

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR AN ADVISORY OPINION)

WRITTEN OBSERVATIONS OF THE REPUBLIC OF LATVIA

19 MARCH 2024

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I. INTRODUCTION

1. Latvia's choice to participate in the advisory proceedings on the *Obligations of States in respect of Climate Change* reflects the utmost seriousness with which it treats the subject matter raised by this request for the advisory opinion. Indeed, this is only the second advisory proceeding that Latvia has participated in before the International Court of Justice ("ICJ" or "the Court") or its predecessor.¹
2. In Latvia's explanation of its position in the United Nations ("UN") General Assembly after the adoption of Resolution 77/276 'Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change', it stated:

Today is truly historic. The adoption by consensus of resolution 77/276 has shown that Vanuatu and other small island developing States and vulnerable countries around the world are not alone in their fight against the effects of climate change. Vanuatu has played a unique role in shaping the response to the global climate crisis by demonstrating that climate change is an environmental issue that unquestionably reaches beyond the legal framework on international environmental law.

International courts and tribunals can play an important role in the formulation and development of the rules of international law that guide the conduct of States and other actors in dealing with the causes and implications of the climate crisis. We appreciate Vanuatu's historic initiative in requesting an advisory opinion on climate change from the International Court of Justice on climate change and international law. Latvia was proud to be a sponsor of the resolution and is seriously considering involvement in the advisory proceedings in order to contribute to the development of international law.²

3. The seriousness and consistency of Latvia's approach to the subject matter is reflected in its statements on various aspects of climate change made under the auspices of the UN, in

¹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403 [6].

² Official Records of the UNGA General Assembly Seventy-seventh session's 64th plenary meeting (Wednesday, 29 March 2023, 10 a.m., New York) UN Doc A/77/PV.64 19 (Pildegovičs).

debates of the Security Council,³ the Sixth Committee of the General Assembly,⁴ and other settings,⁵ as well as its practice in implementation of obligations under the UN climate change regime.⁶

4. Latvia has also been consistent in acting upon its view, expressed above, regarding the importance of the role played by international courts and tribunals in addressing the climate crisis.⁷ In 2023, Latvia participated in the advisory proceedings of the International Tribunal for the Law of the Sea (“ITLOS” or “the Tribunal”) on the *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (“Request by the COSIS”)* – the only State from the Eastern European

³ Statement at the Open Debate of the Security Council on “Addressing climate-related risks to international peace and security” (23 February 2021); Statement by the Permanent Representative at the Ministerial-level open debate at the Security Council entitled “Sea-Level Rise – Implications for International Peace and Security” (14 February 2023); Statement by the Permanent Representative at the Open Debate of the Security Council on the theme “Threats to international peace and security: Climate change, peace and security” (13 June 2023).

⁴ Statement by the Permanent Representative on Cluster II of “Report of the International Law Commission of its seventy-second session” (1 November 2021) <https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/22mtg_latvia_2.pdf>; Statement on Sea-Level Rise in Relation to International Law at the 28th plenary meeting of the Sixth Committee (23 October 2023) <https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_latvia_1.pdf>.

⁵ Statement by the Permanent Representative at the Ambassadorial-level meeting on the impact of climate change on peacebuilding in the Pacific Islands (2 June 2022); Statement at the Peacebuilding Commission “Women leadership for women, peace and security agenda and the role of women in the context of climate change” (14 November 2022).

⁶ *Inter alia*, Latvia has taken a number of measures to perform its obligations under the 1992 UN Framework Convention on Climate Change (“UNFCCC”) and the 2015 Paris Agreement (“Paris Agreement”). It performs its nationally determined contributions (“NDC”) together with the EU (currently the Updated EU NDC (2023)). Latvia has also adopted Latvia’s Climate Neutrality Strategy for 2050; National Energy and Climate Plan until 2030; Latvian National Plan for Adaptation to Climate Change until 2030; National Development Plan 2021–2027; Guidelines for Environmental Policies between 2021 and 2027 establishing Latvia’s obligation to become climate-neutral by 2050. See Report on Latvia’s *Climate neutrality strategy for 2050* <https://ec.europa.eu/clima/sites/lts/lts_lv_lv.pdf>; Latvia’s *National Energy and Climate Plan* <https://ec.europa.eu/energy/sites/ener/files/documents/lv_final_necp_main_en.pdf>; Latvia’s *National Plan for Adaptation to Climate Change until 2030* <<https://likumi.lv/ta/id/308330-par-latvijas-pielagosanas-klimata-parmainam-planu-laika-posmam-lidz-2030-gadam>>; Latvia’s *National Development Plan 2021–2027* <https://www.pkc.gov.lv/sites/default/files/inline-files/NAP2027_apstiprin%C4%81ts%20Saeim%C4%81_1.pdf>; *The Guidelines for Environmental policies between 2021 and 2027* <<https://likumi.lv/ta/id/335137-par-vides-politikas-pamatnostadnem-2021-2027-gadam>>.

⁷ UN Doc A/77/PV.64 (n 2) 19 (Pildegovičs).

Group of States to take part in both the written and oral proceedings.⁸ There, its Agent explained that:

Latvia's choice to participate [in the first case Latvia has taken part in proceedings before the Tribunal] reflects the particular importance of the issues raised by the request for the advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law (COSIS). I note the powerful explanations of this importance given on Monday by Prime Minister [of Antigua and Barbuda] Browne, Prime Minister [of Tuvalu] Natano, Attorney General [of Vanuatu] Loughman and Ms Fifita.⁹

The written statement in these proceedings builds upon and is consistent with Latvia's approach in the advisory proceedings on the *Request by the COSIS*.

5. The written statement will address in turn issues relating to the Court's jurisdiction and discretion (Section II), question (a) (Section III), and question (b) (Section IV), concluding with submissions (Section V).

II. JURISDICTION AND DISCRETION

6. The Court has explained that, when it "is seised of a request for an advisory opinion, it must first consider whether it has jurisdiction to give the opinion requested and if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request".¹⁰ In Latvia's view, the Court has jurisdiction to give the opinion requested by the General Assembly on the obligations of States in respect of climate change. Latvia also sees no reason why the Court should, in the exercise of its discretion,

⁸ International Tribunal for the Law of the Sea, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)* Written Statement of the Republic of Latvia (16 June 2023) <https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/1/C31-WS-1-14-Latvia_01.pdf>; ITLOS/PV.23/C31/9 (15 September 2023) <https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/ITLOS_PV23_C31_9_E.pdf> 8-14; Comments on the Written Responses by COSIS and IUCN (2 October 2023) <https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/questions/Comments_Latvia.pdf>.

⁹ ITLOS/PV.23/C31/9 *ibid* 8 (Līce).

¹⁰ See most recently *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 95 [54]; also *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226 [10]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136 [13]; *Kosovo* (n 1) [17].

decline to answer the request. This section will identify the legal criteria and explain why the Court can answer the two questions put by the General Assembly (sub-section A) and should do so (sub-section B), briefly addressing in conclusion Latvia's position on the questions put to the Court by the General Assembly (sub-section C).

