



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

**WRITTEN STATEMENT SUBMITTED BY  
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA  
TO THE INTERNATIONAL COURT OF JUSTICE**

22 MARCH 2024

## I. INTRODUCTION

1. Indonesia presents this Written Statement pursuant to the International Court of Justice (“the Court”) Order No. 187 of 20 April 2023.
2. On 12 April 2023, the Secretary-General of the United Nations informed the President of the Court that the United Nations General Assembly (“the General Assembly”) had adopted the resolution 77/276 entitled “*Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*” with the following legal 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 right recognised 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 part of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;*
- (b) What are the legal consequences under these obligations for States where they, by their act and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:*
  - (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?*
  - (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”*

3. The Court invited the United Nations (UN) and its Member States to furnish information on the questions submitted to the Court for the advisory opinion and may do so within the time limits fixed. Considering this invitation positively, Indonesia, as a member of the UN, respectfully conveys this written statement to assist the Court in rendering the advisory opinion requested by the General Assembly.



4. This written submission will be divided into two main parts. The first part will elaborate that the Court has jurisdiction to render an advisory opinion for the requested questions and that the Court has no compelling reasons to decline the request. The second part of the submission will elaborate on (i) the legal regimes relevant to the questions, particularly international environmental law and human rights law in describing the States' legal obligations; and (ii) the implementation of the aforementioned and the legal consequences from it.
5. This statement will bring to attention factors, such as national circumstances and general international conditions, that, in Indonesia's view, influence State response to the adverse effects of climate change. To conclude this written statement, Indonesia provides its submissions to the Court.

## **II. THE COURT'S JURISDICTION TO RENDER AN ADVISORY OPINION**

6. It is imperative for the Court to examine, firstly, whether it has jurisdiction to give the advisory opinion requested by the General Assembly and, if so, whether there exist any compelling reasons for the Court to decline to exercise its power to render such an advisory opinion.
7. Indonesia asserts that the Court has jurisdiction to render the advisory opinion requested by the General Assembly, as; (A) the General Assembly has the competence to request for an advisory opinion; (B) the questions submitted by the General Assembly are of a legal nature; and (C) the Court has no compelling reasons to decline to give the requested advisory opinion.

### **A. The General Assembly has the Competence to Request for an Advisory Opinion**

8. The Statute of the Court ("the Statute") emphasizes that an authorized body in accordance with the UN Charter ("the Charter") may give a request for an advisory opinion.<sup>1</sup> The General Assembly is one such authorized body that is competent to request for an advisory opinion. Article 96(1) of the Charter stipulates that "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question." The Court has also provided its confirmation that the scope of this article reflects the liberty of the General Assembly in requesting an opinion of the Court.<sup>2</sup> In the *Legality of the Threat or Use of Nuclear Weapons* advisory opinion, the Court asserts that Article 10 of the Charter has conferred upon the General Assembly the competence to discuss any questions or any matters within the scope of the Charter.

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<sup>1</sup> *Statute of the International Court of Justice*, Article 65, para. 1.

<sup>2</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports, 8 July 1996, para 11.

9. Nevertheless, in this particular matter, it should be explored if the question falls under the scope of the Charter, especially since it has no reference to the issue of climate change and does not contain the keywords “environment”, “greenhouse gases”, “climate change” or even “climate” as appeared in the questions. It is worth noting that other details in the Charter could help ascertain whether the question falls under the scope of the Charter and, hence, the competence of the General Assembly.
  
10. Article 1(3) of the Charter asserts that one of the purposes of the UN is “*to achieve international co-operation in solving international problems.*” Realizing its gravity toward humankind, it is undeniable that the UN has regarded the climate change issue as an international problem that may trigger social and economic impacts. The UN, specifically the General Assembly, has, for many years, considered the issues of environment and climate change. The latest one was within Resolution 77/165 on the Protection of Global Climate for the Present and Future Generations of Humankind.<sup>3</sup> Furthermore, the General Assembly has organized a number of summits and conferences on matters relating to climate change and the environment, including the 2023 UN Water Conference, the UN Ocean Conference, and Stockholm+50. The General Assembly has also decided to convene the High-Level Meeting on Sea Level Rise in 2024.
  
11. Indonesia also is of the view that the existence of Article 12(1) of the Charter<sup>4</sup> does not bar the General Assembly from submitting the present request for an advisory opinion, irrespective of whether the Security Council remains seized over the matter as seen from past UN practices.<sup>5</sup> Various opinions and judgments of the Court have affirmed that the interpretation of this article may evolve for the maintenance of international peace and security.<sup>6</sup> This includes the Court’s affirmation that the General Assembly and the Security Council may deal in parallel with the same matter concerning the maintenance of international peace and security<sup>7</sup>, and the Court’s interpretation that an advisory opinion should not be interpreted as a recommendation within the meaning of Article 12(1) of the Charter<sup>8</sup>.

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<sup>3</sup> United Nations’ General Assembly Resolutions 43/53 of 6 December 1988, 54/222 of 22 December 1999, 62/86 of 10 December 2007, 63/32 of 26 November 2008, 64/73 of 7 December 2009, 65/159 of 20 December 2010, 66/200 of 22 December 2011, 67/210 of 21 December 2012, 68/212 of 20 December 2013, 69/220 of 19 December 2014, 70/205 of 22 December 2015, 71/228 of 21 December 2016, 72/219 of 20 December 2017, 73/232 of 20 December 2018, 74/219 of 19 December 2019, 75/217 of 21 December 2020 and 76/205 of 17 December 2021.

<sup>4</sup> *Charter of the United Nations*, Article 12.

<sup>5</sup> United Nations’ Security Council (2017), Resolution 2349. It recognized the adverse effects of climate change and ecological changes.

<sup>6</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports, 2004, p. 149, para 27.

<sup>7</sup> United Nations’ General Assembly Resolution A/Res/47/121, 7 April 1993 and United Nations’ Security Council Resolution S/Res/781, 9 October 1992. See also United Nations’ General Assembly Resolution A/Res/47/121, 7 April 1993 and United Nations’ Security Council Resolution S/Res/781, 9 October 1992.

<sup>8</sup> *International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010, p. 15, para 24.

12. Therefore, Indonesia asserts that in posing the request for the advisory opinion, the General Assembly acted within its competence as enshrined in the Charter.

