

INTERNATIONAL COURT OF JUSTICE

**ADVISORY OPINION REGARDING “OBLIGATIONS OF STATES IN RESPECT OF  
CLIMATE CHANGE”**

WRITTEN STATEMENT OF MEXICO

March 2024

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## I. INTRODUCTION

1. On 29 March 2023 the United Nations General Assembly adopted, at the 64th meeting of its Seventy-seventh Session, resolution 77/276, deciding to request the International Court of Justice to render an advisory opinion.

2. Whereas the operative paragraph of this resolution reads as follows:

*“The General Assembly*

*Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:*

*‘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?*

*(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?”*

3. Following the adoption of resolution 77/276, which was co-sponsored by Mexico, the following statement was delivered:

*“Adoption of this resolution reflects the importance that the international community gives to climate change in particular, and to the climate crisis in general. It also reaffirms the confidence given to the International Court of Justice as a principal organ of the United Nations.*

*Today, we strengthen the trend of resorting to international law to address those global challenges that are important to all because they affect all of us.”<sup>1</sup>*

4. In this regard, Mexico submits the following written statement pursuant to the International Court of Justice orders of 20 April, 4 August and 15 December 2023. Furthermore, it is of the view that the opinion of the Court will clarify the scope of obligations and on legal consequences under these obligations, and by doing so, it will certainly assist the General Assembly in the exercise of its functions,<sup>2</sup> in a matter that has been under its consideration since, at least 1988 -nearly 36 years ago- when it took action on the issue.<sup>3</sup>

5. This written statement is organized in five sections. First, this introduction that points out general important matters. Second, it addresses the Court’s jurisdiction to render the requested advisory opinion, including addressing the issue of the exercise of its discretion. Third, it contextualizes the interest of Mexico with respect to climate change. Fourth, it

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<sup>1</sup> Mexico, Statement delivered after the adoption of the resolution requesting an advisory opinion on climate change to the International Court of Justice, 29 March 2023, available at <https://mision.sre.gob.mx/onu/index.php/eventos/2152-29-de-marzo-2023-intervencion-de-mexico-en-la-asamblea-general-en-el-debate-tras-la-adopcion-de-la-resolucion-por-la-que-se-solicita-a-la-corte-internacional-de-justicia-una-opinion-consultiva-en-materia-de-cambio-climatico>.

<sup>2</sup> *Interpretation of Peace Treaties, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71. See also, *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, para. 31; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 47.

<sup>3</sup> See G.A. Res. 43/53, U.N. Doc. A/RES/43/53 (Dec. 6, 1988).

presents the views of Mexico on the first question submitted to the Court. Finally, the conclusions will summarize the key points explained in the previous section.

6. Finally, Mexico reserves the right to present its observations on the second question presented by the General Assembly in the subsequent stages of the proceedings before the Court.

## **II. JURISDICTIONAL MATTERS AND PROPRIETY OF THE REQUEST**

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

7. According to Article 96(1) of the Charter of the United Nations and Article 65(1) of the Statute of the International Court of Justice, the Court may give an advisory opinion on any legal question at the request of a body authorized by the Charter.<sup>4</sup> Thus, two requirements must be met: (a) the requesting body is authorized to ask for an advisory opinion, and (b) the request concerns a legal question.

8. On the first requirement, Article 96(1) of the Charter unqualifiedly authorizes to the General Assembly to request advisory opinions to the Court “on any legal question”. Furthermore, Article 10 of the Charter confers upon the General Assembly a competence relating to “any questions or any matters” within the scope of the Charter. This encompasses the purpose enshrined in Article 1(3) about international cooperation to solve international problems of an economic, social, cultural, or humanitarian character, and the promotion and encouragement of respect for human rights and for fundamental freedoms for all. This is certainly connected to all the issues raised in the request for an advisory opinion regarding climate change, as will be shown later in this written submissions.

9. Regarding the second requirement, the Court has explained that “questions framed in terms of law and raising problems of international law ... are by their very nature susceptible of a reply based on law”<sup>5</sup> and therefore “appear ... to be questions of a legal character”.<sup>6</sup> This

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<sup>4</sup> See *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1982, pp. 333-334, at para. 21.

<sup>5</sup> *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 18, at para. 15

<sup>6</sup> *Ibidem*.

is independent of the potential political aspects that may be involved. Political considerations do not suffice to deprive the legal character of the question.<sup>7</sup>

10. The questions submitted to the Court by the General Assembly through resolution A/RES/77/276 are legal in nature. The Court was asked to clarify 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. Additionally, the questions relate to the legal consequences for States under these obligations. All in accordance with the relevant principles and rules of international law.

**B. There are no compelling reasons for the Court to exercise discretion not to render the requested advisory opinion.**

11. Once the Court's jurisdiction is established, thereafter, the Court has the duty to satisfy itself as to the propriety of the exercise of its advisory function by reference to the criterion of "compelling reasons".<sup>8</sup> Under the terms of Article 65(1) of the ICJ Statute, the Court "may give" an advisory opinion. These terms have been consistently interpreted by the Court as giving it discretion to render or not the opinion. This discretion exists so as to protect the integrity of the Court's judicial function as the principal organ of the United Nations.<sup>9</sup>

12. The ICJ itself has never declined to render an advisory opinion requested by the General Assembly. According to the Court, its reply to a request for an opinion "represents its participation in the activities of the UN and, in principle, should not be refused."<sup>10</sup> The object of the Court's opinion is to guide the United Nations in respect of its own action. "Accordingly, the consistent jurisprudence of the Court has determined that only "compelling reasons" should lead the Court to refuse its opinion in response to a request falling within its jurisdiction."<sup>11</sup>

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<sup>7</sup> See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 234, para. 13; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, at para. 41

<sup>8</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 45.

<sup>9</sup> See *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403 at para.29

<sup>10</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71

<sup>11</sup> See *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403 at para.30. See also *Judgments of the Administrative Tribunal of*

13. The Court has stated that, for instance, there would be a compelling reason for it to decline to give an advisory opinion when such a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent.<sup>12</sup> This is not the case at hand, since the questions presented do not concern any specific State explicit or implicitly, and the answer will be given to the General Assembly.<sup>13</sup>

14. The General Assembly is a body duly authorized to request an advisory opinion from the Court, and the request raises questions of a legal nature. The exercise by the Court of its advisory jurisdiction will not circumvent any fundamental principle of international law. Thus, there are no compelling reasons for the Court to refrain from exercising the advisory jurisdiction conferred on it by the Charter and the Statute. On this basis, and in accordance with previous precedents, the Court should exercise that competence and issue the advisory opinion requested by the General Assembly.

15. There may be two additional arguments which may be raised as “compelling reasons” for the Court to decline the exercise of its jurisdiction. First, the alleged scientific nature of the questions submitted by the General Assembly. And, second, the ongoing advisory proceedings concerning questions related to climate change and its effects in other international courts and tribunals. Mexico will address these two issues in turn.

