

INTERNATIONAL COURT OF JUSTICE

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

Written Statement of the
Republic of the Philippines

21 March 2024

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I. Prefatory Statement.

“If we must be able to face the catastrophic crises the rapid and uncontrolled changes in the global climate have brought to humankind today, we need to redefine the word environment to make it fully understandable and real to all countries and all peoples in our shrinking world.

The environment is not about the birds and the bees and the flowers and the trees. It is nothing less than about life and the sources of life of the earth – land, air, and water, or LAW[,] for brevity – the elements of life and the vital organs of the earth. The trees and the forests are the heart and the lungs of life; the land and the soil are the skin and the flesh of the earth from whence all food comes; and the sea and the rivers are the blood and bloodstreams of life on earth. Destroy any of them and we destroy life itself. xxx.

Thus, from now on, we will not use the word “environment.” Rather, we will use the [phrase] “life sources.” For the people of the Philippines – that beautiful country in Asia with 7,107 islands – the word “environment” is inseparable from the concept of nature. In fact, in their language, the word nature is “kalikasan.” Nature (kalikasan) and the natural elements of life of land, air, and water are to them interchangeable. They are all the life sources that enable all life to survive and thrive in this little colorful marble of life we call the earth.”¹ – Hilario G. Davide, Jr., [ret.] Chief Justice of the Philippine Supreme Court and former Permanent Representative of the Philippines to the United Nations in New York (2007-2010).

1. On 29 March 2023, the United Nations General Assembly (UNGA) unanimously adopted *Resolution 77/276*, entitled “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change,”² which requests the International Court of Justice (ICJ), as the principal judicial organ of the UN, to render an advisory opinion on the issue of climate change. Adopted by consensus, *Resolution 77/276* aims to establish specific obligations among States, and the legal consequences thereunder, to ensure the protection of the climate system from anthropogenic emissions of greenhouse gases (GHG) and impact how Member States react to the unprecedented challenge of climate change.

2. Pursuant to Articles 48, 65 and 66 of the Statute of the International Court of Justice (ICJ Statute), the President of this Court issued *Orders dated 20 April 2023, 04 August 2023 and 15 December 2023* notifying States and organizations to furnish information on the questions submitted before this Court, and fixing the time-limit within which this Court is prepared to receive written statements or to hear oral statements relating to the questions.

3. As a member of the United Nations and party to the ICJ Statute, the Philippines is bound by its obligation to give the UN and its principal organs every assistance in any action it takes in accordance with the Charter.³ This obligation aligns with its commitments to international climate

¹ Hilario G. Davide Jr., *The Environment as Life Sources and the Writ of Kalikasan in the Philippines*, 29 Pace Envtl. L. Rev. 592 (2012).

² Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change, G.A. Res. 77/276, U.N. Doc. No. A/RES/77/276 (29 March 2023).

³ U. N. Charter, Article 2(5).

change cooperation under the *United Nations Framework Convention on Climate Change* (UNFCCC),⁴ *Kyoto Protocol*⁵ and *Paris Agreement*,⁶ which it ratified in 1994, 2003 and 2017, respectively.

4. By incorporation, the generally accepted principles of international law anchored on these conventions, treaties and agreements of which the Philippines is a party, forms part of the domestic law of the land.⁷ Consistent with these principles and guarantees of the protection and advancement is the right to a balanced and healthful ecology under the Philippine Constitution.⁸ This constitutional right is implemented by, *inter alia*, Republic Act No. 9729 (RA No. 9729), as amended, otherwise known as the *Climate Change Act of 2009*,⁹ which among others, aims to prevent dangerous anthropogenic interference with the climate system and enable economic development to proceed in a sustainable manner.¹⁰ Furthermore, the Philippines supports the achievement and realization of the Sustainable Development Goals (SDG) through the formulation of the Philippines - United Nations Partnership Framework for Sustainable Development (PFSD) which continuously prioritizes climate change adaptability and national resilience against the impacts of climate change.¹¹

5. Cognizant of its international obligations, and prompted by the pressing need for a just climate action, the Philippines “[recognizes] the vulnerability of the Philippine archipelago and its local communities, particularly the poor, women, and children, to potential dangerous consequences of climate change such as rising seas, changing landscapes, increasing frequency and/or severity of droughts, fires, floods and storms, climate-related illnesses and diseases, damage to ecosystems, biodiversity loss that affect the country’s environment, culture, and economy...”¹²

6. To this end, the Philippines is submitting this written statement before this Court to ensure a more equitable representation of the diverse perspectives and exposures of those most affected by climate change. Faced with the highest disaster risk worldwide,¹³ the recognition of the Philippines’ position on the issues raised is crucial to the application and fulfillment of the principles of equity, fairness and impartiality upon which the ICJ operates. This Submission seeks to highlight for the Court a broader understanding of the global repercussions of climate change, drawing on Philippine national experiences, that can be used to formulate comprehensive and balanced recommendations in respect to the questions raised before this proceeding.

⁴ U. N. Framework Convention on Climate Change, *adopted* 09 May 1992, 1771 U.N.T.S. 107.

⁵ Kyoto Protocol to the U.N. Framework Convention on Climate Change, *adopted* 11 December 1997, 2302 U.N.T.S. 162. (Hereinafter, Kyoto Protocol)

⁶ Paris Agreement to the U.N. Framework Convention on Climate Change, *adopted* 12 December 2015, 3156 U.N.T.S. 79. (Hereinafter, Paris Agreement)

⁷ 1987 Phil. Const. Art. II, § 2.

⁸ 1987 Phil. Const. Art. II, § 16.

⁹ As amended by R.A. No. 10174 entitled “*An Act Establishing the People’s Survival Fund to Provide Long-Term Finance Streams to Enable the Government to Effectively Address the Problem of Climate Change, Amending for the Purpose Republic Act No. 9729, Otherwise Known as the “Climate Change Act Of 2009”, and for Other Purposes*”

¹⁰ R.A. No. 9729 (as amended) § 2.

¹¹ U.N. Philippines, Partnership Framework for Sustainable Development, *available at* <https://philippines.un.org/en/42381-partnership-framework-sustainable-development-pfsd-2019-2023> (last accessed 10 October 2023).

¹² R.A. No. 9729 (as amended) §2 (3).

¹³ Bündnis Entwicklung Hilft & Institute for International Law of Peace and Armed Conflict, The World Risk Report 2023, *available at* https://weltrisikobericht.de/wp-content/uploads/2023/10/WRR_2023_english_online161023.pdf (last accessed 06 March 2024).

II. Introduction.

7. In accordance with this Court's *Orders dated 20 April 2023 and 04 August 2023*, the Philippines hereby submits its written statement, organized as follows: *first*, it addresses matters relating to the jurisdiction of this Court to render the requested advisory opinion and the admissibility of the request; *second*, it provides a background on the Philippines' climate risks and losses sustained in relation thereto; *third*, it presents the views of the Philippines on the questions put to this Court; and, *finally*, it concludes.

8. Overall, the Philippines submits that this Court's answers to the questions put forth in the UNGA *Resolution 77/276* should emphasize that the environment – or, in the Philippine perspective, *kalikasan* – is a common and shared resource of the present and future generations of humankind. All peoples of the world share one Earth, one Home. The universality and primordality, therefore, of the obligation to protect *kalikasan* to ensure sustainability and inter-generational and inter-cultural access is inherent and incumbent upon all States and peoples.

9. State obligations, whether under customary international law or treaty law, therefore, pertaining to the environment are legally binding upon all States. Any act or omission of a State, State actor or a private individual or entity whose actions may be attributable to the State, triggers relevant State obligations when such act or omission causes, or may tend to cause, harmful outcomes on the environment and aggravates climate change effects.¹⁴

10. Such act or omission in violation of State obligations is an internationally wrongful act that carries consequential legal corollaries which may be in the form of cessation or restitution. Relatedly, the Philippines proffers that prompt reliefs should be given and made available to affected States and peoples so as to immediately cease or mitigate any environmental damage.¹⁵

11. Thus, the Philippines proposes that the extraordinary legal remedy of a *Writ of Kalikasan* (Writ of Nature), a unique legal remedy under Philippine law, be considered by the Court as a potential legal remedy that can be developed under international law that is intrinsically available under the *Right to a Clean, Healthy and Sustainable Environment*.

III. ICJ Jurisdiction and Admissibility of the Request.

A. The ICJ has jurisdiction to render an advisory opinion pursuant to Chapter IV, Article 65(1) of the ICJ Statute.

12. Under Article 65 of the ICJ Statute, “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”¹⁶ In order for this Court to acquire jurisdiction over a

¹⁴ See *Trail Smelter Case (U.S.A./Canada)*, Merits, Award, 1941 (III) R.I.A.A. 1905 (16 April 1938 & 11 March 1941); *Lake Lanoux Arbitration (France v. Spain)*, Merits, Award, 1957 R.I.A.A. 281 (16 November 1957); *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Provisional Measures, Order, 2006 I.C.J. Reports 113 (13 July 2006); *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, 2018 I.C.J. Reports 15 (02 February 2018).

¹⁵ *Id.*

¹⁶ I.C.J. Statute, Art. 65, ¶ 1.

request for an advisory opinion, three requisites must be established, *vis*: (1) the requesting body must be authorized by the *Charter of the United Nations* (UN Charter);¹⁷ (2) the subject of the question must be within the scope of activities of the requesting body;¹⁸ and (3) the request must indeed relate to a legal question.¹⁹

13. As to the first requisite, Article 96 of the UN Charter states that the UNGA may request this Court to give an advisory opinion on any legal question.²⁰ During its plenary meeting on 29 March 2023, the UNGA, being an authorized body under the UN Charter, adopted *Resolution 77/276*.

14. With respect to the second requisite, the questions posed to this Court are within the scope of activities of the UNGA. Under the UN Charter, the UNGA may discuss any questions or matters within the scope of the UN Charter, such as matters relating to the general principles of cooperation in the maintenance of international peace and security.²¹ Likewise, the UNGA has the authority to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and promoting international cooperation in the economic, social, cultural, and health fields.²²

14.a. As remarked by the President of the UN Security Council (Security Council) after the Council's 6587th meeting in 2011 on the impact of climate change on international peace and security, the "possible adverse effects of climate change may, in the long run, aggravate certain existing threats to international peace and security"²³ and the "possible security implications of loss of territory of some States caused by sea-level-rise may arise, in particular in small low-lying island States."²⁴

14.b. By the same token, the UNGA, particularly its Second Committee (Economic and Financial), has given a keen interest and urgency in the continuing problem of climate change as it has been conducting general debates, adopting resolutions and concluding reports on climate change mitigation and adaptation and other related topics, such as disaster risk reduction and promotion of sustainable development.²⁵

¹⁷ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Reports 226 (08 July 1996), at 232-33, ¶ 11 (hereinafter *Nuclear Weapons Advisory Opinion*).

¹⁸ *Id.*, see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Reports 136 (09 July 2004), at 145, ¶ 14.

¹⁹ *Nuclear Weapons Advisory Opinion*, 1996 I.C.J., at 233-34, ¶ 13.

²⁰ U.N. Charter, Art. 96, ¶ 1.

²¹ U.N. Charter, Arts. 10 & 11, ¶ 1.

²² U.N. Charter, Art. 13, ¶ 1(a).

²³ U.N. Security Council, *Statement by the President of the Security Council*, p. 1, S/PRST/2011/15 (20 July 2011).

²⁴ *Ibid.*

²⁵ U.N. Department of Public Information, *Sustainable Development Goals Unreachable without Reformed Financial Architecture, Stronger Political Will, Speakers Say as Second Committee Opens General Debate*, (Meetings Coverage and Press Releases GA/EF/3583, 02 October 2023), available at <https://press.un.org/en/2023/gaef3583.doc.htm> (last accessed 06 December 2023); U.N. Department of Public Information, *Developed Countries Must Deliver on Climate Change, Finance Commitments, Delegates Stress, as Second Committee Continues Its General Debate*, (Meetings Coverage and Press Releases GA/EF/3566, 4 October 2022), available at <https://press.un.org/en/2022/gaef3566.doc.htm> (last accessed 06 December 2023); U.N. Department of Public Information, *General Assembly Takes Action on Second Committee Reports by Adopting 37 Resolutions, 2 Decisions*, (Meetings Coverage and Press Releases GA/12397, 17 December 2021), available at <https://press.un.org/en/2021/ga12397.doc.htm> (last accessed, 06 December 2023).

14.c. Since the international community has recognized that climate change may have significant and adverse effects on international peace and security and necessitates international cooperation among States, delving into such transnational problem and the other issues related thereto is without a doubt within the realm of the UNGA.

15. As regards the third requisite, a question “framed in terms of law and raising problems of international law” is by its very nature “susceptible of a reply based on law” and appears “to be a question of legal character”.²⁶ On this note, the pending request for advisory opinion by the UNGA poses questions that refer to: (1) the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of GHG; and (2) the legal consequences for States where they, through their acts or omissions, have caused significant harm to the climate system and other parts of the environment.²⁷

15.a. To shed light on these questions, this Court will necessarily determine the existing rules and principles of law based on different sources of international law, including international conventions, international custom, general principles of law, judicial decisions, and teachings of the most highly qualified publicists of various nations.²⁸ Thereafter, this Court shall interpret the relevant rules and principles of law and apply them to the questions relative to climate change.

