 24 February-6 March 1964, (1964), p. 16 (tab 4, Nauru's judges' folder).

[48] *Ibidem.*

[49] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, CR 2005/10 (translation), p. 22 (Suy) (tab 5, Nauru's judges' folder); see also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 262, para. 277.

[50] Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States submitted by participating governmental experts in the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security established pursuant to General Assembly resolution 73/266, A/76/136, 13 July 2021, p. 71 (tab 6, Nauru's judges' folder) (emphasis added).

[51] M. Lachs, "The Challenge of the Environment" (1990), Vol. 39, *International and Comparative Law Quarterly*, p. 665 (tab 7, Nauru's judges' folder) (emphases added); see also Written Comments of Nauru, para. 41.

6. Under the obligation laid down in *Corfu Channel*, therefore, a range of physical effects injurious to other States, including "[i]njury to the atmosphere, such as . . . detrimental climate change, would be covered"[52]. I make four specific points in this regard.

THE COURT'S FORMULATION OF THE PRINCIPLE IN *CORFU CHANNEL*

7. First, three brief comments relating to the Court's exact formulation of the obligation in *Corfu Channel*. Whereas the English text of the Judgment contains the word "knowingly", the authoritative French text of the Judgment does not add any such adverb. Nothing, therefore, turns on the term "knowingly". Second, the Court used the general term "obligation". The obligation laid down in *Corfu Channel* is exactly the type of norm at issue in the present proceedings: *obligations* of States, in the instant case, in respect of climate change. Third, it does not matter whether the obligation in *Corfu Channel* was based on a general principle of law or a principle of customary international law. It is, as the Court made explicit in the *Silala* case, an obligation "in general international law"[53], a category that covers both contingencies. That is also the terminology Nauru — like several other specially affected States — used in declaring, upon ratification, that no provision in the UNFCCC or in the Paris Agreement could "be interpreted as derogating from *the principles of general international law*"[54].

THE PARIS AGREEMENT IS NOT *LEX SPECIALIS*

8. I come to my second point: the Paris Agreement is not *lex specialis* as regards the obligation in general international law[55]. I think I can deal with this point briefly. For the *lex specialis* principle to apply, it is not enough that the same subject-matter is dealt with by two provisions of law. There

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[52] O. Schachter, "The Emergence of International Environmental Law" (1991), Vol. 44, *Journal of International Affairs*, pp. 460, 464.

[53] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II)*, p. 648, para. 99.

[54] 1771 *UNTS* 318 (tab 1, Nauru's judges' folder); 3156 *UNTS* 95 (tab 2, Nauru's judges' folder) (emphasis added); see Written Comments of Nauru, para. 31; see also Cook Islands (3156 *UNTS* 87); Fiji (1771 *UNTS* 317); Kiribati (1771 *UNTS* 317-318); Marshall Islands (3156 *UNTS* 92); the Federated States of Micronesia (3156 *UNTS* 94); Niue (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en); Papua New Guinea (1771 *UNTS* 321); Philippines (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en); Solomon Islands (3156 *UNTS* 96); Tuvalu (1771 *UNTS* 318; 3156 *UNTS* 97); and Vanuatu (3156 *UNTS* 98).

[55] See e.g. Written Statement of Egypt, para. 71; Written Statement of Cook Islands, para. 135; Written Statement of Switzerland, para. 68; Written Statement of New Zealand, para. 86; Written Statement of Costa Rica, para. 32; see also *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, 21 May 2024, para. 224.

would need to be an actual inconsistency between the two provisions, or a clearly expressed intention that one of them was to exclude the other[56]. Neither is the case here.

9. There is anyway no *lex specialis* problem as between two provisions if, as in the present case, one of them simply embodies "obligations more far-reaching than, but not inconsistent with, those of the other"[57].

THE PARIS AGREEMENT DOES NOT CONDITION GENERAL INTERNATIONAL LAW

10. I come, then, to my third point. Certain States have in these proceedings sought to invent a different process by which to procure the same result as the process of *lex specialis* would have produced if it had applied. Because some States argue that the basis for the determination of whether a State has breached the principle of prevention "would be the procedural mechanisms established under the Paris Agreement"[58]. In other words: if a State has fulfilled its procedural obligations under the Paris Agreement, it would (so they say) by the same token have fulfilled its obligation in general international law.

11. Nauru is confident that the Court will not accede to this contrivance. As Fitzmaurice once observed, "where a particular process is contemplated for achieving a given result" — here the process whereby *lex specialis derogat legi generali* — "the result in question cannot properly be arrived at by substituting a different process for the one contemplated"[59].

12. But there is, in addition, a more fundamental reason. The Court observed in *North Sea Continental Shelf* that the conditioning of general international law by a multilateral treaty is a result "not lightly to be regarded as having been attained"[60].

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[56] Art. 55, ARSIWA Commentary, *Yearbook of the International Law Commission*, 2001, Vol. II, p. 140, para. 4; see also Report of the Study Group of the International Law Commission, finalized by Mr Martti Koskenniemi, *Yearbook of the International Law Commission* 2006, Vol. II, Part One, A/CN.4/SER.A/2006/Add.1 (Part 1/Add.2), p. 25, para. 89; see Written Comments of Nauru, paras. 7–8.

[57] C. W. Jenks, "The Conflict of Law-Making Treaties" (1954), Vol. 30, *BYIL*, p. 426.

[58] Written Statement of Denmark, Finland, Iceland, Norway, and Sweden, para. 72; see also CR 2024/39, p. 52, para. 12 (Nordic countries, Pasternak Jørgensen).

[59] Sir Gerald Fitzmaurice, "The Law and Procedure of the International Court of Justice: General Principles and Substantive Law" (1950), Vol. 27, *BYIL*, p. 8; see also H. Thirlway, "The Law and Procedure of the International Court of Justice 1960–1989: Part One" (1989), Vol. 60, *BYIL*, p. 73.

[60] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 41, para. 71; see also *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 615, para. 90; *Mondev* v. *United States*, (2002), Vol. 125, *ILR*, p. 145, para. 111 (Sir Ninan Stephen, P.; Crawford; Schwebel); *Van*

13. The obligation in general international law and those of the Paris Agreement are separate from one another. The Court held in *Military and Paramilitary Activities* that the body of customary international law exists and applies "separately from international treaty law"[61]. Indeed, this is, as Professor Campbell McLachlan explains in a recent study, the "*nature* of . . . general law"[62].

14. As the Court observed in *Croatia* v. *Serbia*, the treaty obligation and the obligation in general international law will in cases of this kind "remain *separate and distinct*"[63]. The obligation in general international law therefore is not conditioned by the Paris Agreement.

15. This is all the more so given that the detailed rules set out in the Paris Agreement are of a kind that makes them unlikely ever to form part of, or to condition, general international law. The Chamber in the *Gulf of Maine* case was clear: "[a] body of detailed rules is not to be looked for in customary international law which in fact comprises a limited set of norms for ensuring the co-existence and vital co-operation of the members of the international community"[64]. Detailed treaty provisions such as those of the UNFCCC and the Paris Agreement are very far from possessing — in the words of the *North Sea* case — "a fundamentally norm-creating character such as could be regarded as forming the basis of a general rule of law"[65].

16. And finally, as regards the determination of whether a multilateral convention could be considered to have formed a general rule of international law, Nauru notes the special importance accorded in that regard by the Court in the *North Sea* case to those "States whose interests were specially affected"[66]. Twelve such States, specially affected, made it apparent — on their ratification

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Anraat v. *The Netherlands* (decision), No. 65389/09, European Court of Human Rights, 6 July 2010, paras. 35, 88–89; Sir Ian Sinclair, *The Vienna Convention on the Law of Treaties* (2nd edn., 1984), p. 22.

[61] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 96, para. 179.

[62] C. McLachlan, *The Principle of Systemic Integration in International Law* (2024), p. 111, para. 3.110 (emphasis added); *cf. mutatis mutandis Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2022 (I)*, declaration of Judge Xue, pp. 407–408, paras. 9–10.

[63] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 47, para. 88 (emphasis added); see also Written Statement of Burkina Faso, para. 101, fn. 127; Written Statement of Vanuatu, para. 325, fn. 577.

[64] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 299, para. 111.

[65] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 42, para. 72; see CR 2024/43, p. 31, para. 4 (Kenya, Okowa).

[66] *Ibid.*, p. 42, para. 73; see also Y. Daudet, "Aspects de la question des sources du droit international" (2009), Vol. 2, *Collected Courses of the Xiamen Academy of International Law*, p. 23.

of the UNFCCC or the Paris Agreement or both — that they could not agree to the provisions of either instrument conditioning general international law[67].

THE COURT'S ADVICE WILL BE RETROSPECTIVE

17. Fourth and finally: the Court's advice in these proceedings will be retrospective. There is widespread agreement that, by advising the General Assembly as to the obligations of States in respect of climate change, the Court "states the existing law and does not legislate"[68]. Now, that could be disparaged as formalism[69]. It is, however, the correct position, as many States have observed in these proceedings[70]. The Court is not to *revise* obligations of States in respect of climate change, but to *ascertain* "the existence or otherwise"[71] of such obligations and to *declare* the extent of their terms.

18. And if the Court advises that the obligation of prevention applies to climate change, the scope given by the Court to the terms of that obligation will, in accordance with the rules of law, have retrospective effect[72]. This is because, as the Permanent Court observed in *Access to German Minority Schools in Upper Silesia*, the terms of the obligation "must be held to have *always* borne the meaning placed upon them by this interpretation"[73]. The case law of the present Court has followed the same logic[74]. The Court will lay down what has "always been the case"[75], since the obligation first came into being. The position was clearly set out by Salmon, whom I will quote in the original French:

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[67] 1771 *UNTS* 318; 3156 *UNTS* 95 (Nauru); Cook Islands (3156 *UNTS* 87); Fiji (1771 *UNTS* 317); Kiribati (1771 *UNTS* 317–318); Marshall Islands (3156 *UNTS* 92); the Federated States of Micronesia (3156 *UNTS* 94); Niue (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en); Papua New Guinea (1771 *UNTS* 321); Philippines (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en); Solomon Islands (3156 *UNTS* 96); Tuvalu (1771 *UNTS* 318; 3156 *UNTS* 97); and Vanuatu (3156 *UNTS* 98).

[68] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 18.

[69] *Cf.* J. Salmon, "Le fait dans l'application du droit international" (1982), Vol. 175, *Recueil des cours*, pp. 358-359 (tab 8, Nauru's judges' folder).

[70] See e.g. CR 2024/36, p. 28, para. 5 (Saudi Arabia, Wood); CR 2024/38, p. 66, para. 20 (Republic of Korea, Hwang); CR 2024/39, p. 18, para. 22 (Costa Rica, Kohen); Written Statement of Australia, para. 1.30; Written Statement of Slovenia, para. 11; Written Comments of Japan, para. 16.

[71] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 18.

[72] J. Basdevant, *Dictionnaire de la terminologie du droit international* (1960), p. 545.

[73] *Access to German Minority Schools in Upper Silesia, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 40*, p. 19 (emphasis added).

[74] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 230, para. 452.

[75] H. Thirlway, *The International Court of Justice* (2016), p. 151; see also R. Kolb, *The International Court of Justice* (2013), p. 650.

> « Le résultat du processus interprétatif étant de dégager le sens de la norme, ce sens est censé être celui que la norme possède depuis sa création. Il en découle que l'interprétation a un caractère déclaratif. Ses effets rétroagissent à la date de la création de la norme puisque celle-ci est censée avoir eu le sens fixé dès l'origine. Ses effets sont *ex tunc* et non *ex nunc* comme ce serait le cas s'il s'agissait d'un processus non d'interprétation mais de révision. »[76]

CONCLUSION

19. Mr President, I conclude. Any State that, since the obligation came into being, has acted inconsistently, in the context of climate change, with the obligation of prevention has violated an obligation by which it was bound at the time of the commission of its act.

20. Mr President, Members of the Court, I thank you for your attention.

The PRESIDENT: I thank the representatives of Nauru for their presentation. I now invite the next participating delegation, Nepal, to address the Court and I call upon Her Excellency Ms Arzu Rana Deuba to take the floor.

Ms DEUBA:

1. Mr President, Madam Vice-President, Members of the Court, I have the great honour of addressing this esteemed Court on behalf of the people and Government of Nepal.

2. My presence here along with the members of my team in the proceedings of this Court bears testimony to Nepal's respect for international law, which is one of the key constitutional cornerstones of my country's foreign policy. Moreover, our presence here also underpins the importance that Nepal attaches to the question of climate justice. Thus, Nepal is participating in the proceedings of this august Court for the first time today.

3. Nepal's snow-clad mountains, the glorious Himalayas, serve as a natural climate stabilizer for planet Earth. The Himalayas are in fact the Third Pole and help maintain the health of the oceans. They serve as a heat sink; moreover, the glaciers and the snow-melt feed the rivers, sustaining vegetation, the ecosystem and the lives of the people living downstream. A large percentage of humanity is dependent on these glacier and snow-fed rivers for their very survival.

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[76] J. Salmon, "Le fait dans l'application du droit international" (1982), Vol. 175, *Recueil des cours*, p. 358 (tab 8, Nauru's judges' folder).

4. However, these majestic mountains are being plagued by scanty snowfall and fast-melting permafrost in the recent times. This increasing barrenness is a barometer of the catastrophe we are facing today and the challenges we will be confronting in the future.

5. Despite being a key positive contributor to climate balance, ecosystem maintenance and the protection of biodiversity, Nepal's snow-clad mountains and glaciers increasingly face jeopardies posed by accelerated global warming and the consequent climate change even though our own carbon footprint has been and still is negligible. We are having to bear the brunt of the impacts of climate change in a very disproportionate manner. In fact, we are paying for a bad "karma" we did not create.

6. Climate-induced disasters pose a significant threat to Nepal's development agenda. Not only do these disasters destroy and damage physical infrastructure and homes, they claim lives, uproot societies and hinder the very realization of fundamental human rights of the Nepali people. Due to the geographical circumstances and the relatively low level of development, Nepal is "specially affected by and particularly vulnerable to" the adverse effects of climate change.

7. As the nineteenth preambular paragraph of the UNFCCC clearly states, developing countries with "fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change"[77]. Nepal's vulnerability is further worsened due to the elevation-dependent warming in higher altitudes. This has made the warming in Nepal's mountains even more than the global average.

