

**INTERNATIONAL COURT OF JUSTICE**

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

**WRITTEN STATEMENT OF  
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM**

22 MARCH 2024

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## I. INTRODUCTION

1. Over the last seven decades, the community of States has come together to progressively develop principles of international environmental law to protect the climate system and other parts of the environment for present and future generations. The international community has recognized atmospheric pollution and atmospheric degradation are a “*common concern of humankind*”, starting in 1988 with the United Nations General Assembly (‘**UNGA**’) resolution 43/53 and followed by the preamble of the United Nations Framework Convention on Climate Change (‘**UNFCCC**’) and the Paris Agreement. As a factual matter, there is a close physical interaction between the atmosphere and the oceans. According to scientific evidence, the pollution of the marine environment from or through the atmosphere originates significantly from land-based sources, in particular anthropogenic activities on land, thus human activities are responsible for global warming. The UNGA, in its 2030 Development Agenda, has emphasized the urgency of addressing the effect of atmospheric degradation, such as increases in global temperature, sea-level rise, ocean acidification and other impacts that are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island developing States. Those impacts threaten the survival of many societies.

2. As a developing coastal country and one of the nations most severely impacted by climate change, Viet Nam faces significant challenges in safeguarding its environment and ensuring the well-being of its citizens. With its extensive coastline and reliance on agriculture, fisheries, and even tourism, Viet Nam is particularly vulnerable to the adverse effects of climate change, including sea-level rise, extreme weather events, and coastal erosion. These threats pose serious risks to the country’s economic development, food security, and the livelihoods of millions of people.

3. Recognizing the urgency of the situation, the Government of Viet Nam has considered environmental protection as a top priority and made proactive responses to climate change. Despite being a developing nation, Viet Nam has made proactive efforts to implement its international commitments and enhance its ambitions on climate change. In 2015, Viet Nam had submitted an Intended Nationally Determined Contribution (INDC), signed and approved the Paris Agreement, and developed a National Plan for the implementation of the

Paris Agreement in 2016<sup>1</sup>. In 2020, Viet Nam completed the review and update of the Nationally Determined Contribution (NDC) and further decided to update its NDC in 2022, which showed a significant increase in the contribution to reduction of GHG emission. Ambitious in reaching net zero GHG emission by 2050, Viet Nam has developed a comprehensive legal and policy framework<sup>2</sup> under which efforts have been made across all sectors of the economy to reduce GHG emission. Initial positive results have been observed in the period 2014 – 2020 with the estimated emission reduction by 2020 was about 85 Mt CO<sub>2</sub>eq.<sup>3</sup>

4. However, as a developing and growing nation with a population of over 100 million people, Viet Nam faces important barriers in achieving the goal of low GHG emissions. While a shift to renewable energy sources and low emission technologies is crucial, Viet Nam, together with many other developing countries, is struggling to mobilize the financing needed to foster a just power sector transition. For Viet Nam, the estimated cost could exceed 2.750 billion USD<sup>4</sup>. The support of the international community is thus crucial for Viet Nam to achieve its GHG emission reduction target.

5. As elaborated further below, the Government of Viet Nam believes that the International Court of Justice ('ICJ' or '**the Court**') has authority to provide its opinion on the UNGA's questions and encourages the Court, in doing so, to consider thoroughly the opinions and concerns of developing countries. This balanced approach can foster greater fairness in environmental decision-making

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<sup>1</sup> Decision 2053/QĐ-TTg dated 28 October 2016 on the Plan for the Implementation of the Paris Agreement on Climate Change.

<sup>2</sup> Laws and policies related to GHG emission reduction: Law on Environmental Protection (2020); Law on Forestry (2017); Law on Economical and Efficient Use of Energy (2011); National Climate Change Strategy to 2050 (2022); National Strategy on Green Growth for the period 2021-2030 (2021); Viet Nam's Forestry Development Strategy for the period 2021-2030 (2021); Viet Nam's Renewable Energy Development Strategy to 2030, with a vision to 2050 (2015); Viet Nam's Transportation Development Strategy to 2020, with a vision to 2030 (2013); National Energy Development Strategy to 2020, with a vision to 2050 (2007); Programs, master plans, plans and projects directly related to GHG emission reduction include: Methane Emission Reduction Action Plan to 2030 (2022); the Ministry of Foreign Affairs' Climate Diplomacy Action Plan aiming to implement Viet Nam's commitments at COP26 in the period 2022-2025 (2022); Action Program on Green Energy Transition and Reduction of Carbon and Methane Emissions of the Transportation Sector (2022); Action Plan of Construction sector in Climate Change Response for the period 2022-2030, with vision to 2050 in order to implement Viet Nam's commitments at COP26 (2022); Action Plan of Ministry of Industry and Trade to implement Viet Nam's commitments at COP26 (2022); Environmental Protection Plan for Industry and Trade in the period of 2025-2030 (2020); Regulations on Incentive Mechanism for Solar Power Development in Viet Nam (2020); National Action Program on Sustainable Production and Consumption for the period 2021-2030 (2020); National Program on Economical and Efficient Use of Energy in the period of 2019-2030 (2019); Scheme on Development of Organic Agriculture in the period of 2020 - 2030 (2018); Scheme on Sustainable Forest Management and Forest Certification (2018); Master Plan on Development of Viet Nam's Gas Industry to 2025, orientation to 2035 (2017); Plan for the Implementation of the Paris Agreement on Climate Change (2016)...

