Corrigé
Corrected

CR 2024/47

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Tuesday 10 December 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

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

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le mardi 10 décembre 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

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

COMPTE RENDU

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

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

M. Gautier, greffier

The Government of the Republic of Palau is represented by:

HE Mr Gustav Aitaro, Minister of State,

Ms Ernestine Rengiil, Attorney General,

Mr Xavier Matsutaro, National Climate Change Coordinator, Office of Climate Change, Office of the President,

Mr Peter Prows, Legal Counsel.

The Government of the Republic of Panama is represented by:

Mr Fernando Gómez Arbeláez, Director of International Legal Affairs and Treaties, Ministry of Foreign Affairs,

HE Ms Sally Loo Hui, Ambassador of the Republic of Panama to the Kingdom of the Netherlands,

Ms Ilya Espino De Marotta, Deputy Administrator and Sustainability Officer, Panama Canal Authority,

Ms Raisa Raquel Bernal Serrano, Attorney, Ministry of Environment,

Ms Ana Luisa Aguilar, Environmental Engineer, Chief Negotiator on Climate Change, Ministry of Environment.

The Government of the Kingdom of the Netherlands is represented by:

Mr René Lefeber, Legal Adviser, Ministry of Foreign Affairs,

Ms Lotte Kagenaar, Legal Officer, Ministry of Foreign Affairs,

Ms Sara van den Boom, Legal Officer, Ministry of Foreign Affairs,

Ms Annemiek Roeling, Coordinating Policy Officer, Ministry of Infrastructure and Water Management,

Ms Liedeke Wöltgens, Legal Officer, Ministry of Climate Policy and Green Growth,

Ms Kirsten Eeckhout, Legal Officer, Ministry of Climate Policy and Green Growth,

Mr Mert Kumru, Youth Representative, World's Youth for Climate Justice.

The Government of the Republic of Peru is represented by:

HE Ms Franca Deza Ferreccio, Ambassador of the Republic of Peru to the Kingdom of the Netherlands,

Mr Oscar Paredes Loza, Minister,

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

Le Gouvernement de la République des Palaos est représenté par :

S. Exc. M. Gustav Aitaro, ministre d'État,

M^me^ Ernestine Rengiil, *Attorney General*,

M. Xavier Matsutaro, coordonnateur national des activités relatives aux changements climatiques, bureau des changements climatiques, bureau du président,

M. Peter Prows, conseil juridique.

Le Gouvernement de la République du Panama est représenté par :

M. Fernando Gómez Arbeláez, directeur des affaires juridiques et des traités internationaux du ministère des affaires étrangères,

S. Exc. M^me^ Sally Loo Hui, ambassadrice de la République du Panama auprès du Royaume des Pays-Bas,

M^me^ Ilya Espino De Marotta, administratrice adjointe et chargée de la durabilité, Panama Canal Authority,

M^me^ Raisa Raquel Bernal Serrano, avocate auprès du ministère de l'environnement,

M^me^ Ana Luisa Aguilar, ingénieure en environnement, négociatrice en chef en matière de changement climatique, ministère de l'environnement.

Le Gouvernement du Royaume des Pays-Bas est représenté par :

M. René Lefeber, conseiller juridique, ministère des affaires étrangères,

M^me^ Lotte Kagenaar, juriste, ministère des affaires étrangères,

M^me^ Sara van den Boom, juriste, ministère des affaires étrangères,

M^me^ Annemiek Roeling, agente chargée de la coordination des politiques, ministère des infrastructures et de la gestion des eaux,

M^me^ Liedeke Wöltgens, juriste, ministère de la politique climatique et de la croissance verte,

M^me^ Kirsten Eeckhout, juriste, ministère de la politique climatique et de la croissance verte,

M. Mert Kumru, représentant de la jeunesse, Jeunesse mondiale pour la justice climatique.

Le Gouvernement de la République du Pérou est représenté par :

S. Exc. M^me^ Franca Deza Ferreccio, ambassadrice de la République du Pérou auprès du Royaume des Pays-Bas,

M. Oscar Paredes Loza, ministre,

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

Ms Sandra Rodríguez Sánchez, Counsellor,

Ms Estefany Jordán Bueno, Second Secretary.

The Government of the Democratic Republic of the Congo is represented by:

Mr Ivon Mingashang, Professor at the University of Kinshasa, member of the International Law Commission, honorary member of the Brussels Bar and member of the Kinshasa/Gombe Bar,

Mr Nicolas Angelet, Professor at Ghent University and the Université libre de Bruxelles, member of the Brussels Bar, Associate Tenant of Doughty Street Chambers, London,

Ms Sandrine Maljean-Dubois, Director of Research at CNRS, Faculty of Law and Political Science, Aix-Marseille University,

Mr Jean-Paul Segihobe Bigira, Professor and Head of the Department of Environmental Law and Sustainable Development, University of Kinshasa, member of the Kinshasa/Gombe Bar, Member of Parliament,

Mr Olivier Corten, Professor of International Law at the Université libre de Bruxelles, member of the Institut de droit international,

Mr Sylvain Lumu Mbaya, Professor of International Law and Head of the Department of Public International Law and International Relations, Faculty of Law, University of Kinshasa, Judge at the Constitutional Court of the DRC,

Mr Camille Ngoma Kouabi, Professor, University of Kinshasa,

Mr Alidor Kahisha, Director of the Office of the Minister of State, Minister for Justice, member of the Kinshasa/Matete Bar,

Mr Joseph Baruani Saleh, Professor, Université Protestante au Congo,

Mr Ezéchiel Amani Cirimwami, Professor of International Law, Vrije Universiteit Brussel (VUB),

Mr François Habiyaremye Muhashy Kayangwe, Professor at the University of Goma, Researcher at the Royal Belgian Institute of Natural Sciences, member of the Congolese Academy of Sciences,

Mr Blaise Ndombe Musoki Obel, Judge and Deputy Executive Co-ordinator of the Inter-Institutional Commission for Assistance to Victims and Support for Reforms,

Mr Honoré Mitshabo Tshitenge, Legal Assistant to the Director of the Office of the President of the Republic, member of the Kinshasa/Gombe Bar,

Mr Jean-Paul Mwanza Kambongo, Head of the Faculty of Law, University of Kinshasa, member of the Kinshasa/Gombe Bar,

Mr Glodie Kinsemi Malambu, Assistant at the Faculty of Law, University of Kinshasa, member of the Kongo Central Bar,

Ms Grace Ngoy Ilunga, Assistant at the Human Sciences Research Centre, member of the Kinshasa/Matete Bar,

M[me] Sandra Rodríguez Sánchez, conseillère,

M[me] Estefany Jordán Bueno, deuxième secrétaire.

Le Gouvernement de la République démocratique du Congo est représenté par :

M. Ivon Mingashang, professeur à l'Université de Kinshasa, membre de la Commission du droit international des Nations Unies, avocat honoraire au barreau de Bruxelles et avocat au barreau de Kinshasa-Gombe,

M. Nicolas Angelet, professeur à l'Université de Gand et à l'Université libre de Bruxelles, avocat au barreau de Bruxelles, *Associate Tenant*, Doughty Street Chambers (Londres),

M[me] Sandrine Maljean-Dubois, directrice de recherche au CNRS, faculté de droit et de science politique d'Aix-Marseille Université,

M. Jean-Paul Segihobe Bigira, professeur et chef de département du droit de l'environnement et du développement durable à l'Université de Kinshasa, avocat au barreau de Kinshasa-Gombe et député national de la RDC,

M. Olivier Corten, professeur de droit international à l'Université libre de Bruxelles, membre de l'Institut de droit international,

M. Sylvain Lumu Mbaya, professeur de droit international et chef de département du droit international public et relations internationales de la faculté de droit de l'Université de Kinshasa, juge à la Cour constitutionnelle de la RDC,

M. Camille Ngoma Kouabi, professeur à l'Université de Kinshasa,

M. Alidor Kahisha, directeur de cabinet du ministre d'État, ministre de la justice et avocat au barreau de Kinshasa-Matete,

M. Joseph Baruani Saleh, professeur à l'Université protestante au Congo,

M. Ezéchiel Amani Cirimwami, professeur de droit international à la Vrije Universiteit Brussel (VUB),

M. François Habiyaremye Muhashy Kayangwe, professeur à l'Université de Goma, chercheur à l'Institut royal des sciences naturelles de Belgique, membre titulaire de l'Académie congolaise des sciences,

M. Blaise Ndombe Musoki Obel, magistrat, coordonnateur exécutif adjoint de la commission interinstitutionnelle d'aide aux victimes et d'appui aux réformes,

M. Honoré Mitshabo Tshitenge, assistant juridique du directeur de cabinet du président de la République, avocat au barreau de Kinshasa-Gombe,

M. Jean-Paul Mwanza Kambongo, chef de travaux à la faculté de droit de l'Université de Kinshasa, avocat au barreau de Kinshasa-Gombe,

M. Glodie Kinsemi Malambu, assistant à la faculté de droit de l'Université de Kinshasa, avocat au barreau de Kongo-central,

M[me] Grace Ngoy Ilunga, assistante au centre de recherche en sciences humaines, avocate au barreau de Kinshasa-Matete,

Mr Dany Bushabu, Assistant at the Faculty of Law, University of Kinshasa, member of the Kinshasa/Matete Bar,

Ms Rabbie Dimbu Mavua, Assistant at the Faculty of Law, University of Kinshasa,

Mr Bruno Kalala Mbuyi, Assistant at the Faculty of Law, University of Kinshasa,

Ms Bérénice Kabulo Mukanda, Assistant at the Faculty of Law, University of Kinshasa, member of the Kinshasa/Matete Bar,

Ms Alpha Lukala Kakala, Assistant at the Human Sciences Research Centre, member of the Kinshasa/Matete Bar,

Ms Romaine Bulalu Adanze, Assistant at the Human Sciences Research Centre,

Mr Jean-Patrick Nkosi, Assistant to the Deputy Minister for Justice in charge of international disputes.

_____

M. Dany Bushabu, assistant à la faculté de droit de l'Université de Kinshasa, avocat au barreau de Kinshasa-Matete,

M[me] Rabbie Dimbu Mavua, assistante à la faculté de droit de l'Université de Kinshasa,

M. Bruno Kalala Mbuyi, assistant à la faculté de droit de l'Université de Kinshasa,

M[me] Bérénice Kabulo Mukanda, assistante à la faculté de droit de l'Université de Kinshasa, avocate au barreau de Kinshasa-Matete,

M[me] Alpha Lukala Kakala, assistante au centre de recherche en sciences humaines, avocate au barreau de Kinshasa-Matete,

M[me] Romaine Bulalu Adanze, assistante au centre de recherche en sciences humaines,

M. Jean-Patrick Nkosi, assistant du vice-ministre de la justice en charge du contentieux international.

_____

The PRESIDENT: Good morning. Please be seated. The sitting is open.

The Court meets this morning to hear Palau, Panama, the Netherlands, Peru and the Democratic Republic of the Congo on the questions submitted by the United Nations General Assembly. Each of the delegations has 30 minutes at its disposal for its presentation. The Court will observe a short break after the presentation of the Netherlands.

I shall now give the floor to Mr Gustav Aitaro, speaking on behalf of Palau.

Mr AITARO:

I. INTRODUCTION

1. Mr President, Madam Vice-President, Members of the Court, and may it please the Court, I am Gustav Aitaro, the Minister of State of the Republic of Palau. I am honoured to have this opportunity to appear before you with my colleagues, the Honourable Ernestine Rengiil, Palau's Attorney General, who will be providing the latter half of our legal statement later on. Also accompanying me is Mr Xavier Matsutaro, Palau's National Climate Change Co-ordinator from the Office of the President, and Mr Peter Prows, Palau's Legal Counsel. This is the first case in this Court in which Palau has participated, and Palau is grateful for the Court's attention and diligence to the fundamental issues this case raises for the international legal order.

2. Mr President, Madam Vice-President, Members of the Court, after 300 years of colonial rule from Spain, Germany, Japan and the United States of America, Palau was the last country to emerge from the United Nations Trusteeship. In October of this year, Palau celebrated 30 years of independence.

3. Palau takes seriously the rights and responsibilities of independence. Independence should mean that Palau is free to build its own future and be responsible for the security, safety and well-being of its own people. Yet Palau is learning that, with the freedom of independence, must also come with a basic responsibility towards neighbours: every independent nation must ensure that the activities they allow within their territory do not cause significant harm to other nations. No State is truly independent if it must suffer significant injury without consequence from the activities allowed by other States.

