INTERNATIONAL COURT OF JUSTICE

REQUEST FOR ADVISORY OPINION

Obligations of States in respect of Climate Change

Written Statement of the Federative Republic of Brazil

21st March 2024

INTRODUCTION

1. Pursuant to the International Court of Justice Orders of 20 April 2023 and 15 December 2023, the Federative Republic of Brazil has the honor to present this Written Statement regarding the advisory proceedings entitled "Obligations of States in respect of Climate Change".

2. On 29 March 2023, at its seventy-seventh session, the United Nations General Assembly adopted Resolution 77/276, requesting that the Court render an advisory opinion on the following questions:

> *(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. Brazil joined consensus on the aforementioned resolution and delivered the following statement after its adoption:

> *"Brazil welcomes the adoption of this paradigmatic resolution. The mandate we, the General Assembly, are giving to the ICJ comes at a critical time. Just last week the IPCC released its 6th Assessment Synthesis Report, which confirms that the challenge humanity has ahead is unprecedented in urgency and scale. Next December we will gather as Parties to the UNFCCC at COP28 to conclude the first Global Stocktake of the Paris Agreement. Deeply grounded on its two pillars of Science and Equity, the Global Stocktake will assess where we were, and where we must be in the fight against climate change.*
> *Justice seems to be the missing piece in this puzzle. Brazil has high expectations that the ICJ will help UNFCCC Member-States to reconcile differences and come together in a mission-oriented united front to finally unleash climate ambition.*
> *Brazil supports this resolution because it offers us an opportunity for uniting developed and developing countries on issues that have long kept us apart. Solving climate change involves solving a collective trauma. And we will not be able to move forward collectively if we don't overcome these differences. Since the UNFCCC was opened for signature in Rio, in 1992, we have suffered major trust drawbacks that risk stalling future engagement by all countries, a scenario that we cannot afford. We must leave no one behind - no country, no individual. Everyone must be protected from climate change; everyone must be involved in climate action. Alerts about the threats posed by climate change are not new. The IPCC has been presenting us with the best scientific evidence available on the gravity of the problem for over three decades, including on how developing countries would be the ones suffering the most from adverse impacts of global warming. The 1992 Rio Declaration introduced principles to guide our mission to promote sustainable development as a solution to the climate challenge. Recognizing historical emissions and different capabilities, the UNFCCC similarly enshrined the principles of equity and common but differentiated responsibilities. Accordingly, it imposed*

on developed countries the obligation to take the lead in reducing their own emissions, whilst providing finance, technology and capacity-building resources for mitigation and adaptation actions in developing countries.

Five years later, in 1997, we all adopted, as Parties to the UNFCCC, specific quantified targets for developed countries under the Kyoto Protocol, including a collective commitment for them to reduce their aggregate emissions by 5% by 2012, compared to 1990 levels. The Parties that have signed but not ratified Kyoto need to abide by its object and purpose, in line with international law.

The Kyoto target was never achieved by developed countries in aggregate. This failure has fundamentally derailed our global response to climate change from what our international community had originally agreed upon. Ten years after the adoption of the Kyoto Protocol, the IPCC 2007 4th Assessment Report issued clear scientific evidence calling developed countries to reduce their emissions by 10 to 40% by 2020, in relation to 1990.

Once again, that was never implemented. In 2010, under the COP16 Cancun Agreements, developed countries committed to mobilizing jointly USD 100 billion per year by 2020 to address the needs of developing countries.

Almost 15 years have passed and, yet again, developed countries' obligations were never fulfilled.

Alerts by Science have moved from the urgency around mitigation to that around adaptation, and now around loss and damage.

We must interrupt our path-dependency of inaction and burden shifting from developed to developing countries. After all, historical emissions have also been those that have fueled lingering structural inequalities within and among countries, a hateful legacy from colonialism and imperialism.

Looking at our traumatic past as a means to catapult us to a promising future, Brazil regards as a necessary implication of the text adopted today that the material scope of the Court's advisory opinion will indeed encompass responsibilities for historical emissions, the principle of common but differentiated responsibilities, and all unfulfilled obligations by developed countries under relevant international law, particularly the UNFCCC, its Kyoto Protocol and its Paris Agreement. Failing to address these issues and their unmistakable implications for current obligations and responsibilities of developed countries would both detach the advisory opinion from the broader normative and political context upon which the request is based and deprive it from a comprehensive outlook of the sources of international law applicable to the matter.

