

**INTERNATIONAL COURT OF JUSTICE**

**OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE**

**(REQUEST FOR AN ADVISORY OPINION)**

**Written Statement of Saint Lucia**

21 March 2024

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## I. INTRODUCTION

1. Pursuant to the Order of the President of the International Court of Justice (ICJ) of 20 April 2023, Saint Lucia respectfully submits its written statement on the request for an advisory opinion contained in United Nations General Assembly (UNGA) Resolution 77/276 (Resolution 77/276), adopted by consensus on 29 March 2023. In doing so, Saint Lucia joins the global community in seeking clarification on international rights and obligations relating to climate change.<sup>1</sup> It is quite rare for small countries like ours to utilize international courts as avenues for resolving grievances but given the importance of climate change to our present and future well-being, and indeed our very existence, Saint Lucia is compelled to participate and contribute to these historic proceedings.
2. Saint Lucia is a small island developing state (SID), located within the Lesser Antillean arc of the Caribbean archipelago at latitude 13.59 degrees north and longitude 61 degrees west. It sits on an ancient volcanic ridge that connects Martinique to the north and Saint Vincent and the Grenadines to the South, and has a land area of 616 km with an extensive coastline of approximately 158 km, and a coastal shelf of 522 km. Its landscape is very rugged, characterized by mountains — including our iconic twin peak “Pitons” — deep valleys, and rivers. As of 2018, Saint Lucia’s population stood at approximately 179,000.<sup>2</sup>
3. Saint Lucia gained independence from the United Kingdom on 22 February 1979 and is a proud member of the Caribbean Community (CARICOM), a community of Caribbean countries<sup>3</sup>; the Organization of Eastern Caribbean States (OECS)<sup>4</sup>, a sub-group of smaller

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<sup>1</sup> Saint Lucia has never appeared before this Honourable Court but has participated as a third party in three disputes before the World Trade Organization’s Appellate Body. (Appellate Body Reports, *European Communities — Regime for the Importation, Sale and Distribution of Bananas, United States — Sections 301–310 of the Trade Act 1974, United States — Import Measures on Certain Products from the European Communities*).

<sup>2</sup> See <<https://unfccc.int/sites/default/files/resource/Saint%20Lucia%20BUR.pdf>> last visited on 19 March 2024.

<sup>3</sup> CARICOM was established in 1973 by the Treaty Establishing the Caribbean Community (adopted 4 July 1973, in force 1 August 1973) 949 UNTS 17, and is currently governed by the Revised Treaty of Chaguaramas Establishing the Caribbean Community, Including the CARICOM Single Market and Economy (adopted 5 July 2001, in force 1 January 2006) 2259 UNTS 293 (RTC). It is made up of 15 Member States, most of which are small (island) states namely, Antigua and Barbuda, Bahamas, Barbados, Belize, Commonwealth of Dominica, Grenada, Cooperative Republic of Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Republic of Suriname, and Republic of Trinidad and Tobago.

<sup>4</sup> The OECS was established in 1981 and has been most recently revised through the Revised Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union (adopted 18 June 2010, in force 21 January 2011) (RTB). The OECS has seven Member States, all of which are small island states, namely, Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, and Saint Lucia and St. Vincent and the Grenadines.

countries within CARICOM; and more broadly, the Organisation of African, Caribbean and Pacific States (OACPS). CARICOM countries have been actively involved in international action on climate change, through *inter alia* membership of the Alliance of Small Island States (AOSIS).<sup>5</sup> Significantly, CARICOM was the first regional grouping to support Vanuatu’s initiative requesting these advisory proceedings.<sup>6</sup> CARICOM coordinates climate policy primarily through a Ministerial Council on Trade and Economic Development and established the Caribbean Community Climate Change Centre (CCCCC) to specifically support CARICOM Member States by enhancing their ability to respond effectively to the adverse impacts of climate change.<sup>7</sup>

4. At their last meeting held in Guyana in February 2024<sup>8</sup>, the CARICOM Heads of Government noted that despite numerous commitments and promises from international partners, the window to limit global warming to 1.5°C above pre-industrial levels is rapidly closing and that developed countries have not provided sufficient climate finance, technology, and capacity-building support to help developing countries tackle their urgent needs for resilience, especially in adapting to the adverse and increasingly catastrophic impacts of climate change.
5. As one of the CARICOM SIDS<sup>9</sup>, these advisory proceedings are an important avenue for clarifying international rights and obligations on climate change. SIDS are characterized

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<sup>5</sup> AOSIS is a coalition representing the interests of small island and low-lying coastal developing States in international climate change and sustainable development negotiations. See <<https://www.aosis.org/>> last visited on 15 March 2024.

<sup>6</sup> In March 2022 at the 33rd Inter-sessional Meeting of CARICOM Heads of Government in Belize, CARICOM was the first regional group to support Vanuatu’s initiative to proceed to the ICJ. The Communiqué issued under that meeting stated that:

Heads of Government indicated their support for Vanuatu in its pursuit of an Advisory Opinion from the International Court of Justice on the rights of present and future generations to be protected from Climate Change.

See <<https://caricom.org/communique-thirty-third-inter-sessional-meeting-of-caricom-heads-of-government/>> last visited on 15 March 2024.

Since that date, CARICOM/Caribbean states have been instrumental in the political process and in shaping the resolution before the UN General Assembly (UNGA).

<sup>7</sup> The role of the CCCCC encompasses research and monitoring; policy advice and support; capacity building and training; advocacy and awareness; project development and implementation; technology transfer and information sharing; and networking and partnerships. See <<https://www.caribbeanclimate.bz/>> last visited on 15 March 2024.

<sup>8</sup> See CARICOM’s Communiqué from the 46th Regular Meeting of the Conference of Heads of Government of CARICOM, 1 March 2024:

see <<https://hgc.caricom.org/communique-46th-regular-meeting-of-the-conference-of-heads-of-government-of-caricom/>> last visited on 15 March 2024.

<sup>9</sup> While there is no consensus on which countries are SIDS and some academics argue that it is a “political” classification, there is widespread acceptance of the characteristics SIDS share in connection with climate change. See for instance work by Stacy-ann Robinson, including, *Climate change adaptation in SIDS: A systematic review*

by their small size, limited resources, geographic dispersion and isolation from markets, economic fragility, and vulnerability. SIDS are more prone to experience, and be debilitated by, climate-related impacts such as rising sea and sea-surface temperature levels. Under the international climate regime, including the United Nations Framework Convention on Climate Change (UNFCCC)<sup>10</sup>, and successor agreements like the Paris Agreement (Paris Agreement)<sup>11</sup>, SIDS are acknowledged as among those “particularly vulnerable to the adverse effects of climate change and have significant capacity constraints”.<sup>12</sup> The global scientific community, including the Intergovernmental Panel on Climate Change (IPCC), also acknowledges the need for special treatment for small islands, with a recent report dedicating an entire chapter to “Small Islands”.<sup>13</sup> Using other global metrics, such as the United Nation’s Multi-dimensional Vulnerability Index (which provides a macro-level quantitative assessment of structural vulnerability and resilience<sup>14</sup> for developing countries based on economic, environmental and social factors), **SIDS rank among the most vulnerable, with Saint Lucia placing in the top ten most vulnerable developing countries and among the first in the Caribbean region.**<sup>15</sup>

6. SIDS have strong claims for climate justice due to their negligible historical and current greenhouse gas emissions. Saint Lucia, for instance, contributed **approximately**

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*of the literature pre and post the IPCC Fifth Assessment Report* First published: 19 May 2020, See <<https://doi.org/10.1002/wcc.653>> last visited on 15 March 2024.

<sup>10</sup> United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.

<sup>11</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, T.I.A.S. No. 16-1104.

<sup>12</sup> See for instance Article 9(4) of the Paris Agreement.

<sup>13</sup> Mycoo, M., Wairiu, M., Campbell D., et al. (2022). Small Islands. In *Climate change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, et al. (Eds.)]. Cambridge University Press: see <[https://www.ipcc.ch/report/ar6/wg2/downloadsreport/IPCC\\_AR6\\_WGII\\_Chapter15.pdf](https://www.ipcc.ch/report/ar6/wg2/downloadsreport/IPCC_AR6_WGII_Chapter15.pdf)> last visited on 15 March 2024.

<sup>14</sup> See United Nations High-Level Panel on the Development: Multidimensional Vulnerability Index: Final Report, September 2023. <[https://www.un.org/ohrrls/sites/www.un.org.ohrrls/files/final\\_mvi\\_report.pdf](https://www.un.org/ohrrls/sites/www.un.org.ohrrls/files/final_mvi_report.pdf)> last visited on 15 March 2024. The Multidimensional Vulnerability Index (MVI) is made up of two pillars: Structural vulnerability (comprising economic, environmental and social vulnerability) and Structural resilience (comprising economic, environmental and social resilience). There are 142 countries (some countries excluded for lack of data) in the UN’s MVI.

<sup>15</sup> This is driven by a structural vulnerability figure in the top 5 and a lack of structural resilience figure in the upper 50% of countries. Vulnerability scores have a wider range (20.6 – 73.9) compared to the lack of resilience scores (35.8 – 77.7). This means that differences in MVI scores are more likely to be driven by Structural Vulnerability scores than Structural Lack of Resilience scores.

**0.0009% to global emissions in 2018**<sup>16</sup>, yet has experienced an increase in tropical cyclones and landslides, ranking fifth among small states for climate-induced events.<sup>17</sup> The impacts on land, coastal, and marine resources, the loss in biodiversity, as well as the strains on our economic sectors and social infrastructure highlight the multifaceted challenges posed by climate change.<sup>18</sup>

7. And yet, while SIDS bear the brunt of the devastating impacts of climate change, they are among the most vocal supporters of and protagonists for concerted global action; indeed, Saint Lucia has demonstrated its commitment through a “whole of society” approach:
- (i) Local musicians and artists have raised awareness of the impacts of climate change, through campaigns such as the “1.5 to Stay Alive”<sup>19</sup>;
  - (ii) Our poets<sup>20</sup> and artists<sup>21</sup> have produced iconic work and imagery that have drawn international attention to the adverse impacts of climate change on SIDS;

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<sup>16</sup> See

<https://unfccc.int/sites/default/files/resource/Saint%20Lucia%27s%20Final%20BUR%20revised%20Dec%202021.pdf> last visited on 15 March 2024.

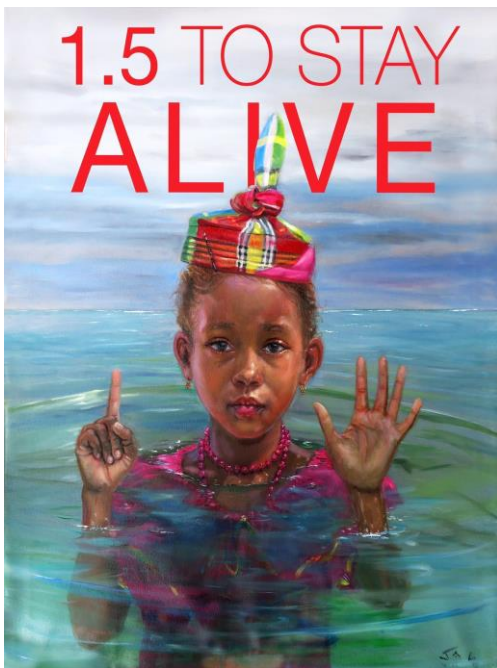
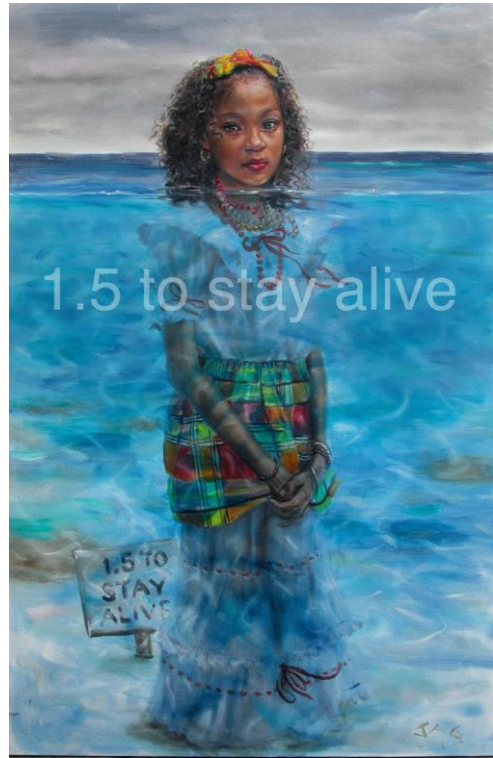
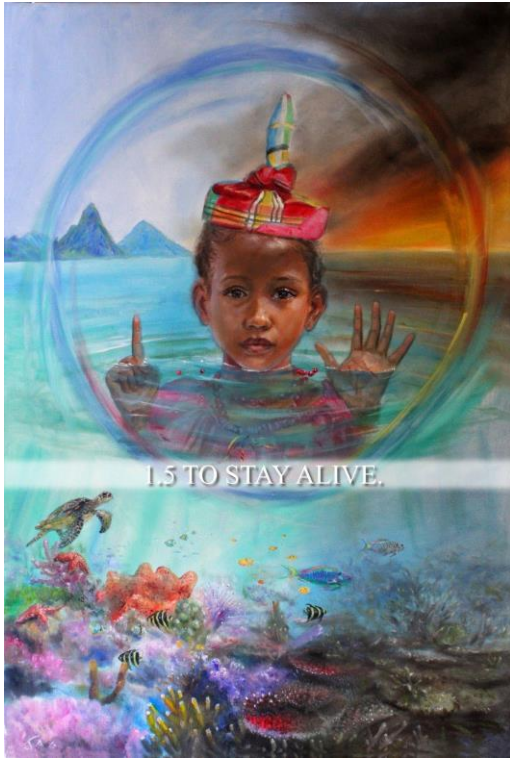
<sup>17</sup> See <https://www.who.int/publications/i/item/health-and-climate-change-country-profile-2020-saint-lucia> last visited on 15 March 2024.