15.b. As can be gleaned from *Resolution 77/276*, international agreements and principles, such as the UN Charter,²⁹ *International Covenant on Civil and Political Rights* (ICCPR),³⁰ *International Covenant on Economic, Social and Cultural Rights* (ICESCR),³¹ UNFCCC, *Paris Agreement*, *United Nations Convention on the Law of the Sea* (UNCLOS),³² the duty of due diligence,³³ the rights recognized in the *Universal Declaration of Human Rights* (UDHR),³⁴ the principle of prevention of significant harm to the environment,³⁵ and the duty to protect and preserve the marine environment,³⁶ are being taken into account in identifying the obligations of States to protect the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases and the legal

²⁶ Nuclear Weapons Advisory Opinion, 1996 I.C.J., at 233-34, ¶ 13; Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, 1996 I.C.J. Reports 66 (08 July 1996), at 73, ¶ 15.

²⁷ Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, *supra* note 2.

²⁸ I.C.J. Statute Art. 38, ¶ 1.

²⁹ U.N. Charter.

³⁰ International Covenant on Civil and Political Rights, *adopted* 16 December 1966, 999 U.N.T.S. 171. (Hereinafter, ICCPR)

³¹ International Covenant on Economic, Social and Cultural Rights, *adopted* 16 December 1966, 993 U.N.T.S. 3. (Hereinafter, ICESCR)

³² Convention on the Law of the Sea, *entered into force* 10 December 1982, 1833 U.N.T.S. 397.

³³ Pulp Mills on the River Uruguay (Argentina v. Uruguay), Merits, Judgment, 2010 I.C.J. Reports 14 (13 July 2006) (hereinafter Pulp Mills).

³⁴ Universal Declaration of Human Rights, G.A. Res. 217 (III)A, U.N. Doc. No. A/RES/217 A (III) (10 December 1948).

³⁵ U.N. Conference on the Human Environment, *Declaration of the United Nations on the Human Environment*, Principle 21, UN Doc. A/CONF.48/14/Rev. 1 (15-16 June 1972); U.N. Conference on Environment and Development, *Declaration of the United Nations on Environment and Development*, Principle 2, UN Doc. A/CONF.151/26/Rev. 1 (vol. I) (03-14 June 1992).

³⁶ Convention on the Law of the Sea, *entered into force* 10 December 1982, 1833 U.N.T.S. 397, Part XII.

consequences of their acts or omissions in case of significant harm to the climate system and to the environment.

15.c. Accordingly, the express reference of the UNGA to these international agreements and principles shows that the questions submitted to this Court are indeed legal in nature.

16. Moreover, it is submitted that the factual considerations underlying a particular question would not render this Court incapable of exercising its jurisdiction over a request for an advisory opinion.³⁷

16.a. In determining the obligations of States relating to the reduction or prevention of climate change, factual questions may arise therefrom, such as, among others, whether there is a causal link between anthropogenic greenhouse gas emissions and the severity of climate change and whether the historical emissions of States can give rise to State responsibility for damages under international law.

16.b. Nonetheless, the presence of both factual and legal elements in certain questions or even the necessity of making factual determinations would not deprive this Court of its authority or competence to take cognizance of a request for an advisory opinion on climate change.

17. In the same vein, it is submitted that the possibility that the questions put forward to this Court would raise political questions does not in any manner affect their legal character and the jurisdiction of this Court over the request for an advisory opinion.³⁸ Regardless of the political aspects and dimensions of climate change, this Court cannot refuse to admit the legal character of a question and has the duty to discharge an essentially judicial task,³⁹ which pertains to the determination of the obligations of States as imposed upon them and the consequences of their acts or omissions as sanctioned by international law.

18. In light of the above, this Court has the authority to exercise jurisdiction over the present request for advisory opinion as the requirements under Article 65 of the ICJ Statute were met: (1) that the request was submitted by the UNGA, which is an authorized requesting body under the UN Charter; and (2) that the request presents legal questions, which call for the application of relevant rules and principles of law on climate change.

B. The paramount importance of the questions raised by the UNGA through Resolution 77/276 requires authoritative guidance from this Court.

19. While this Court's competence to reply to a request of the UNGA is governed by the Charter and the ICJ Statute, the decision on whether to do so depends on the sound prerogative of

³⁷ Western Sahara, Advisory Opinion, 1975 I.C.J. Reports 12 (16 October 1975), at 19, ¶ 17 (hereinafter Western Sahara).

³⁸ Nuclear Weapons Advisory Opinion, 1996 I.C.J., at 234, ¶ 13; Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, 1996 I.C.J. Reports 66 (08 July 1996), at 74, ¶ 16.

³⁹ Nuclear Weapons Advisory Opinion, 1996 I.C.J., at 234, ¶ 13

this Court. Owing to the express wording of the ICJ Statute, which utilizes the word “may,”⁴⁰ this Court has described its competence to render advisory opinions as “discretionary.”⁴¹

19.a. This Court has time and again emphasized its authority to decline requests depending on “whether the circumstances of a particular case are such as to lead the Court to decline to reply to the request for an Opinion.”⁴² Regardless of whether the conditions of jurisdiction are met,⁴³ the decision on whether it is appropriate to reply to any request for an advisory opinion lies with this Court – and with this Court alone.

20. Nevertheless, the consistent practice of this Court has always been to reply to requests for advisory opinions, provided, as a matter of course, that the jurisdictional requirements under the UN Charter and the ICJ Statute are met. This Court has pronounced that it will not, as a matter of principle, decline a request for an advisory opinion unless there is a “compelling reason” to do so.⁴⁴

21. The standard of determining the existence of a “compelling reason” to decline a request for an advisory opinion has been consistently applied by this Court over the several decades spanning its existence, such as in *Certain Expenses of the United Nations* which was rendered in 1962,⁴⁵ *Western Sahara* which was rendered in 1975,⁴⁶ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* which was rendered in 1989,⁴⁷ *Legality of the Threat or Use of Nuclear Weapons* which was rendered in 1996,⁴⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* which was rendered in 2004,⁴⁹ *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*,⁵⁰ and the most recent *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*⁵¹ advisory opinion issued by this Court in 2019. It is worthy to note that this Court, in order to avoid a restrictive interpretation, has not laid down strict parameters for what constitutes “compelling reason.”

22. The Philippines submits that the circumstances surrounding the request of the UNGA pursuant to *Resolution 77/276* do not present any compelling reason for this Court to refuse the exercise its discretionary authority to issue an advisory opinion on the obligation of States in respect of climate change.

⁴⁰ I.C.J. Statute, Art. 65, ¶ 1.

⁴¹ Nuclear Weapons Advisory Opinion, 1996 I.C.J., at 234, ¶ 14.

⁴² Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. Reports 15 (28 May 1951), ¶¶ 19-51 (hereinafter Genocide Convention, Reservations Advisory Opinion).

⁴³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Reports 136 (09 July 2004), at 156, ¶ 44 (hereinafter Wall).

⁴⁴ Genocide Convention, Reservations Advisory Opinion, at 15, ¶¶ 19-51.

⁴⁵ Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, 1962 I.C.J. Reports 151 (20 July 1962) (hereinafter Certain Expenses).

⁴⁶ Western Sahara, 1975 I.C.J., at 12.

⁴⁷ Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, 1989 I.C.J. Reports 177 (15 December 1989).

⁴⁸ Nuclear Weapons Advisory Opinion, 1996 I.C.J., at 234.

⁴⁹ Wall, 2004 I.C.J.

⁵⁰ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. Reports 403 (22 July 2010).

⁵¹ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. Reports 95 (25 February 2019) (hereinafter Chagos Advisory Opinion).

23. Indeed, an advisory opinion of this Court is not a “decision”⁵² which creates a binding force that is contemplated by Article 59 of the ICJ Statute.⁵³ Nevertheless, the issuance of an advisory opinion is not without “moral consequences which are inherent in the dignity of the organ delivering the opinion, or even of its legal consequences.”⁵⁴ It has been described as “some kind of judgement”⁵⁵ that has “legal effect,”⁵⁶ and “carr[ies] no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the principal judicial organ of the United Nations with competence in matters of international law.”⁵⁷

24. Considering that *Resolution 77/276* was issued by the UNGA with “profound alarm” on the continued rise of GHG emissions that may have adverse effects on all countries, particularly developing countries, least developed countries, and small island developing States, and an “utmost concern” on the widespread adverse impacts of human-induced climate change to nature and people, an advisory opinion which sets out, expounds on, and lays down the multifarious obligations of States in respect of climate change under international law will bolster the UNGA’s ability to address urgent climate change concerns. After all, the UNGA is expected to “duly take account”⁵⁸ of the advisory opinions of this Court.

25. In *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*,⁵⁹ this Court rendered an advisory opinion to assist the UNGA in addressing a matter of “particular concern” to the UN organ. Similar to its goal of bringing “colonialism to an end,”⁶⁰ the UNGA has likewise unequivocally expressed, through *Resolution 77/276*, its object in requesting for the advisory opinion of this Court: to ensure the “well-being of present and future generations of humankind” against the “unprecedented challenge of civilizational proportions” of climate change. Through an advisory opinion, this Court can provide authoritative legal guidance to relevant actors in the fight against climate change, as discussed below.

25.a. *Firstly*, an advisory opinion can be relied upon by States regarding how they should conduct themselves in relation to existing climate change obligations under international law. While the Court’s opinion is given not to States, but to the organ which is entitled to request it,⁶¹ it should logically follow that the conduct of States which will be in accordance with the advisory opinion of this Court is imbued with legitimacy.⁶²

⁵² Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania, Advisory Opinion, 1950 I.C.J. Reports 65 (18 July 1950) (hereinafter Interpretation of Peace Treaties).

⁵³ Article 59 of the I.C.J. Statute states: “The decision of the Court has no binding force except between the parties and in respect of that particular case.”

⁵⁴ Interpretation of Peace Treaties, 1950 I.C.J., (Judge Azevedo, dissenting opinion).

⁵⁵ Certain Expenses, 1962 I.C.J.

⁵⁶ Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Case No. 28, Preliminary Objections, Judgement, ITLOS Rep. 2021, ¶ 205 (28 January 2021).

⁵⁷ *Id.*, ¶ 203.

⁵⁸ Niccolo Lanzoni, *The Authority of ICJ Advisory Opinions as Precedents: The Mauritius/Maldives Case*, 2 IRIC Law 296, at 307 (2022), (citing Robert Kolb, *The International Court of Justice 1097* (1st Ed. 2014)).

⁵⁹ Chagos Advisory Opinion, 2019 I.C.J., ¶ 88.

⁶⁰ *Id.*, ¶ 86.

⁶¹ Interpretation of Peace Treaties, 1950 I.C.J.

⁶² Niccolo Lanzoni, *The Authority of ICJ Advisory Opinions as Precedents: The Mauritius/Maldives Case*, 2 IRIC Law 296, at 307 (2022), (citing Karin Oellers-Frahm, *The Charter of the United Nations: A Commentary 1987* (3rd ed.2012, Vol. ii)).

25.b. It can be noted that in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Council Resolution 276 (1970)*,⁶³ this Court prescribed how member nations of the UN should conduct themselves in view of the “illegality and invalidity of South Africa’s continued presence in Namibia.” It is submitted that this Court’s advisory opinion on the specific obligations of States in respect of climate change can authoritatively guide States as to what constitutes legitimate or illegitimate conduct in relation to the international environmental law on climate change.

25.c. *Secondly*, the much-needed advisory opinion from this Court can serve as an additional foundation for future conventions and decisions in international environmental law. While advisory opinions are not binding, certainly the pronouncements of this Court through this medium have become the basis in the formulation of judicial decisions on contentious cases, or in the codification of conventions on international law.

25.d. Over the course of deciding contentious cases between States, this Court has relied upon the pronouncements it has made in its advisory opinions as a guide. Undoubtedly, advisory opinions issued by this Court have been referred to by this very judicial body to ensure consistency with “settled jurisprudence.”⁶⁴

25.e. For instance, in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*,⁶⁵ this Court referred to its pronouncements in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*⁶⁶ to justify the application of both international human rights law and international humanitarian law in assessing the possibility of a breach of international obligations by a State during an armed conflict.

25.f. Specific to international environmental law, this Court has time and again referred⁶⁷ to its pronouncements in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*⁶⁸ to premise its future decisions concerning the obligation of States 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.” Such was the case in the contentious cases of *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*⁶⁹ and *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)*.⁷⁰

⁶³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1971 I.C.J. Reports 16 (June 21, 1971), ¶ 119.

⁶⁴ *United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, Merits, Judgment, 1980 I.C.J. Reports 3 (24 May 1980).

⁶⁵ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Merits, Judgment, 2005 I.C.J. Reports 168 (19 December 2005).

⁶⁶ *Wall*, 2004 I.C.J.

⁶⁷ *Nuclear Weapons Advisory Opinion*, 1996 I.C.J., at 234.

⁶⁸ *Id.*, at 234, ¶ 29.

⁶⁹ *Pulp Mills*, 2010 I.C.J.

⁷⁰ *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)*, Merits, Judgment, 2015 I.C.J. Reports 665 (16 December 2015) (hereinafter *Certain Activities*).

25.g. Moreover, tribunals of special jurisdiction also refer to this Court's advisory opinion in adjudicating contentious cases that are referred to them by States. For instance, this Court's opinion in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* was treated to have "legal effect" by the International Tribunal on the Law of the Sea (ITLOS) when it issued a judgment on preliminary objections in the case of *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, *International Tribunal for the Law of the Sea*. In deciding that the United Kingdom was not an indispensable third party to the dispute between Maldives and Mauritius, a former British colony, over the maritime boundary between the two States, the ITLOS referred to the advisory opinion of this Court which opined that the United Kingdom's "continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State."

