

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

WRITTEN STATEMENT OF THE PRINCIPALITY OF LIECHTENSTEIN

22 MARCH 2024

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1. INTRODUCTION

1. On 29 March 2023, the United Nations General Assembly adopted Resolution 77/276, by which it decided, in accordance with Article 96 of the Charter of the United Nations and pursuant to Article 65 of the Statute of the Court, to request that the International Court of Justice (“**ICJ**” or “**Court**”) give an advisory opinion (“**Request**”) 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 principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

- a. What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
- b. What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
 - i. States, including, in particular, small island developing States, which due to their geographical circumstances and level of 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?¹

2. By its Order of 20 April 2023, the Court fixed 20 October 2023 as the time-limit for the submission of written statements. By its subsequent Order of 4 August 2023, the Court extended the deadline to 22 January 2024. On 15 December 2023, the Court extended to 22 March 2024 the time-limit by which written statements must be presented.

¹ 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*, UN Doc. A/RES/77/276 (4 April 2023) (Dossier No. 2), p. 3.

3. In accordance with the aforementioned Orders, the Principality of Liechtenstein (“**Liechtenstein**”) hereby submits its written statement on the questions presented in the Request.

4. Liechtenstein’s submission is motivated by the unprecedented challenges posed by climate change and the urgent need for clarity regarding the complex questions of international law that pertain to it. Liechtenstein is proud to have served as a member of the Core Group of States on the initiative to request this Advisory Opinion from the Court.

5. Liechtenstein’s statement focuses on international human rights law and the right to self-determination in the context of climate change, a right that is of paramount concern to Liechtenstein. After describing the process that led to the Request (**Section 2**), Liechtenstein addresses the Court’s jurisdiction and explains why there are no compelling reasons to decline to exercise jurisdiction (**Section 3**). The written statement next describes the scientific consensus that excess greenhouse gas (“**GHG**”) emissions are a key driver of climate change, which, in turn, has had, and will continue to have negative consequences for both States and individuals (**Section 4**). Liechtenstein then addresses the effects of climate change on human rights and the right to self-determination (**Section 5**) as well as the necessity for States to comply with their obligations under international law and their right to take effective action in discharge of those obligations (**Section 6**). Finally, the written statement describes the legal consequences that follow from a failure to comply with the aforementioned legal obligations (**Section 7**).

2. BACKGROUND OF THE REQUEST BEFORE THE COURT

6. Liechtenstein supports legal avenues to fight climate change.

7. From 2021 to 2023, Liechtenstein and the International Peace Institute organized a series of workshops focused on different legal avenues to fight climate. These included a request from the UN General Assembly for an advisory opinion by the ICJ on the rights of present and future generations to be protected from the negative effects of climate change.² Liechtenstein has continued to remain engaged in various initiatives related to climate change, including recently before the United Nations Security Council.³

8. Liechtenstein commends the global youth movement that called upon the UN General Assembly to take up this issue and is grateful to the Republic of Vanuatu for its leadership in mobilizing support for this Advisory Opinion Request.

9. Liechtenstein was honoured to be an original member of the “core group” of States tasked with drafting the UN General Assembly resolution requesting an advisory opinion from the ICJ on the legal consequences of climate change.⁴ The core group was a testament to effective multilateralism. It was small enough to be effective but nevertheless representative of the UN membership: both cross-regional and inclusive in terms of national perspectives, but also deliberative and thorough in its approach. The negotiations within the core group and with the broader UN membership is a model to follow for similar multilateral initiatives. This Advisory Opinion Request is a further testament to the ability of small States to lead crucially important initiatives internationally.

² See International Peace Institute, “Legal Avenues to Fight Climate Change” (15 December 2021), *available at* <https://www.ipinst.org/2021/12/legal-avenues-to-fight-climate-change#5>; International Peace Institute, “Legal Avenues to Fight Climate Change” (30 March 2023), *available at* <https://www.ipinst.org/2023/03/legal-avenues-to-fight-climate-change-2023#2>.

³ See Permanent Representative of the Principality of Liechtenstein to the UN, *Statement at UN Security Council Open Debate: The Impact of Climate Change and Food Insecurity on the Maintenance of International Peace and Security* (13 February 2024), *available at* <https://twitter.com/LiechtensteinUN/status/1757520483287699490>.

⁴ “UN General Assembly Seeks World Court Ruling on Climate Change,” *Human Rights Watch* (29 March 2023), *available at* <https://www.hrw.org/news/2023/03/29/un-general-assembly-seeks-world-court-ruling-climate-change#>.

10. Liechtenstein expects the advisory opinion to provide authoritative guidance, including on questions at the intersection of climate change and human rights, which were a central focus of the more than 50 rounds of meetings of the core group.

11. UN General Assembly Resolution 77/276 begins by “[r]ecognizing that climate change is an unprecedented challenge of civilizational proportions, and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it.”⁵ There is indeed no issue of more pressing global concern than climate change. In many ways, it is the defining crisis of our time.

12. Climate change is also one of the greatest threats to human rights of our generation, posing a serious risk to the fundamental rights of individuals and communities across the world. Liechtenstein emphasizes that the UN General Assembly Resolution 77/276 referenced the Universal Declaration of Human Rights (“UDHR”) prominently and recalled the relevant resolutions of the Human Rights Council on climate change and human rights.

13. It is in this vein that Liechtenstein strongly supported this Advisory Opinion Request by the UN General Assembly, which it trusts will result in another landmark decision in the long and rich history of the Court’s contribution to international law.

⁵ 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*, UN Doc. A/RES/77/276 (4 April 2023) (Dossier No. 2), p. 1.

3. JURISDICTION AND DISCRETION

14. The Court has jurisdiction to issue the requested Advisory Opinion pursuant to Article 65(1) of its Statute, which provides: “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.”⁶ The questions before the Court are legal in nature and the UN General Assembly is authorized to make the Request, which it did, by consensus, through the adoption of Resolution 77/276. There are no circumstances warranting the Court to exercise its discretion to decline to respond to the Request.

15. First, Article 96(1) of the UN Charter authorizes the General Assembly to request an advisory opinion “on any legal question.”⁷ Thus, unlike other UN organs and specialized agencies, the General Assembly’s authority to request advisory opinions is not restricted to legal questions “arising within the scope of [its] activities.”⁸ Nonetheless, climate change and its effects are directly relevant to many aspects of the General Assembly’s mandate,⁹ including but not limited to the progressive development of international law;¹⁰ international co-operation in the economic, social, cultural, educational and health fields;¹¹ the maintenance of international peace and security;¹² the realization of human rights and fundamental freedoms;¹³ the right to self-

⁶ ICJ Statute, Art. 65(1).

⁷ UN Charter, Art. 96(1).

⁸ See *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1982, p. 325 at pp. 333-334, para. 21. See also P. d’Argent, “Article 65” in A. Zimmermann *et al.* (eds.), *Statute of the International Court of Justice* (3rd Ed., Oxford University Press 2019), p. 1795, para. 21.

⁹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (I), p. 226, at pp. 232-233, paras. 11-12.

¹⁰ See UN Charter, Arts. 10, 13(1)(a).

¹¹ See *ibid.*, Arts. 10, 13(1)(b).

¹² See *ibid.*, Arts. 10, 11, 14. See also *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403 (“**Kosovo Advisory Opinion**”), at p. 420, para. 40 (“Articles 10 and 11 of the Charter ... confer upon the General Assembly a very broad power to discuss matters within the scope of the activities of the United Nations, including questions related to international peace and security”).

¹³ See UN Charter, Arts. 10, 13(1)(b).

determination;¹⁴ and, most critically, the protection of the global climate for present and future generations.¹⁵

16. The Request is legal in nature because the Court is asked to provide its opinion on the obligations of States to protect the climate system and other parts of the environment from anthropogenic GHG emissions and the legal consequences arising from a failure to uphold these obligations. The questions are “framed in terms of law and rais[ing] problems of international law ... [which] are by their very nature susceptible of a reply based on law” and, thus, must be considered legal questions for purposes of establishing the Court’s jurisdiction.¹⁶

17. As the Court has repeatedly affirmed, the fact that a question may have “political” aspects does not divest the question of its legal character.¹⁷ Since the Court’s opinion is directed not to States but to the organ which requested it, neither the motives of individual States inspiring the Request nor the political implications of the opinion are relevant when determining jurisdiction.¹⁸ As such, the broader political context in which the present Request arose, including the global climate change negotiations taking place in other fora, does not detract from the fact that the Court is invited to discharge a judicial task, namely, to assess the obligations of States under international law in respect of climate change.¹⁹

¹⁴ See *ibid.*, Arts. 10, 14. See also UN General Assembly, Resolution 1514 (XV), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN Doc. A/RES/1514(XV) (14 December 1960), para. 2; UN General Assembly, Resolution 38/17, *Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights*, UN Doc. A/RES/38/17 (22 November 1983).

¹⁵ See Dossier Part V(A), Nos. 104-135 (General Assembly resolutions on protection of global climate for present and future generations).

¹⁶ *Kosovo Advisory Opinion*, pp. 414–415, para. 25 (citing *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at p. 18, para. 15).

¹⁷ *Ibid.*, p. 415, para. 27. See also *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 166, at pp. 171-172, para. 14.

¹⁸ *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion, I.C.J. Reports 1948*, p. 57, at p. 61; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 226, at p. 234, para. 13; *Kosovo Advisory Opinion*, p. 415, para. 27.

¹⁹ *Kosovo Advisory Opinion*, p. 415, para. 27.

18. Even when the jurisdictional conditions are met, the Court has discretion to decline to respond to a request for an advisory opinion under Article 65(1) of its Statute.²⁰ This discretion serves to protect the integrity of the Court’s judicial function and its role as the principal judicial organ of the United Nations.²¹ However, as this Court has consistently expressed, a request for an advisory opinion “in principle, should not be refused”²² and only “compelling reasons” can justify such a refusal.²³ Indeed, the present Court has never exercised its discretionary power to decline to give an advisory opinion where the conditions for the exercise of jurisdiction are met.²⁴

19. In Liechtenstein’s view, there are no compelling reasons for the Court to decline to exercise its advisory jurisdiction. The Court’s answers to the questions submitted would be of great assistance to the General Assembly, as well as other UN bodies, in the exercise of their functions relating to climate change and its impacts. The Court has before it sufficient evidence to enable it to deliver the requested Advisory Opinion:²⁵ a voluminous dossier that includes comprehensive documentation from relevant intergovernmental processes of the United Nations and reports from, among others, the Intergovernmental Panel on Climate Change (“**IPCC**”).²⁶

²⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (“**Wall Advisory Opinion**”), at p. 156, para. 44.