<sup>3</sup> Viet Nam Nationally Determined Contribution 2022.

<sup>4</sup> WB, Scaling Up to Phase Down: Financing Energy Transitions in the Power Sector.

and advocating for the responsibilities of developed countries towards the most severely affected developing countries, thus pushing for greater accountability and action on climate change mitigation and adaptation efforts.

## **II. JURISDICTION AND ADMISSIBILITY OF THE REQUEST**

### **1. The Court has jurisdiction to render the requested advisory opinion**

6. Under Article 65(1) of its Statute, “[t]he 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 (*‘the Charter’*) to make such a request”. Article 96(1) of the Charter authorizes the UNGA to request an advisory opinion from the Court on any legal question. On 29 March 2023, the UNGA adopted Resolution 77/276 requesting the Court to give an advisory opinion on the obligations of States in respect of climate change.

7. Article 96 of the Charter and Article 65(1) of the Court’s Statute also require that the advisory opinion must be on a legal question. In *Western Sahara*, the Court defined a “legal question” as “*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] appear...to be questions of a legal character*”.<sup>5</sup> In this case, the first question relates to the *obligations of States under international law* to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations. The second question concerns *legal consequences* under those obligations for States which have caused significant harm to the climate system. The questions from the UNGA asking the Court clarify the obligations of States under international law and legal consequences are certainly questions of legal characters.

8. Therefore, it is submitted that the Court has jurisdiction in this case.

### **2. The Court has no compelling reasons to decline the request**

9. As stated in many instances, the Court “*has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met*” in accordance with Article 65(1) of the Statute.<sup>6</sup> The Court, nevertheless, repeatedly affirms that a request for an advisory opinion “*represents its*

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<sup>5</sup> *Western Sahara*, Advisory Opinion, I.C.J. Report, p. 18, para. 15.

<sup>6</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010 (II), pp. 415-416, para. 29.

*participation in the activities of the Organization, and, in principle, should not be refused” unless there are “compelling reasons” to do so.*<sup>7</sup>

10. Throughout its history, the Court has given advisory opinions in response to all requests from the UNGA. As in previous cases, the Court considered that it is the requesting organ that determines the needs of such an advisory opinion to the proper performance of its functions.<sup>8</sup> The request for an advisory opinion on climate change was adopted by consensus among all 193 United Nations (‘UN’ or ‘**the Organization**’) Member States, which was the first time a request for an advisory opinion was adopted by consensus since Resolution 258(III) in 1948.<sup>9</sup> This remarkable accord underscores the value the UNGA places on the ICJ’s counsel as it tackles the critical issue of global warming. By speaking with one voice, the UNGA affirms that an advisory opinion by the Court will empower its climate action and strengthen international cooperation in this regard.

11. Climate change is at the core of the continued negotiations and discussions throughout the UN. The negotiations on climate change led to the adoption of the 1992 UNFCCC, the 1997 Kyoto Protocol, the 2009 Copenhagen Accord, and the Paris Agreement. The discussion is continuing in the annual UNFCCC Conference of the Parties (‘COP’). The multifaceted impacts of climate change on human lives are discussed in the UN Environment Programme, Human Rights Council, and International Law Commission, among others. The UNGA itself adopted various resolutions addressing the issue of climate change, including the annual resolution on the Protection of global climate for present and future generations of humankind. As the “*principal judicial organ*” of the Organization, the Court should give an advisory opinion upon the request from the UNGA to contribute to the joint work of the Organization. The Court in the *Nuclear Weapons* advisory opinion recognized “*the environment is not an abstraction but represents the living space, the quality of life and the very health*

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<sup>7</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase*, Advisory Opinion, I.C.J. Reports 1950, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, I.C.J. Reports 1999 (I), pp. 78-79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44)

<sup>8</sup> *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010 (II), p. 417, para. 34; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p.95; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 237, para. 16.

<sup>9</sup> Margaretha Wewerinke-Singh, Ayan Garg, Jacques Hartmann, *The advisory proceedings on climate change before the International Court of Justice*, QIL, Zoom in 102 (2023) 23-43.

