SEPARATE OPINION OF JUDGE AURESCU

No reference to the principle of legal stability — Lack of recognition of fixed baselines/outer limits of maritime zones as customary norm — Existence of widespread, representative and consistent State practice of not updating co-ordinates of baselines and/or outer limits of maritime zones and charts showing them — Existence of opinio juris *— Lack of reference to non-applicability of* rebus sic stantibus *to existing maritime delimitations — Insufficient elaboration on the presumption of continuity of statehood — Loss of territory or population as initial constituent elements of statehood does not lead to loss of membership of the United Nations and of other international organizations — Incomplete analysis of the obligation of non-refoulement — Incomplete analysis of the right to a clean, healthy and sustainable environment — The right has already achieved the status of customary norm.*

1. I agree with most of the findings in this Advisory Opinion, and I voted in favour of the entire operative paragraph. However, there are two very important issues on which, in my view, the Court has missed the opportunity of this much anticipated and vital Opinion to engage into a deeper analysis and reach a more nuanced and comprehensive legal finding. Instead, this Opinion is excessively and unnecessarily cautious and minimalist on these issues, which are of real and pressing concern for the largest majority of UN Member States and their peoples, and for the international community as a whole: sea-level rise (I) and the right to a clean, healthy and sustainable environment (II).

I. SEA-LEVEL RISE

A. No reference to the principle of legal stability; lack of recognition of fixed baselines/outer limits of maritime zones as customary norm in the context of sea-level rise

2. The Court has concluded that under the United Nations Convention on the Law of the Sea (UNCLOS) there is no obligation to update the geographical co-ordinates and charts descripting the baselines from which the maritime zones are measured, in the context of sea-level rise. Paragraph 362 of the Advisory Opinion consecrates this finding:

> "The Court considers that the provisions of UNCLOS do not require States parties, in the context of physical changes resulting from climate-change related sea level rise, to update their charts or lists of geographical co-ordinates that show the baselines and outer limit lines of their maritime zones once they have been duly established in conformity with the Convention. For this reason, States parties to UNCLOS are under no obligation to update such charts or lists of geographical co-ordinates."

This represents the first confirmation, by the international justice (and, particularly relevant, by the International Court of Justice), of this norm and, implicitly, at the same time, of the laborious efforts of the International Law Commission (ILC) which thoroughly elaborated the legal reasons for this conclusion. I salute this finding, and I am particularly glad to do it both as a Member of the Court, and also as a former member of the ILC who was among the proponents for the inclusion, already in 2018-2019, in the ILC work programme, of the topic "Sea-level rise in relation to international law", and especially as former Co-chair of the ILC Study Group on this topic, who worked on this topic for six years, until 2024. This recognition is particularly rewarding since this year the ILC has

finalized its comprehensive work on the topic with the adoption of its Final Report on the issue[1], which is also acknowledged by the Court in paragraph 361 of this Advisory Opinion. Thus, this Court's finding responds adequately to the call of many Participants in these proceedings that considered that UNCLOS must be interpreted *in an evolutive manner* to address new or emerging issues, including those related to climate change (see paragraph 336 of this Advisory Opinion). Sea-level rise is the most prominent such issue.

3. There are many sound legal reasons for the finding that there does not exist *any* obligation for States (for *all* States, not just for the States parties to UNCLOS as specified in a limitative manner in the above-mentioned paragraph 362 of the Advisory Opinion) to update the geographical co-ordinates and charts descripting the baselines and/or outer limits of their maritime zones when facing sea-level rise: this conclusion results from the text interpretation of UNCLOS[2]; from the fact that during its negotiation (as resulting from its *travaux préparatoires*) sea-level rise, as a negative effect of climate change, was not perceived as a factor to be addressed[3]; from the imperative to respect the territorial integrity of States (since moving baselines because of sea-level rise would affect, among other maritime zones, the territorial sea, which is part of State territory); from the obligation to respect State sovereignty (sea-level rise affects territorial sovereignty, but also sovereign rights in other maritime zones); from the obligation to respect the permanent sovereignty over natural resources; from the obligation to respect the right to self-determination (closely connected, *inter alia*, with territorial integrity and permanent sovereignty over natural resources); from the obligation to respect the principle of legal stability, security, certainty and predictability; from considerations of equity, etc. Such reasoning can be found in the written statements and comments, and oral pleadings of the Participants to these advisory proceedings, in States' statements before the Sixth Committee, in the General Assembly and the Security Council meetings on sea-level rise, in States' submissions to the ILC, as well as in the extensive work of the ILC on the topic.

4. Regrettably, not so many of these legal bases for this finding can be found in the Opinion, and perhaps one most notable absence is the principle of legal stability, security, certainty and predictability. This general principle, as clearly evidenced by States in instances already invoked in the previous paragraph, and so amply demonstrated by the ILC, applies to all aspects related to sea-level rise, including freezing baselines, continuity of statehood and the issue of *rebus sic stantibus* (see below). It would have been particularly appropriate for the Opinion to include (at least) a reference to this principle — as a basis for the preservation of existing baselines and, consequentially, of the outer limits of maritime zones, as well as for the preservation of existing maritime delimitations and for the continuity of statehood — and to the obligation to respect it.

5. I also deeply regret that the Court fell short on recognizing that "fixed baselines" in the context of sea-level rise has already become part of the customary international law. The interpretation of UNCLOS that States are not required to update their baselines (the charts or lists of geographical co-ordinates descripting the baselines), once they have been duly established in conformity with the Convention (the solution of fixed baselines), is not only a correct interpretation of UNCLOS, but — I am firmly convinced — already a norm of customary international law, for the reasons exposed below.

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[1] *Official Records of the General Assembly, Eightieth Session, Supplement No. 10* (A/80/10), Report of the International Law Commission on its work at its Seventy-sixth Session, p. 11, para. 36 and Annex I. Final report of the Study Group on sea-level rise in relation to international law.

[2] Interpretation of UNCLOS in accordance with Article 31 of the 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, entered into force on 27 January 1980, United Nations, *Treaty Series*, Vol. 1155, p. 331.

[3] Interpretation of UNCLOS in accordance with Article 32 of the 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, entered into force on 27 January 1980, United Nations, *Treaty Series*, Vol. 1155, p. 331.