²¹ *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 166, at p. 175, para. 24; *Wall Advisory Opinion*, pp. 156-157, paras. 44-45.

²² *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 65, at p. 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*, p. 62, at pp. 78-79, para. 29; *Wall Advisory Opinion*, p. 156, para. 44.

²³ *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against the UNESCO, I.C.J. Reports 1956*, p. 77, at p. 86; *Wall Advisory Opinion*, p. 156, para. 44; *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 166, at p. 183, para. 40; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at p. 21, para. 23.

²⁴ The only time that the Court did not exercise advisory jurisdiction was in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, p. 66, where it found it did not have jurisdiction to begin with.

²⁵ *Wall Advisory Opinion*, pp. 161-162, paras. 57-58; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at pp. 114-115, paras. 73-74.

²⁶ The IPCC is an organization of governments with 195 UN member States tasked with assessing climate change science that works with the world’s most respected scientists in the field. Its reports reflect the scientific consensus regarding the causes and effects of climate change.

20. For the foregoing reasons, Liechtenstein submits that the Court has the jurisdiction to give the requested Advisory Opinion, and there is no reason it should decline to do so.

4. ANTHROPOGENIC GREENHOUSE GAS EMISSIONS CAUSE CLIMATE CHANGE

21. There is overwhelming scientific consensus that “[h]uman activities, principally through emissions of [GHGs], have unequivocally caused global warming,” which in turn causes serious environmental harm.²⁷ The IPCC has concluded, most recently in its March 2023 report, that GHGs have induced significant and rapid changes in the atmosphere, ocean, cryosphere and biosphere, which have had “widespread adverse impacts and related losses and damages to nature and people” affecting vulnerable communities that have historically contributed the least to current climate change most drastically and disproportionately.²⁸ It recognizes “the interdependence of climate, ecosystems and biodiversity, and human societies; the value of diverse forms of knowledge; and the close linkages between climate change adaptation, mitigation, ecosystem health, human well-being and sustainable development, and reflects the increasing diversity of actors involved in climate action.”²⁹ Liechtenstein fully recognizes the findings of the IPCC and aligns its domestic climate policy in accordance with its latest scientific results.

22. Climate change has adverse effects on physical and mental health, food security, and eventually also on mortality. It has and will continue to contribute to increased displacement of populations due to growing food insecurity, loss of territory³⁰, possible uninhabitability, and poses an existential threat to vulnerable communities, especially in coastal areas, and cultural heritage.³¹

²⁷ IPCC, *Climate Change 2023 Synthesis Report – Summary for Policymakers* (2023) (Dossier No. 78) (“**IPCC 2023 – Synthesis Report, Summary for Policymakers**”), available at https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, para. A.1. See also Inter-American Court of Human Rights, Advisory Opinion on Climate Emergency and Human Rights, *Amicus brief submitted by the UN Special Rapporteurs on Toxics and Human Rights (Marcos Orellana), Human Rights and the Environment (David Boyd), and the Right to Development (Surya Deva)* (22 November 2023) (“**IACtHR Climate Advisory Opinion, UN Special Rapporteurs Amicus Brief**”), available at https://www.ohchr.org/sites/default/files/documents/issues/toxicwastes/activities/IACtHR-advisory-opinion-amicus-curiae-boyd-orellana-deva_EN.pdf, para. 24.

²⁸ IPCC 2023 – Synthesis Report, Summary for Policymakers, para. A.2. See also, e.g., IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) (“**IPCC 2022 – Contribution of Working Group II**”), available at https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf, p. 1207.

²⁹ IPCC 2023 – Synthesis Report, Summary for Policymakers, p. 3.

³⁰ United States Environmental Protection Agency 2014, *A Closer Look: Land Loss Along the Atlantic Coast*, Climate Change Indicators. <https://www.epa.gov/climate-indicators/atlantic-coast>.

³¹ See IPCC, *Sixth Assessment Report Working Group II: Fact Sheet – Health* (February 2023), available at https://www.ipcc.ch/report/ar6/wg2/downloads/outreach/IPCC_AR6_WGII_FactSheet_Health.pdf; IPCC, *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* (2023) (“**IPCC 2023 – Synthesis Report**”), available at

Climate change has also had drastic impacts on ecosystems. Global warming has already caused significant impacts on terrestrial and marine ecosystems and changed their composition, which has led to and will continue to lead to a shrinking of suitable habitat space.³²

https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf, pp. 50-51, 76; IPCC 2023 – Synthesis Report, Summary for Policymakers, paras. A.2.2, A.2.4, A.2.5, B.2.2, B.2.4; IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability – Summary for Policy Makers* (2022) (Dossier No. 76), available at https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf, paras. B.2.5, B.4.5; IPCC 2022 – Contribution of Working Group II, pp. 477-478.

³² IPCC 2023 – Synthesis Report, p. 49, Figure 2.3(c); IPCC 2022 – Contribution of Working Group II, pp. 45-47, 1819; K.R. Shivanna, “Climate change and its impact on biodiversity and human welfare” (2022) 88 *Indian National Science Academy* 160, available at <https://doi.org/10.1007/s43538-022-00073-6>, pp. 165-166.

5. THE EFFECT OF CLIMATE CHANGE ON HUMAN RIGHTS AND THE RIGHT TO SELF-DETERMINATION

23. The necessity for States to consider human rights obligations while implementing climate action is well-established.³³ This has been an area of concern for UN human rights bodies, including the UN Human Rights Council, which has adopted resolutions recognizing that climate change constitutes an immediate and far-reaching threat to people and communities around the world, with implications for the full enjoyment of human rights.³⁴ The Office of the United Nations High Commissioner for Human Rights similarly concluded, in a landmark study published in 2009, that climate change affects the enjoyment of a wide range of rights and disproportionately impacts vulnerable groups.³⁵ In 2014, 27 UN Special Rapporteurs and Independent Experts concluded that “[t]here can no longer be any doubt that climate change interferes with the enjoyment of human rights recognised and protected by international law.”³⁶ On the eve of the 2023 United Nations Climate Change Conference or Conference of the Parties of the UNFCCC, UN human rights experts recalled the impact that fossil fuels have on preventing the full enjoyment of a range of

³³ See Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016), 3156 UNTS 79 (“**Paris Agreement**”) (Dossier No. 16), Preamble; Conference of the Parties to the UNFCCC, Decision 1/CP.21, *Adoption of the Paris Agreement*, UN Doc. FCCC/CP/2015/10/Add.1 (29 January 2016) (Dossier No. 155), Preamble; Conference of the Parties to the UNFCCC, Decision 1/CP.16, *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, UN Doc. FCCC/CP/2010/7/Add.1 (15 March 2011) (Dossier No. 156), Preamble; Conference of the Parties to the UNFCCC, Decision 1/CP.27, *Sharm el-Sheikh Implementation Plan*, UN Doc. FCCC/CP/2022/10/Add.1 (20 November 2022) (Dossier No. 167), Preamble.

³⁴ See UN Human Rights Council, Resolution 7/23, *Human rights and climate change*, UN Doc. A/HRC/RES/7/23 (28 March 2008) (Dossier No. 264); UN Human Rights Council, Resolution 18/22, *Human rights and climate change*, UN Doc. A/HRC/RES/18/22 (17 October 2011) (Dossier No. 266); UN Human Rights Council, Resolution 26/27, *Human rights and climate change*, UN Doc. A/HRC/RES/26/27 (15 July 2014) (Dossier No. 267); UN Human Rights Council, Resolution 29/15, *Human rights and climate change*, UN Doc. A/HRC/RES/29/15 (22 July 2015) (Dossier No. 268); UN Human Rights Council, Resolution 32/33, *Human rights and climate change*, UN Doc. A/HRC/RES/32/33 (18 July 2016) (Dossier No. 269); UN Human Rights Council, Resolution 35/20, *Human rights and climate change*, UN Doc. A/HRC/RES/35/20 (7 July 2017) (Dossier No. 270); UN Human Rights Council, Resolution 38/4, *Human rights and climate change*, UN Doc. A/HRC/RES/38/4 (16 July 2018) (Dossier No. 269).

³⁵ UN Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc. A/HRC/10/61 (15 January 2009) (Dossier No. 283), paras. 20-54.

³⁶ UN OHCHR, *A New Climate Change Agreement Must Include Human Rights Protections For All* (17 October 2014), available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/SP/SP_To_UNFCCC.pdf, pp. 1-2.

human rights, and their direct contribution to “biodiversity loss, toxic pollution and water scarcity.”³⁷

24. The Human Rights Council has affirmed that human rights obligations and commitments can inform and strengthen efforts to combat climate change.³⁸ The preamble of the Paris Agreement stresses that all States should consider their human rights obligations when taking action to address climate change.³⁹ And, in 2019, five UN treaty bodies issued a Joint Statement on Human Rights and Climate Change recognizing that the “failure to take measures to prevent foreseeable harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.”⁴⁰

25. These statements are in line with the principle that the legal obligations of States should be interpreted in a holistic way and in accordance with accepted canons of treaty interpretation, as reflected in Article 31 of the Vienna Convention on the Law of Treaties (“VCLT”) and customary international law.⁴¹ As the Court observed in the *Namibia* Advisory Opinion, “an international

³⁷ “Fossils fuels at the heart of the planetary environmental crisis: UN experts,” *OHCHR* (30 November 2023), available at <https://www.ohchr.org/en/press-releases/2023/11/fossils-fuels-heart-planetary-environmental-crisis-un-experts>.