*of human beings, including generations unborn*".<sup>10</sup> The Court's opinion with respect to climate change would mark a major milestone in the UN's work in this regard and significantly advance international efforts to protect the climate system and the other parts of the environment. In the *Nuclear Weapons* case, the Court confirmed that the political aspects of the ongoing climate change negotiation or the politicized context in which the questions had been raised does not affect the Court's jurisdiction to give an opinion.<sup>11</sup>

12. It is further submitted that clarifying the legal framework on climate change through the Court's opinion would be appropriate and useful. As mentioned in the *Nuclear Weapons* advisory opinion, in providing an advisory opinion, the Court is only "*engaged in its normal judicial function of ascertaining the existence or otherwise of legal principles and rules applicable...*".<sup>12</sup> Therefore, the Court is only requested to state the existing international environmental law and is not called upon not to legislate or otherwise create any new obligations or responsibilities. The latest reports from the Intergovernmental Panel on Climate Change ("**IPCC**") make clear that global greenhouse gas emissions continue to rise, and that progress on climate adaptation remains insufficient to keep pace with growing risks and that "*human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming*".<sup>13</sup> By stating and applying the law, the Court's opinion would delineate clearer obligations and responsibilities and therefore could assist States in identifying the substantive actions they are required to undertake to curb human-caused emissions. Such guidance stands to profoundly impact many small island and climate-vulnerable states, for whom climate change poses existential threats to survival and development.

13. There is no doubt that "*the Court has before it sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character*" (*Western Sahara* case).<sup>14</sup> Viet Nam highlights the fact that the Court has received abundant material that is

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<sup>10</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 241, para. 29.

<sup>11</sup> *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, I.C.J. Reports 1996, p. 66, para. 17.

<sup>12</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 237, para. 18.

<sup>13</sup> IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 4, doi: 10.59327/IPCC/AR6-9789291691647.001

<sup>14</sup> *Western Sahara*, Advisory Opinion, I.C.J. Report 1975, pp. 28-29, para. 46.

more than sufficient to meet this condition, including the extensive reports prepared by the UN Secretary-General and the additional materials that are being submitted by States and international organizations. Viet Nam further notes that, if the need arises in this proceeding for external expertise to confirm all pertinent scientific facts, the Court may, on its own motion, appoint assessors or experts as provided for in Articles 30 & 68 of the Statute and Article 9 of the Rules of the Court.

14. Accordingly, Viet Nam submits that there is no compelling reason for the Court to decline to give an advisory opinion to the clear, concise and adequately formulated questions contained in the UNGA in its resolution 77/267.

### **3. Applicable law**

15. In Viet Nam's view, the different sources of law as referred to in the UNGA resolution 77/276 should be examined. In particular, the Court should focus primarily on the relevant treaty provisions contained in the Charter, the UNFCCC, the Paris Agreement and the United Nations Convention on the Law of the Sea ('**UNCLOS**'). The Court should also examine the specific content of 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 as stipulated in international treaties and developed in the jurisprudence of international courts and tribunals to the extent such principles form part of customary international law.

16. In Viet Nam's view, the principle of common but differentiated responsibilities – respective capabilities ('**CBDR-RC**') is a relevant rule of international law applicable in the current proceeding. First, the principle of CBDR-RC is a rule of international law. The principle of CBDR-RC is reflected in several treaties, namely Article 3(2) of the UNFCCC, Article 10 of the Kyoto Protocol, the preamble and Article 2(2) of the Paris Agreement...etc. It has been noted in that respect that "[w]ithin the climate change regime, the concept of common but differentiated responsibilities qualifies as a legally binding principle given its explicit inclusion in [the relevant] instruments."<sup>15</sup> Second, the CBDR-RC principle is a relevant rule of international law. This principle underpins all treaties dealing with anthropogenic greenhouse gas emissions ('**AGHGE**') and therefore must be considered "relevant" in the determination of the obligations of States and the legal consequences under these obligations for States in the

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<sup>15</sup> E. Hey and S. Paulini, "Common but Differentiated Responsibilities", MPEPIL.



protection and preservation of the environment, including the marine environment, from the deleterious impacts caused by AGHGE.

17. In the climate change regime, the CBDR-RC as a guiding principle acknowledges the diverse capacities and responsibilities of States in addressing climate change. According to generally accepted definitions, CBDR-RC “*entails that while pursuing a common goal [...], States take on different obligations, depending on their socio-economic situation and their historical contribution to the environmental problem at stake.*”<sup>16</sup> This requires that developed countries take the lead in this climate combat due to their historical emissions and advanced capabilities. A uniform approach would be neither equitable nor effective, reflecting the differentiated circumstances and capacities of nations on the frontlines of climate impacts.