8. A report by ICIMOD[78] found that the glaciers in the Hindu Kush Himalayan region could lose up to 80 per cent of their current volume of snow by the end of the century if business as usual continues. The decline of ice cover and permafrost will cause more floods, landslides and problems for infrastructure at high elevations.

9. Alluding to Nepal's vulnerability, the Secretary-General of the United Nations, Mr Antonio Guterres, made the following remarks while addressing the Federal Parliament of Nepal in October 2023: "What is happening in this country as a result of climate change is an appalling injustice and a searing indictment of the fossil fuel age."

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[77] United Nations Framework Convention on Climate Change, May 9, 1992, 1771 *UNTS* 107, entered into force Mar. 21, 1994, preamble, para. 19.

[78] International Centre for Integrated Mountain Development (ICIMOD), *Landmark Report on Impacts of Disappearing Snow and Ice in the Hindu Kush Himalaya: Current Emissions Path Threatens Two Billion People and Is Accelerating Species Extinction*, (Dec. 6, 2024), https://www.icimod.org/press-release/landmark-report-on-impacts-of-disappearing-snow-and-ice-in-the-hindu-kush-himalaya-current-emissions-path-threatens-two-billion-people-and-is-accelerating-species-extinction/.

10. It is not just the loss of snow cover or erratic weather patterns that alarm us. What is more concerning is the harsh suffering that climate change has brought to the lives of the people. And this agony is even worse for women, youth and children.

11. Mr President, Members of the Court, the vulnerabilities that I am talking of are not a matter of theoretical speculation or probability. These are sad realities for the Nepali people and their societies — and for those who are victims of changing climate. This year alone, almost 300 citizens of my country have lost their lives due to floods and landslides. To cite just an example — the glacial lake outburst in Thame Village in the Everest region of Nepal on 16 August 2024 swept away 17 houses and one school while displacing 135 households. Allow me to quote the words of Nima Sherpa, a local from the region, who says:

> "Thame was a beautiful village, home to many generations of Sherpa people and their families. These homes now lie buried under debris. It is sad to see how the mountain communities are paying the price of the global climate crisis."

In addition, from 26 to 28 September 2024 we faced a terrible tragedy induced by incessant and unprecedented rainfall which claimed over 250 lives and damaged critical infrastructure.

12. Moreover, these climate-induced disasters this year alone have caused economic losses of more than US$1.3 billion dollars to Nepal. The damage was mostly to infrastructure related to drinking water, road, energy, irrigation and the loss of agricultural produce.

13. Mr President, what countries like Nepal are experiencing is gross injustice. We have been penalized for the mistakes we never made, for the crimes we never committed.

14. However, we have not given up hope or lost faith. We feel adding our voice to the global collective efforts will serve to overcome this existential crisis that humanity currently faces. It is with the hope for climate justice that Nepal attaches great importance to the international processes on climate change. Thus, we have remained fully committed to the global cause of climate action. We are implementing ambitious nationally determined contributions (NDCs) and national adaptation plans (NAPs) under the UNFCCC and the Paris Agreement.

15. It is with a similar hope for climate justice that Nepal co-sponsored resolution 22/276 of the UN General Assembly that requested this august Court for an advisory opinion on the questions presented. It is the first request for an advisory opinion from the General Assembly, which was

adopted by a consensus. This signals the gravity that the international community accords to these questions.

16. Now, I proceed to share Nepal's position on a part of the first question before the Court, particularly the State obligations arising from international human rights law.

17. Climate change hinders the realization and the enjoyment of human rights, including the right to life[79], right to food[80], right to health[81], right to adequate housing, sanitation and water. Moreover, it impacts the rights of women, children and people with disabilities as well as the cultural rights of minorities and indigenous communities[82].

18. The international human rights régime governs, particularly, the relations between States and individuals whereas the international environmental law deals with the relations among States. However, in Nepal's view, many vulnerable States are not able to meet the obligations under international human rights laws, as the actions and emissions arising from beyond their territory also have adverse effects on the specific human rights of their citizens.

19. I would also like to stress that Nepal's views on environmental challenges through a human rights framework have been in place even before such issues gained international recognition, as shown by the *Godawari Marble Quarry* case of 1995[83] where the Supreme Court of Nepal upheld that a clean and healthy environment is part of the right to life.

20. Furthermore, the Constitution of Nepal 2015 guarantees that "every person shall have the right to live in a clean and healthy environment"[84] as a fundamental right. Moreover, the constitutional guarantee of the right to life has been further reinforced by the jurisprudence of the Supreme Court of Nepal[85]. However, to fully realize these obligations, we need material, technical

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[79] Universal Declaration of Human Rights (UDHR), GA res. 217 (III) A, UN doc. A/810, Art. 3 (1948); International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 999 *UNTS* 171, entered into force Mar. 23, 1976, Art. 6.

[80] International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 16, 1966, 993 *UNTS* 3, entered into force Jan. 3, 1976, Art. 11.

[81] UDHR, Art. 25. ICESCR, Art. 12.

[82] ICCPR, Art. 27.

[83] *Surya Prasad Sharma Dhungel* v. *Godavari Marble Industries*, NKP 1995, No. 1, Decision Number 4, para. 30 (1995).

[84] Const. of Nepal, Art. 30 (1).

[85] *Advocate Padam Bahadur Shrestha, et al.* v. *Office of the Prime Minister and Council of Ministers, et al.* NKP 2076 (2019), Volume 3 (Ashadh/June), decision No. 10210. *Advocate Sailendra Prasad Ambedkar, et al.* v. *Government of Nepal, Office of the Prime Minister and Council of Ministers, et al.* NKP (Constitutional Bench) 2079 (2022), Vol. 1

and financial support from the countries whose historic emissions have caused the crisis of anthropogenic climate change. This includes unhindered access to technology and the sharing of meteorological and glacial data.

21. Nepal considers that the Court's advisory opinion will contribute to clarifying the law, especially the obligations of the States regarding climate change and the rules governing the consequences of the violation of these obligations.

22. Mr President and Members of the Court, this concludes my remarks. Thank you for your attention.

23. Now, I would like to request you to please kindly invite Mr Udaya Raj Sapkota, Secretary of the Ministry of Law, Justice and Parliamentary Affairs of Nepal. He will submit Nepal's position on a few other aspects of the first question before the Court.

The PRESIDENT: I thank Her Excellency Arzu Rana Deuba. I now give the floor to Mr Udaya Raj Sapkota. You have the floor, Sir.

Mr SAPKOTA: Thank you, Mr President.

QUESTION 1: ON STATE OBLIGATIONS

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

2. My submission will focus on the first question before this Court.

In answering the first question, the relevant legal framework comprises the international treaties in the field of climate change such as UNFCCC and the Paris Agreement; international treaties regarding human rights and the rules of customary international law — particularly the duty of due diligence, principle of prevention of significant harm to the environment and duty to co-operate and assist.

3. *First*, let me speak on general obligations arising from international law, including customary international law. The general obligation to prevent significant transboundary environmental harm is a well-established rule in international law[86]. This principle has been clarified

(Baisakh/June), decision No. 0069.

[86] *Trail Smelter Arbitration (US* v. *Canada)*, *RIAA*, Vol. 3, 1965 (1941). The judgment in this case stated, "under the principles of international law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein,

by the Court as well, including in the jurisprudence of the *Corfu Channel* case[87] and the Advisory Opinion in *Legality of the Threat or Use of Nuclear Weapons*.

4. This principle of prevention of transboundary harm is based on the concept of due diligence. As this Court has expressed in the *Pulp Mills* case, "the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory"[88]. As the Court has noted in the said case, such due diligence must be conducted by a State using "all the means at its disposal".

5. During the current proceedings, we have heard some States questioning whether this obligation is pertinent to climate change or not. Nepal views that this obligation of *due diligence* applies equally in the context of climate change as well. What makes the preventive principle fundamental is that it transcends specific factual contexts. As has been argued before the Court last week, it cannot be that if isolated sources of transboundary pollution are unlawful, that the most widespread extreme forms, such as GHG emissions, are not.

This should also be understood in the context that the countries responsible for greater amount of emission must take measures to prevent excessive greenhouse gas emissions being emitted from their territory.

6. In this context, Nepal has repeatedly called on the high-emitter and industrialized States for reducing their carbon emission. Developed countries must raise their ambitions and fulfil their commitments urgently.

7. This need for raising ambitions brings me to a *second crucial point* — which is regarding the obligation to make progressive commitments and the principle of common but differentiated responsibility. The treaties on climate change, particularly the UNFCCC and the Paris Agreement, provide for this obligation.

8. Taken as a whole, the Paris Agreement is a legally binding treaty. However, the provisions in this Agreement vary in the extent to which they determine the legally binding obligations of States.

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when the case is of serious consequences and the injury is established by clear and convincing evidence".

[87] *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 4. The Court recognized the obligation of States "not to allow knowingly its territory to be used for acts contrary to the rights of other States" as a "general and well-recognized" principle in development of international law.

[88] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p 55, para. 101.

9. The long-term global temperature goal set by the Agreement is a collective goal. However, this is one of the many modalities spelt out in Article 2 of the Paris Agreement. Nepal submits that other modalities include climate adaptation (Article 2 (1) *(b)*), finance flows (Article 2 (1) *(c)*), technology transfer (Article 7). These obligations are also differentiated as per the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances (CBDRRC-NC).

10. Among these, the CBDRRC-NC principle is an important pillar of the Paris Agreement. While establishing common obligations for all parties, the Paris Agreement imposes additional obligations on developed countries[89].

Further, it has given explicit recognition to the special circumstances of the least developed countries and small island developing States[90]. Nepal is of the view that these considerations must be taken into account by the Court while expounding on obligations.

11. Further, Nepal submits that the following two factors are relevant regarding the application of this principle. First, "share of historical and current global emissions"[91] of the States. And second, the overall assessment of the circumstances, vulnerabilities, constraints and the capabilities of States.

As the latter changes, so should the shared responsibility.

12. Regarding the second point, Nepal stresses also the need to consider specific geographical vulnerabilities of landlocked and mountainous countries, as well as overall economic capabilities and constraints.

Equally important is to give due consideration to the energy mix — as countries like Nepal are dependent or rely on hydropower, which is exposed to uncertain future precipitation, glacial melting and potential risks of landslides and glacial lake outburst floods.

13. Thus, Nepal views that the Court should clarify also the matter of "differentiated obligations", even if the first question asked by the General Assembly simply notes the "obligations of States".

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[89] Paris Agreement, Dec. 12, 2015, *International Law Materials* (ILM), Vol. 54, Arts. 9 (1), 13 (9).

[90] *Ibid.*, Arts. 4 (6), 9 (4), 9 (9), 11 (1) and 13 (3).

[91] United Nations Framework Convention on Climate Change, May 9, 1992, *UNTS,* Vol. 1771, p. 107, entered into force Mar. 21, 1994, preamble, para. 3.

14. Further, the *third aspect* of state obligation that Nepal would like to stress is the "duty of assistance". Developed country parties have an obligation under Article 9 (1) of the Paris Agreement to provide financial resources for assisting developing countries in both mitigation and adaptation.

15. It is also pertinent to recall that this Article on climate finance uses the imperative "shall" — indicating a "legally binding commitment".

Nepal views that under this duty of assistance, developed States have an obligation to support the neediest among the developing countries — the least developed, the small islands and the mountainous countries.

16. Mr President and the Members of the Court, this concludes my remarks. Thank you for your kind attention.

17. Now, I request you to call Mr Suvanga Parajuli, Under-Secretary at the Ministry of Foreign Affairs of Nepal, who will submit Nepal's position on the second question before the Court. Thank you.

The PRESIDENT: I thank Mr Udaya Raj Sapkota. I now give the floor to Mr Suvanga Parajuli. You have the floor, Sir.

Mr PARAJULI:

QUESTION 2: LEGAL CONSEQUENCES

1. Mr President, Madam Vice-President, Members of the Court, I have the honour to continue the submission on behalf of Nepal. I would also like to take this opportunity to express our gratitude to the youth from all over the world who were critical movers behind these proceedings.

2. With your permission, I now proceed to share Nepal's position on the second question regarding the legal consequences of the obligations.

For brevity, my focus would be on the first part of the second question — the consequences with respect to the States injured or specially affected.

3. Some States have characterized climate crisis as nothing more than a shared tragedy, where no specific responsibility can be assigned. This perspective persists despite clear scientific evidence identifying which countries have historically contributed the most to greenhouse gas emissions,

documented proof of what those countries knew about the consequences of their actions and when, and the undeniable harm climate change has caused, is causing and will continue to cause.

This harm affects individuals, communities, States and their environments. To suggest that no international wrongs have occurred that would create an obligation to address these harms is, with all due respect, an untenable position.

4. In Nepal's view, for answering the second question before this Court, the customary international law on the responsibility of States is the relevant legal framework. In this regard, the law is generally reflected in the ILC's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001.

5. As per the ILC Articles, every internationally wrongful act by a State leads to the responsibility of that State[92]. Further, two requirements must be met in order to constitute an internationally wrongful act[93]. First, the conduct must be attributable to the State. Second, the conduct in question must constitute a breach of an international legal obligation.

6. Given the diffused nature of climate change, Nepal considers that the question of *attribution* should look into the legal responsibilities of developed countries that have historically contributed to emissions. This is an example of the composite breach as reflected in Article 15 of the ILC's draft.

7. Once the breach of obligation is determined, customary international law suggests the remedies which include cessation of the wrongful act[94] and full reparation[95]. Any State responsible for a breach of an international legal obligation is under an obligation to cease such conduct.

8. Further, reparation may take any of the three forms, namely restitution, compensation and satisfaction[96]. In this context, my focus here is on the issue of compensation.

9. This Court had established in the *Costa Rica* v. *Nicaragua* case that the "damage to the environment, and the consequent impairment or loss of the ability of the environment to provide

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[92] Responsibility of States for internationally wrongful acts, UNGA res. 56/83, Annex, UN doc. A/RES/56/83 (Dec. 12, 2001), Art. 1.

[93] *Ibid.*, Art. 2.

[94] *Ibid.*, Art. 30.

[95] *Ibid.*, Art. 31.

[96] *Ibid.*, Arts. 35, 36 and 37.

goods and services, is compensable under international law"[97]. But in the same case, this Court said that "*the specific circumstances and characteristics of each case*"[98] remain crucial to assess the compensation.