*i) The alleged scientific nature of the questions submitted by the General Assembly*

16. When referring to the issue of the nature and scope of the questions posed to the Court, Mexico wishes to highlight that they are not of a technical-scientific nature but rather strictly legal. It must be considered that what the Court is being asked to clarify through this advisory opinion is not whether or not there is scientific certainty about the existence of the phenomenon

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*the I.L.O. upon Complaints Made against U.N.E.S.C.O., I.C.J. Reports 1956, p.77 at p. 86; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, at para. 44.*

<sup>12</sup> See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, at para. 47. See also *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, at para. 33.

<sup>13</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71

of climate change and its effects but exclusively what are the legal obligations that States have in regard to this phenomenon, and the legal consequences for States under these obligations.

17. In responding to the two questions posed by the General Assembly in resolution 77/276, the Court shall depart from premise that there is a clear scientific consensus on climate change reflected in the reports of the Intergovernmental Panel on Climate Change (IPCC), particularly in the Summaries for Policymakers, which are approved by consensus, line-by-line, by all 195 member States of the IPCC.

ii) *Ongoing advisory proceedings concerning questions related to climate change and its effects in other international courts and tribunals.*

18. As the Court is aware, two other International Courts - the International Tribunal for the Law of the Sea (ITLOS) and the Inter-American Court of Human Rights (IACHR) – have currently pending requests for advisory opinions linked to the issue of climate change. In this regard, Mexico wishes to state that, in its opinion, this should not be considered a compelling reason for this Court to exercise its discretion not to render the advisory opinion request by the General Assembly.

19. Mexico expresses this conviction on the ground that, although the three referred requests for advisory opinions are linked to the issue of climate change, the scope and focus of each of them is completely different. The requests for advisory opinions made to the ITLOS and the IACHR have a much more specific and narrow scope both *rationae personae* and *rationae materiae*<sup>14</sup> than the questions formulated by the General Assembly to the Court through resolution 77/276. The questions are of a much broader scope, going far beyond the interpretation of a single treaty. The Court, as the principal judicial organ of the United Nations, is the only one endowed with the general jurisdiction to provide the kind of advice requested by the General Assembly through resolution 77/276.

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<sup>14</sup> Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, ITLOS Case No. 31 (Dec. 12, 2022); Request for Advisory Opinion on Climate Emergency and Human Rights submitted by the Republic of Colombia and the Republic of Chile to the Inter-American Court of Human Rights (Jan. 9, 2023).



20. On this basis, and in accordance with previous precedents, the Court should exercise that competence and issue the advisory opinion requested by the General Assembly.

21. A further and related issue, in dealing with these preliminary matters, which merits examination, is the question as to whether the Court should reformulate the questions submitted by the General Assembly.

22. In this connection, it is possible that some participants at the present proceedings may ask the Court to reformulate or to interpret restrictively the questions posed by the General Assembly through its decision 77/276, adopted by consensus on 29 March 2023. For the reasons explained below, Mexico respectfully considers that the Court should refrain from proceeding with this type of request.

23. As the Court itself recently explained in its advisory opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, it only departs from the language of the questions put to it on three hypotheses; when the questions are not adequately formulated when they do not reflect the “legal questions really in issue” or when the questions asked are ambiguous or vague.<sup>15</sup>

24. In the case at hand, and as mentioned above, the Court is expressly asked by the General Assembly to answer two discernible legal questions, which are neither ambiguous nor vague. In the event that the Court considers that certain language of resolution 77/276 is either ambiguous or vague, Mexico considers that all preambular paragraphs, read together and as a whole, of General Assembly resolution 77/276, offer enough interpretative elements for the Court to bring light into the matter. This argument is made despite the fact that there was one view in the General Assembly, in the explanations of position after the adoption of the

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<sup>15</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at para. 135. In addition, in its Advisory Opinion on *the Legality of Nuclear Weapons*, the Court had made clear that it can answer abstract questions: “it is the clear position of the Court that to contend that it should not deal with a question couched in abstract terms is ‘a mere affirmation devoid of any justification’, and that ‘the Court may give an advisory opinion on any legal question, abstract or otherwise’ (*Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter)*, Advisory Opinion, 1948, I.C.J. Reports 1947-1948, p. 61; see also *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, I. C.J. Reports 1954*, p. 51 ; and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I. C.J. Reports 1971, p. 27, para. 40)”.

resolution, arguing otherwise; in other words, that view was inviting the Court to discount the preamble of the resolution in its consideration.<sup>16</sup>

25. An additional factor to support the argument that the questions posed by the General Assembly to the Court through resolution 77/276 do not need to be interpreted nor modified, is the fact that resolution 77/276 was co-sponsored by 132 States and adopted by consensus. This is relevant because the consensus suggests that all Member States consider – or at least do not oppose – the premise that the UN General Assembly was acting within its powers when it adopted the resolution, and that the questions formulated within it are clear enough legal questions which the Court can address under its advisory jurisdiction.

### **III. MEXICO'S POSITION REGARDING CLIMATE CHANGE**

#### **A. Climate change and its impact on Mexico.**

26. Climate change's detrimental impacts are escalating, characterized by severe droughts, destructive floods, intensified storms, and rising sea levels threatening ecosystems and sustainable development. The IPCC's Sixth Assessment Report highlights the alarming consequences of increased global greenhouse gas emissions, directly linking human activities to a global warming of approximately 1.1°C. This warming has led to significant changes in weather patterns and adverse impacts worldwide, especially in communities least responsible for climate change.

27. Given its unique geographic and social characteristics, Mexico emphasizes the importance of addressing climate change challenges promptly. Mexico is committed to the UNFCCC and the Paris Agreement goals, especially limiting global warming to 1.5°C above pre-industrial levels and fostering low greenhouse gas emissions and climate-resilient development.

28. Mexico experiences higher-than-average increases in air temperature, with a rise of 1.69°C since the twentieth century, surpassing the global average. Additionally, around 50% of natural ecosystems have been lost. The main transformations have occurred in humid and

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<sup>16</sup> G.A. Res., U.N. Doc. A/77/PV.64.

dry jungles, grasslands, cloud forests, and mangroves, with lesser degrees of impact on shrublands and temperate forests.

29. Currently, drought affects approximately 75% of Mexico, presenting a significant challenge to water availability and agriculture, thereby endangering national food security.

30. Projections indicate that under high greenhouse gas emissions scenarios, climate change could cost up to five times Mexico's GDP this century. Recognizing that current efforts are insufficient, Mexico advocates for increased funding for climate action, emphasizing the need for financial reforms to provide middle-income countries with favorable access to climate finance.

#### **B. Mexico's global commitments on climate change.**

31. Mexico has intensified its climate change commitment by updating its National Determined Contributions (NDC) for the UNFCCC in 2022, during COP27, aiming to reduce greenhouse gas emissions by 30% by 2030 from a baseline level, with a possibility of increasing the target to 35% with international aid, particularly focusing on clean energy initiatives. This commitment underscores Mexico's proactive approach towards addressing global warming and its effects.