And once we have in hands the legal clarifications provided by the ICJ, we must use them not to point fingers, but rather as a symbol of reconciliation to help us move on, by bridging our differences. The confrontational attitude that is still pervasive in our climate-related debates is extremely worrisome in the context of the dangers Science has alerted us against. Our common fight against climate change must not be about being right or having the moral high ground; it's about cooperating, sharing resources, joining hands. Together, we must advance toward a model of leadership that is collective, based on mutual-empowerment, instead of self-empowerment. To face humanity's greatest challenge ever, we must strive for a new paradigm for our human family that leverages the very best of what it means to be human: empathy, solidarity and trust. Trust in one another, trust in our multilateral institutions, trust in our species".[1]

4. Brazil decided to submit this Written Statement in light of the urgency and gravity of climate change, which requires collective commitment and actions to fight it. Resolution

[1] UN Doc. A/77/PV.65.

77/276 emphasized the "urgency of scaling up action and support, including finance, capacity building and technology transfer, to enhance adaptive capacity and to implement collaborative approaches for effectively responding to the adverse effects of climate change".[2] International law is a powerful instrument to promote the effectiveness of multilateral efforts to address climate change. By participating in this Advisory Opinion, Brazil reaffirms its confidence in the International Court of Justice as the main judicial organ of the United Nations, capable of clarifying important legal questions on the obligations of States in the protection of the climate system and the legal consequences arising from it.

5. This statement is structured in five parts, as follows: (i) considerations on jurisdiction and judicial propriety; (ii) the principle of common but differentiated responsibilities; (iii) States' obligations under the multilateral climate change regime; (iv) legal consequences of these obligations; and (v) conclusion.

I.CONSIDERATIONS ON JURISDICTION AND JUDICIAL PROPRIETY

6. Brazil considers that all criteria for the Court to have advisory jurisdiction have been met. According to Article 65(1) of its Statute, the Court may "give an advisory opinion on any legal question at the request of whatever body authorized by or in accordance with the Charter of the United Nations to make such a request".[3] The General Assembly has the authority to request the Court to give advisory opinions "on any legal questions", as established in Article 96 of the Charter of the United Nations.[4]

7. As this Court has clarified in previous Opinions, a legal question is "framed in terms of law and raise problems of international law"; and it is "susceptible of a reply based on law".[5] In the present proceedings, the Court is asked to rule on the obligations of States related to the climate system and the legal consequences arising thereof, which are questions framed in terms of international law that require answers within this framework. To answer these questions, the Court will have to delve into the existing international legal regime on climate change to interpret its rules in light of its principles. This is an "essentially judicial task",[6] which has been the "usual situation for an advisory opinion of the Court to pronounce on".[7]

8. Moreover, there are no compelling reasons for the Court not to reply to the questions formulated through Resolution 77/276. On the contrary, by providing legal clarity on State's obligations relating to climate change, this Court will fulfill its responsibility to provide "legal

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[2] UNGA Res. A/77/276, 11° preambular paragraph.
[3] Statute of the International Court of Justice, Article 65(1).
[4] According to Article 96 of the UN Charter, "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question". See also Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, *I.C.J. Reports 1982*, pp. 333-334, para. 21.
[5] Western Sahara, Advisory Opinion, *I.C.J. Reports 1975*, p. 18, para. 15.
[6] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, *I.C.J. Reports 1996*, pp. 234-235, para. 13.
[7] Western Sahara, Advisory Opinion, *I.C.J. Reports 1975, p. 20, para 19.*

advice to the organs and institutions requesting the opinion".[8] There is no doubt about the powers of the General Assembly to request this Advisory Opinion on climate change. The core international legal instrument to address climate change – the United Nations Framework Convention on Climate Change (UNFCCC) – originated from a General Assembly Resolution.

9. Resolution 45/212, on the "Protection of global climate for present and future generations of mankind", established the intergovernmental negotiating process – "under the auspices of the General Assembly" – for "an effective framework convention on climate change". In the same Resolution, the General Assembly reaffirmed the principles embodied in its Resolutions 44/207 and 44/228. Resolution 44/207 is particularly relevant here, as it "reaffirms that, owing to its universal character, the United Nations system, through the General Assembly, is the appropriate forum for concerted political action on global environmental problems."[9] Differently from the Security Council, which has neither the competence nor the representativeness to fight climate change, the General Assembly is the appropriate forum to address global environmental problems, including climate change, which is evidenced by the series of UNGA Resolutions addressing this matter,[10] whose normative value may not be disregarded.[11] The present request, therefore, aims at assisting the General Assembly to exercise its functions.

10. For that, the Court must "take into account existing rules of international law which are directly connected with the terms of the request and indispensable for the proper interpretation and understanding of its Opinion".[12] The present request enlists a number of international instruments, some of them outside the multilateral climate regime. Hence, it is for this Court to decide, "after consideration of the great corpus of international law",[13] what is the "most directly relevant applicable law governing"[14] the present question. For Brazil, it is clear that this answer lies in the multilateral climate change regime, centered in the UNFCCC and its Paris Agreement. In recent years, the General Assembly has recognized the UNFCCC and its Paris Agreement as "the primary international, intergovernmental forums for negotiating the global response to climate change",[15] and has invited its Secretariat to report on the work of the Conference of the Parties to the Convention. The importance of the Kyoto Protocol must also be stressed by the Court.