³⁸ See UN Human Rights Council, Resolution 10/4, *Human rights and climate change*, UN Doc. A/HRC/RES/10/4 (25 March 2009) (Dossier No. 265), Preamble.

³⁹ Paris Agreement, Preamble (“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights ...”).

⁴⁰ The Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on human rights and climate change*, UN Doc HR1/2019/1 (14 May 2020) (Dossier No. 300), para. 10.

⁴¹ See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 71, at p. 95, para. 75 (noting that “it is well established that Articles 31 and 32 of the Vienna Convention reflect rules of customary international law”) (citing *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, *Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 598, para. 106; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 320-321, para. 91; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 116, para. 33). See also *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10 at p. 28, para. 58; *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case No. 2013-19, Award (12 July 2016), paras. 216, 247, 274-275.

instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation.”⁴² It follows that the obligations of States with respect to the protection of the climate system and other parts of the environment from anthropogenic emissions of GHGs should be interpreted in a manner that integrates international human rights and international environmental law.

26. Indeed, climate change can lead to events that directly or indirectly threaten lives, and that can undermine and destroy key resources and infrastructure that are essential to human survival. This, in turn, has implications on the right to self-determination, as well as the rights to life; housing; a clean, healthy and sustainable environment; food; water and livelihood, amongst others.

I. The Effect of Climate Change on the Right to Self-Determination

27. The right to self-determination is a *jus cogens* norm recognized in Article 1 of the UN Charter and Common Article 1 of the International Covenant on Civil and Political Rights (“**ICCPR**”) and the International Covenant on Economic, Social and Cultural Rights (“**ICESCR**”). By virtue of this right, all peoples are entitled to “freely determine their political status and freely pursue their economic, social and cultural development.”⁴³ The right to self-determination includes the right of a people, “for their own ends, freely [to] dispose of their natural wealth and resources”⁴⁴ and not to be deprived of their own means of subsistence.⁴⁵ Self-determination is manifested not only through statehood but also through the realization of social, economic and cultural rights.⁴⁶

⁴² *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*, p. 16, at p. 31, para. 53.

⁴³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (“**ICCPR**”) and International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3 (“**ICESCR**”), Common Article 1(1).

⁴⁴ *Ibid.*, Common Article 1(2).

⁴⁵ *Ibid.*

⁴⁶ UN Human Rights Committee, *CCPR General Comment No. 12 – Article 1: Right to Self-determination* (13 March 1984), para. 1 (“The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and

28. As the Court confirmed in the *Chagos* Advisory Opinion, the right to self-determination is an obligation of an *erga omnes* character.⁴⁷ This right must also be accorded to future generations, and not just protected at the present moment.⁴⁸ Consequently, all States have an obligation to take “all necessary measures” to protect the right to self-determination.⁴⁹ Liechtenstein emphasizes the fundamental nature of this right.

29. In 2009, the Human Rights Council recognized self-determination as one of the human rights most affected by climate change.⁵⁰ According to the Council, climate change will inevitably displace individuals, severing them from their homelands and limiting their ability to practice their culture and freely engage in economic, social, and cultural development.⁵¹ More recently, the High Commissioner for Human Rights similarly observed that “[c]limate change not only poses a threat to the lives of individuals but also to their ways of life and livelihoods, and to the survival of entire peoples.”⁵²

30. Despite having contributed the least to climate change, small island developing States (“**SIDS**”) in particular are among the most vulnerable to its effects.⁵³ For States with low-lying

strengthening of those rights.”), para. 2 (“By virtue of [the right to self-determination] [all people] freely “determine their political status and freely pursue their economic, social and cultural development”).

⁴⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, p. 139, para. 180.

⁴⁸ Maastricht Principles on the Human Rights of Future Generations (adopted on 3 February 2023), Art. 5.

⁴⁹ *Ibid.*, Art. 20(a).

⁵⁰ See UN Human Rights Council, Resolution 10/4, *Human rights and climate change*, A/HRC/RES/10/4 (25 March 2009) in *Report of the Human Rights Council on its tenth session*, UN Doc. A/HRC/10/29 (9 November 2009) (Dossier No. 265), Preamble.

⁵¹ UN Human Rights Council, Resolution 35/20, *Human rights and climate change*, UN Doc. A/HRC/RES/35/20 (7 July 2017) (Dossier No. 270), Preamble.

⁵² Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change*, Fact Sheet 38 (2021) at 5, https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf.

⁵³ See, e.g., K. Keo & Y. Jo, *The State Of Climate Ambition: Small Island Developing States (SIDS)* (2022), available at https://climatepromise.undp.org/sites/default/files/research_report_document/Climate%20Ambition-SIDS%20v2.pdf, p. 3; IMF, *Small States’ Resilience To Natural Disasters And Climate Change—Role For The IMF* (December 2016), available at <https://www.imf.org/external/np/pp/eng/2016/110416.pdf>, pp. 8-12; UN Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/HRC/31/52 (1 February 2016) (Dossier No. 306), para. 29.

coastal areas, and for small island States in particular, sea-level rise can pose an existential crisis.⁵⁴ The IPCC Working Group II—which was tasked with assessing climate change impacts—has confirmed that “[i]n high emissions scenarios, low-lying island states may face the long-term risk of becoming uninhabitable, creating the potential for a new phenomenon of climate-induced statelessness.”⁵⁵ The IPCC further notes that “[i]n the Arctic and in some high mountain regions, negative impacts of cryosphere change have been especially felt among Indigenous Peoples.”⁵⁶

31. In addition to threats to statehood due to geographic mortality and the permanent displacement of a State’s population, climate change has resulted in drastic changes to major economic sectors and severely impacted people’s livelihood security. The IPCC concluded that economic damage from, *inter alia*, the effects of climate change has been detected in “climate-exposed sectors, with regional effects to agriculture, forestry, fishery, energy, and tourism, and through outdoor labour productivity.”⁵⁷ The effects of climate change diminish work productivity and slow economic growth, particularly in poorer countries.⁵⁸ This affects livelihoods, impacts

⁵⁴ See ILC, *Report of the Study Group on sea-level rise in relation to international law*, UN Doc. A/CN.4/L.972 (15 July 2022), para. 10; IACtHR Climate Advisory Opinion, UN Special Rapporteurs Amicus Brief, para. 86. Several States have noted that population relocation due to sea-level rise was already a reality, stressing the consequences that the extinction of statehood would have for the definition of their people’s identity as a nation. See, e.g., UN Security Council, *Meeting Coverage: Climate Change-induced Sea-Level Rise Direct Threat to Millions around World*, Secretary-General Tells Security Council, UN Doc. SC/15199 (14 February 2023), available at <https://press.un.org/en/2023/sc15199.doc.htm>; UNDP, *Press Release: Climate change’s impact on coastal flooding to increase 5-times over this century, putting over 70 million people in the path of expanding floodplains, according to new UNDP and CIL data* (28 November 2023), available at <https://www.undp.org/press-releases/climate-changes-impact-coastal-flooding-increase-5-times-over-century-putting-over-70-million-people-path-expanding-floodplains>; Federated States of Micronesia, *COP 28 High-level Segment: National Statement* (9 December 2023), available at <https://unfccc.int/documents/636625>; Tuvalu, *COP 28 High-level Segment: National Statement* (2 December 2023), available at <https://unfccc.int/documents/635632>; Pacific Community, “The existential threat climate change poses to Pacific nations presented at International Tribunal” (21 September 2023), available at <https://www.spc.int/updates/news/2023/09/the-existential-threat-climate-change-poses-to-pacific-nations-presented-at>.

⁵⁵ IPCC 2022 – Contribution of Working Group II, p. 1100.

⁵⁶ IPCC 2023 – Synthesis Report, p. 51.

⁵⁷ *Ibid.*

⁵⁸ M. Dell *et al.*, “Temperature Shocks and Economic Growth: Evidence From the Last Half Century” (2012) 4(3) *American Economic Journal: Macroeconomics* 66, available at https://scholar.harvard.edu/files/dell/files/aej_temperature.pdf, pp. 92-93; S. Dasgupta *et al.*, “Effects of climate change on combined labour productivity and supply: an empirical, multi-model study” (July 2021) 5(7) *The Lancet* 455, available at [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(21\)00170-4/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(21)00170-4/fulltext).

human health and food security, destroys homes and infrastructure, and leads to loss of property and income, with adverse effects on gender and social equity.⁵⁹

32. As noted above, Common Article 1 of the ICCPR and the ICESCR stresses that an important aspect of the right to self-determination is that “a people [may not] be deprived of its own means of subsistence” and that they may have the ability to “freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.”⁶⁰ By interfering with people’s livelihood security, climate change interferes with the right to self-determination in this way as well.

33. It is, furthermore, imperative that States protect the right to self-determination, as this right is essential for the effective enjoyment of other human rights,⁶¹ including the ones discussed in the sections below.

II. The Effect of Climate Change on Other Human Rights

34. The effects of climate change have and will continue to directly impact other human rights as well, including the rights to life; housing; a clean, healthy and sustainable environment; food; water; livelihood; and to participate in cultural life, including the right to access and enjoy cultural heritage, acknowledging that these rights are threatened by many other factors as well among them violent conflicts, natural disasters, deforestation, pollution, poverty and discrimination. Each of the above-mentioned rights are discussed below in more detail.

35. Liechtenstein takes the scientific evidence regularly published by the IPCC as the basis of its national climate policy. Accordingly, the following discussion of the impacts of climate change on human rights is based on the different scenarios used by the IPCC in relation to the effects of

⁵⁹ IPCC 2023 – Synthesis Report, Summary for Policymakers, para. A.2.6.; *ibid.*, p. 7, Figure SPM.1(a).

⁶⁰ ICCPR and ICESCR, Common Article 1(2).

⁶¹ IACtHR Climate Advisory Opinion, UN Special Rapporteurs Amicus Brief, para. 92.

continued climate change, which can differ significantly in terms of likelihood of occurrence and severity across regions.

