

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

REQUEST FOR ADVISORY OPINION



Written Submission of the Dominican Republic

22 March 2024

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CHAPTER 1 INTRODUCTION

1.1 On 29 March 2023, the United Nations General Assembly (the “General Assembly or UNGA”) adopted by consensus Resolution 77/276,¹ which requested the Court to render the present Advisory Opinion pursuant to Article 65 of its Statute (“the Request”). On 20 April 2023, the Court adopted an Order fixing 20 October 2023 as the time-limit within which written statements may be submitted to the Court by the United Nations, its Member States, and other organisations authorized by the Court, in accordance with Article 66, paragraph 2 of its Statute. On 4 August 2023, the Court adopted an Order extending the time-limit for the filing of written statements to 22 January 2024. On 15 December 2023, the Court adopted a second Order extending the time-limit for the filing of written statements to 22 March 2024. This Written Statement is submitted by the Dominican Republic pursuant to the latest Order of the Court.

1.2 For the first time in its history, the Dominican Republic has the honor to participate in a proceeding before the Court. The decision to inaugurate the Dominican Republic’s relationship with the Court through its participation in this case is informed by four main observations.

1.3 *First*, as a committed State Party to the 1992 United Nations Framework Convention on Climate Change (“UNFCCC” or the “Climate Change Convention”)² and to the 2015 Paris Agreement,³ the Dominican Republic strongly encourages and supports all efforts seeking to enhance the compliance and effectiveness of the international regime on climate change. Almost four decades have elapsed since the General Assembly first recognized that climate change is “a common concern for mankind”, given that “climate is an essential

¹ UN General Assembly Resolution, “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”, A/RES/77/276 (29 March 2023) (hereafter “the AO Request”).

² United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994), UNTS 1771, p. 107. The Dominican Republic was one of the early Parties to the Convention, having signed it on 12 June 1992, and ratified it on 7 October 1998.

³ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), UNTS 3156, p. 79. The Dominican Republic signed the Paris Agreement on 12 April 2015 and ratified it on 21 September 2017.

condition which sustains life on earth.”⁴ Following this benchmark, the Dominican Republic became one of the first signatories of the UNFCCC committing to “stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”⁵ More recently, under the Paris Agreement, State Parties pledged to “holding global average temperature rise well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels,”⁶ with the aim to reduce the devastating impacts of climate change. However, notwithstanding the significant progress in building a systematic legal and institutional framework for addressing climate change, the protracted collective efforts to achieve these two key objectives are undeniably, and regrettably, failing. The international community may be advancing in the right direction, but its pace is too slow.

1.4 The best available science and information on climate change, institutionally embodied since 1988 by the Intergovernmental Panel on Climate Change (“IPCC” or “the Panel”),⁷ leaves no room for doubt. In its Sixth Assessment Report, published in March 2023, the IPCC found that, due to anthropogenic emissions, “global surface temperature in the first two decades of the 21st century (2001-2020) was 0.99 °C [...] higher than 1850-1900”, and that it increased “faster since 1970 than in any other 50-year period over at least the last 2000 years”.⁸ The 28th Conference of the Parties to the UNFCCC, held in Dubai (UAE) in December 2023 (“COP.28”), candidly recognized that “Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals”,⁹ even though “2023 [was] set to be the warmest year on record”, and “impacts from climate change are rapidly

⁴ UN General Assembly Resolution, “Protection of Global Climate for Present and Future Generations”, A/RES/43/53, (6 December 1988), preambular para. 11. The expression was reproduced in the four General Assembly resolutions on the same topic and with the same title that followed: A/RES/44/207 (22 December 1989); A/RES/45/212 (21 December 1990); A/RES/46/119 (17 December 1991); and A/RES/47/195 (1 March 1993).

⁵ UNFCCC, Art. 2.

⁶ Paris Agreement, Art. 2(1).

⁷ See Chapter 2, Section I *infra*.

⁸ IPCC, AR6 Synthesis Report: Climate Change 2023 (Longer Report), para. 2.1.1, available at: [IPCC_AR6_SYR_LongerReport.pdf](#)

⁹ UNFCCC, Decision -/CMA.5, “Outcome of the First Global Stocktake” (Advanced unedited version) (30 November-12 December 2023), para. 2, available at: [Outcome of the first global stocktake. Draft decision -/CMA.5. Proposal by the President \(unfccc.int\)](#).

accelerating”.¹⁰ Looking ahead, should emissions continue to increase at the current rate, the very next generation will be facing a global temperature increase of *an additional* 1.5°C between 2030 and 2050.¹¹

1.5 *Second*, as a Member of the UN group Small Island Developing States (“SIDS”), along with 38 other States and 39 Associate Members,¹² the Dominican Republic is highly concerned with the extreme level of urgency and gravity that the climate emergency represents. Defined by Secretary-General António Guterres as “the defining issue of our time” and “a direct existential threat”,¹³ The Dominican Republic recognizes that climate change jeopardizes the very survival of some countries, directly impacts on human security, and even risks affecting international peace and security. For this reason, during its term as a non-permanent member of the Security Council in 2019-2020, the Dominican Republic strongly and consistently advocated for a comprehensive approach to international security that would take climate risks adequately into consideration.¹⁴

¹⁰ *Ibid.* See also, World Meteorological Organisation, *State of the Global Climate 2022*, WMO-No. 1316 (2023), p. 3 (noting that, despite three consecutive years of a cooling La Niña, 2015 to 2022 were the eight warmest years in the instrumental record back to 1850), available at: [download \(wmo.int\)](#). This WMO report complements the IPCC Sixth Assessment report, which only includes data up to 2020.

¹¹ IPCC, AR6 Synthesis Report: Climate Change 2023 (Longer Report), para. 2.3.1.

¹² This represents in aggregate approximately 68 million people in the Caribbean, the Pacific, the Atlantic, the Indian and the South China Sea), see official website of AOSIS, available at: [About Small Island Developing States | Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States](#).

¹³ Secretary-General António Guterres, Remarks to Delegates on Climate Change (10 September 2018), available at: [Secretary-General's remarks on Climate Change \[as delivered\] | United Nations Secretary-General](#). See also, UN Secretary-General Ban Ki-Moon, Opening Remarks at 2014 Climate Summit (23 September 2014) (“[climate change] is the defining issue of our age”), available at: [Opening remarks at 2014 Climate Summit | United Nations Secretary-General](#).

¹⁴ The Dominican Republic, which was the first small island State to be elected as a non-permanent member of the Security Council since the adoption of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, sponsored various deliberation initiatives on the implications of the rise of sea level for international peace and security before. See UN Security Council, Open Debate on “The Impact of Climate Change and Food Insecurity on Maintenance of International Peace and Security”, Speech by H.E. Luis Abinader, President of the Dominican Republic, S/PV.9547 (13 February 2024), p. 25 (“We must take preventive, sensitive and timely action on conflicts. We need tools for data, analysis and joint action to address food insecurity exacerbated by climate change and severe domestic conflicts). See also, Letter dated 2 January 2019 from the Permanent Representative of the Dominican Republic to the United Nations addressed to the Secretary-General, S/2019/1, (3 January 2019) (concept note of the Dominican Republic under its Presidency in preparation of the Security Council meeting on “Addressing the impacts of climate-related disasters on international peace and security”); as well as UN Security Council, 8451st Meeting Record, “Maintenance of international peace and security Addressing the impacts of climate-related disasters on international peace and security”, S/PV.8451 (25 January 2019); see also UN Security Council, 8923rd Meeting Record, “Maintenance of International Peace and Security: Security in the Context of Terrorism and Climate Change”, S/PV.8923 (Resumption 1) (9 December

1.6 *Third*, in light of the multidimensional nature of climate change and its impacts, the Dominican Republic notes that the phenomenon directly touches upon, and challenges, core principles and rules from an array of specialized areas of international law beyond the international regime on climate change—including, *inter alia*, the international law of the sea, international human rights law, and the law on statehood. In this regard, it is particularly noteworthy that in 2018 the International Law Commission established a Study Group on Sea-Level Rise in relation to International Law (“ILC Study Group”) to address the implications of sea-level rise to the international legal order, through “an in-depth analysis of existing international law, including treaty and customary international law, in accordance with the mandate of the Commission.”¹⁵ Similarly, in 2023 the Inter-American Juridical Committee for the Organisation of American States included in its programme for work the topic “Legal Implications of Sea-Level Rise in the Interamerican Regional Context,”¹⁶ designating the Dominican member of the Committee as *Rapporteur*.

1.7 *Finally*, the Dominican Republic also underscores the need for international courts and tribunals to directly engage with this common concern for mankind, building upon the pre-existing proliferation of climate change litigation before domestic and regional courts, which has yet to reach its peak.¹⁷ The fact that the present advisory proceedings before the Court is taking place as two other advisory proceedings relating to climate change are held before the International Tribunal for the Law of the Sea (“ITLOS”) and the Inter-American Court of Human Rights (“IACtHR”) is unprecedented,¹⁸ and a true testimony of the

2021), p. 18. The Security Council addressed this issue again in 2023, *see* UN Security Council, 9260th Meeting Record, “Threats to International Peace and Security Sea-level Rise: Implications for International Peace and Security”, S/PV.9260 (Resumption 1) (14 February 2023), p. 15.

¹⁵ *See* International Law Commission, Recommendation of the Working-Group on the Long-term Programme of Work, *Yearbook of the International Law Commission* (2018), Annex II (by Bogdan Aurescu, Yacouba Cissé, Patrícia Galvão Teles, Nilüfer Oral, Juan José Ruda Santolaria), available at: [Annex II - Yearbook of the International Law Commission 2018 - Volume II \(Part Two\) \(un.org\)](#). Since its establishment, the ILC Study Group as published three reports.

¹⁶ Organisation of American States, Inter-American Juridical Committee, “Legal Implications of Sea-Level Rise in the Inter-American Regional Context,” *Rapporteur*: Julio José Rojas-Báez, available at: [Legal Implications of Sea-Level Rise in the Inter-American Regional Context.pdf \(oas.org\)](#).

¹⁷ *See* United Nations Environment Programme, “Global Climate Change Litigation Report: 2023 Status Review” (2023) (noting that “As at 31 December 2022, the Sabin Centre’s Climate Change Litigation databases included 2,180 cases filed in 65 jurisdictions and international or regional courts, tribunals, quasi-judicial bodies, or other adjudicatory bodies, including special procedures of the United Nations and arbitration tribunals.”), available at: [global_climate_litigation_report_2023.pdf \(unep.org\)](#)

¹⁸ *See* ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal on 12 December 2022),

international community's need of judicial assistance to clarify the legal obligations of States in relation to climate change. The Court is placed in a privileged position to provide such guidance, as the principal judicial organ of the UN system with general subject-matter jurisdiction.¹⁹ Against this background, the Dominican Republic stands by Secretary-General Guterres, who finds that "if issued, an opinion [from the Court] would assist the General Assembly, the United Nations and Member States in taking the bolder and stronger climate action that our world so desperately needs".²⁰

1.8 Given the historical and central role played by the General Assembly under its Charter mandate in combating climate change, it was entirely appropriate that it continue to take up this issue by way of this request for an Advisory Opinion. Spearheaded by the Government of Vanuatu, along with sixteen States (referred to as the "Core Group"), in its final version the draft resolution received widespread support of more than 130 co-sponsoring States, including the Dominican Republic. On 29 March 2023, the General Assembly adopted by consensus Resolution 77/276, which refers to the Court two closely intertwined questions ("the Questions"):

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

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

Case N° 31 (currently under deliberation by the Tribunal), available at: [Request for Advisory Opinion COSIS 12.12.22.pdf \(itlos.org\)](#); and IACtHR, *Request by the Republic of Chile and the Republic of Colombia for an advisory opinion regarding "Climate Emergency and Human Rights" under Article 64(1) of the American Convention on Human Rights* (9 January 2023), available at: [Microsoft Word - INGLÉS.docx \(corteidh.or.cr\)](#)

¹⁹ See *Request for an Examination of the Situation in Accordance with paragraph 63 of the Court's Judgment of 20 December 1974 in Nuclear Tests (New Zealand v. France)* (hereinafter "Request for Examination (New Zealand v. France)"), Separate Opinion of Judge Weeramantry, p. 61 ("the ICJ, situated at the apex of international tribunals, necessarily enjoys a position of special trust and responsibility in relation to the principles of environmental law, especially those relating to what is described in environmental law as the Global Commons.") (emphasis added).

²⁰ UN General Assembly, Official record of the 64th Plenary Meeting, A/77/PV.64 (29 March 2023), p. 1.

- (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?"

1.9 Given the wide scope of the Questions posed to the Court, the present Written Statement will only address specific matters which are directly connected to the Dominican Republic's direct knowledge and understanding, without prejudice to the possibility of expanding the issues covered by it in the round of Written Observations or at the Hearing. **Chapter 2** provides the factual context of the Dominican Republic's submission, underscoring the existing scientific consensus on climate change, and focusing on the impacts of the phenomenon for Caribbean small island States like the Dominican Republic. **Chapter 3** finds that the Court has jurisdiction and that there are no compelling reasons not to issue the Advisory Opinion requested by the General Assembly.

1.10 **Chapter 4** addresses the legal Questions referred by the General Assembly to the Court. *In response to Question A*, this Statement identifies the sources of climate change mitigation obligations of States existing under international climate change law, the fulfilment of which should be informed by the existing obligations under other specialized areas — including, *inter alia*, to respect the territorial integrity of States and fundamental right to survival and, under human rights law, to respect the right to self-determination and the right to development of the peoples and populations from Small Island Developing States —the most affected by the deleterious effects of climate change. *In response to Question B*, this Statement addresses the legal consequences for States arising from such obligations, with a particular focus on the duty of performance of these obligations and the obligation of cessation of the conduct, as well as the obligation to cooperate, *inter alia*, within the loss and damage treaty-based mechanism specifically established within the international regime on climate change.

CHAPTER 2 FACTUAL CONTEXT OF THE SUBMISSION

2.1 This Chapter seeks to provide the relevant factual context in which the Dominican Republic’s Submission is based.²¹ The Request for an Advisory Opinion would have not been referred to the Court (let alone by consensus from the General Assembly), had it not been for consolidated status of the best available science and information concerning climate change, and the universal acceptance that it has found amongst UN Member States. **Section I** thus addresses the existing scientific consensus, acknowledged by all States, on the causes and impacts of climate change. **Section II** covers how such scientific consensus confirms that Small Island Developing States (including from the Caribbean region, such as the Dominican Republic) are particularly vulnerable to climate change.

I. SCIENTIFIC CONSENSUS ACKNOWLEDGED BY ALL STATES ON THE CAUSES AND IMPACTS OF CLIMATE CHANGE

2.2 At the General Assembly session which resulted in the adoption of Resolution 77/276 referring the Request to the Court, the Republic of Vanuatu—leading State of this initiative—stressed that “the science is settled”.²² The Dominican Republic fully agrees with this statement.

2.3 Indeed, in the present proceeding the Court can safely rely on the scientific findings of one main body—the IPCC—which are universally recognized by the international community as the best available scientific knowledge and information on climate change, and have served as the foundation on which the international regime on climate change has been built. It is hardly surprising that several States who made statements in explanation of position at the session expressly referred to the IPCC work—and its latest publication in particular, the

²¹ The Dominican Republic notes the importance of establishing such context, as was underscored by the Court. *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion of 20 December 1980, I.C.J. Reports 1980, p. 73, para. 10 (“But a rule of international law, whether customary or conventional, does not operate in a vacuum; it operates in relation to facts and in the context of a wider framework of legal rules of which it forms only a part. Accordingly, if a question put in the hypothetical way in which it is posed in the request is to receive a pertinent and effectual reply, the Court must first ascertain the meaning and full implications of the question in the light of the actual framework of fact and law in which it falls for consideration. Otherwise its reply to the question may be incomplete and, in consequence, ineffectual and even misleading as to the pertinent legal rules actually governing the matter under consideration by the requesting Organisation.”) (emphasis added).

²² UN General Assembly, 64th Plenary meeting, A/77/PV.64 (29 March 2023), p. 2.

