

INTERNATIONAL COURT OF JUSTICE

**REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY FOR AN ADVISORY OPINION ON THE
QUESTION OF THE “OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE”**

WRITTEN STATEMENT OF THE GOVERNMENT OF CANADA

20 MARCH 2024

INTRODUCTION

1. On March 29, 2023, the United Nations (“UN”) General Assembly adopted resolution A/RES/77/276, in which it decided to request the International Court of Justice (“ICJ” or “the Court”) to render an advisory opinion on the following questions:

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?¹

2. On April 17, 2023, the Deputy-Registrar of the Court gave notice of the request for an advisory opinion to all States entitled to appear before the Court pursuant to Article 66(1) of the Statute of the International Court of Justice (the “Statute”), including Canada.
3. On April 20, 2023, the Court noted that all UN Member States were likely able to furnish it with information relevant to the request for an advisory opinion, and established October 20, 2023 as the deadline for any interested States to do so. On August 4, 2023, the Court extended the deadline for submissions to January 22, 2024. On December 15, 2023, the Court extended further the deadline until March 22, 2024.
4. In response to the invitation from the Registrar of the Court, and pursuant to Article 66(2) of the Statute, the Government of Canada wishes to submit comments pertaining to the Request for an Advisory Opinion on the Question of the “Obligations of States in respect of Climate Change.”

CANADA’S VIEW

5. Climate change is undoubtedly one of the greatest global challenges of our times. Concrete and ambitious actions are needed by all actors in order to tackle this immense problem and build a more sustainable world. Canada is already seeing the impacts of climate change as our country’s Arctic is warming at about three times the global rate.² Rising temperatures, decreased sea ice extent and stability, disruptions to food and water resources, increasing forest fire destruction,

¹ UN General Assembly, *Resolution adopted by the General Assembly on 29 March 2023*, 77th Sess., UN Doc A/RES/77/276 (2023) at p. 3, online: <<https://www.undocs.org/A/RES/77/276>>.

² Government of Canada, *Climate change adaptation in Canada*, online: <<https://natural-resources.canada.ca/climate-change/what-adaptation/10025>>, retrieved on February 4, 2024.

permafrost thaw, flooding, and changes to wildlife and plant patterns are already impacting our country. Furthermore, diminishing access to traditional food sources exacerbate existing challenges and health stressors for Indigenous peoples in Canada.³

6. Canada recognizes that significant global action is needed in order to combat climate change. As part of our updated nationally determined contribution submitted in 2020 pursuant to our obligations under the Paris Agreement,⁴ Canada set a target of 40-45% reductions of greenhouse gas emissions below 2005 levels by 2030, a target that is ambitious, required and achievable—reflecting the scale of the climate crisis. In addition, many provinces have committed to deep greenhouse gas emissions reduction targets for both 2030 and 2050 which could build on and supplement federal measures, leading to further emission reductions.⁵
7. Canada also published in 2022 its Emissions Reduction Plan - an ambitious and achievable roadmap that outlines a sector-by-sector path for Canada to reach its emissions reduction target.⁶
8. Canada is committed to reaching net-zero emissions by 2050 and has enacted legislation to establish a legally binding process to achieve this. An independent Net-Zero Advisory Body, an expert advisory panel, is working to recommend pathways for Canada to reach its “net-zero by 2050” target.⁷

³ Government of Canada, *A Healthy Environment and a Healthy Economy*, online: <<https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/climate-plan-overview/healthy-environment-healthy-economy.html#toc10>>, retrieved on February 5, 2024.

⁴ 12 December 2015, United Nations, Treaty Series, Vol. 3156, p. 88 (entered into force 4 November 2016) [“Paris Agreement”], online: <https://treaties.un.org/doc/Treaties/2016/02/20160215%2006-03%20PM/Ch_XXVII-7-d.pdf>.

⁵ Government of Canada, *Canada’s Enhanced Nationally Determined Contribution*, online: <<https://www.canada.ca/en/environment-climate-change/news/2021/04/canadas-enhanced-nationally-determined-contribution.html>>, retrieved on February 21, 2024.

⁶ Government of Canada, *Canada’s 2030 Emissions Reduction Plan*, online: <<https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/climate-plan-overview/emissions-reduction-2030/plan.html>>, retrieved on February 5, 2024.

⁷ Government of Canada, *Canada’s Enhanced Nationally Determined Contribution*, online: <<https://www.canada.ca/en/environment-climate-change/news/2021/04/canadas-enhanced-nationally-determined-contribution.html>>, retrieved on February 21, 2024.

