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CR 2024/52

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Thursday 12 December 2024, at 3.05 p.m., at the Peace Palace,

President Salam presiding,

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

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le jeudi 12 décembre 2024, à 15 h 5, 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 Eastern Republic of Uruguay is represented by:

Ms Mariana Cabrera, Deputy Secretary of the President of the Eastern Republic of Uruguay,

HE Mr Álvaro González Otero, Ambassador of the Eastern Republic of Uruguay to the Kingdom of the Netherlands,

Mr Marcos Dotta, Director of International Law Affairs, Ministry of Foreign Affairs,

Ms Yas Banifatemi, Founding Partner, Gaillard Banifatemi Shelbaya Disputes, Adjunct Professor of Law, Panthéon-Sorbonne University, Visiting Professor of Law, Harvard Law School,

Mr Pablo Bayarres, Counsellor, Embassy of the Eastern Republic of Uruguay in the Kingdom of the Netherlands,

Ms Yael Ribco Borman, Counsel, Gaillard Banifatemi Shelbaya Disputes,

Ms María del Pilar Álvarez, Associate, Gaillard Banifatemi Shelbaya Disputes.

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HE Mr Ngo Huong Nam, Ambassador of the Socialist Republic of Viet Nam to the Kingdom of the Netherlands,

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Ms Nguyen Thi Ngoc Ha, Head of Division, Political and Security Affairs, Department of International Law and Treaties, Ministry of Foreign Affairs,

Mr Tran Le Duy, Legal Official, National Boundary Committee,

Ms Nguyen Thu Thuy, First Secretary, Embassy of the Socialist Republic of Viet Nam in the Kingdom of the Netherlands,

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Mr Charles Maboshe, Minister Counsellor, Embassy of the Republic of Zambia in the Kingdom of Belgium,

Ms Sambwa Simbyakula-Chilembo, Assistant Director, Ministry of Justice,

Ms Bwalya Mwansa Salamu, Senior Counsel, Ministry of Justice,

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

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S. Exc. M. Ngo Huong Nam, ambassadeur de la République socialiste du Viet Nam auprès du Royaume des Pays-Bas,

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M. Tran Le Duy, juriste, comité national du tracé des frontières,

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M[me] Nguyen Ngoc Lan, chargée d'enseignement à l'Université d'Utrecht, professeure adjointe de droit international public, département de droit international et européen.

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

Mr Thulani Chimbalanga Banda, Counsel, Ministry of Agriculture,

Ms Anna Banda, State Advocate, Ministry of Foreign Affairs and International Co-operation,

Ms Mulima Lisimba, First Secretary for Legal Affairs, Geneva,

Mr Niphegie Choonga Simulyamana, First Secretary for Legal Affairs, Addis Ababa,

Mr Joseph Busenga, First Secretary for Legal Affairs, Brussels,

Mr Christian Tams, Legal Counsel, International Law Chair and Director, Glasgow Centre for International Law and Security,

Ms Olivia Flasch, Legal Counsel,

Mr Stephen Webb, Partner, DLA Piper,

Ms Gitanjali Bajaj, Partner, DLA Piper,

Ms Claire Robertson, Solicitor, DLA Piper,

Ms Camilla Thomas, Solicitor, Senior Associate, DLA Piper,

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The Pacific Islands Forum Fisheries Agency is represented by:

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Mr Pio Manoa, Deputy Director General, Acting Legal Counsel, Forum Fisheries Agency.

The Alliance of Small Island States is represented by:

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Ms Anama Solofa, Lead Negotiator on Ocean Issues,

Mr Richard Bryce Rudyk, Legal Adviser,

Ms Dana-Marie Salina, Legal Fellow,

Ms Lee-Anne Sackett, Director of International Legal Affairs, Vanuatu Climate Justice Program,

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M. Glen Joseph, directeur, autorité des ressources marines des Îles Marshall,

M. Pio Manoa, directeur général adjoint, conseiller juridique par intérim, Agence des pêches du Forum.

L'Alliance des petits États insulaires est représentée par :

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M^me^ Anama Solofa, négociatrice principale pour les océans,

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M^me^ Dana-Marie Salina, chercheuse en droit,

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M^me^ Anne-Sophie Vivier, conseillère juridique pour le Pacifique, programme du Vanuatu pour la justice climatique.

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

The Court meets this afternoon to hear Uruguay, Viet Nam, Zambia, the Pacific Islands Forum Fisheries Agency and the Alliance of Small Island States 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 Zambia.

I shall now give the floor to the delegation of Uruguay. I call His Excellency Álvaro Enrique González Otero to the podium.

Mr GONZÁLEZ OTERO:

I. INTRODUCTION OF THE DELEGATION APPEARING ON BEHALF OF THE ORIENTAL REPUBLIC OF URUGUAY

1. Mr President, distinguished Members of the Court, it is an honour to appear before you today on behalf of the Oriental Republic of Uruguay in my capacity as Ambassador to the Kingdom of the Netherlands.

2. I have the honour of introducing the delegation representing the Oriental Republic of Uruguay. Sitting in the Great Hall of Justice with me are Ms Mariana Cabrera, the Deputy Secretary to the Office of the President of the Oriental Republic of Uruguay, Ambassador Dr Marcos Dotta Salgueiro, Director of International Law Affairs of the Ministry of Foreign Affairs of the Oriental Republic of Uruguay, and Dr Yas Banifatemi, a founding partner of the law firm Gaillard Banifatemi Shelbaya Disputes, which has assisted us throughout these proceedings.

3. The delegation is also composed by Ms Yael Ribco Borman and Ms Pilar Álvarez, also members of Gaillard Banifatemi Shelbaya Disputes, as well as Mr Pablo Bayarres, counsellor of the Embassy of the Oriental Republic of Uruguay to the Kingdom of the Netherlands.

4. After submitting two written memorials in the context of these historical advisory opinion proceedings, to which we respectfully refer, we appear before this honourable Court today to address some of Uruguay's key submissions, trusting that these will assist the Court in providing its answer to the two questions posed to the Court by the General Assembly resolution 77/276 of 29 March 2023.

5. First, Ms Cabrera will explain the impact of climate change in Uruguay, as well as the measures adopted by Uruguay to mitigate and adapt to climate change and the challenges that Uruguay faces in its fight against climate change.

6. Following that, Ambassador Dr Dotta Salgueiro will address some of the obligations of States under international law to ensure the protection of the climate system and other parts of the environment.

7. Finally, Dr Banifatemi will address the legal consequences for States which, through their acts and omissions, have caused significant harm to the climate system and other parts of the environment. I respectfully request, Mr President, to give the floor to Ms Mariana Cabrera. Thank you.

The PRESIDENT: I thank His Excellency Álvaro Enrique González Otero. I now give the floor to Ms Mariana Cabrera.

Ms CABRERA:

II. THE IMPACT OF CLIMATE CHANGE IN URUGUAY

1. Good afternoon, Mr President and Members of the Court.

2. It is an honour to appear before you today on behalf of the Oriental Republic of Uruguay, marking Uruguay's first time appearing before this Court in advisory proceedings.

3. Honourable Members of the Court: the matter before you today concerns one of the most pressing challenges of our time, which potentially can gravely impact the well-being of present and future generations of humankind and life in the planet as we know it.

4. Scientific consensus confirms that anthropogenic greenhouse gas ("GHG") emissions are the dominant cause of global warming and climate change. This is no longer a threat for the future, but a reality that we face today. The climate crisis has already inflicted severe damage on ecosystems and societies across the world, and unless urgent measures are adopted, territories and cultures will disappear forever.

5. As a representative of Uruguay, it is my duty to express our growing distress for our territory and our current and future citizens.

6. Uruguay is a coastal nation, which economy relies heavily on agriculture. For this reason, among others, Uruguay is concerned about the severe impacts that climate change threatens to impose on its territory and population. A future of intensified floods, droughts, sea-level rise and biodiversity loss would not only irreparably alter our country's green and fertile landscape, but also endanger the lives, homes and livelihoods of the vast population living in flood-prone and coastal areas. Additionally, climate change jeopardizes our economy, which depends significantly on agricultural production and tourism — sectors that are highly climate-sensitive.

7. Confronted with this alarming reality, it is now more urgent than ever for States to adopt effective, and immediate measures in a joint effort to mitigate its human and material costs to adapt to this new climate reality. For these efforts to be meaningful, the international community must act now, for ourselves and for generations yet unborn.

8. Conscious of this reality, and despite Uruguay's negligible contribution to global greenhouse emissions, we implemented ambitious climate policies.

9. Transcending political divides, Uruguay has been a pioneer in adopting both mitigation and adaptation measures to ensure climate action remains a national priority.

10. An example of this is Uruguay's transformative energy transition, which has been a resounding success. Today, over 90 per cent of our electricity is generated from renewable sources, making us self-sufficient in renewable energy and enabling us to export surplus energy to neighbouring countries.

11. As a further step towards carbon neutrality, Uruguay is currently setting the foundations for an ambitious second energy transition, which will seek to decarbonize key economic sectors such as transport and industry.

12. As another example that gives us hope for the future, we have adopted a successful national policy to protect and foster Uruguay's native forests, which have continuously grown over the past decades, and implemented sustainable deforestation practices.

13. Uruguay has also innovated in the field of green finance, having recently issued a sovereign sustainability-linked bond, which was the first of its kind globally. This financial instrument ties interest rates to the achievement of sustainability targets, thus aligning Uruguay's financial mechanisms with its commitment to climate goals.

14. As a member of the younger generation of Uruguayans in leadership roles, we are committed to continue these efforts to build a future that we want for ourselves and our children. However, Uruguay's ability to enhance and expand its climate action is constrained by multiple financial, scientific and technical limitations.

15. As it has consistently emphasized in international fora, Uruguay — like many other developing nations — relies on the support of the international community to advance its environmental and sustainability goals. Financial, technical, and technological assistance is indispensable to enable us to implement climate action. The assistance received by developing States is certainly not enough; indeed, we expected more from the COP29 resolutions. We are counting on the leading economies of the world to redouble their commitment to the global fight against climate change and fulfil their promises.

16. As my colleagues will elaborate, States have obligations under international law to protect the climate system and environment. The breach of these obligations, which has disastrous effects on the environment, livelihoods and peoples, has legal consequences which must be enforced.

17. Uruguay firmly believes that the Court's advisory opinion will strengthen the international rule of law, hold States accountable for their international obligations, and pave the way for more sustainable and liveable conditions for our generation and for those yet to come.

18. Thank you for your attention and I respectfully request, Mr President, to give the floor to Ambassador Marcos Dotta.

The PRESIDENT: I thank Ms Mariana Cabrera and I now give the floor to His Excellency Mr Marcos Dotta Salgueiro.

Mr DOTTA:

III. THE OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW TO ENSURE THE PROTECTION OF THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

1. Mr President, Members of the Court, I have the honour of appearing before you today to address some of the key elements of Uruguay's submissions in connection with the first question before this Court, namely, the obligations of States under international law to ensure the protection

of the climate system and other parts of the environment from the deleterious effects of anthropogenic GHG emissions.

2. As demonstrated by Uruguay in its written submissions, to which I respectfully refer, a good faith analysis of the corpus of international law, including customary international law, general principles of law and international treaties, conclusively confirms that States have specific obligations to ensure the protection of the climate system and other parts of the environment. Accordingly, Uruguay submits that there is sufficient basis for the Court to unambiguously ascertain the existence of said obligations. Among these obligations, we respectfully refer to those derived from international human rights law and from the principle of sustainable development duly understood and framed, avoiding the so-called "green protectionism". In the interest of time, I humbly refer to our written submissions and will focus my oral presentation on two specific obligations: the duty of prevention and the obligation to co-operate.

3. Turning to the *States' duty to use all the means at their disposal to prevent serious or irreversible damage caused by greenhouse gas emissions to the environment of another State*, Uruguay respectfully submits four points:

4. *First*, almost 30 years ago, in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, this Court recognized that the environment, as the living space of human beings, is protected by international law. On this basis, the Court confirmed that States have an obligation under international law "to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control"[1].

