
INTERNATIONAL COURT OF JUSTICE

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

**WRITTEN SUBMISSION BY THE ORIENTAL REPUBLIC OF
URUGUAY**

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I. INTRODUCTION

1. On 29 March 2023, the United Nations General Assembly (“**General Assembly**”) adopted by consensus Resolution 77/276 (“**Resolution 77/276**”), whereby it decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice (the “**Court**”) to render an advisory opinion pursuant to Article 65 of the Statute of the Court on the following questions:

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

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?; and
 - (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment with respect to:
 - (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specifically 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?
2. The determination of these legal questions is crucial to the well-being of present and future generations of humankind.
3. The facts underlying the legal questions posed to the Court are not disputed. Indeed, there is scientific consensus that anthropogenic greenhouse gas (“**GHG**”) emissions are the dominant cause of global warming, which has caused—and is expected to continue causing, unless immediate and urgent measures are adopted—widespread adverse impacts and related losses and damages to nature, ecosystems and people, in particular in more vulnerable regions and in climate-exposed sectors, such as agriculture and tourism.
4. Due to its geography and economy, the Oriental Republic of Uruguay (“**Uruguay**”) is particularly vulnerable to the global effects of climate change. As part of its long-standing commitment to the fight against climate change, Uruguay has adopted various measures to

adapt to climate change and to mitigate its effects. Nevertheless, as other developing countries, Uruguay constantly faces financial, scientific and technical shortcomings that hinder its ability to adopt effective climate action.

5. It is against this background that Uruguay respectfully addresses this Court, pursuant to the Orders of the President of the Court of 20 April 2023 and 15 December 2023, to emphasize the importance of achieving legal certainty with respect to the States' obligations under international law to ensure the protection of the climate system and other parts of the environment from GHG emissions and the legal consequences under these obligations for States which have caused, through their acts or omissions, significant harm to the climate system and other parts of the environment.¹
6. In this written statement, Uruguay briefly refers to the gravity of existing and projected climate change, its impact on Uruguay, the measures adopted in Uruguay to mitigate and adapt to climate change and the challenges faced by Uruguay in its fight against climate change (**Section II**).
7. Thereafter, Uruguay respectfully submits that the Court has jurisdiction to render the advisory opinion as requested in accordance with Resolution 77/276 and that there are no compelling reasons for the Court to exercise its discretion not to render the advisory opinion (**Section III**).
8. With respect to the questions before the Court, Uruguay respectfully submits that States have specific obligations under international law to ensure the protection of the climate system and other parts of the environment (**Section IV.A**) and addresses the legal consequences for States which have caused significant harm to the climate system and other parts of the environment through their acts and omissions (**Section IV.B**).
9. Uruguay's concluding remarks may be found in **Section V**.

II. THE GRAVITY OF EXISTING AND PROJECTED CLIMATE CHANGE AND ITS IMPACT ON URUGUAY

10. There is scientific consensus that GHG emissions are the dominant cause of global warming, and that human-induced climate change has caused widespread adverse impacts to nature and people (**A**). Despite the upward trend in the planning and implementation of adaptation

¹ For the avoidance of doubt, Uruguay does not intend to comprehensively address all the questions submitted to the Court for determination in its advisory opinion but to provide its views on limited but important aspects which Uruguay respectfully submits should be considered by the Court as part of the answers to be provided by the Court in its Advisory Opinion.

and mitigation measures across the globe, the measures currently adopted are insufficient to effectively address the deleterious effects of climate change (B).

11. Due to Uruguay's geography and economy, which is largely dependent on agricultural production and farming, Uruguay is particularly vulnerable to the impacts of climate change (C). While it has conducted significant efforts to adopt measures to adapt to climate change (D) and mitigate the effects of climate change (E), Uruguay's ability to continue implementing mitigation and adaptation measures is severely affected by several financial, scientific and technical shortcomings (F).

A. THERE IS SCIENTIFIC CONSENSUS REGARDING THE EXISTENCE AND SEVERITY OF CLIMATE CHANGE, ITS CAUSES AND IMPACTS

12. There is scientific consensus on the grave harmful effects that GHG emissions arising from human activity have caused and will continue to cause to the global climate system. Indeed, Resolution 77/276 was largely driven by the overwhelming scientific evidence on the origin and effects of climate change and the concerns with respect to the harmful consequences of climate change on the well-being of present and future generations of humankind.

13. Thus, in the preamble of Resolution 77/276, the General Assembly noted with concern the existence of consensus that anthropogenic GHG emissions are the principal cause of climate change:

Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming observed since the mid-20th century,²

14. Further, Resolution 77/276 also refers to the devastating impact that human-induced climate change has had on the environment, including the onslaught of increasingly grave events:

Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including 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,³

15. As made evident by the excerpts transcribed above, the reports of the Intergovernmental Panel on Climate Change ("IPCC") on the state of development of scientific knowledge of

² UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023), Preambular Paragraph 9.

³ UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023), ¶ 9.

climate change, its widespread impacts and risks, are a vital source of information given their clarity and scientific robustness. In particular, Uruguay refers to the Summary for Policymakers of the IPCC's 2023 Synthesis Report (6th Assessment Report) (the “**Summary Report**”).⁴

16. Uruguay notes, preliminarily, that IPCC Summaries for Policymakers are approved by consensus, line-by-line, by all 195 member States of the IPCC.⁵ Consequently, the Summaries accurately reflect the scope of scientific consensus on the matter, as agreed by the international community. As such, these are crucial documents to establish the main scientific findings that are relevant for international decision-making with respect to climate change.
17. As arises from the Summary Report, the fact that human activities are chiefly responsible for climate change has been conclusively demonstrated. In this regard, the Summary Report conclusively states that “[h]uman 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”.⁶
18. Regarding the devastating impact of climate change in climate systems across the world, the Summary Report concludes that widespread and rapid changes have already occurred in the atmosphere, the oceans, cryosphere and biosphere, with related losses to nature and communities.⁷ Sadly, the occurrence of extreme climate events has already resulted in the loss of biodiversity and the increased mortality of species in affected regions:

Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems (high confidence). Hundreds of local losses of species have been driven by increases in the magnitude of heat extremes

⁴ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34.

⁵ Principles Governing IPCC Work, Appendix A: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports, section 4.4, available at: <https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf>.

⁶ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 4, statement A.1.

⁷ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 5, statement A.2.

(high confidence) with mass mortality events recorded on land and in the ocean (very high confidence).⁸

19. Moreover, environmental alterations due to climate change have come at a great economic and social expense, particularly in those sectors of the world economy that are most sensitive to climate variations. As noted by the Summary Report:

Climate change has caused widespread adverse impacts and related losses and damages to nature and people that are unequally distributed across systems, regions and sectors. Economic damages from climate change have been detected in climate-exposed sectors, such as agriculture, forestry, fishery, energy, and tourism.⁹

20. Based on the foregoing, the grave harmful effects that human behaviour (particularly, that giving rise to GHG emissions) has had on the environment, have been irrefutably established and may not be credibly disputed in these proceedings before the Court.

21. In addition, the Summary Report refers to the scientific evidence that countries are disproportionately affected by climate change. In particular, it has been proven with a high degree of confidence that communities who have historically contributed the least to climate change have been most gravely affected.¹⁰

22. Alarming, adverse impacts of climate change are expected to intensify in coming years:

In the near term, every region in the world is projected to face further increases in climate hazards (medium to high confidence, depending on region and hazard), increasing multiple risks to ecosystems and humans (very high confidence). Hazards and associated risks expected in the near term include an increase in heat-related human mortality and morbidity (high confidence), food-borne, water-borne, and vector-borne diseases (high confidence), and mental health challenges (very high confidence), flooding in coastal and other low-lying cities and regions (high confidence), biodiversity loss in land, freshwater and ocean ecosystems (medium to very

⁸ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 5, statement A.2.3.

⁹ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 6, statement A.2.6.

¹⁰ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 5, statement A.2.

high confidence, depending on ecosystem), and a decrease in food production in some regions (high confidence).¹¹

23. This notwithstanding, while some prospective changes are unavoidable and/or irreversible given the existing level of accumulated GHG emissions in the atmosphere, the gravity of future scenarios is conditional on the pathway of present and future GHG emissions and their concentration in the atmosphere. As clearly stated by the Summary Report:

Risks and projected adverse impacts and related losses and damages from climate change will escalate with every increment of global warming (very high confidence). They are higher for global warming of 1.5°C than at present, and even higher at 2°C (high confidence).¹²

24. Accordingly, it is still possible to mitigate the onset and potentially devastating consequences that climate change will have on present and future generations. However, for this mitigation to be effective, there is an urgent need to adopt coordinated and profound actions to slow down GHG emissions and thereby control the devastating effects of climate change. In this light, the scientific community has stressed the importance of maintaining global warming at 1.5°C above pre-industrial levels, which would require that the world reaches global net zero CO₂ emissions in the early 2050s:

All global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%), involve rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade. Global net zero CO₂ emissions are reached for these pathway categories, in the early 2050s and around the early 2070s, respectively.¹³

25. For this to be possible, it is of paramount importance and urgency that the international community conducts joint efforts to adopt immediate integrated climate action to mitigate the threat posed by climate change and secure a liveable and sustainable future for humankind:

¹¹ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 15, statement B.2.1.

¹² IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 15, statement B.2.2.

¹³ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 20, statement B.6.

Climate change is a threat to human well-being and planetary health (very high confidence). There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (very high confidence).¹⁴

B. CURRENT ADAPTATION AND MITIGATION MEASURES ARE INSUFFICIENT TO EFFECTIVELY ADDRESS THE DELETERIOUS EFFECTS OF CLIMATE CHANGE

26. As a result of increased global awareness of the severe risks associated with continued climate change, there is an upward trend in the planning and implementation of adaptation and mitigation measures across the world. However, the existence of financial and technological constraints limits the ability of developing countries to continue to adopt further action.
27. Regarding measures adopted by States and communities to adapt to and therefore reduce climate risks, the Summary Report notes:
- Progress in adaptation planning and implementation has been observed across all sectors and regions, generating multiple benefits (very high confidence). Growing public and political awareness of climate impacts and risks has resulted in at least 170 countries and many cities including adaptation in their climate policies and planning processes (high confidence).¹⁵
28. Some examples of successful adaptation measures include cultivar improvements, on-farm water management and storage, soil moisture conservation, irrigation, agroforestry, diversification in agriculture, the use of sustainable land management techniques and agroecological principles and practices.¹⁶
29. However, the adoption of adaptation responses has been fragmented and unequally distributed across regions, leading to the existence of adaptation gaps across different

¹⁴ IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, statement C.1, available at: https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf

¹⁵ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 8, statement A.3.1.

¹⁶ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 8, statement A.3.2.

sectors and regions.¹⁷ Existing financial constraints are unequivocally identified as a key barrier to further progress:

Key barriers to adaptation are limited resources, lack of private sector and citizen engagement, insufficient mobilization of finance (including for research), low climate literacy, lack of political commitment, limited research and/or slow and low uptake of adaptation science, and low sense of urgency. [...] Although global tracked climate finance has shown an upward trend since AR5, current global financial flows for adaptation, including from public and private finance sources, are insufficient and constrain implementation of adaptation options, especially in developing countries (high confidence).¹⁸

30. Similarly, mitigation policies adopted across the globe have consistently expanded in recent years.¹⁹ Examples of such measures include enhanced energy efficiency, recourse to renewable sources of power such as solar or wind energy, improved forest and crop/grassland management. These measures are becoming increasingly cost effective,²⁰ contributing to their further deployment.

31. However, projections based on current nationally determined contributions are insufficient to limit warming to 1.5°C above pre-industrial levels:

Global 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.²¹

¹⁷ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 8, statement A.3.3.

¹⁸ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 9, statement A.3.6.

¹⁹ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 10, statement A.4.

²⁰ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 10-11, statement A.4.2.

²¹ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 10, statement A.4.