<sup>18</sup> See more in Section III of this submission.

<sup>19</sup> See local campaigns available here: <https://www.youtube.com/watch?v=r3rokuuRPsA> last visited on 15 March 2024 and <https://www.youtube.com/watch?v=91Ej0FCbYEQ> last visited on 15 March 2024 and see paintings by Saint Lucian based artist Jonathan Guy-Gladding at p. 7 herein.

<sup>20</sup> Saint Lucia’s renowned poet, and Nobel Prize winner, Sir Derek Walcott, was a strident defender of the environment and many of his works celebrate Caribbean flora and fauna, and treat with the interwoven fabric of culture and landscape (See “The Sea as History”, “Omeros”, “Acacia Trees”, “Pays Natal”). Other local poets have expressed concern about environmental harm and impacts of climate change including Kendel Hippolyte (“Coda”, “The Invisible Hand”, “And Tomorrow”); Macdonald Dixon;; and John Robert Lee (“Uprising”).

<sup>21</sup> Saint Lucian-based artist Jonathan Guy-Gladding contributed a series of images of young Saint Lucian girls - some dressed in national wear - about to be submerged in sea water, as part of the social campaign for “1.5 to Stay Alive” during the Paris Negotiations. See <https://pressroom.oecs.int/new-iconic-painting-to-support-global-climate-justice-campaign> last visited on 15 March 2024.



Above: Paintings by Saint Lucian-based artist Jonathan Guy-Gladding used for the #1point5tostayalive campaign at COP21 leading to the Paris Agreement.

- (iii) Our Government has been steadfast in its commitment to international climate obligations as reflected in the recent introduction into Parliament of our very first **Climate Change Bill**<sup>22</sup>;
- (iv) Saint Lucia is a party to international environmental agreements, in particular those involving climate change, like the United Nations Framework Convention on Climate Change (UNFCCC) which Saint Lucia signed and ratified on 14 June 1993; the Kyoto Protocol signed on 16 March 1998 and ratified on 20 August 2003; and the Paris Agreement, both signed and ratified in April 2016.<sup>23</sup> Pursuant to those commitments, Saint Lucia has submitted National Communications and updated Nationally Determined Contributions (NDCs)<sup>24</sup>, with the latter focusing on GHG emissions reduction in the energy sector by 2030.
- (v) Under the maritime-related obligations, Saint Lucia became a party to the United Nations Convention on the Law of the Sea (UNCLOS) on 27 March 1985. In 2023, Saint Lucia signed the UNCLOS Agreement on Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement).<sup>25</sup> Saint Lucia is also one of eight Members of the Commission of Small Island States on Climate Change and International Law (COSIS)<sup>26</sup>, an intergovernmental body established in 2021 with a mandate to “promote and

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<sup>22</sup> The Climate Change Bill “seeks to implement the United Nations Framework Convention on Climate Change (the Convention), the Paris Agreement and the Kyoto Protocol to the Convention, to establish the functions of the Department responsible for climate change, an electronic climate change database and the Climate Change Committee, to set the parameters for the development of a Climate Change Adaptation Policy, National Adaptation Plan, the Nationally Determined Contribution, and account for greenhouse gas emissions”. The Bill further aims to *inter alia*: recognize the urgency of climate action to address the challenges posed by climate change to populations, resources, and economies, and to develop a comprehensive strategy for mitigation, adaptation, and loss and damage; integrate climate change considerations into all levels of national development decisions, laws, and policies, fostering low-carbon, resilient, and sustainable growth, while also enhancing national capacity for effective, efficient, and equitable responses; and establish mechanisms for emissions reduction targets, monitoring, and stakeholder education on climate change impacts and preparedness. Priority sectors for attention include agriculture; education; energy; fisheries; health; infrastructure and spatial planning; resilient ecosystems (marine and terrestrial); tourism, transport; and water.

<sup>23</sup> Saint Lucia is also a party to several international environmental Agreements, including: the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (The Escazú Agreement) signed on 27 September 2018 and ratified on 1 December 2020; the Montreal Protocol on Substances that Deplete the Ozone Layer acceded to on 28 July 1993.

<sup>24</sup> Saint Lucia has submitted three National Communications to the UNFCCC. The first on 30 November 2001, the second on 9 April 2012 and the third on 13 September 2017. The Updated NDC was submitted on 27 January 2021.

<sup>25</sup> See <<https://www.govt.lc/news/saint-lucia-signs-historic-high-seas-treaty>> last visited on 15 March 2024.

<sup>26</sup> The Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law (COSIS Agreement entered into force on 31 October 2021.



contribute to the definition, implementation, and progressive development of the rules and principles of international law concerning climate change.<sup>27</sup> In December 2022, the Co-Chairs of COSIS requested an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS) regarding the obligations under UNCLOS concerning the obligations of States to prevent the harmful impacts of GHG emissions on marine resources.<sup>28</sup> The opinion from ITLOS is pending.

8. Saint Lucia has demonstrated its commitment to climate action and approaches this Court for greater certainty on the scope, nature, and impact of international legal obligations related to climate change. For SIDS on the frontlines of climate change, this clarification would not only be helpful, it is necessary and urgent. Saint Lucia is aware that legal avenues are just one course open for determining the scope of rights under climate change, but an opinion of this Court will be of vital assistance in authoritatively stating the law through a holistic interpretation of the international law that promotes coherence in States' understanding of, and compliance with, their obligations.<sup>29</sup>
9. **The remainder of Saint Lucia's written submission is organised as follows:**
  - (vi) Section II covers issues relating to the Court's jurisdiction and the admissibility of this request;
  - (vii) Section III sets out the impact of climate change, including on Saint Lucia;
  - (viii) Section IV sets out general considerations arising from the Court's consideration of the questions in these proceedings;

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<sup>27</sup> See Article 1 of the COSIS Agreement.

<sup>28</sup> 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), pending, See <<https://www.itlos.org/en/main/cases/list-of-cases/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/>> last visited on 15 March 2024. For more on these proceedings see paras. 69-74.

<sup>29</sup> See Article 31(3) (c) of the Vienna Convention on the Law of Treaties (VCLT). Vienna Convention on the Law of Treaties, 1969) entitled: General Rule of Interpretation reads: "There shall be taken into account, together with the context: any relevant rules of international law applicable in the relations between the parties."

Consistent with this principle, international treaty provisions frequently incorporate references to other international standards and rules for interpretation. This practice fosters a harmonised progression and application of international law, ensuring coherence across the diverse legal obligations imposed on States. Various judicial bodies, including this Court, the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), the UN Human Rights Committee (UN HRC), and the European Court of Human Rights, routinely adopt this approach.

- (ix) Section V deals with the relevant legal obligations under international law relevant to these advisory proceedings (as per sub-paragraph (a) of the question);
- (x) Section VI explores the legal consequences of the breaches of relevant obligations, (as per sub-paragraph (b) of the question);
- (xi) In Section VII, Saint Lucia concludes.

## II. JURISDICTION AND ADMISSIBILITY OF THE REQUEST

10. Saint Lucia respectfully submits that the Court has jurisdiction to provide the present advisory opinion and that there exist no compelling reasons which would lead the Court to exercise its discretion not to do so. As noted by this Court in the *Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons*<sup>30</sup>, when considering an advisory request, the Court should be “mindful that it should not, in principle, refuse to give an advisory opinion [and that in] accordance with the consistent jurisprudence of the Court, only “compelling reasons” could lead it to such a refusal.”<sup>31</sup>
11. The UNGA is expressly empowered by Article 96(1) of the UN Charter to request an advisory opinion “on any legal question”. The relevant provisions are Article 96(1) of the UN Charter and Chapter IV of the Statute of the ICJ, particularly Article 65(1). Article 96(1) of the UN Charter states that: “The General Assembly [ ... ] may request the International Court of Justice to give an advisory opinion on any legal question’. Article 65(1) of the ICJ Statute states that: ‘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. Saint Lucia submits that the two questions asked by the UNGA are “legal questions”, one focusing on the “obligations of States under international law” and the other on “the legal consequences under these obligations”. Moreover, the UNGA regularly addresses different matters relating to climate change, including in its annual resolution on the “Protection of the global climate for present and future generations”, the latest of which is Resolution 77/165 adopted by consensus on 14 December 2022.

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<sup>30</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 14.

<sup>31</sup> *Ibid.*, para. 14.

13. In addition, the UNGA adopted the resolution requesting the advisory opinion by consensus, which had been co-sponsored by 132 States, including Saint Lucia. Saint Lucia therefore respectfully submits that all Member States consider – or, at the very least, do not oppose – the premise that the UNGA was acting within its powers when it adopted the resolution.
14. The Court, as the principal judicial organ of the United Nations and under the terms of Article 65(1) of the ICJ Statute, “may give” an advisory opinion. These terms under Article 65(1) have been consistently interpreted by the Court as giving it discretion to render or not the opinion requested.<sup>32</sup> The Court itself has never declined to render an advisory opinion requested by the General Assembly. According to the Court, its reply to a request for an opinion “represents its participation in the activities of the UN and, in principle, should not be refused”.<sup>33</sup> As a result, only “**compelling reasons would justify refusal of such a request**”.<sup>34</sup>
15. It is submitted that there are no compelling reasons to justify refusal to render the advisory opinion. Not only is there clear scientific consensus on climate change reflected in the reports of the International Panel on Climate Change (IPCC), particularly in the Summaries for Policymakers (See Section III below), which are approved by consensus, line-by-line, by all 195 Member States of the IPCC<sup>35</sup>, the questions put to the Court concern matters for which there is ample reliable information for the Court to render its opinion, namely the identification of the most relevant obligations and the assessment of the consequences of certain conduct (cumulative emissions of anthropogenic greenhouse

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<sup>32</sup> See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 29; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, General List No. 169, para. 63.

<sup>33</sup> See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 44; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, General List No. 169, para. 65.

<sup>34</sup> See *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 12, para 23; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 14; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 30; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, General List No. 169, para. 65.

<sup>35</sup> Principles Governing IPCC Work, Appendix A: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports, section 4.4, see <<https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf>> last visited on 15 March 2024.

gases over time which have caused climate change and its adverse effects). The data regarding this conduct is empirically well-established since at least 1850.<sup>36</sup>

16. Notwithstanding the pending requests before the ITLOS<sup>37</sup> as well as the Inter-American Court of Human Rights (ICtHR)<sup>38</sup> on climate change and international law, the UNGA is a distinct body from the entities seeking other advisory opinions. Moreover, the subject-matter and questions asked in these other initiatives are much narrower and specific. In addition, the entities seeking these advisory opinions clearly consider that these processes are distinct (as made clear by the fact that COSIS has requested and been authorised by the Court to take part in these proceedings before the Court) and both Chile and Colombia co-sponsored the UNGA resolution requesting the advisory opinion of the Court. As also noted above, only this Court has the general competence to provide the legal opinion requested by the UNGA as made clear by the scope of the question, which goes beyond the interpretation of any single treaty (or constitutive instrument) and specifically refers to general principles of international law, and the adoption of the Resolution by consensus.
17. Saint Lucia therefore respectfully submits that only the International Court of Justice has the jurisdiction to render the requested advisory opinion.

### **III. CLIMATE CHANGE AND ITS IMPACTS ON SAINT LUCIA**

18. Given the importance of science on climate change to these proceedings, Saint Lucia begins by setting out relevant findings of the scientific community on the impacts of climate change on the environment, the Caribbean, and Saint Lucia in particular.
19. Saint Lucia respectfully submits that the scientific community and 195 UN Member States have reached agreement, by consensus, that human activities, specifically anthropogenic Greenhouse Gas (GHG) emissions, are causing harm to the climate system

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<sup>36</sup> See Expert Report by Naomi Oreskes, ‘Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change’, Annexed to the Written Statement of the Republic of Vanuatu.

<sup>37</sup> See para. 7(v) above.

<sup>38</sup> Solicitud de Opinión Consultiva presentada por Colombia y Chile ante la Corte Interamericana de Derechos Humanos, 9 de enero de 2023, pending.

See <[https://www.corteidh.or.cr/observaciones\\_oc\\_new.cfm?nId\\_oc=2634](https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634)> last visited on 15 March 2024.

and environment. The IPCC Reports<sup>39</sup>, approved line by line by all the 195 Member States of the IPCC, including Saint Lucia, state with high confidence that GHG emissions have caused global warming, which is resulting in disastrous consequences. For instance, the IPCC's 2023 Synthesis Report states unequivocally:

Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020...<sup>40</sup>

Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.<sup>41</sup>

Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people (high confidence). Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected (high confidence).<sup>42</sup>

20. This is also recognized in the preambular paragraph 9 of Resolution 77/276:

Noting with utmost concern, the scientific consensus expressed inter alia in the reports of the IPCC, including that anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming observed since the mid-20th. Century.