32. Recognizing climate change as a universal concern, Mexico emphasizes the importance of respecting, promoting, and considering obligations related to human rights, environmental sustainability, health, the rights of Indigenous Peoples and communities, migrants, children, persons with disabilities, and those in vulnerable situations. It advocates for gender equality, empowerment of women, and intergenerational equity, striving to leave no one behind in its climate action strategies.

33. Mexico recognizes climate change as one of the most pressing challenges of this century and promotes ambitious and socially responsible climate action, based on the principle of environmental justice and the fulfilment by States of their international commitments based on the principle of common but differentiated responsibilities and respective capabilities, considering national circumstances.

34. In this sense, Mexico, in its climate action, prioritizes adaptation and continues working on mitigation. The approach of the climate policy is based on social and environmental justice, in favor of the most vulnerable communities, in order to reduce vulnerability and guarantee an effective GHGs reduction, a fair benefit's distribution and the generation of co-benefits for people and nature.

35. Additionally, Mexico emphasizes the need to integrate loss and damage into the global climate agenda and stresses the importance of accessible, fair, and transparent climate finance for developing countries. It advocates for integrated territorial management to enhance adaptive capacity, resilience, and reduce vulnerability to climate change, highlighting the importance of protecting human communities, ecosystems, and addressing inequalities in the face of environmental challenges.

36. Finally, from Mexico's opinion, it is essential to promote the importance of developing countries having access to fair, flexible, simple, equitable, and transparent climate finance. This includes ensuring that people in vulnerable situations benefit in the short term, and that developed countries contribute according to their own capacity.

**IV. RESPONSE TO THE FIRST QUESTION SUBMITTED TO THE COURT: 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?**

37. Regarding the first question, Mexico submits its observations on four obligations it deems relevant in this context: a) prevention and due diligence; b) precaution; c) cooperation; and d) obligations related to human rights.

38. The consideration of each obligation will be divided into two parts. First, the status of such obligations under international, reference will be made to instruments and principles mentioned by the General Assembly resolution, as well as other relevant instruments and principles. Second, a brief description of the Mexican practice on the application of such obligations at the national level will be made.

39. With this, Mexico respectfully requests the International Court of Justice to clarify or detail its criteria regarding State obligations on this matter.

**a) Obligation of prevention**

**i) Prevention in international law.**

40. Mexico considers that the *corpus* of international law relating to the environment rests in two fundamental objectives: while States have sovereign rights over the natural resources found within their territories,<sup>17</sup> States also have the general obligation to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control.

41. This principle has been affirmed by the Court.<sup>18</sup> In addition, in various UN resolutions<sup>19</sup> establish the shared responsibility of States for environmental protection.

42. The principle of prevention is not absolute, but rather rests on the general obligation of due diligence required of a State within its territory<sup>20</sup> to prevent transboundary harm from occurring. Hence, it does rely on “preventive” dimension or content.

43. Due diligence in preventing environmental harm requires States to proactively assess and mitigate risks before significant harm occurs.<sup>21</sup> On the *Pulp Mills on the River Uruguay Case*, this Court held that States are “obliged to use all the means at [their] disposal in order to avoid’ transboundary harm from activities occurring in their territories or under their

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<sup>17</sup> G.A. Res. 523 (VI), U.N. Doc. A/RES/523(VI) (1950); G.A. Res. 626 (VII), U.N. Doc. A/RES/626(VII) (1952); G.A. Res. 1314(XIII), U.N. Doc. A/RES/1314(XIII) (1958); G.A. Res. 1515(XV), U.N. Doc. A/RES/1515(XV) (1960); *Texaco Overseas Petroleum Co. & California Asiatic Oil Co. v. Libya*, 53 I.L.R. 389, para. 87 (1977); *Kuwait v. American Independent Oil Co.*, 21 ILM 976 (1982); United Nations General Assembly, Res. 1803 (XVII) (1962).

<sup>18</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 1. C.J. Reports 1996, p. 226, at para. 29. See also *Trail Smelter Arbitration (U.S. v. Can.)*, 3 U.N.R.I.A.A. 1905, 1965 (1949); *Iron Rhine Arbitration (Belgium v. Netherlands)*, Award, 2003-02, Permanent Court of Arbitration, at para. (24 May 2005).

<sup>19</sup> G.A. Res. 2996 (XXVII),; G.A. Res. 2995 (XXVII), U.N. Doc. A/RES/2995(XXVII) (1972); G.A. Res. 1803 (XVII), U.N. Doc. A/RES/1803(XVII) (1962).

<sup>20</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, paras. 55-56; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, p. 665, para. 104.

<sup>21</sup> International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, U.N. Doc. A/56/10, at 148, General Commentary, para. 1 (2001).

jurisdiction.”<sup>22</sup> In the same judgement, it was stated that due diligence “entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators’.<sup>23</sup>

44. Mexico is of the view that this obligation of due diligence is context-specific and that it must be analysed on a case-by-case basis, depending on the risks of harm that attach to a given activity, which may change over time in view of various factors including of an economic, technological, or of a scientific nature.<sup>24</sup>

45. There has been a shift, from a negative duty to avoid harm, to a positive duty to take concrete steps to protect the environment. States are under the obligation to take diligent steps to prevent harm. Hence, the due diligence obligation is an obligation of conduct.<sup>25</sup> Whether harm occurs or not, procedural failure is enough to breach the substantive obligation.

46. The principle of prevention, as a substantive rule of general international law, comprises a series of procedural obligations,<sup>26</sup> which include: the duties to notify, inform, or consult States potentially affected by transboundary impacts, and to undertake (transboundary) environmental impact assessments (EIA).<sup>27</sup> These measures must be taken jointly with the obligation to take and implement regulatory and policy measures. Due diligence, as an

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<sup>22</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, at paras. 55-56.

<sup>23</sup> Ibid., at para. 79.

<sup>24</sup> International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, U.N. Doc. A/56/10, at 154 and 155, General Commentary, para. 11 (2001). See also *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion)*, 2011 ITLOS Reports 2011, p. 10 at para. 117.

<sup>25</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, p. 665, (Separate Opinion of Judge Donoghue) . See also *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion)*, 2011 ITLOS Reports 2011, p. 10 at para. 110; International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, U.N. Doc. A/56/10, at 154.

<sup>26</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p.14 at para. 79.