### III. SUBMISSIONS ON THE QUESTIONS

#### A. QUESTION 1 REGARDING THE OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW IN RELATION TO CLIMATE CHANGE

18. It is submitted that international law has imposed on States an obligation to protect the climate system and other parts of the environments from anthropogenic emission of greenhouses gases. As defined in the UNFCCC, “*climate system*” refers to the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.<sup>17</sup>

19. In both its Preamble and Principles under Article 3, UNFCCC imposes an obligation on States “*to protect the climate system for present and future generations*” against “*human-induced change*” including “*additional warming of the Earth’s surface and atmosphere*”. The Paris Agreement has translated this obligation into a common goal of “*holding the increase in the global average temperature to well below 2 degrees above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degree above pre-industrial levels*”.

20. UNCLOS, as the Constitution of the Oceans, includes general and comprehensive regulations regarding the duty to protect and preserve the marine environment. Article 192 provides that: “*States have the obligation to protect and preserve the marine environment*”. The term “*marine environment*” includes the ocean as a whole, without distinguishing marine spaces under and beyond

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<sup>16</sup> Ibid, para. 1.

<sup>17</sup> UNFCCC, Article 1.3.

national jurisdiction. In addition, Article 194 concerning Measures to prevent, reduce and control pollution of the marine environment requires States “*to take all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source...*”.

21. It is further submitted that States’ obligation to protect the climate system from adverse impact of excessive greenhouse gases emission has inter-generational dimensions and is linked to human rights protection assumed by States in accordance with the relevant international covenants.

22. The inter-generational dimension of climate change impact is a critical and morally significant aspect of the broader climate crisis. It is based on the concept that “*the pursuit of welfare by the present current generation should not diminish the opportunities of succeeding generations for pursuing a good and decent life*”.<sup>18</sup> This dimension refers to the consequences of current environmental degradation and climate change that will be inherited by future generations or the “unborn” as recognized by the Court in the *Nuclear Threats* case.<sup>19</sup> These include determining acceptable risks that today’s population can impose on the well-being of future generations and that managing natural resources’ utilization may jeopardize the sustainable functioning of the Earth’s ecosystems. The 2030 Agenda for Sustainable Development endorses three main pillars of (i) humanity’s collective duties to the future; (ii) creating new global public goods to be enjoyed by present and future generations alike; and (iii) inclusive governance and decision-making.

23. The United Nations Human Rights Council (‘UNHRC’) unanimously adopted Resolution 53/6<sup>20</sup> concerning human rights and climate change, which expresses “the extreme concern that climate change poses an existential threat to some countries, and has already had an adverse impact on the full and effective enjoyment of the human rights enshrined in the UDHR and other international human rights instruments”.

24. The question thus arises as to what international law, including the aforementioned principles, requires in respect of climate change. Viet Nam submits that States are specifically required to (i) prevent significant harm to the

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<sup>18</sup> United Nations Commission on Human Rights (UNCHR), *Report of the Secretary-General on Rape and Abuse of Women in the Territory of the Former Yugoslavia (30 June 1993)*, UN Doc E/CN.4/1994/5, p. 18, para. 10.

<sup>19</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 238, para. 20.

<sup>20</sup> UNHRC, *Human rights and Climate change (19 July 2023)*, Un Doc A/HRC/RES/53/6.

climate system by having in place measures to regulate, monitor, and mitigate such harm; and (ii) cooperate effectively in good faith and transparent manner.

### **1. Duty to prevent significant harm to the climate system**

25. It should be highlighted that the duty to prevent significant harm to the climate system is a due diligence obligation. The ILC Commentary to the Draft Articles on Prevention of Transboundary Harm for Hazardous Activities reflects this characteristic and explains that “*The obligation of the State origin to take preventive or minimization measures is one of due diligence.*”<sup>21</sup> To determine whether a State complies with this obligation or not, the conduct of State would be evaluated, and “*the State of origin is required, as noted above, to exert its best possible efforts to minimize the risk.*”<sup>22</sup>

26. In *Gabčíkovo-Nagymaros* case, the Court emphasized that since it is frequently not possible to restore the situation that existed before environmental damage occurred, prevention should be the main policy as regards environmental protection.<sup>23</sup>

27. In international environmental law, the duty to prevent is applicable with regard to activities which take place in a State’s territory, or in any area under its jurisdiction, or in areas that are not part of the territory of any specific State, such as the high seas. Regarding maritime waters, UNCLOS establishes a general obligation “*to protect and preserve the marine environment*”, without limiting its geographical scope of application.<sup>24</sup> In this regard, an arbitral tribunal under Annex VII of UNCLOS has indicated that this provision should be interpreted as a duty to protect and preserve the marine environment applicable both within and outside national jurisdictions.<sup>25</sup>

28. In its *Responsibilities and obligations of States with respect to activities in the Area* Advisory Opinion, the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (‘ITLOS’) confirmed that “*the due diligence obligation to ensure requires ... States to take measures within its legal system and that measures must be reasonably appropriate*”.<sup>26</sup> Similarly, UNCLOS

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<sup>21</sup> ILC, *Prevention of Transboundary Harm from Hazardous Activities, with commentaries*, Yearbook of the International Law Commission, 2001, vol. II, Part Two, p. 153.

