

INTERNATIONAL COURT OF JUSTICE

**Obligations of States in respect of Climate Change
(Request for Advisory Opinion)**

WRITTEN STATEMENT OF GERMANY

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INTRODUCTION

1. This Written Statement is filed pursuant to the Court's Order of 20 April 2023 concerning the request for an advisory opinion made by the General Assembly of the United Nations in its Resolution 77/276 of 29 March 2023.
2. The following brief introductory chapter will discuss the content of the present request for an advisory opinion, the issue of the Court's jurisdiction, as well as the significance of the current proceedings. It will also outline the structure of Germany's Written Statement.

CHAPTER 1:

CONTENT OF THE REQUEST, JURISDICTION OF THE COURT, SIGNIFICANCE OF THE ADVISORY OPINION

I. History and content of the request

3. In December 2022, a group of interested States led by the Republic of Vanuatu, and including Germany, tabled in the General Assembly a draft resolution on a request for an advisory opinion of the Court on the obligations of States in relation to climate change.
4. In its Resolution 77/276 of 29 March 2023, the General Assembly then decided, by consensus, and in accordance with Article 96 of the Charter of the United

Nations, to request the Court, pursuant to Article 65 of the Court's Statute, to render an advisory opinion on the following questions:

“Having particular regard to the Charter of the United Nations, the International Covenants on Civil and Political Rights and 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?”

5. In its Order of 20 April 2023, the Court decided that the United Nations and its Member States are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion, and may do so within the time-limits set by the Court. The original time-limits for such submissions were later extended by the Court by its Orders of 4 August 2023 and 15 December 2023 to 22 March 2024 for written statements, and to 22 June 2024 for written comments on the other written statements.
6. In line with the Court’s orders Germany hereby respectfully submits its Written Statement in order to provide the Court with Germany’s legal position on the request made and the legal issues raised by it.
7. Germany further notes that it is not only a State Party to all relevant international agreements concerning climate protection, but that its national policies, as well as its overall foreign policy, are firmly designed to address climate change.
8. Given the scope of the request, as formulated by the General Assembly, Germany’s Written Statement will address not only specific treaty-based climate protection regimes, but also relevant norms of international human rights protection, as well as relevant rules of customary international law.

II. Jurisdiction of the Court

9. Article 96 (1) of the United Nations Charter provides that the General Assembly or the Security Council may request the Court to give an advisory opinion on any legal question. Article 65 (1) of the Court's Statute provides that the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.
10. In the case at hand, these two provisions unequivocally establish the competence of the General Assembly to request the advisory opinion from the Court and the jurisdiction of the Court to give the requested opinion.
11. For one, General Assembly Resolution 77/276 was adopted by consensus. Besides, the request contained therein also falls squarely within the ambit of the General Assembly's mandate under the Charter to request an advisory opinion. The request seeks legal advice from the Court on questions of direct concern for the work of the United Nations, questions that are both urgent and relevant for the work of the General Assembly. The Court is thus competent to provide an advisory opinion in the current proceedings.

III. Significance of the advisory opinion sought for climate mitigation efforts to be undertaken by the international community

12. The significance of the advisory opinion at hand for the international community at large is affirmed by the very fact that the resolution requesting it was adopted by the General Assembly by consensus.
13. Given the challenges the international community is facing when it comes to climate change, it is of utmost importance that the application of international law facilitates future international cooperation in the field of climate mitigation. In Germany's view, the scope and the content of existing international legal obligations in the field of climate change thus merit assessment by the Court.
14. In view of this task, and given its quasi-universal ratification, it is the Paris Agreement which can be described as the central system of reference when defining those obligations. The Paris Agreement reflects a carefully elaborated balance between binding goals and provisions on the one side, and room for national discretion on the other. This is particularly true with regard to the concept of common but differentiated responsibilities and respective capabilities, in light of different national circumstances, to which we will come back later in this submission.
15. The Paris Agreement is being implemented domestically by its 195 States Parties. The advisory opinion of the Court may have an impact on the political willingness to support the further development of this legal framework, and on

the determination to pursue even more ambitious implementation at the national level.

16. Some aspects of the questions raised are also the subject of ongoing advisory proceedings currently pending before the International Tribunal for the Law of the Sea¹ ('ITLOS') and the Inter-American Court of Human Rights² ('IACtHR'), as well as of individual applications before the European Court of Human Rights ('ECtHR'). These proceedings will be decided on the basis of the applicable treaty. Only the International Court of Justice's opinion, given its role as the principal judicial organ of the United Nations, will be able to provide a *holistic* analysis of all applicable rules of international law as far as climate change is concerned. In particular, it is Germany's view that the Court's advisory opinion will be able to shed light on the legal interaction between the Paris Agreement, customary international law and human rights law.

17. Germany wishes to point out that the wording of the request also refers to obligations of States under international law to ensure the protection of the climate system for future generations. As early as 1992, the international community politically recognized the need to protect future generations from the effects of climate change in the United Nations Framework Convention on Climate Change ('UNFCCC').³ This necessity was further emphasized in the Preamble of the Paris Agreement, which notes that States should, when taking action to address climate change, respect, promote and consider *inter alia*

¹ ITLOS, Case no. 31, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law.

² IACtHR, Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile.

³ *Cf.* preamble of the UNFCCC, paras. 11, 23; Article 3 (1) of the UNFCCC.

intergenerational equity.⁴ This means that due account ought to be taken of the interests of future generations.

18. When addressing this necessity to protect future generations, Germany is notably guided by a 2021 landmark judgment of its Constitutional Court.
19. In particular, the German Constitutional Court held that the constitutional right to life and physical integrity, as enshrined in Article 2 (2) of the German Basic Law, encompasses the duty to protect human life and health against the risks posed by climate change. While members of future generations do not yet carry any fundamental rights in the present, the constitutional duty to protect human life and health against adverse effects of climate change arising thereunder can give rise to an objective duty to protect future generations.⁵ In the words of the German Constitutional Court:

“In view of the considerable risks that increasingly severe climate change may also entail for the legal interests protected under Article 2 (2) first sentence GG [*Grundgesetz*, German Basic Law] – for example through heat waves, floods or hurricanes (...) – the state is obliged to afford this protection to the current population and also, in light of objective legal requirements, to future generations.”⁶

⁴ Cf. preamble of the Paris Agreement, para. 11: “*Acknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on [...] intergenerational equity”.

⁵ Federal Constitutional Court, Order of the First Senate of 24 March 2021 - 1 BvR 2656/18 et al., Headnote 1.

⁶ Federal Constitutional Court, Order of the First Senate of 24 March 2021 - 1 BvR 2656/18 et al., para. 148.

20. Moreover, Article 20a of the German Basic Law further obliges the State to take climate action. In cases of conflict, this obligation must be balanced against other constitutional interests and principles. Article 20a of the German Basic Law also imposes upon the legislator a special duty of care with respect to scientific uncertainties as far as causal relationships of environmental relevance are concerned. This entails an obligation to take account of sufficiently reliable indications pointing to the possibility of serious or irreversible impairment, also for the benefit of future generations.⁷
21. It is in full awareness of and respect for this constitutional responsibility to protect the current population as well as future generations from the considerable risks of increasingly severe climate change that Germany conducts its foreign and domestic environmental policy. Germany is equally mindful of and guided by this decision when it herewith submits its considered views on the international legal obligations of States with regard to climate change.

