

**INTERNATIONAL COURT OF JUSTICE**

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

**WRITTEN STATEMENT OF BELIZE**

21 MARCH 2024

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## INTRODUCTION

1. The current Request for an Advisory Opinion<sup>1</sup> could not be more important to Belize. Belize, classified by the United Nations as a Small Island Developing State, is particularly vulnerable to the adverse effects of climate change, including because it possesses the second largest coral reef system in the world, which is at severe risk of being irretrievably lost, and also shares in the largest tract of forest outside the Amazon. Belize is also a State which, through its action within the domestic and international spheres, continues to demonstrate its deep commitment to addressing the threats posed by climate change (in stark contrast to the largest contributors to climate change emissions that are failing to act). Belize thus has a significant voice before the Court.
2. In preparing this Written Statement, Belize has had regard to the following:
  - (a) The breadth of the questions posed in the Request of the United Nations ('UN') General Assembly;
  - (b) The express reference in the preamble to the questions to “the principle of prevention of significant harm to the environment”;
  - (c) The fact that: (i) prevention of significant harm is a principle which the Court has previously addressed, but not in the climate change context; (ii) prevention is of critical importance with respect to environmental harm<sup>2</sup> — and is all the more acutely important in the context of (irreversible) climate change caused by anthropogenic greenhouse gas emissions; and
  - (d) The role of Belize in assisting the Court, including in light of the objective identified by the UN Secretary-General when the Request was being considered by the General Assembly of obtaining an advisory opinion that provides “much-needed clarification on existing international legal obligations” and guides “the actions and conduct of States in their relations with one another, as well as towards their own citizens”.<sup>3</sup>
3. In light of the above, Belize does not seek to address all of the multiple issues raised by the questions but instead focuses on one aspect that it considers of particular importance — namely, prevention. Belize’s Written Statement is divided into two chapters:
  - (a) First, Belize explains further why it considers that it has an important voice in the current process, including as a State that, as well as being particularly

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<sup>1</sup> United Nations General Assembly resolution 77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, UN Doc. A/RES/77/276, 4 April 2023.

<sup>2</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 844, para. 6 (Separate Opinion of Judge *ad hoc* Dugard) (“The main purpose of environmental law is to prevent harm to the environment. This is because of the ‘often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage’ (*Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, *I.C.J. Reports 1997*, p. 78, para. 140)”).

<sup>3</sup> United Nations General Assembly, Seventy-seventh session, 64<sup>th</sup> plenary meeting, UN Doc. A/77/PV.64, 29 March 2023, p. 1.

exposed to the threat of climate change to Belize, is proactive in devoting a significant proportion of its limited resources to seeking to address that threat (**Chapter 1**).

(b) Second, Belize focuses on how the specific obligation regarding prevention of significant environmental harm applies in the context of anthropogenic greenhouse gas emissions (**Chapter 2**).

4. For the avoidance of doubt, the Court's jurisdiction to answer the Request cannot be in doubt,<sup>4</sup> and nor can the propriety of it rendering the opinion requested by the General Assembly. Belize assumes that no State will suggest otherwise.

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<sup>4</sup> The Request was submitted in accordance with Article 96 of the Charter of the United Nations and Article 65 of the Statute of the Court.

## CHAPTER 1: THE THREAT OF CLIMATE CHANGE TO BELIZE AND BELIZE'S ACTION IN RESPONSE

### I. Belize's vulnerability to climate change

5. In November 2023, at COP28 in the United Arab Emirates, Belize's Minister of Sustainable Development, Climate Change and Disaster Risk Management aptly summarised the vulnerability of Belize and other Small Island Developing States to climate change as follows:

“Our countries are on the frontline of the climate emergency and paying the steepest cost of the impacts with little support. There is no greater travesty of justice than the failure of this process in protecting our countries from existential threat.”<sup>5</sup>

6. Belize has a history of calling attention to the urgency of the climate crisis, especially for States that are particularly exposed like Belize. At COP27 in November 2022, it recalled the devastation wreaked on Belize by Hurricane Lisa.<sup>6</sup> In a debate before the United Nations General Assembly in 2021, its Prime Minister emphasised that “Belize, like other [small island and low-lying coastal States], is on the frontline of a climate crisis for which we are not responsible.”<sup>7</sup>
7. Representing the Alliance of Small Island States (‘AOSIS’) at COP25 in December 2019, Belize's representative explained that, for Belizeans, the threat of climate change “is not distant, it is our reality”.<sup>8</sup> It is a reality felt in “[r]ising seas, apocalyptic storms, prolonged droughts, scorching temperatures, rampant wildfires, [and] disappearing biodiversity on land and in oceans”.<sup>9</sup> And it is felt acutely in relation to the Belize Barrier Reef Reserve System, the second largest reef system in the world and a UNESCO World Heritage Site, which is “under siege”, including as a result of sea temperatures rising, ocean acidification and coral bleaching.<sup>10</sup>

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<sup>5</sup> Statement of the Hon. Orlando Habet, Minister of Sustainable Development, Climate Change and Disaster Risk Management of Belize, at COP28, 9 November 2021, available at <https://unfccc.int/documents/636564> (‘Habet COP28 Statement’).

<sup>6</sup> Statement of the Hon. Orlando Habet, Minister of Sustainable Development, Climate Change and Disaster Risk Management of Belize, at COP27, 15 November 2022, available at [https://unfccc.int/sites/default/files/resource/BELIZE\\_cop27cmp17cma4\\_HLS\\_ENG.pdf](https://unfccc.int/sites/default/files/resource/BELIZE_cop27cmp17cma4_HLS_ENG.pdf) (‘Habet COP27 Statement’).

<sup>7</sup> Statement of the Hon. John Briceño, Prime Minister of Belize, to United Nations General Assembly, 24 September 2021, available at [https://estatemts.unmeetings.org/estatemts/10.0010/20210924/ajen3uMeQSDH/nu5mhB5LlnlY\\_en.pdf](https://estatemts.unmeetings.org/estatemts/10.0010/20210924/ajen3uMeQSDH/nu5mhB5LlnlY_en.pdf).

<sup>8</sup> Statement on behalf of the Alliance of Small Island States of the Hon. Omar Figueroa, Minister of Agriculture, Fisheries, Forestry, the Environment, Sustainable Development and Immigration of Belize, at COP25, December 2019, available at [https://unfccc.int/sites/default/files/resource/BELIZE\\_AOSIS\\_cop25cmp15cma2\\_HLS\\_EN.pdf](https://unfccc.int/sites/default/files/resource/BELIZE_AOSIS_cop25cmp15cma2_HLS_EN.pdf) (‘AOSIS COP25 Statement’), p. 2.

<sup>9</sup> *Ibid.*

<sup>10</sup> Statement of the Hon. John Briceño, Prime Minister of Belize, at COP26, 1 November 2021, available at [https://unfccc.int/sites/default/files/resource/BELIZE\\_cop26cmp16cma3\\_HLS\\_EN.pdf](https://unfccc.int/sites/default/files/resource/BELIZE_cop26cmp16cma3_HLS_EN.pdf) (‘Briceño COP26 Statement’); National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021, pp. 123–124.

8. Belize’s National Climate Change Policy, Strategy and Master Plan, published in December 2021,<sup>11</sup> carried out a detailed analysis of climate change modelling and projections, enabling conclusions to be reached about the likely impacts of climate change on Belize. It highlighted the following:
- (a) Increased atmospheric carbon dioxide concentrates and the gradual increase in sea surface temperature will lead to acidification of the world’s oceans, resulting in a projected decrease in average pH by 0.036 within Belizean waters over the next century.<sup>12</sup> Ocean acidification will accelerate coral bleaching and mortality, as well as undermining coral reefs’ structural integrity rendering them more vulnerable to damage during storms, as well as diminishing the stock of crustaceans who will be less able to develop their exoskeletons.<sup>13</sup> The loss of coral habitat will: (i) jeopardise the health and biodiversity of marine ecosystems; (ii) reduce the size of Belize’s commercial fish stock;<sup>14</sup> and (iii) diminish the tourism potential of Belize’s coastal attractions.<sup>15</sup>
  - (b) Given its geographic location in the north-western Caribbean, Belize is naturally vulnerable to tropical storms and hurricanes, which are projected to increase in both frequency and intensity in the coming century as a result of climate change.<sup>16</sup> The concrete consequences for Belize include flash flooding (endangering both human life and critical infrastructure), “[v]ast quantities of crop damage” (affecting both the profitability of the agricultural sector and Belize’s food security), forest damage which will add pressure to Belize’s terrestrial ecosystems and indigenous communities, potentially irreversible damage to Belize’s mangroves and seagrass beds, sanitation risks resulting from inadequate drainage and water-borne diseases, and severe disruptions to Belize’s tourism industry.<sup>17</sup>
  - (c) Climate change is projected to lead to sea level rise in Belize of between 35–100 cm over the next 100 years, leading to adverse effects across all sectors.<sup>18</sup> Among other harms, the anticipated rise in sea levels (as well as ocean acidification) will threaten mangrove cover — endangering ecosystems which provide numerous mitigation and adaptation benefits to climate change.<sup>19</sup>

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<sup>11</sup> National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021.