10. Given the composite nature of State responsibility in climate change, the developed countries have a collective duty to compensate for the harm caused by their historic emissions.

11. Nepal is also of the view that this Court should look at the operationalization of the Fund for responding to the loss and damage mechanism[99] through these lenses of compensating the internationally wrongful act.

The States responsible have an obligation to compensate for any financially assessed damage caused by their internationally wrongful act. And in the case of climate change, such obligation must be borne by a collective of industrialized States based on the *polluters pay* principle.

What countries like Nepal are calling for is not mere handouts or charity, but compensatory climate justice.

12. Before I conclude, let me reiterate that the heaviest burdens of climate change are on the shoulders of countries like Nepal which have historically contributed the least to climate change and have the least capacity for implementing adaptation measures.

To repeat the words the honourable Foreign Minister spelt earlier — what we are facing is a gross injustice. We have been penalized for the mistakes we never made. The Court needs to take these realities into account while rendering its advisory opinion.

13. Given the urgency regarding climate change and the consequences it has on vulnerable States and the generations to come, all States must live up to their obligation in fulfilling and scaling up their commitments. This Court's guidance will be crucial in this regard. Thank you for your kind attention.

The PRESIDENT: I thank the representatives of Nepal for their presentation. I now invite the delegation of New Zealand to address the Court and I call upon Ms Victoria Hallum to take the floor.

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[97] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 28, para. 42.

[98] *Ibid.*, p. 31, para. 52.

[99] UN Framework Convention on Climate Change, *Loss and Damage Fund Joint Interim Secretariat*, https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat.

Ms HALLUM:

INTRODUCTION

1. Mr President, Madame Vice-President, distinguished Members of the Court, it is an honour to appear before you today on behalf of New Zealand.

2. New Zealand acknowledges the leadership of Pacific Island countries and communities, especially Vanuatu, in driving the landmark initiative to request this advisory opinion from the Court. New Zealand was proud to be part of the core group of States supporting this initiative through the United Nations General Assembly process.

3. The United Nations General Assembly has, by an unprecedented consensus, asked the Court two legal questions. These questions are of the greatest importance. It is well established that anthropogenic climate change poses a direct and immediate threat to global security and prosperity. The Sixth Assessment Report of the Intergovernmental Panel on Climate Change confirms that the choices and actions implemented in this decade will have impacts now and for thousands of years[100].

4. As evidenced in the written statements and comments received by the Court, no part of the globe is immune from the adverse impacts of anthropogenic climate change. And the Pacific region in which New Zealand sits is on the front line of climate impacts. The Pacific Islands Forum, of which New Zealand is a member, has recognized climate change as the single greatest threat to the livelihoods, security and well-being of the people of the Pacific[101]. Pacific Islands Forum leaders share a commitment to the need for urgent, immediate and appropriate action to combat the threat and impacts of climate change[102].

5. Pacific countries composed of small atolls are particularly vulnerable to the adverse effects of climate change. The island nation of Tokelau, which is of special significance to New Zealand because of our constitutional and historical ties, and whose people are New Zealand citizens, is one of those countries particularly impacted. Tokelau is halfway between Hawaii and New Zealand, and is comprised of three small coral atolls generally less than three metres above high tide.

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[100] IPCC, 2023: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023) at C.1.

[101] *Boe Declaration on Regional Security*, Pacific Islands Forum (2018).

[102] *2050 Strategy for a Blue Pacific Continent*, Pacific Islands Forum Secretariat (2022).

6. As evidenced in Chapter 15 of the IPCC's Working Group 2 Report,

> "Climate change has already affected and will increasingly affect biodiversity, nature's benefits for people, settlements, infrastructure, livelihoods and economies on small islands. In the absence of ambitious human intervention to reduce emissions, climate change impacts are likely to make some small islands uninhabitable in the second part of the 21st century."[103]

In the course of last week, we heard submissions from Pacific nations highlighting the significant impacts on the lives, livelihoods, cultures, traditions and economies of their people. In the context of describing the devastating effects of tropical cyclone Winston in 2016, Fiji stated: "these climate shocks cascade into broader challenges: food and water insecurity, biodiversity loss, health crises, and more importantly forced displacement".

7. Against this context it should come as no surprise that the 18 members of the Pacific Islands Forum have taken a leading role in clarifying how international law rules on maritime zones and statehood apply with respect to climate change-related sea level rise. The Pacific Islands Forum position is that our maritime zones, once properly delineated in accordance with the United Nations Convention on the Law of the Sea ("UNCLOS")[104], and our statehood are maintained regardless of sea level rise, as clearly articulated in the two Pacific Islands Forum leader statements. Namely the 2021 Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise and the 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise.

8. Mr President, the advisory jurisdiction of this Court and other international tribunals is increasingly being called on to assist States in addressing this most critical legal issue. In May this year, at the request of the Commission of Small Island States on Climate Change and International Law, the International Tribunal for the Law of the Sea ("ITLOS") issued an advisory opinion on the obligations of States parties under Part XII of UNCLOS to protect the marine environment from climate change-related harm ("the ITLOS Climate Change Advisory Opinion")[105]. The

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[103] IPCC, 2022: *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Chapter 15, FAQ 5.1.

[104] *United Nations Convention on the Law of the Sea*, 1833 *UNTS* (opened for signature 10 December 1982, entered into force 16 November 1992).

[105] *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 ("the ITLOS Climate Change Advisory Opinion").

Inter-American Court of Human Rights is also due to issue an advisory opinion, in response to a request from Chile and Colombia, on contracting States' obligations relating to climate change under the American Convention on Human Rights.

9. This Court's jurisdiction to provide its opinion in this case comes from United Nations General Assembly resolution 77/276, adopted by consensus by all 193 United Nations Member States on 29 March 2023. The unanimity of the Request is unprecedented, as is the number of detailed written submissions on the questions posed. Both are a testament to the high regard in which States hold this Court, as well as the authority of the Court's advisory opinions.

10. In the context of an issue as consequential to the community of nations as climate change, it is appropriate that the principal organs of the United Nations should "talk to one other". This should be done in a way that respects and mutually reinforces their respective roles, acknowledging the role of the General Assembly as the main political and policy-making organ of the United Nations and this Court's role as the United Nations' principal judicial organ.

11. Advisory opinions represent one of the most important contributions that this Court can make to the international legal system. They can be particularly valuable with respect to complex issues, like this one, that affect the international community at large and touch on a range of sources of international law. Through its opinion, the Court has the opportunity to promote coherence across international law, facilitating systemic integration and helping avoid norm conflict or fragmentation. A coherent opinion from the Court should complement the international co-operation framework by interpreting and clarifying the applicable international legal norms — promoting a shared understanding of these, with a view to driving collective, co-operative action on climate change.

12. Mr President, distinguished Members of the Court, in our written submissions on part *(a)* of the question, we have identified the key international law obligations relevant to the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases. We have centred our analysis on the climate change treaty régime established under the UNFCCC and Paris Agreement but have also identified other treaties relevant to the question, and discussed certain rules of customary international law. In our written submissions on part *(b)* of the question, we have identified relevant rules of State responsibility that could, in principle, apply to determine the consequences for those States where, by their internationally wrongful acts or

omissions, they cause significant harm to the climate system and other parts of the environment. But we have also identified the non-contentious mechanisms of support, accountability and dispute settlement available under the climate change treaty régime.

13. In these oral submissions, we do not repeat the detail of our written statement and comments. Instead, we focus on four key themes that should, in New Zealand's view, underpin the Court's consideration of the questions put to it:

(a) First, we emphasize the centrality of the climate change treaty régime;

(b) Second, we address the principle of systemic integration;

(c) Third, we discuss the duty to co-operate; and

(d) Finally, we highlight the essentially co-operative model for support, accountability and dispute resolution under the climate change treaty régime.

PART 1: THE CENTRALITY OF THE CLIMATE CHANGE TREATY RÉGIME

14. Mr President, distinguished Members of the Court, the climate change treaty régime established under the 1992 UNFCCC and the 2015 Paris Agreement is the key multilateral framework which defines the nature and scope of the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases. It reflects 30 years of near-continuous negotiation and implementation by States on the most effective, equitable and achievable way to meet the challenge of climate change. It benefits from the authority of State consent, and near-universal ratification. It contains an interweaving matrix of obligations and commitments relating to the mitigation of, and adaptation to, climate change, and to means of implementation and support (including finance, technology development and transfer, and capacity-building). The régime is a "package deal" from which no reservations are permitted[106] because no individual part of the package can be severed from the whole without unbalancing the bargain reached, or undercutting the collective pursuit of the core aim of the régime, namely to hold the increase in the global average temperature to well below 2°C

[106] UNFCCC, Art. 24; Paris Agreement, Art. 27.

above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels[107].

15. Mr President, the climate change treaty régime is driving real progress in the fight against climate change. In 2022, in line with their commitments under the Paris Agreement, developed countries provided and mobilized a total of US$115.9 billion in climate finance to support developing countries with their mitigation and adaptation efforts[108]. According to the first global stocktake, States' nationally determined contributions under the Paris Agreement have reduced anticipated global temperature increase from 4°C to between 2.1 and 2.8°C[109].

16. More work, of course, is needed. New Zealand acknowledges that States still have much work to do to achieve the temperature goal in Article 2 of the Paris Agreement. The climate change treaty régime is, however, the legal framework that is specifically designed to respond to the global challenges posed by climate change and is the only framework capable of driving the action needed to meet that goal through the good-faith co-operation of States parties. As a result, the climate change treaty régime should be at the centre of the Court's analysis in this advisory opinion.

PART 2: THE PRINCIPLE OF SYSTEMIC INTEGRATION

17. With that in mind, we turn now to the second of our four themes, namely the principle of systemic integration. In New Zealand's view, the concept of *lex specialis* is unhelpful to the Court when answering part *(a)* of the question posed. Instead, the principle of systemic integration should guide the Court's opinion to promote a coherent, joined-up approach to the range of overlapping treaty and customary norms applicable, avoiding norm conflict where possible.

18. The principle of systemic integration is embodied in Article 31 (3) *(c)* of the Vienna Convention on the Law of Treaties ("VCLT"). Article 31 provides the general rule of treaty interpretation. To begin, a treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and

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[107] Paris Agreement, Art. 2.

[108] OECD (2024), *Climate Finance Provided and Mobilised by Developed Countries in 2013-2022*, Climate Finance and the USD 100 Billion Goal, OECD Publishing, Paris.

[109] UNFCCC, Technical dialogue of the first global stocktake — Synthesis report by the co-facilitators on the technical dialogue (2023), FCCC/SB/2023/9.

purpose"[110]. Context comprises, in addition to the text with its preamble and annexes, supplementary agreements "relating to the treaty" or made in connection with the conclusion of the treaty[111]. Article 31 (3) then provides:

> "There shall be taken into account, together with the context:
>
> *(a)* Any subsequent agreements between the parties regarding the interpretation of the treaty or the application of its provisions;
>
> *(b)* Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
>
> *(c)* Any relevant rules of international law applicable in the relations between the parties."

19. In its 2006 report on *Fragmentation of International Law*[112], the International Law Commission Study Group identified Article 31 (3) *(c)* as a practical method for avoiding fragmentation of international law into increasingly specialized silos[113], with a resulting loss of coherence in international law as a whole. Article 31 (3) *(c)* requires a treaty to be "interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation"[114] and thus gives life to the principle of systemic integration. As Judges Higgins, Buergenthal and Kooijmans said in the *Arrest Warrant* case, that approach seeks the accommodation of co-existing obligations "and not the triumph of one norm over [an]other"[115].

20. In its *Climate Change* Advisory Opinion, ITLOS relied on Article 31 (3) *(c)* when construing relevant obligations under UNCLOS, noting:

> "The Tribunal is of the view that, subject to article 293 of the Convention, the provisions of the Convention and external rules should, to the extent possible, be interpreted consistently. In this context, the Tribunal notes that the Study Group of the International Law Commission . . . in its 2006 Report on the Fragmentation of International Law, concluded that '[i]t is a generally accepted principle that when

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[110] Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980), *UNTS*, Vol. 1155, p. 340, Art. 31 (1).

[111] *Ibid.*, Art. 31 (2).

[112] International Law Commission (Martti Koskenniemi, Study Group Chair), *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission*, UN doc. A/CN.4/L.682 and Add.1, 13 April 2006.

[113] Described by the Study Group as "the emergence of specialized and (relatively) autonomous rules or rule complexes, legal institutions and spheres of legal practice", *ibid.*, para. 8.

[114] *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. 31, para. 53.

[115] *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, joint separate opinion, p. 87, para. 79; also in *ILM*, 2002, Vol. 41, p. 590.

several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations'".

21. New Zealand urges the Court in these proceedings to adopt a similar approach. While the climate change treaty régime is the principal source of States' legal obligations on the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, other treaties (including, at least, the Montreal Protocol[116] and its Kigali Amendment[117], MARPOL[118] together with its Annex VI Protocol[119], the Chicago Convention[120] and UNCLOS) and rules of customary international law (including at least the duty to co-operate and the precautionary approach, both of which are embedded in the climate change treaty régime) are also relevant to that question. In New Zealand's view, these obligations are mutually supportive and the Court should find that they give rise to a single set of compatible, rather than conflicting or inconsistent, obligations.

22. Related, in order to promote coherence of the international legal system, New Zealand encourages the Court to give due regard to the ITLOS Climate Change Advisory Opinion, acknowledging ITLOS's particular role as the specialist tribunal created by UNCLOS, and its competence to interpret and apply the Convention.

PART 3: THE DUTY TO CO-OPERATE

23. Mr President, distinguished Members of the Court, the third theme we address is the duty to co-operate. The duty pervades international law. As reflected in the Friendly Relations Declaration, States have a duty to co-operate with one another, in accordance with the United Nations Charter, in the maintenance of international peace and security, and in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all[121]. The duty to co-operate in

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[116] *Montreal Protocol on Substances that Deplete the Ozone Layer* (opened for signature on 16 September 1987, entered into force on 1 January 1989), 1522 *UNTS* 3.

[117] *Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer* (opened for signature on 16 September 1987, entered into force on 1 January 2019), 3287 *UNTS*.

[118] *International Convention for the Prevention of Pollution from Ships and its Protocol* (opened for signature on 17 February 1978, entered into force on 2 October 1983), 1340 *UNTS* 61.