4. Man-made climate change is now the biggest threat to the Palauan people's independence and right to self-determination. In order for Palau to fully realize the promise of independence, it must ask this Court to recognize that States have the legal responsibility to ensure that they do all they can to prevent emissions from their territory from causing significant harm to other States.

II. PALAU'S LIVED EXPERIENCE WITH CLIMATE CHANGE

5. In order to understand the threat that climate change poses to Palau, I invite you to walk with me through the lived reality of Palau — a reality deeply marked by the relentless impacts of climate change. As we explore, I bring into sharper focus the pressing vulnerabilities that our communities face daily.

[Slide: Figure 1[1].]

6. Let me start with Koror, the most populous state in Palau. The red areas you see are flood zones from sea level rise. Koror is made up of three main islands and serves as our hub of commerce, education and healthcare. It is not our capital, but it is the pulse of our nation — where most people live and where essential services thrive. Koror's significance extends beyond our own borders, connecting to Babeldaob, an adjacent island which is our second-largest population centre and houses our capital and only international airport.

7. Our roadways are the lifelines that connect these critical services. Yet, these lifelines are acutely susceptible to the impacts of climate change due to rising sea levels and the increasing frequency and severity of storm surges from tropical cyclones.

8. Now, as we look at the map of Koror, I would like to guide you through areas of greatest concern.

9. First, note the orange square at the bottom left. This marks Palau's only national commercial port — the heart of our import and export activities. Above the port, you see two yellow squares. Each represents a narrow, two-way causeway. Damage to even one of these causeways by a severe storm or rising sea levels will cut off access to our port, disrupting essential trade that supports our nation.

---

[1] Figure 1: The effect of 8 feet of sea level rise on the islands of Koror (courtesy Office of the Palau Automated Land and Resource Information System).

10. Moving north-east, we come to another orange square, Palau's only hospital. Just below it lies another causeway marked by a yellow box. Damage to this route could isolate the hospital, preventing residents from receiving medical care during emergencies.

11. Now, let us turn to the top right. The large yellow box you see indicates a causeway connecting Koror to Babeldaob. This connection is very vital. If it were severed, 70 per cent of Palau's population, who live in Koror, would lose access to the only international airport, cutting off travel and severely impacting tourism — our main source of revenue.

12. Finally, I draw your attention to the black box in the centre. It represents the villages of Sechemus and Butilei. These communities are at particular risk due to a triple threat.

[Slide: Figure 2[2].]

13. The first threat is rising sea levels. What was once an anomaly is now becoming routine. In the 1970s, higher than normal tides were rare — only one instance was recorded. But between 2010 and 2019, the number rose to five. In 2021, there were four instances, and this year, we have seen flooding occur twice a month since September, with this year's record high tide in November.

[Slide: Figure 3[3].]

14. Residents of Sechemus often find their roads submerged, waiting for the sea to recede before they can come or go. In some cases, they must drive through standing salt water just to leave their homes. While houses on stilts offer temporary relief, it is only a matter of time before the homes are flooded by the gradual increase in sea levels.

15. The second threat comes from the nature of the land itself. Parts of Sechemus and Butilei were once mangroves, now reclaimed and developed. The ground in these areas is soft and unstable, causing homes and roads to sink. Compounding this, the villages also face a third major threat: flooding from rainfall — a problem worsening with climate change.

16. To truly grasp the weight of these challenges, consider the demographics of these areas. Many residents of Koror cannot simply move inland. Available land in Koror is scarce and already claimed. Returning to ancestral lands is an option for some, but for others, their areas are remote,

---

[2] Figure 2: depicting Sechemus Village.

[3] Figure 3: Number of high water hours per year at Malakal Island in Palau from 1970 to 2019. Original figure by Matthew Widlansky, using data from the University of Hawai'i Sea Level Center Station Explorer, available at https://uhslc.soest.hawaii.edu/stations/?stn=007#datums.

lacking basic infrastructure like roads, electricity and water. Relocating means isolation from essential services and economic opportunities.

17. More than just our infrastructure, climate change threatens our very identity. The gradual disappearance of some of our islands due to rising sea levels is a matter that strikes at the heart of who we are as a people. Every island in Palau holds cultural significance; each has its own unique stories, traditions and heritage sites that tell the history of our ancestors. Losing any one of these lands would mean more than geographic loss — it would sever a link to our history, our culture and our sense of identity.

18. There are low-lying islands in Palau with distinct histories that comprise states within our constitutional Government. As some of these low-lying islands become uninhabitable due to rising sea levels and extreme weather events, we will be forced to answer incredibly difficult questions as to the cultural and political identities of the populations which inhabit these islands. Will the island of Kayangel retain relevance when all its residents are forced to relocate to other areas? And what will happen to the island of Sonsorol, one of the most remote communities of Palau, when all their cultural sites and history are washed away by the sea?

19. Our people's identity has been shaped by these islands for centuries. Sacred sites, burial grounds and cultural landmarks all lie within reach of rising waters. Without urgent action, Palau stands to lose these invaluable aspects of human history.

20. Mr President, Madam Vice-President, Members of the Court, our children stand to inherit a country that no longer reflects the stories and values of our ancestors. If the threat of climate change continues in the current pace, the ocean that sustains us will become a force of destruction, erasing the essence of being Palauan.

21. Thank you for your attention. I would now kindly ask you, Mr President, to call upon Palau's Attorney General, the Honourable Ernestine Rengiil, to take the floor. Thank you.

The PRESIDENT: I thank Mr Gustav Aitaro. I now give the floor to Ms Ernestine Rengiil.

Ms RENGIIL:

III. INTERNATIONAL LAW AND CLIMATE CHANGE

1. Mr President, Members of this honourable Court, I am Ernestine Rengiil, Palau's Attorney General. I am honoured to address this Court today to answer what rights and remedies international law provides to nations, like Palau, for harm caused by climate change. These proceedings are about conduct, specifically identified in the Request from the General Assembly, which is the scientifically acknowledged cause of climate change. This conduct breaches State obligations under international law, triggering legal consequences under the general law of State responsibility.

2. Although climate change poses tremendously complex practical problems for the world, as a matter of international law, the issue of climate change is straightforward. Common to the principles of law of all civilized nations is the concept that one's property may not be used to cause harm to another's. If one uses or allows their property to be used in a manner to cause harm to another, that harm must be stopped and reparations paid in full. In common law systems, this is the law of nuisance. In civil law systems, this is a servitude established by law. And in most moral systems, this is simply the Golden Rule.

3. In international law, this principle is better known as the law of transboundary harm and State responsibility. This principle is foundational to every State's independence. No State is really independent if it must suffer injury without consequences to the States causing the injury.

4. The United States Supreme Court was early to recognize this principle as one of international law, in the 1907 *Tennessee Copper Company* case[4] cited in the *Trail Smelter* arbitral award[5] and in Palau's briefs. In that case, the United States Supreme Court granted an injunction against a company in the US State of Tennessee, whose sulphur dioxide emissions were harming the environment of the US State of Georgia, in order to protect the sovereignty of Georgia. The US Supreme Court stated that the "quasi-sovereign" State of Georgia, not an outside company from

[4] *State of Georgia* v. *Tennessee Copper Company*, 206 U.S. 230, 237 (1907).

[5] *Trail Smelter Arbitration (United States/Canada)*, *Reports of International Arbitral Awards (RIAA)*, Vol. III (1941), p. 1964.

Tennessee, "has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air".

5. *Trail Smelter* applied this same principle to justify an injunction and indemnity for damages in favour of the United States and against Canada arising from harm caused by Canada's emissions of sulphur dioxide.

6. This Court has consistently recognized and applied the principle of transboundary harm and State responsibility, whether in environmental cases or otherwise. In *Corfu Channel*[6], this Court applied "general and well-recognized principles . . . of humanity", arising from "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States", to find Albania liable for damage caused by mines in Albanian waters to British Navy vessels operating legally.

7. In *Legality of the Threat or Use of Nuclear Weapons*[7], this Court recognized that "[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment".

8. More recently, in *Certain Activities Carried Out by Nicaragua in the Border Area*[8], the Court considered claims by Costa Rica for compensation for environmental harm caused by Nicaragua's unlawful dredging of a canal. To resolve those claims, the Court again applied the principle that it is "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States", and "[a] State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State". The Court ultimately found Nicaragua liable and ordered that "full reparation" be made, including "compensation . . . for damage caused to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage."

---

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

[7] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 41, para. 29.

[8] *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. 706, para. 104; *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.

9. The great majority of the written submissions and responses in this case urge this Court to expressly recognize that those same rules apply to climate change. But a small minority argue that climate change should be the exception to these rules. This Court should decline to create new exceptions to the basic rules of the international order for climate change.

10. The minority argue that, because climate change is caused by a diffused set of global emissions sources, it will be too difficult in any future contentious cases to prove causation. But such practical problems exist in all cases and are not sufficient grounds to abandon the basic legal rules altogether. In any contentious case, advocates and experts will have to meet their burden of proof. And if they cannot, then there is nothing for those advancing these practical concerns to worry about.

11. Another set of arguments is more fundamental: because States have negotiated a series of agreements under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC), those agreements occupy the field, as *lex specialis*, of States' obligations under international law with respect to climate change. This argument was rejected by the recent International Tribunal for the Law of the Sea (ITLOS) advisory opinion on climate change. Rightly so. There is no textual support for this argument in the agreements themselves. There is also no reason why States cannot comply both with those agreements and with their more basic obligation to ensure that activities under their jurisdiction do not cause harm to other States.

12. The text of the UNFCCC, in its recitals, explicitly recognizes the continuing viability of the basic rule that "States have . . . the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction". This recital is phrased in the present tense ("States have" the responsibility), leaving no doubt that the parties to the UNFCCC understood that this responsibility to prevent harm would co-exist with the obligations under that agreement.

13. Nothing in the text or context of the UNFCCC or its successor agreements provides even a hint of support for the argument that those agreements occupy the field of climate change law and completely wipe away the basic and well-established rule that States are responsible for ensuring that activities under their jurisdiction do not cause significant harm to other States. Those Participants advancing this argument are asking this Court to rewrite those agreements to insert a significant provision that they could not achieve during the negotiation of those agreements and that the majority

of the parties to those agreements do not accept. This Court should decline their invitation to rewrite those agreements to insert a provision overriding the very obligations of transboundary harm and State responsibility that the recitals to the UNFCCC confirm still applies.

14. This Court should answer the General Assembly's Request for an advisory opinion on climate change by confirming that this basic and well-established principle of transboundary harm and State responsibility applies to climate change.

IV. CONCLUSION: "THE BREADFRUIT STORY"

15. Palau leaves you with a life lesson of *Meduu Ribtal*, "The Breadfruit Story" — a story of overconsumption which led to the destruction of one of Palau's islands. This legend is depicted on the storyboard[9] that you see here.

[Slide: Figure 4.]

Storyboards are a Palauan art form which we use to preserve our traditions and legends, each telling a piece of our history to help us mould a better future.

16. According to ancient Palauan legend, demigods travelled from village to village, performing incredible feats to teach valuable lessons. One such demigod is Dirrachedebsungel. After years of selfless service, she settled as an old woman in Ngibtal, a village on Babeldaob's north-east coast, seeking rest and to be treated with dignity. Her son followed her footsteps — travelling, teaching life lessons and skills.

17. Despite Dirrachedebsungel's years of service, she received no support from her community and lived alone, hungry and overlooked. Each day, she watched local fishermen return with her favourite fish but was never offered any. Finally, after a long absence, her son returned. Seeing her in distress, he broke a branch from a hollow breadfruit tree near her home. Miraculously, with each surge of the ocean, fresh fish filled the tree's hollow, giving his mother a steady supply of food.

18. Consumed by the opportunity to harvest more fish, when the villagers saw her good fortune, they cut down the tree. An abundance of fish flowed out from the tree's stump, but caused the ocean to flood the island, first contaminating the village with salt water and eventually drowning

[9] http://multicoloreddiary.blogspot.com/2016/12/tales-in-color-and-style-following.html.

the entire island, leaving only the old woman to survive. She moved to another village, took a new name, and lived sustainably — spreading word of the practices that caused the island to sink.

19. Today, Ngibtal can be found underwater, with remnants of the sunken village still visible beneath the clear ocean waters. These ruins now serve as a reminder of areas damaged and lost due to lack of self-restraint, causing harm to the land that once sustained them.

20. While this legend has long taught morals and environmental stewardship to Palauans and visitors to Palau, it is also a life lesson to the global community. The breadfruit tree symbolizes fossil fuel extraction: initially beneficial, but short-sighted exploitation ultimately leads to destruction of the environment and the community. The ocean's flood, which destroyed the village, represents the destructive consequences of unsustainable practices. The old woman's survival and message of environmental stewardship represents hope for a future that values sustainability and respect for coexistence with our environment.