25.h. Similarly, the Court of Justice of the European Union, in ruling that the *Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part*, did not apply to Western Sahara, a territory that is being claimed by the Kingdom of Morocco, referred to the advisory opinion of this Court in *Western Sahara* which opined that it did not find "any tie of territorial sovereignty between the territory of Western Sahara" and the Kingdom of Morocco.⁷¹

25.i. *Thirdly*, it is also submitted that an advisory opinion from this Court on the obligations of States in respect of climate change can serve to recognize and express in no uncertain terms, customary international laws that have already ripened in accordance with established state practice and *opinio juris*.⁷² Until customary international law is appraised, it remains an unwritten and implied rule. As such, the rendering of an advisory opinion is considered to have effects in shaping customary international law, as it "translates in terms of express principles such terms as have in fact been accomplished."⁷³

25.j. In issuing an advisory opinion concerning the legality of the threat or use of nuclear weapons, this Court has had the occasion to declare 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" as being part of the corpus of international environmental law. This "principle of prevention"⁷⁴ that is required to be observed by States as a "customary rule" was recognized as such in view of this Court's unequivocal opinion in *Legality of the Threat or Use of Nuclear Weapons*.

26. For the foregoing reasons and considering that the "environment is not an abstraction but represents the living space, the quality of life, and the very health of human beings, including generations unborn,"⁷⁵ the Philippines submits that the exercise by this Court of its advisory jurisdiction has never become as paramount as in this instance.

⁷¹ *Western Sahara*, 1975 I.C.J., at 19, ¶ 17.

⁷² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Meris, Judgment. 1986 I.C.J. Reports 14 (26 November 1984).

⁷³ Teresa Mayr and Jelka Mayr-Singer, *Keep the Wheels Spinning: The Contributions of Advisory Opinions of the International Court of Justice to the Development of International Law*, 76 HJIL 425, at 444 (2016) (citing HERSCH Lauterpacht, *The Development of International Law by the International Court* (1958)).

⁷⁴ *Pulp Mills*, 2010 I.C.J.

⁷⁵ *Nuclear Weapons Advisory Opinion*, 1996 I.C.J., ¶ 29.

IV. Philippine Climate Situation.

A. Scientific Consensus on Climate Change, Its Causes and Impact.

27. The 9th preambular clause of *Resolution 77/276* declares that there is a “scientific consensus... that anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming observed since the mid-20th century...”⁷⁶ The UNGA also “not[es] with utmost concern” that “human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people beyond natural climate variability..”⁷⁷ Finally, it acknowledges “that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected[.]”⁷⁸

28. *Resolution 77/276* likewise refers to the reports of the *Intergovernmental Panel on Climate Change* (IPCC). Specifically, the *2023 Synthesis Report of the IPCC Sixth Assessment Report* (2023 Synthesis Report)⁷⁹ confirms the observed global warming, its causes, and its changes and impacts on weather, climate, nature, and on people.

28.a. On the major cause of global warming, the 2023 Synthesis Report states that:

Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020. Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals.⁸⁰

28.b. Regarding the vulnerability of different regions and people to the irreversible impacts of climate change, the 2023 Synthesis Report finds that:

Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people... Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected...⁸¹

28.c. Further, there is scientific data that proves that the widespread and substantial impacts of climate change will continue to intensify.

⁷⁶ Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, *supra* note 2.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Intergovernmental Panel on Climate Change, *Summary for Policymakers, Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, at 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001 (19 March 2023).

⁸⁰ *Id.*, ¶ A.1, at 4.

⁸¹ *Id.*, ¶ A.2, at 5.

28.d. With respect to human systems, climate change has a direct impact on physical water availability, agriculture/crop production, animal and livestock health and productivity, and fisheries yield and aquaculture production. In addition, increase in global warming also increased infectious diseases, has caused heat, malnutrition and harm from wildfire on the population, has an adverse effect on mental health, and has caused displacement of people. Losses and damage on cities and infrastructures caused by inland flooding, storm damage in coastal areas, damages to infrastructure, and damages to key economic sectors have also been linked to climate change. Finally, climate-driven changes in terrestrial, freshwater, and ocean ecosystems have similarly been observed.⁸²

28.e. Moreover, there is scientific data to back up the attribution of observed physical climate changes to human influences. These multiple physical climate conditions include increase in agricultural and ecological drought, increase in fire weather, increase in compound flooding, increase in heavy precipitation, glacier retreat, global sea level rise, upper ocean acidification, and increase in hot extremes.

28.f. Of concern is that “[g]lobal GHG emissions in 2030 implied by nationally determined contributions (NDCs) announced by October 2021 make it *likely* that warming will exceed 1.5°C during the 21st century and make it harder to limit warming below 2°C. There are gaps between projected emissions from implemented policies and those from NDCs and finance flows fall short of the levels needed to meet climate goals across all sectors and regions.”⁸³

29. In sum, the magnitude of climate change and its links to global impacts are at present heavily backed up by scientific consensus. Both the historical context and future climate change projections are already carefully assessed in different regions, utilizing a global threshold.

B. Philippine Climate Risks and Losses Due to Climate Change.

30. Considering the global scientific consensus on the link between climate change and its impacts on human systems and physical climate conditions, the Philippines conducted its own study on the economic and non-economic losses attributed to major natural extreme events and disasters.

a. Economic Losses.

31. For the direct economic loss and damage, the Philippines ranked the highest in having disaster risks among 193 countries based on the 2023 World Risk Index.⁸⁴ This may be attributed to the increase in meteorological disasters, considering that in 2022, typhoons, tropical cyclones, and southwest monsoon, among others, recorded the highest number of occurrences at 82 or 35.3 percent of the 232 total number of occurrences of natural extreme events and disasters.⁸⁵ From 2012 to 2022, the damages due to natural extreme events and major disasters amounted to PHP497.45 billion. These

⁸² *Id.*, at 7.

⁸³ *Id.*, ¶ A.4, at 10.

⁸⁴ The World Risk Report 2022, *supra* note 13.

⁸⁵ Philippine Statistics Authority, Compendium of Philippine Environment Statistics Component 4: Extreme Events and Disasters (2023), available at <https://psa.gov.ph/statistics/environment-statistics/node/1684059916>

disasters include climatological, *i.e.*, drought/el niño phenomenon, and meteorological, *i.e.*, tropical cyclones.⁸⁶

32. Extreme weather events have likewise resulted in annual losses to the Philippines' Gross Domestic Product (GDP). During the 2003-2022 period, annual losses range from 0.05 percent of GDP to as much as 0.89 percent in extreme cases like Super Typhoon Yolanda (Haiyan) in 2013.

33. The economic impact of climate change is substantial, reducing capital stock, decreasing factor productivity, and increasing financial sector risks (*i.e.*, bank capital adequacy due to more frequent and intense typhoons, especially tail events). The World Bank estimates that the average economic damage and productivity losses from increasing intensity and frequency of extreme events is estimated at least 3.2 percent of the GDP rising to at least 5.7 percent by 2040. But its impact could be much worse and reach 7.6 percent of the GDP by 2030 and 13.6 percent by 2040.⁸⁷

Loss in Sectoral Productivity

Agriculture and Fisheries

34. Climate change has brought upon negative impacts on the Philippines' key economic sectors. For example, agriculture, forestry, and fisheries contributed up to approximately 8.9% of the country's GDP and employed around 23.1% of the labor force.

35. Unfortunately, the agricultural sector is one of the most vulnerable sectors to climatic shocks, particularly typhoons, floods, and drought.⁸⁸ About 56% of the PHP672.9 billion estimated total damage incurred from climate-related disasters (PHP378.4) between 2003 and 2022 was in agriculture. Moreover, it is projected that agricultural productivity in the Philippines will decline by 9 to 21 percent by 2050 due to climate change.⁸⁹

36. Being a coastal nation, climate change has also adversely affected productivity in the Philippines' fisheries sector. Damage to boats, fishing gear, fish pens, and landing sites are common during the typhoon and monsoon seasons and may increase as typhoon intensity increases. Rising sea temperatures and associated acidification and hypoxia are causing some fish species to migrate, which is expected to reduce potential catches from marine fisheries by 2% by 2050.⁹⁰ Fisherfolks in vulnerable areas already report significantly lower catches, changing seasons, and needing to go further out to sea thereby undermining their income.

⁸⁶ *Id.*, Table 4.15.

⁸⁷ World Bank Group Country Climate and Development Report, 2022 available at <https://openknowledge.worldbank.org/entities/publication/3f76eedd-4ab6-5250-ab4e-75f39593f1b3> (last accessed 07 March 2024)

⁸⁸ These hazards were responsible for about 82.4 percent of rice losses in the country from 1970 to 1990. From 1990 to 2006, 70 percent of damage to agricultural production was caused by typhoons, 18 percent were caused by droughts, and 5 percent by floods. See Felino P. Lansingan et al., *Agronomic impacts of climate variability on rice production in the Philippines*, 82 (1-3) AGRICULTURE, ECOSYSTEMS & ENVIRONMENT 129 (2000).

⁸⁹ World Bank Project Information Document (PID) Philippine Rural Project Development Scale Up, 2022 available at https://ewsddata.rightsindevelopment.org/files/documents/79/WB-P180379_4TXkuuJ.pdf

⁹⁰ Rollan C. Geronimo, *Projected climate change impacts on Philippine marine fish distributions*, 2018 accessed at: <https://www.climatelinks.org/sites/default/files/asset/document/2021-11/Projected%20Impacts%20of%20CC%20on%20Fisheries.pdf> (last accessed 13 December 2023)

37. Indirectly, climate change also negatively affects the Philippines' SDG of zero hunger and malnutrition as the diminishing yields in the agricultural and fisheries production lead to higher prices, causing significant hardship to its population. People experiencing poverty will be most affected as they spend about 42% of their income on food.⁹¹ Due to climate change, the number of people at risk of hunger is projected to increase by 8% and 12.8% by 2030 and 2050, respectively.⁹²

Industry and Services

38. Studies have likewise shown that climate change severely affects capital-intensive sectors, such as energy and manufacturing, due to loss of capital stock. These sectors also suffer from some loss of labor productivity. Higher temperatures will severely impact labor productivity, particularly in sectors where work is undertaken outdoors, such as construction. In these sectors, productivity is expected to decline by as much as 10% for each 1°C rise. Increasing mortality and morbidity will also negatively affect the size of the labor force, further reducing output.⁹³

b. Non-Economic Losses.

Biodiversity Loss

39. Climate change has been shown to reduce the terrestrial ecosystems' capacity to produce ecosystem goods and services by altering ecological processes. These include timing of biological events, species distribution, behavior in plants and animals, and frequency and intensity of pests and diseases. For instance, increasing temperature changes affect the photosynthesis process of trees. Moreover, more frequent and intense rainfall events and seasonal changes cause more landslides, floods, droughts, fires, erosion, and sedimentation, among others.⁹⁴

40. Similarly, climate change affects natural processes within coastal, marine, and freshwater ecosystems. Increasing sea surface temperature and changes in ocean currents and circulation impacts the growth rate, reproduction, and spatial distribution of organisms, which result to an increased risk of extinction and low fish productivity.⁹⁵

⁹¹ PSA, OpenSTAT, Food Security Indicators, available at https://openstat.psa.gov.ph/PXWeb/pxweb/en/DB/DB_3L_FUT/0013L5FRFE0.px/table/tableViewLayout1/?rxid=46cb9ed6-3389-45de-938f-b04a5ebe0612; See also, CEIC, Philippines Percentage to Total Expenditure (PTE): Food Expenditure (FE), available at <https://www.ceicdata.com/en/philippines/family-income-and-expenditure-survey-percentage-distribution-of-family-expenditure-by-income-class/percentage-to-total-expenditure-pte-food-expenditure-fe>

⁹² Nicostrato D. Perez, & Mark W. Rosegrant, A partial equilibrium approach to modelling alternative agricultural futures under climate change, in *THE FUTURE OF PHILIPPINE AGRICULTURE UNDER A CHANGING CLIMATE: POLICIES, INVESTMENTS AND SCENARIOS 10* (Mark W. Rosegrant & Mercedita A. Sombilla, eds., 2019).

⁹³ Roberto Roson and Martina Sartori, Estimation of climate change damage functions for 140 regions in the GTAP9 Database. Policy Research Working Paper No.7728. Accessed at: <https://openknowledge.worldbank.org/server/api/core/bitstreams/52800c14-f0cb-5a4f-ae1e-8dd5062be63c/content> (last accessed: 13 December 2023).

⁹⁴ GIZ, *Report on the Management Effectiveness and Capacity Assessment of Protected Areas in the Philippines*, 2014, Accessed at: <http://philchm.ph/wp-content/uploads/NMECA-1.pdf> (last accessed: 13 December 2023).