9. Canada also recognizes that more needs to be done nationally and globally and is continually looking at how to strengthen its contribution to combatting this global crisis.⁸
10. Canada is a strong supporter of the global effort to combat and mitigate the effects of climate change through the international climate change regime of the governing bodies to the UN Framework Convention on Climate Change (“UNFCCC” of “the Convention”) and the Paris Agreement. Over many years of discussion and negotiation, these are the fora in which the world community has placed the decision-making authority for the global effort in dealing with climate change. While recognizing that States have obligations related to climate change under other treaties, those other treaties should not be interpreted as imposing international legal obligations that are contrary to those carefully negotiated through the international climate change regime.⁹

THE LEGAL OBLIGATIONS RELATED TO CLIMATE CHANGE

11. To determine what international legal obligations States may be subject to with respect to climate change, the Court must first decide what the relevant applicable law is.¹⁰ While there are many international treaties that address a number of issues that relate to climate change, there are two principal treaties which contain legal obligations that are specific to addressing the issue: The UNFCCC¹¹ and the Paris Agreement. These treaties enjoy almost universal participation and are the result of many years of unrelenting work and difficult negotiations between States.

⁸ In 2021, Canada announced a doubling of its international climate finance, from \$2.65 billion (2015–2021) to \$5.3 billion (2021–2026). And at the June 2021 North Atlantic Treaty Organization (NATO) Summit, Canada’s Prime Minister announced Canada’s proposal to establish and host a NATO Climate Change and Security Centre of Excellence (CCASCOE) to develop, enhance, and share knowledge on climate change security impacts.

⁹ For the purpose of this submission, Canada is defining the international climate change regime or UN Climate Change process as covering the governing body meetings of the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement.

¹⁰ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, [1996] ICJ Rep p. 226 at para. 23, online: <<https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>>.

¹¹ 9 May 1992, United Nations, Treaty Series, Vol. 1771, p. 107 (entered into force 1 March 1994) [“UNFCCC”], online: <https://treaties.un.org/doc/Treaties/1994/03/19940321%2004-56%20AM/Ch_XXVII_07p.pdf>.

History of Climate Change Legal Regime

12. While the general issue of climate change has been known and discussed in scientific circles since the end of the 19th century, it was not until the 1980s that the world began to seriously consider the development of an international regime to address the problem.
13. The 1988 establishment of the Intergovernmental Panel on Climate Change by the United Nations Environment Programme and the World Meteorological Organization, with the endorsement of its establishment by the UN General Assembly (UNGA), and UNGA's characterization of climate change as a "common concern of mankind,"¹² marked the problem posed by climate change as a true intergovernmental concern.¹³
14. There were already then regional treaties to address transboundary air pollution in Europe and North America. The world had negotiated the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer.¹⁴ But the world determined that more needed to be done as customary international law was not considered specific enough to address the climate change problem effectively. As such, the formal treaty making process for the UNFCCC was commenced. The adoption of the UNFCCC in 1992 only represented a starting point.¹⁵ It was quickly determined that the provisions of the Convention would not be sufficient to operationalise the Convention and negotiations on a Protocol were thus started.

¹² UN General Assembly, *Resolution adopted by the General Assembly on 6 December 1988*, 43rd Sess., UN Doc A/Res/43/53 (1989), p. 133 at para. 1, online: <<https://digitallibrary.un.org/record/54234?ln=en>>.

¹³ Daniel Bodansky, Jutta Brunée & Lavanya Rajamani, *Evolution of the United Nations Climate Regime* (New York, NY: Oxford University Press, 2017) at p. 97 (Oxford Public International Law), online: <<https://opil.ouplaw.com/display/10.1093/law/9780199664290.001.0001/law-9780199664290-chapter-4>>.

¹⁴ 22 March 1985, United Nations, Treaty Series, Vol. 1513, p. 293 (entered into force 22 September 1988), online: <https://treaties.un.org/doc/Treaties/1988/09/19880922%2003-14%20AM/Ch_XXVII_02p.pdf>; 16 September 1987, United Nations, Treaty Series, Vol. 1522, p. 29 (entered into force 1 January 1989), online: <<https://treaties.un.org/doc/publication/unts/volume%201522/volume-1522-i-26369-english.pdf>>, as referenced in *supra* note 10 at p. 98.

¹⁵ *Ibid* at p. 105.