5. Since then, the existence of the States' obligation under customary international law to prevent significant damage to the environment of other States has been endorsed by this Court on various occasions[2].

6. While the customary rule as stated by this Court is peacefully accepted, there is some disagreement among States as to whether the duty to prevent transboundary environmental harm

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

[2] See e.g. case concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, para. 101.

creates specific obligations in respect of the protection of the climate system from the harmful effects of climate change. It is Uruguay's submission that this is undoubtedly the case.

7. There is now conclusive scientific evidence that anthropogenic GHG emissions are the main cause of climate change, which has damaged and will continue to gravely damage the environment. Therefore, activities leading to greenhouse gas emissions within a State's territory which contribute to anthropogenic climate change should be subject to the duty to prevent transboundary harm.

8. In this regard, Uruguay notes that the duty of prevention, as formulated by the Court, is not limited to a specific type of transboundary harm, such as nuclear damage or pollution, but extends to the damage caused by climate change.

9. *Second*, in light of the precautionary principle, the States' duty to prevent serious or irreversible environmental damage exists even in the absence of full certainty with respect to the potential damage to be prevented.

10. *Third*, in line with the jurisprudence of the Court, the prevention principle should be applied in accordance with the general duty of due diligence under international law, which entails, among others, the adoption of appropriate rules and measures[3], and the exercise of vigilance in their enforcement and control[4].

11. *Fourth*, the States' customary duty to exercise due diligence to prevent transboundary harm is not superseded by the obligations undertaken by States under environmental treaties. On the contrary, the customary obligation applies jointly with, and illustrates States' specific obligations under, the United Nations Framework Convention on Climate Change, the Paris Agreement and the United Nations Convention on the Law of the Sea.

12. Turning to the *States' obligation to co-operate financially and technically in the fight against climate change*, Uruguay respectfully notes that States broadly agree on the existence of a duty to co-operate in the protection of the climate system and other parts of the environment from the deleterious effects of climate change.

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[3] Case concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, para. 197.

[4] Case concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, para. 197; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, para. 104.

13. In connection with the duty to co-operate, Uruguay respectfully submits two points which are of particular concern to it.

14. *First*, in light of the principle of common but differentiated responsibilities and respective capabilities, which should guide the interpretation and application of States' obligations with respect to climate change, the duty to co-operate is primarily owed by developed States — who have historically contributed the most to global emissions of greenhouse gases — to developing States, particularly as regards the provision of technical and financial support.

15. *Second*, under the UN Framework Convention, the Paris Agreement and the Kyoto Protocol, certain developed States expressly undertook to co-operate financially with developing States for the implementation of adaptation and mitigation measures. Regrettably, some States have failed to comply with their obligations in this respect, thus negatively affecting the global response to climate change and, particularly, developing States' ability to adequately and effectively address climate change and adapt to its adverse effects. It is urgent that this situation be reverted.

16. Having the honour of appearing before the Court on behalf of the Oriental Republic of Uruguay, a country committed to international law, multilateralism, peace, solidarity, equity and sustainable development, and on behalf of its people, I respectfully request this Court to render an advisory opinion (i) crystallizing the specific obligations of States under international law to ensure the protection of the climate system and other parts of the environment from the deleterious effects of anthropogenic GHG emissions taking into consideration Uruguay's perspectives and emphasis, and (ii) urging States to comply with their obligations.

17. Thank you for your consideration, I respectfully request, Mr President, to give the floor to Dr Yas Banifatemi. Thank you.

The PRESIDENT: I thank Mr Marcos Dotta Salgueiro. I now give the floor to Ms Yas Banifatemi.

Ms BANIFATEMI:

IV. THE LEGAL CONSEQUENCES FOR THE STATES HAVING CAUSED SIGNIFICANT HARM TO THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

1. Honourable Members of the Court, for reasons explained by the agents of the Oriental Republic of Uruguay, the advisory opinion you will render is expected to have a material impact on Uruguay's territory, population and its future generations. But it is not only Uruguay's concerns about its territory and population that bring us here today — Uruguay comes in solidarity with all States, including small island States, whose very existence faces an imminent risk, and which are in dire need of urgent action to prevent irreversible damage to their territory and population. We also have in mind the horrific prospects of massive climate-related migration in the years to come.

2. We are here because we believe in the rule of law and in the tangible impact that this Court's advisory opinion will have. For the rule of law to prevail, not only do we need a clear set of obligations and principles, as discussed by Ambassador Dr Dotta Salgueiro, but also clear legal consequences for the States who, by their acts or omissions, cause significant harm to the climate system and other parts of the environment.

3. I will briefly address the latter point, while respectfully referring the Court to Uruguay's more detailed written submissions on the matter.

4. *First*, Uruguay respectfully submits that, where significant harm has been caused to the climate system and other parts of the environment by an act or omission of a State which (i) is attributable to that State under international law, and (ii) constitutes a breach of an international obligation of that State, the law on State responsibility must naturally apply to determine the legal consequences of such harm.

5. This Court has already confirmed, in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area*, that the principles of international law governing the consequences of internationally wrongful acts apply in cases involving damage to the environment[5].

6. *Second*, and in line with the law of State responsibility, the legal consequences of breaches of international law include the obligation to cease any continuing violation of international law, the

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[5] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, paras. 41-42.

obligation to offer appropriate assurances and guarantees of non-repetition if the circumstances so require, and the obligation to make full reparation for the injury caused by the internationally wrongful act.

7. These legal consequences are without prejudice to the States' continued duty to perform any obligation they have breached, as well as other applicable obligations, including financial obligations undertaken in accordance with the UNFCCC and the Paris Agreement.

8. *Third*, in the case concerning the *Gabčíkovo-Nagymaros Project*, this Court acknowledged the "limitations inherent in the very mechanism of reparation" of environmental damage[6].

9. It is precisely because of the special nature of environmental damage and climate change that we must be cautious to not allow such challenges to undermine the States' general obligation of full reparation for said damages.

10. To take just an example regarding causation, which of course is to be distinguished from attribution: given the diffuse nature of the harm to the climate system and other parts of the environment, and given also the several historical and concurrent causes of climate change, establishing a link between the conduct of a specific State and a specific harm may present practical difficulties. That challenges exist to establish a causal link does not mean, however, that States which have caused significant harm to the climate system and other parts of the environment should be released from the legal consequences of their actions, as explained by Uruguay in its written submissions.

11. In fact, legal consequences may also arise, under international law, with respect to an act or omission of a State that constitutes a breach of an international obligation of that State even when no harm, let alone significant harm, has been caused. The codification of the customary rules of international law on State responsibility by the International Law Commission has confirmed that "[t]here is no general requirement of material harm or damage for a State to be entitled to seek some form of reparation"[7]. The International Law Commission has further clarified that "to prescribe that there is no responsibility because no identifiable harm or damage has occurred would be

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

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

unwarranted"[8]. *A fortiori*, any challenges to establish a causal link between a State's breach of its international obligations and the harm caused to the environment cannot evacuate the legal consequences of such breach.

12. *Fourth* and finally, while the second question before this Court specifically refers to the legal consequences with respect to small island States which, due to their geographical circumstances are specifically affected by, and particularly vulnerable to, the adverse effects of climate change, other States, including Uruguay, are also highly vulnerable to the adverse effects of climate change and are severely impacted by the breaches of other States' obligations, including the obligation to co-operate financially for the implementation of adaptation and mitigation measures. For this reason, Uruguay respectfully submits that no distinction should be made between categories of States based on vulnerability or exposure to harm, but that the question of legal consequences be viewed more generally, from the point of view of harm to the environment, the effects of which are wide-ranging, global and impacting humanity as such.

13. Just looking at 2024, the disastrous floodings on all continents, the calamitous fires, the uncontrollable temperatures, the abolition of seasons, are all terrible warnings that our common house is submerging and risks perishing. In Uruguay's respectful submission, the answer lies in the force of the law, with all its strength. This Court's advisory opinion can only advance the rule of law and help prevent the environmental challenges and catastrophes that risk our lives today and the lives and prospects of the generations to come.

14. This concludes Uruguay's oral submissions before this Court. Honourable Members of the Court, we thank you for your attention.

The PRESIDENT: I thank the representatives of Uruguay for their presentation. I now invite the delegation of Viet Nam to address the Court, and I call upon Ms Nguyen Thi Lan Anh to take the floor.

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

Ms NGUYEN Thi Lan Anh:

OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW IN RELATION TO CLIMATE CHANGE

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour for me to appear before you today on behalf of the Socialist Republic of Viet Nam.

2. Viet Nam is aware that the proceedings are now in the final days of these historic two weeks of hearings. What the past two weeks have shown us is extraordinary. The sheer number of Participants appearing in these advisory proceedings testifies to the significance of questions raised and the important role that the Court is expected to play. You have also heard the diverse views expressed by States. This shows how negotiations alone will not be sufficient for States which have contributed the least to but are suffering the most from climate change to deal with its consequences.

3. Viet Nam is a low-lying, developing State which is highly vulnerable to the impacts of climate change. We therefore welcome the opportunity today to share our views on the most pressing legal questions relating to climate change as agreed by the United Nations General Assembly in resolution 77/276, which Viet Nam proudly co-sponsored.

4. Mr President, I will elaborate on the question *(a)* concerning the obligations of States under international law in relation to climate change. With your permission, Dr Nguyen Dang Thang, Legal Adviser of the Ministry of Foreign Affairs of Viet Nam, will then take the floor to address you on the question *(b)* concerning the legal consequences for States which have caused significant harm to the climate system.

5. In the course of my pleadings, I will touch upon four key issues: first, the applicable law; second, the principle of common but differentiated responsibilities — respective capabilities; third, the duty to prevent significant harm to the climate system; and fourth, the duty to co-operate.

6. Allow me now to turn to my first point: applicable law.

7. Mr President, the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement are important treaties dealing with climate change. However, Viet Nam disagrees with the view of some States that the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from greenhouse gas (GHG) emissions can only be found in these instruments. Instead, Viet Nam

submits that these obligations are also contained in other treaties such as the United Nations Charter, the United Nations Convention on the Law of the Sea and other rules of customary international law such as the principle of prevention of significant harm to the environment.

8. Viet Nam agrees with the position advanced by a majority of States over the past two weeks that the Court should apply the principle of systemic integration and harmonization. As explained by the International Law Commission (ILC), this principle requires all relevant norms to be interpreted so as to "give rise to a single set of compatible obligations"[9]. This principle was most recently adopted by the International Tribunal for the Law of the Sea (ITLOS) in its advisory opinion on climate change of May 2024[10].

9. Finally with regards to the *lex specialis* argument, Viet Nam respectfully invites the Court to find that such an argument is misplaced in this context. The UNFCCC, the Kyoto Protocol and the Paris Agreement do not constitute *lex specialis*. As has been argued by other States, and again confirmed by the ILC, "the application of *lex specialis* does not normally extinguish the relevant general law"[11].

10. Mr President, I will now turn to my second point, the common but differentiated responsibilities respective capabilities (CBDR-RC) principle.

11. Viet Nam submits that the CBDR-RC principle plays a central role in informing the answer to question *(a)*. It is recognized in various provisions of the UNFCCC and the Paris Agreement[12] and, as ITLOS stated, "a key principle" in the implementation of these agreements[13]. In addition to being a stand-alone principle of international climate change law, the CBDR-RC is also a relevant rule of international law within the meaning of Article 31 (3) *(c)*, of the Vienna Convention on the Law of Treaties. Consequently, it should also be taken into account in the application of international

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[9] Report of the Study Group of the International Law Commission on "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law", A/CN.4/L.702 (18 July 2006), 8.

[10] *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case 31 (21 May 2024) [135].

[11] Report of the Study Group of the International Law Commission on "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law", A/CN.4/L.702 (18 July 2006), 9.

[12] See, eg, United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994), 1771, *UNTS*, 107, Preamble, Articles 3(1), 4(1); Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), 3156, *UNTS*, 79, Preamble, Articles 2(2), 4(3), (19).

[13] *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case 31 (21 May 2024) [227].

obligations, including the duty to prevent significant harm to the climate system and the duty to co-operate as I will elaborate subsequently.

