

INTERNATIONAL COURT OF JUSTICE

**OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
REQUEST FOR ADVISORY OPINION**

**WRITTEN STATEMENT OF THE
REPUBLIC OF COLOMBIA**

11 March 2024

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GENERAL INTRODUCTION

The Republic of Colombia (**‘Colombia’**) submits this Written Statement in accordance with the Court’s Order of 20 April 2023, Order of 4 August 2023 and Order of 15 December 2023, to furnish information on the questions submitted to the Court in General Assembly resolution 77/276, and to assist the Court.

In resolution 77/276, the General Assembly requested the Court:

“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,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”

The Written Statement is divided into five chapters. Chapter 1 serves as an introduction, highlighting the issues raised in the Request for Advisory Opinion and advocating for the importance of an Advisory Opinion on this matter. Chapter 2 provides a factual background on the climate change crisis and its impact on Colombia, as well as the country’s efforts to combat its effects. Chapter 3 delves into the obligations of states to ensure the protection of the climate system and environment, discussing the fragmentation of international law and its impact on the climate crisis, the Paris Agreement, the principle of due diligence, common but

differentiated responsibilities, the duty to cooperate, and international law on climate change and human rights. Chapter 4 explores the legal consequences for States under their obligations to ensure the protection of the climate system and environment. Lastly, Chapter 5 offers concluding remarks.

WRITTEN STATEMENT OF THE GOVERNMENT OF THE REUBLIC OF COLOMBIA

Chapter 1

INTRODUCTION

1.1. International Environmental Law is currently considered to be one of the most extensively studied and analysed international regimes. However, it may not always provide clarity regarding the direct and indirect legal, political, social, and cultural ramifications of the climate emergency, as well as the strategies to address them. Scientific advancements continually reveal evidence confirming that the effects on the global climate system, both ongoing and anticipated, stem directly from human activity that damages natural resources. It is thus crucial that the Court studies in depth the content of the applicable law and its extent for general international law.

1.2. The present Request for Advisory Opinion (“Request”) rests on the concerns of a number of countries related to the adverse effects of climate change and the significant gap between the nationally determined contributions (“NDC”) made by States under the umbrella of the United Nations Framework Convention on Climate Change (“UNFCCC”) and the level of ambition necessary to remain and keep the Paris Agreement goal of limiting temperature rise to 1.5°C.¹

1.3. Colombia is well aware of this crisis, and of the inadequacy and highly insufficient NDCs pledged by States, in particular the developed States, to limit global warming. Indeed, as the President of Colombia, Gustavo Petro has advocated before the General Assembly, the

“(…) climate crisis has ‘shown its teeth’ as never before claiming thousands of lives and heating the lands and seas like never before (...) humanity has

¹ United Nations Environment Programme, *Emissions Gap Report 2022: The Closing Window — Climate crisis calls for rapid transformation of societies* (Nairobi, 2022). At: <https://www.unep.org/emissions-gap-report-2022> [N.B. For all links to websites throughout this Written Statement, date last visited was 5 March 2024]

been losing and has unfailingly hastened the era of extinction (...) the crisis of life.”²

1.4. This is not an isolated plea. The Request made by the General Assembly resembles those submitted before the Interamerican Court of Human Rights (“IACtHR”) and the International Tribunal on the Law of the Sea (“ITLOS”), both of which are currently under the consideration of those tribunals.

1.5. Although each of these requests has its context, legal framework, and scope, Colombia submits that if the Court should decide to answer the questions put before it, the resultant Advisory Opinion would be of importance and will guide the General Assembly in determining the better approaches to address this matter.

1.6. Moreover, the response from this Court holds profound significance for the international community and will mark a pivotal moment in addressing the pressing climate crisis. Colombia underscores the far-reaching implications of the Court’s opinion, which is poised to provide essential guidance to all States in the understanding of their international obligations, even beyond international environmental law. Such guidance is imperative for each nation to undertake the necessary domestic measures to effectively tackle the climate emergency.

A. The Issues Raised by the Request

1.7. Under the terms of Resolution 77/276, the General Assembly stresses the commitments reflected in international agreements such as the UNFCCC, the Kyoto Protocol, and the Paris Agreement to address the pressing threat of climate change. It emphasizes the general concerns about the substantial gap between current emission reduction efforts and the necessary targets to limit global temperature increases, in particular, aiming to keep the goal below 2°C and striving for 1.5°C. At the same time, the Resolution acknowledges the disparity between current adaptation levels and those required to effectively respond to the adverse effects of climate change in terms of adaptation, mitigation and financing for the losses and damages caused by it.

² United Nations General Assembly, *Statement by His Excellency Gustavo Petro Urrego, President of the Republic of Colombia* (New York, 2023). At: <https://gadebate.un.org/en/78/colombia>

1.8. The ongoing rise in greenhouse gas (“GHG”) emissions, as well as the severity of the adverse effects of climate change, in particular for developing countries, underscores the fact that an immediate and urgent response to these continuous threats should be prioritized. Especially, it draws attention to the challenges faced by the least developed countries and small island developing States, including persistent droughts, extreme weather events, land loss, degradation, sea level rise, coastal erosion, ocean acidification, and the retreat of mountain glaciers, leading to displacement and menacing food security, water availability, livelihoods, and poverty eradication efforts. In short, an existential threat to human life.

1.9. The questions now before the Court acknowledge the widespread adverse impacts and related losses and damages caused by human-induced climate change, disproportionately affecting vulnerable people and systems across various sectors and regions. Furthermore, these questions attest to the escalating risks from climate and weather extremes as temperatures rise, emphasizing the need for urgent action and support, including financial resources, capacity-building, and technology transfer.

1.10. Hence, there are serious legal, factual and policy matters underlying the request of the General Assembly. Colombia believes that considering the far-reaching impact of climate change on various aspects of human life, the Court has the responsibility to provide the General Assembly with well-informed guidance on the obligations and legal implications of the acts and omissions of the States in complying, not only the UNFCCC and related agreements but also with other relevant multilateral environmental agreements (“MEA”) and international agreements that may play a role in the plight against climate change. Given the reference to a number of international legal obligations in the Request, Colombia considers that the Court should adopt a more integrated approach to the international legal order on climate change highlighting the linkages to be established between different areas of international law. In the context of climate change policy issues, it becomes increasingly crucial to address problems that have a global impact and require cooperation across multiple sectors and industries.

1.11. Indeed, Colombia believes that an opinion from the International Court of Justice (“ICJ”) could: (i) clarify the rights and obligations of Member States of the United Nations concerning climate change, (ii) encourage nations to demonstrate the highest possible level of ambition, taking into account their common but differentiated responsibilities and respective capabilities, in light of different national circumstances and, (iii) determine the legal

consequences derived from breaches or violations of the obligations of States in relation to climate change, including the general rules of State responsibility applicable to environmental harms that enhance pecuniary compensation, credibility, accountability, and fairness of long-term net zero GHG emission goals.

B. The Court has Jurisdiction to Give the Advisory Opinion

1.12. The first task put before the Court in the present proceedings is to consider whether it has the jurisdiction to render a response to the questions requested by the General Assembly and whether, after ascertaining that it can answer the questions, there is any reason to decline to exercise its jurisdiction.

1.13. Article 65(1) of the Statute of the Court stipulates that two requirements must be met for the Court to have jurisdiction to give an advisory opinion: (i) it is necessary that the body requesting the opinion be “*authorized by*” or in accordance with the United Nations Charter (“UN Charter”) to make such a request and, (ii) the question put before the Court must be of a legal nature.

1.14. It is undisputed that, in accordance with Article 96, paragraph (1), of the UN Charter, the General Assembly may request an advisory opinion on any legal question to the Court. It is also clear that a request regarding the principles and rules of the environmental legal framework that affects all Member States of the United Nations, is under the scope of the General Assembly’s powers and functions, in particular, those provided in Article 10 of the UN Charter, relating to “any matters within the scope of the (...) Charter or relating to the powers and functions of any organs provided for in the (...) Charter.”

1.15. In the same vein, according to Article 13 of the UN Charter, the General Assembly “shall initiate studies and make recommendations for the purpose of (...) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification” as well as “promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms.”

1.16. Colombia holds the firm belief that few matters rival the paramount importance and merit the collective concern of the General Assembly as the climate crisis. The adverse effects of climate change impose existential threats to life on the planet. As acknowledged in

Resolution 77/276, “as temperatures rise, impacts from climate and weather extremes, as well as slow-onset events, will pose an ever-greater social, cultural, economic and environmental threat”.

1.17. The second requirement, *i.e.*, that the question put before the Court be a legal one, is also complied with in the present case. In the *Legality of the Threat or Use of Nuclear Weapons* advisory opinion, the Court clarified that a question is a legal one when “the Court is asked to rule on the compatibility of the [request] with the relevant principles and rules of international law”.³ In other words, questions “framed in terms of law and raising problems of international law”,⁴ whereby the Court is asked to identify and apply principles and rules of international law, are “by their very nature susceptible of a reply based on law”⁵ and therefore, qualify as questions of legal character.

1.18. Colombia considers that the questions put to the Court in Resolution 77/276 are of a legal nature since the Court is asked to decide which are the legal obligations imposed on States, and the legal consequences under those obligations to ensure the protection of the environment and the climate system. To answer, the Court should identify in the myriad of customary international law and multilateral treaties that conform to the legal framework of environmental law and general international law, the existing principles and rules that stipulate the legal obligations incumbent upon States in terms of duties to perform acts of protection or refraining from taking actions that may cause or worsen adverse effects to the climate system, and those that encompass the legal consequences for States when in breach – past, ongoing or future – of those obligations.

1.19. Like other legal questions put before the Court, it is undeniable that this question, and the request itself, have political aspects, some of them of a controversial character, in particular, for developed States and highly pollutant countries. Whatever the nature of the issues at stake, Colombia is of the view that these aspects should not discharge the Court of its task, strictly speaking, to assess the legal rules and obligations applicable in this important – and transcendental – field of international law. As the same Court put it in the

³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 234, para. 13.

⁴ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para 15.

⁵ *Ibid.*

Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt advisory opinion:

“Indeed, in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate.”⁶

1.20. Additionally, Colombia submits that the questions contained in Resolution 77/276 are clearly and concisely worded, and most importantly, are legal questions. In any event, in this regard, the Court observed in the *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*:

“It has also been contended that the Court should not deal with a question couched in abstract terms. That is a mere affirmation devoid of any justification. According to Article 96 of the Charter and Article 65 of the Statute, the Court may give an advisory opinion on any legal question, abstract or otherwise.”⁷

1.21. Colombia highlights the significance of Resolution 77/276 which was adopted by consensus. This reflects the collective agreement among States that climate change is one of the most pressing challenges that the international community confronts. The Court should exercise its advisory jurisdiction to the fullest extent to provide clarity on legal rights and obligations under international law regarding climate change.

1.22. Therefore, in the opinion of Colombia, the Court has jurisdiction and should not refrain from responding to the questions contained in Resolution 77/276.

⁶ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 87, para. 33.

⁷ *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion, I.C.J. Reports 1948*, p. 61.

Chapter 2

FACTUAL BACKGROUND: *THE CLIMATE CHANGE CRISIS*

2.1. Climate change poses an unprecedented challenge of civilizational proportions to humankind – an existential threat to life on Earth. The warming that is happening now is unlike anything seen in the “past 10,000 years”.⁸ The reports published by the Intergovernmental Panel on Climate Change (“IPCC”) in 2021 and 2022 underscore the severity and gravity of the global climate change crisis.⁹ In the words of the UN Secretary-General, the “alarm bells are deafening and the evidence is irrefutable”, climate change is a “code red for humanity” and “an atlas of human suffering”,¹⁰ and the world “must use all [its] resources to build a sense of urgency” to limit global temperature rise to 1.5°C above pre-industrial levels.¹¹ According to the Synthesis Report for the Sixth Assessment Report of the IPCC, there is no doubt that human activities, mainly the emission of GHG, have caused a generalized warming of the Earth’s surface that has reached 1.1°C since 1900.¹²

2.2. In Colombia, as will be explained below, an increase of over 1.5°C will lead to more frequent and intense climate-related crises such as extreme temperatures, storms, floods, landslides, heatwaves, forest fires and the loss of endemic ecosystems.¹³

2.3. As the former UN High Commissioner for Human Rights warned, “[t]he world has never seen a human rights threat of this scope. This is not a situation where any country, any institution, any policy-maker can stand on the sidelines”.¹⁴ Unprecedented worldwide

⁸ NASA Climate, *Evidence: How Do We Know Climate Change Is Real?* At: <https://climate.nasa.gov/evidence/>

⁹ See Intergovernmental Panel on Climate Change, Working Groups I, II and III, 2021-2022. At: <https://www.ipcc.ch/reports/>

¹⁰ UN Secretary-General, *Statement on the IPCC Working Group I Report on the Physical Science Basis of the Sixth Assessment* (9 Aug. 2021). At: <https://www.un.org/en/content/sg/statement/2021-08-09/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>

¹¹ UN News, “*Climate Change: An ‘Existential Threat’ to Humanity*”, UN Chief Warns Global Summit (15 May 2018). At: <https://news.un.org/en/story/2018/05/1009782>.

¹² “Summary for Policymakers”, in [Core Writing Team, H. Lee and J. Romero (eds.)] *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, (IPCCC, Geneva, Switzerland, 2023), p. 5.

¹³ Intergovernmental Panel on Climate Change, “Chapter 12 - Central and South America”, in *Impact Adaptation, and Vulnerability, Working Group II contribution to the Sixth Assessment Report of the IPCC* (Feb. 2022), p. 1701.

¹⁴ UN News, “*We are ‘burning up our future’*”, UN’s Bachelet tells Human Rights Council (9 Sept. 2019). At: <https://news.un.org/en/story/2019/09/1045862>

environmental degradation undermines the full realization of human rights,¹⁵ evident in the surge of environmental and climate change cases presented in national, regional, and global human rights tribunals and other mechanisms. In light of this context, this Chapter will first address the urgent need to take significant actions (A). Subsequently, it will then address the impact of climate change on Colombia and its ecosystem (B), Colombian Peace and Security (C) and the Colombian population (D). Lastly, it will highlight the efforts undertaken by Colombia in combating and mitigating the effects of Climate Change (E).

A. Urgent need to take significant action

2.4. With the weight of scientific evidence at our disposal, it is imperative that States act now to dramatically reduce our GHG emissions. Urgent and significant action is needed if we are to preserve a habitable planet for future generations. The IPCC recommended in 2018 that quick and significant reductions in emissions, amounting to a decrease of 45% from 2010 levels, be made by 2030 to avoid exceeding the crucial 1.5°C limit. According to the IPCC in 2022, meeting the goals of the 2015 Paris Agreement will require immediate and substantial reductions in GHG emissions from all sources.¹⁶

2.5. In 2021, the United Nations Environmental Programme (“UNEP”) released a report stating that even if current commitments are met, global emissions will only decrease by 7.5% by 2030. However, in order to achieve the Paris Agreement’s goal of limiting global warming to 1.5°C, a reduction of 55% by 2030 is necessary.¹⁷ According to the 2023 Emissions Gap Report, “[i]f all new and updated unconditional NDCs are fully implemented, they are estimated to reduce global GHG emissions by about 5.0 GtCO₂e annually by 2030, compared with the initial NDCs.”¹⁸ Moreover, “[u]nconditional and conditional NDCs for 2030 are estimated to reduce global emissions by 2 % and 9 % respectively, compared with current policy projections and assuming they are fully implemented. To get to levels consistent with least-cost pathways limiting global warming to below 2°C and 1.5°C, global GHG emissions

¹⁵ See UN General Assembly, Human Rights Council, *The human right to a clean, healthy and sustainable environment* (8 Oct. 2021), UN Doc. A/HRC/RES/48/13, p.2.

¹⁶ Intergovernmental Panel on Climate Change, “Summary for Policymakers”, in *Special Report: Global Warming of 1.5°C* (2018), p.12. At: https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf.

¹⁷ United Nations Environment Programme, *Emissions Gap Report 2021: The Heat Is On*, Executive Summary (Nairobi, 2021) p. xi.