32. As was the case for adaptation measures, the Summary Report notes with concern that the lack of sufficient funding also affects the further adoption of effective mitigation action, as required to prevent further climate change-related harm for present and future generations:

The adoption of low-emission technologies lags in most developing countries, particularly least developed ones, due in part to limited finance, technology development and transfer, and capacity (medium confidence). [...] In 2018, public and publicly mobilised private climate finance flows from developed to developing countries were below the collective goal under the UNFCCC and Paris Agreement to mobilise USD 100 billion per year by 2020 in the context of meaningful mitigation action and transparency on implementation (medium confidence).²²

33. As Uruguay has publicly stated in the past²³ and further explains below, it is crucial that developed States, especially those States that have mostly contributed to climate change by presenting sustained high levels of GHG emissions, enable the urgent adoption of measures for an adequate response to the challenges and risks associated to climate change. In this regard, Uruguay shares the conclusion of the Summary Report on the vital importance of international cooperation which, as is further explained below, has a strong legal basis on international law:

International cooperation is a critical enabler for achieving ambitious climate change mitigation, adaptation, and climate resilient development (high confidence). Climate resilient development is enabled by increased international cooperation including mobilising and enhancing access to finance, particularly for developing countries, vulnerable regions, sectors and groups and aligning finance flows for climate action to be consistent with ambition levels and funding needs (high confidence). Enhancing international cooperation on finance, technology and capacity building can enable greater ambition and can act as a catalyst for accelerating mitigation and adaptation, and shifting development pathways towards sustainability (high confidence).²⁴

²² IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 11, statement A.4.5.

²³ See Ministry of Environment, *Uruguay called [on States] to assume responsibility for climate change* (2023), 9 December 2023 (**Annex 15**), available at: <https://www.gub.uy/ministerio-ambiente/comunicacion/noticias/uruguay-realizo-llamamiento-asumir-responsabilidades-ante-cambio-climatico>.

²⁴ IPCC, 2023: *Summary for Policymakers*. In: *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 [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 34, statement C.7.6.

C. URUGUAY'S GEOGRAPHY AND ECONOMY MAKE IT PARTICULARLY VULNERABLE TO THE DELETERIOUS EFFECTS OF CLIMATE CHANGE

34. Uruguay's economy is largely dependent on agricultural production and farming, which involves 90% of the country's land. In addition, 70% of Uruguay's population and a large portion of its infrastructure is concentrated in low coastal areas, along the coast of the River Plate and the Atlantic Ocean.²⁵ Therefore, climate hazards such as sea level rise, drought, flooding, increasing temperatures, heatwaves and string storms greatly increase Uruguay's vulnerability to climate change. As expressed in Uruguay's Sixth Communication pursuant to the UNFCCC:

Climate change has profound impacts on territories and, consequently, on the socio-economic activities that take place there.

Among the impacts of climate variability and change that affect the country are droughts and the consequent losses in the agricultural sector, cost overruns in energy and difficulties in the supply of drinking water; floods that have effects on public health and displacements, damage to production and infrastructure; extreme coastal events causing erosion, damage to infrastructure and tourism; intense storms that put the population at risk; cold/heat waves that affect human and animal health.²⁶

35. Increases in average temperature in Uruguay due to climate change have been consistent with global trends. Reports show that the average temperature in the country has risen by 0.8°C over the past sixty-five years.²⁷ Estimates of future pathways are conditioned on projected GHG emissions, with estimated increases within the range of 1.5°C and 5.5°C by the end of the 21st century, as well as a likely increase in heatwaves.²⁸ Average rainfall is also expected to increase by 20%-30%.²⁹
36. This increase in the average temperature will likely affect rural activities in Uruguay. Activities such as farming, dairy production and rainfed agriculture are highly sensitive to climate conditions.³⁰ For instance, a study conducted by the Uruguayan Ministry of Agriculture,

²⁵ See Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 51.

²⁶ See Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 50.

²⁷ See Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 45.

²⁸ See Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 48.

²⁹ See Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 47.

³⁰ See Ministry of Farming, Agriculture and Fisheries, *National Adaptation Plan to Variability and Climate Change for the Rural Sector in Uruguay* (2019) (**Annex 7**), pp. 59-61.

Livestock and Fisheries confirmed that all the projected pathways will negatively affect the yield of soy and wheat crops, both of which are crucial for the Uruguayan economy.³¹

37. In relation to changes in the coastal system, projections for a high-emission scenario show, in the long term, increases in wave height of 0.03-0.04 metres in the northern part of the Uruguayan coast, including in the entry area of the River Plate, while decreases of between 0.03-0.04 metres are projected for the southern areas.³² The direction of the waves is expected to shift counter-clockwise, given the projected increases in waves coming from the East and decreases in waves from the South, which are due to the changes in atmospheric behaviour patterns.³³ Regarding sea level rises along the coast of the River Plate, an estimated median rise of 40-45 cm is projected for the end of the century in a scenario of a rise in global average temperature around 2°C, while the median rise for a high-emission scenario is of 55-60 cm.³⁴
38. The aggregate effect of these changes could be dire, potentially limiting access to the Uruguayan port and restricting its operational capabilities, thus gravely hindering the performance of a central element of the Uruguayan economy.³⁵ The rise in sea level, coupled with the increased height of waves, may in turn increase the risk of floods along the Uruguayan coastline.³⁶ Finally, the changes in currents leading to the shift in the direction of the waves could lead to increases in erosive processes and a reduction in the surface area of dry sand beaches.³⁷
39. The potential cost of these changes in the behavioural patterns of the Uruguayan coast may be dramatic. The total damage that the loss of land along the coast for the surface area that is affected by a high risk of flooding (including land, homes and public infrastructure) has

³¹ See Ministry of Farming, Agriculture and Fisheries, *National Adaptation Plan to Variability and Climate Change for the Rural Sector in Uruguay* (2019) (**Annex 7**), p. 62. Soy exports amounted to 14% of total exports in 2022 (see Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 41).

³² See Ministry of Housing, Territorial Planning and Environment, *Variability and climate change in Uruguay. Training materials for Technical Staff of National Institutions* (2019) (**Annex 8**), pp. 13-14.

³³ See Ministry of Housing, Territorial Planning and Environment, *Variability and climate change in Uruguay. Training materials for Technical Staff of National Institutions* (2019) (**Annex 8**), p. 28.

³⁴ See Ministry of Housing, Territorial Planning and Environment, *Variability and climate change in Uruguay. Training materials for Technical Staff of National Institutions* (2019) (**Annex 8**), p. 31.

³⁵ See Ministry of Housing, Territorial Planning and Environment, *Variability and climate change in Uruguay. Training materials for Technical Staff of National Institutions* (2019) (**Annex 8**), p. 3.

³⁶ See Ministry of Housing, Territorial Planning and Environment, *Variability and climate change in Uruguay. Training materials for Technical Staff of National Institutions* (2019) (**Annex 8**), p. 3.

³⁷ See Ministry of Housing, Territorial Planning and Environment, *Variability and climate change in Uruguay. Training materials for Technical Staff of National Institutions* (2019) (**Annex 8**), p. 3.

been estimated at USD 1.6 billion.³⁸ In turn, potential damages on port infrastructure and sanitation works in Montevideo and Punta del Este have been estimated at a further USD 400 million.³⁹

40. In addition, the loss of beaches along the Uruguayan coast, which constitute Uruguay's main touristic attraction, would result in an estimated loss of USD 438 million by 2100.⁴⁰

D. URUGUAY HAS CONDUCTED SIGNIFICANT EFFORTS TO ADAPT TO CLIMATE CHANGE

41. Mindful of the profound gravity of the deleterious effects of climate change in its weather, landscape and economy, Uruguay has been a regional pioneer in the adoption of measures to adapt to predicted climate trends and mitigate their impact. In 2010, Uruguay adopted a National Response Plan to Climate Change ("**National Response Plan**"), noting that "*climate change is the greatest threat that the human species must overcome to survive as such*".⁴¹ Based on the principles of sustainable development, precaution, prevention and common but differentiated responsibilities, among others, the National Response Plan laid out the objectives and strategic paths for prospective climate action in Uruguay.⁴² Among these, the National Response Plan included adopting measures to improve the State's ability to respond to extreme climate events⁴³ and the need to plan and maintain infrastructure in accordance with projected weather climate trends.⁴⁴
42. Moreover, in 2017, Uruguay approved a National Climate Change Policy, with the objective of "*promoting adaptation and mitigation in the Oriental Republic of Uruguay [] before the challenge of climate change.*"⁴⁵
43. Within the framework of the National Climate Change Policy, Uruguay has adopted National Adaptation Plans for key strategic areas: (i) the agricultural sector;⁴⁶ (ii) cities and

³⁸ See CEPAL, *The economy of climate change in Uruguay, Summary* (2010) (**Annex 19**), p. 37.

³⁹ See CEPAL, *The economy of climate change in Uruguay, Summary* (2010) (**Annex 19**), p. 37.

⁴⁰ See CEPAL, *The economy of climate change in Uruguay, Summary* (2010) (**Annex 19**), p. 37.

⁴¹ See Government of Uruguay, *National Response System to Climate Change and Variability* (2010) (**Annex 4**), p. 10.

⁴² See Government of Uruguay, *National Response System to Climate Change and Variability* (2010) (**Annex 4**), pp. 58-59.

⁴³ See Government of Uruguay, *National Response System to Climate Change and Variability* (2010) (**Annex 4**), p. 63.

⁴⁴ See Government of Uruguay, *National Response System to Climate Change and Variability* (2010) (**Annex 4**), p. 63.

⁴⁵ Uruguay, *National Climate Change Policy* (2017) (**Annex 5**), Paragraph 1.

⁴⁶ See Ministry of Farming, Agriculture and Fisheries, *National Adaptation Plan to Variability and Climate Change for the Rural Sector in Uruguay* (2019) (**Annex 7**).

infrastructure⁴⁷ and (iii) coastal areas.⁴⁸ National Adaptation Plans for the Energy and Health sectors are currently under development.⁴⁹

44. The National Adaptation Plan for the Agricultural Sector (“**NAP Agro**”), submitted in 2019, is a strategic instrument to guide public policies with a long-term vision of the productive, environmental, social and institutional dimensions of the challenges that climate change poses to rural activities. The NAP Agro proposes a short-term action plan (2020-2025) that prioritises 66 concrete adaptation measures on technology development and transfer, information systems, climate insurance, productive infrastructure, the promotion of good practices, the strengthening of networks and producer organisations and institutional capacities.⁵⁰ As reported by Uruguay in its Sixth Communication, the challenges identified by Uruguay to further implement the NAP Agro plan include budgetary limitations and lack of sufficient funds, as well as barriers in the adoption and transfer of technology for productive systems adapted to climate change.⁵¹ This notwithstanding, Uruguay has adopted several measures within the NAP Agro over recent years, including the Development and Adaptation to Climate Change project, funded by the World Bank, which provided support to 4,000 producers and provided training to 7,500 rural workers to improve their adaptation capabilities.⁵²
45. Furthermore, Uruguay has developed and implemented a National Plan for the adequate use and management of land, which already includes over 95% of Uruguay’s agricultural surface area.⁵³
46. As regards adaptation measures concerning urban areas, Uruguay has adopted the National Adaptation Plan for Cities and Infrastructure (“**NAP Cities**”). The overall objective of the NAP Cities is to reduce the vulnerability of communities to the effects of climate variability and change by building adaptive capacity and resilience in cities, infrastructure and urban environments. Furthermore, NAP Cities focuses on integrating adaptation measures into

⁴⁷ See Ministry of Housing, Territorial Planning and Environment, *National Adaptation Plan to Climate Change and Variability for Cities and Infrastructures in Uruguay* (2021) (**Annex 9**).

⁴⁸ See Ministry of Housing, Territorial Planning and Environment, *Advances in the National Adaptation to Climate Change Plan for Coastal areas in Uruguay* (2021) (**Annex 10**).

⁴⁹ See Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 11.

⁵⁰ See Ministry of Farming, Agriculture and Fisheries, *National Adaptation Plan to Variability and Climate Change for the Rural Sector in Uruguay* (2019) (**Annex 7**).

⁵¹ Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 171.

⁵² Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 175.