6. This customary rule has been developing for at least a decade. Already in 2020, the ILC identified that at least for the Pacific and South-East Asia regions there is widespread and consistent practice supporting the permanency of maritime boundaries[4]. In subsequent years, this practice extended, in a dynamic manner, to all regions of the world, and the number of States involved in this practice increased exponentially. In their submissions to the ILC and in their statements on the topic of sea-level rise in the Sixth Committee, numerous States have expressed the same view that rejects the theory of ambulatory baselines, have informed that in the context of the effects of sea-level rise their national practice is not to update the co-ordinates of baselines once they have been submitted, and have strongly supported the principle of legal stability in connection with this practice[5]. Some States have also invoked their national legislation explicitly supporting the principle of immutability of baselines[6]. Such positions were also expressed during debates in the Security Council, most recently in 2023[7], and the General Assembly in 2023 and 2024[8]. Moreover, the statements presented from 2020 to 2022 in the Sixth Committee of the General Assembly were not only expressed on behalf of the Pacific Islands Forum and by the Member States of the Forum, but also, very importantly, by Asian, American, African and European States[9]. No States, even those that have national legislation providing for ambulatory baselines, have contested the solution of fixed baselines in the context of sea-level rise[10].

7. In addition to that, several collective declarations have been issued by regional bodies rejecting the ambulatory baselines theory and supporting the fixed baselines solution. For example, the Leaders Declaration, adopted at the Ninth Pacific Islands Leaders Meeting, on 2 July 2021,

> "jointly noted the importance of protecting maritime zones established in accordance with [the UNCLOS], and concurred to further discuss the issue of preserving maritime zones, properly delineated in accordance with [the Convention], in the face of climate change-related sea-level rise including at the multilateral level"[11].

Moreover, the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, which was issued by the 18 Pacific Islands Forum Leaders on 6 August 2021, "[a]ffirm[s] that the Convention imposes no affirmative obligation to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations", states that "the position of Members of

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[4] International Law Commission, Seventy-second Session, First issues paper by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN.4/740), p. 42, para. 104 *(i)*.

[5] International Law Commission, Seventy-fourth Session, Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN.4/761), pp. 11-30, paras. 20-76.

[6] For example, Antigua and Barbuda's Maritime Areas Act 1982 or Fiji's Climate Change Act 2021, see International Law Commission, Seventy-fourth Session, Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN.4/761), p. 12, para. 20 and p. 13, para. 24.

[7] Threats to International Peace and Security: "Sea-Level Rise — Implications for International Peace and Security", 14 February 2023, S/PV.9260 and S/PV.9260 (Resumption 1). See also "Sea-level rise and implications for international peace and security" — UN Security Council Arria-formula meeting, 18 October 2021, see https://webtv.un.org/en/asset/k1i/k1im1x4i6t.

[8] Informal Plenary Meeting of the General Assembly on "Existential Threats of Sea-level Rise Amidst the Climate Crisis", UN General Assembly, 3 November 2023; General Assembly High-level plenary meeting "Addressing the existential threats posed by Sea-level rise", 25 September 2024.

[9] International Law Commission, Seventy-fourth Session, Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN.4/761), pp. 16-30, paras. 33-76.

[10] *Ibid.*, p. 33, para. 84, and p. 41, para. 98 *(a)*.

[11] The Leaders Declaration, adopted on 2 July 2021, para. 12, https://www.mofa.go.jp/files/100207980.pdf.

the Pacific Islands Forum that maintaining maritime zones established in accordance with the Convention, and rights and entitlements that flow from them, notwithstanding climate change-related sea-level rise, is supported by both the Convention and the legal principles underpinning it", declares that "once having, in accordance with the Convention, established and notified our maritime zones to the Secretary-General of the United Nations, we intend to maintain these zones without reduction, notwithstanding climate change-related sea-level rise" and that "our maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with the Convention, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise"[12]. This Declaration was also supported by the Organisation of African, Caribbean and Pacific States (with 79 members)[13]. In addition to that, the Declaration of the 39 Heads of State and Government of the Alliance of Small Island States, adopted on 22 September 2021, affirms, *inter alia*, that there is no obligation under UNCLOS to keep baselines and outer limits of maritime zones under review[14]. Unfortunately, the Advisory Opinion did not refer to this important document.

8. Another international body, the Climate Vulnerable Forum (with 55 members, comprising 25 members from Africa and the Middle East, 19 members from Asia and the Pacific and 11 members from Latin America and the Caribbean), in its Dhaka-Glasgow Declaration of 2 November 2021 (also ignored by the Advisory Opinion),

> "call[ed] on all States to support the principles outlined in the Pacific Islands Forum 2021 Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-level rise, in a plea to authorities at all levels to support the protection and preservation of maritime zones from the threats of climate change. The Declaration preserves maritime zones in the face of their erosion due to the detrimental effects of climate change-driven sea-level rise on territorial integrity, while upholding the centrality of the UN Convention on the Law of the Sea."[15]

9. As a further example, the 2023 Korea-Pacific Islands Leaders' Declaration expressed support for "the 2021 PIF Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise, which proclaims that maritime zones, established in accordance with the 1982 UNCLOS, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise"[16]. On 26 October 2024, the 56 Commonwealth Heads of Government adopted the Apia Commonwealth Ocean Declaration (regrettably ignored, as well, by this Advisory Opinion), in which they supported the interpretation of UNCLOS that allowed for the preservation of maritime zones:

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[12] Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, adopted on 6 August 2021, p. 2, operative para. 1, https://forumsec.org/sites/default/files/2024-05/2021%20Declaration-on-Preserving-Maritime-Zones.pdf.

[13] See Declaration of the Seventh Meeting of the Organisation of African, Caribbean and Pacific States Ministers in Charge of Fisheries and Aquaculture, adopted on 8 April 2022, p. 8, https://www.oacps.org/wp-content/uploads/2022/05/Declaration_-7thMMFA_EN.pdf.

[14] AOSIS Leaders Declaration, adopted on 22 September 2021, para. 41, https://www.aosis.org/launch-of-the-alliance-of-small-island-states-leaders-declaration/.

[15] Dhaka-Glasgow Declaration of the Climate Vulnerable Forum, adopted on 2 November 2021, p. 5, https://cvfv20.org/wp-content/uploads/2024/08/Dhaka-Glasgow-Declaration-of-the-CVF_Final-1.pdf.