21. Palau hopes this Court takes the opportunity presented by this case to confirm that international law also values sustainability and respect for natural resources as part of an international system of law that values the full independence and sovereignty of each State.

22. Mr President, Members of the Court, this concludes Palau's oral submissions. Mesulang.

The PRESIDENT: I thank the representatives of Palau for their presentation. I now invite the delegation of Panama to address the Court and I call Mr Fernando Gómez-Arbeláez to the podium.

Mr GÓMEZ-ARBELÁEZ:

1. Good morning, Mr President, distinguished Members of the Court. Today I have the special honour to address the Members of the International Court of Justice, the principal judicial organ of the United Nations, on behalf of the Republic of Panama. Like other Participants in those momentous hearings that we have been seeing and participating in the last few days, in regard to the countries and organizations they are representing, I wish to express the views of my country as to the legal questions drafted by the General Assembly and submitted to the Court in March and April of last year in its Request for an advisory opinion on the obligations of States in respect of climate change.

2. This Request, embodied in resolution 77/276, is clearly supported by the Charter of the United Nations and the Statute of the Court. Article 65 of the Statute recognizes that the Court has

the discretionary power to decide whether the circumstances of any individual proceedings are such as to lead the Court to decline or to reply to the Request for an advisory opinion. The Republic of Panama is certain that the Court will find that it has the necessary advisory jurisdiction to answer the legal questions expressed in the resolution, a document where the General Assembly recognized "that climate change is an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it".

3. Further, the Court should consider these advisory proceedings as a critical opportunity to attend the inadequacies of the current Conferences of the Parties, or COPs, of the United Nations Framework Convention on Climate Change. By means of an opinion, which in itself carries great legal weight and moral authority, the Court can offer much-needed legal clarity to reinforce international obligations and inspire a stronger determination to tackle the global climate crisis.

4. Along with the Deputy Administrator and Sustainability Officer of the Panama Canal Authority, experts of the Ministry of the Environment and the Panamanian Ambassador to the Kingdom of the Netherlands, I proudly represent the Republic of Panama, a founder of the United Nations, and previously of the League of Nations, and of which a former Judge and Vice-President of the Court, Ricardo Joaquin Alfaro, was an illustrious national.

5. The Members of the Court may be pleased to know that Panama, regardless of its small size and contribution of only 0.03 per cent of global emissions, is mindful of the challenges that requires, as it has become among a handful of States, a carbon-negative country. Despite this condition, Panama is not turning away from facing the adverse conduct of others as to human-induced global warming.

6. Panama is convinced when asserting, as to a point on which many Participants attending this Great Hall of Justice would similarly coincide, that climate change is human-induced and scientifically determined, and that its substantial growing effects stand for the most significant environmental concern of our time, if not in the history of humankind.

7. Unfortunately, the principle of self-determination exercised by a meaningful number of States, particularly those with high emissions of anthropogenic greenhouse gases, or GHGs, and, consequently, responsible for transborder pollution, has had a direct and detrimental impact on the

self-determination of the Republic of Panama and, even more so, on the most vulnerable States of the planet.

8. The indifferent actions of several developed countries, which are carelessly responsible for most of those emissions, have been taking place with little or no regard to their harmful global consequences. Their triviality as to the interconnectedness of countries and the resulting infringement of national sovereignty, as much as that of other vulnerable States, are facts that have brought the Republic of Panama before the Court.

9. The first legal question submitted by the General Assembly to the Court in its Request is ostensibly a simple one, whether States are required to comply with obligations of an international character they have not assumed expressly by becoming a party to an international agreement where they are either established or recognized as applicable. It does relate to the anticipated obligations of States under international customary law and to general principles of international law to ensure the protection of the climate system and other parts of the environment from GHGs "for States and for present and future generations".

10. With deep anxiety, Panama concludes that if the conduct of those States emitting GHGs is not promptly and effectively curbed, there will be no future generations for the United Nations or anyone else to take care of at all.

11. Adding to that ominous prospect, the Members of the Court may concur that the unique geographical features of my country, including its location at the heart of the Americas, make apparent that further explanation as to my participation today at the Peace Palace is unnecessary. It is a narrow, green isthmus uniting the lands of both North and South America which, at the same time, unites the waters of the Atlantic Ocean, the Caribbean Sea and the Pacific Ocean through the Panama Canal.

12. Panama is a small country, but at the same time it is perhaps a giant of considerable proportions in conservation and climate action. We are protecting more than 50 per cent of our territorial waters and over 35 per cent of our lands. As stated, we are one of the few carbon-negative countries in the world, and among the first to submit our climate reports.

13. But climate change is becoming increasingly unpredictable, pushing every year the boundaries of what it is possible to adapt to. Recent events in Panama unambiguously illustrate this

difficult reality. At the beginning of 2024, for example, the Panama Canal basin experienced the third-worst drought in its 110-year history, severely impacting this critical waterway for global transport and commerce. The Canal's lock system, which relies on gravity-fed fresh water from its reservoirs and rivers, faced drastically reduced water availability, leading to fewer transits, lower revenue, prolonged shipping delays, larger freight costs and higher prices for consumers.

14. In a dramatic and alarming twist of events within the same year, the rains returned to Panama, filling the Canal reservoirs but unleashing the opposite extreme. Unusually intense storms generated widespread flooding, resulting in extensive damage to crops, livestock, dwellings and infrastructure. This rapid swing from severe drought to devastating floods highlights the extreme variability of climate impacts, making it almost impossible for a country and its inhabitants to adapt effectively. It feels as though we are surpassing the limits of adaptation, as these volatile and intensifying events outpace our capacity to prepare for and respond to them.

15. In the meantime, the surge of greenhouse gas emissions, which accelerates sea-level rise, is further hampering our possibilities for sustainable growth and our efforts to remain carbon-negative. Rising seas are threatening the shorelines of the isthmus and its islands on both the Caribbean and Pacific coasts, profoundly affecting the habitat of native populations, such as those of the Guna Archipelago in the Caribbean Sea, who have lived there for hundreds of years.

16. These communities are being displaced inland as they witness the gradual disappearance of their homeland. Their displacement creates additional pressure on forests and biodiversity in the areas where they resettle.

17. Mr President, distinguished Members of the Court, a safer future for all depends on your answers to the legal questions that have been placed before you.

18. It is certainly encouraging for Panama as to the answers to be given in the requested advisory opinion that the Court has already recognized convincingly and with the utmost interest in an earlier Opinion as to the *Legality of the Threat or Use of Nuclear Weapons* in 1996, which was mentioned by my predecessor on this podium, that "the environment is under daily threat and that the use of nuclear weapons" — which was the main concern of that proceeding — "could constitute a catastrophe for the environment" while the Court

> "also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."

19. Twenty-eight years later, when human-induced global change is more alarming than ever before, the last paragraph of the quoted text remains perhaps the most comprehensive statement by the Court, not only as to the reality of the daily challenges to the environment, but also as to the recognition by the Court that obligations of States in "areas beyond national control" are part of international law.

20. Holding a similar view as to transboundary activities and liabilities, the Court, in its Judgment in the case concerning the *Pulp Mills on the River Uruguay* in 2010, determined while quoting from the Judgment on the merits in the *Corfu Channel* case of 1949 that

> "the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory. It is 'every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States' . . . A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State."

21. The Court later found in the same Judgment of 2010 that there is

> "a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource".

22. These direct statements by the Court reflect the requirement of existing customary international law and general principles of international law under which States must ensure that activities within their jurisdiction or control do not cause damage to the environment of other States, or of areas beyond the borders of their national jurisdiction. The recognition of this "principle of prevention" helps the Court to answer the first question posed by the General Assembly in the affirmative.

23. Mr President, when formulating the legal questions before the Court, the General Assembly may have been mindful of the clarity of aims stated not only in specific relevant documents such as the Paris Agreement on climate change and the United Nations Framework Convention on Climate Change, that earlier speakers have already covered in detail.

24. As to those legal questions, I wish to go back to the basics of our current international system, to the very central principles enshrined in the Preamble of the Charter of the United Nations.

25. Since 1945, "[w]e the peoples of the United Nations" are determined

> "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom".

To these ends they commit "to practice tolerance and live together in peace with one another as good neighbours" and "to employ international machinery for the promotion of the economic and social advancement of all peoples".

26. Mr President, the Charter reminds us that human rights are universal. Neither the respect of human rights and dignity, nor social progress or better standards or opportunities to live together in peace, and no economic and social advancement for all nations would ever be possible if we allow human-induced climate change to destroy the living conditions of hundreds of millions of people all over the world.

27. The United Nations have combined their efforts, as provided in Article 1 of the Charter, "to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace", "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace", "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" and "to be a centre for harmonizing the actions of nations in the attainment of these common ends".

28. None of those aims, however, could be accomplished if we continue in the current path of environmental harm and destruction.

29. Another resort to the Charter itself brings us to Articles 55 and 56, where the United Nations pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth "with a view to the creation of conditions

of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

30. In accordance with Article 55, the United Nations shall promote:

"1. higher standards of living, full employment, and conditions of economic and social progress and development;

2. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

3. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

31. Nothing needs to be added to these commitments by the members of the Organization. I foresee the Court taking these far-reaching Charter provisions into account when deciding that the promotion of those aims cannot be achieved without due respect to our global environment by all States under international law.

32. Mr President, the Republic of Panama believes that the principles underlying the current efforts against climate change constitute basic principles of general international law with the character of *jus cogens*.

33. It is known that norms having the character of *jus cogens* are rules of general international law developed on behalf of humanity, and nothing cannot be more human than the preservation of the living conditions for all humanity in our planet. Efforts against climate change have not been advanced in the interest of individual communities or States, but in the higher interest of humanity as a whole.

34. Mr President, distinguished Members of the Court, the Republic of Panama feels confident that the Court will recognize in its advisory opinion that environmental obligations are indeed peremptory norms of international law.

35. Since its Judgment on the merits rendered on its first-ever contentious case, the *Corfu Channel* case, in 1949, the Court has shared the view that there are international obligations not based on international conventions, but on "certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war". I find no reason why the Court would not maintain the same view when giving the advisory opinion requested

75 years later, a period in which elementary considerations of humanity regarding our environment are more exacting than ever before.

36. Mr President, the Court has also been asked to indicate what are the legal consequences under the obligations under international law for States where they, by their actions and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to States and to peoples and individuals of the present and future generations affected by the same adverse effects.

37. Those affected countries, among them Panama, are particularly vulnerable to the harmful consequences of climate change due to their geographical circumstances. The Court is aware, no doubt, that the issue of State obligations, particularly the broader topic of State responsibility, was one of the first subjects selected by the International Law Commission for analysis and eventual codification between 1949 and 1953. This occurred during the tenure of Judge Alfaro from Panama as a member of the Commission.

38. It took nearly half a century for the International Law Commission to complete this monumental task, a feat made possible by the dedication of esteemed members such as Professors Derek Bowett and James Crawford of the University of Cambridge. Judge Crawford, who later served on this Court and who is fondly remembered in this Palace, finalized the effort as the last Special Rapporteur on the topic, culminating in the adoption of the Draft Articles on Responsibility of States for Internationally Wrongful Acts by the Commission in 2001.

39. Among the provisions of the Draft Articles, three of them warrant early attention. Article 2, under which there is an internationally wrongful act of a State when conduct consisting of an action or omission is attributable to a State under international law and constitutes a breach of an international obligation of that State. Under Article 30, on cessation and non-repetition, the State responsible for the wrongful act must cease the act and, if continuing, to offer assurances and guarantees that it will not be repeated, if the circumstances so require.

40. Besides, under Article 48, obligations *erga omnes* are recognized, for a State other than the injured State acting in the collective interest can invoke responsibility. The obligation is not directed towards any specific State but rather extends to a collective group of States or, in some cases, to the international community as a whole.

41. Lastly, Mr President, while the character of environmental harm caused to a State and its reparation was not the main objective of the Commission when formulating the Draft Articles, they do offer nonetheless the best possible source to date as to how to repair the damage caused by climate change.

42. We thus submit to the means of reparation, such as restitution, compensation and satisfaction, as well as the payment of interest on any amount due, which the Draft Articles provide in Articles 35, 36, 37 and 38, respectively, with their individual application depending on each particular case.