¹⁸ *Ibid.*

must be reduced by 28 % and 42 % respectively. This is 2 percentage points lower than last year's assessment, illustrating the progress in narrowing the implementation gap between current policies and NDCs.”¹⁹

2.6. The International Energy Agency (“IEA”) estimated in 2012 that limiting the warming to 2°C requires the international community to refrain from burning two-thirds of proven fossil fuel reserves.²⁰ According to the IEA’s 2020 report, if humankind continues to burn all of the existing fossil fuel reserves without any reduction in emissions, it will emit three times more CO₂ than what is allowed in order to meet the 2°C target set by the Paris Agreement.²¹ In 2021, the IEA further warned that no new oil and gas fields are to be approved for development and that no investments are to be made in new fossil fuel infrastructure.²² In the 2023 Update Report, the IEA observed that “by 2035, emissions need to decline by 80% in advanced economies and 60% in emerging market and developing economies compared to the 2022 level. Current [NDCs] are not in line with countries’ own net zero emissions pledges, and those pledges are not sufficient to put the world on a pathway to net zero emissions by 2050.”²³

2.7. The detrimental effects caused by global warming are evident all over the world. The consequences of the climate emergency are not evenly distributed, and some communities and countries are hit harder than others. The impact is particularly devastating in certain regions and on vulnerable groups like children and youth, women, indigenous peoples, afro-descendants, and local communities. If emissions are not significantly reduced and urgent measures of adaptation are not taken, this could worsen the situation and cause more acute impacts on these groups and regions.²⁴

2.8. The IPCC’s Fifth Assessment Report suggests that the population of South America could be significantly impacted by decreased water resources due to the Andean

¹⁹ United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record*, Executive Summary (Nairobi, 2023) p. ix.

²⁰ International Energy Agency, *World Energy Outlook 2012*, Executive Summary (Paris, 2012) p. 25.

²¹ International Energy Agency, *The Oil and Gas Industry in Energy Transitions* (Paris, 2012) p. 97.

²² International Energy Agency, *Net Zero by 2050: A Road Map for the Global Energy Sector* (Paris, 2021).

²³ International Energy Agency, *Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update* (Paris, 2023) p.17.

²⁴ UN News, “*The Caribbean is ‘ground zero’ for the global climate emergency: Guterres*” (3 July 2022). At: <https://news.un.org/en/story/2022/07/1121902>

glacier retreat and changes in regional rainfall cycles.²⁵ Moreover, the rise in sea levels and the temperature of sea surfaces will affect the coastal communities, water resources, and economies across the entire region.²⁶ This will potentially have a disproportionate impact on the coastal and island nations of the Caribbean basin.²⁷ The recent IPCC's Sixth Assessment Report also suggests that "climate and weather extremes are increasingly driving displacement in Africa, Asia, North America, and Central and South America, with small island States in the Caribbean and South Pacific being disproportionately affected relative to their small population size. Through displacement and involuntary migration from extreme weather and climate events, climate change has generated and perpetuated vulnerability"²⁸.

2.9. The Caribbean ecosystem is under serious threat from the impacts of climate change. The region is facing severe marine-based pollution and damage due to various pressures from shipping and boating activities, such as the dumping of garbage, oil spills, discharge of ballast, and physical damage caused by groundings and anchors.²⁹ Additionally, overfishing and other predatory practices, the introduction of alien fish species, beach erosion, and rising sea temperatures due to climate change, are posing significant threats to the region's marine life and coastal communities.³⁰

²⁵ G.O. Magrin, J.A. Marengo, J-P. Boulanger, M.S. Buckeridge, E. Castellanos, G. Poveda, F.R. Scarano, and S. Vicuña, "2014: Central and South America" in *Climate Change 2014: Impacts, Adaptation, and Vulnerability*, Part B: Regional Aspects. *Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [V.R. Barros, C.B. Field, D.J. Dokken, M.D. Mastrandrea, K.J. Mach, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)] (Cambridge, United Kingdom and New York, USA, 2014) pp. 1520 – 1521.

²⁶ *Ibid*, at pp. 1524 – 1525.

²⁷ *Ibid*.

²⁸ "Summary for Policymakers", in [Core Writing Team, H. Lee and J. Romero (eds.)] *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, (IPCCC, Geneva, Switzerland, 2003), p. 6.

²⁹ See S.M. Diez, P.G. Patil, J. Morton, D.J. Rodriguez, A. Vanzella, D.V. Robin, T. Maes, C. Corbin, *Marine Pollution in the Caribbean: Not a Minute to Waste* (World Bank Group, Washington, D.C., 2019). At: <https://documents1.worldbank.org/curated/en/482391554225185720/pdf/Marine-Pollution-in-the-Caribbean-Not-a-Minute-to-Waste.pdf>

³⁰ *Ibid*.

2.10. The Andes region is highly vulnerable to migration and displacement due to climate-related factors.³¹ Similarly, the Amazon Forest, one of the world's largest biodiversity repositories and carbon sink is highly vulnerable.³² Importantly, the Amazon region is home to 40% of the remaining tropical forests in the world and 25% of terrestrial biodiversity.³³ In the Amazon, climate change has consequences such as deforestation and forest fragmentation and, therefore, an increase in carbon released into the atmosphere, which aggravates some changes and causes others. Droughts in 2005 caused fires in the eastern Amazon region. This phenomenon is likely to occur again as the rainforest is transformed into a savannah, with enormous consequences for the livelihoods of the region's indigenous peoples.

2.11. It is estimated that the Andean region will experience several negative impacts such as an increase of 100-200% in the population affected by floods. Additionally, there will be an increase in the incidence of diseases such as malaria, dengue, and chikungunya. Up to 85% of the region's flora and fauna will be negatively impacted. Agricultural production will decrease due to more frequent droughts and a temperature increase. Finally, ocean acidification will lead to a reduction in fish stocks.³⁴ The IPCC has warned that climate change will inevitably lead to an increase in human mobility and there is already evidence that this is happening.³⁵ As the planet warms up and natural disasters become more frequent and severe, people will be forced to migrate to safer areas. This will have significant social, economic, and political implications for countries and communities around the world. This displacement will have varying impacts on vulnerable populations, including those living in coastal areas, on islands, indigenous peoples, afro-descendant communities, and other people working in rural areas.³⁶ Such vulnerable populations are increasingly perceiving and experiencing changes and

³¹ Intergovernmental Panel on Climate Change, "Chapter 12 - Central and South America", in *Impact Adaptation, and Vulnerability, Working Group II contribution to the Sixth Assessment Report of the IPCC* (February 2022), p. 1691.

³² *Ibid.*

³³ ECLAC (CEPAL for its Spanish acronym), *Cepal y Patrimonio Natural, Amazonia posible y sostenible* (Bogotá, 2013). At: <https://hdl.handle.net/11362/1506>.

³⁴ Intergovernmental Panel on Climate Change, "Chapter 12 - Central and South America", in *Impact Adaptation, and Vulnerability, Working Group II contribution to the Sixth Assessment Report of the IPCC* (Feb. 2022), pp. 1693-1703.

³⁵ *Ibid.*

³⁶ Inter-American Commission on Human Rights, *Climate Emergency: Scope of Inter-American Human Rights Obligations*, Resolution 3/2021 (31 Dec. 2021).

impacts of climate crisis such as ocean acidification and loss of permafrost and its associated methane release impacts.

2.12. Climate change indeed poses a threat and danger to the survival of indigenous communities around the world, even though local and indigenous peoples contribute very little to GHG emissions. Chapter 3 below explores in detail the international human rights obligations of States in the context of climate change and vulnerable populations but it is worth noting that the UNFCCC describes climate change as a “common concern of humankind”,³⁷ apart from specifically envisaging the benefit of present and future generations as one of its principles,³⁸ and links the definition of “adverse effects of climate change” to the harmful consequences on “human health and welfare”.³⁹ Similarly, the Paris Agreement recognises in its preamble that “climate change is a common concern of humankind, Parties should when taking action to address climate change, respect, promote and consider their respective obligations on human rights, 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 as gender equality, empowerment of women and intergenerational equity.”⁴⁰

2.13. In light of the adverse effects of climate change that are felt more acutely by those segments of the population that are in vulnerable situations, Colombia submits that this confirms the need to adopt an intersectional approach in this matter.

B. Impact of Climate Change on Colombia and its Ecosystem

2.14. According to the Third Biennial Climate Change Update Report,⁴¹ Colombia is not a major contributor to GHG emissions, contributing only 0.6% of global emissions.

³⁷ UNFCCC, Preamble.

³⁸ UNFCCC, Art. 3.1

³⁹ UNFCCC, Art. 1.1. See Legal Note: *One Ocean Hub, The request for an Advisory Opinion from the International Court of Justice on the Obligations of States in respect of climate change* (13 Dec. 2023), para. 40.

⁴⁰ Paris Agreement, Preamble.

⁴¹ A.M. Mahecha, C. Quintero, C. Sofrony, D. Olarte, J. Bárcenas, J. Puyana, Z. Fajardo, *Documento de trabajo, Avances y Retos de Colombia Frente a los Acuerdos Ambientales Multilaterales*, 003/2023 (UNDP, Colombia, 2023) p.8. At: https://www.undp.org/sites/g/files/zskgke326/files/2023-08/undp_co_pub_avances_compromisos_colombia_acuerdos_ambientales_multilaterales_0.pdf

2.15. Nevertheless, climate change in Colombia is expected to bring about higher temperatures and more frequent extreme weather events, with increasing flood risks and societal and economic damage. Historical records show that the frequency of climate-related disasters has been increasing in the last decades.⁴² By 2050 the sea level of coastal Colombia could rise by between 26 (RCP 2.6) and 29 cm (RCP 8.5),⁴³ affecting more than a million people.

2.16. Additionally, the mean temperature is predicted to rise from 24.97 °C in 2014 to a range of 26.02 °C and 26.21 °C by 2050. Furthermore, the frequency of very hot days (>35 °C) is expected to increase significantly from 13 days per year in 2014 to between 66 and 77 per year by 2050.⁴⁴

2.17. The increase in mean temperatures by 1.5°C in Colombia would double or triple the population affected by floods.⁴⁵ It is expected that the number of days with precipitation exceeding 20 mm will increase slightly from 21.21 to a range between 21.44 and 21.67 during the same period. The climate in Colombia is rapidly changing, leading to significant regional variations. Specifically, there is an increase in rainfall in the Amazon basin and coastal regions, accompanied by a decrease in the highlands.⁴⁶ Failure to combat climate change will result in severe irreversible consequences.

2.18. Colombia is among the most vulnerable countries in the world to the impacts of climate variability and change, due to its biophysical conditions and high social and economic inequality. The Colombian Andean and Caribbean regions are classified under the very high threat category, placing the country at significant risk given that the impact of climate change is pervasive across the nation.

⁴² World Bank, *Country Climate and Development Report, Colombia* (World Bank Group, Washington D.C., July 2023), p. 5, Figure 1.4.

⁴³ World Bank, Climate Change Knowledge Portal. At: <https://climateknowledgeportal.worldbank.org/>

⁴⁴ *Ibid.*

⁴⁵ Intergovernmental Panel on Climate Change, “Chapter 12 - Central and South America”, in *Impact Adaptation, and Vulnerability, Working Group II contribution to the Sixth Assessment Report of the IPCC* (February 2022), pp. 1701.

⁴⁶ World Bank, *Climate Risk Country Profile Colombia* (World Bank Group, Washington D.C., 2023), pp. 25-29. https://climateknowledgeportal.worldbank.org/sites/default/files/country-profiles/16698-WB_Colombia%20Country%20Profile-WEB.pdf

2.19. Colombia is also highly exposed to natural hazards. It has one of the highest rates of disasters caused by natural and climate-induced events in Latin America,⁴⁷ with floods and landslides being the most prevalent and increasingly frequent hazards.⁴⁸ Exposure to climate risks is widespread: 47 % of the territory faces “high” or “very high” climate risks, and 84 % of Colombia’s population and 86 % of its assets are exposed to two or more natural hazards.⁴⁹ According to the Ministry of Finance (2021), disaster and climate risks represent by far Colombia’s largest contingent liability, with a potential impact on the economic activity of up to 4.4 % of its GDP.

2.20. Colombia boasts a remarkable and abundant biological diversity. As per the World Conservation Monitoring Centre (“WCMC-UNEP”), the country is listed among the 17 most biodiverse nations across the globe. It is home to 10% of the planet’s biodiversity and globally ranks first in bird and orchid species diversity and second in plants, butterflies, freshwater fishes and amphibians.⁵⁰ At a broader ecosystem level, it has been recorded that there are more than 314 types of coastal and continental ecosystems. Among these, strategic ecosystems such as the Tropical Dry Forest, the Tropical Rain Forest, wetlands and *páramos* are included.”⁵¹

2.21. Colombia is the country with the most *páramo* territory in the world, with more than 60% of the Colombian Andean ecosystem classified as *páramo*. Colombia is also home to two biodiversity hotspots – the Tropical Andes (the most biologically diverse of all the world’s hotspots that contains about one-sixth of all plant life on the planet, and the largest

⁴⁷ Colombia ranks 2nd in the Latin America region in the hazard and exposure category of the INFORM Risk Index (European Commission 2022)

⁴⁸ World Bank, *Climate Risk Country Profile Colombia* (World Bank Group, Washington D.C., 2023), pp. 32-33.

⁴⁹ J.N. Agwe, M. Arnold, P. Buys, R. S. Chen, U. Klaus Deichman, M. Dilley, O. Kjevstad, A. L. Lerner-Lam, B. Lyon, and G. Yetman, *Natural Disaster Hotspots: A Global Risk Analysis* (World Bank Group, Washington, D.C., 2005). At: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/621711468175150317/Natural-disaster-hotspots-A-global-risk-analysis>; World Bank, *Climate Risk Country Profile Colombia* (World Bank Group, Washington D.C., 2021). https://climateknowledgeportal.worldbank.org/sites/default/files/2021-07/15520-WB_Colombia%20Country%20Profile-WEB%20%283%29.pdf

⁵⁰ See Convention on Biological Diversity Secretariat, *Colombia-Country Profile*, Biodiversity Facts. At: <https://www.cbd.int/countries/profile?country=co>

⁵¹ A.M. Mahecha, C. Quintero, C. Sofrony, D. Olarte, J. Bárcenas, J. Puyana, Z. Fajardo, *Documento de trabajo, Avances y Retos de Colombia Frente a los Acuerdos Ambientales Multilaterales*, 003/2023 (UNDP, Colombia, 2023).

variety of amphibian, bird and mammal species⁵²) and Tumbes-Chocó-Magdalena (that includes some of the world's wettest rainforests in Chocó).⁵³ Moreover, the Amazon rainforest, spanning across Colombia's southern regions, significantly contributes to the nation's rich ecological tapestry, adding to its status as one of the most biodiverse countries on Earth.

2.22. Unfortunately, the biological and ecosystem diversity of Colombia is highly threatened due to the adverse impacts of climate change.⁵⁴ Given the provision of important ecosystem services such as carbon storage, water regulation, food and support to a large number of cultures that are intrinsically related to the territory they inhabit, the conservation of ecosystems is a priority for Colombia.

2.23. In light of the challenges posed by the climate change crisis, Colombia has begun to work on the study of the impacts of climate change and adaptation measures in relation to oceans. The seriousness faced in terms of climate change consequences on the marine environment includes sea level rise and its effects, ocean acidification, ocean warming, and the vulnerability of Colombia's coastal zones.

2.24. Those effects are particularly pronounced in the archipelago of San Andrés, Providencia and Santa Catalina in Colombia, due to its vulnerability to rising sea levels, coastal erosion, and extreme weather events. This archipelago, located in the Caribbean Sea, is highly susceptible to the impacts of climate change, which threaten its unique ecosystems, infrastructure, and socio-economic well-being. Coastal erosion, exacerbated by sea-level rise, poses a significant threat to the islands' coastline, leading to land loss, property damage, and displacement of communities.

2.25. Colombia is aware that oceans not only play a crucial role mitigation of climate change but also offer immense possibilities in terms of benefitting and providing real options for social development to coastal populations in ways compatible with the principles of conservation and environmental sustainability with high standards.

⁵² Critical Ecosystem Partnership Fund, Biodiversity Hotspots – Tropical Andes. At: <https://www.cepf.net/our-work/biodiversity-hotspots/tropical-andes>

⁵³ A.M. Mahecha, C. Quintero, C. Sofrony, D. Olarte, J. Bárcenas, J. Puyana, Z. Fajardo, *Documento de trabajo, Avances y Retos de Colombia Frente a los Acuerdos Ambientales Multilaterales*, 003/2023 (UNDP, Colombia, 2023). See also, Critical Ecosystem Partnership Fund, Biodiversity Hotspots – Tumbes-Choco-Magdalena. At: <https://www.cepf.net/our-work/biodiversity-hotspots/tumbes-choco-magdalena>

⁵⁴ *Ibid.*

C. Impact of Climate Change on Colombian Peace and Security

2.26. Colombia recognises that climate change is transforming and redefining the global security and development landscape. As the 2016 Nobel Peace Prize recipient and Former President of Colombia, Mr. Juan Manuel Santos, noted, “[t]here cannot be peace without sustainable development, and there cannot be sustainable development without peace. It is as simple as that. Peace can be maintained only if the very forests, soils and rivers that communities depend on are protected and managed sustainably.”⁵⁵

2.27. The increasing body of evidence regarding the detrimental effects of climate change on societies and ecosystems is becoming more pronounced and worrying. Moreover, there is growing evidence that these impacts are affecting peace and security worldwide.