11. The multilateral climate change regime is based on a number of principles that ensure balance, transparency and inclusivity, with decisions based on the consensus of all states as Parties to the Convention. It is anchored in clear mandates from the UN General Assembly,

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[8] Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, *I. C. J. Reports 1950*, p. 71

[9] UNGA Res 44/207.

[10] UNGA Resolutions 43/53 of 6 December 1988, 54/222 of 22 December 1999, 62/86 of 10 December 2007, 63/32 of 26 November 2008, 64/73 of 7 December 2009, 65/159 of 20 December 2010, 66/200 of 22 December 2011, 67/210 of 21 December 2012, 68/212 of 20 December 2013, 69/220 of 19 December 2014, 70/205 of 22 December 2015, 71/228 of 21 December 2016, 72/219 of 20 December 2017, 73/232 of 20 December 2018, 74/219 of 19 December 2019, 75/217 of 21 December 2020 and 76/205 of 17 December 2021.

[11] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, *I.C.J. Reports 1996*, pp. 234-235, para. 68.

[12] Western Sahara, Advisory Opinion, *I.C.J. Reports 1975,p. 30, para 52.*

[13] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, *I.C.J. Reports 1996*, para 23-34.

[14] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, *I.C.J. Reports 1996*, para 23-34.

[15] UNGA Res. 77/165, 21/12/2022.

and from the legally binding instruments that form it. Brazil understands, therefore, that the Court has and should exercise its advisory jurisdiction, applying the rules and principles of the multilateral climate change regime.

II. THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES

12. Differentiation in favor of developing states remains, as it always was, the linchpin, the very heart of the climate change international legal regime. In such a light, treaty obligations in this field must be seen as a departure from the idea of reciprocity because of the imperative of justice, equity, and fairness. Failure to uphold differentiation would seriously undercut the legitimacy of the regime, including its universality.

13. Climate justice arises not only from the inter-generational standpoint but also from different levels of development between states. The question is therefore linked with the common but differentiated responsibilities principle, and any interpretation that dilutes it is a hindrance to the achievement of climate justice.

14. The foundations of the common but differentiated responsibilities principle predate the 1992 United Nations Conference of Environment and Development (UNCED), held in Rio de Janeiro, Brazil, when it was first multilaterally articulated in the "Rio Declaration on Environment and Development" (hereinafter "Rio Declaration").

15. The "Report of the World Commission on Environment and Development: Our Common Future" (the "Brundtland Report"), published in 1987, as it identified what would be the basis for the concept of "sustainable development", explored ideas of common actions and differentiated responsibilities.

16. Much earlier, in the first environment conference of the United Nations (United Nations Conference on the Human Environment, Stockholm, 1972), the following was included on paragraph 4 of its declaration:

> "*In the developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap between themselves and the developing countries. In the industrialized countries, environmental problems are generally related to industrialization and technological development.*"

17. Similarly, Principle 12 of the Stockholm Declaration states:

> "*Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries*

and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose."

18. In both excerpts, the Conference demonstrated agreement on the special circumstances that developing countries face and the responsibilities of developed countries to support them. During the preparation of the UNCED, there was a long search for a sentence that could, in a brief manner, express the debate that had been going on since the preparation of the Stockholm Conference. The evolution of the name of the conference itself from "Human Environment" to "Environment and Development" demonstrate what was the central issue. After the Rio Conference, with the mainstreaming of the concept of "sustainable development", which originated in the Brundtland Report, the following conference in Johannesburg in 2002 was titled "World Summit on Sustainable Development".

19. With the successive conference, know as Rio+20, in 2012, the reference to sustainable development was maintained: "United Nations Conference on Sustainable Development". On that opportunity, were approved the "Sustainable Development Goals" (SDGs). In the year 2015, Resolution A/RES/70/1 of the United Nations General Assembly approved the creation of the Agenda 2030, which states on its paragraph 12: "We reaffirm all the principles of the Rio Declaration on Environment and Development, including, inter alia, the principle of common but differentiated responsibilities, as set out in principle 7 thereof". It is therefore recognized that the SDGs created an agenda that was incorporated and disseminated widely, and became reference beyond the UN and even for the Bretton Woods institutions.