⁵³ Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 59.

existing and new policies, programmes and activities, and into national and local planning processes and strategies. This is done with the aim of improving the quality of life of the population.⁵⁴ As part of the implementation of the NAP Cities, the ecosystems that are most vulnerable to floods, coastal erosion and high temperatures have been identified. Progress in the implementation of the NAP Cities has been hindered, partly due to the lack of adequate resources to monitor and give impulse to the relevant action plans and to restrictions in the availability of permanent funding.⁵⁵

47. In relation to the National Adaptation Plan for the Coast, submitted in 2021, its main objective is to strengthen the capacities of institutions to identify impacts and vulnerabilities to climate change and to strengthen the capabilities of both government institutions and other stakeholders to define concrete adaptation strategies and actions in the coastal zone to cope with these impacts. In particular, it was proposed to: *(i)* incorporate an adaptation perspective in the development and implementation of the coastal zone policy framework, *(ii)* strengthen capacities at national, departmental and municipal levels related to climate risk management and adaptation in coastal ecosystems through human resources training and the financing of specific actions, and *(iii)* promote the preservation of natural coastal spaces and processes threatened by climate change and variability.⁵⁶ To date, eleven coastal areas have been selected for their vulnerability and prioritized for further study to determine the adequate course of action to implement adaptation measures.⁵⁷

E. DESPITE ITS LOW LEVEL OF GHG EMISSIONS, URUGUAY HAS VOLUNTARILY ADOPTED MEASURES TO MITIGATE THE EFFECTS OF CLIMATE CHANGE

48. Preliminarily, Uruguay notes that its GHG emissions amount to 0.05% of the worldwide total emissions originating in human activities.⁵⁸ This notwithstanding, Uruguay has a long-standing tradition in the protection and preservation of the environment and has made considerable progress in the adoption of mitigation measures over the past decades.
49. **First**, the protection of the environment is established under Article 47 of the Uruguayan Constitution, in the following terms:

⁵⁴ See Ministry of Housing, Territorial Planning and Environment, *National Adaptation Plan to Climate Change and Variability for Cities and Infrastructures in Uruguay* (2021) (**Annex 9**).

⁵⁵ Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 179.

⁵⁶ See Ministry of Housing, Territorial Planning and Environment, *Advances in the National Adaptation to Climate Change Plan for Coastal areas in Uruguay* (2021) (**Annex 10**).

⁵⁷ Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 181-182.

⁵⁸ Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 118.

The protection of the environment is of general interest. Individuals shall refrain from any act that causes serious depredation, destruction or pollution of the environment. The law shall regulate this provision and may provide penalties for offenders.

Water is a natural resource essential for life. Access to drinking water and access to sanitation are fundamental human rights.⁵⁹

50. In 2000, Article 47 of the Constitution was implemented by means of Law No. 17,283, the “General Law for the Protection of the Environment”, by which the following measures were adopted (*inter alia*):

- Introduced Uruguay’s commitment to promote a model of sustainable development;⁶⁰
- Established the main guidelines for the national environmental policy;⁶¹
- Created an environmental education programme;⁶²
- Established sanctions for breaches of environmental laws and regulations.⁶³

51. **Second**, following the National Energy Policy 2005-2030 adopted in 2008, Uruguay has made great efforts to undergo an energy transition process to decarbonize its electric system, which is currently highly diversified and of renewable origin.⁶⁴ From 2016 to 2022, Uruguay had a total installed capacity of 4,929 MW, with an electric generation composed of 44% of hydraulic origin, 31% of wind power, 17% of biomass thermal source, 6% of thermal fossil energy and 3% of solar photovoltaic generators.⁶⁵ Notably, in 2022, electricity generation from renewable sources was above 90%,⁶⁶ placing Uruguay among world leaders in renewable energy.

52. Uruguay is currently undergoing an ambitious second energy transition, based on the pillars of energy efficiency, electric mobility and the electrification of demand in general.⁶⁷ Through

⁵⁹ Constitution of the Oriental Republic of Uruguay (1997) (**Annex 1**), Article 47.

⁶⁰ See Law No. 17,283, General Law for the Protection of the Environment, 12 December 2000 (**Annex 2**), Article 4.

⁶¹ See Law No. 17,283, General Law for the Protection of the Environment, 12 December 2000 (**Annex 2**), Article 6.

⁶² See Law No. 17,283, General Law for the Protection of the Environment, 12 December 2000 (**Annex 2**), Article 11.

⁶³ See Law No. 17,283, General Law for the Protection of the Environment, 12 December 2000 (**Annex 2**), Article 15.

⁶⁴ See Ministry of Industry, Energy and Mining, *National Energy Policy (2005-2030)* (2008) (**Annex 3**).

⁶⁵ Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 63.

⁶⁶ See Ministry of Industry, Energy and Mining, *Energy Balance Infographic* (2022) (**Annex 11**).

⁶⁷ See Ministry of Industry, Energy and Mining, *Roadmap for Green Hydrogen* (2023) (**Annex 13**), p. 8.

this process, Uruguay seeks to achieve the decarbonisation of key economic sectors such as transport and industry (including the energy industry, i.e. energy consumption by the oil refinery and generation plants of State ownership), which continue to consume fossil fuels and are the main emitters of CO₂. The second energy transition will seek to improve the efficiency of the electricity system through the incorporation of storage and demand management technology to make use of surplus energy.⁶⁸ In addition, the country is committed to reducing emissions from sectors that have proven harder to abate, such as chemicals, maritime and aviation industries, through the implementation of the Green Hydrogen and Derivatives Roadmap with ambitious goals to 2040, for the domestic and export markets.⁶⁹

53. **Third**, several mitigation efforts have been recently adopted in the rural sector. In 2023, a National Strategy for sustainable livestock production was developed, including a National Plan of Appropriate Mitigation Actions (the “**Mitigation Plan**”). The Mitigation Plan identifies a series of practices and technologies that focus on improving productivity and efficiency on livestock farms, to reduce the intensity of GHG emissions per kilogram of meat produced.⁷⁰ In this regard, Uruguay notes that it has committed to reduce methane emissions related to farming by 32% by 2025.⁷¹
54. As regards forestation, the project “Reducing Emissions from Deforestation and Forest Degradation Readiness” was completed in 2022 with the support of the World Bank’s Forest Carbon Partnership Facility. This initiative sought to improve the quality of the country’s native forest ecosystems and their ecosystem services, as well as to reduce GHG emissions from deforestation and degradation processes and to promote conservation actions and increased carbon sequestration.⁷² Uruguay also notes that it has long had in place a Law which protects native bush ecosystems, prohibiting tree felling.⁷³
55. **Fourth**, Uruguay has recently adopted significant steps in the field of sustainable finance. In October 2022, Uruguay issued an innovative sovereign sustainability linked bond (SSLB) for

⁶⁸ Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 205.

⁶⁹ Ministry of Industry, Energy and Mining, *Roadmap for Green Hydrogen* (2023) (**Annex 13**).

⁷⁰ Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 212.

⁷¹ See Ministry of Farming, Agriculture and Fisheries, *Uruguay presented in Rome the document: ‘Emissions of methane in farming and rice crops*, 28 September 2023 (**Annex 17**), available at: <https://www.gub.uy/ministerio-ganaderia-agricultura-pesca/comunicacion/noticias/uruguay-presento-roma-documento-emisiones-metano-ganaderia-arroz>.

⁷² Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (**Annex 12**), p. 217.

⁷³ See Ministry of Farming, Agriculture and Fisheries, *Handbook for Native Bush Management* (2018) (**Annex 6**).

US\$1.5 billion, which resulted from a joint governmental effort involving the Ministry of Economy and Finance, the Ministry of Environment and the Ministry of Agriculture, Livestock and Fisheries and the Ministry of Industry, Energy and Mining.⁷⁴ The SSLB was the first global sustainability-linked bond to incorporate a step-up/step-down interest rate structure, depending on the achievement of the established sustainable targets.⁷⁵

56. Based on the experience of the SSLB, on 16 November 2023, the Board of the World Bank approved a new Development Policy Loan (DPL) for Uruguay in the amount of USD 350 million, including the groundbreaking feature of a step-down in interest payments based on verifiable performance against ambitious climate targets. The objective of this innovative financial mechanism is to reinforce positive incentives for Uruguay to achieve ambitious environmental goals during the loan repayment period.
57. **Fifth**, the institutionalization of the protection of the environment in Uruguay achieved a landmark moment in 2020, with the creation of the Ministry of Environment.⁷⁶

F. URUGUAY AND OTHER DEVELOPING COUNTRIES FACE CONSTANT CHALLENGES IN THE ADAPTATION TO AND FIGHT AGAINST CLIMATE CHANGE

58. Notwithstanding Uruguay's significant progress in the adoption of measures to address and combat climate change, it is vital that it continues to adapt to the deleterious effects of climate change and mitigate its GHG emissions in key sectors that are yet to be decarbonised.⁷⁷ In this regard, Uruguay emphasises that, despite its negligible contributions to global GHG emissions,⁷⁸ it has willingly adopted adaptation measures to protect its population from the deleterious consequences of climate change.

⁷⁴ See Ministry of Economy, *Uruguay, Green and Resilient Growth Development Policy Loan, Interest Rate Step-Down Mechanism to Incentivize Provision of Global Public Goods* (2023) (Annex 14).

⁷⁵ See Ministry of Economy, *Uruguay's Sovereign Sustainability-Linked Bonds (SSLB)* (2023) (Annex 16), available at: <https://www.mef.gub.uy/30687/20/areas/uruguays-sovereign-sustainability-linked-bonds-sslb.html>.

⁷⁶ See Ministry of Environment, *Creation and Historic Evolution*, 21 March 2024 (Annex 18), available at: <https://www.gub.uy/ministerio-ambiente/institucional/creacion-evolucion-historica#:~:text=El%20Ministerio%20de%20Ambiente%20fue,competencias%20exclusivamente%20en%20materias%20ambientales>. This notwithstanding, Uruguay notes that it has had environmental agencies since the creation of the National Institute for the Preservation of the Environment ("INPMA", for its acronym in Spanish) by Law No. 14.053 of 30 December 1971, although the first Ministry with environmental matters within its purview was the Ministry of Housing, Territorial Planning and Environment, created by Law No. 16.112 of 30 May 1990.

⁷⁷ Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change* (2023) (Annex 12), p. 283.

⁷⁸ See above, ¶ 46.

59. However, and of utmost concern to Uruguay, most of the further adaptation and mitigation measures envisaged by Uruguay have faced financial, scientific and technical shortcomings, which have greatly hindered Uruguay's ability to continue making progress in the matter.⁷⁹
60. In this context, Uruguay insists on the importance of receiving means to facilitate the further implementation of policies (financial, technical and technological) to continue protecting its territory and population from the dire impacts of climate change.

III. THE COURT HAS JURISDICTION TO RENDER THE REQUESTED ADVISORY OPINION

61. Pursuant to Resolution 77/276, the General Assembly decided "*in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion*"⁸⁰ on (i) the obligations of States to ensure the protection of the climate system and other parts of the environment from GHG and (ii) the legal consequences for States which have caused significant harm to the climate system and other parts of the environment through their actions or omissions.
62. As repeatedly noted by the Court, when the Court is seized of a request for an advisory opinion, "*it must first consider whether it has jurisdiction to give the opinion requested and if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request*".⁸¹
63. In this case, Uruguay respectfully submits that the Court has jurisdiction to render the advisory opinion as requested by the General Assembly in accordance with Resolution 77/276 (A) and there are no compelling reasons for the Court not to render the requested advisory opinion (B).

A. THE COURT HAS JURISDICTION TO RENDER AN ADVISORY OPINION ON THE LEGAL QUESTIONS SUBMITTED TO ITS CONSIDERATION

64. Pursuant to Article 65(1) of the Statute of the Court, the Court has jurisdiction to "*give an advisory opinion on any legal question at the request of whatever body may be authorized*

⁷⁹ For a detailed description of the financial, scientific and technical obstacles affecting each of the projected measures, see Ministry of Environment, *Uruguay, Sixth National Communication to the Conference of the Parties to the United Nations Framework Convention on Climate Change (2023) (Annex 12)*, pp. 284-294.

⁸⁰ UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023), ¶ 13.

⁸¹ See, e.g., *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, ¶ 54; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 10; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, ¶ 17.

by or in accordance with the Charter of the United Nations to make such a request”.⁸² The two elements are met in this case.