[16] 2023 Korea-Pacific Island Leaders' Declaration on A Partnership in Pursuit of Freedom, Peace and Prosperity for a Resilient Pacific, adopted on 29 May 2023, para. 12, https://forumsec.org/publications/report-declaration-and-action-plan-1st-korea-pacific-leaders-summit-2023.

> "We, the Heads of Government of the Commonwealth:
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> . . . . . .
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> In view of the urgent threat of climate change-related sea-level rise, and the fundamental need to secure the rights, entitlements, and interests of all [S]tates and peoples of the Commonwealth, affirm that members can maintain their maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with UNCLOS, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise."[17]

10. All the above shows a clear, uniform (or, to be precise, identical), frequent and widespread practice by a very large number of States, from all regions of the world. Even the Advisory Opinion itself, in its paragraph 361, which cites in this respect the 2025 Final Report of the ILC on sea-level rise in relation to international law, mentions the

> "convergence of views among States across all regions in support of the absence of an obligation of States parties to UNCLOS to update charts or lists of geographical co-ordinates relating to their maritime zones once they have been duly established, in conformity with UNCLOS".

11. These elements of State practice also serve to establish the existence of *opinio juris*. Based on the situation at the level of 2022, the ILC reminded its 2020 provisional finding that

> "'it [was] early to draw, at this stage, a definitive conclusion on the emergence of a . . . customary rule . . . of international law regarding the preservation of baselines and of outer limits of maritime zones . . .'; although, at the time of drafting of the first issues paper, the Co-Chairs were able to identify elements of regional State practice, the existence of the *opinio juris* [was] not yet evident"[18].

But ever since, the situation has amply developed and considerably changed, indicating in an obvious manner the existence of the *opinio juris*. Besides the above-mentioned statements, submissions and declarations, the positions of States during the advisory proceedings before ITLOS and this Court clearly demonstrate that they perceive the solution of fixed baselines to be not merely a matter of policy discretion or political commitment, but the expression of a legal obligation under international law. At present, there are over 100 States expressly acknowledging that baselines must remain fixed at their current co-ordinates notwithstanding physical coastline changes brought about by sea-level rise. All of them are convinced that by doing so they are in strict compliance with their legal obligations since UNCLOS does not obligate States to update the co-ordinates of their baselines. The abundance and high frequency of State practice in all regions of the world indicate in an obvious and convincing manner, without any shadow of doubt, that the *opinio juris* has already crystallized. The fact that there is no single State objecting to this solution powerfully consolidates this conclusion.

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[17] Apia Commonwealth Ocean Declaration, adopted on 26 October 2024, para. 13, https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/2025-05/apia-commonwealth-ocean-declaration.pdf.

[18] International Law Commission, Seventy-fourth Session, Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN 4/761), p. 39, para. 95, citing para. 104 (*h*) of the First issues paper.

12. This conclusion has been recently adopted by the ILC. Its 2025 Final Consolidated Report on the topic provides the following:

> "Specifically in relation to the subtopic of the law of the sea, the Co-Chairs observed in the first issues paper that it was early to draw, at that stage, a definitive conclusion on the emergence of any customary rule of international law. However, in the light of the developments summarized in the present report, *it is clear that such may no longer be the case*. Statements made by States in the Sixth Committee, Security Council and General Assembly and before the International Court of Justice and the International Tribunal for the Law of the Sea are *strongly indicative of general practice and* opinio juris *reflecting agreement that States are not prevented from preserving existing baselines and maritime zones, that there is no obligation for States to update nautical charts or coordinates*"[19].

Unfortunately, this authoritative finding was also ignored by this Advisory Opinion.

13. Overall, I am strongly persuaded that the solution of fixed baselines in the context of sea-level rise has already become a norm of customary international law, and I do regret that, even if all conditions are thoroughly met for applying the inductive[20] method for identifying a customary norm of international law (a method also used in the past by this Court[21]), as developed by the ILC[22], the Court did not seize the opportunity to recognize this legal truth, so important for a very large number of States and their peoples, in this Opinion.

B. No reference to non-applicability of *rebus sic stantibus* to existing maritime delimitations

14. I also regret that the Advisory Opinion completely omits the analysis of the relevance of *rebus sic stantibus* in the context of sea-level rise, which is particularly important. The Participants to the advisory proceedings invoked this issue expressing support for the stability of maritime delimitations effected by treaties, and expected it to be taken into account[23]. Moreover, the concerns expressed by Participants regarding the stability of maritime delimitations were noted by the Court in paragraph 355 of the Advisory Opinion ("[t]hey argue that *existing . . . maritime delimitations . . . should be preserved*, notwithstanding the physical effects of sea level rise")[24], but no analysis and conclusion of the Court followed.

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[19] International Law Commission, Seventy-sixth Session, Final consolidated report of the Co-Chairs of the Study Group on sea-level rise in relation to international law, by Patrícia Galvão Teles, Nilüfer Oral and Juan José Ruda Santolaria (A/CN.4/783), pp. 95-96, para. 483 (emphasis added).

[20] See Stefan Talmon, "Determining Customary International Law: The ICJ's Methodology between Induction, Deduction and Assertion", *European Journal of International Law*, Vol. 26, Issue 2, May 2015, pp. 417–443.

[21] See, for example, *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/ Netherlands), Judgment, I.C.J. Reports 1969*, p. 44, para. 77; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, *Judgment, I.C.J. Reports 1985*, pp. 29-30, para. 27; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment. I.C.J. Reports 1986*, pp. 97-98, paras. 183-184 and pp. 108-109, para. 207; *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, pp. 122-123, para. 55; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2023 (II)*, p. 438, para. 46.

[22] Identification of customary international law, *Yearbook of the International Law Commission*, 2018, Vol. II, Part Two, A/73/10, pp. 124-126.

[23] For example, CR 2024/44, pp. 26-27, para. 14 (Liechtenstein); Written Statement of Kiribati, p. 64, para. 191; Written Statement of Liechtenstein, p. 37, para. 78; Written Statement of Romania, p. 17, para. 57.

[24] Emphasis added.