AR6 Synthesis Report: Climate Change 2023 (“AR6 Synthesis Report”),²³ as the cornerstone of their support to this timely and critical Request for an Advisory Opinion.²⁴ In fact, the

²³ Intergovernmental Panel on Climate Change: *AR6 Synthesis Report: Climate Change 2023*, finalized for the 6th Assessment Report at the IPCC Panel’s 58th Session held in Interlaken, Switzerland (13 - 19 March 2023) (“hereafter “AR6 Synthesis Report”), available at: [IPCC AR6 SYR FullVolume.pdf](#) (Full report).

²⁴ UN General Assembly, 64th plenary meeting, A/77/PV.64 (29 March 2023). Secretary-General Antonio Guterres was the first one to refer to the IPCC in his introduction of the topic to the General Assembly, at p. 1 (“Earlier this month, the Intergovernmental Panel on Climate Change (IPCC) confirmed that humans are responsible for virtually all global heating over the past 200 years. The IPCC report showed that limiting the overall temperature rise to 1.5°C is achievable, but time is running out. The window for averting the worst effects of the climate crisis is closing rapidly.”). Afterwards, several States made direct references to the IPCC findings, many of them as their opening words: *See e.g., Statement of The Republic Vanuatu*, at p. 2 (“In its Sixth Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) states, in the clearest terms, that anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming that has been observed since the mid-twentieth century. The evidence demonstrates that climate change impacts and risks are already advanced, including in low-lying coastal cities and settlements and small islands.”); *Statement of The Republic of Bangladesh*, at p. 5 (“Successive reports of the Intergovernmental Panel on Climate Change have alerted us to the risks that climate change poses to humanity. The latest synthesis report published this month, says ...”); *Statement of the European Union*, at p. 7 (“In the light of the findings of the Intergovernmental Panel on Climate Change (IPCC), we have been taking determined and decisive action to reduce our net greenhouse-gas emissions by at least 55 per cent by 2030 as compared to 1990 levels ...”); *Statement of the Republic of Costa Rica*, at p. 10 (“In its sixth and most recent assessment report, the Intergovernmental Panel on Climate Change gave us a final warning to reduce emissions by half by 2030 if we want to avoid what, in the words of the Secretary-General, would be a “death sentence” ...”); *Statement of the Republic of Trinidad and Tobago*, at p. 11 (“The most recent report of the Intergovernmental Panel on Climate Change, released just last week, issued a dire warning to the world. We are running out of time”); *Statement of the Principality of Liechtenstein*, at p. 12 (“The report of the Intergovernmental Panel on Climate Change issued last week is an urgent reminder of the limited window that we have to deal with the climate crisis”); *Statement of the Republic of Singapore*, at p. 15 (“The request for an advisory opinion on climate change is very timely. The recently released sixth assessment report of the Intergovernmental Panel on Climate Change makes it abundantly clear that there is an urgent need to accelerate action and raise the level of ambition.”); *Statement of the Socialist Republic of Vietnam*, at p. 16 (“The latest report of the Intergovernmental Panel on Climate Change, issued just a few days ago, made it clear that the impacts and risks of climate change have already increased, including low-lying coastal cities and settlements and small islands”); *Statement of the United Kingdom*, at p. 20 (“The Intergovernmental Panel on Climate Change says that, in order to keep the 1.5°C target alive, we need emissions to peak in 2025, halve by 2030 and reach net zero by 2050 ... An advisory opinion of the International Court of Justice may help us refocus efforts to deliver on climate commitments in this critical date.”); *Statement of the Republic of Mexico*, at p. 21 (“Everything I just said takes on greater importance in light of the most recent alarming report by the Intergovernmental Panel on Climate Change.”); *Statement of the Republic of Korea*, at p. 21 (“The recently published report of the Intergovernmental Panel on Climate Change warns – alarmingly – that limiting warming below 1.5°C will not be possible with the nationally determined contributions announced at the 26th United Nations Framework Convention on Climate Change. It is undeniable that more ambitious and coordinated efforts from the international community are essential.”); *Statement by the Republic of Iceland*, at p. 23 (“Likewise, in response to the report of the Intergovernmental Panel on Climate Change released earlier this month, the Secretary-General submitted a plan to supercharge efforts — namely, the Acceleration Agenda. The time to act is now.”); *Statement of the Republic of Portugal*, at p. 24 (“As we learned just a few days ago from the most recent synthesis report of the Intergovernmental Panel on Climate Change, time is running out.”); *Statement from the Republic of Seychelles*, at p. 24 (“The most recent — sixth — assessment report of the Intergovernmental Panel on Climate Change sounds the alarm on the dismal realities of our world today and the calamitous future that we could face if we do not take action now.”); *Statement from the Kingdom of Norway*, at p. 26 (“In its sixth and most recent Assessment Report, the Intergovernmental Panel on Climate Change estimates that 896 million people from low-lying coastal zones will be particularly exposed to changes in the ocean and the cryosphere, notably through sea level rise and the associated loss of biodiversity.”); *Statement of the Republic of Samoa*, at p. 28 (“The Sixth Assessment Report of the Intergovernmental Panel on Climate Change is yet another stark reminder of how urgent it is that we act now. The science is clear and irrefutable.”) (all emphasis added).

resolution containing the Request itself specifically mentions the IPCC findings in its Preamble, which reads:

“Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected ...”²⁵

2.4 The Dominican Republic understands that, unlike in *Legality of the Threat of Use of Nuclear Weapons*, in the present proceeding scientific findings are likely to play a central role in the elaboration of Court’s opinion on the legal questions posed,²⁶ as they are inextricably linked to the birth and progressive development of the international obligations on climate change themselves.²⁷ The Court is therefore in a privileged position to confirm and judicially endorse that the scientific findings of the IPCC are indeed the lighthouse the international community should primarily look at when walking through the past, present and rapidly changing future scenarios it faces in the midst of the climate crisis.²⁸ The following points made by the Dominican Republic are intended to assist the Court in such endeavor.

²⁵ UN General Assembly Resolution, “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”, A/RES/77/276 (29 March 2023) (italics in the original, emphasis added).

²⁶ See *Legality on the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, I. C.J. Reports 1996, p. 226 (hereinafter “*Legality on the Use of Nuclear Weapons Advisory Opinion*”), para. 15 (“[t]he Court does not consider that, in giving an advisory opinion in the present case, it would necessarily have to write ‘scenarios’, to study various types of nuclear weapons and to evaluate highly complex and controversial technological, strategic and scientific information. The Court will simply address the issues arising in all their aspects by applying the legal rules relevant to the situation.”).

²⁷ See UNFCCC, preamble para.16 (“Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas.”). As developed in Chapter 4 *infra*, the Dominican Republic notes, however, that the relevance of scientific information does not imply that full scientific certainty is required for States to have an obligation to take climate change action, as expressly provided in UNFCCC, art.3(3) (“Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures [...]”) (all emphasis added).

²⁸ Without prejudice to the complementary role played scientific findings from other internationally recognized institutions and additional information gathered and submitted by States in the course of the implementation of their climate change obligations. See UNFCCC, art. 21(2) (“The head of the interim secretariat referred to in paragraph 1 above will cooperate closely with the Intergovernmental Panel on Climate Change to ensure that the

2.5 The universal endorsement of the IPCC’s scientific findings is connected to its institutional origin, place within the UN framework, methodology for the preparation of reports, and the *sui generis* procedure it follows for their final adoption, which counts with the direct involvement of State Parties to the IPCC.

2.6 As previously noted, the General Assembly approved the creation of the IPCC in 1988 through the same resolution that first characterized climate change as a “common concern for mankind”.²⁹ Recognition of the existing and potential gravity of climate change was therefore closely connected with the understanding that the phenomenon would require a new institution specifically devoted to this particular phenomenon. The IPCC was born as a product of the joint collaboration of two pre-existing UN institutions—the United Nations Environment Programme (“UNEP”), and the World Meteorological Organisation (“WMO”),³⁰ with the purpose of “provid[ing] internationally coordinated scientific assessments of the magnitude, timing and potential environmental and socio-economic impact of climate change and realistic response strategies”.³¹ By the same resolution, all relevant organisations and programmes “of the United Nations system” were called upon by the General Assembly to support the work of the IPCC.³² The two parent organisations were also requested to “utilize” their newly created body in order to “immediately ... initiate action leading, as soon as possible, to a comprehensive review and recommendations” with respect to the state of scientific knowledge of the science of climate change existing at the time, which was fundamental to launch the preparatory work of a future climate change treaty.

2.7 The IPCC began a close collaboration with the International Negotiating Committee (“ING”) of the Climate Change Convention and, by 1990, it issued its First

Panel can respond to the need for objective scientific and technical advice. Other relevant scientific bodies could also be consulted.”) (emphasis added).

²⁹ UN General Assembly Resolution, “Protection of Global Climate for Present and Future Generations”, A/RES/43/53 (6 December 1988), para. 5.

³⁰ *Ibid.*

³¹ *Ibid.* (emphasis added).

³² *Ibid.*, para. 10 (emphasis added).

Assessment Report, which was complemented in 1992.³³ That year, the UNFCCC was adopted at the Rio Conference on Environment and Development (often referred to as the “Earth Summit”), which became the founding stone of the international regime on climate change. The Climate Change Convention recognized the IPCC as the scientific institution which must closely collaborate with the UNFCCC Secretariat to provide it with the “objective scientific and technical advice under the UNFCCC process” required to progressively develop the international regime on climate change.³⁴ To fulfil its task, between 1990 and 2023, the IPCC has completed six full assessment cycles and produced a total of 47 reports (comprising six comprehensive Assessment Reports and Synthesis Reports, as well as several Special Reports on specific issues and Methodological Reports, which provide guidelines on the preparation of greenhouse gas inventories for the inventory reporting requirements of UNFCCC State Parties).

2.8 Importantly, the IPCC does not create “new science”, nor does it conduct its own research. Rather, it identifies where there is agreement (or differences) in the scientific community, and where further research is needed, taking stock of the latest and cutting-edge literature on climate change. To do so, the IPCC relies on hundreds of the world’s leading scientists from both developed and developing States to regularly assess the thousands of scientific papers published each year worldwide and provide a comprehensive summary on them.³⁵ Though this process of scrutiny, confirmation and public authentication, the IPCC achieves its goal—namely, to encapsulate in its reports “the best available scientific knowledge and information”—existing on the phenomenon at a global scale. Before publication, the IPCC reports are subject to procedures of formal endorsement by the State Parties, at the IPCC Plenary, a stage which “seals” the interface between science and policy and facilitates the widespread public assimilation of the Panel’s findings.³⁶ Overall, this Panel’s methodology of

³³ IPCC, First Assessment Report: Overview and Policymaker Summaries and 1992 IPCC Supplement (1990-1992), available at: [IPCC First Assessment Report Overview and Policymaker Summaries and 1992 IPCC Supplement](#).

³⁴ UNFCCC, Art. 21(2).

³⁵ See Full list of IPCC Reports, available at: [Reports — IPCC](#)

³⁶ Representatives of IPCC member governments meet in Plenary Sessions (the “IPCC Plenary”) at least once a year to decide, by consensus on various aspects relating to the organisation’s budget and work programme; the scope and outline of its reports; issues related to principles and procedures of the IPCC; and the structure and mandate of IPCC Working Groups and Task Forces. Most importantly, there are three main processes of endorsement of IPCC reports by its State members, depending of the type of report: (i) “acceptance” of IPCC Reports occur at a Session of the Working Group or Panel, and signifies that the material has not been subject to

preparation and adoption of reports has made possible the progressive development and further consolidation of scientific knowledge in line with the mandate the IPCC received from the General Assembly.

2.9 In 2007, the Panel was awarded the Nobel Peace Prize for “creat[ing] an ever-broader informed consensus about the connection between human activities and global warming.”³⁷ In addition, several decisions from the UNFCCC Conference of the Parties (as well as UN organs) expressly endorse the IPCC findings, including the latest COP.28.³⁸ As the principal judicial organ of the UN system, and the only one with general subject-matter jurisdiction, the Court is now called upon certifying the existence of such a consensus, by confirming that the latest IPCC reports constitute the best available scientific knowledge and information about the causes and impacts of climate change.

II. SCIENTIFIC EVIDENCE SHOWS THAT CARIBBEAN SMALL ISLAND DEVELOPING STATES SUCH AS THE DOMINICAN REPUBLIC ARE PARTICULARLY VULNERABLE TO THE ADVERSE EFFECTS OF CLIMATE CHANGE

2.10 As it is widely acknowledged, climate change impacts the planet and the humanity as a whole, but does so in a heterogeneous fashion. The Dominican Republic hereby summarizes the factual context in which its Written Statement is submitted, namely the fact that it is a “particularly vulnerable State to climate change”—a condition it shares with several other Caribbean Island States, as well as Small Island Developing States from other regions.³⁹

line by line discussion and agreement, but nevertheless presents a comprehensive, objective and balanced view of the subject matter; (ii) “adoption” of IPCC Reports is a process of endorsement section by section (not line by line), which is used for the (longer) Synthesis Report of each assessment, as well as for Overview Chapters of Methodology Reports; (iii) “approval” is the endorsement process specifically applied to IPCC Summaries for Policymakers, and signifies that the material has been subject to detailed, line by line discussion and agreement by Member States.

³⁷ See IPCC, Nobel Peace Prize 2007: Activities of the IPCC and Proposal for the Use of the Prize Amount), IPCC-XXVII/Doc. 6, (29 October 2007), available at: [Microsoft Word – Doc. 6 – Nobel prize rev.doc \(ipcc.ch\)](#).

³⁸ See UNFCCC, Decision +/CMA.5 (Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement), “Outcome of the First Global Stocktake”, Dubai (December 2023) (advanced unedited version), paras. 14-16, 23, 26, 42, 155. See, in particular, para. 26 (“Recognizes the finding in the Synthesis Report of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, based on global modelled pathways and assumptions, that global greenhouse gas emissions are projected to peak between 2020 and at the latest before 2025 in global modelled pathways that limit warming to 1.5 °C with no or limited overshoot and in those that limit warming to 2 °C and assume immediate action”).

³⁹ See UNFCCC, preambular para. 19 (recognizing that “[t]hat low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification,

2.11 Small Island Developing States have been at the frontline of global concerted actions against climate change since the early years of normative and institutional development of the regime. Indeed, a year after Malta propelled the recognition by the General Assembly of climate change as a common concern of mankind as well as the creation of the IPCC, the leadership of the Republic of the Maldives led to the adoption in 1989 of the first General Assembly resolution directly concerned with the impacts of sea-level rise on islands and coastal areas.⁴⁰ This was followed by the creation in 1990 (during the preparatory process of the Rio Conference on Environment and Development) of the Alliance of Small Island States (“AOSIS”), a trans-regional, informal coalition originally spearheaded by The Maldives and Trinidad and Tobago, which today represents the interests of the 39 small island and low-lying coastal developing states (including the Dominican Republic) in international climate change negotiations.⁴¹ For the past three decades, AOSIS has embodied the “international conscience” in international climate change cooperation. Today, the hand of the country that first chaired AOSIS—the Republic of Vanuatu—has guided the General Assembly in bringing the present Request to the Court, requesting it to identify the international obligations of States in respect of climate change and the legal consequences of arising from the breach of such obligations.

2.12 This sustained leadership role of Small Island Developing States concerning international climate change regime building is nothing but a reflection of their common, disproportionate—sometimes extreme—vulnerability to the adverse effects of the phenomenon.

2.13 In its 2023 AR6 Synthesis Report the IPCC indeed found, with “high confidence”,⁴² that “widespread and rapid changes in the atmosphere, ocean, cryosphere and

and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change.”).

⁴⁰ UN General Assembly Resolution, “Possible Adverse Effects of Sea-level rise on Islands and Coastal Areas, Particularly Low-lying Coastal Areas”, A/RES/44/206 (22 December 1989), preambular para. 2 (“*Aware* of the potential problem of sea-level rise, which could adversely affect islands and coastal area, particularly low-lying coastal areas”) (emphasis in the original). *See also*, preambular para. 5 of the same resolution (whereby the General Assembly resolution also “noted [t]he concern expressed in the Final Communiqué of the Twentieth South Pacific Forum held at Tarawa, Kiribati, on 10 and 11 July 1989, at the possible effects on island countries of rising sea levels resulting from global warming.”).