.... human induced climate change including frequent and intense extreme weather events has caused widespread adverse impacts and related losses and damages to nature and its peoples.<sup>43</sup>

21. Further, the contents of preambular paragraph 9 are deeply embedded in the scientific consensus literature expressed in the IPCC Reports, including the Full Report and the Summaries for Policy Makers:

Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land use change, lifestyles and patterns of consumption and production across regions, between and within countries and among individuals.<sup>44</sup>

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<sup>39</sup> Synthesis Report of the Sixth Assessment Report

<[https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf)> last visited on 17 March 2024.

<sup>40</sup> *Ibid.*, p. 42.

<sup>41</sup> *Ibid.*, p. 46.

<sup>42</sup> *Ibid.*, p. 42.

<sup>43</sup> See

<<https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F77%2F276&Language=E&DeviceType=Desktop&LangRequested=False>> last visited on 19 March 2024.

<sup>44</sup> *Ibid.*, footnote 39, p. 42.

22. The impacts of climate change on the Caribbean have been documented in a Report produced specifically for these advisory proceedings<sup>45</sup> by three Caribbean lead authors of the IPCC's Sixth Assessment Cycle (AR6) Reports.<sup>46</sup> That Report is attached as **Annex I** to this submission. It presents an "objective overview of the scientific assessment of climate change causes, impacts, risks, and research gaps that are relevant to the Caribbean"<sup>47</sup>, and "draw[s] directly from the seven reports produced in the Sixth Assessment Cycle of the IPCC."<sup>48</sup>
23. The Report confirms that climate change, caused by humans, is having a disproportionately adverse impact on Caribbean SIDS. Specifically, it finds that:
- (i) "human activities have unequivocally caused global warming. Emissions of greenhouse gases that have been tracked since 1850 show wide regional disparities, with small island developing states (SIDS) across the globe contributing approximately only 0.5% of historical cumulative emissions. These emissions have caused warming of the atmosphere of approximately 1.1°C, which has resulted in widespread and rapid changes to environments across the globe."<sup>49</sup>
  - (ii) "SIDS, including the countries of the Caribbean, are disproportionately affected by current impacts and future risks of climate change. In terms of current impacts, much of the Caribbean region shows statistically significant warming of the atmosphere and detectable decreasing trends in precipitation. The most severe drought in the region from 2013 to 2016 was strongly related to anthropogenic warming and increased the severity of the event by 17% and the spatial extent by 7%. Small Islands of the Caribbean have experienced negative changes to terrestrial, freshwater and ocean ecosystems with adverse implications for

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<sup>45</sup> Science of Climate Change and the Caribbean: Findings from the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Cycle (AR6) (unpublished) by Dr. Adelle Thomas, Climate Analytics, IPCC AR6 Lead Author, IPCC AR7 WGII Vice-Chair, Professor Michelle Mycoo, University of The West Indies, IPCC AR6 Coordinating Lead Author, Professor Michael Taylor, University of The West Indies, IPCC AR6 Coordinating Lead Author (5 March 2024).

<sup>46</sup> The hundreds of leading scientists who participated in the sixth assessment cycle were divided into three Working Groups. Working Group I examines the physical science underpinning past, present, and future climate change. Working Group II assesses the vulnerability of socioeconomic and natural systems to climate change, negative and positive consequences of climate change, and options for adapting to it. Working Group III focuses on climate change mitigation, assessing methods for reducing GHG emissions, and removing GHGs from the atmosphere.

<sup>47</sup> *Ibid.*, p. 4.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

biodiversity. Negative impacts have been observed on many human systems, including water and food security, health and well-being, and cities, settlements and infrastructure. Tropical cyclones, storms, floods, droughts and coral reef damage are exacerbating existing vulnerabilities among the population and economies of the Caribbean.”<sup>50</sup>

- (iii) “For future risks, climate change poses significant challenges for the Caribbean, threatening sustainable development. Even if global warming is limited to 1.5°C, the compounding impacts of climate change are projected to contribute to the loss of critical natural and human systems, including threatening the habitability of some islands and coastal communities. Some impacts may be irreversible, such as the loss of coral reefs with significant consequences for the Caribbean including loss of coastal protection, biodiversity loss and impacts on critical livelihoods such as tourism and fisheries. Sea level rise (SLR) has been projected to impact the terrestrial biodiversity of low-lying islands and coastal regions via large habitat losses. Caribbean islands are among those projected to suffer the most habitat loss with projections of between 8.7% and 49.2% of its islands entirely submerged, respectively, from 1-m to 6-m SLR. Higher levels of global warming limit the options available for Caribbean countries to adapt to escalating risks posed by climate change. Limiting global warming to a specific level requires transformational change to curb cumulative carbon dioxide emissions, reach net zero and also reduce emissions of other greenhouse gases.”<sup>51</sup>
- (iv) “Future warming depends on past, current and future emissions. Current emissions as well as future emissions planned by countries and detailed in their submissions to the [UNFCCC] make it likely that global warming will exceed 1.5°C this century.”<sup>52</sup>
- (v) “Surpassing 1.5°C is a critical threshold for SIDS, including in the Caribbean, with escalating impacts of climate change resulting in limits in the ability of people and nature to adapt.”<sup>53</sup>

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<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, pp. 4-5.

<sup>53</sup> *Ibid.*, p. 5.

(vi) “[T]he science is very clear that Caribbean SIDS have made negligible contributions to the emissions that drive current and future climate change, that they are disproportionately affected by current impacts and future risks of climate change.”<sup>54</sup>

24. Health impacts of climate change have also been earmarked as a major area of concern for the region. For instance, as noted by Dr. James Hospedales, a Caribbean health expert<sup>55</sup>, who, along with other regional and global medical and health professionals, has been involved in a project entitled Research for Action on Climate Change and Health in the Caribbean<sup>56</sup>:

Climate change is having multiple adverse impacts on health and health systems in the Caribbean. Climate disruptions in the region are at an all-time high, with intense hurricanes, accelerating sea level rise, extreme heat, warming oceans, and drought causing increased injuries and deaths, heat-related illness, vector-borne diseases, mental health disorders, non-communicable diseases, and population displacement and migration.<sup>57</sup>

25. The impacts of climate change experienced by Saint Lucia are compiled in several local Reports, including, the Saint Lucia First Biennial Update Report (September 2021); the Saint Lucia National Adaptation Plan (NAP) 2018-2028<sup>58</sup>; and the 2006 and 2015 Saint Lucia State of the Environment Reports.<sup>59</sup> These Reports document the harmful impacts of climate change on Saint Lucia, which are exacerbated by its natural as well as non-climatic vulnerabilities, further compounding the impacts of climate change. Saint Lucia’s small geographical area means that disasters take on country-wide proportions: it is located in one of the highest risk areas of the planet (including high volcanic and

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<sup>54</sup> *Ibid.*, p. 5.

<sup>55</sup> Dr. James Hospedales is the founder of EarthMedic and EarthNurse Foundation for Planetary Health; and former Executive Director, Caribbean Public Health Agency.

<sup>56</sup> See publication by Allen CF, West RM, Gordon-Strachan G, Hassan S, McFarlane S, Polson-Edwards K, Thomas A, Hospedales CJ, Dubrow R. *Research for Action on Climate Change and Health in the Caribbean: A Public, Private, People’s and Planetary Agenda. Research for Action on Climate Change and Health in the Caribbean Project, 2024*: <<https://earthmedic.com/research-for-action-on-climate-change-and-health-in-the-caribbean/>> last visited on 17 March 2024.

<sup>57</sup> Statement provided by Dr. James Hospedales for the purposes of these proceedings.

<sup>58</sup> Government of Saint Lucia. (2022). Saint Lucia’s First National Adaptation Plan Progress Report. Department of Sustainable Development, Ministry of Education, Sustainable Development, Innovation and Vocational Training <<https://unfccc.int/sites/default/files/ACR/2022-10/Saint-Lucia-2022-NAP-progress-report-final%202018-2021.pdf>> last visited on 17 March 2024.

<sup>59</sup> State of the Environment 2006, <[https://wedocs.unep.org/bitstream/handle/20.500.11822/8446/-State\\_of\\_the\\_Environment\\_Report\\_-\\_GEO\\_Saint\\_Lucia-2006GEO\\_SaintLucia\\_2006.pdf.pdf?sequence=3&BisAllowed=>](https://wedocs.unep.org/bitstream/handle/20.500.11822/8446/-State_of_the_Environment_Report_-_GEO_Saint_Lucia-2006GEO_SaintLucia_2006.pdf.pdf?sequence=3&BisAllowed=>)> last visited on 17 March 2024 and GOSL (2015). State of the Environment Report 2015. Sustainable Development and Environment Division, Ministry of Sustainable Development, Energy, Science and Technology.



seismic activity, direct exposure to forces of the ocean, and is situated in the tropical cyclone belts) and it depends on a few sources such as agriculture and tourism for a substantial part of its gross domestic product (GDP). Over the years, these sources of income have been severely reduced by the impact of single climate-related disasters. The island's vulnerability is evidenced by its limited capacity to recover following a devastating weather event<sup>60</sup>, and the financial impacts of loss and damage to Saint Lucia have been estimated to be 12.1% of GDP by 2025, rising to 24.5% by 2050 and 49.1% by 2100.<sup>61</sup>

26. Recent extreme climate events have highlighted the vulnerability of the island to climate hazards.<sup>62</sup> A changing climate has already resulted in dwindling freshwater resources in Saint Lucia, more flooding resulting in higher incidences of water, food, and vector-borne diseases, impacting health; and the terrestrial and marine ecosystems and biodiversity are experiencing changes in habitat conditions and loss of species. Visible examples include extensive coral bleaching and loss of sea turtle nesting sites, more frequent landslides, coastal erosion, and flooding from intense seasonal rains and hurricanes which are already testing the resilience of the island's infrastructure and livelihoods of its people, particularly the poor and vulnerable. Saint Lucia has documented the loss and damage likely to arise in several priority sectors, including water resources and services, agriculture, fisheries and aquaculture, tourism, and vulnerable groups.<sup>63</sup>

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<sup>60</sup> See Saint Lucia's National Adaptation Plan (NAP) (2018-2028) <https://www4.unfccc.int/sites/NAPC/Documents/Parties/SLU-NAP-May-2018.pdf> last visited on 17 March 2024, p. 8.

<sup>61</sup> *Ibid.*, p.8.

<sup>62</sup> *Ibid.*, p. 8. For instance, in 2010, Hurricane Tomas cost the island 43.4% of its GDP, resulting in a total estimated 336 million United States Dollars in damages to housing, infrastructure, economic sectors especially agriculture and tourism, while claiming 7 lives. Additionally, in 2013, an unseasonal low-level trough, passed over the island producing greater than 224 mm of rain in 2 to 3 hours. This system impacted 2600 people directly, killed 6, destroyed 47 homes and caused USD 89.2 million in damages. Further, since 2012, Saint Lucia has experienced drought conditions every year, resulting from a decline in both the total annual and temporal distribution of rainfall. Consequently, the entire island has been forced to adopt periodic water rationing.

<sup>63</sup> These summaries have been prepared based on the documents referred to in footnotes 58-60 above. Saint Lucia can provide general estimates only, given the limited data available.

(i) Water Resources and Services

27. The impacts of more frequent extreme weather events like intense rainfall, hurricanes, high winds and storm surges create a risk of flooding, which can cause damage and destruction of water intakes, dams, and reservoirs leaving human settlements without water or with poor water supply and quality. Increased soil erosion and surface run-off on exposed soil are likely to cause siltation of river systems, dams and reservoirs at great cost to the island, reducing the effectiveness of drainage infrastructure and cause an increased risk of contamination of water resources from the leaching of pit latrines, septic tanks and pig farms especially in rural areas. Freshwater and marine ecosystems and biodiversity are also increasingly affected by agrochemicals during strong rains which impacts the island's coral reefs, fisheries and mangrove systems. Higher temperatures, prolonged and intense dry episodes and drought would increase water consumption and put greater pressure on municipal rationing of fresh water supplies. Meanwhile, sea level rise could cause intrusion into freshwater lenses especially low-lying coastal areas, further reducing the availability and quality of fresh water.

(ii) Agriculture

28. Extreme weather events are likely to lead to extensive crop damage and reduced yields, affecting agricultural production, harvesting and post-harvesting operations. Intense rains and flooding will cause water logging and saline soil conditions, leading to increased landslides, property losses and damage to irrigation systems, feeder roads and loss of agriculture lands, especially in low-lying areas. Siltation and contamination of the water courses with residual agrochemicals may not only interrupt the portable water supplies but also decrease the reliability of traditional planting and harvesting schedules. The higher temperatures, prolonged and intense dry episodes and drought conditions could cause heat stress to plants, retarding their growth and development, shortening life cycles, affecting yields and overall productivity. An increase in pest infestation and disease outbreaks, especially new ones, are also expected as a result of these climate change impacts. Poultry and small ruminants may succumb to the battering of high winds, and livestock could experience reduced fertility and reproductive rates, late maturation of offsprings, increase in calf mortality and a reduction in overall body weight.

(iii) Fisheries and Aquaculture

29. Damage to coral reefs will impact their role as fish nurseries and breeding habitats as well as natural barriers that protect coastal communities against hurricanes and storm surges. Freshwater farms can become flooded and damaged severely, impacting freshwater marine ecosystems and biodiversity. Extreme weather events can cause loss and damage to boats, gear, port infrastructure and operations as well as mooring lines. Sedimentation due to soil erosion, would lead to increased dredging costs, affecting the viability of both commercial and recreational fishing. Higher temperatures, prolonged and intense dry episodes and drought could cause migration of various fish and shell-fish species, resulting in increased species diversity and variability in yields. Fish feed is also likely to be impacted as well as the growth, development and cost of culture fish due to new diseases and parasites exacerbated by these temperatures.
30. Sea level rise can further lead to loss of fishing habitats where mangroves are destroyed. Low-lying communities like Anse La Raye, Canaries and Dennery, can see the loss and damage of fishing utilities, infrastructure and other man-made and natural resources.
31. These impacts will result in a severe loss of fish stocks and habitats as well as income loss and livelihoods of fisherfolk. The loss of the cultural tradition of fishing as a way of life for many in the rural areas, could lead to increased dependence on foreign fish imports, which further threatens the island's food security.