⁹⁵ Southeast Asian Fisheries Development Center, 2011, Accessed at: https://www.researchgate.net/publication/285844064_Mitigating_the_impacts_of_climate_change_Philippine_fisheries_in_focus (last accessed: 13 December 2023)

40.a. Increased temperature, ocean acidification, and tropical cyclones also cause corals to bleach, becoming more fragile and slowing down recovery and growth. These threaten the critical habitats for fish and other marine species. They also reduce storm surge protection services valued at USD 4 billion per year.⁹⁶

40.b. The Philippines is also especially vulnerable to sea level rise, with reports of 15mm per year of sea level rise in Manila Bay between 1960 and 2012, which is nine times the global average. It is projected that 16.9 percent of the Philippines' islands will be submerged under extreme scenarios of sea-level rise by 2100.⁹⁷

Learning losses

41. Of particular importance to a developing nation is the disruption in education by climate-induced hazards. For instance, in 2021, Typhoon Rai affected almost 30,000 schools serving around 12 million students in 11 regions of the Philippines. About USD 1.2 billion, or 10% of the Philippines' Department of Education's annual budget, was needed to repair the damage brought about by the typhoon. Moreover, prolonged exposure to extreme heat causes heat-related illnesses and discomfort in the classroom, leading to missed school days and lower learning outcomes, especially for young children.⁹⁸

Health Impacts

42. Temperature increases, flood and hurricane risks, and worsening air pollution due to climate change also impact human health. In the Philippines, 61% of heat-related deaths are attributed to climate change.⁹⁹ Moreover, projections indicate that annual heat-related deaths in Southeast Asia could increase by 295% by 2030 and 691% by 2050 without adaptation.¹⁰⁰

42.a. *On Diseases.* Climate change impacts affect the concentration of harmful air pollutants and accelerate the development of mosquito-, tick-, and rodent-borne diseases, consequently increasing the likelihood of transmission to humans.¹⁰¹ It is projected that 150 million people (out of an estimated 163 million) in the Philippines could be at risk of malaria by 2070. The vectorial capacity of dengue fever is also expected to remain at a very

⁹⁶ Natasha Charmaine Tamayo, Jonathan Anticamara, and Lilibeth Acosta-Michlik. 2018. *National estimates of values of Philippine reefs' ecosystem services*, 2018, 633-644. Accessed at <https://www.sciencedirect.com/science/article/abs/pii/S0921800917300812#:~:text=The%20TEV%20of%20Philippine%20reefs,US%24%2Fkm2%2Fyr>. (Last accessed: 13 December 2023)

⁹⁷ Céline Bellard, Camille Leclercand Franck Courchamp, *Impact of Sea Level Rise on the 10 Insular Biodiversity Hotspots*, 2013,203–212. Accessed at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/geb.12093> (Last Accessed: 13 December 2023)

⁹⁸ U.N. Children's Fund (UNICEF) 2021. *The Climate Crisis is a Child Rights Crisis: Introducing the Children's Climate Risk Index*. Accessed at <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf> (last accessed: 13 December 2023)

⁹⁹ Ana Vicedo-Cabrera et al. *The Burden of Heat-Related Mortality Attributable to Recent Human-Induced Climate Change, 2021*, 492-500 Accessed at : <https://www.nature.com/articles/s41558-021-01058-x> (last accessed: 13 December 2023)

¹⁰⁰ Yasushi Honda et al. *Heat-Related Mortality Risk Model for Climate Change Impact Projection*, 2014,56–63. Accessed at: <https://pubmed.ncbi.nlm.nih.gov/23928946/> (last accessed: 13 December 2023)

¹⁰¹ World Bank Country Climate and Development Report (2022).

high endemic transmission level. Moreover, increased flooding is likely to lead to greater outbreaks of Leptospirosis.¹⁰²

42.b. *On Malnutrition.* Declining agricultural output, fish catches, and higher food prices due to climate change can lead to malnutrition among vulnerable communities. It is estimated that around 41.55 climate-related deaths per million population could be linked to the lack of food availability in the Philippines by the year 2050.¹⁰³ Damage to critical infrastructure due to climate-induced hazards can also disrupt access to essential health services.¹⁰⁴

42.c. *On Water Supply and Quality.* With rapid urban growth, accelerated evaporation from reservoirs due to higher temperatures reduces already stressed water supply systems. Higher rainfall volumes also increase river water's turbidity which, in turn, lower water treatment plants' capacities. Runoff and floodwater can also carry animal waste and pesticides that may contaminate water and become breeding grounds for mosquitoes that transmit disease.¹⁰⁵

Displacement and Migration

43. Climatic shocks also induce forced migration and displacement, particularly in communities with livelihoods prone to changes in climatic systems (e.g., agriculture and fisheries). According to the Global Report on Internal Displacement, around 4 million Filipinos were displaced in 2020, primarily due to typhoons. By the end of the century, it is projected that around 60 million people residing in the country's coastal areas will be displaced due to a one-meter sea-level rise.¹⁰⁶

44. The peculiar situation of the Philippines as an archipelagic country located in a tropical region where there is expected rainfall all year round, as well as a regular storm and typhoon activity, renders the country largely vulnerable to risks that affect coastal areas. For instance, the country, especially its communities located in coastal areas, fell victim to Typhoon Haiyan, reported as "one of the strongest typhoons to ever make landfall in Earth's recorded history."¹⁰⁷

45. Moreover, studies have found that the Philippines is experiencing above average sea-level rise due to climate change. For instance, the Manila Bay, a natural harbour where more than twenty (20) communities reside, has recorded a 15-mm per year sea-level rise between 1960 to 2012,

¹⁰² Al-Shere Amilasan et al. *Outbreak of Leptospirosis after Flood, the Philippines, 2009, 2012*. Accessed at : <https://pubmed.ncbi.nlm.nih.gov/22257492/> (last accessed: 13 December 2023)

¹⁰³ Marco Springmann, et al., *Global and Regional Health Effects of Future Food Production under Climate Change: A Modelling Study, 2016, 1937–1946.* Accessed at: <https://pubmed.ncbi.nlm.nih.gov/26947322/> (last accessed: 13 December 2023)

¹⁰⁴ World Bank Country Climate and Development Report (2022).

¹⁰⁵ *Id.*

¹⁰⁶ Gustavo Gonzalez & Kristin Dadey, *The Climate Crisis is a Game Changer When it Comes to Migration*, IOM Philippines, 29 October 2021, available at <https://philippines.iom.int/news/climate-crisis-game-changer-when-it-comes-migration> (last accessed 06 December 2023).

¹⁰⁷ NASA, *Super Typhoon Haiyan Surges Across the Philippines*, THE EARTH OBSERVATORY, November 8, 2013, available at <https://earthobservatory.nasa.gov/images/82348/super-typhoon-haiyan-surges-across-the-philippines> (last accessed 26 October 2023).

which is nine times the average of the sea-level rise worldwide.¹⁰⁸ Should an extreme scenario of sea-level rise occur, i.e., 6 meters, 16.9% of the Philippine islands will be submerged in water.¹⁰⁹

Casualties

46. Between 2012-2022, a total of 11,076 deaths, 196,154 injured persons, and 2,331 missing persons have been attributed to 134 major rapid-onset climate events (*i.e.*, typhoons, and other rainfall events).¹¹⁰

47. The high number of casualties in 2012 and 2013 is attributed to Typhoon Pablo (1,248 recorded deaths, 2,916 recorded injuries) and Typhoon Yolanda (6,300 recorded deaths, 28,689 recorded injuries), respectively. While preparations were made in anticipation of the impact of the typhoons, the unprecedented magnitude of both hazards made it difficult for communities to respond accordingly.¹¹¹

48. In conclusion, the Philippine data supports the global scientific consensus on the impacts of climate change. In the Philippines, economic losses on different sectors – agricultural, fisheries, industry, and services – and the non-economic losses – terrestrial ecosystem, coastal and marine, learning losses, health impacts, displacement and migration, and casualties – have adversely affected the country's growth.

V. Philippine Submissions on the Questions.

49. It is the Philippines' understanding that the questions put forth by *Resolution 77/276* delve into the nature and legality of the conduct of States that have resulted in anthropogenic GHG emissions over time, thereby causing climate change. In inquiring thereon, the conduct of States is juxtaposed against State obligations under customary international law, general principles of law and treaties, conventions, and other international agreements.

50. As will be discussed hereunder, the Philippines submits that, looking through the lenses of these three sources of State obligations, any State act or omission attributed to a State which resulted in anthropogenic GHG emissions over time thereby causing climate change is a breach of a State obligation and such act or omission is an internationally wrongful act which necessarily gives rise to a corresponding legal consequence pursuant to customary international law, general principles of law and applicable treaties, conventions and other international agreements.

¹⁰⁸ Asian Development Bank, Climate Risk Country Profile: Philippines, *available at* <https://www.adb.org/publications/climate-risk-country-profile-philippines> (last accessed 06 December 2023).

¹⁰⁹ *Id.*

¹¹⁰ *Supra*, Note 86.

¹¹¹ *Id.*

A. State Obligations under International Law.

A.1. Customary International Law.

51. Customary international law, as contrasted to conventional international law or treaties, is binding on all States. A practice ripens into customary international law when it becomes (i) general State practice, and (ii) there is acceptance of the practice as law (*opinio juris*).¹¹² Thus, when given wide acceptance, customary international law may be cited as a source of legal obligations.

52. The first criterion is when the practice is accepted by majority of States and has become a legal obligation for States.¹¹³ The second criterion is called *opinio juris* or *opinio juris sive necessitates* in that the act “must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule requiring it.”¹¹⁴

53. The only exceptions to the universal binding effect of customary international law are local or regional customs which can apply to a specific geographical area and the principle of persistent objection in which a State “manifests its opposition to a practice before it has developed into a rule of customary international law”¹¹⁵ such that, by reason of such objection, the objecting State opts out from the operation of the new rule.¹¹⁶

54. In regard to the environment and to all peoples’ *Right to a Clean, Healthy and Sustainable Environment*, several customary norms apply and create State obligations, a breach of which resultantly carries legal consequences.

A.1.a. Obligation Not to Cause Transboundary Harm

55. The early cases of *Trail Smelter*¹¹⁷ and the *Corfu Channel*¹¹⁸ have enunciated the “no-harm” rule or the principle of prevention and established the existence of the obligation of States to ensure that activities within their jurisdiction and control must respect the environment of other States or of areas beyond national control.

55.a. *Trail Smelter* is a landmark environmental law case that enunciated “the fundamental principles of no harm and the obligation to prevent and abate transboundary environmental interference causing significant harm,”¹¹⁹ thus:

“[U]nder the principles of international law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”¹²⁰

¹¹² Saul Hofileña, Jr., *International Law* 6 (2016, 1st ed.).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Michael P. Scharf, *Accelerated Formation of Customary International Law* 1167 (2014).

¹¹⁶ *Ibid.*; See also Malcolm N. Shaw, *International Law* 67 (8th ed. 2017).

¹¹⁷ *Trail Smelter Case* (U.S.A./Canada), Merits, Award, 1941 (III) R.I.A.A. 1905, at 1965 (16 April 1938 & 11 March 1941) (hereinafter *Trail Smelter*).

¹¹⁸ *The Corfu Channel Case* (United Kingdom v. Albania), Merits, Judgment, 1949 I.C.J. Reports 22 (09 April 1949) (hereinafter *Corfu Channel*).

¹¹⁹ *Trail Smelter*, 1941 (III) R.I.A.A.

¹²⁰ *Id.*

55.b. *Corfu Channel* is a landmark case of this Court which dealt with the “general question of international responsibility of a state not only for its own acts but also for the acts of other entities.”¹²¹ In this case, forty-five British officers and sailors lost their lives while forty-two others were wounded due to an explosion of mines in Albanian waters which was initially regarded as safe. In ruling that Albania is responsible for the explosions and the damages and loss of human life resulting therefrom, this Court declared that there were “general and well-recognized principles of international law” concerning “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.”¹²²

56. Moreover, this Court, in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, provided that “[t]he 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.”¹²³

57. Further, in the *Iron Rhine Arbitral Case*,¹²⁴ the Permanent Court of Arbitration (PCA) declared that the “duty of prevention” of transboundary harm is now a “principle of general international law,” thus:

“The use of the Iron Rhine railway started some 120 years ago and it is now envisaged and requested by Belgium at a substantially increased and intensified level. Such new use is susceptible of having an adverse impact on the environment and causing harm to it. Today, in international environmental law, a growing emphasis is being put on the duty of prevention. Much of international environmental law has been formulated by reference to the impact that activities in one territory may have on the territory of another. xxx.”¹²⁵

58. The same principle of general international law was reiterated in several international cases. Thus, in *Pulp Mills on The River Uruguay*, this Court stated that:

“101. The Court points out that the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory. It is “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States” (*Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 22). A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State. This Court has established that this obligation “is now part of the corpus of international law relating to the environment” (*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 242, para. 29).¹²⁶

59. Further, in *Dispute Over the Status and Use of the Waters of Silala*, this Court reiterated that:

“99. The Court recalls that in general international law it is “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States” (*Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 22).

¹²¹ *Corfu Channel*, 1949 I.C.J.

¹²² *Id.*

¹²³ *Nuclear Weapons Advisory Opinion*, 1996 I.C.J., ¶ 29.

¹²⁴ *Award in the Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) Railway between the Kingdom of Belgium and the Kingdom of Netherlands*, Merits, Decision, 2005 (XXVII) R.I.A.A. 35, ¶ 222 (24 May 2005).

¹²⁵ *Id.*

¹²⁶ *Pulp Mills*, 2010 I.C.J., at 55-56, ¶ 101.

