INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

ADVISORY PROCEEDINGS

(REQUEST FOR AN ADVISORY OPINION)

ANSWERS OF BARBADOS

20 December 2024

[INTENTIONALLY BLANK PAGE]

TABLE OF CONTENTS

I. **INTRODUCTION** 1

II. **QUESTION PUT BY JUDGE CLEVELAND: DURING THESE PROCEEDINGS, A NUMBER OF PARTICIPANTS HAVE REFERRED TO THE PRODUCTION OF FOSSIL FUELS IN THE CONTEXT OF CLIMATE CHANGE, INCLUDING WITH RESPECT TO SUBSIDIES. IN YOUR VIEW, WHAT ARE THE SPECIFIC OBLIGATIONS UNDER INTERNATIONAL LAW OF STATES WITHIN WHOSE JURISDICTION FOSSIL FUELS ARE PRODUCED TO ENSURE PROTECTION OF THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT FROM ANTHROPOGENIC EMISSIONS OF GREENHOUSE GASES, IF ANY?** 2

ANSWER: 2

III. **QUESTION PUT BY JUDGE TLADI: IN THEIR WRITTEN AND ORAL PLEADINGS, PARTICIPANTS HAVE GENERALLY ENGAGED IN AN INTERPRETATION OF THE VARIOUS PARAGRAPHS OF ARTICLE 4 OF THE PARIS AGREEMENT. MANY PARTICIPANTS HAVE, ON THE BASIS OF THIS INTERPRETATION, COME TO THE CONCLUSION THAT, TO THE EXTENT THAT ARTICLE 4 IMPOSES ANY OBLIGATIONS IN RESPECT OF NATIONALLY DETERMINED CONTRIBUTIONS, THESE ARE PROCEDURAL OBLIGATIONS. PARTICIPANTS COMING TO THIS CONCLUSION HAVE, IN GENERAL, RELIED ON THE ORDINARY MEANING OF THE WORDS, CONTEXT AND SOMETIMES SOME ELEMENTS IN ARTICLE 31 (3) OF THE VIENNA CONVENTION ON THE LAW OF TREATIES. I WOULD LIKE TO KNOW FROM THE PARTICIPANTS WHETHER, ACCORDING TO THEM, "THE OBJECT AND PURPOSE" OF THE PARIS AGREEMENT, AND THE OBJECT AND PURPOSE OF THE CLIMATE CHANGE TREATY FRAMEWORK IN GENERAL, HAS ANY EFFECT ON THIS INTERPRETATION AND IF SO, WHAT EFFECT DOES IT HAVE?** 3

ANSWER: 3

A. The interpretation that Article 4 provides solely procedural requirements must be rejected as contrary to the requirement to interpret a treaty in good faith in light of its object and purpose 6

B. The ordinary meaning to be given to the terms of Article 4 of the Paris Agreement in their context further confirms that the obligations thereunder are substantive and not merely procedural 12

C. In any event, orthodox principles of international law confirm that the substantive obligations under Article 4 of the Paris Agreement operate alongside and do not displace States' existing obligations under international law to prevent, mitigate and remediate climate change-related transboundary harm 14

IV. QUESTION PUT BY JUDGE AURESCU: SOME PARTICIPANTS HAVE ARGUED, DURING THE WRITTEN AND/OR ORAL STAGES OF THE PROCEEDINGS, THAT THERE EXISTS THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT IN INTERNATIONAL LAW. COULD YOU PLEASE DEVELOP WHAT IS, IN YOUR VIEW, THE LEGAL CONTENT OF THIS RIGHT AND ITS RELATION WITH THE OTHER HUMAN RIGHTS WHICH YOU CONSIDER RELEVANT FOR THIS ADVISORY OPINION? 20

ANSWER: 20

A. The right to a clean, healthy and sustainable environment is a logical corollary of each State's right not to have its environment harmed by another State, i.e., the transboundary harm principle 21

B. The right to a clean, healthy and sustainable environment is also a logical corollary of the established principle that States cannot harm the global environment, including areas beyond national control 26

C. The right to a clean, healthy and sustainable environment also emerges from fundamental *erga omnes* principles of human rights law and the fulfilment of those rights 28

V. QUESTION PUT BY JUDGE CHARLESWORTH: IN YOUR UNDERSTANDING, WHAT IS THE SIGNIFICANCE OF THE DECLARATIONS MADE BY SOME STATES ON BECOMING PARTIES TO THE UNFCCC AND THE PARIS AGREEMENT TO THE EFFECT THAT NO PROVISION IN THESE AGREEMENTS MAY BE INTERPRETED AS DEROGATING FROM PRINCIPLES OF GENERAL INTERNATIONAL LAW OR ANY CLAIMS OR RIGHTS CONCERNING COMPENSATION OR LIABILITY DUE TO THE ADVERSE EFFECTS OF CLIMATE CHANGE? 32

ANSWER: 32

A. The Declarations are significant because, under international law, they have "considerable probative value" and are "an element to be taken into account in interpreting the treaty in accordance with the general rule of interpretation of treaties" 36

B. The Declarations are significant because they form part of the consistent evidence of State practice demonstrating that the UNFCCC, the Kyoto Protocol and the Paris Agreement complement, and do not displace, other norms in international law 38

C. The Declarations are significant because they can be compared to the complete lack of evidence of the alternate position advanced by major emitting States 42

D. The Declarations are significant because they are "circumstances of the conclusion" of the UNFCCC and Paris Agreement under Article 32 of the Vienna Convention on the Law of Treaties that disprove the "manifestly absurd or unreasonable" interpretation of these treaties advanced by major emitting States in these proceedings 45

E. The Declarations are significant but there are also numerous other bases on which this Court should conclude that the UNFCCC, the Kyoto Protocol and the Paris Agreement do not displace other sources of international law relating to climate change 47

VI. CONCLUSION 51

I. INTRODUCTION

1. Barbados submits these answers to the questions from Judges Cleveland, Tladi, Aurescu and Charlesworth of this Court in accordance with the directions of the President of the Court on the last day of the public hearings in these proceedings – 13 December 2024.[1]

2. After this introduction, **Section II** provides an answer to Judge Cleveland's question. **Section III** provides an answer to Judge Tladi's question. **Section IV** provides an answer to Judge Aurescu's question. **Section V** provides an answer to Judge Charlesworth's question. **Section VI** offers a conclusion.

[1] *See also* Letter from the Registrar dated 13 December 2024.

II. QUESTION PUT BY JUDGE CLEVELAND: DURING THESE PROCEEDINGS, A NUMBER OF PARTICIPANTS HAVE REFERRED TO THE PRODUCTION OF FOSSIL FUELS IN THE CONTEXT OF CLIMATE CHANGE, INCLUDING WITH RESPECT TO SUBSIDIES. IN YOUR VIEW, WHAT ARE THE SPECIFIC OBLIGATIONS UNDER INTERNATIONAL LAW OF STATES WITHIN WHOSE JURISDICTION FOSSIL FUELS ARE PRODUCED TO ENSURE PROTECTION OF THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT FROM ANTHROPOGENIC EMISSIONS OF GREENHOUSE GASES, IF ANY?

ANSWER:

3. Barbados welcomes this question from Judge Cleveland. Barbados addressed this subject in its previous submissions. Barbados has set out in its written submissions, subject to the principle of common but differentiated responsibilities, the specific obligations under international law of all States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.

4. Thus, Barbados respectfully refers the Court to Sections III and IV of the Written Comments of Barbados, paragraphs 195 to 196 of the Written Statement of Barbados and Appendix to Barbados's written comments containing the Supplemental written observations requested by the Inter-American Court of Human Rights (the "**IACtHR**") from Barbados.

III. QUESTION PUT BY JUDGE TLADI: IN THEIR WRITTEN AND ORAL PLEADINGS, PARTICIPANTS HAVE GENERALLY ENGAGED IN AN INTERPRETATION OF THE VARIOUS PARAGRAPHS OF ARTICLE 4 OF THE PARIS AGREEMENT. MANY PARTICIPANTS HAVE, ON THE BASIS OF THIS INTERPRETATION, COME TO THE CONCLUSION THAT, TO THE EXTENT THAT ARTICLE 4 IMPOSES ANY OBLIGATIONS IN RESPECT OF NATIONALLY DETERMINED CONTRIBUTIONS, THESE ARE PROCEDURAL OBLIGATIONS. PARTICIPANTS COMING TO THIS CONCLUSION HAVE, IN GENERAL, RELIED ON THE ORDINARY MEANING OF THE WORDS, CONTEXT AND SOMETIMES SOME ELEMENTS IN ARTICLE 31 (3) OF THE VIENNA CONVENTION ON THE LAW OF TREATIES. I WOULD LIKE TO KNOW FROM THE PARTICIPANTS WHETHER, ACCORDING TO THEM, "THE OBJECT AND PURPOSE" OF THE PARIS AGREEMENT, AND THE OBJECT AND PURPOSE OF THE CLIMATE CHANGE TREATY FRAMEWORK IN GENERAL, HAS ANY EFFECT ON THIS INTERPRETATION AND IF SO, WHAT EFFECT DOES IT HAVE?

ANSWER:

5. Barbados welcomes this question from Judge Tladi. Barbados addressed this subject in its previous submissions. Thus, Barbados respectfully refers the Court to Sections III and IV of the Written Comments of Barbados and paragraphs 195 to 196 of the Written Statement of Barbados.

6. Judge Tladi's question raises an inherent contradiction in the legal position adopted by major emitting States in the narrow context of these proceedings. This is their interpretation of the United Nations Framework Convention on Climate Change (the "**UNFCCC**"), the Paris Agreement[2] and the Kyoto Protocol[3] (all three together, the "**Initial Climate Change Agreements**"). These States seek to convince the Court to adopt an interpretation that completely reverses what these treaties actually say and are intended to mean. These States are seeking to convert treaties, whose purpose is to mandate a coordinated response to climate change, into treaties that would exonerate emitting States from the consequences of in knowingly harming other States by causing climate change and failing to address climate change appropriately today. This is an unreasonable reading of the treaties, under the terms of Article 32 of the Vienna Convention on the Law of Treaties (the "**VCLT**").[4]

7. The major emitting States thus seek to convert the climate change treaties into exonerating instruments. They do so, despite the unchallenged fact that they are intended by their signatories to be instruments to combat climate change. One way that they seek to do this is by interpreting the obligation under Article 4 of the Paris Agreement to prepare, communicate and maintain successive Nationally Determined Contributions ("**NDCs**") as amounting to no more than a procedural promise to issue an NDC. They would thus give it no substantive

[2] Paris Agreement, 12 December 2015, 3156 UNTS 79 ("**Paris Agreement**"), Annex 156.

[3] Kyoto Protocol to The United Nations Framework Convention on Climate Change, 11 December 1997, FCCC/CP/1997/L.7/Add.1 ("**Kyoto Protocol**"), Annex 131.