A. Jurisdiction

7. In determining its jurisdiction to give an advisory opinion under Article 65, paragraph 1, of its Statute¹¹ and Article 96, paragraph 1, of the UN Charter,¹² the Court is to satisfy itself that the questions on which it is requested to give an opinion are “legal questions”.¹³
8. The Court has explained that “questions framed in terms of law and rais[ing] problems of international law ... are by their very nature susceptible of a reply based on law” and “therefore ... appear ... to be questions of a legal character”.¹⁴ In the present proceedings, question (a) relates to primary “obligations of States under international law” in the context of climate change, and question (b) mainly concerns the secondary obligations, namely “the legal consequences” that flow from a breach of a primary obligation that has “caused significant harm to the climate system and other parts of the environment”. In Latvia's view, these are plainly “legal questions”. Indeed, in the most recent advisory opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (“*Chagos*”), the Court held that similarly structured and drafted questions, requesting an opinion from the Court on primary obligations and “consequences under international law”, were of legal character.¹⁵

¹¹ Statute of the Court, Art 65(1) (“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”).

¹² United Nations Charter, Art 96(1) (“[t]he General Assembly ... may request the International Court of Justice to give an advisory opinion on any legal question”).

¹³ *Kosovo* (n 1) [25].

¹⁴ *Ibid.*

¹⁵ *Chagos* (n 10) [58]-[59].

B. Discretion

9. Under Article 65 of the Court's Statute, it has "a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met".¹⁶ In Latvia's view, there are no grounds for the Court to exercise its discretion to decline to give an advisory opinion requested by the General Assembly.
10. In *Chagos*, the Court summarised its consistent jurisprudence by noting that "[t]he discretion whether or not to respond to a request for an advisory opinion exists so as to protect the integrity of the Court's judicial function as the principal judicial organ of the United Nations", recalled the fact that its answer to a request for an advisory opinion "represents its participation in the activities of the Organization, and, in principle, should not be refused", and concluded "that only 'compelling reasons' may lead the Court to refuse its opinion in response to a request falling within its jurisdiction".¹⁷
11. The Court has identified several reasons that could, in principle, be deemed compelling and thus warrant the exercise of its discretion to decline to give an advisory opinion.¹⁸ In Latvia's view, none of those reasons apply in the present proceedings.

C. The questions put to the Court by the General Assembly

12. The Court may, if necessary, depart from the language of the questions referred to it, or clarify or reformulate those questions.¹⁹ In Latvia's view, this is not required in the present proceedings.

¹⁶ See most recently *ibid* [63]; also *Wall* (n 10) [44]; *Kosovo* (n 1) [29].

¹⁷ *Chagos* (n 10) [64]-[65].

¹⁸ See most recently *ibid* [67]-[91]; also *Wall* (n 10) [46]-[64]; *Kosovo* (n 1) [32]-[47].

¹⁹ *Chagos* (n 10) [135].

13. In what follows, Latvia will address in turn question (a) (Section III) and question (b) (Section IV). In this statement, Latvia will focus on the instruments, rules, and principles identified in the chapeau and the text of the questions.

III. QUESTION (A)

14. Question (a) is expressed in the following terms:

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?

15. Latvia will answer question (a) in six parts, dealing in turn with obligations under the UN climate change regime (sub-section A), the UN Convention on the Law of the Sea (“UNCLOS”) (sub-section B), the duty of due diligence and the principle of prevention of significant harm to the environment (sub-section C), international human rights law (sub-section D), and the UN Charter (sub-section E). In doing so, Latvia applies the principles of treaty interpretation in Articles 31 to 33 of the Vienna Convention on the Law of Treaties (“Vienna Convention”) that reflect rules of customary international law.²⁰

A. UN climate change regime

16. The UN climate change regime constitutes the key suite of obligations under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases (“GHG”). In the *Request by the COSIS*, Latvia noted that “[t]he two particularly relevant instruments in the context of climate

²⁰ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)* [2023] ICJ Judgment of 6 April 2023 <<https://www.icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-00-EN.pdf>> [87].

change are the United Nations Framework Convention on Climate Change ... and the Paris Agreement” that together “lay out the most specific and up-to-date legal framework in respect of the greenhouse gas emissions”.²¹ This sub-section will first introduce general aspects of the UN climate change regime (*i*) and obligations under the 1992 UN Framework Convention on Climate Change (“UNFCCC”) (*ii*) before addressing obligations under the 2015 Paris Agreement (“Paris Agreement”) in relation to adaptation (*iii*), mitigation (*iv*), and fair and effective implementation (*v*), noting in conclusion rules in relation to loss and damage (*vi*).

i. General aspects

17. The UN climate change regime operates under the framework established in the UNFCCC, adopted at the 1992 UN Conference on Environment and Development held in Rio de Janeiro.²² Instruments adopted at the annual Conference of the Parties (“COP”)²³ implement the general objectives, guiding principles and general obligations of the Parties under the Convention. The Paris Agreement was adopted at COP 21 in Paris in 2015.²⁴ It is the primary source of obligations within the UN climate change regime, and as an agreement concluded under the UNFCCC must be understood and interpreted in the light of this framework.²⁵ Obligations under the Paris Agreement operate against the background of the more general obligations established under Article 4 of the UNFCCC.

²¹ ITLOS/PV.23/C31/9 (n 8) 11, 12 (Paparinskis).

²² (adopted 9 May 1992, entry into force 21 March 1994) 1771 UNTS 107 (signed by Latvia on 11 June 1992, ratified on 23 March 1995).

²³ Ibid art 7. In addition to the COP, there is also the Conference of the meeting of the Parties to the Paris Agreement (“CMA”).

²⁴ Adopted in Decision 1/CP.21, ‘Adoption of the Paris Agreement’ (adopted 12 December 2015) FCCC/CP/2015/L.9 (29 January 2016), (entry into force 4 November 2016) 3156 UNTS 79 (signed by Latvia on 22 April 2016, ratified on 16 March 2017). See also Latvia’s practice in implementation of the Paris Agreement, discussed at [2].

²⁵ Decision 1/CP.21, FCCC/CP/2015/L.9 [1].

18. The purpose of the Paris Agreement is directly connected to “enhancing the implementation of the [United Nations Framework] Convention [on Climate Change], including its objective”.²⁶ The “ultimate objective” of the UNFCCC is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”.²⁷ The objective of the Paris Agreement is explained in Article 2 as having three aspects:

- (a) 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;
- (b) Increasing 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
- (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

The goal expressed in Article 2, paragraph 1(a), of the Paris Agreement (“the temperature goal”) is of primary importance in determining, for the purposes of the Paris Agreement, the degree of warming that constitutes dangerous anthropogenic interference with the climate system. As part of the outcome of the first global stocktake in 2023, the Parties to the Paris Agreement resolved to pursue efforts to limit the temperature increase to 1.5 °C.²⁸

19. Obligations expressed in both the UNFCCC and the Paris Agreement take into account the respective capabilities of their Parties as individual States. In the Paris Agreement, common but differentiated responsibilities operate “in the light of different national

²⁶ Paris Agreement (n 24) art 2(1).

²⁷ UNFCCC (n 22) art 2(1) (“Objective”).

²⁸ Decision -/CM.5, ‘Outcome of the Global Stocktake’ (13 December 2023) (advanced unedited version) [4]; see also, *ibid* [191], which launched the Roadmap to 1.5 °C.

circumstances”,²⁹ according to the particular circumstances of each Party as well as group-based differentiation.³⁰

ii. *Obligations under the UNFCCC*

20. The UNFCCC provides a general framework for governance of the climate change regime and also contains several general obligations for Parties. These obligations cover four categories: mitigation; adaptation; support; communication.³¹ They will be addressed in turn.