15. The resulting Kyoto Protocol¹⁶ concluded in 1997 was an important step forward. However, it featured a top-down regulatory approach which did not take into account emissions from developing economies, including some of the world's biggest greenhouse gas emitters. This meant that it could only address less than 24% of global greenhouse gas emissions.¹⁷ Developing country greenhouse gas emissions are now accounting for most emissions increases as emissions have peaked or are close to peaking in most developed countries.¹⁸ Therefore, the Kyoto Protocol was not going to be sufficient.

16. This led States to negotiate the Paris Agreement, adopted in 2015. The Paris Agreement moved away from a top-down regulatory approach to a bottom-up process that provided for more acceptance from countries.¹⁹ The Paris Agreement establishes a national contribution approach, expected to reflect a country's highest possible ambition, with review processes, including biennial transparency report on progress, as well as a global stocktake every five years,²⁰ and a facilitative approach to compliance.

17. The obligations pursuant to the UNFCCC and the Paris Agreement were very carefully negotiated by the States Parties to ensure global participation, while facilitating global progress against the Agreement goals. Some obligations are collective, while others are obligations placed on individual States Parties. For example, Article 4(1) of the Paris Agreement establishes a collective goal to peak greenhouse gas emissions as soon as possible and to undertake rapid reductions

¹⁶ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 11 December 1997, United Nations, Treaty Series, Vol. 2303, p. 162 (entered into force 11 December 1997) ["Kyoto Protocol"], online: <https://treaties.un.org/doc/Treaties/1998/09/19980921%2004-41%20PM/Ch_XXVII_07_ap.pdf>.

¹⁷ *Ibid* at p. 108.

¹⁸ UN Environment Program, "Emissions Gap Report 2023: Broken Record – Temperatures hit new highs, yet world fails to cut emissions (again)" (2023), online: <<https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y>> at p. 7-8, retrieved on February 21, 2024.

¹⁹ *Ibid* at p. 115.

²⁰ Julia Kreienkamp, "The Long Road to Paris: The History of the Global Climate Change Regime" (November 2019), online: <https://www.ucl.ac.uk/global-governance/sites/global-governance/files/the_long_road_to_paris_the_history_of_the_global_climate_change_regime.pdf> at p. 12, retrieved on February 21, 2024.

thereafter in accordance with the best available science. This is a collective obligation to which all States Parties must contribute. Article 12 of the Paris Agreement imposes a collective obligation on States Parties to cooperate in taking measures to enhance climate change education, awareness, public participation, and public access to information.²¹ On the other hand, Article 4(2) establishes an individual legal obligation on each Party to “prepare, communicate and maintain successive nationally determined contributions that it intends to achieve,”²² while Article 7(9) imposes an individual legal obligation on each Party, as appropriate, to “engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions.”²³

Cooperation with other instruments

18. Where the Conference of the Parties to the Convention and the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (the “governing bodies”) have recognized that they may not be best placed to address a certain aspect of climate change, they have cooperated with other institutions that are better placed to take on the responsibility for those particular aspects. For example, States Parties to the Convention and the Paris Agreement cooperate with the International Maritime Organization and the International Civil Aviation Organization to address reduction of greenhouse gas emissions from international maritime shipping and international civil aviation, respectively, as they are best placed to deal with these issues, given their specific expertise and the difficulty in attributing greenhouse gas emissions from these activities to specific States.²⁴

²¹ *Supra* note 4 at article 12.

²² *Ibid* at article 4(2).

²³ *Ibid* at article 7(9).

²⁴ UNFCCC Conference of the Parties, *Decision 4/CP.1 in Report of the Conference of the Parties on its First Session, held at Berlin from 28 March to 7 April 1995*, 1st Sess., UN Doc. FCCC/CP/1995/7/Add.1 (1995) at p. 15, online: <<https://unfccc.int/resource/docs/cop1/07a01.pdf#page=15>>.

19. While the UNFCCC and the Paris Agreement are the two preeminent treaties negotiated to address climate change, Canada acknowledges that climate change is relevant to a variety of international legal obligations. For example, as mentioned in Canada's submission to the International Tribunal on the Law of the Sea regarding the Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law, climate change is a form of marine pollution and therefore is relevant to States' obligations related to the prevention of pollution of the marine environment. Canada's submission states:

In examining States Parties' obligations under Articles 192 and 194[UN Convention on the Law of the Sea (UNCLOS)], alongside the broad definition of marine pollution under Article 1(1)(4), which includes both substances and energy, Canada considers that the Convention has been drafted in a way which enables it to encompass new sources of pollution that may not have been anticipated at the time of its negotiation, such as the anthropogenic emissions of greenhouse gases (GHGs). Indeed, it is noteworthy that the list of sources of marine pollution in Article 194(3) is expressly open-ended.²⁵