<sup>12</sup> *Ibid.*, p. 122.

<sup>13</sup> *Ibid.*, pp. 54, 122–123. On the risks posed by ocean acidification for Belize’s coral reefs, mangroves and seagrass beds, and marine organisms, see also Integrated Vulnerability and Adaptation Assessment, 20 January 2020, pp. 19–20, 112, 116–117, 153–155.

<sup>14</sup> See also Belize, Updated Nationally Determined Contribution, August 2021, available at <https://unfccc.int/sites/default/files/NDC/2022-06/Belize%20Updated%20NDC.pdf> (‘Updated NDC’), p. 6. Belize’s fisheries sector is under extreme threat as a result of warmer sea surface temperatures, ocean acidification, sea-level rise and extreme weather events. A decline in this industry would affect not only Belize’s GDP but also its food security.

<sup>15</sup> National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021, p. 123.

<sup>16</sup> *Ibid.*, p. 129.

<sup>17</sup> *Ibid.*, pp. 129–130.

<sup>18</sup> *Ibid.*, p. 124.

<sup>19</sup> *Ibid.*, pp. 54–55, 125. On the risks to Belize’s mangrove ecosystems as a result of rising sea levels, see also Integrated Vulnerability and Adaptation Assessment, 20 January 2020, p. 157.

- (d) A significant decrease in annual precipitation projected as a result of climate change will lead to severe droughts (with especially serious consequences for agriculture in the country’s interior), as well as a loss of biodiversity, such as in Belize’s riverine ecosystems.<sup>20</sup> Equally, increased air temperatures and prolonged, intensified heat waves will reduce crop yields, compromise irrigation systems, lead to a redistribution of pests (while diminishing crop resistance to them), stress livestock and poultry and increase human susceptibility to diseases (especially among vulnerable groups such as elderly, young and poor individuals).<sup>21</sup>
9. These risks for Belize have already materialised in severe adverse impact. Numerous coastal communities in Belize — including Monkey River Village, the town of Barranco, Dangriga Town and Hopkins Village — have already suffered concrete effects of climate change, including severe erosion.<sup>22</sup> According to a 2021 technical assessment, the erosion is evidence of “a regional phenomenon probably associated with sea level rise and changes in the behavior patterns of extreme erosive events associated with climate change”.<sup>23</sup>
10. Similarly, Belize has already suffered acute damage as a result of increasingly frequent and intense extreme weather events. For example, Hurricane Lisa — a category 1 storm which made landfall in Belize in November 2022 — resulted in loss and damage of more than BZD 192 million (close to USD 100 million at present exchange rates) in a single event.<sup>24</sup> The livelihoods of over 172,000 (39% of Belize’s population) were harmed.<sup>25</sup>
11. The threats which climate change poses to Belize have been confirmed in, for example, the following:
- (a) In a systematic diagnostic published in 2016, the World Bank stated that “the impacts of climate change can be severe to Belize’s natural resources”, on which Belize’s economy relies heavily, and that “Belize’s vulnerability to natural

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<sup>20</sup> National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021, pp. 132–133.

<sup>21</sup> *Ibid.*, pp. 134–136.

<sup>22</sup> Technical Report: Preliminary Assessment of Coastal Erosion Process in the Coastal Town of Barranco, Belize, 2 December 2021; Technical Report: Preliminary Assessment of Coastal Erosion Process in the Coastal Town of Dangriga and Coastal Community of Hopkins, Belize, 12–19 March 2019; UN News, “Saving a Belize village from man-made erosion”, 8 January 2023, available at <https://news.un.org/en/story/2023/01/1132262>.

<sup>23</sup> Technical Report: Preliminary Assessment of Coastal Erosion Process in the Coastal Town of Barranco, Belize, 2 December 2021, pp. 8–9. See also Technical Report: Preliminary Assessment of Coastal Erosion Process in the Coastal Town of Dangriga and Coastal Community of Hopkins, Belize, 12–19 March 2019, p. 5 (coastal erosion is “related to a higher frequency and intensity of tropical storms, sea level rise and the deficit in the sand inputs to the coastal system”).

<sup>24</sup> Post Disaster Needs Assessment (PDNA): Floods due to Hurricane Lisa in Belize — Executive Summary (March 2023), p. 28; Habet COP27 Statement.

<sup>25</sup> Post Disaster Needs Assessment (PDNA): Floods due to Hurricane Lisa in Belize — Executive Summary (March 2023), p. 31.

disasters is exacerbated by the effects of climate change, as natural hazards are expected to intensify both in terms of frequency and severity”.<sup>26</sup>

- (b) Likewise, the International Monetary Fund identifies Belize as being at “high” risk as a result of climate change, including as a result of damage to coastal ecosystems, harm to the tourism industry and an escalation of poverty.<sup>27</sup>

## II. Belize’s proactive and diligent response to climate change

12. In its response to climate change, Belize has sought to set “the benchmark of ambition”.<sup>28</sup> Belize has fully engaged on the international plane while, on the domestic plane, it has put in place a progressive program of measures to mitigate and adapt to climate change.

### A. Belize has fully engaged in the processes of the UNFCCC

13. Belize has consistently participated in meetings conducted pursuant to the United Nations Framework Convention on Climate Change (‘UNFCCC’) and has stressed before the States Parties the grave impact that climate change is already having on Belize, as well as calling for robust action to address climate change.<sup>29</sup>
14. Belize published its Updated Nationally Determined Contribution (‘Updated NDC’) in August 2021.<sup>30</sup> This communication was prepared by Belize with a number of international partners providing technical assistance.<sup>31</sup> Its development involved broad stakeholder engagement, including with vulnerable populations.<sup>32</sup>
15. Belize is a member of the “High Ambition Coalition”, as a result of which, in late 2019, it committed to increasing emissions reduction ambition by the first quarter of 2020 and developing a long-term strategy aligned with achieving net zero global emissions by 2050.<sup>33</sup> In the Updated NDC, Belize set out a suite of mitigation targets and actions which spanned land use change and forestry; agriculture; energy; and waste

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<sup>26</sup> World Bank Group, Systematic Country Diagnostic: Belize, Report No. 102973-BZ, 29 January 2016, available at <https://openknowledge.worldbank.org/server/api/core/bitstreams/2d9005e1-9728-56db-a820-8da395cb417e/content>, pp. 66, 68.

<sup>27</sup> International Monetary Fund, Policy Paper: Small States’ Resilience to Natural Disasters and Climate Change — Role for the IMF, December 2016, available at <https://www.imf.org/external/np/pp/eng/2016/110416.pdf>, pp. 17–18.

<sup>28</sup> AOSIS COP25 Statement, p. 4. The actions referred to below are illustrative (and not exhaustive) of the steps taken by Belize in this regard.

<sup>29</sup> See, e.g., Habet COP27 Statement.

<sup>30</sup> The Updated NDC superseded the Nationally Determined Contribution first communicated in 2016.

<sup>31</sup> These included the Commonwealth Secretariat, International Renewable Energy Agency, NDC Partnership Support Unit, Rocky Mountain Institute, Climate Technology Collaboration Network, Fundación Bariloche, and UNFCCC Regional Collaboration Center in Grenada (with the Caribbean Climate Change MRV Hub). Additional assistance was received from the United Nations Development Programme, World Wildlife Fund, Pew Charitable Trusts, Initiative for Climate Action Transparency, and Coalition for Rainforest Nations: Updated NDC, p. 11.

<sup>32</sup> *Ibid.*, p. 12.

<sup>33</sup> “15 world leaders commit to delivering new Paris targets by early 2020 and to achieving net zero global emissions by 2050 on eve of UN Summit”, Press release issued by the Office of the President of the Republic of the Marshall Islands, 22 September 2019, available at <https://www.docdroid.net/gavlB6o/190922-rmi-unsg-summit-release-leaders-statement-final-combined-pdf>.



management.<sup>34</sup> Belize also set out a diverse range of adaptation targets and actions in its Updated NDC, relating to Belize’s coastal zone and marine resources; agriculture; fisheries and aquaculture; human health; tourism; forestry and biodiversity; land use, human settlements and infrastructure; and water resources.<sup>35</sup>

16. Belize has also submitted regular national communications and other reports to the UNFCCC.<sup>36</sup> In its most recent (fourth) national communication, dated 2022, it summarised the adaptation and mitigation measures which it intended to put in place, including through its Low Emission Development Strategy and Action Plan (addressed further below).<sup>37</sup> It also communicated the constraints and gaps, and related financial, technical and capacity needs, with a view to identifying areas where international assistance was required in order to allow Belize to meet UNFCCC requirements.<sup>38</sup>
  - B. Belize is party to numerous other treaty, specialised and regional initiatives relevant to climate change
17. Belize is a party to numerous multilateral conventions which concern mitigation of and/or adaptation to climate change, including treaties with implications for the protection and preservation of the marine environment. These include, non-exhaustively: (i) the treaties which constitute the UNFCCC framework;<sup>39</sup> (ii) the United Nations Convention on the Law of the Sea; (iii) the International Convention for the Prevention of Pollution from Ships (‘MARPOL’); (iv) the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region; and (v) the Convention on Biological Diversity.
18. Belize is an active member of AOSIS, which represents the interests of the 39 small island and low-lying coastal developing States in relation to (among other issues) climate change. In 2019–2020, Belize held the Chair of AOSIS, during which period it represented AOSIS at COP25, as noted above.<sup>40</sup> AOSIS continues to provide a unique voice for highly climate-vulnerable developing States. In its report to COP27 of

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<sup>34</sup> Updated NDC, pp. 14–22.