21. Mitigation obligations require Parties generally to adopt, formulate, publish and regularly update national programmes containing measures to address anthropogenic GHG emissions and removals by sources and sinks.³² In addition, there are obligations to promote the sustainable management of sources and sinks,³³ and to take climate change considerations into account, to the extent feasible, in other social, economic and environmental policies and action.³⁴ Annex I Parties are also required to adopt mitigation policies and to take corresponding measures to implement those policies.³⁵

22. Adaptation measures are encompassed within the general obligation relating to national programmes.³⁶ Parties are also required to cooperate in adapting to climate change.³⁷

²⁹ Paris Agreement (n 24) art 2(2).

³⁰ Ibid arts 3, 4(2)-(3), 4(19), 7(9)-(10) (self-differentiation); arts 4(4)-(6), 7(3), 9(1) (group-based differentiation).

³¹ See D Bodansky, J Brunnée and L Rajamani (eds), *International Climate Change Law* (OUP 2017) ch 4; B Mayer, *International Law Obligations on Climate Change Mitigation* (OUP 2022) 41-46.

³² UNFCCC (n 22) art 4(1)(b).

³³ Ibid art 4(1)(d).

³⁴ Ibid art 4(1)(f).

³⁵ Ibid art 4(2)(a).

³⁶ Ibid art 4(1)(b).

³⁷ Ibid art 4(1)(e).

Annex II Parties are obliged to assist developing country Parties with adaptation, especially those countries particularly vulnerable to the adverse effects of climate change.³⁸

23. Support obligations also include a general commitment on all Parties to cooperate in the development, diffusion, application and transfer of technologies, practices and processes.³⁹

Annex II Parties are also under an obligation to provide financial support to developing country Parties, and to facilitate and finance technology transfer to other Parties, including developing country Parties.⁴⁰

24. Communication obligations encompass providing information on national inventories of GHG emissions,⁴¹ and transparency commitments relating to mitigation measures. All Parties are obliged to communicate steps taken, or envisaged, to implement the UNFCCC.⁴² Annex I Parties are required to provide detailed information on national policies and measures.⁴³ Annex II Parties are required to provide information on the implementation of their support obligations.⁴⁴

25. These general obligations have been operationalised through institutional processes and practices developed and adopted through the COP, most significantly through the Paris Agreement. The Paris Agreement contains, in general terms, three types of obligations relating to respectively mitigation, adaptation, and fair and effective implementation

³⁸ Ibid art 4(4); see also arts 4(8), (9). On assistance Parties particularly affected by climate change and least developed country Parties, see also Decision 5/CP.7, 'Implementation of Article 4, paragraphs 8 and 9 of the Convention' FCCC/CP/2001/13/Add.1 (21 January 2002) [11]; Decision 28/CP.7, 'Guidelines for the preparation of national adaptation programmes of action' FCCC/CP/2001/13/Add.4 (21 January 2002); Decision 29/CP.7, 'Establishment of a least developed countries expert group' FCCC/CP/2001/13/Add.4 (21 January 2002).

³⁹ UNFCCC (n 22) art 4(1)(c).

⁴⁰ Ibid arts 4(3), 4(5). Financial support occurs through the Financial Mechanism established in Article 11 of the UNFCCC.

⁴¹ UNFCCC (n 22) art 4(1)(a).

⁴² Ibid art 12(1)(b).

⁴³ Ibid art 4(2)(b).

⁴⁴ Ibid art 12(3).

(including transparency, financing, technology sharing and public engagement), and also addresses loss and damage. Latvia will consider these issues in turn.

iii. *Obligations under the Paris Agreement in relation to mitigation*

26. In Latvia's view, the primary obligations under the Paris Agreement for the protection of the climate system and other parts of the environment from anthropogenic emissions of GHG are found in the provisions concerning mitigation of emissions expressed in Article 4. In particular, Article 4, paragraph 2, provides that:

Each Party⁴⁵ shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

Article 4, paragraph 2, has to be interpreted and applied by taking due account of the fact that it both provides considerable discretion for Parties and calibrates the exercise of that discretion, as will be explained in the following paragraphs.

27. On the one hand, Article 4 leaves the content of the nationally determined contributions ("NDC") to be determined, as the ordinary meaning of the concept suggests, at the national level. It is for each Party to determine its contribution to the achievement of global peaking and reduction of GHG emissions.⁴⁶ The obligation to "pursue" the implementation of NDCs does not require Parties to achieve their NDCs, and failure to meet an NDC's objectives will not breach Article 4, paragraph 2. Rather, that provision is an obligation of conduct incumbent on Parties in pursuit of the implementation of their NDCs.⁴⁷

⁴⁵ "Least developed country Parties" may substitute strategies, plans or actions for their NDC obligation: *ibid* art 4(6).

⁴⁶ This is an individual obligation, but Parties may coordinate their NDCs by agreement, including through Regional Economic Organizations (*ibid* art 4(16)). Latvia's NDC is coordinated through the European Union.

⁴⁷ Bodansky, Brunnée and Rajamani (n 31) 231-233; D Klein, MP Carazo, M Doelle, J Bulmer, and A Higham (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (OUP 2017) 147; Mayer (n 31) 54-60.

28. On the other hand, Article 4 calibrates the Parties' discretion to determine their level of contribution and on the objectives and measures to pursue in three ways.

29. *First*, good faith interpretation and application of Article 4, paragraph 2, in light of its object and purpose, requires that the NDC and its implementation must be faithful to the long-term temperature goal of the Paris Agreement under Article 2, and the aims of Article 4, paragraph 1, namely the global peaking of GHG emissions as soon as possible and their rapid reduction thereafter.⁴⁸ The object of climate change mitigation under Article 4, paragraph 1, is "to achieve the long-term temperature goal set out in Article 2".⁴⁹ The mitigation regime established by Article 4 entails a continuing, long-term approach to mitigation, based on progressively greater mitigation efforts over time. The aim of the provision is that the mitigation efforts of the Parties acting under Article 4 will achieve "global peaking" of GHG emissions "as soon as possible" and "rapid reductions" in emissions thereafter, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of GHG in the second half of this century.⁵⁰ It has been noted in scholarship that good faith performance of Article 4, paragraph 2, requires that measures to implement an NDC must be faithful to the objectives set out in the NDC.⁵¹

30. *Secondly*, the obligations under Article 4, paragraph 2, have a procedural character. Parties must act with reasonable diligence in preparing and pursuing the implementation of their NDCs to ensure that the objectives of the Paris Agreement are met.⁵² The due diligence

⁴⁸ *Oil Platforms (Islamic Republic of Iran v. United States of America)* (Preliminary Objections) [1996] ICJ Rep 803 [28].

⁴⁹ Paris Agreement (n 24) art 4(1).

⁵⁰ *Ibid.*

⁵¹ Bodansky, Brunnée and Rajamani (n 31) 231.

⁵² C Voigt, 'The Paris Agreement: What Is the Standard of Conduct for Parties?' (2016) 18 QIL 17, 21. The principle of due diligence is examined in more detail below at Sub-section C.i.

standard is informed by the “highest possible ambition”, progression over time and differentiation,⁵³ as noted in Article 4, paragraphs 3 and 4.⁵⁴

31. *Thirdly*, Article 4 also provides for several procedural obligations regarding preparation, communication, maintenance, and implementation of NDCs. These obligations are expressed in Article 4, paragraphs 8 and 9 (to be read together with Article 14, paragraph 3, and Article 4, paragraph 15). Under Article 4, paragraph 8, Parties are obliged to provide “the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement [CMA]”.⁵⁵ Decision 4, CMA.1 sets mandatory requirements for the provision of such information.⁵⁶ More generally, the implementation of the obligations under Article 4, paragraph 2, must be understood in light of the institutional framework developed by the COP and CMA.