15. In general, in order for the fundamental change of circumstances to be invoked successfully, the change has to affect the essential basis of consent of the parties and have the effect of radically transforming the obligations to be performed by the parties under the treaties[25]. However, the principle does not apply at all if the treaty establishes a boundary, the reason being that of avoiding "dangerous frictions" and to "safeguard the stability of boundaries in order to promote peace and security in the international community"[26].

16. Although sovereign States cannot be precluded from invoking sea-level rise as a pretext to terminate a boundary treaty, it is highly unlikely that such reasoning would be upheld in any circumstance. As noted by the Court in *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)*, "boundaries between States, including maritime boundaries, are aimed at providing permanency and stability"[27]. The award in the *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)* also pronounced that "maritime delimitations, like land boundaries, must be stable and definitive to ensure a peaceful relationship between the States concerned in the long term"; it mentioned climate change effects, which include sea-level rise:

> "In the view of the Tribunal, neither the prospect of climate change nor its possible effects can jeopardize the large number of settled maritime boundaries throughout the world. This applies equally to maritime boundaries agreed between States and to those established through international adjudication."[28]

Moreover, as stated by the ILC,

> "[i]t is evident [that] the objective and purpose [of] article 62, paragraph 2 *(a)*, is to prevent conflict and preserve the stability of boundaries. To recognize sea-level rise as a fundamental change of circumstance within the meaning of article 62 would produce the contrary outcome."[29]

17. Furthermore, the principle of immutability and intangibility of boundaries, which is well established in international law, reinforces this conclusion. This principle, while rooted in land boundaries, holds significant implications for maritime boundaries as well. The principle of *uti possidetis juris*, which initially emerged during decolonization processes, aimed to preserve colonial boundaries when new States gained independence, thereby preventing territorial disputes. In *Frontier Dispute (Burkina Faso/Republic of Mali)*, the Chamber of the Court noted that "the principle of *uti possidetis* has kept its place among the most important legal principles"[30] after decolonization. In *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, the Court found that *uti possidetis juris* may apply to maritime spaces[31]. Moreover, in *Territorial and*

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[25] Article 62 (1) *(a)* and *(b)* of the 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, entered into force on 27 January 1980, United Nations, *Treaty Series*, Vol. 1155, p. 331.

[26] International Law Commission, Seventy-fourth Session, Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN.4/761), p. 50, para. 118, citing, *inter alia*, the ILC commentary to the draft article 59 of the draft Vienna Convention on the Law of Treaties.

[27] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment, I.C.J. Reports 2021*, p. 263, para. 158.

[28] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, Case No. 2010-16, Award, Permanent Court of Arbitration, 7 July 2014, p. 63, paras. 216-217.

[29] International Law Commission, Seventy-fourth Session, Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN.4/761), p. 59, para. 123.

[30] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 567, para. 26.

[31] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 589, para. 386.

Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. *Honduras)*, the Court found that *uti possidetis* might, in certain circumstances, play a role in maritime delimitation, such as in connection with historic bays and territorial seas[32]. This confirms that the principle of immutability and intangibility of existing boundaries applies as well to maritime boundaries, which share the same function of demarcating the extent of the sovereignty (in the case of territorial sea) and of the sovereign rights (in the case of the other maritime zones) of a State.

18. In addition, the 2025 ILC Final Consolidated Report on sea-level rise in relation to international law concluded that

> "[t]he principle of fundamental change of circumstances (*rebus sic stantibus*), as codified in article 62, paragraph 1, of the Vienna Convention on the Law of Treaties, does not apply to maritime delimitation agreements, as they are covered by the exclusion for treaties establishing boundaries under article 62, paragraph 2 *(a)*"[33].

Moreover, the same 2025 ILC Final Consolidated Report found that

> "statements made by States in the Sixth Committee, Security Council and General Assembly and before the International Court of Justice and the International Tribunal for the Law of the Sea are *strongly indicative of general practice and* opinio juris *reflecting agreement . . . that the principle of fundamental change of circumstances (*rebus sic stantibus*) does not apply to maritime boundaries in the case of sea-level rise*."[34]

19. In light of the above, it is again regrettable that the Opinion ignored this issue with regard to which the ILC found that "there is a *clear consensus* [among States] that the principle of fundamental change of circumstances does not apply to maritime boundaries, which enjoy the same legal protection under the Vienna Convention on the Law of Treaties as land boundaries"[35]. This consensus, evident from the positions of States in various fora, including in the Sixth Committee of the General Assembly since 2020, would have warranted consideration and acknowledgment in the Opinion.

C. Insufficient elaboration on the presumption of continuity of statehood

20. The Court stated that "[i]n the view of the Court, once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood" (Advisory Opinion, para. 363). I agree with this very important finding, which is the first confirmation, by the international justice (and, particularly relevant, by the International Court of Justice), of this strong presumption of the continuity of statehood, which was thoroughly reasoned

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[32] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 728, para. 232.

[33] International Law Commission, Seventy-sixth Session, Final consolidated report of the Co-Chairs of the Study Group on sea-level rise in relation to international law, by Patrícia Galvão Teles, Nilüfer Oral and Juan José Ruda Santolaria (A/CN.4/783), p. 97, para. 491 *(k)*; see also International Law Commission, Seventy-second Session, First issues paper by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN.4/740), pp. 54-55, para. 141; International Law Commission, Seventy-fourth Session, Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN.4/761), p. 52, para. 125.

[34] International Law Commission, Seventy-sixth Session, Final consolidated report of the Co-Chairs of the Study Group on sea-level rise in relation to international law, by Patrícia Galvão Teles, Nilüfer Oral and Juan José Ruda Santolaria (A/CN.4/783), p. 96, para. 483 (emphasis added).

[35] *Ibid.*, p. 63, para. 348.

by the ILC in its work on the topic of sea-level rise. At the same time, I consider that the wording of this finding could have been more accurate: on the one hand, "necessarily" is superfluous in this context and the verb "would" could have been safely replaced by "does"; on the other hand, the mentioned paragraph of the Advisory Opinion refers to the "disappearance of one" of the constituent elements of the State, while in the context of sea-level rise the submergence of State territory also affects a second constituent element of the State, which is the population. In this context, I consider that the text of the Opinion referring to "one" constituent element should not be interpreted in a strict mathematic, restrictive manner.