“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” in a transboundary context, and in particular as regards a shared resource (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 56, para. 101, citing *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 242, para. 29; *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, I.C.J. Reports 2015 (II), p. 706, para. 104).¹²⁷

60. Furthermore, the State obligation not to cause transboundary harm has been included in various multilateral treaties which involve the protection of the environment, management of hazardous wastes, and prevention of marine pollution.¹²⁸ This was also mentioned in Principle 21 of the *Stockholm Declaration (1972)* which states:¹²⁹

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

61. It must be emphasized, however, that, given the States’ sovereign rights to explore and exploit their natural resources, transboundary harm must be of “serious consequence,” and cause at least “significant,” “substantial” or “appreciable” harm.¹³⁰ Nonetheless, this state obligation was reiterated almost in *verbatim* in subsequent important instruments and policy documents, such as Principle 2 of the 1992 *Rio Declaration*¹³¹; Article 3 of the 1992 *Convention on Biological Diversity*, Recital 8 of the Preamble of the UNFCCC, and paragraph 2, Article 194 of the UNCLOS.

A.1.b. Obligation to Exercise Due Diligence

62. Related to the *Obligation Not to Cause Transboundary Harm* is the obligation of States to exercise due diligence. This obligation refers to the State obligation to undertake means to ensure that its obligation not to harm or pollute the environment is carried out.

63. In *Pulp Mills on the River Uruguay*,¹³² and reiterated by the ITLOS in its *Advisory Opinion in the Sub-Regional Fisheries Commission*,¹³³ it was explained that the obligation of due diligence “entails

¹²⁷ Dispute over the Status and Use of the Waters of Silala (Chile v Bolivia), Merits, Judgement 2022 I.C.J. Reports 614, at 648-649. ¶ 99 (01 December 2002) (hereinafter *Silala Case*).

¹²⁸ International Law Commission, *Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries*, Y.B. Int’l L. Comm’n 148, 149 (2001).

¹²⁹ *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/RES/2994(XXVII) (16 June 1972) (hereinafter the *Stockholm Declaration*).

¹³⁰ “No Harm-Rule and Climate Change,” <https://legalresponse.org/wp-content/uploads/2013/07/BP42E-Briefing-Paper-No-Harm-Rule-and-Climate-Change-24-Jul-2012>, (Last accessed: 07 March 2024.)

¹³¹ “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

¹³² *Pulp Mills*, 2010 I.C.J., ¶ 197.

¹³³ Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, ITLOS Rep. 2015, at 41, ¶ 131 (02 April 2015).

not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable” to all public and private entities under its jurisdiction.¹³⁴

A.1.c. Obligation to Undertake an Environmental Impact Assessment

64. Intertwined with the State *Obligation Not to Cause Transboundary Harm* and *Obligation to Exercise Due Diligence* is the State obligation to undertake an environmental impact assessment (EIA) prior to undertaking an activity that will potentially harm or affect the environment.

65. An EIA serves several functions – (i) it provides decision-makers with information on the environmental consequences of proposed activities, programmes, and policies; (ii) it requires decisions to be influenced by that information; and (iii) it provides a mechanism to ensure the participation of potentially affected persons in the decision-making process.¹³⁵

66. This customary international law obligation to conduct an EIA is triggered when a State plans to undertake an activity that has the potential of adversely affecting another State. Thus, in *Pulp Mills on the River Uruguay*,¹³⁶ this Court held that “it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource”¹³⁷ and “the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if the party planning works liable to affect the regime of the river or the quality of its waters did not undertake an environmental impact assessment on the potential effects of such works.”¹³⁸

67. Further, in *Certain Activities Carried Out by Nicaragua in the Border Area and Construction of a Road in Costa Rica along the San Juan River*,¹³⁹ this Court held that “a State must, before embarking on an activity having the potential to adversely effect the environment of another State, ascertain if there is a risk of significant transboundary harm, which would trigger the requirement to carry out an environmental impact assessment.”¹⁴⁰

68. Relatedly, in *Dispute Over the Status and Use of the Waters of Silala*,¹⁴¹ this Court stated that “[i]f the environmental impact assessment confirms that there is a risk of significant transboundary harm, the State planning to undertake the activity is required, in conformity with its due diligence obligation, to notify and consult in good faith with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk.”¹⁴²

¹³⁴ *Id.*

¹³⁵ Philippe Sands & Jaqueline Peel, *Principles of International Environmental Law* 204 (3rd ed. 2012).

¹³⁶ *Pulp Mills*, 2010 I.C.J., ¶ 197.

¹³⁷ *Id.*, ¶ 197.

¹³⁸ *Id.*

¹³⁹ *Certain Activities*, 2015 I.C.J.

¹⁴⁰ *Id.*

¹⁴¹ *Silala Case*, 2022 I.C.J.

¹⁴² *Id.*, ¶ 114.

69. Verily, underscoring the important role of an EIA in addressing climate change are the requirements in UNFCCC¹⁴³ and Kyoto Protocol¹⁴⁴ which both provide a requirement on the contracting parties to take into account and minimize the adverse effects of climate change by reducing GHG emissions and by promoting adaptation response.

70. Thus, in the *Advisory Opinion on Responsibilities and Obligations in the Area*,¹⁴⁵ the ITLOS Seabed Dispute Chamber “stressed that the obligation to conduct an environmental impact assessment is a direct obligation under the Convention and a general obligation under customary international law.”¹⁴⁶

A.1.d. Duty to Cooperate

71. The duty to cooperate is a recognized fundamental principle of customary international law which is reflected in Article 1(3) of the UN Charter, thus:

Article 1
The Purposes of the United Nations are:

xxx xxx xxx

3. **To achieve international co-operation in solving international problems** of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

xxx xxx xxx

(Emphasis supplied.)

72. Specific to the environment, Article 30 of UNGA *Resolution 3281*¹⁴⁷ on the *Charter of Economic Rights and Duties of States* provides that:

Article 30

The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavour to establish their own environmental and developmental policies in conformity with such responsibility. The environmental policies of all States should enhance and not adversely affect the present and future development potential of developing countries. All States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. **All States should co-operate in evolving international norms and regulations in the field of the environment.** *(Emphasis supplied.)*

¹⁴³ UNFCCC, Articles 4.1(b) and (e).

¹⁴⁴ Kyoto Protocol, Articles 10.1(a) and (b).

¹⁴⁵ *Responsibilities and Obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, ITLOS Rep. 2011, at 10, ¶145 (01 February 2011).

¹⁴⁶ *Id.*

¹⁴⁷ Charter of Economic Rights and Duties of States, G.A. Res. 3281 (XXIX), Art. 30, U.N. Doc. A/RES/39/163 (12 December 1974).

73. Principle 7 of the *Rio Declaration* also provides that “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem.”¹⁴⁸

74. Further, the *2030 Agenda for Sustainable Development*,¹⁴⁹ sets out the obligation to cooperate in respect to climate change as follows:

“The global nature of climate change calls for the widest possible international co-operation aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change.”¹⁵⁰

75. Indeed, the State obligation to cooperate is affirmed in practically all international environmental agreements. It may relate to general terms such as in the implementation of the treaty objectives and provisions, relate to specific commitments such as the rules on an EIA and exchange of information, and the transboundary enforcement of environmental standards.

75.a. The UNFCCC also acknowledges that “the global nature of climate change calls for the widest possible cooperation of all countries and their participation in an effective and appropriate international response.”¹⁵¹ Article 3.5 thereof further provides that “[t]he Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country parties, thus enabling them better to address the problems of climate change.”¹⁵²

75.b. The *Kyoto Protocol* also provides that parties thereto shall “[c]ooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures.”¹⁵³

75.c. The preamble of the *Paris Agreement*¹⁵⁴ affirms “the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement.”¹⁵⁵

75.d. Article 197 of the UNCLOS requires States to cooperate on a regional basis to formulate standards and practices for the protection and preservation of the marine environment:

“States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this

¹⁴⁸ U.N. Conference on Environment and Development, *Declaration of the United Nations on Environment and Development*, Principle 2, UN Doc. A/CONF.151/26/Rev. 1 (vol. I) (13-14 June 1992) (hereinafter *Rio Declaration*).

¹⁴⁹ *Transforming our world : The 2030 Agenda for Sustainable Development*, G.A. Res. 70/1, U.N. Doc. A/RES/70/1 (21 October 2015).

¹⁵⁰ *Id.*, ¶ 31.

¹⁵¹ U.N. *Framework Convention on Climate Change* (adopted 09 May 1992), 1771 U.N.T.S. 107.

¹⁵² *Ibid.*, see also UNFCCC, Articles 4, 5, 6, 7, and 9.

¹⁵³ *Kyoto Protocol*, Article 2.

¹⁵⁴ Conference of the Parties, *Paris Agreement to the United Nations Framework Convention on Climate Change*, UN Doc. FCCC/CP/2015/L.9/Rev.1 (12 December 2015).

¹⁵⁵ *Id.*, see also *Paris Agreement*, Articles 6, 7, 8, 10, 11, and 12.

Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.”

76. Likewise, international case law is extant with rulings adverting to the obligation of States to cooperate. One of such is the *MOX Plant case*¹⁵⁶ where the ITLOS stated that “the duty to cooperate is a fundamental principle in the prevention of pollution of the environment under Part XII of the Convention and general international law xxx.”¹⁵⁷

77. The ITLOS reiterated the same obligation in the *Land Reclamation Case*¹⁵⁸ where Singapore and Malaysia were ordered to cooperate in order to determine the effects of Singapore’s land reclamation activities.

78. Similarly, in the *South China Sea Arbitration*,¹⁵⁹ the ITLOS emphasized that:

The importance of cooperation to marine protection and preservation has been recognised by the International Tribunal for the Law of the Sea on multiple occasions. The International Court of Justice, also recognised, in *Pulp Mills on the River Uruguay*, that “by co-operating . . . the States concerned can manage the risks of damage to the environment that might be created by the plans initiated by one or [the] other of them, so as to prevent the damage in question.”

79. This Court similarly noted in *Pulp Mills on The River Uruguay*¹⁶⁰ and *Dispute Over the Status and use of the Waters of Silala*¹⁶¹ that the obligation to cooperate is an important complement to other substantive obligations of State parties.

A.2. General Principles of International Environmental Law.

80. Aside from customary international law, international environmental law likewise encapsulates several general principles that grew out of substantive and procedural matters enunciated in landmark international arbitral awards which eventually found their way into UN declarations, conventions and other international instruments.

A.2.a Principle of Sustainable Development

81. The principle of sustainable development is prominent in development discourses. It is generally defined as “development that meets the needs of the current generation without compromising the ability of future generations to meet their own needs.”¹⁶² In the *Gabcikovo-*

¹⁵⁶ The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures, Order, ITLOS Rep. 2001, p. 110, ¶ 82 (3 03 December 2001).

¹⁵⁷ *Id.*

¹⁵⁸ Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order, ITLOS Rep. 2003, p. 4, ¶ 92 (08 October 2003).

¹⁵⁹ In the Matter of the South China Sea Arbitration (Philippines v. China), Award, 33 R.I.A.A. 1, at 394-95, ¶ 985 (12 July 2016).

¹⁶⁰ Pulp Mills, 2010 I.C.J.

¹⁶¹ Silala Case, 2022 I.C.J.

¹⁶² Justice Mensah, *Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review*, 2019, Accessed at <https://doi.org/10.1080/23311886.2019.1653531> (last accessed: 13 December 2023)

Nagymaros Project Case,¹⁶³ this Court acknowledged that there is a “need to reconcile economic development with the protection of the environment [which] is aptly expressed in the concept of sustainable development.”

82. Further, in the *Indus Waters Kishenganga Arbitration*,¹⁶⁴ the Permanent Court of Arbitration (PCA) encapsulated the discussion of several landmark cases on international environmental law and emphasized therein the principle of sustainable development, in this wise:

449. There is no doubt that States are required under contemporary customary international law to take environmental protection into consideration when planning and developing projects that may cause injury to a bordering State. Since the time of Trail Smelter, a series of international conventions, declarations, and judicial and arbitral decisions have addressed the need to manage natural resources in a sustainable manner. In particular, the International Court of Justice expounded upon the principle of “sustainable development” in *Gabčíkovo-Nagymaros*, referring to the “need to reconcile economic development with protection of the environment.”

450. Applied to large-scale construction projects, the principle of sustainable development translates, as the International Court of Justice recently put it in *Pulp Mills*, into “a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.” The International Court of Justice affirmed that “due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if a party planning works liable to affect the regime of the river or the quality of its waters did not undertake an environmental impact assessment on the potential effects of such works.” Finally, the International Court of Justice emphasized that such duties of due diligence, vigilance and prevention continue “once operations have started and, where necessary, throughout the life of the project.”

451. Similarly, this Court recalls the acknowledgement by the Tribunal in the *Iron Rhine* arbitration of the “principle of general international law” that States have “a duty to prevent, or at least mitigate” significant harm to the environment when pursuing large-scale construction activities. As the *Iron Rhine* Tribunal determined, this principle “applies not only in autonomous activities but also in activities undertaken in implementation of specific treaties.”

A.2.b Principle of Inter-Generational Equity.

83. The *Principle of Sustainable Development* is intimately linked to the principle of inter-generational equity which recognizes that resources should be used by the present generation in a manner that will sustainably maintain its abundance and quality for the benefit of future generations.

84. It has roots in the 1972 Stockholm Declaration¹⁶⁵ and forms a core tenet of the sustainable development framework when it was proclaimed that “[t]o defend and improve the human environment for present and future generations has become an imperative goal for mankind – a goal

¹⁶³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 I.C.J. Reports 3, ¶ 140. *Please also see* ¶ 141, which went further to describe how such duty should be upheld by both of the parties which is more known as the duty of cooperation, *viz*:

It is for the Parties themselves to find an agreed solution that takes account of the objectives of the Treaty, which much be pursued in a joint and integrated way, as well as the norms of international environmental law and the principles of the law of international watercourses.