32. *Finally*, the obligations under Article 4, paragraph 2, operate in conjunction with the provisions concerning sinks and reservoirs under Article 5 and Article 6 on voluntary cooperation. Article 5 does not establish a new obligation but encourages further pursuit of the obligation relating to sinks and reservoirs established in Article 4, paragraph (1)(d), of the UNFCCC. The implementation of this obligation occurs primarily in accordance with

⁵³ Ibid; also Mayer (n 31) 55-56.

⁵⁴ These provisions, while not creating binding obligations on their own, L Rajamani, ‘The 2015 Paris Agreement: Interplay Between Hard, Soft, and Non-Obligations’ (2016) 28 *Journal of Environmental Law* 337, 354-355, may be taken into account in interpretation and application, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (Judgment) [2010] ICJ Rep 14 [62]; *Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening)* (Judgment) [2014] ICJ Rep 226 [83], [137].

⁵⁵ Decision 1/CP.21, FCCC/CP/2015/L.9 [27], which must be understood together with the transparency framework, see below at (v).

⁵⁶ Decision 4, CMA.1, ‘Further guidance in relation to the mitigation section of decision 1/CP.21’ (adopted 26th Plenary Meeting, 15 December 2018) FCCC/PA/CMA/2018/3/Add.1 (19 March 2019) [7], and Annex I [6]-[7].

the framework on Reducing emissions from deforestation and forest degradation in developing countries (REDD-plus).⁵⁷

iv. *Obligations under the Paris Agreement in relation to adaptation*

33. Adaptation is recognized in Article 7, paragraph 2, as a key component for the protection of “people, livelihoods and ecosystems”,⁵⁸ and thus is important for the protection of other parts of the environment from the adverse effects of climate change. The key legal obligation, set out in Article 7, paragraph 9, is that each Party, as appropriate, is to “engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions”. Latvia notes that guidance on adaptation has recently been provided by the CMA in the United Arab Emirates Framework for Global Climate Resilience,⁵⁹ which sets as one of its targets “[r]educing climate impacts on ecosystems and biodiversity” and includes among its objectives the “preservation and regeneration of nature”.⁶⁰

v. *Obligations under the Paris Agreement in relation to fair and effective implementation*

34. In addition to obligations in relation to mitigation and adaptation, addressed above, the Paris Agreement provides for three kinds of obligations to ensure that the implementation of the Agreement is fair and effective in the pursuit of its objectives.

35. *First*, Article 13 calls for transparency in accordance with the transparency framework,⁶¹ with the purpose to “build mutual trust and confidence and to promote effective

⁵⁷ Decision 1/CP.19, ‘Further Advancing the Durban’ (adopted 10th Plenary Meeting, 23 November 2013) FCCC/CP/2013/10/Add.1 (31 January 2014).

⁵⁸ Paris Agreement (n 24) art 7(2).

⁵⁹ Decision -/CMA.5, ‘Glasgow-Sharm-el-Sheikh work programme on the global goal on adaptation referred to in decision 7/CMA.3’ (adopted 13 December 2023) (advanced unedited version).

⁶⁰ *Ibid* [8].

⁶¹ Paris Agreement (n 24) arts 3(7)-(10) and Decision 18/CMA.1, ‘Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement’ (adopted 26th Plenary Meeting, 15 December 2018) FCCC/PA/CMA/2018/3/Add.2 (19 March 2019) and Annex.

implementation”.⁶² This framework is comprehensive and applicable to all aspects of the Agreement,⁶³ and is supplemented by the rules on the enhanced transparency framework adopted at COP 24.⁶⁴

36. *Secondly*, the Paris Agreement requires support to developing country Parties to assist them in enhancing their mitigation⁶⁵ and adaptation efforts, both by financing obligations,⁶⁶ and by support of developing country Parties in their technology development.⁶⁷ Obligations to provide financial support to developing country Parties are met primarily through the Green Climate Fund,⁶⁸ while technology transfer is supported by the Technology Mechanism established under the UNFCCC.⁶⁹

37. *Thirdly*, measures to address climate change must also involve public support and engagement.⁷⁰

vi. *Paris Agreement in relation to loss and damage*

38. The Paris Agreement also addresses loss and damage in Article 8. It adopts and continues the Warsaw International Mechanism for Loss and Damage associated with Climate

⁶² Ibid art 13(1).

⁶³ See ibid arts 13(7), (8), (9) and (10).

⁶⁴ See Decision 18/CMA.1, ‘Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement’ (adopted 26th Plenary Meeting, 15 December 2018) FCCC/PA/CMA/2018/3/Add.2 (19 March 2019) and Annex.

⁶⁵ Paris Agreement (n 24) art 4(5).

⁶⁶ Ibid art 9.

⁶⁷ Ibid art 10(6).

⁶⁸ Ibid art 9(8). See Decision 1/CP.16, ‘The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention’ (adopted 9th Plenary Meeting, 10-11 December 2010) FCCC/CP/2010/7/Add.1 (15 March 2011).

⁶⁹ Paris Agreement (n 24) art 10(3). See Decision 1/CP.16 (n 68). This currently involves the Joint Work Program of the UNFCCC Technology Mechanism 2023-2027.

⁷⁰ Ibid art 12. See also sub-section D below on international human rights.

Change Impacts.⁷¹ Decision 1/CP.21 confirms that “Article 8 of the Agreement does not involve or provide a basis for any liability and compensation.”⁷² New funding arrangements to combat loss and damage, under the Loss and Damage Fund, have been established at COP 27 and made operational at COP 28.⁷³ These arrangements operate to assist with measures to avert, minimize, and address adverse effects of climate change.

⁷¹ See Decision 2/CP.19, ‘Warsaw international mechanism for loss and damage associated with climate change impacts’ (adopted 10th Plenary Meeting, 23 November 2013) FCCC/CP/2013/10/Add.1 (31 January 2014), together with Decision 4/CP.22.

⁷² Decision 1/CP.21, FCCC/CP/2015/L.9 [51].

⁷³ See Decision 2/CP.27 and 2/CMA.4, ‘Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage’ adopted (10th Plenary Meeting, 20th November 2022) FCCC/CP/2022/10/Add.1 (17 March 2023); see also Decision -/CP.28 and -/CMA.5, ‘Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4’ (13 December 2023) (advanced unedited version).

B. UN Convention on the Law of the Sea

39. In Latvia's view, which is consistent with its pleadings in the advisory proceedings before ITLOS,⁷⁴ UNCLOS sets out obligations of its Parties in the context of the preservation and protection of the marine environment, which extend to the deleterious effects of climate change. The Court must approach the interpretation of UNCLOS in light of the principle of treaty interpretation expressed in Article 31, paragraph 3(c), of the Vienna Convention, by taking into account the relevant rules of international environmental law, including the UNFCCC and the Paris Agreement (discussed in sub-section A).⁷⁵

i. General aspects of UNCLOS and climate change

40. Although UNCLOS does not contain any express obligations in respect of climate change, its Part XII governs the preservation and protection of the marine environment from multiple sources of pollution. In Latvia's view, the definition of the "pollution of the marine environment" in Article 1, paragraph 1(4) of UNCLOS must be read to include GHG emissions.⁷⁶ This is consistent with its textual expression as well as the object and purpose of UNCLOS, which overtly seeks to promote the protection and preservation of the marine environment.⁷⁷ As such, the obligations of States Parties under Part XII UNCLOS extend to taking all practicable measures to protect the marine environment against the deleterious effects of climate change.