65. **First**, the two questions submitted to the Court are “legal questions”. In its Advisory Opinion on *Western Sahara*, the Court indicated that “questions submitted by the General Assembly [which] have been framed in term of law and raise problems of international law [] are by their very nature susceptible of a reply based on law; indeed, they are scarcely susceptible of a reply otherwise than on the basis of law”. Accordingly, the Court found that “they appear to the Court to be questions of a legal character”.⁸³
66. Similarly, in its Advisory Opinion concerning the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* the Court held that “a request from the General Assembly for an advisory opinion to examine a situation by reference to international law concerns a legal question”.⁸⁴
67. The Court has further clarified that “the contingency that there may be factual issues underlying the question posed does not alter its character as a ‘legal question’ as envisaged in Article 96 of the Charter”.⁸⁵
68. In this case, there is scientific consensus with respect to the facts underlying the questions submitted to the Court, which concern (i) “the obligations of States under international law”⁸⁶ to ensure the protection of the climate system and other parts of the environment from GHG emissions, and (ii) “the legal consequences under these obligations”⁸⁷ for States which have caused significant harm to the climate change and other parts of the environment through their acts or omissions.
69. The Court was requested to render its advisory opinion “having particular regard”⁸⁸ to a series of treaties (*i.e.*, the Charter of the United Nations, the International Covenant on Civil

⁸² United Nations, *Statute of the International Court of Justice* (1945), Article 65(1).

⁸³ *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, ¶ 15. See also, *e.g.*, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 13.

⁸⁴ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, ¶ 58.

⁸⁵ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, ¶ 40. See also, *e.g.*, *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, ¶ 17.

⁸⁶ UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023), ¶ 13(a).

⁸⁷ UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023), ¶ 13(b).

⁸⁸ UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023), ¶ 13.

and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement and the United Nations Convention on the Law of the Sea) and legal principles (*i.e.*, 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).

70. It is therefore clear that the questions submitted to the Court are legal questions, which were framed in legal terms, raise problems of international law and are, by their very nature, susceptible of being replied on the basis of international law.
71. **Second**, the advisory opinion was requested by the General Assembly, which is competent to request an advisory opinion by virtue of Article 96(1) of the Charter of the United Nations, which expressly allows it to “*request the International Court of Justice to give an advisory opinion on any legal question*”.⁸⁹
72. Therefore, the Court has jurisdiction to render the advisory opinion requested by Resolution 77/276.

B. THERE ARE NO COMPELLING REASONS FOR THE COURT TO EXERCISE DISCRETION NOT TO RENDER THE REQUESTED ADVISORY OPINION

73. Article 65(1) of the Statute of the Court provides that the Court “*may*” render an advisory opinion.⁹⁰ The provision has been consistently interpreted by the Court as providing it with the discretionary power to decline to give an advisory opinion even if it has jurisdiction:

The Court has recalled many times in the past that Article 65, paragraph 1, of its Statute, which provides that ‘The Court may give an advisory opinion . . .’, should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met.⁹¹

74. The Court has also held that its discretion to give an advisory opinion “*exists so as to protect the integrity of the Court’s judicial function as the principal judicial organ of the United*

⁸⁹ United Nations, *Charter of the United Nations* (1945), Article 96(1).

⁹⁰ United Nations, *Statute of the International Court of Justice* (1945), Article 65(1).

⁹¹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, ¶ 63; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, ¶ 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, ¶ 29.

Nations”,⁹² while acknowledging that its answer to a request for an advisory opinion “represents its participation in the activities of the Organization, and, in principle, should not be refused”.⁹³ Therefore, the Court has held that only “compelling reasons would justify refusal of such a request”.⁹⁴

75. In the present case, there are no compelling reasons for the Court to exercise its discretion not to render the advisory opinion, requested by consensus by the General Assembly and co-sponsored by 132 States,⁹⁵ on legal questions which are of utmost importance and relevance to the well-being of present and future generations of humankind.
76. For the avoidance of doubt, the Court is not requested to provide its opinion on the factual issues underlying the request, given that there is a clear scientific consensus regarding the existence and severity of climate change, its causes and impacts.⁹⁶

⁹² *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, ¶ 64; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, ¶¶ 44-45; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, ¶ 29.

⁹³ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, ¶ 65; *Interpretation of Peace Treaties*, Advisory Opinion: I.C.J. Reports 1950, ¶ 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, I.C.J. Reports 1999, ¶ 29; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, ¶ 30.

⁹⁴ *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, ¶23. See also *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶14; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, ¶ 30; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, General List No. 169, ¶ 65.

⁹⁵ The co-sponsors of Resolution 77/276 include Algeria, Andorra, Angola, Antigua and Barbuda, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belgium, Belize, Bulgaria, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Djibouti, Dominican Republic, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea-Bissau, Guyana, Hungary, Iceland, Ireland, Italy, Jamaica, Kiribati, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, North Macedonia, Norway, Palau, Panama, Papua New Guinea, Portugal, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Vanuatu, Viet Nam and State of Palestine. Additional co-sponsors: Afghanistan, Armenia, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Burundi, Dominica, Ecuador, El Salvador, Equatorial Guinea, Haiti, Indonesia, Israel, Japan, Kyrgyzstan, Malaysia, Mali, Mongolia, Niger, Peru, Philippines, Poland, Republic of Korea, San Marino, Tajikistan, Thailand and Uruguay.

⁹⁶ See above, Section II.A.

IV. URUGUAY'S SUBMISSIONS ON THE QUESTIONS BEFORE THE COURT

77. The questions before the Court concern: (i) the scope of the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions and (ii) the legal consequences for States which have caused significant harm to the climate system through their acts or omissions.
78. In this written submission, Uruguay will focus on certain issues of particular relevance to it and which should be taken into account by the Court when assessing the questions submitted to its consideration. Before addressing the questions before the Court, however, three preliminary issues must be raised.
79. **First**, as noted above, it is undisputed that the climate system is under threat and the damage caused by the past and present generations, which is often irreversible, will have a significant impact on the future generations.
80. This has been acknowledged by the Court in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, where the Court noted 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*”.⁹⁷ The Court also recognized that “[t]he environment is under daily threat”.⁹⁸ The Court further acknowledged, in the case concerning the *Gabčíkovo-Nagymaros Project*, “*the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage*”.⁹⁹
81. **Second**, when addressing the questions submitted by Resolution 77/276, the Court should consider the entire body of international law, including all treaties and general rules of international law that are applicable to climate change, its causes and its effects. This arises clearly from Resolution 77/276 itself, requesting the Court’s advisory opinion on the obligations of States “*under international law*”. The Resolution 77/276 further notes:

Emphasizing the importance of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the United Nations Convention on the Law of the Sea, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, among other instruments, and of the relevant principles and relevant obligations of

⁹⁷ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 29.

⁹⁸ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 29.

⁹⁹ *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 140.

customary international law, including those reflected in the Declaration of the United Nations Conference on the Human Environment and the Rio Declaration on Environment and Development, to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects.¹⁰⁰

82. The terms “*among other instruments*” and “*including*”, as well as the reference to principles and obligations of customary law, make it abundantly clear that the General Assembly does not intend that the Court limit its advisory opinion to those obligations arising directly under international treaties. Rather, the questions put to the Court should be addressed in light of any and all relevant sources of international law as reflected in Article 38 of the Statute of the Court, namely international treaties, customary international law, general principles of law and, to the extent relevant, judicial decisions and commentary.¹⁰¹
83. Further, Resolution 77/276 does not restrict the scope of the sources of international law put to the Court’s consideration to those emanating from the universal system of the United Nations. In this regard, sources such as regional human rights treaties, as interpreted by human rights treaty bodies, may also be of relevance to the Court’s consideration.¹⁰²
84. **Third**, it is a fundamental principle of international law, enshrined in Article 26 of the Vienna Convention on the Law of Treaties, that “*every treaty in force is binding upon the parties to it and must be performed by them in good faith*”.¹⁰³ As explained by the Court in the case concerning the *Gabčíkovo-Nagymaros Project*, the principle of *pacta sunt servanda* implies that “*it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application*”. Thus, the Court held that the principle of good faith “*obliges the Parties to apply [treaties] in a reasonable way and in such a manner that its purpose can be realized*”.¹⁰⁴

¹⁰⁰ UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023), ¶ 5 (emphasis added).

¹⁰¹ United Nations, *Statute of the International Court of Justice* (1945), Article 38(1).

¹⁰² Uruguay notes, for instance, that the Inter-American Court of Human Rights has previously found that Article 4 of the American Convention on Human Rights should be construed as to entail State parties’ obligation to secure a healthy and safe environment to their populations (see *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 140). Uruguay also notes that the Court has previously analysed the case law of regional human rights bodies (see, e.g., *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, ¶¶ 66-67 (emphasis added)).

¹⁰³ Vienna Convention on the Law of Treaties (1969), Article 26; See also, Jean Salomon, “*Volume I, Part III Observance, Application and Interpretation of Treaties, s.1 Observance of Treaties, Art.26 1969 Vienna Convention*”, in Olivier Corten, Pierre Klein (eds), *The Vienna Convention on the Law of Treaties* (Oxford University Press, 2011), ¶ 6.

¹⁰⁴ *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 142.

85. The States' obligations in connection with the climate system and other parts of the environment, in particular under the various climate-related treaties which the Court has been called by the General Assembly to have in "*particular regard*" when rendering its advisory opinion, should be assessed in light of this fundamental principle of law.
86. **Fourth**, customary obligations concerning the protection of the environment have an *erga omnes* character, in that they are not obligations owed to one particular State but to the international community of States as a whole, and that can be enforced by any State on behalf of that community.¹⁰⁵ This *erga omnes* character arises from the shared nature of the natural resources potentially affected by State actions that are harmful to the environment. For example, in the case concerning the *Nuclear Tests*, the Court found that certain announcements made by the French Government that it would terminate atmospheric nuclear tests were directed at "*the world at large*" and should be "*considered within the general framework of the security of international intercourse, and the confidence and trust which are so essential in the relations among States.*"¹⁰⁶ In this context, according to the Court, "[t]he objects of these statements are clear and they were addressed to the international community as a whole, and the Court holds that they constitute an undertaking possessing legal effect".¹⁰⁷
87. Against this background, Uruguay respectfully submits that, in accordance with the entire body of international law, States have obligations vis-à-vis other States to ensure the protection of the climate system and other parts of the environment (A). Despite any difficulty to establish a causal link, the breach of any such obligations by a State gives rise to the international responsibility of that State, without prejudice to the States' continued duty to perform any obligation breached (B).

A. UNDER INTERNATIONAL LAW, STATES HAVE SPECIFIC OBLIGATIONS TO ENSURE THE PROTECTION OF THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

88. Uruguay respectfully submits that, under international law, States have specific obligations to ensure the protection of the climate system and other parts of the environment, including the duty to prevent serious or irreversible environmental damage (1) even in the absence of full scientific certainty, in accordance with the precautionary principle (2). In addition, States

¹⁰⁵ Patricia Birnie, Alan Boyle, and Catherine Redgwell, *International Law and the Environment* (3rd ed., Oxford University Press, 2009), p. 131; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001) Article 48 ("*Article 48. Invocation of responsibility by a State other than an injured State 1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if: [...] (b) the obligation breached is owed to the international community as a whole.*")

¹⁰⁶ *Nuclear Tests Case (Australia v. France)*, I.C.J. Reports (1974), ¶ 51.

¹⁰⁷ *Nuclear Tests Case (Australia v. France)*, I.C.J. Reports (1974), ¶ 51. See also *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Separate Opinion of Vice-President Weeramantry.

must comply with their existing obligations to mitigate GHG emissions (3) and cooperate and provide support for the adoption of adaptation and mitigation measures (4), which includes financial support (5). Further, Uruguay explains that the States' obligations are informed by the principle of common but differentiated responsibilities, pursuant to which developed States should lead international climate action and provide support to developing States (6), guided by the concept of sustainable development (7).