**B. The Questions Submitted by the General Assembly are of Legal Nature**

13. Article 65 of the Statute specifically stipulates the jurisdiction of the Court to provide an advisory opinion, which reads:<sup>9</sup>

- (i) The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.
- (ii) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

14. In determining whether a question is of a legal nature, it is worth looking at past advisory opinions where the Court applied the following characteristics independently (in a non-cumulative manner) to determine if the question posed indeed constitutes a “legal question”:<sup>10</sup>

- (i) A question directed toward the legal consequences arising from a given factual situation considering the rules and principles of international law;<sup>11</sup>
- (ii) A question which was framed in terms of law and susceptible by a reply based on law;<sup>12</sup>
- (iii) A question which expressly asks the Court whether a particular action is compatible with international law, and the fact that a question has political aspects, does not deprive it of its character as a legal question.<sup>13</sup>

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<sup>9</sup> *Statute of the International Court of Justice*, Article 65.

<sup>10</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 153, para. 37; *Western Sahara*, Advisory Opinion, I.C.J. Reports, 1975, p. 18, para. 15; *Western Sahara*, Advisory Opinion, I.C.J. Reports, 1975, p. 19, para. 17.

<sup>11</sup> *Western Sahara*, Advisory Opinion, I.C.J. Reports, 1975, p. 19, para. 17.

<sup>12</sup> *Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 415, para. 25; *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 18, para. 15.

<sup>13</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports, 8 July 1996, p. 234, para.13; *Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 415, para. 25.



15. The main point of the questions submitted to the Court concerns the legal obligation of States under international law to protect the rights of present and future generations against the adverse effects of climate change and 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.
16. Indonesia views the request as a legal matter despite the apparent political and technical facets surrounding the issues of climate change and human rights. In light of this, Indonesia emphasizes the important role of the Court in maintaining its judicial integrity by formulating its response strictly within the confines of the existing international legal framework related to the environment and human rights, such as the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement and the Universal Declaration of Human Rights (UDHR), alongside other established legal principles and precedents, such as the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) and equity, with a view to clarifying the obligation of States under these international legal frameworks, principles, and precedents.
17. In addressing such questions, the Court may need to interpret the legal obligations of States in light of scientific understanding of climate change, such as activities of States that have been taking place since the 19<sup>th</sup> century that have caused anthropogenic greenhouse gas (GHG) emissions, which are the known cause of climate change<sup>14</sup>; and the scientific factuality of climate change<sup>15</sup>.
18. The application of scientific understanding in legal consideration can assist the Court in determining the obligations of States under the relevant international legal frameworks, principles, and precedents. This approach can also establish a causal link between non-compliance and significant harm to the climate system and other parts of the environment, with possible legal consequences consistent with the established compliance mechanism under international environmental law, which is generally non-adversarial, non-punitive, and pays attention to the respective national capabilities and circumstances of States.<sup>16</sup>

### **C. The Court Has No Compelling Reasons to Decline to Give the Requested Advisory Opinion**

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<sup>14</sup> The link between GHG emissions over time and global warming is shown in a figure extracted from the IPCC's 2023 Synthesis Report, Figure 2.2, page 9, available at: [https://report.ipcc.ch/ar6syrr/pdf/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://report.ipcc.ch/ar6syrr/pdf/IPCC_AR6_SYR_LongerReport.pdf)

<sup>15</sup> The scientific and factual data evidencing climate change is comprehensively elaborated within the IPCC's Sixth Assessment Report, Chapter 2: Changing State of the Climate, available at: [https://report.ipcc.ch/ar6/wg1/IPCC\\_AR6\\_WGI\\_FullReport.pdf](https://report.ipcc.ch/ar6/wg1/IPCC_AR6_WGI_FullReport.pdf)

<sup>16</sup> *Paris Agreement*, 2015, Article 15; Annex to Decision 20/CMA.1 of 19 March 2019, para. 2-17.

19. The Court has discretionary power in deciding to render an advisory opinion to a request falling within its jurisdiction in accordance with Article 65(1) of the Statute.<sup>17</sup> As the principal judicial organ of the UN, the Court, in various cases, has been of the view that the request for an advisory opinion should not be refused.<sup>18</sup> In past advisory opinions, the Court has repeatedly stated that it will consider if there are “compelling reasons”<sup>19</sup> as grounds to decline giving the advisory opinion.
20. One reason that has been mentioned in the jurisprudence of the Court is the “consent of interested States.”<sup>20</sup> This notion only occurs when discussing requests relating to a dispute between States. Examination of this parameter has also touched upon the judicial propriety of the Court in relation to its advisory and judicial function for contentious cases relating to the existence of a dispute. Nevertheless, Indonesia considers that the situation in this request is different from such circumstances. First, the issue at hand does not relate to a dispute between States. Consequently, in giving a response to the request, the Court is not at risk of adjudicating a subject matter of a bilateral dispute existing between States without their consent. Second, the General Assembly resolution, which conveyed the request to the Court, was adopted by consensus and co-sponsored by 105 State members of the UN. Such consensus by such a large number of States sufficiently meets the parameters of consent of interested States.
21. Indonesia would also like to underline that the Court’s opinion could provide legal clarity and guidance for States in fulfilling their commitments under relevant international environmental legal frameworks and hence could complement the existing work of the General Assembly and other specialized bodies such as the UNFCCC, rather than substituting or complicating the process. As mentioned by the Court, advisory opinions could provide the requesting organs with the elements of law and guidance necessary to address issues before it.<sup>21</sup>
22. Indonesia takes note that there are pending advisory opinion requests relating to climate change before the International Tribunal for the Law of the Sea (ITLOS)<sup>22</sup> and the Inter-

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<sup>17</sup>*Supra n.2*, p. 234-235, para. 14.

<sup>18</sup>*Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania (first phase)*, Advisory Opinion, 1950, I.C.J. Reports, p. 71; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004, I.C.J. Reports, p. 156-157, para 44.

<sup>19</sup>*Kosovo*, Advisory Opinion, 2010, I.C.J. Reports, p. 15, para. 24.

<sup>20</sup>*Western Sahara*, Advisory Opinion, I.C.J. Reports, p. 25, para. 33.

<sup>21</sup>*Wall*, *supra n. 6*, p. 162-163, para 59-62.