<sup>35</sup> *Ibid.*, pp. 23–31.

<sup>36</sup> Belize, First National Communication to the Conference of the Parties of the United Nations Framework Convention on Climate Change, July 2002, available at <https://unfccc.int/sites/default/files/resource/Belize%20INC.pdf>; Belize, Second National Communication to the Conference of the Parties of the United Nations Framework Convention on Climate Change, 2011, available at <https://unfccc.int/sites/default/files/resource/blznc2.pdf>; Belize, Third National Communication to the Conference of the Parties of the United Nations Framework Convention on Climate Change, 2016, available at <https://unfccc.int/sites/default/files/resource/blznc3rev.pdf>; National Climate Change Office, Ministry of Forestry, Fisheries, the Environment and Sustainable Development, Belize’s First Biennial Update Report to the United Nations Framework Convention on Climate Change, 2020, available at <https://unfccc.int/sites/default/files/resource/BELIZE%20BUR%202020.pdf>; Belize, Fourth National Communication to the Conference of the Parties of the United Nations Framework Convention on Climate Change, 2022, available at <https://unfccc.int/sites/default/files/resource/Belize%20National%20Communication.pdf> (‘Belize Fourth National Communication to COP’).

<sup>37</sup> Belize Fourth National Communication to COP, sections 3–4.

<sup>38</sup> *Ibid.*, section 5.

<sup>39</sup> The United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement.

<sup>40</sup> See para. 7.

November 2022, AOSIS set out its work on four key goals — namely: (i) the establishment of a loss and damage fund; (ii) the launch of a robust global stocktake; (iii) the raising of ambition (including in mitigation, adaptation and finance) to limit global warming to 1.5°C above pre-industrial levels; and (iv) the provision of support to small island developing States to cope with the ongoing harms caused by climate change.<sup>41</sup>

19. Belize joined the Liliendaal Declaration on Climate Change and Development of 6 July 2009 in which Heads of State and Government of the Caribbean Community urged “an increased sense of urgency and purpose” in developing international climate change agreements, as well as calling for adaptation and capacity building to be prioritised. It has also been involved in Caricom’s development of the Revised Regional Framework for Achieving Development Resilient to Climate Change for 2022–2023.

C. Belize has implemented national laws, policies and strategies focused on sustainable development and environmental conservation, including in response to climate change

20. Belize has made responding effectively to climate change a central pillar of its national strategy. At COP28, Belize identified that it had “continued to ramp up its mitigation action”, with the following concrete results:

“In marine conservation, 20.3% of Belize’s ocean is under legal protection. In sustainable transportation, Belize has embarked on a national transition to e-mobility. This includes the adoption of electric vehicles and the development of necessary infrastructure to support their integration into our transportation system. This will result in avoiding 117 Kilo-tons-Carbon Dioxide per year from the transport sector by 2030. We have also initiated the construction of a 60-megawatt solar power plant with the goal of cutting annual emissions by 60,000 tons and contributing substantially to our commitment to clean and renewable energy sources. Belize continues to do its part — even as it continues to shoulder the burden from the impacts of climate change.”<sup>42</sup>

21. Belize’s Climate Change Master Plan sets out in detail the policy, institutional and legislative framework which Belize has implemented in response to climate change,<sup>43</sup> significant aspects of which were highlighted in its Updated NDC (as set out above). Other key policy and planning documents include the following:

- (a) The Low Emission Development Strategy and Action Plan (published in 2021), which provides a framework for Belize to shift its development pathway towards that of a green-growth, low-emission economy over the period from 2020–2050;<sup>44</sup>

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<sup>41</sup> Alliance of Small Island States, COP27: Summary Report, 6–18 November 2022.

<sup>42</sup> Habet COP28 Statement.

<sup>43</sup> National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021, Section 4.

<sup>44</sup> Low Emissions Development Strategy and Action Plan: Belize, 2021, available at <https://unfccc.int/sites/default/files/resource/Belize%20LEDS.pdf>.

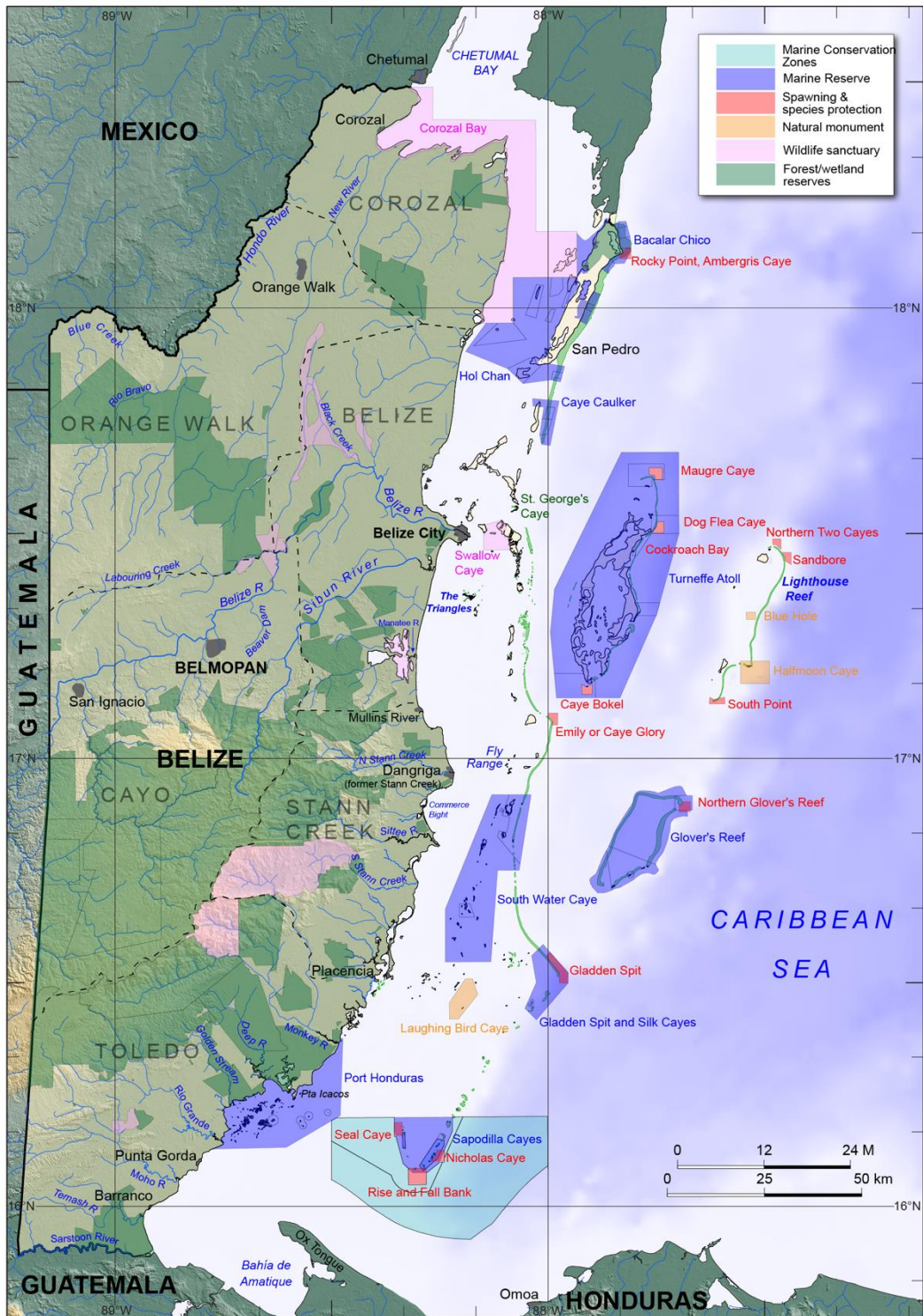
- (b) The Technology Action Plan for Climate Change Adaptation and Mitigation (published in 2018);
  - (c) Horizon 2030 — Long Term National Development Framework for Belize (published in 2011), one of the main pillars of which is responsible environmental stewardship, and which presents proposals for converting long-term vision, goals and objectives into medium-term strategies incorporating environmental sustainability into development planning; and
  - (d) The National Fisheries Policy, Strategy and Action Plan for the period 2020–2024 (published in 2019), which sets out fisheries management approaches that address the impact of climate change.
22. Belize has enacted the National Protected Areas System Act 2015,<sup>45</sup> the objectives of which include promoting the long-term conservation, management and sustainable use of Belize’s protected areas, as designated under the Act.<sup>46</sup> The duties assigned under the Act are to be performed having regard to, among others, the UNFCCC.<sup>47</sup> The seven protected areas within the Belize Barrier Reef Reserve System and other protected areas are shown in **Figure 1** below.

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<sup>45</sup> This 2015 Act was preceded by the National Parks Systems Act of 1981.