1. States have the duty to use all the means at their disposal to prevent serious or irreversible environmental damage

89. Under customary international law, States have the duty to use all means at their disposal to prevent serious or irreversible damage to the environment of another State.
90. The Court has acknowledged the importance of preventing environmental damage, considering the *“often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage”*.¹⁰⁸ For example, in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court acknowledged 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”*.¹⁰⁹
91. In the case concerning the *Construction of a Road in Costa Rica Along the San Juan River*, the Court further explained that *“to fulfil its obligation to exercise due diligence in preventing significant transboundary environmental damage, a State must, before embarking on an activity having the potential adversely to affect the environment of another State, ascertain if there is a risk of transboundary harm, which would trigger the requirement to carry out an environmental impact assessment”*.¹¹⁰ If the environmental impact assessment confirms 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*

¹⁰⁸ *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 140. See also, e.g., International Law Commission (ILC), *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (and Commentaries)* (2001), General commentary (2) (*“Prevention should be a preferred policy because compensation in case of harm often cannot restore the situation prevailing prior to the event or accident”*).

¹⁰⁹ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 29.

¹¹⁰ *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, ¶¶ 104, 153. See also *Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 20 April 2010, ¶ 101. See also *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, ¶¶ 104, 188.

*with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk”.*¹¹¹

92. The customary character of the duty to prevent environmental damage has also been recognized by other international courts and tribunals. For example, in its 2017 Advisory Opinion on the Environment and Human Rights, the Inter-American Court of Human Rights (“IACtHR”) held that “[t]he principle of prevention of environmental damage forms part of international customary law”.¹¹² The IACtHR further explained as follows:

Under environmental law, the principle of prevention has meant that 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.’ This principle was explicitly established in the Stockholm and Rio Declarations on the environment and is linked to the international obligation to exercise due diligence so as not to cause or permit damage to other States.¹¹³

93. According to the IACtHR, it is frequently not possible to restore the situation that existed before the environmental damage occurred, so prevention “*should be the main policy as regards environmental protection*”.¹¹⁴ Nevertheless, the specific measures that a State should adopt to comply with the principle of prevention “*may change over time*”, including in light of new scientific or technical knowledge.¹¹⁵ The obligation must, in any event, “*be fulfilled in keeping with the standard of due diligence, which must be appropriate and proportionate to the level of risk of environmental harm*”.¹¹⁶ Therefore, “*the measures that a State must take to conserve fragile ecosystems will be greater and different from those it*

¹¹¹ *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, ¶¶ 104, 168.

¹¹² *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 129.

¹¹³ *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 128.

¹¹⁴ *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 130. See also International Law Commission (ILC), ‘Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (and Commentaries)’ (2001), General Commentary (2).

¹¹⁵ *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 142.

¹¹⁶ *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 142. The IACtHR noted, in this regard, that the obligation of prevention “*is an obligation of means and not of results*”. See also, ¶ 143.

must take to deal with the risk of environmental damage to other components of the environment”.¹¹⁷

94. The IACtHR has applied similar criteria in contentious cases, finding that:

[T]he principle of prevention of environmental harm [] entails the State obligation to implement the necessary measures ex ante damage is caused to the environment, taking into account that, owing to its particularities, after the damage has occurred, it will frequently not be possible to restore the previous situation. Based on the duty of prevention, the Court has pointed out that ‘States are bound to use all the means at their disposal to avoid activities under its jurisdiction causing significant harm to the environment.’ This obligation must be fulfilled in keeping with the standard of due diligence, which must be appropriate and proportionate to the level of risk of environmental harm. Even though it is not possible to include a detailed list of all the measures that States could take to comply with this obligation, the following are some measures that must be taken in relation to activities that could potentially cause harm: (i) regulate; (ii) supervise and monitor; (iii) require and approve environmental impact assessments; (iv) establish contingency plans, and (v) mitigate, when environmental damage has occurred.¹¹⁸

95. Importantly, the IACtHR noted that the principle of prevention applies not only with respect to activities that cause damage to the environment of another State, but also *“in relation to damage that may occur in areas that are not part of the territory of any specific State, such as on the high seas”*.¹¹⁹
96. Arbitral Tribunals have also interpreted and applied the duty of prevention in different contexts. For example, already in 1938, the arbitral tribunal in the *Trail Smelter* arbitration held that *“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 consequences and the injury is established by clear and convincing evidence”*.¹²⁰
97. More recently, the arbitral tribunal constituted in the arbitration regarding the *Iron Rhine Railway* noted that *“in international environmental law, a growing emphasis is being put on*

¹¹⁷ *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 142.

¹¹⁸ *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Inter-American Court of Human Rights, 6 February 2020, ¶ 208. See also *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 144.

¹¹⁹ *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 131.

¹²⁰ *Trail Smelter Case (United States, Canada)*, 16 April 1938 and 11 March 1941, RIAA Volume III, pp. 1905-1982, p. 1965.

*the of prevention*¹²¹ and that, while the duty applies, in principle, by reference to “*the impact that activities in one territory may have on the territory of another*, it also applies “*by analogy, where a state exercises a right under international law within the territory of another state*”.¹²² In the tribunal’s view, the duty, which “*has now become a principle of general international law*”, “*require that where development may cause significant harm to the environment there is a duty to prevent, or at least mitigate, such harm*”.¹²³

98. In the *Matter of the Indus Waters Kishenganga Arbitration*, the arbitral tribunal confirmed that “[t]here 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”.¹²⁴

99. In addition to courts and tribunals, the principle of prevention has also been recognized by States. For example, in the Stockholm Declaration, the following principle was declared:

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.¹²⁵

100. Also in the Rio Declaration, the States agreed to “*effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health*”.¹²⁶

101. In this context, Article 2 of the United Nations Framework Convention on Climate Change establishes that its “*ultimate objective*” is “*to achieve the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate change [] within a*

¹²¹ *Arbitration Regarding the Iron Rhine Railway (The Kingdom of Belgium v. The Kingdom of The Netherlands)*, Permanent Court of Arbitration (PCA), Award of the Arbitral Tribunal, 24 May 2005, ¶ 222.

¹²² *Arbitration Regarding the Iron Rhine Railway (The Kingdom of Belgium v. The Kingdom of The Netherlands)*, Permanent Court of Arbitration (PCA), Award of the Arbitral Tribunal, 24 May 2005, ¶¶ 222-223.

¹²³ *Arbitration Regarding the Iron Rhine Railway (The Kingdom of Belgium v. The Kingdom of The Netherlands)*, Permanent Court of Arbitration (PCA), Award of the Arbitral Tribunal, 24 May 2005, ¶ 59.

¹²⁴ *Indus Waters Kishenganga Arbitration (The Islamic Republic of Pakistan v. The Republic of India)*, Permanent Court of Arbitration (PCA), Partial Award, 18 February 2013, ¶ 449.

¹²⁵ Declaration on the Human Environment adopted by the United Nations Conference on the Human Environment, Stockholm (1972), Principle 21.

¹²⁶ United Nations General Assembly, *Rio Declaration on Environment and Development* (1992), Principle 14.

time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner”.¹²⁷ Moreover, Article 3 of the Convention provides that the Parties “should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects [...]”.¹²⁸

102. Other treaties also contain specific obligations to prevent harm to the environment, which are “informed” by the general duty to prevent. For example, Article 192 of the United Nations Convention on the Law of the Sea provides that “States have the obligation to protect and preserve the marine environment”.¹²⁹ The arbitral tribunal in the *Matter of the South China Sea Arbitration* held that Article 192 imposes a duty on States Parties which “extends both to ‘protection’ of the marine environment from future damage and ‘preservation’ in the sense of maintaining or improving its present condition”. The tribunal further noted that the “‘duty to prevent, or at least mitigate’ significant harm to the environment when pursuing large-scale construction activities [] informs the scope of the general obligation in Article 192”.¹³⁰

2. In accordance with the precautionary principle, States have the duty to prevent serious or irreversible environmental damage even in the absence of full scientific certainty with respect to the potential damage to be prevented

103. It is widely acknowledged that States have the duty to adopt measures to prevent threats of serious or irreversible environmental damage despite the lack of full scientific certainty. As explained by the International Tribunal for the Law of the Sea (“ITLOS”), the precautionary principle is “an integral part of the obligation of due diligence” and “applies in situations where scientific evidence concerning the scope and potential negative impact of the activity is insufficient, but where there are plausible indications of potential risks”.¹³¹
104. In the Advisory Opinion on the *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, the Seabed Disputes Chamber of the ITLOS noted a “trend” towards recognizing the precautionary approach as part of customary international law:

¹²⁷ *United Nations Framework Convention of Climate Change* (1992), Article 2.

¹²⁸ *United Nations Framework Convention of Climate Change* (1992), Article 3(3).

¹²⁹ *United Nations Convention on the Law of the Sea* (1982), Article 192.

¹³⁰ *Matter of the South China Sea Arbitration (The Republic of the Philippines v. The People’s Republic of China)*, PCA Case No. 2013-19, Award, 12 July 2016, ¶ 941.

¹³¹ *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, 1 February 2011, ¶ 131.

The Chamber observes that the precautionary approach has been incorporated into a growing number of international treaties and other instruments, many of which reflect the formulation of Principle 15 of the Rio Declaration. In the view of the Chamber, this has initiated a trend towards making this approach part of customary international law.¹³²

105. The IACtHR also recognized the precautionary principle and held that States “*must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty*”. Therefore, “*even in the absence of scientific certainty, [States] must take ‘effective’ measures to prevent severe or irreversible damage*”.¹³³

106. The precautionary principle has also been accepted by States. For example, in the Rio Declaration, the following principle was declared:

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.¹³⁴

107. Similarly, Article 3 of the United Nations Framework Convention on Climate Change also enshrines the precautionary principle in the following terms:

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.¹³⁵

108. More recently, the Committee on the Rights of the Child recalled the States’ “*due diligence obligation to take appropriate preventive measures to protect children against reasonably*

¹³² *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, 1 February 2011, ¶ 135.

¹³³ *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-American Court of Human Rights, 15 November 2017, ¶ 180.

¹³⁴ Rio Declaration on Environment and Development, proclaimed by the United Nations Conference on Environment and Development, June 1992, Principle 15.

¹³⁵ *United Nations Framework Convention of Climate Change* (1992), Article 3(3).

foreseeable environmental harm and violations of their rights, paying due regard to the precautionary principle".¹³⁶

109. The precautionary principle has also been incorporated into the domestic law of several States, including Uruguay. Thus, Article 6(b) of Law 17,283, the "General Law on the Protection of the Environment", provides that "[p]revention and foresight are the priority criteria in environmental management and, when there is a danger or serious and irreversible harm, the lack of absolute technical or scientific certainty cannot be invoked as a ground not to adopt preventive measures".¹³⁷

3. States should comply with their existing obligations to mitigate GHG emissions, including developing and implementing substantive environmental standards

110. Given the severe impacts that climate change has and will continue to have on human life across the world, it has become increasingly clear that States' commitments in terms of the protection of human rights entail a duty to reduce GHG emissions and adopt adequate adaptation action to mitigate climate change.
111. In this regard, the IACTHR has found that, in cases where there is a threatened violation of the right to life, States have the "duty to take positive, concrete measures geared towards fulfilment of the right to a decent life, especially in the case of persons who are vulnerable and at risk".¹³⁸ Of particular relevance to the issues addressed in this written submission, in its 2017 Advisory Opinion on the Environment and Human Rights, the IACHR held that "States have an obligation to supervise and monitor activities within their jurisdiction that may cause significant damage to the environment".¹³⁹
112. Moreover, the UN Human Rights Committee in its General Comment on Article 6 of the ICCPR (right to life) has confirmed that international environmental law should "inform" the content of Article 6 of the Covenant, and that "State parties should therefore [...] develop and implement substantive environmental standards".¹⁴⁰ Concordantly, in its analysis of the

¹³⁶ United Nations, *Committee on the Rights of the Child, General Comment No. 26 on Children's Rights and the Environment, with a Special Focus on Climate Change*, 22 August 2023, ¶ 69.

¹³⁷ See Law No. 17,283, General Law for the Protection of the Environment, 12 December 2000 (**Annex 2**), Article 6(b).

¹³⁸ Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay* (Merits, reparations and costs, 17 June 2005), ¶ 162.