A. RIGHT TO LIFE

36. The right to life is protected by Article 3 of the UDHR⁶² and Article 6 of the ICCPR.⁶³ It is “the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation.”⁶⁴ The right to life constitutes a fundamental right, “the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights.”⁶⁵ States have an obligation to respect the right to life, which entails a duty “to refrain from engaging in conduct resulting in arbitrary deprivation of life.”⁶⁶ The obligation extends to “reasonably foreseeable threats and life-threatening situations that can result in loss of life.”⁶⁷

37. The effects of climate change can directly threaten human lives and as a consequence infringe on the right to life. As the UN Human Rights Committee has found, “[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”⁶⁸

38. Extreme weather events, which have become more frequent due to climate change, may have direct and devastating impacts on human lives. For example, climate change has likely increased the frequency and intensity of tropical cyclones.⁶⁹ In 2019, almost 4 million people were affected by cyclones in Mozambique, Malawi and Zimbabwe alone, where people were killed,

⁶² UDHR, Art. 3.

⁶³ ICCPR, Art. 6(1) (“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.”).

⁶⁴ UN Human Rights Committee, *General Comment No. 36 – Article 6: Right to Life*, UN Doc. CCPR/C/GC/36 (3 September 2019) (Dossier No. 299), para. 2.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*, para. 7.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, para. 62.

⁶⁹ See IPCC 2023 – Synthesis Report, pp. 46, 69.

displaced and lost access to schools, hospitals and sanitation.⁷⁰ The “arbitrary” loss of life associated with extreme weather events is precisely what the right to life obliges States to prevent.

39. While extreme weather events may be the most visible threat to the right to life, climate change also endangers the right to life through increased risks of drought, increased heat, disease vectors, and a myriad of other ways.⁷¹ Extreme heat will continue to become more frequent due to climate change, resulting in higher human mortality and morbidity across all regions of the world.⁷² In fact, increased illness and death are likely as a result of even small differences in seasonal average temperatures.⁷³ Excessive heat takes a significant physiological toll, creating new illnesses and disabilities as well as making existing ones more severe.⁷⁴ As the World Health Organization (“WHO”) has observed, “[e]xtended periods of high day and night-time temperatures create cumulative physiological stress on the human body which exacerbates the top causes of death globally, including respiratory and cardiovascular diseases, diabetes mellitus and renal disease.”⁷⁵ According to the WHO, between 2030 and 2050, climate change is expected to cause 250,000 additional deaths each year due to malaria, malnutrition, diarrhoea and heat stress.⁷⁶

40. The UN Human Rights Committee has confirmed that the effects of climate change may endanger the right to life under the ICCPR, recalling that “environmental degradation can compromise effective enjoyment of the right to life and that severe environmental degradation can

⁷⁰ Amnesty International, *Stop Burning Our Rights! What Governments and Corporations Must Do to Protect Humanity from the Climate Crisis: Executive Summary* (7 June 2021), available at <https://www.amnesty.org/en/documents/pol30/4110/2021/en/>, p. 4.

⁷¹ UN OHCHR, *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change – Understanding Human Rights and Climate Change* (27 November 2015), available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>, p. 14.

⁷² See IPCC 2022 – Contribution of Working Group II, pp. 63-64; IPCC 2023 – Synthesis Report, Summary for Policymakers, para. A.2.5.

⁷³ World Health Organization, “Heat and Health” (1 June 2018), available at <https://www.who.int/news-room/factsheets/detail/climate-change-heat-and-health>.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ World Health Organization, “Climate Change – Overview” (last accessed: 13 February 2024), available at https://www.who.int/health-topics/climate-change#tab=tab_1.

adversely affect an individual's well-being and lead to a violation of the right to life."⁷⁷ It also determined that "in the absence of urgent action ... the effects of climate change may expose individuals to a violation of their rights under article 6 of the Covenant."⁷⁸ Moreover, "given that the risk of an entire country's [*sic.*] becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized."⁷⁹

41. The impacts of climate change on the right to life are likely to materialize and will become more severe, if States do not take appropriate steps through mitigation and adaptation measures.

B. RIGHT TO HOUSING

42. Article 17 of the ICCPR establishes that "[n]o one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence."⁸⁰ Article 11 of the ICESCR further establishes that all persons are entitled to an adequate standard of living for themselves and their families, including adequate housing.⁸¹ The Committee on Economic, Social and Cultural Rights noted that "[t]he human right to adequate housing ... is of central importance for the enjoyment of all economic, social and cultural rights."⁸²

43. Climate change threatens the right to housing in a number of ways. To begin with, more frequent extreme weather events increase the risk of physical destruction to homes. Drought,

⁷⁷ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019 (Daniel Billy and others v. Australia)*, UN Doc. CCPR/C/135/D/3624/2019 (18 September 2023) ("*Billy v. Australia*"), para. 8.5.

⁷⁸ *Ibid.*, para. 8.7 (citing UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016 (Ioane Teitiota v. New Zealand)*, UN Doc. CCPR/C/127/D/2728/2016 (23 September 2020), para. 9.11).

⁷⁹ *Ibid.*

⁸⁰ ICCPR, Art. 17.

⁸¹ ICESCR, Art. 11 ("The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.").

⁸² UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4 – Art. 11: The Right to Adequate Housing* (13 December 1991), available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=ICEnwWR8rbeJM8O1ALabP9BWeyFuYGLyYmdqGzgvNrcHN2wfOJ7e7h561aYJ0EMO2J51czkGbs+UgXB3nd9N+A==, para. 1.

erosion, and flooding can render territories uninhabitable. Sea-level rise threatens the very land upon which houses in low-lying areas are situated, a phenomenon that is expected to “continue for centuries even if the global mean temperature is stabilized.”⁸³ The impact has been and will be felt most acutely by people living in low-lying island States which, in high emission scenarios, “face the long-term risk of becoming uninhabitable.”⁸⁴

44. Climate change has resulted in and will likely lead to significantly higher levels of displacement due to increasing weather-related risks. Since 2008, weather-related hazards and loss of fresh water for agriculture and drinking⁸⁵ “have displaced over 21 million people each year on average, equivalent to 41 people every minute.”⁸⁶ Some are forced to move to overcrowded and overburdened cities that are unable to provide adequate housing, while others must establish new homes in informal settlements, where many live in inadequate or even inhumane conditions.⁸⁷ In 2020 alone, 30 million persons were displaced due to weather-related events.⁸⁸ The World Bank has predicted that by 2050, 216 million people could be internally displaced across the six regions it studied (Latin America, North Africa, sub-Saharan Africa, Eastern Europe and Central Asia, South Asia, and East Asia and the Pacific) as a result of climate change.⁸⁹

⁸³ UN OHCHR, *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>, p. 19 (citing IPCC, *Climate Change 2014 – Synthesis Report (AR5)* (2014), p. 13).

⁸⁴ IPCC 2022 – Contribution of Working Group II, p. 1100.

⁸⁵ UN Human Rights Council, *Towards a just transformation: climate crisis and the right to housing – Report of the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Balakrishnan Rajagopal, UN Doc. A/HRC/52/28 (23 December 2022) (Dossier No. 328), para. 11.

⁸⁶ Environmental Justice Foundation, *No Shelter From the Storm: The Urgent Need to Recognise and Protect Climate Refugees* (13 October 2021), available at https://ejfoundation.org/resources/downloads/EJF_Climate-Refugee-Report_2021_final.pdf, p. 2.

⁸⁷ UN Human Rights Council, *Towards a just transformation: climate crisis and the right to housing – Report of the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Balakrishnan Rajagopal, UN Doc. A/HRC/52/28 (23 December 2022) (Dossier No. 328), para. 11.

⁸⁸ *Ibid.*

⁸⁹ See The World Bank Group, *Groundswell Part II: Acting on Internal Climate Migration* (2021), available at <http://hdl.handle.net/10986/36248>, p. xxii.

C. RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT

45. A healthy environment is a prerequisite for the full enjoyment of human rights, including the rights to life and health.⁹⁰ The 1972 Stockholm Declaration recognized that there is a “fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”⁹¹ Regional human rights systems have similarly recognized the right of all peoples to a “general satisfactory environment favourable to their development,”⁹² and established that the right to progressive development includes a free-standing environmental right.⁹³ This right has also been recognized by resolutions of the UN Human Rights Council and the UN General Assembly.⁹⁴

46. The rights of children, including their right to a clean, healthy, and sustainable environment, are particularly affected by climate change. As the UN Committee on the Rights of the Child observed, children may be “particularly affected by climate change,”⁹⁵ since effects of climate change on the environment can harm their physical and mental health. Given that the consequences of environmental damage are very likely longstanding and difficult to reverse, the failure to secure a clean, healthy and sustainable environment in the present jeopardizes the ability

⁹⁰ See UN Human Rights Council, Resolution 48/13, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/HRC/RES/48/13 (18 October 2021) (Dossier No. 279), Preamble; UN General Assembly, Resolution 76/300, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300 (1 August 2022) (Dossier No. 260).

⁹¹ Report of the UN Conference on the Human Environment, Stockholm, 5-16 June 1972, *Chapter I: Declaration of the UN Conference on the Human Environment*, UN Doc. A/CONF.48/14/Rev.1 (1973) (Dossier No. 136), Principle 1.

⁹² Organization of African Unity, African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, Art. 24.

⁹³ Inter-American Court of Human Rights, Advisory Opinion OC-23-17, *The Environment and Human Rights* (15 November 2017), para. 59 (“Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.”).

⁹⁴ See, e.g., UN General Assembly, Resolution 76/300, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300 (28 July 2022) (Dossier No. 260); UN Human Rights Council, Resolution 48/13, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/HRC/RES/48/13 (8 October 2021) (Dossier No. 279).

⁹⁵ See UN Committee on the Rights of the Child, *Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019 (Sacchi, et al. v. Argentina, et al.)*, UN Doc. CRC/C/88/D/104/2019 (11 November 2021) (“*Sacchi v. Argentina*”), para. 10.13.

of future generations to enjoy this right.⁹⁶ As a result, the subject of climate justice has become a global subject with nearly 2,000 trials taking place around the world.⁹⁷ Many cases have been filed by children such as the one taken filed by four Portuguese children and two young adults against the 27 European Union member states as well as the United Kingdom, Switzerland, Norway, Russia and Turkey before the European Court of Human Rights.