[119] *Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto* (opened for signature on 26 September 1997, entered into force on 19 May 2005).

[120] *Convention on International Civil Aviation* (adopted on 7 December 1944, entered into force on 4 April 1947), 15 *UNTS* 295.

[121] UNGA Resolution 2625 (XXV). *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.*

relation to environmental matters was recognized in Principle 24 of the Stockholm Declaration[122], and repeated in Principles 7 and 27 of the Rio Declaration[123]. Amongst other treaties, it is embedded in UNCLOS, in the Convention on Biological Diversity[124] and the Fish Stocks Agreement[125]. ITLOS has described the duty to co-operate as "a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law"[126]. This Court has also recognized the existence of a duty to co-operate, particularly in the context of transboundary or shared resources[127]. In her separate opinion in the *Whaling in the Antarctic* case, Judge Charlesworth said[128]:

> "The concept of a duty of co-operation is the foundation of legal régimes dealing *(inter alia)* with shared resources and with the environment. It derives from the principle that the conservation and management of shared resources and the environment must be based on shared interests, rather than the interests of one party."

24. In agreement with many of the written statements and comments filed in these proceedings, New Zealand considers that the duty to co-operate is a foundational duty in the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases. The duty is one of conduct, rather than result, but requires States to act in good faith and with "due diligence" to that end[129].

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[122] *Declaration of the United Nations Conference on the Human Environment: In Report of the United Nations Conference on the Human Environment*, UN doc. A/CONF. 48/14, at 2 and Corr. 1 (1972).

[123] *Rio Declaration on Environment and Development*, in the Report of the United Nations Conference on Environment and Development UN doc. A/CONF.151/26.

[124] *Convention on Biological Diversity* (opened for signature 5 June 1992, entered into force on 29 December 1993), 1760 *UNTS* 79.

[125] *Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks* (opened for signature on 4 December 1995, entered into force on 11 December 2001), 2167 *UNTS* 3.

[126] *MOX Plant (Ireland* v. *United Kingdom)*, Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95, at p. 110, para. 82. See also *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. 10, at p. 25, para. 92; *Request for Advisory Opinion Submitted by the Sub-Regional Fisheries Commission*, Advisory Opinion, 2 April 2005, ITLOS Reports 2015, p. 4, at p. 43, para. 140.

[127] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 14, para. 77; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 665, para. 106.

[128] *Whaling in the Antarctic (Australia* v. *Japan: New Zealand Intervening), Judgment, I.C.J. Reports 2014*, separate opinion of Judge Charlesworth, p. 457, para. 13.

[129] See, for example, ITLOS Climate Change Advisory Opinion, *supra* n.107 at [296] and [309]; *MOX Plant (Ireland* v. *United Kingdom)* (Provisional Measures) [2001] ITLOS Rep 95 at [82].

25. The duty to co-operate in the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases arises as a matter of both treaty and customary international law. In the performance of that duty, States have agreed the climate change treaty régime.

26. Mr President, in its Climate Change Advisory Opinion, ITLOS noted that the UNFCCC and the Paris Agreement

> "contemplate and variously give substance to the duty to cooperate on the assumption, as indicated in the preamble of the UNFCCC, that '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'"[130].

ITLOS rightly noted, however, that the mere adoption of the UNFCCC and the Paris Agreement did not discharge States from their obligation to co-operate, as the obligation requires an ongoing effort on the part of States in the development of new or revised regulatory instruments, particularly in light of the evolution of scientific knowledge[131].

27. That is why the climate change treaty régime establishes architecture for ongoing co-operation. And that architecture includes the annual heartbeat of the Conferences of the Parties to the UNFCCC and the meetings of the Parties to the Paris Agreement and the five-yearly ambition cycle for NDCs. It also includes meetings of subsidiary bodies, and the operation of mechanisms to support ongoing co-operation in mitigation[132], adaptation[133], loss and damage[134], finance[135], technology development and transfer[136], and capacity-building[137].

28. Thus, the institutional architecture of the climate change treaty régime allows States, in the ongoing performance of their duty to co-operate, continuously to update their commitments, and develop more detailed rules for the implementation of their obligations, which take account of

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[130] ITLOS Climate Change Advisory Opinion, *supra* n.107, at [298].

[131] *Ibid.*, at [311].

[132] Including the Paris Agreement crediting mechanism and the Article 6 (4) Supervisory Body.

[133] Including the Least Developed Countries Expert Group, the Nairobi Work Programme, the Cancun Adaptation Framework, the Adaptation Committee, and the Glasgow-Sharm-el-Sheikh work programme on the global goal.

[134] Including the Warsaw International Mechanism, the Santiago Network and the Loss and Damage Fund.

[135] Including the Financial Mechanism, Global Environment Facility, Green Climate Fund, Special Climate Change Fund, Least Developed Countries Fund, Adaptation Fund and the Standing Committee on Finance.

[136] Including the Technology Mechanism.

[137] Including the Committee on Capacity Building.

emerging scientific knowledge and the tracking of collective performance against targets through the global stocktake. In this way, the signing of the Paris Agreement did not reflect the endpoint of negotiation and the ossification of an international legal framework; it reflected a starting-point for ongoing co-operation.

PART 4: THE CO-OPERATIVE MODEL OF SUPPORT, ACCOUNTABILITY AND DISPUTE RESOLUTION UNDER THE CLIMATE CHANGE TREATY RÉGIME

29. In that context, we now turn to the final theme of these submissions, namely the essentially co-operative model of support, accountability and dispute resolution under the climate change treaty régime.

30. In relation to part *(b)* of the question, New Zealand acknowledges that the law of State responsibility applies in principle to internationally wrongful acts that cause significant harm to the environment of other States. However, as discussed in our written comments, the application of the ordinary rules of State responsibility to the climate change context is uncertain and characterized by complex unresolved legal and factual issues flowing from the nature of climate change, including those relating to causation and attribution. In New Zealand's view, that complexity and uncertainty is not suitable for resolution in the context of an advisory opinion, which by its nature does not address questions of law in the context of specific factual circumstances.

31. That said, New Zealand acknowledges that the adverse effects of climate change are already being experienced across the globe, in particular by small island developing States, and acknowledges that present and future generations will continue to be affected by the impacts of climate change, irrespective of States' collective efforts to date in accordance with international law. Accordingly, New Zealand invites the Court to take note of the co-operative model of support, accountability and dispute resolution under the climate change treaty régime.

32. Mechanisms exist under both the UNFCCC and the Paris Agreement to assist vulnerable countries in averting, minimizing and responding to loss and damage. Those mechanisms include the Warsaw International Mechanism for Loss and Damage[138], the Santiago Network[139] and the Loss and

[138] Established by Decision 2/CP.19.

[139] Established by Decision 1/CP.21.

Damage Fund[140]. That is, through the climate change treaty régime, States have agreed to provide support to countries injured, or specially affected by, or particularly vulnerable to, the adverse effects of climate change, irrespective of the existence or non-existence of a duty to do so under the law of State responsibility.

33. In a similar way, States have agreed through the climate change treaty régime to an essentially co-operative, non-contentious model of accountability and dispute resolution. States are held to their obligations and commitments through a combination of the global stocktake[141], the enhanced transparency framework[142], facilitative, multilateral consideration of progress[143], and through the Paris Agreement Implementation and Compliance Committee[144]. These mechanisms are to be applied in a facilitative, non-intrusive, non-adversarial, and non-punitive manner, respectful of national sovereignty[145]. Where disputes arise, the default method of dispute resolution is conciliation rather than binding determination[146]. That is all consistent with the collaborative nature of a climate change treaty régime based on the principles of co-operation and equity.

CONCLUSION

34. In conclusion, Mr President, distinguished Members of the Court, climate change is an issue that is unprecedented in human history for the complexity and scale of the response that it demands. It is an issue that cannot be addressed except by effective co-operation, and on the basis of a careful balancing of principles, interests and capacities.

35. Through this advisory opinion, the Court has a historic opportunity to bring clarity and coherence to international climate change law. In doing so, the Court can be of great assistance, both to States in implementing their obligations and taking action under their Paris Agreement commitments, as well as to the mechanisms operating under the Paris Agreement such as the Implementation and Compliance Committee.

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[140] Established by Decision 1/CP28, Decision 5/CMA.5.

[141] Paris Agreement, Arts. 4 (9) and 14; and see Decision 1/CMA.5.

[142] Paris Agreement, Art. 3; and see Decisions 1 and 5/CMA.3.

[143] Paris Agreement, Art. 13 (11).

[144] Paris Agreement, Art. 15; and see Decision 1/CP.21, paras. 102-103, and Decision 20/CMA.1.

[145] See, for example, Paris Agreement, Arts. 13 (3) and 15 (2).

[146] UNFCCC, Art. 14, and Paris Agreement, Art. 24.

36. Thank you, Mr President, Madam Vice-President, honourable Members of the Court. That concludes New Zealand's submission.

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

The Court adjourned from 4.25 p.m. to 4.40 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, the State of Palestine, to address the Court and I call His Excellency Ammar Hijazi to the podium.

Mr HIJAZI:

I. OPENING STATEMENT

1. Mr President, Members of the Court, it is an honour and great responsibility to appear before you today on behalf of the people and State of Palestine in these historic proceedings.

2. The State of Palestine actively participated and proudly co-sponsored General Assembly's resolution 77/276 requesting the Court's advisory opinion. Palestine firmly believes that international law must take centre stage in protecting humanity from the dangerous path of human-made destruction resulting from climate change. Palestine also believes that this issue affects fundamental rights enshrined in international law, including the inalienable right of peoples to self-determination and the permanent sovereignty of people over their natural resources. Palestine is well positioned to offer insight into this important dimension of these proceedings.

3. Palestine cannot stress enough the importance of the multilateral system for co-operation on climate change including under the UNFCCC and Paris Agreement. This is a system that was founded on equity and the principle of common but differentiated responsibilities and respective capabilities, to reflect the essential fact that all countries have different national circumstances as a result of history, economics, culture and geography, as well as environmental conditions.

4. The State of Palestine will demonstrate that obligations of States, in respect to climate change and legal consequences, intersect with different areas of international law, including the laws of armed conflict. The State of Palestine believes that it can best assist by focusing on a particular issue that, despite its great importance, has not yet been adequately addressed: the responsibility of States for the impacts on climate caused by armed conflict and other military activities, including in situations of occupation. This is an important issue that the State of Palestine, as the Court will appreciate, is particularly well positioned to address.

5. In 1992, the General Assembly endorsed the Rio Declaration, marking its 27 principles as the cornerstone of international environmental law. It called attention specifically to the relationship between environmental protection and the principles of international law applicable in armed conflict. The relationship was recognized by the Court in its Advisory Opinion on the threat or use of nuclear weapons. In that ruling, the International Court of Justice reaffirmed Principle 24 of the Rio Declaration and concluded that "important environmental factors . . . are properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict"[147].

6. In its Sixth Assessment Report, the IPCC warns "with high certainty" that, even if the current pledges by parties under the Paris Agreement nationally determined contributions are fulfilled, global warming will still exceed *1.5°C above pre-industrial levels after 2030*[148]. As ominous as this conclusion is, it understates the problem. In most cases, States do not report the greenhouse gas emissions from armed conflicts or other military activities or include them in their total emissions[149]. According to climate scientists, this results in a significant undercount of the overall emission of

[147] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 30 and 33.

[148] Special Report: Global Warming of 1.5 ºC, IPCC, 2019, available at https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf.

[149] See Tavares Da Costa, R., Krausmann, E. and Hadjisavvas, C., Navigating Climate Change in Defence — Climate Risk Management Guide for Chiefs of Defence Staff, Publications Office of the European Union, Luxembourg, 2024, doi:10.2760/831469, JRC135952. See also: *Broken Record: Temperatures hit new highs, yet world fails to cut emissions (again)*, UNEP, 2023, available at https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y.

GHGs to the environment, and thus understates the magnitude of the problem, and the responsibilities of States to contain global warming[150].

7. The IPCC's Sixth Assessment Report also warns that "[v]ulnerable communities who have historically contributed the least to current climate change are disproportionately affected"[151]. Many of the most adversely affected States produce no significant greenhouse gas emissions. They are victims of climate change while bearing little or no responsibility for it. The State of Palestine is among those States. We are responsible for less than 0.001 per cent of global greenhouse gas emissions. Yet, Palestine now grapples with unprecedented severe climate events, mainly due to Israel's illegal occupation, including the violation of the Palestinian people's inalienable right to control its territory, to have sovereignty over its resources and to be in command of its climate policies[152].

8. Israel's illegal occupation also curtails the State of Palestine's ability to support an effective international climate policy. As a party to the UNFCCC and the Paris Agreement, the State of Palestine is taking action to reduce 17.5 per cent of its greenhouse gas emissions by 2040 under the current status quo, when our goal could be 26.6 per cent if Israel's illegal occupation of our territory ends.

9. There can be no doubt that the ongoing illegal Israeli belligerent occupation of Palestine and its discriminatory policies have clear negative climate effects. The scientific evidence confirms this. The death, the destruction caused by Israel's genocidal assault on the Gaza Strip over the past 14 months, and the systematic pillaging of Palestinian land and resources, as well as the relentless destructive attacks in the occupied West Bank, including East Jerusalem, have been well documented by the United Nations, and in other proceedings before the Court. What has not been taken into

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[150] *Decarbonize the military — mandate emissions reporting,* Nature, Vol. 611, Rajaeifar, M., et al., 3 November 2022; see also: *Estimating the Military's Global Greenhouse Gas Emissions,* Scientists for Global Responsibility and Conflict and Environment Observatory, Parkinson, S. and Cottrell, L., 2022, available at https://ceobs.org/wp-content/uploads/2022/11/SGR-CEOBS_Estimating_Global_MIlitary_GHG_Emissions.pdf; see also: *Tipping Point North South, Conflict and Environmental Observatory, Scientists for Global Responsibility, Costs of War, Transform Defence, Concrete Impacts*, WILPF, ZOi, Norwegian People's Aid, *Submission to the UNFCCC global stocktake: Military and conflict emissions,* April 2023, available at https://unfccc.int/documents/627636.

[151] IPCC, 2023, Climate Change 2023 Synthesis Report, Section 2. available at https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf.