<sup>22</sup> *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, pending, available at: <https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>



American Court of Human Rights (ICtHR).<sup>23</sup> Indonesia maintains that the General Assembly is a distinct body from the entities seeking the other advisory opinions (the Commission of Small Island States on Climate Change and International Law [COSIS] for the request for advisory opinion before the ITLOS, and Chile and Colombia for the request for advisory opinion before the ICtHR). Furthermore, the core questions asked in these other initiatives are much narrower and specific. The Court is the only body with the general competence to provide the type of advice needed by the General Assembly, as made clear by the scope of the questions.

23. Despite the discretionary character of its advisory jurisdiction, Indonesia highlights that the Court has never, in the exercise of this discretionary power, declined to respond to a request for an advisory opinion.<sup>24</sup>

24. Therefore, Indonesia submits that the Court has jurisdiction to give the advisory opinion, and there is no compelling reason for the Court to decline to exercise such power. Indonesia urges the Court to continue with the advisory proceeding for this request.

### **III. INTERNATIONAL LAW RELATING TO THE PROTECTION OF THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT**

25. The two questions in the request can be summarized as the issues of “obligations of States under international law” and “legal consequences under these obligations” in the context of “...*protection of the climate system and other part of the environment from anthropogenic emissions of greenhouse gases.*”

26. The second half of the Advisory Opinion request concerns legal consequences where States cause significant harm to the climate system and other parts of the environment, by either their actions or omissions.

27. Considering the wide spectrum of the body of international law relating to the questions posed, there is a need to establish a particular law to derive such obligations. For this purpose, the chapeau of the questions provides guidance on where to draw the answer as it mentioned the Charter, as well as several other international legal instruments and principles, as reference points to consider the two questions posed.

28. The Charter describes several obligations and roles of the UN and relevant UN bodies for various issues, most importantly in maintaining international peace and security,

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<sup>23</sup> *Solicitud de Opinión Consultiva presentada por Colombia y Chile ante la Corte Interamericana de Derechos Humanos*, 9 de enero de 2023, pending, available at: [https://www.corteidh.or.cr/observaciones\\_oc\\_new.cfm?nId\\_oc=2634](https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634)

<sup>24</sup> *Wall*, *supra* n. 6, p. 156-157, para. 44.

developing friendly relations among nations, harmonizing actions among nations, and achieving international cooperation in solving international problems. The UN is also mandated to promote, among others, solutions for international economic, social, health, and related problems.<sup>25</sup>

29. It is abundantly clear, however, that the Charter does not contain any article with the specific obligation to protect the climate system, other parts of the environment, or any reference to climate change. This is understandable, considering that the issue of climate change was not on the global agenda during the conception of the UN. Nevertheless, considering the mandate and function of the UN, as mentioned above, there should be no debate that the Charter provides the foundation for international cooperation in the context of adapting and mitigating the effect of climate change on the environment.

#### **A. Distinct Legal Regimes between the Human Rights and the Protection of the Environment**

30. The way in which the questions were presented may give rise to the idea that human rights and environmental obligations are governed under the same legal regime. However, this is not the case. These two obligations can be considered to fall within two distinct legal regimes, namely:

- (i) international human rights law, which may cover:
  - a. the International Covenant on Civil and Political Rights (ICCPR);
  - b. the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
  - c. the UDHR; and
- (ii) international environmental law, which may cover:
  - a. the UNFCCC;
  - b. the Paris Agreement;
  - c. the United Nations Convention on the Law of the Sea (UNCLOS);
  - d. the 1997 Kyoto Protocol to the UNFCCC (Kyoto Protocol);
  - e. the Convention on Biological Diversity (CBD);
  - f. the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol);
  - g. the Minamata Convention on Mercury (Minamata Convention);
  - h. the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention);
  - i. the duty of due diligence;
  - j. the principle of prevention of significant harm to the environment; and
  - k. the duty to protect and preserve the marine environment.

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<sup>25</sup> *Supra* n. 4, Article 55.

31. From the above list, it is evident that human rights and environmental norms are stipulated in different international instruments and principles under distinct scopes.
32. Indonesia perceives it necessary to examine the documents mentioned in the questions to investigate if there exists a definite nexus between the seemingly separate obligations contained in the human rights covenants and States' obligations towards the environment and climate system under the multilateral environmental agreements (MEAs).

**i. Environmental Contexts in International Human Rights Instruments**

33. Human rights are universally accepted as rights inherent to the human person, or individual rights. The stipulation of human rights in the core human rights treaties,<sup>26</sup> including in the ICCPR and the ICESCR, which were specifically invoked in the questions, confirms this individual nature of human rights.
34. However, by mentioning the ICCPR, the ICESCR, and the UDHR, the questions can be read as advocating for legal recognition of a collective human right on the environment for the present and future generations as right holders. This requires an examination by the Court by interpreting the existing *corpus* of international law to examine if the development in international environmental law and international human rights law show evident and unambiguous convergence, and if this raises strict legal consequences.
35. The UDHR is a non-legally binding, foundational text in the universal recognition of individual rights. Under the UDHR, member States of the UN pledged for the promotion of universal respect for and observance of a set of individual rights. These rights were then elaborated further in the ICCPR and the ICESCR. The UDHR does not include references to the environment, the climate system, or climate change. The UDHR also does not contain anything that may lead to the conclusion of the existence of a right on that matter, nor does the UDHR directly or indirectly create an obligation for the state to respect, promote, or protect rights relating to the environment. For this reason, we will not elaborate further on the UDHR in relation to the request.
36. The ICCPR does not specifically mention the issues of the environment and climate change, or the duty to protect the environment. However, the ICCPR does stipulate

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<sup>26</sup> Nine core human rights treaties are the International Covenant on Civil and Political Rights, 1966; the International Covenant on Economic, Social and Cultural Rights, 1966; the Convention on the Elimination of all forms of Racial Discrimination, 1965; the Convention on the Elimination of all forms of Discrimination Against Women, 1979; the Convention on the Rights of the Child, 1989; the Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment and Punishment, 1984; the International Convention on the Rights of Migrant Workers and Members of their Families, 1990; the Convention on the Rights of Persons with Disabilities, 2006; and the International Convention on the Protection of All Persons against Enforced Disappearance, 2010.

obligations to protect the right to life. Article 6 of the ICCPR recognizes the right to life, stating, “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>27</sup>