47. The right to a clean, healthy and sustainable environment requires the preservation of a safe climate, clean air, clean water and adequate sanitation, healthy and sustainably produced food, non-toxic environments, and healthy biodiversity and ecosystems. As discussed throughout this brief, all of these aspects are threatened by climate change.⁹⁸

D. RIGHT TO FOOD

48. The right to food is enshrined in Article 25 of the UDHR,⁹⁹ and in Article 11 of the ICESCR, which upholds the “fundamental right of everyone to be free from hunger” and calls upon States acting individually and through international co-operation “to ensure an equitable distribution of world food supplies in relation to need.”¹⁰⁰ States have an obligation to respect, protect, promote, and fulfil the right to food, and “have committed to mobilize maximum available resources for the progressive realization of the right to food and all other rights contained in the ICESCR.”¹⁰¹

49. Climate change undermines food security, and thereby threatens the realization of the right to food. In 2016 and 2017, after a decade of progress, rates of hunger and malnutrition began to

⁹⁶ *Ibid.*

⁹⁷ C. Lepage, “Climate Justice in Europe, The Growing Role of Courts” (2021) 3(2) *RED* 135, available at <https://www.cairn-int.info/journal-red-2021-2-page-135.htm>.

⁹⁸ For impacts of climate change *see supra* § 5.

⁹⁹ UDHR, Art. 25(1) (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”).

¹⁰⁰ ICESCR, Art. 11(2).

¹⁰¹ UN OHCHR, *Understanding Human Rights and Climate Change: Submission of the OHCHR for Human Rights to the 21st Conference of the Parties to the UNFCCC* (2015), available at <https://www.uncclern.org/wp-content/uploads/library/cop21.pdf>, p. 16.

increase again.¹⁰² Climate variability and extremes are among the key drivers behind this increase in global hunger, and are one of the leading causes of severe food crises.¹⁰³ Effects of climate change, such as “shifting precipitation patterns, higher temperatures, extreme weather events, changing sea ice conditions, droughts, floods, algal blooms and salinization,” contribute to a decrease in food production, which in turn impacts food security and the enjoyment of the right to food.¹⁰⁴

50. The adverse impacts of climate change on the global food system are evident. Key food sources, including livestock, agriculture, and fish yield, all have experienced adverse impacts as a result of climate change.¹⁰⁵ By contributing to desertification and land degradation,¹⁰⁶ climate change threatens land used for agricultural production. Reduced production of staple crops, including wheat, maize, and rice, is already destabilizing the foundation of the global food system.¹⁰⁷

51. Acidification and stratification of oceans, a result of GHG emissions, has destroyed coral reefs and led to decreased fish stocks.¹⁰⁸ Ocean warming also contributes to an overall decrease in maximum catch potential, compounding the impacts from overfishing.¹⁰⁹ Together, ocean warming, acidification, and stratification adversely affect food production.¹¹⁰ Rising sea levels

¹⁰² UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019) (Dossier No. 312), paras. 35-36.

¹⁰³ FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World: Building climate resilience for food security and nutrition* (2018), available at https://docs.wfp.org/api/documents/WFP-0000074343/download/?_ga=2.34656674.2097596764.1707942853-90185231.1707942853, p. xii.

¹⁰⁴ UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019) (Dossier No. 312), para. 34.

¹⁰⁵ IPCC 2023 – Synthesis Report, pp. 49-50.

¹⁰⁶ *Ibid.*, p. 46.

¹⁰⁷ UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019) (Dossier No. 312), para. 34.

¹⁰⁸ *Ibid.*

¹⁰⁹ IPCC 2023 – Synthesis Report, pp. 46, 50.

¹¹⁰ *Ibid.*; IPCC 2022 – Contribution of Working Group II, p. 215 (recalling that between 2013-2015, a marine heatwave in the northeast Pacific “enhanced surface water stratification decreasing nutrient supply, primary and community

have caused salinization of water in certain coastal areas and contaminated water sources, making them unsuitable for irrigation purposes.¹¹¹

52. The impact of climate change on food security is increasingly experienced around the world. The largest impacts have been observed in communities in Africa, Asia, Central and South America, and the Arctic, as well as on small islands and for small-scale food producers, low-income households and indigenous peoples.¹¹² If left unchecked, the effects of climate change will continue to place strain on the global food supply.

E. RIGHT TO WATER AND SANITATION

53. Access to safe drinking water and sanitation are established human rights, derived from the right to an adequate standard of living under Article 11(1) of the ICESCR, and recognized in a wide range of international instruments.¹¹³ On 28 July 2010, the United Nations General Assembly adopted a landmark resolution recognizing “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”¹¹⁴

54. The key elements of the rights to water and sanitation, as elaborated by the Committee on Economic, Social and Cultural Rights in its General Comment No. 15¹¹⁵ and in the work of the

production and leading to widespread changes to open ocean and coastal ecosystems, with geographical shifts of key species across trophic levels ... and the closure of commercially important fisheries”).

¹¹¹ See, e.g., J. Fortin, “Storms, Rising Seas and Salty Drinking Water Threaten Lower Louisiana,” *The New York Times* (15 November 2023), available at <https://www.nytimes.com/2023/11/15/us/louisiana-saltwater-climate.html>. See also K. Tully, “The Invisible Flood: The Chemistry, Ecology, and Social Implications of Coastal Saltwater Intrusion” (1 May 2019) 69(5) *Bioscience* 368, available at <https://doi.org/10.1093/biosci/biz027>, pp. 368–378.

¹¹² IPCC 2023 – Synthesis Report, p. 50.

¹¹³ See, e.g., Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13, Art. 14(2)(h); Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3 (Dossier No. 55), Art. 24(2)(c); Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950), 75 UNTS 135, Arts. 20, 26, 29 and 46; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978), 1125 UNTS 3, Arts. 54 and 55.

¹¹⁴ UN General Assembly, Resolution 64/292, *The human right to water and sanitation*, UN Doc. A/RES/64/292 (28 July 2010), para. 1.

¹¹⁵ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 15 – Arts. 11 and 12: The Right to Water*, UN Doc. E/C.12/2002/11 (2002) (Dossier No. 294), para 12.

Special Rapporteur on the human rights to safe drinking water, are: availability, quality, accessibility, affordability, and acceptability.¹¹⁶ Each of these elements has been and will continue to be threatened by the adverse effects of climate change, including through the contamination of water sources and the salinization of water in coastal areas.¹¹⁷

55. “**Availability**” refers to the adequate supply of water for personal and domestic use, including drinking, sanitation, food preparation, and personal and household hygiene.¹¹⁸ Only a tiny fraction of water on Earth is useable and available freshwater, and climate change is dangerously affecting it.¹¹⁹ Rising temperatures as a result of climate change have caused, and will continue to lead to, increased evaporation of surface water, which leads to periods of lower precipitation as well as more severe droughts and increased flooding.¹²⁰ Floods threaten water quality and availability due to contamination of water sources,¹²¹ and result in higher competition for available water sources. Aquifers are at risk of overexploitation and salinization.¹²²

56. Already, climate change has impacted the global water cycle, disrupting familiar hydrological patterns for hundreds of millions of people.¹²³ According to the IPCC, droughts observed in Syria and the Southern Levant in 2014, Thailand in 2016, multiple countries in East Africa in 2017, South Africa in 2019, and China in 2019 were all caused in part by climate change, with devastating consequences.¹²⁴ Even in areas where the intensity of precipitation has increased,

¹¹⁶ See UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019) (Dossier No. 312), para. 38.

¹¹⁷ See, e.g., P. Arrojo Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation, *Special Thematic Report 1: Outlining the impacts of climate change on water and sanitation around the world* (January 2022), available at <https://www.ohchr.org/sites/default/files/2022-01/climate-change-1-friendlyversion.pdf>, pp. 2-3.

¹¹⁸ *Ibid.*, p. 3.

¹¹⁹ UN Water, “Water and Climate Change - Facts and Figures” (last accessed: 14 February 2024), available at <https://www.unwater.org/water-facts/water-and-climate-change>.

¹²⁰ P. Arrojo Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation, *Special Thematic Report 1: Outlining the impacts of climate change on water and sanitation around the world* (January 2022), available at <https://www.ohchr.org/sites/default/files/2022-01/climate-change-1-friendlyversion.pdf>, pp. 4-5, 9, 12.

¹²¹ *Ibid.*, p. 5.

¹²² *Ibid.*, pp. 2, 6, 8-9, 12-13.

¹²³ IPCC 2022 – Contribution of Working Group II, pp. 555, 565.

¹²⁴ *Ibid.*, pp. 580-581.

this has typically been accompanied by longer dry spells, exacerbating periods of water scarcity.¹²⁵ Currently, around two billion people worldwide lack access to safe drinking water¹²⁶ and roughly half of the world’s population experiences severe water scarcity for at least one month of the year.¹²⁷ Future effects of climate change will exacerbate these problems. The IPCC estimates that, at 2 degrees Celsius warming, between 0.9 and 3.9 billion people will be at increased exposure to water stress.¹²⁸ The World Bank predicts that the primary impacts faced by Liechtenstein “are related to raising temperatures, such as prolonged heat waves, droughts, an increased risk of landslides and debris flows.”¹²⁹ Overall, it noted, “changes in climatic conditions are expected to have a strong impact on biodiversity.”¹³⁰

57. “**Quality**” refers to the rule that water used for personal and domestic use “must be safe and free from contaminants that threaten health.”¹³¹ Climate change has negatively impacted water quality and will continue to do so. As summarized by the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, “[i]ncreasing water temperatures, higher or lower groundwater levels, floods and droughts raise the threat of heightened micro-organisms, chemical substances and radiological hazards in drinking water.”¹³² Degraded water quality and associated illnesses have been observed as secondary consequences

¹²⁵ “Double-whammy weather: Study identifies increased frequency of connected patterns from drought to heavy rain in regional hotspots across the globe,” *Princeton University* (14 May 2020), available at <https://www.princeton.edu/news/2020/05/14/double-whammy-weather-study-identifies-increased-frequency-connected-patterns>. See also IPCC 2022 – Contribution of Working Group II, p. 555.