(iv) Tourism and Natural Resources

32. As one of the main drivers of Saint Lucia's economy, tourism will be impacted as more extreme weather cause land slippage and soil erosion, leading to loss of tours like nature trails which are heavily supported by the cruise ships. Loss of biodiversity can easily be translated into reduced opportunities for attracting visitors interested in ecotourism and nature trails. The destruction of coral reefs, beaches and forests could lessen Saint Lucia's attractiveness to the region as a tourist destination. Currently, Saint Lucia is revered as one of the top honeymoon destinations in the world and this status could be very much affected by these impacts. Dive tourism will be reduced due to the destruction and bleaching of the coral reefs, and direct damage to hotels, restaurants, airports and berthing facilities for yachts, cruise ships and piers would also create added pressure.

33. Extreme weather events may also increase insurance costs in the sector, reduce locally harvested foods which supply the hotel industry, causing increased dependence on the importation of foreign goods.

(v) Women and Vulnerable Populations

34. Climate change impacts disproportionately women and vulnerable populations, in particular those that depend on agriculture and coastal activities, women, indigenous persons, elderly children and those living in poverty. These groups are usually among the poorest owing to a series of complexities, including the sexual division of labour, systemic discrimination, institutionalized sexism and racism and gender stereotypes.

35. On the positive side, climate change has had a galvanizing impact on non-State actors in the Caribbean who are on the “frontlines” of climate change – including small-scale farmers and fisherfolk, rural women producers, elderly and disabled persons, the income poor, migrants, indigenous<sup>64</sup> and Afro-descendant communities and LGBTQIA+ persons – leading to greater advocacy and joint action, including through the creation of a Climate Justice and Resilience Agenda for 2023-2030 among 40 Caribbean think tanks, academic and civil society organizations.<sup>65</sup>

#### **IV. SUBMISSIONS ON THE QUESTION – GENERAL LEGAL CONSIDERATIONS**

36. The specific request presented for an advisory opinion comprises an introductory paragraph and two sub-paragraphs, and reads as follows:

“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,

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<sup>64</sup> For specific impacts of climate change on the Caribbean indigenous communities see, <<https://earth.ed.ac.uk/case-studies/jamaican-climate-justice-project-promotes-ancestral-food-heritage-for-resilience/>> last visited on 16 March 2024; <<https://cyen.org/climate-justice-and-indigenous-livelihoods-in-belize/>> last visited on 16 March 2024; <<https://www.youtube.com/watch?v=As-AYD86UJo>> last visited on 16 March 2024.

<sup>65</sup> See <<https://canari.org/wp-content/uploads/2023/11/Caribbean-Climate-Justice-and-Resilience-Agenda-10.2023.pdf>> last visited on 16 March 2024.

- (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?"

37. First, Saint Lucia respectfully submits that this Court should consider the questions before it paying particular attention to the situation of SIDS. Not only does subparagraph (b)(i) request the Court to take into account the impact of the breaches of international law obligations on SIDS specifically, but the preambular paragraphs of Resolution 77/276 – agreed to by the UNGA – recall principles of equity reflected in the UNFCCC and Paris Agreement; highlight the vulnerability of “particular developing countries”, like SIDS, to the adverse effects of climate change; stress the urgency of financial, capacity-building and technology transfer to assist countries to adapt and address loss and damage from climate change; and express serious concern with the failure of developed countries to mobilize necessary resources to meet the USD 100 billion per year target for mitigation action. These references align with the demands that CARICOM has been making to the international community and provide important context for this Court’s understanding of the motivation behind, and interpretation of, the questions in this request.<sup>66</sup>

38. Second, Saint Lucia also submits that the Court should interpret the obligations of States in line with Articles 31-33 of the Vienna Convention on the Law of Treaties (VCLT) and in particular Article 31(3)(c).<sup>67</sup> The diversity of instruments referred to in the preamble of Resolution 77/276 and in the introductory paragraph to the question, demonstrate that climate change law is a burgeoning area that is interdependent and derived from multiple sources, including traditional sources of law as well as emerging peremptory norms,

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<sup>66</sup> See para. 4 above.

<sup>67</sup> VCLT, Article 31 3(c), General Rule of Interpretation reads: “There shall be taken into account, together with the context: any relevant rules of international law applicable in the relations between the Parties”.

secondary legislation from international organizations, and soft law, all of which, it is submitted, should be taken into account.<sup>68</sup>

39. The sources specifically mentioned in the introduction to the questions are not exhaustive given that the Court is asked to merely “hav[e] particular regard” to them. Nonetheless, they are highly relevant to the identification of relevant legal obligations for the following reasons:

- (i) the UN Charter embodies the fundamental principles of international law, particularly in Articles 1 (purposes) and 2 (principles), including sovereign equality, good faith, the duty to co-operate and the right to self-determination, as subsequently elaborated on in other UN General Assembly resolutions and in the case law of the Court itself;
- (ii) the 1966 International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) embody the key treaty pillars of the “international bill of rights” with very wide geographical application and the incorporation by reference of detailed interpretive materials (e.g. views of human rights treaty bodies and general comments). Moreover, both treaties expressly protect the right to self-determination;
- (iii) the UNFCCC and the Paris Agreement contain rules that specifically address aspects of the conduct i.e. human activities contributing to GHG emissions, and of the legal consequences, including provisions on mitigation, adaptation, loss and damage, finance, technology transfer, and capacity-building. These rules are non-exhaustive and apply from the date of the entry into force of the UNFCCC and the Paris Agreement;
- (iv) UNCLOS contains Articles 192 (obligation to protect and preserve the marine environment), 193 (limits on the right to exploit natural resources) and 194 (prevention of pollution);

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<sup>68</sup> Alina Kaczorowska-Ireland, *Public International Law*, 6th edition (Routledge, 14 July 2023).

- (v) the duty of due diligence modulates the operation of certain treaty obligations and on a stand-alone basis and covers a longer timespan than the other rules identified;
- (vi) the rights recognized in the Universal Declaration of Human Rights as part of general international law are a key component of the international bill of rights and apply to all States;
- (vii) the principle of prevention of significant environmental harm is important because it is now well established that GHG emissions have caused significant harm to the climate system, which is a part of the environment, as well as – directly and indirectly (through the adverse effects of climate change) – to other parts of the environment; and
- (viii) the duty to protect and preserve the marine environment, codified in Article 192 of the UNCLOS as an obligation as aforementioned, is recognized as having customary grounding.

40. In its task of discerning and reconciling the various obligations that apply, the Court should recall its *Advisory Opinion in South Africa* where it stated that:

an international instrument must be interpreted and applied within the overall framework of the judicial system in force at the time of the interpretation.<sup>69</sup>

41. Taking an approach of considering obligations to protect the climate system across a range of rules of international law is not novel and can be harmonized even where rules conflict.<sup>70</sup> Saint Lucia refers the Court to the Guidelines enunciated by the International

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<sup>69</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, I.C.J. Reports 1971, p. 16 and 31.

<sup>70</sup> See an attempt to harmonize for instance international trade law and climate law by the International Legal Expert Group on Trade-Related Climate Measures and Policies. (2023). Principles of international law relevant for consideration in the design and implementation of trade-related climate measures and policies. Report of an International Legal Expert Group. Forum on Trade, Environment, & the SDGs (TESS) <[https://cdn2.assets-servd.host/lyrical-cormorant/production/assets/images/Publications/TRCMs\\_Principles\\_TESS.pdf?dm=1695371717](https://cdn2.assets-servd.host/lyrical-cormorant/production/assets/images/Publications/TRCMs_Principles_TESS.pdf?dm=1695371717)> last visited on 16 March 2024. For work by Caribbean scholars on the interaction between trade and climate obligations see SRC Policy Brief # 3 The Trade and Climate Change Interface: Initial Considerations for CARICOM by Jan Yves Remy, Rueanna Haynes and Kaycia Ellis Bourne at: <<https://secureservercdn.net/198.71.233.86/dk4.d52.myftpupload.com/wp-content/uploads/2021/11/The-Trade-and-Climate-Change-Interface-Policy-Brief.pdf>> last visited on 16 March 2024; and see Jan Yves Remy (2023), Trade-related climate priorities for CARICOM at the World Trade Organization. Forum on Trade, Environment & the SDGs (TESS) and Shridath Ramphal Centre (SRC) <<https://shridathramphalcentre.com/wp->

Law Commission (ILC) on “Protection of the Atmosphere”<sup>71</sup> that were adopted by the UNGA. They provide *inter alia*:

- (i) that conflicts may arise with rules of international law relating to the protection of the atmosphere and other relevant rules of international law, including, *inter alia*, the rules of international trade and investment law, of the law of the sea and of international human rights law;
- (ii) that “to the extent possible” such rules should be identified, interpreted and applied in order to give rise “to a single set of compatible obligations, in line with the principles of harmonization and systemic integration, and with a view to avoiding conflicts”; and
- (iii) that “when developing new rules of international law relating to the protection of the atmosphere and other relevant rules of international law” States must “endeavour to do so in a harmonious manner”; and that “**special consideration should be given to persons and groups particularly vulnerable to atmospheric pollution and atmospheric degradation**”, including “indigenous peoples, people of the least developed countries and people of low-lying coastal areas and **small island developing States affected by sea-level rise**”.<sup>72</sup>

42. These Guidelines provide guidance on prioritizing and harmonizing obligations across different rules of international law and clearly set out a requirement of “special consideration”<sup>73</sup> of climate-vulnerable groups, with specific reference to SIDS. This further demonstrates that dedicated consideration of the vulnerabilities of SIDS is again not a novel idea limited to the question before the Court but an existing requirement when identifying States’ obligations in relation to climate change or protection of the climate system.

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[content/uploads/2023/02/TESS-Policy-Paper-Trade-Related-Priorities-for-CARICOM-at-the-WTO.pdf](https://documents.un.org/doc/undoc/gen/n21/348/19/pdf/n2134819.pdf?token=fAE8A69uNQX5v9eSiX&fe=tr)> last visited on 19 March 2024.

<sup>71</sup> Seventy-sixth session Agenda item 82 Report of the International Law Commission on the work of its seventy-second session Resolution adopted by the General Assembly on 9 December 2021 [on the report of the Sixth Committee (A/76/473, para. 12)] 76/112

<https://documents.un.org/doc/undoc/gen/n21/348/19/pdf/n2134819.pdf?token=fAE8A69uNQX5v9eSiX&fe=tr>> last visited on 19 March 2024.

<sup>72</sup> *Ibid.*, Guideline 9.

<sup>73</sup> *Ibid.*, Guideline 9(3).



## V. FIRST QUESTION - SUB-PARAGRAPH (A): THE OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW IN RELATION TO CLIMATE CHANGE

43. The first question which falls under sub-paragraph (a) asks:
- (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?
    - (i) Scope of obligations covered in sub-paragraph (a)
44. Based on dictionary definitions, the primary obligations referred to under sub-paragraph (a) require States to make certain<sup>74</sup> (“ensure”) that they keep safe from harm or injury<sup>75</sup> (“protect”) the climate from human-made<sup>76</sup> (“anthropogenic”) emissions of gases in the earth's atmosphere that trap heat<sup>77</sup> (“greenhouse gases”).
45. The “climate system” includes a complex system with five interacting components: the atmosphere (air), the hydrosphere (water), the cryosphere (ice and permafrost), the lithosphere (earth's upper rocky layer), and the biosphere (living things), influenced by external forces such as the Sun.<sup>78</sup> This is consistent with the definition of “climate system” under the UNFCCC, being “the totality of the atmosphere, hydrosphere, biosphere, and geosphere and their interactions.”<sup>79</sup> The residual reference to “other parts of the environment” invites consideration of the impacts of anthropogenic GHG emissions on biodiversity, wetlands, nature, glaciers and human beings as well.<sup>80</sup> The use of the words “climate system and other parts of the environment” therefore implies a holistic approach and understanding of the Earth as a single, intertwined, complex system.
46. The question focuses on those obligations that States owe *to each other* (“for States”) as well as to “*present and future generations*” as the intended beneficiaries of these

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<sup>74</sup> See <<https://www.collinsdictionary.com/dictionary/english/make-certain>> last visited on 16 March 2024.

<sup>75</sup> See <<https://www.collinsdictionary.com/dictionary/english/safety>> last visited on 16 March 2024.

<sup>76</sup> See <<https://www.merriam-webster.com/dictionary/anthropogenic>> last visited on 16 March 2024.

<sup>77</sup> See <<https://www.nationalgrid.com/stories/energy-explained/what-are-greenhouse-gases#>> last visited on 16 March 2024.

<sup>78</sup> See <[https://en.wikipedia.org/wiki/Climate\\_system](https://en.wikipedia.org/wiki/Climate_system)> last visited on 16 March 2024.

<sup>79</sup> Article 1 (Definitions) of the UNFCCC.