IV. Structure of Germany's Written Statement

22. Germany's written statement consists of three chapters. After this *introduction*, *Chapter 2* of Germany's written statement will address the question of what the obligations of States under international law are *vis-à-vis other States* to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.

⁷ *Cf.* Federal Constitutional Court, Order of the First Senate of 24 March 2021 - 1 BvR 2656/18 et al., Headnote 2.b.

23. *Chapter 3* will then consider under what conditions States may have human rights obligations in the context of the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.
24. It will be followed by a brief summary and Germany's submissions in the proceedings at hand.

**CHAPTER 2:
LEGAL OBLIGATIONS OF STATES UNDER INTERNATIONAL
LAW TO ENSURE THE PROTECTION OF THE CLIMATE
SYSTEM**

25. In this *Chapter*, *Section 1* first addresses the crucial differentiation between legal obligations, on the one hand, and voluntary commitments, on the other. *Section 2* discusses the links that exist between international environmental law and human rights law. *Section 3* addresses the issue of intertemporality with regard to past emissions. *Section 4* stresses the significance of international treaties in regulating inter-State relations regarding the protection of the climate and other parts of the environment from anthropogenic greenhouse gas emissions. *Section 5* addresses relevant rules of customary international law and principles of international law.

I. Differentiation between legal obligations and voluntary commitments

26. At the outset, Germany would like to emphasize that with regard to the rules governing anthropogenic greenhouse gas emissions, a clear distinction must be

drawn between legally binding obligations on the one hand, and non-binding voluntary commitments on the other.

27. By way of example, Germany would like to take the opportunity to refer to its recent submission to the International Law Commission regarding sea-level rise in relation to international law.⁸ This submission includes a list of voluntary commitments in the area of climate change, such as the implementation of ecosystem-based adaptation measures, the provision of relevant climate information and services under the International Climate Initiative (as part of the German Government's international climate finance commitment), International Research Collaborations, Coastal Management Partnerships and Germany's activities in international fora. Moreover, voluntary commitments in the field of climate change are included as part of the Sendai Framework for Disaster Risk Reduction 2015-2030. Germany is convinced that by mobilizing a broad donor base that includes *all* States that are capable of providing financial assistance, and through the contributions of these States to financial mechanisms such as the Green Climate Fund, the Adaptation Fund and the fund for responding to Loss and Damage, those countries that are most vulnerable to and most affected by climate change can be supported in their efforts to increase their adaptation and resilience.
28. While Germany considers all of those and similar political and financial commitments to be important means of fighting climate change, they do not, by and of themselves, constitute legal obligations.

⁸ *Cf.* ILC, Sea-level rise in relation to international law – German Submission to the International Law Commission in preparation of its 75th session (2024) – Answers to Questions posed in the Commission's report of the 73rd session (2022), Chapter III, 30 June 2023.

29. Clarity concerning this key distinction between legal obligations and voluntary commitments is indispensable for States to be able to consent to legal obligations. The political discussion on global climate mitigation efforts will benefit from a clear distinction between, on the one hand, existing legal obligations, and non-binding voluntary commitments and forms of cooperation on the other.
30. In this context, Germany also wishes to point out that the classification of an instrument as a binding treaty governed by international law does not entail a statement about the legal nature, content or scope of the individual provisions of the treaty.⁹ This distinction is of particular relevance when assessing the legal interaction between different bodies of international law and potential collisions of obligations. Binding treaties regularly contain provisions that do not themselves impose legal obligations. An example of this is when permissive terms are used to stress the freedom of States to act in a certain way ('may'). Binding treaties might also include norms that merely list non-exhaustive examples or recommend certain measures. Such provisions in binding treaties may be taken into account to interpret legal obligations established in other provisions of the treaty. However, they do not impose self-standing legal obligations.
31. Even within binding treaty obligations, a clear distinction must be made between obligations of result and obligations of conduct. Obligations of conduct, such

⁹ *Fitzmaurice/Elias*, *Contemporary Issues in the Law of Treaties*, 2005, p. 46 et seq.; *Bodansky/Brunnée/Rajamani*, *International Climate Change Law*, 2017, p. 18 et seq.

as obligations to undertake best efforts, grant States a wide discretion depending on the specific economic, legal and other relevant circumstances. The determination of the scope of specific legal obligations under an international treaty thus requires an individual and separate examination for each treaty provision.

32. The Paris Agreement is the primary legal and political framework for international cooperation in the field of climate mitigation efforts. Germany would like to note that a careful balance was struck between legally binding clauses and non-binding political commitments within the Paris Agreement. That balance must be respected. The Paris Agreement currently benefits from it, since it is this balance which made such wide accession possible and encourages compliance.¹⁰
33. It is a legal corpus containing legal obligations steadily being developed by its Member States and which contains political compromises accepted by consensus of the State parties and thus by the vast majority of States. It encompasses some obligations of result, various obligations of conduct granting Parties a substantial margin of discretion concerning the fulfillment of their obligations, and a wide array of provisions that do not impose legal obligations.
34. Germany is thus of the view that the Court's advisory opinion could, by maintaining the clear distinction between legal obligations on the one hand, and voluntary commitments on the other, support the above-mentioned balance contained in the Paris Agreement.

¹⁰ Cf. also *Chapter 1 Section III*.

II. Interpretation of obligations of States under international environmental law in light of environment-related human rights obligations

35. As confirmed by Article 31 (3) (c) of the VCLT (as having codified international law on the matter¹¹), the interpretation of treaties shall take into account any relevant rules of international law applicable in the relations between the parties. Thus, for example, the interpretation of human rights treaties must take into account relevant legal obligations that the same States have undertaken when becoming parties to treaties in other areas of law that are relevant to human rights protection. The protection of human rights and the international climate protection regime are two parallel treaty regimes, each of which concerns different protected goods and establishes independent obligations. The extent to which interactions may arise must be examined in each future individual case, whereby the relevant provisions must be carefully interpreted in accordance with Art. 31 of the VCLT.
36. It is of utmost importance to differentiate between obligations agreed upon and political goals set within the respective framework. Specific obligations of States in the field of climate change that arise under the different international legal regimes must be reconciled with each other without diminishing their respective specific content.

¹¹ ICJ, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Rep. 2003, p. 182, para. 41.

37. Human rights treaties and environmental treaties were not concluded with the intention of widening the scope of one or the other. Rather, the principle of systemic interpretation applies to the interpretation of international environmental law in light of relevant obligations stemming from human rights treaties.¹² This is in line with the Court’s established jurisprudence that legal obligations must be interpreted in light of relevant other rules of international law applicable between the Parties.¹³

III. Intertemporality and past emissions

38. A further relevant aspect when examining the legal obligations of States with respect to greenhouse gas emissions is the question of whether certain obligations stemming from customary international law have emerged at all, and if so when. This is particularly relevant for the ‘no-harm rule’.
39. In that regard, Germany would like to underscore that the legality of past emissions can only be assessed according to the State obligations applicable at the time. This means—concerning obligations stemming from customary international law—that for the assessment of the legality of such past emissions, only those rules and standards are relevant on which State practice as well as *opinio iuris* can be identified at that point in time.

¹² Cf. ILC, Draft guidelines on the protection of the atmosphere, with commentaries, UN Doc. A/76/10, 2021, draft guideline 9 para. 1.