¹³⁹ *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-American Court of Human Rights, 15 November 2017, ¶ 154.

¹⁴⁰ United Nations Human Rights Committee, *General Comment No. 36 – Article 6: Right to Life* (2018), ¶ 62.

interpretation and application of Article 6 to the case of Mr. Daniel Billy et al, the UN Human Rights Committee found that:

[T]he right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures to protect the right to life. [...]

The Committee observes that both it and regional human rights tribunals have established that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life.¹⁴¹

113. Accordingly, given the scientific evidence of the threat that climate change poses for human life, States should adopt measures to reduce GHG emissions and mitigate climate change as a corollary of their obligation to protect human life.

4. States must cooperate to regulate their behaviour in relation to the causes and effects of climate change and provide support for the adoption of adaptation and mitigation measures, particularly to developing countries

114. The duty to cooperate is a general principle of public international law that has been recognized by States in numerous occasions, including in the Charter of the United Nations.¹⁴² In relation to environmental matters, the duty to cooperate often derives from the principle that shared resources should be administered and protected in accordance with shared interests.¹⁴³

115. This duty was clearly set out *obiter dicta* by the arbitral tribunal in the *Lake Lanoux* case, as regards the States' duties to reach agreement in relation to environmental matters concerning shared natural resources. In *Lake Lanoux*, the tribunal addressed whether France's decision to allow Électricité de France to divert the waters of Lake Lanoux, which fed one of the tributaries of the Spanish river Segre. Despite finding that France had not breached its obligations under the Treaty of Friendship, Conciliation and Judicial or Arbitral Settlement Treaty between France and Spain, the tribunal emphasized States' general duty to consult and negotiate in good faith:

International practice reflects the conviction that States ought to strive to conclude such agreements: there would thus appear to be an obligation to accept in good faith all communications and contracts which could, by a

¹⁴¹ United Nations Human Rights Committee, *Views Adopted by Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 3624/2019* (2022), ¶¶ 8.3 and 8.5.

¹⁴² See e.g., United Nations, *Charter of the United Nations* (1945), Preamble ("to practice tolerance and live together in peace with one another as good neighbours") and Articles 56 and 74.

¹⁴³ See *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Separate Opinion of Judge Ad Hoc Charlesworth.

broad comparison of interests and by reciprocal good will, provide States with the best conditions for concluding agreements.¹⁴⁴

116. Moreover, the duty to cooperate in environmental matters was recognized in the Stockholm Declaration of 1972, issued in the context of the first world conference on the environment of 1972. Specifically, Principle 24 provides:

International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big and small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.¹⁴⁵

117. To a similar effect, Principles 7 and 27 of the Rio Declaration of 1992 embody the States' duty to cooperate in a spirit of partnership to protect the environment and further the development of international law as regards sustainable development.¹⁴⁶

[Principle 7] States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command. [...]

[Principle 27] States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

118. Furthermore, the duty to cooperate has been recognized by international judicial bodies as a fundamental principle of international law. For instance, in the *MOX Plant* case, the ITLOS stated:

[T]he duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and

¹⁴⁴ *Lac Lanoux Arbitration (France v Spain)*, (1957) 12 RIAA 281; 24 I.L.R. 101.

¹⁴⁵ Declaration on the Human Environment, Adopted by the United Nations Conference on the Human Environment, Stockholm (1972), Principle 24.

¹⁴⁶ United Nations General Assembly, *Rio Declaration on Environment and Development* (1992), Principles 7 and 27.

general international law and [] rights arise therefrom which the Tribunal may consider appropriate to preserve under article 290 of the Convention;¹⁴⁷

119. The States' duty to cooperate was also recognized by the International Law Commission ("ILC") in its *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*. In particular, Article 4 provides that:

States concerned shall cooperate in good faith and, as necessary, seek the assistance of one or more competent international organizations in preventing significant transboundary harm or at any event in minimizing the risk thereof.¹⁴⁸

120. In the commentaries to this Articles, the ILC emphasizes the crucial importance of the duty of cooperation as a principle of international law relevant to the prevention of transboundary harm, stating that "[t]he principle of cooperation between States is essential in designing and implementing effective policies."¹⁴⁹ This has also been recognized by the IACtHR in its Advisory Opinion on the Environment and Human Rights, stating that:

In the specific case of activities, projects or incidents that could cause significant transboundary environmental harm, the potentially affected State or States require the cooperation of the State of origin and vice versa in order to take the measures of prevention and mitigation needed to ensure the human rights of the persons subject to their jurisdiction.¹⁵⁰

121. The IACtHR has also held that States must cooperate to ensure the protection against environmental damage, particularly as regards shared resources. According to the IACtHR, the development and use of these resources should be done equitably and reasonably to prevent a State from impinging on another State's sovereign rights.¹⁵¹

122. It is indisputable that GHG emissions affect shared natural resources, such as the ocean (acidification, rises in sea level, changes in current, etc.), the atmosphere and climate systems in general. Therefore, Uruguay submits that States have the duty to cooperate as regards the prevention of environmental damage, including by giving other States adequate notice of potentially harmful actions and negotiating in good faith.

¹⁴⁷ *MOX Plant (Ireland v United Kingdom)* (Provisional Measures, Order of 3 December 2001) ITLOS Reports 2001, ¶ 82. See also *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, ¶¶ 77, 113.

¹⁴⁸ International Law Commission (ILC), *'Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (and Commentaries)'* (2001), Article 4.

¹⁴⁹ International Law Commission (ILC), *'Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (and Commentaries)'* (2001), Article 4 Commentary, ¶ 1.

¹⁵⁰ *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 182.

¹⁵¹ *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 185.

123. In addition, the duty to cooperate in relation to climate change has further applications, as recognized by States in their treaty practice. In this regard, multilateral treaties concerning climate change often contain specific undertakings that States cooperate to achieve certain ends, among which are the following:
- Scientific cooperation through the exchange of information,¹⁵²
 - Transfer of technologies, practices, processes and capacity building;¹⁵³
 - Education, training and public awareness;¹⁵⁴
 - Adoption of adaptation measures;¹⁵⁵ and
 - Promotion of an open international economic system.¹⁵⁶
124. Given the magnitude of the challenge facing the international community as regards the need to adopt immediate, comprehensive action to adapt to and mitigate climate change, States' duty to cooperate is of paramount importance. States and, in particular, those with greater capabilities (*see below*, §6), should conduct consistent efforts to cooperate with and assist other States in their fight against climate change.

5. Developed States must provide financial assistance to developing States for the implementation of adaptation and mitigation measures

125. As discussed above, collective, worldwide efforts can only be enabled by the provision of support, including financial support, from developed countries to developing countries.
126. Initially, a binding commitment of developed Parties to provide financing to developing Parties was provided under Article 4(4) of the UNFCCC, as follows:

The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly

¹⁵² *Vienna Convention for the Protection of the Ozone Layer* (1985), Article 4; *United Nations Convention on the Law of the Sea*, 1982, Article 242 (Promotion of international cooperation); *United Nations Framework Convention of Climate Change*, 1992, Article 4(g)-(h).

¹⁵³ *Vienna Convention for the Protection of the Ozone Layer* (1985), Article 4; *United Nations Framework Convention of Climate Change* (1992), Article 4(c); *Paris Agreement to the United Nations Framework Convention on Climate Change* (2015), Article 10(2) (also contemplates cooperation in the development of technology), Article 11(3) (capacity building).

¹⁵⁴ *United Nations Framework Convention of Climate Change* (1992), Article 4(i); *Paris Agreement to the United Nations Framework Convention on Climate Change* (2015), Article 12.

¹⁵⁵ *Paris Agreement to the United Nations Framework Convention on Climate Change* (2015), Article 7(6).

¹⁵⁶ *United Nations Framework Convention of Climate Change* (1992), Article 3(5).

vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.¹⁵⁷

127. The UNFCCC also provided a Financial Mechanism for the provision of financial resources, functioning under the guidance of the Conference of the Parties (“COP”).¹⁵⁸ The Financial Mechanism has been operated by the Global Environment Facility (“GEF”) since the entry into force of the UNFCCC in 1994.¹⁵⁹
128. In 2001, the Adaptation Fund was established to finance concrete adaptation projects and programmes in developing countries that are Parties to the Kyoto Protocol and are particularly vulnerable to the adverse effects of climate change.¹⁶⁰
129. Developed States’ commitment towards providing financial support to developing States to further the fight against climate change was reaffirmed and expanded in the Paris Agreement. Specifically, Article 9 of the Paris Agreement provides:
1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.
- [...]
3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.¹⁶¹
130. Further, according to Article 9(4) of the Paris Agreement, the financial support provided thereunder should seek to provide a balance between adaptation and mitigation measures. Moreover, developed States shall provide “transparent and consistent information on support for developing country Parties”.¹⁶²
131. Notwithstanding the legal framework described above, developed States have systematically failed to meet their commitments with Climate Finance. At COP 16, in 2010, developed

¹⁵⁷ United Nations Framework Convention of Climate Change (1992), Article 4(4).

¹⁵⁸ United Nations Framework Convention of Climate Change (1992), Article 11.

¹⁵⁹ The Global Environment Facility, *Who We Are*, 21 March 2024 (**Annex 20**), available at: <https://www.thegef.org/who-we-are>.

¹⁶⁰ The Adaptation Fund, *Governance*, 21 March 2024 (**Annex 21**), available at: <https://www.adaptation-fund.org/about/governance/>.

¹⁶¹ *Paris Agreement to the United Nations Framework Convention on Climate Change* (2015), Article 9 (emphasis added).

¹⁶² *Paris Agreement to the United Nations Framework Convention on Climate Change* (2015), Article 9(7).

countries undertook to a goal of mobilizing jointly USD 100 billion per year by 2020, to be allocated to meaningful mitigation actions and transparency on implementation.¹⁶³ However, as of 2021, this goal had still not been met. In 2021, total contributions by developed States to developing States amounted to USD 89.6 billion. Although these amounts imply an increase of 7.6% over the previous year, it is still USD 10.4 billion short of the USD 100 billion annual goal that was to be reached by 2020.¹⁶⁴ Moreover, in 2021, adaptation funding decreased by USD 4 billion with respect to 2020.¹⁶⁵

132. Uruguay notes with concern that developed States have yet to fulfill their international commitments as regards climate finance, which importance to the furtherance of significant climate action may not be overstated. In addition, Uruguay notes the shortage of updated, organized information showing the status of international climate contributions, which is crucial to monitor progress and ensure accountability.

6. The principle of common but differentiated responsibilities in international environmental law entails that developed States should lead international climate action and provide support to developing States

133. The principle of common but differentiated responsibility and related capabilities (“PCDR”) is a general principle of international environmental law according to which international environmental obligations relating to climate change and sustainable development do not equally apply to States. Rather, distinctions should be drawn between developed and developing States to account for contextual differences, including their divergent capabilities and contribution to environmental damage.

134. An early formulation of the PCDR may be found in Principle 7 of the Rio Declaration on Environment and Development:

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environment degradation, States have common but differentiated responsibilities.¹⁶⁶

¹⁶³ United Nations Conference of the Parties, Report of the Conference of Parties on its Sixteenth Session, held in Cancun from 29 November to 10 December 2010, Decision 1/CP.16, Decision 1/CP.16 (2011), ¶ 98.

¹⁶⁴ OECD, *Climate Finance Provided and Mobilised by Developed Countries in 2013-2021* (2023), p. 7.

¹⁶⁵ OECD, *Climate Finance Provided and Mobilised by Developed Countries in 2013-2021* (2023), p. 8.

¹⁶⁶ United Nations General Assembly, *Rio Declaration on Environment and Development* (3-14 June 1992) Principle 7 (emphasis added). Notably, prior to the Rio Declaration, Article 5 of the *Montreal Protocol on Substances that Deplete the Ozone Layer* (1987) had already contemplated the “special situation of developing countries” as regards the obligations arising out of the Protocol, allowing them to delay compliance with the control measures set out in paragraphs 1 to 4 of Article 2 by ten additional years (see the Montreal Protocol on Substances that Deplete the Ozone Layer (1987) Article 5).