37. The subsequent paragraphs of such article concern the right to life in relation to the death penalty and genocide and thus can be read as recognition of the right to life in relation to deprivation of life by imposition of judicial action (death sentence) or a heinous crime (genocide) and not indirect impact of significant harm of the climate system or the environment.
38. Nevertheless, noting that climate change and the resulting significant changes to the environment can have direct and indirect effects on people’s safety in the face of drought, extreme weather conditions, or sea level rise, there is an emerging recognition of the connection between the protection of the environment and the protection and the enjoyment of the human right to life. The 1972 Stockholm Declaration, for example, has underlined that the environment is essential for humankind’s enjoyment of the right to life. It also recognizes the importance of the application of technology and development utilizing the environment and its natural resources to prevent harm to the environment, which will, in turn, impede our access to the necessary natural resources and create environmental issues that negatively affect humankind's life. Thus, social and economic development should be pursued in harmony with the knowledge to protect the environment, which can be achieved with, *inter alia*, proper environmental policies and action as well as international cooperation.<sup>28</sup>
39. Similar to the UN Charter and the ICCPR, the ICESCR also does not explicitly mention the issues of environment and climate change, or the duty to protect the environment.<sup>29</sup>
40. At the same time, however, other thematic international human rights instruments contain provisions which refer to a specific element of the environment. These include Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women, which States that women have the right to adequate living conditions, including water supply;<sup>30</sup> and Articles 24 and 29 of the Convention of the Rights of the Child which require countries to consider the risk of pollution in relation to the child’s right to health and education of the child to be directed to, among others, the development of respect for the natural environment.<sup>31</sup>

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<sup>27</sup> ICCPR, Article 6.

<sup>28</sup> *Stockholm Declaration*, Preamble, para. 5-6.

<sup>29</sup> ICESCR, Article 12 only references the environment by mentioning “the improvement of all aspects of environmental and industrial hygiene” within the context of the right to the highest attainable standard of physical and mental health.

<sup>30</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, Article 14.

<sup>31</sup> *Convention of the Rights of the Child*, Article 24 and Article 29.



## ii. Emerging Recognition of the Linkage between the Human Rights and Protection of the Environment

41. With regard to the nexus between human rights and the protection of the environment, it is also worth noting that the discussion on environmental issues by different international bodies or actors through the General Comments of UN treaty bodies, scientific reports, publications, and joint statements suggests the emerging recognition of the linkage between human rights and protection of the environment in a generic manner.
42. The 2009 Office of the United Nations High Commissioner for Human Right (OHCHR) Report recognizes that, while universal human rights treaties do not refer to a specific issue of environment, the UN treaty bodies recognize the link between the environment and the realization of a range of human rights.<sup>32</sup> It is clear that a clean and healthy environment lays the foundation for access to clean water and sanitation, food, proper and adequate housing, and health.
43. Further, in recent years, the General Assembly, as well as the Human Rights Council, have adopted resolutions recognizing the right to a clean, healthy, and sustainable environment.<sup>33</sup> Nevertheless, the non-legally binding nature of the decisions and resolutions from these two bodies is well-defined in international law. Therefore, it is indisputable that no legal obligations are derived from such recognition. With this understanding, the promotion and protection of the right to a clean, healthy, and sustainable environment require the implementation of obligations under MEAs guided by the principles of international environmental law.
44. In conclusion, while the *corpus* of international human rights law does not create any specific obligation relating to the climate system or other parts of the environment, there is general recognition of the connection between environmental protection and human rights. In this context, the State's obligations relating to the climate system within the framework of human rights, if it exists, should only be limited to their own citizens within their territories.<sup>34</sup> The implementation of such obligations, if it exists, is also dependent on the respective national circumstances and, more importantly, on the human rights instrument they have ratified.

## B. International Legal Regime for the Protection of the Environment and Climate Change

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<sup>32</sup> United Nations' Human Rights Council, *Report of the OHCHR on the Relationship Between Climate Change and Human Rights*, OHCHR 2009 Report, A/HRC/10/61, 15 January 2009, para. 18.

<sup>33</sup> United Nations' General Assembly Resolution A/Res/76/300 of 2022; United Nations' Human Rights Council A/HRC/Res/48/13 of 2021 on *the human right to a clean, healthy and sustainable environment*.

<sup>34</sup> See, for example, Supreme Court of the Netherlands' (Hoge Raad) Judgment (*State of Netherlands v. Urgenda*), No. 19/00135, 20 December 2019, para. 2.3.2.



45. As the *corpus* of international human rights law does not create any specific obligation relating to the climate system or other parts of the environment, Indonesia posits that the answer to this question is to be found under relevant international environmental law, which contains specific substantive and procedural obligations.
46. A number of agreements constitute the *corpus* of international environmental law with specific areas of focus, most notably the UNFCCC, the UNCLOS, the Kyoto Protocol, the Paris Agreement, the CBD, the Montreal Protocol, the Minamata Convention,<sup>35</sup> and the Basel Convention<sup>36</sup>. These treaties were created to identify environmental problems with a certain parameter to build measurable strategies to prevent and counter those problems through coordinated individual and collective efforts.

**i. Collective Obligations within the Context of International Environmental Regime**

47. The global nature of many environmental challenges, such as climate change, loss of biodiversity, and ocean pollution, are transboundary or global in nature, meaning that no single State can address them effectively on its own, and therefore, they require collective efforts and cooperation. As a result, Indonesia believes that international environmental protection is inherently a collective obligation of the international community. States are commonly viewed as important actors in addressing climate change on a global scale. This collective issue is closely intertwined with the sphere of international politics, wherein States serve as the political entities responsible for taking or sometimes neglecting actions. In this regard, by being parties to various MEAs, States are thus bound to the various obligations enshrined within the MEAs.
48. The CBD emphasizes the conservation of biological diversity, sustainable use of biological diversity components, and fair and equitable sharing of the benefits arising out of the utilization of genetic resources. While the CBD does not include specific obligations regarding climate change, in Decision VIII/30 of the Conference of Parties (COP) to the CBD, the State Parties adopted guidance for the synergy of specific activities in the field

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<sup>35</sup> The Minamata Convention on Mercury (enter into force on the 16 August 2017) is primarily focused on addressing mercury pollution and its adverse effects on human health and the environment, rather than directly addressing climate change. While the Minamata Convention is not a climate change treaty per se, it is part of the broader international environmental framework aimed at protecting human health and the environment. Actions taken to reduce mercury pollution under the convention can have positive side effects on climate change mitigation and adaptation efforts, emphasizing the interconnected nature of environmental challenges.