<sup>27</sup> Ibid, at paras. 67-266 Section III (“The Alleged Breach of Procedural Obligations”), and Section IV (“Substantive Obligations”). See also *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, pp. 705– 710 (procedural obligations),pp. 710– 712 (substantive obligations), pp. 719– 726 (procedural obligations), pp. 726– 737 (substantive obligations).

obligation, entails not only the adoption of appropriate and reasonable rules and measures,<sup>28</sup> but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators.<sup>29</sup>

47. Furthermore, the preventive principle also applies to the marine environment, both in areas within national jurisdiction, as well as in areas beyond national jurisdiction, where States must take measures to prevent, reduce and control pollution to the marine environment, including monitoring, assessing, and reporting the risks or effects of pollution, as per the United Nations Convention on the Law of the Sea (UNCLOS).<sup>30</sup>

**ii) National practice regarding the obligation of prevention and due diligence.**

48. While International Law establishes certain obligations upon States, in order to comply with the preventive principle deriving from the general obligation of due diligence, a margin of discretion remains for such States to implementing it according to their domestic policy, national legislation and judicial practice.

49. The Mexican Federal Constitution provides the human right to a healthy environment in its Article 4, paragraph 5.<sup>31</sup> This right is understood as a cornerstone for all person's development and well-being that shall be guaranteed by the State. That same provision establishes that environmental harm and deterioration shall entail responsibility to whoever causes it.

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<sup>28</sup> *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion)*, 2011 ITLOS Reports 2011, p.10 at paras. 117–120.

<sup>29</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p.14 at paras. 101 and 197; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, p. 665, at para. 104

<sup>30</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS), articles 192, 194 and 206.

<sup>31</sup> In addition, Mexico has national legislation that develops the principle of prevention: Ley General para la Prevención y Gestión Integral de los Residuos; La Ley General de Desarrollo Forestal Sustentable; La Ley General de Vida Silvestre; La Ley de Aguas Nacionales; Ley General de Cambio Climático; Estrategia Nacional de Cambio Climático; Programa Especial de Cambio Climático 2021-2024.

50. As has been elaborated through judicial activity in Mexico,<sup>32</sup> environmental law, in achieving its purposes of conserving and preserving the natural resources, as well as maintaining an ecological balance and optimizing life quality for present and future generations, relies on a set of mandatory principles, including prevention.

51. The Mexican Supreme Court of Justice has highlighted that this principle must guide the analysis and interpretation of the content and scope of the right to a healthy environment, as well as the legal obligations concerning climate change and the protection of the environment at the national level.<sup>33</sup> Accordingly, the Supreme Court has affirmed that this principle must also guide the interpretation of the constitutional provisions, international agreements, and other norms relevant to the specific case.<sup>34</sup>

52. For instance, the Supreme Court has interpreted and applied the prevention principle in several decisions. The Court has pointed out that the prevention principle is based on the knowledge that a particular situation or activity entails a risk to the environment and, consequently, requires the adoption of early measures to avoid environmental harm and reduce or eliminate the risk.<sup>35</sup> According to the Mexican Supreme Court, this principle has several components: (1) the obligation to conduct an Environmental Impact Assessment (EIA) wherever there is a risk that the proposed activity may have a significant adverse impact on the environment; (2) the implementation of environmental quality and emission standards; and (3) the existence of an environmental liability regime.<sup>36</sup>

53. In this sense, the Mexican Supreme Court has concluded that EIAs are one of the main components of the prevention principle and that it must comply with certain criteria to protect the right to a healthy environment.<sup>37</sup>

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<sup>32</sup> Medio Ambiente Sano. Principios Aplicables a su Protección, Constitucionalmente Reconocida, Tesis TCC XXVII.3o.15 CS (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, tomo IV, Junio de 2018, p. 3092.

<sup>33</sup> Suprema Corte de Justicia de la Nación, Amparo en revisión 307/2016 (7 Nov. 2018), para. 88.

<sup>34</sup> *Ibid*, para. 88-122.

<sup>35</sup> Suprema Corte de Justicia de la Nación, Amparo en revisión 54/2021 (7 Dic. 2021), para. 215.

<sup>36</sup> *Ibid*, para. 216.

<sup>37</sup> According to the Mexican Supreme Court, an EIA must contain a comprehensive analysis of the project, plan, or program submitted for authorization, considering its nature, objectives, characteristics, spatial distribution, and associated services and activities. Also, EIAs must evaluate the impacts of the project considering the entire regional environmental system where the project will be carried out, as well as the project's "cumulative, synergistic, and residual environmental impacts." Lastly, EIAs must adhere to the standard of "the best available



## b) Obligation of precaution

### i) Precaution in international law.

54. The 1992 UN Framework Convention on Climate Change (UNFCCC) incorporates the precautionary principle by advocating for States Parties to undertake proactive measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. The Convention specifies that, 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.<sup>38</sup>

55. Mexico notes that this principle is echoed across various international treaties<sup>39</sup> and recognized by human rights organs<sup>40</sup>, aligning with Principle 15 of the Rio Declaration, which urges States to apply a precautionary approach, according to their capabilities, to prevent environmental degradation in the face of significant risks.<sup>41</sup>

56. International case law,<sup>42</sup> highlights the role of the precautionary principle in treaty interpretation, mandating actions such as information exchange to mitigate environmental risks.<sup>43</sup> More recently, in its advisory opinion issued in 2011, the Seabed Disputes Chamber

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scientific evidence.” According to the Supreme Court, reliable, timely, and sufficient information is necessary to evaluate the viability of the proposed activities and determine appropriate measures to prevent and mitigate environmental harm. *See* Suprema Corte de Justicia de la Nación, Amparo en revisión 54/2021 (7 Dic. 2021), paras. 315, 276, 289, 331, 332, 335)

<sup>38</sup> United Nations Framework Convention on Climate Change, art. 3(3), May 9, 1992, 1771 U.N.T.S. 107.

<sup>39</sup> Vienna Convention for the Protection of the Ozone Layer, preamble., Mar. 22, 1985, 1513 U.N.T.S. 293; Montreal Protocol on Substances that Deplete the Ozone Layer, preamble., Sept. 16, 1987, 1522 U.N.T.S. 3; Convention on Biological Diversity, pmbl., June 5, 1992, 1760 U.N.T.S. 79; Cartagena Protocol on Biosafety to the Convention on Biological Diversity, preamble and art. 1, Jan. 29, 2000, 2226 U.N.T.S. 208; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (“Escazú Agreement”), Mar. 4, 2018, LC/PUB.2018/8 (entered into force Apr. 22, 2021).

<sup>40</sup> Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, U.N. Doc. CCPR/C/GC/36 (2019); Inter-American Court of Human Rights, Advisory Opinion OC-23/17, Environment and Human Rights (Nov. 15, 2017), available at [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf).

<sup>41</sup> A/CONF.151/26 (Vol. I), United Nations General Assembly, Report of the United Nations Conference on Environment and Development, August 12, 1992, pp. 3

<sup>42</sup> *See Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, at para. 164 referring to “a precautionary approach”; see also ITLOS, *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p.280 at para. 77, referring to “prudence and caution to ensure that effective conservation measures are taken to prevent serious harm to the stock of southern bluefin tuna”; and ITLOS, *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures, Case No. 10, ITLOS Reports 95 (3 December 2001), p. 95 at para. 84.