[4] *See* Section III.A.

obligation in regard to the contents of the NDC or a State's obligation to comply with the NDC's commitments.[5]

8. This Court has an opportunity now to correct that grave misapprehension of the Paris Agreement. In answer to Judge Tladi's question, the obligations in Article 4 of the Paris Agreement are not purely procedural because:

a. first, the interpretation that Article 4 provides solely procedural requirements ignores the "good faith" interpretation of the treaty in light of its "object and purpose" under Article 31 of the VCLT, since that interpretation improperly permits States to avoid the obligation to mitigate or adapt to climate change in any substantive manner whatsoever (*see* **Section III.A** below); and

b. second, the interpretation that Article 4 provides solely procedural requirements also ignores the ordinary meaning of the terms of

---

[5] *See*, *e.g.*, Canada, Oral Statement of 3 December 2024, Verbatim Record 2024/38, page 12, paragraphs 11-12; People's Republic of China, Oral Statement of 3 December 2024, Verbatim Record 2024/38, pages 33-34, paragraphs 29-32; the Kingdom of Denmark, the Republic of Finland, Iceland, the Kingdom of Norway and the Kingdom of Sweden, Oral Statement of 4 December 2024, Verbatim Record 2024/39, page 46, paragraphs 6-9; United States of America, Oral Statement of 4 December 2024, Verbatim Record 2024/40, pages 41-42, paragraphs 13-17. *See also* Written Statement of the Kingdom of Saudi Arabia, 21 March 2024, paragraphs 4.62 ("the Paris Agreement encourages the undertaking of mitigation measures in Article 4, though it does not impose obligations on States in that regard"), and 4.65 ("Parties are not legally bound to achieve their NDCs"); Written Statement of Australia, 22 March 2024, paragraphs 2.16-2.23; Written Statement of the United States of America, 22 March 2024, paragraphs 3.14-3.22; Written Statement of the United Kingdom of Great Britain and Northern Ireland, 18 March 2024, paragraphs 64-70; Written Statement of the United Arab Emirates, 22 March 2024, paragraphs 111-119; Written Statement of the Russian Federation, 21 March 2024, page 8; Written Statement of the Organization of the Petroleum Exporting Countries (OPEC), 19 March 2024, paragraphs 66-74.

the Paris Agreement, including the numerous substantive requirements therein (*see* **Section III.B** below).

9. In all events, as Barbados reiterates, whether or not Article 4 of the Paris Agreement reflects solely procedural obligations or imposes any substantive ones is also immaterial. The Paris Agreement (like the UNFCCC and Kyoto Protocol) does not displace the substantive obligations related to climate change found from other sources of international law (*see* **Section III.C** below).

A. The interpretation that Article 4 provides solely procedural requirements must be rejected as contrary to the requirement to interpret a treaty in good faith in light of its object and purpose

10. Consistent with orthodox rules of treaty interpretation, Article 4 of the Paris Agreement must be interpreted "in good faith … and in the light of its object and purpose."[6] This follows uncontroversially from Article 31(1) of the VCLT and reflects customary international law.[7] As Article 26 of the VCLT further confirms, treaties in force must be performed by parties to them "in good faith".

11. The "object and purpose" of a treaty relevantly refers to "the reasons for which States parties or signatories concluded a treaty, and the continuing

---

[6] Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331 (the **"VCLT"**), Article 31(1), Annex 67.

[7] *See* VCLT, Article 31(1), Annex 67. *See also* R. Gardiner, *A Single Set of Rules of Interpretation*, in TREATY INTERPRETATION, ed. Sir Frank Berman KCMG KC (Oxford University Press, 2015), pages 13-20, Annex 692; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004*, I.C.J. Reports 2004, p.136, page 174, paragraph 94, Annex 417.

functions and *raison d'être* of the treaty."[8] They include the treaty's aims, nature and end.[9]

12. The European Court of Human Rights confirmed, in *Verein Klimaseniorinnen Schweiz and others v Switzerland*, that the object and purpose of a treaty must guide its interpretation so as to ensure that the rights and duties contained therein are practical and effective:

> the object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied such as to guarantee rights that are practical and effective, not theoretical and illusory.[10]

13. In the same way, a legally sound interpretation of Article 4 of the Paris Agreement must be guided by the object and purpose of the Paris Agreement. It is an instrument to respond to the urgent threat of climate change. The same applies to the object and purpose of the UNFCCC, whose implementation the Paris Agreement seeks to enhance.[11] The

---

[8] M. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff Publishers, 2009), page 248, citing *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951*, I.C.J. Reports 1951, p. 15, page 27, Annex 691.

[9] *See* M. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff Publishers, 2009), page 427, Annex 691. *See also Interpretation of the Convention of 1919 Concerning Employment of Women During the Night*, *Advisory Opinion of 1932,* Permanent Court of International Justice, Dissenting Opinion of Judge Anzilotti, pp. 383-389, page 383 ("Only when it is known what the Contracting Parties intended to do and the aim they had in view is it possible to Say either that the natural meaning of terms used in a particular article corresponds with the real intention of the Parties, or that the natural meaning of the terms used falls short of or goes further than such intention"), Annex 679.

[10] *Verein Klimaseniorinnen Schweiz and Others v Switzerland* [2024] ECHR 304, paragraph 545, Annex 621.

[11] *See* Paris Agreement, Article 2(1), Annex 156. *See also* its Preamble ("*In pursuit* of the objective of the Convention, and being guided by its principles") (emphasis in the original).

object and purpose of the Paris Agreement and the UNFCCC – as identified from their express terms, as well as confirmed by the State practice of domestic courts[12] – include the following:

a. as the "ultimate objective" of the UNFCCC and any related legal instruments, including the Paris Agreement, the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system";[13]

b. within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner;[14]

c. recognising and responding to "the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge";[15]

d. "[i]n order to achieve the long-term temperature goal … aim[ing] to reach global peaking of greenhouse gas emissions as soon as

---

12 *See*, *e.g*., *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)*, [2022] QLC 21, Order of the Land Court of Queensland, 25 November 2022, in particular at paragraphs 675-681, Annex 464.

13 United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107 ("**UNFCCC**"), Article 2, Annex 112. *See also Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)*, [2022] QLC 21, Order of the Land Court of Queensland, 25 November 2022, paragraph 681 ("the Paris Agreement is a resolution of the Conference of Parties of the UNFCCC. Its objective in art 2 is to achieve stabilisation of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. That is the ultimate goal that international and national policy seeks to achieve"), Annex 464.

14 *See* UNFCCC, Annex 112.

15 Paris Agreement, Preamble, Annex 156.

possible … and to undertake rapid reductions thereafter in accordance with best available science";[16]

e. "foster[ing] climate resilience and low greenhouse gas emissions development";[17] and

f. "strengthen[ing] the global response to the threat of climate change in the context of sustainable development and efforts to eradicate poverty", including by "holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change."[18]

14. Consistent with the established law of treaty interpretation, the object and purpose of the Paris Agreement guide and inform the interpretation of Article 4 to ensure that its terms and the obligations that it defines are practical and effective, not theoretical or purely illusory.[19] The proper construction of Article 4 of the Paris Agreement, taking into account the Agreement's object and purpose in accordance with Article 31(1) of the VCLT, must therefore factor in amongst other things the Paris

[16] Paris Agreement, Article 4(1), Annex 156. *See also Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)*, [2022] QLC 21, Order of the Land Court of Queensland, 25 November 2022, paragraph 677, Annex 464.

[17] Paris Agreement, Article 2(1)(b), Annex 156. *See also Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)*, [2022] QLC 21, Order of the Land Court of Queensland, 25 November 2022, paragraph 678, Annex 464.

[18] Paris Agreement, Article 2(1)(a), Annex 156. *See also Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)*, [2022] QLC 21, Order of the Land Court of Queensland, 25 November 2022, paragraph 676, Annex 464.

[19] *See Verein Klimaseniorinnen Schweiz and Others v Switzerland* [2024] ECHR 304, paragraph 545, Annex 621.

Agreement's object and purpose of providing "an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge."[20]

15. This confirms that the proper interpretation of Article 4 is that it sets forth substantive and not merely procedural obligations. Any different interpretation wrongly renders the obligations enshrined in its terms merely theoretical and illusory: it would improperly permit States party to the Paris Agreement and the UNFCCC to avoid the obligation to mitigate or adapt to climate change in any substantive manner whatsoever. Such an approach would result incorrectly in an interpretation of Article 4 that would turn the Initial Climate Change Agreements upside down, in ways that would be manifestly absurd and unreasonable within the meaning of Article 32 of the VCLT.

16. Ensuring the substantive content to the NDC obligations in Article 4 is consistent with the position under customary international law and the VCLT, Article 31(1), that Article 4 must be interpreted in good faith. That is, the terms of Article 4 must be interpreted as having been "intended to mean something, rather than nothing."[21] It would run contrary to good faith to allow the major emitting States to interpret their obligations under Article 4 as amounting to "nothing". The position

---

20 Paris Agreement, Recitals, Annex 156.

21 M. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff Publishers, 2009), page 425, paragraph 7 ("When interpreting a treaty, good faith raises at the outset the presumption that the treaty terms were intended to mean something, rather than nothing."), Annex 691; "Interpretation of the Algerian Declarations of 19 January 1981 (Claims Against U.S. Nationals)", Iran-United States Claims Tribunal, *International Law Reports* (Cambridge University Press, 1982), page 605 ("good faith is not only a rule of morality but a part of codified international law"), Annex 688.

facing this Court is aptly described by the International Law Commission in its 1966 report:

> When a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted.[22]

17. This is also consistent with the principle of effectiveness that must guide the implementation of the object and purpose of a treaty as confirmed by this Court.[23] Indeed, any other interpretation of Article 4 which denies the substantive nature of the obligations it lays down would run contrary to good faith. It would also deny effectiveness to the Paris Agreement, as a treaty directed *inter alia* at an effective and progressive response to "the urgent threat of climate change on the basis of the best available scientific knowledge."[24]

---

[22] "Draft Articles on the Law of Treaties with commentaries", Report of the Commission to the General Assembly on the work of its eighteenth session, Yearbook of the International Law Commission, vol. II, *International Law Commission*, 1966, page 219, Annex 682.

[23] *See*, *e.g.*, *Territorial Dispute (Libya Arab Jamahiriya/Chad), Judgment of 3 February 1994, I.C.J. Reports 1994*, p. 6, page 25 ("The text of Article 3 clearly conveys the intention of the parties to reach a definitive settlement of the question of their common frontiers. Article 3 and Annex 1 are intended to define frontiers by reference to legal instruments which would yield the course of such frontiers. Any other construction would be contrary to one of the fundamental principles of interpretation of treaties, consistently upheld by international jurisprudence, namely that of effectiveness"), Annex 676.

[24] Paris Agreement, Recitals, Annex 156.

B. The ordinary meaning to be given to the terms of Article 4 of the Paris Agreement in their context further confirms that the obligations thereunder are substantive and not merely procedural

18. Consistent with orthodox rules of treaty interpretation, Article 4 of the Paris Agreement must also be interpreted "in accordance with the ordinary meaning to be given to the terms of the treaty in their context."[25] This likewise follows from the VCLT, reflecting customary international law.[26] As the International Law Commission has further confirmed, "the ordinary meaning of a term is not to be determined in the abstract but in the context of the treaty."[27]

19. The "context" of a treaty term for the purpose of its interpretation extends not only to the relevant treaty provision but also to the treaty in its entirety, including its preamble, and any other related treaty or instrument.[28]

20. Under the ordinary meaning of the terms of Article 4 of the Paris Agreement, States are obliged to commit to reducing their greenhouse gas emissions by drawing up national climate action plans and adopting the policies and measures needed to achieve the global objectives set out in

---

[25] VCLT, Article 31(1), Annex 67.