12. The application of CBDR-RC principle means that while all States share the common obligation to make mitigation efforts, the obligations of States with respect to climate action should be based on various factors, such as: the differences in historical contribution to GHG emissions, the capacity of the State in question and the vulnerability to the adverse effects of climate change.

13. In other words, States with greater means and capabilities due to their level of development, financial, technical resources, and environmental expertise must do more to reduce GHG emissions.

14. Mr President, with your permission, I will now turn to my third submission concerning the duty to prevent significant harm to the climate system.

15. The duty to prevent significant harm to the environment originated from the no-harm principle which the International Court of Justice confirmed to be a rule of customary international law in the *Corfu Channel* case in 1949[14]. The Court further confirmed that the duty to prevent significant harm as a rule of customary international law in the 1996 Advisory Opinion on the *Legality of Nuclear Weapons*[15]. Viet Nam submits that this customary duty to prevent harm principle applies in the context of climate change. The fact that this duty has only been applied in the case of transboundary harm caused by one State to another neighbouring State does not preclude its application to transboundary harm caused by climate change as some States have argued. Again, the Court has confirmed in the 1996 Advisory Opinion that the principle also applies to "areas beyond national control"[16]. This is an obligation of due diligence as the Court held in the 2010 *Pulp Mills* case. Viet Nam agrees with the view that the factors relevant to determining the content of due diligence under international law inform the content of every State's customary due diligence obligations in the climate change context.

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

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

[16] *Ibid.*

16. This brings me to the question of the standard of due diligence required to prevent significant harm to the climate system. On this point, Mr President, the jurisprudence is clear. In the *Pulp Mills* case, the Court held that this obligation entails

> "not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators"[17].

The element of vigilance in the monitoring and control of both public and private operators is particularly important in the context of preventing harm resulting from climate change.

17. As explained by the International Law Commission in 2001, the standard of diligence needs to be appropriate and proportional to the degree of risks[18]. According to ITLOS in its advisory opinion earlier this year, this should also be based on scientific and technological information, the urgency of the issue, and the severity of the damage[19].

18. Mr President, science is clear on all these points. Viet Nam welcomes the initiative taken by the Court to meet with scientists of the Intergovernmental Panel on Climate Change (IPCC) in November 2024. The IPCC reports consistently show that the degree of risk of climate change is high, the damage is severe and irreversible. Therefore, the standard of due diligence cannot be anything lower than *stringent*.

19. However, as held by ITLOS, the necessary measures to be taken have to be based on the available means and capabilities of the State concerned[20]. The CBDR-RC is again highly relevant. Developed States must therefore exercise a higher level of vigilance and adopt more stringent measures to reduce GHG emissions to prevent harm to and to protect the climate system.

20. Mr President, I will now move to my fourth and final point: the duty to co-operate.

21. The duty to co-operate is clearly stipulated in various arguments of the UNFCCC and the Paris Agreement. However, it also exists as a matter of customary international law as confirmed by

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[17] Case Concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, para. 197.

[18] *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities with Commentaries*, Yearbook of the International Law Commission, Vol. II, Part Two, 154, [11].

[19] *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case 31 (21 May 2024) [239].

[20] *Ibid.*, [207].

ITLOS in the *MOX Plant* in 2001[21]. The duty to co-operate therefore cannot be discharged only through the mechanisms contained within the UNFCCC and Paris Agreement frameworks.

22. Viet Nam invites the Court to take into account the CBDR-RC in determining the content of this duty in the context of climate change. This means that the duty to co-operate needs to be interpreted in light of the significant developmental challenges that developing States encounter. In the specific context of climate change, this principle covers co-operation regarding: (i) transfer of relevant technologies; (ii) conservation and enhancement of sinks and reservoirs of all greenhouse gas; (iii) adaptation to the impacts of climate change; (iv) research to further the understanding of and to reduce or eliminate the causes, effects and magnitude of climate change and the economic and social consequences of various response strategies; and (v) education, training and public awareness related to climate change.

23. Mr President, Madam Vice-President, distinguished Members of the Court, this concludes my part of the submission. I thank you for your kind attention and I respectfully request that you invite Dr Nguyen Dang Thang to take the floor.

The PRESIDENT: I thank Ms Nguyen Thi Lan Anh. I now give the floor to Mr Nguyen Dang Thang.

Mr NGUYEN Dang Thang:

LEGAL CONSEQUENCES FOR STATES WHICH HAVE CAUSED SIGNIFICANT HARM TO THE CLIMATE SYSTEM

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is a great honour for me to represent the Socialist Republic of Viet Nam in these historic proceedings.

2. My colleague, Dr Nguyen Thi Lan Anh, has just explained the different obligations of States under international law as far as climate change is concerned. I will address question *(b)*, namely "the legal consequences . . . for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment".

[21] *MOX Plant (Ireland* v. *United Kingdom)* (Provisional Measures, Order of 3 December 2001), ITLOS Reports 2001, [82].

3. To begin, I would like to recall that we are now past the point of 1.5°C — the goal set out under the Paris Agreement. Clearly, parties have been slow and ineffective in their mitigation strategies. We urge States to intensify efforts to achieve significant, rapid and sustained reductions in greenhouse gas (GHG) emissions. We call on developed States to honour their commitments under the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement.

4. That being said, Viet Nam would like to reiterate that these treaties do not create a self-contained régime, displacing the customary rules on State responsibility as reflected in the International Law Commission's Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA). In its *Climate Change* Advisory Opinion, ITLOS clarified that compliance with the Paris Agreement alone does not fulfil the State obligations under the United Nations Convention on the Law of the Sea. We urge the Court to apply this reasoning in the broader issue at hand.

5. We acknowledge that, in the written submissions and statements before the Court, there was a certain level of scepticism on the part of some States regarding the temporal dimension of the obligations to prevent harm to the climate system and the establishment of a breach under international law. However, we submit that such scepticism is not well founded for two reasons.

6. First, as having been amply demonstrated over the past two weeks, scientific knowledge and evidence of the harm to the atmosphere dates back at least to the 1960s. The UNFCCC of 1992 is the legal sedimentation of a United Nations process on climate change, which was initiated due to earlier concerns about the impacts of GHG emissions. In fact, as explained by my colleague, the duty to prevent transboundary harm was already acknowledged by *Trail Smelter Arbitration* in 1905, and subsequently confirmed as a rule of customary international law by your Court in the very first case, the *Corfu Channel* in 1949. Thus, it is illogical to assume that a breach of the duty to prevent harm can only be found for conducts taking place after 1992.

7. Second, while we assume that a finding on breach is difficult, such a task is not impossible. In fact, it is an imperative task at the core of the advisory opinion. With regard to the causation of harm, we agree with the International Union for Conservation of Nature in its written comments that scientific evidence clearly establishes a direct causal relationship between higher GHG levels and significant harm to the climate system. It follows that when States fail to reduce their GHG emissions,

resulting in significant harm to the climate system, a causal link between the violation and the resulting damage can thereby be established.

8. In this regard, allow me to give but one example of such a causal link. Similar to a large number of States which have appeared before you over the past two weeks, the people of Viet Nam have to face an increasing number of natural disasters caused by climate change, including deadly tropical cyclones. This year, we witnessed the devastating consequences of the most powerful storm over the East Sea (the South China Sea) in the past three decades and the most destructive one to hit Viet Nam in 70 years. This storm, so-called Super Typhoon Yagi, killed more than 300 people, injured nearly 2,000 others and destroyed hundreds of thousands of houses and buildings in Viet Nam; its total damage to our economy is estimated to be US$3.3 billion[22].

9. Mr President, Viet Nam agrees with the view that even if multiple States may be collectively responsible for significant harm caused by GHG emissions, each State could still be independently held responsible for the harm caused. This is provided for in Article 47 of ARSIWA[23]. The Court may not need to identify which specific country is responsible for breaching its obligations in the context of these advisory proceedings. However, it should clarify if a breach is committed and what are its legal consequences.

10. We believe the information presented to the Court is sufficient to determine whether legal obligations to protect the climate system and other parts of the environment have been fulfilled. If the Court finds that these obligations have not been met, the next step is to address the consequences as provided under ARSIWA. Specifically, a breach of international obligations entails two consequences: (i) the cessation of the wrongful act and (ii) full reparation for the injury caused by the wrongful act. We also maintain that the principle of CBDR-RC plays a key role in determining these legal consequences.

11. As for cessation, States have an obligation to take immediate and concrete actions to reduce GHG emissions, in line with the scientific recommendations provided by the Intergovernmental

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[22] Viet Nam News Agency, "Typhoon Yagi Killed 318 People, Damage Reaches $3.3 Billion" (30 Sept. 2024) https://vietnamnews.vn/society/1663938/typhoon-yagi-killed-318-people-damage-reaches-3-3-billion.html#:~:text=Preliminary%20estimates%20place%20the%20total,estimate%20reported%20on%20September%2015, accessed 10 Dec. 2024.

[23] International Law Commission's Articles on State Responsibility for Internationally Wrongful Acts, Article 47. This is confirmed by the European Court of Human Rights in *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland*, ECtHR Application No.53600/20, Judgment (Merits and Just Satisfaction) of Grand Chamber, (09 April 2024) [442-3].

Panel on Climate Change (IPCC) and other authoritative sources. However, as confirmed by ITLOS, the scope of measures to reduce GHG emissions "may differ between developed States and developing States", with developed States being expected to "continue to take the lead"[24]. This reflects the understanding that developed States have a historical responsibility for a significant portion of global emissions of GHGs. It follows that the distinction in the legal consequences borne by developed and developing States must be recognized and integrated into the Court's advisory opinion.

12. The obligation to make full reparation "in an adequate form" for the injury caused by an internationally wrongful act is a general principle of international law. Viet Nam submits that in the present case, all three forms of reparation as described in ARSIWA, namely restitution, compensation and satisfaction, are relevant and should be taken in combination. It is logical to prioritize restitution as the primary form of reparation. But where restitution is not possible, compensation is due. This Court's statement in *Certain Activities* is instructive in this regard: compensation "may include indemnification for the impairment or loss of environmental goods and services in the period prior to recovery and payment for the restoration of the damaged environment"[25]. Finally, satisfaction may take, among others, the form of measures to prevent a recurrence of the harm[26].

13. As injuries and damages caused by climate change occur in all shapes and sizes, so do reparation measures to be taken by responsible States. Again, the CBDR-RC can be called into play. In fact, reparation measures may vary according to the national circumstances of a particular affected State. It follows that responsible developed States need to consult affected developing States about the choice of the appropriate measures for reparation. In our view, these may include, subject to the needs of the relevant developing States: (i) monetary compensation for damages and for restoration measures, such as reforestation, biodiversity recovery and coastal erosion prevention; (ii) support for mitigation and adaptation efforts through financial assistance, capacity-building and technology

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[24] ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case 31, Advisory Opinion of 21 May 2024, para. 229.

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

[26] James Crawford, *Brownlie's Principles of Public International Law* (9th edn., Oxford University Press 2019), p. 533-534.

transfer; and (iii) other forms of assistance for climate resilience actions, such as disaster relief, infrastructure rebuilding and healthcare facilities for impacted communities.

14. Mr President, Madam Vice-President, distinguished Members of the Court, these proceedings have been conducted during these cold winter days in The Hague. But outside this courtroom, the global temperature is continuously on the rise, with 2023 and 2024 being successively the warmest years on record. We should not be looking for new records like this. We hope the Court, in discharging its advisory functions, clarify the obligations of States as well as the consequences for the failure to fulfil these obligations as far as climate change is concerned. In doing so, the Court will contribute in a meaningful way to the joint efforts of the international community to address what is rightly regarded as one of the greatest challenges of our time.

15. I would like, by way of conclusion, to respectfully request the Court to render an advisory opinion which:

(i) confirms that States' obligations to protect the climate system and other parts of the environment from GHG emissions are found in the entire corpus of international law;

(ii) confirms that breaches of the international obligations to protect the climate system can be established based on the existence of a significant harm to the climate system;

(iii) specifies the legal consequences for the breaches of the international obligations to protect the climate system, including appropriate forms of reparation for such breaches;

(iv) duly applies CBDR-RC as the guiding principle in answering both questions presented to the Court.