⁴¹ *See* Official website of AOSIS, available at: [AOSIS – Alliance of Small Island States](https://www.aosis.org/).

⁴² As explained in the IPCC 2023 Summary for Policymakers, note 5 (“Each finding is grounded in an evaluation of underlying evidence and agreement. A level of confidence is expressed using five qualifiers: very low, low, medium, high and very high, and typeset in italics, for example, medium confidence.”) (emphasis added).

biosphere have occurred”, and noted that “vulnerable communities who have historically contributed the least to current climate change are disproportionately affected”.⁴³ The AR6 Summary for Policy Makers (“AR6 SPM”)—the contents of which have been approved line-by-line by all States at the IPCC Plenary— further specified that “approximately 3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change”, and pointed out that “between 2010 and 2020, human mortality from floods, droughts and storms was 15 times higher in highly vulnerable regions, compared to regions with very low vulnerability”.⁴⁴

2.14 With regard to this region in particular, the AR6 Summary for Policy Makers notes that “small island states in the Caribbean and South Pacific [are] being disproportionately affected relative to their small population size”,⁴⁵ and that tropical cyclons will remain the main driver of flooding in the Caribbean Sea.⁴⁶ The IPCC Facts Sheet on Small Islands further notes that there is “extinction risk of 100% for endemic species within insular biodiversity hotspots within the Caribbean”, which would be directly linked to the heightened frequency and severity of tropical cyclones and flooding in the region.⁴⁷ In 2022 the World Meteorological Organisation further specified that sea level in the Caribbean rose at a rate of 3.6mm per year between 1993 and 2020, which was slightly higher than the global average of 3.3 mm per year, and the surface temperature of the Caribbean Sea reached a record high in 2020, exceeding the previous highest anomaly value of +0.78°C in 2010 and registering 0.87°C above the

⁴³ IPCC, 2023 AR6 Synthesis Report: Summary for Policy-Makers (2023), para. A.2, available at: [IPCC_AR6_SYR_SPM.pdf](#)

⁴⁴ *Ibid.*, para. A.2.2.

⁴⁵ *Ibid.*, para. A.2.5; *see also* 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, pp. 35-115 (“Despite having much lower per capita emissions (1.7 tCO₂- eq and 4.6 tCO₂-eq, respectively) than the global average (6.9 tCO₂-eq) Small Island Developing States(SIDS) are disproportionately impacted by the adverse effects of climate change on food and water security, human health and on economies and society and related losses and damages. Their vulnerability is exacerbated by inequity and marginalization.”).

⁴⁶ IPCC, 2023 AR6 Synthesis Report: Summary for Policy-Makers (2023), para. A.2.5.

⁴⁷ IPCC, Facts Sheet: Small Islands (AR6 Working Group II – Impacts, Adaptation and Vulnerability) (2023), p. 1, Fact Sheets published by the IPCC provide an accessible snapshot of the key findings on specific regions or issues, which are distilled from the relevant Chapters and Cross-Chapter Papers of the Assessment Reports. *See also*, IPCC, 2022: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, para. B.4.1 (“Very high extinction risk for endemic species in biodiversity hotspots is projected to at least double from 2% between 1.5°C and 2°C global warming levels and to increase at least tenfold if warming rises from 1.5°C to 3°C (medium confidence).”), available at: https://www.ipcc.ch/report/ar6/wg2/downloads/outreach/IPCC_AR6_WGII_FactSheet_SmallIslands.pdf

1981–2010 average.⁴⁸ Noting that sea-level on the Pacific side is rising at a lower rate than in the Atlantic side, the WMO thus concluded that “sea-level rise threatens the large portion of the Latin American and Caribbean population which lives in coastal areas by contaminating freshwater aquifers, eroding shorelines, inundating low-lying areas and increasing the risks of storm surges”.⁴⁹

2.15 On the same year this conclusion from the WMO was released, the General Assembly adopted by consensus Resolution 77/163 of 2022, which recognized the Caribbean Sea as a “critical asset” with “unique biodiversity and highly fragile ecosystems”.⁵⁰ The resolution defined the Caribbean as “the most tourism dependent region in the world relative to its size”,⁵¹ and noted the “heavy reliance of most of the Caribbean economies on their coastal areas, as well as on the marine environment in general”, which are jeopardized by the “high degree of vulnerability occasioned by climate change, climate variability and associated phenomena”⁵²—in particular, hurricane activity. Importantly, the resolution specifically mentioned the threat to biodiversity posed by “invasive alien species” such as lionfish, and “the sargassum seaweed influx and its negative impact on the people, [and] the territory”.⁵³

2.16 All of these climate change impacts are indeed part of the Dominican Republic’s reality. Located in the centre of the Caribbean region, in the northern hemisphere and south of the Tropic of Cancer, the Dominican Republic’s territory extends in the oriental part of the island of Santo Domingo with its adjacent islands, and is a major contributor to Caribbean biodiversity. Indeed, all Caribbean Island States, including the whole island of Santo Domingo,

⁴⁸ World Meteorological Organisation, *State of the Climate in Latin America and the Caribbean 2021* (2002), p. 13, available at: <https://public.wmo.int/en/our-mandate/climate/wmo-statement-state-of-global-climate/LAC>

⁴⁹ *Ibid.* See also, IUCN, World Commission on Environmental Law (WCEL), Written opinion on the Request for an Advisory Opinion from the Inter-American Court on Human Rights concerning the Climate Emergency and Human Rights (2023).

⁵⁰ General Assembly Resolution 77/163, “Towards the sustainable development of the Caribbean Sea for present and future generations” A/RES/77/163 (14 December 2022), preambular para. 14.

⁵¹ *Ibid.*, preambular paragraph 15.

⁵² *Ibid.*, preambular paragraph 18.

⁵³ *Ibid.*, para. 18.

form one of the 36 existing hotspots (megadiversity areas) existing worldwide.⁵⁴ Within its land territorial extension of approximately 48,186.00 km², the Dominican Republic alone hosts 128 protected areas,⁵⁵ including 28 marine protected areas and critical wetlands protected by the Ramsar Convention.⁵⁶ Its limited size conditions the habitable surface and the sustainable use of natural resources, presenting an economic and development challenge. In six decades, ranging from 1950 to 2010, the Dominican Republic's population multiplied by 4.42—from slightly above 2 million inhabitants in 1950 to reaching almost 9,5 million in 2010. According to the most recent population census, today the Dominican Republic's population is at 11,12 million, and 60% of its urban population is concentrated in coastal or river areas.⁵⁷ Importantly, the Dominican Republic heavily relies on tourism, which originates approximately 61% of its annual GDP.⁵⁸

2.17 The adverse impacts of climate change in the Dominican Republic are evident and grave, having been ranked by the Global Climate Index as one of the ten most affected nations by climate change impacts between 1997 and 2016.⁵⁹ Indeed, the Dominican Republic is located in the route of hurricanes from the Atlantic Ocean. During half of each year, the State is highly and recurrently exposed to extreme weather events and atmospheric phenomena (such as cyclones), which particularly occur from June to November and affect the southeast and southwest regions of the country with greater intensity. For instance, in September 2017, the country was impacted by two hurricanes, Irma and María, which were only two weeks apart,

⁵⁴ See D. Olson, “A decade of conservation by the Critical Ecosystem Partnership Fund 2001-2010: An independent evaluation of CEPF’s global impact”, Conservation Earth for the Critical Ecosystem Partnership Fund (2010), available at: [A Decade of Conservation by the Critical Ecosystem Partnership Fund \(cepf.net\)](#)

⁵⁵ Dominican Republic, Ministry of Environment and Natural Resources, National Council for Climate Change and Clean Development Mechanism (in collaboration with United Nations Development Programme and the Global Environmental Facility), First Biannual Updating Report of the Dominican Republic before the UNFCCC (February 2020) (hereinafter “First Report of the Dominican Republic before the UNFCCC”), p. 18, available at: [Primer Informe Bienal de Actualización \(“fBUR”\) \(unfccc.int\)](#) (in Spanish).

⁵⁶ *Ibid.*, p. 64.

⁵⁷ World Bank Data, Dominican Republic (Population, total, 2022), available at [Population, total - Dominican Republic | Data \(worldbank.org\)](#); and National Climate Change Adaptation Plan in the Dominican Republic (2015-2030), p. 20, available at [Plan-Nacional-de-Adaptacion-para-el-Cambio-Climatico-en-RD-2015-2030-PNACC.pdf \(cambioclimatico.gob.do\)](#) (in Spanish).

⁵⁸ First Report of the Dominican Republic before the UNFCCC, p. 72.

⁵⁹ Germanwatch, Global Climate Risk Index 2017: Who Suffers most from Extreme Weather Events? Weather-related Loss Events in 2015 and 1996 to 2015 (2017), available at: <https://www.germanwatch.org/sites/default/files/publication/16411.pdf>

and caused estimated damages amounting to approximately US\$ 182.4 million. The impact of these hurricanes slowed down the country's economic growth, which declined from 6.6% in 2016 to 4.6% in 2017.⁶⁰ Relatedly, the Dominican Republic noted significant rain pattern change, with a 20% to 30% increase of cases of intense rain between May and November, when compared to the data of the last two decades.

2.18 Climate change has also impacted the ocean and coastal ecosystems, leading to coral reduction, loss of vegetated wetlands, and changes in the plankton community or in ocean and coastal food web structures.⁶¹ Importantly, the phenomenon has contributed to an influx of sargassum in the Republic's maritime areas and beaches with heavy metal contents, severely undermining its marine diversity and directly impacting on the tourist sector.⁶² A most recent comprehensive report prepared by the World Bank Group has concluded that "climate-induced GDP deviations from the baseline scenario could reach up to 16.7 percent of GDP by 2050", with this "more than 80 percent of the loss comes from three channels: reduced labor productivity caused by heat stress, more tropical storms, and reduced tourism demand".⁶³ Regional economic projections indicate that, due to the intensification of climate shocks, by 2050 the gross domestic product of six highly exposed Caribbean and Central American countries (the Dominican Republic along with Barbados, El Salvador, Guatemala, Honduras and Saint Lucia) could decrease between 9% and 12% compared to a business-as-usual growth scenario.⁶⁴

2.19 It is against this background and the Dominican Republic hereafter addresses the legal aspects of the Request referred to the Court.

⁶⁰ First Report of the Dominican Republic before the UNFCCC, p. 64.

⁶¹ IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change p.1691.

⁶² *Ibid.*

⁶³ World Bank Group, Dominican Republic: Country Climate and Development Report (November 2023), p. iv, available at: [World Bank Document](#).

⁶⁴ Economic Development Division of the Economic Commission for Latin America and the Caribbean (ECLAC), Economic Survey of Latin America and the Caribbean 2023: Financing a Sustainable Transition: Investment for Growth and Climate Change Action (November 2023), p. 17, available at: [Economic Survey of Latin America and the Caribbean, 2023 \(cepal.org\)](#)

CHAPTER 3
THE COURT HAS JURISDICTION TO RENDER THE ADVISORY OPINION
REQUESTED BY THE GENERAL ASSEMBLY

3.1 This Chapter addresses the jurisdiction of the Court to issue the Advisory Opinion requested by General Assembly Resolution 77/276, and the propriety of doing so. **Section I** shows that the Court has jurisdiction to give the Opinion requested, because the General Assembly is an organ duly authorized to seek an advisory opinion from the Court, and because the request raises questions of a legal character and the political context in which it has been presented bears no impact on the Court’s jurisdiction. **Section II** shows that there are no compelling reasons for the Court to decline to give its advisory opinion on the important matters which the General Assembly has placed before it.

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

3.2 The Court derives its advisory jurisdiction from Article 65, paragraph 1 of the Statute, which provides that 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”.⁶⁵ Both conditions are fulfilled in the present case.

3.3 First of all, the General Assembly is one of the bodies expressly authorized by Article 96, paragraph 1, of the Charter to refer to the Court requests for advisory opinion. When interpreting Article 65, paragraph 1 of the Statute, the Court has further explained that:

“[I]t is... a precondition of the Court’s competence that the advisory opinion [...] should be one arising within the scope of the activities of the requesting organ. Unlike other organs of the United Nations and specialized agencies, whose power to request advisory opinions is restricted to legal questions ‘arising within the scope of their activities,’ the General Assembly’s power is broad”.⁶⁶

3.4 In the present case, the subject matter of Resolution 77/276 referring the Request to the Court has been regularly addressed by the Assembly in the exercise of its powers and functions under Chapters XI to XIII of the Charter. In addition, when the General Assembly

⁶⁵ ICJ Statute, Art. 65(1).

⁶⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2009, I.C.J. Reports 2004, p. 136 (hereinafter the “Wall Advisory Opinion”), para. 14 (*citing to* Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, pp. 333-334, para. 21.) (emphasis added).

requests an advisory opinion from the Court in accordance with its own rules, the presumption is that the Assembly has exercised its power validly. As the Court recalled in the *Wall* case, “[a] resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ’s rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted”.⁶⁷ Resolution 77/276 was approved by the General Assembly pursuant to its established rules.

3.5 With regard to the second requirement, the Court has explained that “questions ... framed in terms of law and rais[ing] problems of international law ... are by their very nature susceptible of a reply based on law” and “therefore they appear ... to be questions of a legal character”.⁶⁸ In the process of exercising its judicial role, the Court is called upon identifying the existing relevant obligations under international law with respect to climate change, and defining the legal consequences for States arising from such obligations. Both Questions referred to the Court by the General Assembly in the present case are, but their very nature, “scarcely susceptible of a reply otherwise than on the basis of law”.⁶⁹

3.6 In addition, the fact that the Questions referred to by the General Assembly may also touch on issues of a political nature bears no impact on their otherwise “legal character”. As the Court explained in *Legality of the Threat or Use of Nuclear Weapons*, “the political nature of the motives which may be said to have inspired the request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion”.⁷⁰ Rather, the Court’s long-standing jurisprudence makes clear that it “cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task”.⁷¹

⁶⁷ *Wall Advisory Opinion*, para. 35 (citing to Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)).

⁶⁸ *Western Sahara*, Advisory Opinion of 16 October 1975, I.C.J. Reports 1975, p. 12 (hereinafter “Western Sahara Advisory Opinion”), para. 15. See also *Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, I.C.J. Reports 2010, p. 403, pp. 414-415 (hereinafter “Kosovo Advisory Opinion”), para. 25; *Legality of Nuclear Weapons Advisory Opinion*, pp. 233-234, para. 13.

⁶⁹ *Western Sahara*, para. 15. See also, *Wall Advisory Opinion*, para. 37.

⁷⁰ *Wall Advisory Opinion*, para. 13.

⁷¹ *Ibid.*, para. 14.

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

3.7 Article 65, paragraph 1 of the Court's Statute "leaves the Court a discretion as to whether or not it will give an Advisory Opinion that has been requested of it, once it has established its competence to do so".⁷² Notwithstanding its discretionary power, as the Court itself noted, "the present Court has never, in the exercise of this discretionary power, declined to respond to a request for an advisory opinion".⁷³ Indeed, in the 27 advisory proceedings it has been seized with, the Court has always been "mindful of the fact that its answer to a request for an advisory opinion 'represents its participation in the activities of the Organisation, and, in principle, should not be refused',⁷⁴ given that the Court's advisory opinions "have the purpose of furnishing to the requesting organs the elements of law necessary for them in their action".⁷⁵ As the principal judicial organ of the United Nations, the Court has repeatedly stated that "only 'compelling reasons' should lead the Court to refuse its opinion in response to a request falling within its jurisdiction".⁷⁶

3.8 In the present case, the fact that Resolution 77/276 was adopted by consensus, having been co-sponsored by 132 States, is a compelling indication of the urgent need of the Court's assistance by the General Assembly in this matter, as well as of the absence of "compelling reasons" that would call upon the Court to make use of its discretionary powers.