<sup>80</sup> This Court stated in its Advisory Opinion on *The Legality of the Threat or Use of Nuclear Weapons*, 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.” This Court further recognized 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”.

obligations. When read together with the context provided by sub-paragraphs (b) (i) and (ii) of the question which specifically refers to the consequences of breaches of obligations on “*small island developing States*” as well as “[*p*]eoples and individuals for present and future generations”, it is clear that the Court is being invited to identify obligations owed to SIDS as well as people and communities who live in them.

47. The reference to “*present and future generations*” highlights that the beneficiaries intended to be included for consideration are not just States, as traditional objects of international law, but also human, health and other rights that enure to persons and individuals impacted by climate change. The Court is being asked to consider legal obligations and norms found in human rights treaties and conventions and other legal instruments that are increasingly concerned with questions about the effects of climate change on various groups.<sup>81</sup> CARICOM SIDS for instance recently signed the Escazú Agreement, a regional environmental and human rights agreement among Latin American and Caribbean under the auspices of UNECLAC that requires Parties to contribute “to the *protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development.*”<sup>82</sup>
48. Saint Lucia focuses on the obligations arising under the UNFCCC, the Paris Agreement, UNCLOS, as well as the duties to prevent transboundary harm and significant harm to the environment, including the duty of due diligence, and the duty to cooperate, **with a particular focus on the special and differentiated treatment of SIDS.** The focus reflects Saint Lucia’s engagement and ongoing participation in the climate negotiations and the special significance Saint Lucia, as a “large ocean state”<sup>83</sup>, attaches to the sea, the marine environment and its protection.<sup>84</sup> Saint Lucia reiterates however that these

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<sup>81</sup> See for instance the reference in the introductory paragraph of the question to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the rights recognized in the Universal Declaration of Human Rights.

<sup>82</sup> Article 1 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean: see <<https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf>> last visited on 17 March 2024.

<sup>83</sup> See Andrew Hume, Jim Leape, Kirsten L.L. Oleson, Emily Polk, Kevin Chand - *Towards an Ocean-based Large Ocean States Country Classification*: see <<https://www.sciencedirect.com/science/article/pii/S0308597X21003778#tbl0015>> last visited on 19 March 2024.

<sup>84</sup> Poetry by Saint Lucian Nobel Laureate Derek Walcott, like “The Sea is History”, reflects the reverence with which Saint Lucians hold the sea :

international treaties and principles do not exhaust the relevant norms that this Court should take into account as relevant, as highlighted in paragraphs 38 to 42 above. Saint Lucia reserves the right to make further submissions on other areas of law in subsequent submissions in these advisory proceedings. Saint Lucia also supports the submissions of our fellow OECS Members, Grenada, Saint Vincent and the Grenadines; and the OACPS which have made more fulsome arguments under other relevant obligations.

(ii) Relevant Legal Obligations relating to Climate Change

- Obligations under the UNFCCC and Paris Agreement

49. The Court is asked, in the introductory part of the request, to have “particular regard” to UNFCCC and Paris Agreement. Saint Lucia submits that the common wording in subparagraph (a) of the question and provisions of these climate treaties means that the Court will be hardpressed not to consider these treaties in its opinion: the UNFCCC urges Parties to the Framework Convention to “protect the *climate system* for the benefit of *present and future generations* of humankind” (Article 3(1)); the temperature targets in Articles 2 and 4 of the Paris Agreement embody the principle of avoiding “dangerous *anthropogenic* interference with the climate system” (Article 2 of the UNFCCC) which results from the GHG emission-generating activities; and *small island developing States* once again receive special treatment as “particularly *vulnerable to the adverse effects of climate change*” under both Agreements.
50. The UNFCCC is understood as the “founding treaty of the climate change regime”.<sup>85</sup> It was negotiated in 1992 and entered into force in 1994, with near universal membership. As a framework convention, it was understood that further commitments would have to be negotiated and elaborated over time with the evolution of scientific evidence. Together with the Kyoto Protocol, the Paris Agreement is one of the more important successor Agreements that followed the UNFCCC. While comprehensive, the Paris Agreement is not a complete codification of States’ international law obligations in relation to climate

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Where are your monuments, your battles, martyrs?  
Where is your tribal memory? Sirs,  
in that grey vault. The sea. The sea  
has locked them up. The sea is History...

<sup>85</sup> See *The Paris Agreement on Climate Change: Analysis and Commentary*, edited by Daniel Klein, María Pía Carazo, Meinhard Doelle, Jane Bulmer, and Andrew Higham. Oxford: Oxford University Press, 2017.

change and was not intended to replace States' existing obligations under international law.

51. The negotiations leading to the Paris Agreement in 2015 hold particular significance for Saint Lucia and many other SIDS. When addressing the closing plenary at the COP21 immediately following the adoption of the Paris Agreement, the then Saint Lucian Minister of Sustainable Development – James “Jimmy” Fletcher who also represented CARICOM States and was selected by the COP President to be part of the ministerial team to achieve consensus on the elements of the Paris Agreement – stated:

Mr. President, I can confidently speak on behalf of my fellow Caribbean delegations when I say that for perhaps the first time in a long time, Caribbean and other SIDS truly felt that our concerns were being heard at a COP. Our delegations witnessed a sincere interest to craft a fair, balanced and ambitious Agreement that sought to address the needs of the most climate-vulnerable countries...

We view this Agreement not as a combination of separate articles, but as a total package that will provide us with the legal framework for protecting our ecosystems, our islands, our people, our cultures and our planet.

...I can look back fondly and proudly on my two weeks here in Paris and know that together with a group of hard working and determined men and women I helped create history; a history that will ensure that my island and our planet will have a more certain future.

52. The Paris Agreement is a hybrid treaty under international law in that not all provisions are legally binding; it takes a nuanced, carefully calibrated approach to differentiation, adopting a bottom-up approach that allows States to nationally determine the substance of their mitigation and adaptation actions; it relies on transparency rather than legal bindingness to promote accountability; and its “ambition mechanism” establishes an iterative process to promote progressively stronger NDCs over time.<sup>86</sup> This hybrid, partially legally binding, partially voluntary nature of the Paris Agreement exemplifies why other sources or rules of international law are required to clarify the full extent of States' obligations in relation to climate change beyond the UNFCCC and Paris Agreement.

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<sup>86</sup> Bodansky, D. Paris Agreement United Nations Audiovisual Library of International Law Copyright © United Nations, 2021:1. All rights reserved <<https://legal.un.org/avl/ha/pa/pa.html>> last visited on 16 March 2024.

53. Aspirational obligations within the Paris Agreement detail both temperature and emissions goals that supplement the UNFCCC’s objective of stabilizing concentrations of greenhouse gases at levels that would prevent dangerous anthropogenic interference with the climate system (UNFCCC Article 2). These goals are not legally binding but do identify the level of effort that States Parties to the agreement should make when implementing policies to achieve these goals. Article 2.1(a) sets out the temperature threshold to keep temperature increases to “well below” 2°C above pre-industrial levels, and to work toward limiting temperature increases to 1.5°C. Recent decisions taken by consensus establish that the 1.5°C threshold is the preferred limit that Parties should be seeking to maintain.<sup>87</sup>
54. The Agreement also provides two new emissions targets under Article 4(1) of Paris Agreement: first, to reach the global emission peak as soon as feasible and then to rapidly reduce emissions with “best available science”<sup>88</sup>; and second, to attain net zero emissions in the second half of the century. To achieve these goals, Article 4 sets forth several legal obligations on parties, including:
- (i) to prepare, communicate and maintain successive NDCs and to pursue domestic mitigation measures with the aim of achieving the objectives of each NDC (Article 4(2));
  - (ii) to communicate an NDC every five years, with the information necessary for clarity, transparency and understanding (ICTU), and be informed by the outcomes of the global stocktake (Article 4(9))<sup>89</sup>;

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<sup>87</sup> See decision 1/CMA.3 para. 21 as follows. ‘*Recognizes* that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C and *resolves* to pursue efforts to limit the temperature increase to 1.5 °C;’ contained in document FCCC/PA/CMA/2021/10/Add.1 available at [https://unfccc.int/sites/default/files/resource/cma2021\\_10\\_add1\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf) last accessed 11 March 2024. And 1/CMA.5 (GST Decision) paragraph 4 ‘*Underscores* that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C and *resolves* to pursue efforts to limit the temperature increase to 1.5 °C’ and paragraph 5 ‘...and *emphasizes* the need for urgent action and support to keep the 1.5 °C goal within reach...’

<sup>88</sup> See < <https://sdgs.un.org/frameworks/parisagreement> > last available on 16 March 2024.

<sup>89</sup> The Paris Rulebook decision on mitigation provides further guidance on the obligations of Parties to provide information to facilitate clarity, transparency and understanding (ICTU) of their NDCs and to account for their NDCs (Decision 4/CMA.1). Although ordinarily COP decisions are not legally binding, the Article 4 provisions on ICTU and accounting provide that Parties are to act “in accordance with” relevant COP decisions (technically, decisions of the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement, or CMA), making the Paris Rulebook decisions on ICTU and accounting binding on Parties.

- (iii) that each Party’s successive NDC will represent a progression beyond the then current NDC and reflect its highest possible ambition (Article 4(3));
  - (iv) that Parties will account for their NDCs (Article 4(13)).
55. Saint Lucia acknowledges that Article 4 does not create an individual obligation on each party to implement or achieve its NDC, given that (i) the provision requires Parties only to “pursue” domestic measures, rather than to actually implement them; (ii) the obligation to pursue domestic mitigation measures is arguably a collective rather than an individual obligation, since it is formulated as an obligation applicable to “parties” rather than “each party”; and (iii) the aim specified in Article 4(2) is to achieve the “objectives” of the NDCs. These treaty obligations are again aspirational in nature. In some circumstances, if the conduct of a State in relation to its “acts or omissions” relating to the regulation of GHG emissions within its jurisdiction is causing, likely to cause or has already caused harm, this may still result in breaches of that State’s obligations under other rules of international law, even while fulfilling its obligations under these articles.
56. Beyond mitigation obligations, the Paris Agreement also establishes a goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability, including the importance of cooperation between Parties and stakeholders with an emphasis on developing countries (Article 7); States recognized the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change as critical issue for developing country<sup>90</sup> (Article 8); and States highlighted the need for financial support to respond to climate change, especially for developing countries – and the obligation of “developed countries” to provide additional financial resources (Article 9). Article 13 sets out reporting requirements and Article 15 the means to facilitate and comply with implementation of the Paris Agreement. Article 14 establishes a global stocktake of Paris Agreement implementation every five years.

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<sup>90</sup> See latest obligations on Loss and Damage emerging from the 28th Conference of the Parties (COP28) <<https://www.cop28.com/en/news/2023/11/COP28-Presidency-unites-the-world-on-Loss-and-Damage>> last visited on 16 March 2024; <<https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era>> last visited on 16 March 2024; <<https://unepccc.org/wp-content/uploads/2023/12/loss-and-damage-at-cop28-web.pdf>> last visited on 16 March 2024. State Parties at the recently held COP28, 30 November 2023 to 13 December 2023, agreed to operationalize the Loss and Damage Fund to assist developing countries grapple with the effects of climate change.

57. These articles provide useful guidance on the measures required to be taken for States to address the impacts of climate change, which can be taken into consideration when assessing the legal consequences for breaches of obligations together with the relevant legal obligations as contained within the UNFCCC and Paris Agreement and other treaties, including human rights treaties, general principles of international law or customary international law.

- The principle of CBDR-RC under the UNFCCC and Paris Agreement<sup>91</sup>

58. The equitable principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) is a core principle given expression under the UNFCCC and the Paris Agreement. One of its first formulations is reflected in Principle 7 of the Rio Declaration on Environment and Development, which provides that “[i]n view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.” It is a foundational element of global climate governance, integral to both the UNFCCC and the Paris Agreement, and mandates specific legal responsibilities for developed countries to take the lead in reducing and mitigating climate change, reflecting the recognition of historical emissions and disparities in resources and capacities.

59. Saint Lucia submits that the UNFCCC and the Paris Agreement **collectively reinforce the differentiated responsibilities of States in addressing climate change, with a**

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<sup>91</sup> For academic work on the CBDR-RC principle, including under the UNFCCC and Paris Agreement, see, Reuben Makomere, Kennedy Liti Mbeva, 2018, Squaring the Circle: *Development Prospects Within the Paris Agreement*, in Carbon Climate Law Review Vol 12 Issue 1 <[https://us01.z.antigena.com/1/FPsocbzmRHi3YoaOVX\\_4EKwKdC53DAfEtzYAedcjNGPTtvJ5FXgjAGdDuni1Awe7\\_WvW6SD~FqVGfnwp1BjC-RK8nONIZGW\\_bav7PtWTLBPP72jfhIEyQdTxz\\_e4bSivEnObxWp2HDipLcZhJwFQPIA\\_HSuCQVd\\_fZG8jVuOvHxWVJT4Z39saCgVX9w6QK~d5vObdT~s6n--QC](https://us01.z.antigena.com/1/FPsocbzmRHi3YoaOVX_4EKwKdC53DAfEtzYAedcjNGPTtvJ5FXgjAGdDuni1Awe7_WvW6SD~FqVGfnwp1BjC-RK8nONIZGW_bav7PtWTLBPP72jfhIEyQdTxz_e4bSivEnObxWp2HDipLcZhJwFQPIA_HSuCQVd_fZG8jVuOvHxWVJT4Z39saCgVX9w6QK~d5vObdT~s6n--QC)> last visited on 16 March 2024; Reuben Makomere, Kennedy Liti Mbeva, 2019, *Contested Multilateralism: Toward Aligning Regimes for Ocean and Climate Governance in Climate Change and Ocean Governance Politics and Policy for Threatened Seas* (Chapter 16) Cambridge University Press: <<https://www.cambridge.org/core/books/abs/climate-change-and-ocean-governance/contested-multilateralism/512F36FE4FD93196D925E1BF6F7926F6>> last visited on 16 March 2024; Kennedy Liti and Mbeva Pieter Pauw 2016 *Self-Differentiation of Countries' Responsibilities Addressing Climate Change through Intended Nationally Determined Contributions* <[https://www.idos-research.de/uploads/media/DP\\_4.2016.pdf](https://www.idos-research.de/uploads/media/DP_4.2016.pdf)> last visited on 16 March 2024.