16. That brings me to the end of my submission on behalf of the Socialist Republic of Viet Nam. I thank you for your kind attention.

The PRESIDENT: I thank the representatives of Viet Nam for their presentation. I now invite the delegation of Zambia to address the Court and I give the floor to Mr Marshal Muchende.

Mr MUCHENDE:

I. INTRODUCTION

1. Mr President, Your Excellencies, greetings from Zambia. It is an honour to appear before this Court once again, as Solicitor General of the Republic of Zambia.

2. My delegation, comprising of Ms Sambwa Chilembo, Ms Bwalya Salamu, Ms Mulima Lisimba, Mr Joseph Busenga, Mr Mwenda Hamanyati, Mr Choonga Simulyamana, Mr Thulani Chimbalanga Banda and Ms Anna Banda, and I have endured the strain of long-haul flights at great expense to the Zambian people to add a voice to the proceedings because, like many other least developed countries (LDCs), we are "most affected by climate change, and our vulnerabilities make us the most heavily reliant on the protections offered by international law"[27]. Our voice is supported by the able and pro bono services of the international legal team DLA Piper and Professor Christian Tams, who is our consultant.

3. There is, in our view, a legal and moral obligation on all States to pass on a sustainable planet to future generations. Zambia will make the case that more is expected from States owing to the far-reaching debilitating effects of climate change. We will argue that the time is ripe, Your Excellencies, for this Court to render an advisory opinion on the consequences for States parties that abrogate their obligations under international law with regards to climate change.

4. We want to take our hats off and thank the Republic of Vanuatu and the student movement in the Pacific for its efforts in spearheading this initiative and for the unprecedented resolve of the General Assembly. Zambia is proud to stand alongside 14 LDCs and 16 African States making submissions in these proceedings that will hopefully mark a new dawn in the actualization of State obligations towards climate change for current and future generations.

A. Impact of climate change on Zambia

5. Mr President, although Zambia contributes very little to global emissions and has robust legal and regulatory frameworks to protect our environment, we remain the most impacted by climate change. This is due to many vulnerabilities, including the debt crisis, which, like a python wrapped

[27] Written Statement of the African Union, [4].

around us, has shackled us and made it near-impossible to invest in infrastructure to withstand the impact of climate change, build adaptative capacity through early warning systems, green energy, irrigation systems; and boost national resilience through science and technology.

6. On average, LDCs such as Zambia spend more than 30 per cent of their budget on debt service payments. Zambia, in particular, defaulted on its debt in 2020, and with the coming into Office of the New Dawn Government led by President Hakainde Hichilema, in 2021, the first task was to apply to the Common Framework for Debt Restructuring to try to reduce the payable instalments and the applicable interest owed to creditors and bondholders. This was so that Zambia could manage to service the debt and amortize the capital outlay in a sustainable manner and within the normal budget. The python of debt wrapped around Zambia leaves no breathing space for the country to invest in climate change adaptation, mitigation, loss and damage.

7. Approximately 72 per cent of our people are engaged in agro-activities, including our very own President and his family. Many of our farmers are small-scale farmers, who entirely depend on rainfall, leaving them vulnerable to the effects of climate change[28]. The production of our country, Your Excellencies, of our staple food, maize, is decreasing each year owing to climate change. From 2.3 million metric tonnes produced in the 2016/2017 season, last year we only managed to produce 1.5 million metric tonnes. This year, we only produced half of the required amount needed in Zambia for human consumption[29]. This is as a direct consequence of the effects of climate change on Zambia[30].

8. Mr President, climate change has touched every aspect of the Zambian economy, from devastating crop failure to the decreasing levels in our rivers and dams resulting in the dwindling of

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[28] African Union, *Dakar 2 Zambia — Country Food and Agriculture Delivery Compact* (online, 2023), available at https://www.afdb.org/sites/default/files/documents/publications/zambia_country_food_and_agriculture_delivery_compact.pdf; Food and Agriculture Organization of the United Nations, Modelling System for Agricultural Impacts of Climate Change (MOSAICC) — Zambia (online), available at https://www.fao.org/in-action/mosaicc/on-the-ground/zambia/en/.

[29] Presidential Delivery Unit Zambia, *Zambia in 2.1 million Metric Tonnes Maize Deficit* (online, 26 June 2024), available at https://www.pdu.gov.zm/blog/zambia-in-21-million-metric-tonnes-maize-deficit; United States Department of Agriculture, Country Summary — Zambia Production (online, 2024), available at https://ipad.fas.usda.gov/countrysummary/default.aspx?id=ZA; United States Department of Agriculture, Country Summary — Zambia Corn Area, Yield and Production (online, 2024), available at https://ipad.fas.usda.gov/countrysummary/default.aspx?id=ZA&crop=Corn.

[30] Statement by the Hon. Mulambo Haimbe MP, Minister of Foreign Affairs and International Cooperation, at the Plenary of the High-Level Segment of the 79th Session of the UN General Assembly (28 September 2024), p. 3, available at https://www.mofaic.gov.zm/wp-content/uploads/2024/09/GA-Press-Statement-28-sept-28-09-24.pdf; https://www.mofaic.gov.zm/wp-content/uploads/2024/09/GA-Press-Statement-28-sept-28-09-24.pdf.

our fortunes from our agriculture, tourism and energy sectors. In the last two years, Zambia has experienced the worst drought in recent times, leading the Government to declare a national emergency in February 2024[31]. This rainy season of 2024 is also not promising, and our agriculture, tourism and energy sectors are amongst the most adversely affected[32].

9. Mr President, with leave of this Court, I have prepared some evidentiary resources for presentation on the screen, to show the particularly stark effect of climate change. With your permission, may the people on the instrument show the first slide on the television.

— Mr President, what you are seeing on the screen, is the seventh natural wonder of the world, the Victoria Falls, which was the tourism attraction that gave us some annuities or income in the country. The falls are Zambia's number one tourist attraction. Please show the second slide.

— Behold the splendour of the mighty Victoria Falls before the drought. I now wish to draw you to a sombre picture of the current status of the mighty Victoria Falls. Please move to the third.

10. This is how the mighty Victoria Falls has been ruined as a result of climate change, and we make no income anymore out of this resource as a result of climate change.

11. Mr President, this has never happened in the entire history of Zambia. This is the effect of El Niño on my country.

12. Mr President, Zambia has also faced an energy crisis of the highest severity due to the impacts of climate change. We once sourced 84 per cent of our electricity from hydropower, with Kariba Dam alone producing 70 per cent of the electricity in the country. However, the drought has led to rivers and lakes literally drying up, with the Kariba Dam now only able to produce 7 per cent of its total capacity[33]. This has resulted in daily power cuts of up to 21 hours.

13. In Zambia, climate change has forced us to even reckon with a great paradox: because of the effects of climate change on our hydroelectricity sources, Zambia has no other choice but to fall

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[31] United Nations Office for the Coordination of Humanitarian Affairs, *Zambia: Drought Response Appeal May 2024 — December 2024 (May 2024)* (online, 2024), available at https://www.unocha.org/publications/report/zambia/zambia-drought-response-appeal-may-2024-december-2024-may-2024; United Nations in Zambia, *Information update on drought response by the UN System* (online, 2024), available at https://zambia.un.org/sites/default/files/2024-06/United%20Nations%20Zambia%20Information%20Update%20on%20Drought%20May%202024.pdf.

[32] Statement by the Hon. Mulambo Haimbe MP, Minister of Foreign Affairs and International Cooperation, at the Plenary of the High-Level Segment of the 79th Session of the UN General Assembly (28 September 2024), p. 3, available at https://www.mofaic.gov.zm/wp-content/uploads/2024/09/GA-Press-Statement-28-sept-28-09-24.pdf.

[33] Kennedy Gondwe, *How a mega dam has caused a mega power crisis for Zambia* (3 October 2024), BBC News, available at https://www.bbc.com/news/articles/cx2krr137x9o.

back to using our previously retired coal-powered electricity stations during drought[34]. This sombre step backwards demonstrates that we do not have the luxury of time nor the resources to adapt to the immediate and severe effects of climate change.

B. State obligations at international law

14. That said, Mr President, and having set the tone and painted a clear picture of how impacted we are by social change, it is our submission that over the years, a milieu of international law comprising a multitude of instruments has been developed to prevent, mitigate and adapt to climate change. Key instruments, such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, emphasize the obligation on developed countries to mitigate the effects of climate change[35].

15. Our submission, given the existential threat posed by climate change, and as emphasized by ITLOS in its advisory opinion of May 2024, the Paris Agreement alone is not sufficient. Nor is it the only State agreement to which the international community must comply with.

16. My colleagues will speak to these issues a little while later; mine is to argue that Zambia expects States parties to all relevant treaties to give deference to the doctrine of *pacta sunt servanda.* Developed countries must honour their pledges which they made to developing countries. These include three pledges in particular:

(a) In 2009, at the 15th United Nations Climate Conference (COP15) in Copenhagen, developed countries committed to providing US$100 billion annually in climate finance by 2020 to assist developing countries to respond to, and mitigate the effects of, climate change.

(b) In 2015, at COP21, developed countries pledged to provide climate finance of US$100 billion annually. We are yet to see the tangible deliverables on these undertakings, which have been extended to 2025.

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[34] International Centre for Sustainable Carbon, *Zambia approves new coal power plant as drought saps hydropower* (online, 24 October 2024), available at https://www.sustainable-carbon.org/zambia-approves-new-coal-power-plant-as-drought-saps-hydropower/.

[35] Article 4 (4) of the United Nations Framework Convention on Climate Change (UNFCCC); Article 9 (1) of the Paris Agreement.

(c) Most recently, at COP29, countries reached a breakthrough agreement, called the New Collective Quantified Goal, which tripled the pledge to US$300 billion per annum by 2035[36].

17. These pledges have created a legitimate expectation in the minds of developing countries such as Zambia and their budgetary appropriations. These pledges must be honoured without fail.

18. Mr President, as others have said, for States to take part in this collective objective, it is necessary to reduce the burden of debt on LDCs like Zambia, who are significantly impacted by climate change, which is preventing them from fully investing in climate mitigation and adaptation measures[37].

C. Concluding remarks

19. As I conclude, I wish to call upon the 100 States and international organizations appearing before this Court in these proceedings to renew our collective resolve to address the unprecedented challenges that climate change presents. A challenge of civilisational proportions requires a commensurate response; our current and future generations depend on it. And I must say, they depend on the decision or advice that you will render at the end of the day.

20. Mr President, at this juncture as I beg to rest, I wish to seek your leave to pass on the baton to Ms Sambwa Simbyakula-Chilembo, Assistant Director in International Law and Agreements from the Ministry of Justice in Zambia, to speak to the legal framework surrounding the State's obligations, after which we will hand over, with leave of the Court of course, to Professor Christian Tams, who will speak to the consequences as we contribute to this very important advisory opinion of this Court. I beg to rest, Mr President.

The PRESIDENT: I thank Mr Marshal Muchende. I now give the floor to Ms Sambwa Simbyakula-Chilembo.

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[36] We note that this pledge is barely sufficient considering that the Standing Committee on Finance under the UNFCCC established that the amount required for adaptation, mitigation, and loss and damage is US$1.3 trillion. See UNFCCC, Draft decision -/CMA.6 on the New collective quantified goal on climate finance, FCCC/PA/CMA/2024/L.22 (24 November 2024) [3]; and Standing Committee on Finance, UNFCCC, Sixth Biennial Assessment and Overview of Climate Finance Flows (Bonn, 2024).

[37] See for example Written Statement of the African Union, [18 *(c)*].

Ms SIMBYAKULA-CHILEMBO:

II. CURBING GREENHOUSE GAS EMISSIONS: NEGATIVE AND POSITIVE DUTIES

A. Introduction

1. Mr President, Members of the Court, it is an honour to appear before the Court in these historic proceedings. I echo the sentiments of the Solicitor-General of the Republic of Zambia in expressing our gratitude for the opportunity to make submissions on issues that will shape our collective future.