<sup>22</sup> ILC, *Prevention of Transboundary Harm from Hazardous Activities, with commentaries*, Yearbook of the International Law Commission, 2001, vol. II, Part Two, p. 153.

<sup>23</sup> *Gabčíkovo-Nagymaros Project (Hungary vs Slovakia)*, Judgment, I.C.J. Reports 1997, p. 77-78, para. 140.

<sup>24</sup> UNCLOS, Article 192.

<sup>25</sup> *South China Sea Arbitration (Philippines v. China)*, Award, PCA Case no 2013-19, 2016, p. 373, para. 940.

<sup>26</sup> *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 44, para. 120.

establishes the obligation to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, from seabed activities subject to national jurisdiction, from dumping and from or through the atmosphere, among other matters. In a similar vein, in the *Pulp Mills* case, the Court indicated that as part of the obligation of prevention, States must ensure compliance with and implementation of their environmental protection laws and regulations, as well as exercise some form of administrative control over public and private agents, for example, by monitoring their activities.<sup>27</sup>

29. Tribunals in inter-State arbitrations<sup>28</sup> have indicated that States must mitigate significant environmental damage if it occurs. Even if the such damage occurs despite all the required preventive measures, the State of origin must ensure that appropriate measures are adopted to mitigate the damage.

## **2. Duty to cooperate effectively in good faith**

30. The duty of States to “*cooperate with one another in accordance with the Charter*” has been recognized in the UNGA Resolution 2625 (XXV) entitled Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. Accordingly, “*State has the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, general welfare of nations and international cooperation free from discrimination based on such difference*”.<sup>29</sup>

31. More specifically, regarding the duty to protect and preserve the marine environment require state to cooperate, both regionally and globally. Article 197 UNCLOS stipulates that States shall cooperate “*on a global basis, and as appropriate, on a regional basis, directly or through competence international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environmental, taking into account characteristics regional features*”.

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<sup>27</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 79, para.196.

<sup>28</sup> *Iron Rhine Arbitration (Belgium v. The Netherlands)*, Award, PCA Case no 2003-02, 2005, p. 29, para. 59; *Kishanganga River Hydroelectric Power Plant Arbitration (Pakistan v. India)*, Final Award, PCA Case no 2011-01, 2013, p. 170, para 451.

<sup>29</sup> UNGA, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, (24 October 1970), UN Doc A/RES/2625(XXV).

32. Article 198 of UNCLOS obliges a State, when it becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, to immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations. The affected States and the competent international organizations must cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage, as obliged by Article 199. States shall also cooperate to undertake programs of scientific research and encourage the exchange of information and data acquired about pollution of the marine environment<sup>30</sup> as well as cooperate to establish appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment.<sup>31</sup> Scientific and technical assistance must be provided for developing States according to Article 202. Furthermore, obligations of cooperation are also regulated in provisions relating to the physical investigation of foreign vessels (Article 226(2)), and the prevention of pollution from land-based sources (Articles 207 – 212).

33. Under international environmental law, the duty to cooperate is reflected in Principle 24 of the Stockholm Declaration, and the Rio Declaration which establishes that “*States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem*” as well as in other pertinent international treaties. This duty to cooperate in environmental matters and its customary nature have been recognized by the *Lake Lanoux Arbitration* tribunal and ITLOS. The Court, in its *Nuclear Tests, Nuclear Threats*, and *Pulp Mills* cases, confirmed that the duty to cooperate is derived from the principle of good faith in international relations, and is essential for protection of the environment. Along the same lines, the ITLOS, in its *MOX Plant* case, has determined that “*the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under [...] general international law.*”<sup>32</sup>

34. More specifically relating to climate change, the UNFCCC stated that “*the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate*

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<sup>30</sup> UNCLOS, Article 200.

<sup>31</sup> UNCLOS, Article 201.

<sup>32</sup> *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures, Order, 3 December 2001, ITLOS Reports 2001, p. 110, para. 82.

*international response*”<sup>33</sup> in accordance with the principle of sovereignty, CBDR-RC and their social and economic conditions.

