

INTERNATIONAL COURT OF JUSTICE

REQUEST FOR AN ADVISORY OPINION

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE
CHANGE

(General List No. 187)

WRITTEN STATEMENT

BY THE GOVERNMENTS OF DENMARK, FINLAND,
ICELAND, NORWAY AND SWEDEN

The Hague
21 March 2024

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I. Introduction

1. In its Order of 20 April 2023, the International Court of Justice (hereinafter “**ICJ**” or “**the Court**”) invited States to submit written statements with regard to the advisory opinion requested by the United Nations General Assembly in resolution 77/276 adopted on 29 March 2023 at the 64th meeting of its Seventy-seventh Session. Pursuant to the Courts Order,¹ the Governments of Denmark, Finland, Iceland, Norway, and Sweden (hereinafter “**the Nordic countries**”) submit this joint written Statement.
2. The Nordic countries co-sponsored resolution 77/276, together with 127 other Member States, and the resolution was adopted by consensus. The resolution poses the following questions to the Court:

“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of

¹Reference is also made to the subsequent Court Orders dated 4 August 2023 and 15 December 2023 by which the Court extended the deadline for submission of written statements in the proceedings.

development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

3. The Nordic countries recognise that climate change poses an existential threat to both present and future generations and is a defining issue of our time. Our position on the challenges posed by climate change has been clearly stated on numerous occasions. In the recent joint Nordic ministerial declaration on COP28, the Nordic countries stressed that “*we need ambitious climate targets and immediate climate action*”.² Climate change is occurring due to anthropogenic emissions of greenhouse gases. The many changes in the climate system are already being felt around the world and will continue to have serious and irreversible impacts on the environment and human society. This has been underlined in several reports by the International Panel on Climate Change (hereinafter “**the IPCC**”)³ and the findings are not in dispute.
4. Climate change is a global crisis, which requires collective global action, combined with coordinated domestic mitigation measures. Facilitation of such action, globally and at domestic levels, crucially depends on international cooperation and international agreements, in particular the United Nations (hereinafter “**the UN**”) climate change regime within which the Paris Agreement reflects the most recent consensus and the gravitation point of global action to tackle the threat of climate change.⁴
5. The Nordic countries have consistently been strong promoters and supporters of the development and implementation of international agreements dealing with the issues of climate change and other concerns relating to environmental degradation. The Nordic countries have also actively advocated placing issues concerning the protection of climate and the environment on the agenda of competent international organisations and as key priorities for the international community.

² Nordic Ministerial Declaration on COP28, approved by the Nordic Ministers of Environment and Climate on November 13th 2023: <[Nordic ministerial declaration on COP28 | Nordisk samarbaid \(norden.org\)](#)> accessed 18 March 2024.

³ See e.g. the compilation of IPCC reports made available by the Secretariat of the United Nations in relation to this case: <[Reports of the Intergovernmental Panel on Climate Change \(IPCC\) \(icj-cij.org\)](#)> accessed 18 March 2024.

⁴ See Part IV (A) of this written statement.

6. The 1972 United Nations Conference on the Human Environment in Stockholm was the first world conference that placed environmental issues at the forefront of international concerns, and the resulting Stockholm Declaration was the first UN declaration relating to the global environment. It constituted a decisive milestone for the subsequent development of international environmental law. In 1987, the Brundtland Commission (the World Commission on Environment and Development (“WCED”)) coined the term sustainable development as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*”.⁵ The related conceptual framework spearheaded subsequent efforts to unite States in pursuit of sustainable development. This inspired the use of that term within the UN system and the international community as such, including notably in the UN climate change instruments.⁶ Moreover, it constituted a conceptual bedrock of the UN Sustainable Development Goals (hereinafter “**the SDGs**”).
7. The Nordic countries are deeply committed to reducing emissions and creating a cleaner world, with effective responses to the climate crisis, and to do our part in reaching the long-term temperature goal of the Paris Agreement. Safeguarding the well-being of present and future generations requires that societies strive to prevent environmental degradation, adapt to a changing climate, and continue their vigorous and concerted efforts to reduce greenhouse gas emissions.
8. The Nordic countries actively support a green transition, through political action at domestic levels, regionally, and internationally. In line with the outcome of the first global stocktake⁷ we join forces behind a collective commitment to transition away from fossil fuels in energy systems. This also means rapidly phasing in renewables, to reform the global energy system and further a sustainable development for humankind that, in the words of the Brundtland Commission, meets the needs of the present without

⁵ Report of the World Commission on Environmental and Development, “*Our Common Future*”, United Nations 1987, page 8, para 27: <<http://www.un-documents.net/our-common-future.pdf>> accessed 18 March 2024.

⁶ See e.g. UNFCCC Articles 2 and 3, paragraph 4, the Kyoto Protocol Article 2, paragraph 1, and the Paris Agreement Article 2, paragraph 1.

⁷ As reflected in Decision 1/CMA5 – Outcome of the first global stocktake. See “*Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fifth session, held in the United Arab Emirates from 30 November to 13 December 2023*”, FCCC/PA/CMA/2023/16/Add.1, page 2: <[Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fifth session. Addendum \(unfccc.int\)](https://unfccc.int/Reports-and-Studies/report-of-the-conference-of-the-parties-serving-as-the-meeting-of-the-parties-to-the-paris-agreement-on-its-fifth-session-addendum)> accessed 18 March 2024.

compromising the ability of future generations to meet their own needs. The Nordic countries are ready to contribute to the efforts in tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030, cf. the global stocktake decision paragraph 28 (a).⁸ This transition is a global effort for the bettering of the common interests of humankind and must therefore include all and leave no one behind. Decarbonisation requires a scale-up of technologies and solutions – as well as the creation of new and innovative technologies and solutions.

9. In this regard, the Nordic countries recognise the key role of business and industry in the climate transition, not least when it comes to demonstrating how the climate transition can spur innovation, rural development and competitive green jobs. By building on world-leading competence in science and energy industries in both the public and private sectors and in academia in the Nordic region, the Nordic countries take part in spearheading the development of new technologies that may facilitate a transition to new patterns of production and consumption, in line with the shared ambition of a sustainable development.
10. Against this backdrop of critical awareness of the challenges posed by climate change, consistent engagement for the advancement of environmental concerns globally and high ambitions for finding sustainable solutions to the issues at hand, the Nordic countries welcome the Court's consideration of the questions put to it by the General Assembly in resolution 77/276. It is observed in this regard that resolution 77/276 was adopted by consensus by the General Assembly on 29 March 2023 and that it is the questions posed in the resolution that have been referred to the ICJ for consideration.
11. The Nordic countries are satisfied that the Court has jurisdiction to offer an advisory opinion on the questions put to it in resolution 77/276. According to Article 65, paragraph 1, of the Statute of the ICJ, the Court is competent to render an advisory opinion on "*any legal question*" at the request of a body authorised to make such a request. The United Nations General Assembly is authorised to make such a request pursuant to Article 96, paragraph 1, of the Charter of the United Nations. With regards to the legal nature of the questions, the Nordic countries note that the questions posed

⁸ Ibid.

to the Court in resolution 77/276 are formulated with reference to existing legal obligations related to anthropogenic emission of greenhouse gases, as is clear from the phrases “[w]hat are the legal obligations” and “[w]hat are the legal consequences”. The Court is requested to deliver its opinion on the questions posed based on applicable law, and as such identify the existing principles and rules, interpret them, and apply them.⁹