21. I also find it important to add that the disappearance of one (or more) of the initial constituent elements does not only not affect the existing statehood, but also does not — and cannot — lead to the loss of membership of the United Nations and of other international organizations. The Court missed the opportunity to make such an important statement, so practically relevant for the States which will see their territory entirely submerged or their entire population forced to migrate due to sea-level rise effects.

22. Indeed, the affected State would continue to be a member of international organizations, such as the United Nations[36]. Under Articles 5 and 6 of the United Nations Charter, the Members can be suspended or expelled by the General Assembly upon the recommendation of the Security Council, but there are no other Charter provisions concerning the loss of membership. Neither Article 5 nor Article 6 are applicable to the situation where a State could be stripped of the United Nations membership solely on the basis that its territory is submerged or that the population is forced to leave to other States because of sea-level rise.

D. Obligation to co-operate and restitution

23. The main conclusion of the sea-level rise section of the Opinion is that

> "the legal obligation to co-operate requires States, in the context of sea level rise, to work together with a view to achieving equitable solutions, taking into account the rights of affected States and those of their populations" (Advisory Opinion, para. 365).

This conclusion is based on partial premises: as already mentioned, the Opinion ignores (among others) the very important obligation to respect the principle of legal stability, security, certainty and predictability, and other principles which I referred to in paragraph 3 of this separate opinion, above; as I have already stated, it would have been very appropriate to include at least a reference to this principle as a legal basis for the preservation of existing baselines and of the outer limits of maritime zones, as well as for the preservation of existing maritime delimitations and for the continuity of statehood, and to the obligation to respect this principle. In the absence of a reference here to the principle of stability, a correct interpretation of this paragraph is very important. In my view, the words "equitable solutions" should not and cannot be understood as conveying any message that there might exist competing interests that need to be balanced in an equitable manner between the States affected by sea-level rise and the other States (States which might claim interests or potential rights which might allegedly appear for them due to the loss of rights of the States from the first category, for instance in connection with the régime of the high seas); such an interpretation would be incorrect. The States at risk of losing parts or even the entirety of their maritime zones and of seeing their whole territory submerged are at high and real risk of losing some of their inherent sovereign rights, while the rights of the other States, that are not subjected to such risks, remain

[36] See International Law Commission, Seventy-sixth Session, Final consolidated report of the Co-Chairs of the Study Group on sea level rise in relation to international law, by Patrícia Galvão Teles, Nilüfer Oral and Juan José Ruda Santolaria (A/CN.4/783), p. 98, para. 492 *(a)*.

unchanged/untouched. The main and most important purpose of fixed baselines, of the presumption of continuity of statehood, of not affecting existing maritime delimitations and of protecting the persons belonging to the populations of the States affected by sea-level rise is *solely* to preserve their *existing* rights; these do *not* create *new rights* for the concerned States and do not affect any *existing* rights of any other States. It would be deeply *unequitable* to consider otherwise. Moreover, no such position or claim was ever expressed by any State in any instance in connection with the topic of sea-level rise and its effects. That is why this text should only be understood, also in connection with the preceding paragraph 364 of the Opinion, which mentions the legal obligation of co-operation to address the adverse effects of sea-level rise based *inter alia* on the "ensuing need for solidarity", that the "equitable solutions" have as sole purpose to bring equity for the States and their populations affected by the negative effects of sea-level rise, in order to protect their existing rights.

24. Finally on this issue, the Opinion could have included in the reply to question *(b)* the finding that restitution may take the form of continued recognition by all States of the entitlements of States affected by sea-level rise to their current maritime zones as well as of their continued statehood, even if submerged. This would be a minimal form of restitution for these States, most of which did not contribute significantly to climate change and its negative effects, among which sea-level rise.

E. Incomplete analysis of the obligation of non-refoulement

25. Last but not least on sea-level rise, I regret that the Court dedicated quite little attention to the obligation of non-refoulement which is particularly important for individuals directly affected by sea-level rise. If a State's territory submerges or if, even before that, becomes uninhabitable, the affected population has nowhere to stay and live. In light of global warming, this will soon become the reality that more and more small island and low-lying coastal States must face.

26. In paragraph 378 of the Opinion the Court acknowledges that

> "States have obligations under the principle of non-refoulement where there are substantial grounds for believing that there is a real risk of irreparable harm to the right to life in breach of Article 6 of the ICCPR if individuals are returned to their country of origin".

I agree with this important finding. However, the Court should have gone further and added that this obligation under international human rights law also includes positive obligations to take proactive measures to prevent refoulement and to ensure that other rights are respected during the individuals' stay in the State's territory; such measures may cover, for example, a duty to conduct an individualized risk assessment, or an obligation to admit those seeking protection and even to issue temporary residence permits for them, to take appropriate protective measures against arbitrary detention and acts by non-State actors that may lead to refoulement[37].

II. NO EXPLICIT REFERENCE TO THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT AS A CUSTOMARY NORM

27. The Court stated that "the right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment" (Advisory Opinion, para. 393). It also concluded that the right to "a clean, healthy and sustainable environment

[37] See International Law Commission, Seventy-fifth Session, Additional paper to the second issues paper (2022) by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on sea-level rise in relation to international law (A/CN.4/774), p. 63, para. 238.

is a precondition for the enjoyment of many human rights such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing" and that it is difficult to see how the obligations of States "to guarantee the effective enjoyment of such rights" can be "fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right. The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other human rights" (*ibid.*). The Court concludes, in the same paragraph, that, "under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights".

28. I agree with these findings. However, they are insufficient and incomplete. I do regret that the Court, while accepting the existence of the human right to a clean, healthy and sustainable environment, was again excessively cautious even in front of compelling evidence, and fell short of explicitly finding that the right to a clean, healthy and sustainable environment is already a norm of customary international law. The customary character of this right is induced from the obvious existence of uniform and widespread State practice and *opinio juris*, as evidenced below.

29. A thorough analysis of various international instruments, of Constitutions and national legislation of States from all world regions confirms this conclusion of the customary character of this right. The following paragraphs offer a concise presentation of this analysis. Also, many submissions before this Court affirm the customary nature of the right[38], while the 54 replies to the question that I have addressed at the end of the public hearings on 13 December 2024 also confirm this conclusion[39].