2.28. In contexts lacking resilient livelihood options and characterized by fragile social systems and governance mechanisms, the consequences of climate change can magnify vulnerabilities such as poverty and inequality and contribute to grievances. Consequently, the indirect effects of climate change can elevate the risk of insecurity, encompassing protests, riots, and local and national-level violent conflicts.⁵⁶ This insecurity, in turn, amplifies individuals’ susceptibility to climate change effects and diminishes their capacity for adaptation. In light of the foregoing, it is evident that climate change may constrain efforts to maintain, establish, and foster international peace and security.

2.29. Moreover, climate-related security risks are context-dependent and influenced by social, economic, and political factors. This underscores that risks are not predetermined but are substantially influenced by human activities, implying that institutions can address and manage climate-related security risks.⁵⁷

2.30. UNEP has underscored that “[f]or over six decades, armed conflicts have occurred in more than two-thirds of the world’s biodiversity hotspots thus posing critical threats

⁵⁵ See UN Security Council, *Threat to International Peace and Security* (13 June 2023) UN Doc. S/PV.9345, p. 6/31.

⁵⁶ M. Mobjörk, F. Krampe, and K. Tarif, “Pathways of climate insecurity: Guidance for policymakers” (SIPRI: Stockholm, Policy Brief, November 2020)

⁵⁷ M. Mobjörk, et al., “Climate-related Security Risks: Towards an Integrated Approach” (SIPRI: Stockholm, October 2016)

to conservation efforts”⁵⁸ – Colombia’s sections thereof being no exception, unfortunately. This has resulted in various effects, mainly on wildlife populations, water resources, and ecosystem modifications. All of these negative effects are directly linked to the phenomenon of climate change.

2.31. Furthermore, countries in conflict are disproportionately affected by climate variability and extreme weather events due to the limited capacity of individuals, systems, and institutions to adapt, exacerbating the existing consequences of conflict.⁵⁹ The International Committee of the Red Cross (“ICRC”) has established that out of the 20 countries deemed most vulnerable to climate change, 12 are currently experiencing conflict situations.⁶⁰

2.32. A two-way relationship between climate change and conflicts can be identified worldwide. In some cases, armed conflict arises due to environmental degradation, which in turn triggers conflicts. In such situations, climate change can act as a risk multiplier, exacerbating underlying vulnerabilities.⁶¹ On the other hand, in other scenarios, the conflict itself directly affects the environment.⁶² Hence, there exists either a causal relationship between environmental damage leading to conflict initiation, or the presence of conflict subsequently resulting in environmental degradation.

2.33. In this first scenario, it has been established that risks are higher where past or present conflicts have undermined the capacity of institutions and communities to absorb additional tension caused by climate change or to adapt to changes in the environment. Undoubtedly, the nexus between climate change and conflicts is intricate and exhibits diverse manifestations globally. One notable aspect pertains to the causal relationship between

⁵⁸ UNEP, “*Why we need to protect biodiversity from harmful effects of war and armed conflict*” (6 Nov. 2018). At: <https://www.unep.org/news-and-stories/story/why-we-need-protect-biodiversity-harmful-effects-war-and-armed-conflict>

⁵⁹ International Red Cross Committee (ICRC), “*Seven things You Need to Know about Climate Change and Conflict*” (9 July 2020). At: <https://www.icrc.org/en/document/climate-change-and-conflict>

⁶⁰ Department of Political and Peacebuilding Affairs of the United Nations (DPPA), “*Strategic Plan 2020-2022*”.

⁶¹ Intergovernmental Panel on Climate Change (IPCC) of the United Nations, “*Sixth Assessment Report, Climate Change 2021: The Physical Science Basis*” (9 Aug. 2021).

⁶² ICRC, “*Natural Environment: Neglected Victim of Armed Conflicts*” (2019). At: <https://www.icrc.org/en/document/natural-environment-neglected-victim-armed-conflict>

environmental degradation and the onset of armed conflicts.⁶³ Degradation stemming from climate change-induced impacts can precipitate conditions of resource scarcity, competition, and eventual conflict escalation. This illustrates how climate change can function as a catalyst for conflicts by amplifying existing tensions and disparities.

2.34. In the second situation, the deterioration, exploitation, and damage of natural resources and the environment in general occur within the dynamics of the conflict.⁶⁴ Conversely, conflicts themselves can directly result in significant harm to the environment. Actions such as warfare, resource extraction, and population displacement frequently result in environmental degradation, encompassing phenomena like deforestation, pollution, and habitat destruction. This underscores the deleterious cycle of mutual reinforcement between conflict and environmental harm, wherein conflict exacerbates environmental degradation, subsequently fostering conditions for further conflicts. Comprehension and mitigation of these intricate interplays are imperative for effective conflict prevention, resolution, and sustainable environmental governance.

2.35. For instance, the ICRC established that the presence of conflicts is one of the main factors in predicting the decline of wildlife species worldwide.⁶⁵ This highlights the interconnectedness between armed conflicts and environmental degradation, emphasizing the need for effective measures to mitigate the detrimental effects of conflicts on biodiversity conservation efforts. Also, the ICRC has recognized that, of the 20 countries considered most vulnerable to climate change, 12 are in conflict situations.⁶⁶

2.36. In Colombia, the control exerted by armed groups over territories and activities therein resulted in severe environmental consequences, particularly concerning natural

⁶³ L. Van Praag, “A qualitative study of the migration-adaptation nexus to deal with environmental change in Tinghir and Tangier (Morocco)” (*Journal of Integrative Environmental Sciences*, 18(1), 2021), pp. 1–17. <https://doi.org/10.1080/1943815X.2020.1869784>

⁶⁴ C. E. Werrell and F. Femia, “*With Climate Change, the Risk of New Conflicts*” (UNESCO Courier, 30 Mar. 2018) At: <https://courier.unesco.org/es/articles/con-el-cambio-climatico-el-riesgo-de-nuevos-conflictos>; United Nations Environment Programme (UNEP) “*From Conflict to Peacebuilding: The Role of Natural Resources and the Environment*” (Nairobi, 2009) At https://wedocs.unep.org/bitstream/handle/20.500.11822/7867/pcdmb_policy_01.pdf; ICRC, “*Natural Environment: Neglected Victim of Armed Conflicts*” (2019). At: <https://www.icrc.org/en/document/natural-environment-neglected-victim-armed-conflict>

⁶⁵ ICRC, “*Natural Environment: Neglected Victim of Armed Conflicts*” (2019). At: <https://www.icrc.org/en/document/natural-environment-neglected-victim-armed-conflict>

⁶⁶ Department of Political and Peacebuilding Affairs of the United Nations (DPPA), “*Strategic Plan 2020-2022*”.

resources.⁶⁷ Undoubtedly, armed conflict has historically been a significant driver of environmental damage. Clear examples of this have included frequent attacks on oil pipelines, riverine contamination resulting from illegal mining practices, the placement of landmines in protected areas, and the expansion of agricultural frontiers due to forced displacement.

2.37. For instance, figures show that over the past 35 years attacks on pipelines have led to the spillage of 4.1 million barrels, equivalent to 16 disasters like the Exxon Valdez spill. Moreover, between 1990 and 2013, 58% of deforestation in Colombia occurred in conflict-affected areas, resulting in the loss of 3 million hectares.⁶⁸ Additionally, between 2018 and 2020, the number of environmental defenders killed in Colombia increased by over 150%. These are but a few examples that underscore the close relationship between environmental issues and armed conflict.

2.38. Additionally, in Colombia, as in other developing countries, the historical dependence on natural resources and water-intensive agricultural products has increased society's susceptibility to the effects of climate change.⁶⁹ These countries exhibit a heavy dependence on imported goods, rendering them susceptible to fluctuations in global prices, thereby elevating the likelihood of economic adversity and food insecurity. The transition away from dependence on fossil fuels towards climate-resilient national and local economies is crucial for global sustainability efforts. However, in many countries, the realization of these objectives is impeded by challenges such as weak State institutions, political instability, and conflict.

2.39. Despite the numerous environmental impacts caused by the conflict, post-conflict scenarios, such as the one Colombia has experienced since the signing of the Final Peace Agreement between the Colombian Government and the then-armed group

⁶⁷ *Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, signed on 24 November 2016, between the Government of Colombia and the Revolutionary Armed Forces of Colombia -People's Army (FARC-EP)*, UN Security Council UN Doc. S /2017/272 - annex II; K. Lyons, "'Nature' and territories as victims: Decolonizing Colombia's transitional justice process" (*American Anthropologist* 125(1), 2022), pp. 63–76.; J.S. Villamil Rodríguez, "Legal Pluralism and Transitional Justice in Colombia—Is the Special Jurisdiction for Peace a Hybrid Tribunal?" (*International Journal of Constitutional Law* 26(1), 2020), pp. 229-275.

⁶⁸ National Planning Department of Colombia, "*Environmental Peace Dividends: Challenges and Opportunities for Building a Lasting Peace*" [*Dividendos Ambientales de la Paz: Retos y Oportunidades para Construir una Paz Sostenible*], Documento 451 (DNP, Dirección de Estudios Económicos, Archivos de Economía, 6 Oct. 2016), p. 3. At: <https://colaboracion.dnp.gov.co/CDT/Estudios%20Econmicos/451.pdf>

⁶⁹ G. D. Dabelko, et al., "Navigating a Just and Peaceful Transition: Environment of Peace (Part 3)" (SIPRI: Stockholm, 2022)

“Revolutionary Armed Forces of Colombia”, demonstrate how the cessation of conflict can directly contribute to mitigating environmental damage.

2.40. As reflected in the 2016 Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, Colombia is committed to “[achieving] a sustainable society [that is] united in diversity, founded not only on the cult of human rights but on mutual tolerance, on the protection of the environment, on respect for nature, its renewable and non-renewable resources and its biodiversity.”⁷⁰ Among the most important aspects of the 2016 Final Agreement is the environmental, ethnic, cultural and territorial focus embedded throughout the different chapters.

2.41. In Colombia, while huge challenges undoubtedly remain, significant efforts have been made towards resettlement and community recovery programs for territories and the environment. As an example, one of the main actions undertaken has been the protection of forests and the restoration of heavily deforested territories during the conflict.⁷¹

2.42. Also worth noting is the understanding that, in Colombia, the natural environment stands as the silent victim of the ongoing armed conflict. A significant milestone in this regard was when the Constitutional Court issued its judgment T-622 of 2016, in which, for the first time, it declared an ecosystem as a subject of rights. This ruling recognized “the Atrato River, its basin, and tributaries as a subject of rights to protection, conservation, maintenance, and restoration by the State and ethnic communities.”⁷² Notably, the Atrato River is located in the biogeographic Chocó discussed below (Tumbes-Chocó-Magdalena biodiversity hotspot, mentioned above). The constitutional court ruling established a point of departure for a new legal doctrine wherein the environment is recognized as possessing legal rights, i.e., endowed with legal personhood. This seminal ruling paved the way for subsequent

⁷⁰ *Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, signed on 24 November 2016, between the Government of Colombia and the Revolutionary Armed Forces of Colombia -People’s Army (FARC-EP)*, UN Security Council UN Doc. S /2017/272 - annex II, Preamble.

⁷¹ Ministry of Environment and Sustainable Development of Colombia, “*Environmental Actions for Peace: A National Government Priority*” [“*Acciones ambientales para la paz: una prioridad del Gobierno Nacional*”] (2021). At: <https://www.minambiente.gov.co/acciones-ambientales-para-la-paz-una-prioridad-del-gobierno-nacional/>

⁷² Constitutional Court of the Republic of Colombia, Judgment T-622 of 2016 (“*al río Atrato, su cuenca y afluentes como un sujeto de derechos a la protección, conservación, mantenimiento y restauración a cargo del Estado y las comunidades étnicas. Dicha decisión judicial le abrió paso a una nueva línea jurisprudencial donde se declara al medio ambiente como titular de derechos*”). At: <https://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm>.

similar rulings on other Colombian rivers and even other ecosystems including the Pisba páramo and the entire Colombian Amazon.⁷³ Significantly, the Investigation and Prosecution Unit (“UIA”) of the Special Jurisdiction for Peace (“JEP”) recognized the territory (in its ecological, cultural, and spiritual dimensions) as a victim of the armed conflict, accrediting the environment as the holder of rights in this transitional justice system created in the 2016 Peace Agreement.⁷⁴ This jurisdiction has documented at least 283 environmental impacts since 2022. Given these findings, today, the occurrence of severe and extensive damage to ecosystems constitutes violations of guarantees of non-repetition under the Agreement.

2.43. Colombia considers of particular importance assessing environmental impacts resulting from climate change with a comprehensive perspective that considers both human rights considerations and conflict dynamics. The Colombian case illustrates the direct relationship between armed conflicts and environmental impacts while, at the same time, exemplifying how peace scenarios, of necessity, lead to positive consequences in mitigating these damages. Environmental responsibilities must not be construed independently, as the repercussions of environmental damage reach into various realms of international law. Thus, similar to the Colombian case, it is crucial for all States facing or having faced conflict situations to act in environmental advocacy. This is with a view to ensuring widespread compliance with the obligations discussed throughout this intervention.

2.44. Exposure to climate change intersects with pre-existing vulnerabilities, thereby heightening the likelihood of insecurity, including conflict. Hence, there is an imminent need to recognize: i) the pivotal role of viable livelihoods in assessing climate-related security risks, ii) the potential for climate change in one area to precipitate insecurity elsewhere, iii) the interaction between climate change and both emerging and established conflict risks, and iv) the societal response of conflict to climate change.

2.45. The intersection of climate change with peace and security extends beyond national borders and permeates varied contexts. The specific nature of the relationship between

⁷³ P. Wesche, “Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision” (*Journal of Environmental Law*, vol. 33, issue 3, Nov. 2021), pp. 531-535.

⁷⁴ Special Jurisdiction for Peace (Colombia), Investigation and Prosecution Unit, Report “The Environment as a Silent Victim: A Diagnosis of Affectations post-Peace Agreement, 2017-2022” [*El Ambiente Como Víctima Silenciosa. Un diagnóstico de las afectaciones en el posacuerdo de paz*], July 2022. At: <https://www.jep.gov.co/JEP/documentos1/El%20ambiente%20como%20v%C3%ADctima%20silenciosa.pdf>

climate change and peace and security, tailored to each context, poses challenges in deriving overarching lessons for the international community.

2.46. While climate change adaptation initiatives can bolster economic diversification and the adoption of climate-resilient livelihood strategies and technologies, they also carry conflict risks. Therefore, integrating climate change adaptation efforts is crucial for enhancing resilience to tensions and conflicts in countries where climate-vulnerable livelihoods and economies predominate. To implement a conflict-sensitive approach to adaptation, it is crucial to acknowledge the direct influence of complying with or violating environmental obligations, on the preservation and advancement of global peace.

2.47. Conflict does not inevitably result from climate change but rather stems from societal responses to its impacts. This underscores the importance of political frameworks and effective governance in addressing issues of climate, peace, and security. Given the aforementioned, international responses to climate-related security risks should aim to promote equitable climate action and facilitate transitions away from conflict, aligning with the development of national policies for environmental, agricultural, land, and water management that aim to substantially address inequalities and associated conflict risks while fostering climate resilience and peacebuilding opportunities.

2.48. The interconnections between climate change, peace, and security are complex, necessitating holistic responses, to address the associated risks.

D. Impact of Climate Change on the Colombian Population

2.49. Climate change further worsens the difficulties already faced by vulnerable communities, it exacerbates political and economic marginalization, land and resource loss, human rights violations, discrimination, and unemployment. In the case of Colombia, vulnerable communities include, in particular, children, women, indigenous peoples, afro-descendants, and the *raizal* communities. All of these communities face the direct consequences of climate change given their dependence on and close relationship with the environment and its resources.

2.50. Colombia believes that the direct participation of such peoples and local communities is crucial to integrating their traditional knowledge systems into climate action frameworks and national and international legal instruments. Colombia urges that the Court should take into account the special significance of these communities and the untapped potential of their ancestral and traditional wealth of wisdom in caring for and respecting the

natural environment.⁷⁵ In this section, Colombia will briefly outline the impact of the climate change crisis on children (1), women (2) and indigenous people, afro-descendants, and the *raizal* communities (3).