[26] *See* VCLT, Article 31(1), Annex 67. *See* also, R. Gardiner, *A Single Set of Rules of Interpretation*, in TREATY INTERPRETATION, ed. Sir Frank Berman KCMG KC (Oxford University Press, 2015), pages 13-20, Annex 692; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004*, p.136, page 174, paragraph 94, Annex 417.

[27] "Documents of the second part of the seventeenth session and of the eighteenth session including the reports of the Commission to the General Assembly", Yearbook of the International Law Commission, A/CN.4/SER. A/1966/Add. 1 (Part 2), *International Law Commission*, 1966, page 221, paragraph 12, Annex 683.

[28] *See* VCLT, Articles 31(1)-(2), Annex 67.

the Paris Agreement.[29] Viewed in its broader context, the Paris Agreement further enshrines and develops mitigation obligations further. It does so by systematising processes for submitting and implementing greenhouse gas mitigation commitments by States.[30] In establishing clear obligations to support developing countries,[31] the Paris Agreement further confirms the obligation to repair climate change harm whether or not a State has caused such harm. These obligations have been further enhanced through the Kyoto Protocol processes for imposing quantified emission limitation and reduction commitments.[32] The context of the Paris Agreement further includes the UNFCCC, enshrining the "ultimate objective" of the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system."[33]

21. Under the express terms of Article 4 of the Paris Agreement, the NDCs prepared and maintained by States parties must "reflect [their] highest possible ambition … in the light of different national circumstances."[34] States must then also actually perform their commitments in the NDC, which substantively must reflect each State's highest possible ambition. Such interpretation arises naturally from the ordinary meaning of the

---

29 *See* Written Statement of Barbados, paragraph 196.

30 *See* Paris Agreement, Articles 4 and 5, Annex 156.

31 *See* Paris Agreement, Article 4(5), Annex 156.

32 *See* Kyoto Protocol, Article 3, Annex 131.

33 UNFCCC, Article 2, Annex 112. *See also Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)*, [2022] QLC 21, Order of the Land Court of Queensland, 25 November 2022, paragraph 681 ("the Paris Agreement is a resolution of the Conference of Parties of the UNFCCC. Its objective in art 2 is to achieve stabilisation of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. That is the ultimate goal that international and national policy seeks to achieve"), Annex 464.

34 Paris Agreement, Article 4(3), Annex 156.

terms, including the requirement that Parties "shall pursue domestic mitigation measures, with the aim of achieving the objectives of such [NDCs]."[35]

22. As such, the ordinary meaning in the context of the terms of Article 4 of the Paris Agreement, including the numerous substantive requirements set out above, further confirms that its obligations are not merely procedural.

C. In any event, orthodox principles of international law confirm that the substantive obligations under Article 4 of the Paris Agreement operate alongside and do not displace States' existing obligations under international law to prevent, mitigate and remediate climate change-related transboundary harm

23. In any event, as Barbados set out in its Written Comments, the Paris Agreement and, more generally, the climate change treaty framework of the Initial Climate Change Agreements do not form a *lex specialis* or a self-contained regime. There is nothing in those agreements that tenably leads to the conclusion in law that they set aside other relevant international law.[36] A proper understanding of Article 31(3) of the VCLT confirms that any interpretation of Article 4 of the Paris Agreement must take into account not only the context but also existing relevant rules of applicable international law. Article 31(3) states:

> 3. There shall be taken into account, together with the context…

---

[35] Paris Agreement, Article 4(2), Annex 156.

[36] *See* Written Comments of Barbados, Section IV.

> (c) any relevant rules of international law applicable in the relations between the parties.[37]

24. General customary international law on transboundary harm, including its regime of strict liability, constitutes such "relevant rules of international law applicable in the relations between the parties."

25. Article 31(3)(c) of the VCLT sets out a "general principle of treaty interpretation, namely that of systematic integration within the international legal system."[38] The International Law Commission has clarified that "[i]t is a generally accepted principle that when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations."[39] The principle of systematic integration has generally been repeatedly endorsed by international courts and tribunals, including this Court.[40]

---

37 VCLT, Article 31(3), Annex 67.

38 C. McLachlan, "The Principle of Systematic Integration and Article 31(3)(c) of the Vienna Convention", *International and Comparative Law Quarterly*, 2005, pp. 279-320, page 280, Annex 690.

39 "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law", Report of the Study Group of the International Law Commission, A/CN.4/L.702, *International Law Commission*, 18 July 2006, page 8, Annex 686.

40 *See*, e.g., *Legal Consequences for States of The Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion of 21 June 1971, I.C.J. Reports 1971*, p.16, page 31, paragraph 53 ("Moreover, an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation."), Annex 675; *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal), Advisory Opinion of 21 May 2024*, ITLOS Reports 2024, p.4, pages 80-81, paragraphs 223-224, Annex 620; *Case of Golder v the United Kingdom* [1975] ECHR 1, paragraphs 35-36, Annex 678. *See also Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica), Judgment of 16 December 2015, I.C.J. Reports 2015*, p. 665, page 708, paragraph 108 ("the fact that the 1858 Treaty may contain limited obligations concerning notification or consultation in

26. In this respect, and explained in further detail by Barbados below,[41] the submissions of a number of States before this Court which characterise the Paris Agreement and the climate change treaty framework of the Initial Climate Change Agreements as *lex specialis* are misconceived.[42] Reliance on the *lex specialis* rule may be invoked only in limited circumstances, where there is an express intention to exclude the application of general international law or where there is incompatibility between the two sets of rules:

> For the *lex specialis* principle to apply it is not enough that the same subject matter is dealt with by two provisions; there must be some actual inconsistency

specific situations does not exclude any other procedural obligations with regard to transboundary harm which may exist in treaty or customary international law"), Annex 406; C. McLachlan, "The Principle of Systematic Integration and Article 31(3)(c) of the Vienna Convention", *International and Comparative Law Quarterly*, 2005, pp. 279-320, page 284 ("the development of specialized fields of international law – if progressed in isolated compartments – could lead to serious conflicts of laws within the international legal system"), Annex 690.

[41] *See* Section V.

[42] *See*, e.g., Germany, Oral Statement of 2 December 2024, Verbatim Record 2024/35, page 142, paragraph 10; Kingdom of Saudi Arabia, Oral Statement of 2 December 2024, Verbatim Record 2024/36, pages 28-30, paragraphs 5-10; People's Republic of China, Oral Statement of 3 December 2024, Verbatim Record 2024/38, pages 29-30, paragraphs 8-9; Russian Federation, Oral Statement of 4 December 2024, Verbatim Record 2024/40, page 53, paragraph 9; New Zealand, Oral Statement of 9 December 2024, Verbatim Record 2024/46, pages 33-34, paragraphs 14-16; United Kingdom of Great Britain and Northern Ireland, Oral Statement of 10 December 2024, Verbatim Record 2024/48, pages 43-44, paragraph 13, page 47, paragraph 23 and page 51, paragraph 45; Written Comments of the United Kingdom of Great Britain and Northern Ireland, 12 August 2024, paragraph 10; Written Comments of the Kingdom of Saudi Arabia, 15 August 2024, paragraphs 1.2 and 1.8-1.9; Written Comments of New Zealand, 14 August 2024, paragraphs 14-15; Written Comments of the United States of America, 15 August 2024, paragraphs 1.4-1.7. *See also* Written Comments of Barbados, paragraph 24; Barbados, Oral Statement of 2 December 2024, Verbatim Record 2024/36, page 82, paragraph 4 and page 83, paragraph 10.

> between them, or else a discernible intention that one provision is to exclude the other.[43]

27. The climate change treaty framework of the Initial Climate Change Agreements does not meet the foregoing required conditions to be construed as a self-contained regime constituting *lex specialis*. Indeed, it contains no express provision to exclude the application of general international law. As this Court has emphatically confirmed, important principles of customary international law cannot be dispensed tacitly and without clear words.[44]

28. Far from dispensing with general international law, the Initial Climate Change Agreements explicitly acknowledge the continuing relevance of general international law. For instance, the UNFCCC recalls expressly that:

> States have, in accordance with the Charter of the United Nations and the principles of international law. . . the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the

---

43 "Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries", Report of the Commission to the General Assembly on the work of its fifty-third session, Yearbook of the International Law Commission, A/CN.4/SER.A/2001/Add.1 (Part 2*), International Law Commission*, 10 August 2001, page 140, Article 55, paragraph 4, Annex 650.

44 *See*, e.g., *Elettronica Sicula S.p.A. (United States of America v Italy), Judgment of 20 July 1989, I.C.J. Reports 1989*, p. 15, page 42, paragraph 50 ("Yet the Chamber finds itself unable to accept that an important principle of customary international law should be held to have been tacitly dispensed with, in the absence of any words making clear an intention to do so"), Annex 674. *See also* "Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law", Report of the Study Group of the International Law Commission, finalised by Mr. Martti Koskenniemi, A/CN.4/L.682 and Add.1 (Part 1), 12 April 2006, page 43, paragraph 184 ("Moreover, the general rules operate unless their operation has been expressly excluded"), Annex 685.

> environment of other States or of areas beyond the limits of national jurisdiction.[45]

29. This is also consistent with the statements of States during the negotiations of the climate change treaty framework and elsewhere, as pointed out by Barbados in its Written Comments and at the public hearings in these proceedings.[46] They confirm that the climate change treaty framework of the Initial Climate Change Agreements is not intended to operate as *lex specialis* overriding general international law.

30. Furthermore, neither the UNFCCC nor the Paris Agreement addresses the regime of liability and compensation for the breach of climate change related obligations.[47] Consequently, the climate change treaty framework of the Initial Climate Change Agreements cannot be construed as precluding the application of the regime of State's international responsibility.

31. As explained by Barbados in its Written Comments, several regional courts of human rights and domestic courts have also held that the Initial Climate Change Agreements do not displace existing rules of international law on transboundary harm.[48] Barbados further explained that the Initial Climate Change Agreements apply in conjunction with the general

---

[45] UNFCCC, Recitals, page 166, Annex 112. *See also* Kyoto Protocol, Recitals, Annex 131; Doha Amendment to the Kyoto Protocol, 8 December 2012, 3377 UNTS, Annex 570; Paris Agreement, Recitals, page 144, Annex 156; Written Comments of Barbados, paragraphs 28-33.

[46] *See* Written Comments of Barbados, paragraphs 34-41; Barbados, Oral Statement of 2 December 2024, Verbatim Record 2024/36, pages 82-83, paragraphs 6-9.

[47] *See* Adoption of the Paris Agreement, Decision 1/CP.21, Report of the Conference of the Parties on its Twenty-First Session, held in Paris from 30 November to 13 December 2015, Addendum, Part two: Action taken by the Conference of the Parties at its Twenty-First Session, FCCC/CP/2015/10/Add.1, 29 January 2016, paragraph 51, Annex 293.

[48] *See* Written Comments of Barbados, Section IV.D.

international law of transboundary harm. Those norms of customary international law require States to ensure that activities under their jurisdiction and control respect the environment of other States.[49]

32. In addition, such norms also include the agreement by 197 States on the establishment of a loss and damage fund dedicated to assisting developing nations most severely affected by climate change.[50] In this respect, as set out in Barbados's Written Comments, Barbados also has been leading international dialogue to address the disproportionate burden of climate change on small island and developing States like Barbados, including its financial burden.[51] This includes: (a) the 2021 Bridgetown Declaration;[52] (b) the 2022 Bridgetown Initiative for the Reform of the Global Financial Architecture;[53] and (c) the new Bridgetown Initiative 3.0, calling on further action in this sphere given the inadequacy of current international efforts to finance climate resilience measures.[54]

---

49 *See* Written Statement of Barbados, Section VI.A.