30. Regarding State practice, already in 1972, the Stockholm Declaration, in its Principle I, affirmed the right to live in an environment conducive to dignity and well-being[40]. The 1992 Rio Declaration[41] and the 2007 United Nations Declaration on the Rights of Indigenous Peoples[42] also affirmed this right. Moreover, in October 2021, the Human Rights Council recognized "the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights"[43]. Following this, in July 2022, the General Assembly adopted Resolution 76/300 recognizing "the right to a clean, healthy and sustainable environment as a human right"[44]. The resolution was authoritatively adopted with 161 votes in favour, 8 abstentions and none against.

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[38] See the Written Statements of African Union, Antigua and Barbuda, Bangladesh, Bolivia, Cook Islands, Comoros, COSIS, Costa Rica, Ecuador, European Union, Gambia, IUCN, Myanmar, Namibia, OACPS, Papua New Guinea, Saint Lucia, Samoa, Sri Lanka, Thailand, Tuvalu, Vanuatu.

[39] Fifty-four replies were received by the Court to my question: "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?"

[40] Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, A/CONF.48/14/Rev.1.

[41] Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, A/CONF.151/26 (Vol. I).

[42] General Assembly, Sixty-first session, Resolution adopted by the General Assembly on 13 September 2007, A/RES/61/295.

[43] Human Rights Council, Forty-eighth session, Resolution adopted by the Human Rights Council on 8 October 2021, A/HRC/RES/48/13. The resolution was adopted by a vote of 43 to 0, with 4 abstentions.

[44] General Assembly, Seventy-sixth session, Resolution adopted by the General Assembly on 28 July 2022 A/RES/76/300.

31. In addition, various treaty monitoring bodies have recognized the right to a clean, healthy and sustainable environment. Notably among them, the Conference of the Parties of the United Nations Framework Convention on Climate Change serving as the meeting of the Parties to the Paris Agreement, whose reports are adopted by consensus by the States parties to this treaty, which enjoys near universal participation[45].

32. Furthermore, at regional level, States have concluded international treaties explicitly recognizing the right.

33. Article 11 of the Additional Protocol to the American Convention on Human Rights (San Salvador Protocol) guarantees the right as an independent human right[46]. Similarly, the Escazú Agreement guarantees the right to live in a healthy environment and establishes obligations for States on access to information, public participation and justice in environmental matters[47]. Also, the American Declaration on the Rights of Indigenous Peoples, adopted by consensus, affirms that "[i]ndigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the rights to life and to their spirituality, cosmovision, and collective well-being"[48].

34. The Aarhus Convention refers to "the right of every person of present and future generations to live in an environment adequate to his or her health and well-being" and sets the objective of the Convention as the contribution to the protection of that right[49].

35. Moreover, Article 38 of the Arab Charter on Human Rights stipulates that

> "[e]very person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights."[50]

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[45] See Committee on Economic, Social and Cultural Rights, General comment No. 26 (2022) on land and economic, social and cultural rights, 22 December 2022, E/C.12/GC/26; Committee on the Rights of the Child, General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, 22 August 2023, CRC/C/GC/26; United Nations Framework Convention on Climate Change, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fourth session, held in Sharm el-Sheikh from 6 to 20 November 2022, 17 March 2023, FCCC/PA/CMA/2022/10/Add.1 (Preamble, para. 11: "Acknowledging that climate change is a common concern of humankind and that Parties should, when taking action to address climate change, respect, promote and consider . . . the right to a clean, healthy and sustainable environment").

[46] Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, San Salvador, adopted on 17 November 1988, entered into force on 16 November 1999.

[47] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú, adopted on 4 March 2018, entered into force on 22 April 2021.

[48] Organization of American States, American Declaration on the Rights of Indigenous Peoples, adopted at the third plenary session, adopted on 15 June 2016.

[49] Article 1 (Objective) reads: "In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention." Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, adopted on 25 June 1998, entered into force on 30 October 2001.

[50] Arab Charter on Human Rights, League of Arab States, adopted on 22 May 2004, entered into force on 15 March 2008.

36. Furthermore, Article 24 of the African Charter on Human and Peoples' Rights provides that "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development"[51]. Additionally, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), stipulates in Article XVIII (1) that "[w]omen shall have the right to live in a healthy and sustainable environment"[52].

37. In Asia, the Association of Southeast Asian Nations (ASEAN) Declaration on Human Rights guarantees "the right to a safe, clean and sustainable environment"[53].

38. On a national level, 110 States have affirmed the right to a clean, healthy and sustainable environment in their Constitutions: 92 States have explicitly affirmed the right[54], while 18 others provide for its implicit recognition[55]. The constitutional recognition of this right can be observed, across regions and legal traditions, in Africa, Asia and the Pacific, Eastern Europe, Latin America and the Caribbean, as well as in Western Europe and others. The content and wording of these provisions vary, but they converge on the recognition of legal protection, under the form of a human right, of a clean, healthy and sustainable environment.

39. As far as national legislation is concerned, 104 States have adopted such legislation that either expressly affirms the right to a healthy environment or establishes legal frameworks that give effect to its essential elements[56]. These texts vary in structure but consistently define substantive

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[51] African Charter on Human and Peoples' Rights, Nairobi, adopted on 27 June 1981, entered into force on 21 October 1986.

[52] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Maputo, adopted on 11 July 2003, entered into force on 25 November 2025.

[53] ASEAN Human Rights Declaration, Phnom Penh, adopted on 19 November 2012.

[54] Algeria, Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czechia, Democratic Republic of the Congo, Dominican Republic, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, Gabon, Georgia, Greece, Guinea, Guyana, Honduras, Hungary, Indonesia, Iran, Iraq, Jamaica, Kenya, Kyrgyzstan, Latvia, Malawi, Maldives, Mali, Mauritania, Mexico, Mongolia, Montenegro, Morocco, Mozambique, Nepal, Nicaragua, Niger, North Macedonia, Norway, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Somalia, South Africa, South Sudan, Spain, Sudan, Thailand, Timor-Leste, Togo, Tunisia, Türkiye, Turkmenistan, Uganda, Ukraine, Venezuela, Viet Nam, Zimbabwe.