43. Mr President, distinguished Members of the Court, on behalf of the Republic of Panama I thank you for your interest in the views I have expressed. I will just add that 125 years ago, at the Hague Peace Conference — the first Hague Peace Conference — which in 1899 met at a palace not far from here, the *Huis ten Bosch*, an attempt was made to turn the collective interests of the international community into a priority of international relations under international law. As we all know, it regretfully failed in preserving the peace for more than fifteen years. Let us not fail this time where previous efforts were unsuccessful in materializing the supreme goal of living peacefully in a world where we are all neighbours. Let us succeed in the face of adversity, which today, alongside war, is represented by the harsh realities of climate change we are all living through.

Thank you very much.

The PRESIDENT: I thank the representative of Panama for his presentation. I now invite the delegation of the Netherlands to make its oral statement and I call upon Professor René Lefeber to take the floor.

Mr LEFEBER:

I. INTRODUCTION

1. Mr President, distinguished Members of the Court, it is an honour to appear before you today on behalf of the Kingdom of the Netherlands to participate in this hearing on the Request for an advisory opinion on the *Obligations of States in respect of Climate Change*. I will present to you,

further to the written statement and the written comments on the other written statements, additional observations of the Kingdom of the Netherlands with respect to this Request.

2. The presentation of the Kingdom of the Netherlands will consist of two parts. The first part will provide you with the position of the Kingdom of the Netherlands. The second part will present the perspective of a youth representative.

II. THE EUROPEAN AND CARIBBEAN PARTS OF THE KINGDOM OF THE NETHERLANDS

3. Mr President, distinguished Members of the Court, the Kingdom of the Netherlands has, historically, always faced the necessity to adapt to nature. *Luctor et emergo*, struggle and emerge, is the motto of the province of Zeeland ("Sealand") which has been particularly vulnerable to high tides. Land and water have been and continue to be shaped by the forces of nature and humans.

4. The European part of the Kingdom of the Netherlands is one of many densely populated low-lying deltas in the world. For centuries, parts of the population of the European part of the Kingdom of the Netherlands have lived below sea level. There were always reasons to improve its water management. Flood risks and salinization have traditionally been managed by combining river levees, sea barriers and dunes for protection with systems to pump out excess water from polders into rivers and the sea.

5. Over the past decades, the international community as a whole has been confronted with an unprecedented threat that transcends borders and generations: climate change. This threat originates in anthropogenic greenhouse gas emissions. With the release of the first three reports of the Intergovernmental Panel on Climate Change, or IPCC, in 1990, scientific understanding of anthropogenic climate change began to advance.

6. Human-induced climate change is already producing many weather and climate extremes, as well as activating slow-onset processes, in every region, across the globe. This has led to widespread adverse impacts on food and water security, human health, economies and society, and related loss and damage to nature and people. In the period from January to September 2024, the global average temperature was 1.5°C above the pre-industrial level[10]. Every progression of global

[10] World Meteorological Organization, "2024 is on track to be the hottest year on record as warming temporarily hits 1.5°C" (11 November 2024), available at https://wmo.int/news/media-centre/2024-track-be-hottest-year-record-warming-temporarily-hits-15degc.

warming increases the risk of adverse climate change impacts and related loss and damage, and therefore the need for adaptation[11]. Any further delay in concerted anticipatory global action on mitigation and adaptation will miss a rapidly closing window of opportunity to secure a liveable and sustainable future for all. Despite the progress made, adaptation gaps exist between current levels of adaptation and levels that are needed to respond to impacts and reduce climate risks.

7. Even for the European part of the Kingdom of the Netherlands, despite centuries of experience in adapting to natural forces and despite the uncertainty about the degree of future acceleration, it has become clear how climate change and its deleterious effects enhance the need for adaptation measures to maintain safety and liveability in the future. These adaptation measures are becoming more and more complex, and require looking beyond current civil engineering solutions.

8. For example, the European part of the Kingdom of the Netherlands already faces increased salinization due to climate change, exacerbated by land subsidence, requiring adaptation in land use. This problem will increase with a rising sea level. Moreover, in some areas in the European part of the Kingdom of the Netherlands, engineering solutions designed to keep our feet dry have resulted in greater vulnerability during dry periods. States must anticipate unforeseen consequences of adaptation efforts in their long-term planning.

9. The Kingdom of the Netherlands has conducted research on long-term perspectives to address the projected increasing risk for the Dutch delta[12]. This research has explored four different conceptual strategies:

— The first is the "protection-closed" strategy: this strategy involves "protecting the coast from floods and erosion with hard or soft measures, such as water defences, sand nourishment or wetlands. River arms will be closed off with dams".

— The second is the "protection-open" strategy: this strategy is the same as the "protection-closed" strategy, but "rivers will continue to have open connections to the sea".

— The third is the "seaward" strategy: this strategy involves "the creation of new, higher and seaward land to protect the delta from the consequences of flooding".

---

[11] IPCC, 2023, "Synthesis Report" in *Climate Change 2023, Contribution of Working Groups I, II, and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, H. Lee and J. Romero (eds.).

[12] Deltares, "Sea level rise: research into the consequences", available at https://www.deltares.nl/en/expertise/areas-of-expertise/sea-level-rise.

— And the fourth is the "flexibility" strategy: this strategy involves "the reduction of vulnerability to the effects of higher sea-level rise by means of water- or salt-tolerant land use, such as floating buildings and infrastructure on piles . . . spatial planning and/or relocation".

10. The report on this research acknowledges that uncertainty is now still too large for decision-making, but the technical and societal feasibility, as well as the adaptivity of each of these strategies, have been mapped.

11. The Caribbean part of the Kingdom of the Netherlands also faces the impacts of climate change and its deleterious effects. It is currently experienced in the form of higher average temperatures, increased wind speed and more droughts in both the dry and wet season. In the future, in a warmer climate, tropical storms and hurricanes become stronger with faster wind speeds and more rainfall. Marine heatwaves will become more common due to rising sea temperatures and the higher carbon dioxide levels lead to ocean acidification. Together, these conditions negatively impact coral health, thereby contributing to coral bleaching and the decline of coral reefs in the Caribbean part of the Kingdom of the Netherlands. Sea-level rise will first affect the lower-lying parts of the Caribbean part of the Kingdom, requiring different responses than those traditionally developed in the European part of the Kingdom. Adaptation in the Caribbean part of the Kingdom of the Netherlands may, for example, consist of a combination of nature restoration measures, spatial planning and climate-resilient infrastructure.

12. Mr President, distinguished Members of the Court, having described some of the current and potential consequences of climate change for the Kingdom of the Netherlands, as well as possible adaptation measures to address these consequences, I would now like to take a moment to reflect on the location where these hearings take place. While The Hague at large lies below sea level, the Peace Palace, the building in which we are currently seated, is six metres above sea level. Dry feet are therefore assured for the remainder of these hearings. However, as evident from the latest IPCC reports, sea level is rising and will continue to do so in the centuries to come — with all of its consequences. If the international community does not intensify its mitigation efforts, and if the Kingdom of the Netherlands does not manage to continue to protect its coast and riverbanks through adaptation, at some point in the future we may find ourselves here *on Peace Palace Island*.

Ultimately, those residing in these low-lying coastal areas will have to live with a sea level that will be higher than it is today.

III. THE INTRINSIC LINK BETWEEN MITIGATION AND ADAPTATION IN LIGHT OF THE GLOBAL RESPONSE TO CLIMATE CHANGE

13. Mr President, distinguished Members of the Court, many States face a multitude of vulnerabilities exacerbated by climate change. An essential component of the global response to climate change is mitigation. The Kingdom of the Netherlands has argued in its written statement that it is of the view that it is imperative that States develop, adopt and implement a mitigation policy. A State could comply with this obligation through, for example, becoming a party to, and complying with, the United Nations Framework Convention on Climate Change — to which I will refer as the UNFCCC — and/or the Paris Agreement, including by preparing, communicating and maintaining progressively formulated, and non-regressive, nationally determined contributions. Such so-called NDCs must have the intention to achieve the aims as enshrined in the UNFCCC and the Paris Agreement.

14. It is the *opinio juris* of the Kingdom of the Netherlands that the obligation to develop, adopt and implement a mitigation policy has passed into the general corpus of international law. Given the common interest of all States in complying with this obligation, and in light of the threat to the survival of States and their peoples, that looms larger with every increment of global warming, the Kingdom of the Netherlands considers this obligation to be applicable *erga omnes*.

15. The obligation to develop, adopt and implement a mitigation policy originates in several normative provisions and collective objectives, such as the protection and enhancements of carbon sinks and reservoirs. And in the pursuit of a mitigation policy, States should formulate long-term low greenhouse gas emission development strategies towards net-zero emissions by 2050, including by phasing out fossil fuels.

16. However, even if global warming is contained through mitigation measures, the IPCC has found that global warming will continue for decades, and the impacts of climate change will become even more serious. This means that all efforts must be undertaken today to limit the deleterious consequences of climate change in the future. And these efforts relate to both the obligation to

develop, adopt, and implement a mitigation policy, as well as the obligation to take adaptation measures — two efforts that are intrinsically linked.

17. As stated by the IPCC, "adaptation is a necessary strategy at all scales to complement climate change mitigation efforts"[13]. The understanding of the IPCC that adaptation efforts are required — even if mitigation efforts are successful — has evolved over the years. In 2007, the IPCC stated that "neither adaptation nor mitigation alone can avoid all climate change impacts"[14]. In 2014, the IPCC reiterated that "many adaptation and mitigation options can help address climate change, but no single option is sufficient by itself"[15]. In 2023, the IPCC found that "accelerated and equitable mitigation and adaptation bring benefits from avoiding damages from climate change and are critical to achieving sustainable development"[16].

18. The complementarity between mitigation and adaptation is, for example, embedded in various climate change-related agreements. According to Article 3, paragraph 3, of the UNFCCC, mitigation policies should take into account adaptation. Article 7 of the Paris Agreement recalls that adaptive capacity must be enhanced in the context of the long-term temperature goal of the Paris Agreement. It also states that the *current need* for adaptation is significant while recognizing that greater levels of mitigation can reduce the need for additional adaptation efforts in the future.

19. With regard to human rights law, the Kingdom of the Netherlands notes that human rights instruments do not contain specific provisions on mitigation and adaptation measures. Nevertheless, the effective enjoyment of human rights can be impacted by the consequences of human-induced climate change.

20. As the consequences of climate change pose a real and immediate threat to human rights and their effective enjoyment, States must take reasonable and appropriate measures to protect such

---

[13] IPCC, 2001, "Summary for Policymakers" in *Climate Change 2001, Impacts, Adaptation, and Vulnerability, Contribution of Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change*, J. McCarthy *et al.* (eds.), p. 751.

[14] IPCC, 2007, "Synthesis Report" in *Climate Change 2007, Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, R.K. Pachauri and A. Reisinger (eds.), p. 19.

[15] IPCC, 2014, "Summary for Policymakers" in *Climate Change 2014, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, R.K. Pachauri and L.A. Meyer (eds.), p. 26.

[16] IPCC, 2023, "Synthesis Report" in *Climate Change 2023, Contribution of Working Groups I, II, and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, H. Lee and J. Romero (eds.), p. 88.

rights. Such measures should include both mitigation and adaptation measures. For example, the Supreme Court of the Netherlands has stated that both adaptation and mitigation measures are "urgently needed" to combat climate change and its "disastrous consequences"[17]. Similarly, the European Court of Human Rights has found that both mitigation and adaptation measures are needed, because, without effective mitigation, adaptation measures cannot in themselves suffice to combat climate change[18].

21. In the context of the law of the sea, the International Tribunal for the Law of the Sea, in its advisory opinion on climate change and international law[19], found that the general comprehensive obligation to protect and preserve the marine environment encompasses the obligation to take mitigation measures as well as the obligation to undertake adaptation actions.

22. The Kingdom of the Netherlands wishes to emphasize that, besides the obligation to develop, adopt and implement a mitigation policy, each State is subject to a distinct obligation to plan and implement adaptation actions. The Kingdom of the Netherlands wishes to highlight that having an adaptation policy is not optional. However, each State is granted a certain margin of discretion when determining which measures to adopt, bearing in mind the Paris Agreement that requires its parties to plan and undertake adaptation actions "as appropriate". This is in line with the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances.

23. What is to be considered "appropriate" in this respect has also been addressed by the European Court of Human Rights. It stated that

> "[w]hile the challenges of combatting climate change are global, both the relative importance of various sources of emissions and the necessary policies and measures required for achieving adequate mitigation and adaptation may vary to some extent from one State to another depending on several factors"[20].

---

[17] Supreme Court of the Netherlands, 20 Dec. 2019, ECLI:NL:HR:2019:2007 (*The State* v. *Urgenda*), para. 7.5.2.

[18] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland* [GC], No. 53600/20, 9 Apr. 2024, para. 418.

[19] ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024.