⁷² *Legality Nuclear Weapons Advisory Opinion*, para. 14. See also, *Wall Advisory Opinion*, para. 44 ("The Court has recalled many times in the past that Article 65, paragraph 1, of its Statute, which provides that 'The Court may give an advisory opinion...'" (emphasis added); and *Kosovo Advisory Opinion*, para. 29.

⁷³ *Wall Advisory Opinion*, para. 44.

⁷⁴ *Wall Advisory Opinion*, para. 44 ("The Court's Opinion is given not to the States, but to the organ which is entitled to request it; the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organisation, and, in principle, should not be refused.").

⁷⁵ *Ibid.*, para. 60.

⁷⁶ *Kosovo Advisory Opinion*, para. 30 (emphasis added). See also, e.g., *Wall Advisory Opinion*, para. 44; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion of 29 April 1999, I.C.J. Reports 1999, p. 78, para. 29.

CHAPTER 4 OBSERVATIONS ON THE QUESTIONS REFERRED TO THE COURT

4.1 The Dominican Republic hereafter addresses the Questions referred to the Court by the General Assembly. As a *preliminary point*, **Section I** notes that, while the international regime on climate change is at the heart of these proceedings and the primary locus where the relevant international obligations of States are to be identified, the General Assembly sought to give due consideration to all types of climate change impacts, and expressly called upon the Court to identify the legal obligations of States with respect of climate change without limitation as to the sources of law to be assessed. **Section II** addresses *Question A*, by identifying first the international mitigation obligations arising from international climate change law, followed by the obligations under other specialized areas –with a particular focus on States’ obligation to respect the territorial integrity and fundamental right to survival of every State, as well as obligations under human rights law (relating to the protection of peoples’ right to self-determination and the right to development). **Section III** addresses *Question B* on the legal consequences arising from the breach of such obligations, with a particular focus on the obligation of cessation of the wrongful conduct, and participation in mechanism specifically established within the international regime on climate change to address reparations of permanent and irreversible loss and damage due to the phenomenon.

I. SCOPE OF THE REQUEST, APPLICABLE LAW AND THE INTER-TEMPORAL PRINCIPLE

A. UNLIMITED SCOPE OF THE SOURCES OF LAW TO BE CONSIDERED UNDER THE REQUEST

4.2 As addressed in Chapter 3, the Questions posed to the Court are clearly of a legal character. Question A asks the Court to identify the “obligations of States under international law” relating to climate change, while Question B requests that the Court identifies the “legal consequences under these obligations for States”. Therefore, by their very nature, they are both susceptible of a response from the Court based on law.⁷⁷ While the Court may “depart from the language of the request” for clarification purposes (either because the request is not adequately formulated, does not reflect the legal issues “really in issue” or are too vague or abstract),⁷⁸ the Court’s reformulation of the questions put before it is very limited

⁷⁷ See Chapter 3 *supra*.

⁷⁸ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, I.C.J. Reports 2019, p. 95 (hereinafter “Chagos Advisory Opinion”), para. 135 (“The Court recalls that it may depart from the language of the question put to it where the question is not adequately

if their legal nature has been established. Indeed, as the Court explained in the *Chagos* advisory opinion “[a]lthough, in exceptional circumstances, the Court may reformulate the questions referred to it for an advisory opinion, it only does so to ensure that it gives a reply ‘based on law’ and should not require reformulation”.⁷⁹

4.3 The question that arises thereafter pertains to the scope of the Request and, more precisely, whether the Court should limit the sources of international law it examines to respond to the two questions posed. In the Dominican Republic’s view, once the legal nature of the Questions posed and the jurisdiction of the Court to issue the requested advisory opinion are established, the only limitation to the scope of Court’s jurisdictional function may be derived from the wording of the Resolution containing the Request itself.⁸⁰ In *Certain Expenses*, the Court was called upon considering whether an amendment that France had sought to be included in the final version of the resolution should be taken into account to limit the question’s scope. The Court found that “[i]t is not to be assumed that the General Assembly would thus seek to fetter or hamper the Court in the discharge of its judicial function. The Court must have full liberty to consider all relevant data available to it in forming an opinion on a question posed to it for an advisory opinion”.⁸¹ In fact, in cases where the Court was called upon conducting a clarification in interpreting of the questions posed (including its reformulation to find “the real legal question”), its inclination has been *broadening the scope of the question*, not narrowing it.⁸²

formulated (Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, 1928, P.C.I.J., Series B, No. 16) or does not reflect the “legal questions really in issue” (Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, p. 89, para. 35). Similarly, where the question asked is ambiguous or vague, the Court may clarify it before giving its opinion (Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, p. 348, para. 46).”).

⁷⁹ *Chagos Advisory Opinion*, para. 135.

⁸⁰ See, e.g. *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV)*, Advisory Opinion of 28 August 1928, PCIJ, Series B, N° 16, p. 16 (“the Court is in a position to reply to the request for an opinion submitted to it, always keeping within the scope of the question thus formulated. It follows that, in so far as the points in dispute between the interested Governments fall outside the scope of the question as set out above, the Court cannot deal, with them.”) (emphasis added).

⁸¹ *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion of 20 July 1962: I.C. J. Reports 1962, p. 151 (at 157) (hereinafter “*Certain Expenses Advisory Opinion*”) (emphasis added).

⁸² See, e.g. *Certain expenses Advisory Opinion*, p. 151 (at 157), whereby the Court found that the rejection of the French amendment did not prove that the General Assembly has sought to preclude the Court from interpreting article 17 of the UN Chart in Light of other articles of the Charter (rather, the Court found that that “if any deduction is to be made from the debates on this point, the opposite conclusion would be drawn from the clear statements of sponsoring delegations that they took it for granted the Court would consider the Charter as a

4.4 Unlike other prior advisory proceedings, the present Request is not bound by the contours of UN law (such as *Reparation for Injuries* or *Certain Expenses* cases), nor does it concern specific issues arising between two States or entities (such as the *Wall* case). The present Request concerns fundamental issues of international law which, by their very nature, require that the Court be “guided by the directives embodied in article 38 of the Court’s Statute,”⁸³ and give full consideration to the entire corpus of international law as a whole.⁸⁴

4.5 This is particularly reflected in, and confirmed by, the *chapeau* of the Request, which reads:

“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment ...”⁸⁵

whole.”). See also, *Admissibility of hearings of petitioners by the Committee on South West Africa*, Advisory Opinion of 1 June 1956: I.C. J. Reports 1956, p. 23. (“It was in these circumstances that the question was submitted to the Court. While the question in terms refers to the grant of oral hearings by the Committee, the Court interprets it as meaning: whether it is legally open to the General Assembly to authorize the Committee to grant oral hearings to petitioners. The Court must therefore deal with the broader question as to whether it would be consistent with its previous Opinion of II July 1950 for the General Assembly to authorize the Committee on South West Africa to grant oral hearings to petitioners.”). *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I. C.J. Reports 1980, p. 73, para. 34 (“Accordingly, it is apparent that, although the questions in the request are formulated in terms only of Section 37, the true legal question under consideration in the World Health Assembly is: What are the legal principles and rules applicable to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected? This, in the Court's opinion, must also be considered to be the legal question submitted to it by the request. The Court points out that, if it is to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction, it must ascertain what are the legal questions really in issue in questions formulated in a request ...”) (all emphasis added).

⁸³ A. Zimmermann, C. Tomushat and K.Oellers-Frahm, *The Statute of the International Court of Justice: a Commentary* (2006), article 38 (Pellet), p. 694, paras. 57-60 (further noting that “According to art. 68 [i]n the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent it recognizes them to be applicable”. Quite rightly, the Court has consistently recognized – even if only implicitly – that Art. 38 para. 1 is fully applicable when it exercises its advisory function.”).

⁸⁴ See *Request for an Examination* (New Zealand v. France), Dissenting Opinion of Judge Weeramantry, p. 61 (“the ICJ, situated at the apex of international tribunals, necessarily enjoys a position of special trust and responsibility in relation to the principles of environmental law, especially those relating to what is described in environmental law as the Global Commons.”) (emphasis added).

⁸⁵ AO Request, (emphasis added).

4.6 For the purposes of interpretation, this *chapeau* constitutes the preamble of the Request and, pursuant to article 31, paragraph 2 of the Vienna Convention on the Law of Treaties, is part of its context.⁸⁶ Through this preambular language, the General Assembly undeniably sought that the Court would address the Questions posed without any limitation as to either the nature of the sources of international law to be examined, nor their subject matter. Indeed, the *chapeau* comprises an express reference to six multilateral treaties in force of universal or quasi-universal ratification (ranging between 169 and 198 State Parties).⁸⁷ The UN Charter—perhaps the most general and all-encompassing treaty in force—opens the list, followed by the five core multilateral treaties structuring three key specialised areas, which are referred to in their chronological order of adoption: human rights law (International Covenant for Civil and Political Rights and International Covenant for Economic, Social and Cultural Rights), followed by the law of the sea (UN Convention on the Law of the Sea), and closing with the most recent one, international climate change law (UNFCCC and Paris Agreement)).

4.7 After the list of key treaties that the Court is called upon considering, the General Assembly expressly mentions three general principles of law (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), presumably also according to the General Assembly’s understanding of their chronological order of appearance in the international legal order.

4.8 Finally, to further ensure that the Court does not limit the scope of the Request in the discharge of its judicial function, this list of relevant treaties and general principles of law is preceded by the opening expression of the Request “having particular regard to”, which confirms that the list is not meant to be exhaustive. It is also noteworthy that the *chapeau* of the Request does not establish a hierarchy between the different specialised areas of international law and their structural legal instruments it invites the Court to consider. The

⁸⁶ Thus, in accordance with article 31, paragraph 1 of the same Convention, the operative part of the Resolution (and therefore, the Questions contained therein) must be interpreted in that context. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980), UNTS 1155, p. 331, Art. 31(1) (“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”); and art. 31(2) (“The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes.”).

⁸⁷ According to the UN Treaty Series Database: UN Charter counts with 193 State Parties; the International Covenant for Civil and Political Rights with 173 State Parties; the International Covenant for Economic, Social and Cultural Rights with 171 State Parties; the UN Convention on the Law of the Sea with 169 State Parties; the UNFCCC with 198 State Parties); and the Paris Agreement with 195 State Parties.

Court is therefore requested to look even beyond all the sources of law enshrined in the *chapeau*.

B. RELEVANCE OF THE INTER-TEMPORAL PRINCIPLE

4.9 The multiplicity of relevant sources of law to the present case, which not only pertain to different specialized areas but have also evolved since the time of their creation, bears the question of whether the Court, when identifying the international obligations of States with respect to climate change and their legal consequences (as specifically framed in the Questions), should appreciate such obligations and their content as they were at the time of their creation, or today, at the time when it is seized with the Request. On this point, the Dominican Republic recalls the well-known distinction provided for in the *Island of Palmas* case by arbitrator Max Huber, who in relation to the inter-temporal principle explained that:

“As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so-called inter-temporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the acts creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law.”⁸⁸

4.10 Thus, when identifying the relevant international legal obligations with respect of climate change and defining the legal consequences arising from them, consideration should be given to the *present content* of such obligations, not the content they had at the time of their creation. To do so, it will be key for the Court to take into account the best available science and information, primarily found in the latest IPCC reports and projections, as the development of scientific knowledge about the causes and impacts of climate change has shaped the evolution of the legal obligations themselves. As Judge Weeramantry put it in the *Request for Examination of the Situation* case, “it is a truism that scientific knowledge increases exponentially ... The Court is seized of the present Request at this point of time and must bring to bear upon it the scientific knowledge now available”.⁸⁹ This is especially relevant in the

⁸⁸ *Island of Palmas Case (or Miangas), (United States v Netherlands)*, Award, (1928) II RIAA 829, ICGJ 392 (PCA 1928) (4 April 1928), p. 845.

⁸⁹ Request for an Examination of the Situation in Accordance with Paragraph 63 of the Courts Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France), Order of 22 September 1995, Dissenting Opinion of Judge Weeramantry, pp. 55-56, I.C.J. Reports 1995, p. 288 (pp. 339-340). In this case, New Zealand asked the Court whether the announcement by France that it would conduct eight nuclear weapons tests would be in accordance with the Court’s 1974 Judgment on the matter.

present case, considering that Article 3, paragraph 3 of the Climate Change Convention itself already expressly embeds the precautionary principle, as it provides that “lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.⁹⁰

II. QUESTION A: OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW IN RELATION TO CLIMATE CHANGE

4.11 The first question the Court is seized with (“Question A”), which directly follows the *chapeau*, is formulated as follows:

- (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?

4.12 Section A provides observations on the meaning of the terms of this Question. Section B identifies the relevant obligations of States under international law with a particular focus on the international regime on climate change. Section C in turn identifies obligations existing under other specialized areas which inform the mitigation obligations of States under international climate change law.

A. PRELIMINARY OBSERVATIONS ON THE MEANING OF KEY TERMS IN QUESTION A

4.13 While the terms opening Question A, namely “obligations of States under international law” are self-explanatory, the remaining part of the Question is structured around additional key concepts which require to be defined.

4.14 The question first refers to the notion of “*climate system*”, an expression included in Article 1, paragraph 3 of the UNFCCC which (for the purposes of the Convention), defines it as “the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions”.⁹¹ This notion bears a scientific origin, as it had been employed by the IPCC in its 1990 First Assessment Report, which served as the basis for the preparatory work of the Convention under the Intergovernmental Negotiating Committee.⁹² The expression is referred

⁹⁰ UNFCCC, Art. 3(3).

⁹¹ UNFCCC, Art. 1.

⁹² IPCC, First Assessment Report (FAR Climate Change: Scientific Assessment of Climate Change), Working Group 1, Summary for Policy-Makers, p. 7 (“The driving energy for weather and climate comes from the Sun. The Earth intercepts solar radiation (including that in the short-wave, visible, part of the spectrum), about a third

to another seven times in four key provisions of the Climate Change Convention: (i) it is the closing line of the preamble;⁹³ (ii) it is at the heart of article 2, which defines the objective of the Convention;⁹⁴ (iii) it opens the first structural principle of the regime in article 3, paragraph 1 on common but differentiated responsibilities and respective capabilities, and is also mentioned in, in article 3, paragraph 4 concerning the principle on sustainable development,⁹⁵ and finally, (iv) it is mentioned twice in the provision defining the Parties' commitments under the Convention, as defined in article 4, paragraph 1, on scientific and technical promotion and cooperation "on data archives related to the climate system".⁹⁶ In "pursuing the objective of the [Climate Change] Convention", the Paris Agreement implicitly refers to the notion of "climate system" as well.⁹⁷ The expression has been expressly included in all General Assembly Resolutions on the "Protection of the global climate for present and future generations" between 2005 and 2015.

4.15 The notion of "*other parts of the environment*" can be understood as a "sweeping clause", intended to capture within the scope of the Question obligations under international law which aim at protecting the environment but whose object is not the protection of the climate system *as such*. For instance, from a scientific standpoint, the obligations in the UN Convention on the Law of the Sea or in multilateral environmental

of it is reflected, the rest is absorbed by the different components (atmosphere, ocean, ice, land and biota) of the climate system. The energy absorbed from solar radiation is balanced (in the long term) by outgoing radiation from the Earth and atmosphere, this terrestrial radiation takes the form of long-wave invisible infrared energy, and its magnitude is determined by the temperature of the Earth atmosphere system.") (emphasis added).

⁹³ UNFCCC, preamble *in fine* "(which reads "determined to protect the climate system for present and future generations.")".

⁹⁴ UNFCCC, Art. 2 ("the ultimate goal of the Convention is (...) to achieve (...) stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system (...)").

⁹⁵ UNFCCC, Art. 3(1) ("the Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis and in accordance with their common but differentiated responsibilities and respective capabilities"); and Art. 3(2) ("the Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate (...)").

⁹⁶ UNFCCC, Art. 4(1)(g & h).