20. In December 1992, the United Nations General Assembly endorsed the Rio Declaration through its Resolution 47/190, adopted by consensus. The Declaration contains twenty-seven principles, which – according to Principle 27 – should serve as basis for "the further development of international law in the field of sustainable development". The Rio Principles are the cornerstone upon which international environmental law has been built, including the entire climate change regime, inaugurated by the United Nations Framework Convention on Climate Change (hereinafter "UNFCCC") – also adopted in 1992, in Rio de Janeiro – and complemented by the 1997 Kyoto Protocol to the UNFCCC (hereinafter "Kyoto Protocol") and also by the 2015 Paris Agreement to the UNFCCC (hereinafter "Paris Agreement").

21. Since the Rio Declaration (1992), international law unequivocally recognizes the common but differentiated responsibilities (CBDR) principle, which has lately been renamed to common but differentiated responsibilities and respective capabilities (CBDR-RC) in climate change treaties. Principle 7 of the Rio Declaration states:

Principle 7.
States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem.
In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their

societies place on the global environment and of the technologies and financial resources they command.

22. Currently, the CBDR-RC principle is widely recognized in several multilateral environment agreements[16] and instruments, domestic legislation, and decisions of international judicial and non-judicial bodies, such as the Inter-American Court of Human Rights[17] and the World Trade Organization (WTO) Dispute Settlement Body, either directly or by reference to Principle 7 of the Rio Declaration. For example, in the US-Shrimp Case, the WTO Panel affirmed the principle according to which "States have common but differentiated responsibilities to conserve and protect the environment".[18] Moreover, the CBDR-RC principle has been applied by domestic courts of states from different regions, and with various development levels.[19]

23. Among multilateral environmental agreements, those concerning climate change developed further the meaning of the CBDR-RC principle in a manner that emphasized the role of justice and equity as a basis for states' differentiation.

24. The United Nations Framework Convention on Climate Change (UNFCCC) duly recognizes the role of CBDR in its preamble, as well as in articles 3(1) and 4(1), adding the idea of "respective capabilities to the principle" (RC). The UNFCCC imposes legally enforceable obligations, as it stipulates enforceable primary international legal rules, as well as provides a general framework for the interpretation of its Protocols and related instruments. It states that 'the largest share of historical and current emissions of greenhouse gases has originated in developed countries.' The Kyoto Protocol (Art. 10) and its Annex B gave the CBDR-RC principle wider concreteness, also through legally enforceable obligations.

25. Brazil recognizes that the Paris Agreement, in its preamble and in its art. 2(2)), adopts a specific perspective on the principle by alluding to "different national circumstances". Such a reference, however, does not deprive the principle of its legal authoritativeness. On the contrary, it only reinforces the idea that the CBDR-RC principle applies no matter the approach taken to the differentiation. Specifically, the Paris Agreement adopts a bottom-up approach

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[16] Paris Agreement (preambular paragraph 3, and Articles 2(2), 4(3) and 4(19)); the Kyoto Protocol (Art. 10); and the United Nations; the United Nations Framework Convention on Climate Change (UNFCCC, preambular paragraph 6, and Articles 3(1) and 4(1)). Other multilateral environmental agreements also refer to the principle: the Stockholm Convention on Persistent Organic Pollutants (preambular paragraph 13) and the Minamata Convention on Mercury (preambular paragraph 4). The principle is also endorsed in the 2002 Johannesburg Plan of Implementation and in the Outcome Document of the 2012 Rio+20 conference (*The Future We Want*).

[17] Inter-American Court of Human Rights, OC 23/17, para. 183.

[18] World Trade Organization (*United States – Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Panel, WT/DS58/RW, 15th June 2001, para. 7.2).

[19] Brazil (11ª Vara Federal de Curitiba, GP Distribuidora de Combustíveis S.A. vs. DG-ANP, 2021); Netherlands (Dutch Supreme Court. Urgenda v. Netherlands. (2019)); Germany (Federal Constitutional Court, Neubauer vs. Germany, 2020); France (Conseil d'Etat, Commune de Grande-Synthe vs. France (Decision 11° 427301; Admissibility, 2020) and Notre Affaire a Tous and Others vs. France, 2021); Ecuador (Baihua Caiga et. al. , vs. Petro Oriental S.A. ,2020); Mexico (District Court in Administrative Matters, Nuestros Derechos al Futuro y Medio Ambiente Sano et. al., vs. Mexico, 2022); Norway (Supreme Court, Greenpeace Nordic Ass'n vs. Ministry of Petroleum and Energy, People vs. Arctic Oil, 2020); New Zealand (High Court, Thomson vs. Minister for Climate Change Issues, 2017); Australia (High Court, Gloucester Resources Limited vs. Minister for Planning, 2019); and Belgium (4th Chamber of Brussels, VZW Klimaatzaak vs. Kingdom of Belgium & Others, 2021).

towards climate change that still requires more efforts from developed states than from developing states. Hence, the idea of differentiation is kept, demanding from developed states to 'take the lead in combating climate change and the adverse effects thereof' (UNFCCC, Article 3(1)), as a general direction. That is why the General Assembly, in the request for this advisory opinion, textually mentions that "the United Nations Framework Convention on Climate Change and the Paris Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances" (preambular paragraph 7).