¹⁶⁴ Award in the Arbitration regarding the *Indus Waters Kishenganga* between Pakistan and India (*Pakistan v. India*), Merits, Partial Award, 31 R.I.A.A. 1, ¶ 448-51 (20 December 2013).

¹⁶⁵ *Stockholm Declaration*, *supra* note 129.

to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world-wide economic and social development.”¹⁶⁶

85. In 1988, the UNGA acknowledged that “that certain human activities could change global climate patterns, threatening present and future generations with potentially severe economic and social consequences” thereby recognizing the right of the future generations to inherit the same diversity in natural and cultural resources.¹⁶⁷

86. The UNFCCC further embedded inter-generational equity within the international climate change regime as a founding principle when Article 3 thereof stated the need to “protect the climate system for the benefit of present and future generations of humankind.” The same was affirmed anew as a guiding principle in climate change actions in the *Paris Agreement* preamble.

87. In the Philippine setting, the principle of inter-generational equity finds strong constitutional mooring and judicial recognition. In the landmark *Children’s Case of the Philippines*,¹⁶⁸ the Philippine Supreme Court equated the principle of inter-generational equity to the fundamental right to a balanced and healthful ecology and held therein that:

“xxx. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors’ assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

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While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.¹⁶⁹

A.2.c Precautionary Principle

88. The precautionary principle originated in West German domestic law and emerged in international legal instruments in the mid-1980s.¹⁷⁰ This principle, now found in most environmental

¹⁶⁶ *Id.*

¹⁶⁷ *National Inquiry on Climate Change Report*, Commission on Human Rights of the Philippines, 2022; can be accessed at: <https://www.ciel.org/wp-content/uploads/2023/02/CHRP-NICC-Report-2022.pdf> (Last accessed: 07 March 2024).

¹⁶⁸ *Oposa vs. Factoran*, G.R. No. 101083, 224 S.C.R.A. 792 (30 July 1993).

¹⁶⁹ *Id.*

¹⁷⁰ Daniel Dobos, *The Necessity of Precaution: The Future of Ecological Necessity and the Precautionary Principle*, 13 *Fordham Env’tl L.J.* 375, 384 (2001).

agreements, such as the Convention on Biological Diversity (CBD)¹⁷¹ proffers that notwithstanding scientific uncertainty about environmental risks inherent in a particular activity, decisions about that activity should err on the side of taking effective measures to avoid potential harm.

89. The essence of this principle is expressed in Principle 15 of the Rio Declaration,¹⁷² thus:

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damages, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

90. Likewise, Article 3.3 of UNFCCC states:

ARTICLE 3
PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

xxx

xxx

xxx

3. 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. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

91. The core elements of the precautionary principle, therefore, are the need for environmental protection; the presence of threat or risk of serious damage; and the fact that a lack of scientific certainty should not be used to avoid taking action to prevent that damage. Thus, in the *Southern Bluefin Tuna Fish Case*,¹⁷³ the ITLOS held that the conservation of living resources, such as the Southern Bluefin Tuna Fish that is “severely depleted and is at its historically lowest level,”¹⁷⁴ is “an element of the protection and preservation of the marine environment.”¹⁷⁵

¹⁷¹ *Convention on Biological Diversity*, Preamble:

...

Nothing also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific, certainty should not be used as a reason for postponing measures to avoid or minimize such threat.

¹⁷² *Rio Declaration*, *supra* note 130.

¹⁷³ *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Provisional Measures, Order, ITLOS Rep. 1999, at 280 (27 August 1999).

¹⁷⁴ *Id.*, ¶ 71.

¹⁷⁵ *Id.*, ¶ 70.

A.2.d Principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDRRC)

92. State Parties have the obligation to be collectively responsible with environmental protection and preservation through the common but differentiated responsibility and respective capabilities (CBDRRC) principle. It establishes that the obligation to combat climate change is a common responsibility for all nations. However, their responsibilities are differentiated in that not all countries should contribute equally – which means some countries carry a greater share of burden than others depending on their technological, financial, and structural capabilities, among others.

93. The CBDRRC principle is receiving increasing recognition in international law, especially in the context of climate change, which has been used as a tool to alleviate economic gaps between countries while achieving the objective to solve the climate change issue. It is expressed in Principle 7 of the *Rio Declaration* and Article 3.1. of the UNFCCC.

94. Articles 3.1 and 10 of the *Kyoto Protocol* apply the principle of “differentiated responsibility” to OECD countries, setting a range of different targets depending upon the States’ historic contribution and capabilities.

95. Under the *Paris Agreement*, while an essentially binary differentiation approach between developed and developing countries has been adopted similar to the UNFCCC approach, there are some marked differences. For example, all parties to the *Paris Agreement* are subject to the common obligation of preparing, maintaining, and updating their respective Nationally Determined Contribution (NDC) every five (5) years, and to reporting on its implementation every two (2) years. However, there is differentiation in that only developed countries are committed to provide finance and technology transfer while developing countries are not. Further, in terms of reporting, developed countries are obliged to provide more information while developing countries have more flexibility with respect to the information they report.

96. The Philippines, as a State Party to the UNFCCC, is committed to its core principle of common but differentiated responsibilities and respective capabilities. Indeed, Section 2 of its Republic Act No. 9729 (RA No. 9729), or the *Climate Change Act*, adopts as a State policy “the principle of protecting the climate system for the benefit of humankind, on the basis of climate justice or common but differentiated responsibilities,” among others.

A.2.e Polluter Pays Principle

97. Under the polluter pays principle, the cost of the pollution should be borne by the State responsible for causing the pollution. At the international level, the polluter pays principle was first found in “the 1972 Recommendation of the OECD Council on Guiding Principles concerning International Economic Aspects of Environmental Policies, where it stated that: The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in international trade and investment is the so-called Polluter-Pays Principle.”¹⁷⁶

¹⁷⁶ Development Asia, Polluter Pays Principle in Environmental Law, available at <https://events.development.asia/system/files/materials/2016/12/201612-environmental-law-principles-polluter-pays.pdf> (last accessed 07 December 2023).

98. While this principle is not explicitly referred to in the UNFCCC, the *Kyoto Protocol*, and the *Paris Agreement*, many of the provisions and obligations stated therein point to the evidence that said principle is being applied.

99. The Preamble and Article 3 of UNFCCC implicitly recognize the polluter pays principle. Under Articles 3.1 and 10 of the *Kyoto Protocol*, the polluter pays principle was made more explicit when they specifically placed legally binding obligations upon developed countries or those who have historically emitted pollutants in the past to reduce the GHG emissions and also to bear the costs of reducing such polluting emissions. Under the *Paris Agreement*, the principle is manifested in the obligations of Parties to submit nationally determined contributions, on the provisions of climate finance, and on emission trading schemes.

100. Within the Philippine context, this principle has found legislative imprimatur in Republic Act No. 8749 (RA No. 8749), otherwise known as the *Philippine Clean Air Act of 1999*, which declares that the Philippines recognizes that “polluters must pay.”¹⁷⁷ Thus, Section 18 thereof requires project and program proponents to put up financial guarantee mechanisms to finance the needs for emergency response, clean-up rehabilitation of areas that may be damaged during the program or project’s actual and post implementation.

A.3. Treaties, Conventions and Other International Agreements.

101. International conventions and treaties that are ratified by a great number of States can serve as basis for the establishment of a code of conduct in general international law.¹⁷⁸ International tribunals have held that “refusal to fulfill a treaty obligation involves international responsibility.”¹⁷⁹

102. Under the *Vienna Convention on the Law of Treaties*,¹⁸⁰ “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.”¹⁸¹ Specific to climate change, the main sources of State duties and obligations are the UNFCCC, including the agreements within its framework like the *Kyoto Protocol* and the *Paris Agreement*, which have been ratified by most States. Hence, State parties are expected to comply with their obligations thereunder and any breach thereof may trigger the application of relevant international law. While these climate change treaties prescribe legally binding commitments and obligations, the same are qualified in terms of application and obligation based on their classification as either Annex I, Annex II or non-Annex I countries.

TREATY	PARTIES	OBLIGATION
UNFCCC	Annex I	1. Mitigation , Articles 4.2(a), (b) and (e); 2. Knowledge Sharing , Article 4.2(e)(i); and, 3. Reporting , Article 12.2.
	Annex II	1. Financing , Articles 4.3 and 4.4; 2. Technology Transfer , Articles 4.5 and 4.8; and, 3. Reporting , Article 12.3.

¹⁷⁷ RA No. 8749, Section 2.
¹⁷⁸ Saul Hofileña, Jr *International Law* 8(1st ed. 2016). p. 8. See also Joaquin Bernas, *Introduction to Public International Law*. 16 (2009)
¹⁷⁹ International Law Commission, Report of the International Law Commission on the work of its 53rd session, at 32, U.N. Doc. A/56/10 (10 August 2001).
¹⁸⁰ Vienna Convention on the Law of Treaties, *opened for signature* 23 May 1969, 1155 U.N.T.S. 331. (Hereinafter, Vienna Convention on the Law of Treaties)
¹⁸¹ Vienna Convention on the Law of Treaties, Article 26,

TREATY	PARTIES	OBLIGATION
	ALL Parties	<ol style="list-style-type: none"> 1. Promotion of International Economic System, Article 3; 2. Development, application, diffusion, and transfer of technologies and practices, Article 4.1(c); 3. Sustainable management and conservation and enhancement of sinks and reservoir, Article 4.1(d); 4. Preparations for Adaptation, Article 4.1(e); 5. Knowledge Sharing and Research, Articles 4.1(g) and (h); 6. Public Awareness, Article 4.1(i); 7. Program, Plan and Policy Formulation and Implementation, Article 4.1(b), (e) and (f); 8. Inventory, Article 4.1(a); 9. Reporting, Articles 4.1(j) and 12.1; and, 10. Adaptation and Impacts Response Measures, Articles 4.8 and 4.9
Kyoto Protocol	Annex I	<ol style="list-style-type: none"> 1. Limitation and Reduction of GHG Emissions, Articles 2.2 and 3.1; 2. Provision of Financial Resources, Article 11.2; 3. Experience and Knowledge Sharing, Article 2.1(b); 4. Policy Implementation, Articles 2.1(a) and 2.3; 5. National Inventories, Articles 5.1 and 7.1; and, 6. Reporting, Articles 3.3 and 7.2.
	Annex II	<ol style="list-style-type: none"> 1. Financing, Article 11.2(a).
	ALL Parties	<ol style="list-style-type: none"> 1. Development, application, diffusion, and transfer of technologies and practices, Article 10(c); 2. Policy and Program Implementation, Articles 10.1(a) and (b); 3. Research, Article 10(d); 4. Public Awareness, Article 10(e); and, 5. Reporting, Article 10(f).
Paris Agreement	ALL Parties	<ol style="list-style-type: none"> 1. Submission of Nationally Determined Contributions (NDCs) and Global Stocktake, Articles 4.2, 4.8, 4.9 in relation to 14.2, and 6.2; 2. Mitigation, Articles 4.3 and 6.4; 3. Adaptation, Article 7.9; 4. Adaptation Efforts of Developing Countries, Article 7.3; 5. Technology Transfer, Article 10.2; and, 6. Transparency, Articles 4.13 and 6.2.
	Developed Countries	<ol style="list-style-type: none"> 1. Lead in Mitigation Efforts, Article 4.4; 2. Financial Assistance, Articles 4.5, 9.1 and 10.6; 3. Transparency, Article 9.7; and, 4. Technology Transfer, Article 13.9.

103. The following international environmental documents are likewise within the ambit of treaties, conventions and other international agreements that create and impose State obligations that are relevant to climate change action for those States which are parties to them: (i) *Stockholm Declaration*; (ii) *Rio Declaration*; (iii) *Convention on Long-Range Transboundary Air Pollution* (1979); (iv) UNCLOS; (v) the *Vienna Convention for the Protection of the Ozone Layer* (1985); (vi) the amended *Convention on Marine Pollution from Land-Based Sources* (1986); (vii) the *Convention on Environmental Impact Assessment in a Transboundary Context* (1991); and, (viii) the *Convention on Biological Diversity* (1992).

104. In addition to international environmental treaties and documents, provisions of international human rights law are also relevant. The UDHR,¹⁸² ICCPR,¹⁸³ and the ICESCR¹⁸⁴ comprise the International Bill of Rights. The ICCPR and ICESCR are treaties which are binding upon State parties who ratify, sign or accede thereto. The rights stated therein are fundamental rights of all races and nationalities, present and future generations alike.

105. Further, the obligations of States under international human rights law follow the “respect-protect-fulfil” framework. The Office of the High Commissioner on Human Rights (OHCHR) describes these obligations in this manner:

“The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.”¹⁸⁵

106. Accordingly, all signatories to the ICCPR and ICESCR have the obligation to respect the enjoyment of the rights stated therein by the people, protect the enjoyment of such rights against abuses committed by the State, State actors and private individuals or entities, and take positive steps to ensure that such rights are continuously enjoyed.