[20] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland* [GC], No. 53600/20, 9 Apr. 2024, para. 421.

Such factors include "the structure of the economy, geographical and demographic conditions and other societal circumstances"[21].

24. The Kingdom of the Netherlands acknowledges that climate action may require difficult decisions, as was also demonstrated by presenting the adaptation needs and dilemmas of the Kingdom of the Netherlands. In light of the projected loss and damage by the latest scientific estimates, the Kingdom of the Netherlands wishes to underline that tailored, region-specific adaptation planning is essential to address the complex and evolving impacts of climate change. Proactive planning of adaptation measures and policies is required through continuous assessments based on the latest scientific data and regional climate projections. The effectiveness and the sustainability of adaptation measures should be reviewed through impact assessments, so that potential negative impacts can be identified and addressed, ensuring that adaptation does not only enhance climate resilience but also aligns with other environmental protection and sustainable development goals. Particular regard must be had for adverse impacts of adaptation measures on those segments of the population that are already vulnerable, such as women, children, indigenous peoples and those living in extreme poverty.

25. Notwithstanding the subnational, national and regional dimensions of adaptation, adaptation is a global challenge of the international community as a whole. Support for and international co-operation on adaptation efforts is therefore critical, especially for developing countries that are particularly vulnerable to the adverse effects of climate change.

IV. THE GLOBAL RESPONSE TO THE INJURIOUS CONSEQUENCES OF CLIMATE CHANGE

26. Mr President, distinguished Members of the Court, the Kingdom of the Netherlands has also noted the finding of the IPCC that climate change has already caused substantial damage and increasingly irreversible loss. While meeting global warming targets would substantially reduce projected loss and damage, such loss and damage can never fully be avoided. Despite mitigation and adaptation efforts, our planet will inevitably, to a greater or lesser extent, experience the injurious

[21] *Ibid.*

consequences of climate change. Such consequences require the international community to work together in addressing them.

27. Measures have been taken to address loss and damage associated with consequences of climate change — including extreme events and slow onset events — to assist developing countries that are particularly vulnerable to the adverse effects of climate change[22]. Through the Warsaw International Mechanism, established in the context of the UNFCCC, understanding, action and support with respect to loss and damage is to be enhanced on a co-operative and facilitative basis. Furthermore, funding arrangements were established, including a fund, to which developed countries are urged to provide support, and other States are encouraged to provide support[23].

28. Finally, the Kingdom of the Netherlands wishes to mention another far-reaching potential consequence of climate change: climate displacement. While existing international legal instruments grant rights to refugees and stateless persons, no adequate legal protection is currently provided to climate-displaced persons. It is for this reason that the Kingdom of the Netherlands believes that climate migration should be put on the international agenda, including the annual climate change conferences. In this respect, the Kingdom of the Netherlands would also like to draw the Court's attention to the ongoing work of the International Law Commission in relation to sea-level rise and the protection of persons.

V. CONCLUSION

29. Mr President, distinguished Members of the Court, the only way to combat climate change is by means of international co-operation. The duty to co-operate permeates the entirety of the international community's response to climate change. This includes capacity-building of developing countries, in particular the capacity of the least developed countries and countries particularly vulnerable to climate change. The duty to co-operate also extends to technology development and transfer. Furthermore, addressing the finance gap is critical to implementing effective mitigation and adaptation measures as well as addressing the injurious consequences of climate change. Both

[22] Report of the Conference of the Parties on its nineteenth session, Decision 2/CP.19: "Warsaw international mechanism for loss and damage associated with climate change impacts", UN doc. FCCC/CP/2013/10/Add.1 (31 January 2014).

[23] Report of the Conference of the Parties on its twenty-eighth session, Decision 1/CP/28: "Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2-3 of decisions 2/CP.27 and 2/CMA.4", UN doc. FCCC/CP/2023/11/Add.1 (15 March 2024).

mitigation and adaptation financing would need to increase manyfold. There is sufficient global capital to close the global investment gap; however, there are barriers to redirect capital to climate action[24]. Governments are critical in reducing these barriers, while at the same time all actors have a role to play. As agreed in the new collective quantified goal on climate finance, the finance to developing countries for climate action from all public and private sources should grow to at least US$1.3 trillion per year by 2035[25]. Developed countries, as part of a global effort, should take the lead in mobilizing climate finance from a wide variety of sources to provide at least US$300 billion per year by 2035 for climate action in developing countries[26].

30. The international community must implement its common and individual efforts regarding mitigation, adaptation, finance, technology development and transfer, and capacity-building in a co-operative, balanced, integrated and comprehensive manner. States should prepare for injurious consequences through, for example, spatial and disaster planning, with sufficient support for the States that are most vulnerable to the impacts of climate change. The Kingdom of the Netherlands would therefore like to stress that the global nature of climate change calls for the widest possible co-operation by all States and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities, in light of their different national circumstances. There is no time, nor room, for free riders on this planet.

31. Mr President, distinguished Members of the Court, I thank you for your attention, and now, with your permission, I invite you to call Mr Mert Kumru to the podium.

The PRESIDENT: I thank Professor René Lefeber. I now give the floor to Mr Mert Kumru. You have the floor.

---

[24] "Outcome of the first global stocktake", Decision 1/CMA.5, UN doc. FCCC/PA/CMA/2023/16/Add.1.

[25] "Matters relating to finance: New collective quantified goal on climate finance", Advance unedited version of Decision -/CMA.6 (24 November 2024).

[26] *Ibid.*

Mr KUMRU:

VI. STATEMENT OF A YOUTH REPRESENTATIVE

1. Mr President, distinguished Members of the Court. My name is Mert Kumru and I am part of the World's Youth for Climate Justice. I have the honour today to address you on behalf of the youth of all countries that are part of the Kingdom of the Netherlands. It is time that we acknowledge the fact that thanks to the leadership, resilience and stubborn optimism of young people, we are gathered here for these historic hearings in the city of peace and justice. The lives of both generations present and future will be influenced by the outcome of this advisory opinion. We inherit a planet that is on fire. Thus, it only makes sense to pursue an intergenerational approach to an intergenerational threat. We, the world's youth, are counting on you to join us in this quest.

2. Resolution 2250 on Youth, Peace and Security of the United Nations Security Council urged Member States to increase youth representation in decision-making processes at all levels. Youth are not merely the victims of the climate crisis. We are also the active agents of peace that seek to change the course of history for the benefit of all, to safeguard the rights of future generations.

3. We understand that climate change is interconnected with other challenges that pose a direct threat to peace and justice. The realm in which these hearings take place therefore transcends the climate discourse, and extends to the question of the enjoyment and protection of our human rights. According to Article 6 of the Convention on the Rights of the Child, all children have a right to life. This right imposes upon the Member States the obligation to take special protective measures necessary to prevent and reduce child mortality from climate change, and it also ensures that all children can enjoy their right to life with dignity, in line with General Comment No. 26.

4. The Kingdom of the Netherlands signed the Madrid Intergovernmental Declaration on Children, Youth and Climate Action. This declaration declares that the climate crisis is a child rights crisis and acknowledges the global leadership of young people for immediate climate action as well as their critical role as agents of change. In that spirit, we have collaborated to ensure that the voices from the youth of the Caribbean part of our Kingdom were included alongside the voices of the European part in our advocacy work. The islands where they are from experience the effects of the

climate crisis much more severely and thus require different needs from the European part of the Kingdom.

5. Mr President, distinguished Members of the Court, we are seeing an exponential increase in the severity and frequency of climate-related catastrophes. In the context of the climate crisis, we ought to treat time as a valuable resource. A resource that is not on our side and simultaneously is running out rapidly. It took us years of tireless work and effort to appear here today, before you. We cannot afford to wait again.

6. Let the record show that it was the youth that brought the world together to fight against a common challenge, a challenge that does not discriminate on the basis of colour nor creed, a challenge that we can and we shall overcome. We owe it to those that come after us. Thank you.

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

The Court adjourned from 11.30 a.m. to 11.40 a.m.

The PRESIDENT: Please be seated. The sitting is resumed, and for reasons known to me, Judge Brant will not be able to be with us now, so I invite the next participating delegation, Peru, to address the Court and I give the floor to Her Excellency Ms Franca Deza Ferreccio.

Ms DEZA FERRECCIO:

I. INTRODUCTION

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

2. Climate change is an urgent and unprecedented threat to the entire international community, as well as to the environment and the present and future generations. As the best available science makes abundantly clear, climate change is a global phenomenon caused by human activities. Its adverse consequences affect countries, regions and populations differently, depending on structural socio-environmental factors and their economic capacity to address them, amongst other variables.

3. The Sixth Assessment Report of the Intergovernmental Panel on Climate Change concluded that without rapid, deep and sustained mitigation and accelerated adaptation actions, losses and damages will continue to increase, including projected adverse impacts in Central and South America, Africa, least developed countries, small island developing States, Asia and the Arctic, and will disproportionately affect the most vulnerable populations.

4. Peru co-sponsored resolution 77/276 of the United Nations General Assembly, which requested an advisory opinion from this Court. Peru considers that the questions posed to the International Court of Justice are relevant and appropriate, and that the international community expects a response from the Court by virtue of its high authority and prerogatives.

5. Under Article 65 of the Statute of the International Court of Justice, Peru also considers that the Court has the authority to provide guidance on this matter, which will help to clarify the obligations of States concerning climate change under international law. The guidance that the Court shall provide on the identification of obligations and their legal consequences in the context of climate change is essential for the international community.

6. Mr President, Members of the Court, taking into consideration that Peru has already stated and substantiated its own vulnerability to climate change in its written submission, before you, I will hence reinforce in this declaration some relevant aspects of our argument.

II. CLIMATE CHANGE DISPROPORTIONATE ADVERSE EFFECTS IN PERU AND THE NEED FOR INTERNATIONAL CO-OPERATION

7. Peru, as a developing country which has limited economic resources to support its sustainable development goals, and that meets seven of the nine special circumstances described in Article 4.8 of the United Nations Framework Convention on Climate Change, is certainly adversely affected by climate change, despite having historically contributed less than 0.5 per cent to the global greenhouse gas emissions.

8. Peru is particularly vulnerable to the adverse effects of climate change such as droughts, glacial retreat, floods, forest fires, frosts, heavy rains, among others. Events related to climate phenomena trigger 67 per cent of the disasters recorded in its territory. Both extreme and slow-onset events negatively affect Peru’s biodiversity, ecosystems, water and fisheries resources, agriculture, crops and food security, health, housing and infrastructure.

9. Due to this situation, Peru has been actively involved in the efforts sought by the international community to address global climate change through political negotiations. Some of them led to the adoption of the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement. Peru is a party to these agreements; it is committed to the international legal framework on climate change and has been taking measures to comply with its international commitments.

10. In early 2022, the Peruvian Government declared climate emergency of national interest. The declaration focused on the following priority lines: climate governance, climate change education, monitoring and tracking, climate finance, and human rights and climate justice. Similarly, to implement its nationally determined contribution by 2030, under the United Nations Framework Convention on Climate Change, Peru has identified 150 priority measures related to climate change; 84 of them are related to adaptation and 66 deal with mitigation.

11. The full compliance of these measures requires international co-operation and funding from various sources — both public and private — including committed international funds. Peru is currently implementing its nationally determined contribution and, despite its economic growth, public resources are insufficient to meet all the needs of climate change adaptation and mitigation, and to address loss and damage associated with the adverse effects of climate change. To do so, financial, technical and technological support and assistance from developed countries, including support for just transition programmes, are essential. In order to truly unlock greater climate action in developing countries, climate finance co-operation needs to be non-debt inducing, based mainly on grants and highly concessional instruments. Also, it needs to be adequate to existent and future needs and priorities of developing countries, additional to existing development aid, and predictable.

12. For the reasons expressed before, the Republic of Peru requests that, when elaborating its advisory opinion, this Court should take into consideration the historical contribution by States to greenhouse emissions, the particularities and the special environmental situation of developing States, including their budgetary and economic limitations, and social circumstances to confront the adverse effects of climate change. Their fair plea for international financial support and for accelerating the implementation of mitigation and adaptation commitments should be duly assessed.

III. OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW REGARDING CLIMATE CHANGE

13. My second point will be on obligations of States under international law regarding climate change. Regarding the first question posed to the Court, Peru states that, under international law, there is consensus on the importance of granting protection in the global climate system. Therefore, it is particularly relevant to identify the obligations that States have, as enshrined in the different sources of international law, and to consider the guidelines and commitments that may arise from soft international law on the matter.