135. More recently, the PCDR has been expanded to also account for differences among States' capabilities. As such, the PCDR has been widely recognized in States' treaty practice, becoming deeply ingrained within modern treaties on the protection of the environment and climate change.

136. For example, in its Preamble, the UNFCCC acknowledges that States' cooperation with and participation in an international response to climate change should be in accordance with the PCDR, stating that:

[T]he global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions.¹⁶⁷

137. Concordantly, preambular paragraph 10 of the UNFCCC emphasizes the importance of a contextual interpretation of States' responsibilities towards climate change, as follows:

States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.¹⁶⁸

138. Moreover, the PCDR is included among the principles of the UNFCCC in its Article 3(1), which provides that the duty to protect the climate system should be allocated equitably among States, in such a manner that developed countries should take a preponderant role in the fight against climate change:

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:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.¹⁶⁹

139. In line with the foregoing, the PCDR underlies each of the commitments undertaken by the Contracting States to the UNFCCC in Article 4. Precisely, the *chapeau* of Article 4(1) states:

¹⁶⁷ *United Nations Framework Convention of Climate Change* (1992), Preambular paragraph 6.

¹⁶⁸ *United Nations Framework Convention of Climate Change* (1992), Preambular paragraph 10.

¹⁶⁹ *United Nations Framework Convention of Climate Change* (1992), Article 3(1)

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: [...] ¹⁷⁰

140. Accordingly, most commitments undertaken by Parties to the UNFCCC under Article 4 are exclusively undertaken by “developed country Parties” and other Parties included in Annexes I (OECD member States and economies in transition) ¹⁷¹ and II (OECD member States). ¹⁷² Conversely, the UNFCCC also defines other categories of States based on their vulnerability and/or shortage of capabilities, such as especially vulnerable states (Articles 3.2, 4.8) and countries identified as “least developed countries” (Article 4(9)):

The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology. ¹⁷³

141. Other regimes for the equitable distribution of international responsibility for obligations arising from climate change, its causes and deleterious effects in accordance with their

¹⁷⁰ *United Nations Framework Convention of Climate Change* (1992), Article 4(1). The commitments undertaken under Article 4(1) of the UNFCCC were reaffirmed under Article 10 of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (“Article 10 All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall: [...]”).

¹⁷¹ *United Nations Framework Convention of Climate Change* (1992) Annex I. Annex I includes the industrialized countries that were members of the Organisation for Economic Co-operation and Development (OECD) in 1992, plus countries with economies in transition (the EIT Parties), thus comprising: Austria; Belarus; Belgium; Bulgaria; Canada; Croatia; Czech Republic; Denmark; European Economic Community; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Italy; Japan; Latvia; Liechtenstein; Lithuania; Luxembourg; Monaco; Netherlands; New Zealand; Norway; Poland; Portugal; Romania; Russian Federation; Slovakia; Slovenia; Spain; Sweden; Switzerland; Turkey; Ukraine; United Kingdom of Great Britain and Northern Ireland; United States of America.

¹⁷² *United Nations Framework Convention of Climate Change* (1992) Annex II. Annex II includes only countries that were members of OECD in 1992: Australia; Austria; Belgium; Canada; Denmark; European Economic Community; Finland; France; Germany; Greece; Iceland; Ireland; Italy; Japan; Luxembourg; Netherlands; New Zealand; Norway; Portugal; Spain; Sweden; Switzerland; United Kingdom of Great Britain and Northern Ireland; United States of America.

¹⁷³ *United Nations Framework Convention of Climate Change* (1992), Article 4(9).

capabilities can be seen in UNCLOS,¹⁷⁴ the Ozone Convention¹⁷⁵ and the Convention on Biodiversity of 1992.¹⁷⁶ Further examples of provisions stating the conditional character of developing States' obligations may be found in the Montreal Protocol¹⁷⁷ and the Convention on Biodiversity.¹⁷⁸

142. More recently, the PCDR has served as one of the underlying principles of the Paris Agreement, which contains numerous preambular paragraphs and provisions that directly or indirectly refer to the PCDR, either expressly or by applying an equitable logic to the allocation of responsibilities between Parties based on their contribution to climate change and their respective capabilities:

[Preambular paragraph 3] In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, [...]

[Preambular paragraph 5] Also recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, as provided for in the Convention, [...]

[Preambular paragraph 6] Taking full account of the specific needs and special situations of the least developed countries with regard to funding and transfer of technology, [...]

[Article 4(3)] Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. [...]

[Article 4(15)] Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.

¹⁷⁴ *United Nations Convention on the Law of the Sea* (1982), Article 194(1) ("States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.")

¹⁷⁵ *Vienna Convention for the Protection of the Ozone Layer* (1985), Article 2 ("Article 2: General obligations [...] 2. To this end the Parties shall, in accordance with the means at their disposal and their capabilities:").

¹⁷⁶ *Convention on Biological Diversity* (1992), Article 6 ("Article 6 General Measures for Conservation and Sustainable Use Each Contracting Party shall, in accordance with its particular conditions and capabilities [...]").

¹⁷⁷ *The Montreal Protocol on Substances that Deplete the Ozone Layer* (1987), Article 10.

¹⁷⁸ *Convention on Biological Diversity* (1992), Article 20(4).

[Article 4(19)] All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

[Article 9(4)] The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.¹⁷⁹

143. Based on the foregoing, Uruguay submits that the PCDR is a core principle of international environmental law, which is designed to guarantee the sustainability of the international system for the protection of the environment and the mitigation of climate change, which should therefore inform the application of all the obligations related to the prevention of climate change and its deleterious effects. As such, the PCDR is essential to establish an equitable balance between developed and developing states, in a twofold manner: (i) by allowing for different standards to govern States' obligations, in accordance with their respective capabilities and (ii) by making performance of obligations by developing States conditional on the provision of means of implementation by developed States.¹⁸⁰
144. International treaty law contains numerous examples of both applications of the PCDR.
145. As emphasized by the Uruguayan Minister of Environment at the COP28 Summit,¹⁸¹ in accordance with the PCDR, the onus of international efforts in environmental matters should be on developed States, including assisting developing countries to enable the urgent adoption of further measures for the protection of present and future generations.

7. Environmental protection should be balanced with the social and economic development of developing States

146. Although a State's right to pursue economic development and to exercise its authority over its own natural resources and territory is an attribute of State sovereignty protected as such by international law, this right cannot be lawfully exercised without regard for the detrimental impact on human rights or the environment. Conversely, environmental policies should not be applied in a way that hinders developing States' ability to further their

¹⁷⁹ *Paris Agreement to the United Nations Framework Convention on Climate Change* (2015), Preambular paragraphs 3, 5 and 6 and Articles 4(15), 4(1) and 9(4).

¹⁸⁰ See Patricia Birnie, Alan Boyle, and Catherine Redgwell, *International Law and the Environment* (3 ed., Oxford University Press, 2009), p. 133 *et seq.*

¹⁸¹ See, e.g., Speech by the Uruguayan Minister for the Environment at the 28th United Nations Climate Conference held in December 2023 in Dubai, United Arab Emirates (<https://www.youtube.com/watch?v=7M-f7wzYx10>).

economic development and to increase the prosperity and wellbeing of their populations. This balance has been achieved by international courts and bodies by means of the development and application of the concept of “sustainable development”, which has been defined by the World Commission on Environment and Development as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹⁸²

147. One of the first expressions of the idea of sustainable development was documented in Principle 11 of the Stockholm Declaration, as follows:

The environmental policies should enhance and not adversely affect the present or future development potential of developing countries.¹⁸³

148. Although the term “sustainable development” is not used in the Stockholm Declaration, Principle 11 acknowledges the need to harmonize environmental policies with the States’ path towards development, which is central to the notion of sustainable development.

149. Subsequently, the Rio Declaration provided a number of Principles based on the same underlying concept, describing both the substantive elements of sustainable development, in Principles 3 to 8 (including the integration of environmental protection and economic development; the right to development; the sustainable utilization of natural resources and the equitable allocation of resources both within the present generation and between present and future generations) and its procedural elements in Principles 10 and 17 (dealing with public participation in decision-making and environmental impact assessment).¹⁸⁴ Cogently, Principles 2 and 6 of the Rio Declaration state:

[Principle 2] 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.

[Principle 6] The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of

¹⁸² World Commission on Environment and Development, *Report of the World Commission on Environment and Development: Our Common Future* (1987), ¶ 51.

¹⁸³ Declaration on the Human Environment, *Adopted by the United Nations Conference on the Human Environment*, Stockholm (1972), Principle 11.

¹⁸⁴ United Nations General Assembly, *Rio Declaration on Environment and Development* (3-14 June 1992), Principles 3-8, 10-17.

environment and development should also address the interests and needs of all countries.¹⁸⁵

150. The first time that the concept of sustainable development was used *eo nomine* in the jurisprudence of the Court was in the case concerning the *Gabčíkovo-Nagymaros* project for the construction of two barrages on the Danube, in the border between Hungary and Czechoslovakia (until 1993) and Slovakia thereafter.¹⁸⁶ Although in 1977 both parties had signed a Treaty agreeing to the construction of the barrages, subsequent opposition to the project in Hungary led the country to withdraw its support for the project in 1992. Czechoslovakia (and Slovakia, as from 1993) maintained its interest in the continuation of the project. To address these conflicting interests, the Court resorted to the concept of sustainable development, which it described as follows:

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

For the purposes of the present case, this means that the Parties together should look afresh at the effects on the environment of the operation of the Gabčíkovo power plant. In particular they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river.¹⁸⁷

¹⁸⁵ United Nations General Assembly, *Rio Declaration on Environment and Development* (3-14 June 1992), Principles 2, 6.

¹⁸⁶ Previously, the Court had emphasized the need to protect future generations in its approach to the protection of the environment and human living space. See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 29 (“*The environment is not an abstraction, but represents the living space, the quality of life and the health of human beings, including generations unborn*”).

¹⁸⁷ *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 140. See also *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Separate Opinion of Vice-President Weeramantry, p. 92; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006 (Provisional Measures, 13 July 2006 Order), ¶ 80.

151. While Uruguay acknowledges that there is an ongoing debate as to the normativity of the concept of sustainable development,¹⁸⁸ the consideration that it has merited from the Court shows, at the very least, that it informs the judicial reasoning process.¹⁸⁹
152. The concept of sustainable development has also been recognized by States and adopted as part of their treaty practice. Such is the case of the UNFCCC, which in its Preamble and Article 3(4) recalls the importance of balancing environmental protection with social and economic development, particularly that of developing countries.¹⁹⁰
153. State practice has often resorted to the concept of sustainable development as one of the foundations for a shared agenda for future generations.¹⁹¹ Notably, in 2015, the concept of sustainable development was central in the pivotal 2030 Agenda for Sustainable Development adopted by all United Nation Member States in 2015, setting the 17 Sustainable Development Goals that form the 2030 Agenda for Sustainable Development. Of particular relevance to the questions put before the Court, the Sustainable Development Goals in the 2030 Agenda relate to both, the eradication of poverty and the protection and preservation of the environment.¹⁹²
154. Based on the foregoing, Uruguay emphasizes the importance of the concept of sustainable development to adequately balance the protection of the environment with States' social and economic development (and, in particular, that of developing countries).

¹⁸⁸ See e.g., Patricia Birnie, Alan Boyle, and Catherine Redgwell, *International Law and the Environment* (3rd ed., Oxford University Press, 2009), p. 115 *et seq*; Virginie Barral, *Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm*, *European Journal of International Law* (Volume 23, Issue 2, 2012), pp. 377–400); Philippe Sands, *International Courts and the Application of the Concept of 'Sustainable Development'*, *Max Planck Yearbook of United Nations Law Online* (Volume 3, Issue 1, 1999), pp. 389-405.

¹⁸⁹ See Virginie Barral, *Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm*, *European Journal of International Law* (Volume 23, Issue 2, 2012), p. 378, citing to Vaughan Lowe, *Sustainable Development and Unsustainable Arguments* in A. Boyle and D. Freestone (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges* (1999).

¹⁹⁰ See *United Nations Framework Convention of Climate Change* (1992), Preambular ¶ 21 and Article 3(4). See also *Paris Agreement to the United Nations Framework Convention on Climate Change* (2015), Article 2.1.