2. I will now turn to the important legal questions before the Court. I will address issues pertaining to question *(a)*, and Professor Christian Tams will speak to question *(b)*. In answering question *(a)*, Zambia will emphasize two points:

(a) developed States have binding legal obligations to reduce greenhouse emissions, arising not only from the Paris Agreement, but also under customary international law, and must be held to a stricter standard; and

(b) developed States have a positive legal duty to support States like Zambia in their efforts to mitigate and adapt to the effects of climate change.

3. I now turn to Zambia's first submission.

B. Duties to reduce greenhouse gas emissions

4. It is a well-established principle of international law that all States have a positive legal duty to prevent harm to the environment[38]. This obligation encompasses all activities within a State's jurisdiction or control[39]. As Vanuatu and Melanesian Spearhead Group acknowledged, this Court has

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[38] Sierra Leone, Written Statement, 15 August 2024, [3.10]; Singapore, Written Statement, 22 March 2024, [3.1]; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 56, para. 101 ("*Pulp Mills*"); *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 242, para. 29 ("*Nuclear Weapons Advisory Opinion*"); *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*"); *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22 ("*Corfu Channel Case*"); *Trail Smelter (United States, Canada), Awards of 1938 and 1941*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. III, p. 1965.

[39] See *Nuclear Weapons Advisory Opinion*, p. 242, para. 29: "obligation of States to ensure that activities within their jurisdiction or control respect the environment of other States or of areas beyond the limits of national jurisdiction"; See also United Nations Conference on the Human Environment, Stockholm Declaration: Declaration on the Human Environment, Principle 21, UN doc. A/CONF.48/14/Rev.1 (16 June 1972); United Nations Conference on Environment and Development, Rio Declaration on Environment and Development ("Rio Declaration"), Principle 2, UN doc. A/CONF.151/26, Vol. 1, (12 August 1992); United Nations Framework Convention on Climate Change (UNFCCC), adopted 9 May 1992, entered into force 21 March 1994, United Nations, *Treaty Series (UNTS)*, Vol. 1771, p. 107 (Dossier No. 4); United Nations Convention on the Law of the Sea (UNCLOS), opened for signature 10 December 1982, entered into force 16 November 1994), *UNTS*, Vol. 1933, p. 397, Art. 194.

confirmed that this principle of prevention constitutes an "obligation of due diligence", which is now "part of the corpus of international law relating to the environment"[40]. This obligation is reflected in Article 2 (1) *(a)* of the Paris Agreement[41].

5. While this duty is incumbent upon all States, its content is not the same for every State. Indeed, this obligation is informed by the principle of common but differentiated responsibilities and respective capabilities, or CBDR-RC. States who have contributed more to the climate crisis must do more to prevent harm to the environment. To cite the African Union: "the burden of GHG reduction must be allocated equitably"[42].

6. This equitable allocation is called for as a matter of binding international law. Developed States have far too long accepted the CBDR-RC principle, but diluted its practical application. Zambia looks to the Court to specify the contours of the notion of equitable allocation.

7. Turning now to Zambia's second submission.

C. Developed States have a positive duty to provide support to states like Zambia

8. A general obligation to co-operate is widely recognized in international law[43] and, as Tonga recalled this morning, is "now deeply embedded in the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement"[44]. The conservation and management of shared resources and the environment "must be based on shared interests, rather than the interests of

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[40] *Nuclear Weapons Advisory Opinion*, pp. 241-242, para. 29; *Pulp Mills*, pp. 55-56, para. 101; *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 41, para. 111.

[41] Paris Agreement, opened for signature 22 April 2016, entered into force 4 November 2016, *UNTS*, Vol. 1155, 706 2 (1) *(a)*.

[42] African Union, Written Statement, 22 March 2024, para. 114.

[43] African Union, Written Statement, 22 March 2024, paras. 125-129; *Yearbook of the International Law Commission*, 2021, Vol. II (2), Guideline 8, para. 1; UNFCCC, Arts. 3 (5) and 4 (1c); Paris Agreement, preamble; *Nuclear Weapons Advisory Opinion*, pp. 263-265, paras. 98-103; *Pulp Mills*, paras. 90-122, and 132-150; *Certain Activities,* p. 706, para. 104; *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, para. 82; *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Order of 10 September 2003, ITLOS Reports 2003*, para. 92; *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana* v. *Côte d'Ivoire), Order of 25 April 2016, ITLOS Reports 2016*, para. 73; *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Judgment, I.C.J. Reports 2018 (II)*, p. 538, paras. 86-87, and pp. 560-561, paras. 165-167; *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, para. 140; *The South China Sea Arbitration (The Republic of Philippines* v. *The Peoples Republic of China) (Awards), Permanent Court of Arbitration*, Case No. 2013-19, 12 July 2016, [946], [984]-[985]; *Corfu Channel Case*, pp. 22-23.

[44] CR 2024/51 (Tonga).

one party"[45]. In the climate change régime, the principle of CBDR-RC[46] translates the general obligation to co-operate into a positive legal duty for developed States to provide support and assistance to developing countries[47].

9. As several States have strongly asserted in these proceedings, developed States' inability to deliver adequate climate finance to developing States is representative of unacceptable deficiencies in global support mechanisms[48]. As Fiji noted, this "undermines the trust that countries have in such arrangements"[49].

10. The financing commitments from COP29 fall far short of what developing States need to combat the climate crisis, as well as what is required of developed States to meet their obligations to provide financial assistance. Past experience suggests this new target will not be met on time nor reflect the true value of support developing States need.

11. At present, climate financing often replaces existing humanitarian aid to developing States or takes the form of concessional loans, which are insufficient in circumstances where States like Zambia are already debt-distressed due to climate-related disasters[50].

12. Zambia submits that this practice is inadequate to meet States' obligations under the UNFCCC, which provides that (i) "new and additional" financial resources must be provided for adaptation measures, specifically in African countries[51] and (ii) "Parties shall give full consideration

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

[46] UNFCCC*,* preamble "the global nature of climate change calls for the widest possible cooperation by all countries . . . in accordance with their common but differentiated responsibilities".

[47] Democratic Republic of the Congo, Written Statement, 4 March 2024, [220]; Rio Declaration*,* Principle 7; UNFCCC, Arts 4(8), 10 *(c)*; Paris Agreement, Arts. 7 (6), 8, 9 (1)-(4), 10 (2); "Decision 1/CP.21: Adoption of the Paris Agreement"*,* UN doc. FCCC/CP/2015/10/Add.1 (29 January 2016, adopted 13 December 2015), para. 114.

[48] CR 2024/38, [5] 20 (Chile); CR 2024/40), [13], [15] 66 (Fiji); CR 2024/35, [10] 109 (Vanuatu and Melanesian Spearhead Group).

[49] CR 2024/40, [13], [15] 66 (Fiji).

[50] Organisation for Economic Co-operation and Development, *Climate Finance Provided and Mobilised by Developed Countries in 2013-2022* (Report, 29 May 2024) 11, 16-17, https://www.oecd.org/en/publications/climate-finance-provided-and-mobilised-by-developed-countries-in-2013-2022_19150727-en/full-report.html; Independent Expert Group on Climate Finance, *Delivering on the $100 Billion Climate Finance Commitment and Transforming Climate Finance* (Report, December 2020) https://www.un.org/sites/un2.un.org/files/2020/12/100_billion_climate_finance_report.pdf.

[51] UNFCCC, Arts. 4 (1) *(e)*, 4 (3).

to what actions are necessary . . . to meet the specific needs and concerns of developing country Parties", particularly for countries that are landlocked and/or affected by drought[52].

13. Zambia requests the Court to clarify beyond doubt that the positive legal obligation to provide financial assistance and support to developing States must be interpreted to prescribe practical assistance that is tailored to the needs of developing States. In particular, the provision of debt relief, and "debt-climate swaps", in addition to financial grants for adaptation and mitigation efforts[53], constitute a more appropriate form of climate finance than loans[54]. Indeed, as Bolivia submitted, debt-free models, like grants, should be the priority for developed States' assistance, as this "represents an authentic interpretation . . . of their obligations previously established in the climate change treaties"[55]. Zambia submits that the provision of adequate and suitable financial assistance is not a moral or political demand, but a legal obligation.

D. Concluding remarks

14. In conclusion, to quote the remarks of the African Group of Negotiators Chair following COP29, "[a]s I close, I remind us all of the southern African concept of *Ubuntu*: I am because you are. When Africa loses, the world loses — its critical minerals, its biodiversity, its stability. When Africa thrives, the world thrives with it"[56].

15. Mr President, Members of the Court, that concludes my submissions. I kindly ask that you invite our counsel, Professor Christian Tams, to continue Zambia's submissions.

The PRESIDENT: I thank you and now give the floor to Professor Christian Tams.

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[52] *Ibid.*, Arts. 4 (8) *(e)*, 4 (8) *(i)*.

[53] CR 2024/35, [16] 126 (South Africa).

[54] Democratic Republic of the Congo, Written Statement, 4 March 2024, [224], [231]-[240], [304]-[309]; Sierra Leone, Written Statement, 15 August 2024, [3.27], [3.29] [3.149], [4.3]; African Union, Written Statement, 22 March 2024, [18c], [142]-[152], [163], [198b], [218].

[55] CR 2024/37, [47] 29 (Bolivia).

[56] "COP29: African negotiators reluctantly welcome climate finance deal", *EnviroNews Nigeria* (25 Nov. 2024), available at https://www.environewsnigeria.com/cop29-african-negotiators-reluctantly-welcome-climate-finance-deal/#google_vignette.

Mr TAMS:

III. STATE RESPONSIBILITY FOR WRONGFUL CONDUCT

A. Introduction

1. Mr President, Madam Vice-President, Members of the Court, it is an honour to appear before you on behalf of the Republic of Zambia. My task is to present Zambia's submissions on "the legal consequences flowing from acts and omissions that have caused significant harm to the climate system", as referred to in question *(b)*. I will focus on a set of rules that has prompted much concern here; that is, the régime of State responsibility. Zambia's central submission to you can be summarized in a simple phrase: *Do not be afraid of State responsibility*. I make three points.

B. State responsibility is central to the General Assembly's Request

2. The *first* is this: State responsibility is a central part of the question put to you by the General Assembly. Under the modern doctrine, State responsibility comprises "the general conditions . . . for the State to be considered responsible for wrongful actions or omissions, *and the legal consequences which flow therefrom*"[57]. *Legal consequences flowing from actions and omissions* — it is precisely the language used in question *(b)*. No amount of legal or semantic acrobatics can read responsibility out of the General Assembly's Request.

3. And Mr President, no amount of acrobatics can make these proceedings purely about the Paris Agreement, as the United Kingdom wanted you to believe earlier this week[58], and as several other developed countries seemed to suggest. Of course, the Paris Agreement is crucial. But the General Assembly's request highlights other rules deemed "particularly relevant", among them human rights treaties, due diligence obligations, and the principle of prevention. It is simply implausible that the Paris Agreement should eclipse — as a *lex specialis* or self-contained régime — these other, separate rules[59]. It is wholly implausible that the Paris Agreement should preclude a finding of responsibility when other, separate rules have been breached.

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[57] See "Report of the Commission to the General Assembly on the work of its fifty-third session" (2001) II (2) *Yearbook of the International Law Commission*, 31 [1].

[58] See CR 2024/48 [29]-[35] 48-49 (United Kingdom).

[59] See e.g. CR 2024/36 [11]-[12] 18-19 (Antigua and Barbuda); CR 2024/36 [5]-[8] 82 (Barbados); CR 2024/37 [5] 10 (Belize); CR 2024/39 [4] 23 (Côte d'Ivoire); CR 2024/43 [2] 31 (Kenya).

C. State responsibility can be meaningfully applied

4. Mr President, Members of the Court, this brings me to my second point: the régime of State responsibility *can* be meaningfully applied to climate change. Of course, climate change is a complex phenomenon, driven by acts and omissions of multiple actors over decades. But the modern law of State responsibility — shaped in the jurisprudence of this Court and the work of the International Law Commission — is capable of addressing this complexity. Let me mention three aspects.