<sup>46</sup> National Protected Areas System Act 2015 (as amended to 2015), Chapter 215, Substantive Laws of Belize, Revised Edition 2020, s. 5.

<sup>47</sup> *Ibid.*, s. 7(f)(i).



**Figure 1: Belize's Protected Environmental Areas**

23. As a result of Belize's ambitious approach to biodiversity management, more than 40% of its territory is under some form of protected status. Indeed, 23% of Belize's landmass is protected, not only serving the conservation of species in Belize, but also contributing to the protection of the Mesoamerican forest ecosystem as a whole — this ecosystem being the largest tract of forest outside the Amazon. Among the highest priority protected areas, the Cockscomb Basin Wildlife Sanctuary encompasses 122,260 acres



of the Maya Mountains Massif and — making it unique in the world — was established with a view to protecting the jaguar population.<sup>48</sup> Belize has embarked on a program of reducing emissions from deforestation, reducing emissions from forest degradation, conservation of forest carbon stocks, sustainable management of forests and enhancement of forest carbon stocks,<sup>49</sup> with a view to enhancing carbon capture and net carbon sequestration.

24. Belize has also established a Ministry of Blue Economy and Civil Aviation which, in 2022, published the Belize Blue Economy Development Policy, Strategy and Implementation Plan for 2022–2027.<sup>50</sup> This Plan is designed to facilitate the sustainable management and development of Belize’s marine ecosystems, both in its coastal zones and throughout its exclusive economic zone, with a focus on mangrove, seagrass and coral reef ecosystems.<sup>51</sup> This plan is to be implemented alongside Belize’s regulations and policies specifically directed at protecting marine and coastal ecosystems, and in particular mangrove and seagrass ecosystems, which sequester and store significant amounts of carbon, offset sea-level rise and coastal erosion and expand the habitat available for biodiverse resources.<sup>52</sup> In 2016, the Government of Belize endorsed the first Integrated Coastal Zone Management Plan in 2016, which facilitates the improved management of coastal and marine ecosystems so as to maintain their integrity, with adapting to climate change one of the key themes of the strategic action steps outlined.<sup>53</sup>

D. Belize has adopted an innovative climate finance strategy

25. It is estimated that the total cost of implementing Belize’s Updated NDC is USD 1.906 billion for the period until 2030, while the currently unfinanced NDC implementation cost is USD 1.663 billion.<sup>54</sup> Unlocking adequate climate finance is essential.
26. Belize’s National Committee on Climate Change has established the Climate Finance Working Group to provide guidance on efforts to access, manage and effectively use climate finance. Belize has accessed climate finance from all climate funds under the UNFCCC finance mechanism.<sup>55</sup> Belize has established a Protected Areas Conservation Trust, which initially served as a fund to finance protected areas management and community conservation (funded through an exit tax for all visitors to Belize). The Trust has since expanded to serve as Belize’s National Implementing Entity for the

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<sup>48</sup> Belize Audobon Society, Management Plan: Cockscomb Basin Wildlife Sanctuary (2019–2023), available at [https://rris.biopama.org/sites/default/files/2021-02/CBWS%20Management%20Plan%202019\\_2023.pdf](https://rris.biopama.org/sites/default/files/2021-02/CBWS%20Management%20Plan%202019_2023.pdf), p. 3. For a list of Belize’s protected areas, see Belize Forest Reference Level (2020), available at [https://redd.unfccc.int/media/belize\\_frel\\_final\\_report\\_2001-2015\\_2020.01.13.pdf](https://redd.unfccc.int/media/belize_frel_final_report_2001-2015_2020.01.13.pdf), p. 21.

<sup>49</sup> UNFCCC Secretariat, Report on the technical assessment of the proposed forest reference level of Belize submitted in 2020, UN Doc. FCCC/TAR/2020/BLZ, 18 May 2021, p. 4.

<sup>50</sup> Ministry of Blue Economy and Civil Aviation of Belize, Belize Blue Economy Development Policy, Strategy and Implementation Plan, 2022–2027.

<sup>51</sup> *Ibid.*, p. 1.

<sup>52</sup> See, e.g., Coastal Zone Management Act 2011 (as amended to 2015), Chapter 329, Substantive Laws of Belize, Revised Edition 2020; Forests (Protection of Mangroves) Regulations 2018.

<sup>53</sup> Belize, Integrated Coastal Zone Management Plan, 2016, pp. 55–57.

<sup>54</sup> National Climate Finance Strategy of Belize, 2021–2026, pp. 8, 13.

<sup>55</sup> This includes the Global Environment Facility, the Adaptation Fund, the Special Climate Change Fund and the Green Climate Fund: Updated NDC, p. 10.

UNFCCC’s Adaptation Fund, and is the first national accredited entity for the UNFCCC’s Green Climate Fund.<sup>56</sup>

27. Since 2010 Belize has implemented about 30 climate change projects using climate finance with a combined value of over USD 135 million (both grants and loans), in addition to another 10 regional climate change projects using climate finance of over USD 100 million.<sup>57</sup>
28. In 2021, Belize published a National Climate Finance Strategy for 2021–2026.<sup>58</sup> This document showed that Belize had, between 2015 and 2019, accessed climate finance to the value of approximately USD 227.4 million from multilateral development banks, bilateral donors, climate funds and private investments (among others), in the form of both grants and loans.<sup>59</sup> It also set out strategic directions, coupled with short- and medium-term goals, for Belize to mobilise climate finance to achieve its NDC targets.
29. In November 2021, Belize entered a USD 360 million debt-for-marine conservation transaction — the largest blue bond transaction ever executed.<sup>60</sup> The Blue Bonds Loan Agreement and the Conservation Funding Agreement are contingent on Belize’s fulfilment of eight primary conservation commitments, including (among others) Belize’s expansion of its biodiversity protection zones and its designation of public lands within the Belize Barrier Reef Reserve System as mangrove reserves.<sup>61</sup>

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<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> National Climate Finance Strategy of Belize, 2021–2026.

<sup>59</sup> *Ibid.*, pp. 14–15.

<sup>60</sup> Briceño COP26 Statement.

<sup>61</sup> Belize, Blue Bond and Finance Permanent Unit, Annual Report, 2022–2023, p. 3.

## CHAPTER 2: THE OBLIGATION TO PREVENT SIGNIFICANT HARM TO THE ENVIRONMENT

30. This chapter is divided into two parts as follows:
- (a) First, Belize provides an overview of the obligation to prevent significant harm to the environment as set out in the Court’s jurisprudence (**Section I**);
  - (b) Second, Belize focuses on the application of that obligation in the context of anthropogenic emissions of greenhouse gases, with specific reference to the obligation to carry out environmental assessments (**Section II**).

### I. Overview of the obligation of prevention of harm to the environment

31. States are under a customary international law obligation to ensure that activities within their jurisdiction or control do not cause significant harm to the environment of other States or areas beyond the limits of their jurisdiction. At times this obligation has been referred to as “the principle of prevention”.<sup>62</sup> In this submission Belize refers to it as the **Prevention Obligation**.
32. It follows from the principles of sovereign equality and territorial sovereignty of States that a State has a right to engage in certain activities of its choosing within its own territory. There are, however, limitations on the exercise of that right, including in the form of a countervailing obligation which requires a State to prevent transboundary harm to the areas beyond the limits of its national jurisdiction, including the environment of other States. Such harm, emanating from within a State’s territory but affecting areas exterior to it, is known as transboundary harm.
33. The Court has repeatedly affirmed both the existence and the customary international law status of the Prevention Obligation. Most notably:
- (a) In the *Nuclear Weapons Advisory Opinion*, the Court stated that “the existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment”.<sup>63</sup>
  - (b) In *Pulp Mills* the Court, as well as recalling the above statement from the *Nuclear Weapons Advisory Opinion*, stated that:

“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

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<sup>62</sup> See, e.g., *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at pp. 55–56, para. 101. As noted above, the preamble to the questions set out in the Request for an advisory opinion refers to “the principle of prevention of significant harm to the environment”.

<sup>63</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226 at pp. 241–242, para. 29. See also International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, General commentary at p. 148, para. (3).

other States’ (*Corfu Channel (United Kingdom 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.”<sup>64</sup>

(c) In *Certain Activities*, the Court cited the passages referred to above from both the *Nuclear Weapons Advisory Opinion* and *Pulp Mills*.<sup>65</sup>

34. Other international courts and tribunals have made similar pronouncements.<sup>66</sup> The Prevention Obligation is also reflected in numerous international conventions and declarations.<sup>67</sup>
35. The Court has recognised that the Prevention Obligation requires that a State “exercise due diligence in preventing significant transboundary [environmental] harm”.<sup>68</sup> This means that a State must use “all means at its disposal”<sup>69</sup> to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to areas outside its national jurisdiction. Thus the State has a duty to prevent such significant transboundary harm, and where this is not fully possible it must minimise or

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<sup>64</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at pp. 55–56, para. 101.

<sup>65</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at pp. 711–712, para. 118.