<sup>36</sup> The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (enter into force on the 5 May 1992) primarily addresses the management and control of hazardous waste and does not have a direct focus on climate change or greenhouse gas emissions. However, it can indirectly contribute to climate change mitigation by regulating the proper disposal and environmentally sound management of hazardous waste.

of biodiversity and climate change, relating to the impacts, vulnerability, and adaptation to climate change.<sup>37</sup>

49. The Montreal Protocol is a landmark agreement that has successfully reduced the global production, consumption, and emissions of ozone-depleting substances (ODSs), which are components of greenhouse gases that contribute to the radiative forces of climate change. The treaty is structured around several groups of *halogenated hydrocarbons* that deplete stratospheric ozone, with the latest addition of *hydrofluorocarbon* by the 2016 Kigali Amendment.
50. Besides these agreements, it is widely understood that the UNFCCC is the framework agreement for the global community to respond to the threat of climate change. This convention's objective is to stabilize greenhouse gas concentration in the atmosphere at a level that will prevent dangerous human interference with the climate system.
51. The UNFCCC, followed by the Kyoto Protocol and the Paris Agreement, constitute the global governance for climate change. These conventions have charted the pathway for States to take mandatory and voluntary measures, both individually and collectively, to protect the environment and address the impacts of climate change.
52. The Paris Agreement, adopted in 2015, set out a core triad of States' obligations encompassing all aspects of climate change, namely:
  - a. The quantifiable and progressive nationally determined contributions (NDCs) for climate actions to keep warming below 2°C and striving towards 1.5°C;<sup>38</sup>
  - b. The obligation to incentivize these actions through climate finance, technology transfer, capacity building, education, facilitative dialogue, and other cooperative measures;<sup>39</sup> and
  - c. Transparency on the implementation through reporting, peer review, periodic stocktaking, public participation, and compliance mechanisms.<sup>40</sup>
53. The objectives under the Paris Agreement can be grouped under three categories, namely:
  - a. Collective goals: long-term temperature goal, resilience and low GHG emissions development;
  - b. Collective efforts: a global emissions trajectory (peaking, reduction, balance between sources and sinks in 2<sup>nd</sup> half of 21<sup>st</sup> century); and
  - c. Individual efforts: successive updated NDCs.

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<sup>37</sup> *Conference of the Parties (COP) of the Convention on Biological Diversity, Biodiversity and climate change: guidance to promote synergy among activities for biodiversity conservation, mitigating or adapting to climate change and combating land degradation*, UNEP/CBD/COP/DEC/VIII/30 of 15 June 2006.

<sup>38</sup> *Paris Agreement*, 2015, Articles 2, 3, 4, 5, 6, and 7.

<sup>39</sup> *Ibid.*, Article 9, 10, 11 and 12.

<sup>40</sup> *Ibid.*, Article 13, 14 and 15.

54. While the Paris Agreement is indeed a treaty under international law, there are different readings to the effect of its provisions. The UN Office of Legal Affairs asserts that State Parties to the Paris Agreement do not have an obligation to achieve their NDCs to address climate change.<sup>41</sup> This means that while the provisions on preparation, communicating, and maintaining NDCs, as well as pursuing domestic mitigation measures to achieve such NDCs, are irrefutably legally binding (as expressly stipulated in Article 4.2 of the Paris Agreement), the achievement of such NDCs is not. This can be construed as legal obligations of conduct and not obligations of result.
55. Considering the mandated comprehensive nature of the NDCs, State Parties' compliance with the Paris Agreement may be assessed through the implementation of the NDCs. As mandated by the Conference of the Parties which serves as the meeting of the Parties to the Paris Agreement (CMA), the Secretariat to the Paris Agreement publishes an annual NDC Synthesis Report. The 2023 Report synthesized information from 168 latest available NDCs, representing 195 Parties to the Paris Agreement, including the 153 new or updated NDCs communicated by 180 Parties, recorded in the NDC registry as of 25 September 2023.<sup>42</sup> Furthermore, as stipulated in Article 15(1) and (2) of the Paris Agreement, the Paris Agreement Implementation and Compliance Committee was established to supervise each State Party's implementation of their NDCs.<sup>43</sup>
56. The NDC of 82 percent of State Parties is unconditional, at least in part, with many more ambitious conditional elements.<sup>44</sup> These conditional elements depend on access to means of implementation, including finance mechanisms. While the Paris Agreement abandons the Annex of Industrialized States approach as in the previous UNFCCC and the Kyoto Protocol, it does employ a nuanced approach to delineating the obligations of its State Parties. As a means of financing implementation, the Paris Agreement imposes financial obligations only on developed country Parties, while simultaneously encouraging other Parties to provide voluntary support.<sup>45</sup>
57. However, a closer look at the pledged contributions from all NDCs shows that while the majority of the NDCs State Finance as a means of implementation, with 69 percent

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<sup>41</sup> UN Audiovisual Library of International Law, *Paris Agreement Introductory Note*, 12 December 2015, p. 1. Accessed from <https://legal.un.org/avl/ha/pa/pa.html>.

<sup>42</sup> Conference of the Parties (COP) of UNFCCC, *Nationally determined contributions under the Paris Agreement, Synthesis report by the secretariat* (UNFCCC Synthesis Report), FCCC/PA/CMA/2023/12, 14 November 2023.

<sup>43</sup> *Paris Agreement*, *supra* n. 38, Article 15 (1) and (2).

<sup>44</sup> This implementation of conditional elements depends on a number of factors including access to enhance financial resources, technology transfer and available technical support and capacity building supports, availability of market-based mechanisms and absorptive capacity of forest and other ecosystems. *Supra* n. 42, p. 14, para. 66.