5. *First*, Article 15 of the ILC's text, which envisages wrongfulness as the result of "a series of actions or omissions defined in aggregate as wrongful"[60]. It is precisely meant to cover situations where not every individual act is unlawful, but the aggregate result is. The provision has obvious relevance here[61].

6. *Second*, multiple actors. The ILC addresses this specifically in Article 47, which has been referred to, and it notes in the commentary that "responsibility is not diminished or reduced by the fact that one or more other States are also responsible for the same act"[62]. This is crucial: if Zambia experiences the disastrous effects of climate change, it does so because of the misconduct of *many* States, notably developed and industrialized States. Even today, the Group of 20 States (G20) remain responsible for 76 per cent of greenhouse gas emissions[63].

7. My *third* point, causation — much referred to here, and allegedly posing "particular challenges" to the application of State responsibility[64]. Mr President, causation is no bar to finding State responsibility for breaches. Under Article 12 of the ILC's text, a State incurs responsibility when its conduct is not in conformity with its obligations. A finding of responsibility does not per se depend on causation, or on damage for that matter. Central obligations at stake here do not depend on any causal nexus: the duty to assist developing States is one example. Similarly, as this Court has

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[60] "Report of the Commission to the General Assembly on the work of its fifty-third session", *Yearbook of the International Law Commission (YILC)*, 2001, Vol. II (2), p. 62.

[61] See African Union, Written Statement, 22 March 2024, [231]-[232]; see also The Gambia, Written Statement, 22 March 2024, [5.5]; Kenya, Written Statement, 22 March 2024, [6.104].

[62] See "Report of the Commission to the General Assembly on the work of its fifty-third session", *YILC*, 2001, Vol. II (2), p. 124. See also *ibid.*, p. 65, para. 2.

[63] United Nations Environment Programme, *Broken Record: Temperatures hit new highs, yet world fails to cut emissions (again)* (Emissions Gap Report 2023, 20 November 2023), 6, https://www.unep.org/resources/emissions-gap-report-2023.

[64] See e.g. CR 2024/36 [3] 49 (Australia); France, Written Comments, 15 August 2024, [60]-[61]; Japan, Written Comments, 15 August 2024, [94]; United Kingdom, Written Comments, 12 August 2024, [68].

suggested in the *Bosnian Genocide* case[65], with respect to due diligence obligations, "it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent" the proscribed outcome.

8. Mr President, State responsibility is not a legal straightjacket. It is a flexible framework that can be meaningfully applied to the complex challenges of climate change. Zambia encourages the Court to state firmly that where States violate their manifold obligations relating to climate change, they incur State responsibility. This would be an important signal.

D. The legal consequences of breaches

9. Mr President, Members of the Court, my third point: what are the consequences of State responsibility? The ILC's text in Part Two gives us clear guidance. Zambia urges the Court to clarify that the principles of Part Two apply to our case, and two aspects stand out.

10. *First*, the core obligations. These are not in doubt. States are under a duty to end their wrongful conduct — cessation — and to make reparation, i.e. "wipe out, as far as possible, all the consequences of the illegal act"[66]. This is not a matter of goodwill, but of binding law[67].

11. *Second*, the substance of reparation. Under Article 31 of the ILC's text, States must make "full reparation for the injury caused" and this is where causation matters — but causation can be applied meaningfully. This Court has repeatedly engaged with complex causal links and it has shown pragmatism and common sense in addressing them. In the *Certain Activities* case, you ordered compensation even where "the state of science regarding the causal link [was] uncertain"[68]. You have also endorsed the approach of the *Trail Smelter* arbitration tribunal, which in the context of transboundary harm where the amount of damages could not be ascertained with certainty, famously

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

[66] *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47; *Responsibility of States for Internationally Wrongful Acts*, UNGA res 56/83, UN doc. A/RES/56/83 (12 Dec. 2001, adopted 28 January 2002), Art. 31.

[67] *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21; *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, 29; see also CR 2024/38 [16] 40 (Colombia).

[68] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 34; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, pp. 122-123, para. 349.

noted that "it will be enough if the evidence show[s] the extent of the damages as a matter of just and reasonable inference"[69].

12. In Zambia's submission, these clarifications are instructive because they show that reparation can be meaningfully applied to the case of climate change — an area where, as many States have noted, the science is clear. Scientific reports compiled over generations leave no doubt as to the basic chain of causation — a chain leading from developed and industrialized States' emissions to devastation principally felt in developing countries, including on the African continent[70]. Developed States cannot gloss over this point. Their overwhelming historical contribution is recognized in the Paris Agreement and the Kyoto Protocol.

13. Mr President, with the permission of the Court, I would ask for about one minute to conclude Zambia's submissions. In Zambia's submission, the Court in this opinion should build on this recognition and consolidate its jurisprudence on reparation. Guided by the Court, States will be able to take meaningful steps towards repairing injuries caused by climate change. As for the modalities, Zambia echoes the powerful pleas we have heard here by Antigua and Barbuda, and Colombia[71] to look at questions of debt relief, which indeed could free up crucial "resources for mitigation, adaptation, recovery and restoration initiatives"[72]. In the terms used by the Solicitor-General, Zambia needs to be freed from the python wrapped around its neck. Debt relief would be a pragmatic way of redressing injuries and achieving reparation.

E. Conclusion

14. To conclude, Zambia is the last State to address you in these proceedings. It looks to the Court's Opinion with anticipation and confidence. Above all, Zambia urges you not to be afraid of

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[69] *Trail Smelter case (United States, Canada) (Awards of 1938 and 1941)*, *RIAA*, Vol. III, p. 1920; see also Kenya, Written Statement, 22 March 2024, [6.106]; African Union, Written Statement, 22 March 2024, [271].

[70] See Bahamas, Written Statement, 22 March 2024, [234]; Burkina Faso, Written Statement, 2 April 2024, [273]; Costa Rica, Written Statement, 26 March 2024, [103]; Democratic Republic of the Congo, Written Statement, 4 March 2024, [291]-[304]; Federated States of Micronesia, Written Statement, 15 March 2024, [122]; African Union, Written Statement, 22 March 2024, [230]; Organisation of African, Caribbean, and Pacific States, Written Statement, 22 March 2024, [145]-[146]; see also Mauritius, Written Comments, 15 August 2024, [115]-[117]; Melanesian Spearhead Group, Written Comments, 15 August 2024, [199]; Mexico, Written Comments, 15 August 2024, [112]-[116]; Solomon Islands, Written Comments, 15 August 2024, [52]-[55]; Vanuatu, Written Comments, 15 August 2024, [493]-[499]; African Union, Written Comments, 15 August 2024, [230]; Commission of Small Island States, Written Statement, 22 March 2024, [199].

[71] CR 2024/36 [7] 14, [8] 15 (Antigua and Barbuda); CR 2024/38 [15] 40 (Colombia); CR 2024/41 [36] 28-29, [37]-[38] 29 (Sierra Leone).

[72] CR 2024/38 [15] 40 (Colombia).

State responsibility: it is at the heart of the General Assembly's request. It can — and should — finally become a tool to achieve climate justice. The haunting image of the Victoria Falls drying up illustrates the urgency of the task.

15. Mr President, in conclusion, let me thank the Registry and everyone involved here for handling these complex marathon hearings so courteously and professionally, despite the huge strain that they must have placed on the Court's time and resources.

16. This concludes Zambia's submission. I thank you for your kind attention.

The PRESIDENT: I thank the representatives of Zambia for their presentation. Before I invite the next delegation to take the floor, the Court will observe a 10-minute break. The hearing is suspended.

The Court adjourned from 4.30 p.m. to 4.45 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, the Pacific Islands Forum Fisheries Agency, to address the Court and I call Mr Pio Emosi Manoa to the podium.

Mr MANOA:

ORAL STATEMENT OF THE PACIFIC ISLANDS FORUM FISHERIES AGENCY

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour to appear before you today on behalf of the Pacific Islands Forum Fisheries Agency.

2. To supplement this oral statement, I would respectfully refer the Court to the written statement made by the Pacific Islands Forum Fisheries Agency dated 15 March 2024.

3. The Pacific Islands Forum Fisheries Agency, which I will henceforth refer to as "the Agency" or the "FFA", and its membership, are profoundly affected by the issue of climate change, within the scope of the Request to the Court for an advisory opinion.

4. Fifteen of the Agency's 17 members fall within the category of small island developing States (SIDS). As expressly identified in the questions posed to the Court, due to their geographical

circumstances and level of development, such small island developing States are injured and specially affected by and are particularly vulnerable to the adverse effects of climate change.

5. The Agency itself, as well as its members, is also directly affected. The activities of the Agency, and its mandate, are to ensure that its members obtain the greatest possible social and economic benefits from the sustainable use of offshore fisheries resources, in particular tuna. These fisheries resources are particularly susceptible and vulnerable to the impact of climate change, directly impacting upon the activities of the Agency and its mandate.

6. The implications of climate change, and the importance of the questions before the Court to the Agency and its members, will therefore be immediately apparent. The Agency and its members have an essential and abiding interest in the Court's proceedings, and respectfully turn to the Court for support in this matter.

7. Mr President, distinguished Members of the Court, to set the scene, let me draw the Court's attention to the achievements of the Agency and its members in successfully conserving, sustainably managing and developing the offshore fisheries resources in the Pacific Islands region, particularly regional tuna stocks.

8. These days we hear a great deal about overfishing and the collapse or threatened collapse of international fisheries due to poor or inadequate fisheries management and lack of co-operation amongst States. The Pacific Islands region, however, stands high in this regard. Its tuna stocks are the largest and healthiest in the world. In fact, the region is unique in its special indicators, which show that all of its major tuna stocks are sustainably fished, and none are overfished.

9. The Agency and its members achieve this through a co-ordinated and mutually beneficial approach to the conservation, sustainable management and development of offshore fisheries resources, in particular tuna, which are found both within the exclusive economic zone and the high seas.

10. The Agency and its members have developed innovative and world-leading approaches for sustainable fisheries management in the region. This includes mechanisms to protect tuna stocks from overfishing, including by illegal unreported and unregulated fishing vessels, and in regulating a wide range of other matters related to the fishery and its conservation and management. These

mechanisms and controls have been carefully developed and enhanced during the 45 years since the establishment of the Agency in 1979.

11. The Agency, and its members, have therefore made a substantial and highly valuable investment on their own behalf, and also that of the broader international community, through their careful and sustainable long-term management of the world's largest tuna fishery, to maintain it as a key resource into the long-term future.

12. This investment in sustaining the fishery is not just for arcane or academic reasons. It is because the fishery is of vital importance for the Agency's small island developing State members, for their continuing economic, social and cultural development and sustainability. This is no exaggeration.

13. In fact, 47 per cent of Pacific households list fishing as either a primary or secondary source of income. For most governments in the region, it is a vital source of national income.

14. The Agency's written statement, in paragraph 15, gives more detail on the significance of tuna fisheries for the Pacific Islands region, and for sustaining the livelihoods of Pacific communities and their economic development.

15. The importance of these fisheries to Pacific small island developing States, members of the Agency, and their reliance on them, is therefore very clear.

16. Mr President and distinguished Members of the Court, unfortunately, what is equally clear, are the serious impacts and threats to these fisheries from climate change. Damage to fisheries and loss of fish stocks will have a significant negative impact on the income, livelihoods, food security and economies of Pacific small island developing States, as well as social and cultural impacts. This is the primary reason for the Agency's participation in these proceedings, as I will deal with shortly.

17. I should, however, first note that the implications of climate change for Pacific small island developing States, go well beyond impacts on fisheries and fish stocks.

18. Climate change threatens the very physical integrity of some of the Agency's small island developing State members, particularly those which are low lying. This is due to sea-level rise. This has led Pacific Island leaders to characterize climate change as the region's single greatest security threat. Moreover, there is a growing body of research that 2°C warming above pre-industrial levels is insufficient to slow global sea-level rise. Lag effects mean that sea-level rise is expected to continue

well after atmospheric warming stabilization. Suffice to say that, for some, these consequences are catastrophic.