41. Two provisions in Part XII UNCLOS are particularly relevant to the Court in addressing the law of the sea obligations in respect of climate change. First, under Article 192 UNCLOS, States Parties have a general obligation to preserve and protect the marine environment. As explained in the *South China Sea* arbitration, the scope of that obligation "extends both to 'protection' of the marine environment from future damage and

⁷⁴ See n 8.

⁷⁵ ITLOS/PV.23/C31/9 (n 8) 9 (Līce), 10 (Paparinskis).

⁷⁶ Ibid 11 (Paparinskis).

⁷⁷ Ibid; see UNCLOS, Preamble, 4th recital.

‘preservation’ in the sense of maintaining or improving the present condition”.⁷⁸ To that end, it entails both “the positive obligation to take active measures to protect and preserve the marine environment” and “the negative obligation not to degrade the marine environment”.⁷⁹ Secondly, Article 194 UNCLOS imposes an obligation upon States Parties to take, individually or jointly, measures to prevent, reduce and control pollution of the marine environment. In Latvia’s view, this obligation covers all sources of pollution, including those that could not have been foreseen at the time UNCLOS was negotiated and adopted. Moreover, the scope of the obligation is “not limited to measures aimed strictly at controlling pollution and extends to measures focussed primarily on conservation and preservation of ecosystems”.⁸⁰

42. The general obligations in Articles 192 and 194 UNCLOS do not operate in a legal vacuum and must be read together with the rest of Part XII.⁸¹ This includes Section 5, which addresses international rules and national legislation to prevent, reduce and control marine pollution, and Section 6, which deals with the enforcement of laws and regulations. Specific provisions of Part XII also play a role.⁸² In Latvia’s view, the key obligations in this respect include Articles 195, 196, 197, 204, 206, 207, 212, 213 and 222.⁸³

43. For example, the duty to cooperate in Article 197 “is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention”.⁸⁴ In line with the existing decisions of international courts and tribunals, that duty may entail

⁷⁸ *The South China Sea Arbitration (The Philippines v. The People’s Republic of China)* (Award of 12 July 2016) [2016] 33 RIAA 153 [941].

⁷⁹ *Ibid.*

⁸⁰ See UNCLOS art 194(5); *Chagos Marine Protected Area (Mauritius v. United Kingdom)* (Award of 18 March 2015) [2015] 31 RIAA 359 [538].

⁸¹ ITLOS/PV.23/C31/9 (n 8) 12 (Paparinskis).

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *The Mox Plant Case (Ireland v. United Kingdom of Great Britain and Northern Ireland)* (Provisional Measures) (Order) [2001] ITLOS Rep 95 [82].

both substantive and procedural elements, such as notification, exchange of information, the undertaking of consultations and negotiations, as well as environmental impact assessment and communication of its results to affected parties.⁸⁵ In the context of climate change, this duty requires cooperation with and participation in international processes to coordinate the appropriate collective action to prevent, mitigate and adapt to the various diffuse global challenges it poses.⁸⁶

44. UNCLOS provisions, particularly those in Part XII, are supplemented by reference in Articles 192, 214, and 237 to other international rules and standards developed and adopted outside the framework of the UNCLOS that are specifically related to the environmental challenges that climate change poses to the oceans. The non-exhaustive examples are the UNFCCC and the Paris Agreement. These instruments reflect concrete sets of obligations that States have undertaken in respect of climate change, including mitigation, adaptation, loss and damage, finance, capacity-building, and technology transfer. In Latvia's view, they lay out a more specific and contemporary legal framework in respect of GHGs.⁸⁷ With 198 and 195 States Parties, respectively, the UNFCCC and the Paris Agreement reflect the overwhelming consensus of the international community on how to address climate change.⁸⁸ Any interpretation of Part XII, therefore, should be informed by the obligations contained within those treaties and mindful of the processes adopted by the Conferences of the Parties to implement them.⁸⁹

⁸⁵ Ibid [84]; *The South China Sea Arbitration* (n 78) [988]. See also *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (Judgment) [2015] ICJ Rep 665 [173]; and more recently, *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)* [2022] ICJ Judgment of 1 December 2022 <<https://www.icj-cij.org/sites/default/files/case-related/162/162-20221201-JUD-01-00-EN.pdf>> [83].

⁸⁶ ITLOS/PV.23/C31/9 (n 8) 12 (Paparinskis).

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

ii. *Specific provisions of UNCLOS*

45. The obligations under Part XII UNCLOS are expressed in broad and general terms. They require States Parties to exercise due diligence in achieving the results expected by those obligations, namely the preservation of the marine environment and its protection against multiple sources of pollution. In Latvia's view, the categorization of these provisions into obligations of conduct or result is not decisive as to the content of these obligations, even if many provisions of Part XII UNCLOS indeed reflect obligations of conduct or means.⁹⁰ The wording used in several provisions of Part XII (e.g. Articles 194, 204, 206, and 207(3) UNCLOS) suggests that States Parties are not required to achieve the result, but rather to take all means reasonably available to them to do so.⁹¹ These obligations require States Parties "to deploy adequate means, to exercise best possible efforts, to do the utmost" to achieve or avoid a particular outcome.⁹² As the Court noted, "[a] State does not incur responsibility simply because the desired result is not achieved; responsibility is, however, incurred if the State manifestly failed to take all measures ... which were within its power".⁹³

46. Due diligence is "a variable concept".⁹⁴ In Latvia's view, the content of the standard in this context is informed by the specific instruments that govern the environmental issues relating to climate change, such as the UNFCCC or the Paris Agreement. Three

⁹⁰ Comments on the Written Responses (n 8) [6].

⁹¹ ITLOS/PV.23/C31/9 (n 8) 13 (Paparinskis).

⁹² *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)* (Advisory Opinion) [2015] ITLOS Rep 4 [129].

⁹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43 [430].

⁹⁴ *Responsibilities and Obligations of States with respect to activities in the Area* (Advisory Opinion) [2011] ITLOS Rep 10 [117].

considerations relating to due diligence are particularly relevant in informing the content of Part XII obligations and their application to GHG emissions.⁹⁵

47. The *first* consideration is the greatly varying capacity of States.⁹⁶ UNCLOS reflects this proposition in Article 194(1) in the context of the marine pollution.⁹⁷

48. *Secondly*, the “assessment *in concreto*” of whether the State has exercised due diligence will take into account other parameters.⁹⁸ These include the nature and seriousness of the risk related to the activity at stake, the state of the scientific knowledge of the risks in question, and the passage of time.⁹⁹ Thus, for instance, to the extent there is any scientific uncertainty as to the nature or seriousness of the risk of harm that certain activities may pose to the environment, States’ conduct shall be guided by the precautionary approach.¹⁰⁰

49. *Thirdly*, obligations of due diligence will not be satisfied merely because a Party to UNCLOS enacts a legal framework for averting harm to the marine environment.¹⁰¹ Due diligence also requires “a certain level of vigilance in the enforcement and the exercise of administrative control”.¹⁰² This applies both to activities directly undertaken by Parties

⁹⁵ ITLOS/PV.23/C31/9 (n 8) 13-14 (Paparinskis).

⁹⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (n 93) [430].

⁹⁷ UNCLOS art 194(1).

⁹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (n 93) [430].