106.a. *The Right to Self-Determination.* Both the ICCPR and ICESCR preface and lead with the right to self-determination, a foundational right which is an “essential condition” in a State’s ability to discharge its obligations in relation to the protection and fulfilment of all other ICCPR and ICESCR rights.¹⁸⁶ The categorical statement in Article 1 of both ICCPR and ICESCR that the people may not be “deprived of its own means of subsistence” puts States on notice that it is obliged to protect the right of self-determination against the threat of climate change.

106.b. The violation of the right to self-determination is most evident in Small Island Developing States and Least Developed Countries¹⁸⁷ who are most at risk of losing entire territories and population due to alarming sea level rises that will eventually completely submerge their land. The Philippines, as an archipelagic state, is likewise susceptible to the same risk as portions of its land mass and population are threatened by the same climate change impacts.

106.c. The *Fifth Assessment Report of the Intergovernmental Panel on Climate Change* discusses the impact of sea level rise on countries like the Philippines with extensive

¹⁸² Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (10 December 1948).

¹⁸³ ICCPR.

¹⁸⁴ ICESCR.

¹⁸⁵ Office of the High Commissioner for Human Rights, International Human Rights Law, available at <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (last accessed 11 October 2023).

¹⁸⁶ U.N. Human Rights Committee, CCPR General Comment No. 12: Article 1 (Right to Self-determination), *The Right to Self-determination of Peoples*, available at <https://www.refworld.org/docid/453883f822.html> (last accessed 24 October 2023).

¹⁸⁷ Office of the High Commissioner for Human Rights, *Understanding Human Rights and Climate Change*, at 14, available at www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf (last accessed 07 December 2023).

coastal systems and low-lying areas.¹⁸⁸ Within the Philippine context, the right to self-determination of numerous indigenous cultural communities and peoples whose way of life and livelihood are rooted in, and intricately entwined with, the islands and coastal areas will be violated if climate change impacts cannot be mitigated.

106.d. *The Right to Life.* Article 6(1) of the ICCPR provides, in very categorical words, that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” State actions relative to adaptation, mitigation, and conservation of the environment are crucial to the protection and promotion of this right since climate change directly and indirectly threatens one’s right to life.

106.e. Thus, in *General Comment No. 36*,¹⁸⁹ the UN Human Rights Committee emphasized the direct link between climate change and the right to life and tacitly inferred that mitigation and adaptation mechanisms adopted by States, particularly against conduct and activities that continue to increase GHG emissions, are part of its obligation to exercise due diligence to protect the right to life, thus:

7. States parties must respect the right to life. This entails the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. States parties must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State. The obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life. (*Citations omitted.*)

106.f. *Procedural Rights.* Article 19(2) of the ICCPR also recognizes the right to freedom of expression which includes the “freedom to seek, receive and impart information and ideas of all kinds.” This right is of particular relevance to climate change in light of the obligation of States to raise public awareness on environmental matters pursuant to Article 4.1(i) in relation to Article 6 of the UNFCCC.

106.g. In particular, Article 6(a)(ii) and (iii) of the UNFCCC imposes upon States the procedural obligation to ensure public information and participation in addressing climate change and its effects. Relatedly, Principles 6, 7 and 9 of the Framework Principles on Human Rights and the Environment¹⁹⁰ espouses that States should provide education and public awareness in environmental matters, public access to environmental information, and facilitate public participation in decision-making related to the environment.

106.h. *The Right to an Adequate Standard of Living.* Article 25 of the UDHR recognizes the right to an adequate standard of living. This is operationalized by Article 11 of the

¹⁸⁸ Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, at 151, ISBN: 978-92-9169-143-2 (02 November 2014).

¹⁸⁹ Office of the High Commissioner for Human Rights, *General Comment No. 36 on article 6: right to life*, available at <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life> (last accessed 07 December 2023).

¹⁹⁰ Special Rapporteur, *Framework Principles on the Human Rights and the Environment*, 37th Session of the Human Rights Council, U.N. Doc. A/HRC/37/59 (January 24, 2018).

ICESCR. This right is multi-faceted as it includes the right to adequate food, clothing, and housing;¹⁹¹ the right to be free from hunger;¹⁹² and the right to a safe drinking water and sanitation.¹⁹³

106.i. Inasmuch as climate change heavily impacts upon people's standard of living, emphasis must be given to State obligations that ensure sustainability of actions and timely and effective mitigation and adaptation mechanisms.

106.j. *The Right to the Highest Attainable Standard of Health*. Article 12 of the ICESCR interfaces this right with an explicit mention and linkage to environmental conditions and industrial hygiene. The State obligation to fulfil the right to health is an inclusive duty that is affected by GHG emissions, thus:

“xxx. States are also required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline. Furthermore, States parties are required to formulate, implement and periodically review a coherent national policy to minimize the risk of occupational accidents and diseases, as well as to provide a coherent national policy on occupational safety and health services.”¹⁹⁴ (*Citations omitted.*)

107. Withal, Articles 2 and 3 of the *Convention on the Rights of the Child* (CRC)¹⁹⁵ also obligate State parties “to take all measures to ensure that the child is protected against all forms of discrimination” and to make the “best interest of the child” the primary consideration in all actions concerning children.

107.a. Relative thereto, the Committee on the Rights of the Child released last 22 August 2023 its *General Comment No. 26*¹⁹⁶ on children's rights and the environment, with a special focus on climate change considering that “[a]s rights holders, children are entitled to protection from infringements of their rights stemming from environmental harm and to be recognized and fully respected as environmental actors.”¹⁹⁷ Thus, it was espoused

¹⁹¹ ICESCR, Article 11 ; *See also* U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), *available at* <https://www.refworld.org/docid/47a7079a1.html> (last accessed 24 October 2023).

¹⁹² ICESCR, Article 11; *See also* U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), *available at* <https://www.refworld.org/docid/4538838c11.html> (last accessed 24 October 2023).

¹⁹³ U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), *available at* <https://www.refworld.org/docid/4538838d11.html> (last accessed 24 October 2023).

¹⁹⁴ U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), *available at* <https://www.refworld.org/docid/4538838d0.html> (last accessed 24 October 2023).

¹⁹⁵ Convention on the Rights of the Child, *adopted* 20 November 1989, 1577 U.N.T.S. 3.

¹⁹⁶ Committee on the Rights of the Child, General comment No. 26 (2023) on children's rights and the environment with a special focus on climate change, *available at* https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRC_General%20Comment%2026_2023_EN.pdf (last accessed 07 December 2023).

¹⁹⁷ *Id.*, ¶ 7.

that in the context of climate change, the “best interest of the child” refers to State conduct that takes into consideration the risks and vulnerabilities of children, thus:

“Determining the best interests of the child should include an assessment of the specific circumstances that place children uniquely at risk in the context of environmental harm. The purpose of assessing the best interests of the child shall be to ensure the full and effective enjoyment of all rights, including the right to a clean, healthy and sustainable environment. States should not only protect children against environmental harm, but also ensure their well-being and development, taking into account the possibility of future risk and harm.”

107.b. Further, *General Comment No. 26* underscores that under the CRC, the following fundamental rights of children and international environmental law principles must be observed so that “children’s rights and environmental protection form a virtuous circle”¹⁹⁸ and that “[t]he obligation to respect children’s rights requires States to refrain from violating them by causing environmental harm. They shall protect children against environmental damage from other sources and third parties, including by regulating business enterprises. States parties are also under the obligation to prevent and remediate the impacts of environmental hazards on children’s rights,”¹⁹⁹ thus:

- i. The principle of inter-generational equity and future generations;
- ii. Right to non-discrimination, Article 2 of the CRC;
- iii. The principle of the best interests of the child, Article 3 of the CRC;
- iv. Right to life, survival and development;
- v. Right to be heard, Article 12 of the CRC;
- vi. Freedom of expression, association and peaceful assembly, Articles 13 and 15 of the CRC;
- vii. Access to information, Articles 13 and 17;
- viii. Right to freedom from all forms of violence, Article 19 of the CRC;
- ix. Right to the highest attainable standard of health, Article 24 of the CRC;
- x. Right to social security and adequate standard of living, Articles 26 and 27 of the CRC;
- xi. Right to education, Articles 29 and 29 (1)(e) of the CRC;
- xii. Rights of indigenous children and children belonging to minority groups, Article 30 of the CRC;
- xiii. Right to rest, play, leisure and recreation, Article 31 of the CRC; and
- xiv. Right to a clean, healthy and sustainable environment.

B. Legal Consequences for Breach of State Obligations in relation to Climate Change.

108. The inquiry now turns to the typology of the acts or omissions of States that have resulted in anthropogenic GHG emissions over time, thereby causing deleterious effects on the environment and exacerbating climate change impacts.

109. To arrive at a conclusion, the Philippines posits the following analytical approach:

¹⁹⁸ *Id.*, ¶ 8

¹⁹⁹ *Id.*, ¶ 68.

109.a. Are State acts or omissions not in conformity to State obligations under customary international law, general principles of law or treaties, conventions or other international agreements considered as a breach of such obligation?

109.b. If yes, are such acts or omissions wrongful under customary international law, general principles of law or treaties, conventions or other international agreements?

109.c. If such breach is a wrongful act under customary international law, general principles of law or treaties, conventions or other international agreements, what are the legal consequences and available legal remedies and claims of affected States?

State acts or omissions that have resulted in anthropogenic GHG emissions over time thereby causing climate change constitute a breach of State obligations under international law which is an internationally wrongful act.

110. The Philippines submits that the binding character of State obligations under international law must be viewed through the application of the principle of *pacta sunt servanda* and the *Doctrine of State Responsibility*.

111. *Pacta sunt servanda* is a customary rule of international law and codified by Article 26 of the *Vienna Convention on the Law of Treaties* which directs all States to perform their international obligations in good faith. Non-performance of international obligations in good faith disrupts the harmony of nations and violates, among other things, the fundamental duty to cooperate.

112. The Philippines has consistently conformed to this rule of law as reflected in the statements and acts of Philippine legislative and executive branches which show the Philippines' willingness to adhere to its treaty obligations under various international agreements. Specific to the environment, the Philippine legislature categorically expressed that "[a]s a party to the United Nations Framework Convention on Climate Change (UNFCCC), the State adopts the ultimate objective of the Convention which is the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."²⁰⁰ The Philippine executive department, through its Climate Change Commission (CCC), echoed this commitment in the Philippine's 2010-2022 *National Framework Strategy on Climate Change and National Climate Change Action Plan, National Adaptation Plan of the Philippines 2023-2028, and the Philippines' Nationally Determined Contribution and its Implementation Plan (NDCIP) and Financial Plan*.

113. This is likewise unambiguously emphasized in the rulings of the Philippine Supreme Court in the cases of *Tanada vs. Angara*,²⁰¹ *Government of Hongkong Special Administrative Region vs. Olalia, Jr.*,²⁰² and *Pharmaceutical and Health Care Association vs. Duque III*.²⁰³ Further, in *Bayan vs. Zamora*,²⁰⁴ the

²⁰⁰ RA No. 9729, as amended, Section 2 (2).

²⁰¹ *Tanada v. Angara*, G.R. No. 118295, 272 SCRA 18 (02 May 1997) (Phil.).

²⁰² *Government of Hongkong v. Olalia*, G.R. No. 153675, 521 SCRA 470 (19 April 2007) (Phil.).

²⁰³ *Pharmaceutical and Health Care Association of the Philippines v. Duque*, G.R. No. 173034, 535 SCRA 264 (09 October 2007) (Phil.).

²⁰⁴ *Bagong Alyansang Makabayan v. Zamora*, G.R. No. 138570, 342 SCRA 449 (10 October 2000) (Phil.).

Philippine Supreme Court underscored the Philippines' commitment to the time-honoured principle of *pacta sunt servanda* when it stated that “[a]s an integral part of the community of nations, we are responsible to assure that our government, Constitution and laws will carry out our international obligation.” Likewise, in *Secretary of Finance vs. Egis Road Operations, S.A.*,²⁰⁵ it was declared that the Philippines cannot sacrifice its compliance with its treaty obligations in the process of streamlining its operations as “[t]his would contravene the fundamental international law principle of *pacta sunt servanda* that is enshrined in Article 26 of the Vienna Convention on the Law of Treaties.”

114. The *Doctrine of State Responsibility*, on the other hand, is a general law of wrongs that governs when international obligations are breached such as in instances when international agreement commitments are not fulfilled in good faith, the consequences that result from such breach, and how such consequences may be invoked and addressed. It emanates from the nature of the international legal system, which relies on States as a means of formulating and implementing its rules, and arises out of the twin doctrines of state sovereignty and equality of states.²⁰⁶ Thus, in *Chorzów Factory (Germany v Poland) (Merits)*,²⁰⁷ this Court not only stated that it is a principle of international law but also as ‘a greater conception of law’ involving an obligation to make reparation for any breach of an engagement.

115. The rules on the *Doctrine of State Responsibility* are reflected in the International Law Commission’s (ILC) *Articles on the Responsibility of States for Internationally Wrongful Acts* (ARSIWA) which states that every internationally wrongful act of a State entails and prompts the responsibility of that State.²⁰⁸

116. Under Article 2 of ARSIWA, for State responsibility to arise, the State must engage in conduct that combines two elements: (i) it is attributable to the State under international law, and (ii) it must constitute a breach of an international legal obligation in force for that State at the time. Further, ARSIWA posits that State responsibility encompasses the acts or omissions of State organs,²⁰⁹ persons or entities who exercise elements of governmental authority,²¹⁰ organs placed at the disposal of a State by another State,²¹¹ State-controlled acts,²¹² acts carried out in the absence or default of the official authorities,²¹³ acts of insurrectional or other similar movements,²¹⁴ and acts acknowledged and adopted by a State as its own.²¹⁵ All these acts or omissions are attributable to the State as if they are direct acts of the State itself.