14. Furthermore, Peru considers that there are obligations arising from international treaties, customary international law, general principles of law and other sources of international law, which must be fulfilled by States. These obligations are mainly established in the United Nations Framework Convention on Climate Change, adopted on 9 May 1992 and embodied in the Paris Agreement of 2015.

15. At this stage of the proceedings, Peru considers that it is crucial to address specific principles enshrined in Article 3 of said Convention, and in the Rio Declaration on Environment and Development of 1992. First, the principle of intergenerational equity, second, the principle of common but differentiated responsibilities, third, the principle of precaution, and fourth, the principle of international co-operation. Let me address each in turn.

Principle of intergenerational equity

16. The principle of intergenerational equity in international environmental law, as stated in Article 3.1 of the United Nations Convention on Climate Change, derives from the responsibility of States to protect and conserve resources, considering that decisions and measures taken now may have significant impacts on the living conditions and well-being of future generations of humankind.

17. Therefore, in the context of climate change, the principle of intergenerational equity, among other aspects, requires States and present generations of humankind to take measures to mitigate and adapt to the effects of global warming, in order to prevent its impacts on the well-being and rights of present generations of humankind, bearing in mind that resources could still be used sustainably and bequeathedly for the benefit of future generations.

Principle of common but differentiated responsibilities

18. The principle of common but differentiated responsibilities in international environmental law is contemplated in the UNFCCC and the Paris Agreement as a consequence of the historical responsibility for greenhouse emissions, the limited means of implementation that some States have and the provisions that refer to the principle of equity.

19. In enhancing the implementation of the UNFCCC, it is worth recalling the Article 2.2 of the Paris Agreement, adopted on 12 December 2015, which states that this Agreement "will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances". This underpins the existence of a willingness for a dynamic and evolving interpretation of the international obligations for States regarding the environment.

20. Furthermore, the principle of common but differentiated responsibilities requires to take into account the specific needs and special circumstances of developing countries, especially those that are particularly vulnerable to the adverse effects of climate change, including Peru, that would have to bear a disproportionate or abnormal burden concerning climate change.

21. It is important to mention that developed States, which have historically been the largest emitters of greenhouse gases, have also recognized this principle. An example thereof is the adoption of the Copenhagen Accord, through which developed countries committed to jointly mobilize US$100 billion per year, beginning in 2020, to address the needs of developing countries. Another example is the new collective quantified goal on climate finance agreed upon in Baku last month, where developed countries committed to jointly mobilize US$300 billion annually by 2035. However, due to the urgency of implementing climate action this decade, the new goal falls short of developing countries' needs (estimated in trillions of US dollars) and time frame (since the goal aims to reach US$300 billion in 2035, not immediately).

Precautionary principle

22. The precautionary principle, incorporated in Article 3.3 of the United Nations Convention on Climate Change, directs that parties shall take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Since each State is responsible for controlling greenhouse gas emissions originating from the territory subject to their jurisdiction or

control, and considering their global effects and historical contribution, States are under the obligation to reduce such emissions.

23. This principle is strongly related to the principles we have previously mentioned, taking into consideration that national policies and negotiations on climate change pursued by States should also be based on the best available science, including traditional knowledge and wisdom.

Principle of international co-operation

24. The principle of international co-operation, reflected in Article 3.5 of the UNFCCC, requires the parties to co-operate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all parties, particularly developing countries.

25. This principle is very important for countries such as Peru, considering the adverse impacts of climate change on its productive and economic activities, and the limitation of resources to meet the needs of its population, as well as achieving the sustainable development goals.

Human rights

26. It is essential for the advisory opinion of the International Court of Justice to also consider a human rights approach. Several fora within the United Nations and the inter-American regional systems have significantly contributed to this matter, reaffirming the link between climate change and its effects on the enjoyment and the effective realization of human rights.

27. Moreover, Peru believes that consideration should be given, by this Court, to the special situation of risk faced by certain groups and people in vulnerable situations due to the effects of climate change, such as indigenous peoples, local and rural communities, children, women, older persons, people living in extreme poverty, minorities, persons with disabilities, migrants, refugees and internally displaced persons.

Oceans and sea-level rise

28. Additionally, Peru emphasizes the general obligation to protect and conserve the marine environment as a rule of customary international law, the effects of which are *erga omnes*. This

obligation, in essence, requires States to adopt measures to maintain or improve present conditions of the marine environment, as well as measures aimed at preventing future damage.

29. Regarding the rise in sea level, a multidimensional global phenomenon caused by climate change that affects various regions of the world differently, Peru considers it appropriate to emphasize the existential character posed by this phenomenon for low-lying coastal States, small island States and small island developing States. Peru, as a low-lying coastal State, highlights the relevance of the work being done by the Study Group on sea-level rise in relation to international law of the United Nations International Law Commission.

30. Therefore, in view of the importance of the principles previously mentioned, Peru emphasizes that the general obligations of States in respect of climate change should be determined in line with the principles set forth by international environmental law.

31. Considering all the reasons mentioned above, Peru argues that in the current state of development of international law, the Court is in a position to determine general obligations of States with respect to the reduction of greenhouse gas emissions, and that international law allows for an evolutionary interpretation of international climate change obligations in favour of a balanced global climate system.

IV. LEGAL CONSEQUENCES UNDER INTERNATIONAL LAW OF THE CONDUCT OF STATES REGARDING CLIMATE CHANGE

32. Regarding the second question posed to the Court, Peru underscores that the actions of States must be guided by all the principles and provisions of international law as mentioned in its written statement.

33. Since international responsibility is assessed on a case-by-case basis, when determining the legal consequences of the breach of an international obligation, the general rules of international responsibility, as well as the principles governing international environmental law, should be taken into account by the Court. Likewise, it is relevant to consider the appropriate forms of reparation provided for in international law.

34. It is worth mentioning two examples of financial mechanisms, recognized by developed States, that were established as appropriate forms of reparation. The first one is the Loss and Damage Fund to address climate change impacts in developing countries that are particularly vulnerable to

them, which was created during the 27th Conference of the Parties to the United Nations Framework Convention on Climate Change and operationalized in 2023. The second one is the International Fund for Compensation for Oil Pollution Damage (created in 1992) and its Supplementary Fund (created in 2003) which provide compensation for oil pollution damage resulting from spills from tankers.

V. CONCLUSION

35. To conclude, Mr President, Members of the Court, for the reasons presented here, Peru argues that:

(a) The International Court of Justice's advisory opinion on the questions raised is relevant to the international community, given the threat posed by climate change to States and the need for States to take urgent actions on mitigation of and adaptation to climate change in this critical decade, as well as on financing climate change action.

(b) The Court can greatly contribute to clarify the scope of international obligations related to climate change and the legal consequences of failing to comply with these obligations.

(c) Global warming, caused by anthropogenic action, is a serious threat to the entire international community, and specifically to developing States and territories that are particularly vulnerable to the adverse effects of climate change.

(d) Failure to globally reduce anthropogenic emissions will further affect the composition, resilience, and productivity of ecosystems, biodiversity, and socioeconomic development of States and territories, as in the case of Peru.

(e) The international community has recognized the need to take measures to favour a balanced climate system, as set out in various sources of international law, and accepts that actions taken by States on climate change issues must be based on the best available science.

(f) The actions of States must be guided by the principles and provisions of international law, as mentioned in this declaration, considering that the global climate system will be inherited by future generations of humankind.

(g) The principle of common but differentiated responsibilities has a central role in the analysis to be carried out by the International Court of Justice.

(h) The implementation of adaptation and mitigation measures in developing States and territories particularly vulnerable to climate change, such as Peru, requires solid and consistent action in terms of international co-operation. This co-operation should be provided by developed States with greater economic capacity and experience, and by international organizations. It could be channelled by various means, including the creation and strengthening of earmarked funds.

(i) In the current state of development of international law, Peru firmly believes that the Court is in a strong position to determine general obligations of States with respect to the reduction of greenhouse gas emissions, increasing the adaptation to climate change, and enhancing financing for adaptation and mitigation.

(j) International law allows for an evolutionary interpretation of international climate change obligations to favour a balanced climate system.

(k) The Court has the opportunity to set out in this advisory opinion the path towards a balanced interpretation of international environmental obligations, which is not limited to assessing the commitments undertaken through conventions but may develop them along with the needs of justice of the international community, in particular with the need for effective reparation of damage caused to third States.

36. In this line of reasoning, Peru appeals to the International Court of Justice to answer the questions raised, taking into account what has been enunciated in its written statement and has been summed up in this oral declaration. Thank you very much.

The PRESIDENT: I thank the representative of Peru for her presentation. J'invite maintenant la délégation de la République démocratique du Congo à prendre la parole et appelle M. Ivon Mingashang à la barre.

M. MINGASHANG :

PROPOS INTRODUCTIF

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un honneur pour moi de me présenter devant cette auguste Cour, en ma qualité d'agent et avocat-conseil de la République démocratique du Congo, pour introduire la plaidoirie de mon pays à ce stade de la procédure.

2. Les observations orales de la République démocratique du Congo seront articulées en trois temps et porteront respectivement sur :

— l'interprétation systémique des obligations des États (par M^me^ Sandrine Maljean-Dubois) ;

— le changement climatique et le droit de la responsabilité internationale (par le professeur Nicolas Angelet) ; et enfin,

— le principe des responsabilités communes mais différenciées (par M^e^ Ivon Mingashang, donc moi-même).

3. Cela étant, je vous prie respectueusement de bien vouloir accorder la parole à M^me^ Sandrine Maljean-Dubois. Et je vous en remercie.

Le PRÉSIDENT : Je remercie M. Ivon Mingashang. Je passe maintenant la parole à M^me^ Sandrine Maljean-Dubois. Vous avez la parole, Madame.

M^me^ MALJEAN-DUBOIS :

II. L'INTERPRÉTATION SYSTÉMIQUE DES OBLIGATIONS DES ÉTATS

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un honneur de me présenter devant vous aujourd'hui au nom de la République du Congo.

2. Certains États — une minorité — croient pouvoir invoquer les rapports entre les différentes sources du droit international pour en exiger une lecture cloisonnée et une utilisation sélective[27]. Je démontrerai en trois points qu'au contraire le droit applicable directement pertinent[28] est composé d'un ensemble de règles qui doivent être appliquées simultanément (A) et de manière articulée, et que cela les renforce mutuellement (B, C).

[27] Par exemple, Arabie saoudite, observations écrites, 21 mars 2024, par. 4.90 et suiv. ; Australie, observations écrites, 22 mars 2024, par. 2.61 et suiv. ; Canada, observations écrites, 20 mars 2024, par. 22-23 ; Chine, exposé écrit, par. 92 et suiv. ; Japon, observations écrites, 22 mars 2024, par. 4 et suiv. ; États-Unis, observations écrites, 15 août 2024, par. 3.1.

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

A. La nécessité d'une lecture intégrée des règles visées dans la demande d'avis

3. Premier point, les différentes obligations internationales des États coexistent. Les États doivent se conformer à toutes leurs obligations internationales, sans exception. Le respect d'une obligation ne les exonère en rien de leur responsabilité au regard des autres.

4. Concrètement, un État peut être en conformité avec l'accord de Paris, tout en manquant à ses obligations de diligence ou à ses obligations en matière de droit de l'homme ou de droit de la mer. L'accord de Paris ne saurait être considéré comme une *lex specialis et encore moins comme un régime se suffisant à lui-même. Preuve en est que son préambule rappelle explicitement l'obligation de diligence*[29] *et les droits humains*[30]. Ces différentes obligations ne sont pas en conflit. Elles sont complémentaires. Ainsi, les règles visées dans la demande d'avis doivent être lues de manière systémique, conformément à l'article 31, paragraphe 3 *c)*, de la convention de Vienne sur le droit des traités. Cette méthode seule garantit, comme la Cour l'a observé, que les traités ne produisent pas des effets de manière isolée, mais soient « interprété[s] et appliqué[s] dans le cadre de l'ensemble du système juridique en vigueur »[31]. C'est aussi ce qu'a fait le Tribunal international du droit de la mer[32].

B. Le renforcement du régime du climat par d'autres obligations internationales

5. J'en viens à mon deuxième point : les obligations de la convention-cadre sur les changements climatiques et de l'accord de Paris sont renforcées par d'autres obligations internationales.

6. Le régime international du climat, en particulier l'accord de Paris, ne suffit pas à lui seul à prévenir des dommages significatifs au système climatique. Si l'accord de Paris pose bien l'objectif collectif, de limiter le réchauffement à 1,5 °C, les contributions nationales, qui en sont le moteur,

---

[29] Accord de Paris, préambule, al. 8 ; voir RDC, observations écrites, 4 mars 2024, par. 9-11.