[152] The State of Palestine's First Nationally Determined Contributions (NDCs), "Updated Submission*",* October 2021, p. 9, available at: https://unfccc.int/sites/default/files/NDC/2022-06/Updated%20NDC_%20State%20of%20Palestine_2021_FINAL.pdf.

account, though, are the impacts of these military activities on climate, affecting Palestine directly and affecting the world at large.

10. Even where there is no armed conflict, military exercises, transport, construction and weapons production and testing regularly take place in Palestine and around the world generating greenhouse gas and vastly contributing to climate change. These, too, are largely unaccounted for, and are therefore not considered when States commit to greenhouse gas reductions.

11. The problem is thus widespread, and it affects all of us, most specially people suffering from the indignities of armed conflict, including foreign occupation. The State of Palestine respectfully submits that this is an issue that the Court should not miss the opportunity to address in the historic opinion it will issue at the conclusion of these advisory proceedings. This will fulfil the promise not to leave anyone behind and ensure that law applies to all.

12. With these introductory remarks, allow me to introduce our experts: Professor Kate Mackintosh and Professor Nilüfer Oral, who will be concluding Palestine's oral presentation.

13. Mr President, Members of the Court, I thank you for your courtesy in allowing me to address you on behalf of the State of Palestine and I ask you to call Professor Kate Mackintosh to the podium.

The PRESIDENT: I thank His Excellency Ammar Hijazi. I now give the floor to Professor Kate Mackintosh. Professor, you have the floor.

Ms MACKINTOSH:

II. FACTUAL STATEMENT ON THE IMPACTS OF ARMED CONFLICT AND OTHER MILITARY ACTIVITIES, INCLUDING OCCUPATION, ON CLIMATE

1. Mr President, Members of the Court, it is an honour to address you today on behalf of the State of Palestine. As you prepare to delineate the legal obligations of States to protect the climate system, we urge you — as you just heard from the Ambassador — to take the impacts of armed conflict and other military activities, including occupation, into account. Sadly, the State of Palestine provides a current and concrete example of how these activities translate into dangerous increases in anthropogenic greenhouse gas emissions that affect not only Palestine, but the whole world.

2. Climate scientists have determined that the ongoing war in the Gaza Strip was responsible for emission of between 420,000 and 650,000 tonnes of carbon dioxide and other greenhouse gases in just the first 120 days, which is the period for which there is published data[153]. This is equivalent to the total *annual* emissions of 26 of the lowest-emitting States. One of the principal contributors is the jet fuel combusted by fighter planes, as well as by the delivery of arms and munitions. Fuel burned by Israeli fighter jets on bombing missions during this four-month period is estimated to have produced over 157,000 tonnes of CO_2 equivalent, while emissions from transport flights carrying military equipment from the United States to Israel is estimated at 159,000 tonnes[154]. Missile production and launch, as well as fires ignited by missile strikes, also emit significant amounts of greenhouse gases, and in Gaza the tonnage of missiles dropped in just six months surpassed the World War II bombing of Dresden, Hamburg and London combined[155]. None of these emissions — which reflect only the first four to six months of a conflict that has already lasted fourteen — figure in the national inventories of any States parties to the UNFCCC[156].

3. And these numbers represent only a fraction of the total conflict-related greenhouse gas emissions into the atmosphere. Post-war reconstruction following other armed conflicts has been found to produce exponentially more emissions than the conduct of hostilities[157]. Once this is factored into the current Gaza conflict, estimates of the total emissions produced rise to over 52 million tonnes of CO_2 equivalent, which is higher than the annual emissions of 126 States and territories[158].

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[153] Otu-Larbi F. et al., June 2024, *A Multitemporal Snapshot of Greenhouse Gas Emissions from the Israel-Gaza Conflict,* pp. 11-12, available at https://ssrn.com/abstract=4855947.

[154] *Ibid.*, p. 11.

[155] WeWorld, October 2024, *One Year of War on Gaza: WeWorld Response*, available at https://reliefweb.int/report/occupied-palestinian-territory/weworld-flash-update-24-one-year-war-gaza-weworld-response-october-11th-2024.

[156] Otu-Larbi F. et al., June 2024, *A Multitemporal Snapshot of Greenhouse Gas Emissions from the Israel-Gaza Conflict*, p. 9, available at https://ssrn.com/abstract=4855947.

[157] Darbyshire, E. and D. Weir, 14 June 2021, *How does war contribute to climate change?* Conflict and Environment Observatory (CEOBS), available at https://ceobs.org/how-does-war-contribute-to-climate-change/; see also Neimark B., 12 Dec. 2023, *How to assess the carbon footprint of a war*, The Conversation, available at https://theconversation.
com/how-to-assess-the-carbon-footprint-of-a-war-215575.

[158] Otu-Larbi F. et al., June 2024, *A Multitemporal Snapshot of Greenhouse Gas Emissions from the Israel-Gaza Conflict,* pp. 19-20, available at https://ssrn.com/abstract=4855947. See also Abdelnour, S. and N. Roy, September 2024, *Estimating Carbon Emissions from Processing Building Debris in Gaza*, available at https://www.researchgate.net/publication/383876523_Estimating_Carbon_Emissions_from_Processing_Building_Debris_in_Gaza.

4. Mr President, the devastating consequences of war on ecosystems and biodiversity also threaten the climate system. It is well established that the climate, ecosystems and biodiversity are interrelated, and that ecosystem damage and biodiversity loss exacerbate the climate crisis, in particular via the destruction and degradation of carbon sinks[159]. This is a consistent theme of the IPCC assessment reports, which emphasize the important role of "forests, agricultural lands and rangelands . . . in reducing current emissions of [greenhouse gases], and enhancing carbon sinks"[160], and point to protecting ecosystems for carbon storage and other ecosystem services as an important mitigation strategy[161].

5. As of July 2024, a staggering 60 per cent of Gaza's farmland, an area of roughly 137 sq km, was estimated to have been either damaged or destroyed during the armed conflict[162]. By last April, this already included half of all trees and orchards in the territory[163]. With this destruction comes increased risk of desertification[164], and the loss, of course, of the services provided by these ecosystems, including their vital roles as carbon sinks[165].

6. Mr President, Members of the Court, the threat to the climate system is exacerbated by Israel's unlawful occupation of the entire State of Palestine. Although the occupying Power has a legal obligation to protect the environment and to conserve the natural resources of the occupied

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[159] United Nations Climate Action, *Biodiversity —our strongest natural defense against climate change*, available at https://www.un.org/en/climatechange/science/climate-issues/biodiversity. See also UNEP, 2021: *Making Peace with Nature: A scientific blueprint to tackle the climate, biodiversity and pollution emergencies*, available at https://wedocs.unep.org/xmlui/bitstream/handle/20.500.11822/34948/MPN.pdf

[160] IPPC, *Climate Change 1995*, Second Assessment Report of the Intergovernmental Panel on Climate Change, 1995, p. 13, available at https://archive.ipcc.ch/pdf/climate-changes-1995/ipcc-2nd-assessment/2nd-assessment-en.pdf.

[161] IPPC, *Climate Change 2014: Mitigation of Climate Change,* Working Group III Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, available at https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_full.pdf. See also UNEP, 2022: *For People and Planet, The United Nations Environment Programme Strategy for tackling climate change, biodiversity and nature loss, and pollution and waste from 2022-2025,* para. 9: "The accumulating pollution from chemicals and waste and the changing climate, biodiversity loss, ecosystem degradation, desertification, land degradation and drought are closely related and are reinforcing each other", available at https://wedocs.unep.org/bitstream/handle/20.500.11822/42683/medium_term_strategy_2022.pdf?sequence=1&isAllowed=y.

[162] Aljazeera, *How Israel destroyed Gaza's ability to feed itself*, Hussein M. and M. Haddad, 2 July 2024, available at https://www.aljazeera.com/news/longform/2024/7/2/how-israel-destroyed-gazas-ability-to-feed-itself.

[163] UNEP (2024), *Environmental Impact of the Conflict in Gaza: Preliminary Assessment of Environmental Impacts,* 18 June 2024, p. 32 available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/45739/environmental_impact_conflict_Gaza.pdf?sequence=3&isAllowed=y.

[164] *Ibid*., p. 35.

[165] *Ibid*.

territory for the benefit of the protected population, this obligation is often violated, as the Court has already concluded in relation to Israel's occupation of Palestine[166].

7. A people under occupation are denied their fundamental right of self-determination, which includes control over their natural resources and environment. In the case of Palestine, restrictions imposed by the Israeli authorities significantly limit the policy instruments and public investment opportunities available to the Palestinian Government to address climate challenges[167]. As the United Nations Development Programme has confirmed, the occupation prevents the Palestinian people from taking the necessary steps both to mitigate and to adapt to climate change, rendering them more vulnerable to climate impacts[168]. Although the State of Palestine, party to the UNFCCC and the Paris Agreement[169], is committed to reducing greenhouse gas emissions[170], its efforts are impeded by the occupying Power[171].

8. Further, Israel's unlawful settlement enterprise itself has contributed to additional emissions as well as to degradation of critical carbon sinks in the West Bank, including East Jerusalem. In addition to ongoing military activities over the years of occupation, Israel's practices include the systematic uprooting of trees and the destruction of carbon-absorbing forests and other

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[166] *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion of 19 July 2024*.

[167] World Bank Group, 2023, West Bank and Gaza Country Climate and Development Report, available at https://reliefweb.int/report/occupied-palestinian-territory/west-bank-and-gaza-country-climate-and-development-report.

[168] UNDP, 2010, *Climate Change Adaptation Strategy and Programme of Action for the Palestinian Authority*, https://eprints.lse.ac.uk/30777/1/PA-UNDP_climate_change.pdf. See also Mason, M., et al., "Conflict and social vulnerability to climate change: Lessons from Gaza"*, Climate and Development*, Vol. 3, 2011, Issue 4, pp. 285-297, available at: https://doi.org/10.1080/17565529.2011.618386. See also Suha Jarrar, 2019: *Adaptation under Occupation: Climate Change Vulnerability in the Occupied Palestinian Territory*, Al-Haq Publisher, available at https://www.alhaq.org/cached_uploads/download/2021/07/15/climatechange2019-1626328773.pdf. See also Mason, M. et al., 2012, "Compounding vulnerability: impacts of climate change on Palestinians in Gaza and the West Bank", *Journal of Palestine Studies*, Vol. 41 (3).

[169] United Nations Framework Agreement on Climate Change (UNFCCC), New York, 9 May 1992. See also: Paris Agreement, Paris, 12 December 2015.

[170] First Nationally Determined Contributions, "Updated Submission", State of Palestine, Oct. 2021, available at https://unfccc.int/sites/default/files/NDC/2022-06/Updated%20NDC_%20State%20of%20Palestine_2021_FINAL.pdf. See also Palestinian Environment Quality Authority, 2023, *Climate Finance in the Palestinian Context,* available at https://unfccc.int/sites/default/files/resource/climate_finance_in_the_palestinian_context.pdf.

[171] UNDP Programme of Assistance to the Palestinian People, 2010, *Climate Change Adaptation Strategy and Programme of Action for the Palestinian Authority*, https://eprints.lse.ac.uk/30777/1/PA-UNDP_climate_change.pdf. See also World Bank, November 2023: West Bank and Gaza Country Climate and Development Report, available at https://reliefweb.int/report/occupied-palestinian-territory/west-bank-and-gaza-country-climate-and-development-report. See also Hamed, T.A., and K. Peric, 2020, "The role of renewable energy resources in alleviating energy poverty in Palestine", *Renewable Energy Focus,* Vol. 35, Dec. 2020, pp. 97-107, available at https://doi.org/10.1016/j.ref.2020.09.006. See also: *Climate Oppression: A Major Tool to Establish and Maintain Israel's Apartheid Regime over the Palestinian People and their Lands,* Al Haq (NGO), Submission to UN OHCHR, November 2021, available at https://www.ohchr.org/sites/default/files/2022-03/al-haq.pdf.

environmentally sensitive areas in order to construct bypass roads, buffer zones, carbon-intensive military bases and concrete annexation walls[172]. Under Israeli legislation, Palestinian territory is used as a dumping ground for toxic chemicals and e-waste, further degrading critical ecosystem services[173]. And the occupation has prevented responsible management of solid waste, leading to higher methane emissions, especially from the more than 700,000 illegal Israeli settlers[174].

9. The current international system for carbon accounting counts none of these costs, nor those of the other armed conflicts and military activities around the world. If we continue to ignore these impacts on the climate system, we gravely underestimate the reductions in emissions that are necessary to prevent or even mitigate the impending climate catastrophe, and we effectively exclude the most vulnerable among us from the protection of the law.

10. It is for these reasons that the State of Palestine urges the Court to take such impacts into account when delineating the obligations of States to ensure the protection of the climate system. I thank you for your kind attention and ask that you call Professor Oral to the podium.

The PRESIDENT: I thank Professor Kate Mackintosh. I now give the floor to Professor Nilüfer Oral. You have the floor.

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[172] Brophy, Z. and J. Isaac, 2014, *The Environmental Impact of Israeli military activities in the occupied Palestinian territory,* Applied Research Institute–Jerusalem, available at https://www.arij.org/wp-content/uploads/2014/01/The-environmental-impact-of-Israeli-military.pdf. See also Neimark, B., F. Otu-Larbi F. et al., June 2024, *A Multitemporal Snapshot of Greenhouse Gas Emissions from the Israel-Gaza Conflict*, p. 18, available at SSRN: https://ssrn.com/abstract=4855947.

[173] UNEP, 2020, *State of Environment and Outlook Report for the occupied Palestinian territory 2020*, available at https://www.unep.org/resources/report/state-environment-and-outlook-report-occupied-palestinian-territory-2020. See also Human Rights Watch, January 2016: *Occupation Inc.: How settlement businesses contribute to Israel's violations of Palestinian rights*, available at https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations. See further Omar, G. and S. I. AlKhalil, 2019, "A Study of the Environmental Impacts of the Gishori Industrial Complex on Plant Diversity in Tulkarm, Palestine", *Jordan Journal of Biological Sciences*, available at https://www.researchgate.net/publication/337534284_A_Study_of_the_Environmental_Impacts_of_the_Gishori_Industrial_Complex_on_Plant_Diversity_in_Tulkarm_Palestine.