<sup>45</sup> *Paris Agreement*, *supra* n. 38, Article 9.



characterizing it as requiring international support, only 7 percent of Parties mentioned finance in the context of providing international financial support.<sup>46</sup>

58. While the pledge of contribution meets one element of state obligations under the Paris Agreement, fulfilling the pledge is another. To measure the achievement of NDCs, as collective efforts to achieve the goal of holding the increase in the global average temperature to well below 2°C above pre-industrial levels, Article 14 of the Paris Agreement created the global stocktake as a tool to review the progress in achieving the global goal of the Agreement encompassing adaptation, mitigation and means of implementation and support.
59. The first global stocktake that took place in December 2023 at the 28<sup>th</sup> COP acknowledged that despite overall progress on mitigation, adaptation, and means of implementation and support, State Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals. The outcome of the first global stocktake noted that the pledge to jointly mobilize USD 100 million per year by 2020 was not met in 2021 and urged developed country Parties to fully deliver this pledge per year through 2025 in the context of meaningful mitigation actions and transparency on implementation<sup>47</sup>.
60. Besides the written legal obligations, deliberation on the State's obligation can also be derived from customary international law. The Court, in its jurisprudence, asserted that customary international law obliges States 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, known as the principle of prevention. This principle is recognized in the Principle 21 of the Stockholm Declaration and the Principle 2 of the Rio Declaration. The Court has consistently affirmed the importance it attaches to the protection of the environment as an obligation of States under customary international law, such as in *Pulp Mills*<sup>48</sup> and *Corfu Channel*.<sup>49</sup>
61. However, in the context of climate change and biodiversity protection, the applicability of the principle of prevention and its legal consequences to individual States remains ambiguous. This is because the harm to another State or to the climate system and biodiversity does not stem from the actions or inactions of a single State, but from the collective actions or inactions of all States. In this regard, Indonesia believes that the Court

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<sup>46</sup> *Supra* n. 42, p. 44 para. 193.

<sup>47</sup> Conference of the Parties (COP) of UNFCCC, *First global stocktake*, FCCC/PA/CMA/2023/L.17, 13 December 2023, p. 11-12, para. 80, 85.

<sup>48</sup> *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, ICJ's Judgment, 2010, p. 45-46, para. 101.

<sup>49</sup> *Corfu Channel Case (United Kingdom v Albania)*, ICJ's Judgment (Merits), 9 April 1949, p. 22; *Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*, ICJ's Judgment (Separate Opinion of Vice-President Weeramantry), 25 September 1997, p. 117-118.

should not assess individual State's acts or omissions in its legal considerations, given the collective and global nature of environmental challenges.

62. Furthermore, Indonesia acknowledges the precautionary approach as another emerging guiding principle for States to take proactive measures to anticipate or prevent damage in the face of reasonably foreseeable threats of serious or irreversible harm, even in the absence of conclusive scientific evidence. The precautionary approach has been incorporated into numerous non-binding declarations, such as the Rio Declaration and Agenda 21. Additionally, the UNFCCC promotes the idea that Parties should take precautionary measures to the extent that they are capable.
63. Nevertheless, Indonesia remains uncertain about the precautionary approach's status as a principle of customary international law. Despite its frequent mention in discussions and several ICJ opinions, the approach has yet to be definitively recognized as a binding principle of customary international law.<sup>50</sup> Indonesia believes that the general principle of customary international law for precautionary approach has not yet been established, and, at best, this approach may be considered an emerging norm of international law to those States that actually implement it in their national legislation. In this context, Indonesia advises the Court to avoid providing a premature recognition of new customary law obligations stemming from this precautionary approach.
64. Therefore, Indonesia contends that the international environmental regime recognizes the collective and global nature of environmental challenges beyond national borders and further requires States to address these challenges collectively and effectively through coordinated international actions. Indonesia further recognizes that the effective realization of these collective obligations relies upon the principles of cooperation, equity, and CBDR-RC.

**ii. Common but Differentiated Responsibilities and Respective Capabilities and Equity as Key Principles in International Environmental Law**

65. The principle of CBDR-RC is the fundamental concept in the international environmental law that guides States' efforts in addressing climate change and other parts of the environment. The principle emphasizes that all States have a common responsibility to address climate change, but their obligations are differentiated based on their historical contributions to the problems and their current capacities in light of different national

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<sup>50</sup> The issue of precautionary approach and principle was addressed within States' submission in the Court's cases, which was then rejected by the Court. See for example, *Gabčíkovo-Nagymaros Project* (Hungary v Slovakia), ICJ's Judgment (Separate Opinion of Vice-President Weeramantry), 25 September 1997, p. 97, 113; *Pulp Mills*, *supra* n. 48, p. 60-61, para. 161, 164.



circumstances.<sup>51</sup> This means that developed States, which have historically contributed more to global greenhouse gas emissions, have a greater responsibility to lead in reducing emissions and supporting developing countries through finance, technology transfer, and capacity building.<sup>52</sup>

66. Such CBDR-RC principle permeates the understanding and the implementation of the international environmental law regime regarding climate change, both in terms of its cause and measures.
67. Furthermore, such principle prescribes that mitigation and adaptation efforts should be embedded within the wider development context noting the historical contributions of CO<sup>2</sup> that vary substantially across regions. The 2023 Intergovernmental Panel on Climate Change (IPCC) report shows how the cause, impact as well as mitigation, and adaptation measures by states to climate change cannot be separated from the differences, not only in their geography, but also of equal importance, their history and levels of development.<sup>53</sup>
68. A read-through of such report will further illustrate that least developed and developing countries, including the small islands developing states countries, have much lower capita emissions than the global average. Yet, vulnerable communities who had historically contributed the least to climate change are disproportionately affected.<sup>54</sup> This is also especially true for Indonesia which, as an archipelagic state, is distinctively vulnerable to the transboundary effects of climate change.
69. Recognized as the largest archipelagic state, comprising over 17,500 islands with a coastline stretching over 81,000 kilometres (km), Indonesia's islands are home to an extremely varied geography, topography, and climate, ranging from sea, coastal systems to peat swamps and montane forests. Nevertheless, with 75% of its cities situated in coastal area, Indonesia is particularly susceptible to the repercussions of rising sea levels. Projections suggest that by 2050, up to 95 percent of Jakarta's coastal areas could face submersion. Additionally, Indonesia experiences frequent natural disasters, recording 3,622 incidents in 2019 alone, of which approximately 90% are hydrometeorological phenomena, such as tornadoes, floods, and landslides, which are anticipated to exacerbate

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<sup>51</sup> UNFCCC, Article 3 para. 1. Furthermore, UNFCCC, preamble, para. 3 recognises that the largest share of historical and current global GHG emissions originated in developed countries.

<sup>52</sup> United Nations' General Assembly, *Protection of global climate for present and future generations of humankind*, Resolution A/RES/78/153, 21 December 2023, p. 7, para. 2, and p. 10, para. 24.