¹³ ICJ, *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment of 12 October 1984 given by the Chamber Constituted by the Order made by the Court on 20 January 1982, I.C.J. Rep. 1984, p. 290, para. 83; ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Rep. 1996, p. 240, para. 25; ICJ, *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, I.C.J. Rep. 2008, p. 219, para. 114.

40. With respect to anthropogenic greenhouse gas emissions, such State practice and *opinion iuris* only conceivably have emerged after scientific knowledge about the adverse effects of greenhouse gas emissions had become established. The reports of the Intergovernmental Panel on Climate Change (‘IPCC’) might constitute a sound basis for the determination of that scientific knowledge, and thus indicate the earliest point of time in which norms of customary international law may gradually have started to develop. Not only do these reports reflect the global consensus of the scientific community at the time but also the state of knowledge of the international community, as these reports are also endorsed by the respective IPCC members’ governments. Therefore, any potential customary international law concerning greenhouse gas emissions can only conceivably have emerged in the 1990s at the earliest.

IV. International treaty law

41. This fourth Section analyses the international treaty law that is relevant for the assessment of State obligations regarding protection against climate change. The selection of treaties analysed is based on the instruments mentioned in the General Assembly’s request,¹⁴ and on the documents listed in Part II of the materials compiled pursuant to Article 65 (2) of the Court’s Statute, as submitted by the Secretariat of the United Nations on 30 June 2023.

¹⁴ Cf. UNGA Res. A/77/L.58, 1 March 2023.

a) *Paris Agreement and United Nations Framework Convention on Climate Change*

42. Germany would like to stress that the Paris Agreement and the UNFCCC, on which it builds, are the decisive treaties when it comes to determining and further developing the legal obligations of States under international law to ensure the protection of the climate system. This includes the decisions taken by the ‘Conference of the Parties serving as the meeting of the Parties to the Paris Agreement’ (‘CMA’).
43. At its core, Article 2 (1) (a) of the Paris Agreement sets out the goal of holding the increase in global average temperature to well below 2°C above pre-industrial levels, including through the pursuit of efforts to limit temperature increase to 1.5°C above pre-industrial levels.¹⁵ The structure of the Paris Agreement then foresees a system of nationally determined contributions (NDCs) to achieve this common mitigation goal.¹⁶
44. While the wording of Article 2 (1) of the Paris Agreement itself could be interpreted as a mere description of the purpose and aim of the agreement, the goal of reducing the global average temperature lies at the core of all obligations of the Agreement which refer explicitly to Article 2. In Germany’s view, Article 2 (1) of the Paris Agreement sets a binding goal that all Member States are obliged to achieve jointly. The individual obligations of States incumbent upon

¹⁵ This was most recently reaffirmed and specified in paras. 3-6 of decision 1/CMA.5.

¹⁶ Cf. *infra* para. 49 et seq.

them in order to achieve this common binding goal are laid down elsewhere in the agreement and must be specified in more detail.

45. In this context, it is important to point out that the Paris Agreement presents a certain shift within the climate protection regime from a more result-oriented obligations approach (as reflected in the Kyoto Protocol in particular) to a more conduct-based approach.¹⁷
46. Article 2 (1) of the Paris Agreement uses conduct-oriented language, stating that it “*aims to strengthen* the global response to the threat of climate change” while affirming the climate protection regime’s “ultimate objective” (Article 2 of the UNFCCC: “*prevent[ing]* dangerous anthropogenic interference with the climate system”). The “aim to strengthen” stated in the chapeau is clearly spelled out as conduct-oriented. The chapeau thus stipulates what is to be achieved within the framework of “best efforts” to prevent such dangerous interference. The list contained in lit. (a) to (c) of Article 2 (1) of the Paris Agreement includes the temperature target.
47. A temperature target, while providing concretization with regard to the greenhouse gas concentrations to be achieved within the meaning of Article 2 of the UNFCCC, does not clearly specify the greenhouse gas level to be achieved. It provides the basis for its calculation.¹⁸

¹⁷ *Brunnée*, Procedure and Substance in International Environmental Law, 2020, 170; *Rajamani*, Due Diligence in International Climate Change Law, in: Krieger/Peters/Kreuzer, Due Diligence in the International Legal Order, 2020, 163 (168).

¹⁸ *Brunnée*, Procedure and Substance in International Environmental Law, 2020, 170.

48. The classification of Article 2 (1) of the Paris Agreement as an obligation of conduct is also supported by the fact that the Paris Agreement, as a subsequent instrument to the UNFCCC, is subject to the latter's understanding of the constant need to re-evaluate climate response measures and targets in the light of new scientific findings.¹⁹
49. The Paris Agreement spells out core elements of how this obligation of conduct is to be fulfilled. Most importantly, each State Party is under the obligation to elaborate NDCs. These NDCs have to be communicated to the UNFCCC's Conference of the Parties at least every five years.²⁰
50. Moreover, Parties shall implement NDCs with domestic mitigation measures in line with Article 4 (2) of the Paris Agreement.²¹ According to Article 4 (3) of the Paris Agreement, each subsequent NDC will then represent a progression beyond the previous NDC. Moreover, States shall regularly provide information on their progress in accomplishing their respective NDCs.²² Additionally, they shall engage in facilitative, multilateral considerations of progress.²³
51. All of these requirements are decisive when it comes to achieving the common mitigation goal set out in Article 2 (1) of the Paris Agreement.

¹⁹ Cf. UNFCCC Preamble para. 16: “*Recognizing* that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas”.

²⁰ Article 4 (2) and (9) of the Paris Agreement.

²¹ Most recently recalled and elaborated on in paras. 164-173 of decision 1/CMA.5.

²² Article 13 (7) of the Paris Agreement.

²³ Article 13 (11) of the Paris Agreement.

52. Germany wants to stress that the Paris Agreement sets out additional goals that are important to achieving the common long-term mitigation goal. These include the goal set out in Article 4 (1) of the Paris Agreement to reach global peaking of greenhouse gas emissions as soon as possible.
53. Likewise, the Paris Agreement and its implementing rulebook contain specific obligations with regard to the information necessary for clarity, transparency and understanding in the communication of NDCs in accordance with Article 4 (8) and decision 1/CP.21;²⁴ as well as obligations on how to track progress and how to account for the implementation of the NDCs outlined in the enhanced transparency framework²⁵ and the accounting obligations contained in Article 4 (13) and decision 4/CMA.1.
54. These elements with their carefully elaborated balance of necessary flexibilities for the Parties on the one hand, and binding provisions on the other, underscore why the Paris Agreement and the UNFCCC underpin the international community's endeavors to combat climate change.
55. Alongside its submissions on the core aspects of the Paris Agreement and the UNFCCC and their relationship to other rules of international law, Germany would like to highlight some further aspects of these specific treaties for climate protection.

²⁴ Further guidance in relation to the mitigation section of decision 1/CP.21 is contained in decision 4/CMA.1.

²⁵ *Cf.* decision 18/CMA.1.