An important indicator of the extent to which States Parties are meeting their general obligation to protect and preserve the marine environment, as well as their specific obligations under Part XII in relation to climate change pollution and the impacts of climate change, is the extent to which they effectively and ambitiously implement relevant international agreements related to climate change.²⁶

20. Conversely, effective implementation of legal obligations under other treaties can assist States in meeting their climate change obligations. For example, effective

²⁵ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, "Written Statement of Canada" (16 June 2023), ITLOS No. 31 at para 13, online: <https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/1/C31-WS-1-25-Canada-rev_01.pdf>.

²⁶ *Ibid* at para. 62(8).

implementation of legal obligations under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) contribute significantly to fighting climate change. The preamble to the Montreal Protocol specifically acknowledges its connection to fighting climate change by noting that Parties are “[c]onscious of the potential climatic effects of emissions of these substances.”²⁷

21. As per Article 26 of the Vienna Convention on the Law of Treaties and customary international law, it is a core principle of international law that every treaty in force is binding upon the parties to it and must be performed by them in good faith – *pacta sunt servanda*.²⁸ As indicated by the Court in paragraph 142 of the *Case Concerning the Gabčíkovo-Nagymaros Project*,

What is required in the present case by the rule (*sic*) *pacta sunt servanda*, as reflected in Article 26 of the Vienna Convention of 1969 on the Law of Treaties, is that the Parties find an agreed solution within the cooperative context of the Treaty. Article 26 combines two elements, which are of equal importance. It provides that ‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith.’ This latter element, in the Court’s view, implies that, in this case, it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized.²⁹

22. As part of implementing treaties in good faith, if a State is simultaneously bound by several treaties, it must ensure that it can comply with them all to the extent that they have no conflict, and it must interpret its international legal obligations in such a manner, to the extent possible. States must consider all their existing international

²⁷ *Supra* note 16 at preamble.

²⁸ 23 May 1969, United Nations, Treaty Series, Vol. 1155, p. 29 (entered into force 27 January 1980), online: <https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf>.

²⁹ *Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment of 25 September 1997, [1997] ICJ Report at para. 142, online: <<https://www.icj-cij.org/sites/default/files/case-related/92/092-19970925-JUD-01-00-EN.pdf>>.

legal obligations when taking action. States cannot use the purported fulfillment of international obligations in one subject-matter area to justify not meeting their international legal obligations in another unless there is a matter of the conflict, in which case, Article 30 of the Vienna Convention on the Law of Treaties, and any conflict clauses in the treaty, must be considered.³⁰ While it is reasonable for the Court to assess the obligations of States regarding climate change in the light of other international agreements, those other international agreements should not be interpreted as imposing contradictory obligations on States with respect to climate change.

23. It is imperative to protect the UN Climate Change process, as it is within this process that States have created the specific framework and institutions to tackle the global problem of climate change. The Conference of the Parties to the Convention and the Conference of the Parties serving as the meeting of the States Parties to the Paris Agreement are best placed to assess how to use the evolving science to inform global actions and establish new standards. In addition, the meetings of the governing bodies allow States which want to do more to engage in actions that can go beyond what the governing bodies might have agreed to. This has led to initiatives such as the Global Methane Pledge and the Powering Past Coal Alliance.³¹ Canada's longstanding view is that negotiation between States is the best way to achieve international progress to deal with the climate crisis, and the UN Climate Change process, created by the global community over many years of work, remains the best place to have those negotiations.

³⁰ *Supra* note 28 at article 30.

³¹ Climate & Clean Air Coalition Secretariat, *Global Methane Pledge*, online: <<https://www.ccacoalition.org/en/resources/global-methane-pledge>>, retrieved on February 21, 2024; Powering Past Coal Alliance, *Powering Past Coal Alliance Declaration*, online: <<https://poweringpastcoal.org/declaration/>>, retrieved on February 21, 2024.