⁹⁹ *Area* (n 94) [117]. See also on precautionary approach: *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)* (Provisional Measures) (Order) [1999] ITLOS Rep 280 [77]; *M/V ‘Louisa’ (Saint Vincent and the Grenadines v. Kingdom of Spain)* (Provisional Measures) (Order) [2008-2010] ITLOS Rep 58 [77]; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Cote d’Ivoire)* (Provisional Measures) (Order) [2015] ITLOS Rep 146 [72].

¹⁰⁰ *Area* (n 94) [131]; see also ILC, ‘Articles on Prevention of Transboundary Harm from Hazardous Activities (with Commentaries)’ *Yearbook of the International Law Commission 2001: Volume II Part 2 UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2)* 148, 162-163 [5]-[7] (Commentary to Art 10).

¹⁰¹ ITLOS/PV.23/C31/9 (n 8) 14 (Paparinskis).

¹⁰² *The South China Sea Arbitration* (n 78) [944]; *SFRC* (n 92) [131].

themselves, but also in “ensuring [that] activities within their jurisdiction and control do not harm the marine environment”.¹⁰³

50. In sum, when considering the content of the relevant obligations in Part XII in respect of the prevention and protection of harm to the marine environment caused by climate change, Parties to UNCLOS should act with due diligence, as that notion has been understood in international law.¹⁰⁴

C. The duty of due diligence and the principle of prevention of significant harm to the environment

51. In Latvia’s view, the Court’s decisions provide a helpful point of reference as to how certain rules of general international law can supplement or inform the content and application of more specific obligations that States have in respect of climate change under the relevant treaties addressed in sub-sections A (UN climate change regime) and B (UNCLOS). In the *chapeau* of the questions before the Court, the General Assembly has identified certain rules expressed in sources other than treaties. These include the duty of due diligence and the principle of prevention of significant harm to the environment, which are addressed below. Since Latvia is a State Party to UNCLOS, the duty to protect and preserve the marine environment has been addressed at sub-section B.

i. The duty of due diligence

52. In its earlier decisions, the Court has explained the nature and characteristics of the duty of due diligence. Latvia here emphasises three different elements in the Court’s jurisprudence.

53. *First*, the Court has held that States have a general duty of due diligence in respect of any activities occurring within their jurisdiction that may cause harm to third States. In the *Corfu Channel* case, the Court emphasized “every State’s obligation not to allow

¹⁰³ *The South China Sea Arbitration* (n 78) [944].

¹⁰⁴ ITLOS/PV.23/C31/9 (n 8) 14 (Paparinskis).

knowingly its territory to be used for acts contrary to the rights of other States”.¹⁰⁵ In this sense, as the Court explained in *Pulp Mills on the River Uruguay* (“*Pulp Mills*”), “due diligence” is a reference to a rule of customary international law on the “due diligence that is required of a State in its territory”.¹⁰⁶ In the environmental law context relevant to the present proceedings, the Court has explained that this rule is particularised in such more specific obligations as undertaking an environmental impact assessment in respect of activities or projects (industrial or otherwise) that may cause harm to the environment.¹⁰⁷ States are to act with due diligence at all stages of any project that poses a risk of transboundary harm to the environment, “once operations have started and, where necessary, throughout the life of the project”.¹⁰⁸

54. *Secondly*, “due diligence” may refer to a particular technique of drafting rules in different specialist fields of international law, such as diplomatic and consular law, international humanitarian law, and international criminal law.¹⁰⁹ When used in this sense, due diligence is related to the rule explained in the *Corfu Channel* case by similarity of structure, rather than because it substantively expresses that rule in more precise terms.

55. *Thirdly*, in both senses identified above, due diligence is a relevant benchmark to assessing the performance of obligations of conduct (means) such as the obligations to prevent a particular result. In *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, the Court

¹⁰⁵ *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)* (Merits) [1949] ICJ Rep 4, 22.

¹⁰⁶ *Pulp Mills* (n 54) [101].

¹⁰⁷ See *Certain Activities* (n 85) [104]; cf. *Pulp Mills* (n 54) [101]. See also 2001 ILC Articles on Prevention of Transboundary Harm from Hazardous Activities (n 100) art 7.

¹⁰⁸ *Pulp Mills* (n 54) [205].

¹⁰⁹ See *United Nations Diplomatic and Consular Staff in Tehran (United States of America v. Islamic Republic of Iran)* (Judgment) [1980] ICJ Rep 3 [61]-[64] (diplomatic and consular law); *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* [2005] ICJ Rep 168 [246] (international humanitarian law); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (n 94) [430] (international criminal law).

acknowledged several parameters that may affect the analysis of whether a State has discharged its duty of due diligence in preventing the commission of genocide. In particular, the Court emphasized that not all States would have the same capacity to influence the occurrence of harmful events. That capacity, according to the Court, “depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events”.¹¹⁰ Further, that “capacity to influence must also be assessed by legal criteria, since it is clear that every State may only act within the limits permitted by international law”.¹¹¹ Crucially, however, where action by more than one State is required to avert a particular outcome, each individual State is expected to “take all measures ... which [are] within its power”.¹¹²

56. The foregoing considerations, while not automatically transposable to similarly worded obligations in other fields of international law, may serve as a helpful point of reference for the Court to clarify the content of States’ due diligence obligations in respect of climate change and the relevant circumstances of their application.

ii. The principle of prevention of significant harm to the environment

57. In Latvia’s view, the Court’s decisions on the principle of prevention may be particularly instructive to framing its answer to question (a).

58. In *Legality of the Threat or Use of Nuclear Weapons*, the Court held that “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”.¹¹³ Latvia recognised the importance of

¹¹⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (n 93) [430].

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Nuclear Weapons* (n 10) [29].

this statement by quoting it in the explanation of the position on the request of this advisory opinion.¹¹⁴

59. Latvia referred already at paragraph 53 to how the Court explained in *Pulp Mills* that “the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory”.¹¹⁵ The Court held that “[a] State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State”.¹¹⁶ Other international courts and tribunals have expressed similar views.¹¹⁷ In its work on prevention of transboundary harm from hazardous activities, the International Law Commission (“ILC”) referred to the “well-established principle of prevention”,¹¹⁸ and went on to explain the obligation of the State to prevent transboundary harm as one of due diligence¹¹⁹. In this context, the ILC noted that “due diligence is manifested in reasonable efforts by a State to inform itself of factual and legal components that relate foreseeably to a contemplated procedure and to take appropriate measures, in timely fashion, to address them”.¹²⁰

60. States have to comply with various procedural duties in order to fulfil their obligation to prevent significant transboundary environmental harm.¹²¹ Chief among them is the duty to

¹¹⁴ UN Doc A/77/PV.64 (n 2) 19 (Pildegovičs).

¹¹⁵ *Pulp Mills* (n 54) [101].

¹¹⁶ *Ibid.*

¹¹⁷ See *The Iron Rhine Railway Arbitration (Belgium/The Netherlands)* (Award of 24 May 2005) (2005) 27 RIAA 35 [59]; *The Indus Waters Kishenganga Arbitration (Islamic Republic of Pakistan v. India)* (Partial Award of 18 February 2013) (2013) 31 RIAA 55 [449]-[452]; also *Trail Smelter (United States of America v. Canada)* (16 April 1938 and 11 March 1941) (1941) 3 RIAA 1905 at 1965.

¹¹⁸ 2001 ILC Articles on Prevention of Transboundary Harm from Hazardous Activities (n 100) (General Commentary 4).