26. Among other principles of the international legal regime on climate change, the CBDR-RC principle, due to its structural role, is an essential legal tool to guide the interpretation and implementation of the obligations established therein. The CBDR-RC, indeed, constitutes an essential component of the primary rules that define States´s obligations under the international legal regime on climate change In such a regime, the lead of developed states "in combating climate change and the adverse effects thereof" entails that international legal obligations must be interpreted and implemented commensurate to the contributions of States to the harm caused to the climate system and other parts of the environment, as well as to their capacities and resources. Albeit some developed states have argued that there were no international legal obligations at the time when much of the abovementioned harm happened by their acts and omissions, the respect of the sovereignty of other states entails a limit to the freedom of any given state. This limit is in force in international law for centuries, and not only after the emergence of specific legal rules on climate change.

27. In this vein, Brazil believes that the CBDR-RC principle goes beyond treaty law. Among other implications, it is a crucial legal principle that informs the whole international legal regime on climate change. Both existing international legal obligations, as well as future ones in the climate change international legal regime, must be implemented and interpreted in the light of the CBDR-RC principle. Such a reading comes not only from the binding rules on climate change agreements that explicitly recognize it but also from the fact that such rules must be taken into account in the interpretation of any treaty related to climate change in the terms of Article 31(3)(c) of the Vienna Convention on the Law of Treaties – of a clear customary nature, as recognized by the Court.[20] The broad reach of the CBDR-RC on what relates to different international obligations of the states was recognized by several members of the International Law Commission in its 2023 session, as made clear in the Report of the Commission: "The link between the principle of equity and the principle of common but differentiated responsibilities was also mentioned by several members. It was noted that the latter principle, established in international law, was relevant to the obligations of all States to address climate change and its effects".[21]

28. Brazil expects that the Court recognizes the CBDR-RC as a structural legal principle for the implementation and interpretation of the international legal regime on climate change,

[20] Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), Judgment, *I.C.J. Reports 2008*, p. 177, para. 112.
[21] ILC, Report of the International Law Commission, 2023, para. 196.

also due to the importance the General Assembly attached to that principle in the request for this Advisory Opinion.

29. In this vein, the considerations below should be read in light of the fact that the CBDR-RC is a structural legal principle of the international legal regime on climate change.

III. STATES' OBLIGATIONS UNDER THE MULTILATERAL CLIMATE CHANGE REGIME

A. Scientific evidence and the Intergovernmental Panel on Climate Change

30. Climate change was first recognized as a "common concern of humankind" by the United Nations General Assembly (UNGA) in 1988. By Resolution 43/53, UNGA noted with concern emerging evidence that continued growth in atmospheric concentrations of greenhouse gases (GHG) could produce global warming. By that same resolution, UNGA also endorsed the establishment of the Intergovernmental Panel on Climate Change (IPCC).[22] In its first 1990 report, the IPCC assessed:

> *"We are certain of the following: (...) emissions resulting from human activities are substantially increasing the atmospheric concentrations of [GHG...]. These increases will enhance the greenhouse effect, resulting on average in an additional warming of the Earth's surface... If this occurs, consequent changes may have a significant impact on society".*[23]

31. There was then widespread evidence that GHG emissions could lead to increased atmospheric concentrations that would, in turn, result in global temperature increase, thereby impacting society. In scientific terms, the relevant relationship of causality consecrated ever since the establishment of the IPCC involves the link between emissions and concentrations, moving from concentrations to temperature increase, and thereby from temperature increase to potential damage. This three-step causality is determinant to this Court's advisory opinion insofar as the causal link between GHG emissions and adverse impacts from climate change is not linear. Rather it involves a complex dynamic in which past emissions contribute exponentially more to current global warming than present-day emissions, which only marginally add to the cumulative radiative forcing of cumulative historical emissions.