12. It is the expectation of the Nordic countries that the Court’s consideration of the questions raised will provide a positive contribution to the continued work within the UN, its Member States, and the international community more generally, when dealing with the critical issue of climate change. We trust that the Court’s examination of the questions posed will contribute to improving the understanding of existing obligations under international law relating to the issue of climate change and environmental protection.
13. A strengthened global response to the threat of climate change needs a combination of focused political targets and implementation of the legal obligations agreed to by States. Enhancing the common understanding of legal obligations is an important contribution for any action and legal development in this field, also at national and regional levels. The Nordic countries believe that it is crucial that the Court remains sensitive to the ongoing political processes to address this pressing issue, as well as the role of the Paris Agreement as a key interpretative factor in any process seeking to determine the possible existence and scope of obligations relative to the issue of climate change mitigation and adaptation under other instruments.
14. This statement sets out the general views of the Nordic countries with regard to the questions put forward to the Court in resolution 77/276. Part II briefly reviews the background to the request for the advisory opinion. Part III presents general observations to the questions put forward to the Court. Part IV presents specific observations concerning question (a). Part V presents the observations of the Nordic

⁹ In accordance with the Court’s methodology as elaborated in its own jurisprudence. See e.g. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226 (p. 233-234, para. 13).

countries with regard to question (b). Finally, part VI concludes the Nordic countries observations.

II. Background to the request

15. The Nordic countries will in the following part examine the background to the request for the advisory opinion, put forward through the adoption by the UN General Assembly of resolution 77/276. The aim is to present the views of the Nordic countries with regard to both the broader context of international responses to the threat of climate change and the more immediate context for the adoption of resolution 77/276.
16. The threat of climate change has featured prominently on the agenda of different bodies in the UN for many years, including under the negotiations at the Conference of the Parties to the UNFCCC (hereinafter “COP”), as well as the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (hereinafter “CMP”) and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (hereinafter “CMA”).¹⁰
17. A testament to the universality of the concerns posed by climate change is the near universal participation in the Paris Agreement,¹¹ which constitutes the primary intergovernmental agreement relating to the global response to climate change and the gravitation point of global action to tackle the threat of climate change.
18. The UN has approached the threat of climate change in several ways. Although it has proven challenging to build unity in the Security Council on responses to climate change, aspects of climate-related peace and security implications have been referred to in the Council’s debates, presidential statements and resolutions on numerous occasions.¹² The General Assembly of the UN has also repeatedly addressed the issues of climate change. The subject of climate change makes up an integral part of UN General Assembly resolution 70/1 of 25 September 2015 entitled “*Transforming our world: the 2030 Agenda for Sustainable Development*”,¹³ which sets out the SDGs. The

¹⁰ See Part IV (A) of this written statement.

¹¹ The Paris Agreement was adopted in 2015. The Agreement is ratified by 194 State Parties and the European Union at the time of writing.

¹² See e.g. the overview on the subject “*Energy, Climate and Natural Resources*” in the Security Council, provided by the Security Council Report: <[Energy, Climate and Natural Resources Publications : Security Council Report](#)> accessed 18 March 2024.

¹³ United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1, adopted 25 September 2015.

SDGs make the subject of climate change instrumental to all aspects of the work of the UN, in addition to the exclusive focus of SDG 13 on the issue of climate change, which calls for States to take urgent action to combat climate change and its impacts.

19. The subject of climate change is also at the centre of resolution 77/165 of 14 December 2022 entitled “*Protection of global climate for present and future generations*”,¹⁴ as well as several other resolutions and decisions relating to the protection of the global climate. The United Nations Human Rights Council has also adopted several resolutions on human rights and climate change.¹⁵
20. The initiative leading up to resolution 77/276 was taken by a core group of 18 States led by Vanuatu. Specifically, it commenced as a response to a global youth movement pressing for action to submit a request to the ICJ for an advisory opinion on matters related to climate change. The core group drafted the questions and the text which led to resolution 77/276. During the end of 2022 and the start of 2023, there were extensive consultations and negotiations between delegations of UN Member States regarding the wording of resolution 77/276, eventually resulting in a text adopted by consensus.
21. As is clear from the statements made in connection with the adoption of the resolution, there was, notwithstanding the consensus decision to request an advisory opinion from the ICJ on the issue of climate change, a divergence of views among the members of the General Assembly with regard to the exact phrasing of the questions to the Court and to the interpretation of them.
22. The Nordic countries note in this regard that a prerequisite for the consensus adoption of the resolution and its broad co-sponsorship was the understanding that the resolution would not place additional responsibilities on States or diverge from the *lex lata*, but that it would clarify existing obligations under international law. This is reflected in the statements made by numerous delegations after the adoption of the resolution.¹⁶

¹⁴ United Nations General Assembly, *Protection of global climate for present and future generations of humankind*, A/RES/77/165, adopted 14 December 2022.

¹⁵ See e.g. United Nations Human Rights Council, *Human rights and climate change*, resolution 10/4, adopted 25 March 2009.

¹⁶ See A/77/PV.64 - Official Records of the United Nations General Assembly’s Seventy-seventh session 64th plenary meeting Wednesday, 29 March 2023: <[Request by the General Assembly for an advisory opinion of the Court \(icj-cij.org\)](https://www.icj-cij.org)> accessed 18 March 2024.

23. As reflected in the statements, another prerequisite was that the questions posed to the Court are not determinative of the existence of any such obligations, including where these flow from. Furthermore, the questions do not presuppose that breaches of any relevant obligations already have occurred or are occurring. The aim of the request is to examine the possible existence and content of any relevant obligations under existing international law, and the legal consequences under such possible obligations if breaches occur, to ensure future compliance.

24. After the adoption, the representative from Norway thus stated that:

“From Norway’s perspective, the greatest value of the resolution is in the elaboration it presents on current obligations, and through that, its ability to lay a foundation for improved future compliance and greater ambition on climate action. We are therefore pleased that the questions posed to the Court are focused on improving the understanding of existing obligations under international law with a view to preventing future breaches. We also welcome that the questions are related to obligations and possible legal consequences for all States, and are not limited to a specific State or group of States. We note that the questions are not determinative of whether there are such obligations or where they flow from. We also note that the questions posed to the Court do not prejudice the nature of such obligations or their consequences, but are openly paraphrased.”¹⁷

25. Similarly, the representative from Iceland stated:

“We expect the Court to answer the legal questions on the basis of the current obligations of all States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases. The questions to the International Court of Justice and the resolution as a whole do not prejudice the nature of such obligations and do not pertain to whether breaches have occurred, are occurring or will occur. Furthermore, we note that the preambular part refers to a number of matters that are not related to legal obligations,

¹⁷ Ibid, page 26.

and as such would not be expected to have any bearing on the Court's advisory opinion."¹⁸

26. The representative of the European Union (hereinafter "EU"), in this case speaking also on behalf of Denmark, Sweden, and Finland, made the following points in their statement:

"[T]he EU and its member States welcome the explanation provided by Vanuatu that its intention in leading this effort has been that the Court "will not place additional obligations or responsibilities" on States, but rather "provide legal motivation for all nations, including emerging and high-emitting developing countries, to build greater ambition into their Paris Agreement nationally determined contributions and to take meaningful action to curb emissions and protect human rights". Thus, in line with the aim and the content of the resolution, we expect the advisory opinion to, first, answer the legal questions on the basis of the current state of international law and with regard to all States; secondly, identify and, to the extent possible, clarify the obligations of States under applicable international law and the legal consequences for all States for the breach of those obligations. The resolution does not prejudge whether and when breaches have occurred, are occurring or will occur in the future but rather focuses on the consequences thereof for all States."¹⁹

27. The Nordic countries also note that a substantial number of other delegations made similar statements subsequent to the adoption of resolution 77/276.