¹¹⁹ *Ibid.* 154 art 3 (Commentary 7).

¹²⁰ *Ibid.* 154 [10] (Commentary to Art 3).

¹²¹ See, most recently, *Silala* (n 85) [100]-[101].

“undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource”.¹²² That duty arises in respect of any activity, industrial or otherwise, that poses a risk of significant transboundary harm.¹²³ According to the Court, “[i]f the environmental impact assessment confirms that there is a risk of significant transboundary harm, the State planning to undertake the activity is required, in conformity with its due diligence obligation, to notify and consult in good faith with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk”.¹²⁴ Relatedly, the Court has recognized that cooperation is “essential to fulfil the obligation of prevention”¹²⁵, since it is “by co-operating that the States concerned can jointly manage the risks of damage to the environment that might be created by the plans initiated by one or the other of them, so as to prevent the damage in question”.¹²⁶

61. In sum, the Court’s previous findings on the duty of due diligence and the principle of prevention, particularly as these apply in the transboundary environmental context, provide a useful framework of reference for clarifying the content and scope of obligations that States have undertaken in respect of climate change.

D. International law of human rights

62. In Latvia’s view, human rights obligations are significant for the obligations to protect the climate system and, consequently, the protection of the climate system must involve a human rights-integrated approach. The interwoven relationship between environmental

¹²² *Certain Activities* (n 85) [104].

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Pulp Mills* (n 54) [102].

¹²⁶ *Ibid* [77].

protection and human rights is recognized in Principle 1 of the Rio Declaration on Environment and Development (“Rio Declaration”), which provides that:

Human beings are at the centre for concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.¹²⁷

This concern is reflected in the Court’s observation that “the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn”,¹²⁸ viewed by Latvia as particularly important and quoted in the explanation of the position on the request of this advisory opinion.¹²⁹ Latvia also notes the Court’s reference to “the great significance that it attaches to respect for the environment, not only for States but also for the whole of mankind”.¹³⁰

63. Latvia confines its observations in the following paragraphs to the instruments identified in question (a), namely the International Covenant on Civil and Political Rights (“ICCPR”),¹³¹ International Covenant on Economic, Social and Cultural Rights,¹³² and the Universal Declaration of Human Rights.¹³³

64. Latvia notes that these instruments do not specifically provide for a free-standing right to a clean, healthy, and sustainable environment. Latvia both welcomes Resolution 76/300 and notes the lack of consensus on whether the right to a clean, healthy, and sustainable environment is already established as a rule of customary international law. In Latvia’s

¹²⁷ ‘Rio Declaration on Environment and Development’, Annex I to the Report of the UN Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992) A/CONF.151/26. See also ‘Stockholm Declaration on the Human Environment’ (adopted 16 June 1972) in Report of the UN Conference on the Human Environment, A/CONF.48/14/Rev.1, Principles 1, 8.

¹²⁸ *Nuclear Weapons* (n 10) [29].

¹²⁹ UN Doc A/77/PV.64 (n 2) 19 (Pildegovičs).

¹³⁰ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Rep 7 [53].

¹³¹ (16 December 1966, entry into force 23 March 1976) 999 UNTS 171 (acceded to by Latvia on 14 April 1992).

¹³² (16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (acceded to by Latvia on 14 April 1992).

¹³³ (adopted 10 December 1948) UNGA Res 217 A(III).

view, human rights are relevant to the obligations of States under international law to ensure the protection of the climate system in three ways.

65. *First*, measures taken to protect the climate system should be compatible with a State's human rights obligations. This is recognised in paragraph 11 of the Preamble to the Paris Agreement, which states that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights".¹³⁴

66. *Secondly*, States should ensure adequate human rights due diligence, provision of information and public participation within the procedures under the Paris Agreement for the preparation and maintenance of NDCs and their implementation. By way of example of the variety of ways of addressing this issue, the right to participate in public affairs, directly or through elected representatives, is protected under Article 25(a) ICCPR. The right to information on climate change related matters is protected through the right to freedom of expression under Article 19 ICCPR, which was explained in General Comment 34 as requiring States to "proactively put in the public domain Government information of public interest".¹³⁵ Rights to information and participation are integrated within international environmental law.¹³⁶ Under Article 12 of the Paris Agreement, Parties are subject to specific obligations to take measures to enhance public participation and public access to information.

67. *Thirdly*, protection of the climate system and other parts of the environment is important for the effective enjoyment of rights protected under international human rights law.¹³⁷

¹³⁴ Paris Agreement (n 22), reaffirmed in Decision -/CMA.5 (n 59) preambular [7] and operative [178].

¹³⁵ United Nations Human Rights Committee, CCPR/C/GC/34, General comment No. 34: Article 19: Freedoms of opinion and expression (12 September 2011) [19].

¹³⁶ 1992 Rio Declaration (n 127) Principle 10.

¹³⁷ Human Rights Committee, 'General Comment 36, Article 6: Right to Life' (3 September 2019) CCPR/C/GC/36 [30], [62]; Committee on Economic, Social and Cultural Rights, 'General Comment 26 on Land and Economic, Social and Cultural Rights' (22 December 2022) E/C.12/GC/26 [1]-[2]; also Human Rights Committee, 'General Comment 23, Article 27, Rights of Minorities, (8 April 1994) CCPR/C/21/Rev.1/Add.5 [3.2.].

68. In Latvia's view, the focus of the inquiry into human rights relevant to obligations of States in respect of climate change is on the rights protected under the specific instruments. In practice, the question is whether the effective enjoyment of these rights has been impaired, since to secure these rights States may be required to take appropriate measures to ensure an adequate system of environmental protection.¹³⁸ In answering that question, Latvia urges the Court to take into account legal issues relevant for the specific instruments and their application as well as the broader systemic interaction of human rights and climate change regimes, as respectively explained in the following paragraphs.

69. Whether human rights are violated by the occurrence of environmental degradation must be determined on the facts of the particular case against the legal benchmarks set by the rights protected in the specific instruments. Such violation will not necessarily take place every time that environmental degradation has occurred. By way of example of some considerations identified as relevant, adverse effects of environmental pollution must directly affect the individual's enjoyment of their rights and must attain a certain minimum level of severity before it can affect their human rights.¹³⁹ In some cases, the proof of "severe environmental degradation" has been called for.¹⁴⁰ Individuals have also been required to demonstrate that they have faced past or present adverse impacts on the enjoyment of their rights or "a real and reasonably foreseeable risk of being exposed to a situation" that impairs the enjoyment of their rights.¹⁴¹ Whether the State has breached its obligations may also depend upon failure by the State to take appropriate measures to address risks relevant for the particular rights in the particular factual circumstances.¹⁴²

¹³⁸ Human Rights Committee 'General Comment 36, Article 6: Right to Life' (n 137) [62].

¹³⁹ See European Court of Human Rights, *Fadeyeva v. Russian Federation* (application no 55723/00) Grand Chamber Judgment of 8 July 2003 [114]; Human Rights Committee, *Teitiota v. New Zealand* (24 October 2019) CCPR/C/127/D/2728/2016 [9.5].

¹⁴⁰ Human Rights Committee, *Portillo-Cáceres v. Paraguay* (25 July 2019) CCPR/C/126/D/2751/2016 [7.4].

¹⁴¹ *Billy and others v. Australia* (21 July 2022) CCPR/C/135/D/3624/2019 [8.6].

¹⁴² *Ibid* [8.3].