**particular focus on providing support to SIDS, including obligations on developed nations in areas of finance, loss and damage, mitigation, and technological assistance.** The many provisions setting out this special treatment for vulnerable countries, including SIDS, are set out in **Annex II** of this submission.<sup>92</sup>

60. Starting with the UNFCCC, Article 3(1) sets out a “Principle” of the regime as follows:

The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties **should take the lead in** combating climate change and the adverse effects thereof.

61. Article 4(8) identifies SIDS as a particularly vulnerable group of States that require additional support under the Convention, including actions related to funding, insurance, and the transfer of technology, to meet their specific needs and concerns arising from the adverse effects of climate change and/or the impact of the implementation of response measures.

62. Articles 4(3) to 4(7) of the UNFCCC delineate the commitments of developed countries in assisting SIDS to meet the obligations enshrined in the Convention. Article 4(3) obligates developed States to “provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations ... including for the transfer of technology, needed by the developing country Parties...”; and Article 4 (4) obligates developed States to “assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.”

63. The Paris Agreement also incorporates the CBDR-RC principle in Article 2.2 (Aims), Article 4 (Mitigation), and Article 7 (Adaptation), even though it adopts a more nuanced approach. In terms of implementation obligations, it requires developed countries to undertake absolute economy-wide emission reduction targets, with developing countries “*encouraged*” to move towards such targets over time (Article 4(4)); each party’s successive NDCs expressly reflects its CBDR-RC; and LDCs and SIDS “*may*” prepare and communicate strategies, plans and actions for low GHG emissions development

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<sup>92</sup> Annex II of this submission provides a complete list of CBDR-RC provisions contained in the UNFCCC and Paris Agreement.



reflecting their special circumstances. Article 7 recognizes the importance of support (including finance) for adaptation efforts, as well as the importance of considering the needs of developing countries, “especially those that are particularly vulnerable to the adverse effects of climate change”.<sup>93</sup> Article 7(10) also notes that the submission of periodical adaptation communications should not create “any additional burden for developing countries”. Article 9(3) states that “developed country Parties should *continue to take the lead* in mobilizing climate finance”, meaning others will follow. Article 9(4) emphasizes countries that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints and explicitly mentions LDCs and SIDS. Article 9(9) provides that institutions “*ensure efficient access to financial resources* through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.”

64. Article 11(1) emphasizes countries “with the least capacity, such as the least developed countries” and “those that are particularly vulnerable, such as the Small Island Developing States” should benefit from *capacity building* under the Agreement, including in implementation of adaptation and mitigation actions, facilitation of technology development, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information. Article 11(3) calls on Parties to “cooperate to enhance the capacity of developing country Parties to implement” the Agreement, and specifically on “developed country Parties [to] enhance support for capacity-building actions in developing country Parties.”
65. Saint Lucia submits that the UNFCCC and Paris Agreement clarify equitable principles to guide the **differentiated responsibilities** of developed States and developing States, particularly SIDS that are vulnerable to climate change. The principles impose lesser obligations on SIDS on account of their limited means and near zero contribution to the climate problem, and heightened obligations on developed States, particularly historical polluters that have contributed to significant harm to the environment, towards

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<sup>93</sup> Article 7(6) of the Paris Agreement.

developing States and SIDS, including through financial, technological and other types of measures to adapt, mitigate and address loss and damage.

- Prevention of transboundary harm and significant harm to the environment

66. Saint Lucia respectfully submits that the principle of “prevention of transboundary harm”<sup>94</sup> and its more recent iteration – the duty to prevent “significant harm to the environment” – should be considered a legal obligation in relation to climate change. Saint Lucia recalls that this Court has treated the principle of prevention of transboundary harm as a rule of customary international law<sup>95</sup> which also entails an inextricable

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<sup>94</sup> Principle 2 of the Rio Declaration underscores the fundamental principle that states possess the sovereign right to exploit their own resources within the framework of their environmental and developmental policies. However, this right is counterbalanced by the responsibility not to cause harm to the environment of other states or areas beyond national jurisdiction. (See also: The role of international case law in implementing the obligation not to cause significant harm, Mara Tignino and Christian Brethaut, published online 6 October 2020 <<https://link.springer.com/article/10.1007/s10784-020-09503-6>> last visited on 16 March 2024; | International Environmental Agreements: Politics, Law and Economics (springer.com); <<https://link.springer.com/journal/10784>> last visited on 16 March 2024; Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries – 2001, <[https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_7\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf)> last visited on 16 March 2024; Prevention Obligations in International Environmental Law, <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2290211](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2290211)> last visited on 16 March 2024; | Yearbook of International Environmental Law | Oxford Academic (oup.com))

The duty not to cause transboundary harm imposes significant obligations on States to ensure that activities within their jurisdiction or control do not result in environmental damage extending beyond their borders. This principle recognizes the interconnectedness of ecosystems and the transboundary nature of environmental impacts, particularly those stemming from anthropogenic greenhouse gas emissions. States are obligated to take proactive measures to mitigate and prevent activities that have the potential to cause transboundary harm, including those contributing to climate change.

In the 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the ICJ made the following observation:

The Court recognizes that the environment is under daily threat and 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. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now a part of the corpus of international law relating to the environment. (SEE VLS AB).

See also *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment of 16 December 2015, <<https://www.icj-cij.org/sites/default/files/case-related/150/150-20151216-JUD-01-00-EN.pdf>> last visited on 16 March 2024.

<sup>95</sup> See International Legal Expert Group on Trade-Related Climate Measures and Policies. (2023), p. 19 (referring to ICJ Advisory Opinion on the *Legality of Nuclear Weapons* (1996), para. 29; ICJ, Judgment, Case concerning the *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, ICJ Reports 1997, p.41, para.53, and ICJ, Judgment, Case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 2010 ICJ Reports 1, 38, para. 101) In its the Case concerning *Pulp Mills on the River*, the Court recognized the customary international law nature of the principle of prevention, and that the duty is to exercise due diligence to prevent “significant environmental damage, harm, or risk thereof” irrespective of whether it may occur:

101. The Court points out 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. It is “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States” (Corfu Channel (United Kingdom

obligation of “**due diligence**” on States. As an obligation of conduct, the principle of due diligence requires States to adopt appropriate measures to prevent activities within their jurisdiction or control that cause significant transboundary harm, including in areas beyond national jurisdiction and those areas such as the global commons that have no connection to State sovereignty.<sup>96</sup>

67. Saint Lucia submits that the duty to prevent significant harm to the environment must apply to States insofar as they contribute GHG emissions that impact others. While it is less clear from customary international law what concrete measures States are required to take in order to fulfill their due diligence duties under the principle of prevention, the standard is generally considered to be appropriate and proportional to the degree of risk of harm (severity and likelihood); the passage of time; and the economic level of States.<sup>97</sup> Moreover, States must use “**all the means at [their] disposal**” to prevent activities within their jurisdiction or control causing significant environmental damage, harm, or risk thereof.<sup>98</sup> The ICJ has also clarified that these “means” include certain elements such as cooperation, the adoption and enforcement of environmental legislation, as well as the conduct of an environmental impact assessment. Beyond these elements, the actual content of this duty and the “selection of the specific measures to exercise due diligence [remains within] the purview of the State of origin.”<sup>99</sup>

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v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 22). 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. This Court has established that this obligation “is now part of the corpus of international law relating to the environment” (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 242, para. 29.

<sup>96</sup> See International Legal Expert Group on Trade-Related Climate Measures and Policies. (2023), p. 19, noting that those treaties that incorporate this principle of due diligence provide for further substantive specificities (e.g. what measures to adopt and how to implement them) and/or procedural specificities (what procedures to follow) (referring to United Nations Convention on the Law of the Sea (UNCLOS) (1982); the Protocol on Environmental Protection to the Antarctic Treaty (1991)); ICJ, *Pulp Mills*, para. 197; and ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (2001), Commentary to Article 4.3.) The ITLOS Seabed Dispute Chamber defined the duty of due diligence as the duty “to deploy adequate means, to exercise best possible efforts, to do the utmost”, ITLOS, Responsibilities in the Area, para. 110.

<sup>97</sup> See International Legal Expert Group on Trade-Related Climate Measures and Policies. (2023), p. 19 and footnote 51 (referring to See e.g., International Law Committee (ILC) Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (2001), Commentary to Article 3.11.)

<sup>98</sup> See International Legal Expert Group on Trade-Related Climate Measures and Policies. (2023), p. 19 (referring to ICJ, Judgement, Case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 2010 ICJ Reports 1, 38, para. 101).

<sup>99</sup> J.E. Viñuales, ‘Due Diligence in International Environmental Law: A Fine-Grained Cartography’, in H. Krieger (ed.), *Due Diligence in the International Legal Order* (OUP, 2020). See also ICJ, *Pulp Mills*, para. 205.

68. Under the duty of prevention therefore, States are under an obligation to use all means at their disposal to prevent transboundary harms caused by anthropogenic GHGs which are transboundary in nature. Moreover, the duty of due diligence requires that States that have contributed more to the harm, and are more economically able to prevent harm, are under a heightened obligation.

- Obligations under the UNCLOS

69. Saint Lucia respectfully submits that, in the context of marine resources and the environment, the duty to prevent harm and other international legal obligations are reflected in the provisions of UNCLOS which this Court should also consider as relevant. Saint Lucia recalls that there is a pending request by COSIS for an advisory opinion by ITLOS on the obligations of States under UNCLOS to prevent the harmful impacts of GHG emissions on marine resources, and given the similarity of issues raised in that request<sup>100</sup>, respectfully submits that the Court have regard of the ITLOS' advisory opinion when identifying the scope and nature of States obligations under UNCLOS.<sup>101</sup>

70. In that context, Saint Lucia, as a member of COSIS, draws on arguments made in the COSIS written submission in relation to obligations under UNCLOS.<sup>102</sup> Under Article 194, States are obliged to take all measures necessary to prevent, reduce and control pollution (Article 194(1)); and to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution (Article 194(2)). Saint Lucia agrees

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<sup>100</sup> Specifically, the request to ITLOS reads:

Having regard to the fundamental importance of oceans as sinks and reservoirs of greenhouse gases and the direct relevance of the marine environment to the adverse effects of climate change on Small Island States, the Commission shall be authorized to request advisory opinions from the International Tribunal for the Law of the Sea ("ITLOS") on any legal question within the scope of the 1982 United Nations Convention on the Law of the Sea, consistent with Article 21 of the ITLOS Statute and Article 138 of its Rules.

On these bases, and pursuant to a unanimous Decision of its Members in accordance with Article 3(5) of the Agreement, the Commission decided at a duly constituted meeting on 26 August 2022 to refer the following legal questions to the Tribunal for an advisory opinion:

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea (the "UNCLOS"), including under Part XII:

(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?

<sup>101</sup> See para 7(v) above.

<sup>102</sup> See Written Statement of the COSIS, Volume 1, 16 June 2023:

<[https://www.itlos.org/fileadmin/itlos/documents/cases/31/written\\_statements/2/C31-WS-2-4-COSIS.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/2/C31-WS-2-4-COSIS.pdf)> last visited on 19 March 2024. Saint Lucia notes that COSIS will be providing a submission in these proceedings and reserves its right to reflect those updated arguments in future proceedings before this Court.

that “anthropogenic GHG emissions meet the definition of “pollution” under UNCLOS “because they introduce excess heat and carbon into the marine environment that result or are likely to result in an array of deleterious effects.”<sup>103</sup>

71. Saint Lucia also agrees that the duty under Article 194(1), which reflects customary international law to prevent harm, there is an obligation “to adopt and implement all national and collective (international) measures that are necessary for preventing, reducing, and controlling pollution of the marine environment” but the obligation is to do so using the best practicable means. As noted in the COSIS submission, “each State’s capabilities and level of development may influence the nature of the applicable obligation imposed on this State to take all necessary measures to prevent, reduce, and control pollution of the marine environment... [and] that the intensity of the effort a State has to make is determined by its actual technical and scientific capacity to entertain this effort. Aside from a State’s economic development, other subjective factors may also inform the content of an obligation: for example, a State’s capacity to influence the actions of certain actors.”<sup>104</sup>
72. Saint Lucia also submits, in line with the COSIS submission, that Article 194(2) “imposes a due diligence obligation on States with respect to the prevention of significant environmental harm to areas beyond their jurisdiction, and obliges States Parties to take appropriate measures to prevent significant transboundary harm or adverse environmental impacts beyond national borders arising out of activities within their jurisdiction and control.”<sup>105</sup> Given that the standard of due diligence applicable to States must be “appropriate and proportional to the degree of risk of transboundary harm” from their activities, it is both logical and just that industrialized and developed States should bear **a more exacting obligation with respect** to the prevention of transboundary and extraterritorial harm from GHG emissions as industrialized and developed States play an outsized role in generating GHG emissions and associated damage to the marine environment.”<sup>106</sup>
73. Finally, Saint Lucia supports the arguments in the COSIS submission that Article 192 reflects the obligation of customary international law to protect and preserve the marine

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<sup>103</sup> *Ibid.*, para. 168.