<sup>43</sup> *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures, Case No. 10, ITLOS Reports 95 (3 December 2001), at para. 84.

of the ITLOS recognized the application of a precautionary approach as a direct obligation of States sponsoring activities in the Area in accordance with the Exploration Regulations and noted its incorporation into numerous international treaties. It also observed a trend towards recognizing the precautionary principle as customary international law.<sup>44</sup> In Mexico's view, this reflects its critical role in environmental protection efforts.

57. Considering the above, Mexico views the precautionary principle as a legal obligation under the “*corpus* of international law relating to the environment”,<sup>45</sup> and in particular under the climate change regime, emphasizing the necessity of precautionary measures in the face of threats of serious or irreversible damage, guided by cost-effectiveness and where there is lack of full scientific certainty.

**ii) Mexican practice on the precautionary principle.**

58. Mexico's national legislation incorporate the precautionary principle<sup>46</sup>, and it has been consistently interpreted and applied by the Mexican Supreme Court of Justice. For instance, the Supreme Court has concluded that government authorities must comply with the precautionary principle when considering an activity that might cause serious or irreparable environmental harm.<sup>47</sup>

59. The Supreme Court also highlighted that the precautionary principle is a general interpretative principle that must be observed by all authorities, including the Judiciary, to adequately protect the environment in situations of scientific uncertainty about risks, damages, and causal agents.

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<sup>44</sup> *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion)*, 2011 ITLOS Reports 2011, p. 10 at paras. 121, 125 and 135.

<sup>45</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, pp. 241-242, at para. 29.

<sup>46</sup> Articles 1 and 4 of the Political Constitution of the United Mexican States; Mexican Legislation specifically contemplates the Precautionary Principle in article 26 section III of the General Law on Climate Change, which states as a definition of this principle: “III. Caution, where there is a threat of serious or irreversible damage, the lack of full scientific certainty should not be used as a reason to postpone mitigation and adaptation measures to address the adverse effects of climate change.”

<sup>47</sup> In its decision in *Amparo en Revisión 307/2016*, the Supreme Court interpreted the content of the precautionary principle and invoked the Rio Declaration to conclude that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

60. In this regard, the Mexican Supreme Court has developed two criteria to inform and guide the application of the precautionary principle that will be discussed as follows: (1) the standard of “the best available science” and (2) the reversal of the burden of proof.

*1) The standard of “the best available science”*

61. In its decision in *Controversia Constitucional 212/2018*, the Supreme Court analysed the Paris Agreement and concluded that the precautionary principle requires government authorities to always proceed in accordance with “the best available science.” Considering that the precautionary principle promotes the implementation of measures in front of a possible risk to the environment, despite the lack of scientific certainty, the standard of best available science must guide the decision-making process.

62. In this regard, when exercising their powers, all authorities must consider the best scientific information and knowledge about the environment. This decision confirms that the development of scientific knowledge is essential in implementing the precautionary principle, particularly within the framework of the climate regime. Therefore, the Supreme Court has considered the reports of the Intergovernmental Panel on Climate Change (IPCC) to inform its decisions on several cases.

63. Consequently, Mexico considers that the application of the precautionary principle requires only scientific evidence that provides plausible indicators of risk, rather than clear and definitive indicators of that risk, as some stakeholders might argue. The absence of unequivocal information regarding adverse consequences that could arise in the environment cannot serve as a justification for refraining from adopting the most environmentally protective measures.

64. Similarly, the precautionary principle should not be subjugated only to scientific evidence. This would imply disregarding other forms of knowledge, such as the traditional knowledge of Indigenous Peoples and communities.<sup>48</sup> In this context, the Mexican Supreme

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<sup>48</sup> Suprema Corte de Justicia de la Nación, Amparo en Revisión 610/2019 (Ene. 15, 2020), the Court noted that public participation enriches the environmental impact assessment process, enabling a comprehensive review of how projects might affect human rights and the environment.

Court of Justice has linked the precautionary principle with the right to public participation in environmental matters, which is recognized in Article 7 of the Escazú Agreement.

65. This perspective is consistent with Article 8(j) of the Convention on Biological Diversity, which mandates the protection and integration of Indigenous and local communities' knowledge and practices in biodiversity conservation and sustainable use. Indigenous wisdom, thus, is acknowledged as valuable in identifying and mitigating environmental risks.

66. Finally, as noted by the Mexican Supreme Court in its case *Controversia Constitucional 89/2020*, it is preferable to err on the side of caution to prevent environmental impacts than to allow an activity or the use of a substance about which there is no certainty of its harmlessness.

## 2) *The reversal of burden of proof*

67. An important aspect of the precautionary principle involves reversing the burden of proof, which is recognized nationally but varies regionally and globally. It is clear that the absence of scientific evidence does not justify inaction in environmental protection. When activities are suspected of posing environmental risks, necessary precautions should be taken without requiring definitive proof of harm, potentially shifting the burden of proof to those claiming no environmental impact.<sup>49</sup>

68. However, Mexico notes that there are different opinions: the European Commission<sup>50</sup> acknowledges it as common practice among its members, while the Inter-American human rights system has not defined a position. Additionally, this Court asserts that the precautionary principle does not entail a burden of proof reversal.<sup>51</sup>

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<sup>49</sup> Suprema Corte de Justicia de la Nación, Derecho Humano a un Medio Ambiente Sano. Por virtud del principio de precaución, resulta constitucional adoptar decisiones jurisdiccionales en situaciones que puedan producir riesgos ambientales, incluso ante la falta de certeza científica o técnica al respecto, 1a./J. 10/2022 (11a. Época), Semanario Judicial de la Federación, 1 de abril de 2022, Registro digital: 2024376; Plenos de Circuito, Jurisprudencia PC.II.A. J/17 A (10a. Época), Semanario Judicial de la Federación, 9 de octubre de 2020, Registro digital: 2022207; Tribunales Colegiados de Circuito, Tesis XXVII.3o.9 CS (10a. Época), Semanario Judicial de la Federación, 9 de diciembre de 2016, Registro digital: 2013345.

<sup>50</sup> Commission of the European Communities, Communication from the Commission on the Precautionary Principle, COM(2000) 1 final (Feb. 2, 2000), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000DC0001&from=EN>.

<sup>51</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, para. 164.

69. Despite these differences, the reversal of the burden of proof has been consistently developed in Mexican jurisprudence, is part of the judicial activity in the country, and is even considered an obligation for the Judiciary after signing and ratifying the Escazú Agreement on environmental access rights.