¹²⁶ UN Climate Action, “Water – at the center of the climate crisis” (last accessed: 8 March 2024), available at <https://www.un.org/en/climatechange/science/climate-issues/water>.

¹²⁷ IPCC, *Sixth Assessment Report Working Group II: Fact Sheet – Food and Water* (October 2022), available at https://www.ipcc.ch/report/ar6/wg2/downloads/outreach/IPCC_AR6_WGII_FactSheet_FoodAndWater.pdf, p. 1.

¹²⁸ IPCC 2022 – Contribution of Working Group II, p. 558.

¹²⁹ The World Bank, Climate Change Knowledge Portal, “Climate Change Overview: Liechtenstein” (last accessed: 14 February 2024), available at <https://climateknowledgeportal.worldbank.org/country/liechtenstein>.

¹³⁰ *Ibid.*

¹³¹ P. Arrojo Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation, *Special Thematic Report I: Outlining the impacts of climate change on water and sanitation around the world* (January 2022), available at <https://www.ohchr.org/sites/default/files/2022-01/climate-change-1-friendlyversion.pdf>, p. 3.

¹³² UN OHCHR, *Position Paper of the Independent Expert on human rights, water and sanitation, Ms. Catarina de Albuquerque: Climate Change and the Human Rights to Water and Sanitation*, available at https://www2.ohchr.org/english/issues/water/iexpert/docs/climatechange_hrtws.pdf, p. 3 (citing Committee on Economic, Social and Cultural Rights, General comment No. 15 (2002), p. 5; B. C. Bates, Z.W. Kundzewicz, S. Wu and J.P. Palutikof, *Climate Change and Water*, Technical Paper VI, IPCC (2008), p. 2).

of various effects of climate change, including in the context of water contamination caused by algae blooms, increased water turbidity triggered by wildfires, and sediment runoff as a result of glacial retreat.¹³³ Additionally, “[f]loods and droughts will cause many forms of water pollution such as salinization of groundwater, intrusion of sediments, organic carbon, pathogens and pesticides, which impacts the health of the population.”¹³⁴

58. “**Accessibility**” refers to the ability of everyone, without discrimination, to access water facilities and services, and includes “four overlapping dimensions: physical accessibility, economic accessibility, non-discrimination, and information accessibility.”¹³⁵ Events caused by climate change, such as extreme weather events including hurricanes, typhoons and sea-level rise, impair access to water by causing widespread damage to water sources and infrastructure, which impacts all four dimensions.¹³⁶

59. “**Affordability**” means that “access to sanitation facilities and services, including construction, emptying and maintenance, must be available at a price that is affordable for all people without limiting their capacity to access other human rights.”¹³⁷ Increasing demand and competition over water, due to the effects of climate change, results in rising prices for water, making this vital resource less affordable for those who are most at risk of water scarcity.¹³⁸

¹³³ IPCC 2022 – Contribution of Working Group II, pp. 582-583.

¹³⁴ UN OHCHR, *Position Paper of the Independent Expert on human rights, water and sanitation, Ms. Catarina de Albuquerque: Climate Change and the Human Rights to Water and Sanitation*, available at https://www2.ohchr.org/english/issues/water/iexpert/docs/climatechange_hrtws.pdf, p. 3 (citing Committee on Economic, Social and Cultural Rights, General comment No. 15 (2002), p. 5; B. C. Bates, Z.W. Kundzewicz, S. Wu and J.P. Palutikof, *Climate Change and Water*, Technical Paper VI, IPCC (2008), p. 2).

¹³⁵ P. Arrojo Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation, *Special Thematic Report 1: Outlining the impacts of climate change on water and sanitation around the world* (January 2022), available at <https://www.ohchr.org/sites/default/files/2022-01/climate-change-1-friendlyversion.pdf>, p. 3.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.* See also UN OHCHR, *Position Paper of the Independent Expert on human rights, water and sanitation, Ms. Catarina de Albuquerque: Climate Change and the Human Rights to Water and Sanitation*, available at https://www2.ohchr.org/english/issues/water/iexpert/docs/climatechange_hrtws.pdf, pp. 2-3.

Additionally, the destruction of vulnerable water and sanitation infrastructure further exacerbates these rising costs.¹³⁹

60. “**Acceptability**” refers to the need for water and sanitation services to be “safe, and ensure privacy and dignity.”¹⁴⁰ Although climate change is likely to threaten access to drinking water and sanitation across the globe, certain areas will be more impacted than others. Small island states, polar regions, mountainous areas like Liechtenstein, and coastal zones all have geographical characteristics that make them more vulnerable to climate change. As such, “populations living in those areas face larger threats to the enjoyment of human rights to safe drinking water and sanitation.”¹⁴¹ For example, climate change has already contributed to a water crisis in Bolivia, “where glaciers are receding and water rationing has been required in major cities.”¹⁴²

61. Droughts, which have intensified as a result of climate change, have had a deep and widespread impact across the globe, affecting societies, ecosystems, and economies.¹⁴³ Since 2000, the number and duration of droughts has increased by 29 percent, as compared to the two previous decades.¹⁴⁴ Severe droughts have affected Africa disproportionately, with more than 300 drought events recorded over the past 100 years—accounting for 44 percent of the total drought

¹³⁹ UN OHCHR, *Position Paper of the Independent Expert on human rights, water and sanitation, Ms. Catarina de Albuquerque: Climate Change and the Human Rights to Water and Sanitation*, available at https://www2.ohchr.org/english/issues/water/iexpert/docs/climatechange_hrtws.pdf, p. 3.

¹⁴⁰ P. Arrojo Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation, *Special Thematic Report I: Outlining the impacts of climate change on water and sanitation around the world* (January 2022), available at <https://www.ohchr.org/sites/default/files/2022-01/climate-change-1-friendlyversion.pdf>, p. 3.

¹⁴¹ *Ibid.*, p. 8.

¹⁴² UN Human Rights Special Procedures, *Safe Climate: A Report of the Special Rapporteur on Human Rights and the Environment* (2 October 2019), available at https://www.unep.org/resources/report/safe-climate-report-special-rapporteur-human-rights-and-environment?_ga=2.151164863.745738304.1707932168-1604386905.1707932168, p. 21.

¹⁴³ See World Economic Forum, *Droughts are getting worse around the world, here's why and what needs to be done* (12 August 2022), available at <https://www.weforum.org/agenda/2022/08/drought-water-climate-un/>; United Nations Convention to Combat Desertification, *Drought in Numbers 2022: Restoration for Readiness and Resilience* (12 May 2022), available at <https://www.unccd.int/sites/default/files/2022-06/Drought%20in%20Numbers%20%28English%29.pdf>, p. 8.

¹⁴⁴ United Nations Convention to Combat Desertification, *Drought in Numbers 2022: Restoration for Readiness and Resilience* (12 May 2022), available at <https://www.unccd.int/sites/default/files/2022-06/Drought%20in%20Numbers%20%28English%29.pdf>, p. 4.

events recorded.¹⁴⁵ Europe has similarly seen an increase in the number of drought events, with more than 45 events occurring in Europe in the past century, leading to more than USD 27.8 billion in economic losses.¹⁴⁶

F. RIGHT TO LIVELIHOOD

62. Article 7 of the ICESCR protects the right of everyone to “the enjoyment of just and favourable conditions of work” that ensure a decent living.¹⁴⁷ Article 11 of the same instrument recognizes the right to “an adequate standard of living ... including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹⁴⁸

63. The right to livelihood is predicated on the enjoyment of other related rights, including those discussed above. Communities experiencing displacement, extreme weather events, drought, famine, and other climate-related challenges also experience a violation of the right to livelihood.¹⁴⁹ Storm surges, sea-level rise and coastal flooding, and inland flooding in urban regions, coupled with periods of extreme heat, directly disrupt livelihoods in many communities.¹⁵⁰ The loss of coastal fisheries, for example, has threatened communities that depend upon fishing to preserve an adequate living standard.¹⁵¹

64. Climate change may also cause occupational hazards for those pursuing their right to livelihood. Even where official protections for workers exist on paper to mitigate the harms of

¹⁴⁵ *Ibid.*, p. 12.

¹⁴⁶ *Ibid.*

¹⁴⁷ ICESCR, Art. 7.

¹⁴⁸ *Ibid.*, Art. 11.

¹⁴⁹ IPCC 2022 – Contribution of Working Group II, Chapter 8: Poverty, Livelihoods and Sustainable Development.

¹⁵⁰ See IPCC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2014), available at https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf, pp. 15, 65, 69.

¹⁵¹ International Tribunal for the Law of the Sea, Case No. 31, *Amicus brief submitted to the International Tribunal for the Law of the Sea by the UN Special Rapporteurs on Human Rights & Climate Change (Ian Fry), Toxics & Human Rights (Marcos Orellana), and Human Rights & the Environment (David Boyd)* (30 May 2023), paras. 57-59.

extreme heat, those with precarious status are often left outside official occupational safety regimes.¹⁵²

65. As with other rights, the poorest and most vulnerable communities often face the brunt of climate change's impacts.¹⁵³ Those communities have "limited resources to confront disasters, and their livelihoods depend directly on increasingly threatened ecosystem goods and services."¹⁵⁴ As a result, the poorest often bear climate impacts disproportionately.

G. RIGHT TO PARTICIPATE IN CULTURAL LIFE, INCLUDING THE RIGHT TO ACCESS AND ENJOY CULTURAL HERITAGE

66. Article 27 of the UDHR establishes that "[e]veryone has the right freely to participate in the cultural life of the community."¹⁵⁵ In 2018, the Human Rights Council unanimously adopted a resolution reiterating the obligation of States to "respect, promote and protect the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage."¹⁵⁶ States have made clear that preserving and protecting cultural heritage is a priority,¹⁵⁷ and have

¹⁵² See M. El Khayat *et al.*, "Impacts of Climate Change and Heat Stress on Farmworkers' Health: A Scoping Review" (2022) 10 *Frontiers in Public Health*, available at <https://doi.org/10.3389/fpubh.2022.782811>, p. 2; International Labour Organization, *Working on a warmer planet: The impact of heat stress on labour productivity and decent work* (2019), available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_711919.pdf, p. 14. See also M. Kiefer *et al.*, "Worker health and safety and climate change in the Americas: issues and research needs" (September 2016) 40(3) *Rev Panam Salud Publica* 192, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5176103/>.