50 *See* Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage, Decision 2/CP.27, Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022, Addendum, Part two: Action taken by the Conference of the Parties at its twenty-seventh session, FCCC/CP/2022/10/Add.1, 17 March 2023, paragraphs 1 and 13, Annex 313.

51 *See* Written Comments of Barbados, paragraph 20, Section III and Appendix.

52 *See* Bridgetown Declaration, Report XXII Meeting of the Forum of Ministers of Environment of Latin America and the Caribbean, 1-2 February 2021, Annex III, UNEP/LAC-IG.XXII/7, 5 February 2021, Annex 307.

53 *See* The 2022 Bridgetown Agenda for the Reform of the Global Financial Architecture, *Government of Barbados, Ministry of Foreign Affairs and Foreign Trade*, 23 September 2022, Annex 311.

54 *See* The Bridgetown Agenda for the Reform of the Global Financial Architecture version 3.0, *Government of Barbados, Ministry of Foreign Affairs and Foreign Trade*, 2024, Annex 671 ter.

IV. QUESTION PUT BY JUDGE AURESCU: SOME PARTICIPANTS HAVE ARGUED, DURING THE WRITTEN AND/OR ORAL STAGES OF THE PROCEEDINGS, THAT THERE EXISTS THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT IN INTERNATIONAL LAW. COULD YOU PLEASE DEVELOP WHAT IS, IN YOUR VIEW, THE LEGAL CONTENT OF THIS RIGHT AND ITS RELATION WITH THE OTHER HUMAN RIGHTS WHICH YOU CONSIDER RELEVANT FOR THIS ADVISORY OPINION?

ANSWER:

33. Barbados welcomes this question from Judge Aurescu. Barbados addressed this subject in its previous submissions. Thus, Barbados respectfully refers the Court to the sections in its written submissions in which it explained that there is a legal obligation of States to maintain a clean, healthy and sustainable environment in three geographic areas: first, in their own territories;[55] second, in the territories of other States, through the transboundary harm principle;[56] and third, in areas beyond national control.[57]

34. The legal content of this right is the right of every State to be able to provide its citizens with a clean, healthy and sustainable environment for the realisation of their political, social, economic and other human rights.

---

55 *See* Written Statement of Barbados, Section VI.B.

56 *See* Written Statement of Barbados, Section VI.A.

57 *See* Written Statement of Barbados, Section VI.C.

In this regard, the right has existed as *lex lata* for centuries. The right to a clean, healthy and sustainable environment emerges from:

a. the *lex lata* pre-existing transboundary harm principle, in that the right to a clean, healthy and sustainable environment is a logical corollary of each State's right not to have its own environment harmed by any other State – and not just another State that happens to be proximately located next to the first State (*see* **Section IV.A** below);

b. the *lex lata* pre-existing principle that States cannot harm the global environment, including areas beyond national control, which has existed for decades even before this Court's constitution (*see* **Section IV.B** below); and

c. fundamental *erga omnes* principles of human rights law and the fulfilment of those rights, including the rights to life, food and security (*see* **Section IV.C** below).

A. The right to a clean, healthy and sustainable environment is a logical corollary of each State's right not to have its environment harmed by another State, i.e., the transboundary harm principle

35. The right to a clean, healthy and sustainable environment is a logical corollary of each State's right not to have its own environment harmed by another State, regardless of that second State's proximity.

36. The transboundary harm principle provides that a State cannot injure another State's environment.[58] This well-established rule logically

[58] *See* Written Statement of Barbados, Section VI.A.

protects each State's right to a clean, healthy and sustainable environment by ensuring that such an environment is not impacted by third Parties outside of that State's control. In other words, the transboundary harm principle and the right to a clean, healthy and sustainable environment are two sides of the same coin.

37. In this respect, it is incorrect to argue that the prohibition on transboundary harm is a duty owed only to neighbouring States and, in any case, only materialised as such after the 1990s.[59]

38. The obligation not to cause transboundary harm is not limited to immediately neighbouring States but extends to transboundary harm wherever caused, including in areas beyond national jurisdiction (*see* **Section IV.B** below).[60] A multitude of long-standing international treaties and State practice confirms that the customary international law obligation not to cause transboundary harm is not restricted to physically neighbouring States.

---

59 *See* Written Statement by the Swiss Confederation, 18 March 2024, paragraphs 5, 35; Written Statement of the United States of America, 22 March 2024, paragraphs 2.12-2.14, 2.19; Written Statement of the Kingdom of the Netherlands, 21 March 2024, paragraph 5.6; Written Statement of the Russian Federation, 21 March 2024, page 16. *See also* Written Statement of the Government of Canada, 20 March 2024, paragraphs 12-13

60 *See* Written Statement of Barbados, Sections VI.A and VI.C. *See also*, e.g., UNFCCC, Recitals, page 166, Annex 112; "Commentaries on the Draft articles on Prevention of Transboundary Harm from Hazardous Activities", Report of the Commission to the General Assembly on the work of its fifty-third session, Yearbook of the International Law Commission, A/CN.4/SER.A/2001/Add.1 (Part 2), *International Law Commission*, 10 August 2001, page 153, Article 3, paragraph 1, Annex 684; Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 29 December 1972, 1046 UNTS 120, Preamble, Annex 82; Convention on long-range transboundary air pollution, 13 November 1979, 1302 UNTS 217, Recitals, and Article 2, Annex 89; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996,* p. 226, paragraph 29, Annex 392.

39. For instance, in the late 19th century, the tribunal in the *Fur Seals Arbitration* confirmed environmental protection obligations (namely, measures for the protection and preservation of migratory fur seals) in respect of the high seas "outside the jurisdictional limits of the respective Governments."[61] By 1911 – evidencing clear recognition of the transboundary harm rules well beyond the narrow framework of immediately proximate neighbouring States – each of Great Britain, Japan, Russia and the United States of America had concluded the Convention between the United States and Other Powers Providing for the Preservation and Protection of Fur Seals, enshrining such extraterritorial obligations of environmental protection into treaty law.[62]

40. In addition to the numerous treaties and instances of State practice set out in Barbados's Written Statement,[63] the Court should further take account of the wide-ranging case law (including that of this Court) confirming the obligation not to cause transboundary harm beyond the narrow framework of immediately proximate neighbouring States.[64]

---

[61] *Award of the Arbitral Tribunal established under the Treaty signed in Washington, on the 29th of February 1892, Between United States and Her Majesty The Queen of United Kingdom of Great-Britain and Ireland (Relating to the Rights of Jurisdiction of United States in the Bering's Sea and the Preservation of Fur Seals)*, Award, 15 August 1893, RIAA Vol. XXVIII, p. 263, page 270, Annex 180. *See also* Written Statement of Barbados, paragraph 179.

[62] *See* Convention between the United States and Other Powers Providing for the Preservation and Protection of Fur Seals, 7 July 1911, UK Treaty Series 1912 No. 2, Annex 181. *See also* Written Statement of Barbados, paragraph 179.

[63] *See* Written Statement of Barbados, paragraphs 180-191.

[64] *See* Written Statement of Barbados, paragraph 144, in particular in respect of *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v Albania), Merits, Judgment of 9 April 1949, I.C.J. Reports 1949*, p. 4, page 22, Annex 384, concerning a dispute between non-neighbours, the United Kingdom and Albania; and *Nuclear Weapons Advisory Opinion*, paragraph 29, Annex 392, recognising the potentially catastrophic environmental impacts of nuclear weapon use.

41. Decisions of this Court and international tribunals also do not confine the obligation not to cause transboundary harm to neighbouring States. They do not stipulate such a qualification and thus offer no ground to read such a restriction into this obligation. For example:

a. in *Pulp Mills*, the Court stated that "[a] State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State";[65] and

b. in the *IACtHR Advisory Opinion OC-23/17 on the Environment and Human Rights*, the Court held that under the obligation to prevent transboundary harm "States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority."[66]

42. Likewise, in *Sacchi et al. v Argentina et al.*, the UN Committee on the Rights of the Child did not consider such a (geographical) limitation to the transboundary harm principle. The Committee noted that:

> [i]n cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary

---

65 *Case of Pulp Mills on the River Uruguay (Argentina v Uruguay), Judgment of 20 April 2010, I.C.J. Reports 2010,* p. 14, paragraph 101, Annex 400.

66 *The Environment and Human Rights (State Obligations in Relation to The Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, paragraph 103, Annex 372.

> harm that impacts the enjoyment of human rights of persons outside its territory.[67]

43. In this respect, Barbados urges the Court to be guided by the insightful analysis of (then) Professor Xue that transboundary damage does not solely refer to:

> bilateral cases or to claims among a few States, as the word ‘‘transboundary” may imply. It also comprises damage to the commons arising from national activities or emanating from sources on national territory.
>
> … the media for the transborder movement of the effects can be water, air, or soil. With national boundaries in mind, the term ‘‘transboundary” stresses the element of boundary-crossing in terms of the direct or immediate consequences of the act for which the source State is held responsible. It is the act of boundary-crossing which subjects the consequent damage to international remedy and initiates the application of international rules. Moreover, a ‘‘transboundary” harm may result from a transboundary movement across several boundaries that causes detrimental effects in several States. A transboundary act may also take the form of an act which causes harm in and beyond national jurisdiction or control, such as marine pollution of the high seas from land-based sources.[68]

---

[67] “Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019”, CRC/C/88/D/104/2019, *UN Committee on the Rights of the Child*, 11 November 2021, paragraph 9.5, Annex 627.

[68] H. Xue, *Transboundary Damage in International Law* (Cambridge University Press, 2003), pages 7 and 9, Annex 689.

B. The right to a clean, healthy and sustainable environment is also a logical corollary of the established principle that States cannot harm the global environment, including areas beyond national control

44. The right to a clean, healthy and sustainable environment is also a logical corollary of the principle that each State cannot harm the global environment, including areas beyond national control.

45. As noted above, the requirement to protect the environment in areas beyond national control has been established since at least the *Fur Seal* arbitration. Numerous treaties and instances of State practice, set out in Barbados's Written Statement, demonstrate the same.[69]

46. In addition, the multilateral and global nature of this obligation is also evidenced by over 70 States in written and oral submissions in climate change related proceedings before this Court, the International Tribunal for the Law of the Sea ("**ITLOS**") and the IACtHR. They have stated that the obligation not to cause transboundary harm is applicable to climate change notwithstanding that the harm may occur to global commons or a State that does not border the emitting State.[70]

---

69 *See* Written Statement of Barbados, paragraphs 141-143, 146, and 180-187.