56. *Firstly*, Germany would like to underline that given the economic development of certain States since the adoption of the UNFCCC, the Parties of the Paris Agreement deliberately refrained from adopting any provisions that would have created a static dichotomy between developed and developing States. Instead, the Paris Agreement introduced a more nuanced system of differentiation, enabling a spectrum of commitments and allowing Parties to the Agreement to set their own NDCs in the light of different national circumstances.
57. The Paris Agreement’s addition of “different national circumstances” to the principle of *common but differentiated responsibilities and respective capabilities* (“CBDR”) constitutes a significant development beyond the UNFCCC, which had not reflected the Parties’ different national circumstances. This is complemented by the obligation of all Parties to provide information to facilitate clarity, transparency and understanding when communicating their respective NDCs.²⁶ Not only does such information clarify how the Party considers its NDC to be fair and ambitious in light of its national circumstances. It also substantiates how the NDC contributes towards achieving the common objective of the Convention as set out in Article 2 thereof. A key legal element in this ambition cycle is that Parties update their actions and support, as well as international cooperation, informed by the outcome of the Global Stocktakes.²⁷
58. Therefore, the concept of *common but differentiated responsibilities and respective capabilities in the light of different national circumstances*, as stipulated in the Paris Agreement, is the expression of a dynamic interpretation of State obligations. It

²⁶ Cf. paras. 50, 53.

²⁷ Article 14 (3) Paris Agreement and decision 19/CMA.1, with the outcome of the first Global Stocktake contained in decision 1/CMA.5.

reflects the evolution from relatively static categories of developed and developing States to a more nuanced system of differentiation, which enables a spectrum of commitments depending on the individual capabilities and circumstances of each State.

59. Hence, the concept must not be misunderstood as referring to a differentiated ‘historical’ responsibility of the Parties to the Paris Agreement for greenhouse gas emissions in the past – *i.e.* before any legal norm on greenhouse gas emissions had been established.²⁸
60. In this sense, as the protection of the climate is a common concern of all States, the concept of the principle of common but differentiated responsibilities and the ensuing respective capabilities in the light of different national circumstances serves to underline that each State’s NDC will reflect its “highest possible ambition”.
61. Thus, the concept requires the varying current economic and technological capabilities of the Parties to be taken into account.²⁹ Similarly, Article 4 (11) of the Paris Agreement provides that each State Party may at any time adjust its contribution, but only with a view to enhancing its level of ambition. The interplay between Article 4 (3) and Article 4 (11) of the Paris Agreement is therefore future-oriented in that it establishes a dynamic standard which will gradually enhance each State Party’s climate change mitigation efforts.³⁰

²⁸ *Cf.* para. 40.

²⁹ Article 4 (3) Paris Agreement, *cf.* UNGA Res. 76/205, 5 January 2022, para. 2; UNGA Res. 77/165, 21 December 2021, para. 2.

³⁰ *Cf.* para. 49 et seq.

62. *Secondly*, Germany would like to point out that no claims for damages or obligations to provide compensation can be derived from the Paris Agreement. In this regard, Germany draws the Court's attention to Article 8 of the Paris Agreement, and para. 51 of decision 1/CP.21 concerning the adoption of the Paris Agreement with regard to that said provision.³¹
63. Pursuant to Article 8 (1) of the Paris Agreement, States recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change. Decision 1/CP.21 confirms in its para. 51 that Article 8 of the Paris Agreement does not involve or provide a basis for any liability or compensation.
64. Furthermore, as mentioned above, both the Paris Agreement and the UNFCCC also contain provisions that do not impose legal obligations.³² This is exemplified by Article 15 of the Paris Agreement, which establishes a compliance mechanism that is expert-based and facilitative in nature, functioning in a manner that is transparent, non-adversarial and non-punitive. These provisions inform the operation of the Paris Agreement Implementation and Compliance Committee, which reports to the CMA annually on its operation and the possible actions to be taken by Parties in response to its communications.

³¹ Decision 1/CP.21 as contained in the report of the Conference of the Parties on its twenty-first session, FCCC/CP/2015/10/Add.1, 29 January 2016.

³² *Cf. Chapter 2 Section 1.*

b) *Convention on Biological Diversity and United Nations Convention to Combat Desertification*

65. Germany acknowledges that there is a close link between the UNFCCC and the two other Rio Conventions concluded around the same time, *i.e.* the 1992 Convention on Biological Diversity (“CBD”) and its protocols, as well as the 1994 UN Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (“UNCCD”).
66. As a firm supporter and State Party of all three treaties, as well as host State of the UNCCD secretariat, Germany is committed to enhancing synergies between these treaties, *e.g.* by further endorsing the activities of the *Joint Liaison Group* between the secretariats of the CBD, the UNFCCC and the UNCCD.
67. The CBD, which currently has 196 Contracting Parties, is the most comprehensive binding international agreement in the field of nature conservation and the sustainable use of natural resources. The UNCCD is the sole legally binding international treaty framework set up to address desertification and the effects of drought, and currently has 197 Parties. Both legal frameworks are crucial to ensuring the sustainability of our planet and the prosperity of future generations, and adherence to them will also have positive effects on combating climate change. It is Germany’s understanding that the CBD and the UNCCD have a more specific scope of application than the UNFCCC. Nevertheless, as regards the goal to “protect the climate system for

present and future generations”,³³ they are important specific subsidiary means for determining States’ obligations under public international law with regard to preventing adverse effects of climate change.

68. In Article 4 (a), the CBD states that the provisions of this Convention apply “in the case of components of biological diversity, in areas within the limits of its (*i.e. a contracting Party’s*) national jurisdiction”. In addition, the CBD focuses primarily on so-called *in-situ* conservation³⁴, as well as (auxiliary) *ex-situ* measures “preferably in the country of origin”³⁵, while at the same time affirming the principle of sovereignty of States.³⁶ This means that the CBD stresses the protection of biodiversity as a more territorial matter compared to the long-term common goal of reducing greenhouse gases. The protection of biodiversity is to be carried out most effectively by the respective territorial State.
69. The UNCCD – which initially focused on dry areas when it was founded – significantly expanded its scope in 2015 with the adoption of the Sustainable Development Goals (SDGs). The UNCCD is the custodian agency for the Sustainable Development Goal 15.3 on land degradation neutrality (LDN), which refers to the protection, sustainable use and restoration of all land ecosystems worldwide. The implementation of LDN is a core goal of the UNCCD in addition to combating desertification and droughts. It is submitted

³³ Preamble of the UNFCCC, para. 23.

³⁴ *Cf.* Preamble of the CBD: “*Noting* further that the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats”; Article 8 of the CBD.

³⁵ *Cf.* Preamble of the CBD: “*Noting* further that *ex-situ* measures, preferably in the country of origin, also have an important role to play”; Article 9 of the CBD.

³⁶ *Cf.* Preamble CBD: “*Reaffirming* that States have sovereign rights over their own biological resources”; Article 3 CBD: “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies”; *cf.* as well Article 15 (1) of the CBD.

that the UNFCCC, the Paris Agreement and the decisions taken by the CMA ought to be seen as the primary instruments for determining which State obligations exist in connection with the impacts of human-induced greenhouse gas emissions.