[30] Accord de Paris, préambule, al. 11 ; voir RDC, observations écrites, 4 mars 2024, par. 12-14.

[31] *Conséquences juridiques pour les États de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 31, par. 53.

[32] Avis du 21 mai 2024, demande d'avis consultatif soumise par la Commission des petits États insulaires sur le changement climatique et le droit international, affaire nº 31, par. 128 et suiv.

manquent de coordination. Une fois agrégées, et toutes mises en œuvre, elles nous placent plutôt sur une trajectoire de 2,6 °C d'ici à la fin du siècle[33].

7. Ceci illustre l'importance du constat selon lequel le droit applicable ne se résume pas à l'accord de Paris. L'obligation de diligence ou de prévention vient le compléter et le renforcer. D'une part, ne pas mettre en œuvre tous les moyens à disposition pour prévenir les dommages significatifs au système climatique place l'État en situation de violation du droit international général. D'autre part, chaque État doit faire sa part. Ainsi, dans des situations où l'action conjointe des États est essentielle, la Cour a considéré, s'agissant de la prévention du génocide, que chaque État reste individuellement tenu de prendre toutes les mesures en son pouvoir pour prévenir le dommage, sans pouvoir se disculper en se prévalant de l'inaction des autres : tel est également le cas du changement climatique[34].

C. Le renforcement de l'obligation générale de prévention par les obligations conventionnelles

8. J'en arrive à mon troisième point : l'obligation de prévention des dommages est informée et renforcée à son tour par les obligations conventionnelles.

9. En matière de diligence, les États doivent en effet appliquer un standard, lequel standard est informé par d'autres règles internationales, dont notamment l'accord de Paris, et en particulier son article 2 posant l'objectif de limiter la hausse mondiale des températures.

10. Ce standard est aussi et nécessairement informé par la science, en particulier les rapports du GIEC, qui sont le fruit d'une expertise collective internationale et constituent une source fiable de synthèse des connaissances scientifiques. C'est la science qui nous indique « que les effets des changements climatiques seront bien moindres si la température augmente de 1,5 °C et non de

---

[33] UNEP, *Emissions Gap Report. No more hot air . . . please! With a massive gap between rhetoric and reality, countries draft new climate commitments*, 2024, 100 pages.

[34] *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 43.

2 °C »[35]. C'est la science qui nous indique que « pour limiter le réchauffement de la planète à 1,5 °C, il faut réduire rapidement, nettement et durablement les émissions mondiales de gaz à effet de serre de 43 % d'ici à 2030 par rapport au niveau de 2019 »[36]. Et c'est la science qui nous indique que c'est possible.

11. Dans ce contexte, un État ne pourrait guère être considéré comme agissant avec diligence si les mesures qu'il a prises ne correspondent pas aux efforts de la plus haute ambition possible pour limiter au maximum le réchauffement à 1,5 °C[37]. Le risque est connu, prévisible, significatif et déjà partiellement matérialisé. L'obligation de diligence exige alors une vigilance maximale. Informée par le régime du climat, éclairée par les rapports du GIEC, elle impose aux États de prendre des mesures justes, urgentes et ambitieuses pour atténuer les effets du changement climatique et s'y adapter. Loin de diminuer avec le temps, cette obligation s'est au contraire renforcée au fur et à mesure que les preuves scientifiques se sont accumulées.

12. Je me dois d'ajouter que, *a contrario*, le fait que le seuil des 1,5 °C n'ait pas encore été franchi n'exonère pas les États fortement émetteurs de leur responsabilité pour les dommages déjà infligés à d'autres États et au système climatique. Les préjudices sensibles attribuables aux émissions humaines se multiplient déjà, sans que nous ayons même franchi le seuil des 1,5 °C. L'obligation de prévenir les dommages futurs n'exclut pas celle de réparer les dommages actuels.

13. Monsieur le président, Mesdames et Messieurs les juges, parce que le défi climatique est complexe et transversal, il ne peut être encapsulé dans le régime international du climat. Aucune norme, prise isolément, ne peut y répondre. Si le droit international s'est construit de manière fragmentée, cela ne signifie nullement qu'il doit s'appliquer de la sorte. La science nous apprend que les éléments du système Terre interagissent étroitement ; de même les éléments du système juridique.

---

[35] Décision 1/CMA.3 de 2021, « Pacte de Glasgow pour le climat », par. 21. IPCC, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3-24. La RDC renvoie sur ce point à ses observations écrites, 4 mars 2024, par. 211-212. *Intergovernmental Panel on Climate Change, Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers (2021), statement B.1.*

[36] Décision 1/CMA.4, « Plan de mise en œuvre de Charm el-Cheikh », par. 15.

[37] Observations écrites de la RDC, 4 mars 2024, en particulier par. 203-204.

Dès lors, un droit mis en œuvre en silos serait un droit qui ignore non seulement les réalités juridiques, mais aussi économiques, sociales et environnementales, et qui s'adresserait tout simplement à un monde qui n'existe pas…

14. Je remercie la Cour pour son attention, et vous prie respectueusement, Monsieur le président, d'appeler maintenant mon collègue et ami, le professeur Angelet.

Le PRÉSIDENT : Je remercie M[me] Sandrine Maljean-Dubois. Je passe maintenant la parole au professeur Nicolas Angelet.

M. ANGELET :

III. CHANGEMENT CLIMATIQUE ET DROIT DE LA RESPONSABILITÉ INTERNATIONALE

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un honneur pour moi de comparaître devant vous pour la République démocratique du Congo. Je me concentrerai sur deux questions : premièrement, l'existence d'un lien direct de causalité entre les émissions de gaz à effet de serre et le préjudice des États victimes (A) et, deuxièmement, la réparation du dommage indivisible causé par plusieurs États (B). Je souligne d'emblée que ces questions sont importantes au regard des comportements passés mais aussi pour réguler les comportements futurs.

A. Le lien de causalité direct entre les émissions de gaz à effet de serre et le préjudice des États victimes

2. Monsieur le président, s'agissant de ma première question, certains États font valoir que les émissions de gaz à effet de serre sont une cause trop éloignée du dommage climatique d'autres États pour qu'ils en soient tenus pour responsables[38]. Cette affirmation est inexacte[39].

3. Le caractère direct du lien de causalité est apprécié notamment au regard de la *prévisibilité* du dommage[40]. Or, il est établi que les émissions de gaz à effet de serre causent le changement

---

[38] États-Unis d'Amérique, exposé écrit, par. 5.9 et suiv. ; Japon, observations écrites, par. 94 ; Arabie saoudite, observations écrites, par. 5.9 et suiv. ; Suisse, par. 78.

[39] Cf. Albanie, observations écrites, par. 70 et suiv. ; Bahamas, observations écrites, par. 117 et suiv. ; Bangladesh, observations écrites, par. 54 et suiv. ; Colombie, observations écrites, par. 3.52 et suiv. ; France, par. 59 et suiv. ; Union internationale pour la conservation de la nature (UICN), observations écrites, par. 44 ; Kenya, observations écrites, par. 5.15 ; Pakistan, observations écrites, par. 25-52 ; Vanuatu, observations écrites, par. 205.

[40] Commentaire de l'article 31 des articles de la CDI sur la responsabilité de l'État, *Annuaire de la Commission du droit international*, 2001, vol. II, deuxième partie, p. 99, par. 10 ; Cf. États-Unis d'Amérique, exposé écrit, par. 5.9.

climatique, qui cause lui-même des dommages aux États[41]. Il est aussi établi que certaines catégories d'États particulièrement vulnérables subissent et vont subir d'énormes dommages en raison du changement climatique[42].

4. Ce que l'on ne sait pas avec certitude, c'est *quel* État va subir *quel* dommage à *quel* moment. Mais cela ne signifie pas que le lien de causalité est indirect. Cela signifie que les conséquences *prévisibles* des émissions sont *indiscriminées*, au sens que ce terme revêt, par exemple, en droit international humanitaire lorsqu'il interdit les attaques indiscriminées. Ce caractère indiscriminé ne rompt pas le lien de causalité. Il marque au contraire le caractère gravement négligent du comportement qui entre en compte pour établir ou confirmer le lien de causalité[43]. Lorsque des chasseurs, sachant qu'il y a des personnes vulnérables dans le bois, tirent *aveuglément*, le lien de causalité n'est pas relâché, il est renforcé.

5. Le dommage subi par des États en raison des émissions de gaz à effet de serre d'autres États est donc bien réparable.

B. L'obligation pour chaque État principal émetteur de réparer la totalité du dommage indivisible causé

6. Monsieur le président, j'en viens à mon second point, le dommage indivisible causé par plusieurs États responsables.

7. Comme le font valoir de nombreux participants à la procédure[44], *chacun* des États principaux émetteurs de gaz à effet de serre — que j'identifierai ci-après comme « les principaux émetteurs » — peut être tenu pour responsable de la *totalité* du dommage qu'un autre État, singulièrement un pays moins avancé, subit en raison du changement climatique.

---

[41] Voir, entre autres, RDC, exposé écrit, par. 36-120 ; RDC, observations écrites, par. 57 et 59.

[42] Voir, entre autres, RDC, exposé écrit, par. 90 et suiv.

[43] Cf. commentaire de l'article 31 des articles de la CDI sur la responsabilité de l'État, *Annuaire de la Commission du droit international*, 2001, vol. II, deuxième partie, p. 99, par. 10.

[44] Voir notamment RDC, exposé écrit, p. 141 et suiv. ; RDC, observations écrites, p. 19 et suiv. ; Albanie, observations écrites, par. 71 ; Bangladesh, observations écrites, par. 61-62 ; Îles Marshall, observations écrites, par. 44-47 ; Maurice, par. 139 ; Vanuatu, observations écrites, par. 160 ; Égypte, observations écrites, par. 113-114 ; COSIS, observations écrites, 99-101 ; Mexique, observations écrites, par. 113 et suiv. ; Organisation des États d'Afrique, des Caraïbes et du Pacifique, observations écrites, par. 95 ; Seychelles, observations écrites, par. 73 ; Sierra Leone, par. 4.9 ; Timor-Leste, observations écrites, par. 118 ; Uruguay, observations écrites, par. 173. *Contra* : Australie, observations écrites, par. 6.15 ; États-Unis d'Amérique, par. 5.7 et suiv.

8. Dans l'affaire des *Activités armées sur le territoire du Congo*, la Cour a rappelé que « lorsque plusieurs causes attribuables à deux acteurs ou davantage sont à l'origine d'un dommage, il est possible, dans certains cas, qu'un seul de ces acteurs soit tenu de réparer en totalité le préjudice »[45]. Selon le commentaire de la Commission du droit international auquel cet arrêt renvoie, la question est de savoir s'il est possible d'attribuer un élément *identifiable* du dommage à une cause *spécifique*. Si ce n'est pas le cas, c'est-à-dire si le dommage est « indivisible », tout État responsable pourra être tenu de le réparer intégralement[46]. Dans l'affaire du *Détroit de Corfou*[47], l'Albanie avait ainsi dû réparer la totalité du dommage du Royaume-Uni, alors que les mines avaient été posées par un autre État. Cette règle vise à éviter que la victime soit privée de toute réparation, à défaut de pouvoir prouver quelle partie du dommage a été causée par lequel des États responsables[48].

9. Or, les dommages causés par le changement climatique sont indivisibles. Il peut être prouvé que les dommages causés par une catastrophe naturelle ont été causés par les émissions de gaz à effet de serre des principaux émetteurs, mais il n'est pas possible de prouver *in concreto* quelle partie du dommage a été causée par les émissions de *tel ou tel* État. Chacun des États principaux émetteurs est alors responsable de la totalité du dommage.

10. Monsieur le président, Mesdames et Messieurs les juges, cette conclusion s'impose d'autant plus dans l'hypothèse visée à l'article 47 des articles sur la responsabilité de l'État, où plusieurs États sont responsables non pas de faits illicites différents, comme dans l'affaire du *Détroit de Corfou*, mais *du même fait internationalement illicite* commis conjointement[49].

11. Or, tel est précisément le cas de la violation de l'obligation de diligence requise par les États principaux émetteurs[50]. Le premier élément constitutif de cette violation, le dommage, est commun puisqu'il est indivisible. Le second élément constitutif, la négligence, est également commun. Tous les États principaux émetteurs se sont, au moins depuis la convention-cadre sur les

---

[45] *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda), réparations, arrêt, C.I.J. Recueil 2022 (I)*, p. 49, par. 98.

[46] Commentaire de l'article 31 des articles de la CDI sur la responsabilité de l'État, *Annuaire de la Commission du droit international*, 2001, vol. II, deuxième partie, p. 100, par. 13.