⁹⁷ Paris Agreement, preambular para. 2.

agreements such as the Convention on Biological Diversity may not be met in absence of protection of the climate system.⁹⁸

4.16 The expression “*anthropogenic emissions of greenhouse gases*” is not, *in totum*, incorporated in the UNFCCC. The Convention defines “emissions” as the “release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time”;⁹⁹ and “greenhouse gases” as “those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.”¹⁰⁰ Unsurprisingly, the qualifier “anthropogenic” is absent from the definitions provided by the UNFCCC (either as a stand-alone term, nor accompanying others). The state of scientific knowledge at the time when the Convention was adopted did not make it possible to ascertain that climate change was a phenomenon *caused by* humans or human activities (as opposed to a natural phenomenon).¹⁰¹ However, after thirty-two years of comprehensive, in-depth scientific research and modelling, by 2023 the IPCC has been able to conclude that “human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020”.¹⁰² Specifically, the Panel noted “with high confidence” that in 2019, atmospheric CO₂ concentrations were “higher than at any time in at least 2 million years”, and with “very high confidence” that concentrations of

⁹⁸ Materials shared by the Secretariat for the present proceedings included the Convention on Biological Diversity, the UN Convention to Combat Desertification, two “sister conventions” adopted alongside the UNFCCC.

⁹⁹ UNFCCC, Art. 1(4).

¹⁰⁰ UNFCCC, Art. 1(5).

¹⁰¹ See IPCC, First Assessment Report (FAR Climate Change: Scientific Assessment of Climate Change) 1990, Working Group 1, Summary for Policy-Makers, para. 1.0.5 (“The size of the warming over the last century is broadly consistent with the prediction by climate models, but is also of the same magnitude as natural climate variability. If the sole cause of the observed warming were the human-made greenhouse effect, then the implied climate sensitivity would be near the lower end of the range inferred from models. Thus the observed increase could be largely due to this natural variability: alternatively this variability and other human factors could have offset a still larger human-induced greenhouse warming. The unequivocal detection of the enhanced greenhouse effect from observations is not likely for a decade or more.”) (emphasis added).

¹⁰² IPCC, Sixth Assessment Report, Climate Change 2023: Synthesis Report, Summary Report for Policymakers (March 2023), para. A.1 (Observed Warming and its Causes), *see also* para. A.1.4 (“Observed increases in well-mixed GHG concentrations since around 1750 are unequivocally caused by GHG emissions from human activities over this period. Historical cumulative net CO₂ emissions from 1850 to 2019 were 2400 ± 240 GtCO₂ of which more than half (58%) occurred between 1850 and 1989, and about 42% occurred between 1990 and 2019 (high confidence).

methane and nitrous oxide “were higher than at any time in at least 800,000 years”.¹⁰³ This was acknowledged by all States when they adopted by consensus Resolution 72/276 referring the Request to the Court. Paragraph 9 of the Resolution’s preamble reads:

“Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected ...”¹⁰⁴

Therefore, at the time the Court is seized with this proceeding, there is both scientific and political consensus that *general causation* between human-made atmospheric greenhouse gas emissions and resulting in climate change is, undisputedly, established.¹⁰⁵

4.17 Finally, the expression “*for present and future generations*”, framed in legal terms as the principle of inter-generational equity is hardly “new” or “emerging” at the time when the Court is seized with this matter. This principle finds its roots in the 1972 Stockholm Declaration on the Human Environment, which enshrined in its Principle 1 “the solemn responsibility to protect and improve the environment for present and future generations”,¹⁰⁶ and even set a limit to States’ sovereign rights, given that, as provided in Principle 2, “the natural resources of the earth ... must be safeguarded for the benefit of present and future generations”.¹⁰⁷ The 1987 Report of the World Commission on Environment and Development

¹⁰³ IPCC, 6th Assessment Report, Climate Change 2023: Synthesis Report, Summary Report for Policymakers (March 2023), para. A.1.4

¹⁰⁴ UN General Assembly Resolution, “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”, A/RES/77/276 (29 March 2023), preambular paragraph 9 (emphasis added).

¹⁰⁵ See e.g. C. Voigt, “The Potential Roles of the ICJ in Climate Change-Related Claims”, in D. Farber *et al* eds. *Climate Change Law* (2016), p. 161 (“It is further necessary that there is a causal link between the activity and the occurring damage. It is useful here to distinguish between general causation and specific causation. The first type refers to a general link between increasing anthropogenic GHG emissions and climate change damages. This causation chain is not discussed here as almost universal international scientific consensus exists on these issues.”).

¹⁰⁶ Stockholm Declaration on the Human Environment, adopted by the United Nations Conference on the Human Environment (Stockholm, 16 June 1972); endorsed by U.N. General Assembly Resolutions 2994/XXVII, 2995/UVII and 2996/XXII of 15 December 1972, Principle 1 (emphasis added).

¹⁰⁷ *Ibid.*, Principle 2.

Our Common Future referred to this landmark recognition, and recommended that “governments take appropriate steps to recognize these reciprocal rights and responsibilities”.¹⁰⁸ These responsibilities are most relevant in the context of climate change, for several greenhouse gases (“GHGs”) remain in the atmosphere long after being released; over time they accumulate, which leads to an increase in atmospheric GHG concentration. Since the warming effects of the emissions on the climate system persist for long periods of time, by their very nature they affect both present and future generations.

4.18 Since its inception, the international legal framework for the protection of the climate system has been conceived as incorporating at its core the protection of not only “the rights of people presently in existence”, but also, as Judge Weeramantry put it, “the rights of unborn posterity”.¹⁰⁹ As he explained, “those are rights which a nation is entitled, and indeed obliged, to protect”.¹¹⁰ The 1988 General Assembly Resolution which first characterized climate change as a “global concern of mankind”, already included a direct reference to intergenerational justice in its title—“Protecting the global climate for present and future generations”—, which would be subsequently and consistently reproduced for more than three decades in 32 additional General Assembly resolutions on this issue. In 1992, the expression “for present and future generations” was included in Principle 3 of the 1992 Rio Declaration on the Human Environment in relation to the right to development;¹¹¹ and also found a direct conventional expression in the *three* multilateral environmental treaties that emerged, together, from the Earth Summit (all of which are currently in force)—the Climate Change Convention,

¹⁰⁸ Report of the World Commission on Environment and Development: *Our Common Future* (“Brundtland Report”), (1987), paras. 83-84. *See also*, IUCN World Declaration on the Environmental Rule of Law (2016), Principle 8 (“The present generation must ensure that the health, diversity, ecological functions, and beauty of the environment are maintained or restored to provide equitable access to the benefits of the environment by each successive generation.”), available at: [Environmental Rule of Law | IUCN](#)

¹⁰⁹ *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Courts Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France)*, Order of 22 September 1995, Dissenting Opinion of Judge Weeramantry, pp. 55-56, I.C.J. Reports 1995, p. 288, (at p. 339).

¹¹⁰ *Ibid.*

¹¹¹ Rio Declaration on Environment and Development (adopted at the United Nations Conference on the Human Environment in Rio di Janeiro, 14 June 1992), ILM 31, p. 874, Principle 3 (“The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”).

as well as the Convention on Biological Diversity, and the Convention to Combat Desertification.¹¹²

4.19 In its 1997 *Gabčíkovo-Nagymaros* Judgment, the Court made its first express pronouncement on this principle in connection with the protection of freshwater resources, recognizing that:

“Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades”.¹¹³

The present case, which has been “inspired by the youth of the world”,¹¹⁴ provides the Court with a new historical opportunity to expand its previous pronouncement of this structural principle of international environmental law, this time in relation to the obligations of States with respect of what the Resolution referring the Request to the Court has defined as “an unprecedented challenge of civilizational proportions”.¹¹⁵

4.20 From the above-mentioned understanding of the key terms of Question A, the Dominican Republic hereafter addresses the relevant obligations of States under international law with respect to climate change. In the Dominican Republic’s view, by the very nature of the object of the Question, international environmental law (and, particularly, the international regime on climate change), is the primary locus where relevant international obligations of State relating to the protection of the climate system and other parts of the environment may be found. Thus, by no means should international environmental law be considered as the *sole*, nor necessarily the most important specialized area of international law relevant to these

¹¹² See UNFCCC, preamble *in fine*; Art. 2; CBD, preamble *in fine*; UNCCD, preamble *in fine*.

¹¹³ *Gabčíkovo-Nagymaros Project (Hungary | Slovakia)*, Judgment of 25 September 1997, I.C.J. Reports 1997, p. 7, para. 140 (emphasis added).

¹¹⁴ UN General Assembly, 64th plenary meeting, A/77/PV.64 (29 March 2023), *Statement of the Republic of Costa Rica*, p. 9; see also, e.g. *Statement by the Republic of Vanuatu* (noting that “young law students in the Pacific who inspired this initiative and who brought it to the attention of the Vanuatu Government in 2019.”).

¹¹⁵ AO Request, preambular para. 1.

proceedings. The Dominican Republic will first provide an explanation of the mitigations obligations of States arising from international climate change law.

B. RELEVANT OBLIGATIONS UNDER INTERNATIONAL ENVIRONMENTAL LAW

4.21 The obligations of States under international environmental law to protect the climate system against anthropogenic green-house gas emissions for present and future generations, arise, first and foremost, from two legally binding, conventional sources: the Climate Change Convention and the Paris Agreement. In light of the IPCC Sixth Assessment Report from March 2023, these are complemented by customary international rules, including, *inter alia*, the obligation of not to cause transboundary harm.

4.22 The Climate Change Convention and the Paris Agreement created a very vast array of international legal obligations. The Dominican Republic will thus focus on the nature, scope and normative content of only those obligations pertaining to mitigation obligations.

4.23 The “ultimate objective” of the international regime on climate change, as set forth in article 2 of the Climate Change Convention, is “to achieve (...) stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”.¹¹⁶ This objective also applies to “any other legal instruments that the Conference of the Parties may adopt”,¹¹⁷ and is therefore common to both the UNFCCC and the Paris Agreement. As noted by Professors Bodansky, Brunée and Rajamani, while the regime’s objective focuses on greenhouse gas “concentrations” —rather than “emissions”— State Parties to both treaties have not specified the GHG concentration level that the regime should seek to achieve. Instead, they have agreed on “objectives defined in terms of temperature change and long-term emissions”.¹¹⁸ In addition, specifying what concentration level is “safe” (or “dangerous”) involves a value judgment based on both scientific and policy factors.¹¹⁹

¹¹⁶ UNFCCC, Art. 2 (emphasis added).

¹¹⁷ UNFCCC, Art. 2 (emphasis added).

¹¹⁸ See D. Bodansky, J. Brunée and L. Rajamani, *International Climate Change Law* (2017), p. 126.

¹¹⁹ Ibid.

4.24 To achieve the regime’s objective, State Parties to the UNFCCC first established under Article 4, paragraphs 1(b-d), and paragraph 2, specific mitigation and reporting commitments that applied only to developed States and economies in transition, listed in Annex I of the Convention (“Annex I Parties”). This structure—which created different types of obligations for different categories of States—reflected the Parties’ recognition of the principles of historical responsibility of developed States, and common but differentiated responsibilities and respective capabilities. Under Article 4, paragraph 1 of the Convention Annex I Parties thus have a general obligation to “formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change.”¹²⁰ In addition, under Article 4, paragraph 2, Annex I Parties have a specific obligation to “adopt national policies and measures to limit greenhouse gas emissions and to protect and enhance its sinks and reservoirs, with the goal of returning emissions to 1990 levels by the year 2000”.¹²¹ Developing States, which are the Parties not listed in Annex I of the Convention (“Non-Annex I Parties”), did not have mitigation obligations under the Climate Change Convention.¹²²

4.25 The Paris Agreement was adopted in 2015 under the Climate Change Convention and, pursuant to Article 2, “aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty”.¹²³ Importantly Article 2, paragraph 1(a) specifies the Agreement’s overarching goal is to “[h]old 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”.¹²⁴

4.26 To achieve this long-term temperature goal, Article 4, paragraphs 2 and 9, establish that each Party (both Annex I and Non-Annex I States) shall prepare, communicate

¹²⁰ UNFCCC, Art. 4(1).

¹²¹ UNFCCC, Art. 4.2

¹²² The “mitigation commitments” under the Climate Change Convention did not include a target, nor a timetable. These were established by the 1997 Kyoto Protocol, which established quantified emission reduction targets for Annex I Parties, but is no longer in force.

¹²³ Paris Agreement, Art. 2.

¹²⁴ Paris Agreement, Art. 2(1)(a).

every five years, and maintain successive nationally determined contributions (“NDCs”).¹²⁵ They shall also pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.¹²⁶ Importantly, each Party’s successive NDC must always represent a progression, and reflect its highest possible ambition.¹²⁷ Through a transparency framework referred to as the “global stocktake,” every five years a collective assessment is made in order to check whether national efforts add up to what is necessary to limit the temperature increase below 2°C, and whether the goal to limit the temperature increase to 1.5°C remains achievable.¹²⁸

4.27 Notwithstanding the fact that, by September 2023, 180 out of 195 State Parties had communicated their updated NDCs —representing 94.9% of the total global emissions in 2019—the efforts displayed by the international community do not meet, to this day, the level of ambition necessary to reach the goal of limiting the temperature increase below 2°C, let alone to keep the 1.5°C target as a plausible scenario. The latest NDC Synthesis Report of the UNFCCC Secretariat, published in November 2023, noted that “the emission reductions until 2030 will have to be further enhanced for 2035 and beyond to be in line with pathways to limiting warming to 1.5 °C (with over 50 per cent likelihood in 2100) with no or limited overshoot over the course of the century”.¹²⁹ On the basis of this information, the report categorically concludes that “the absolute difference in the level of emissions by 2030 according to the latest NDCs and these IPCC scenarios is sizeable”.¹³⁰ Indeed, the report explains that, on the one hand, the Parties’ “total GHG emission level could be 64.0 (60.0–68.0) per cent lower in 2050 than in 2019 which, is a long-term estimate “a level consistent with 2 °C scenarios”. On the other hand, the report however warns that “for scenarios of

¹²⁵ Paris Agreement, Art. 4(2) and Art. 4(9). While preserving the principle of common but differentiated responsibilities and respective capabilities, the Paris Agreement operationalized this principle through self-differentiation.

¹²⁶ Paris Agreement, Art. 4(2).

¹²⁷ *Ibid.*, Art. 4(3).

¹²⁸ *Ibid.*, Art. 14.

¹²⁹ UNFCCC Secretariat, NDC Synthesis Report (November 2023), FCCC/PA/CMA/2023/12: para. 13, available at: [cma2023_12\(1\).pdf](#) (emphasis added).

¹³⁰ *Ibid.*, para. 15 (emphasis added).

limiting warming to 1.5 °C (...) annual per capita emissions by 2050 are required to be two to three times lower, at 1.3 (0.6–2.1) t CO₂ eq".¹³¹

4.28 While the two long-term temperature limit scenarios may seem to be close, there is a dark abyss within the half a degree Celsius that separates the 2°C from the 1.5°C scenario. That small temperature range is where the difference between life or death, for both ecosystems and human-systems, lies. Again, the best available science is clear. In its 2018 *Special Report on 1.5°C*, the IPCC summarized what that half degree difference entails in all key areas. As a general overview, the Panel noted that “climate models project robust differences in regional climate characteristics between present-day and global warming of 1.5°C, and between 1.5°C and 2°C”.¹³²

4.29 For instance, with regard to sea-level rise, the Panel explained that “by 2100, global mean sea level rise is projected to be around 0.1 meter lower with global warming of 1.5°C compared to 2°C”, while “a lower rate of sea level rise enables greater opportunities for adaptation in the human and ecological systems of small islands, low-lying coastal areas and deltas”.¹³³ For biodiversity loss, “limiting global warming to 1.5°C compared to 2°C is projected to lower the impacts on terrestrial, freshwater and coastal ecosystems and to retain more of their services to humans”.¹³⁴ In addition, limiting global warming to 1.5°C compared to 2°C is projected to reduce increases in ocean temperature, deoxygenation and acidification, which “reduc[es] risks to marine biodiversity, fisheries, and ecosystems, and their functions and services to humans”.¹³⁵ Finally, with regard to human security, the Panel notes that “climate-related risks to health, livelihoods, food security, water supply, human security, and

¹³¹ *Ibid.*, para. 18.