70. The Mexican Supreme Court's rulings have addressed these imbalances by adopting measures to ensure environmental protection and justice. In particular, it has endorsed reversing the burden of proof to counteract these asymmetries in litigation between the parties.<sup>52</sup>

71. This interpretation has proven crucial in evaluating legal standing in environmental cases. The Supreme Court has ruled, for instance in *Amparo en Revisión 307/2016*, that plaintiffs need not prove actual harm to establish standing, instead relying on the potential for harm to assess the merits of the case. Additionally, the Court has applied the precautionary principle in assessing legal standing, as in *Amparo en Revisión 839/2019*, deriving the obligation from the right to a healthy environment and the Escazú Agreement's call for "broad active legal standing."

72. Mexico is of the view that the precautionary principle also applies when ordering interim measures to prevent, halt, or mitigate environmental damage. For instance, in *Amparo en Revisión 1023/2019*, the Supreme Court emphasized that courts must apply this principle to determine the admissibility of a precautionary or interim measure in cases where the plaintiff claims a violation of the right to a healthy environment.

73. Finally, in its decision in *Recurso de revisión en incidente de suspensión 1/2022*, the Supreme Court applied the precautionary principle in interpreting several provisions on interim measures, highlighting that courts must not use the lack of scientific certainty as a reason for postponing measures to prevent environmental degradation.<sup>53</sup>

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<sup>52</sup> Suprema Corte de Justicia de la Nación, Amparo en revisión 307/2016 (Nov. 7, 2018). The SCJN ruled that a preliminary assessment of risk could justify this reversal, even amid scientific uncertainty. The Court urged a reevaluation of evidence rules, emphasizing the Escazú Agreement's provisions for facilitating evidence production, including the reversal and dynamic burden of proof, to protect environmental rights.

<sup>53</sup> The Supreme Court also relied on Article 8.3 of the Escazú Agreement, which establishes that each Party shall have "the possibility of ordering precautionary and interim measures, inter alia, to prevent, halt, mitigate, or rehabilitate damage to the environment" to guarantee the right of access to justice in environmental matters.

## c) Duty of cooperation

### i) International law on cooperation.

74. Mexico notes that the duty to cooperate in environmental protection exists international agreements such as the Paris Agreement,<sup>54</sup> emphasizing the duty to prevent harm to the Earth's ecosystem and address climate change impacts collectively, including cooperation to enhance climate change education, training, public awareness, public participation and public access to information. Moreover, the UNFCCC recognizes that the global nature of climate change requires the cooperation of all countries and includes the obligation to cooperate in preparations for adapting to the impacts of climate change.<sup>55</sup>

75. Additionally, the Court, as well as other international courts and tribunals, have underlined cooperation as crucial for managing transboundary environmental risks and preventing transboundary pollution through mechanisms like Environmental Impact Assessments and consultations. In this regard, these international courts and tribunals stress the importance of timely, good faith consultations, with activities potentially causing transboundary environmental harm.<sup>56</sup>

76. Moreover, according to the International Law Commission (ILC), States initiating potentially harmful transboundary activities must regard affected States' interests.<sup>57</sup> It stresses the necessity of information sharing and seeking equitable solutions through consultations, potentially requiring plan adjustments to lessen harmful impacts.<sup>58</sup>

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<sup>54</sup> Paris Agreement, Dec. 12, 2015, art. 8, T.I.A.S. No. 16-1104, 3156 U.N.T.S. 79, entered into force Nov. 4, 2016. See also Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol. I), Principles 7 and 19, U.N. Conference on Environment and Development, June 3-14, 1992, Rio de Janeiro, Brazil.

<sup>55</sup> United Nations Framework Convention on Climate Change, preamble and art. 4, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.

<sup>56</sup>; *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, Judgment, I.C.J. Reports 2022, p. 614 at paras. 114, 118; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, paras. 77, 115, 116 y 144; *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I. C. J. Reports 1997, p. 7, at paras. 109, 112; see also *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures, Case No. 10, ITLOS Reports 95 (3 December 2001), p. 95 at para. 82; Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, at 74, 78, 81, paras. 186, 197, 205 (Nov. 15, 2017).

<sup>57</sup> International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, U.N. Doc. A/56/10.

<sup>58</sup> International Law Commission, Draft Articles on the Law of Non-Navigational Uses of International Watercourses, U.N. Doc. A/CN.4/L.493 and Add.1 [and Add.1/Corr.1] and 2.

77. Mexico considers that the duty to consult between States, as one of the procedural duties of the general obligation to cooperate in good faith, is an obligation of the States Parties to the UNFCCC and the Paris Agreement due to significant environmental, economic and social impacts derived from substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryosphere, and coastal and open ocean ecosystems caused by climate change.

78. Its compliance adheres to the due diligence measures of preparing an EIA to assess damages involving certain activities carried out by a State, notifying affected States or groups about such damage, and subsequently holding consultations and, if necessary, negotiations aimed at reaching an agreement on possible alternatives to prevent environmental damage and impacts on human rights.

79. Since many environmental issues have transboundary dimensions, Mexico maintains that States have the obligation to cooperate at the international level to effectively address these problems. This involves sharing information, technology, and resources to combat climate change, biodiversity loss, desertification, pollution and other global environmental challenges.<sup>59</sup>

80. Judicial interpretations, such as in the opinion on the Chagos Case, emphasize the need for consultation and negotiation in preventing significant environmental damage, requiring States to act in a manner that respects the rights and interests of others.<sup>60</sup>

81. Moreover, for Mexico, applying the cooperation principle requires considering the principle of common but differentiated responsibilities, ensuring that states account for varying capacities and the interests of others in environmental decision-making.

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<sup>59</sup> According to the Paris Agreement, this involves strengthening cooperative action on technology development and transfer, capacity-building, and climate financing – in particular, for developing countries – to combat climate change, biodiversity loss, desertification, and other global environmental challenges. In order to be effective, the international cooperation must be cross-cutting, gender-responsive, and safeguard human rights.

<sup>60</sup> Chagos Marine Protected Area Arbitration (Maur. v. U.K.), Award, Permanent Court of Arbitration, at 519 (Mar. 18, 2015).

**ii) Mexican application on the duty to cooperate.**

82. Mexico advocates for a preventive and precautionary approach in cooperation to address climate change, emphasizing the necessity of collective and individual State actions to mitigate emissions, adapt to impacts, and ensure inclusive participation in environmental protection efforts.

83. The fulfilment of this responsibility is associated with the cooperation channels that exist within the framework of the UNFCCC, such as those related to technology transfer, creation and strengthening of capacities, climate finance mobilization, as well as in various sectors related to mitigation and adaptation to climate change, in which the country participates.

84. For this purpose, Mexico has an International Development Cooperation Law, which aims to provide the Federal Executive Branch with the necessary instruments for the programming, promotion, agreement, coordination, execution, quantification, evaluation and supervision of actions and International Cooperation Programs for development between Mexico and the governments of other countries as well as with international organizations, for the transfer, reception and exchange of resources, goods, knowledge and educational, cultural, technical, scientific, economic and financial experiences.