19. This is covered in great detail in paragraphs 19 to 40 of the Agency's written statement, and in national statements of Agency members and others. The most recent Pacific Island leaders meeting reiterated that climate change continues to be a matter of priority to the Pacific region, and also committed to elevate the issue of sea-level rise politically[73].

20. Mr President, Members of the Court, let me turn back to the serious impacts and threats to fisheries and fish stocks, because of the effects of climate change on the oceans. This damage to fisheries and loss of fish stocks will have a significant negative impact on the income, livelihoods, food securities and economies of Pacific small island developing States, as well as social and cultural impacts upon them. This damage occurs from various causes.

21. The impacts of climate change on the oceans include ocean warming, deoxygenation and ocean acidification. The Intergovernmental Panel on Climate Change's Sixth Assessment Report states, with high confidence, that ocean warming and ocean acidification have already affected food production including shellfish aquaculture and fisheries in some regions. Such impacts have also been directly observed by the Agency's members.

22. The Intergovernmental Panel on Climate Change's Report, which I referred to, also establishes that ocean warming, ocean acidification and deoxygenation will continue to increase this century. This will have significant impacts on ocean health and on fisheries, including coral reef systems and coastal fisheries on which many Pacific small island developing States communities are heavily dependent.

23. All of this makes it all the more essential to contain the levels of these emissions.

24. Scientific studies also show that climate change will result in redistributions of tuna stocks and related implications for pelagic fisheries, which will adversely affect the Agency's small island developing State members. Climate change is driving tuna further to the east and outside of members' exclusive economic zones into the high seas, threatening the loss of economic and food security of Pacific small island developing States. Indeed, climate-driven redistribution of tuna threatens not

[73] Communiqué of the 53rd Pacific Islands Leaders Forum, 26-30 August 2024, paras. 24-34, available at https://forumsec.org/publications/reports-communique-53rd-pacific-islands-leaders-forum-2024.

only to disrupt Pacific small island developing States' economies, but also the sustainable management of the world's largest tuna fishery. This is covered in great detail in the Agency's written statement.

25. Mr President, distinguished Members of the Court, by 2050, under a high greenhouse gas emissions scenario, the total biomass of three tuna species in the waters of 10 of the Pacific small island developing State members of the Agency, could decline by an average of 13 per cent, while a greater proportion could occur in the high seas.

26. The potential implications for Pacific Island economies in 2050 include an average decline in the major purse-seine fishery by 20 per cent with consequences which will imply significant annual losses in regional tuna-fishing access fees for Pacific States, which have limited economic bases and few alternative means of producing revenue.

27. A rise in ocean temperatures is also expected to alter the distribution of other transboundary species in the Pacific Ocean that contribute to domestic food security needs. There is also significant uncertainty as to what impacts the changes in ocean temperatures might have upon pelagic stocks, upon which the tuna feed. This means that current estimates of tuna displacement may be grossly underestimated.

28. It should be noted that these impacts are reduced if greenhouse gas emissions are reduced. This means that greater reductions in greenhouse gas emissions, in line with the Paris Agreement, would provide a pathway to sustainability for tuna-dependent Pacific Island economies.

29. On the other hand, not achieving greenhouse gas emissions in line with the Paris Agreement, will not only impact the capacity for the Agency's small island developing State members to generate income from the tuna fisheries on which they are vitally dependent, but will also significantly increase the management cost for these fisheries. It will also likely compromise the effectiveness of current fisheries management practices that have over the years ensured the sustainability of tuna stocks in the region. This loss of income and government revenue, compounded with rising food insecurity and health concerns, poses a significant risk of harm to the Agency's small island developing State members.

30. Mr President, distinguished Members of the Court, impacts on the coastal fisheries of Agency members are also projected, particularly due to a decline in warm-water coral reefs about

which I will say more in a moment. The decline in warm-water coral reefs is, for example, projected to greatly compromise their provision of seafood, which will elevate the risks to nutritional health in some communities highly dependent upon it.

31. Climate change impacts on marine ecosystems put key cultural dimensions of lives and livelihoods at risk in other ways as well, including through shifts in the distribution or abundance of harvested species and diminished access to fishing or areas. This includes potentially rapid or irreversible loss of culture and local knowledge and indigenous knowledge, as well as negative impacts on traditional diets and food security.

32. More specifically with regard to coral reef systems, the Pacific region is home to approximately 25 per cent of the coral reefs on the planet and is dotted with thousands of islands that differ climatically and geologically. At present, many of these reefs are in good health, because of their remote locations and low exposure to human impacts.

33. Climate change is however affecting this. Since 1993, the rate of ocean warming and thus heat uptake has more than doubled, with significant impacts on coral reefs, including an increasing frequency and severity of coral bleaching. Warm-water coral reefs are already impacted by extreme temperatures and ocean acidification, as well as marine heat waves, resulting in increasing frequency of large-scale coral bleaching events. Almost all warm-water coral reefs are projected to suffer significant losses of area, biodiversity and local extinctions, even if global warming is limited to 1.5°C. This has significant implications for FFA members.

34. As I have just mentioned, marine heat waves have increased significantly as a result of climate change. They are projected to worsen in frequency, duration, spatial extent and intensity, which will further impact on fisheries and consequently on Agency members.

35. Climate change is already causing coastal changes in the Pacific Region and is affecting coastal communities in Agency members. Impacts to date which have manifested in the ocean, include wave inundation, coastal erosion, and deterioration of coastal food systems and fresh water sources. These impacts are exacerbated in small countries with extensive low-lying areas, very limited resources and extreme vulnerability to such events. These climate change exacerbated environmental impacts have forced many communities to abandon their ancestral lands and

important traditional food sources, often resulting in the loss of cultural heritage, cultural identity, cultural practices and social cohesion — and in economic instability and insecurity.

36. As Pacific leaders have said, the displacement of these communities poses significant challenges in terms of safeguarding human rights, ensuring access to basic services, and maintaining community structures. Added to that is the difficulty for small island developing countries in effectively relocating communities when there are very limited available land and other resources.

37. Risks related to rise in the global mean sea level include erosion, flooding and salination; this is expected to significantly increase by the end of the century along all low-lying coasts, in the absence of major adaptation efforts, which are beyond the affordability and scope of FFA small island developing State members.

38. Mr President, distinguished Members of the Court, as the Agency's written statement concludes, coastal communities in FFA small island developing State members, have already experienced displacement as a result of climate change, and this will only get worse unless meaningful international action is taken.

39. The adverse consequences for the livelihood and well-being of coastal communities are profound, including their very security and survival.

40. Impacts on marine resources, including offshore fisheries such as tuna, on which FFA small island developing States are so dependent, are also profound, and pose a significant economic, social and cultural threat.

41. It is therefore incumbent upon the international community to take urgent and necessary action to deal with anthropogenic emissions of greenhouse gases, and their consequences — particularly with regard to small island developing State members of the Agency, who respectfully turn to the Court for support in this regard.

42. Mr President, Madam Vice-President and distinguished Members of the Court, I thank you for this singular honour and your kind attention.

The PRESIDENT: I thank the representative of the Pacific Islands Forum Fisheries Agency for his presentation. I now invite the next participating delegation, the Alliance of Small Island States,

to address the Court and I call upon His Excellency Mr Fatumanava-o-Upolu III Pa'olelei Luteru to take the floor.

Mr LUTERU:

I. INTRODUCTION

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour to deliver this oral submission on behalf of the Alliance of Small Island States (AOSIS), a group of 39 small islands and low-lying coastal developing States, who are specially affected by the climate crisis.

2. As States defined by the ocean, limited resources and geographic vulnerabilities, the effects of climate change and sea-level rise on our States cannot be understated. They threaten the well-being of our peoples, communities, cultures, ecosystems, food security, livelihoods and traditional knowledge.

3. Small island developing States (SIDS) rely heavily on coastal and marine resources as key drivers of our economies. However, climate change harms beaches and reefs that are vital to the tourism industry and disrupts the fisheries sector because of warming waters and altered marine environments.

4. In low-lying atolls, saltwater intrusion into water lenses exacerbates the scarcity of potable water, requiring costly adaptation measures such as desalination facilities.

5. Moreover, the coastal and marine environments of SIDS are integral to our social and cultural identities and heritage, through traditional practices, community life and historical sites. Rising sea levels and increased coastal erosion threaten these cultural ties, as in Grenada's video submission last week.

6. Mr President, in this era of unprecedented and relentless sea-level rise, international law must evolve to meet the climate crisis and the disproportionate effect that it has on SIDS. We already have many of the tools to do this, but we must interpret and apply them for the realities of this new era.

7. Over the past two weeks, you have heard from 28 SIDS who have made submissions to this Court, the vast majority for the first time. This is more than one quarter of all the submissions. This

is clear evidence of our engagement in the critical issues the Court is considering in this advisory opinion.

8. As not to duplicate the submissions of our member States, we will focus our submission on four issues:

(a) First, AOSIS submits that the Court, in answering the question as a whole, must consider the status of SIDS as specially affected by climate change.

(b) Second, AOSIS urges the Court to acknowledge the duty of co-operation as a general principle of international environmental law, potentially in response to paragraph *(a)* of the question.

(c) Third, AOSIS urges the Court, potentially in response to paragraph *(b)* of the question, to acknowledge the duty of States to recognize the stability of maritime zones; and

(d) Fourth, acknowledge the principle of continuity of statehood and sovereignty despite the impacts of climate change-related sea-level rise.

II. SIDS AS SPECIALLY AFFECTED BY CLIMATE CHANGE

9. Mr President, SIDS are specially affected by climate change. This is both because of the outsized impact of climate change on SIDS and because SIDS have been central to the last 30 years of law-making on these issues. We submit that this Court should give greater weight to the practice of SIDS, as specially affected States, in two ways. First, in the consideration of developments in customary international law, and second, in the interpretation of treaties through subsequent practice.

10. In the *North Sea Continental Shelf* cases, this Court noted there may be a particular role for the practice of States whose interests are specially affected, in the determination of customary international law. It noted that a general rule of international law may develop rapidly, where there is a "very widespread and representative participation . . . provided it included that of States whose interests were specially affected"[74].

11. This issue has been subsequently raised by both developed and developing countries in submissions to this Court and by separate opinions. This is in addition to the broad evidence of State practice through statements in the UN General Assembly's Sixth Committee in relation to the work of the International Law Commission on the identification of customary international law.

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[74] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 42, para. 73.

12. While members of the ILC expressed concern that the concept of specially affected States "was irreconcilable with the sovereign equality of States", it was included in the ILC's commentary as an "indispensable factor"[75] in assessing the generality of State practice.

13. AOSIS submits that recognizing the status of specially affected States does not enhance the power of already powerful States. Rather, it equitably ensures that the practice of States specially affected by circumstances that we did not create be given the appropriate weight in the interpretation and application of relevant legal rules.

14. Indeed, numerous treaty provisions in the UN climate change régime provide for special consideration of the needs and concerns of SIDS. The UNFCCC's preamble recognizes the particular vulnerabilities of SIDS, and its Article 4, paragraph 8, provides that

> "Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change . . ., especially on: (a) small island countries"[76].

15. The subsequent Paris Agreement expressly recognizes that the special circumstances of SIDS are to be given particular consideration in relation to mitigation and adaptation, financing, capacity-building and transparency requirements[77].

Conclusion

16. Mr President and distinguished Members of the Court, in conclusion, AOSIS submits that, in the climate change context, not only should the situation of SIDS be taken into account as a matter of equity, but also that the practice of SIDS as specially affected States should be particularly considered in the development of customary international law, and in the interpretation of relevant treaty obligations in the light of subsequent practice.

17. Mr President, I would like to ask the Court to invite Professor Bryce Rudyk, the AOSIS Legal Adviser, to deliver the remainder of our submission.

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[75] Report of the ILC — 66th Session (2014), para. 168, available at https://legal.un.org/ilc/reports/2014/english/chp10.pdf.

[76] Art. 4 (8), *United Nations Framework Convention on Climate Change* (adopted 9 May 1992, entered into force 21 March 1994), 1771, *UNTS*, 107.

[77] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) *UNTS* 54113, Arts. 4 (6), 9 (4), 9 (9), 11 (1), 13 (3).