<sup>66</sup> *Trail Smelter Case (United States/Canada)*, Decision, (1941) III RIAA 1905 at p. 1965; *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 941 (citing *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226 at pp. 241–242, para. 29); *Arbitration Regarding the Indus Waters Kishenganga (Pakistan v. India)*, Partial Award, (2013) XXXI RIAA 1 at p. 217, para. 451. See also Leslie-Anne Duvic-Paoli and Jorge E. Viñuales, “Principle 2: Prevention” in Jorge E. Viñuales (ed.), *The Rio Declaration on Environment and Development: A Commentary* (CUP 2015), p. 136 (“The prevention principle is in many ways the cornerstone of modern international environmental law. Its grounding in both customary and treaty law is uncontroverted and its operation as an architectural, interpretive and decision-making norm is well-established”).

<sup>67</sup> See, e.g., Declaration of the United Nations Conference on the Human Environment (“Stockholm Declaration”), reproduced in Report of the United Nations Conference on the Human Environment, 5–16 June 1972, UN Doc. A/CONF.48/14/Rev.1, Principle 21; Rio Declaration on Environment and Development (“Rio Declaration”), reproduced at Report of the United Nations Conference on Environment and Development, 3–14 June 1992, UN Doc. A/CONF.151/26 (Vol. 1), Annex 1, Principle 2; Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (adopted 24 June 1998, entered into force 22 October 2003) 2230 UNTS 79, Preamble; Convention on the Transboundary Effects of Industrial Accidents (adopted 17 March 1992, entered into force 19 April 2000) 2105 UNTS 457, Preamble; United Nations General Assembly resolution 3281, Charter of Economic Rights and Duties of States, UN Doc. A/RES/3281, 6 November 1974, Article 30.

<sup>68</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 720, para. 153, p. 724, para. 168 (referring to a State’s “obligation to exercise due diligence in preventing significant transboundary harm”). See also p. 782, para. 1 (Separate Opinion of Judge Donoghue) (“I emphasize that States have an obligation under customary international law to exercise due diligence in preventing significant transboundary environmental harm”), p. 844, para. 7 (“The duty of due diligence therefore is the standard of conduct required to implement the principle of prevention”).

<sup>69</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at pp. 55–56, para. 101.



mitigate that harm.<sup>70</sup> It has also been observed that the standard of due diligence “has to be more severe for the riskier activities”.<sup>71</sup>

36. The cases before the Court referred to above did not concern instances of transboundary environmental harm involving anthropogenic emissions of greenhouse gases. However, as a matter of principle, the Prevention Obligation, which has been cast in wide terms capable of applying in diverse factual situations and applied with respect various types of environmental harm, must apply with equal force in this context. Indeed, reflecting the applicability and significance of this customary international law obligation in the context of climate change, it is expressly referred to in the preamble of the UNFCCC. For the avoidance of doubt, Belize’s position is that, in the context of greenhouse gas emissions and climate change, the scope of the Prevention Obligation is not fully reflected in the modest commitments that States Parties have thus far undertaken pursuant to the UNFCCC.

## II. The assessment aspect of the Prevention Obligation

37. The Prevention Obligation requires States to take all means at their disposal to identify activities (proposed and ongoing) which involve a risk of significant transboundary harm.<sup>72</sup> Thus, the Prevention Obligation applies to all phases of decision-making (including, non-exhaustively, planning, impact assessment, the decision to proceed with the conduct in question, implementation and post-implementation monitoring).<sup>73</sup>
38. A critical aspect of the implementation of the Prevention Obligation concerns the obligation to carry out an assessment of the environmental impact of certain activities prior to any approval being given by the State.<sup>74</sup>
39. Specifically, the Court has stated that:
- (a) In order “to fulfil its obligation to exercise due diligence in preventing significant transboundary environmental harm, a State must, before embarking on an activity having the potential adversely to affect the environment of another State or other area beyond its national jurisdiction, first ascertain whether there is a risk of significant transboundary harm, which would trigger the obligation

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<sup>70</sup> *Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) Railway (Belgium/Netherlands)*, Award, (2005) XXVII RIAA 35 at p. 66, para. 59; International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 3, Commentary p. 153, para. (3).

<sup>71</sup> *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 43, para. 117.

<sup>72</sup> International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 3, Commentary at pp. 153–154, para. (5).

<sup>73</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 785, para. 9 (Separate Opinion of Judge Donoghue).

<sup>74</sup> As to the critical nature of such an obligation, see e.g. the observation in *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 322 (noting that procedural rules such as the requirement to carry out an environmental impact assessment “may, indeed, be of equal or even greater importance than the substantive standards existing in international law”).

to carry out an environmental impact assessment”.<sup>75</sup> In this submission, Belize refers to this obligation as the **Assessment Obligation**.

- (b) A failure to conduct an environmental assessment can give rise to a finding that a State has breached the Prevention Obligation without any showing of material transboundary harm.<sup>76</sup>

40. As to the status of the Assessment Obligation under international law:

- (a) The Court has expressly recognised that the Assessment Obligation is “a requirement under general international law”,<sup>77</sup> meaning that it is a rule of customary international law<sup>78</sup> (a position affirmed by other international tribunals<sup>79</sup>).
- (b) It is also well-accepted both that the Prevention Obligation is a rule of customary international law (see paras. 33–34 above) and that the Assessment Obligation is critical to a State’s exercise of the requisite due diligence to prevent transboundary harm.<sup>80</sup> In other words, a State which either fails to consider

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<sup>75</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at pp. 706–707, para. 104. See also p. 720, para. 153 (“The Court recalls ... that a State’s obligation to exercise due diligence in preventing significant transboundary harm requires that State to ascertain whether there is a risk of significant transboundary harm prior to undertaking an activity having the potential adversely to affect the environment of another State”), pp. 844–845, paras. 8–9 (Separate Opinion of Judge *ad hoc* Dugard). It is noted that the Paris Agreement at Article 7(9)(c) states that “[e]ach Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include ... (c) assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems”.

<sup>76</sup> See, e.g., *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 721, para. 156, p. 722, para. 159, p. 725, para. 173, p. 741, para. 229(6). See also p. 785, para. 9 (Separate Opinion of Judge Donoghue).

<sup>77</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at p. 83, para. 204.

<sup>78</sup> See the *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 782, para. 2 (Separate Opinion of Judge Donoghue) (“the Court today, as in the *Pulp Mills* case ..., uses the terms ‘general international law’ and ‘customary international law’, apparently without differentiation. Although some writers have ascribed distinct meanings to these two terms, I consider that the task before the Court today is the examination of ‘international custom, as evidence of a general practice accepted as law’ in accordance with Article 38, paragraph 1 (b), of the Statute of the Court”), p. 848, para. 16 (Separate Opinion of Judge *ad hoc* Dugard) (“What meaning then is to be attached to the term ‘general international law’ which the International Court has used in *Pulp Mills* and other decisions? In the present case I understand the term ‘general international law’ to denote a rule of customary international law requiring an environmental impact assessment to be carried out where there is a risk of transboundary harm”).

<sup>79</sup> *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 322; *Arbitration Regarding the Indus Waters Kishenganga (Pakistan v. India)*, Partial Award, (2013) XXXI RIAA 1 at pp. 216–217, para. 450; *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 50, para. 145.

<sup>80</sup> See *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment,

whether there is a need for an environmental assessment or, where such need is found to arise, fails to carry out such an assessment, could not be said to have exercised the due diligence required by the Prevention Obligation.

41. For the purposes of the present proceedings, it is necessary to consider how the Assessment Obligation is engaged, including specifically with respect to the release of anthropogenic emissions of greenhouse gases.
42. For this analysis, the following three stages to the Assessment Obligation are considered in turn below:
  - (a) **Stage 1:** identifying an “activity having the potential adversely to affect the environment of another State”<sup>81</sup>;
  - (b) **Stage 2:** ascertaining whether the activity poses a “risk of significant transboundary harm”; and
  - (c) **Stage 3:** where such risk exists, conducting the assessment itself.
- A. Stage 1: “activity having the potential adversely to affect the environment of another State”
43. At stage 1, a State is required to consider whether any proposed activity has the potential adversely to affect the environment of another State or other area outside its national jurisdiction. As a matter of practice, stage 1 may be considered without differentiation from stage 2 but is nonetheless analytically discrete.
44. Belize considers that this requirement applies with respect to proposed activities occurring or planned in the State’s territory or otherwise within the State’s jurisdiction or control:
  - (a) The overarching Prevention Obligation applies to activity within the State’s jurisdiction or control.<sup>82</sup>

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ICJ Reports 2015, p. 665 at p. 786, para. 13 (Separate Opinion of Judge Donoghue), paras. 18, 21 (Separate Opinion of Judge Owada).

<sup>81</sup> This language is taken from *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at pp. 706–707, para. 104 (see para. 39(a) above).

<sup>82</sup> See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226 at pp. 241–242, para. 29 (cited above referring to “activities within their jurisdiction and control”); *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at pp. 55–56, para. 101 (cited above referring to “activities which take place in its territory, or in any area under its jurisdiction”); International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 2(d) at p. 152 (defining the State of origin as “the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in article 1 are planned or are carried out”). Other international law instruments reflecting the Prevention Obligation expressly refers to activity in the States jurisdiction or control, for example: Rio Declaration, Principle 2; Stockholm Declaration, Principle 21; Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79, Article 3. There is no requirement of “effective”, “active” or “intentional” control.