¹⁸ Ibid, page 23.

¹⁹ Ibid, page 7.

III. General observations concerning the questions posed to the Court

28. This part will set out general observations of the Nordic countries concerning the questions posed to the Court in resolution 77/276. This will be supplemented by the more specific observations to those questions presented in part IV and V below.
29. The Nordic countries note that the questions posed to the Court in resolution 77/276 are formulated in broad terms. They are not limited to specific fields of international law. The chapeau of the questions directs the Court to have regard to a significant number of documents and instruments of potential relevance. Furthermore, the questions are not related to a particular set of facts that could direct the Court to identify and apply relevant law to a specific factual situation. According to the wording of the resolution, the Court is asked to examine, firstly, obligations of States to ensure protection of two specific domains, the climate system and the environment, from one particular type of societal activity, i.e. anthropogenic emissions of greenhouse gases (question (a)), and, secondly, the legal consequences under those obligations for States that have caused significant harm to the climate system or other parts of the environment (question (b)).
30. Contrary to what is usually the situation for a court in its exercise of its judicial function, the questions put to the Court in resolution 77/276 do not lend themselves to a definitive answer in the affirmative or the negative. The questions rather invite the Court to engage in an abstract examination of existing obligations of States which is not related to a particular type of activity and related legal consequences thereof.
31. According to its practice in advisory proceedings, the Court has discretionary competence to interpret the questions posed to it.²⁰ As noted in part II above, it is the opinion of the Nordic countries that the aim of referring the questions to the Court is not to place additional responsibilities on States or to diverge from the *lex lata*. The aim is rather to inform the understanding of international law applicable to the issue of protecting the climate system and the environment from anthropogenic emissions of greenhouse gases.

²⁰ See e.g. *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, I.C.J. Reports 1980, p. 73 (p. 88-89, para. 35) and *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1982, p. 325 (p. 348-349, para. 46-47).

32. In exercising its competence, the Court has previously touched upon the relationship between *lex lata* and *lex ferenda*. In the *Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons* the Court noted that; “[i]t is clear that the Court cannot legislate, and, in the circumstances of the present case, it is not called upon to do so”.²¹ Rather, as in similar cases before, “its task is to engage in its normal judicial function of ascertaining the existence or otherwise of legal principles and rules applicable” to the questions posed.²² Importantly, an examination of *lex lata* does not preclude the Court from specifying the scope of existing law and sometimes noting its trend, but merely directs that such statements must be in accordance with the established sources of international law as recognised in Article 38 of the ICJ Statute.
33. The Nordic countries trust that the Court will interpret the questions and examine the issues raised in such way that its legal assessment may be a positive contribution to the future engagement of the UN General Assembly and the international community at large with the issue of climate change and environmental degradation caused by anthropogenic emissions of greenhouse gases.
34. The Nordic countries further note that the request put to the Court through resolution 77/276 to examine international obligations relating to the issue of climate change coincides with a substantial number of proceedings before international and domestic courts and tribunals relating in some shape or form to the same issue. Some of these proceedings are pending, whilst others are completed.
35. The International Tribunal for the Law of the Sea (hereinafter “ITLOS”) is currently considering a request submitted by the Commission of Small Island States on Climate Change and International Law (hereinafter “COSIS”) for an advisory opinion. This concerns obligations of States under the UN Convention on the Law of the Sea (hereinafter “UNCLOS”²³) to prevent, reduce and control possible pollution of the marine environment caused by anthropogenic emissions, and to what extent the

²¹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226 (p. 237, para. 18).

²² *Ibid.*

²³ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 396.

obligation to protect and preserve the marine environment applies in relation to climate change impacts.²⁴

36. In the field of human rights at a regional level, a number of applications have been brought to the European Court of Human Rights (hereinafter “**ECtHR**”) relating to the issue of climate change and consequences thereof for the enjoyment of rights under the European Convention on Human Rights. The Inter-American Court of Human Rights has rendered an advisory opinion concerning the relation between environmental harm and human rights in 2017 and is currently considering a request submitted in January 2023 by Colombia and Chile for an advisory opinion on questions relating to obligations under the American Convention on Human Rights with regard to responding to the issue of climate change. There is also a number of judicial decisions from domestic courts dealing with particular issues related to climate change, as well as decisions of and ongoing cases before various UN Human Rights treaty bodies.
37. There is an overlap between a number of the mentioned cases and proceedings and the questions put to the Court in resolution 77/276. The advisory opinion that the COSIS has requested from ITLOS, for instance, invites ITLOS to examine issues that could also be understood as being covered by the wording of the questions posed to the ICJ in resolution 77/276. Similarly, the various proceedings and decisions relating to questions of human rights and climate change concern legal questions and legal aspects that also come within the ambit of the questions posed to the Court. This may raise questions concerning the interrelationship between the Court’s approach to the examination of the questions and other proceedings, and decisions and opinions from other institutions.
38. It is the understanding of the Nordic countries that the Court is not limited in its examination of the questions posed by proceedings before other judicial institutions. We note that the Court, in its interpretation of international law, can take into account judicial decisions by other judicial institutions or opinions or recommendations by other agents such as, for example, UN Human Rights treaty bodies established under relevant conventions. However, the Court is, as is also clearly reflected in Article 38, paragraph

²⁴ See ITLOS’ overview of the Case: <[Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission \(SRFC\) \(itlos.org\)](https://www.itlos.org/en/cases-and-proceedings/2023-01-Request-for-an-advisory-opinion-submitted-by-the-Sub-Regional-Fisheries-Commission-SRFC)> accessed 18 March 2024.

1 (d), of the Court's Statute and the Court's statements in, inter alia, the *Diallo*²⁵ case and the *Qatar v. UAE*²⁶ case, not bound to model its interpretation of relevant law on the interpretation done by other judicial institutions, or opinions or recommendations by other agents such as, for example, UN Human Rights treaty bodies established under relevant conventions.

39. The Nordic countries acknowledge the Court's unique role and representative composition as the principal judicial organ of the UN, in accordance with Article 92 of the Charter. This role sets the ICJ apart from other judicial bodies, such as international courts or tribunals with jurisdictions limited to a particular convention, or the national courts of individual States. It is placed on a rather different footing both with regard to the relevant sources but potentially also with regard to issues of legal methodology. With the request for an advisory opinion, the Court is asked to offer its independent and autonomous opinion on the existing obligations of States under international law to ensure the protection of the climate system and the environment from anthropogenic emissions of greenhouse gases and to approach those questions from the perspective of international law in general.
40. The Nordic countries stress the important role that the Court's examination of the request may play in informing the interrelationship between relevant rules of international law applicable to the issues at hand. The broad formulation of the questions posed to the Court in resolution 77/276, and the specific references to a number of documents and instruments, offer an opportunity for the Court to inform the relationship between the relevant rules of general international law and specialised fields of international law applicable to the issue.
41. In a context of a significant number of proceedings and overlapping litigation initiatives spurred by increased engagement by various civil society actors, the Court's examination of existing international law relevant to the issue of anthropogenic greenhouse gas emissions can offer guidance to States and other institutions. Given its

²⁵ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639 (p. 664, para. 66): "the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the [Human Rights] Committee".

²⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 71 (p. 104, para 101).

mandate as the principal judicial organ of the UN and its general mandate in matters of international law, the Court is, in the opinion of the Nordic countries, uniquely positioned to offer an important and sought after contribution to a systemic interpretation of relevant rules that more specialised international institutions would not be similarly expected or positioned to provide.

42. Furthermore, and as noted in the context of the discussions of the International Law Commission on the fragmentation of international law, the Nordic countries note that, “[t]he law cannot resolve in an abstract way any possible conflict that may arise between economic and environmental regimes”.²⁷ The same applies to apparent conflicts between other normative regimes. In such cases, it is necessary to have due regard in the interpretative process to the need for systemic integration, notably in conformity with Article 31 (3) (c) of the Vienna Convention on the Law of Treaties (hereinafter “VCLT”).
43. Issues pertaining to climate change mitigation and adaptation may give rise to the need to also consider applicable rules deriving from other branches of international law. Choices of means may need to take into account what sometimes, at least in appearance, constitute conflicting obligations. This may be true for environmentally sustainable measures ultimately aimed at reducing emissions and preparing for a green transition, like for example establishment and expansion of renewable energy sources.²⁸ Such considerations were early identified in the conceptual framework provided by sustainable development, as this is based on the idea of a balancing between the needs of the present and the needs of the future, by gearing societies towards solutions for our common existence that, on the one hand, meets the needs of the present whilst, on the other hand, does so without compromising the ability of future generations to meet their own needs. The Nordic countries trust that the Court will take into full consideration such factors.

²⁷ International Law Commission, Fifty-eighth session, “*Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law*”, Report of the Study Group of the International Law Commission, Finalized by Martti Koskenniemi, A/CN.4/L.682, p. 247, para. 488: <[Report of the Study Group of the International Law Commission, finalized by Mr. Martti Koskenniemi \(un.org\)](#)> accessed 19 March 2024.

²⁸ See e.g. about the effects of climate mitigation actions on biodiversity in the “*Scientific Outcome of the IPBES-IPCC co-sponsored workshop on biodiversity and climate change*”, section 3: <[20210609_scientific_outcome.pdf \(ipbes.net\)](#)> accessed on 19 March 2024.

IV. Specific observations concerning question (a)

44. This part will set out the specific observations of the Nordic countries concerning question (a) of resolution 77/276. Specifically, the question asks for the Court's opinion on the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations. The Nordic countries take the opportunity at this stage to comment on the UN climate change regime (A), the relevant rules of customary international law (B), the interface between the issue of climate change and the obligations of States under human rights instruments (C), as well as the United Nations Convention on the Law of the Sea (D).

A. The UN Climate Change Regime

45. Climate change caused by anthropogenic emissions of greenhouse gases and the severe detrimental effects it has on the climate system and other parts of the environment is a common crisis and concern of humankind. This has been underlined by the findings of the IPCC and is not in dispute. For over 30 years, the international community has worked together, shaped different legal vehicles, and created political consensus to deal with the issue, based on a gradually evolving scientific understanding of the various aspects of climate change. This is reflected in the carefully negotiated frameworks and agreements, which *inter alia* have responded to the evolving scientific understanding.

46. The UN climate change regime, consisting of the 1992 United Nations Framework Convention on Climate Change (hereinafter “UNFCCC”)²⁹, the 1997 Kyoto Protocol to the UNFCCC³⁰ and the 2015 Paris Agreement³¹, forms the primary body of international regulation setting out obligations of States to ensure the protection of the climate system from anthropogenic greenhouse gas emissions.

²⁹ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

³⁰ Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162 (Kyoto Protocol).

³¹ Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 79.

47. The objective of the UN climate change regime is to strengthen the global response to the threat of climate change. This is implemented through a combination of legal obligations and political targets. These should stimulate action on the part of States to keep the increase in the global average temperature within a level that would prevent dangerous anthropogenic interference with the climate system. As stipulated in Article 2, paragraph 1 (a) of the Paris Agreement, this means holding the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels, recognising that this would significantly reduce risks and impacts associated with climate change.
48. The Paris Agreement constitutes the most recent international consensus within the UN climate change regime, having been unanimously adopted in Paris in 2015 and entered into force on 4 November 2016. The Agreement has been ratified by 195 Parties (194 States plus the European Union)³², which gives it a near universal participation. As such, the Paris Agreement is today the central gravitation point for the global response to the threat of climate change, setting out the primary mechanisms, commitments and procedures for the combined efforts and ambitions of States to deal with the issue.
49. The Paris Agreement improves upon the earlier instruments, in particular the UNFCCC. This is reflected in Article 2, paragraph 1, of the Paris Agreement which stipulates that the Agreement “*in enhancing the implementation of [the UNFCCC], including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty [...]*”.
50. Importantly, the Paris Agreement has established a new consensus on critical issues, reforming and furthering the global response to the threat of climate change, setting up a system that includes a collective responsibility of all Parties and ensures progression over time. The Agreement combines procedural requirements and political discretion for Parties to the agreement to determine their own path and shape their national climate policies. This approach has allowed all Parties to contribute to the global efforts to combat climate change and increase ambitions over time.

³² Status as of 19 March 2024 as per Overview of current State Parties available at the following link: <[United Nations Treaty Collection](#)> accessed 19 March 2024.

51. The Nordic countries stress that there is no hierarchical relationship between the Paris Agreement and the UNFCCC to indicate that the latter takes precedence over the former in case of inconsistency. Any normative inconsistency between the Paris Agreement and the other agreements in the UN climate change regime would need to be resolved through recourse to the applicable principles for the interpretation of treaties and, in case of norm conflict, the well-established techniques for the resolution of norm conflict.
52. The near universal adoption of the Paris Agreement and the specific references therein to the UNFCCC, demonstrate that the Parties considered that the terms of the Paris Agreement and the system created by it are compatible with the UNFCCC and, if not, that the terms of the Paris Agreement should take precedence, given that it constitutes the most recent consensus. Following the maxims *lex posterior* and *lex specialis*, there is a general presumption that the terms of the Paris Agreement should prevail over the other instruments in the UN climate change regime in the case of norm conflict, being both the later treaty and the treaty with the more precisely delimited scope of application relating to the particular issues addressed in that agreement. Against this backdrop, it is the opinion of the Nordic countries that the Paris Agreement consensus prevails over the other instruments of the UN climate change regime in case of norm conflict.
53. The Nordic countries note that the core obligations under the UN climate change regime, including the Paris Agreement, are procedural in nature. Their aim is to set up mechanisms focusing and facilitating State action towards taking steps needed to reach the long-term goals of the Paris Agreement pursuant to Article 2, paragraph 1 (a)-(c).
54. The core of the Paris Agreement is the five-year ambition mechanism reflected in Article 4 of the Agreement. It requires all Parties to submit a Nationally Determined Contribution (hereinafter “**NDC**”) every five years, and these will represent progression and reflect highest possible ambition, reflecting common but differentiated responsibilities and respective capabilities in the light of different national circumstances. In accordance with Article 4, paragraph 2, of the Paris Agreement, Parties shall pursue domestic mitigation measures with the aim of achieving the objectives of the NDCs. Emission reductions may also be achieved through voluntary cooperation with other Parties to allow for a higher ambition in their actions, cf. Article 6 of the Paris Agreement.