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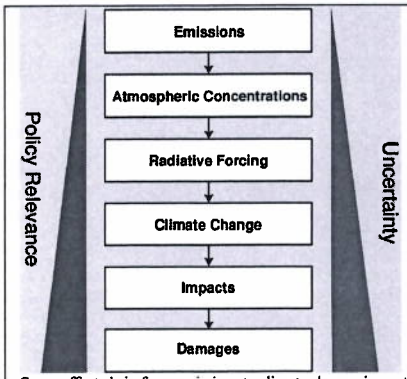
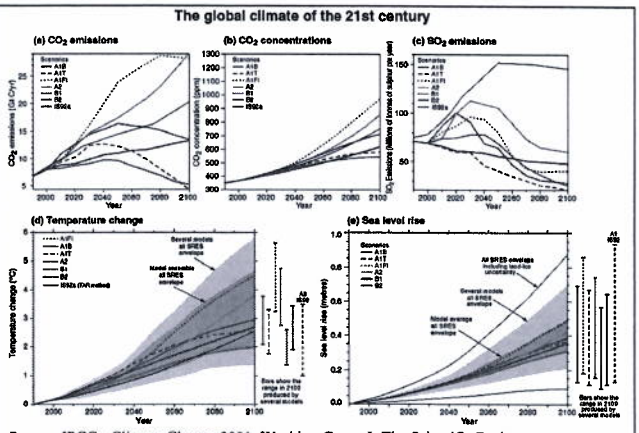
[22] UNGA Res. 43/53: "Protection of global climate for present and future generations of mankind", https://documents.un.org/doc/resolution/gen/nr0/530/32/img/nr053032.pdf?token=whOwjOuUD0y3f8PIMH&fe=true.

[23] Policymaker Summary of Working Group I (Scientific Assessment of Climate Change), https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_90_92_assessments_far_wg_I_spm.pdf.



Cause-effect chain from emissions to climate change, impacts and damages (adapted from Fuglestvedt et al., 2003, Climatic Change)



Source: IPCC - Climate Change 2001: Working Group I: The Scientific Basis.

B. The United Nations Framework Convention on Climate Change - UNFCCC

32. In response to scientific alerts by the IPCC, the United Nations Framework Convention on Climate Change (UNFCCC or "Convention") was adopted in 1992 and open for signature at the United Nations Conference on Environment and Development, held in Rio de Janeiro that same year. The Convention inaugurated the multilateral climate change regime under its umbrella, while expressly conditioning all its related instruments to its ultimate objective, principles and provisions. Under Article 2:

> *"The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."*

33. The ultimate objective of the Convention and its legal instruments is, thus, directly related to the stabilization of atmospheric concentrations at a level that would prevent potential impacts, particularly on ecosystems, food production and economic development.

34. The Conference of the Parties to the Convention (COP) adopted the Kyoto Protocol to the UNFCCC in 1997, and the Paris Agreement to the UNFCCC in 2015. As legal instruments related to the Convention, both the Protocol (and the Paris Agreement, as will be seen later) are bound by UNFCCC principles and provisions. Accordingly, the preamble of the Kyoto Protocol clearly states:

> *"The Parties to this Protocol,*
> *Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as "the Convention",*
> *In pursuit of the ultimate objective of the Convention as stated in its Article 2,*
> *Recalling the provisions of the Convention,*

Being guided by Article 3 of the Convention,
Pursuant to the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the to the Convention at its first session,
Have agreed as follows..."

35. Similarly, the preamble of the Paris Agreement states:

"The Parties to this Agreement,
Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as "the Convention",
Pursuant to the Durban Platform for Enhanced Action established by decision 1/CP.17 of the Conference of the Parties to the Convention at its seventeenth session...
In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances...
Have agreed as follows..."

36. In "actions to achieve the objective of the Convention and to implement its provisions," the UNFCCC provides that "Parties shall be guided" by the principles listed in its Article 3, namely: (i) "equity and common but differentiated responsibilities and respective capabilities" (Article 3.1); (ii) "[full consideration of] specific needs and special circumstances of developing country Parties" (Article 3.2); (iii) "precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects" (Article 3.3); (iv) the "right [and obligation to] promote sustainable development" (Article 3.4); and (v) the obligation to "cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties" (Article 3.5). As Parties to the Convention,[24] Parties to the Kyoto Protocol and to the Paris Agreement are therefore all bound to these five overarching principles when implementing their obligations under these three treaties. The principle of CBDR-RC, in particular, as emphasized earlier, mandates developed countries "to take the lead in combating climate change and the adverse effects thereof," a principle that is operationalized as treaty law in various legal provisions of the Convention, and the Kyoto Protocol and Paris Agreement thereunder.

37. In line with such principles, legal obligations under the UNFCCC are mainly provided in its Article 4. Under Article 4.1, "all Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall" abide by obligations regarding mitigation, transparency, and cooperation that are detailed along its text. Under Article 4.2, "developed country Parties

[24] A country must be a Party to the Convention in order to be a Party either to the Kyoto Protocol or the Paris Agreement. Article 24.1 of the Kyoto Protocol states that "this Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention", while Article 27.3 provides that "any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol." Article 20.1 of the Paris Agreement states that "this Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Convention", whilst Article 28.3 provides that "any Party that withdraws from the Convention shall be considered as also having withdrawn from this Agreement".

and other Parties included in Annex I of the Convention" are bound to additional mitigation and transparency obligations.