- (b) In the two key cases where the Court has considered the Assessment Requirement (*Pulp Mills* and *Certain Activities*), the relevant activities were within the State’s jurisdiction or control.
  - (c) The objective of the assessment is to enable a State to cease or modify activities that would result in significant transboundary harm, and in order to implement any cessation/modification the activities would need to be within the State’s jurisdiction or control.
  - (d) Proposed activities include specific activities planned to occur within a State’s territory or otherwise within the State’s jurisdiction or control, and include activities planned by a developer or contractor (regardless of whether those activities or that developer/contractor are connected to the State).
45. Belize considers that there is no generic limitation on the type of proposed activities that must be considered:
- (a) In *Pulp Mills* the Court expressly referred to proposed “industrial activity”.<sup>83</sup> However, as observed by the Court subsequently in *Certain Activities*, the “underlying principle” clearly applies more generally.<sup>84</sup>
  - (b) The key question is whether the proposed activities have “the potential adversely to affect the environment of another State” or other area outside national jurisdiction.
  - (c) In principle, proposed activities having such an adverse effect may take various forms, including specific planned activities (such as particular projects, undertakings and enterprises), as well as a State’s broader policy decisions as to whether to allow or promote certain forms of activity which would obviously generate substantial greenhouse gas emissions (such as large scale extraction or development of fossil fuels) on territory over which it exercises jurisdiction or control.<sup>85</sup>
  - (d) What is required is a case-by-case analysis, taking into account the particular facts and circumstances including the best available science on the foreseeable environmental impacts of the proposed activity or policy decision in question.

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<sup>83</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at p. 83, para. 204.

<sup>84</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 706, para. 104. See also, e.g., *Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) Railway (Belgium/Netherlands)*, Award, (2005) XXVII RIAA 35 at pp. 66–67, para. 59, p. 116, para. 222; Rio Declaration, Principle 17.

<sup>85</sup> This is recognised in, for example, Convention on Environmental Impact Assessment in a Transboundary Context (adopted 25 February 1991, entered into force 10 September 1997) 1989 UNTS 309 (‘Espoo Convention’), Article 2(7) (“Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programs”). See further Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (adopted 21 May 2003, entered into force on 11 July 2010) 2685 UNTS 140 (‘Kyiv Protocol’).

46. As to the applicable threshold that the activity must have “the potential to adversely to affect” the environment of another State or other area outside national jurisdiction, Belize considers that:
- (a) A potential refers to a possibility, rather than a likelihood;
  - (b) Adverse effect is also to be understood broadly; and
  - (c) Whether there is a potential adverse effect is to be considered applying the precautionary principle.
47. Belize considers that any proposed activity within a State’s jurisdiction or control that would result in or contribute to the release of anthropogenic emissions of greenhouse gases has the potential adversely to affect the environment of another State or other area outside national jurisdiction (noting that at Stage 2 there is then consideration as to the significance of the harm). In particular:
- (a) The best available science is clear as to the harmful consequences of the release of anthropogenic emissions of greenhouse gases on the global environment, i.e. the environment of all States. In this sense, the chain of causation between the cause (anthropogenic emissions of greenhouse gases) and the effect (harm to the environment) is clear. The IPCC has in this regard:
    - i. Reaffirmed “with high confidence the AR5 [Fifth Assessment Report] finding that there is a near-linear relationship between cumulative anthropogenic CO<sub>2</sub> emissions and the global warming they cause”, and that “[e]ach 1000 GtCO<sub>2</sub> of cumulative CO<sub>2</sub> emissions is assessed to *likely* cause a 0.27°C to 0.63°C increase in global surface temperature with a best estimate of 0.45°C”;<sup>86</sup>
    - ii. Noted that “[e]very tonne of CO<sub>2</sub> emissions adds to global warming”;<sup>87</sup> and
    - iii. Stated with “high confidence” that “[l]imiting global warming requires limiting the total cumulative global anthropogenic emissions of CO<sub>2</sub> since the pre-industrial period, that is, staying within a total carbon budget”.<sup>88</sup>
  - (b) Clearly, where the proposed activity will directly result in the release of anthropogenic emissions of greenhouse gases within a State’s jurisdiction or control, this stage 1 of the analysis will be satisfied. The paradigm example would be the large-scale industrial burning of fossil fuels on a State’s territory

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<sup>86</sup> IPCC, Sixth Assessment Report, Summary for Policy Makers, 2021, available at [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf), p. 28, para. D.1.1.

<sup>87</sup> *Ibid.*, p. 37, table SPM.10 entitled “Near-linear relationship between cumulative CO<sub>2</sub> emissions and the increase in global surface temperature”.

<sup>88</sup> IPCC, Special Report: Global Warming of 1.5°C, Summary for Policy Makers, 2018, available at [https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM\\_version\\_report\\_LR.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf), p. 12, para. C.1.3.

(or on territory over which the State in fact exercises jurisdiction or control, such as occupied territory) to generate energy (whether by the State or a third party).

- (c) Other activities that would indirectly result in or contribute to the release of anthropogenic emissions of greenhouse gases within a State's jurisdiction or control also engage Stage 1. This includes policy decisions by a State as to whether to allow certain forms of activity on territory over which it exercises jurisdiction or control (such as the exploration, exploitation and/or use of a specific type of fossil fuel) or by persons over which it exercises jurisdiction or control.

B. Stage 2: "risk of significant transboundary harm"

48. Stage 2 of the Assessment Obligation requires that the State ascertain whether the proposed activity gives rise to a "risk of significant transboundary harm".
49. A threshold of "significant" transboundary harm has an established pedigree,<sup>89</sup> including in the Court's jurisprudence.<sup>90</sup>
50. Belize submits that it is clear that:
- (a) The threshold of a "risk of significant transboundary harm" denotes an objective assessment.<sup>91</sup>
- (b) As follows from the ordinary meaning of the term, "risk" of significant transboundary harm refers to a possibility, rather than a likelihood.<sup>92</sup>
- (c) "Significant" harm is something more than detectable but need not be at the level of serious or substantial harm.<sup>93</sup> The threshold of "significant" harm

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<sup>89</sup> See the use of the threshold of "significant harm" in the context of the Prevention Obligation more broadly: United Nations General Assembly resolution 2995 (XXVII), Co-operation between States in the field of the environment, UN Doc A/RES/2995(XXVII), 15 December 1972, para. 1; International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, p. 149, Article 1.

<sup>90</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 720, para. 153; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at pp. 55–56, para. 101.

<sup>91</sup> See *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 720, para. 153. See also International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 1, Commentary at p. 152, para. (14) ("The notion of risk is thus to be taken objectively, as denoting an appreciation of possible harm resulting from an activity which a properly informed observer had or ought to have had").

<sup>92</sup> See, e.g., *Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway (Belgium/Netherlands)*, Award, (2005) XXVII RIAA 35 at p. 66, para. 59 ("where development may cause significant harm to the environment there is a duty to prevent, or at least mitigate, such harm") (emphasis added).

<sup>93</sup> International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 2, Commentary at p. 152, para. (4). In a separate context, the International Law Commission has suggested that "significant harm" is "harm which is greater than the mere nuisance or

undoubtedly does not require that the harm be “grave”,<sup>94</sup> provided that it is capable of “being measured by factual and objective standards”.<sup>95</sup>

- (d) The “significance” of a potential harm is to be ascertained based on both the degree of the risk of harm and the gravity of the consequences if the risk materialises, i.e. the severity of the harm.<sup>96</sup>
- (e) The circumstances of the particular environment in which the activity occurs and/or which is at risk of significant harm as a result of the activity (“the receiving environment”) must also be considered in assessing whether the threshold is met.<sup>97</sup>
- (f) Whether the threshold is met must be determined in each specific case in light of the facts.<sup>98</sup>
- (g) The input of scientific experts is likely to be required in ascertaining whether harm is “significant”.<sup>99</sup>

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insignificant harm which is normally tolerated”: Sixth Report on International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law, 15 March 1990, UN Doc. A/CN.4/428, reproduced in Yearbook of the International Law Commission (1990), vol. II, Part One, p. 105, Article 2(h).

<sup>94</sup> International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 1, Commentary at p. 149, para. (2) (referring to harm that may assume “grave (more than significant, serious or substantial) proportions”).

<sup>95</sup> International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 2, Commentary at p. 152, para. (4).

<sup>96</sup> See, e.g., International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 2, Commentary at p. 152, para. (2) (“‘risk of causing significant transboundary harm’ refers to the combined effect of the probability of occurrence of an accident and the magnitude of its injurious impact. It is, therefore, the combined effect of ‘risk’ and ‘harm’ which sets the threshold”).

<sup>97</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at pp. 720–721, para. 155 (“In evaluating whether, as of the end of 2010, the construction of the road posed a risk of significant transboundary harm, the Court will have regard to the nature and magnitude of the project and the context in which it was to be carried out. ... The presence of Ramsar protected sites heightens the risk of significant damage because it denotes that the receiving environment is particularly sensitive”), p. 850, para. 19 (Separate Opinion of Judge *ad hoc* Dugard). See also International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 2, Commentary at p. 153, para. (7).

<sup>98</sup> International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 2, Commentary at pp. 152–153, paras. (4), (7). See also Espoo Convention, Appendix III (referring to the size, location and effects of the proposed activities).