The PRESIDENT: Thank you, Sir. I now give the floor to Professor Bryce Rudyk.

Mr RUDYK:

1. Mr President, Madam Vice-President and distinguished Members of the Court, it is my profound honour to deliver this submission on behalf of the 39 member states of AOSIS.

2. The remainder of our submission will discuss three points that are of particular importance to SIDS. Specifically, we respectfully ask the Court to: first, affirm that the duty of co-operation is a general principle of international law, including the provision of financial and technological assistance; second, recognize the stability of maritime zones; and third, affirm that there is a principle of continuity of statehood in international law.

III. DUTY OF CO-OPERATION IN INTERNATIONAL ENVIRONMENTAL LAW

3. On our first issue, the duty of co-operation is a foundational principle in international law, essential for addressing global challenges. This duty is particularly crucial in the context of climate change, where the effects are global, transboundary and disproportionately and inequitably impact vulnerable States, including SIDS.

4. The duty of co-operation is enshrined in the United Nations Charter, committing all Member States to "take joint and separate action in cooperation with the Organization for the achievement"[78] of social and economic development. It is also contained in the Universal Declaration of Human Rights and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, as well as being a foundational principle in international human rights and disaster law.

5. This duty is found in multiple international and regional agreements, including human rights instruments, and is supported by significant State practice, including multiple resolutions in the Human Rights Council and the General Assembly.

6. We submit that there is a duty to co-operate in international environmental law that is a general principle of international law. The Rio Declaration on Environment and Development (1992)

[78] Art. 56, *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945), 1, *UNTS*, XVI.

elaborates on this duty in Principle 7, stating: "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem."[79]

7. This Court has considered this duty extensively, albeit usually in the context of pre-existing bilateral or multilateral agreements and has noted that States must approach international environmental issues in a co-operative manner. As this Court said in the *Gabčikovo-Nagymaros* Judgment: "in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage"[80].

8. We also submit that the duty of co-operation is found in relevant treaties. Paris Agreement Article 9, paragraph 1, mandates that "developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention"[81]. Article 10 establishes a technology framework to promote and facilitate enhanced action on the development and transfer of environmentally sound technologies to developing countries. These provisions reflect the legally binding nature of the duty of co-operation, highlighting the critical role of the provision of means of implementation as a form of co-operation.

9. Recognizing that co-operation is absolutely essential to solve global environmental problems, we respectfully urge the Court to affirm that the duty of co-operation is a general principle of international environmental law. This will help to ensure that the most vulnerable States, in particular small island developing States, have the resources and support needed to adapt to and mitigate the impacts of climate change.

IV. STABILITY OF MARITIME ZONES IN THE FACE OF CLIMATE CHANGE

10. I will now speak on our second issue, the stability of maritime zones.

11. The need to ensure legal stability, security, certainty and predictability underpin the United Nations Convention on the Law of the Sea (UNCLOS) and customary international law. We

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[79] Principle 7, *Rio Declaration on Environment and Development* (adopted 14 June 1992), UNGA res. 1/CONF.151/26 (Vol. I) (12 August 1992).

[80] *Gabčikovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.CJ. Reports 1997*, p. 78, para. 140.

[81] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), *UNTS*, 54113, art. 9 (1).

submit that once a State has deposited charts or co-ordinates of maritime zones in accordance with UNCLOS, it is not required to update them. These maritime zones and their associated rights and entitlements shall not be reduced, no matter the physical effects of climate change-related sea-level rise.

Legal framework and principles

12. UNCLOS provides the legal framework for the establishment of baselines and maritime zones, including territorial seas, exclusive economic zones and continental shelves. It does not require States to revise their maritime baselines due to natural changes, such as erosion or sea-level rise. This silence is significant and reflects the broader principle of stability and predictability in international law. As highlighted by the Pacific Islands Forum (PIF) in its 2019 submission to the ILC, "the absence of an explicit requirement for updating baselines demonstrates an implicit intent to ensure stability and legal certainty"[82].

State practice and legal commitments

13. In 2021, the leaders of the PIF adopted a Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise, in which they proclaimed that

> "maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with the Convention, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise"[83].

Later that year, the 39 heads of state and government of AOSIS made a similar declaration.

14. In addition, there have been numerous similar statements made by States at the General Assembly, in submissions to the ILC, and in declarations by States upon deposit of geographical co-ordinates with the Secretary-General which have consistently reiterated this interpretation. This includes statements by major coastal States, including the United States and, most recently, the United Kingdom. In November, just last month, the UK Minister of State for Development delivered a statement in the House of Commons on preserving maritime zones in line with the PIF and AOSIS

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[82] Pacific Islands Forum (PIF) submission to the International Law Commission, 2019, available at https://legal.un.org/ilc/sessions/72/pdfs/english/slr_pif.pdf.

[83] "Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise" (Pacific Islands Forum, 2021).

declarations. Collectively, this is evidence of broad State practice concerning the stability of maritime zones.

15. In addition to these statements, the overwhelming practice of States in Maritime Zone Notifications since the entry into force of UNCLOS is further evidence of the stability of maritime zones. In the 164 Maritime Zone Notifications filed since 1995, only a single State has revised their baselines because of a change in the baseline. Other States have provided additional detail or additional basepoints, but none have changed their baselines.

Consistent with legal principles

16. Maintaining the stability of maritime zones is consistent with a number of principles of international law. First, *uti possidetis juris*. This principle served during the wave of decolonization in the twentieth century to preserve existing boundaries under international law to maintain legal stability and prevent the eruption of conflict. Applying this principle to maritime zones in the context of climate change-related sea-level rise is in the interest of the international community, to ensure legal stability, certainty, security and predictability and reduce the risk of potential conflict.

17. Second, the principle of permanent sovereignty over natural resources also continues to be integral to the economic development of developing States. This widely recognized principle, affirmed by this Court, reinforces the need to preserve maritime rights and entitlements of AOSIS members, particularly with respect to their marine natural resources.

18. Finally, the principle of equity demands the stability of maritime zones. SIDS have contributed negligibly to the causes of climate change, yet face some of the most severe impacts, including the potential loss of land territory and marine resources. Requiring SIDS to adjust their maritime zones due to sea-level rise would impose an unjust burden, exacerbating existing vulnerabilities and undermining the principles of equity and fairness in international law.

Conclusion

19. We urge the Court to affirm that maritime zones, once established and notified in accordance with UNCLOS, shall remain unchanged, notwithstanding physical changes connected to sea-level rise. Such affirmation is vital to safeguard the legal entitlements and sovereign rights of

SIDS and to uphold the principles of justice and equity that are fundamental to the international order. We suggest that the Court could make this affirmation in response to paragraph *(b)* of the question.

V. CONTINUITY OF STATEHOOD AND SOVEREIGNTY DESPITE SEA-LEVEL RISE

20. Mr President, distinguished Members of the Court, turning now to our final issue. The principle of continuity of statehood, as well as sovereignty and United Nations membership, is fundamental to the international legal order. In the context of climate change, this principle holds that statehood, once established, endures despite physical changes to or complete inundation of a State's land territory due to climate change-related sea-level rise.

21. SIDS have been clear that there is no existential threat to our statehood from sea-level rise. We must not conflate the physical reality of land territory becoming submerged with the legal rules concerning statehood and sovereignty, including permanent sovereignty over natural resources.

Historical precedent

22. The principle of continuity of statehood is well established in international law. Historical precedents over the past century have illustrated that the continuity of statehood and sovereignty is central to maintaining international stability and upholding the rights of peoples.

23. The Montevideo Convention on the Rights and Duties of States, particularly its four criteria, is sometimes cited in these discussions. However, these criteria were drafted by a limited number of States at a time when the unique challenges posed by anthropogenic climate change were unknown. Most critically, historical and current State practice strongly suggests that these criteria are for the establishment of States, not their continuation — and certainly not to justify their termination.

24. Continuity of statehood has been the default and upheld in various historical contexts. First, international law has long recognized the legitimacy of governments in exile. During the Second World War, governments in exile retained their sovereignty and legal status despite the occupation of their territories, maintaining their representation in international organizations.

25. Second, the dissolution and reconstitution of States, such as in the case of federations or unions, further highlight the enduring nature of statehood and sovereignty. States have reasserted their independence after periods of union or merger, and resumed participation in international organizations without delay.

26. In retrospect, it may be argued that each of these situations were temporary, but at the time, that was unclear. The international community continued to respect their statehood, sovereignty and participation in international organizations, despite profound political transformation. Similar considerations must now be applied in the present circumstances.

State practice and declarations

27. In addition to the earlier State practice and that surveyed by the ILC and ILA, there is an increasing body of practice that reflects a clear commitment of States to preserving statehood and sovereignty despite the physical threats posed by climate change.

28. First, at the national level, multiple SIDS have adopted legal measures to reinforce the continuity of their statehood. For example, a number of Pacific SIDS have enacted legislation recognizing their maritime boundaries and zones, as well as their sovereignty as fixed, irrespective of changes to their physical coastline.

29. Second, there are now more examples of cross-regional practice and *opinio juris*. The 2023 Declaration by the Leaders of the PIF on the Continuity of Statehood "affirms that international law supports a presumption of continuity of statehood and does not contemplate its demise in the context of climate change-related sea-level rise", and goes on to "declare that the statehood and sovereignty of [PIF Members] will continue"[84].

30. Just three months ago in September, the 39 Heads of State and Government of AOSIS made a similar declaration, declaring that "international law is premised on a principle of continuity of statehood, consistent with broad state practice over the past century"[85]. Recognizing the practice and *opinio juris* of States, this use of principle, rather than presumption, was deliberate.

31. The AOSIS Declaration affirmed that "consistent with the principles of equity, fairness and sovereign equality of States, statehood cannot be challenged under any circumstances of climate change-related sea-level rise"[86].

32. It further proclaimed that

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[84] 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise, preamble, para. 12.

[85] Alliance of Small Island States (AOSIS) Declaration on Sea-Level Rise and Statehood (adopted 23 September 2024, New York).

[86] *Ibid.*

> "consistent with the right to self-determination, the statehood and sovereignty of SIDS and our membership in the United Nations, its specialized agencies and other intergovernmental organizations will cease only if another form of expression of the right to self-determination of a SIDS population is explicitly sought and freely exercised by that population"[87].

33. The Declaration makes clear that the only way to extinguish established statehood is through the exercise of the right of self-determination, as enshrined in international law. While SIDS have recognized that climate change is causing, and will cause, serious and irreversible impacts on land territory, the right of a population to "freely determine their political status" should not be negated by these physical changes of sea-level rise.

34. To suggest that SIDS may lose their statehood, sovereignty or membership in international organizations because of the acts of other States, is the pinnacle of inequity. It is unacceptable and would be contrary to the principles of justice that underpin all of international law.

IV. CONCLUSION

35. In conclusion, distinguished Members of the Court, SIDS have come to you to seek clarity on international law and to reaffirm our rights as sovereign and equal States. We come as our physical world is fundamentally changing from no action or inaction on our part. Recognizing the principles of equity and self-determination, and the necessity of ensuring legal stability, security, certainty and predictability, we ask you to affirm the following:

(a) First, that small island developing States are specially affected by climate change and sea-level rise and recognize the critical importance of their State practice to the clarification and development of international law.

(b) Second, that the duty of co-operation in international environmental law is a general principle of international law, and that provision of financial and technological assistance is a component of that co-operation.

(c) Third, that maritime zones, once established and deposited in accordance with UNCLOS, and the rights and entitlements that flow from them, shall continue to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise. And

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[87] *Ibid.*

(d) Fourth, that there is a principle of continuity of statehood in international law, and that no matter the physical changes that result from climate change, States will retain their statehood, sovereignty and memberships in international organizations.

36. Distinguished Members of the Court, we thank you for your consideration.

The PRESIDENT: I thank the representatives of the Alliance of Small Island States for their presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow at 10 a.m., in order for the Commission of Small Island States on Climate Change and International Law, the Pacific Community, the Pacific Islands Forum and the Organisation of African, Caribbean and Pacific States to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 5.35 p.m.

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