[174] UNDP Programme of Assistance to the Palestinian People, 2023, *Palestinian Programme Framework 2023-2025*, available at https://www.undp.org/papp/publications/palestinian-programme-framework; *Sound Management of Waste and Chemicals in Palestine*, UNEP, 2023, available at: https://zoinet.org/wp-content/uploads/2024/07/Pal-chem-waste_EN.pdf; See also UNEP, 2024, *Environmental impact of the conflict in Gaza Preliminary assessment of environmental impacts*, available at https://wedocs.unep.org/bitstream/handle/20.500.11822/45739/environmental_impact_conflict_Gaza.pdf?sequence=3&isAllowed=y; see also N. Atallah, 2020: *Palestine: solid waste management under occupation,* Heinrich Boll Stiftung Palestine and Jordan, available at https://ps.boell.org/en/2020/10/07/palestine-solid-waste-management-under-occupation.

Ms ORAL:

III. RULES OF INTERNATIONAL LAW APPLICABLE TO GHG EMISSIONS RESULTING OF ARMED CONFLICT, RELEVANT OBLIGATIONS AND RELEVANT LEGAL CONSEQUENCES

1. Mr President, Members of the Court, it is a great honour to appear before you and a privilege to do so on behalf of the State of Palestine.

2. We seek the guidance of the Court in identifying the obligations of States to ensure the protection of the climate system and other parts of the environment from greenhouse gas emissions, including in relation to armed conflict and other military activities, as well as in situations of occupation[175].

3. Mr President, I will first address general obligations. As most States have argued[176], there is an obligation under customary international law to prevent significant transboundary harm[177]. This obligation requires States to ensure that "activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction"[178].

4. States have collectively recognized this obligation in several instruments starting with the Stockholm Declaration[179] and the Rio Declaration[180], and as codified in the Convention on

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[175] *See Reports on the "Military Emissions Gap", Tavares Da Costa, R., Krausmann, E. and Hadjisavvas, C., Navigating Climate Change in Defence – Climate Risk Management Guide for Chiefs of Defence Staff,* Publications Office of the European Union, Luxembourg, 2024, doi:10.2760/831469, JRC135952. See also: See also: *Broken Record: Temperatures hit new highs, yet world fails to cut emissions (again)*, UNEP, 2023, available at https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y.

[176] See Written Statement of Antigua and Barbuda, paras. 125–128; Australia, paras. 4.7–4.8; The Bahamas, paras. 92–98; Bangladesh, paras. 88–89; Barbados, Sect. VI.A; Belize, paras. 31–36; Brazil, para. 70; Burkina Faso, para. 286; Chile, paras. 35–39; China, para. 127; Costa Rica, paras. 40–49; Denmark et al., paras. 65–67; Dominican Republic, para. 4.31; Ecuador, paras. 3.18–3.19; Egypt, paras. 298–328; Grenada, paras. 38–40; Indonesia, para. 60; Republic of Korea, para. 33; Kuwait, para. 72; Latvia, para. 53; Mauritius, paras. 189–190; Mexico, paras. 40–41; Namibia, paras. 49–52; Netherlands, para. 3.52; New Zealand, paras. 97–98; Pakistan, paras. 29–33; Saint Vincent and the Grenadines, paras. 98–99; Sierra Leone, paras. 3.10–3.11; Singapore, para. 3.1; Seychelles, Sect. II.C.1; South Africa, para. 74; Spain, para. 8; Sri Lanka, paras. 95–96; Switzerland, para. 14; Thailand, paras. 7–9; United Arab Emirates, para. 92; Uruguay, Sect. IV.A.1; Vanuatu, paras. 261–264; African Union, paras. 90–92; European Union, paras. 297–300; IUCN, paras. 308–309; Melanesian Spearhead Group, para. 298; OACPS, paras. 101, 148–150.

[177] *Trail Smelter Arbitration*, *RIAA*, Vol. III, 1965; *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, pp. 22–23.

[178] *Trail Smelter Arbitration*, *RIAA*, Vol. III, p. 1965.

[179] 1972 Stockholm Declaration, Principle 21.

[180] 1992 Rio Declaration, Principle 2.

Biodiversity[181], UNCLOS[182] and the UNFCCC[183]. This Court has also reaffirmed the obligation on several occasions[184], including most recently in the *Silala* case[185].

5. We fully endorse the views of States that the obligation to prevent significant transboundary harm is one of due diligence that applies equally to climate change and the prevention of harmful greenhouse gas emissions[186]. States must adopt appropriate rules and measures, be vigilant in their enforcement and their exercise of administrative control over public and private actors[187]. We submit that the applicable standard of due diligence, as described by the Seabed Disputes Chamber, "has to be more severe for the riskier activities"[188].

6. Science is very clear on the dire risks posed by climate change. As the IPCC has concluded, "the rise in weather and climate extremes has led to some irreversible impacts as natural and human systems are pushed beyond their ability to adapt"[189]. According to the COP28 global stocktake

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[181] Convention on Biological Diversity, Rio De Janeiro, 1992, Article 3.

[182] United Nations Convention on the Law of the Sea, New York, 1982, Article 194 (3).

[183] UNFCCC, Preamble.

[184] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 241-242, para. 29. See also: *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Request for Advisory Opinion Submitted to the Seabed Disputes Chamber)*, Advisory Opinion, p. 10, para. 180. See also: *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 14, para. 101. See also: *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 665, paras. 104, 108, 168.

[185] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II)*, p. 614, paras. 83 & 99. See also: *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7, para. 140. See also: *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area,* Advisory Opinion, 1 February 2011, para. 148. See also: *ILC, Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, with commentaries*, 12 December 2001, UN doc. A/RES/56/82, commentary to Article 3.

[186] See Written Statements of Australia, paras. 3.8, 4.7–4.11; Bangladesh, para. 89; Burkina Faso, para. 181; Cameroon, para. 13; Chile, paras. 35–39; Colombia, para. 3.13–3.30; Cook Islands, paras. 165–166; COSIS, para. 59; Costa Rica, para. 40; Ecuador, paras. 3.23–3.25; Egypt, paras. 97–98; Ghana, para. 26; Japan, paras. 12 & 5.81; Republic of Korea, paras. 33–37; Latvia, paras. 51–61; Mexico, paras. 42–43; Namibia, paras. 49–51; New Zealand, paras. 90, 98; Pakistan, para. 39; Philippines, paras. 62–63; Portugal, para. 55; Samoa, paras. 98–104; Seychelles, para. 126; Sierra Leone, paras. 3.11–3.15; Singapore, paras. 3.4–3.6; South Africa, para. 74; Sri Lanka, paras. 96–97; Switzerland, paras. 37–47; Thailand, paras. 11–14; United Arab Emirates, para. 94; United States, para. 4.5; Uruguay, paras. 89–98; Vanuatu, para. 235; Viet Nam, para. 25.

[187] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, para. 204. See also: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 43, para. 430. See also: ILC, Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, with commentaries, 12 December 2001, UN doc. A/RES/56/82, Article 7.

[188] *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Request for Advisory Opinion Submitted to the Seabed Disputes Chamber)*, Advisory Opinion, para. 117; see also: *Alabama Claims (United States* v. *United Kingdom)*, *RIAA*, Vol. 125, p. 128 (2012), p. 129.

[189] IPCC, Working Group II, "Glossary", *Sixth Assessment Report: Impacts, Adaptation, and Vulnerability* (2022), p. 9 (B.1.2-B.1.3), 2912, available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf. See also: IPCC, "Summary for Policymakers", *Sixth Assessment Synthesis Report* (Dossier No. 78), 2023, p. 21, available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

outcome, "limiting global warming to 1.5°C with no or limited overshoot requires deep, rapid and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero carbon dioxide emissions by 2050"[190].

7. As a result, States must exercise a high level of due diligence in controlling and reducing their GHG emissions, in accordance with the principles of CBDR-RC. ITLOS found that, in addressing marine pollution from GHG emissions, the required due diligence must be "stringent", particularly if global temperature exceeds the 1.5°C limit (a point we have come dangerously close to already), but also recognized this may differ between developed and developing States[191]. Mr President, we submit that the climate crisis requires application of the same stringent standard of due diligence to the protection of the global environment, from all emissions of GHG that contribute significantly to global warming, including emissions from armed conflict and other military activities, as well as occupation.

8. International law has long recognized legal obligations to protect the environment during armed conflict. As an example, Article 35 of the Additional Protocol to the 1949 Geneva Convention prohibits the employment of "methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment"[192].

9. In 1993, the General Assembly adopted resolution 47/37, which recognized that the use of certain means and methods of warfare may have dire effects on the environment. The resolution stressed that destruction of the environment not justified by military necessity and carried out wantonly was "clearly contrary to international law"[193].

10. In 2009, UNEP issued a report and called upon the International Law Commission to "examine the existing international law for protecting the environment during armed conflict and

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[190] Outcome of the first global stocktake, Draft Decision, Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, 13 December 2023, FCCC/PA/CMA/2023/L.17, available at: https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf.

[191] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, International Tribunal for the Law of the Sea, Advisory Opinion, 21 May 2024, paras. 241 and 229.

[192] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 35.

[193] Resolution by the United Nations General Assembly, 25 November 1992, 47/37, available at: https://documents.un.org/doc/resolution/gen/nr0/024/04/img/nr002404.pdf. See also: Additional Protocol I, Geneva Conventions of 12 August 1949, Article 55; see also Additional Protocol I, Geneva Conventions of 12 August 1949, Article 35 (3).

recommend how it can be clarified, codified and expanded"[194]. In response, the Commission developed and adopted in 2022 the Principles on protection of the environment in relation to armed conflicts[195]. These principles are intended to apply before, during and after armed conflict, including in situations of occupation.

11. Principle 13 is especially pertinent. It provides:

> "The environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict.
>
> 2. Subject to applicable international law:
>
> *(a)* care shall be taken to protect the environment against widespread, long-term and severe damage;
>
> *(b)* the use of methods and means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the environment is prohibited.
>
> 3. No part of the environment may be attacked, unless it has become a military objective."

12. As the commentary explains, the principle "reflects the obligation to respect and protect the environment, the duty of care and the prohibition of the use of certain methods and means of warfare, as well as the prohibition of attacks against any part of the environment, unless it has become a military objective"[196].

13. Other instruments also recognize the obligation of States to protect and preserve the environment in relation to armed conflict. These include the San Remo Manual on International Law Applicable to Armed Conflict at Sea, the African Convention on the Conservation of Nature and

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[194] *Protecting the Environment During Armed Conflict: an Inventory and Analysis of International Law*, UNEP, 2009, p. 9, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/7813/-Protecting%20the%20Environment%20During%20Armed%20Conflict_An%20Inventory%20and%20Analysis%20of%20International%20Law-2009891.pdf?sequence=3&amp%3BisAllowed=.

[195] Adopted by the International Law Commission in its 73rd Session in 2022 and submitted to the General Assembly, https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf.

[196] *Draft Principles on protection of the environment in relation to armed conflict and commentaries*, International Law Commission, Commentary on Principle 13, 2022, p. 141, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/8_7_2022.pdf.

Natural Resources, and the ICRC Study on Customary International Humanitarian Law and Guidelines, in particular Rules 43, 44 and 45[197].

14. We submit that these rules and principles, which expressly apply to the protection of the environment during armed conflict, should by necessity apply to the protection of the climate system from harm caused by GHG emissions released into the atmosphere as a result of armed conflict and other military activities.

15. This means that all GHG emissions from armed conflict and other military activities should be reported by States as part of their obligations under Article 4 (1) *(a)* of the UNFCCC in order to properly account for their total GHG emissions. Mr President, given the fragile state of the planet in the face of climate change, and the reality that we are currently on a trajectory towards 2.6°C, all these GHG emissions matter[198].

16. In addition, there is a need for clear guidance on the application of international humanitarian law to the harmful effects on climate change from armed conflict and other military activities. In particular, we request that the Court clarify that the environment, including carbon sinks and reservoirs, is a civilian object and that the rules of distinction, proportionality and precaution apply to armed conflict and other military activities that generate GHG emissions and contribute to climate change.

17. As you have heard, occupation is a particular form of military activity that poses a threat to the environment and ultimately to the climate system. The ILC Principles on protection of the environment in relation to armed conflicts expressly make the link between occupation and the environment, requiring an occupying Power to "take appropriate measures to prevent significant harm to the environment of the occupied territory"[199]. This requirement should be applied to all activities of the occupying Power that produce significant GHG emissions.

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[197] *World Charter for Nature*, UN General Assembly, UN doc. A/RES/37/7, 28 October 1982, Principles 5 and 20. See also: Rio Declaration, Principle 24; see also: *Study on Customary International Humanitarian Law*, ICRC, Rule 44: Due Regard for the Natural Environment in Military Operations, available at: https://ihl-databases.icrc.org/en/customary-iahl/v1/rule44. See also: *Guidelines on the Protection of the Environment in Times of Armed Conflict*, ICRC, 25 September 2020, Rule 1, pp. 29-30. See also: *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, paras. 35 and 44. See also: Rome Statute, Rome, 1998, Article 8 (2) *(b)* (iii).

[198] *United Nations Framework Agreement on Climate Change* (UNFCCC), New York, 9 May 1992.

[199] *Draft Principles on protection of the environment in relation to armed conflict and commentaries*, International Law Commission, Principle 19 (2), 2022, p. 158, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/8_7_2022.pdf.

18. For these reasons, we urge the Court, bearing in mind the deleterious impacts of armed conflict and other military activities on the climate system, including carbon sinks and reservoirs, to set out in clear terms the legal obligations of States in respect of preventing, avoiding, reducing or mitigating the effects of GHG emissions caused by these activities.

19. I turn next to the legal consequences of not fulfilling these obligations.

20. Under the Articles on State Responsibility it is a well-accepted rule of international law that every internationally wrongful act of a State entails the international responsibility of that State[200]. We submit, every State that fails to exercise the appropriate level of due diligence to control or reduce its GHG emissions — including from armed conflicts and other military activities, as well as occupation — incurs international responsibility for its failure to do so. ITLOS, in its recent advisory opinion, found that when a State fails to comply with its obligation to take all necessary measures to prevent, reduce and control marine pollution from GHG emissions, that State may be internationally responsible under UNCLOS[201]. This should apply equally to the obligations of States under general international law in relation to climate change and include the obligation to make full reparation as provided for in Article 31 of the Articles on State Responsibility[202].