<sup>99</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at pp. 116–117, para. 17 (Joint Dissenting Opinion of Judges Al-Khasawneh and Simma).

51. As to how the threshold of a “risk of significant transboundary harm” applies in the specific context of anthropogenic emissions of greenhouse gases, Belize submits that the following should inform the approach taken:
- (a) The best available science must be identified and applied. In the context of assessing the harm caused by anthropogenic emissions of greenhouse gases, the reports of the IPCC are of particular significance.
  - (b) Any risk of significant harm to sensitive receiving environments, such as coral reefs, must be taken into account.<sup>100</sup>
  - (c) Consideration must be given to the cumulative impacts of greenhouse gas emissions, i.e. the combined and incremental impacts resulting from different relevant activities, including known past, present and reasonably foreseeable related and unrelated activities, or from the repetition of similar activities over time, and the consequences of climate change, and related impacts.<sup>101</sup> Consistent with this common sense approach, the Biodiversity of Areas Beyond National Jurisdiction Treaty (‘the BBNJ Treaty’) expressly provides that, in considering whether there is a risk of significant or harmful changes to the marine environment, States must include consideration of cumulative impacts.<sup>102</sup>
  - (d) The precautionary principle must be observed, given that this is a well-established principle of international environmental law,<sup>103</sup> with its generally accepted application in the context of climate change reflected in Article 3(3) of the UNFCCC.<sup>104</sup>
52. Belize notes that Appendix I to the United Nations Convention on Environmental Impact Assessment in a Transboundary Context (‘the Espoo Convention’)<sup>105</sup> sets out a list of activities that are likely to cause significant adverse transboundary impact.<sup>106</sup>

<sup>100</sup> IPCC, Sixth Assessment Report, Synthesis Report: Longer Report, available at [https://report.ipcc.ch/ar6syr/pdf/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_LongerReport.pdf), p. 36, para. 3.1.2.

<sup>101</sup> See the definition of cumulative impacts in the BBNJ Treaty at Article 1(6). See also the glossary of terms accompanying the IPCC Sixth Assessment Report (available at <https://apps.ipcc.ch/glossary/>) which defines “cumulative emissions” as “[t]he total amount of emissions released over a specified period of time”.

<sup>102</sup> BBNJ Treaty, Articles 30(1)(a)(ii), 30(2)(e).

<sup>103</sup> See, e.g., Rio Declaration, Principle 15; *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 47, para. 135; *European Communities—Measures Concerning Meat and Meat Products (Hormones)*, Report of the World Trade Organization Appellate Body, 16 January 1998, WT/DS26/AB/R and WT/DS48/AB/R, paras. 16, 121.

<sup>104</sup> Article 3(3) provides: “The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost”.

<sup>105</sup> See citation at footnote 85 above.

<sup>106</sup> The list includes: crude oil refineries; thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load); installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing of irradiated nuclear fuels or for the



Although this provides a helpful indication of some types of activities that may be caught, it does not represent customary international law, and Belize anyway considers that a fixed list in the present context would be unnecessary and undesirable (including because of the risks of under inclusion and of the list becoming outdated following technological developments).

53. In summary, an environmental assessment is mandated where the proposed activity gives rise to a “risk of significant transboundary harm”. Indeed, if the global environment is to be protected from the severe harms caused by the adverse impacts of climate change, it appears essential that environmental assessments with respect to those impacts becomes a form of reflex for planned activities.<sup>107</sup>

### C. Stage 3: the environmental assessment

54. As regards the environmental assessment itself, the following is already established in the Court’s jurisprudence:
- (a) The assessment must be conducted prior to the activity being undertaken.<sup>108</sup>
  - (b) The obligation to undertake the assessment is a “continuous one”, with monitoring of the relevant activity as appropriate.<sup>109</sup>
  - (c) States must make a “determination of the content of an [environmental assessment] ... in light of the specific circumstances of each case”.<sup>110</sup>
  - (d) As a minimum, the assessment must meet the criteria established in the domestic law of the relevant State.<sup>111</sup>
  - (e) The burden of proof in showing that an appropriate environmental assessment has been carried out is upon the State undertaking the activity.<sup>112</sup>

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storage, disposal and processing of radioactive waste; large-diameter oil and gas pipelines; offshore hydrocarbon production; deforestation of large areas.

<sup>107</sup> See also ITLOS, Case No. 31, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Written Statement of Belize, 16 June 2023, available at [https://www.itlos.org/fileadmin/itlos/documents/cases/31/written\\_statements/1/C31-WS-1-23-Belize.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/1/C31-WS-1-23-Belize.pdf) (‘Belize ITLOS Written Statement’), pp. 28–29, para. 81.

<sup>108</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at pp. 83–84, para. 205. See also *Certain Activities*, , paras. 104 and 161.

<sup>109</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at pp. 722–723, para. 161.

<sup>110</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at pp. 706–707, para. 104. See also Belize ITLOS Written Statement, p. 29, para. 82 (“The required content of an environmental assessment will depend on the specific circumstances of each case”).

<sup>111</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at pp. 83–84, para. 205.

<sup>112</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 720, paras. 153, 154.

55. As follows from the basic obligation to carry out the environmental assessment, the information contained in the assessment must be sufficient to meet the needs of the decision-making body in the State of origin and the needs of potentially affected States in understanding the degree and seriousness of the risk of adverse transboundary impact. In this connection, Belize considers that Appendix II to the Espoo Convention offers useful general guidance in providing that:

“Information to be included in the environmental impact assessment documentation shall, as a minimum, contain ... :

- (a) A description of the proposed activity and its purpose;
- (b) A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative;
- (c) A description of the environment likely to be significantly affected by the proposed activity and its alternatives;
- (d) A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;
- (e) A description of mitigation measures to keep adverse environmental impacts to a minimum;
- (f) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;
- (g) An identification of gaps in knowledge and uncertainties encountered in compiling the required information;
- (h) Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis; and
- (i) A non-technical summary including a visual presentation as appropriate (maps, graphs, etc).”

56. Belize submits that there must be certain other parameters to the environmental assessment in the context of the release of anthropogenic emissions of greenhouse gases in light of the specific legal context, that is:

- (a) The overarching Prevention Obligation (and the need to give practical effect to that obligation) i.e. the imperative of preventing significant transboundary harm;

- (b) The fact that the standard of conduct demanded is one of due diligence (see para. 35 above),<sup>113</sup> and that the standard of due diligence “has to be more severe for the riskier activities”,<sup>114</sup>
  - (c) The precautionary principle (referred to at para. 51(d) above);
  - (d) The imperative that international law obligations be performed in good faith;<sup>115</sup>
  - (e) The importance of co-operation in the context of environmental harm;<sup>116</sup> and
  - (f) The interests of the global population, including future generations.<sup>117</sup>
57. Belize submits that the parameters include the following (as is anyway obvious from the specific factual as well as the legal context):
- (a) The release of greenhouse gas emissions resulting from the proposed activity cannot be considered in isolation but must be considered in light of the levels of: (i) the State’s previous greenhouse gas emissions (including with respect to existing projects); (ii) the State’s projected greenhouse gas emissions (including with respect to other proposed projects); and (iii) greenhouse gas emissions globally (which are essential to identifying the temperature trajectory and any remaining “budget” of greenhouse gas emissions in order to stay within a temperature threshold that is necessarily a global one).
  - (b) This in turn requires some assessment of the cumulative impacts of the new emissions arising from the proposed activity and existing emissions, including from related projects and activities. As noted by the Inter-American Court of Human Rights:
 

“[T]he environmental impact assessment must examine the cumulative impact of existing projects and proposed projects. ... This analysis will allow a more accurate conclusion to be reached

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<sup>113</sup> See *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 849, para. 18 (Separate Opinion of Judge *ad hoc* Dugard).

<sup>114</sup> *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 43, para. 117.

<sup>115</sup> *Nuclear Tests (Australia v. France)*, Judgment, ICJ Reports 1974, p. 253 at p. 268, para. 46 (“One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith”).

<sup>116</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at p. 49, para. 77; Stockholm Declaration, Principle 24; Rio Declaration, Principles 7, 27.