<sup>104</sup> *Ibid.*, para. 194.

<sup>105</sup> *Ibid.*, para. 300.

<sup>106</sup> *Ibid.*, para. 301.

environment. That obligation has both positive and negative dimensions, requiring States to take positive action to protect and preserve the marine environment, as well as to refrain from degrading the marine environment. The duty to “protect” requires States to prevent future damage to the marine environment. It requires them not only to take action to prevent harm to the marine environment caused by their agents, but also by individuals within their control; the duty to “preserve” requires States to maintain or improve the marine environment’s present condition. This includes a duty to restore parts of the marine environment or ecosystems that have suffered degradation.<sup>107</sup>

74. In addition to those arguments made in the COSIS submission, Saint Lucia submits that the UNCLOS regime also incorporates an equitable principle to provide preferential treatment to developing countries, including SIDS, in the protection and preservation of their marine resources and the prevention, reduction and control of marine pollution. Specifically, Article 202 requires States to promote programmes of scientific, educational, technical and other assistance to developing States; Article 203 requires that developing countries be provided preferential treatment in the allocation of appropriate funds for technical assistance; Article 266 imposes a duty of cooperation on States, in accordance with their capabilities, to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions, recognises that some States (including geographically disadvantaged ones) might require technical assistance with regard to the exploration, exploitation, conservation and management of marine resources, and requires States to endeavour to foster favourable economic and legal conditions for the transfer of marine technology for the benefit of all Parties concerned on an equitable basis.

- Duty to Cooperate

75. The duty to cooperate transcends political, economic, and social differences among States, emphasizing collective action for the common good. The UNGA Resolution 2625, A/RES/25/2625 specifically states that:

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the

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<sup>107</sup> *Ibid.*, paras. 368-369.

general welfare of nations and international co-operation free from discrimination based on such differences.<sup>108</sup>

76. In the environment context, Principle 7 of the Rio Declaration provides that “States shall cooperate in a spirit of global partnership to conserve, protect, and restore the integrity and health of the Earth’s ecosystem”. Principle 24 of the Stockholm Declaration provides that:

International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big or small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

77. The duty to cooperate is also reflected in the UNFCCC, which, in its preamble, acknowledges “that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response”<sup>109</sup>, and the fifth principle in Article 3 of the UNFCCC further provides that “[t]he Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change.”<sup>110</sup> It also finds expression in Article 197 of UNCLOS, which directs States Parties to “cooperate on a global basis ... directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures ... for the protection and preservation of the marine environment.”
78. The principle of cooperation has a second dimension: the duty to cooperate “in a transboundary context,” which reflects customary international law and includes *inter alia* the duty of notification and consultation with States potentially affected by activity

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<sup>108</sup> See <[https://treaties.un.org/doc/source/docs/A\\_RES\\_2625-Eng.pdf](https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf)> last visited on 16 March 2024. See also the United Nations Declaration Concerning Friendly Relations and Cooperation Among States fundamental purposes of the United Nations,” which emphasizes that “States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such difference.”

<sup>109</sup> See UNFCCC preamble para. 6.

<sup>110</sup> *Ibid.*, see Article 3(5) of the UNFCCC.

and events having consequences on the environment (Principles 18 and 19 of the Rio Declaration). The Paris Agreement states that “Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.”<sup>111</sup> Several avenues to increase transparency and facilitate discussions among Parties related to the possible impacts of their climate mitigation measures on developing countries have been put in place to support ongoing work.<sup>112</sup> Saint Lucia submits that the duty to cooperate is now also reflected in the sharing of information and inclusive decision-making that now characterizes the climate and environment regime, including adopting regulations relating to environmental impact assessments; providing notifications, exchanging information and engaging in consultations. That duty also behoves countries to pay heed to the special needs of developing countries.

(iii) Conclusion

79. Based on the above, Saint Lucia submits the following arguments in response to the first question in sub-paragraph (a):

- (i) Customary international law, general principles, and treaties to which Saint Lucia is a party require States to undertake obligations to ensure the protection of SIDS and present and future generations of people and individuals within them from the harmful impacts of anthropogenic GHG emissions on the climate system and other parts of the environment. While not exhaustive, these obligations can partially be found in the UNFCCC, the Paris Agreement and the UNCLOS, and under principles of equity, duty to prevent transboundary harm, and the duty to cooperate;
- (ii) These climate-related obligations require all States to collaborate to ensure protection of the entire climate system from GHG emissions by taking all steps within their respective capacities, and complying with obligations at the domestic and international levels to prevent transboundary harm, which at a minimum

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<sup>111</sup> See Article 4(15) of the Paris Agreement.

<sup>112</sup> See International Legal Expert Group on Trade-Related Climate Measures and Policies. (2023), p. 21 (referring to a “Forum on the impacts of the implementation of response measures under the UNFCCC, the Kyoto Protocol and the Paris Agreement”) which was established in 2018, together with the Katowice Committee of Experts on Impacts of Implementation of Response Measures, which was created to support the forum by undertaking technical work. (See Decision 7/ CMA.1, Decision 3/CMP.14, Decision 7/ CP.24.)).



requires keeping temperatures within agreed permissible limits (to pursue efforts to limit the temperature increase to 1.5° Celsius above pre-industrial levels) and to co-operate with each other by complying with primarily procedural obligations;

- (iii) There is an acceptance that climate obligations are differentiated based on countries' capacities and historical contributions, with SIDS having burdens commensurate with their contribution to GHG emissions and limited financial capacities and the greatest legal claim for support to meet their international obligations to the climate and other States. The climate framework, in particular, under the UNFCCC and Paris Agreement, has increasingly emphasized the necessity of tailored support for SIDS, encompassing a range of obligations by developed nations, highlighting finance, loss and damage, mitigation, and technological assistance. Such support is critical for building resilient infrastructure, promoting sustainable development, and transitioning to low-carbon economies; and providing a systematic approach to supporting SIDS that suffer from climate-induced damages. It also highlights the importance of more ambitious mitigation efforts by developed countries to "lead" by example, setting a path for global emission reductions while also providing financial and technical support to SIDS to enhance their mitigation capacities.
- (iv) This Court must interpret the rules of international law holistically, and in a manner that harmonises States' obligations, across various fields of international law. In so doing, this Court should give prominence to SIDS and their concerns emanating from failure of countries to meet their climate responsibilities.

80. Saint Lucia submits that – in line with its vulnerability, capacity constraints and its limited emissions to date (at 0.0009% in 2018) – it has fulfilled its obligation in international law “to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of GHGs for States and for present and future generations”. It is less clear that other countries have done all in their power to “ensure” protection based on their respective capabilities and their historical emissions.

**VI. SECOND QUESTION - SUB-PARAGRAPH (B): THE LEGAL CONSEQUENCES OF BREACHES OF OBLIGATIONS WHICH HAVE CAUSED SIGNIFICANT HARM**

81. The second question before the Court, which is found under sub-paragraph (b), asks:
- (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 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?
82. The question is concerned with the legal consequences of breaches of the climate change-related obligations referred to under sub-paragraph (a) – and the consequent responsibility on States for any proven wrongdoing. Two categories of entities potentially adversely affected by climate change: States, with a specific focus on SIDS; and peoples and individuals of present and future generations affected by adverse effects of climate change.
83. Saint Lucia has highlighted in Section III above the significant harm to SIDS and its people caused by the breach of legal obligations owed under climate provisions and norms. Specifically, the itemized harm demonstrates that the scientific community has now reached a point where the “best available science” confirms findings that are very relevant to the questions posed in sub-paragraph (b), namely that:
- (i) the degree of harm associated with anthropogenic GHG emissions is “significant”;
  - (ii) the “significant harm” is not attributable to SIDS and can therefore be attributed to other States;
  - (iii) this harm has been “caused” (in the past) by the acts and omissions of States, and that there is further risk of harm continuing and worsening in the future especially for SIDS; and

- (iv) the harm is adversely affecting SIDS and peoples and individuals of present and future generations in SIDS, indicating that not only is the harm affecting the physical environment but also human systems, including water and food security, health and well-being, and cities, settlements and infrastructure. These effects are exacerbating existing vulnerabilities among the population and economies of the Caribbean.
84. Saint Lucia now turns to identify the “legal consequences” for States under the relevant climate obligations for the significant harm caused. Saint Lucia submits that the reference to “these obligations” is clearly a cross-reference back to the legal obligations identified in the previous sub-paragraph (a). Saint Lucia has set out above in Section V the relevant legal obligations that arise under customary international law, general principles of law, and the UNFCCC, Paris Agreement and UNCLOS.
85. Saint Lucia notes that these regimes offer limited recourse for dealing with legal consequences for breaches of their provisions. Moreover, as we have also noted, the specific obligations we have referenced above do not exhaust the obligations that might apply and be binding on States, and therefore the legal consequences that might be applicable.
86. Saint Lucia submits that the overarching framework governing the “legal consequences” provided under relevant rules of general international law is codified in the ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), including Article 30. The ICJ has clearly recognized that the general rules of reparation must be read in the light of the specific circumstances arising from the nature of environmental harm.<sup>113</sup> Moreover, specific aspects relating to the application of those general rules on reparation, including the assessment of the required causal nexus, “may vary depending on the primary rule violated and the nature and extent of the injury”.<sup>114</sup>

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<sup>113</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, paras. 34, 41-43, <<https://www.icj-cij.org/sites/default/files/case-related/150/150-20180202-JUD-01-00-EN.pdf>> last visited on 17 March 2024.

<sup>114</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment of 9 February 2022, para. 94, <<https://www.icj-cij.org/sites/default/files/case-related/116/116-20220209-JUD-01-00-EN.pdf>> last visited on 17 March 2024. See also *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, para. 34, <<https://www.icj-cij.org/sites/default/files/case-related/150/150-20180202-JUD-01-00-EN.pdf>> last visited on 17 March 2024.

87. Article 13 of ARSIWA embodies the first rule of the intertemporal law principle and requires that the legality of acts, facts, and situations must be assessed at the moment when they occur. Acts and omissions that have caused significant harm to the climate system and other parts of the environment were at all relevant times governed by international law. States that have significantly contributed to cumulative GHG emissions were bound by international law obligations and their conduct, individually and collectively, constitutes a composite act amounting to a breach, within the meaning of Article 15 of ARSIWA.
88. In relation to States' obligations under the principle of prevention of significant harm to the environment, as detailed in Section V above, Saint Lucia maintains that States that significantly contributed to cumulative GHG emissions were also at all times bound by these obligations, including in relation to the duty of due diligence to the specific context of environmental protection.
89. These obligations existed from at least the beginning of the Industrial Revolution, and even after the duty of due diligence was specified in relation to environmental protection, including – specifically – air pollution, particularly for States' whose conduct responsible for climate change continued and, indeed, intensified.
90. These States were at all times required to exercise due diligence that required that they not allow their territory to be used in a manner that could cause significant harm to the interests of other States. Temporally, this duty to exercise due diligence existed from when these States had awareness and knowledge of the catastrophic implications of anthropogenic GHG emissions, in other words the harm caused by fossil fuel combustion, as already referred to in the Expert Report by Naomi Oreskes submitted in these proceedings by Vanuatu.<sup>115</sup> Failing to fulfill these obligations has led to well-documented irreversible loss and damage, which is clearly a breach of the duty of due diligence.
91. Turning lastly to the remedies that might be available for breach of obligations related to climate under general international law, Saint Lucia draws to the Court's attention some

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<sup>115</sup> See footnote 36.

areas that should guide the Court’s findings. In particular, Saint Lucia submits that it is appropriate for this Honourable Court to note the obligations of States to:

- (i) Continue to perform all obligations required by international law<sup>116</sup>;
- (ii) Cease any continuing unlawful acts;
- (iii) Offer appropriate assurances and guarantees of non-repetition<sup>117</sup>;
- (iv) Provide full reparation for the injury caused by the internationally wrongful act (including through restitution, compensation and satisfaction<sup>118</sup>).

92. With respect to the requirement to **make full reparation for injury caused**, Saint Lucia notes that “restitution” requires the wrongful State to take actions that will reverse climate change. While Saint Lucia accepts that restitution, as set out in Article 35 of the ARSIWA, is not required where it is “materially impossible”, we submit that **restitution is not materially impossible and can be progressively and gradually achieved by consistent actions taken to counteract climate change**.<sup>119</sup> Saint Lucia also submits that restitution over time does not impose a disproportionate burden.<sup>120</sup> In this regard, Saint Lucia submits that this Court should indicate that countries should make good on commitments to reduce GHG emissions, including those under the UNFCCC and Paris Agreements to meet their own ambitious targets made under their NDCs, and to provide finance, capacity-building and technology transfer for mitigation, adaptation and loss and damage, in particular to SIDS.

93. The Court should also clarify that there is a **duty to provide compensation**, since the damage caused by internationally wrongful acts related to climate change cannot be immediately or entirely made good by restitution.<sup>121</sup> As highlighted above, the ongoing harmful effects of climate change will continue to cause damage to the SIDS, and are exacerbated by pre-existing challenges that bedevil CARICOM SIDS such as crippling debt, and the legacies of slavery, which Caribbean States have long argued serve as a

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<sup>116</sup> As provided in, e.g., Article 29 of ARSIWA.

<sup>117</sup> As provided in, e.g., Article 30 of ARSIWA.

<sup>118</sup> As provided in, e.g., Articles 31 and 34 of ARSIWA.