70 *See* Written Statement of the Commonwealth of the Bahamas, 22 March 2024, paragraph 98; Written Statement of the Democratic Socialist Republic of Sri Lanka, 22 March 2024, paragraphs 95-100; Written Statement submitted by the Republic of Vanuatu, 21 March 2024, paragraphs 261-267; Written Statement submitted by the Oriental Republic of Uruguay, 22 March 2024, paragraphs 89-102; Written Statement by the Republic of Cameroon, 21 March 2024, paragraph 13; Written Statement of the State of Kuwait, 22 March 2024, paragraphs 14(3) and 15; Written Statement of the Republic of Palau, March 2024, paragraphs 16-17; Written Statement of the Republic of Singapore, 20 March 2024, paragraph 3.1; Written Statement of the Republic of Peru, 20 March 2024, paragraph 76; Written Statement of the Solomon Islands, 22 March 2024, paragraphs 149-152; Written Statement of the Republic of Kenya, 22 March 2024, paragraphs 5.3-5.8; Written Statement of the Republic of the Philippines, 21 March 2024, paragraphs 56-60; Written Statement of the Republic of Sierra Leone, 15 March 2024, paragraphs 3.10-3.11; Written Statement by the Swiss Confederation, 18 March 2024, paragraphs

14-21; Written Statement of Saint Lucia, 21 March 2024, paragraph 72; Written Statement of Belize, 21 March 2024, paragraphs 31-36; Written Statement of Saint Vincent and the Grenadines, 21 March 2024, paragraphs 98-100; Written Statement of the Republic of Kiribati, 22 March 2024, paragraphs 127-131; Written Statement of the Republic of the Marshall Islands, 22 March 2024, paragraphs 22-24; Written Statement of the United Arab Emirates, 22 March 2024, paragraphs 98-104; Written Statement of the Kingdom of the Netherlands, 21 March 2024, paragraphs 3.58-3.71; Written Statement of Grenada, 21 March 2024, paragraphs 39-41; Written Statement of the Kingdom of Thailand, 22 March 2024, paragraphs 15-17; Written Statement of the Independent State of Samoa, 22 March 2024, paragraph 98; Written Observations of the Republic of Latvia, 19 March 2024, paragraphs 58-61; Written Statement of the Republic of Ecuador, 22 March 2024, paragraphs 3.18-3.22; Written Statement of the Kingdom of Spain, March 2024, paragraph 8; Written Statement of the Arab Republic of Egypt, 22 March 2024, paragraphs 87-93; Written Statement of the Plurinational State of Bolivia, 22 March 2024, paragraph 36; Written Statement of Antigua and Barbuda, 22 March 2024, paragraphs 125-126; Written Statement of the Islamic Republic of Pakistan, 22 March 2024, paragraphs 29-33; Written Statement of the Republic of Ghana, 21 March 2024, paragraphs 23-26; Written Statement of the Republic of Namibia, 19 March 2024, paragraphs 49-56; Written Statement of the Republic of Mauritius, 22 March 2024, paragraphs 189-192; Written Statement of the Argentine Republic, 22 March 2024, paragraph 48; Written Statement of Tuvalu, 22 March 2024, paragraph 73; Written Statement of the Republic of El Salvador, 22 March 2024, paragraph 35; Written Observations of Dominican Republic, 22 March 2024, paragraph 4.31; Written Statement of the African Union, 22 March 2024, paragraphs 90-94; Written Statement of the Federated States of Micronesia, 15 March 2024, paragraphs 53-62; Written Statement by the Governments of Denmark, Finland, Iceland, Norway and Sweden, 21 March 2024, paragraphs 65-69; Comments submitted by the Democratic Republic of the Congo, 4 March 2024, paragraphs 128-130; Written Statement of the Republic of Nauru, 22 March 2024, paragraphs 26-33; Written Statement of the Republic of Slovenia, 22 March 2024, paragraph 40; Written Statement of the Republic of Korea, 22 March 2024, paragraphs 33-37; Written Statement of the Government of Nepal, paragraphs 25-27; Written Statement of the Portuguese Republic, March 2024, paragraphs 85-86; Written Statement of the Republic of Seychelles, 22 March 2024, paragraphs 102-108; Written Statement of the Republic of Costa Rica, March 2024, paragraphs 45-49; Written Statement of the Republic of Albania, 22 March 2024, paragraphs 65-68; Written Statement of the People's Republic of Bangladesh, 22 March 2024, paragraphs 83-95; Written Statement of the Federative Republic of Brazil, 21 March 2024, paragraphs 31-62; Written Statement of Burkina Faso, 2 April 2024, paragraphs 171-194; Written Statement of the Republic of Chile, 22 March 2024, paragraphs 35-39; Written Statement of the Cook Islands, 20 March 2024, paragraphs 158-170; Written Statement of the Republic of Colombia, 11 March 2024, paragraph 3.10; and Written Statement of the Government of Japan, 22 March 2024, paragraphs 11-12. *See also* Written Statement of the Republic of Mozambique presented to the International Tribunal for the Law of the Sea, 16 June 2023, paragraphs 3.57-3.62; Written Statement of the Republic of Djibouti presented to the International Tribunal for the Law of the Sea, 16 June 2023, paragraphs 54-55; and Written Statement of the Republic of Rwanda presented to the International Tribunal for the Law of the Sea, 17 June 2013, paragraphs 175-184.

C. The right to a clean, healthy and sustainable environment also emerges from fundamental *erga omnes* principles of human rights law and the fulfilment of those rights

47. The right to a clean, healthy and sustainable environment also emerges from the *erga omnes* principles of human rights law and the fulfilment of those human rights.

48. Barbados's Written Statement lists numerous international human rights instruments by which States around the world have agreed to protect and preserve the environment and to prevent harm to humankind. Barbados's Written Statement also includes an extensive list of treaty bodies worldwide that have interpreted human rights as requiring States to ensure that right as well as examples from general practice of States.[71]

49. In addition, as recent as two days ago, on 18 December 2024, the Supreme Court of the State of Montana in the United States of America upheld a lower court decision to the effect that there is a "fundamental constitutional right to a clean and healthful environment."[72] In doing so, the Supreme Court referred to a clause in the Montana Constitution that stipulates that the "state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations."[73] The Supreme Court also concluded that "climate change

[71] *See* Written Statement of Barbados, paragraph 164.

[72] *R. Held, et al. v the State of Montana,* the Supreme Court of the State of Montana, 2024 MT 312, DA 23-0575, 18 December 2024 ("**18 December 2024 Decision of the Supreme Court of Montana**"), paragraphs 4, Annex 681. *See* 18 December 2024 Decision of the Supreme Court of Montana, paragraphs 25, 28 and 73, Annex 681.

[73] 18 December 2024 Decision of the Supreme Court of Montana, paragraph 22, Annex 681.

is a serious threat to the constitutional guarantee of a clean and healthful environment in Montana."[74]

50. States have an obligation to protect and ensure the full and effective enjoyment of human rights.[75] It follows that States must act to protect human rights from the effects of the climate emergency, including by giving full effect to their obligations under international environmental law. In order for States to satisfy their obligation to provide a clean, healthy and sustainable environment, States must also meet their other obligations under international environmental law, such as the obligation (a) not to cause transboundary harm;[76] (b) to protect and preserve the environment;[77] (c) to mitigate and repair harm already caused;[78] and (d) to pay for loss and damage caused by damage to the environment and climatic system.[79]

51. The right to a clean, healthy and sustainable environment is closely related to other important human rights. The fulfilment of the right to a clean, healthy and sustainable environment is a pre-requisite to the ability of States to satisfy many of their other human rights obligations.

---

74 *See* 18 December 2024 Decision of the Supreme Court of Montana, paragraphs 36, 4 and 29, Annex 681.

75 *See*, e.g., "Climate Emergency: Scope of Inter-American Human Rights Obligations", Resolution 3/2021, *Inter-American Commission on Human Rights*, 31 December 2021, (the "**IACHR Climate Emergency Resolution**"), paragraph 9, Annex 273; International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Article 2, Annex 74; Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 15, 4 November 1950, European Treaty Series No. 5, Article 1, Annex 69.

76 *See* Written Statement of Barbados, Section VI.A.

77 *See* Written Statement of Barbados, Sections VI.B and VI.C.

78 *See* Written Statement of Barbados, Section VI.D.

79 *See* Written Statement of Barbados, Section VI.F.

52. Climate change and other harm that impedes the right to a clean and healthy environment have a significant deleterious impact on the full and effective enjoyment of human rights. For example, global warming causes food insecurity, forced migration, disease and death resulting from more intense heatwaves and fires, as well as a higher risk of food, water and vector-borne diseases.[80] Environmental pollution has a destructive impact on human health and lifespan.[81] Barbados's Written Statement includes examples of human rights treaty bodies that have interpreted that other human rights require that the right to a healthy environment or non-polluted climate system is protected. These rights include: (a) the right to life, security and physical integrity; (b) the territorial rights of indigenous and tribal peoples and the right to life; (c) the right to life, security and physical integrity; (d) the right to private and family life; (e) the right to health; (f) the right not be discriminated against; and (g) a broad range of children's rights.[82] Thus, States recognise that they "should when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health, the rights of Indigenous Peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well

---

80 *See* IACHR Climate Emergency Resolution page 5, Annex 273; "Water. Climate Change 2022: Impacts, Adaptation and Vulnerability", Cambridge University Press, *Intergovernmental Panel on Climate Change*, 2022, pages 555–557, 585, Annex 53.

81 *See* Written Statement of Barbados, paragraph 162(c).

82 *See* Written Statement of Barbados, paragraph 162.

as gender equality, empowerment of women and intergenerational equity."[83]

53. As the IACtHR observed "there is an undeniable link between the protection of the environment and the enjoyment of other human rights."[84] As also held by the IACtHR, the satisfaction of the right to a clean and healthy environment, or at least the maintenance of a minimal environmental quality, is required for the protection of other human rights. It considered that:

> . . . it is clear that several fundamental rights enshrined [in the American Declaration of the Rights and Duties of Man or the American Convention on Human Rights] require, as a precondition for their proper exercise, a minimal environmental quality, and suffer a profound detrimental impact from the degradation of the natural resource base.[85]

54. The Inter-American Commission on Human Rights has equally stated that "several fundamental rights require, as a necessary precondition for their enjoyment, a minimum environmental quality, and are profoundly affected by the degradation of natural resources."[86]

---

83 Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4, Decision 1/CP.28, Report of the Conference of the Parties on its twenty-eighth session, held in the United Arab Emirates from 30 November to 13 December 2023,FCCC/CP/2023/11/Add.1, 15 March 2024, Annex 671 bis, preamble, paragraph 4.

84 *Case of Kawas-Fernández v Honduras. Merits, Reparations, and Costs*. Judgment of April 3, 2009. Series C No. 196, paragraph 148, Annex 377.

85 "Case 12.354, Merits, Kuna Indigenous People of Madungandí and Emberá Indigenous People of Bayano and their Members v Panama", Report No. 125/12, *Inter-American Commission on Human Rights*, 13 November 2012, paragraph 233, Annex 680.

86 "Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources, Norms and Jurisprudence of the Inter-American Human Rights-System", OEA/Ser.L/V/II. Doc. 56/09, *Inter-American Commission on Human Rights*, 30 December 2009, paragraph 190, Annex 468.

V. QUESTION PUT BY JUDGE CHARLESWORTH: IN YOUR UNDERSTANDING, WHAT IS THE SIGNIFICANCE OF THE DECLARATIONS MADE BY SOME STATES ON BECOMING PARTIES TO THE UNFCCC AND THE PARIS AGREEMENT TO THE EFFECT THAT NO PROVISION IN THESE AGREEMENTS MAY BE INTERPRETED AS DEROGATING FROM PRINCIPLES OF GENERAL INTERNATIONAL LAW OR ANY CLAIMS OR RIGHTS CONCERNING COMPENSATION OR LIABILITY DUE TO THE ADVERSE EFFECTS OF CLIMATE CHANGE?