¹⁵³ See The World Bank, *Groundswell – Preparing for Internal Climate Migration* (2018), available at <https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell---preparing-for-internal-climate-migration>, p. 21 ("According to the IDMC, disaster displacement has consistently affected poorer countries the most; low and middle income countries account for 95 percent of the global total. ... Many poor people have limited resources to confront disasters, and their livelihoods depend directly on increasingly threatened ecosystem goods and services. As a result, the poorest often bear climate impacts disproportionately, with their well-being losses (equivalent to consumption) more than twice as large as the world's average.").

¹⁵⁴ *Ibid.*

¹⁵⁵ UDHR, Art. 27.

¹⁵⁶ UN Human Rights Council, *Resolution adopted by the Human Rights Council on 22 March 2018: Cultural rights and the protection of cultural heritage*, UN Doc. A/HRC/RES/37/17 (9 April 2018), para. 1.

¹⁵⁷ See Statement of Italy delivered by Ambassador Massari at United Nations Security Council Arria-Formula Meeting "Protection of Cultural Heritage In Armed Conflicts" (2 May 2023), available at https://italyun.esteri.it/en/news/dalla_rappresentanza/2023/05/statement-of-italy-delivered-by-amb-massari-at-united-nations-security-council-arria-formula-meeting-protection-of-cultural-heritage-in-armed-conflicts-may-2-2023/; UN General Assembly, Informal Plenary Meeting of the General Assembly on Existential Threats of Sea-level Rise Amidst the Climate Crisis, Statement by Italy, at 02:00:50-02:01:38, available at

acknowledged that climate change may endanger cultural heritage sites that are central to the enjoyment of cultural rights.¹⁵⁸

67. Climate change has impacted and continues to threaten coral reefs, key marine world heritage sites that are directly affected by warming waters and ocean acidification.¹⁵⁹ If climate change remains inadequately addressed, even under the most ambitious current reduction scenarios for global GHG emissions, “70 per cent of corals worldwide are projected to suffer from long-term degradation by 2030, putting the reefs protected in many World Heritage sites at significant risk.”¹⁶⁰

68. Cultural sites, including buildings with historical, religious, and cultural significance, are also physically vulnerable to rising sea levels and extreme weather events.¹⁶¹ More than 130 World Heritage Cultural sites are endangered by rising sea levels.¹⁶² Such sites are vulnerable to climate-related damage from “extreme wind and rainfall events, as well as from coastal erosion, flooding and increasing damp and other impacts.”¹⁶³ Other impacts include the destabilization of building foundations by “increases or decreases in soil moisture, changes in the freeze/thaw cycle or, at Arctic sites, by thawing permafrost.”¹⁶⁴ Extreme temperatures in Iraq have contributed to the

<https://webtv.un.org/en/asset/k15/k153f79njv>; UN Security Council, Resolution 2347 (2017), UN Doc. S/RES/2347 (2017) (24 March 2017), para. 5.

¹⁵⁸ A. Markham *et al.*, *World Heritage and Tourism in a Changing Climate* (2016), available at <https://www.ucsusa.org/sites/default/files/attach/2016/05/world-heritage-and-tourism-in-a-changing-climate.pdf>, p. 11 (“Climate change is one of the most significant risks for World Heritage to emerge since the adoption of the World Heritage Convention in 1972.”).

¹⁵⁹ *Ibid.*, pp. 11-12.

¹⁶⁰ *Ibid.*, p. 12.

¹⁶¹ UN General Assembly, *Report of the Special Rapporteur in the field of cultural rights, Karima Bennouna*, UN Doc. A/75/298 (10 August 2020) (Dossier No. 326), para. 36.

¹⁶² A. Markham *et al.*, *World Heritage and Tourism in a Changing Climate* (2016), available at <https://www.ucsusa.org/sites/default/files/attach/2016/05/world-heritage-and-tourism-in-a-changing-climate.pdf>, p. 14.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

erosion of mosques and temples.¹⁶⁵ Earthen architecture sites, such as the Djenné mosque in Mali, are particularly vulnerable to changes in temperature and water interactions.¹⁶⁶

69. Cultural heritage includes not only tangible sites, but also the “practice and transmission of a host of rich intangible cultural heritage practices – from oral traditions, to performing arts, social practices, rituals, festive events, traditional craftsmanship, and interactions and relationships with nature.”¹⁶⁷ These are placed at risk by climate change.¹⁶⁸ Extreme weather events can and have disrupted traditional events, including festivals and holidays, and can also interrupt daily life in ways that undermine cornerstones of cultural transmission including oral storytelling, rituals, and teaching of traditional crafts and practices.¹⁶⁹ Losses include “the ability to live on ancestral lands; guardianship of sacred sites; folklore, song and dance; traditional medicine; religious rites; and cultural knowledge (including indigenous knowledge and practice).”¹⁷⁰

70. The threat is especially acute for indigenous groups, whose cultural heritage and cultural identity can be closely connected to their environments and traditional lands, resources, and territories.¹⁷¹ Several instruments specifically protect the cultural rights of indigenous peoples,

¹⁶⁵ H. Lynch, “Iraq’s ancient buildings are being destroyed by climate change,” *The Guardian* (15 April 2022), available at <https://www.theguardian.com/world/2022/apr/15/iraq-ancient-buildings-destroyed-by-climate-change-salt-sandstorms>.

¹⁶⁶ A. Markham et al., *World Heritage and Tourism in a Changing Climate* (2016), available at <https://www.ucsusa.org/sites/default/files/attach/2016/05/world-heritage-and-tourism-in-a-changing-climate.pdf>, p. 14.

¹⁶⁷ UN General Assembly, *Report of the Special Rapporteur in the field of cultural rights, Karima Bennoune*, UN Doc. A/75/298 (10 August 2020) (Dossier No. 326), para. 33.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, para. 34.

¹⁷¹ See UN Department of Economic and Social Affairs – Indigenous Peoples, “Climate Change” (last accessed: 14 February 2024), available at <https://www.un.org/development/desa/indigenouspeoples/climate-change.html>; “As climate crisis alters their lands, Indigenous Peoples turn to the courts,” *UNEP* (8 August 2023), available at <https://www.unep.org/news-and-stories/story/climate-crisis-alters-their-lands-indigenous-peoples-turn-courts>; A. Markham, “Cultural Heritage is a Human Right. Climate Change is Fast Eroding It.” *The Equation Blog, Union of Concerned Scientists* (27 November 2023), available at <https://blog.ucsusa.org/adam-markham/cultural-heritage-is-a-human-right-climate-change-is-fast-eroding-it/>. See also UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019) (Dossier No. 312), para. 48; UN Human Rights Council, *Report of the Secretary-General on the impacts of climate change on the human rights of people in vulnerable situations*, UN Doc. A/HRC/50/57 (Dossier No. 292), para. 8.

including the UN Declaration on the Rights of Indigenous Peoples and Article 27 of the ICCPR, which enshrines the inalienable right of indigenous peoples to enjoy the territories and natural resources that they traditionally use for subsistence and their cultural identity.¹⁷²

71. Displacement, whether caused by long-term rising sea levels or extreme weather events, entails the risk to sever the connection between communities and their traditional lands. As one Tuvaluan official asked: “If we are not here anymore, what will happen to our culture?”¹⁷³

¹⁷² See UN Human Rights Committee, *General Comment No. 23: Article 27 – Rights of Minorities*, UN Doc. CCPR/C/21/Rev.1/Add.5 (8 April 1994), available at <https://www.legal-tools.org/doc/0e1a35/pdf/>, para. 7.

¹⁷³ UN General Assembly, *Report of the Special Rapporteur in the field of cultural rights, Karima Bennouna*, UN Doc. A/75/298 (10 August 2020) (Dossier No. 326), para. 4.

6. STATES HAVE AN OBLIGATION TO REDUCE GREENHOUSE GAS EMISSIONS AND IMPLEMENT MEASURES FOR CLIMATE ADAPTATION TO COMPLY WITH THEIR OBLIGATION TO RESPECT HUMAN RIGHTS, INCLUDING THE RIGHT TO SELF-DETERMINATION

72. The obligations of States to reduce global anthropogenic GHG emissions and to implement effective climate adaptation measures includes the obligation—and right—to take measures aimed at preventing foreseeable and serious human rights violations resulting from the adverse effects of climate change.¹⁷⁴ As detailed above, States’ obligations to protect the climate system and other parts of the environment from anthropogenic GHG emissions must be interpreted in light of their human rights obligations and their obligations under international environmental and climate law. UN human rights experts have accordingly urged States to fulfil their obligation to “place human rights at the heart of all climate action, including mitigation and loss and damage.”¹⁷⁵

73. The Committee on Economic, Social and Cultural Rights has warned that a failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of the obligation to respect, protect and fulfil human rights for all.¹⁷⁶ Accordingly, States must do everything in their power to address climate change and, *inter alia*, reduce GHG emissions to limit the increase in global temperatures to well below 2°C above pre-industrial levels and pursue efforts to limit the

¹⁷⁴ See, e.g., UN Human Rights Council, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox*, UN Doc. A/HRC/25/53 (30 December 2013) (Dossier No. 304), § IV; UN Human Rights Committee, *General Comment No. 36: Article 6 – Right to Life*, UN Doc. CCPR/C/GC/36 (3 September 2019) (Dossier No. 299), para. 62; *Billy v. Australia*, para. 8.12 (observing that Australia’s failure to implement adaptation measures adequate to counter rising sea levels amounted to a failure to protect against “foreseeable and serious violations of private and family life and the home”); *ibid.*, para. 8.14 (finding that complainants’ right to culture was violated where impacts “could have reasonably been foreseen by the State party”); *Sacchi v. Argentina*, para. 10.6 (“Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.”).

¹⁷⁵ “Fossil fuels at the heart of the planetary environmental crisis: UN experts,” *OHCHR* (30 November 2023), available at <https://www.ohchr.org/en/press-releases/2023/11/fossils-fuels-heart-planetary-environmental-crisis-un-experts>.