(1) CHILDREN

2.51. In light of intergenerational equity, and considering that the State’s actions can generate affectations for years to come, special care must be provided by States when considering climate action.⁷⁶ The United Nations Committee on the Rights of the Child (“CRC”) has highlighted the close relationship between the rights of children, specifically those established in the UN Convention on the Rights of the Child, and the protection of the environment.⁷⁷ The rights of children, including the right to life, are threatened by environmental degradation, biodiversity loss, climate change, including water scarcity, food insecurity, vector-borne and waterborne diseases, the intensification of air pollution and physical trauma linked to both sudden- and slow-onset events pollution which disproportionately affect children.⁷⁸ These challenges are closely linked to challenges such as poverty, inequality and conflict.⁷⁹

2.52. Taking the above into account, the best interests of children must be particularly relevant in the formulation and implementation of environmental policies and decisions, and for the present case, mitigation, and adaptation actions to climate change.⁸⁰ In that regard, the CRC has reiterated that all policies, standards, guidelines, plans, strategies, budgets,

⁷⁵ See UNEP, *Indigenous Peoples and the Nature they Protect* (8 June 2020), at: <https://www.unep.org/news-and-stories/story/indigenous-peoples-and-nature-they-protect>; UNDP, *Guardians of the Forest* (7 June 2019) at: <https://stories.undp.org/guardians-of-the-forest>; N. Salazar Sutil, “Colombian government’s promise to title one million hectares for Afro-descendent people required to protect the future of the whole country” (3 Feb. 2023), at: <https://thetenurefacility.org/article/colombian-governments-promise-to-title-one-million-hectares-for-afro-descendent-people-required-to-protect-the-future-of-the-whole-country/>; E. Recio, and D. Hestad, *Indigenous Peoples: Defending an Environment for All* (Policy Brief, Apr. 2022), at: <https://www.iisd.org/system/files/2022-04/still-one-earth-Indigenous-Peoples.pdf>.

⁷⁶ UN 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*, UN Doc. CRC/C/GC/26 (22 Aug. 2023).

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ See UNICEF, *The Climate Crisis is a Child Rights Crisis: Introducing the Children’s Climate Risk Index* (2021).

⁸⁰ Report of the Special Rapporteur on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy, and sustainable environment, 24 Jan. 2018, Framework Principle 11 c.

international agreements, and development assistance programs in the environmental field must prioritize the best interests and protection of children and future generations.⁸¹

(2) WOMEN

2.53. In relation to gender-based impacts, the Special Rapporteur on violence against women and girls has assessed the intersecting vulnerabilities experienced by groups of women most at risk from the adverse effects of climate change. The Special Rapporteur noted in her report, for example, that:

“Studies found that women are 14 times more likely to die in a climate catastrophe than men. The combined impacts of sudden-onset natural disasters and slow-onset events, environmental degradation and forced displacement seriously affect women’s and girls’ rights to life, access to food and nutrition, safe drinking water and sanitation, education and training, adequate housing, land, decent work and labour protection [...]”.⁸²

2.54. In turn, the 2022 IPCC Report on Climate Change has acknowledged that the burdens arising from the climate emergency are not evenly distributed and that women’s greater exposure to disasters can “undermine women’s ability to achieve economic independence, enhance human capital, and maintain physical and mental health and well-being.” Furthermore, the Report highlights that this burden is heavier for women in less developed states.⁸³

2.55. On the other hand, the Report prepared by the Secretariat of the UNFCCC in June 2022, based on inputs submitted by governments, stated the following:

“The adverse effects of drought, floods, hurricanes, extreme precipitation, and sea-level rise often affect women more than men due to systemic gender discrimination and social expectations related to gender roles. These adverse effects have various social, financial, and economic dimensions. All communications indicate that a complex interaction of social factors makes

⁸¹ UN 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*, UN Doc. CRC/C/GC/26 (22 Aug. 2023).

⁸² Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, *Report of the Special Rapporteur on violence against women and girls, its causes and consequences*, 11 July 2022, UN General Assembly Resolution A/77/136, para. 7.

⁸³ IPCC, *Synthesis Report of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, “Climate Change 2022: Mitigation of Climate Change,” in *Climate Change*, 2022, p. 525.

women and marginalized groups at greater risk of suffering adverse effects of climate change over an extended period.”

2.56. Additionally, the Report acknowledges that although States have made progress in collecting gender-disaggregated data and systematically conducting gender analyses of climate policies, more inputs are needed to better understand the gender-differentiated effects of climate change and to apply gender-focused measures.⁸⁴

2.57. Moreover, gender-based violence is common in conflict zones, which are also at greater risk of extreme weather events,⁸⁵ as exemplified by the Colombian case. It indicates that women and girls are at special risk of gender-based violence due to the combination of adverse effects of climate change, environmental degradation, and conflicts.⁸⁶ Moreover, the increase in gender-based violence reduces the adaptability and resilience of women and girls, weakening the future resilience of communities to the impacts of climate change, in all regional contexts.⁸⁷

2.58. In this regard, and as presented above, the areas of Colombian territory that have been affected by the armed conflict, such as the Amazon jungle and the Colombian Pacific, have been some of the most affected by natural phenomena.⁸⁸ Women in these territories are the ones who have carried the heaviest burden of these circumstances. Given women’s dependence on natural resources and agriculture for their livelihoods and feeding their families in countries such as Colombia, coupled with their lack of control and ownership of land and resources and often discriminatory norms, make them less able to respond to and recover from climate change and climate-related disasters.⁸⁹

⁸⁴ Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, *Report of the Special Rapporteur on violence against women and girls, its causes and consequences*, 11 July 2022, UN General Assembly Resolution A/77/136, para. 7.

⁸⁵ L. Sánchez Avendaño, *Indigenous and Rural Women’s Voices: Recommendations to Address Climate Security Risks in Colombia*, Geneva Centre for Security Sector Governance (DCAF, Geneva, 2022), p. 15.

⁸⁶ *Ibid*, pp. 10, 11, 15.

⁸⁷ *Ibid*, p. 25.

⁸⁸ ICRC, “*Colombia: Challenges of armed conflict and violence*” (2018). At: <https://www.icrc.org/en/colombia-challenges-armed-conflict-and-violence>

⁸⁹ International Union for Conservation of Nature, “*Linkages between gender-based violence and the environment*” (2020). At: <https://portals.iucn.org/library/sites/library/files/documents/2020-002-Es.pdf>

2.59. In this context, Colombia trusts that the Court will recognize the scope of the duties and obligations of States in light of the climate crisis, considering a gender approach, especially in those areas in which women are directly affected by the climate crisis in a significantly different way than men.

(3) INDIGENOUS PEOPLE, AFRO-DESCENDANTS, AND THE RAIZAL COMMUNITIES

(a) *Indigenous communities*

2.60. In the context of the climate crisis, indigenous communities are in constant danger and their right to a healthy environment - which directly incorporates their right to territory and resources - is already being undermined. States which have a significant number of indigenous communities within their population, such as Colombia, should consider the special relevance of the right to a healthy environment with respect to this population group.⁹⁰

2.61. For instance, the IACtHR has established that the right to a healthy environment and the enjoyment of the human rights derived from it are to be viewed from a different perspective when it comes to indigenous communities.⁹¹ In particular, the Court has highlighted that in the context of these populations, emphasis is to be placed on safeguarding the special relationship between these communities and their environment.

2.62. This relationship holds profound significance within indigenous cultures, serving as a cornerstone that shapes the political, social, economic, and spiritual dimensions of life.⁹² In turn, the IACtHR interpreted the content of this right indicating that it materializes through the protection of the right to land, the right to natural resources, and the right to territory.⁹³ This catalogue of rights emanates from both traditional environmental rights and the needs derived from protecting that special relationship in all of its dimensions and scope.

2.63. Climate change exacerbates the social, economic, and environmental vulnerabilities of indigenous peoples. Therefore, it is necessary to give due consideration to

⁹⁰ Rodrigo Uprimny Yepes, “Los derechos de los pueblos indígenas en Colombia” (*Revista de Derecho Público*, No. 32, 2015), pp. 315-342.

⁹¹ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, par. 48.

⁹² IACtHR, *Jurisprudence Booklet of the Inter-American Court of Human Rights No. 11: Indigenous and Tribal Peoples*.

⁹³ *Ibid.*

the special interest of protecting the right to a healthy environment of indigenous communities, as this right has a different content and scope with respect to other population groups.

2.64. Furthermore, in the case of Colombia, the presence of indigenous communities is especially relevant because of their participation in environmental activism. This is due to their worldviews being intimately linked with the protection of the environment, which in turn, grants them a special interest in its protection. For example, indigenous leaders in Colombia are constantly denouncing the presence of illegal mining in their surroundings or calling out failures to comply with the duty of prior consultation, among other issues.⁹⁴

2.65. In turn, it is important to note that 53.4% of Colombia's natural forests are located in ethnic territories; of this percentage, 46% are located in indigenous reserves.⁹⁵ However, these territories have been particularly affected by climate change. Given this situation, Colombia is, for example, currently making progress in the restoration of 1,000 hectares and the planting of 700,000 trees of native species of tropical and Andean ecosystems in the Sierra Nevada de Santa Marta, an area where four indigenous communities, with approximately 30,000 people, are located.⁹⁶

2.66. Therefore, it is important for the Court's opinion to protect in a particular way the content of this right in relation to indigenous communities, in order for States to take additional, specific measures to mitigate the crisis that addresses the special needs of these groups in this regard.

(b) Afro-descendants

2.67. Climate change has emerged as an increasingly inescapable threat to afro-descendant communities, whose lives, at least in Colombia, are often closely intertwined with coastal environments and tropical rainforests. According to official figures of the Economic Commission for Latin America and the Caribbean ("ECLAC"), estimates for 2020 indicate that 134 million people self-identify with afro-descendant-related categories in Latin America and

⁹⁴ IACtHR, Annual Report 2016, para. 247; ONIC, "*ONIC denuncia amenazas y atentados constantes contra dirigentes del Consejo Regional Indígena del Huila - CRIHU*," 28 May 2019.

⁹⁵ Ministry of the Environment and Sustainable Development of Colombia, "*Through tradition, culture and knowledge, indigenous peoples support the environment*" [*"Con tradición, cultura y conocimiento, los pueblos indígenas aportan al medio ambiente"*], 9 Aug. 2021. At: <https://www.minambiente.gov.co/con-tradicion-cultural-y-conocimiento-los-pueblos-indigenas-aportan-al-medio-ambiente/>

⁹⁶ *Ibid.*

the Caribbean, representing about 20.9% of the region's total population.⁹⁷ This is a significant figure considering that it represents approximately a fifth of the total population of Latin America.

2.68. In the case of Colombia, the region known as the *biogeographic Chocó*, which is a biodiversity corridor that stretches along the Pacific Ocean coastline from the Panamanian Darién to the southwest of the country and even continues into Ecuador and the northern part of Perú, is where the largest part of the afro-descendant communities are settled.⁹⁸ In this area, phenomena such as the rise in sea level, a direct consequence of climate change, seriously threat livelihood. Storm surges, more frequent storms and saline intrusion are eroding their lands and placing their homes at risk, impairing their existence.

2.69. In that sense, afro-descendant communities currently face considerable challenges as environmental disasters intensify. For example, the geographic conditions of the Caribbean coast have changed in recent times. Also, forest cover has been decreasing, exposing these territories to more extreme droughts and floods depending on whether the dry or rainy season is present. In turn, as in the case of indigenous populations, climate change also threatens the cultural heritage of afro-descendant communities in Colombia. Their connection with the land and biodiversity usually is intrinsic to their cultural practices, music, dances, and traditional knowledge systems. This is because these traditional systems of beliefs and customs have developed based on the territory in which the communities have settled. In this sense, it is therefore important for the Court to take into consideration the differential approach and the special protection to be afforded to afro-descendant communities in areas particularly vulnerable to the effects of climate change.

(c) Raizal communities

2.70. Climate change represents a real threat and harm to the *Raizal* communities, which in Colombia are particularly settled in the Archipelago of San Andrés, Providencia, and

⁹⁷ United Nations Economic Commission for Latin America and the Caribbean, “*People of African descent and COVID-19: unveiling structural inequalities in Latin America*”, 2021. Retrieved from: <https://repositorio.cepal.org/server/api/core/bitstreams/5da3e897-537c-4753-90cd-ce9c50639b09/content>

⁹⁸ WWF, “*El Chocó biogeográfico colombiano apuesta por la sostenibilidad*”, (2020), at: <https://www.wwf.org.co/?361970/El-Choco-biogeografico-colombiano-apuesta-por-la-sostenibilidad>; see also, *supra*, description of the Tumbes-Choco-Magdalena biodiversity hotspot.

Santa Catalina. As the life of this community is closely intertwined with coastal ecosystems,⁹⁹ these populations face an increasingly challenging scenario as environmental impacts intensify.¹⁰⁰ According to official figures from the Ombudsman’s Office of the Republic of Colombia, the Archipelago of San Andres, Providencia and Santa Catalina is the department of Colombia most affected by climate change.¹⁰¹

2.71. The rise in sea level has become one of the main problems. Coastal erosion is affecting the territory that has been the basis of *Raizal* life for generations. More frequent storms and extreme tides are threatening to displace the *Raizal* people from their places of settlement, affecting their fundamental subsistence activities, such as when Providencia Island, part of the Archipelago, was decimated by Hurricane Iota in 2020.¹⁰² In turn, the degradation of coral reefs, caused by ocean acidification and rising water temperatures, adds an additional layer of adversity. These reefs, which are essential for fishing and marine biodiversity in the areas where these people live, are rapidly weakening.

2.72. In this regard, it is noted that the *Raizal* communities that inhabit the Archipelago depend strictly on 45 freshwater springs, which are at risk of disappearing. The loss of this vital resource not only impacts their economy but also compromises their food security and the ecological balance they have maintained for centuries.

2.73. Also, in addition to the material challenges, climate change threatens the cultural heritage of these communities. Their identity is intrinsically linked to the land and the sea, and drastic changes in these environments jeopardize traditions, ancestral knowledge, and special ways of life.

2.74. Therefore, the impact of climate change on the different communities settled in the region, and especially in Colombia, is multidimensional. This is the reason why Colombia argues that the Court should consider the differential approach with respect to these vulnerable

⁹⁹ UNESCO International Bureau of Education, “*Promoting Sustainable Development through a Case Study: The Seaflower Biosphere Reserve*”, 2003.

¹⁰⁰ *Ibid.*

¹⁰¹ Office of the Ombudsman of Colombia, *Ombudsman report on water, sanitation and waste management public utilities in the Archipelago of San Andrés, Providencia and Santa Catalina*, 2015. Retrieved from: [http://www.defensoria.gov.co/attachment/1231/Informe%20Defensorial%20Archipi%C3%A9lago%20San%20Andrés%20y%20Providencia%20PDF%20\(1\).pdf](http://www.defensoria.gov.co/attachment/1231/Informe%20Defensorial%20Archipi%C3%A9lago%20San%20Andrés%20y%20Providencia%20PDF%20(1).pdf)

¹⁰² UN, *When Hurricane Iota Nearly Destroyed Providencia Island in Colombia* (Video, in English. At: <https://www.un.org/en/video/when-hurricane-iota-nearly-destroyed-providencia-island-colombia>).

population groups when addressing the duties of the States in the prevention and mitigation of the climate crisis, to ensure that the special rights of these populations are protected, and their very existence as unique communities is safeguarded.

E. Colombia's Efforts in Combating and Mitigating the Effects of Climate Change

2.75. As President Gustavo Petro recently highlighted at COP28, Colombia has proposed “overcoming the climate crisis through multilateralism, through international law, making the COP plans binding on all parties, and creating a space of global public powers that plans the transition to a decarbonized economy”.¹⁰³ Colombia is proposing the “restructuring of the global financial system, the debt-for-nature swaps and the issuance of Special Drawing Rights to finance climate crisis mitigation, and adaptation plans [and] the strengthening and reform of the United Nations”.¹⁰⁴

2.76. Colombia has the distinction of being the first Latin American country to lend its support to the global initiative calling for a treaty to phase out the world's dependence on fossil fuels.¹⁰⁵ The country is actively advocating for a fossil fuel non-proliferation treaty, climate stabilization prioritizing commitment to nature-based solutions and climate investment,¹⁰⁶ and an economically rational transition¹⁰⁶ that does not generate an economic crisis for developing and vulnerable nations.