[47] *Détroit de Corfou (Royaume-Uni c. Albanie), fond, arrêt, C.I.J. Recueil 1949*, p. 22-23.

[48] RDC, exposé écrit, par. 303.

[49] CDI, « Projet d'articles sur la responsabilité de l'État pour fait internationalement illicite », *Annuaire de la Commission du droit international*, 2001, vol. II, deuxième partie, p. 133.

[50] Voir RDC, observations écrites, par. 46 et suiv. ; RDC, exposé écrit, par. 296-304.

changements climatiques, montrés *collectivement* négligents, en connaissance des conséquences de leurs actions et omissions cumulées. Si les *émissions* sont individuelles, la négligence est commune. Les États principaux émetteurs sont donc responsables d'un *même fait illicite* commis conjointement. L'obligation individuelle de réparer la totalité du dommage s'impose d'autant plus.

12. Monsieur le président, Mesdames et Messieurs les juges, s'agissant des dommages climatiques, ce régime de responsabilité est à la fois nécessaire et proportionné. La RDC a montré dans ses écritures que ce régime de responsabilité s'applique essentiellement entre les États principaux émetteurs, d'une part, et les petits États insulaires et les pays les moins avancés, d'autre part[51]. Compte tenu du nombre de coauteurs et de la complexité de la matière, ce régime est indispensable pour assurer un secours *effectif* aux victimes les plus vulnérables[52]. Par ailleurs, il ne représente pas une charge excessive pour les coauteurs[53], qui peuvent notamment s'en prémunir en contribuant à des mécanismes communs de réparation[54]. Ce régime doit *à tout le moins* constituer le point de départ en matière de changement climatique.

13. Cela doit assurer un recours effectif aux victimes, mais aussi — c'est essentiel — inciter les États responsables à respecter leurs obligations *primaires* à l'avenir, et enfin, fournir une base pour la recherche de solutions diplomatiques. Le Royaume des Pays-Bas a indiqué ce matin qu'il ne peut pas, en cette matière, y avoir de « free riders ». Le droit de la responsabilité est là pour l'empêcher.

14. Monsieur le président, Mesdames et Messieurs les juges, je vous remercie pour votre attention et je vous prie, Monsieur le président, de bien vouloir rappeler à la barre le professeur Mingashang.

Le PRÉSIDENT : Je remercie le professeur Nicolas Angelet. Je redonne la parole à M. Ivon Mingashang. Vous avez la parole, Monsieur.

---

[51] RDC, exposé écrit, par. 310-312.

[52] RDC, exposé écrit, par. 315. Voir *Certaines activités menées par le Nicaragua dans la région frontalière (Costa Rica c. Nicaragua), indemnisation, arrêt, C.I.J. Recueil 2018 (I)*, p. 26-27, par. 35.

[53] RDC, exposé écrit, par. 306-315.

[54] *Ibid.*, par. 316.

M. MINGASHANG :

IV. LE PRINCIPE DES RESPONSABILITÉS COMMUNES MAIS DIFFÉRENCIÉES

1. Monsieur le président, Mesdames et Messieurs les juges, je vous remercie de m'accorder une fois de plus la parole pour clore l'intervention de la République démocratique du Congo dans le cadre de cette plaidoirie.

2. Mon propos sera axé sur le *principe des responsabilités communes mais différenciées et des capacités respectives des États*. Il sera articulé en trois temps, de manière schématique. Il s'agira d'abord de souligner l'importance du principe en question (A) ; ensuite, de dégager ses implications (B), et enfin de terminer par quelques considérations d'intérêt pratique (C).

A. L'importance du principe

3. S'agissant de l'importance de ce principe, Monsieur le président, il convient de relever *prima facie* que le principe dont nous entendons exposer le bien-fondé figure au cœur de la convention-cadre des Nations Unies sur les changements climatiques ainsi que de l'accord de Paris de 2015. Il s'agit, comme il a été plusieurs fois relevé devant vous, d'un principe cardinal dans la compréhension des obligations des États en matière de lutte contre les perturbations du système climatique.

4. Le Tribunal international du droit de la mer a encore récemment réaffirmé toute son importance dans le cadre de la convention de Montego Bay de 1982, à l'occasion de son avis consultatif du 21 mai de cette année, *en soulignant au passage la charge plus lourde qui pèse sur les pays développés*[55]. Et je me rallie au développement que l'oratrice représentant la République du Pérou de tout à l'heure a consacré à cet aspect des choses.

5. Considérée dans sa double dimension éthique et politique (« responsability » — pour faire anglophone) et juridique (« liability »), la responsabilité incombe à tous les pays de manière collective et à chacun d'eux pris individuellement en vue de lutter contre le dérèglement climatique. Elle relève d'un impératif catégorique à la Kant et qui s'impose à l'ensemble des États, petits ou grands. Cependant, une application du droit qui se limiterait à une notion d'égalité formelle aboutirait

[55] TIDM, *Demande d'avis consultatif soumise par la Commission des petits états insulaires sur le changement climatique et le droit international, arrêt de 2024*, par. 229.

dans ce domaine à des résultats manifestement déraisonnables et absurdes, et ce, au préjudice des générations présentes et à venir.

6. Pour raison, les activités anthropiques à l'origine des catastrophes naturelles auxquelles l'humanité est confrontée constituent en effet une œuvre des États qui se sont engagés dans l'industrialisation de leurs sociétés au début du XIX^{e} siècle. Et pourtant, la contribution des 55 États que compte l'Afrique pris dans leur ensemble n'atteint pas le seuil de 4 % des émissions globales de gaz à effet de serre[56]. Or c'est l'un des continents — outre l'Océanie — qui voit son développement socioéconomique sérieusement entravé par la crise climatique consécutive à cette course effrénée à la croissance économique et au progrès industriel.

7. Voilà pourquoi le droit international devrait consacrer un traitement particulier à chacun des États en tenant compte de sa situation socioéconomique d'une part, et de sa contribution effective du point de vue historique et actuel au problème environnemental, d'autre part. Ceci est conforme à l'esprit et à la lettre de l'article 2, paragraphe 1, de l'accord de Paris, lequel entend inscrire la lutte contre les changements climatiques dans le contexte du développement durable.

8. Monsieur le président, il serait injuste de soumettre indistinctement tous les pays aux mêmes mesures de redressement et de réparation. C'est une question fondamentale de justice et d'équité qui se pose en l'espèce. Parce que les États fortement émetteurs ont pu, ou en tout cas auraient dû, prendre conscience bien avant les autres de la gravité des risques inhérents aux émissions de gaz à effet de serre, en partant de leur avancée technologique dans ce domaine. Il est donc évident que, conformément à la jurisprudence de la Cour[57], l'obligation de prévention et le devoir d'agir sont nés pour ces États bien avant qu'ils ne trouvent à s'appliquer aux États en développement.

B. L'implication d'un tel principe

9. Quelles sont alors les implications d'un tel principe ? Dans le cadre limité de cette plaidoirie, j'en pointerai trois.

---

[56] COP 26 sur le climat 2021 : « Les priorités de l'Afrique, Afrique Renouveau », par. 5 : https://www.un.org/africarenewal/fr/magazine/juillet-2021/cop26-sur-le-climat-les-priorités-de-lafrique.

[57] *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 222, par. 431.

10. *En premier lieu*, il est important de faire remarquer que, conformément à l'article 3, paragraphe 2, de la convention-cadre des Nations Unies sur les changements climatiques,

> « [i]l convient de tenir pleinement compte des besoins spécifiques et de la situation spéciale des pays en développement parties, … de ceux qui sont particulièrement vulnérables aux effets néfastes des changements climatiques, ainsi que des Parties, [en l'occurrence] des pays en développement …, auxquelles la Convention imposerait une charge disproportionnée ou anormale ».

11. Il va sans dire qu'en suivant cette disposition, les pays industrialisés ont l'obligation *d'assumer prioritairement et significativement la plus grande charge en la matière*. Ils doivent en effet assurer une part des efforts nécessaires qui soit proportionnée à la fois aux moyens dont ils disposent, à l'importance des dommages qu'ils causent et surtout à la circonstance que ces dommages touchent principalement les États considérés comme vulnérables.

12. La logique commande par conséquent que les États ayant significativement contribué — dans le passé tout comme dans le présent — au problème climatique se voient obligés de limiter drastiquement leurs émissions de CO_2 afin de combattre le phénomène du dérèglement climatique. Et dans cet ordre d'idées, l'avis de la Cour en la présente affaire ne devrait aucunement aller dans le sens de nier la pertinence de ce principe, comme le soutiennent certains États minoritaires dans le seul but de se soustraire à leur responsabilité respective[58]. Parce que ces États savent, ou en tout cas devraient le savoir, que les conséquences néfastes de leurs activités sont simplement de nature à affecter sérieusement la viabilité de notre milieu de vie commun en nous exposant au risque d'une « apocalypse écologique » qui apparaît de plus en plus visible à l'horizon.

13. *En deuxième lieu*, il est primordial d'adopter *des mesures compensatoires importantes* en transférant les technologies et les moyens financiers aux pays les plus vulnérables afin que ceux-ci puissent prendre les dispositions qui s'imposent sur leur propre territoire. Il ressort à cet égard du préambule de la convention-cadre sur les changements climatiques que le caractère planétaire de la crise de l'environnement entraînée par les perturbations climatiques impose à tous les États une obligation de coopération. Celle-ci soumet en particulier les États industrialisés à des engagements spécifiques se rapportant à des mesures d'assistance technique et financière[59].

---

[58] Voir notamment l'exposé écrit des États-Unis d'Amérique, p. 24, par. 2.37 ; la position du Canada lors des exposés oraux, CR 2024/38, p. 15, etc.

[59] Voir l'article 4 de la CCNUCC et les articles 9-11 de l'accord de Paris.

14. L'interprétation de cette disposition devrait aller dans le sens de clarifier les obligations financières des pays principaux émetteurs de gaz à effet de serre et non seulement des pays développés. La mise en œuvre de ce principe s'avère par ailleurs indispensable afin de permettre aux pays du Sud, qui ont encore de grands puits et réservoirs de gaz à effet de serre, de les conserver et de les stabiliser. Il importe de préciser que la forêt équatoriale et les tourbières du bassin du Congo font partie de cette catégorie, conformément à l'article premier de la convention-cadre sur les changements climatiques.

15. *En troisième lieu*, ce principe ne devrait aucunement servir de prétexte pour qui que ce soit afin de se soustraire à la responsabilité assumée par tous les États, tant à titre individuel que collectif.

16. Il appartient à chaque État d'assumer sa part de responsabilité lorsqu'il s'agit de prendre des mesures indispensables afin de faire face au dérèglement climatique. L'adoption de telles mesures devrait être conditionnée par les capacités propres de l'État, et non en fonction de l'action et/ou l'omission de tout autre État[60]. Monsieur le président, toute autre interprétation qui tendrait à réduire la portée de cette obligation ne ferait que compromettre l'efficacité du dispositif global de lutte contre le dérèglement climatique.

C. En conclusion

17. Monsieur le président, Mesdames et Messieurs les juges, permettez-moi de conclure en insistant sur un dernier point. En effet, bien que le Tribunal international du droit de la mer maintienne la distinction traditionnelle entre pays développés et pays en développement, il est sans doute nécessaire que la Cour tienne davantage compte de la réalité économique et écologique caractéristique de l'époque contemporaine. Il importe désormais de compter avec les économies émergentes dans la régulation climatique, à cause de leur participation non négligeable au problème qui nous préoccupe.

18. L'avis découlant de cette procédure devrait dès lors, selon la République démocratique du Congo, pointer de manière plus précise les responsabilités juridiques des principaux pays émetteurs, quels qu'ils soient. Cela étant, Monsieur le président, Mesdames et Messieurs les juges, la

---

[60] Voir CEDH, *Verein KlimaSeniorinnen Schweiz et autres c. Suisse*, arrêt 9.4.2024, par. 442. Lire également *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 221, par. 430.

République démocratique du Congo prie respectueusement l'auguste Cour de considérer qu'elle reproduise en l'occurrence l'intégralité du dispositif de ses observations écrites, lesquelles ont été déposées en bonne et due forme au Greffe de la Cour.

19. Je vous remercie de votre particulière attention.

Le PRÉSIDENT : Je remercie les représentants de la République démocratique du Congo pour leur présentation, qui conclut l'audience de ce matin. La Cour se réunira à nouveau cet après-midi, à 15 heures, pour entendre le Portugal, la République dominicaine, la Roumanie, le Royaume-Uni et Sainte-Lucie sur les questions qui lui ont été soumises.

L'audience est levée.

L'audience est levée à 12 h 40.

_____