70. Nevertheless, Germany wants to stress that both, the CBD and the UNCCD, as treaties protecting specific components of the environment endangered by climate change, are important instruments complementing the implementation of the Paris Agreement, especially on a regional and national level.

c) Ozone Layer Protection Regime

71. Germany strongly supports the continued strengthening of the international ozone layer protection system in the form of the 1985 Vienna Convention on Ozone Layer Protection and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer ('MP'), including its adjustments and amendments. In particular, Germany recognizes its obligations to control the production and consumption of substances covered by the MP and its amendments. Germany would like to emphasize that the international ozone layer protection system successfully contributed significantly to the mitigation of climate change, as most ozone-depleting substances are also potent greenhouse gases.
72. The accelerated phase-out of hydrochlorofluorocarbons agreed in 2007³⁷ and the phase-down of hydrofluorocarbons, *i.e.* of substances that are not ozone-

³⁷ *Cf.* decision XIX/6: Adjustments to the Montreal Protocol with regard to Annex C, Group I, substances (hydrochlorofluorocarbons), 2007.

depleting or are less ozone-depleting but contribute significantly to global warming, agreed in the 2016 Kigali Amendment to the MP, which entered into force 2019, demonstrate the climate-protecting potential of the MP and its Kigali Amendment and the growing determination of the Parties to complement the overall climate protection system through these instruments.

73. While the scope of the UNFCCC was limited to “greenhouse gases not controlled by the Montreal Protocol”,³⁸ the Paris Agreement covers all greenhouse gases.³⁹ This means that the ozone layer protection system and the climate protection regime are now overlapping and complement each other. This linkage is already laid out in the UNFCCC itself⁴⁰ and is increasingly being driven forward by the international community.
74. The G7 Climate, Energy and Environment Ministers’ Communiqué from 2022, in which Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States as the G7, and the European Union clearly expressed their conviction regarding the synergies of both regimes, can be seen as instructive in this regard.⁴¹

³⁸ *Cf. e.g.* Article 4 (1) (a)-(d) of the UNFCCC, and Article 2 (a) (ii), (vi), (vii) of the Kyoto Protocol.

³⁹ Article 1 sentence 1 of the Paris Agreement in conjunction with Article 1 (5) of the UNFCCC.

⁴⁰ *Cf.*, in particular, Preamble of the UNFCCC, para. 13, as well as Article 8 (2) (e) of the UNFCCC, stating that the UNFCCC secretariat shall “ensure the necessary coordination with the secretariats of other relevant international bodies”, which is also explicitly endorsed by Article 17 (2) of the Paris Agreement.

⁴¹ G7 Climate, Energy and Environment Ministers’ Communiqué, 27 May 2022, para. 64: “We reaffirm the importance of consistent and universal implementation of the Montreal Protocol for both the protection of the ozone layer and the climate [...]. We will continue to implement the phasedown of hydrofluorocarbon production and consumption reflected in the Kigali Amendment [...] while supporting the direct transition to [...] climate [...] friendly alternatives.”

75. Germany would like to stress the complementarity of these regimes and the success of the MP. The latter is due to the fact that the controlled substances can be found in narrowly defined contexts. In contrast, addressing the overall phenomenon of climate change represents a much broader challenge. Hence, the international ozone layer protection system, which is an example of a successful international regime to protect specific components of the environment, serves as a complementary instrument in line with the UNFCCC and the Paris Agreement. At the same time, the success of the MP in terms of its own contribution to reducing global warming can be instructive for the entire climate protection regime.

V. International customary law and principles of international law

a) Preliminary considerations

76. In the request for the Advisory Opinion, reference was made to the 1972 UN Declaration on the Human Environment (“Stockholm Declaration”) and the 1992 Rio Declaration. Neither declaration constitutes a treaty; they are therefore not legally binding under international law. It is against this background that reference in the request was made to both declarations with a view to examining the status of the rules contained therein. In line with the fact that both instruments were not drafted as international treaties, the principles contained therein do not purport to formulate clear-cut State obligations, but rather reflect policy strategies thought vital to tackle the identified environmental challenges.
77. With regard to the duty to cooperate, Germany would like to point to the fact that it has found expression in Principle 24 of the Stockholm Declaration. With

regard to the prevention of pollution of the marine environment, the duty to cooperate has been recognized as a ‘fundamental principle’ by the ITLOS.⁴² Germany is guided by this principle in all of its efforts to protect the climate system. Germany sees the existing substantive obligations to protect the environment as an expression of the will of States to live up to their duty to cooperate.

d) Common but differentiated responsibilities and respective capabilities, in the light of different national circumstances

78. In the request for the advisory opinion, reference has also been made to the “principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances”. Regarding the notion of common but differentiated responsibilities and respective capabilities (CBDR)⁴³ in the light of different national circumstances, Germany respectfully submits two interlinked arguments.

79. *Firstly*, Germany submits that the concept of CBDR, in the light of different national circumstances, as referred to in the Paris Agreement is pertinent to the interpretation of the Paris Agreement in which it is laid down. However, it does not possess a normative status of its own or independently of the Paris Agreement in the field of climate protection law. This is evidenced by the practice of the General Assembly, which, ever since the adoption of the Paris

⁴² ITLOS, *The Mox Plant Case (Ireland v. United Kingdom)*, Case No. 10, Provisional Measures, Order of 3 December 2001, p. 110, para. 82, referring to the duty to cooperate as a ‘fundamental principle’ in the prevention of pollution of the marine environment.

⁴³ *Cf.* also *supra* para. 57 et seq.

Agreement, refers to this concept only in conjunction with Article 2 (2) thereof.⁴⁴ Therefore, the concept has no bearing beyond the scope of the provisions contained in the Paris Agreement.

80. *Secondly*, as shown above, the Paris Agreement modified the previous understanding of this concept as stipulated in the Article 3 of the UNFCCC.⁴⁵ In the area of climate protection law as expressed in the Paris Agreement, the concept of CBDR, in light of different national circumstances, emphasizes that each State's NDC must reflect its "highest possible ambition". In the determination and reevaluation of their respective NDCs, Parties must therefore consider their varying economic and technological capabilities. The concept therefore only applies to the analysis and interpretation of a State Party's commitment to reduce greenhouse gas emissions within its respective current and future NDCs. As stated above it does not refer to a differentiated 'historical' responsibility of the Parties to the Paris Agreement.⁴⁶

81. In consequence, Germany stresses that the concept neither exempts certain States from their individual obligations, nor refers to 'historical' emissions of Parties in the past – *i.e.* before any international legal norm on greenhouse gas emissions was established.

⁴⁴ *Cf. e.g.* UNGA Res. 77/165, 21 December 2021 and relevant previous UNGA Res.

⁴⁵ *Cf. supra Chapter 2 Section IV lit. a.*

⁴⁶ *Cf. Chapter 1 Section III.* A historical responsibility in a legal sense is also cannot to be derived from the Paris Agreement with regard to Article 8 PA and para. 51 of decision 1/CP.21.

CHAPTER 3:
***HUMAN RIGHTS OBLIGATIONS* OF STATES RELEVANT TO
THE PROTECTION OF THE CLIMATE SYSTEM AND OTHER
PARTS OF THE ENVIRONMENT FROM ANTHROPOGENIC
EMISSIONS OF GREENHOUSE GASES**

82. This Chapter of Germany's Written Statement addresses legal obligations of States under international human rights law which might become relevant for States' obligations to protect the climate system.
83. This part is twofold: *Section 1* will deal with more general issues; while *Section 2* in turn will consider which specific substantive obligations arising under certain human rights treaties might become relevant in this context.