²⁰⁵ *Secretary of Finance v. Egis Road Operations*, G.R. No. 247748, January 30, 2023, available at <https://sc.judiciary.gov.ph/247748-the-secretary-of-finance-vs-egis-road-operations-s-a/> (last accessed 07 December 2023) (Phil.).

²⁰⁶ Malcolm N. Shaw, *International Law*, 589 (8th ed. 2017).

²⁰⁷ Case Concerning the Factory at Chorzow (Germany v. Poland), Merits, Judgment, 1928 P.C.I.J. (ser A) No. 17 (13 September 1928) (hereinafter Chorzow Factory).

²⁰⁸ International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, art. 1, U.N. Doc. A/56/10 (2001).

²⁰⁹ *Id.*, art. 4.

²¹⁰ *Id.*, art. 5.

²¹¹ *Id.*, art. 6.

²¹² *Id.*, art. 8.

²¹³ International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, art. 1, U.N. Doc. A/56/10 (2001).

²¹⁴ *Id.*, art. 10.

²¹⁵ *Id.*, art. 11.

117. Moreover, Article 12 of ARSIWA provides that a breach of an international obligation exists when an act or omission of a State results to a non-conformity to what is required of it, regardless of its origin or character – that is, whether such obligation sprang from customary international law, general principles of law, or treaties and other international agreements.

118. Furthermore, the element of “damage” to bring about State responsibility is not necessary as a State may already be made responsible by the mere failure, for example, to enact a law when it has a treaty obligation to do so.²¹⁶ In such case, the non-action of the State to do an act mandated by a treaty obligation would suffice to say that the State is already in breach of an obligation hence, already engaged in an internationally wrongful act. Thus, in the *Rainbow Warrior Case*,²¹⁷ the Tribunal therein held that any “unlawful action against non-material interests, such as acts affecting the honor, dignity or prestige of a State, entitle the victim to receive adequate reparation, *even if those acts have not resulted in pecuniary or material loss for the claimant State.*”

119. Clearly therefore, when a State – by itself or through State actors or other entities whose actions or omissions may be attributable to the State – commits acts or omissions that do not faithfully conform to its international obligations, the same constitute a breach of an obligation and, under international law, is an internationally wrongful act.

Appropriate legal remedies available to States affected by an internationally wrongful act that has resulted in anthropogenic GHG emissions over time thereby causing climate change.

120. The commission of an internationally wrongful act triggers State responsibility and, of necessary consequence, carries with it the application of the principal legal consequences of an internationally wrongful act, that is, the obligations of the responsible State to cease the wrongful conduct²¹⁸ and to make full reparation for the injury caused by the internationally wrongful act.²¹⁹ Moreover, all States, in accordance with the *Duty to Cooperate*, are obliged to cooperate to bring an end to such breach, not to recognize the situation brought about by the breach as lawful, and to not render aid or assistance to the responsible State.²²⁰

121. Accordingly, States affected by internationally wrongful acts of other States that have resulted in anthropogenic GHG emissions over time thereby causing climate change may demand that the remedial actions of either cessation and/or reparation following the injury caused by the internationally wrongful act be enforced.

²¹⁶ *Id.*, art. 12.

²¹⁷ Case Concerning the Difference Between New Zealand and France Concerning the Interpretation or Application of Two Agreements Concluded on 9 July 1986 Between the Two States and Which Related to the Problems Arising from the Rainbow Warrior Affair (New Zealand v. France), Decision, 20 R.I.A.A. 215 (30 April 1990) (hereinafter *Rainbow Warrior Case*).

²¹⁸ International Law Commission, Responsibility of States for Internationally Wrongful Acts, art. 30, U.N. Doc. A/56/589/Corr.1 (2001) (hereinafter ARSIWA).

²¹⁹ *Id.*, art. 31.

²²⁰ *Id.*, art. 40 and 41.

122. Cessation, as stated in Article 30 of ARSIWA, means that the responsible State must immediately cease its commission of the internationally wrongful act and must offer assurances and guarantees of non-repetition, if required by the circumstances.

123. As explained in the *Materials on the Responsibility of States for Internationally Wrongful Acts*,²²¹ “[c]essation is, as it were, the negative aspect of future performance, concerned with securing an end to continuing wrongful conduct, whereas assurances and guarantees serve a preventive function and may be described as a positive reinforcement of future performance”²²² and is most often the “first requirement in eliminating the consequences of wrongful conduct”²²³ and “frequently demanded not only by States but also by the organs of international organizations such as the [UNGA] and Security Council in the face of serious breaches of international law.”²²⁴

124. Reparation, on the other hand, requires full compensation for the injury, whether material or moral, caused by the internationally wrongful act. As provided by Article 34 of ARSIWA, this may be in the form of restitution, compensation, and satisfaction – either singly or in combination.

125. In *Chorzów Factory*,²²⁵ the Permanent Court of International Justice (PCIJ) decreed that the obligation to make reparation in an adequate form is a general principle of international law. It further defined reparation as “the indispensable complement to a failure to apply a convention and there is no necessity for this to be stated in the convention itself.”²²⁶ The Tribunal therein further stated that:

“The essential principle contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals - is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”

126. Following Article 35 of ARSIWA, restitution, as a form of reparation, imposes an obligation upon the responsible State to return the condition to what and how it was before the wrongful act was committed, that is, the *status quo ante*, provided that it is not materially impossible to do so and does not involve a burden that is out of proportion to the benefit derived from restitution.

127. Restitution may likewise take other forms. It may be in the form of material restoration, the return of territory, persons or property, reversal of some juridical act – such as in instances where a modification of the legal system or situation is needed as when a legislative act has to be amended to effect restitution – or some combination thereof.²²⁷

²²¹ INTERNATIONAL LAW COMMISSION, MATERIALS ON THE RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS 25 (2012).

²²² *Id.*, at 311.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Chorzow Factory*, 1928 P.C.I.J.

²²⁶ *Id.*

²²⁷ MATERIALS ON THE RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS, *supra* note 222, at 371.

128. If, however, restitution is not possible, Article 36 of ARSIWA provides that the responsible State is then under an obligation to compensate the affected State/s for the damage caused by the internationally wrongful act. Compensation must cover “any financially assessable damage.”²²⁸

129. *Apropos* in this context is the ruling of this Court in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica vs. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua vs. Costa Rica)*²²⁹ which held that Nicaragua had an obligation to compensate Costa Rica for the material damages caused by its unlawful activities as it damaged the environment. In particular, the consequent impairment or loss of the ability of the environment to provide goods and services, and the cost of the restoration of the damaged environment, was compensable under international law.

130. If both restitution and compensation are not possible, Article 37 of ARSIWA provides that the responsible State is under obligation to give satisfaction for the injury caused by the internationally wrongful act. Satisfaction may be in the form of an acknowledging responsibility for the breach, an expression of regret, a formal apology or any such modality most appropriate for the circumstances. This form of reparation, however, may be required only in instances where restitution and/or compensation is not possible.

131. Material and moral damages that result from an internationally wrongful act are customarily quantifiable and capable of pecuniary estimation, hence, can be covered by the remedies of either restitution and/or compensation. However, as seen in the *Rainbow Warrior Case*,²³⁰ the availability of the remedy of satisfaction finds significance in cases where non-material injury is caused to affected States such as in instances where slur and insult have been levied by the responsible State against an affected State. In such an eventuality, the remedy of satisfaction comes in hand.

132. Non-material injuries are frequently of a symbolic character, arising from the very fact of the breach of the obligation, irrespective of its material consequences for the State concerned.²³¹ State practice also provides many instances of claims for satisfaction in circumstances where the internationally wrongful act of a State causes non-material injury to another State such as situations of insults to the symbols of the State, such as the national flag, violations of sovereignty or territorial integrity, attacks on ships or aircraft, ill-treatment of or deliberate attacks on heads of State or Government or diplomatic or consular representatives or other protected persons and violations of the premises of embassies or consulates or of the residences of members of the mission.²³²

133. Within the Philippine context, the blueprint for the interplay and application of these remedial actions is set out in the *Rules of Procedure for Environmental Cases (RPEC)*²³³ which governs cases involving the enforcement or violations of environmental and other related laws, rules and regulations in order to afford “a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the [Philippine] Constitution, existing laws, rules

²²⁸ ARSIWA, *supra* note 219, art. 36(2).

²²⁹ ICJ Summary 2018/1 dated 02 February 2018, a copy of which is hereto attached as Annex “P.”

²³⁰ *Rainbow Warrior Case*, 20 R.I.A.A.

²³¹ MATERIALS ON THE RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS, *supra* note 222.

²³² *Id.*, at 416.

²³³ A.M. No. 09-6-8-SC Philippine Supreme Court, Rules of Procedure in Environmental Cases, Administrative Circular No. 09-6-8-SC (13 April 2010) (hereinafter RPEC).

and regulations, and international agreements”²³⁴ so as to “[ensure] the effective enforcement of remedies and redress for violation of environmental laws.”²³⁵

134. The RPEC provides for the remedy of a *Writ of Kalikasan* (Writ of Nature), a unique and innovative legal remedy espoused only by the Philippines and the very first of its kind in the entire world.

135. The *Writ of Kalikasan* “is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one’s constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats.”²³⁶ The remedy is available to a natural or juridical person, entity authorized by law, people’s organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated or threatened to be violated.²³⁷

136. Upon the grant of the *Writ of Kalikasan*, the reliefs of permanent cessation and desistance,²³⁸ rehabilitation or restoration,²³⁹ strict compliance,²⁴⁰ periodic reports,²⁴¹ and such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation, or restoration of the environment²⁴² are granted, if so warranted.

137. Indeed, while the *sui generis* remedy of the *Writ of Kalikasan* is concededly of municipal application in the Philippines, said remedial innovation is of value in the present discourse where climate change is of such magnitude that it imperils present and future generations. Thus, the Philippines respectfully proffers to this Court the proposition that a similar simple and speedy remedial measure be looked into and made available in the international setting so as to afford affected States, entities and peoples immediate recourse against environmental damage arising from breaches of State obligations under international law.

138. Premises considered, the Philippines submits that, as it specifically pertains to the environment (i) State acts or omissions that resulted in anthropogenic GHG emissions over time, thereby causing climate change, constitute a breach of State obligations under international law; (ii) that, within the wide vista of international law, such breach is an internationally wrongful act; and, (iii) the legal consequence of an internationally wrongful act springing forth from a breach of State obligations in respect to climate change affords affected States appropriate legal remedies and claims.

²³⁴ *Id.*, § 3(b).

²³⁵ *Id.*, § 3(c).

²³⁶ *Segovia vs. Climate Change Commission*, 47 Phil. 543, (07 March 2017).

²³⁷ RPEC, *supra* note 231, Rule 7, § 1.

²³⁸ *Id.*, § 15(a).

²³⁹ *Id.*, § 15(b).

²⁴⁰ *Id.*, § 15(c).

²⁴¹ *Id.*, § 15(d).

²⁴² *Id.*, § 15(e).

VI. Conclusion.

“The courts have a ready yardstick – the measurements according to the standard of the rule of law and the overarching principles of justice. This sense of justice must include justice for the sources of life on earth – the land, the air, and the water. That justice must be done though heavens should fall [sic]. *Fiat justitia ruat caelum.*”²⁴³ – Hilario G. Davide, Jr., [ret.] Chief Justice of the Philippine Supreme Court and former Permanent Representative of the Philippines to the United Nations in New York (2007-2010).

139. In closing, the Philippines respectfully proffers that the following submissions should be part of the answers of this Court to the questions raised by the UNGA in its request for an advisory opinion in its *Resolution 77/276*, thus:

139.a. The enormity of the effects of climate change and its calamitous impact on all States and peoples are doubtless confirmed by scientific consensus. Historical data and future projections of climate change have carefully assessed and determined a global threshold that, in the interest of the continuity and sustainability of life as the present generation knows it, must be immediately achieved. This paramount concern, therefore, impels and warrants the exercise of this Court’s advisory jurisdiction.

139.b. In the exercise of this Court’s advisory jurisdiction, the Philippines humbly and respectfully exhorts that the questions posed before it be viewed within the context of all people’s fundamental *Right to Life* from whence the *Right to a Clean, Healthy and Sustainable Environment* flows from. All State obligations related and relevant to the environment are but contingent obligations that give meaning to the *Right to a Clean, Healthy and Sustainable Environment*.

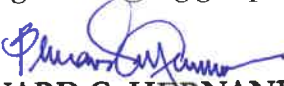
139.c. Any act or omission, therefore, that harms or tends to harm the environment ultimately results to a harm to all people’s life. Thus, any act or omission that may be attributable to a State which results in anthropogenic GHG emissions over time thereby causing climate change is a breach of a State obligation under international law. Such act or omission is an internationally wrongful act which, under prevailing international practice, triggers State responsibility and corresponding legal consequences pursuant to customary international law, general principles of law and applicable treaties, conventions, and other international agreements.

21 March 2024

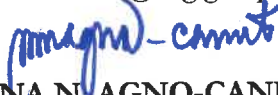
²⁴³ Hilario G. Davide Jr., *The Environment as Life Sources and the Writ of Kalikasan in the Philippines*, 29 *Pace Envtl. L. Rev.* 592 (2012).

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