¹⁷⁶ UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019) (Dossier No. 312), para. 70 (citing Committee on Economic, Social, and Cultural Rights, *Statement: Climate change and the International Covenant on Economic, Social, and Cultural Rights* (8 October 2018), available at <https://www.ohchr.org/en/statements/2018/10/committee-releases-statement-climate-change-and-covenant?LangID=E&NewsID=23691>).

temperature increase to 1.5°C above pre-industrial levels, as set out in the Paris Agreement (“**1.5°C Standard**”). There is overwhelming scientific evidence that the failure to limit global warming to 1.5°C above pre-industrial levels will seriously threaten the habitability of territories around the world and thus a number of human rights, including the right of self-determination, of people occupying such territories. Therefore, a large group of States—the High Ambition Coalition—has repeatedly called for increased ambition to limit global warming to a maximum of 1.5°C.¹⁷⁷

74. States have a special obligation to protect the *jus cogens* and non-derogable right to self-determination. As recalled in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, “[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples.”¹⁷⁸ Because the adverse effects of climate change may have a significant effect on the right to self-determination, at a minimum, States are obliged to exercise due diligence and take all necessary steps to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels and [pursue] efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”¹⁷⁹ The requisite standard of due diligence is necessarily extremely high in light of the fact that a *jus cogens* norm is at stake.

75. Given that the right to self-determination is inalienable, there is a presumption for continued statehood, including and in particular for States whose land territory becomes inundated by rising sea-levels, and whose populations may as a result be relocated. States are thus obligated to continue to recognize the right to self-determination of peoples in the event of such a scenario. As the late Judge James Crawford noted, “[a] State is not necessarily extinguished by substantial

¹⁷⁷ High Ambition Coalition, *High Ambition Coalition 2023 Leaders’ Statement* (19 September 2023, updated 1 December 2023), available at <https://www.highambitioncoalition.org/statements/cochair-summary-april-2021-9n7c5-z7kx1-733k4-sjma4-4hmc2>; High Ambition Coalition, *High Ambition Coalition COP 26 Leaders’ Statement* (2021), available at <https://www.highambitioncoalition.org/statements/cochair-summary-april-2021-9n7c5-z7kx1-733k4-49h35>.

¹⁷⁸ UN General Assembly, Resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, UN Doc. A/RES/2625(XXV) (24 October 1970), pp. 123-124.

¹⁷⁹ Paris Agreement, Art. 2(1)(a).

changes in territory, population or government, or even, in some cases, by a combination of all three.”¹⁸⁰

76. In this regard, Liechtenstein supports the position taken by the most affected States that “statehood will cease only if another form of expression of the right to self-determination is explicitly sought and exercised by that people”¹⁸¹ and recognizes States in their deterritorialized forms.¹⁸² Liechtenstein emphasizes that States which cease to meet the criteria laid out in the Montevideo Convention¹⁸³ do not lose their statehood, as there is a strong presumption of the continuity of statehood.

77. Furthermore, because the right of peoples to permanent sovereignty over their wealth and natural resources is a basic constituent of the right to self-determination,¹⁸⁴ States’ baselines should be fixed as the sea moves landward as a result of sea-level rise. This is consistent with a proper interpretation of the United Nations Convention on the Law of the Sea and the views expressed by a significant number of States before the Sixth Committee to the General Assembly on the Chapter of the International Law Commission on Sea-Level Rise in Relation to International Law.¹⁸⁵

¹⁸⁰ J. Crawford, *The Creation of States in International Law* (2nd Ed., Oxford University Press 2007), pp. 700-701.

¹⁸¹ UN General Assembly, 78th Session, *Statement by Samoa on behalf of the Alliance of Small Island States (AOSIS) United Nations Security Council Open Debate on Threats to International Peace and Security: Sea-Level Rise – Implications for International Peace and Security* (14 February 2023), available at <http://tinyurl.com/2p8emvtp>, para. 11.

¹⁸² Liechtenstein similarly supports the view set out in the Second Issue Paper that “[i]t is essential to preserve the right to self-determination of the populations of any small island developing States whose land territory is completely covered by the sea or becomes uninhabitable,” including “through the maintenance of statehood, or the implementation of other approaches that enable the populations concerned to express their will in relation to decisions that could affect their future, and that preserve their rights, including their right to maintain their identity.” International Law Commission, *Second issues paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on sea-level rise in relation to international law*, UN Doc. A/CN.4/752 (19 April 2022) (Dossier No. 102), para. 226. The same position has been adopted by other relevant stakeholders, including the Pacific Island Forum and International Law Commission. See International Law Commission, Seventy-third session (18 April–3 June and 4 July–5 August 2022), *Report of the International Law Commission—Chapter IX: Sea-level rise in relation to international law*, UN Doc. A/77/10 (2022) (Dossier No. 101), paras. 196, 199, 201.

¹⁸³ Namely, a permanent population, a defined territory, and a government.

¹⁸⁴ UN General Assembly, Resolution 1803 (XVII), *Permanent Sovereignty over Natural Resources*, UN Doc. A/RES/1803(XVII) (14 December 1962).

¹⁸⁵ See International Law Commission, Seventy-fourth session (24 April–2 June and 3 July–4 August 2023), *Report of the International Law Commission—Chapter VIII: Sea-level rise in relation to international law*, UN Doc. A/78/10 (Dossier No. 103A), para. 172.

78. Moreover, under the *rebus sic stantibus* principle enshrined in Article 62(1) of the VCLT,¹⁸⁶ a fundamental change of circumstances would have no effect on existing maritime delimitation treaties. Article 62(2)(a) of the VCLT provides that a fundamental change of circumstances may not be invoked as grounds for terminating or withdrawing from a treaty if “the treaty establishes a boundary.”¹⁸⁷ This is the same position taken in the ILC Report,¹⁸⁸ which affirms that the limitation on the application of the principle of *clausula rebus sic stantibus*, as provided for in Article 62(2) of the VCLT, is applicable to maritime boundaries.¹⁸⁹

79. States are obligated to take all necessary measures, including the reduction of GHG emissions and the implementation of effective climate adaptation measures, to protect other human rights, including the right to life, housing, a clean, healthy and sustainable environment, food, water and sanitation, livelihood, and to participate in cultural life, from climate change impacts. States have a mitigation obligation to minimize GHG emissions in accordance with their obligations under the UNFCCC, the Kyoto-Protocol and the Paris Agreement, because those

¹⁸⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art. 62(1) (“A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.”)

¹⁸⁷ See *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, I.C.J. Reports 1978, p. 3, at pp. 35-36, para. 85 (“The dispute relates to the determination of the respective areas of continental shelf over which Greece and Turkey are entitled to exercise the sovereign rights recognized by international law. ... Whether it is a land frontier or a boundary line in the continental shelf that is in question, *the process is essentially the same, and inevitably involves the same element of stability and permanence, and is subject to the rule excluding boundary agreements from fundamental change of circumstances.*”) (emphasis added). See also *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment, I.C.J. Reports 1991, p. 53, at pp. 73-74, paras. 62-63; *In the Matter of the Bay of Bengal Maritime Boundary Arbitration between the People’s Republic of Bangladesh and the Republic of India (Bangladesh v. India)*, PCA Case No. 2010-16, Award (7 July 2014), para. 218 (“The possibility of change in the maritime boundary established in the present case would defeat the very purpose of the delimitation.”).

¹⁸⁸ International Law Commission, Seventy-second session (26 April–4 June and 5 July–6 August 2021), *Report of the International Law Commission—Chapter IX: Sea-level rise in relation to international law*, UN Doc. A/76/10 (2021) (Dossier No. 88), para. 261. See also International Law Commission, Seventy-fourth session (24 April–2 June and 3 July–4 August 2023), *Report of the International Law Commission—Chapter VIII: Sea-level rise in relation to international law*, UN Doc. A/78/10 (2023), para. 172.

¹⁸⁹ See, e.g., *In the Matter of the Bay of Bengal Maritime Boundary Arbitration between the People’s Republic of Bangladesh and the Republic of India (Bangladesh v. India)*, PCA Case No. 2010-16, Award (7 July 2014), p. 63, para. 217.

emissions exacerbate climate change, which may infringe on the enjoyment of human rights, as discussed above. In respect of the principle of Common but Differentiated Responsibilities, the current division of obligations between Developed States Parties and Developing States Parties (Annex I of the UNFCCC) may not reflect the current reality. Several Non-Annex-I-Parties have become major GHG emitters since the adoption of the UNFCCC in 1992.

7. THE LEGAL CONSEQUENCES OF A FAILURE TO ADDRESS THE EFFECTS OF CLIMATE CHANGE AND FULFIL CLIMATE CHANGE COMMITMENTS

80. The failure to fulfil the legal obligations under international human rights and environmental law described above generates international responsibility. It might, however, be difficult to establish full responsibility for actions that were not considered to be unlawful in the past.¹⁹⁰ Common or collective responsibilities may be more appropriate to establish responsibility in the context of climate change, and remedies might include a collective obligation of major emitters to finance mitigation actions and adaptation measures, assurances of continued recognition of the right to self-determination through Statehood and other forms, and protection from future harm.

¹⁹⁰ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), reproduced in *Yearbook of the International Law Commission 2001*, Vol. II(2), Art. 31.

8. CONCLUSION

81. The likely effects of climate change are far-reaching and significant, impacting individuals, their communities, and the ecosystems they inhabit. It was well within the scope and competence of the UN General Assembly to submit the current Request to the Court for an Advisory Opinion. The Court has the jurisdiction to give the requested Advisory Opinion and there is no reason it should decline to do so.

82. The overwhelming scientific consensus is clear: anthropogenic GHG emissions are the main drivers for climate change, which in turn significantly infringes upon human rights. Climate change may have a significant effect on the right to self-determination, which will be felt most acutely by low-lying island States in particular. Other human rights, including the right to life, housing, a clean, healthy and sustainable environment, food, water, livelihood, and to participate in cultural life, are likewise threatened by climate change.

Brussels, 21 March 2024

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