35. The content of this duty as stipulated by the UNFCCC includes cooperation in respect of (i) “*development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases...in all relevant sectors, including energy, transport, industry, agriculture, forestry and waste management sectors*”; (ii) “*conservation and enhancement...of sinks and reservoirs of all greenhouse gases...including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems*”; (iii) “*adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods*”; (iv) “*scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies*”; (v) “*scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies*”; (vi) “*education, training and public awareness related to climate change*”.<sup>34</sup>

36. The Paris Agreement has expanded this duty to contain, among others, (i) making finance flows consistent with a path way towards low greenhouse gas emissions and climate-resilient development; (ii) the implementation of States’ nationally-determined contributions; and (iii) comprehensive risk assessment and management; risk insurance facilities, climate risk pooling and other insurance solutions.<sup>35</sup>

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<sup>33</sup> UNFCCC, Preamble.

<sup>34</sup> UNFCCC, Article 4(1).

<sup>35</sup> Paris Agreement, Articles 2(1), 6, 8(4).

## **B. QUESTION 2 REGARDING THE LEGAL CONSEQUENCES UNDER THOSE OBLIGATIONS OF THE CONDUCT OF STATES WHICH HAVE CAUSED SIGNIFICANT HARM TO THE CLIMATE SYSTEM**

### **1. Climate change has caused “significant harm” to Viet Nam**

37. The IPCC in various reports have concluded that Viet Nam is “*among nine countries where at least 50 million people will be exposed to impacts of rising sea levels and more powerful storms, among other dangers*”.<sup>36</sup> Extreme weather events such as strong winds, hail, storms, floods, forest fires, lightning, tornadoes, and hurricanes are occurring more and more frequently and on a larger scale, with more unpredictable developments.<sup>37</sup> Climate change poses significant risks to agriculture, food security, biodiversity, water resources, public health, residence and technical infrastructure. These are industries/sectors with high exposure and sensitivity to natural disasters and extreme climate events. Climate change is an inherent risk for the goals of hunger eradication and poverty reduction and sustainable development. In the future, under the impact of climate change and rising sea levels, inducing severe/accelerated soil salinization, loss of agricultural land, degradation of water for irrigation and daily life, seriously affecting the people’s lives.

38. With a coastline of more than 3,000km, Viet Nam is in the region that suffer serious risks and potential impacts related to climate change and sea level rise. Such risks will increase for deltas and large urban areas, especially coastal cities. For example, with regard to water resources, droughts occur more frequently and be more severe in the Central region. By the end of the 21st century, the intrusion depth corresponding to 1‰ salinity could increase to over 20 km on the Dong Nai, Tien and Hau rivers, and approximately 10 km on the Thai Binh river, compared to the period 1986-2005. Floods increase and become more severe with the highest flood peak of the year may increase continuously in most river basins. With regard to land resources, changes in weather conditions (temperature, rainfall, extreme climate phenomena, and so on) have caused land areas to become salinized, dry, desertified, flooded, eroded, and washed away.

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<sup>36</sup> IPCC, *Global Warming of 1.5°C - An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, (2018), p. 231.

<sup>37</sup> UNDP and IMHEN, *Viet Nam special report on managing the risks of extreme events and disasters to advance climate change adaptation* (2015).

39. The marine ecosystem in Viet Nam is also severely affected by climate change, especially coastal wetlands, including the mangrove forest area in Ca Mau, Ho Chi Minh city, Vung Tau and Nam Dinh. Ocean warming changes the growing season, increases phytoplankton outbreaks, thus changing the environment in a direction unfavorable for the development of seagrass beds. Climate change increases ocean acidification and strong storms, which destroy coral reefs and grass beds and change marine fish species and resources. The phenomenon of mass coral death in the past 20 years is due to a number of reasons, including ocean warming. On many islands and island groups in Viet Nam, climate change and sea level rise have caused flooding, affected biological resources, and changed the ecosystem of mangrove forests, seagrass, and coral. There are also many other climate change impacts on mineral resources, biodiversity, farming, animal husbandry, forestry, fisheries, transportation, urban and housing, tourism, health, commerce, energy and industry.<sup>38</sup> A recent World Bank study confirmed that “*initial calculations ... suggest that Vietnam lost \$10 billion in 2020, or 3.2 percent of its GDP, to climate change impacts*”<sup>39</sup>.

40. According to Country Climate and Development Report (CCDR) in 2022 of the World Bank group, without appropriate adaptation and mitigation measures, it is estimated that climate change will cause Vietnam to lose about 12% to 14.5% of GDP per year by 2050 and could push up to one million people into extreme poverty by 2030.

41. It is clear from well-established scientific evidence that Viet Nam is specially affected by and is suffering from “*significant harm*” as a consequence of breaches to the international obligations to protect the climate system.