ANSWER:

55. Barbados welcomes this question from Judge Charlesworth. Barbados addressed this subject in its previous submissions. Thus, Barbados respectfully refers the Court to Sections III and IV of the Written Comments of Barbados and Section VI of the Written Statement of Barbados.[87]

56. The declarations of States on becoming parties to the UNFCCC and the Paris Agreement (the "**Declarations**") are significant to answering this question.

57. On the map in Figure 1 below, presented to the Court by Barbados at the public hearings in these proceedings, Barbados has highlighted a number of States whose formal, official pronouncements confirm Barbados's position the applicable law. That is: the UNFCCC, the Kyoto Protocol

[87] *See also* Oral Statement of Barbados of 2 December 2024, Verbatim Record 2024/36, pages 82-83, paragraphs 4-11.

and the Paris Agreement are not exhaustive statements of relevant international law. They are not a *lex specialis*. Nor have they created an exclusive, self-contained regime.

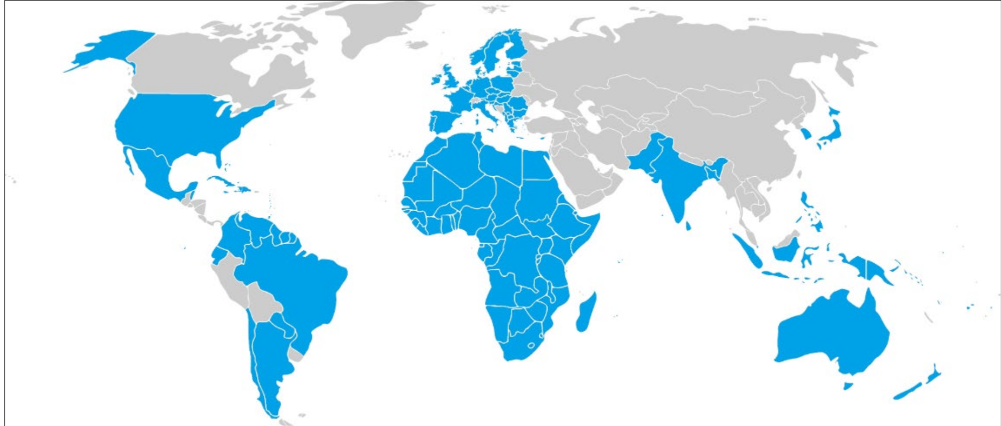


Figure 1: States whose public pronouncements follow Barbados's position on applicable law that the Initial Climate Change Agreements do not displace other international law rules relevant to climate change.[88]

58. The Declarations confirm that the *in extremis* position of the major emitting States – that the Initial Climate Change Agreements replace all other sources of international law on climate change to those States' sole advantage (including claims or rights concerning compensation or liability due to the adverse effects of climate change) – is unsupported by any regular means of treaty interpretation. In summary, this is because:

a. first, in treaty interpretation, declarations, such as these ones, have "considerable probative value"[89] and are "an element to be taken

---

88 *See* Judges' Folder of Barbados, Speakers' presentation slides, tab 5, 2 December 2024.

89 *International Status of South West Africa, Advisory Opinion of 11 July 1950, I.C.J. Reports 1950*, p. 128, pages 135-136, Annex 672.

into account in interpreting the treaty in accordance with the general rule of interpretation of treaties."[90] In this respect, the Declarations provide significant additional evidence that the UNFCCC and the Paris Agreement did not displace all other sources of international law. Quite the contrary. They confirm that the proper interpretation of these treaties is that they complement other international law, as also seen in the ordinary meanings of the terms of these treaties and their object and purpose (*see* **Section V.A** below);

b. second, the Declarations form evidence of the consistent State practice, post-dating the climate change treaties, that demonstrates that these treaties did not displace other international law obligations. As Barbados also identified in its written and oral submissions, the consistent practice of States, and formal pronouncements, confirm that the UNFCCC and Paris Agreement (as well as the Kyoto Protocol) are an "additional legal basis" to address climate change – a position the European Union previously advanced in other contexts outside of these proceedings[91] (*see* **Section V.B** below);

c. third, as the International Law Commission has also stated, the burden lies on the party claiming a contradiction between legal

---

[90] "Text of the Guide to Practice on Reservations to Treaties", Report of the International Law Commission on the work of its sixty-third session, Yearbook of the International Law Commission, A/66/10/ADD.1, *International Law Commission*, 26 April–3 June and 4 July–12 August 2011 ("**ILC Guide to Practice on Reservations to Treaties with Commentaries**"), Guideline 4.7.1(1), Annex 687.

[91] Summary record of the 36th meeting of the General Assembly held on 24 November 2004, A/C.2/59/SR.36, paragraph 24, Annex 599. *See also* Written Comments of Barbados, paragraph 40(c).

norms and/or the displacement of parallel legal norms to show that such contradiction exists or displacement has been agreed. The Declarations must therefore be compared to the utter lack of any evidence, in the *travaux préparatoires* or otherwise, of any contemporary understanding of States that the UNFCCC and the Paris Agreement displaced all other international law regarding climate change. Instead, this creative but *in extremis* legal argument, with its most dramatic consequences, is simply a recent construct advanced in the context of these proceedings by major emitting States to exonerate themselves from their failure to address climate change (*see* **Section V.C** below);

d. fourth, the Declarations are significant because they are "circumstances of the conclusion" of the UNFCCC and Paris Agreement under Article 32 of the VCLT that disprove the "manifestly absurd or unreasonable" interpretation of these treaties advanced by major emitting States in these proceedings (*see* **Section V.D** below); and

e. of course, while the Declarations are significant, they are not outcome-determinative. Significant other evidence, presented by Barbados and other States, confirms that the UNFCCC and Paris Agreement do not displace all other international law as well (*see* **Section V.E** below).

A. The Declarations are significant because, under international law, they have "considerable probative value" and are "an element to be taken into account in interpreting the treaty in accordance with the general rule of interpretation of treaties"

59. The ordinary meaning of the terms of the Initial Climate Change Agreements is clear. They complement, and do not supplant, other obligations arising out of other sources of international law. The Declarations confirm this interpretation.

60. The International Law Commission has previously noted that declarations made at the time of signing a treaty "constitute an element to be taken into account in interpreting the treaty in accordance with the general rule of interpretation of treaties."[92] This Court has confirmed previously that such declarations have "considerable probative value" to confirm interpretations derived under ordinary treaty interpretation rules.[93]

---

[92] ILC Guide to Practice on Reservations to Treaties with Commentaries, Guideline 4.7.1(1), Annex 687. *See also* VCLT, Articles 31 and 32, Annex 67; R. Gardiner, *The Vienna Convention Rules on Treaty Interpretation*, in OXFORD GUIDE TO TREATIES, ed. Duncan B. Hollis (Oxford University Press, 2020) ("Paragraph (2)(b) envisages as context an instrument made by one or more parties accepted by the others as related to the treaty, but not necessarily agreed to by those others. For example, an interpretative declaration accompanying a State's instrument of ratification is made in connection with a treaty's conclusion and accepted by other parties as related to it, but may not receive those parties' agreement as to whether it is the correct interpretation"), Annex 693.

[93] *International Status of South West Africa, Advisory Opinion of 11 July 1950, I.C.J. Reports 1950*, p. 128, pages 135-136, Annex 672.

61. Thirteen States to the UNFCCC and Kyoto Protocol[94] and nine States to the Paris Agreement[95] made Declarations confirming their understanding that these treaties did not displace other relevant sources of international law.[96] Those Declarations state, as Judge Charlesworth summarised, that no provision in the Initial Climate Change Agreements may be interpreted as derogating from principles of general international law or any claims or rights concerning compensation or liability due to the adverse effects of climate change. The Declarations were made validly.[97]

---

[94] Declarations were made by Fiji, Kiribati, Nauru, Papua New Guinea, Cook Islands, Belize, Marshall Islands, Micronesia (Federated States of), Solomon Islands, St. Lucia, Tuvalu, Venezuela (Bolivarian Republic of) and Niue (*see* Declarations made upon signature of the UNFCCC, pages 4-5, Annex 604; Declarations made upon signature of the Kyoto Protocol, 2303 UNTS 162, page 4, Annex 605; Declarations made upon signature of the Doha Amendment to the Kyoto Protocol, 3377 UNTS, pages 3-5, Annex 606).

[95] *See* Cook Islands, Ratification of the Paris Agreement, 1 September 2016, C.N.609.2016.Treaties-XXVII.7.d (Depositary Notification), Annex 297; Republic of the Marshall Islands, Ratification of the Paris Agreement, 22 April 2016, C.N.173.2016.Treaties-XXVII.7.d (Depositary Notification), Annex 295; Federated States of Micronesia, Ratification of the Paris Agreement, 15 September 2016, C.N.626.2016.Treaties-XXVII.7.d (Depositary Notification), Annex 298; Republic of Nauru, Ratification of the Paris Agreement, 22 April 2016, C.N.179.2016.Treaties-XXVII.7.d (Depositary Notification), Annex 296; Niue, Ratification of the Paris Agreement, 28 October 2016, C.N.807.2016.Treaties-XXVII.7.d (Depositary Notification), Annex 301; Republic of the Philippines, Ratification of the Paris Agreement, 23 March 2017, C.N.149.2017.Treaties-XXVII.7.d (Depositary Notification), Annex 302; Solomon Islands, Ratification of the Paris Agreement, 21 September 2016, C.N.650.2016.Treaties-XXVII.7.d (Depositary Notification), Annex 299; Tuvalu, Ratification of the Paris Agreement, 22 April 2016, C.N.183.2016.Treaties-XXVII.7.d (Depositary Notification), Annex 294; Republic of Vanuatu, Ratification of the Paris Agreement, 21 September 2016, C.N.653.2016.Treaties-XXVII.7.d (Depositary Notification), Annex 300.

[96] *See* Written Comments of Barbados, paragraph 34; Oral Statement of Barbados of 2 December 2024, Verbatim Record 2024/36, page 82, paragraph 7.

[97] Although neither the UNFCCC nor the Paris Agreement allow reservations (*see* UNFCCC, Article 24, Annex 112; Paris Agreement, Article 27, Annex 156), they do not prohibit declarations. The ILC Guide to Practice on Reservations to Treaties therefore treats such declarations as valid (*see* ILC Guide to Practice on Reservations to Treaties with Commentaries, Guideline 3.5, Annex 687).

62. The Declarations support the correct interpretation of these treaties. As Barbados explained in its written submissions to this Court,[98] there is no express provision in the Initial Climate Change Agreements that purports to extinguish other norms applicable to climate change. In fact, the Initial Climate Change Agreements expressly recognise the relevance of other sources of international law, such as obligations under customary international law, international human rights law and international development law.[99] Interpreting the Initial Climate Change Agreements in good faith and in light of the ordinary meaning of the terms in the treaties, the Initial Climate Change Agreements do not claim to extinguish obligations arising out of other sources of international law.[100]

63. Therefore, the Declarations serve to confirm that the Initial Climate Change Agreements do not displace other relevant sources of international law.

B. The Declarations are significant because they form part of the consistent evidence of State practice demonstrating that the UNFCCC, the Kyoto Protocol and the Paris Agreement complement, and do not displace, other norms in international law

64. The International Law Commission notes that approval of an interpretative declaration "shall not be inferred from the mere silence of a State or an international organization."[101] Instead, the Commission stated

---

[98] *See* Written Comments of Barbados, Section IV.B.