55. The five-year ambition cycle of the Paris Agreement is set in place to ensure increased ambition over time and enable the Parties to collectively achieve the long-term temperature target of the Paris Agreement. The Parties shall, when communicating an NDC, be informed by the outcomes of the global stocktake, cf. Article 4, paragraph 9, of the Paris Agreement, in conjunction with Article 14. The first of which was recently completed at COP28 in 2023.
56. The Paris Agreement also ensures that the Parties report and track progress on their NDCs through an enhanced transparency framework for action and support, cf. Article 13. Each Party shall regularly provide information on emissions by sources and removals by sinks of greenhouse gases and information necessary to track progress made in implementing and achieving its NDCs. These biennial transparency reports are also subject to technical expert reviews. The Paris Agreement also establishes a mechanism to facilitate implementation of and promote compliance with its provisions, cf. Article 15. The mandate of the committee established under Article 15 is defined by its modalities and procedures. These procedures lead to recommendations and facilitate assistance to Parties that are found in non-compliance.
57. The Paris Agreement does not specify any objective criteria for determining a Party's NDC, other than that it will reflect the highest possible ambition of the Party and represent a progression beyond the already existing NDC. It is up to each Party to determine its highest possible ambition. It was a clear prerequisite for the unanimous adoption of the Paris Agreement that the determination of the NDC would remain a subject to the discretion of the sovereign States. Different proposals for models of specific "*fair*" burden sharing etc. were proposed and rejected during the negotiations.
58. To collectively achieve the purpose of the Paris Agreement and its long-term goals, a carefully negotiated bottom-up structure is built into the Agreement's provisions, which is based on the obligation for submission of NDCs and the idea that this system will create a political dynamic that increases ambition over time. Importantly, the structure of the Agreement entails that all Parties have commitments under the Agreement. These commitments are to be achieved based on the Parties' own capabilities and different national circumstances. As reflected in Article 2, paragraph 2, which stipulates that the Agreement will be implemented "*to reflect equity and the principle of common but*

differentiated responsibilities and respective capabilities, in the light of different national circumstances". As such, differentiation is reflected in the Agreement's various provisions, notably abandoning the bifurcated approach of linking obligations to annexes as set out in the UNFCCC. For example, this is reflected in Article 4, paragraph 4, of the Paris Agreement, according to which developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. And in Article 9, paragraph 1, where developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation.

59. The Nordic countries are of the view that the Paris Agreement's bottom-up approach to NDCs reflects the consensus of the international community on how to address climate change. The combination of legal requirements and political discretion for the Parties to the Agreement to determine their own contributions and shape their national climate policies is the approach that has made all Parties able to engage and contribute to global efforts to combat climate change. This was a prerequisite for the unanimous adoption of the Agreement.
60. The centrality of the UN climate change regime to the global response to the threat of climate change implies, in the view of the Nordic countries, that these instruments have a broader systemic relevance with regard to the examination of the obligations of States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.
61. The principle of systemic integration is reflected in Article 31, paragraph 3 (c), of the VCLT, and in a presumption of compatibility between obligations applicable between the same Parties. The UN climate change regime, and the Paris Agreement in particular, as the most recent consensus with near universal participation, is a key interpretative factor in any process seeking to determine the possible existence and scope of obligations relative to that same issue under other instruments. These include, *inter alia*, UNCLOS and various human rights instruments.
62. The Nordic countries recognise climate change as a serious threat to the global climate system with widespread consequences. The adverse effects of climate change are the

common concern of humankind, which calls for collective action and close cooperation. The Nordic countries stress that the COP is the supreme decision-making body of the UNFCCC, as the CMA is to the Paris Agreement. Through subsequent negotiations under the COP and the CMA, a large number of decisions have been taken to establish the rules for implementation of the agreements, to strengthen the political response, and raise the level of ambition. Negotiations under these bodies are the primary forum for increasing global climate ambition and implementation, and have delivered carefully formulated decisions for many years.

63. The Nordic countries recall that the constructive approach to combatting climate change is within the international legal framework of the UN climate change regime, including the UNFCCC and the Paris Agreement, as well as negotiating any further obligations within the COP and the CMA.

B. Customary International Law

64. Customary international law is one of the three primary sources of international law. In accordance with Article 38, paragraph 1 (b), of the Statute of the International Court of Justice, the Court shall apply international custom, as evidence of a general practice accepted as law.
65. The Court has stated in several cases dealing with issues of transboundary environmental consequences that States, in their bilateral relations, have an obligation under customary international law to exercise due diligence in not knowingly allowing their territory to be used for acts that prejudice the rights of other States, including acts that cause significant damage to the environment of another State. In the *Corfu Channel* case the Court made reference to “[...] every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States”.³³ In the *Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons*, the Court affirmed the general applicability of the obligation to prevent transboundary harm, stating 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

³³ *Corfu Channel case, Judgment of April 9th, 1949, I.C.J. Reports 1949, p. 4 (p. 22).*

national control is now part of the corpus of international law relating to the environment“.³⁴ In the *Pulp Mills* case, the Court further referred to the principle of prevention, as a customary rule, with origins in the due diligence that is required of a State in its territory, stating; “[a] *State is thus obliged to use all 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.*”³⁵

66. States have underlined the political importance of the obligation to prevent transboundary harm at various occasions. At the first global environmental conference, the obligation of States to reduce environmental harm to other States was consolidated and formulated as a principle, albeit not of a legal nature. According to Principle 21 of the Stockholm Declaration on the Human Environment adopted by the United Nations Conference on the Human Environment, Stockholm, 16 June 1972;

*“States have, in accordance with the Charter 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.”*³⁶

67. The Stockholm Declaration is a diplomatic conference declaration which is not legally binding. Principle 21 of the Declaration reaffirms the obligation to prevent transboundary harm, whilst also reiterating the shared understanding of States that a State has the sovereign right to exploit its own resources. The reference to this sovereign right in Principle 21 cannot be interpreted in a vacuum but must be read in conjunction with the rest of the Declaration, which also emphasises, especially in Principles 1 and 2, that the environment must be preserved and improved for the benefit of all peoples and individuals of both the present and future generations.
68. The obligation of States under customary international law to prevent significant transboundary harm to other States or areas beyond national control does not include an

³⁴ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226 (p. 241-242, para 29).

³⁵ *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 14 (p. 45, para 101).

³⁶ UN Conference on Human Environment, “*Declaration of the United National Conference on the Human Environment*” (16 June 1972) UN Doc A/CONF.48/14/Rev 1 (Stockholm Declaration).

exhaustive list of sources of such harm, but relates to *significant damage* done to *the environment of another State or of areas beyond national control*.³⁷ This standard does not impose or determine any specific obligations under international law to ensure the protection of the climate system or the prevention of consequences due to climate change. The standard is generally worded, and neutral as to the source of the harm.

69. Thus, in theory there is nothing that excludes concrete harm, resulting from anthropogenic emissions of greenhouse gases, from the obligation to prevent transboundary environmental harm, as long as the harm qualifies as significant and affects the environment of another State or areas beyond national control. However, a breach of that obligation resulting from such activities would require a demonstration that specific activities under the jurisdiction of that State have caused significant damage to the environment of another State or to areas beyond national jurisdiction.
70. The Nordic countries note in this regard that the standard has been developed on the basis of State practice relating to direct and manifested injury in bilateral affairs, and that it has never been applied outside that context to cases of alleged injury to natural systems or other more abstract elements that *might* in turn lead to consequences somewhere on the planet. Moreover, application of the standard would also require that it can be established that the State in question has not acted with the necessary due diligence to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control.
71. As there is no generally accepted standard, scientific or legal, for determination of the effects of a specific act of anthropogenic emissions on the climate system and other parts of the environment, the existing obligation under customary international law regarding transboundary environmental harm may not be transposed to the case of climate change.
72. Nor is there any specific standard developed for the apportionment and causal inter-relationship of the combined emissions of States. Against this backdrop, it is the opinion

³⁷ *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 14 (p. 45, para 101).

of the Nordic countries that the relevant framework for approaching a determination of whether a State has an obligation to act with due diligence in this regard, would be the procedural mechanisms established under the Paris Agreement.