2.77. Colombia believes that developing nations need over three and five trillion USD annually in external financing to meet the goals and objectives of the Paris Agreement. Unfortunately, the current debt conditions are hindering their economic growth. Therefore, Colombia urges the international community, including the Court, to take this aspect into

¹⁰³ Annex 2: Statement of the President of Republic of Colombia, Gustavo Petro Urrego, at the COP28 High Level Segment, 1 Dec. 2023.

¹⁰⁴ *Ibid.*

¹⁰⁵ Statement of the President of Republic of Colombia, Gustavo Petro Urrego, at the COP28 Fossil Fuel Non-Proliferation Treaty negotiating mandate High-Level Party event, 12 Dec. 2023, At: <https://petro.presidencia.gov.co/prensa/Paginas/Colombia-supports-climate-action-through-the-Fossil-Fuel-Non-Proliferation-Treaty-231202.aspx>

¹⁰⁶ Ministry of Environment and Sustainable Development of Colombia, *Colombia's 6 proposals at COP28* (retrieved from: <https://www.minambiente.gov.co/wp-content/uploads/2023/11/Colombias-6-proposals-at-COP28.pdf>), *Colombia presents USD\$34 billion climate investment portfolio at COP28* (retrieved from: <https://www.minambiente.gov.co/wp-content/uploads/2023/12/Colombia-presents-USD34-billion-climate-investment-portfolio-at-COP28.pdf>), and *Colombia leads global commitment on nature-based solutions at COP28* (at: <https://www.minambiente.gov.co/colombia-lidera-compromiso-global-sobre-soluciones-basadas-en-naturaleza-en-la-cop28/>).

account when interpreting the contours of international cooperation obligations. Notwithstanding legal obligations concerning reparations as may be pronounced by the Court, Colombia calls for developed countries to provide cooperation and support, to help attain climate goals, through expanded access to finance, coherent policy approaches, the fulfilment of obligations in terms of climate financing, and capacity building for developing nations.

2.78. The Government of Colombia has also advanced an ambitious development and climate action agenda. Colombia aims to achieve high-income status by 2040, by closing socioeconomic gaps, promoting social mobility, and fostering economic, social, and environmental development.¹⁰⁷ Colombia, however, is committed to achieving its development goals without harming the environment. In the area of climate action, Colombia has boosted the ambition of its NDCs.¹⁰⁸ It is committed to reaching net zero GHG emissions by 2050. The climate change laws and regulations in Colombia are extensive and aligned with international law and bolster its commitment to fight climate change.

2.79. Colombia's commitment to preserving the planet and ensuring a sustainable future for all is undeniable. It has taken bold steps towards this goal by signing crucial agreements such as the Global Methane Pledge, the Amazon Cooperation Treaty, the Glasgow Leader's Declaration on Forests, the Treaty on Biodiversity Beyond National Jurisdiction and the *Escazú* Agreement. In addition, Colombia has shown its dedication to the cause by refusing to sign coal, oil, and gas exploration contracts, dismantling gasoline subsidies, and calling for a global ban on fracking.¹⁰⁹

2.80. Furthermore, Colombia has taken significant steps towards reducing deforestation in the Amazon rainforest, using its own resources to combat this pressing issue.¹¹⁰ These actions demonstrate Colombia's unwavering commitment to the preservation of the planet and the protection of human life.

2.81. Moreover, Colombia has made important efforts to make the ocean-climate nexus visible within the framework of the negotiations of the UNFCCC and the Paris

¹⁰⁷ See World Bank Group, *Colombia Country Climate and Development Report*, CCDR Series (July 2023).

¹⁰⁸ See Annex 3: Colombia's Nationally Determined Contribution.

¹⁰⁹ Annex 2: Statement of the President of Republic of Colombia, Gustavo Petro Urrego, at the COP28 High Level Segment, 1 Dec. 2023.

¹¹⁰ *Ibid.*

Agreement and achieved important progress during COP15 of the Convention on Biological Diversity (CBD), in which the Kunming-Montreal Global Framework for Biological Diversity was adopted. The Colombian approach to combat the climate change crisis is based on three fundamental pillars. Firstly, promoting the prohibition of all new extraction projects. Secondly, a gradual phase-out of fuel production projects. And thirdly, promoting a just global transition for countries, workers, and communities. This transition would allow access to renewable energies and diversify the economy. Moreover, differentiated responsibility for the richest countries, those most responsible for the GHG emission is an integral part of this approach.

2.82. Furthermore, the Supreme Court of Colombia in the *Future Generations v. Ministry of the Environment and Others* (“*Demanda Generaciones Futuras v. Minambiente*”), significantly contributed to the Colombian understanding of the rights of the future generation as it observed that the “environmental rights of future generations are based on (i) the ethical duty of solidarity of the species, and (ii) the intrinsic value of nature.”¹¹¹

2.83. The Supreme Court recognised that “the fundamental rights of life, health, the vital minimum, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem. Without a healthy environment, subjects of law and sentient beings in general will not be able to survive, much less protect those rights, for our children or for future generations. Nor can the existence of the family, society, or the State itself be guaranteed”.¹¹² The Supreme Court also recognized the nature of threats that are posed by Climate Change - “[t]he increasing deterioration of the environment is a serious attack on current and future life and all other fundamental rights. Furthermore, it gradually tires life and all the rights related to it. The impossibility of exercising the fundamental rights to water, to breathe clean air and enjoy a healthy environment makes living subjects sick every day, increases the lack of fresh water, and decreases expectations of a dignified life”.¹¹³

2.84. For Colombia, as its Supreme Court observed, the “ethical duty of the solidarity of the species” can be explained by the “fact that natural goods are shared by all the inhabitants of Planet Earth, and by the descendants or future generations who do not yet have them

¹¹¹ Annex 4: Supreme Court of Justice of the Republic of Colombia, *Future Generations v. Ministry of the Environment and Others* (“*Demanda Generaciones Futuras v. Minambiente*”), Judgment STC4360-2018, 4 April 2018.

¹¹² *Ibid.*

¹¹³ *Ibid.*

materially but who are tributaries, recipients, and owners of them, being those, however, contradictorily, increasingly insufficient, and limited. In such a way that without the current existence of an equitable and prudent consumption criterion, the human species may be compromised in the future by the scarcity of resources essential for life. In this way, solidarity, and environmentalism “are related until they become the same”.¹¹⁴ Regarding the “intrinsic value of nature”, the Court observed that “it transcends the anthropocentric perspective, and focuses on “ecocentric-anthropic” criteria, which places the human being on par with the environmental ecosystem, whose purpose is to avoid arrogant, dismissive, and irresponsible treatment of the environmental resources, and its entire context, to satisfy materialistic ends, without any protectionist or conservationist respect”.¹¹⁵

2.85. The Colombian proposal to swap climate debt for nature bonds presents a visionary approach at the intersection of environmental conservation and financial sustainability. Thematic bonds, also known as earmarked bonds, are mainly fixed-income financial instruments issued by both governments and companies to finance projects that generate environmental and social benefits. In recent years, Colombia has been developing regulatory instruments to develop this type of financial instrument.

2.86. The Colombian government is moving forward with the issuance of green, social and sustainable sovereign bonds as a public policy tool to send clear signals to the markets on the commitment to the promotion of sustainable financing mechanisms that allow for the development of a low-carbon economy, resilient to climate change, focused on the conservation of ecosystems and biodiversity, while additionally oriented to the social development of the country to contribute to the reduction of poverty and other inequalities.¹¹⁶

2.87. By leveraging its abundant natural resources and biodiversity, Colombia aims to incentivize investments in ecosystem restoration and climate mitigation. Through the issuance of nature bonds, backed by commitments to protect vital habitats and reduce carbon emissions, Colombia seeks to address its climate debt while simultaneously fostering

¹¹⁴ Annex 4: Supreme Court of Justice of the Republic of Colombia, *Future Generations v. Ministry of the Environment and Others* (“*Demanda Generaciones Futuras v. Minambiente*”), Judgment STC4360-2018, 4 April 2018.

¹¹⁵ *Ibid.*

¹¹⁶ Ministry of Finance of Colombia, *Framework for Colombia’s Sovereign Green, Social and Sustainable Bonds* [“*Marco de referencia de Bonos verdes, sociales y soberanos de Colombia*”] (2022)

ecological resilience and sustainable development. This innovative scheme holds the promise of not only alleviating debt burdens but also advancing the global climate agenda.

2.88. In embracing the proposal to exchange climate debt for nature bonds, Colombia underscores the interconnectedness between ecological health, economic stability, and social well-being.¹¹⁷ By prioritizing investments in nature conservation and sustainable land management, Colombia not only enhances its resilience to climate change but also fosters inclusive growth and environmental justice. This transformative initiative has the potential to inspire similar actions globally, paving the way for a paradigm shift towards a more sustainable and equitable world, where nature's value is recognized and integrated into financial systems for the benefit of current and future generations.¹¹⁸

2.89. Colombia is currently the seventh largest sustainable debt market in Latin America and the Caribbean, with US\$2.4 trillion issued at the end of 2022. This is shown in the “Colombia Sustainable Finance State of the Market 2022” report issued by the Climate Bonds Initiative.¹¹⁹ In turn, in November 2023, Colombia issued the first two social bond references in its history in the international capital markets, with maturities in 2035 and 2053, for US\$1.25 billion each and with coupons of 8.000% and 8.750%, respectively.¹²⁰

2.90. Thus, the country's commitment to seeking new financing alternatives focused on the fulfilment of the SDGs and the linking of public debt to specific social objectives has been amply evidenced.¹²¹ It is clear that Colombia is not only leading by example in the fight against climate change but is also calling for “unity of the entire [Global South]”¹²² in this

¹¹⁷ Ministry of Finance of Colombia, *Framework for Colombia's Sovereign Green, Social and Sustainable Bonds* [“Marco de referencia de Bonos verdes, sociales y soberanos de Colombia”] (2022).

¹¹⁸ *Ibid.*

¹¹⁹ Climate Bonds Initiative, “Colombia Sustainable Finance State of the Market 2022”, 26 Apr. 2023 (retrieved from: https://www.climatebonds.net/files/reports/colombia_sustainable_state_of_the_market_2022_english.pdf).

¹²⁰ Ministry of Finance of Colombia, Press Release: “Colombia successfully issues its first two social bonds references in the international capital market for USD2.5 billion”, 8 Nov. 2023 (At: https://www.minhacienda.gov.co/webcenter/portal/SaladePrensa/pages_DetalleNoticia?documentId=WCC_CLUSTER-232436).

¹²¹ In December 2023, Moody's International Ratings assigned a sustainability rating of SQS2 to the Bond Framework, due to its alignment with international principles on the subject and its contribution to sustainable development in accordance with the SDGs. In Moody's Investors Service, “Government of Colombia - Second Party Opinion – Green, Social and Sustainable Bond Framework Assigned SQS2 Sustainability Quality Score”, 11 Dec. 2023.

¹²² Annex 2: Statement of the President of Republic of Colombia, Gustavo Petro Urrego, at the COP28 High Level Segment, 1 Dec. 2023.

crucial effort in the hope that through collective action, we can work towards a better future for all and ensure the survival of our planet for the generations to come.

Chapter 3

OBLIGATIONS TO ENSURE THE PROTECTION OF THE CLIMATE SYSTEM AND THE ENVIRONMENT

3.1. Colombia's submissions will focus primarily on the first question put before the Court which is related to the identification of "obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of [GHGs] for States and for the present and future generations".

3.2. Colombia will first discuss the fragmented character of international law and its implications in addressing the climate change crisis (A). Subsequently, it will outline the international legal framework on climate change, developed through treaty-specific regimes and general international law (B). Given the severity of the global climate crisis and the existential risks to human society and human rights imposed by climate change, Colombia considers that the principle of due diligence, along with other principles and rules such as prevention and precaution, provides a normative foundation in the law applicable to climate change-related disputes. In this regard, Colombia, in its submissions, will first focus on the general international law on climate change having particular regard to the *principle of due diligence* (C). Colombia will then turn to the *principle of the highest possible ambition and progression*, as reflected in the 2015 Paris Agreement, which Colombia considers is closely aligned with the principle of due diligence (D). Subsequently, Colombia will focus on the *principle of common but differentiated responsibilities and respective capabilities* ("CBDR-RC") (E), and the legal nature of the *duty to cooperate* in the context of the protection of the climate system (F). Finally, Colombia will discuss the framework of obligations of States under international human rights law to ensure the protection of the climate system (G).

A. Fragmentation of International Law and Climate Change

3.3. The ICJ has been presented with questions that seek to clarify the "obligations of States" under various regimes of international law. Although different public international law regimes have developed specialized regulations and principles to govern matters within their respective domains, these advancements have not unfolded consistently in a coordinated fashion, leading to significant fragmentation within international law.

3.4. Hence, it is not surprising that States face difficulties when trying to harmonize different systems, as they must integrate concepts and principles sourced from various legal frameworks. Many of the rules that need to be applied simultaneously adhere to the intrinsic logic of the systems within which they were originally developed. Therefore, their smooth integration into other or alternative systems is not always easy to achieve.

3.5. For instance, countries such as Colombia are facing important obstacles when trying to implement robust schemes for the protection of the environment due to the adverse reaction triggered by other regimes of international law. An illustrative example can be observed in the international arbitration – *Eco Oro Minerals Corp. v. Republic of Colombia*,¹²³ wherein, despite the presence of a treaty clause aimed at safeguarding the capacity of the State to protect the environment, the legal actions initiated against Colombia culminated with the State being held liable and accountable for damages. This may have been averted if the arbitrators had taken into consideration the consequences of the fragmented nature of international law, particularly in environmental and climate protection.

3.6. Notwithstanding, the jurisprudence of international tribunals has proven that regimes can be effectively harmonized, and even be complementary. The close interrelation between measures aimed at environmental safeguarding and the effective realization of numerous fundamental human rights has allowed the IACtHR, in Advisory Opinion OC-23/2017, to explain how the fulfilment of environmental obligations is necessary for the effective realization of human rights.¹²⁴

3.7. Colombia argues that the current Request allows the Court to examine the fragmentation that hinders the application of environmental obligations, particularly vis-à-vis climate change. Colombia considers that the task of the Court “is to engage in its normal

¹²³ See *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 Sept. 2021; See also, UN General Assembly, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights* (13 July 2023) UN Doc. A/78/168, paras. 26 and 62.

¹²⁴ UN Human Rights Council, “*Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Analytical study of the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health*,” paras. 34-48; Human Rights Council, Resolution of 8 Oct. 2021, “*The human right to a clean, healthy and sustainable environment*,” para. 2.

judicial function of ascertaining the existence or otherwise of legal principles and rules applicable”,¹²⁵ to the protection of the climate system and other parts of the environment. This can be achieved by considering how other treaties and customary regimes, such as the UN Charter, the Paris Agreement, human rights or investment treaties, interact with environmental norms. The Court with its general jurisdiction is in a unique position to accomplish this, as no other court in the world has the same privilege.

B. International Law on Climate Change

3.8. Colombia submits that in its response to the questions posed in the Request, the Court should consider the evolution of international law on climate change, which has taken place through a series of international climate and environmental treaties. Colombia considers the UNFCCC regime, which includes the Kyoto Protocol and the Paris Agreement as well as instruments such as the Copenhagen Accord, and the Cancún Agreements, among others, as a relevant framework for international law on climate change. This regime is made up of treaties adopted to address climate change and the decisions taken by the parties to these treaties to promote their implementation. The UNFCCC, for instance, has outlined general objectives, principles, and commitments; it also created processes and institutions to carry out and support further negotiations, including the Conference of the Parties (“COP”).

3.9. For Colombia, international law addressing climate change is not confined to the UNFCCC regime. In fact, measures relating to climate change have developed in a variety of forums. The UNFCCC and other multilateral regimes establish rules applicable to specific issue areas but, in addition to these rules, international law comprises some norms of a customary nature and of a general application. These norms of general international law apply to any issue-area in international law unless their exclusion is explicitly provided or necessarily implied by any set of *lex specialis*.

3.10. Indeed, various norms of general international law can possibly be interpreted as requiring action on change mitigation, adaptation, resilience, and financial and technical assistance. Such general principles of international law also serve as means of interpretation of the obligations deriving from the climate change regime. For example, the no-harm principle,

¹²⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 18

which states that countries must prevent activities within their territory or control from causing serious transboundary harm, should include harm caused by excessive GHG emissions. International human rights law may also be considered to imply a broad mandate for States to address climate change, whose impacts affect the enjoyment of human rights in many ways.¹²⁶ The Court should interpret such general provisions in a new light in the context of climate change.