## **2. Legal consequences for “significant harm” in accordance with CBDR-RC principle**

42. According to Article 1 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (‘**ARSIWA**’), “*every internationally wrongful act of a State entails the international responsibility of that State*”. Article 28 of ARSIWA further provides that “*international responsibility of a State which is entailed by an internationally wrongful act ... involves legal consequences*”. And there is no exception for violations of the above-mentioned legal obligations

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<sup>38</sup> Ministry of Natural Resources and Environment of Viet Nam, *Report of the National Plan to Adapt to Climate Change for the period 2021-2030, with a vision to 2050*, (2022).

<sup>39</sup> CCDR, World Bank p.6



relating to environmental law, the enjoyment of rights by vulnerable groups, and future generations.

43. In determining the legal consequences of breaches of legal obligations Viet Nam sets out in the previous section, the Court should, therefore, focus on the omissions or acts of States which have caused “*significant harm*” to the climate system and other parts of the environment, particularly those States with significant emission footprints in the last two centuries.

44. As a general rule, when a State violates its obligations under international law on climate change, the States which are directly injured as a consequence of such breach can invoke the former State’s responsibility.<sup>40</sup> Furthermore, ARSIWA also provides that any State can invoke the responsibility of another State if the obligation breached is owed to the international community as a whole.<sup>41</sup>

45. It should be noted that responsibility for climate change is not evenly shared among States. Instead, a fair distribution of this responsibility requires specific considerations including historical contributions, vulnerability, and capacity of different nations to address climate change.<sup>42</sup> Accordingly, Viet Nam submits that the Principle of CBDR-RC as enshrined in various international agreements must be taken into account in determining the legal consequences for States which have caused significant harm to the climate system.<sup>43</sup>

46. The legal consequences for the violations include continued duty of performance, cessation and non-repetition, and reparation.<sup>44</sup> In this regard, Viet Nam emphasizes the importance of reparation, in forms of restitution, compensation and satisfaction, either singly or in combination,<sup>45</sup> and under the principle of CBDR-RC.

47. In *Costa Rica/Nicaragua*, the Court has recognized that “*damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law*”. Such compensation may include “*indemnification for the impairment or loss of environmental goods and services in the period prior to recovery and*

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<sup>40</sup> D. Bodanksy, J. Brunnée and L. Rajamani, *International Climate Change Law*, Oxford, Oxford University Press, 2017, p. 49.

<sup>41</sup> Article 48.

<sup>42</sup> UNFCCC, Preamble.

<sup>43</sup> The UNFCCC and the Paris Agreement.

<sup>44</sup> ARSIWA, Articles 29, 30 and 31.

<sup>45</sup> ARSIWA, Article 34.

*payment for the restoration of the damaged environment”, and where “payment for restoration ... may not always suffice to return an environment to the state in which it was before the damage occurred”.*<sup>46</sup>

48. Furthermore, in this regard, Viet Nam invites the Court to examine a specific form of cessation and reparation obligations relating to the transfer of green technologies which contribute to minimize anthropogenic greenhouse gas emissions. Many countries which contribute the least to climate change but suffer the most from it, including Viet Nam, have made strong commitments to reduce anthropogenic greenhouse gas emissions. Green technologies are crucial to the realization of these commitments. And yet, under the argument that technologies are mainly developed and owned by private actors, very few measures, if any, were adopted by developed States to encourage or facilitate the transfer of such technologies to other States, particularly States with limited resources. As a result, technologies for the reduction of anthropogenic greenhouse gas emissions will be sold at market prices, in accordance with mutually agreed terms between the buyers and the sellers, even if the development of such technologies was sponsored and financed by the government. Consequently, in many instances, access to technologies reducing anthropogenic greenhouse gas emissions is out of reach of countries which contribute the least to climate change but suffer the most from it.

49. In Viet Nam’s opinion, the governments of developed countries are obligated to adopt measures, under the terms of cessation and reparation, to encourage corporations under their jurisdiction to transfer technologies reducing and minimizing AGHGE to developing countries with limited resources, including small islands States, least developed countries and countries most vulnerable to climate change.

### **3. Reparation for Loss and Damage associated with Climate Change under the UNFCCC**

50. The UNFCCC and the Paris Agreement have established a general framework of the law on state responsibility and indicative of the forms of compensation that is required for significant damages to the climate system. The development of the UNFCCC and its subsequent arrangements provides guidance for an understanding that climate and environmental degradation is compensable and the forms such compensation may take. Those forms, for

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<sup>46</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 28, para. 42.

climate change impacts, especially for most vulnerable states, entail: (i) active measures and commitments, (ii) aiming at enhancing understanding and ascertaining loss and damage, and (iii) specific measures could include continuing dialogue, cooperation, financial and technological support, and capacity building.