Human Rights

24. Canada is supportive of the international momentum to highlight the connection between a healthy environment, climate change, and the enjoyment of human rights. In 2022, Canada supported UNGA resolution A/RES/76/300 entitled "The human right to a clean, healthy and sustainable environment"³² and provided an explanation of vote stating that "there is currently no common or internationally agreed upon understanding of the content and scope of a right to a clean, healthy and sustainable environment."³³ Canada further emphasized that it "looks forward to working with others on exchanging information to support due consideration of what such a right may comprise, and what it may entail within the international human rights framework."³⁴
25. Environmental harms, including climate change, negatively impact, directly and indirectly, the enjoyment of many human rights, including in particular the right to life, the right to the highest attainable standard of health, the right to adequate food, the right to safe drinking water and basic sanitation, and the right to an adequate standard of living. The progressive realization of economic, social and cultural rights may require States to adopt measures to mitigate the impacts of climate change and help persons subject to their jurisdiction to adapt to climate change. As such, effective implementation of international environmental obligations, including the obligations under the Paris Agreement, can assist States in meeting their respective human rights obligations.
26. In responding to climate change, States should adopt a human-rights based approach to adaptation and mitigation measures and ensure that the measures adopted do not violate their obligations under international human rights treaties or pursuant to customary international law. This includes the obligation to ensure that measures taken do not discriminate against any group, including Indigenous peoples,

³² UN General Assembly, *Resolution adopted by the General Assembly on 28 July 2022*, 56th Sess., UN Doc A/Res/76/300 (2022), online: <<https://digitallibrary.un.org/record/3983329?ln=en>>.

³³ UN General Assembly, *Official Records of Thursday, 28 July 2022*, 76th Sess., UN Doc A/76/PV.97 (2022) at p. 13/19, online: <<https://digitallibrary.un.org/record/3994693?ln=en>>.

³⁴ *Ibid.*

women, children and persons belonging to minority groups. States likewise should provide for public participation in climate policy-making, ensure public access to environmental information and education, and must protect the rights to freedom of expression, association and peaceful assembly as it relates to environmental action and ensure access to justice in environmental matters. In considering the extent of States' human rights obligations related to climate change, it is also important to be mindful that States must make challenging resource allocation decisions and balance sometimes competing rights.

27. The positive impact that climate change action can have on human rights cannot be relied on to broaden the scope of States' obligations under international human rights law. For example, the right to life, as guaranteed by Article 6 of the *International Covenant on Civil and Political Rights*,³⁵ seeks to ensure that no one is arbitrarily deprived of their life without legal protection and recourse. Canada does not accept that the right to life creates positive obligations on States to protect against any foreseeable threat to the full enjoyment of this right, nor that international environmental obligations inform the scope of the right to life under international human rights law.

28. Notwithstanding the linkages between environmental damage, including that caused by climate change, and human rights, certain aspects and principles of environmental law treaties do not translate to international human rights law. Under international human rights law, States Parties to treaties are obligated to respect, protect and promote the rights of rights-holders, i.e., persons who are subject to their jurisdiction. Canada has consistently maintained that the jurisdictional competence of a State is primarily territorial, and that it is only under very specific exceptions that States may incur extra-territorial obligations under international human rights law. This territorial application is explicitly reflected in international

³⁵ *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, Vol. 999, p. 171 (entered into force 23 March 1976) ["International Covenant on Civil and Political Rights"], online: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>.

law and is based on the important notions of comity and sovereign equality of States.³⁶

29. Likewise, the notion of common but differentiated responsibilities, an evolving concept in international climate change law, does not apply with respect to human rights, which are universal, inalienable and indivisible. Similarly, while international environmental law does acknowledge the notion of “future generations”, international human rights law does not guarantee rights of future generations but rather seeks to protect and promote individuals’ human rights in the present. States must, however, uphold their international human rights law obligations, including in the context of a changing climate.

THE LEGAL CONSEQUENCES OF BREACHES TO LEGAL OBLIGATIONS

30. Per Article 1 of the International Law Commission’s Draft Articles of Responsibility of States for Intentionally Wrongful Acts: “Every intentional wrongful act of a State entails the international responsibility of that State.” Therefore, for there to be responsibility, there must be an international wrongful act. Article 2 clarifies the elements of a wrongful act, namely:

There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.

31. As is clear, to have a finding of an internationally wrongful act, there needs to be a breach of an international obligation. Article 12 of the Draft Articles notes that:

³⁶ For example, Article 2(1) of the International Covenant on Civil and Political Rights, see *ibid*, states “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

In addition, pursuant to Article 13 of the Draft Articles there cannot be:

...a breach on an international obligation unless the State is bound by the obligation in question at the time the act occurs.

32. Given the relative newness of climate change as a subject at international law, it would be difficult to conclude that there yet exists a norm protecting against the effects of climate change that carries sufficient practice and *opinio juris* to be considered a part of customary international law. In the context of climate change, the earliest international obligations that directly arise are those found in the Convention and the Paris Agreement. As a State cannot be liable for something that was not a violation of international law, customary or otherwise, at the time of the action, any action that a State took prior to becoming a Party to the Convention or the Paris Agreement could not be counted against it as a breach of international law in the context of climate change.