3.11. Additionally, the Court should consider the principles of international law, such as the principle of sustainable development, the issues related to equity between generations in the care and use of our planet, the principle of cooperation, and the obligations of States to respect and promote human rights protection through their climate action in order to clarify the scope and contours of obligations regarding climate change. Colombia notes that treaty provisions relating to the protection and preservation of environmental and cultural resources may also require states to mitigate climate change insofar as this is essential to preventing the foreseeable impacts of climate change on these resources. Moreover, the interpretation of specific climate change obligations should consider other relevant norms, including the Stockholm Declaration on the Human Environment (“Stockholm Declaration”), the Rio Declaration on Environment and Development (“Rio Declaration”), and general mitigation obligations arising under other treaties such as human rights and customary international law.

3.12. Since the international agreements on climate change do not replace the norms of general international law, including environmental law principles, Colombia requests that the Court provide a detailed understanding of how general international law applies to climate change for States in its advisory opinion. Such clarity is essential to successful international cooperation in addressing the climate change crisis.

C. Principle of Due Diligence

3.13. Colombia submits that the responsibility of States to respect and preserve the environment is not only for the advantage of other States but also for the benefit of all humanity. The primary beneficiaries of respecting the obligations relating to climate change are

¹²⁶ See, e.g., CESCR, “*Concluding observations on the fifth periodic report of Australia*” (23 June 2017), UN doc. E/ C.12/ AUS/ CO/ 5, para. 12

individuals – both present and future generations. As the Court underscored in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* –

“[T]he environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment”.¹²⁷

3.14. This entails that all States have a “common interest” and an “essential interest” in preventing damage to and preserving, the environment and maintaining an ecological balance. As the Court recognised in the *Pulp Mills* case, “vigilance and prevention is all the more important in the preservation of the ecological balance, since the negative impact of human activities... may affect other components of the ecosystem... such as its flora, fauna, and soil”.¹²⁸

3.15. Colombia submits that customary international law imposes an obligation on States to act in both a preventative and a proactive way in order to protect the environment. This obligation has both positive and negative dimensions, requiring States to take positive action to protect the environment, as well as to refrain from degrading the environment. Colombia submits that the duty to “protect” requires States to prevent future damage to the environment. It requires them not only to take action to prevent harm to the environment caused by their agents but also by individuals within their control. In this regard, Colombia considers that States are obligated to protect against current and foreseeable impacts related to climate change and human rights impacts arising from business activities within their territory, jurisdiction or both.¹²⁹ As the High Commissioner for Human Rights noted:

“The obligations of States in the context of climate change and other environmental harms extend to all rights-holders and to harm that occurs both

¹²⁷ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, pp. 241-242, para. 29; See also, *Iron Rhine Arbitration (Belgium v. Netherlands), Award, ICGJ 373 (PCA 2005)*, para. 59.

¹²⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 67, para. 188

¹²⁹ Working Group on the issue of human rights and transnational corporations and other business enterprises, *Information Note on Climate Change and the Guiding Principles on Business and Human Rights* (June 2023)

inside and beyond boundaries. States should be accountable to rights-holders for their contributions to climate change including for failure to adequately regulate the emissions of businesses under their jurisdiction regardless of where such emissions or their harms actually occur.”¹³⁰

3.16. The principle of prevention in international environmental law, on the other hand, is often articulated as the duty to prevent significant transboundary environmental harm, which requires each State 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.”¹³¹

3.17. States are not only required to implement “appropriate rules and measures” to prevent significant transboundary harm but also to ensure “vigilance in the enforcement” of those measures, such as by monitoring activities likely to cause harm.¹³² As part of its work on protecting the atmosphere, the International Law Commission (“ILC”) also considered that States have the obligation to protect the atmosphere by exercising due diligence.¹³³

3.18. Recently, in the case concerning the *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, the ICJ noted that in a transboundary context, especially when there are shared resources, states must use all means at their disposal to fulfil their obligation not to cause harm,¹³⁴ as well as to fulfil the duty to make reparations after the

<https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf> ; See United Nations OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect Respect and Remedy” Framework* (OHCHR, New York, 2011).

¹³⁰ OHCHR, *Understanding Human Rights and Climate Change*, Submission of the OHCHR to the 21st Conference of the Parties to the UUNFCC (2021), para. 3.

¹³¹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *I.C.J. Reports 2010*, p. 56, para. 101.

¹³² *Ibid*, pp. 55-56, para. 101.

¹³³ ILC, Special Rapporteur, *Sixth Report on the protection of the atmosphere*, Guideline 3, A/CN.4/736 (Feb. 11, 2020), paras. 45-52.

¹³⁴ *Dispute over the status and use of the waters of the Silala (Chile v. Bolivia)*, Judgment, *I.C.J. Reports 2022*, p. 648, para. 99.

occurrence of harm.¹³⁵ Additionally, the principle of prevention was central in the reasoning of the IACtHR in its Advisory Opinion OC-23/17.¹³⁶

3.19. Colombia submits that the primary standard against which the customary international law obligations to protect is to be assessed is the obligation to act with due diligence. As the Court expressed in the *Pulp Mills* case “the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory”.¹³⁷

3.20. The due diligence standard that should apply to combat the climate change crisis must be informed by the UNFCCC, the Kyoto Protocol, and the Paris Agreement, along with the relevant applicable international rules and standards. Moreover, it should be informed by scientific knowledge.

3.21. Colombia submits that the duty of due diligence includes both procedural and substantive elements. This requires States to both make efforts in good faith to identify environmental harm and adopt rules and measures and also to incorporate a high degree of “vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators”.¹³⁸

3.22. Colombia emphasizes that while due diligence is inherently a variable concept,¹³⁹ and its expression in international treaties often does not explicitly refer to a “strict standard of conduct or an obligation of result”, it is not without any normative guidance to States.¹⁴⁰ Notwithstanding the sovereign discretion that is intrinsic in due diligence, it is susceptible to a determination – either a State acts in compliance or its conduct amounts to a breach. Colombia submits that the contours of this duty in the context of climate change must

¹³⁵ E. Romée van der Marel, “Trading Plastic Waste in a Global Economy: Soundly Regulated by the Basel Convention?” (*Journal of Environmental Law*, vol. 34, 2022), p. 493.

¹³⁶ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para. 127-174.

¹³⁷ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 55, para. 101; *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, 2015, I.C.J. Reports, p. 706, para. 104.

¹³⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 79, para. 197.

¹³⁹ ITLOS, *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Request for Advisory Opinion Submitted to the Seabed Disputes Chamber), Case No. 17, Advisory Opinion of 1 Feb. 2011, para. 117.

¹⁴⁰ C. Voigt, “The Paris Agreement: What is the standard of conduct for parties?” (*QIL* 26 (2016)), pp. 17-28, 20.

be understood by taking into consideration the objective and purpose of the international climate change law, discretion permitted to the parties, differentiated nature of obligations, nature of potential harm in the absence of due diligence and the principle of good faith.¹⁴¹

3.23. The principle of due diligence requires States to identify and evaluate the significant risk of an activity, at the earliest possible stage in a decision-making process. As noted in the commentary on the Framework Principles on Human Rights and the Environment:

“Prior assessment of the possible environmental impacts of proposed projects and policies is generally required by national laws, and the elements of effective environmental assessment are widely understood: the assessment should be undertaken as early as possible in the decision-making process for any proposal that is likely to have significant effects on the environment; the assessment should provide meaningful opportunities for the public to participate, should consider alternatives to the proposal, and should address all potential environmental impacts, including transboundary effects and cumulative effects”.¹⁴²

3.24. As the Court explained in the *Gabčíkovo-Nagymaros* judgement, when exercising due diligence in the context of environmental risks “current standards must be taken into consideration.”¹⁴³ The Court further observed that:

“Owing to new scientific insights and to a growing awareness of the risks for mankind—for present and future generations—of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past”.¹⁴⁴

¹⁴¹ See L. Rajamani, “Due Diligence in International Climate Change Law”, in H. Krieger, A. Peters, and L. Kreuzer (eds), *Due Diligence in the International Legal Order* (Oxford, 2020).

¹⁴² UNGA, *Framework Principles on Human Rights and the Environment*, Principle 8, para. 20, Un Doc. A/HRC/37/59.

¹⁴³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, *ICJ Reports 1997*, p. 77, para. 140.

¹⁴⁴ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, *ICJ Reports 1997*, p. 78, para. 140; ILC, *Commentaries on the Prevention of Transboundary Harm from Hazardous Activities*, UN Doc. A/56/10 (2001), Article 3(4) (noting that international rules and standards “constitute a necessary reference point to determine whether measures adopted are suitable” for the purposes of preventing the pollution of the environment).

3.25. Colombia is of the view that the sole application of the principle of prevention is insufficient when dealing with both known and unknown effects of the climate crisis. It is not acceptable, nor sufficient, for States to excuse themselves based on the unpredictability of the actual causation of effects or consequences of activities reasonably likely to worsen or accelerate the climate crisis, in order to refrain from adopting measures to mitigate the harmful effects of such activities.

3.26. In this regard, Colombia draws the attention of the Court to the precautionary approach, an integral part of the general obligation of due diligence,¹⁴⁵ which seeks to provide guidelines on the application and interpretation of environmental law when there is no scientific certainty regarding the production or risk of environmental harm.

3.27. Colombia notes that the precautionary approach is particularly important in relation to the climate change crisis, considering the IPCC's warning that "pathways that overshoot 1.5°C run a greater risk of passing through 'tipping points', thresholds beyond which certain impacts can no longer be avoided even if temperatures are brought back down later".¹⁴⁶ There is growing concern that passing certain tipping points could lead to significant disruptions in ecosystems, economies, and society.¹⁴⁷

3.28. Article 3 of the UNFCCC provides that "[t]he Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects".¹⁴⁸ Colombia submits that, in this regard, States should be guided by the precautionary principle as stipulated in the Rio Declaration on Environment and Development, which requires that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".¹⁴⁹

¹⁴⁵ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para. 177.

¹⁴⁶ Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5°C, Summary for Policymakers* (IPCC, 2018). p. 283.

At: https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Full_Report_HR.pdf

¹⁴⁷ See W. Steffen et. al., "Trajectories of the Earth System in the Anthropocene", (*Proc Natl Acad Sci* 115(33), U.S.A. Aug. 2018, pp. 8252-8259).

¹⁴⁸ UNFCCC, art. 3.3.

¹⁴⁹ UN Conference on Environment and Development, Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I) (Annex I) (hereinafter "Rio Declaration"), Principle 15.

3.29. The United Nations Human Rights Committee has urged States to “pay due regard to the precautionary approach” when addressing threats like climate change.¹⁵⁰ The IACtHR also observed that “States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty. Consequently, States must act with due caution to prevent possible damage.”¹⁵¹

3.30. The precautionary approach serves a double purpose in the context of the climate change crisis. It not only provides a normative basis for ambitious climate action by States but also requires them to take resolute steps to reduce their emissions of GHG in order to confront the climate change crisis. According to the ITLOS, the precautionary approach should be viewed as a key element of due diligence in this regard. It observed that –

“The link between an obligation of due diligence and the precautionary approach is implicit [...] [It]emerges from the declaration of the Tribunal that the parties ‘should in the circumstances act with prudence and caution to ensure that conservation measures are taken . . .’ [...] and is confirmed by the further statements that ‘there is scientific uncertainty regarding measures to be taken to conserve the stock of southern bluefin tuna’ [...] and that ‘although the Tribunal cannot conclusively assess the scientific evidence presented by the parties, it finds that measures should be taken as a matter of urgency.’”¹⁵²

D. Principle of Highest Possible Ambition and Progression as reflected in the Paris Agreement

3.31. The principle of highest possible ambition and progression, as articulated in Articles 3 and 4(3) of the Paris Agreement, stands as a cornerstone to ensure the protection of the climate system from anthropogenic emissions of GHG.

¹⁵⁰ Human Rights Committee, *General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, UN Doc CCPR/C/GC/36 (30 October 2018) para 62.

¹⁵¹ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para. 180.

¹⁵² ITLOS, *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Request for Advisory Opinion Submitted to the Seabed Disputes Chamber), Case No. 17, Advisory Opinion of 1 Feb. 2011, para. 132.

3.32. Before turning to the principle of the highest possible ambition and progressions, it is important to recall that the Paris Agreement in Article 2(1)(a) sets forth the aim - “in enhancing the implementation of the UNFCCC” to “strengthen the global response to the threat of climate change . . . 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 . . .”¹⁵³

3.33. Parties also agreed to strengthen the global response to climate change, inter alia by “[i]ncreasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production,” and “[m]aking finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.”¹⁵⁴ Under Article 5(1), the States Parties also agreed that they should “conserve and enhance” sinks and reservoirs of GHG.

3.34. While the Paris Agreement entered into force in 2016, the States Parties to the UNFCCC have repeatedly reaffirmed and underscored the target of limiting the global average temperature increase to 1.5°C.¹⁵⁵ The States Parties to the Paris Agreement also agreed to take specific measures toward achieving the 1.5°C limit.

3.35. In Article 4 of the Paris Agreement, Parties agreed to reduce their GHG emissions as quickly as possible. Developed countries have to set targets to reduce their emissions economy-wide. To achieve the overall goal of limiting temperature, each Party has an obligation to prepare and communicate their NDC and to take domestic actions to meet their commitments. At the same time, developing countries are encouraged to make economy-wide efforts to limit or reduce their emissions over time. Colombia submits that it should be done in

¹⁵³ See Paris Agreement, art. 2(1)(a).

¹⁵⁴ Paris Agreement, art. 2(b)-(c).

¹⁵⁵ COP27, Decision 21/CP.27, UN Doc. FCCC/CP/2022/10/Add.2 (2023), para. 7; COP27, Draft Decision - /CP.27 -/CMA.4, UN Doc. FCCC/CP/2022/L.18-FCCC/PA/CMA/2022/L.20 (2022), Preamble; COP27, Decision 21/CP.27, UN Doc. FCCC/CP/2022/10/Add.2 (2023), para. 8

line with the objectives of, and the collective commitments expressed in, Articles 2(1) and 4(1) of the Paris Agreement.¹⁵⁶

3.36. Colombia submits that the due diligence standard of conduct applies, in particular, to the realisation of Parties' NDCs. According to Article 4(2), second sentence, the "Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such NDCs". At the same time, it also establishes a standard of conduct according to which Parties ought to do as well as they can in designing, implementing and enforcing domestic measures aiming at achieving the objective of their respective NDC.¹⁵⁷

3.37. One of the main principles of the Paris Agreement is that each Party should reflect its "highest possible ambition" in its NDC to achieve the Agreement's long-term temperature goal.¹⁵⁸ Articles 3 and 4(3) establish a requirement that the efforts of all Parties will represent a progression over time, meaning that every new effort will go beyond previous ones. This, in turn, is based on the principle of due diligence, which requires taking due regard to different national circumstances, reflecting CBDR-RC.¹⁵⁹

3.38. For Colombia, the principle of the highest possible ambition, which aligns with the duty of due diligence in international law, essentially requires that Parties deploy their best efforts in setting their national mitigation targets and in pursuing domestic measures to achieve them. In the context of the Paris Agreement, Colombia submits that the Court should interpret this standard as one requiring Parties to act in proportion to the risk at stake and to their individual capacity, considering that those efforts should progress over time.¹⁶⁰

3.39. Colombia argues that countries must make every effort within their means to progressively protect the rights and interests at stake, which includes limiting the rise in global temperature to below 2°C and striving to limit it to 1.5°C. Additionally, in line with the due diligence principle, Article 4(3) mandates the identification of the highest achievable

¹⁵⁶ Paris Agreement, art. 4(2).

¹⁵⁷ C. Voigt, "The Paris Agreement: What is the standard of conduct for parties?" (*QIL* 26 (2016)), pp. 17-28, 20.

¹⁵⁸ Paris Agreement, art. 4.3.

¹⁵⁹ Paris Agreement, Article 4.3; See C. Voigt & F. Ferreira, "'Dynamic Differentiation': The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement" (5 *Transnat'l Env. L.* 285 (2016)).

¹⁶⁰ See International Law Association, *First report of the ILA Study Group on Due Diligence in International Law*, 7 March 2014. At: https://www.ila-hq.org/en_GB/documents/first-report-washington-dc-2014

mitigation goal that is not overly burdensome or impossible to achieve economically. This goal should be comprehensive and based on a thorough assessment of mitigation options in all relevant sectors. The Parties must utilize all political, legal, socio-economic, financial, and institutional capacities and possibilities in defining such a target. Furthermore, they must plan their climate policies holistically and with a long-term outlook, as stipulated in Article 4(19), which requires Parties to aim to formulate and communicate long-term strategies for low GHG emissions.