<sup>119</sup> See Article 35(a) of ARSIWA.

<sup>120</sup> See Article 35(b) of ARSIWA.

<sup>121</sup> See Article 36 of ARSIWA.

basis for reparatory justice.<sup>122</sup> Saint Lucian historian, the Honourable Ambassador Dr. June Soomer explains the basis for the climate-related claims of reparations as follows:

The case for reparatory justice and the call for climate justice are inextricably linked and have been at the forefront of the agenda of CARICOM member states as they forge ahead with the attainment of the 2030 Sustainable Development Goals. Essentially the region posits that there can be no sustainable development without both reparatory and climate justice, as colonialism is a historic as well as an ongoing driver of the climate crisis. ... the vulnerability of ecosystems and people in these countries to climate change has its roots in enslavement, historical patterns of inequity and colonialism, which has resulted in unsustainable ocean and land use. Under colonialism it was clear that the Caribbean was denied participation in Europe's industrialization process, and was confined to the role of producer and exporter of raw materials... the CARICOM Ten Point Reparations Plan enunciates the duty to repair the damage caused by enslavement and the continued impact of the extraction policies that fuelled the Industrial Revolution and resultant climate change.<sup>123</sup>

94. Saint Lucia submits that compensation for ongoing harms should include: financing for the Loss and Damage Fund of over USD 100 billion dollars pledged by developed countries, and discussed at the most recent UNFCCC COP28<sup>124</sup>, which would assist SIDS – and Saint Lucia<sup>125</sup> – to meet their needs arising from the ongoing deleterious effects of climate change; funding to meet the gaping research needs of the scientists<sup>126</sup>,

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<sup>122</sup> See <<https://caricom.org/caricom-ten-point-plan-for-reparatory-justice/>> last visited on 17 March 2024; <[https://adsdatabase.ohchr.org/IssueLibrary/CARICOM\\_Ten-Point%20Plan%20for%20Reparatory%20Justice.pdf](https://adsdatabase.ohchr.org/IssueLibrary/CARICOM_Ten-Point%20Plan%20for%20Reparatory%20Justice.pdf)> last visited on 17 March 2024. See also Britain's Black Debt—Reparations for Caribbean Slavery and Native Genocide. By Hilary McD. Beckles (Kingston, University of the West Indies Press, 2013); see also How Britain Underdeveloped the Caribbean: A Reparation Response to Europe's Legacy of Plunder and Poverty, Hilary Beckles.

<sup>123</sup> Statement by Ambassador Dr, Soomer for these proceedings.

<sup>124</sup> Loss and Damage has gained prominence, particularly with the operationalization of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts. The outcomes of COP28 are anticipated to further solidify the framework for addressing loss and damage, recognizing that despite best efforts to adapt, certain adverse effects of climate change are inevitable and can lead to significant socio-economic and environmental losses. The implementation of these outcomes is crucial for providing a systematic approach to supporting SIDS that suffer from climate-induced damages.

<sup>125</sup> Specific areas for assistance that have been earmarked by Saint Lucia's Ministry of Sustainable Development include: updated water, forest and marine resource assessments, digital high-resolution landslide, flood risk and erosion maps, updated land use maps and comprehensive poverty assessments which could allow for better identification and mapping of vulnerable groups; the creation of a portal to centralize and disseminate climate change information and environmental data; greater engagement of universities and research institutions in the provision of scholarships and internships as well as the strengthening of academic scientific programmes in areas such as climatology; capacity-building and training for policymakers to enable the mainstreaming of gender-responsive climate change into development planning.

<sup>126</sup> For instance, in the Report filed as Annex I, Caribbean climate scientists highlight the research gaps – and inadequate funding for required research in the areas of climate science, including in areas such as island-scale data availability; ecosystem services data; vulnerability and resilience, and adaptation.

health experts<sup>127</sup> and other research communities in the Caribbean<sup>128</sup>; and facilitating SIDS access to funds from the international community to meet climate obligations, including those under the Paris Agreement. These demands were specified by Saint Lucia's Minister for Sustainable Development, the Honourable Shawn Anton Edward, at COP28 when he called for a more robust discussion on how the Loss and Damage Fund should be operationalized, how it could be capitalized and how the monies could be channelled to SIDS. He specifically highlighted the need for a re-vamping of the whole financial architecture as it relates to grant funding to assist SIDS in meeting their climate obligations..<sup>129</sup>

95. Finally, the Court **should give satisfaction** for the injuries caused by the illegal acts, since neither restitution nor compensation can address past and continuing harms caused by actions which contributed to climate change.<sup>130</sup> Satisfaction may take the forms set out in Article 37(2) of the ARSIWA, since none are out of proportion nor humiliating. These include an (i) acknowledgement of the breach, (ii) an expression of regret, (iii) a formal apology, or (iv) another appropriate modality. Saint Lucia submits that Article 37(2) is disjunctive, accordingly, the Court is not limited to one form of satisfaction as set out therein.

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<sup>127</sup> Specific gaps in climate and health research include noncommunicable diseases and risk factors; heat-related illness; mental health; population displacement and migration; distribution, equity and justice; and water sanitation and hygiene; as well as collaboration between agencies. Systemic gaps include the need for a regional fund to support context-specific climate and health research; an awareness and skills-building program to create a climate-literate health workforce and informed and empowered public; research on health co-benefits of mitigation actions such as more plant-based diets or alternative transport such as biking/walking; government engagement in climate change and health, e.g., in the NDCs; and how to scale up climate SMART health facilities. (See Allen CF, West RM, Gordon-Strachan G, Hassan S, McFarlane S, Polson-Edwards K, Thomas A, Hospedales CJ, Dubrow R. Research for Action on Climate Change and Health in the Caribbean: A Public, Private, People's and Planetary Agenda. Research for Action on Climate Change and Health in the Caribbean Project, 2024. See also [https://www.researchgate.net/publication/371268802\\_Caribbean\\_health\\_professional\\_views\\_on\\_climate\\_change\\_and\\_health](https://www.researchgate.net/publication/371268802_Caribbean_health_professional_views_on_climate_change_and_health) last visited on 17 March 2024.

<sup>128</sup> See UWI Experts Talk Climate Change, Collaboration and Funding at UNFCCC COP 28: <https://global.uwi.edu/media/news/uwi-experts-talk-climate-change-collaboration-and-funding-unfccc-cop-28> last visited on 17 March 2024.

<sup>129</sup> See <https://thevoiceslu.com/2023> last visited on 17 March 2024.

<sup>130</sup> See Article 37 of ARSIWA.

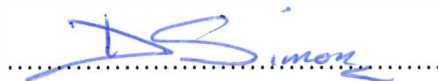
## VII. CONCLUSIONS

96. This proceeding marks Saint Lucia's first time participating in a matter before this Honourable Court. As one of CARICOM's Small Island Developing States (SIDS), Saint Lucia's participation signals the importance that it, and the Caribbean region, attach to the climate, and to the obligations that all States have agreed to under international law to protect the climate system. Saint Lucia is one of the "frontline" States that bear the brunt of States' failure to comply with their obligations to date, and we come to this Court seeking urgent clarification and answers on the scope of obligations owed by States to SIDS, its peoples, and individuals.
97. On the basis of the considerations set out in this submission, Saint Lucia respectfully submits that the following elements should be part of the answers of the Court to the questions raised by the General Assembly in its request for an advisory opinion contained in Resolution 77/276:
- (i) First, this Court has jurisdiction to render the requested advisory opinion;
  - (ii) Second, there is clear scientific evidence, and consensus in the scientific community, that GHG emissions have caused global warming and that climate change caused by humans is having and will continue to have a disproportionately adverse impact on the physical environment and human systems of Caribbean SIDS, including Saint Lucia;
  - (iii) Third, customary international law, general principles, and treaties to which Saint Lucia is a party require States to undertake obligations to ensure the protection of SIDS and present and future generations of people and individuals within them from the harmful impacts of anthropogenic GHG emissions on the climate system and other parts of the environment. While not exhaustive, these obligations can partially be found in the UNFCCC, the Paris Agreement and the UNCLOS, and under principles of equity, the duty to prevent transboundary harm, and the duty to cooperate;
  - (iv) Fourth, climate obligations are differentiated based on countries' capacities and historical contributions, with SIDS having burdens commensurate with their contribution to GHG emissions and limited financial capacities and the greatest



legal claim for support to meet their international obligations to the climate and other States. The climate framework, in particular, under the UNFCCC and Paris Agreement, has increasingly emphasized the necessity of tailored support for SIDS, encompassing a range of obligations by developed nations, highlighting finance, loss and damage, mitigation, and technological assistance;

- (v) Fifth, through their acts and omissions, States have caused significant harm to the climate system and other parts of the environment and States that have contributed to cumulative GHG emissions were bound by international obligations and their conduct, individually and collectively, constitutes a composite act amounting to a breach of international law, within the meaning of Article 15 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA);
- (vi) Finally, under ARSIWA, this Court should find that as a legal consequence of breaches of climate-related obligations under general international law by States, this Court should find *inter alia* that there is a duty to make full reparation to SIDS for injury caused, through restitution, compensation and satisfaction.



Mr Desmond Simon, Charge d' Affaires, Embassies of the Eastern Caribbean States and Missions to the European Union, Organisation of Eastern Caribbean States

21 March 2024<sup>131</sup>

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<sup>131</sup>This submission was prepared for the Government of Saint Lucia by Dr Jan Yves Remy (Shridath Ramphal Centre for International Trade Law, Policy and Services, University of the West Indies), Rochelle John-Charles (Saint Lucia's Attorney-General's Chambers), and Kate Wilson (Saint Lucia's Ministry of Sustainable Development). The Government expresses sincere appreciation to all who contributed to its preparation and finalization.

## **LIST OF ANNEXES**

**ANNEX I** - The Science of Climate Change and the Caribbean: Findings from the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Cycle (AR6) by Dr Adelle Thomas, Professor Michelle Mycoo and Professor Michael Taylor (5 March 2024). **(attached)**

**ANNEX II** - List of Provisions of the UNFCCC and Paris Agreement reflecting CBDR-RC

## ANNEX II

### List of Provisions of the UNFCCC and Paris Agreement reflecting CBDR-RC

#### UNFCCC

##### *The Preamble*

“...Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

**“Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low** and that the share of global emissions originating in developing countries will grow to meet their social and development needs,”

“...Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, **in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,**”

**“...Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semiarid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change...”**

“...Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, **taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,**”

##### · *Article 3.1*

“..The Parties should protect the climate system for the benefit of present and future generations of humankind, **on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.** Accordingly, **the developed**

**country Parties should take the lead in combating climate change and the adverse effects thereof.**”

· *Article 3.2*

**“The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention,** should be given full consideration.”

· *Article 4.2*

“The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. **These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention...**”

· *Article 4.3*

**“The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article.** The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.”

· *Article 4.4*

**“The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.”**

· *Article 4.5*

**“The developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and knowhow to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention.** In this process, **the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties.** Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.”

· *Article 4.7*

**“The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.”**

· *Article 4.8*

“In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on: (a) **Small island countries**, (b) **Countries with low-lying coastal areas**, .....(d) **Countries with areas prone to natural disasters**, (g) **Countries with areas with fragile ecosystems**, including mountainous ecosystems....Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.”

## Paris Agreement

### · *Preamble*

“In pursuit of the objective of the Convention, and being guided by its principles, **including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.**”

**“Also recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, as provided for in the Convention.”**

**“Taking full account of the specific needs and special situations of the least developed countries with regard to funding and transfer of technology.”**

“Also recognizing that sustainable lifestyles and sustainable patterns of consumption and production, **with developed country Parties taking the lead**, play an important role in addressing climate change,”

### · *Article 2.2*

“This Agreement will be implemented to **reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.**”

### · *Article 3*

“As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, **while recognizing the need to support developing country Parties for the effective implementation of this Agreement.**”

### · *Article 3.3*

“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, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

· *Article 3.4*

“Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation **targets in the light of different national circumstances.**”

· *Article 3.5.*

“Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for **developing country Parties** will allow for higher ambition in their actions.”

· *Article 3.6.*

“The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.”

· *Article 9*

“Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.”

· *Article 9.3.*

“As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.”

· *Article 9.4.*

“The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, **taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.**”

· *Article 9.5.*

“Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, **projected levels of public financial resources to be provided to developing country Parties.** Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.”

· *Article 9.6.*

“The global stocktake referred to in Article 14 shall take into account the relevant information **provided by developed country Parties and/or Agreement bodies on efforts related to climate finance.**”

· *Article 9.7.*

“**Developed country Parties shall provide transparent and consistent information on support for developing country** Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement, at its first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so.”

· *Article 9.9.*

“The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, **shall aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.**”



· *Article 10.6*

**“Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktake referred to in Article 14 shall take into account available information on efforts related to support on technology development and transfer for developing country Parties.”**

· *Article 11.1.*

**“Capacity-building under this Agreement should enhance the capacity and ability of developing country Parties, in particular countries with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, such as small island developing States, to take effective climate change action,** including, inter alia, to implement adaptation and mitigation actions, and should facilitate technology development, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information.”

· *Article 11.2.*

**“Capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership of Parties, in particular, for developing country Parties, including at the national, subnational and local levels.** Capacity-building should be guided by lessons learned, including those from capacity-building activities under the Convention, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive.”

· *Article 11.3.*

**“All Parties should cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties.”**

· *Article 11.4.*

**“All Parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches,** shall

regularly communicate on these actions or measures on capacity building. Developing country Parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement.”