33. Canada also notes that Article 15 of the Paris Agreement establishes an implementation and compliance committee.³⁷ Parties to the Paris Agreement have decided that where a breach of obligations under the Agreement appears to have occurred, the best course of action to remedy that breach is to invoke the committee, which is non-adversarial and non-punitive, to look into the breach with the State Party in question, and determine the appropriate consequences to give to that breach.

³⁷ *Supra* note 4 at article 15.

34. In addition, Article 14 of the Convention sets out the process in the event of a dispute between Parties concerning the interpretation or application of the Convention:

ARTICLE 14

SETTLEMENT OF DISPUTES

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice, and/or

(b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.³⁸

35. This is a process that the Paris Agreement has also accepted.³⁹ As such, should a State Party consider that another State Party is not meeting its legal obligations under the Paris Agreement, processes are set out to address the alleged breach.

³⁸ *Supra* note 12 at article 14.

³⁹ See *supra* note 4 at article 24.

CONCLUSION

36. Climate change is a global challenge, for which States have established, over many years of negotiation, a UN Climate Change process, through the Convention and the Paris Agreement. Processes under these agreements involve the whole of the international community: this is the only viable route to effectively addressing the climate change crisis.
37. The International Panel on Climate Change's 6th Assessment Synthesis Report has noted that due to the UN Climate Change treaties, levels of national ambition are rising. In addition, the Paris Agreement has led to policy development and target-setting for greenhouse gas (GHG) emissions at national and sub-national levels, and regulatory and economic instruments are being deployed successfully. Evidence suggests that "...mitigation policies have led to several gigatons (Gt) of carbon dioxide equivalent per year of avoided global emissions."⁴⁰ The 2023 UNEP Emissions Gap Report also noted that "Globally, GHG emissions in 2030 based on policies in place were projected to increase by 16 per cent at the time of the adoption of the Paris Agreement. Now the projected increase is 3 per cent."⁴¹ It further noted:

Policy progress has contributed to reducing the implementation gap, defined as the difference between projected emissions under current policies and projected emissions under full implementation of the nationally determined contributions (NDCs). The global implementation gap for 2030 is estimated to be around 1.5 GtCO₂e for the unconditional NDCs (down from 3 GtCO₂e in last year's assessment) and 5 GtCO₂e for the conditional NDCs (down from 6 GtCO₂e last year). The implementation gap for the G20 members States has also been reduced. As a group, G20 members States are projected to fall short of their new and updated NDCs by 1.2 GtCO₂e annually by 2030, which

⁴⁰ H.-O. Pörtner et al, eds, *Synthesis Report of the IPCC Sixth Assessment Report (AR6): Summary for Policymakers* (Cambridge, UK & New York, NY: Cambridge University Press, 2022) at para. A.4.1, online: <https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf>, retrieved on February 21, 2024.

⁴¹ *Supra* note 18 at p. XVIII, retrieved on February 21, 2024.

is 0.6 GtCO₂e lower than last year's assessment. The impact of newly implemented policies is a main driver of both lower global and G20 emission projections for 2030.⁴²

38. Much more will need to be done over the coming years; the ambitions of States must be raised and global actions need to accelerate. The importance of ratcheting up ambition is also recognized in Article 4.3 of the Paris Agreement, which states "Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition."⁴³ However, the discussions at the governing bodies of the Convention and the Paris Agreement are having an impact and progress is being made. While recognizing that States have obligations related to climate change under other treaties, Canada reiterates that these treaties should not be interpreted as imposing international legal obligations on States that are contrary to those carefully negotiated through the climate change regime. Doing so would undermine the effectiveness of the UN Climate Change Process, which is the opposite of what the world needs to achieve.

39. Canada remains firmly committed to the UN Climate Change process, through the Convention and the Paris Agreement. Their establishment followed years of negotiations and scientific work, and their comprehensive acceptance by the international community is testament to their global importance. Supporting the UN process and its related treaties, and living up to their obligations, are the world's best hope for combatting the climate change crisis.

⁴² *Ibid* at p. XVIII-XiX.

⁴³ *Supra* note 4 at article 4.3.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Alan H. Kessel', followed by a long horizontal flourish.

Alan H. Kessel
Assistant Deputy Minister and Legal Adviser
Global Affairs Canada