3.40. Likewise, Article 4 also establishes in paragraphs 4 and 5 that “developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.” It further states that “[s]upport shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10, and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.”

3.41. Colombia submits that the “highest possible ambition” as a standard of conduct and due diligence needs to be adopted by the Parties while formulating and communicating their NDCs every five years.¹⁶¹ States must act with care and use appropriate measures in matters of international importance. The level of care required is proportional to the degree of risk they may face or are exposed to. As the level of potential harm increases, so does the duty of care required to prevent it.¹⁶²

E. Common but Differentiated Responsibilities and Respective Capabilities

3.42. The principle of CBDR-RC¹⁶³ recognizes the importance of all states establishing and adopting effective measures for environmental protection against the ongoing

¹⁶¹ See C. Voigt, “The Paris Agreement: What is the standard of conduct for parties?” (*QIL* 26 (2016)), pp. 17-28, at p. 24.

¹⁶² ILC, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, in *Yearbook of the International Law Commission*, vol. II, part two (2001), commentary to art 3, para 18 (“The required degree of care is proportional to the degree of hazard involved. [...] The higher the degree of inadmissible harm, the greater would be the duty of care required to prevent it.”)

¹⁶³ UN Conference on Environment and Development, *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (Vol. I) (Annex I), Principle 7.

deterioration and degradation of climate and environmental systems. These measures should be proportional to the damage caused and understood in terms of the origin of the damage and the capabilities of each state. Priority should be given to the specific situations and needs of developing countries.¹⁶⁴

3.43. The Stockholm Declaration establishes a fundamental principle reflecting the importance of support from developed countries to developing countries in achieving the goals of environmental conservation and improvement, as follows:

“Principle 12. Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the international technical and financial assistance for this purpose.”

3.44. This principle was first addressed in 1989 by the United Nations General Assembly, as a central element of the negotiations that would lead to the United Nations Conference on Environment and Development of 1992 (“Rio Conference”).¹⁶⁵ In Resolution 44/228 the General Assembly recognised the idea that the responsibility to protect the environment as a common heritage of humanity should be shared and is a common goal of all states. However, this does not imply that all states have a uniform responsibility.¹⁶⁶

3.45. The Rio Declaration proclaimed this principle as the acknowledgement by all states of cooperation and the fact that each has contributed differently to environmental degradation. In this regard, the principle consists of two essential notions: i) the pursuit of a common objective, namely, the conservation, protection, and restoration of the integrity of the environment and its ecosystems; and ii) the assumption of differentiated responsibilities based on the capacities of each state.¹⁶⁷ Thus, the principle seeks to maintain a proper balance

¹⁶⁴ Kyoto Protocol to the UNFCCC, 11 December 1997, 2303 U.N.T.S Article 10.

¹⁶⁵ United Nations General Assembly, Resolution 44/228, “*United Nations Conference on Environment and Development*”, 22 December 1989.

¹⁶⁶ E. Hey and S. Paulini, “Common but Differentiated Responsibilities”, in *Max Planck Encyclopedia of International Law* (Oxford University Press, last updated online 2021), para. 1.

¹⁶⁷ Commission on Sustainable Development, *Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development*, (Geneva Switzerland, 26-28 Sept. 1995), para. 38

between environmental protection and the historical and current realities of different societies worldwide.¹⁶⁸

3.46. The first element entails a fundamental notion of environmental protection. Being a common global good whose impacts transcend borders, the task of environmental conservation requires the collective participation of all States, even those who may not have substantially contributed to its degradation.¹⁶⁹ This dimension serves as a foundation for members of the international community to engage in the conservation of a healthy environment at all levels—local, national, regional, and global—as well as in the mitigation and reparation of the damages already inflicted upon it.¹⁷⁰

3.47. Common responsibility, therefore, describes those shared obligations between two or more States regarding the protection of a particular environmental resource and applies in situations where said resource is not under the full and exclusive jurisdiction of a single State. However, the scope and legal nature of these obligations will depend on each affected environmental resource and the international regime governing the matter for the involved States.

3.48. The second element indicates that those States that have historically contributed more to environmental degradation must assume differentiated responsibilities.¹⁷¹ Depending on the regime, this differentiated responsibility has given rise to obligations such as financing or technology transfer to developing countries.¹⁷² When implementing this principle, it is equally important to consider the specific capacities that States have to prevent, reduce, and control a particular environmental problem.

¹⁶⁸ Commentary to Rio Declaration, p. 243; Declaration of the United Nations Conference on Human Environment, Stockholm, 16 June 1972, (hereinafter “Stockholm Declaration”), Principle 12.

¹⁶⁹ Convention for the establishment of an Inter-American Tropical Tuna Commission, 31 May 1949, 80 U.N.T.S.; Stockholm Declaration, Principle 23; United Nations Framework Convention on Climate Change, 9 May 1992.

¹⁷⁰ United Nations General Assembly Resolutions 43/53 (1988), 44/207 (1989) y 45/212 (1990).

¹⁷¹ J. Viñuales “*The Rio Declaration on Environment and Development: A commentary*”, 2015, OSAIL, (hereinafter (“Commentary to Rio Declaration”), p.232.

¹⁷² Commentary to Rio Declaration, p.232.

3.49. The growing awareness of the applicability of this principle by the international community is evident in its inclusion in various international instruments, such as the Montreal Protocol,¹⁷³ and most notably, the UNFCCC.¹⁷⁴

3.50. In this context, and invoking the principles contained in the UNFCCC, Articles 3(1) and 3(2) highlight that “[P]arties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and its adverse effects thereof” and, likewise, that “[T]he specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.”

3.51. The UNFCCC underlines that “change in the Earth’s climate and its adverse effects are a common concern of humankind.”¹⁷⁵ Colombia acknowledges that all States share the responsibility for addressing the climate emergency. However, it is important to recognize that States differ in their level of responsibility for causing the climate change crisis, as well as their ability to address it. This is why UNFCCC creates an equilibrium between “common concern” and States’ obligations to be “in accordance with CBDR–RC and their social and economic conditions.”¹⁷⁶

3.52. The UNFCCC differentiates between developed (Annex I) and developing (Annex II) countries, which have different obligations concerning their GHG emissions,¹⁷⁷ and

¹⁷³ Montreal Protocol on substances that deplete the ozone layer, Montreal, 16 Sept. 1987, 1522 U.N.T.S. 26369.

¹⁷⁴ United Nations Framework Convention on Climate Change, 9 May 1994, 1771 U.N.T.S. 30822.

¹⁷⁵ UNFCCC, Preamble.

¹⁷⁶ See UN Conference on Environment and Development, *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (Vol. I) (Annex I), Principle 7 (“In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”).

¹⁷⁷ UNFCCC, arts. 4.1-4.2.

regarding the provision of finance and transfer of technology to other countries.¹⁷⁸ The Paris Agreement takes a more dynamic approach.¹⁷⁹ Rather than referencing the bifurcated UNFCCC Annexes, the differentiated obligations of States can be adjusted over time, reflecting contemporary conditions within and among States. This reflects both the principle of CBDR–RC and the principle of progressive realization. The Paris Agreement also maintains that developed States should “take the lead in mobilizing climate finance.”¹⁸⁰ Moreover, Article 10 (6) of the Paris Agreement recognises that “[s]upport, including financial support, shall be provided to developing country Parties” [...] including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation.”

3.53. For Colombia, the burden of climate change mitigation measures, as well as the resourcing and financing of climate mitigation, adaptation, loss and damages, must reflect these historical realities and ongoing responsibilities and capabilities. Developed States with wealth and resources have vastly contributed to the global volume of GHG emissions while ensuring their economic development. As noted, “[t]he main contributors to the problem have reaped immense economic benefits and thus have the greatest responsibility to solve the problem.”¹⁸¹

3.54. Colombia argues that the CBDR–RC principle mentioned earlier applies not only globally but also to individual states. It is crucial to acknowledge that states have different levels of responsibility based on their historic and current emissions. Furthermore, their ability to mitigate GHG emissions or adjust to the effects of the climate emergency also varies.

3.55. Colombia considers that international principles on environmental protection are important for the effective implementation of environmental instruments and, in principle, has not been in favour of prioritizing one over the others. However, the country recognizes that, in effect, although the climate crisis is global and implies a common sense of responsibility, it is necessary that, in relation to response, mitigation, adaptation and

¹⁷⁸ UNFCCC, arts. 4.3, 4.7.

¹⁷⁹ See C. Voigt & F. Ferreira, “‘Dynamic Differentiation’: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement” (5 *Transnat’l Env. L.* 285 (2016)).

¹⁸⁰ Paris Agreement, art. 9(3).

¹⁸¹ Special Rapporteur on human rights and the environment, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: A safe climate*, David Boyd, U.N. Doc. A/74/161 (15 July 2019), para. 26.

remediation actions, a differentiation be established, including the historical proportion in which certain States have contributed to the problem and the differentiated capacities that countries actually have to address it. Indeed, as emphasized in Article 3(1) of the UNFCCC, it is the developed countries that are called upon to take the lead in combating climate change, not only in terms of their historical responsibility but also by virtue of their capabilities to address climate change. Ignoring this reality would imply the impossibility of an effective response by the States to this problem.

3.56. Finally, this principle cannot be understood as an exception permitting States to avoid the adoption and implementation of measures aimed at environmental protection. Article 2(2) of the Paris Agreement states that it will be implemented “to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

3.57. Colombia considers that one of the important issues that require collective action from the Parties, especially the developed ones, is the need for means of implementation, such as finances, technology, and capacity building to implement measures to combat the climate and environmental crisis. The UNFCCC, in Articles 4(3) to 4(7), states that “developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in meeting their obligations”. This is relevant in the current context in which many developing countries have increased their indebtedness, with high-interest rates, as well as their fiscal deficit and cost of capital,¹⁸² to meet their sustainable development objectives and respond to these crises of global impact, while at the same time repaying their debt. This makes the implementation of climate and environmental commitments substantially more expensive, which ultimately entails a trade-off between climate action and sustainable development for many developing countries, which is incongruent with the spirit of both the UNFCCC¹⁸³ and the Paris Agreement.¹⁸⁴

¹⁸² S. Mbaye, M. Moreno-Badia, and K. Chae, “*Global Debt Database: Methodology and Sources*”, IMF Working Paper (International Monetary Fund, Washington, DC, 2018).

¹⁸³ UNFCCC, arts. 2 & 3.4.

¹⁸⁴ Paris Agreement, art. 2.1.

3.58. This implies the need to “bring financial flows to a level consistent with a pathway towards climate-resilient and low greenhouse gas emissions development”¹⁸⁵, which requires a policy agenda designed to drive climate-resilient structural economic transformation, and which should be closely linked to, among others, a reform of the international financial architecture as discussed in Chapter 2, above. The Paris Agreement also includes financing obligations for developing countries,¹⁸⁶ including provision and resource mobilization.¹⁸⁷

3.59. To speed up environmental and climate investments necessary to meet the objectives stated in the UNFCCC and the Paris Agreement, without jeopardizing the fiscal sustainability of developing nations and without discrimination against any region or group of developing countries, Colombia considers it necessary, in addition to climate-related debt burden relief, for these countries to obtain access to concessional or low-cost financing through new instruments.

F. Duty to Cooperate

3.60. Colombia submits that the climate change crisis cannot be efficiently and effectively addressed only without international cooperation between States. As noted in the UNFCCC Preamble, “the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate response.”

3.61. In Colombia’s view, States need to recognize not only their particular interests but also those of other States, especially when, as is the case in the present request, what is at stake are the common interests of the international community as a whole.

3.62. This obligation, of customary origin, has been recognized by various international jurisdictions, such as the IACtHR and the ICJ, as an essential element for environmental protection.¹⁸⁸ In particular, the Court has established that the duty of

¹⁸⁵ Paris Agreement, art. 2.1(c).

¹⁸⁶ Paris Agreement, art. 9.1.

¹⁸⁷ Paris Agreement, art. 9.3.

¹⁸⁸ Lake Lanoux Arbitration (France v. Spain), Award 16 November 1957, p. 308; *Legality of the Threat or Use of nuclear weapons*, Advisory Opinion, I.C.J. Reports 1996, para. 102; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 67 para. 145; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 18, para. 17, and pp. 177-178, para. 140; ITLOS, *Mox plant case (Ireland v. United Kingdom)*, Provisional Measures, 3 Dec. 2001, para. 82; and Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para. 181-210.

cooperation must be carried out in good faith,¹⁸⁹ understanding that actions, approaches, or discussions undertaken aim to reach agreements that fall within the common interest of the States.¹⁹⁰ Moreover, this duty incorporates three interrelated obligations – to notify potentially affected States of any significant environmental damage that might result from activity within a State’s jurisdiction; to consult and negotiate with potentially affected States. Such consultation and negotiation activities should be performed in good faith; and to exchange information concerning risks of transboundary harm.

3.63. Thus, similar to the obligation to prevent transboundary harm, the duty of cooperation stands as a fundamental pillar of international environmental law, especially in dealing with the climate crisis.¹⁹¹ Given that the impacts on the global climate system result from the cumulative actions of humans over an extended period,¹⁹² a single State cannot halt it, nor can it address its consequences in isolation.¹⁹³

3.64. Therefore, the solutions that may be implemented will necessarily involve concerted action among the nations of the world. In this way, a fundamental measure to prevent the violation of human rights as a result of the climate crisis is for States to effectively and reciprocally fulfil their duty to cooperate.

3.65. According to the UNFCCC and its Paris Agreement, international cooperation is necessary for effectively achieving climate goals. The developing countries, which often face significant development challenges, require support in terms of finance, low-carbon technology transfer, and capacity-building in order to fully realize these goals. The developed countries are obligated to provide this support. However, without a facilitative global technology transfer regime in place and the assistance of grant-based and concessional public-sources finance from

¹⁸⁹ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para. 184 – 185.

¹⁹⁰ *Obligation to negotiate access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, I.C.J. Reports 2018, para. 86.

¹⁹¹ United Nations Economic Commission for Latin America and the Caribbean, “*Climate Change and Human Rights: contributions by and for Latin America and the Caribbean*” (2019), p. 52.

¹⁹² ““Summary for Policymakers”, in [Core Writing Team, H. Lee and J. Romero (eds.)] *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, (IPCCC, Geneva, Switzerland, 2023), A. I.

¹⁹³ *Ibid.*

developed countries to cover the incremental and associated costs of these technologies, developing countries cannot deploy low-carbon climate technologies on a large scale.

G. International Law on Climate Change and Human Rights

3.66. The climate change crisis adversely affects the lives and well-being of humans. It has been estimated that approximately 3.3 to 3.6 billion people live in highly vulnerable environments susceptible to climate change.¹⁹⁴ As noted earlier, the climate change crisis also adversely impacts the local communities and indigenous peoples in the Americas and the Caribbean region.¹⁹⁵

3.67. The extensive impact of environmental degradation on human rights has been recognized since the Stockholm Declaration, the Rio Declaration and the 1993 Vienna Declaration and Programme of Action. Principle 1 of the Stockholm Declaration notes that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”¹⁹⁶ Similarly, the Rio Declaration reaffirmed that human beings “are entitled to a healthy and productive life in harmony with nature” and that “environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”¹⁹⁷ Moreover, the “right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”¹⁹⁸ Recently, the United Nations General Assembly adopted resolution 76/300 on 28 July 2022 which recognizes the right to a clean, healthy, sustainable environment as a human right, and further notes that this right is important for the enjoyment of other human rights.¹⁹⁹ The resolution reflects agreement on the links between

¹⁹⁴ UN Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2537/2015*, 18 Dec. 2018, pp.15-16.

¹⁹⁵ Intergovernmental Panel on Climate Change, AR6 Synthesis Report: Climate Change 2023, para. A.2.

¹⁹⁶ Stockholm Declaration on the Human Environment, UN Conference on the Human Environment, Stockholm (June 1972), UN Doc. A/CONF.48/14/Rev.1 (“Stockholm Declaration”), Principle 1.

¹⁹⁷ UN Conference on Environment and Development, Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I) (Annex I), Principles 1 and 4.

¹⁹⁸ UN Conference on Environment and Development, Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I) (Annex I), Principle 3.

¹⁹⁹ See U.N. Human Rights Council, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300.

sustainable development, the protection of the environment, including ecosystems, and the promotion of human well-being and full enjoyment of all human rights for present and future generations.