[55] Bangladesh, Cyprus, El Salvador, Estonia, Ghana, Guatemala, India, Ireland, Italy, Liberia, Lithuania, Malaysia, Namibia, Nigeria, Pakistan, Panama, Sri Lanka, United Republic of Tanzania.

[56] Angola, Argentina, Armenia, Azerbaijan, Belarus, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czechia, Democratic Republic of Congo, Djibouti, Dominican Republic, Ecuador, El Salvador, Eritrea, Estonia, Finland, France, Gabon, Gambia, Georgia, Greece, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, India, Indonesia, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Lithuania, Madagascar, Malawi, Mauritania, Mexico, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Palau, Panama, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Tajikistan, Thailand, Timor-Leste, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

entitlements[57], impose binding obligations on public authorities[58] and establish mechanisms for enforcement, including access to remedies and judicial review[59]. In a substantial number of States, such legislation also incorporates procedural guarantees, most commonly the rights to public participation and access to environmental information[60]. The presence of such measures across all regional groups and legal systems, including civil law, common law, Islamic and mixed traditions, indicates that domestic regulation of environmental quality is neither sporadic, nor incidental. It appears both in States whose Constitutions affirm the right, and in those where it has been developed exclusively through legislative means.

40. Of these 104 States with national legislation providing the right to, and protection for, a clean, healthy and sustainable environment, 73 States also recognize the right explicitly in their Constitutions[61]. A further 10 States recognize the right implicitly in their constitutional texts[62]. Accordingly, 83 States have both constitutional (either explicit or implicit) and legislative recognition. The remaining 21 States have adopted legislative protection of the right in the absence of any constitutional recognition[63]. Furthermore, 86 of the States with national legislation also affirm the right by being parties to relevant international treaties[64]. This means that 70 States simultaneously provide for the right to a healthy environment across all three axes: Constitution, legislation and

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[57] See, for example, Angola, Benin, Burkina Faso, Cabo Verde, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Eritrea, Gabon, Gambia, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Mauritania, Morocco, Mozambique, Niger, Nigeria, Rwanda, Sao Tome and Príncipe, Senegal, South Africa, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia, Zimbabwe.

[58] See, for example, Brazil, Burkina Faso, Cameroon, Central African Republic, Chad, Colombia, Djibouti, France, Finland, Gabon, Guinea-Bissau, Kenya, Lesotho, Liberia, Mauritania, Mexico, Mozambique, Morocco, Nigeria, Portugal, Rwanda, Spain, Senegal, South Africa, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia, Zimbabwe.

[59] See, for example, Burkina Faso, Cameroon, Central African Republic, Chad, Colombia, Djibouti, France, Kenya, Lesotho, Liberia, Mozambique, Niger, Rwanda, Spain, South Africa, Uganda, Ukraine, United Republic of Tanzania, Zimbabwe.

[60] See, for example, Brazil, Burkina Faso, Cameroon, Colombia, Côte d'Ivoire, Djibouti, Estonia, France, Guatemala, Hungary, Kenya, Lesotho, Liberia, Madagascar, Mauritania, Mexico, Mozambique, Niger, Philippines, Portugal, Rwanda, Slovakia, Slovenia, South Africa, Spain, Uganda, Ukraine, United Republic of Tanzania, Uruguay, Zimbabwe.

[61] Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czechia, Democratic Republic of Congo, Dominican Republic, Ecuador, Finland, France, Gabon, Georgia, Greece, Honduras, Hungary, Indonesia, Kenya, Kyrgyzstan, Latvia, Malawi, Mauritania, Mexico, Mongolia, Montenegro, Morocco, Mozambique, Nicaragua, Niger, North Macedonia, Norway, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Thailand, Timor-Leste, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, Venezuela, Viet Nam, Zimbabwe.

[62] Cyprus, El Salvador, Estonia, Guatemala, India, Liberia, Lithuania, Nigeria, Panama, United Republic of Tanzania.

[63] Armenia, Bhutan, Bosnia and Herzegovina, Djibouti, Eritrea, Gambia, Guinea-Bissau, Haiti, Kazakhstan, Lebanon, Lesotho, Libya, Madagascar, Monaco, Palau, Saudi Arabia, Tajikistan, Uruguay, Uzbekistan, Yemen, Zambia.

[64] Angola, Argentina, Armenia, Azerbaijan, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Democratic Republic of the Congo, Djibouti, Ecuador, El Salvador, Eritrea, Estonia, Finland, France, Gabon, Gambia, Georgia, Greece, Guatemala, Guinea-Bissau, Honduras, Hungary, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Lithuania, Madagascar, Malawi, Mauritania, Mexico, Montenegro, Mozambique, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Panama, Paraguay, Peru, Portugal, Republic of Moldova, Romania, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Tajikistan, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Republic of Tanzania, Uruguay, Yemen, Zambia, Zimbabwe.

treaty[65]. The cumulative body of evidence, spanning 92 States with explicit constitutional recognition[66], 18 with implicit recognition[67], 104 with corresponding legislative protection[68] and 134 States with treaty-based recognition[69], with *a total of 164 States* from all world regions affording at least one form of legal protection[70], demonstrates a general and representative pattern of conduct directed towards the protection of a clean, healthy and sustainable environment. While differences exist in the legal form or institutional arrangements, such variation does not preclude the identification of a sufficiently consistent State practice.

41. Regarding the existence of *opinio juris*, the language employed in a wide range of national Constitutions and legislative instruments unequivocally demonstrates the existence of this element as well. Numerous constitutional provisions affirm the right in mandatory terms and are accompanied by duties imposed on the State to ensure, preserve or restore environmental conditions. In many cases, these duties are enforceable through administrative, civil or criminal proceedings, and are supplemented by procedural rights of access to information, participation and remedies. Such provisions do not simply reflect aspirational goals, but establish enforceable legal norms that are directly justiciable before domestic courts. Legislative acts further reinforce this conclusion, as they impose obligations on both public authorities and private actors. The recurrence of language expressing legally binding duties across jurisdictions supports the inference that States regard such obligations as normative in character.