¹³² IPCC, *Special Report on Global Warming of 1.5°C, Summary for Policymakers* (2018), para. B.1 (noting also “[t]hese differences include increases in: mean temperature in most land and ocean regions (high confidence), hot extremes in most inhabited regions (high confidence), heavy precipitation in several regions (medium confidence), and the probability of drought and precipitation deficits in some regions (medium confidence).”), available at: [SPM_version_report_LR.pdf \(ipcc.ch\)](#).

¹³³ *Ibid.*, para. B.2 (emphasis added).

¹³⁴ *Ibid.*, para. B.3 (emphasis added).

¹³⁵ *Ibid.*, para. B.4 (emphasis added).

economic growth are projected to increase with global warming of 1.5°C and increase further with 2°C”.¹³⁶

4.30 The Dominican Republic notes that the decision of the General Assembly to reach the Court now was informed by its “outmost concern” for the “significant gap” between the aggregate effect of States’ current nationally determined contributions and the emission reductions required to meet the long-term temperature targets of the Paris Agreement.¹³⁷ In light of the context of the Request, as well as the scientific consensus previously mentioned, the Dominican Republic is of the view that State Parties to the Paris Agreement have an obligation to update their NDCs with a view to enhancing their reduction targets to a level compatible with preserving the goal to “pursue efforts” to reach a 1.5°C temperature, and meet the ultimate objective of the Climate Change Convention, namely to achieve the stabilization of greenhouse gas concentrations in the atmosphere “at a level that would prevent *dangerous anthropogenic interference* with the climate system.”¹³⁸

4.31 Such obligation finds its conventional source in article 4, paragraphs 2 and 9 of the Paris Agreement (mitigation commitments), read in light of the specific goal of the Agreement defined in article 2 (setting the long-term temperature goals). It also arises from the application in the present case of a customary rule – the obligation not to cause transboundary harm. Indeed, it is undisputed that in international law, States have the obligation to ensure that activities carried out within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction. This rule, enshrined in Principle 21 of the 1972 Stockholm Declaration on the Human Environment, and restated twenty years later in Principle 21 of the 1992 Rio Declaration, as well as in several multilateral environmental agreements,¹³⁹ has been defined as the “cornerstone of international environmental law.”¹⁴⁰ In its 1996 Advisory Opinion on *Legality or the Threat or Use of*

¹³⁶ *Ibid.*, para. B.5 (emphasis added).

¹³⁷ General Assembly Resolution 77/276, preambular para. 9.

¹³⁸ UNFCCC, Art. 2.

¹³⁹ See, e.g. Convention on Biological Diversity, Art. 3 (“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”).

¹⁴⁰ Stockholm Declaration on the Human Environment (1972), Principle 21; Rio Declaration on Environment and Development (1992), Principle 2.

Nuclear Weapons, the Court confirmed that it reflects customary international law.¹⁴¹ While it is commonly admitted that this obligation constitutes a duty of due diligence (that is, an obligation of conduct, rather than result), in the *Pulp Mills* and *Certain Activities in the Border Area* Judgements of 2010 and 2015, respectively, the Court found that States are “obliged to use all means at [their] disposal in order to avoid activities which take place in its territory ... caus[ing] significant damage to the environment of another State”.¹⁴²

4.32 While States’ mitigation obligations under international environmental law are at the core of the present proceedings, in accordance with the purpose of the Request, the Court is also called upon examining obligations arising from other specialized areas.

C. RELEVANT OBLIGATIONS RELATING TO STATES’ FUNDAMENTAL RIGHT TO SURVIVAL AND INTERNATIONAL HUMAN RIGHTS LAW

4.33 Consistently characterized by the General Assembly as “one of the greatest challenges of our time”, the environmental, social and economic ramifications of climate change impacts are, in fact, virtually unlimited. One of the most deleterious effects that result from climate change is sea-level rise and coastal erosion, both “serious threats for many coastal regions and islands”,¹⁴³ particularly small island developing States who face serious challenges to sustainable development, with some even experiencing “threats to their very survival”.¹⁴⁴ The Dominican Republic seeks to draw the Court’s attention to additional obligations to respect the presentation of the territorial integrity of small island developing States and their

¹⁴¹ *Legality of Nuclear Weapons Advisory Opinion*, para. 29 (“The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”). The origins of this customary rule may be found in the rule (which preceded the Stockholm Declaration), according to which States should not allow their territories to be used for acts contrary to the rights of other States (deriving from an extension of the principle of good neighbourliness), which has been recognized by the Court since the case *Corfu Channel (United Kingdom v. Albania)* (merits), I.C.J. Reports 1949, p. 4, para. 22.

¹⁴² *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgement, I.C.J. Reports 2010, p.14, p. 56 (para. 101); this finding was later confirmed by the Court in *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica/Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua/ Costa Rica)*, Judgment of 16 December 2015, I.C.J. Reports 2015 (I), p. 45, para. 104. See also, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, UN Doc. A/56/10, Art. 3 and its commentary, explaining that it must be proven that the State in question has failed to adopt appropriate legislative and administrative measures designed to control and regulate the activities at stake and to minimize the risks involved.

¹⁴³ UN General Assembly Resolution, “Oceans and the Law of the Sea” A/RES/74/19 (20 December 2019), para. 202.

¹⁴⁴ Report of the UN Secretary-General “Oceans and the Law of the Sea: Sea-Level Rise and its Impacts,” A/75/70 (16 March 2020), para. 70.

fundamental right to survival (*Sub-section i*); as well as obligations under international human rights law relating to the respect of the peoples' rights to self-determination and the right to development (*Sub-section ii*).

1. Obligations to Respect Small Island Developing States' Territorial Integrity and Fundamental Right to Survival

4.34 As the Court recalled in its Advisory Opinion on the *Legality with International Law of the Unilateral Declaration of Independence of Kosovo*, “the principle of territorial integrity is an important part of the international legal order”.¹⁴⁵ This significant notion is indeed enshrined in Article 2, paragraph 4 of the UN Charter, providing the general prohibition of all States to threat or use of force “against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purpose of the United Nations”.¹⁴⁶ As noted in the *Commentary* to the Charter edited by Judge Simma, the express reference to both the concept of territorial integrity and that of political independence was originally absent from the Dumbarton Oaks Proposals for a General International Organisation,¹⁴⁷ just as they were from Article 10 of the 1919 Covenant of the League of Nations.¹⁴⁸

4.35 The inclusion of both notions in the final text of Article 2, paragraph 4 of the Charter resulted from the successful insistence of “several smaller States”, who “wanted particular emphasis to be placed on the protection of territorial integrity and political independence by means of the prohibition of the use of force”.¹⁴⁹ The expression is thus not intended to restrict the scope of the prohibition of the use of force.¹⁵⁰ Rather, it seems to clarify

¹⁴⁵ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion of 22 July 2010, para. 80.

¹⁴⁶ UN Charter, Art. 2(4).

¹⁴⁷ B. Simma, D. Khan, G. Nolte, A. Paulus and N. Wessendorf eds., *The Charter of the United Nations: a Commentary* (3rd ed. 2012), Art. 2(4) (online access). Dumbarton Oaks Proposals for a General International Organisation (2 April 1945), Chapter II, Art. 4 (“All members of the Organisation shall refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the Organisation.”).

¹⁴⁸ Covenant of the League of Nations (28 June 1919), (28 June 1919), LNTS 108, p. 188, Art. 10 (States undertook “to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League.”).

¹⁴⁹ B. Simma, D. Khan, G. Nolte, A. Paulus and N. Wessendorf eds., *The Charter of the United Nations: a Commentary* (3rd ed. 2012), art. 2(4) (citing to Openheim, Lauterpacht, Browlie, Ronzitti and Verdross as scholars supporting this interpretation).

¹⁵⁰ *Ibid.*

and underscore the object of protection of the prohibition. In light of the history of the term's place in such a central provision of the Charter, several eminent international legal scholars, including Judge Lauterpacht, have expressed the view that territorial integrity, especially where coupled with political independence, "is synonymous with territorial inviolability".¹⁵¹ Importantly, the Court specified that the scope of the principle of territorial integrity "is confined to the relations between States"¹⁵²—one may thus refer to the principle of territorial integrity of *States*. The corollary is that, as Judge Koroma explained, "this principle entails an obligation to respect the definition, delineation and territorial integrity of an existing State".¹⁵³

4.36 It is undisputed that the principle of territorial integrity was historically framed within the context of conventional forms of use of force. Yet, as the Court remarked in its 1949 Advisory Opinion on *Reparations*, "throughout its history, the development of international law has been influenced by the requirements of international life".¹⁵⁴ In the present proceedings, the General Assembly has indeed brought to the Court's attention a *sui generis* challenge to the territorial integrity of some small island developing States. In the words of the Republic of Papua New Guinea—speaking in 2007 on behalf of the Pacific Islands Forum at the first debate held before the Security Council on climate change—"the dangers that small islands and their populations face are no less serious than those faced by nations and peoples threatened by guns and bombs."¹⁵⁵ Indeed, some low-lying island States embody the climate emergency in its most extreme form. For these States, climate change constitutes nothing short of an existential threat; a challenge to what the Court has characterized in *Legality of the Threat of Use of Nuclear Weapons* as "the fundamental right of every State to survival."¹⁵⁶

4.37 For at least the past fifteen years, the international community has fully acknowledged and embraced the fatal prospect that these States face. One of the most vivid moments when this critical issue was discussed at the General Assembly was the plenary

¹⁵¹ *Ibid.*

¹⁵² *Kosovo Advisory Opinion*, para. 80.

¹⁵³ *Kosovo Advisory Opinion*, Dissenting Opinion of Judge Koroma, para. 21 (emphasis added).

¹⁵⁴ *Reparation for Injuries in the Service of the United Nations*, Advisory Opinion of 11 April 1949, I.C.J. Reports 1949, p. 174, at p. 8.

¹⁵⁵ UN Security Council, Meeting Record S/PV.5663 (17 April 2007), p. 28.

¹⁵⁶ *Legality Nuclear Weapons Advisory Opinion*, para. 96.

leading to the adoption of Resolution 63/281 on “Climate Change and its Possible Security Implications.”¹⁵⁷ This resolution was promoted by small island developing States of the Pacific and received the full support and solidarity of the Caribbean Community (“CARICOM”). As the Republic of Fiji explained on that occasion “for small island States, the security implications of climate change have been, first and foremost, a threat to our very existence as sovereign nations. All else will be immaterial if statehood is lost—lost through rising sea levels and warming seas caused by climate change”.¹⁵⁸ Three months after the adoption of this resolution, the report on the matter prepared by former Secretary-General Ban Ki-Moon characterized sea-level rise as “perhaps the ultimate security threat, jeopardizing the very existence of small low-lying countries”.¹⁵⁹ Referring to this report, in 2011 the Security Council adopted by unanimity the Presidential Statement on Maintenance of International Peace and Security and Impacts of Climate Change, whereby the Council “express[ed] its concern that possible security implications of loss of territory of some States caused by sea-level rise may arise, in particular in small low-lying island States”.¹⁶⁰

4.38 In response to the threat to their survival posed by the deleterious impacts of climate change (in particular, sea-level rise), the affected small island developing States have sought deploying protective legal strategies, a matter that is currently under consideration by the ILC Study Group on Sea Level Rise in Relation with International Law,¹⁶¹ as well as by

¹⁵⁷ UN General Assembly Resolution 63/281, “Climate Change and its Possible Security Implications”, A/RES/63/281 (9 June 2009).

¹⁵⁸ UN General Assembly, 88th Plenary meeting record A/63/PV.85 (3 June 2009), Statement of the Republic of Fiji, p. 15 (a few years later, Fiji would become the first small island State to ever Chair a climate change summit). *See also, e.g. Statement of the Republic of Nauru*, p. 2 (“clearly, the survival of States, their sovereignty and territorial integrity, and the impact on their neighbours are matters of international peace and security”); and *Statement of the Marshall Islands*, p. 9 (noting “we find some of the strongest support for our survival in the principles of the United Nations Charter, in its commitment to fundamental freedoms and in the respective mandates of the relevant organs, including those of the Security Council, to address security issues. It is also inarguably within customary international law that, like all Member nations, we are bound to commit to the continued existence and survival of the most vulnerable among us.”) (emphasis added).

¹⁵⁹ “Climate Change and its Possible Security Implications: Report from the Secretary-General”, A/64/350 (11 September 2009), para. 71 (emphasis added).

¹⁶⁰ UN Security Council, Presidential Statement, “Maintenance of International Peace and Security and Impacts of Climate Change”, S/PRST/2011/16 (20 July 2011), para. 8.

¹⁶¹ *See, in particular*, International Law Commission, Sea-Level Rise in Relation to International Law, Second issues paper by Patricia Galvao Teles, and Juan José Ruda Santolaria (co-chairs), A/C.4/752 (19 April 2022) (“hereafter “ILC Study Group, 2022 Report”).

the ILA Committee on International Law and Sea-Level Rise.¹⁶² The Dominican Republic seeks to draw the Court’s attention to two of the most prominent legal response measures that the affected States are deploying, which pertain to the realm of the law on statehood and the international law of the sea.

4.39 While no situation of submergence of the entire territory of a State has yet crystallized, for the affected States “the threat is nearest and most tangible.”¹⁶³ One of the key arguments put forward by the affected States, in light of international law’s natural inclination towards predictability and stability, is that a presumption of continuity of statehood should be recognized. This point lies on the understanding that article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, setting the criteria for the creation of a State, would not automatically apply to the assessment of whether a State’s legal personality has become extinct.¹⁶⁴ Indeed, Article 6 of the Montevideo Convention provides that the recognition of a State is “unconditional and irrevocable”.¹⁶⁵ In addition, Judge Crawford noted

¹⁶² See International Law Association, Committee on International Law and Sea-Level Rise, Report of the Lisbon Conference (June 2022) (Chaired by Prof. Davor Vidas), p. 24 (noting that “the Committee has viewed the gradual diminishment of – or disintegration of – indicia of statehood of a coastal State as a general process, with particular significance for small island and archipelagic States. As already noted, this process will likely last for at least several decades, and will go through different phases. Throughout that relatively long period of time, the rights of the affected populations will need adequate protection, both at the original location and, in the case of migration, displacement or planned relocation, in the new location, whether within the country of origin or abroad.116 Moreover, throughout that relatively long time-period, the maritime entitlements of the coastal State may persist – even though the land territory in question may become increasingly less habitable before ultimately becoming uninhabitable, at which point elements of the land territory as such may still remain above water, possibly for a long time.”), available at: [2022-report-ila-committee-june-2022 \(ila-hq.org\)](https://www.ila-hq.org/2022-report-ila-committee-june-2022)

¹⁶³ ILC Study Group, 2022 Report, para. 175 (“No situation has yet arisen in which the entire land territory of a State has been covered by the sea or become uninhabitable, but the evolution of sea-level rise and the perception of the phenomenon by affected States, in particular those for which the threat is nearest and most tangible, make it necessary to consider the foundations in international law of the options that could be implemented at some point.”).

¹⁶⁴ Convention on the Rights and Duties of States (26 December 1933), Art. 1 (“The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government and (d) capacity to enter into relations with the other States.”). On at least four occasions between 1949 and 1966 the possibility of reaching a definition of statehood was debated at the ILC during the preparation session of three different instruments (the Declaration of the Rights and Duties of States in 1949, the Vienna Convention on the Law of Treaties in 1956 and 1966, and the Articles on Succession of States in Respect of Treaties in 1974). However, none of these attempts were successful. See J. Duursma, *Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood* (1996), p. 113. The criteria set forth by the Montevideo Convention are generally accepted as customary law. See, e.g., T. Grant, “Defining Statehood: the Montevideo Convention and its Discontents” (1998-1999), *Columbia Journal of Transnational Law*, vol. 37, p. 403.