73. As noted in part III, the UN climate change regime, in particular the Paris Agreement, as the most recent consensus in that regime, is a key interpretative factor in any process seeking to determine the scope of other obligations relative to the issue of climate change. The Nordic countries therefore stress that a determination as to whether a State, through anthropogenic emissions of greenhouse gases, has reneged on a general obligation to act with due diligence to prevent significant transboundary harm, would need to take into account the extent to which that State has taken the steps expected of it under the relevant instruments.
74. In this sense, the question of possible obligations of States under customary international law cannot meaningfully be applied to the empirical case of anthropogenic emissions of greenhouse gases without a careful consideration of the inter-relationship with the Paris Agreement. It is further noted, in this regard, that the long-term temperature target of the Paris Agreement is a global ambition that is not broken down into a designated emission reduction target for each Party to the Paris Agreement as a material obligation for that State. According to the Paris Agreement the States determine their own national determined contributions, which represents progression over time and reflect the State's highest possible ambition.³⁸
75. Principle 15 of the non-binding Rio Declaration on Environment and Development of 1992 states that *"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 damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."*³⁹ Similarly, the UNFCCC sets out, in Article 3, certain principles whereby the Parties should be guided to achieve the objective of the Convention. It follows from Article 3,

³⁸ See part IV (A) of this written statement.

³⁹ UN Conference on Environment and Development, *"Rio Declaration on Environment and Development"* (14 June 1992) UN Doc A/CONF.151/26/Rev 1 (Rio Declaration).

paragraph 3, that “*the Parties should take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects.*”

76. However, the Nordic countries note that an expectation of precautionary measures has not been endorsed as a rule of customary international law separate from the general obligation to prevent transboundary harm. The taking of precautionary measures might, however, under certain circumstances form an integral part of the general due diligence expected of States pursuant to the obligation to prevent transboundary harm.

C. Human Rights

77. The Nordic countries recognise that peoples and individuals of the present and future generations are and will be affected by any adverse effects of climate change, and that environmental harm and climate change have pervasive effects on societies. As recognised already by the 1982 World Charter for Nature; “*Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients*”.⁴⁰
78. As such, climate change and other consequences of anthropogenic emissions of greenhouse gases may affect the conditions for the realisation and enjoyment of human rights, such as the right to life, the right to a private life and the right to a standard of living adequate for the health and well-being of oneself and one’s family. Indigenous peoples are also particularly vulnerable to adverse effects of climate change which may, inter alia, affect the natural conditions for traditional livelihoods such as fishing, hunting and herding activities.
79. The synergy between environmental protection and human rights has been emphasised by States on numerous occasions. Principle 1 of the Stockholm Declaration, which as noted is a non-binding political declaration, refers to the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a

⁴⁰ United Nations General Assembly, *World Charter of Nature*, A/RES/37/7, adopted 28 October 1982.

life of dignity and well-being, and that one bears a solemn responsibility to protect and improve the environment for present and future generations.

80. Furthermore, the objective of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“the Aarhus Convention”) is; “[...] *to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, and each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of the Convention*”.⁴¹
81. The ultimate objective of the UNFCCC, and the related legal instruments, is to achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The UN climate change regime does not prescribe human rights obligations on the Parties. The UNFCCC does not explicitly mention human rights, but the Parties have a right to, and should promote, sustainable development.⁴²
82. The Paris Agreement contains a specific reference to human rights in its preamble, which states that: “*Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights [...]*”. This does not establish a legal obligation to protect peoples or individuals against the consequences of climate change as an independent human right but calls upon the Parties to recognise the need for a human rights-based approach when taking action to address climate change.
83. Fundamentally, human rights law defines the obligations of States with regard to their treatment of individuals, whereas international environmental law focuses primarily on obligations that States owe to one another, or to international organisations. The effects of anthropogenic emissions of greenhouse gases are global and do not respect borders,

⁴¹ Cf. Article 1 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

⁴² Cf. UNFCCC Article 2 in conjunction with Article 3, paragraph 4.

thereby emissions from one State's territory may affect the enjoyment of human rights in another State, although to differing degrees.

84. The Nordic countries emphasise that human rights obligations of States are established under the various instruments dealing specifically with those issues, and the scope of such obligations therefore must be assessed and interpreted on the basis of such treaties. Fundamentally, a human rights violation can only be established if there is an identifiable obligation under such instruments that a duty-holder has breached. This is a matter dependent on the scope of such obligations and, as also noted in part IV (B) of this written statement, a matter dependent on issues of causation, i.e. the establishment of a sufficiently close, immediate, credible and objective link between an act or omission, the situation claimed to constitute a violation and the person claiming to be victim of the alleged violation.
85. The fact that climate change adversely impacts societies and the conditions for the enjoyment of human rights does not in itself constitute an identifiable human rights violation. In regard to climate change, a human rights violation is conditioned upon the establishment of a link between the specific environmental degradation at hand and the impairment of a protected right.
86. A violation of a positive obligation of a State under relevant human rights instruments requires that causality can be established between one State's emissions of greenhouse gases and interference with the climate system creating and causing a specific and sufficiently severe impairment of an individual's human right. Moreover, States must ensure the rights of individuals subject to its jurisdiction, cf. for example Article 2, paragraph 1, of the 1966 International Covenant on Civil and Political Rights ("ICCPR")⁴³, and Article 1 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR")⁴⁴. The obligations under these human rights instruments are limited to the enjoyment of said rights by individuals

⁴³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1979) 999 UNTS 171.

⁴⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221.

within the specific jurisdictional boundaries. These questions must therefore be assessed under the relevant instrument in relation to a specific case.

87. Furthermore, the Nordic countries note that States enjoy a margin of appreciation with regards to the determination of the necessary steps taken to implement human rights in the domestic sphere, as is reflected in the ECHR and the practice of the ECtHR. Considering the global nature of the problem presented by the threat of climate change and the fact that greenhouse gas emissions are involved in most, if not all, human activities, there is a wider latitude of available approaches to climate change than in the face of, for example, a local environmental issue.
88. The choice of available measures and their precise timing are complex issues with society-wide implications, including on a State's national budget and welfare, at a larger scale than any single environmental issue. Considering the many options regarding measures and their consequences, including consequences for interests protected under the specific human rights instruments, there is even greater reason – and need – for the choice of measures to remain within the margin of appreciation of the State to be influenced through participation in democratic processes.
89. Thus, climate change litigation concerning alleged human rights violations gives rise to several highly complex questions, including regarding causality, jurisdiction, legal interest, proportionality and margin of appreciation. Therefore, claims concerning a violation of an established human right caused by consequences of climate change and one State's acts or omissions must be assessed on the basis of the detailed factual situation of any specific case.