85. Moreover, bilaterally, Mexico cooperates with other countries in the implementation of projects that impact the environment.<sup>61</sup>

**d) Obligations regarding human rights**

86. Mexico considers that two main human rights obligations must be analysed at this point: i) the obligation to protect the human right to a healthy environment and ii) the obligation to provide judicial guarantees and protection in environmental matters.

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<sup>61</sup> For instance Joint U.S.-Mexico Contingency and Emergency Plan for Preparedness and Response to Hazardous Chemical Management Events in the Land Border Zone, which has the following objectives: to provide a binational coordination mechanism to ensure adequate and effective cooperative preparedness and response measures between Mexico and the United States; and to develop systems for joint notification and response to a contaminant incident in the area covered by the Plan.



**i) Protection to the right to a healthy environment.**

*a) Protection of this right in international law*

87. The UN General Assembly recognized the human right to a clean, healthy, and sustainable environment on July 26, 2022,<sup>62</sup> in a resolution co-sponsored by Mexico and more than 100 countries.<sup>63</sup>

88. Additionally, the Inter-American system upholds this right, rooted in the American Convention on Human Rights and its Additional Protocol.<sup>64</sup> The Inter-American Court has stated that the human right to a healthy environment encompasses both individual and collective aspects. Collectively, it is considered a universal value that extends to present and future generations. However, on an individual level, the right to a clean environment is significant because its violation can directly or indirectly affect individuals due to its interconnection with other rights, including the right to health, personal integrity, and life.<sup>65</sup>

89. Additionally, the IACHR mandates the application of the precautionary principle to prevent potential environmental harm to safeguard rights, including life and personal integrity, highlighting the vulnerability of several human rights to environmental impacts.<sup>66</sup>

90. Echoing this, the Special Rapporteur's report on human rights and the environment asserts that States' obligations to ensure a non-toxic environment are governed by the principles of prevention, precaution, non-discrimination, non-regression, 'polluter pays', and the best interest of the child.<sup>67</sup>

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<sup>62</sup> United Nations General Assembly, Human Right to a Clean, Healthy, and Sustainable Environment, U.N. Doc. A/76/L.75 (2022).

<sup>63</sup> In addition, on April 4, 2023, within the framework of the 52nd session of the HRC, the resolution "The human right to a clean, healthy, and sustainable environment" was adopted by consensus. This resolution recognized that interferences in the enjoyment of a safe, clean, sustainable environment, and environmental damage can have negative repercussions for the effective enjoyment of all human rights.

<sup>64</sup> American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, art. 26; and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador", Nov. 17, 1988, O.A.S.T.S. No. 69, art. 11. See also 1966 International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3, arts. 1, 11 and 12.

<sup>65</sup> Environment and Human Rights, Advisory Opinion OC-23/17, Inter-American Court of Human Rights, Advisory Opinion OC-23/17, Environment and Human Rights (Nov. 15, 2017), paras. 62 and 63.

<sup>66</sup> Environment and Human Rights, Advisory Opinion OC-23/17, Inter-American Court of Human Rights, Advisory Opinion OC-23/17, Environment and Human Rights (Nov. 15, 2017), paragraphs 47, 66 and 242. See also ICCPR, *Portillo Cáceres v. Paraguay*, CCPR/C/126/D/2751/2016 (25 July 2019), para. 7.4.

<sup>67</sup> (January 12, 2022) United Nations Document A/HRC/49/53, paragraph 54 and 89.

91. Mexico considers that the human right to a healthy environment is intertwined with the precautionary principle, particularly as defined in Principle 15 of the Rio Declaration, which urges States to take cost-effective measures to prevent environmental degradation in the face of serious or irreversible threats without awaiting scientific certainty.<sup>68</sup>

92. In the *Indigenous Communities of the Lhaka Honhat v. Argentina* case, the IACHR emphasizes the obligation to ensure the right to a healthy environment extends to preventing rights violations by third parties, requiring States to establish effective oversight mechanisms.<sup>69</sup>

93. Fulfilling this obligation requires due diligence proportionate to the risk level. States must implement measures such as regulation, supervision, environmental impact assessments, contingency planning, and mitigation in the event of environmental damage.<sup>70</sup>

94. Moreover, Mexico shares the view of the CEDAW Committee in its General Recommendation No. 39 in the sense that “States parties have an obligation to ensure that State actors and business enterprises take measures without delay to guarantee a clean, healthy and sustainable environment and planetary system, including the prevention of [...] all forms of violence against Indigenous women who are environmental human rights defenders and their communities and territories”. Women and girls contribute in a significant way to environmental management, disaster risk reduction and climate change resilience, who are also at the forefront of the local, national and international demand and action for a clean, safe, healthy and sustainable environment.

95. It is important to note that, the consequences of climate change have differentiated effects on women and girls, particularly on Indigenous and rural women and girls, and therefore States shall guarantee the effective participation of all women and girls in climate matters. According to the Convention on the Elimination of All Forms of Discrimination

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<sup>68</sup> The Mexican Supreme Court has invoked the Rio Declaration in order to interpret the content and scope of the precautionary principle and emphasize its importance for protecting and guaranteeing the human right to a healthy environment. See Suprema Corte de Justicia de la Nación, Amparo en revisión 307/2016 (Nov. 7, 2018), para. 88-122.

<sup>69</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, Merits, Reparations and Costs, Judgment of Feb. 6, 2020, Inter-Am. Ct. H.R. (Ser. C) No. 400, para. 208.

<sup>70</sup> *Ibidem*.

against Women (CEDAW) “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country”.

96. Considering General Recommendations 34 (2016), 37 (2018) and 39 (2022) of the CEDAW Committee, States shall assure the full participation of women and girls in all their diversity in the design, planning and application of policies related to environment, climate change, and damage risk reduction, so disasters and adverse effects of climate change prevention and response are effective and incorporate perspectives from all society sectors.

*b) Mexican perspective to the protection of the right to a healthy environment*

97. The Mexican Supreme Court has established that principles of prevention and precaution must guide the analysis and interpretation of the content and scope of the right to a healthy environment —recognized in Article 4 of the Mexican Federal Constitution, as well as the legal obligations the protection of the environment.<sup>71</sup> According to the Court, these principles must also guide the interpretation of the constitutional provisions, international agreements, and other relevant norms.

98. Judicial precedents set by the Court have clarified the multifaceted nature of the right to a healthy environment, considering it both for its own sake and for its role in safeguarding other human rights.<sup>72</sup>

99. Notably, in the case of *Amparo en Revisión 307/2016*, the Mexican Supreme Court identified two dimensions of this right: an objective one that values the environment intrinsically, and a subjective one that sees environmental protection as foundational to the fulfillment of other human rights. According to the Court, the violation of any of these dimensions constitutes a violation of the right to a healthy environment.<sup>73</sup>

100. This interpretation emphasizes the intrinsic value of the environment and its link to various human rights, reinforcing the notion that environmental protection extends beyond human benefits to encompass all living organisms. The Mexican Supreme Court aligns the right to a healthy environment with sustainable development, as outlined in the Constitution,

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<sup>71</sup> Suprema Corte de Justicia de la Nación, Amparo en revisión 307/2016 (Nov. 7, 2018), para. 88-122.