¹⁶⁵ Convention on the Rights and Duties of States (26 December 1933), Art. 6 (“The recognition of a state merely signifies that the state which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable”).

that State practice indicates that “[a] State is not necessarily extinguished by substantial changes in territory, population or government, or even, in some cases, by a combination of all three.”¹⁶⁶In this respect, the Dominican Republic notes and supports the preliminary conclusion reached by the ILC Study Group on Sea Level Rise in Relation to International Law that:

“With regard to small island developing States whose territory could be covered by the sea or become uninhabitable owing to exceptional circumstances outside their will or control, a strong presumption in favour of continuing statehood should be considered. Such States have to provide for their preservation, and international cooperation will be of particular importance in that regard.”¹⁶⁷

4.40 In addition, the affected small island States, often referred to as “Ocean States,” have taken legal measures seeking to protect, first and foremost, their maritime spaces and entitlements,¹⁶⁸ as well as their marine environment. This is indeed the first stepping-stone towards the preservation of the continuity of their international legal personality.¹⁶⁹ In this respect, the Dominican Republic notes the adoption on 6 August 2021 of the *Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise*. Through this legal instrument, the leaders of the Pacific Island Forum recognized that “the relationship between climate change-related sea-level rise and maritime zones was not contemplated by the drafters of the Convention at the time of its negotiation”,¹⁷⁰ and affirmed that the Convention imposes no affirmative obligation to keep baselines and outer limits of maritime zones under

¹⁶⁶ J. Crawford, *The Creation of States in International Law* (2nd rev. ed. 2006); see also from the same author, “Islands as Sovereign Nations”, 38 *International & Comparative Law Quarterly* (1989), 277.

¹⁶⁷ ILC Study Group, 2022 Report, para. 194 (emphasis added).

¹⁶⁸ Paradoxically, for these States, the sea is both a fundamental element of their national identity and primary source of their livelihood, as it is the main threat to their existence, *See e.g. Remarks by Hon. Tuilaepa Lupesoliai Sailele Malielegaoi Prime Minister of the Independent State of Samoa at the High Level Pacific Regional Side Event by PIFS on “Our Values and Identity as Stewards of the World’s Largest Oceanic Continent, the Blue Pacific”*, U.N. Headquarters, 3 June 2017. In this speech, Samoan Prime Minister defined the relationship between Pacific island peoples and the ocean as “dualistic,” for the Ocean is at once a “shared resource and a source of isolation”, the element that offers enduring sustenance, but also the one that has “daunted” them with its “devastating and overwhelming power”.

¹⁶⁹ *See* ILC Study Group, 2022 Report, para. 195 (“the preservation of statehood is also linked to the preservation of the rights of States affected by the phenomenon of sea-level rise in respect of the maritime areas under their jurisdiction and the living and non-living resources therein.”).

¹⁷⁰ Forum of Pacific Island States, *Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise* (6 August 2021), preambular para. 6, available at: [Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise – Pacific Islands Forum \(forumsec.org\)](https://www.forumsec.org/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise-pacific-islands-forum).

review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations.¹⁷¹ Consequently, the Declaration concludes that:

“[M]aritime zones, as established and notified to the Secretary-General of the United Nations in accordance with the Convention, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change related sea-level rise”.¹⁷²

4.41 Even though its origin is regional, a month later AOSIS member States from all regions, including the Caribbean, endorsed it.¹⁷³

4.42 In the Dominican Republic’s view, considering the Court’s recognition of “the fundamental right of every State to survival”,¹⁷⁴ the fact that these legal response measures have been put forward *within the context of an extreme existential threat to some countries* (as confirmed by scientific consensus and acknowledged by all States), creates an obligation of other States to comply with their mitigation commitments under the Climate Change Convention and the Paris Agreement previously described; as well as an obligation of States to respect the legal measures set forth by the affected States to preserve their territory, which is derived from the principle of territorial integrity of States set forth, *inter alia*, in Article 2(4) of the UN Charter. In addition, pursuant to Articles 1(1) y 1(3) of the Charter setting forth the goals of the organisation, States have a duty to cooperate with the affected States.

¹⁷¹ *Ibid.*, para. 6, (“*Acknowledging* that the relationship between climate change-related sea-level rise and maritime zones was not contemplated by the drafters of the Convention at the time of its negotiation, and that the Convention was premised on the basis that, in the determination of maritime zones, coastlines and maritime features were generally considered to be stable.”).

¹⁷² *Ibid.*, paras. 3-6 of the operative part (“*Declare* that once having, in accordance with the Convention, established and notified our maritime zones to the Secretary-General of the United Nations, we intend to maintain these zones without reduction, notwithstanding climate change-related sea-level rise; *Further declare* that we do not intend to review and update the baselines and outer limits of our maritime zones as a consequence of climate change-related sea-level rise, and; *Proclaim* that our maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with the Convention, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise.”) (emphasis added).

¹⁷³ Alliance of Small Island States Leaders’ Declaration (22 September 2021), preambular para, 3 (“Reiterating that climate change continues to pose the most serious threat to our very existence, territorial integrity, viability and survival, undermining our continued efforts to achieve the 2030 Agenda and its Sustainable Development Goals (SDGs), the SIDS Accelerated Modalities of Action (SAMOA) Pathway, and global efforts to protect planetary biodiversity and the future of our ocean.”), available at: [AOSIS Leaders' Declaration - Endorsed 16.09.2021.doc \(dropbox.com\)](#) (emphasis added).

¹⁷⁴ *Legality of Nuclear Weapons Advisory Opinion*, para. 96.

2. Obligations under International Human Rights Law

4.43 The deleterious effects of climate change on the territorial integrity of small island developing States and threat to the survival of some of them also bear an impact on the effective enjoyment of human rights of their peoples. Since 2016, *all* resolutions adopted by the Human Rights Council on “Climate Change and Human Rights” have recognized that climate change “poses an existential threat for some [States]”, and “has already had an adverse impact on the full and effective enjoyment of human rights enshrined in the Universal Declaration of Human Rights” and “other international human rights instruments”.¹⁷⁵

4.44 Both the Human Rights Council (in all of the above-mentioned resolutions),¹⁷⁶ as well as the three UN Special Rapporteurs on Human Rights & Climate Change, Toxics & Human Rights, and Human Rights & the Environment,¹⁷⁷ have recognized the right to self-determination as one of the rights whose full and effective enjoyment is affected by climate change impacts. This right is enshrined in Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,¹⁷⁸ was confirmed as such by numerous General Assembly resolutions,¹⁷⁹ and recognized by the Court as a “fundamental human right” with “a broad scope of application,”

¹⁷⁵ Human Rights Council Resolution “Human Rights and Climate Change” (18 July 2016), A/HRC/RES/32/33, preambular paragraph 11; as well as Resolutions with the same title: A/HRC/RES/35/20 (7 July 2017), preambular paragraph 13; A/HRC/RES/38/4 (16 July 2018), preambular paragraph 17; A/HRC/RES/41/21 (23 July 2019), preambular paragraph 16; A/HRC/RES/44/7 (23 July 2020), preambular paragraph 19; A/HRC/RES/47/24 (27 July 2021), preambular paragraph 17; A/HRC/RES/50/9 (14 July 2022), preambular paragraph 23; and A/HRC/RES/53/6 (19 July 2023), preambular paragraph 19.

¹⁷⁶ *Ibid.*

¹⁷⁷ 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), available at: [Amicus Brief of the UN Special Rapporteurs to ITLOS 4881-4764-9624 v.24.pdf](#)

¹⁷⁸ ICCPR, ICECSR, Common Article 1.

¹⁷⁹ The principle of self-determination was enshrined in Article 1(2) of the UN Charter (providing that one of the organisation’s purposes is the development of friendly relations among nations based on the principle of equal rights and self-determination of peoples), and Article 55 (dealing with the ways in which the organisation should create the conditions necessary for peaceful and friendly relations among states, based on the respect for the principle of equal rights and self-determination of peoples). This marked the beginning of a process that led to its crystallization as a legally enforceable right, as recognized by General Assembly Resolution 1514 (XV) on the Declaration of Granting of Independence to Colonial Countries and Peoples and General Assembly Resolution, 2625 (XXV) on the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations and recognized by the Court in the *Chagos* Advisory Opinion.

and *erga omnes* character.¹⁸⁰ In the context of climate change, the Office of the High Commissioner on Human Rights (on which the Special Rapporteurs rely) has explained that:

“While the right to self-determination is a collective right held by peoples rather than individuals, its realisation is an essential condition for the effective enjoyment of individual human rights. Climate 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”.¹⁸¹

4.45 The Special Rapporteurs further recalled that the right to self-determination is being “dramatically affected by rising sea levels”, in so far as sea-level rise threatens the viability of small island developing states as “territory is eroded and submerged”.¹⁸² In addition, they noted that self-determination includes the right of a people not to be deprived of its own means of subsistence”,¹⁸³ which may also be violated “where States or peoples are no longer able to freely dispose of their natural resources”.¹⁸⁴ In line with these observations from UN officers and agencies, on 6 November 2023, the Pacific Island Leaders adopted the *Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise*, which acknowledged that “States carry an important duty in ensuring protection of their people, and continuity of statehood is necessary and fundamental for that protection to be implemented and to endure.”¹⁸⁵

¹⁸⁰ *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* ICJ Reports 1970 p. 3, but see the separate opinion of Judge Ammoun on pp. 301 to 304 at par. 11. *East Timor (Portugal v Australia)* case ICJ Reports 1995 where the Court stated that ‘Portugal’s assertion that the right of people’s to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable’ at p. 90 and that the right of peoples to self-determination was ‘one of the essential principles of contemporary international law’ at p.102.

¹⁸¹ Office of the UN High Commissioner on Human Rights, Frequently Asked Questions on Human Rights and Climate Change, , Fact Sheet 38, page 5, available at: [FSheet38_FAQ_HR_CC_EN_0.pdf \(ohchr.org\)](https://www.ohchr.org/documents/factsheet38_faqs_hr_cc_en_0.pdf) (emphasis added).

¹⁸² 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), para. 47, citing to Human Rights Committee, General Comment No. 12, 13 Mar. 1984 on the right to self-determination, para. 6; CERD General Recommendation No. 21 (1996).

¹⁸³ 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), para. 48.

¹⁸⁴ *Ibid.*

¹⁸⁵ See Pacific Islands Forum, Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise, adopted at the 52nd Pacific Islands Forum (Aitutaki, Cook Islands)

4.46 The Dominican Republic, noting that in the *Chagos* Advisory Opinion the Court connected the right to self-determination with the obligation to respect territorial integrity,¹⁸⁶ supports the view shared by the Office of the High Commissioner on Human Rights and the three Special Rapporteurs (shared by the Pacific Island Leaders) that “States have a duty to take action, individually and collectively, to avert and address the threats to the right of self-determination, by mitigating climate change”.¹⁸⁷

4.47 Furthermore, the Dominican Republic stresses the fact that climate change also impairs the full and effective enjoyment of a wide arrays of human rights which, taken together, impact the right to development of populations from small island developing States, which was expressly recognized by the UN General Assembly since 1986.¹⁸⁸ In his special report to the UN General Assembly, the Special Rapporteur on Extreme Poverty and Human Rights warned that the unequal distribution of climate change across the developing and developed regions puts the world at risk of “climate apartheid”.¹⁸⁹ Similarly, the three Special Rapporteurs previously mentioned have noted that pollution of the marine environment caused by greenhouse gas emissions compromises access to food, and that there is “a strong correlation between countries with a low human development index and a strong dependence in marine resources”.¹⁹⁰ In 2021 the Special Rapporteur on the Right to Development, Mr. Saad Alfarargi, expressly characterized climate change as “one of the adverse global trends that poses a challenge to the implementation of the right to development,” given that:

(9 November 2023), para. 11, available at: [Annex-D-2023-PIF-Declaration-on-Statehood-and-Protections-of-Persons.pdf \(forumsec.org\)](#)

¹⁸⁶ *Chagos Advisory Opinion*, para. 160.

¹⁸⁷ Office of the UN High Commissioner on Human Rights, Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet n°38, p. 5.

¹⁸⁸ UN General Assembly, Declaration on the Right to Development, A/RES/41/128 (4 December 1986),

¹⁸⁹ Report of the Special Rapporteur on Extreme Poverty and Human Rights: Climate Change and Poverty, A/HRC/41/39, (17 July 2019), para. 51 (“An overreliance on the private sector could lead to a climate apartheid scenario in which the wealthy pay to escape overheating, hunger and conflict, while the rest of the world is left to suffer.”), available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc4139-climate-change-extreme-poverty-and-human-rights-report>. See also, *See also* IUCN, World Commission on Environmental Law (*WCEL*), Written opinion on the Request for an Advisory Opinion from the Inter-American Court on Human Rights concerning the Climate Emergency and Human Rights (2023).

¹⁹⁰ 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), para. 54.

“The global climate crisis, the increasing number of natural disasters and new global pandemics all have the potential to undo decades of development. The effects of climate change are not an environmental or economic issue; they impact the enjoyment of the rights to health care, education, housing, culture and food; and they destroy property and eradicate livelihoods and employment opportunities in affected communities and, in some instances, in entire countries”¹⁹¹

4.48 The Dominican Republic, mindful of its Constitutional duty to “prevent pollution, protect and maintain the environment for the benefit of present and future generations”,¹⁹² can only express its full agreement with the Special Rapporteurs’ opinion that States’ obligations to mitigate climate change under the international regime on climate change should be informed by their duties to promote, respect and preserve the human rights of their populations. Such duties do not find their source of law in human rights instruments alone;¹⁹³ they also emanate directly from the obligations of States under international climate change law. Indeed, the Paris Agreement’s preamble provides that:

“Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”.¹⁹⁴

The UNFCCC Conference of the Parties reaffirmed the commitment to these goals through two of its most important and recent Decisions.¹⁹⁵

¹⁹¹Human Rights Council, Report of the UN Special Rapporteur on the Right to Development: Climate Action at a National Level (2 July 2021), A/HRC/48/56, para. 86.

¹⁹² Constitution of the Dominican Republic, Official Gazette No. 10561 (26 January 2010), Art. 67 (translation from Spanish of the Dominican Republic), available at: [Microsoft Word - Constitución de la República Dominicana versión 2010 \(cijc.org\)](https://www.cijc.org/Documentos/Constitucion%20de%20la%20Republica%20Dominicana%202010.pdf)

¹⁹³ See e.g. United Nations High Commissioner for Refugees (2004) General comment no. 31 [80] Article 8, (“[t]here may be circumstances in which a failure to ensure Covenant rights [ICCPR] as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”).

¹⁹⁴ Paris Agreement, preambular para. 11 (emphasis added).

¹⁹⁵ See, e.g. UNFCCC, Decision -/CP.26, “Glasgow Climate Pact” (Advanced unedited version), preambular para. 6, available at: https://unfccc.int/sites/default/files/resource/Overarching_decision_1-CP-26_0.pdf; UNFCCC, Decision -/CP.27 Sharm el-Sheikh Implementation Plan (Advanced unedited version), preambular para. 8, available at: https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf.

III. QUESTION B: LEGAL CONSEQUENCES UNDER THOSE OBLIGATIONS ON THE CONDUCT OF STATES WHICH HAS CAUSED CLIMATE CHANGE AND ITS IMPACTS

4.49 The second question the Court is seized with is formulated as follows:

(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?¹⁹⁶

4.50 Section A provides observations on the meaning of the terms of this Question. Section B poses that the first legal consequence arising from the fact that States' acts and omissions have caused "significant harm to the climate system and other parts of the environment" is the characterization of an internationally wrongful act. Section C covers the second legal consequence derived from such characterization, with a particular focus on the obligation of cessation of the wrongful conduct, as well as the obligation of reparation under different forms.

A. PRELIMINARY OBSERVATIONS ON THE MEANING OF KEY TERMS OF QUESTION B

4.51 Question B refers to the legal consequences under the international obligations previously identified, when States, by their acts or omissions, "have caused significant harm to the climate system and other parts of the environment".¹⁹⁷

4.52 The Dominican Republic first understands that the expression "*have caused*" refers to the standard of general causation which, as previously noted, has been undeniably established. At present, there is both scientific and political affirming "unequivocally" that climate change has been "unequivocally" caused by anthropogenic green-house gas emissions.¹⁹⁸

¹⁹⁶ AO Request (emphasis added).

¹⁹⁷ *Ibid.*, Question B (chapeau).

¹⁹⁸ See Chapter II, Section I *supra*.