I. General questions

a) Preliminary considerations

84. In its request for an advisory opinion, the General Assembly made specific reference to applicable human rights instruments, and in doing so also referred to legal obligations of States arising *vis-à-vis* "peoples and individuals of the present and future generations". This is why Germany's climate foreign policy includes a strong engagement for human rights, particularly the human rights of those most vulnerable to the adverse effects of climate change such as women and marginalized population groups. As a State Party to the Paris Agreement, Germany acknowledges that States "should, when taking action to address

climate change, respect, promote and consider their respective obligations on human rights, [...] the rights of [...] people in vulnerable situations”.⁴⁷

85. At the same time, addressing and identifying possible human rights violations that could be caused by climate change requires a careful analysis of the scope of application *ratione personae*, *ratione temporis* and *ratione loci* of relevant human rights treaties in line with the Court’s own well-established jurisprudence, as well as that of other international courts and tribunals. Notably, the conditions under which a person may be considered to be subject to the jurisdiction of a given State Party to a human rights treaty so as to trigger the latter’s applicability must be examined.

b) *Interpretation of environment-related human rights obligations in light of obligations of States under international environmental law*

86. As stated above, it should be noted that the protection of human rights and the international climate protection regime are two parallel treaty regimes, each of which concerns different protected goods and establishes independent obligations. The extent to which interactions may arise must be examined in each future individual case, whereby the relevant provisions must be carefully interpreted in accordance with Art. 31 of the VCLT. In addressing the human rights-related issues of climate change Germany reiterates the fact that the UNFCCC and the Paris Agreement constitute the central legal frameworks for combatting the effects of climate change. Therefore, environment-related human rights obligations must be interpreted in light of applicable rules of

⁴⁷ Cf. Preamble of the Paris Agreement, para 11.

environmental law in accordance with Article 31 of the VCLT.⁴⁸ This is in line with the practice of the Human Rights Committee, to which this Court ascribes great weight when interpreting human rights obligations.⁴⁹ In addressing the human rights-related issues of climate change Germany reiterates that the UNFCCC and the Paris Agreement constitute the central legal frameworks for combatting the effects of climate change.

87. This approach was notably applied by the Human Rights Committee in its 2019 decision in the case of *Norma Portillo Cáceres versus Paraguay*. There, the Committee found a violation of the right of life under Article 6 of the International Covenant on Civil and Political Rights ('ICCPR') due to the use of certain pesticides.⁵⁰ In reaching its conclusion it considered it a specifically relevant factor that Paraguay had been obliged not to allow the use of the life-threatening pesticides in question on its territory by virtue of being a Party to the Stockholm Convention on Persistent Organic Pollutants prohibiting the use of the substance in question.
88. This approach to interpreting relevant human rights obligations in line with applicable rules of international environmental law was further confirmed by General Comment No. 36 of the Human Rights Committee on the right to life under Article 6 of the ICCPR. There, the Human Rights Committee confirmed the close interrelationship between human rights obligations on the one hand, and international environmental law on the other. Citing *inter alia* the Rio

⁴⁸ See also *Chapter 2 Section II*.

⁴⁹ ICJ, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of The Congo)*, Judgment of 30 November 2010, I.C.J. Rep. 2010, p. 663 para. 66.

⁵⁰ CCPR, *Portillo Cáceres et al. v. Paraguay*, UN Doc. CCPR/C/126/D/2751/2016, 20 September 2019, para. 7.3.

Declaration, the UNFCCC and the Paris Agreement, the Human Rights Committee thus stated that

“(...) [e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. *Obligations of States parties under international environmental law should thus inform the contents of article 6 of the [International] Covenant [on Civil and Political Rights], and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law.*”⁵¹

89. This confirms that the Human Rights Committee aligns its interpretation of the ICCPR, and notably Article 6 thereof, with obligations that States have simultaneously undertaken under international environment law. The very same considerations ought to apply *mutatis mutandis* when it comes to the interpretation of other human rights treaties.
90. As a matter of fact, the States Parties of both the UNFCCC and the Paris Agreement have concluded these agreements in full awareness of the environment-related human rights obligations they had previously entered into. It must therefore be assumed that the obligations arising under both the UNFCCC and the Paris Agreement conform with, and are in accordance with,

⁵¹ CCPR, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, 30 October 2018, para. 62; emphasis added. Cf. also *Portillo Cáceres et al. v. Paraguay*, UN Doc. CCPR/C/126/D/2751/2016, 20 September 2019; CCPR, *Ioane Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016, 7 January 2020; CCPR, *Billy et al. v. Australia*, UN Doc. CCPR/C/135/D/3624/2019, 21 July 2022, para. 7.5.

environment-based human rights obligations. *Vice versa*, as shown, obligations stemming from human rights law are also to be interpreted in light of international environmental law.

c) *Scope of human rights obligations ratione loci*

91. States are bound by human rights obligations only when they exercise jurisdiction over a given person.⁵² Human rights obligations arise primarily with regard to persons within a State's territory. This was stressed notably by the ECtHR in its *Bankovic* judgment. In the said case the ECtHR stated:

“The [European] Court [of Human Rights] is of the view, therefore, that Article 1 of the [European] Convention [on Human Rights] must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case.”⁵³

92. At the same time, Germany recognizes and acknowledges that – notably in line with the Court's own jurisprudence and that of regional human rights courts – international human rights treaties such as *inter alia* the ICCPR⁵⁴, the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’)⁵⁵, may in exceptional circumstances apply extraterritorially, leading to a State being

⁵² *Cf. e.g.* Article 2 (1) of the ICCPR, Article 1 of the ECHR.

⁵³ ECtHR, *Bankovic and Others v. Belgium and 16 Other States*, App. No. 52207/99, 12 December 2001, para. 61.

⁵⁴ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, I.C.J. Rep. 2004, p. 163, paras. 110, 111.

⁵⁵ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, I.C.J. Rep. 2004, p. 163, para. 112.

held responsible for acts having effects outside of a State's own territory. However, even the most far-reaching positions taken by international human rights bodies such as *e.g.* the Human Rights Committee agree, and rightly so, that this may only be the case in situations where a State exercises effective control over a person.⁵⁶ The question whether a State exercises effective control over a person by virtue of incidents taking place outside of the State's territory, and whether then, as a legal consequence, said State can be held accountable for any ensuing human rights violation abroad, cannot be decided in a general manner. Rather, each and every specific situation must be examined individually on a case-by-case basis.⁵⁷

93. However, as States may only be considered to exercise extraterritorial jurisdiction if they exercise effective control over persons abroad, States don't exercise jurisdiction on the mere basis of acts or omissions that cause effects in a different State. The fact that a state controls the activities that cause damage in a different state⁵⁸ is not sufficient for the exercise of extraterritorial jurisdiction. Germany considers such a cause-and-effect approach to jurisdiction to be incompatible with the object and purpose of human rights treaties and not covered by the consent of the contracting States. Such an interpretation of international human rights conventions would mean that human rights obligations of States under any regional or universal human rights regime would extend to the entire population of the world. At the same time, any human rights

⁵⁶ *Cf. e.g.* CCPR, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 2004, para. 10; IACtHR, Advisory Opinion OC-23/17, 15 November 2017, paras. 81, 102 ff., 136, 175-180.

⁵⁷ ECtHR, *Banković and Others v. Belgium and 16 Other States*, App. No. 52207/99, 12 December 2001, para. 61.