[99] *See* UNFCCC, Recitals, page 166, Annex 112; Paris Agreement, Recitals, page 144, Annex 156. *See also* Written Comments of Barbados, Section IV.B.1.

[100] *See* VCLT, Article 31, Annex 67.

[101] ILC Guide to Practice on Reservations to Treaties with Commentaries, Guideline 2.9.9, Annex 687.

that it "may be inferred, in exceptional cases, from the conduct of the States or international organizations concerned, taking into account all relevant circumstances."[102]

65. In this case, it is notable that States have not objected to the Declarations. They have not done so, despite the exceptionally high-profile and public nature of the issues and the related discussions amongst States. Despite that, not a single State made a contradictory statement; no State made a declaration which proposed a contrary interpretation.[103] In fact, the conduct of States and international organisations confirms their understanding that the Initial Climate Change Agreements do not displace States' existing obligations under international law. By way of example:

    a. following the adoption of the UNFCCC, States continued to negotiate and to enter into treaties concerning climate change, including the Paris Agreement;

    b. also after the adoption of the UNFCCC, the Conference of the Parties adopted the Cancun Agreements recognising that climate change affects human rights and emphasising "that Parties should, in all climate change related actions, fully respect human rights";[104]

---

[102] ILC Guide to Practice on Reservations to Treaties with Commentaries, Guideline 2.9.8(2), Annex 687.

[103] *See also* Written Comments of Antigua and Barbuda, 13 August 2024, paragraph 95.

[104] The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, Decision 1/CP.16, Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, Addendum, Part Two: Action taken by the Conference of the Parties at its sixteenth session, FCCC/CP/2010/7/Add.1, 15 March 2011, recitals and paragraph 8, Annex 287.

c. the decision adopting the Paris Agreement expressly stated that the Paris Agreement "does not ***involve*** or ***provide*** any basis for liability or compensation" (emphasis added);[105]

d. since the adoption of the Initial Climate Change Agreements, States have entered into many multilateral and bilateral treaties or other arrangements with the goal of combatting climate change, without mandating that the UNFCCC and Paris Agreement are the sole legal mechanism for addressing climate change;[106]

e. in 2022, 197 States reached a historic unanimous agreement on the establishment of a loss and damage fund dedicated to assisting developing nations most severely affected by climate change;[107]

f. States have made official pronouncements confirming that the Initial Climate Change Agreements were considered at their

---

105 Adoption of the Paris Agreement, Decision 1/CP.21, Report of the Conference of the Parties on its Twenty-First Session, held in Paris from 30 November to 13 December 2015, Addendum, Part two: Action taken by the Conference of the Parties at its Twenty-First Session, FCCC/CP/2015/10/Add.1, 29 January 2016, paragraph 51, Annex 293. *See also* Written Comments of Barbados, Section IV.B.1.

106 *See*, e.g., Declaration on China-Africa Cooperation on Combating Climate Change, 2 December2021, Annex 308; The Ibero-American Environmental Charter, adopted in the XXVIII Ibero-American Summit of Heads of State and Government, 25 March 2023, Annex 162; Bridgetown Declaration, Report XXII Meeting of the Forum of Ministers of Environment of Latin America and the Caribbean, 1-2 February 2021, Annex III, UNEP/LAC-IG.XXII/7, 5 February 2021, Annex 307; "The Strasbourg Principles of International Environmental Human Rights Law – 2022", *Journal of Human Rights and the Environment*, 2022, pp. 195-2020, Annex 540.

107 *See* Written Statement of Barbados, paragraph 198; Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage, Decision 2/CP.27, Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022, Addendum, Part two: Action taken by the Conference of the Parties at its twenty-seventh session, FCCC/CP/2022/10/Add.1, 17 March 2023, paragraphs 1 and 13, Annex 313.

adoption as initial starting points that would be followed by more concrete solutions to the climate crisis;[108]

g. all States at the UN General Assembly unanimously "emphasi[sed] the importance" of a wide range of treaties and other international law "to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects" in the UN General Assembly resolution requesting an advisory opinion from this Court;[109]

h. the question posed by the UN General Assembly to the Court (acting by unanimous consent) asked this Court to render an advisory opinion based on all applicable international legal sources;[110] and

i. numerous States beyond the 15 States that made the Declarations have also explicitly endorsed the interpretations of the Initial Climate Change Agreements in the Declarations in their submissions to this Court.[111]

---

108 *See* Written Comments of Barbados, paragraphs 38-40; Oral Statement of Barbados of 2 December 2024, Verbatim Record 2024/36, page 83, paragraphs 9-10.

109 UN General Assembly Resolution 77/276 (2023), A/RES/77/276, 4 April 2023, recitals, Annex 233.

110 S*ee* Request for Advisory Opinion by the Secretary-General of the United Nations dated 12 April 2023, page 2 ("Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment").

111 *See*, e.g., Written Statement of the Republic of Mauritius, 22 March 2024, paragraph 123; Written Comment of the Republic of Mauritius, 15 August 2024, paragraph 123;

66. It is telling that a few States have argued to the contrary but only now, for the first time in these advisory proceedings.[112] However, Barbados respectfully submits that, in international law, consistent State practice prevails over a position taken for the purposes of litigation.

C. The Declarations are significant because they can be compared to the complete lack of evidence of the alternate position advanced by major emitting States

67. The International Law Commission has confirmed that the burden of establishing the displacement of one international norm by another, such as by establishing their inconsistency, is a high one.[113] The burden falls on the Party seeking to excuse its conduct in breach of the first norm.[114]

Written Comments of Antigua and Barbuda, 13 August 2024, paragraphs 94-95; Written Comments of the Commonwealth of the Bahamas, 14 August 2024, paragraph 20; Written Comments of the People's Republic of Bangladesh on the Written Statements Submitted to the Court, 15 August 2024, paragraph 30; Written Comments of the Democratic Socialist Republic of Sri Lanka, August 2024, paragraph 63; Commonwealth of Dominca, Oral Statement of 3 December 2024, Verbatim Record 2024/38, page 58, paragraphs 24-25; Republic of Ghana, Oral Statement of 5 December 2024, Verbatim Record 2024/41, page 34, paragraph 11; Republic of Namibia, Oral Statement of 9 December 2024, Verbatim Record 2024/45, page 48, paragraph 54; Republic of Seychelles, Oral Statement of 11 December 2024, pages 50-51, paragraph 7.

[112] *See* Written Comments of Barbados, paragraphs 23-24; Oral Statement of Barbados of 2 December 2024, Verbatim Record 2024/36, pages 82-83, paragraphs 4-10.

[113] *See* "Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries", Report of the Commission to the General Assembly on the work of its fifty-third session, Yearbook of the International Law Commission, A/CN.4/SER.A/2001/Add.1 (Part 2), *International Law Commission*, 10 August 2001, Article 55, page 140, paragraph 4, Annex 650; "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law", Report of the Study Group of the International Law Commission, finalised by Mr Martti Koskenniemi, A/CN.4/L.682 and Add.1, 13 April 2006, page 105, paragraph 7, Annex 652. *See also* Written Comments of Barbados, paragraphs 45-47.

[114] *See*, e.g., J. Pauwelyn, *Conflict of Norms in Public International Law* (Cambridge University Press, 2009), page 243, Annex 662. *See also* Written Comments of Barbados, paragraphs 42 and 47.

68. In that light, the Declarations are significant. They are significant not only because of the interpretive position they propounded and that they are evidence of State practice. They are also significant because their existence serves to highlight the lack of any evidence – not argument for this proceeding, but actual pre-litigation evidence – supporting the treaty interpretation position of certain major emitting States that the UNFCCC and Paris Agreement displace all other sources of international law. The lack of any pre-existing evidence to support the interpretation of major emitting States proves that their position, albeit legally creative, is a recent construct designed for the purposes of litigation.

69. The vast majority of responding States in these proceedings have confirmed through word and deed the global inter-State consensus that the Initial Climate Change Agreements do not displace all other sources of international law.[115] To do so, they have deployed as evidence the text of

[115] *See*, e.g., Written Statement submitted by the Republic of Vanuatu, 21 March 2024, paragraphs 433-434, Section 4.4; Written Statement of the Republic of Mauritius, 22 March 2024, paragraph 123; Written Comments of the Republic of Vanuatu, 15 August 2024, Section 2.4; Written Comments of Tuvalu on the Written Statements Made by Other States and International Organizations, 14 August 2024, paragraphs 38-40; Written Comments of the Republic of Nauru, 15 August 2024, paragraphs 27-33; Written Comments of the Cook Islands, 15 August 2024, paragraphs 56, 65-66; Written Comments of Antigua and Barbuda, 13 August 2024, paragraphs 94-101; Written Comments of the Commonwealth of the Bahamas, 14 August 2024, paragraphs 17-24; Written Comments of the People's Republic of Bangladesh, 15 August 2024, paragraphs 28-38; Written Comments of Belize, 15 August 2024, paragraph 37; Written Comments of the Democratic Socialist Republic of Sri Lanka, August 2024, paragraphs 15-25, 63; Written Comments of the Commission of Small Island States on Climate Change and International Law on the Written Statements made by other States and International Organizations, 14 August 2024, Section IV.B.3 and paragraphs 92-93; Belize, Oral Statement of 3 December 2024, Verbatim Record 2024/37, pages 10-11, paragraph 5; Commonwealth of Dominica, Oral Statement of 3 December 2024, Verbatim Record 2024/38, pages 56-58, paragraphs 16-26; Republic of Kiribati, Oral Statement of 6 December 2024, Verbatim Record 2024/43, pages 49-50, paragraphs 33-35; Republic of Namibia, Oral Statement of 9 December 2024, Verbatim Record 2024/45, pages 47-48, paragraphs 49-54; Republic of Nauru, Oral Statement of 9 December 2024, Verbatim Record 2024/46, page 8, paragraph 2.

the treaties themselves; their object and purpose; consistent State practice, including pronouncements and actions; and, as is appropriate, the Declarations.[116] In stark contrast, the *in extremis* position that all other international law is displaced by the Initial Climate Change Agreement is supported by no evidence except creative legal argument. For example, States advocating this position have not shown any reference in the *travaux préparatoires* of any displacement of other norms.

70. In this respect, this Court has confirmed that a State's interpretive position of a treaty as advanced during a proceeding is entitled to less weight than pre-dispute evidence related to the proper interpretation of the same treaty.[117] While this is not a contentious proceeding, the same principle

---

116 *See*, e.g., Written Statement of the Republic of Vanuatu, 21 March 2024, paragraphs 433-434; Written Statement of the Republic of Mauritius, 22 March 2024, paragraph 123; Written Comments of the Republic of Vanuatu, 15 August 2024, paragraphs 156-157; Written Comments of Tuvalu on the Written Statements Made by Other States and International Organizations, 14 August 2024, paragraphs 38-40; Written Comments of the Republic of Nauru, 15 August 2024, paragraph 31; Written Comments of the Cook Islands, 15 August 2024, paragraph 56; Written Comments of Antigua and Barbuda, 13 August 2024, paragraphs 94-95, 99; Written Comments of the Commonwealth of the Bahamas, 14 August 2024, paragraph 22; Written Comments of the People's Republic of Bangladesh, 15 August 2024, paragraph 30; Written Comments of Belize, 15 August 2024, paragraph 37(c); Written Comments of the Democratic Socialist Republic of Sri Lanka, August 2024, paragraphs 33-43, 63; Belize, Oral Statement of 3 December 2024, Verbatim Record 2024/37, page 11, paragraph 5; Commonwealth of Dominica, Oral Statement of 3 December 2024, Verbatim Record 2024/38, page 58, paragraphs 25; Republic of Kiribati, Oral Statement of 6 December 2024, Verbatim Record 2024/43, pages 49-50, paragraphs 33-35; Republic of Namibia, Oral Statement of 9 December 2024, Verbatim Record 2024/45, pages 47-48, paragraphs 49-54; Republic of Nauru, Oral Statement of 9 December 2024, Verbatim Record 2024/46, page 8, paragraph 2.