21. Many States have taken the view that the Articles on State Responsibility apply to climate change[203]. This is also reflected in Principle 9 of the ILC Principles on the Protection of the Environment in Relation to Armed Conflict, which is based on the Court's decision in the *Certain*

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[200] *2001 Articles on Responsibility of States for Internationally Wrongful Acts*, United Nations General Assembly resolution, UN doc. A/RES/56/83, 2001, Article 1, available at: https://documents.un.org/doc/undoc/gen/n01/477/97/pdf/n0147797.pdf.

[201] *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change*, Advisory Opinion, International Tribunal for the Law of the Sea, 21 May 2024, Case No. 31, para. 223. Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.

[202] *2001 Articles on Responsibility of States for Internationally Wrongful Acts*, United Nations General Assembly Resolution, UN doc. A/RES/56/83, 2001, Article 31, available at: https://documents.un.org/doc/undoc/gen/n01/477/97/pdf/n0147797.pdf.

[203] See Written Statements of Albania, paras. 129-130; Antigua and Barbuda, paras. 532-533; the Bahamas, para. 233; Barbados, para. 200; Brazil, paras. 79, 86, 88; Burkina Faso, Sect. V.A; Chile, para. 110; Colombia, paras. 4.6-4.18; Costa Rica, para. 95; Democratic Republic of the Congo, para. 251; Dominican Republic, paras. 4.63-4.67; Ecuador, paras. 4.6, 4.9-4.21; Egypt, paras. 351-396; El Salvador, paras. 49-58; Grenada, paras. 74-77; Kenya, para. 2.7; Kiribati, paras. 173-205; Latvia, paras. 73-77, 78 *(g)*; Madagascar, para. 67; Marshall Islands, paras. 55-58; Mauritius, paras. 208-210; Namibia, paras. 128-130; Palau, paras. 18-19; Philippines, paras. 108-138; Peru, paras. 90-92; Saint Lucia, paras. 81-86; Saint Vincent and the Grenadines, para. 128; Samoa, paras. 187-213; Sierra Leone, para. 3.134; Solomon Islands, paras. 229-230; Sri Lanka, paras. 102-104; Thailand, para. 29; Timor-Leste, paras. 354-355; Tonga, paras. 284-285, 288; Uruguay, paras. 155-162; Vanuatu, Sect. V; OACPS, paras. 138-140, 143; African Union, paras. 222-226; COSIS, Sect. IV; IUCN, paras. 529-532, 551; Melanesian Spearhead Group, paras. 290-292; United States, Sect. V.; COSIS, Sect. IV.

Activities (Costa Rica v. *Nicaragua)* case[204], requiring States to make "full reparation" including for "damage . . . to the environment, in and of itself"[205].

22. To conclude, Mr President, we agree with the many States that the Court should take into account the full corpus of international law in addressing the questions placed before it. There is a strong and urgent need for the Court to address and clarify the legal rules for protection against climate catastrophe, including as they apply to States engaged in armed conflict or other military activities, as well as occupation. As the United Nations Special Rapporteur for human rights and the environment recently warned: "[a]rmed conflict pushes humanity even closer to the precipice of climate catastrophe"[206]. The threat to the well-being of present and future generations of humankind requires an immediate and urgent response, and this, in turn, requires clear rules on the legal obligations of States and the consequences for failure to fulfil them. These rules must apply to GHG emissions from armed conflict and other military activities, as well as from other sources.

23. Mr President, the State of Palestine places its full confidence in the Court, and trusts that the Court will provide the legal guidance that the world so urgently needs for its own self-preservation.

24. Mr President, Members of the Court, this concludes my presentation and that of the State of Palestine. I thank you for your kind attention.

The PRESIDENT: I thank the representatives of the State of Palestine for their presentation. I now invite the next participating delegation, Pakistan, to address the Court and I call upon Mr Mansoor Usman Awan to take the floor.

Mr AWAN:

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[204] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 28, para 41. See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 122, para. 348.

[205] *Draft Principles on protection of the environment in relation to armed conflict and commentaries*, International Law Commission, Principle 19 (2), 2022, p. 158, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/8_7_2022.pdf.

[206] "'Protect the climate for whom?': Palestinians highlight Gaza at Cop29", *The Guardian,* D. Noor, 23 Nov. 2024, available at https://www.theguardian.com/environment/2024/nov/23/protect-the-climate-for-whom-palestinians-highlight-gaza-at-cop29. See also "Revealed: repairing Israel's destruction of Gaza will come at huge climate cost", *The Guardian*, N. Lakhani, 11 June 2024, available at: https://www.theguardian.com/world/article/2024/jun/06/rebuilding-gaza-climate-cost.

INTRODUCTION

1. Mr President, Madam Vice-President and distinguished Members of the Court, I am honoured to appear before you as the Representative of Pakistan in these proceedings, which could not be more important for my country. Mr President, I stand here before you entrusted with a very heavy responsibility by my people, who are among some of the worst affected by climate change events.

2. In 2022, the United Nations Secretary-General astutely addressed to the General Assembly that Pakistan was "responsible for less than 1 per cent of greenhouse-gas emissions — but its people are 15 times more likely to die from climate-related impacts than people elsewhere"[207].

3. At the outset, Pakistan would like to set out its agreement with the like-minded developing countries on three key points[208]:

(a) *First*, as to the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (UNFCCC) being the primary treaty framework in these proceedings[209];

(b) *Second*, as to the interpretation of the obligations of States parties under the provisions of the climate change treaties, including the principle of common but differentiated responsibilities and respective capabilities and equity[210], as well as climate finance and mitigation co-operation; and

(c) *Third*, as to the disputes regarding the interpretation and application of the obligations under the climate change treaties. These are primarily to be resolved in accordance with the mechanisms established under these treaties.

4. I will not repeat Pakistan's submissions on these points, but instead focus on the obligation under customary international law that applies in parallel. Against this backdrop, Pakistan's submissions are structured as follows: I will first turn to flooding and desertification that climate change has caused in Pakistan. Second: the obligation of prevention of significant transboundary harm[211]. Third: recognition by States that the obligation of prevention applies generally. Fourth, I

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[207] United Nations, Secretary-General/Statements and Messages, "While Floodwaters Receding, 'Needs Have Not', Secretary-General Tells General Assembly, Urging Support to Pakistan as 'Litmus Test for Climate Justice'", SG/SM/21963, 27 Sept. 2023, https://press.un.org/en/2023/sgsm21963.doc.htm.

[208] See Written Statement of the People's Republic of China, para. 154.

[209] Written Statement of Pakistan, paras. 47–61.

[210] See Written Statement of Pakistan, paras. 40–46.

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

will turn to the requirement of knowledge — actual or constructive — in relation to the obligation of prevention.

FLOODING AND DESERTIFICATION

5. First: flooding and desertification. According to the ancient wisdom of the farmlands of my country, "the neighbour of the river is neither hungry nor thirsty"[212]. Previous generations, no doubt assumed this would hold true forever.

6. These days, however, neighbours of the rivers of Pakistan live in constant danger of facing an even worse fate than hunger or thirst. In 2010, for example, those living in the catchment area of the great Indus River were hit by deadly floods of terrifying proportions. The flooding submerged *a fifth of the whole of Pakistan*. Six million of my people were displaced. Almost 2,000 lives were lost. The direct economic losses were estimated at US$10 billion[213].

7. If the floods of 2010 were bad, worse was still to come in 2022. That year, Pakistan was hit by floods which submerged *a third of my country* and affected 33 million people. Compared to previous monsoon seasons, Pakistan experienced an approximate 200 per cent increase in rainfall, between June and August of 2022[214]. The unprecedented precipitation — the heaviest and most concentrated *ever* recorded[215] — led to flooding, landslides and accelerated glacial melting. Entire villages and their crops were inundated and ruined. More than 2 million homes were destroyed. Waste was laid to a very great deal of infrastructure[216]. Thirty thousand schools and two thousand health facilities were damaged or destroyed[217]. The costs associated with all this destruction are extremely high. The World Bank estimated the reconstruction needs to exceed US$16 billion[218]. The impact of

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[212] *Glossary of the Multani Language: Compared with Punjábi and Sindhi* (1881), p. 62.

[213] Written Statement of Pakistan, para. 15.

[214] The People's Republic of China and the Islamic Republic of Pakistan, Investigation and Advisory Report on 2022 Catastrophic Floods in Pakistan, Chinese Governmental Flood Control Expert Group (2022), pp. 14–15.

[215] Office of the Chief Engineering Advisor and Federal Flood Commission, 2022 Annual Report (2023), p. i; Ministry of Planning Development & Special Initiatives, Pakistan Floods 2022: Post Disaster Needs Assessment, October 2022, p. 31.

[216] Ministry of Planning Development & Special Initiatives, Pakistan Floods 2022: Post Disaster Needs Assessment, October 2022, pp. 4 and 11.

[217] United Nations, Secretary-General/Statements and Messages, "While Floodwaters Receding, 'Needs Have Not', Secretary-General Tells General Assembly, Urging Support to Pakistan as 'Litmus Test for Climate Justice'", SG/SM/21963, 27 Sept. 2023, https://press.un.org/en/2023/sgsm21963.doc.htm.

[218] World Bank Press Release, 28 October 2022, "Pakistan: Flood Damages and Economic Losses Over USD 30 billion and Reconstruction Needs over USD 16 billion — New Assessment", available at: https://www.worldbank

flooding in 2022 on Pakistan's GDP was a devastating US$15.2 billion[219]. The events were — as the United Nations Secretary-General observed — "apocalyptic"[220].

8. The Intergovernmental Panel on Climate Change (IPCC) has observed and found that the annual average of daily maximum and minimum temperatures has increased over almost all of Pakistan[221]. Temperature increases have contributed to reduced yields of wheat in arid, sub-arid and dry sub-humid zones of the country[222].

9. The rising and extreme temperatures affecting Pakistan are also resulting in devastating desertification. Aridity has increased in most parts of the country[223], to the extent that desertification is now a serious problem[224]. Water and wind erosion, depletion of soil fertility, deforestation, livestock grazing pressure, loss of biodiversity, water logging, salinity, drought and (again) flooding have now become the main problems[225].

10. Mr President, it used to be that the farmers of the alluvial plains of my country would say: "If the flood comes, it increases good luck; if it does not come, drought consumes us."[226] The yearly flooding was a blessing to all. With climate change that, too, is changing. The flood no longer means good fortune: it spells devastation. And floods, with all the destruction that they now wreak, are not an alternative to drought. The people of Pakistan get flood and drought *both*.

11. Owing to diminishing ground water level, in 2015, a farmer was forced to seek the intervention of the Lahore High Court, claiming access to water as his fundamental constitutional right. In a landmark judgment, *Asghar Leghari* v. *Federation of Pakistan,* the Lahore High Court observed:

.org/en/news/press-release/2022/10/28/pakistan-flood-damages-and-economic-losses-over-usd-30-billion-and-reconstruction-needs-over-usd-16-billion-new-assessme#:~:text=Loss%20in%20gross%20domestic%20product, external%20trade%20and%20services%20sectors.

[219] Pakistan Economic Survey 2022–23: Annexure III Pakistan Floods 2022 Impact Assessment, p. 281, available at: https://www.finance.gov.pk/survey_2023.html.

[220] United Nations, Secretary-General/Statements and Messages, "While Floodwaters Receding, 'Needs Have Not', Secretary-General Tells General Assembly, Urging Support to Pakistan as 'Litmus Test for Climate Justice'", SG/SM/21963, 27 Sept. 2023, https://press.un.org/en/2023/sgsm21963.doc.htm.

[221] IPCC, *Climate Change 2021 — The Physical Science Basis*, p. 1979.

[222] IPCC, *Climate Change 2022 — Impacts, Adaptation and Vulnerability*, p. 2209.

[223] IPCC, *Climate Change 2021 — The Physical Science Basis*, p. 1800.

[224] IPCC, *Special Report on Climate Change and Land* (2022), p. 264.

[225] *National Action Programme to Combat Desertification in Pakistan* (2002), "Executive summary".

[226] *Glossary of the Multani Language: Compared with Punjabi and Sindhi* (1881), p. 27.

> "Climate change is a defining challenge of our time and has led to dramatic alterations of our planet's climate system. For Pakistan, these climatic variations have primarily resulted in heavy floods and droughts, raising serious concerns regarding water and food security."[227]

12. This sober assessment is entirely accurate. But where does the responsibility lie, for the floods and droughts that are depriving the people of Pakistan of its very "means of subsistence", as recognized in the two United Nations human rights Covenants[228]?

13. The IPCC projects that, in the absence of adaptation measures, global warming will, at a 2°C temperature rise, lead to an increase in direct flood damages by 1.4 to 2 times and, at a 3°C rise, 2.5 to 3.9 times[229]. Mr President, we dread to contemplate such contingencies, which are becoming increasingly less remote.

14. In 2023, Pakistan joined 122 other States that endorsed the Declaration on Climate and Health and expressed their "grave concern about the negative impacts of climate change on health"[230]. Climate change has a disproportionate impact on the young and especially women. It severely impacts opportunities, education, and access to good health, including reproductive health. Mr President, 64 per cent of the population of Pakistan is under 30 and 49 per cent of the population are women. Thus, a large part of Pakistan's population is among those who are subject to this disproportionately great impact of climate change.

15. For Pakistan, the 2010 and 2022 floods provide a reliable indication of what more is to come; unless all States take the necessary measures. The United Nations Secretary-General has correctly stated that "[t]he responsibility is clear; [t]he countries that contributed most to global heating must contribute most to righting the harm it has done"[231].

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[227] *Asghar Leghari* v. *Federation of Pakistan*, PLD 2018 Lahore 364, para. 11 (Syed Mansoor Ali Shah, C. J.).

[228] Art. 1 (2) common to International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, 999 *UNTS* 171 and International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, 993 *UNTS* 3.

[229] IPCC, *Climate Change Synthesis Report* (2023), p. 71.

[230] COP28 Declaration on Climate and Health, preamble, available at https://www.who.int/publications/m/item/cop28-uae-declaration-on-climate-and-health.

[231] "While Floodwaters Receding, 'Needs Have Not', Secretary-General Tells General Assembly, Urging Support to Pakistan as 'Litmus Test for Climate Justice", 27 September 2023, SG/SM/21963, https://press.un.org/en/2023/sgsm21963.doc.htm.