42. The voting pattern of the resolution recognizing the right to a clean, healthy and sustainable environment as a human right further reinforces the normative character of this practice. As observed in the *Nuclear Weapons* Advisory Opinion, "General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence

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[65] Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Democratic Republic of the Congo, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Georgia, Greece, Guatemala, Honduras, Hungary, Kenya, Kyrgyzstan, Latvia, Liberia, Lithuania, Malawi, Mauritania, Mexico, Montenegro, Mozambique, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Panama, Paraguay, Peru, Portugal, Republic of Moldova, Romania, Rwanda, Sao Tome and Principe, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Republic of Tanzania, Zimbabwe.

[66] See fn. 54.

[67] See fn. 55.

[68] See fn. 56.

[69] Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Eswatini, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, Iraq, Ireland, Italy, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Montenegro, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, South Sudan, Spain, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Yemen, Zambia, Zimbabwe. See also Astrid Puentes Riaño, UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment, "Healthy Environment: A Human Right and Customary International Law", 29 January 2025, https://sdg.iisd.org/commentary/guest-articles/healthy-environment-a-human-right-and-customary-international-law/.

[70] Seventy States provide protection in all three forms — constitutional, legislative and treaty-based (see fn. 65), while the remaining ninety-four States are almost equally divided between States providing protection through two of the three forms and States providing protection through one of the three forms.

important for establishing the existence of a rule or the emergence of an *opinio juris*."[71] This approach was reaffirmed in the *Chagos* Advisory Opinion, where the Court found that Resolution 1514 (XV) had a declaratory character "in view of its content and the conditions of its adoption"[72]. In that case, the Court considered the resolution's wording, the overwhelming support it received, and the absence of any objection to the existence of the underlying legal principle (which in that instance was the right to self-determination), as indicative of its normative weight. The same analysis applies to Resolution 76/300, which was adopted with 161 votes in favour, none against, and only 8 abstentions, and uses the unequivocal term "recognizes" in relation to the right to a clean, healthy and sustainable environment. While the General Assembly resolutions are not binding in themselves, such language, coupled with the overwhelming support for the resolution and the domestic implementation (as shown above) contribute to the evidentiary basis for a belief on the part of States that such a right corresponds to a legal standard.

43. Additional support for the existence of *opinio juris* may be found in the preambular and operative provisions of international and regional treaties that recognize the right to a clean, healthy and sustainable environment in expressly normative terms. The preamble to the Aarhus Convention affirms that "adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself" and recognizes that "every person has the right to live in an environment adequate to his or her health and well-being", while its Article 1 also refers to this right[73]. The Escazú Agreement reiterates in its Article 4 that "[e]ach Party shall guarantee the right of every person to live in a healthy environment"[74]. Such treaty-based regulation, especially when followed by internal legal implementation, constitutes compelling evidence that the parties act out of a sense of legal obligation, and not merely policy preference.

44. The jurisprudence of international courts further confirms the legal character attributed to this right by States. For example, in its 2017 Advisory Opinion, the Inter-American Court of Human Rights held that "numerous human rights protection systems recognize the right to a healthy environment as a right in itself"[75]. In its 2025 Advisory Opinion, the same Court stated that

> "the right to a healthy environment as an autonomous right is distinct from the environmental content that arises from the protection of other rights, such as the right to life or the right to personal integrity . . . Therefore, the protection of the right to a healthy environment necessarily results in the protection of substantive human rights."[76]

It further developed that

> "the recognition of a human right to a healthy climate as an independent right — derived from the right to a healthy environment — . . . is also in line with the evolution of international human rights law and international environmental law, insofar as it

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[71] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 254-255, para. 70.

[72] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 132, para. 152.

[73] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, adopted on 25 June 1998, entered into force on 30 October 2001.

[74] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú, adopted on 4 March 2018, entered into force on 22 April 2021.

[75] Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 of November 15, 2017, Requested by the Republic of Colombia*, para. 55.

[76] Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 of May 29, 2025, Requested by the Republic of Chile and the Republic of Colombia*, para. 274.

> strengthens the protection of people in the face of one of the most serious threats to their rights that they face and will continue to face in the future. The Court understands a healthy climate to be one that derives from a climate system free from anthropogenic interference that is dangerous to humans and to Nature as a whole."[77]

45. Taken together, the statements, treaty participation, national constitutional and legislative provisions, judicial reasoning and official submissions form a beyond doubt converging and convincing body of evidence. They firmly confirm that a substantial number of States, across all regions and legal traditions, engage in the recognition and implementation of the right to a clean, healthy and sustainable environment not as a mere matter of policy discretion or discretional political preference, but out of a sense of legal duty. This belief demonstrates that the practice previously identified is accompanied by the requisite *opinio juris*. Consequently, both conditions for the existence of a customary norm are fulfilled[78]. The fact that a small number of States expressed, in various instances and manners[79], reservations as to the customary character of the right, does not invalidate this conclusion. As clarified by the ILC, it is not necessary to demonstrate that *all* States have recognized the alleged rule as customary international law; what is required is that a sufficiently broad and representative number of States accept the rule as law, together with no or only limited objection[80], a situation which corresponds to the one which characterizes the right to a clean, healthy and sustainable environment.

46. Overall, I am firmly convinced that the right to a clean, healthy and sustainable environment has already become a norm of customary international law, and I reiterate my regret that the Court did not recognize this reality, in an express manner, in the Opinion.

47. Last, but not least, it is regrettable that the sea-level rise-related issues and the recognition of the right to a clean, healthy and sustainable environment and its consequences were not included in the *dispositif*, which would have given proper emphasis to the findings of the Court comprised in the reasoning of this Advisory Opinion.

(Signed) Bogdan AURESCU.

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[77] *Ibid*., para. 300.

[78] See fns. 21-22.

[79] Such as abstentions when Resolution 76/300 was adopted, explanations of vote on the same occasion, positions expressed during these advisory proceedings.

[80] Identification of customary international law, *Yearbook of the International Law Commission*, 2018, Vol. II, Part Two, A/73/10, p. 139. Adding the States which abstained on the occasion of the adoption of Resolution 76/300 in 2022 with those States which on the same occasion expressed in their explanations of vote certain reservations as to the existence of the right in customary international law or regarding the content of the right, and with those States which expressed similar reservations during the present advisory proceedings, the total number of these States amount, on my counting, to 23, which is a limited number compared to that of the 164 States which support the existence of the right as customary. This does not describe a situation when "the members of the international community are profoundly divided" on the question of whether a certain practice is accompanied by *opinio juris* (see *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 254, para. 67).