¹⁹¹ See, e.g. United Nations General Assembly, Resolution 66/288, *The Future We Want* (27 July 2012).

¹⁹² See e.g. *Sustainable Development Goal One*, United Nations – Department of Economic and Social Affairs, Sustainable Development (“End Poverty in all its Forms Everywhere”), available at: <https://sdgs.un.org/goals/goal1>; *Climate Action and Synergies*, United Nations – Department of Economic and Social Affairs, Sustainable Development (“Take urgent action to combat climate change and its impacts”), available at: <https://sdgs.un.org/topics/climate-action-synergies>.

B. THE LEGAL CONSEQUENCES FOR STATES WHICH HAVE CAUSED SIGNIFICANT HARM TO THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

155. It is trite that every internationally wrongful act of a State entails the international responsibility of that State.¹⁹³ In general, the international responsibility of a State involves a series of legal consequences, including:¹⁹⁴
156. Obligation to cease the wrongful conduct: if the wrongful conduct is continuing, the State has the obligation to put an end to the violation of international law and to safeguard the continuing validity and effectiveness of the obligation;¹⁹⁵
157. Obligation to offer appropriate assurances and guarantees of non-repetition: if the circumstances so require, the State is required to offer appropriate assurances and guarantees of non-repetition to restore the confidence on a continuing legal relationship.¹⁹⁶ Assurances are normally given verbally, while guarantees of non-repetition usually involve preventive measures to avoid repetition of the breach;¹⁹⁷ and
158. Obligation to make full reparation for the injury caused by the internationally wrongful act: it has been widely acknowledged that “*It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be states in the convention itself*”.¹⁹⁸ 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*”.¹⁹⁹ Full reparation may take the following forms, either singly or in combination:

¹⁹³ See, e.g., International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) Article 1; S.S. “*Wimbledon*”, PCIJ, Series A, No. 1, Judgment, August 1923, p. 30; *Phosphates in Morocco*, PCIJ, Series A/B, No. 74, Judgment on Preliminary Objections, 14 June 1938, p. 28; *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 47.

¹⁹⁴ In accordance with the International Law Commission’s *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001) specific legal consequences may arise from “*special rules of international law*”.

¹⁹⁵ See International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 30(a).

¹⁹⁶ See *Articles on Responsibility of States for Internationally Wrongful Acts*, Article 30(b).

¹⁹⁷ See International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001) Article 30, Commentary (12).

¹⁹⁸ *Factory at Chorzów*, PCIJ, Series A, No. 9, Judgment on Jurisdiction, 26 July 1927, p. 21. See also, e.g., *Factory at Chorzów*, PCIJ, Series A, No. 17, Judgment on Merits, 13 September 1928, p. 29.

¹⁹⁹ *Factory at Chorzów*, PCIJ, Series A, No. 17, Judgment on Merits, 13 September 1928, p. 47. See also International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 31.

- Restitution: involves the obligation to re-establish the situation which existed before the wrongful act was committed. The obligation to make restitution applies when (i) restitution is not materially impossible, and (ii) making restitution does not involve a disproportionate burden as compared to compensation;²⁰⁰
 - Compensation: the compensation shall cover any financially assessable damage suffered by the injured State or its nationals;²⁰¹
 - Satisfaction, satisfaction may consist, among others, in an acknowledgment of the breach, an expression of regret, a formal apology or any appropriate modality to give satisfaction for the injury caused “*insofar as it cannot be made good by restitution or compensation*”.²⁰²
159. If the internationally wrongful act constitutes a serious breach by the State of an obligation arising under a peremptory norm of general international law, the breach may entail the further consequences both for the responsible State and for other States, including: (i) the obligation to cooperate to bring the breach to an end; (ii) the obligation not to recognize as lawful the situation created by the breach, and (iii) the obligation not to render aid or assistance to the responsible State in maintaining the situation so created.²⁰³
160. As set out in Section IV.A.1 above, States have the obligation to ensure the protection of the climate system and other parts of the environment. Accordingly, any breach of said obligations by a State would give rise to its international responsibility and the subsequent obligation to make full reparation.²⁰⁴
161. In *Certain Activities Carried Out by Nicaragua in the Border Area*, the Court acknowledged that the full reparation principle applies in relation to environmental damage so that compensation is due not only to account for the expenses incurred by a State as a

²⁰⁰ See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 35.

²⁰¹ See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 36.

²⁰² See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 37.

²⁰³ See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Articles 40-41. A breach is considered “serious” if it involves “a gross or systematic failure by the responsible State to fulfil [an] obligation”. See also Article 40(2).

²⁰⁴ The obligation to compensate may also arise from a rule of international law providing for strict responsibility based on harm or injury only. See, e.g., Resolution by the Institut de Droit International on “*Responsibility and Liability under International Law for Environmental Damage*”, Session of Strasbourg, 4 September 1997. See also *The Environment and Human Rights, Advisory Opinion OC-23/17*, Inter-American Court of Human Rights, 15 November 2017, ¶ 103.

consequence of environmental damage, but also for “*damage caused to the environment, in and of itself*”:

The Court has not previously adjudicated a claim for compensation for environmental damage. However, it is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage.

The Court is therefore of the view that damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law. Such compensation may include indemnification for the impairment or loss of environmental goods and services in the prior to recovery and payment for the restoration of the damaged environment.²⁰⁵

162. Uruguay respectfully addresses two important and independent issues with respect to the legal consequences for States which have caused significant harm to the climate system and other parts of the environment. The first issue concerns the States’ continued duty to perform any obligation breached (1); and the second issue is that any difficulties in establishing a causal link between the States’ conduct and the significant harm to the climate system and other parts of the environment may not preclude the legal consequences for the States which have caused significant harm to the climate system and other parts of the environment (2).

1. States have a continued duty to perform any obligation breached

163. Article 29 of the Articles on Responsibility of States for Internationally Wrongful Acts enshrines the general principle that “[t]he legal consequences of an internationally wrongful act do not affect the continued duty of the responsible State to perform the obligation it has breached”.²⁰⁶ This means that, regardless of the legal consequences arising out of the internationally wrongful act, “the pre-existing legal relation established by the primary obligation” does not disappear, and the responsible State is not relieved of the duty to perform the obligation breached.²⁰⁷ In other words, the fact that a State has breached an international obligation and is therefore subject to legal consequences does not, without more, entail that the obligation in question does not remain binding upon it.

²⁰⁵ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, ¶¶ 41-42.

²⁰⁶ See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 29.

²⁰⁷ See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 29, Commentary (2).

164. This principle is particularly relevant in the context of the obligations of States to ensure the protection of the climate system and other parts of the environment, which remain unaffected despite any potential breach by one or more States. This means that any State which has breached any of its international obligations with respect to the protection of the climate system or other parts of the environment would continue to be bound by the very same obligation, in addition to any other legal consequence arising out of the breach of the obligation. In other words, a State cannot be exempted from its obligations by breaching those obligations.
165. In this respect, Uruguay reaffirms its concern with the delay to meet the financial obligations undertaken by developed countries towards the “USD 100 billion by 2020” goal and the replenishment of the Adaptation Fund in the context of the UNCCC and the Paris Agreement and notes that the continuing breach further aggravates the harm caused. Uruguay trusts that the obligations undertaken will be complied with.²⁰⁸

2. The difficulties in establishing a causal link do not preclude the legal consequences for the States that have caused significant harm to the climate system and other parts of the environment

166. In accordance with Article 31 of the Articles on Responsibility of States for Internationally Wrongful Acts, a State is under an obligation to make full reparation “*for the injury caused by the internationally wrongful act*”.²⁰⁹
167. This means, as explained by the Court, that “*compensation can be awarded only if there is ‘a sufficiently direct and certain causal link between the wrongful act [...] and the injury suffered by the Applicant, consisting of all damage of any type, material or moral’*”.²¹⁰
168. As also explained by the Court, “*the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury*”.²¹¹

²⁰⁸ See, e.g., Speech by the Uruguayan Minister for the Environment at the 28th United Nations Climate Conference held in December 2023 in Dubai, United Arab Emirates (<https://www.youtube.com/watch?v=7M-f7wzYx10>).

²⁰⁹ International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 31.

²¹⁰ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, ¶ 93; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, ¶ 462; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, ¶ 32; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment, I.C.J. Reports 2012, ¶ 14.

²¹¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, ¶ 94. See also International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001), Article 31, Commentary (10)

169. In the case of significant harm to the climate system and other parts of the environment, while there is “*scientific consensus*” that “*anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, 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, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected*”,²¹² due to the diffuse nature of the harm itself and the several historical and concurrent causes, including the acts and omissions of several States, establishing a link between the conduct of a specific State and a specific harm is particularly challenging.²¹³
170. These difficulties, however, cannot preclude the legal consequences for the States which have caused significant harm to the climate system and other parts of the environment. As noted by the ILC, “*international practice and decisions of international tribunals do not support the reduction or attenuation of reparation for concurrent causes, except in cases of contributory fault*”.²¹⁴
171. In *Certain Activities Carried Out by Nicaragua in the Border Area*, the Court acknowledged that particular issues of causation may exist in environmental cases. Nevertheless, the Court held that any uncertainty should be addressed by the Court, which should determine the existence of a “*sufficient causal link*”:

In cases of alleged environmental damage, particular issues may arise with respect to the existence of damage and causation. The damage may be due to several concurrent causes, or the state of science regarding the causal link between the wrongful act and the damage may be uncertain. These are difficulties that must be addressed as and when they arise in light of the facts of the case at hand and the evidence presented to the Court. Ultimately, it is for the Court to decide whether there is a sufficient causal nexus between the wrongful act and the injury suffered.

(“*the requirement of a causal link is not necessarily the same in relation to every breach of an international obligation*”).

²¹² UN General Assembly, Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change* (29 March 2023). See also above, Section II.A.

²¹³ See, in this regard, International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Articles 14 and 15.

²¹⁴ See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001), Article 31, Commentary (12).

In respect of the valuation of damage, the Court recalls that the absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage.²¹⁵

172. Similarly, the Committee on the Rights of the Child concluded, referring to the principle of common but differentiated responsibilities, that *“the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harms that the emissions originating within its territory may cause to children, whatever their location”*.²¹⁶
173. There are, currently, several attribution studies and techniques which may help determine a causal link between emitters and climate harm. An analysis of these exceeds the scope of the present submission.
174. Nevertheless, on the basis of the above Uruguay respectfully submits that any alleged difficulties to establish a causal link between a State’s conduct and certain environmental harm do not preclude, in principle, the legal consequences for the States that have caused—or contributed to cause—the significant harm.

V. CONCLUSIONS

175. On the basis of the foregoing, Uruguay respectfully submits that the following elements should be considered as part of the answers of the Court to the questions raised by the General Assembly in its request for an advisory opinion contained in Resolution 77/276:
176. With respect to the first question, Uruguay respectfully submits that, under international law, States have specific obligations to ensure the protection of the climate system and other parts of the environment, including the duty to prevent serious or irreversible environmental damage even in the absence of full scientific certainty, in accordance with the precautionary principle, and the duty to comply with their existing obligations to mitigate GHG emissions. States also have the duty to cooperate and provide support for the adoption of adaptation and mitigation measures, including but not limited to financial support. The States’ obligations are informed by the principle of common but differentiated responsibilities, pursuant to which developed States should lead international climate action and provide support to developing States, guided also by the concept of sustainable development, implying that a State’s right to economic development must be balanced with its due respect to human rights and the climate system and other parts of the environment.

²¹⁵ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, ¶¶ 34-35.

²¹⁶ Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019, 8 October 2021, ¶ 10.10.

177. With respect to the second question, Uruguay respectfully submits that any breach of the obligations to ensure the protection of the climate system and other parts of the environment by a State would give rise to its international responsibility and the subsequent obligation to make full reparation, without prejudice to the State's continued duty to perform the obligation breached. The international responsibility of a breaching State is not precluded by any difficulties in establishing a causal link between the States' conduct and the significant harm to the climate system and other parts of the environment.

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Respectfully submitted on behalf of
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