<sup>72</sup> Suprema Corte de Justicia de la Nación, Amparo en revisión 307/2016 (Nov. 7, 2018), para. 64.

<sup>73</sup> Ibid, para. 76-77.

stressing the importance of intergenerational equity and the need for sustainable practices that do not compromise the rights of future generations.<sup>74</sup>

101. It acknowledges the critical role of government actions in preventing environmental harm and advancing the realization of environmental and climate-related human rights.<sup>75</sup> In this vein, the Mexican Supreme Court emphasizes the necessity of using all available resources towards the progressive fulfilment of these rights, highlighting the principle of progressivity in human rights, which mandates the maintenance or enhancement of environmental protection levels in line with international agreements such as the Escazú Agreement.<sup>76</sup>

102. Furthermore, the Mexican Supreme Court's analysis of the Paris Agreement, particularly regarding the establishment of protected areas, asserts that these zones must retain a high level of natural resource protection without regression.<sup>77</sup> It also affirms the importance of procedural obligations, including the rights to information, public participation, and access to justice, as foundational elements of effective environmental governance.<sup>78</sup>

103. Therefore, Mexico considers that access to environmental information is a public interest that enables responsible participation in decision-making, as demonstrated in *Amparo en Revisión 839/2019*.<sup>79</sup> The Court has emphasized on the necessity of citizen involvement in EIA, ensuring that their input influences decisions. This participatory right, linked to Article 25 of the International Covenant on Civil and Political Rights, is integral to the environmental

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<sup>74</sup> Suprema Corte de Justicia de la Nación, Amparo en revisión 307/2016 (Nov. 7, 2018), para. 87; Suprema Corte de Justicia de la Nación, Controversia Constitucional 212/2018 (Sep. 29, 2021), para. 95, 103 y 125.

<sup>75</sup> The Mexican Supreme Court concluded that several government authorities made an omission and caused a violation of the right to a healthy environment by failing to exercise their powers to protect an ecosystem. *See* Suprema Corte de Justicia de la Nación, Amparo en Revisión 641/2017 (Oct. 18, 2017).

<sup>76</sup> Suprema Corte de Justicia de la Nación, Contradicción de tesis 270/2016 (Ene. 11, 2017), p. 36; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (“Escazú Agreement”), Art. 3(c), Mar. 4, 2018, LC/PUB.2018/8 (entered into force Apr. 22, 2021).

<sup>77</sup> Suprema Corte de Justicia de la Nación, Controversia Constitucional 212/2018 (Sep. 29, 2021), para. 126, 127, 160, 166, 217. According to the Supreme Court, this prohibition implies that government authorities must not (i) reduce the limits of an area already designated for environmental protection, (ii) grant licenses or permits for activities that are incompatible with conservation objectives, and (iii) carry out any other action that might decrease the ecosystem services in the area—including climate change mitigation and adaptation. With this conclusion, the Court reiterated that once government authorities have reached a certain level of human rights protection, the benefits “constitute the new minimum standard from which authorities must make progress towards the satisfaction of those rights.”

<sup>78</sup> For instance Suprema Corte de Justicia de la Nación, Amparo en revisión 307/2016 (Nov. 7, 2018), para. 91-103; Suprema Corte de Justicia de la Nación, Amparo en Revisión 610/2019 (Ene. 15, 2020), p. 30.

<sup>79</sup> Suprema Corte de Justicia de la Nación, Amparo en Revisión 839/2019 (May. 6, 2020), para. 226.

protection mandate under the Constitution and international agreements, highlighting the importance of public and social interest in environmental preservation.<sup>80</sup>

**ii) Duty to provide legal remedies in environmental matters.**

104. Recognizing the multifaceted origins of climate change, Mexico advocates for the implementation of access to judicial and administrative mechanisms, to effectively fulfill the commitment to provide legal remedies in environmental matters. This will be discussed in Mexico's commentaries on the second question to be presented at later stages of this consultative process before the Court.

**V. CONCLUSIONS**

105. In conclusion, the International Court of Justice holds the jurisdiction to provide an advisory opinion as requested by the General Assembly based on Article 96(1) of the UN Charter and Article 65(1) of the ICJ Statute. The request fulfills the necessary conditions: it is posed by an authorized body, the General Assembly, and pertains to a legal question, specifically the obligations of States under international law regarding the protection of the climate system from anthropogenic greenhouse gas emissions. By rendering the advisory opinion requested by the General Assembly, the Court will be participating in the activities of the Organizations.<sup>81</sup>

106. Furthermore, while the Court, each time it is seized of a request for an opinion, has the duty to satisfy as to the propriety of the exercise of its judicial function,<sup>82</sup> in the present request, there are no compelling reasons for the Court to decline rendering the advisory opinion. The Court's role in contributing to United Nations activities by providing legal guidance without circumventing principles of judicial settlement consent. Therefore, in line with past case law and the Court's purpose role in its participation in the activities of the organization,<sup>83</sup> it is

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<sup>80</sup> Suprema Corte de Justicia de la Nación, Amparo en Revisión 839/2019 (May. 6, 2020), para. 226.

<sup>81</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, at p. 71

<sup>82</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, at para.45

<sup>83</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71

appropriate for the Court to deliver the requested advisory opinion, so as to facilitate international legal clarity on climate change obligations and also assist the General Assembly in discharging its functions.<sup>84</sup>

107. In addressing the obligations of States under international law, Mexico highlights four core obligations: prevention and due diligence, precaution, cooperation, and human rights. Mexico views these obligations through both international and national lenses.

108. First, the principle of prevention demands that states act with due diligence to mitigate environmental risks. This involves procedural obligations like impact assessments and notification of potential transboundary impacts, emphasizing the shift from mere harm avoidance to proactive environmental protection.

109. Second, Mexico underscores the application of the precautionary principle in international and domestic law, advocating that lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation and climate change. This approach aligns with global trends recognizing the precautionary principle's increasing incorporation into international law, signaling its critical role in environmental governance.

110. Third, regarding cooperation, Mexico identifies the collective action required to address global environmental issues like climate change, as outlined in international frameworks like the UNFCCC and the Paris Agreement.

111. Regarding human rights obligations, Mexico asserts that environmental protection and human rights are intertwined. Particularly, the right to a healthy environment and access to justice in cases of environmental harm. Through its constitutional provisions and Supreme Court decisions, Mexico demonstrates a commitment to environmental justice, underlining the necessity for global and national synergy in tackling the effects of climate change.

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<sup>84</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71. See also, *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, para. 31.; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 47.

112. Finally, Mexico respectfully reserves the right to address further issues in later stages of the proceedings, including the right to revise or to supplement the arguments raised in the present written statement.

The Hague, 22 March 2024

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