THE OBLIGATION OF PREVENTION ENUNCIATED IN *CORFU CHANNEL*

16. Mr President, Madam Vice-President, and distinguished Members of the Court, this leads me to the obligation of prevention of significant transboundary harm. Harm caused to the territory of Pakistan, through the ravages of climate change caused by other States through their activities in their own territory, is significant transboundary harm.

17. Pakistan agrees with the People's Republic of China that the United Nations General Assembly's Request places particular emphasis on the obligation of prevention and its attendant duty of due diligence[232]. A very great number of States argue, like Pakistan, that the obligation is part of the applicable law in these proceedings[233]. As it is stated in the preamble to the UNFCCC, States have "the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States"[234]. This rests on the basis that "in general international law it is 'every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States'"[235].

18. And to be clear: the obligation set forth in *Corfu Channel* is one that lays down an obligation more far-reaching than the modest obligations under the UNFCCC and the Paris Agreement[236]. What is required under this prevention obligation cannot be assessed in the abstract, but calls for an assessment *in concreto*[237]. In other words, by reference to the particular facts at issue in a given case[238].

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[232] Written Comments of Pakistan, para. 10; Written Statement of the People's Republic of China, para. 126.

[233] See e.g. Written Statement of the African Union, paras. 54–56; Written Statement of Egypt, paras. 98, 330; Written Statement of the Democratic Republic of the Congo, para. 138; Written Statement of Burkina Faso, paras. 161–163; Written Statement of Sri Lanka, paras. 95–96; Written Statement of Sierra Leone, para. 3.10; Written Statement of Ecuador, para. 3.18; Written Statement of Belize, paras. 31–33; Written Statement of Seychelles paras. 101–102; Written Statement of the Republic of Korea, para. 33; Written Statement of Kenya, paras. 5.3–5.4; Written Statement of Slovenia, paras. 18, 40; Written Statement of Mauritius, para. 189; Written Statement of the International Union for Conservation of Nature, paras. 308–309; Written Statement of Thailand, para. 9; Written Statement of Costa Rica, paras. 40–49; Written Statement of the Bahamas, para. 92; Written Statement of Chile, paras. 35–37.

[234] United Nations Framework Convention on Climate Change (UNFCCC), 9 May 1992, 1771 *UNTS* 165, preamble.

[235] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II)*, p. 648, para. 99, citing *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22.

[236] Written Statement of Pakistan, para. 48; Written Comments of Pakistan, para. 10; see also e.g. Written Statement of Belize, para. 36; Written Comments of Nauru, para. 47.

[237] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

[238] See CR 2024/37, p. 11, para. 7 (Belize, Wordsworth).

RECOGNITION BY STATES THAT THE OBLIGATION APPLIES GENERALLY

19. Mr President, Madam Vice-President and distinguished Members of the Court, I now turn to recognition by States that the obligation of prevention has always applied *generally*. In 1964, Pakistan recognized that the obligation set out in *Corfu Channel* was "rationally valid and correct"[239] and that it would apply generally in the context where the "pollution of the atmosphere, land and water all over the world may seriously affect the life and health of the population of all countries"[240]. There was, also in the 1960s, recognition in State practice that international "responsibility should extend to *every kind of damage whatsoever* — biological, meteorological, economic and otherwise"[241].

20. A small minority of States have, however, argued that the obligation of prevention does *not* apply in the context of climate change. The argument is that climate change differs, in various regards, from what they call traditional transboundary harm. As I shall show, the obligation of prevention applies also to diffuse harm outside the context of neighbouring States.

21. From Australia, you heard the argument last week that the obligation of prevention has been applied only in cases involving "a direct and temporally proximate cause of environmental harm from an identifiable source spreading from one State to a neighbouring State"[242].

22. Australia also argued that there is a lack of State practice and *opinio juris* that supports the application of the obligation of prevention in the context of climate change[243]. The United States[244] and the Nordic countries[245] made similar arguments last week.

23. These contentions do not find any support in the practice of States in relation to the obligation of prevention. The practice is to the contrary. This is evident from State practice in the context of the adoption of general United Nations conventions.

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[239] Asian–African Legal Consultative Committee, Sixth Session, 24 February–6 March 1964, (1964), "Statements of Delegates and Observers Made at the Fourth Session", p. 73.

[240] *Ibid.*, p. 71.

[241] Asian–African Legal Consultative Committee, Report of the Sixth Session, 24 February–6 March 1964, (1964), p. 16 (emphasis added).

[242] CR 2024/36, p. 43, para. 10 (Australia, Donaghue); Written Statement of Australia, para. 4.10.

[243] CR 2024/36, p. 44, para. 14 (Australia, Donaghue).

[244] CR 2024/40, p. 44, para. 23 (United States, Taylor); Written Statement of the United States, para. 4.15.

[245] CR 2024/39, p. 52, para. 8 (Nordic countries, Pasternak Jørgensen); Written Statement of Denmark, Finland, Iceland, Norway, and Sweden, para. 70.

24. As you have heard numerous times, the UNFCCC recognizes, in its preamble, that the obligation to prevent transboundary harm applies in the context of climate change[246]. As Belize observed last week, if the obligation of prevention were not a relevant and applicable norm in the context of climate change, it would not have been expressly referenced in the preamble of the UNFCCC[247].

25. And the UNFCCC is only one of several general conventions which apply to situations beyond the context of transboundary harm from one State to a neighbouring State, beyond the situation where there is a direct cause of harm from a single source, *and which also recognize the obligation of prevention in their respective contexts*.

26. The United States has argued in these proceedings that the obligation of prevention cannot apply to "varied and diffuse activities . . . over a long period of time"[248]. This argument is undermined by the fact that the United States, along with 50 other States, is a State party to the Convention on Long-Range Transboundary Air Pollution of 1979, which recognizes the obligation of prevention in its preamble[249]. This Convention concerns, according to its Article 1 *(b)*,

> "air pollution whose physical origin is situated wholly or in part within the area under the national jurisdiction of one State and which has adverse effects in the area under the jurisdiction of another State *at such a distance that it is not generally possible to distinguish the contribution of individual emission sources or groups of sources*"[250].

27. A second example is the Vienna Convention for the Protection of the Ozone Layer, which recalls the obligation of prevention, using the same wording as the UNFCCC[251]. This Convention defines, in Article 1 (2), "adverse effects" as:

> "changes in the physical environment or biota, *including changes in climate*, which have significant deleterious effects on human health or on the composition, resilience and productivity of natural and managed ecosystems, or on materials useful to mankind".

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[246] Preamble, UNFCCC.

[247] CR 2024/37, p. 10, para. 3 (Belize, Wordsworth).

[248] *Cf.* Written Statement of the United States, para. 4.15; see also CR 2024/36, p. 33, para. 12 (Saudi Arabia, Bajbaa).

[249] Preamble, 13 November 1979, 1302 *UNTS* 217.

[250] *Ibid.*, Art. 1 *(b)* (emphasis added).

[251] Preamble, 22 March 1985, 1513 *UNTS* 293.

28. Third, in the preamble to the Convention to Combat Desertification, the State parties also reaffirmed the obligation of prevention, again having adopted the same wording[252]. The State parties also acknowledge in the preamble:

> "[T]hat desertification and drought are problems of global dimension in that they affect all regions of the world and that joint action of the international community is needed to combat desertification and/or mitigate the effects of drought".

29. In addition to the context of the UNFCCC, the contexts of long-range transboundary air pollution, the protection of the ozone layer, and desertification are all areas where the international community has adopted general conventions that recognize the obligation of prevention in situations of diffuse harm outside the context of neighbouring States.

30. I now turn to the relationship between the climate change treaty régime and the obligation of prevention in general international law. The UNFCCC and the Paris Agreement are not *lex specialis* in relation to the obligation of prevention[253]. But not only does the UNFCCC régime not displace the obligation in general international law; differently to what some States have contended[254], the treaty obligations also do not modify, or otherwise condition, the more onerous general international law obligation.

31. Judge Xue rightly observed, in relation to pre-existing rights and obligations in customary international law, in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea*, that "unless and until they are explicitly negated by treaty law or new customary rules, they continue to exist and apply under customary international law"[255].

32. And, as the International Law Commission has explained, in and of themselves, treaties cannot conclusively attest to the content of a rule of customary international law[256].

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[252] 14 October 1994, 1954 *UNTS* 3.

[253] Written Comments of Pakistan, para. 12.

[254] CR 2024/40, p. 9, para. 10 (UAE, Balalaa); CR 2024/39, p. 51, para. 6 (Nordic countries Pasternak Jørgensen).

[255] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2022 (I)*, declaration of Judge Xue, p. 407, para. 9.

[256] Identification of customary international law, *Yearbook of the International Law Commission* 2018, A/73/10, p. 143, para. 2 of the commentary to Conclusion 11; see also O. Sender & M. Wood, *Identification of Customary International Law* (2024), p. 203.

33. General international law exists and applies, as the Court observed in *Military and Paramilitary Activities in and against Nicaragua*, "*separately* from international treaty law"[257]. The obligation of prevention is separate from the treaty obligations. Its terms are more onerous than the treaty obligations and it applies in parallel to them. The obligation in general international law and the treaty obligations remain "separate and distinct".

34. I return to the *Corfu Channel* case. This was also a case concerning an obligation in general international law on the one hand and specific obligations under treaty on the other, the two sets of obligation being separate and distinct. As Sir Gerald Fitzmaurice explained, the respondent in *Corfu Channel*

> "was held to have had knowledge of the presence of an undeclared minefield in her waters; and although not a party to the Hague Convention No. VIII of 1907, which contains a specific obligation to notify any such presence, was found none the less to be under a similar or parallel obligation because of (as the Court put it) '. . . every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States'"[258].

35. To conclude my third point: Sir Robert Jennings, former judge and President of this Court, was correct to refer to the obligation in *Corfu Channel* as the very "foundation of the law of State responsibility"[259]. As Pakistan has set out in its written pleadings, the general principles of State responsibility apply fully within the context of climate change[260]. States that have breached the obligation of prevention in the context of anthropogenic greenhouse gas emissions owe legal responsibility to the States that have thereby been injured. Much of the damage inflicted on the climate system is irreversible. Reparation therefore necessarily takes the form of compensation, satisfaction, or a combination of both[261]. As numerous Participants have argued, in the context of climate change, the most appropriate form of remedy is the payment of compensation[262].

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[257] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 96, para. 179 (emphasis added).

[258] G. Fitzmaurice, "The Older Generation of International Lawyer and the Question of Human Rights" (1968), Vol. 21, Revista Espanola de Derecho Internacional, p. 481.

[259] R.Y. Jennings, "General Course on Principles of International Law" (1967), Vol. 121, *Recueil des cours*, p. 370.

[260] Written Comments of Pakistan, paras. 23 *et seq.*

[261] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, pp. 103-104, para. 273.

[262] See e.g. the Written Statement of OACPS, paras. 178-179; Written Statement of Singapore, para. 4.13; Written Statement of Bahamas, para. 242; Written Statement of the African Union, para. 282; Written Statement of Kenya, para. 6.95.

KNOWLEDGE: ACTUAL OR CONSTRUCTIVE

36. Finally, Mr President, Madam Vice-President and distinguished Members of the Court, I come to the requirement of knowledge: actual or constructive. The obligation of prevention in general international law has been there since *at least* the mid-twentieth century[263]. Pakistan agrees with the submission by the Russian Federation that the obligation of prevention applies from the point at which the State in question had the requisite knowledge of the adverse effects of anthropogenic greenhouse-gas emissions[264]. It would be no excuse for polluting States now to argue that they were *ignorant* that their release of greenhouse gases into the atmosphere could potentially alter the climate system and that such interference could have catastrophic effects for other States.

37. International law asks whether the State in question had *actual or constructive* knowledge. That is the approach the Court took in the *Fisheries* case, where the Court found that the United Kingdom "could not have been ignorant" of Norway's system of straight baselines[265]. The question is when the State at issue became aware of the relevant fact, "or when *ought it to have become aware* but for its own neglect"[266].

38. The Court's reasoning in *Corfu Channel* rests on the general principle of "objective responsibility"[267]. As Judge Bennouna has observed, the obligation in *Corfu Channel* is "contingent upon the State's actual or constructive knowledge of events occurring in its territory and liable to violate other States' rights"[268]. Such "knowledge of the risk is, therefore, the trigger of the due diligence obligation of the territorial State towards the foreign State"[269].

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[263] Written Comments of Pakistan, paras. 7-8.

[264] CR 2024/40, p. 53, para. 10 (Russian Federation, Musikhin); see also 2024/38, p. 22, para. 15 (Chile, Fuentes Torrijo).

[265] *Fisheries (United Kingdom* v. *Norway), Judgment, I.C.J. Reports 1951*, p. 139; see also *Eritrea* v. *Yemen (Phase One)* (1998), Vol. 114, *ILR* p. 102, para. 400.

[266] *Fisheries (United Kingdom* v. *Norway), Judgment, I.C.J. Reports 1951*, dissenting opinion of Judge McNair, pp. 171-172 (emphasis added); see also *Grand River Enterprises Six Nations, Ltd. et al. (Claimants)* v. *United States of America*, NAFTA/UNCITRAL arbitration, Objections to Jurisdiction, 20 July 2006, para. 59 (Nariman, P.; Anaya; Crook); Written Statement of the International Union for Conservation of Nature, para. 349.

[267] A. Randelzhofer & B. Simma, *Festschrift für Friedrich Berber* (1973), pp. 430-431; J. Crawford, *Brownlie's Principles of Public International Law* (9th edn., 2019), pp. 539-541.

[268] M. Bennouna, "The *Corfu Channel* case and the concept of sovereignty" in *The ICJ and the Evolution of International Law: The Enduring Impact of the Corfu Channel Case* (2013), p. 16.

[269] *Ibidem.*

CONCLUSION

39. I have come to the end of Pakistan's oral submissions. If lives and livelihoods are to be protected — if we want to avoid utter catastrophe — there simply is no time to lose. As has often been said, we are the first generation to feel the impact of climate change, and undoubtedly, we are the last generation that can do something about it. For the human race, turning a Nelson's eye to the climate emergency is no longer an option. Mr President, Madam Vice-President and distinguished Members of the Court, Pakistan urges you to give an opinion which meets the challenge climate change poses to our planet. I thank you very much for your kind attention.

The PRESIDENT: I thank the representative of Pakistan for his presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow at 10 a.m., in order for Palau, Panama, the Netherlands, Peru and the Democratic Republic of the Congo to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 5.40 p.m.

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