<sup>53</sup> 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. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001.

<sup>54</sup> *Ibid.*

with the onset of climate change.<sup>55</sup> These distinct national circumstances must be considered in the implementation of various obligations to address climate change.

70. Thus, acknowledging the different contributions and capabilities of states in relation to climate change and flexibility in its implementation, it is Indonesia's view that the principle of CBDR-RC is the key principle to be considered to ensure the relevance and fairness of the implementation of various obligations under MEAs over time as states will progress and realign their respective responsibilities and capabilities without causing unfair disadvantage to any other states.
71. Furthermore, Indonesia also believes in the importance of equity as a guiding principle for identifying commitments and responsibilities among States. The principle of equity emphasizes the importance of equitable rights of all States to pursue sustainable development, recognizing that efforts to combat climate change and environmental protection should not come at the expense of the economic viability of developing States but allow them to pursue an equitable convergence between environmental protection and economic development goals. The recognition of the principle of equity is particularly crucial for developing States like Indonesia, which stands at a critical juncture where it must navigate its own developmental trajectory to achieve the ultimate objective of sustainable development, namely poverty eradication<sup>56</sup>, while addressing the disproportionate impact of historical emissions of the industrialized States.<sup>57</sup>

### C. Legal Consequences of Causing Significant Harm to the Environment

72. The second half of the advisory opinion request concerns legal consequences where states cause significant harm to the climate system and other parts of the environment, by either their actions or omissions. The formulation of the question of the request should not be seen as restricting the Court in its deliberation, instead, it provides certainty by setting out the ambit in which the Court provides its answer, namely what legal consequences arise from breaches of obligations only to those that “have caused *significant harm* to the climate system and other parts of the environment” and not *all* climate change obligations.
73. This is in line with the Court's jurisprudence that the Court must “ascertain what are the legal questions really in issue in questions formulated in a request” and “remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction.”<sup>58</sup>.

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<sup>55</sup> World Bank Group and Asian Development Bank, *Indonesia Climate Risk Country Profile*. Accessed from [https://climateknowledgeportal.worldbank.org/sites/default/files/2021-05/15504-Indonesia%20Country%20Profile-WEB\\_0.pdf](https://climateknowledgeportal.worldbank.org/sites/default/files/2021-05/15504-Indonesia%20Country%20Profile-WEB_0.pdf)

<sup>56</sup> United Nations' General Assembly, *The future we want*, Resolution A/RES/66/288, 11 September 2012, para. 4.

<sup>57</sup> UNFCCC, preamble, para. 3.

<sup>58</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports, 1980, p. 19, para. 35; *Admissibility of Hearings of Petitioners by the Committee on South West Africa*, Advisory

To ensure certainty, deliberating on the questions should be done within the ambit of *lex lata* or the existing corpus of international law. The difficult and slow progress of negotiation for global efforts to tackle climate change is a clear demonstration of the varying degrees of countries' capacities in handling environmental problems while balancing the need for national development and poverty eradication.

74. In this context, determining whether State actions or omissions in its environmental obligation have caused significant harm to the climate system poses significant and complex challenges. This is due to the collective nature of climate change obligation that is characterized by shared responsibility based on the principles of equity and CBDR-RC, making it impractical to attribute the causation to the actions or omissions of a single State. The legal concept of causation requires a clear and direct link between an act or omission and the harm caused, a connection that must be not only foreseeable but also distinctly attributable to the concerned State beyond a reasonable doubt.
75. In this context, Indonesia asserts that it is not within the purview of the Court to examine whether individual State's acts or omissions could potentially cause harm to the climate system. In other words, whether or not the State's acts or omissions factually cause harm to the climate system and lead to climate change is not something that the Court needs to determine in this advisory opinion.<sup>59</sup>
76. Returning to the question itself, in essence, the second half concerns non-compliance by state, be it by their acts or omission, to their obligations under the relevant international instruments.
77. The UN Environmental Programme (UNEP) Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements defines compliance as "*the fulfillment by the contracting Parties of their obligations under a multilateral environmental agreement and any amendment to the multilateral environmental agreement*".<sup>60</sup> This definition takes on the international perspective towards legally binding treaties.

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Opinion, I.C.J. Reports, 1956, p. 26; *Certain Expenses of the United Nations*, Advisory Opinion, I.C.J. Reports, 1962, para. 9-11.

<sup>59</sup> See IPCC, 2023: *Summary for Policymakers*. In: *Climate Change 2023: Synthesis Report*. Scientific factuality of climate change can be established, as the findings and reports from the IPCC have presented assessment on the current state of the environment, including a number of special reports concerning specific topics, as well the effect of climate change on the environment based on scientific and technical data. These reports have resulted in bodies of knowledge and records relating to climate change that is considered verifiable and reliable for states and international organisations, including the UN to base their decisions on.

<sup>60</sup> *UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements*, p. 2, para. 9 point (a).



78. Most MEAs established or mandated the establishment, of a formal, multilateral non-compliance mechanism. In this vein, it can be deduced that most MEAs contain non-compliance procedure that is consultative, non-confrontational<sup>61</sup> and non-judicial.<sup>62</sup> These mechanisms are instead directed to assist state parties in implementing their obligations under the treaty concerned. Where MEAs contain dispute settlement procedures, they tend not to include compulsory binding procedures. Instead, they often comprise bilateral negotiation, compulsory conciliation, and voluntary arbitration.<sup>63</sup>
79. Further, such non-compliance mechanisms mostly come in the form of a body or committee established to monitor non-compliance. The committee will have the task of gathering information or receiving reports on, monitoring, assessing, and producing synthesis reports on the implementation of obligations by State Parties. These proceedings commonly will lead to the presentation of recommendations aiming to help the Parties concerned to fulfil their obligations under the relevant treaty.
80. In any case, the committee's response to breaches of substantial obligations under MEAs needs to be tailored to the circumstances of the case. Further, different elements should be factored in when assessing Parties' implementation levels.
81. It should be noted that non-compliance does not always derive from deliberate disregard to the mandatory norms prescribed in the treaty. Non-compliance can result from a lack of human and financial resources, technology, as well as institutional or legislative capacities.
82. Alarming, the people and ecosystems that are highly vulnerable to climatic hazards are also those that live in regions with considerable development constraints. One of the key findings of the synthesis reports is the historical context of emissions. The 2022 IPCC Report asserted with high confidence that vulnerability is higher in locations with poverty, governance challenges, limited access to basic services and resources, violent conflict, and high levels of climate-sensitive livelihoods, including smallholder farmers, pastoralists, and fishing communities.<sup>64</sup> The Report further elaborates that the future vulnerability of

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<sup>61</sup> While treaty such as Article 15 of the Paris Agreement expressly articulates it, the non-adversarial character was not always mentioned in the treaty itself. The non-confrontational manner of the non-compliance procedure can also be found in the decision establishing the compliance monitoring body, e.g. Decision VI/12, COP-6 (2000) of the Basel Convention which established the Compliance Committee, its Terms of Reference stated that the Committee shall be 'non-confrontational, transparent, cost-effective and preventative in nature, simple, flexible, non-binding and oriented in the direction of helping Parties to implement the provisions of the Basel Convention'.