4.53 A specific definition of the concept of “*significant harm*” can be found in the 2001 ILC Articles on Prevention of Transboundary Harm from Hazardous Activities. In its Commentary to Article 2, the Commission explained that “‘significant’ is something more than ‘detectable’ but need not be at the level of ‘serious’ or ‘substantial’.”¹⁹⁹ Thus, for a harm to be significant “[it] must lead to a real detrimental effect on matters such as, for example, human health, industry, property, environment or agriculture in other States. Such detrimental effects must be susceptible of being measured by factual and objective standards”.²⁰⁰

4.54 In addition, Question B asks to identify the legal consequences of having caused such significant harm with respect to either States (Question B(i)) or peoples and individuals (Questions B(ii)). When it comes to the first part (i) of the question, three categories of States are identified: “injured” States; “specially affected” States; or States “particularly vulnerable to the adverse effects of climate change.” The definition of these three concepts can be found in two different sources. First, the term “injured” originates from Article 42 of the ILC Draft Articles on States Responsibility and implies that a State is injured if “the obligation breached was owed to it individually”.²⁰¹ Similarly, the term “specially affected” is also drawn from Article 42, paragraph b(i). The Commentary to this clause explains that the term originates from Article 60(2)(b) of the 1969 Vienna Convention on the Law of Treaties and implies that “even in cases where the legal effects of an internationally wrongful act extend by implication to the whole group of States bound by the obligation or to the international community as a whole, the wrongful act may have particular adverse effects on one State or on a small number of States”.²⁰² Second, the expression referring to States “*particularly vulnerable*” to climate change can be found in several articles of the Climate Change Convention and the Paris

¹⁹⁹ ILC Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10), commentary to Article 2, p. 152 (noting also that “The idea of a threshold is reflected in the *Trail Smelter* award, which used the words “serious consequence[s]”, as well as in the *Lake Lanoux* award, which relied on the concept “seriously” (*gravement*). A number of conventions have also used “significant”, “serious” or “substantial” as the threshold. “Significant” has also been used in other legal instruments and domestic law”) (emphasis in the original).

²⁰⁰ *Ibid.* (emphasis added).

²⁰¹ ILC Draft Articles on State Responsibility for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission* (2001), vol. II, Part Two, as corrected, commentary to Article 42, p. 117, para. 6.

²⁰² ILC Draft Articles on State Responsibility for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission* (2001), vol. II, Part Two, as corrected, commentary to Article 42, p. 119, para. 12 (emphasis added).

Agreement,²⁰³ and is drawn from the scientific concept of vulnerability employed by the IPCC. This third category thus encompasses a wider group of States than the previous two categories, and none of them are mutually exclusive.²⁰⁴

4.55 The notion of “*adverse effects of climate change*” is expressly referred to in Article 1(1) of the UNFCCC, which defines it as “changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or the operation of socio-economic systems or on human health and welfare”.²⁰⁵ This definition also reflects the scientific use of the term made by the IPCC.

4.56 The Dominican Republic refers to its prior observations on the definition of “*present and future generations*” provided under Question A above.²⁰⁶ Without prejudice to the possibility of expanding its commentaries at a later stage of the proceedings, the observations of the Dominican Republic to Question B will be limited to its chapeau and sub-question (i) (legal consequences with respect to particularly vulnerable *States*).

B. CHARACTERIZATION OF ANTHROPOGENIC GREENHOUSE GAS EMISSIONS AS AN INTERNATIONALLY WRONGFUL ACT

4.57 In order to determine 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”, the Court is, in fact, called upon to answer whether States’ actions or omissions relating to anthropogenic greenhouse gas emissions can be characterized as an internationally wrongful act. The overarching relevant framework to respond to this question is provided by the relevant rules of general international law, as codified in the ILC Draft Articles on State Responsibility.

²⁰³ See UNFCCC, preamble, Arts. 3(2); 4(4); see also Paris Agreement, preamble and Arts. 6(6), 7(2), 7(6), 9(4), 11(1).

²⁰⁴ States who may not fall under the category of “injured States” as defined by Article 42 of the ILC Articles may nonetheless be part of the wider category of States “particularly vulnerable” to climate change impacts.

²⁰⁵ UNFCCC, Art. 1(1).

²⁰⁶ See Chapter IV, Section II.A *supra*.

4.58 It is a well-established principle that “every internationally wrongful act entails its international responsibility”,²⁰⁷ and that some wrongful acts that may engage the responsibility of the State or States “towards several or many States or even towards the international community as a whole”.²⁰⁸ The ILC Commentary on Article 1 of the Draft Articles on State Responsibility recalled how in the *Barcelona Traction* Judgement, the Court recognized that “in view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*”.²⁰⁹ In order for the Court to establish the existence of an internationally wrongful act, it must find that the State conduct, consisting on an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.²¹⁰

4.59 In the present case, the conduct of States that is at stake concerns the emission of anthropogenic greenhouse gases (both historical and present). Even though these emissions may not be directly attributable to each State when they are performed by private companies, *States’ omission* to take the necessary legislative and administrative actions limiting the quantity of emissions from both public and private actors in their respective territory is directly attributable to every State.²¹¹

4.60 As argued in Section II.B *supra*, the Dominican Republic is of the view that State Parties to the Paris Agreement have an obligation under the international regime on climate change to update their NDCs with a view to enhancing their reduction targets to a level compatible with preserving the goal to “pursue efforts” to reach a 1.5°C temperature, and meet the ultimate objective of the Climate Change Convention, namely to achieve the stabilization

²⁰⁷ ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/56/10), Yearbook of the International Law Commission, 2001, vol. II, Part Two (hereinafter “ILC Draft Articles on State Responsibility”, commentary to Article 1, p. 11, para. 1.

²⁰⁸ *Ibid.*

²⁰⁹ ILC Draft Articles on State Responsibility, commentary to Article 1, p. 13, para. 4. *Barcelona Traction, Light and Power Company, Limited*, Second Phase, Judgment, I.C.J. Reports 1970, p. 32, para. 33

²¹⁰ ILC Draft Articles on State Responsibility, commentary to Article 2, p. 21, para. 4.

²¹¹ See e.g. *United States Diplomatic and Consular Staff in Tehran*, ICJ Judgement, pp. 31–32, paras. 63 and 67 (where the Court concluded that the responsibility of the Islamic Republic of Iran was entailed by the “inaction” of its authorities which “failed to take appropriate steps”, in circumstances where such steps were evidently called for.).

of greenhouse gas concentrations in the atmosphere “at a level that would prevent *dangerous anthropogenic interference* with the climate system”.²¹² Such obligation finds its conventional source in article 4, paragraphs 2 and 9 of the Paris Agreement (mitigation commitments), read in light of the specific goal of the Agreement defined in article 2 (setting the long-term temperature goals). It also arises from the application in the present case of a customary obligation to ensure that activities carried out within every State’ jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.²¹³

4.61 At present, as established by the latest 2023 NDC Synthesis Report of the UNFCCC Secretariat, voluntary mitigation commitments submitted by States by way of their NDC are, undisputedly, not sufficient to either maintain the 1.5°C scenario as a plausible outcome, nor to avoid significant harm to both the climate system and other parts of the environment, especially with regard to small island developing States whose very fundamental right to survival is at stake. Through their “series of actions or omissions defined in aggregate as wrongful”, States have thus collectively incurred in an internationally wrongful act”.²¹⁴ The breach of such international obligations incumbent on all States continues to this day.²¹⁵

4.62 There is perhaps no better reflection of States’ self-recognition of their present and common responsibility for this continuing breach than the establishment, since 2012 and within the international regime on climate change, of a mechanism expressly designed to address “loss and damage associated with the adverse effects of climate change,” including “events that may involve *irreversible* and *permanent* loss and damage” in particularly vulnerable developing countries (the “Santiago Mechanism for Loss and Damage associated

²¹² UNFCCC, art. 2. *See* Chapter IV, Section II.B *supra*.

²¹³ *See* Chapter IV, Section II.B *supra*.

²¹⁴ ILC Draft Articles on State Responsibility, Art. 15(1) (breach consisting of a composite act) (“The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.”).

²¹⁵ ILC Draft Articles on State Responsibility, Art. 14 (extension in time of the breach of an international obligation), Commentary to Art. 14, para. 3 (“a continuing wrongful act, on the other hand, occupies the entire period during which the act continues and remains not in conformity with the international obligation, provided that the State is bound by the international obligation during that period.”).

with Climate Change Impacts” or the “Loss and Damage Mechanism”).²¹⁶ Indeed, despite the fact that at COP.28 States recognized the need to “transitioning away from fossil fuels in energy systems”²¹⁷ —a major paradigm shift for the global economic blueprint— mitigation and adaptation efforts seem to no longer hold the same level of attention than they did at the early years of the climate change regime. The eyes are now shifted towards addressing the deleterious impacts of climate change, from which there seems to be no escape.²¹⁸

C. LEGAL CONSEQUENCES OF THE INTERNATIONALLY WRONGFUL ACT

4.63 The characterization of an internationally wrongful act in turn involves an array of additional legal consequences. The Dominican Republic will focus on three of them: the continued duty of performance, the obligation of cessation of the wrongful act, and the obligation of reparation.

4.64 As provided in Article 29 of the Draft Articles on State Responsibility, “the legal consequences of an internationally wrongful act ... do not affect the continued duty of the responsible State to perform the obligation breached”.²¹⁹ This is a fundamental legal consequence for the present case, as it ensures that the future of the international regime on climate change will not be jeopardized by the characterization of States’ insufficient mitigation commitments as an internationally wrongful act. Closely connected with the duty of performance is the obligation of cessation of the wrongful conduct, which seeks to “safeguard the continuing validity and effectiveness of the underlying primary rule”, as it “protects both

²¹⁶ Even though loss and damage had been put forward by small island States since the beginning of the climate change regime, it was only established by the Conference of the Parties at the 2013 Warsaw Climate Change Conference, as a mechanism under the Cancun Adaptation Framework. The 2015 Paris Agreement subsequently enshrined this issue in Article 8, a new self-standing provision, distinct from the adaptation framework. *See* UNFCCC, Decision 3/CP.18, “Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity, FCCC/CP/2012/8/Add.1 (13 February 2013), para. 5; UNFCCC, Decision 2/COP.19, “Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts”, FCCC/CP/2013/10/Add.1 (31 January 2014); UNFCCC, Decision 2/CP.20, “Warsaw International Mechanism on Loss and Damage” FCCC/CP/2014/10/Add.1 (2 February 2015); and Paris Agreement, art. 8.

²¹⁷ UNFCCC, Decision -/CMA.5, “Outcome of the first global stocktake” (Advanced unedited version), para. 28(d).

²¹⁸ The Republic has supported this effort by hosting, in September 2023, the third meeting of the Transition Committee on the financing of the Loss and Damage Mechanism overseeing the Loss and Damage Fund, which was created in 2021.

²¹⁹ ILC Draft Articles on State Responsibility, commentary to Article 26, p. 309.

the interests of the injured State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law”.²²⁰

4.65 In addition, States have with respect to States which are “injured”, “specially affected” or “particularly vulnerable to the effects of climate change”, an obligation of reparation. In the 1927 *Chorzow Factory* case, the Permanent Court of International Justice ruled that “reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed”.²²¹

4.66 In the present case, the nature and magnitude of the significant harm caused to small island developing States previously described makes reparation by restitution impossible. Indeed, the very preamble of the COP decision whereby the Paris Agreement was adopted qualified climate change as a “potentially *irreversible* threat to human societies and the planet”.²²² In its 1997 *Gabčíkovo-Nagymaros* Judgement, the Court noted that in the field of environmental protection, vigilance and prevention are required on account of the “often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage”.²²³ Following the same reasoning, the Seabed Disputes Chamber of ITLOS more recently questioned the “technical feasibility of restoring the situation to the status quo ante” in the case of potential damages to the deep seabed area. Similarly, reparation by compensation is challenging, as it presupposes that the damage at stake is “financially assessable”,²²⁴ and must be read in the light of the specific circumstances arising from the nature of environmental harm.²²⁵

²²⁰ *Ibid.*, commentary to Article 30, p. 312.

²²¹ *Case concerning the Factory at Chorzow*, Judgement of 13 September 1928, PCIJ Series A, N°17, p. 47.

²²² UNFCCC, Decision 1/CP.21, “Adoption of the Paris Agreement,” preambular para. 5.

²²³ *Gabčíkovo-Nagymaros Project (Hungary | Slovakia)*, Judgment of 25 September 1997, ICJ Reports 1997, p. 7, para. 140.

²²⁴ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment of 9 February 2022, para. 94. See also *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, paragraph 34, available at: <https://www.icj-cij.org/sites/default/files/case-related/150/150-20180202-JUD-01-00-EN.pdf>

²²⁵ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, paras. 34, 41-43.

4.67 However, the general international legal regime on reparations set forth in the Articles on State Responsibility is residual,²²⁶ and the provisions of certain treaties may define certain specific consequences resulting from a particular treaty or regime. In this regard, the establishment within the UNFCCC framework of the *Santiago International Mechanism for Loss and Damage Associated with Climate Change Impacts* may be considered a form of remedy, capable of dealing with the specificities and peculiarities of significant, and irreversible loss and damage resulting from climate change impacts. Good faith cooperation by all States in providing the financial and technical support that the Loss and Damage Mechanism requires, is therefore a cornerstone of the law on reparation to small island developing States, who stand in the trenches fighting for their survival and preserving their material substratum as States.

²²⁶ ILC Draft Articles on State Responsibility, Art. 55.

CHAPTER 5 SUBMISSIONS

5.1 On the basis of the foregoing considerations, the Dominican Republic respectfully submits that the following elements be taken into consideration by the Court, should it decide to render the Opinion requested the General Assembly in Resolution 77/276:

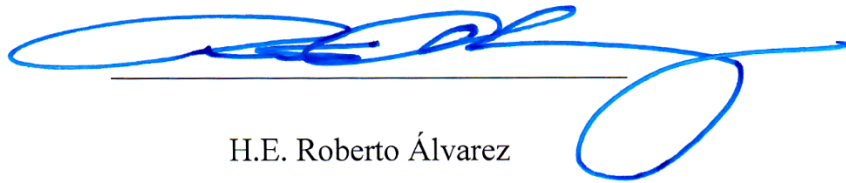
- (i) As concluded by the best available science and information, reflected in the 2022 Sixth Assessment Report of the Intergovernmental Panel on Climate Change, anthropogenic greenhouse gas emissions have unequivocally caused a dangerous interference in the climate system, defeating the ultimate goal of the international regime on climate change as defined in Article 2 of the United Nations Framework Convention on Climate Change;
- (ii) Through their composite and continuous acts (direct emission of greenhouse gases), as well as through their omissions (failure to adopt the necessary legislative and administrative measures to prevent private actors from emitting greenhouse gases from their territory), States have breached and continue to breach, *inter alia*:
 - a. their international mitigation obligations under Article 4, paragraphs 2 and 9 of the Paris Agreement, whose goal is to ensure that the global average temperature is held well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above preindustrial levels;
 - b. their customary obligation to ensure that activities carried out within every State jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction;
 - c. their international obligation under Article 2, paragraph 4 of the UN Charter; and to respect every State's territorial integrity and fundamental right to survival; and
 - d. their general duty to promote, respect and preserve the human rights of their populations against the deleterious impacts of climate change, including the right to self-determination, the right to development and the right to a healthy environment.

- (iii) The legal consequences arising from States' continued breach of the above-mentioned obligations include, *inter alia*:
- a. The obligation of all States to put a halt on the actions and omissions that have breached, and continue to breach, the international obligations listed in point (ii) above;
 - b. the obligation of all States to perform such obligations;
 - c. the obligation of all States to cooperate with a view to establish an effective system of reparation directed at States which are particularly vulnerable to the deleterious impacts of climate change, including through the Santiago Mechanism on Loss and Damage established under the international regime on climate change.

H.E Dr. Juan Bautista Durán

Ambassador Extraordinary and Plenipotentiary of the Dominican Republic
to the Kingdom of the Netherlands

On behalf of



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

H.E. Roberto Álvarez
Minister of Foreign Affairs of the Dominican Republic

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