⁵⁸ This standard was applied by the Committee on the Rights of the Child (CRC) in *Savchi et al. v. Germany*, 22 September 2021, UN Doc. CRC/C/88/D/107/2019, para. 9.5

court or body would have jurisdiction as far as each and every person affected by climate change was concerned.

94. Applied specifically to the issue of the emission of greenhouse gases emanating from one State's territory, and eventual ensuing harm being caused by climate change, it follows that exposure to emissions emanating from the territory of a given State, even assuming *arguendo* that they alone, or jointly with other emissions emanating from other States, might cause adverse effects to human rights in a different State, does not amount to the exercise of 'jurisdiction' over persons residing in such other State by the emitting State.
- d) *Scope of human rights obligations ratione personae / requirement of causality / victim status*
95. The overarching goal of human rights treaties is to protect the victims of human rights violations. In other words, human rights treaties do not aim to protect persons from merely abstract risks. Rather, an actual and considerable infringement of a protected right must exist. This implies that possible future infringements of such rights do not as such yet constitute violations of applicable human rights treaties.
96. Finding a human rights violation for which a specific State would bear responsibility under the general rules of State responsibility would require a finding of a causal link between the conduct of such State and the infringement of a given human right.

97. As to the specific case of climate change caused by greenhouse gas emissions, States can thus not be held responsible for human rights violations caused by climate change, unless it can be established that the harmed person is specifically, and directly, affected as an individual in his or her human rights protected by international law by acts or omissions of a *specific* State.
98. This means that where the general adverse effects of climate change cannot be attributed to a single State, or to a limited group of States, but where instead such adverse effects have been caused, or will be caused in the future, by the international community of States at large, no single State can individually be held responsible for ensuing human rights infringements.
99. Germany acknowledges that it has been successfully shown in individual cases that particular consequences of climate change may cause imminent, or reasonably foreseeable, harm to specific individuals.⁵⁹ This however presupposes – apart from the exercise of effective control and hence jurisdiction *over the victim* – that the acts that cause such harm can be attributed to the State concerned, and that, in addition, a causal link exists between such act and the harm caused.
100. Moreover, a person claiming a human rights violation must be able to demonstrate that he or she is individually, directly and presently affected in his or her human rights, *i.e.* that he or she is a victim of a human rights violation taking place by acts or omissions of a *specific* State.

⁵⁹ Cf. e.g. CCPR, *Ioane Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016, 24 October 2019; CCPR, *Billy et al. v. Australia*, UN Doc. CCPR/C/135/D/3624/2019, 21 July 2022.

101. Accordingly, individual rights of human beings who will only come into existence in the future, but who do not yet exist as of today, cannot be taken into account when considering alleged human rights violations that are claimed to take place now, or that are reasonably foreseeable.⁶⁰ Likewise, human beings alive now cannot claim rights on behalf of members of future generations.
102. Germany accordingly takes the position that the idea of individual human rights of members of future generations does not form part of the current international *lex lata*. As a matter of fact, whilst there are non-legally binding international documents, as well as domestic constitutions, providing for individual rights of members of future generations of human beings, this concept lacks a grounding in generalized State practice and *opinio iuris*.
103. Finally, the efforts required to sufficiently protect fundamental human rights, especially those of a *jus cogens* character such as the right to life, can change in the *future*. This depends on the development of climate change, and its future impact on the protection of human rights. In order to maintain their compliance with international human rights law, States must therefore continuously evaluate and adapt their mitigation efforts in light of changing circumstances. Notably, they must adapt the regulatory framework at the national and international levels in a manner that ensures the fulfilment of their human rights obligations.

⁶⁰ According to the CRC Committee, “Mechanisms should be available for claims of imminent or foreseeable harms and past or current violations of children’s rights”, CRC, General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change, UN Doc. CRC/C/GC/26, 22 August 2023, para. 84.

e) *Right to a clean, healthy, and sustainable environment*

104. Germany is cognizant of the fact that combatting climate change is an endeavour that is connected to maintaining a clean, healthy and sustainable environment. This is so because the deleterious effects of climate change are also often detrimental to the preservation of a clean, healthy and sustainable environment. Germany therefore wishes to mention the ongoing debate regarding a right to a clean, healthy, and sustainable environment. Germany notes that Article 24 of the African Charter on Human and Peoples' Rights, Article 38 of the Arab Charter of Human Rights, and Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ('Protocol of San Salvador'), all contain, albeit in slightly different forms, a right to a healthy environment. A growing number of States explicitly recognize a right to a healthy environment in national legislation. At the same time no equivalent general individual right to a healthy environment has so far been enshrined in any universally accepted human rights treaty. An individual right to a healthy environment is currently not part of international customary law.
105. The right to a healthy environment, however, has been recognized politically by resolutions in both the Human Rights Council and the General Assembly. Germany has been an active supporter of these resolutions. These resolutions reflect an understanding of the right as not being a "new" right, but rather a right that is derived from and inherent in already existing international human rights obligations, in particular under the International Covenant on Civil and

Political Rights and the International Covenant on Economic, Social and Cultural Rights.

106. This interconnection with existing rights is clearly reflected in the 2022 General Assembly resolution on the human right to a clean, healthy and sustainable environment. The said resolution, after recognizing the right to a clean, healthy and sustainable environment as a human right, at the same time

“[n]ote[d] that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;”

and that in order to promote this human right

“(…) the full implementation of the multilateral environmental agreements under the principles of international environmental law”⁶¹

is required. This once again demonstrates that on the universal level the right to a clean, healthy, and sustainable environment, for one, constitutes a specific manifestation of other previously established human rights, and that, besides, it must, just like other environment-related human rights, be interpreted in line with the obligations States have undertaken under international environmental law.

⁶¹ UNGA, The human right to a clean, healthy and sustainable environment, UN Doc. A/RES/76/300, 1 August 2022.

II. Certain specific obligations under human rights treaties

107. None of the nine universal major UN human rights treaties contains an explicit right to a healthy environment or an explicit State obligation to combat climate change.⁶² However, over the past 15 years, all UN human rights treaty bodies have dealt with the challenges of climate change in connection with the human rights obligations arising under the respective treaties. As the Court has confirmed, their interpretations may provide guidance in interpreting the respective human rights treaties. As the Court has put it:

“Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled.”⁶³

⁶² Only Article 11 of the Convention on the Rights of Persons with Disabilities provides that States Parties must take all necessary measures to ensure the protection and safety of persons with disabilities in situations of danger, including natural disasters, which might be interpreted as including such incidents caused by long-term climate change.

⁶³ ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Rep. 2010, p. 639, para. 66.

108. At the same time, however, the Court has also recently made it clear that it is not legally bound by any such interpretation, notwithstanding the weight to be given by the Court to such interpretations by human rights treaty bodies:

“The Court recalls that, in its Judgment on the merits in the Diallo case, to which reference is made in paragraph 77 above, it indicated that it should ‘ascribe great weight’ to the interpretation of the International Covenant on Civil and Political Rights — which it was called upon to apply in that case — adopted by the Human Rights Committee (Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II), p. 664, para. 66). In this regard, it also affirmed, however, that it was ‘in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee’ (ibid.). In the present case concerning the interpretation of CERD, the Court has carefully considered the position taken by the CERD Committee, which is specified in paragraph 100 above, on the issue of discrimination based on nationality. By applying, as it is required to do (cf. paragraph 75), the relevant customary rules on treaty interpretation, it came to the conclusion indicated in paragraph 88, on the basis of the reasons set out above.”⁶⁴

109. It is in light of these considerations, by the Court, that Germany will now address some of the most relevant issues related to the protection of human rights with regard to mankind-induced climate change.