<sup>62</sup> United Nations' Environment Programme, *Compliance Mechanism under Selected Multilateral Environmental Agreements*, Report, 27 May 2007.

<sup>63</sup> *Ibid.* From 19 MEAs compared in this compilation, four MEAs does not have provisions on settling disputes between its Parties. The dispute resolution procedures of UNCLOS and the Fish Stocks Agreement does contain compulsory binding procedures.

<sup>64</sup> H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.), *Summary for Policymakers, in Climate Change 2022: Impacts, Adaptation, and Vulnerability*, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) (Cambridge University Press, Cambridge, UK and New York, NY, USA, 2022), p. 3-33.

ecosystems to climate change will be strongly influenced by past, present, and future developments of human society.<sup>65</sup> The 2023 Report highlights that vulnerable communities who have historically contributed the least to current climate change are disproportionately affected.<sup>66</sup>

83. This assessment supported the finding that failure to fully implement environmental treaty obligations stems mostly from gaps in economic, governance, and technical capacity. This is undoubtedly a long-standing comprehension of the international community.
84. Further, it is important to appreciate the complementary nature of climate change and sustainable development. The Rio Declaration on Environment and Development adopted in 1992 recorded 27 principles that act as guidelines for the development of many negotiations and adoptions of international climate change regime balancing between the responsibility to protect the environment and the right of development.<sup>67</sup> These *inter alia* include the principles of CBDR-RC, equity, and sustainable development. Principle 6 of the Rio Declaration articulates that the special situation and needs of developing, least developed, and those most environmentally vulnerable countries warranted special priority, including in the context of international actions for the environment and development.
85. These principles are further affirmed in the Paris Agreement as the latest global treaty to respond to climate change and comprehensive environmental damage. Adequate climate finance to fund NDC measures is unattainable, yet most needed by the populations living in vulnerable countries. While climate funding pledges progressively show an increase, the 2023 UNEP Report on Environmental Rule of Law stated that existing climate pledges and legislations are not adequate to achieve the goal of limiting global average temperatures to under 2°C.<sup>68</sup> The Sharm el-Sheikh Implementation Plan highlights that a global transformation to a low-carbon economy requires investments of at least USD 4 - 6 trillion per year.<sup>69</sup> Nevertheless, it is widely understood that the goal to mobilize jointly USD 100 million per year has not been met.
86. Given these considerations, particularly the difference in responsibilities, Indonesia believes that in order to ensure compliance with environmental treaties and find solutions to global environmental problems, States have the duty to cooperate with each other and within the relevant international organizations in good faith. This cooperation should be based on the principles of CBDR-RC and equity, recognizing the different paths of

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<sup>65</sup> *Ibid.*

<sup>66</sup> *Supra* n. 53.

<sup>67</sup> *Rio Declaration on Environment and Development.*

<sup>68</sup> UNEP Report on Environmental Rule of Law: Tracking Progress and Charting Future Directions. 2023.

<sup>69</sup> UNFCCC. Sharm el-Sheikh Implementation Plan. November 2022.



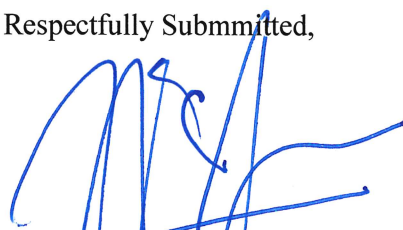
transition between countries toward a common, sustainable, and equitable future for the present and future generations.

#### **IV. CONCLUSION AND SUBMISSION**

87. By virtue of the aforementioned facts and legal arguments presented in this document, Indonesia has the honour to submit the following and invites the Court to consider:

- (i) that the Court has the jurisdiction to render an advisory opinion as requested by the General Assembly resolution within the confines of the existing international legal framework related to the environment and human rights, alongside other established legal principles and precedents, with a view to clarifying the obligation of States under such international legal frameworks, principles, and precedents;
- (ii) that the Court's advisory opinion shall have no binding character and only be applicable and used to guide and complement the work of the Assembly, as the requesting body, or any other relevant UN bodies, in conducting its activities;
- (iii) that there are no specific obligations for States under the existing human rights treaties to ensure the protection of the climate system despite an emerging recognition of the linkage between environmental protection and human rights. Should the Court decide to render its opinion on the matter, Indonesia is of the view that such an opinion should only clarify that the obligation in question only applies to a State's own citizens within its own territories in accordance with their respective national laws, specific circumstances and the human rights treaties they have ratified;
- (iv) that States have an obligation to take climate action and contribute to the global response to climate change in line with their respective NDCs and the best available science. This obligation shall be interpreted based on the principle of CBDR-RC and equity, recognizing that peaking will take longer for developing States in accordance with Article 4.1 of the Paris Agreement, and the responsibility of developed States to take the lead in reducing emissions and supporting developing countries through financial aid, technology transfer, and capacity building; and
- (v) that the implementation of various environmental obligations under MEAs to address the collective problem of climate change, including its compliance mechanism, requires effective cooperation between States and within the relevant organization based on the principle of equity and CBDR-RC in light of different national circumstances, taking into account the different levels of development and geographical circumstances between states, and taking particular attention to least developed states and vulnerable countries as well as archipelagic states noting their particular susceptibility to the repercussions of rising sea level.

Respectfully Submitted,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

**L. Aprih Jinangkung**

Director General for

Legal Affairs and International Treaties / Legal Adviser  
Ministry of Foreign Affairs of the Republic of Indonesia

22 March 2024