51. Under the UNFCCC, there exists a variety of frameworks on assistance to developing countries, especially those particularly vulnerable to climate change impacts.<sup>47</sup> The loss and damage framework has been established within the UNFCCC since the 2007 Bali Action Plan and consolidated by the 2013 Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts. The Warsaw Mechanism formulated the logic for addressing loss and damage associated with climate impacts, including financial and technological support and capacity building. The importance of the issue of loss and damage and the role of the Warsaw International Mechanism was further reaffirmed under Article 8 of the Paris Agreement. At COP28, a loss and damage fund was established to help developing nations cope with the effects of climate change.

52. Therefore, Viet Nam submits that pledges by nations under the Copenhagen Accord (goal of \$100 billion per year in climate finance) or the Loss and Damage Fund, or the obligation to transfer green technologies to developing countries as stipulated in relevant UN treaties<sup>48</sup> are the appropriate form of reparation, in line with the CBDR-RC principle. It is also of the view that the urgency and the colossal need for funding to address the significant harm caused by anthropological GHG emission historically, especially in least-developed nations and states most vulnerable to climate change impact, calls for a transcending understanding of the call for increased and sustained climate finance, with a stronger emphasis on adaptation and loss and damage, as such would be in line with the general body of law on state responsibility.

#### **IV. CONCLUSION**

53. In conclusion, the Government of the Socialist Republic of Viet Nam would like to confirm that the Court has jurisdiction to answer the legal questions posed by the UNGA in accordance with its Statute and jurisprudence.

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<sup>47</sup> UNFCCC, Preamble, Articles 4, 5.

<sup>48</sup> UNCLOS, Article 144.2; BBNJ, Article 42; CBD, Article 16.

54. Viet Nam is also of the view that the current legal framework, including the pertinent legal instruments, establishes States' obligations in protecting the climate system and other parts of the environment. These include the obligation to reduce and limit greenhouse gas emissions read in light of the principle of common but differentiated responsibility, and the duty to prevent and cooperate through financing mechanism and transfer of technology. In this common and joint effort, the developed countries should be at the forefront and the conditions and situations of the most vulnerable and developing countries should be considered.

55. Viet Nam is of the view that the Court should confirm the existence of a significant harm of the climate system caused by the breach of the obligations to protect the climate system, and specify the obligation of reparation for such significant harm as legal consequences. The Court's opinion on the obligation of reparation, including financing mechanism and transfer of technology will enable particularly vulnerable coastal developing countries, including Viet Nam, to alleviate the adverse impact of climate change and realize the commitments and obligations under international law regarding climate change.

Le Tuan Anh  
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## **LIST OF AUTHORITIES**

### **Treaties and other instruments**

1. Charter of the United Nations of 1945
2. Convention on Biological Diversity of 1992
3. Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) of 1972
4. ILC's Draft Articles on Prevention of Transboundary Harms from Hazardous Activities
5. ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts
6. International Covenant on Civil and Political Rights of 1966
7. International Covenant on Economic, Social and Cultural Rights of 1966
8. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization of 2010
9. Rio Declaration on Environment and Development of 1992
10. United Nations Convention on the Law of the Sea of 1982
11. United Nations Framework Convention on Climate Change Paris Agreement of 1992
12. Universal Declaration of Human Rights of 1948

### **UN documents**

1. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (UNGA Resolution 2625 (XXVI))
2. Intergenerational solidarity and the needs of future generations: Report of the Secretary-General (A/68/322)
3. Resolution 10/4 of the UN Human Rights Council (2009)
4. Resolution 7/23 of the UN Human Rights Council (2008)

### **Cases**

#### **ICJ**

1. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403
2. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018, p. 15

3. Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999, p. 62
4. Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p. 7.
5. Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 71
6. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136
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8. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226
9. Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974, p. 253.
10. Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 144.
11. Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12.

#### **PCA**

1. Iron Rhine Arbitration (Belgium v. The Netherlands), Award of May 24, 2005
2. Kishanganga River Hydroelectric Power Plant Arbitration (Pakistan v. India), Partial award of February 18, 2013, Final Award of December 20, 2013
3. South China Sea Arbitration (Philippines v. China), Award of July 12, 2016

#### **ITLOS**

1. MOX Plant (Ireland v. United Kingdom), Order of 13 November 2001, ITLOS Reports 2001, p. 89

## LIST OF ABBREVIATIONS

<b>Abbreviation</b>	<b>Definition</b>
ARSIWA	Draft Articles on Responsibility of States for Internationally Wrongful Acts
CBD	Convention on Biological Diversity
CBDR	Common but differentiated responsibilities
COP	Conference of the Parties
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILC	International Law Commission
ITLOS	International Tribunal for the Law of the Sea
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council