⁶⁴ ICJ, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 71, para. 101.

a) *Right to life*

110. Environmental degradation, climate change and unsustainable development are among the most urgent and serious threats to the right to life of present and future generations.⁶⁵ It has to be noted, however, that this does not mean that climate change ought to be understood as constituting an immediate threat to, or violation of, the right to life as such.⁶⁶ As a matter of fact, the Human Rights Committee has so far *not* yet found any violation of Article 6 of the ICCPR to have been caused by climate change. It was however of the view that without robust national and international efforts, the effects of climate change may in the future expose individuals to a violation of their rights under Articles 6 or 7 of the ICCPR when States remove a person to a territory the existence of which is threatened by climate change.⁶⁷
111. Likewise, the CRC Committee did not find a violation of any rights enshrined in the CRC in *Sacchi et al. v. Argentina, Brazil, France, Germany and Turkey* since the individual complaints were declared inadmissible by the Committee for failure to exhaust local remedies.
112. Leaving aside the issue of whether the applicants were subject to the jurisdiction of the respondent States for the purposes of the Convention already addressed

⁶⁵ CCPR, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, 30 October 2018, para. 62.

⁶⁶ CCPR, *Ioane Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016, 7 January 2020, para. 9.11.

⁶⁷ CCPR, *Ioane Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016, 7 January 2020, para. 9.11.

above, it ought to be noted that the CRC Committee did not make any reference to a specific right protected under the CRC.⁶⁸ Rather, it stated in general terms that climate change poses significant *risks* to the enjoyment of human rights, such as the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights, and that failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, *could* constitute a violation of States' human rights obligations.⁶⁹

113. The decision therefore did not clarify or confirm specific State obligations arising under the CRC, let alone find a violation of such obligations by any of the respondent States. Rather, any possible breach of a right of a child, as enshrined in the CRC, will in the future have to be assessed individually on a case-by-case basis.

b) *Specific human rights obligations vis-à-vis children, women and other vulnerable groups related to climate change*

114. The vulnerability of certain specific groups of people increases their risk of being particularly affected by the consequences of climate change. Natural disasters in general induced by human behaviour or not – as well as climate change in particular, tend to hit those who already find themselves in a vulnerable position particularly hard since they are less able, and often lack the necessary means and

⁶⁸ The complaint had claimed breaches of Articles 6, 24 and 30, read in conjunction with Article 3 of the CRC.

⁶⁹ CRC, *Sacchi et al. v. Germany*, UN Doc. CRC/C/88/D/107/2019, 22 September 2021, para. 9.6.

opportunities, to protect themselves adequately against the hazards resulting from climate change and changing environmental conditions.⁷⁰

115. Vulnerable groups are thus prone to be affected earlier and more severely than other groups by a deterioration of the general situation in their home country.⁷¹ Subject to the issue of whether a certain person finds him- or herself subject to the jurisdiction of a given State Party to a specific treaty protecting the rights of women, children, or people with disabilities, States to such treaties thus have to take appropriate steps to safeguard and protect the rights of members of such specific groups against the effects of climate change in order to avoid a discriminatory effect on their rights caused by greenhouse gas emissions.
116. Notably, in fulfilling their obligations under applicable rules of international environmental law, States must take into account the specific social-economic status that women still have in many societies. They must also take into account, as far as children are concerned, the fact that their life-span extends beyond that of adults, which means that children could be exposed to more severe consequences of climate change should the international community of States not take sufficient timely measures to curb greenhouse gas emissions. Moreover, States, in fulfilling their human rights obligations, as outlined above, must also further take into account the specific situation of children in light of their state of development and physical constitution.

⁷⁰ Cf. also ILC, Draft guidelines on the protection of the atmosphere, with commentaries, UN Doc. A/76/10, 2021, draft guideline 9 para. 3.

⁷¹ Human Rights Council, John H. Knox, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/25/53, 30 December 2013; CEDAW, General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change; CRC, General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, UN Doc. CRC/C/GC/26, 22 August 2023.

c) *Rights of minorities and indigenous populations*

117. Ethnic minorities and notably indigenous peoples given the habitats they are living in and depend on, rely particularly on a healthy environment. In line with the views the Human Rights Committee, Germany draws attention to the fact that indigenous peoples often still maintain a traditionally territorial culture. Accordingly, protection within the meaning of Article 27 of the ICCPR may also consist of preserving their particular way of life closely linked to nature.⁷² The scope of protection under Article 27 of the ICCPR may therefore be affected if the exercise of traditional activities, such as fishing or hunting, is endangered by environmental degradation⁷³ caused by climate change. Here again, this will only lead to a violation of the ICCPR if the above-mentioned conditions are fulfilled (jurisdiction, victim requirement etc.).

⁷² CCPR, *Billy et al. v. Australia*, UN Doc. CCPR/C/135/D/3624/2019, 21 July 2022, para. 8.13; *cf.* also CCPR, *Benito Oliveira et al. v. Paraguay*, UN Doc. CCPR/C/132/D/2552/2015, 14 July 2021, para. 8.6; CCPR, *Poma Poma v. Peru*, UN Doc. CCPR/C/95/D/1457/2006, 27 March 2009, para. 7.2.

⁷³ CCPR, *Benito Oliveira et al. v. Paraguay*, UN Doc. CCPR/C/132/D/2552/2015, 14 July 2021, para. 8.5.

SUBMISSIONS

118. In conclusion, Germany respectfully submits that:

- a) The **Paris Agreement and the UNFCCC are the decisive treaties** to determine the legal obligations of States under international law to ensure the protection of the climate system. While there are further obligations stemming from customary international law and other international treaties, **these different bodies of law should be seen as complementary to each other** and to the Paris Agreement and the UNFCCC. They need to be interpreted systemically and coherently in light of each other.
- b) **Article 2 (1) of the Paris Agreement** sets a **binding goal** to hold the increase in global average temperature to well below 2°C above pre-industrial levels, including through the pursuit of efforts to limit temperature increase to 1.5°C above pre-industrial levels, which all States Parties are obliged to achieve jointly.
- c) **Human rights and international environmental law inform each other:** Human rights obligations must be interpreted in light of obligations of States under international environmental law and *vice versa*.
- d) When fulfilling their obligations under applicable rules of international environmental law, States must take into account the **specific needs of vulnerable groups** such as women, children or people with disabilities, and intergenerational equity.
- e) The concept of common but differentiated responsibilities and respective capabilities (**CBDR**), in light of different national circumstances, **neither exempts certain States from their individual obligations, nor refers to ‘historical’ emissions of Parties in the past** – *i.e.* before any international legal norm on greenhouse gas emissions was established. No claims for damages or obligations to provide compensation whatsoever can be deducted from the Paris Agreement. Para. 51 of Decision 1/CP.21 concerning the adoption of the Paris Agreement concerning the said provision clarifies that Article 8 of the Paris Agreement does neither involve, nor provide a basis for any liability or compensation.

Berlin, 20 March 2024

Tania von Uslar

Tania von Uslar-Gleichen

- The Legal Adviser, German Federal Foreign Office -