<sup>117</sup> See United Nations General Assembly resolution 77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, UN Doc. A/RES/77/276, 4 April 2023, Preamble (recognising that “climate change is an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it”). See also Paris Agreement, Preamble (expressly referring to “intergenerational equity”).

on whether the individual and cumulative effects of existing and future activities involve a risk of significant harm.”<sup>118</sup>

58. In circumstances where the environmental assessment confirms that there is a risk of significant transboundary harm, the State conducting the assessment is then subject to further and critically important obligations.
59. First, the State must notify in good faith potentially affected States, where that is necessary to determine the appropriate measures to prevent or mitigate the risk, as was expressly confirmed in the *Certain Activities* case.<sup>119</sup> The existence of this obligation follows from both the nature of the requirement to exercise due diligence (understood as the degree of care that is expected of a good government<sup>120</sup>) and the duty to cooperate as an essential element in any effective planning for protection of the environment.<sup>121</sup> In the specific context of climate change:
- (a) The notification obligation extends generally as all States are affected by climate change (as reflected in the reporting obligations of States party to the Paris Agreement<sup>122</sup>).
  - (b) Whilst the Court in *Certain Activities* framed this notification aspect of the obligation as being triggered in circumstances where the environmental impact assessment confirms that there is a risk of significant transboundary harm, having regard to the overarching Prevention Obligation and the obligation to exercise due diligence in that regard, Belize submits that the obligation to notify other States may arise at a different stage in the assessment process.<sup>123</sup>
  - (c) Belize also considers that, as an attribute of what is to be expected of a good government with respect to the existential threat of climate change, the reports of such environmental assessments must be published such that not only the States concerned but also the public are fully informed as to the potential impacts. Such notification forms a vital part of enhanced transparency<sup>124</sup>

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<sup>118</sup> *Advisory Opinion OC-23/17 on the Environment and Human Rights*, 15 November 2017, para. 165 (internal citations omitted). See also Kyiv Protocol, Annex IV, para. 6, footnote (“These effects should include secondary, cumulative, synergistic, short-, medium- and long-term, permanent and temporary, positive and negative effects”).

<sup>119</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 707, para. 104.

<sup>120</sup> International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 3, Commentary at p. 155, para. (17).

<sup>121</sup> Stockholm Declaration, Principle 24; Rio Declaration, Principle 7; International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 4, Commentary at p. 155, para. (1).

<sup>122</sup> See also Paris Agreement, Article 8(4) (which identifies an area of co-operation as including “comprehensive risk assessment and management”).

<sup>123</sup> See *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 788, para. 21 (Separate Opinion of Judge Donoghue).

<sup>124</sup> The Paris Agreement at Article 13 expressly refers to the importance of an enhanced transparency framework, noting transparency arrangements under the Convention include “national communications,

enabling public scrutiny, which Belize considers a critical tool in the prevention of environmental harm.<sup>125</sup>

60. Second, the duty to prevent transboundary harm and to exercise due diligence may require a State to consult in good faith with potentially affected States.<sup>126</sup> The existence of such a discrete requirement would need to be assessed on a case-by-case basis. One circumstance in which it may arise is if the State intending to act may lack information regarding (for example) a particularly sensitive receiving environment, such as a coral reef, in which case information from other States is needed in order to carry out a meaningful environmental assessment.
61. Third, the State must conduct monitoring of the relevant activity as appropriate. That was expressly confirmed in the *Pulp Mills* case.<sup>127</sup> The existence of this obligation follows from the requirement to exercise due diligence (as expressly acknowledged in *Certain Activities*<sup>128</sup>). Having ascertained whether an activity within its jurisdiction or control that results in or contributes to the release of anthropogenic emissions of greenhouse gases gives rise to a “risk of significant transboundary harm”, the State is then under a duty to “exert its best possible efforts to minimize the risk”,<sup>129</sup> which must include “best possible efforts” made while the relevant activity is being undertaken. Monitoring comprises a system of continued observation, measurement and evaluation for defined purposes.<sup>130</sup> In short, it evaluates the actual — as opposed to the predicted — effects of the relevant activity.

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biennial reports and biennial update reports, international assessment and review and international consultation and analysis”.

<sup>125</sup> See Belize ITLOS Written Statement, p. 31, para. 91; ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, oral statement of Belize, Verbatim record, ITLOS/PV.23.C31/11, available at [https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral\\_proceedings/verbatim\\_records\\_rev/ITLOS\\_PV23\\_C31\\_11\\_Rev.1\\_E.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/verbatim_records_rev/ITLOS_PV23_C31_11_Rev.1_E.pdf), p. 37, lines 1–18 (Wordsworth).

<sup>126</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 707, para. 104.

<sup>127</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at pp. 83–84, para. 205 (“Moreover, once operations have started and, where necessary, throughout the life of the project, continuous monitoring of its effects on the environment shall be undertaken”), cited at *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at 722–723, para. 161.

<sup>128</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665 at p. 740, para. 228, p. 785, para. 9 (Separate Opinion of Judge Donoghue), p. 845, para. 9 (Separate Opinion of Judge *ad hoc* Dugard).

<sup>129</sup> International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 3, Commentary at p. 154, para (7).

<sup>130</sup> See, e.g., United Nations Economic Commission for Europe, Updated Strategies for Monitoring and Assessment of Transboundary Rivers, Lakes and Groundwaters, 2006, available at [https://unece.org/DAM/env/water/publications/assessment/StrategiesM\\_A.pdf](https://unece.org/DAM/env/water/publications/assessment/StrategiesM_A.pdf), p. 6. The same source (also at p. 6) observes that “[m]onitoring is usually understood as a process of repetitive measurements for various defined purposes of one or more elements of the environment. To ensure comparability over time, the monitoring processes are undertaken at the same locations at regular time intervals, using comparable methodologies for environmental sensing and data collection”.

62. Monitoring is essential in order to identify, at an early stage, unforeseen adverse effects and to be able to decide upon and undertake appropriate remedial action,<sup>131</sup> which could involve terminating the conduct in question because of its unforeseen adverse effects. Adverse effects may become apparent over the course of the activity (even if not apprehended at the outset) as a result of factual developments,<sup>132</sup> “developments in scientific knowledge”,<sup>133</sup> or indeed an evolution in “value determination”.<sup>134</sup>
63. In the specific context of activity that results in or contributes to the release of anthropogenic emissions of greenhouse gases:
- (a) The monitoring must be conducted in accordance with the best available science and best available techniques<sup>135</sup> (which may necessitate reviewing the appropriateness of a monitoring programme in the light of new technology or scientific information).
  - (b) Key specific objectives of the monitoring must be: (i) to identify and record the greenhouse gas emissions in fact resulting from the proposed activity; (ii) to assess and verify the harm caused by those emissions, including in light of: (a) updated data on the current and projected levels of the State’s greenhouse gas emissions as well as greenhouse gas emissions globally; and (b) the best available science on cumulative impacts.
  - (c) To the extent that mitigatory measures were relevant to the original assessment and/or have subsequently been put in place with respect to the relevant activity, the monitoring shall include an evaluation of such measures (including their effectiveness).
  - (d) The monitoring must be conducted for the duration of the relevant activity, on a continuous or sufficiently frequent basis (as appropriate).

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<sup>131</sup> See, e.g., Kyiv Protocol, Article 12(1).

<sup>132</sup> For example, “a perfectly safe reservoir may become dangerous as a result of an earthquake, in which case the continued operation of the reservoir would be an activity involving risk”: International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN Doc. A/56/10, 2001, Article 1, Commentary at p. 151, para. (15).

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*, Article 2, Commentary at p. 153, para. (8) (“The term ‘significant’, while determined by factual and objective criteria, also involves a value determination which depends on the circumstances of a particular case and the period in which the determination is made. For instance, a particular deprivation at a particular time might not be considered ‘significant’ because at that specific time scientific knowledge or human appreciation for a particular resource had not reached a point at which much value was ascribed to that particular resource. But some time later that view might change and the same harm might then be considered ‘significant’”).

<sup>135</sup> Best available techniques is defined as “the most effective and advanced stage in the development of activities and their methods of operation, which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole”: see Directive 2010/75/EU (European Commission 2010) as referred to by, e.g., OECD, “Best Available Techniques (BAT) for Preventing and Controlling Industrial Pollution: Policies on BAT or Similar Concepts Across the World”, ENV/JM/MONO(2017)12, 2017, p. 11.

- (e) There must be periodic reports of the results of the monitoring (‘monitoring reports’).
- (f) The monitoring reports must be made public. Consistent with the position set out above, this requirement follows from the nature of the requirement to exercise due diligence (see para. 35 above), the duty to cooperate (see paras. 56(e) and 59 above) and the critical role of enhanced transparency and public scrutiny in the prevention of environmental harm (see para. 59(c) above).<sup>136</sup>
- (g) The information obtained through the monitoring process must be subject to appropriate consideration by the State concerned, or else the obligation would be meaningless. It follows that the State must, as appropriate: (i) consider its decision authorising the relevant activity (and take necessary action as appropriate, which may include halting the relevant activity);<sup>137</sup> (ii) notify other States (see para. 59 above) of the outcome of its monitoring activity and any action taken in response; and (iii) depending on the circumstances, consult with other States (see para. 60 above).

**H. E. Gianni Avila**

**Ambassador, Head of the Mission of Belize to  
the European Union**

21 March 2024

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<sup>136</sup> The importance of such publication is reflected in BBNJ Treaty, Article 36(2), which mandates that “[m]onitoring reports shall be made public”.

<sup>137</sup> The importance of this review process is reflected in BBNJ Treaty, Article 37(2), which mandates as follows: “Should the Party with jurisdiction or control over the activity identify significant adverse impacts that either were not foreseen in the environmental impact assessment, in nature or severity, or that arise from a breach of any of the conditions set out in the approval of the activity, the Party shall review its decision authorizing the activity, notify the Conference of the Parties, other Parties and the public, including through the Clearing-House Mechanism, and: (a) Require that measures be proposed and implemented to prevent, mitigate and/or manage those impacts or take any other necessary action and/or halt the activity, as appropriate; and (b) Evaluate, in a timely manner, any measures implemented or actions taken under subparagraph (a) above”.