D. United Nations Convention on the Law of the Sea

90. The 1982 United Nations Convention on the Law of the Sea, UNCLOS, is the comprehensive legal framework for the governance of the world's oceans and seas. The Convention has been ratified by 168 States, and the EU,⁴⁵ and major parts of the

⁴⁵ As of March 2024 according to: <UNTC> accessed on 19 March 2024.

convention constitute a codification of customary international law. As consistently affirmed in resolutions of the UN General Assembly, UNCLOS is of a universal and unified character, and sets out the legal framework within which all activities in the oceans and seas must be carried out, including the conservation and sustainable use of the oceans and their resources.⁴⁶ With its many provisions aiming to ensure sustainable ocean governance, UNCLOS codifies and balances the rights and duties of States to protect, explore, exploit, conserve and manage the living resources of different marine areas, while at the same time requiring the protection and preservation of the marine environment.

91. Of particular relevance for question (a) of the advisory opinion is UNCLOS part XII, which is concerned with the “[p]rotection and preservation of the marine environment”. Article 192 UNCLOS stipulates a general obligation for States parties “to protect and preserve the marine environment”.

92. As a general obligation, Article 192 is of general application to the activities of States in relation to the marine environment, which is supplemented and actualised for specific scenarios by specific provisions, either in UNCLOS or other international legal instruments. As such, the standard does not explicitly impose or determine any specific obligations under international law to ensure the protection of the climate system or the prevention of consequences due to climate change. The Nordic countries note that the immediate context of the provision, which is the other provisions in UNCLOS part XII, section 1, refers to several specific scenarios of deleterious activities that is further regulated, namely pollution of the marine environment, cf. Article 194, transfer of damage or hazards, cf. Article 195, and the use of technology or introduction of alien and new species, cf. Article 196. The immediate focus of the specific obligations in part XII is, thus, the various types of activities traditionally known to have, or to carry a concrete risk of having, a direct negative impact on the marine environment. General deleterious effects on the marine environment stemming from anthropogenic emissions of greenhouse gases are not specifically addressed by UNCLOS.

⁴⁶ See e.g. res. A/78/L.15 preambular paragraph 5 and 6.

93. Accordingly, the general obligation of States to protect and preserve the marine environment, as reflected in Article 192, does not set out specific obligations in relation to climate change. The Nordic countries note that there is no established practice to interpret the obligation under Article 192 in such a way, whilst also noting that the issue has recently been put to the consideration of ITLOS in the form of an advisory opinion.
94. The provisions of part XII of UNCLOS are generally recognised as being obligations of conduct rather than of a specific result, in practice entailing a due diligence obligation which States owe to each other. The nature of due diligence obligations is such that they are reactive to the context of each situation. In this context, the Nordic countries refer to ITLOS' characterisation of due diligence as a "*variable concept*".⁴⁷ The standard of diligence expected of States fluctuates depending on factors such as the state of scientific knowledge, the level of risk associated with activities, and the causal inter-relationship of the activity in question and specific negative impact on the protection and preservation of the marine environment. As has been noted in part IV (B) and (C) of this statement, there is no generally accepted standard, legal or scientific, for determination of the effects of a specific act of anthropogenic emissions on the climate system or other parts of the environment, including the marine environment. There is neither any specific legal standard developed for the apportionment and causal inter-relationship of the combined emissions of States.
95. Further, and against this backdrop, the Nordic countries note that the structure and comprehensive nature of UNCLOS presupposes that its general provisions, including specifically those pertaining to the protection and preservation of the marine environment, will be further elaborated by international rules, standards and recommended practices and procedures applicable in the relations between States.⁴⁸ The UN climate change regime constitutes such international rules within the meaning of UNCLOS Article 197. The fulfilment by States of their obligations to protect and preserve the marine environment as reflected by part XII of UNCLOS in relation to climate change-related environmental damage would, thus, have to be considered in

⁴⁷ *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10 (p. 43, para 117).

⁴⁸ Cf. VCLT Article 31 (3) c). See also UNCLOS Article 197 (1) and 212 (1) which refer to States "*taking into account internationally agreed rules, standards and recommended practices and procedures*".

light of the extent to which that State has taken the mitigative steps expected of it under the Paris Agreement, which is the most recent and near universally adopted consensus for climate change mitigation. As such, a potential application of the general obligation for States parties under UNCLOS Article 192 “*to protect and preserve the marine environment*” on environmental damage posed by an activity such as anthropogenic emissions of greenhouse gases, would coincide at large with a similar potential application of the due diligence obligation after customary international law, maintaining harmony of law between relevant international law on the matter.

V. Observations concerning question (b)

96. The following part will briefly present the observations of the Nordic countries with regards to question (b) posed in resolution 77/276.
97. With question (b), the Court is asked to render an advisory opinion on legal consequences under any international obligations identified pursuant to question (a) for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to (i) States, including, in particular, small island developing States (SIDS), which are injured or specially affected by or particularly vulnerable to adverse effects of climate change, and (ii) peoples and individuals of the present and future generations affected by the adverse effects on climate change.
98. The Nordic countries firstly note the numerous statements made by States in connection with the adoption of resolution 77/276, stressing the need to approach the issue of legal consequences and responsibility with a view to clarifying existing international law and, by that, offer a contribution to future compliance. As noted in part II of this written statement, the questions posed to the Court are not based on an assumption, presumption or allegation that breaches of any relevant obligations already have occurred or are occurring. The approach is essentially forward looking and not aimed at assessment of any specific historical acts or omissions or of any specific case.
99. The Court is not asked to interpret and comment on specific acts by specific actors, but to approach the issue of “*legal consequences*” with a view to offering an abstract examination of the matter, and to do so in relation to all States and not any single State or group of States. Thus, the Nordic countries trust that the Court will examine question (b) without assessing the issue of consequences in relation to specific factual situations.
100. The wording of question (b) could imply that “*significant harm to the climate system and the environment*” is a distinct standard to be applied by the Court in evaluating any legal consequences. The Nordic countries note that an assessment of legal consequences pursuant to specific international obligations will have to be done on the basis of the

standards established by those specific primary obligations. Thus, the wording of question (b) does not constitute a determination by States of “*significant harm*” as a general legal standard separate from possible obligations identified in relation to question (a), and as is always the case, the substantive obligations flow directly from the primary obligations. The Nordic countries refer in this regard to the fact that the aim of the resolution was broadly perceived to be that of examining the possible existence and content of relevant obligations under existing international law, and the legal consequences pursuant to such possible obligations if breaches occur.

101. The term “*under these obligations*” may be interpreted as directing the Court to focus its assessment of question (b) on legal consequences provided for by the primary rules engaged, i.e. “*the obligations of States under international law to ensure the protection of the climate system [...] from anthropogenic emissions of greenhouse gases [...]*”. It may be noted in that regard that the UN climate change regime essentially represents the collectively agreed approach of States and the international community to deal with the threat of climate change and the consequences of its adverse effects.
102. The Nordic countries at the same time note that an assessment of “*legal consequences*” in international law in relation to specific primary obligations is generally approached as a matter of applying the secondary obligations of State responsibility to a specific case of alleged violation of a primary obligation of a particular State. The Court has on numerous occasions elaborated on the general consequences of an internationally wrongful act pursuant to the law of State responsibility and the Nordic countries note that the applicable law relating to these issues are well established.
103. In 2001, the International Law Commission adopted the final version of the draft of the Articles on the Responsibility of States for Internationally Wrongful Acts (hereinafter “**the Draft Articles**”).⁴⁹ The Draft Articles codify customary international law on State responsibility and are widely accepted and applied in practice, including by the ICJ. The Draft Articles set out the general condition under international law for a State to be

⁴⁹ The Articles have been commended to the attention of the Governments by resolution 56/83 of 12 December 2001 without prejudice to their future adoption as a treaty text or other appropriate action, and resolution 59/35 of 2 December 2004 where the General Assembly also requested the Secretary-General to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the Articles.

considered responsible for its wrongful actions or omissions, and the legal consequences which flow therefrom.