38. Paragraphs 3 to 5 of Article 4 further impose on "developed country Parties and other developed Parties included in Annex II" climate finance obligations towards developing countries. Conversely, Article 4.7 conditions the implementation of obligations under the Convention by developing countries to financial and technology resources they receive from developed countries:

> *"The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties."*

C. The Kyoto Protocol to the UNFCCC

39. At the very first Conference of the Parties (COP) to the UNFCCC (Berlin, 1995), Parties adopted Decision 1/CP.1,[25] which "reviewed Article 4, paragraph 2(a) and (b), of the [UNFCCC], and [...] agree[d] to begin a process... for the period beyond 2000, including the strengthening of the commitments of the Parties included in Annex I to the Convention (Annex I Parties) in Article 4, paragraph 2(a) and (b), through the adoption of a protocol or another legal instrument." Decision 1/CP.1 defined that:

> *'1. The process shall be guided, inter alia, by the following:*
> *(a) The provisions of the Convention, including Article 3, in particular the principles in Article 3.1, which reads as follows: "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof;"*
> *(b) The specific needs and concerns of developing country Parties referred to in Article 4.8; the specific needs and special situations of least developed countries referred to in Article 4.9; and the situation of Parties, particularly developing country Parties, referred to in Article 4.10 of the Convention;*
> *(c) The legitimate needs of the developing countries for the achievement of sustained economic growth and the eradication of poverty, recognizing also that all Parties have a right to, and should, promote sustainable development;*
> *(d) The fact that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that the per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs;*
> *(e) The fact that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response,*

[25] Decision 1/CP.1, FCCC/CP/1995/7/Add.1.

in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions;'

40. The so-called "Berlin Mandate" from the 1995 COP1 resulted in the adoption of the 1997 Kyoto Protocol to the Convention, which imposed emission accounting rules and quantified emission limitation and reduction commitments to Annex I Parties.[26] The Kyoto Protocol counted with a first commitment period from 2008 to 2012, in which Annex I countries were imposed the target of reducing their overall emissions by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012 (Article 3.1), as well as a second commitment period from 2012 to 2020.[27]

41. The Kyoto Protocol is still in force. At the 18th Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP18, Dubai, November/ December 2023), Brazil proposed discussions on a possible third commitment period of the Protocol.[28] The provisions of the Kyoto Protocol are therefore legally binding and must be considered by this Court.

D. The Paris Agreement to the UNFCCC

42. While the Kyoto Protocol was never ratified by the United States of America and was denounced by Canada,[29] Parties to the Convention adopted the "Cancun Agreements" at COP16 (Cancun, 2010), which included a "shared vision for long-term cooperative action":

"A shared vision for long-term cooperative action
1. [The COP] affirms that climate change is one of the greatest challenges of our time and that all Parties share a vision for long-term cooperative action in order to achieve the objective of the Convention under its Article 2, including through the achievement of a global goal, on the basis of equity and in accordance with common but differentiated responsibilities and respective capabilities; this vision is to guide the policies and actions of all Parties, while taking into full consideration the different circumstances of Parties in accordance with the principles and provisions of the Convention; the vision addresses mitigation, adaptation, finance, technology development and transfer, and capacity-building in a balanced, integrated and comprehensive manner to enhance and achieve the full, effective and sustained implementation of the Convention, now, up to and beyond 2012;
2. Further affirms that:
(a) Scaled-up overall mitigation efforts that allow for the achievement of desired stabilization levels are necessary, with developed country Parties showing leadership by undertaking ambitious emission reductions and providing technology, capacity-building and financial resources to developing country Parties, in accordance with the relevant provisions of the Convention;

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[26] Kyoto Protocol, Article 2.
[27] Doha Amendment to the Kyoto Protocol, adopted by CMP8, Doha, 8 December 2012: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-c&chapter=27&clang=_en.
[28] Available at: https://unfccc.int/documents/633025.
[29] https://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-eb-25-2014-2_canada_withdrawal_from_kp.pdf.