3.68. The Special Rapporteur on Human Rights and Climate Change has observed that “[t]hroughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the rights to, inter alia, life, health, food, development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery.”²⁰⁰ The Human Rights Committee has also indicated that:

“Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States parties under international environmental law should thus inform the content of article 6 of the [CCPR], and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.”²⁰¹

3.69. Colombia submits that the protection of the environment, mitigation and combating climate change are a prerequisite for ensuring the well-being of among others, indigenous populations, afro-descendants communities and the *Raizales* in the Caribbean region.

²⁰⁰ Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, *Promotion and protection of human rights in the context of climate change*, U.N. Doc. A/77/226 (26 July 2022), para. 88.

²⁰¹ U.N. Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 3624/2019*, CCPR/C/135/D/3624/2019 (22 July 2022), para. 8.3.

3.70. The Paris Agreement also acknowledges the relationship between human rights and response measures relating to mitigation, adaptation, and loss and damage adopted by States. It notes that States should “respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, persons with disabilities, and people in vulnerable situations” while addressing climate change.²⁰²In this regard, the UN Human Rights Committee, for instance, identified the climate emergency as “among the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”²⁰³ Similarly, the IACtHR also discussed the interrelationship between human rights and the environment in its Advisory Opinion OC-23/17, opining that “the adverse effects of climate change affect the real enjoyment of human rights.”²⁰⁴

3.71. Moreover, IACtHR affirmed an approach of “systemic integration” and “harmonious interpretation” between different bodies of relevant law.²⁰⁵ For the IACtHR, this approach meant that it “must take international law on environmental protection into consideration when defining the meaning and scope of the obligations assumed by States under the American Convention on Human Rights, in particular, when specifying measures States must take.”²⁰⁶ This approach –systemic integration – is consistent with Article 31(3)(c) of the Vienna Convention on the Law of Treaties (“VCLT”). Article 31(3)(c) requires that courts and tribunals, when interpreting international treaties, consider “any relevant rules of international law applicable in the relations between the parties.” The *corpus* of relevant rules includes not only treaties but also general principles and rules of customary international law,²⁰⁷ such as due diligence, harm prevention, precaution, highest possible ambition, non-regression, and CBDR–RC.

²⁰² Paris Agreement, Preamble.

²⁰³ U.N. Human Rights Committee, *General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, UN Doc CCPR/C/GC/36 (30 Oct. 2018) para 62.

²⁰⁴ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para. 47.

²⁰⁵ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para. 44.

²⁰⁶ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para. 44.

²⁰⁷ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Preliminary Objection, Judgment, I.C.J. Reports 1996*, p. 817, para. 41.

3.72. The IACtHR also found that “the State obligation to respect and to ensure human rights applies to every person who is within the State’s territory or who is in any way subject to its authority, responsibility or control.”²⁰⁸ A State “is exercising authority over that person when that person is under its effective control, either within or outside its territory.”²⁰⁹ Therefore, a person’s rights are violated “if there is a causal link between the act that originated in its territory and the infringement of the human right outside its territory.”²¹⁰

²⁰⁸ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para. 73.

²⁰⁹ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para.81.

²¹⁰ Annex 1: Inter-American Court of Human Rights Advisory Opinion OC-23/17, para.101.

Chapter 4

LEGAL CONSEQUENCES FOR STATES UNDER OBLIGATIONS TO ENSURE THE PROTECTION OF THE CLIMATE SYSTEM AND THE ENVIRONMENT

4.1. Colombia submits that when a State violates its international legal obligations, as discussed in Chapter 3, the legal responsibility is established ‘immediately as between the two [or more] States’.²¹¹ The idea of State responsibility for environmental damages is certainly not new. The Court has dealt with the issue of damages in cases of environmental wrongs on several occasions.²¹²

4.2. Additionally, a pattern of acts and omissions by States, contrary to international legal obligations, that resulted in escalating emissions of GHG when viewed collectively, can itself be considered as a conduct that substantially disrupts the climate system. The continuing environmental damage at the heart of the climate crisis has had such an impact on States, in particular, on their environment and their ability to assure human rights, that it constitutes significant harm in breach of the no-harm rule and other applicable environmental obligations. This is a risk that does not distinguish borders or social conditions but will affect the entire human population with special emphasis on those most vulnerable in developing States. This conduct is an international breach that has a continuous character, which persists over time and encompasses both acts and omissions of responsible States.

4.3. Moreover, it is worth recalling that the wording in question (b) in resolution 77/276, significantly approved by consensus, and submitted by the UNGA to the Court, requests it to determine what the legal consequences are “for States where they, by their acts and omissions *have caused significant harm* to the climate system and other parts of the environment” (emphasis added). The existence of harm and causality, thus, are not at issue.

²¹¹ *Case concerning Phosphates in Morocco (Italy v France)*, 1938 PCIJ Series A/B, No. 74, at p. 10, para. 48.

²¹² *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Reparations, Judgment of 9 February 2022*, I.C.J. Reports 2022, p. 48, paras. 93-94; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Compensation, Judgment*, I.C.J. Reports 2018, p. 26, para. 34.

4.4. Colombia submits that the Court while clarifying the legal consequences derived from breaches – restitution, compensation, and satisfaction, either singly or in combination ²¹³ – should take into consideration the need for pecuniary compensation, credibility, accountability, and fairness in reaching the goal of limiting temperature rise to 1.5°C.

4.5. Hence, the legal consequences stemming from breaches of international law on climate, including the breach of the no-harm principle, are cessation and non-repetition **(A)**, as well as reparation **(B)**.

A. Cessation and Non-Repetition

4.6. Compliance with existing obligations is a prerequisite to the restoration and repair of the legal relationships affected by the breach.²¹⁴ As the failure of many States to prevent excessive GHG emissions within their jurisdiction and other international legal obligations appears to be continuing, Colombia submits that cessation is as relevant as the taking of appropriate assurances and guarantees of non-repetition. States responsible for a continuing internationally wrongful act, such as a breach of the no-harm principle, have a crucial obligation to put an end to it. It is a matter of avoiding harm and preventing more serious damages.

4.7. The consequences for States affected by climate change–related wrongful conduct could be drastic, particularly where the violation involves not a single act, but a series of wrongful acts and omissions carried out in disregard of the abundant scientific evidence. To meet its obligation of cessation, a State may need to make changes to significant parts of its laws, regulatory system and levels of assistance requested from, or provided to, other States in order to restore compliance with the substantive obligation that was violated.

4.8. Colombia submits that under the law of State responsibility, inasmuch as the breach of an international obligation is continuing, States are under an obligation to take all relevant measures to ensure the cessation of such breaches.²¹⁵ For Colombia, “cessation”

²¹³ ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, in *Yearbook of the International Law Commission*, vol. II, part two (2001) (hereinafter Articles on State Responsibility), art. 34.

²¹⁴ Articles on State Responsibility, art. 30.

²¹⁵ Articles on State Responsibility, art. 30(a).

implies a more urgent need for action compared to the term “mitigation.” It is necessary not only to mitigate the harmful anthropogenic interference with our climate system but to prevent it altogether. Similarly, limiting or reducing excessive GHG emissions is not sufficient; they must be brought to a complete halt along with appropriate assurances and guarantees of non-repetition. Therefore, it is imperative for major polluters to discontinue all activities that directly harm the environment.²¹⁶

4.9. While it is acknowledged that requesting States to entirely cease *all* GHG emissions is not feasible, halting operations that pose a risk to human health is achievable and should be urged, particularly regarding emissions originating from the global north.

4.10. Colombia posits that it is incumbent upon the Court to declare that appropriate assurances and guarantees of non-repetition must be offered by the largest emitters and States that violate their international legal obligations. Adhering to legal commitments to reduce GHG, formally committing to timelines for decarbonizing their economies and phasing out fossil fuels, while adopting and enforcing regulations for their private sectors in accordance with such obligations, are not only welcomed but also much needed, albeit insufficient, assurances and guarantees of non-repetition.

B. Reparation

4.11. This Court has ruled that in the realm of reparation for environmental harms, the character of the reparation may vary depending on the obligation violated and the nature of the injury.²¹⁷

4.12. Restitution is recognized as a means of providing redress for harm, involving the restoration of the situation to its state prior to the occurrence of the wrongful act.²¹⁸ When dealing with the effects of climate change, while some effects on the climate system may have

²¹⁶ See *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment of 31 March 2024, I.C.J. Reports 2014, p. 298, paras. 245-247.

²¹⁷ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment of 9 February 2022, I.C.J. Reports 2022, paras. 93-94; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, para. 34.

²¹⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 67, para. 273.

reached irreversible levels, certain circumstances can still be remediated and returned to their previous state.²¹⁹ When this is possible, all efforts to achieve restitution should be made.

4.13. Furthermore, the violation of an international obligation also entails a duty to provide appropriate compensation. This involves providing full reparation for the harm resulting from an internationally wrongful act. If restitution is impossible or imposes a burden significantly outweighing the benefits, compensation or other forms of satisfaction, or a combination thereof, may be appropriate forms of redress.²²⁰

4.14. Monetary compensation is typically deemed suitable and frequently the sole recourse for harm resulting from an unlawful act.²²¹ For instance, in the case of a wrongful act which affected the environment and natural resources, the Court determined that compensation was due to repair the damage caused.²²² Accordingly, it is appropriate to assert that compensation is warranted for harm inflicted on the environment of States, even when the harm may result from multiple concurrent factors.²²³ Colombia submits that the consequences of the climate change crisis are financially quantifiable and therefore, compensation could constitute an appropriate form of remedy.

4.15. Colombia considers that Courts should also take into consideration that States which bear the greatest vulnerability to climate change, often suffer a subsequent decline in biodiversity, and they lack the financial capacity to bolster their resilience against damages due to heavy debt burdens and financial instability.²²⁴ Measures such as debt-for-climate swaps and debt-for-nature swaps aim to alleviate this burden by reallocating fiscal resources, enabling

²¹⁹ Approaches to address Loss and Damage associated with Climate Change impacts in developing countries. See, e.g., the operationalization of the Loss and Damage Fund during the last COP (“The COP and CMA at its twenty-eighth and fifth sessions, operationalized the Loss and Damage Fund as an as entity entrusted with the operation of the Financial Mechanism of the Convention, which would also serve the Paris Agreement. The Fund will be accountable to and function under the guidance of the COP and the CMA.”) At: <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat#:~:text=The%20COP%20and%20CMA%20at,the%20COP%20and%20the%20CMA>

²²⁰ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 81, para. 152.

²²¹ Articles on State Responsibility, art. 36.

²²² *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment of 9 February 2022, I.C.J. Reports 2022, p. 104 para. 275, and p. 106, para. 281.

²²³ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018 (I), p. 28, paras. 41-42.

²²⁴ M. d Chamon, E. Klok, V. V. Thakoor, J. Zettermeyer, *Debt-for-Climate Swaps: Analysis, Design, and Implementation* (IMF, 2022). At: <https://www.imf.org/en/Publications/WP/Issues/2022/08/11/Debt-for-Climate-Swaps-Analysis-Design-and-Implementation-522184>

vulnerable governments to enhance resilience without jeopardizing fiscal stability or diverting funds from other critical development endeavours. Colombia submits that these activities should not be seen as a mere expression of goodwill by developed States but as an actual obligation stemming from the commission of various and continued internationally wrongful acts against the environment resulting from historic and current GHG emissions.

4.16. As shown in Chapter 2, section E, above, the emission of green bonds constitutes a tool that can be replicated by countries as a form of reparation through which they are contributing to the cessation of environmental impacts, while creating a sustainable financial system aligned with the environmental purposes to be protected at a global level. By integrating nature-based solutions into debt restructuring strategies, Colombia sets a precedent for other nations to follow, highlighting the crucial role of natural capital in building a more environmentally sustainable future.

4.17. Ultimately, it falls upon the Court to determine the legal contours of how appropriate reparation should be made for the harm endured. The complexities and scale of the present case should not deter the Court from applying the rules of international law and addressing these questions, considering the specific circumstances of the type of harm caused and the sources of that harm.

4.18. In light of the multi-dimensional aspects of climate change crises, Colombia considers that the Court should take into account when clarifying the scope of the legal consequences for States, the concept of environmental justice that emphasises the goal of promoting justice and accountability in environmental matters, focusing on respect, protection and fulfilment of environmental rights, and the promotion of the environmental rule of law, including the full realisation of the rights of the victims.²²⁵

²²⁵ UNDP, *Environmental Justice: securing our right to a clean, healthy and sustainable environment* (2022), p. 15, at: <https://www.undp.org/publications/environmental-justice-securing-our-right-clean-healthy-and-sustainable-environment> ; see also, United Nations Environment Programme, *Environmental Rule of Law: First Global Report*, 2019.

Chapter 5

CONCLUDING REMARKS

5.1. Colombia submits that the Advisory Opinion sought by the General Assembly is of utmost importance to the international community. The climate change crisis and its effects are felt worldwide, and the obligation to protect the climate system and the environment is the responsibility of all States, and one that needs to be addressed comprehensively without further delay. As shown, the Court has jurisdiction to render the Advisory Opinion requested of it and there are no justifiable reasons for not exercising its jurisdiction in this matter.

5.2. International law, including the law on climate change, has developed specialized regulations to govern matters within their respective domains, but the lack of integration and coordination has led to significant challenges within international law. Colombia argues that the current request for an advisory opinion allows the Court to examine the challenges posed by the fragmentation of international law and climate change that has hitherto hindered the sound application of climate and environmental protection obligations. The Court with its general jurisdiction should seize this opportunity to clarify the application and existence of relevant obligations of States to protect the climate system.

5.3. The international law on climate change is complex, but it provides a basis of obligations and responsibilities for States. The principle of CBDR-RC is at the core of this framework, recognizing the different levels of development and capacities of States to address the climate crisis. However, all States must cooperate and take measures to protect the climate system and the environment.

5.4. The Paris Agreement represents a significant step forward in the international fight against climate change, but it is clear that the current NDCs are not sufficient to limit

temperature rise to 1.5°C. This is a matter of great concern, as the effects of climate change are already being felt in many parts of the world, particularly in vulnerable countries like Colombia.

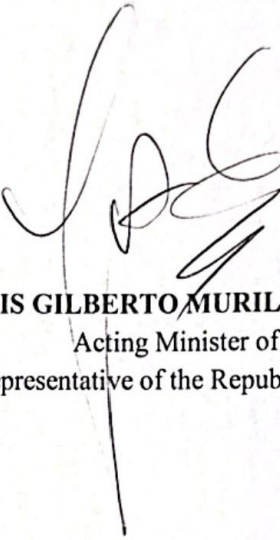
5.5. Colombia's submissions underscore the gravity of the climate crisis and the need for urgent and effective global action. Colombia has shown its commitment to addressing the climate crisis, through its efforts to reduce emissions, promote renewable energy, protect its forests and biodiversity, and support adaptation measures.

5.6. However, the efforts of one country alone are not enough to address this global challenge, and Colombia urges all States to increase their ambition and to take urgent concrete measures to protect the climate system and the environment. The Court's pronouncement on the legal principles informing the content of the duties incumbent upon States in this regard, is invaluable in light of the urgency and gravity of the situation given the imminent risks of irreparable harm to populations worldwide, particularly vulnerable communities in developing countries.

5.7. Colombia also emphasizes the importance of considering the human rights dimension of the climate crisis. The effects of climate change are felt disproportionately by vulnerable populations, such as indigenous communities, women, children, and people living in poverty. Protecting the climate system and the environment is not only a legal obligation but also a necessity, as it is essential for the enjoyment of basic human rights, such as the right to life, health, food, water, and a healthy environment.

5.8. Colombia also argues for the need for the principal judicial organ of the United Nations that is, as such, in a unique position to do so, to clarify the legal consequences for States, both in order to prevent further harm as well as to redress significant harm already caused by their actions or omissions with regard to climate change.

5.9. In conclusion, Colombia respectfully requests the Court to render an Advisory Opinion that will provide valuable guidance to the international community in addressing the climate crisis and will contribute to the protection of the planet and the well-being of present and future generations.



LUIS GILBERTO MURILLO URRUTIA
Acting Minister of Foreign Affairs
Representative of the Republic of Colombia
11 March 2024

LIST OF ANNEXES

The Annexes to Colombia’s Written Statement are set out below and numbered in the order in which they are referred to in the text.

- Annex 1** Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, English version
- Annex 2** Statement of the President of the Republic of Colombia, Gustavo Petro Urrego, at the COP28 High Level Segment, 1 December 2023, English version
- Annex 3** Colombia’s Nationally Determined Contribution
- Annex 4** Supreme Court of Justice of the Republic of Colombia, Future Generations v. Ministry of the Environment and Others (“*Demanda Generaciones Futuras v. Minambiente*”), Judgment STC4360-2018, 4 April 2018, English Translation