104. Article 1 of the Draft Articles sets out the basic principle underlying the Draft Articles as a whole that a breach of international obligations by a State entails its international responsibility. Article 2 of the Draft Articles specifies the conditions required to establish the existence of an internationally wrongful act of a State; first the conduct in question must be attributable to the State under international law, and second, the conduct must constitute a breach of an international legal obligation in force for the State at the time. The Draft Articles do not define the content of the international obligations or the breach of which gives rise to responsibility. Thus, the questions rely on the primary rules, including customary and conventional international law.
105. Question (b) and sub-questions (i) and (ii) concerning the legal consequences for States where they, by their acts or omissions, have caused significant harm to the climate system, are abstract and require an individual and specific assessment of State responsibility under international law. Firstly, an obligation under international law must be identified and, secondly, an act or omission of the State must be attributable to the State and constitute a breach of an obligation under international law of that State. The assessment of whether an act or omission is attributable to the State, and the possible legal consequences thereof, requires a thorough assessment of the circumstances and facts of a State's international obligation and potential breach in question.
106. In that respect, the Nordic countries reiterate that anthropogenic emissions of greenhouse gases are transboundary and the consequences of climate change are global. The mitigation and prevention of climate change is thus a common interest and responsibility of humankind in the general meaning of that term. In continuation of the points previously made, we note that the adverse effects of climate change may injure or may have injured several States, and in that context we briefly point out that according to Article 46 of the Draft Articles, where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act. Similarly, Article 47 of the Draft Articles addresses the situation of a plurality of

responsible States in relation to the same internationally wrongful act.⁵⁰ It is noted that the identification of such an act will depend on the particular primary obligation, which cannot be prescribed in the abstract. In addition, in situations where several States by separate internationally wrongful conduct have contributed to causing the same damage, the responsibility of each State is determined individually, on the basis of the State's own conduct and by reference to its own international obligations.

107. As has been noted in part IV of this written statement, questions of detrimental environmental impacts flowing from anthropogenic emissions of greenhouse gases engage complex questions of causation intricately connected to the nature and function of global consumption patterns, energy systems and the combined requirements of life worldwide. There is no generally accepted set of criteria, legal or scientific, for the determination of a qualified link between the acts of one State or agent and a specific detrimental consequence.
108. The threat of climate change is a serious global challenge that requires a common immediate response by all States and the international community as a whole, and not a matter that can be reduced to the identifiable act of one State. As noted in part III of this written statement, the UN climate change regime and, in particular, the Paris Agreement, as the most recent consensus within that regime, offers the most appropriate framework from which to assess the extent to which any State has acted with the necessary due diligence in regard to its obligations to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases. Furthermore, as identified in part IV of this written statement, the long-term temperature goal of the Paris Agreement is a collective target that is not broken down into a designated emission reduction target for each Party to the Paris Agreement as a material obligation for that State.
109. Against the backdrop of the points made in the previous paragraphs, the question of potential legal consequences for States must therefore be dealt with on a case by case basis. Bearing this in mind, the Nordic countries welcome the Court's remarks on State

⁵⁰ Article 47, paragraph 1, of the Draft Articles state, where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.

responsibility in connection with climate change. We expect that these will be highly valuable to develop the further understanding of the interplay between general rules of international law and the specific regulation relating to the issue of climate change and environmental protection.

VI. Conclusion

110. In conclusion, the Nordic countries emphasise the urgent nature of the climate crisis and the need for an ambitious global response to combat climate change and prevent serious and irreversible harm to the environment and human society throughout the world. In the outcome of the global stocktake under the Paris Agreement, the Parties inter alia welcomed that the Paris Agreement has driven near universal climate action, but also that we are not on track to reaching the long-term goals and, consequently, that further action is needed on a wide breadth of issues under the Paris Agreement.⁵¹ The Nordic countries are committed to the long-term temperature goal of the Paris Agreement and to spearhead the technological innovation that may lead the transition of energy systems and consumption patterns towards a sustainable development. Resolution 77/276 was adopted by a consensus decision to request an advisory opinion from the Court with an aim to improve the understanding of existing obligations under international law.
111. The Nordic countries trust and highly appreciate the Court's competence to examine and interpret existing international obligations applicable to the questions posed. We note that the resolution calls for an abstract examination and interpretation of existing obligations of States not relative to a particular type of activity and related legal consequences thereof. We also reiterate the unique role of the Court as the principal judicial organ of the UN.
112. Furthermore, we reiterate the unique position of the Court, as a judicial institution of general competence in international law, to inform the understanding of the interplay between various fields of international law applicable to the issue of protecting the climate system and the environment from anthropogenic emissions of greenhouse gases. This includes, in particular, the role of the Paris Agreement as a key interpretative factor in any process seeking to determine the possible existence and scope of obligations relative to the issue of climate change under other instruments.

⁵¹As reflected in paragraph 1 and 2 of Decision 1/CMA5 – Outcome of the first global stocktake. See “*Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fifth session, held in the United Arab Emirates from 30 November to 13 December 2023*”, FCCC/PA/CMA/2023/16/Add.1, page 2: <[Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fifth session. Addendum \(unfccc.int\)](#)> accessed 18 March 2024.

113. With regard to the interpretation of the Paris Agreement itself, as the pinnacle of the UN climate change regime, the Nordic countries are particularly mindful of the Agreement's carefully crafted structure designed to accommodate both legally binding requirements and a political consensus that may evolve over time. Importantly, this structure is made to ensure that the level of ambition is constantly under review so the world is moving towards the objective of the Paris Agreement.
114. Finally, the Nordic countries stress that the adverse effects of climate change are a global challenge and a common concern of humankind, which calls for collective ambitious political action and close cooperation within the COP as the supreme decision-making body of the UN climate change regime. We continue to stand ready to engage with global partners both to ensure the protection of the climate system as well as to harness the opportunities of the green transition for the benefit of all.
115. We trust that the advisory opinion of the Court, in furthering understanding of applicable *lex lata*, may assist States in their identification of any political decisions that may be needed to further the global response to the threat of climate change. Against this backdrop, the Nordic countries welcome the Court's interpretation of applicable international law.

Respectfully submitted on behalf of the Nordic countries.



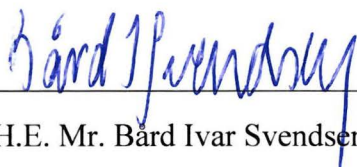
H.E. Mr. Jarl Frijs-Madsen
Ambassador of Denmark to the Kingdom of the Netherlands



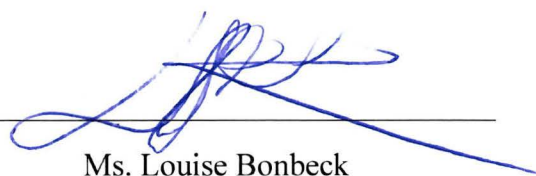
H.E. Mr. Ilkka-Pekka Similä
Ambassador of Finland to the Kingdom of the Netherlands



H.E. Mr. Kristján Andri Stefánsson
Ambassador of Iceland to the Kingdom of the Netherlands



H.E. Mr. Bård Ivar Svendsen
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