70. Latvia also urges the Court to take into account the broader systemic considerations. Human rights obligations in connection with the protection of the climate system and other parts of the environment should be interpreted in a manner appreciative of the carefully negotiated balance struck by States in the UNFCCC and Paris Agreement, both regarding the obligations and approaches to protection of the climate system and the appropriate mechanisms for supervision. The effects of climate change and the choices States make in adopting measures to address them raise complex questions of distributive justice that require a balance to be struck between individual and broader societal interests. Moreover, the challenges of addressing climate change require effective international cooperation, and, to this end, the primary international forum for negotiating the global response to climate change is through the UNFCCC and the Paris Agreement.¹⁴³

71. Human rights obligations must be integrated into the States' approaches to tackling climate change in a way that does not undermine the flexibility of States, individually and collectively, to make appropriate distributive choices inherent in the current climate change regime. Instead, these considerations should be integrated in a way that augments and enhances both the protection of human rights and of the climate system and other parts of the environment.

E. United Nations Charter

72. The Charter provides the overall framework for consideration of the climate change issues, including on foundational principles of international law implicated by the request. In particular, Latvia reiterates its view that, as a matter of positive international law, statehood of small island developing States is not affected by climate change-related sea-level rise because factual control over territory is not always a necessary criterion for the continued juridical existence of States.¹⁴⁴

¹⁴³ UNGA Res 70/1, 'Transforming our World: the Agenda 2030 for Sustainable Development' (adopted 25 September 2015) A/RES/70/1, fn * to Goal 13 of the 'Sustainable Development Goals'.

¹⁴⁴ Second issues paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on sea-level rise in relation to international law, 'Sea-level rise in relation to international law' (19 April 2022) UN Doc A/CN.4/752 [35], [189].

IV. QUESTION (B)

73. Question (b) is expressed in the following terms:

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,

...

(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?

74. In Latvia's view, question (b) is predominantly directed at secondary rules of international law regarding State responsibility. Reading question (b) in such terms follows from interpretation of the operative phrase of "legal consequences" in line with the Court's established approach to interpretation of questions in advisory proceedings. In the most recent advisory opinion on *Chagos*, a question similar to question (b) was expressed as "consequences under international law", and was interpreted and applied by the Court as relating to the international responsibility of the United Kingdom.¹⁴⁵ In an earlier advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the General Assembly used the same expression in posing the question as in these proceedings ("legal consequences"), and the Court answered it by examining legal consequences resulting from the violations of international law by

¹⁴⁵ *Chagos* (n 10) [177]-[182].

Israel.¹⁴⁶ In Latvia's view, question (b) in the present proceedings has to be read against the background of the Court's approach to interpretation and application of questions expressed in similar and identical terms. This reading would also be in line with the use of technical terms of art of State responsibility in the question, such as "legal consequences",¹⁴⁷ injured State,¹⁴⁸ and specially affected State.¹⁴⁹

75. Questions of State responsibility are fact-specific, and answers will depend on whether particular conduct is attributable to the State under international law and constitutes a breach of an international obligation of the State.¹⁵⁰ In light of the number and diversity of primary obligations explicitly identified in the request for the advisory opinion (and particularly the *in concreto* assessment of obligations of conduct, discussed at sub-sections III.B-C above), Latvia will at this stage limit its submissions to certain observations regarding general rules of responsibility. Latvia may provide more granular answers in its written comments, taking advantage of the advisory opinion of ITLOS on *Request by the COSIS* as well as the issues raised by participants in the proceedings regarding circumstances where State responsibility is likely to arise.

76. Latvia notes that the Court has in its earlier decisions identified several rules of customary international law relating to content of State responsibility, often by reference to the ILC's articles on responsibility of States for internationally wrongful acts ("2001 ILC articles"). In particular, the Court has referred to Article 30(a) ("Cessation and non-repetition", in

¹⁴⁶ *Wall* (n 10) [147]-[160].

¹⁴⁷ ILC, 'Articles on responsibility of States for internationally wrongful acts' *Yearbook of the International Law Commission 2001: Volume II Part 2 UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2)* 26 art 28.

¹⁴⁸ *Ibid* arts 39, 42, 43, 45-9, 52, 54.

¹⁴⁹ *Ibid* art 42(b)(i).

¹⁵⁰ *Ibid* art 2.

relation to cessation),¹⁵¹ Article 31 (“Reparation”),¹⁵² Article 34 (“Forms of reparation”),¹⁵³ Article 35 (“Restitution”),¹⁵⁴ Article 36 (“Compensation”),¹⁵⁵ and Article 37 (“Satisfaction”).¹⁵⁶ General secondary rules will apply to determine the content of State responsibility in these circumstances just as in any others, in light of the applicable *lex specialis* secondary rules and particular mechanisms, such as for settlement of disputes.

77. If and to the extent that question (b) also addresses “legal consequences” under particular primary rules, Latvia’s position has already been provided in answering question (a). By way of example, Latvia’s position on the UN climate change regime is provided in subsection III.A. Latvia may provide more granular answers in its written comments on the issues raised by participants in these proceedings.

V. SUBMISSIONS

78. For the reasons which have been set out in this written statement, Latvia believes that it would be appropriate for the Court to base its response on the General Assembly’s request for an advisory opinion on the following grounds.

- a. *First*, the Court has jurisdiction to give the opinion requested by the General Assembly on the obligations of States in respect of climate change, and there is no reason why the Court should either decline to answer the request or reformulate the questions.

¹⁵¹ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* (Judgment) [2012] ICJ Rep 99 [137].

¹⁵² *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (Reparations) [2022] ICJ Rep 13 [70].

¹⁵³ *Ibid* [101].

¹⁵⁴ *Jurisdictional Immunities* (n 151) [119].

¹⁵⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (n 93) [460].

¹⁵⁶ *Armed Activities* (n 152) [388].

- b. *Secondly*, the UNFCCC and the Paris Agreement constitute the key obligations under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of GHGs, operationalised through institutional processes and practices developed and adopted through the COP. It contains three types of obligations relating to respectively mitigation, adaptation, and fair and effective implementation, and also contains rules on loss and damage. Obligations on mitigation in Article 4 of the Paris Agreement both provide for and calibrate the exercise of discretion by the Parties.
- c. *Thirdly*, UNCLOS sets out obligations of States in the context of the preservation and protection of the marine environment, which extend to the deleterious effects of climate change, particularly in its Part XII.
- d. *Fourthly*, the Court's decisions on the duty of due diligence and the principle of prevention, particularly as these apply in the transboundary environmental context, provide a useful framework of reference for clarifying the content and scope of obligations that States have undertaken in respect of climate change and the relevant circumstances of their application.
- e. *Fifthly*, human rights obligations are significant for the obligations to protect the climate system and, consequently, the protection of the climate system must involve a human rights-integrated approach. The important question in practice is whether the effective enjoyment of human rights under the specified instruments has been impaired.
- f. *Sixthly*, the Charter provides the overall framework for consideration of the climate change issues, including on foundational principles of international law implicated by the request, and among other things preserves as a matter of positive international law statehood of small island developing States.
- g. *Seventhly*, the Court is invited to interpret and apply question (b) as predominantly directed at secondary rules of State responsibility. The Court may find it appropriate to recall, in general terms, the applicable rules on the topic. To the extent that

question (b) is also directed at legal consequences under primary rules, Latvia invites the Court in pursuance of judicial economy to address these issues in answering question (a).

Respectfully,


(Signed) Sanita PĒKALE.

Agent of the Republic of Latvia