117 For example, the Court in *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* recognised that "it cannot take into consideration acts having taken place after the date on which the dispute between the Parties crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of the Party which relies on them" (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgement of 17 December 2002, I.C.J. Reports 2002*, p. 625, Annex 677). *See also Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras), Judgement of 8 October 2007, I.C.J. Reports 1952*, p. 659, paragraph 117 ("[acts

should apply in force to the incorrect argument now deployed by many major emitting States: that because they have acted in concert to argue an incorrect interpretation in this advisory proceeding, that by itself constitutes State practice sufficient to displace decades (indeed centuries and millennia) of established international law.

D. The Declarations are significant because they are "circumstances of the conclusion" of the UNFCCC and Paris Agreement under Article 32 of the Vienna Convention on the Law of Treaties that disprove the "manifestly absurd or unreasonable" interpretation of these treaties advanced by major emitting States in these proceedings

71. An interpretation of the Initial Climate Change Agreements as displacing all other relevant sources of international law "leads to a result which is manifestly absurd or unreasonable."[118] Article 32 of the VCLT states as follows:

> Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31 or to determine the meaning when the interpretation according to article 31:
>
> (a) leaves the meaning ambiguous or obscure; or

occurring before a critical date are] in general meaningless" . . . "having been carried out by a State which, already having claims to assert in a legal dispute, could have taken those actions strictly with the aim of buttressing those claims. Thus a critical date will be the dividing line after which the Parties' acts become irrelevant [to determining the dispute]") and paragraphs 217 and 219 (the Court disregarded evidence presented by the Parties during the proceedings finding that it "essentially [only] serves the purpose of buttressing their respective claims and of confirming their arguments"), Annex 673.

118 VCLT, Article 32(b), Annex 67.

(b) leads to a result which is manifestly absurd or unreasonable.[119]

72. An interpretation of the Initial Climate Change Agreements as displacing all other relevant sources of international law is "manifestly absurd" and "unreasonable" because it renders inapplicable norms applicable to climate change before the Initial Climate Change Agreements came into effect which robustly protect the environment (e.g., by requiring States not to cause transboundary harm and requiring them to pay compensation if they harm the environment of other States or areas beyond national jurisdiction).[120]

73. Instead, the Initial Climate Change Agreements would replace such robust norms with (a) obligations that participants in these proceedings argue are merely procedural and not substantive;[121] or (b) no norms at all, as some participants in these proceedings argue that certain provisions in the Initial Climate Change Agreements do not contain binding obligations on States.[122] As Antigua and Barbuda aptly stated during the hearing in these proceedings, the displacement:

---

119 VCLT, Article 32, Annex 67.

120 *See* Written Statement of Barbados, Sections VI and VII.

121 *See*, e.g., United Arab Emirates, Oral Statement of 2 December 2024, Verbatim Record 2024/40, pages 9-11, paragraphs 14-20; United States of America, Oral Statement of 4 December 2024, Verbatim Record 2024/40, pages 45-46, paragraphs 26-29; Written Statement of the United States of America, 22 March 2024, paragraphs 3.14-3.22; Written Statement of the United Kingdom of Great Britain and Northern Ireland, 18 March 2024, paragraphs 62-71; Written Statement of the United Arab Emirates, 22 March 2024, paragraph 111; Written Statement of the Russian Federation, 21 March 2024, page 8.

122 *See*, e.g., Written Statement of the Kingdom of Saudi Arabia, 21 March 2024, paragraphs 4.26 and 4.65; Written Statement of the United States of America, 22 March 2024, paragraphs 3.14-3.22; Written Statement of the Organisation of Petroleum Exporting States, paragraph 66.

> would lead to a surprising conclusion that the climate change treaties leave the world – and the most vulnerable States therein– less well protected than if these treaties had never been concluded. This is a dangerously regressive approach.[123]

74. The Declarations were made on signing the Initial Climate Change Agreements and therefore constitute "circumstances of the conclusion" of the Initial Climate Change Agreements for the purposes of treaty interpretation.[124] As detailed in **Section V.A** above, the Declarations confirm that the Initial Climate Change Agreements do not displace all other sources of international law applicable to climate change.

E. The Declarations are significant but there are also numerous other bases on which this Court should conclude that the UNFCCC, the Kyoto Protocol and the Paris Agreement do not displace other sources of international law relating to climate change

75. As noted above, some States and international organisations in these proceedings claim that the Initial Climate Change Agreements displace primary and secondary obligations under general international law that would have otherwise been applicable to climate change.[125] This is

---

[123] Antigua and Barbuda, Oral Statement of 2 December 2024, Verbatim Record 2024/36, page 17, paragraph 8.

[124] *See* R. Gardiner, *Supplementary Means of Interpretation*, in OXFORD GUIDE TO TREATIES, ed. Duncan B. Hollis (Oxford University Press, 2020), page 467, Section 4.5 ("Given that the supplementary means envisaged by article 32 of the Vienna Convention are not indicated, other than that they include preparatory work and circumstances of conclusion of a treaty, it seems reasonable to take it that they are only limited by the requirement that any such means must be consistent with the Vienna rules unless otherwise agreed in the particular treaty"), Annex 694. *See also* ILC Guide to Practice on Reservations to Treaties with Commentaries, Guideline 4.7.1, commentary in paragraph 21, Annex 687.

[125] *See*, e.g., Germany, Oral Statement of 2 December 2024, Verbatim Record 2024/81, page 142, paragraph 10; Kingdom of Saudi Arabia, Oral Statement of 2 December 2024, Verbatim Record 2024/36, pages 28-30, paragraphs 5-10; People's Republic of China,

incorrect for a number of reasons, as Barbados set out in its written and oral submissions, including that:

a. there is no factual or textual evidence in the Initial Climate Change Agreements that they purport to extinguish States' obligations under general international law;[126]

b. there is no cogent legal basis on which to argue that the Initial Climate Change Agreements displace existing sources of international law. The Initial Climate Change Agreements constitute neither *lex specialis* nor a self-contained regime and policy concerns should not lead this Court to disregard general international law;[127]

c. many States have confirmed in public statements before the institution of these proceedings that the Initial Climate Change

---

Oral Statement of 3 December 2024, Verbatim Record 2024/28, pages 29-30, paragraph 8; Russian Federation, Oral Statement of 4 December 2024, Verbatim Record 2024/40, page 53, paragraph 9; New Zealand, Oral Statement of 9 December 2024, Verbatim Record 2024/46, pages 33-34, paragraphs 14-16; United Kingdom of Great Britain and Northern Ireland, Oral Statement of 10 December 2024, Verbatim Record 2024-48, pages 43-44, paragraph 13, page 47, paragraph 23 and page 51, paragraph 45; Written Comments of the United Kingdom of Great Britain and Northern Ireland, 12 August 2024, paragraph 10; Written Comments of the Kingdom of Saudi Arabia, 15 August 2024, paragraphs 1.2 and 1.8-1.9; Written Comments of New Zealand, 14 August 2024, Section 3.2; Written Comments of the United States of America, 15 August 2024, paragraphs 1.3-1.7. *See also* Written Comments of Barbados, paragraph 24; Oral Statement of Barbados of 2 December 2024, Verbatim Record 2024/36, page 82, paragraph 4 and page 83, paragraph 10.

[126] *See* Written Comments of Barbados, Section IV.B.

[127] *See* Written Comments of Barbados, Section IV.C.

Agreements are only one of the various ways in which States are addressing the climate crisis;[128]

d. many States agree that the Initial Climate Change Agreements do not displace general sources of international law in submissions to this Court[129] and to the IACtHR;[130] and

e. a significant number of international and national courts have confirmed that the Initial Climate Change Agreements do not displace other relevant sources of international law, including the ITLOS and the European Court of Human Rights.[131]

76. Therefore, even if this Court does not consider the interpretations in the Declarations to be decisive (although Barbados respectfully submits it

---

[128] *See* Written Comments of Barbados, Section IV.B.3; "Remarks by the President on the Paris Agreement", *The White House*, 5 October 2016, Annex 668; Oral Statement by India at the twenty-second session of the Conference of the Parties (COP 22) to the United Nations Framework Convention on Climate Change (UNFCCC), 16 November 2016, Annex 669. *See also* Oral Statement of Barbados of 2 December 2024, Verbatim Record 2024/36, page 83, paragraphs 9-10.

[129] *See*, e.g., Written Statement of the Republic of Chile, 22 March 2024, paragraphs 33-34; Written Comments of the Republic of Colombia, 14 August 2024, paragraphs 3.62-3.68; Second Written Statement of Mexico, August 2024, paragraphs 7-17; Written Comments of the Democratic Socialist Republic of Sri Lanka, August 2024, paragraphs 10-15; Written Comments of the People's Republic of Bangladesh on the Written Statements submitted to the Court, 15 August 2024, Part III; Written Comments of the Republic of Ecuador, 15 August 2024, paragraphs 17-18, 23-25; Written Comments of the Islamic Republic of Pakistan, 15 August 2024, paragraphs 10-22; Written Comments of the African Union, 15 August 2024, paragraphs 17-26. *See also* Oral Statement of Barbados of 2 December 2024, Verbatim Record 2024/36, page 82, paragraph 8 and footnote 245.

[130] *See*, e.g., in the *Request for Advisory Opinion OC-32 on Climate Emergency and Human Rights presented by the Republic of Chile and the Republic of Colombia*, Written Observations of the Federative Republic of Brazil, December 2023, paragraph 18Annex 670; Written Observations of the Republic of Paraguay, December 2023, paragraphs 28-29, Annex 671. *See also* Oral Statement of Barbados of 2 December 2024, Verbatim Record 2024/36, page 82, paragraph 8.

[131] *See* Written Comments of Barbados, Section IV.D.

132

should),[132] there are anyway numerous other bases on which this Court should conclude that the Initial Climate Change Agreements are not the only source of international law relevant to its advisory opinion.

---

132 *See* Section V.A above.

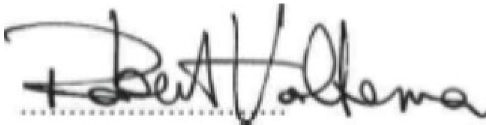
VI. CONCLUSION

77. For the reasons described above, Barbados respectfully invites the Court to make an advisory opinion on the same terms as set out in paragraph 343 of the Written Statement of Barbados and paragraph 112 of the Written Comments of Barbados.

20 December 2024

Ambassador François Jackman, Ambassador and Permanent Representative, Permanent Mission of Barbados to the United Nations

Representative of Barbados



Professor Robert G Volterra, Partner at Volterra Fietta and Visiting Professor of International Law at University College London

Co-Representative of Barbados