(b) Adaptation must be addressed with the same priority as mitigation and requires appropriate institutional arrangements to enhance adaptation action and support;
(c) All Parties should cooperate, consistent with the principles of the Convention, through effective mechanisms, enhanced means and appropriate enabling environments, and enhance technology development and the transfer of technologies to developing country Parties to enable action on mitigation and adaptation;
(d) Mobilization and provision of scaled-up, new, additional, adequate and predictable financial resources is necessary to address the adaptation and mitigation needs of developing countries;
(e) Capacity-building is essential to enable developing country Parties to participate fully in, and to implement effectively, their commitments under the Convention; and that the goal is to enhance the capacity of developing country Parties in all areas;"[30]

43. Regarding "enhanced action on mitigation," COP16 agreed on *"nationally appropriate mitigation commitments or actions by developed country Parties, emphasizing the need for deep cuts in global greenhouse gas emissions and early and urgent undertakings to accelerate and enhance the implementation of the Convention by all Parties, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities, [while] acknowledging that the largest share of historical global emissions of greenhouse gases originated in developed countries and that, owing to this historical responsibility, developed country Parties must take the lead in combating climate change and the adverse effects thereof".*[31]

44. COP16 also *"urge[d] developed country Parties to increase the ambition of their economy-wide emission reduction targets, with a view to reducing their aggregate anthropogenic emissions... to a level consistent with the Fourth Assessment Report of the Intergovernmental Panel on Climate Change."* As later recognized during COP28 in 2023, this mitigation commitment by developed country Parties was never achieved.[32] For developing country Parties, COP16 *"invite[d] developing countries that wish to voluntarily inform the Conference of the Parties of their intention to implement nationally appropriate mitigation actions", "recognizing that developing country Parties are already contributing and will continue to contribute to a global mitigation effort in accordance with the principles and provisions of the Convention, and could enhance their mitigation actions, depending on provision of finance, technology and capacity-building support by developed country Parties."*

45. In terms of climate finance, COP16 also legally formalized the commitment made by developed countries the previous year *"to a goal of mobilizing jointly USD 100 billion per year by 2020 to address the needs of developing countries."*[33] By 2021, developed countries would

[30] Decision 1/CP.16, COP16, Cancun, 2010.
[31] Ibid.
[32] In Decision 1/CMA.5, paragraph 17, COP28 "notes with concern the pre-2020 gaps in both mitigation ambition and implementation by developed country Parties and that the Intergovernmental Panel on Climate Change had earlier indicated that developed countries must reduce emissions by 25–40 per cent below 1990 levels by 2020, which was not achieved".
[33] Decision 1/CP.16, COP16, Cancun, 2010, para 98.

be found not to have met that goal, in a clear breach of their finance commitment, in addition to their failed emission mitigation commitment.[34]

46. In 2011, in parallel to discussions within CMP7 on the second commitment of the Kyoto Protocol, COP17 (Durban, 2011) launched negotiations that would lead to the adoption of the Paris Agreement to the UNFCCC in 2015. Under Decision 1/CP.17:

> *"[The COP,] noting with grave concern the significant gap between the aggregate effect of Parties mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 C or 1.5 C above pre-industrial levels, [...]*
> *2. Also decides to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, through a subsidiary body under the Convention hereby established and to be known as the Ad Hoc Working Group on the Durban Platform for Enhanced Action;"*

47. Following the conclusion of the Durban Platform, the Paris Agreement was adopted in 2015 and entered into force in 2016, with the purpose of "*enhancing the implementation of the Convention, including its objective.*" Reflecting the shared vision for long-term cooperative action established by COP16 through the "Cancun Agreement," the Paris Agreement set three long-term goals on temperature, adaptation, and finance flows, as well as specific provisions on mitigation, adaptation, finance, technology, and capacity-building, all to be "implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities". Article 2 of the Paris Agreement provides that:

> *Article 2*
> *1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:*
> *(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;*
> *(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and*
> *(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.*
> *2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.*

[34] Decision 1/CMA.5, CMA5, Dubai, 2023, para 80: "[the CMA] notes with deep regret that the goal of developed country Parties to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation was not met in 2021 [...]."

48. One of the backbones of the Paris Agreement lies on the obligation by all Parties to undertake and communicate ambitious efforts as "nationally determined contributions" [NDCs], to represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement" (Article 3). Developed countries' NDCs are to include climate finance and support for developing countries. The Paris Agreement imposes NDC and transparency obligations to all Parties, whilst expressly referring to CBDR-RC and differentiating developed and developing states in terms of obligations on climate mitigation, finance, and transparency of action and support. Under Article 4:

> *"3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.*
> *4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.*
> *5. Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions. [...]*
> *15. Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties. [...]*
> *19. All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."*

49. Article 9 is particularly clear about developed countries' continued climate finance obligations towards developing countries:

> "*1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.*"

E. State of implementation of the UNFCCC and its related instruments

50. In 1997 and 2013, in the context of negotiations that led to the Kyoto Protocol[35] and to the Paris Agreement[36], Brazil proposed the launching of methodological work around linking a countries' contribution to emission control to its contribution to global warming. The Brazilian proposal in 2013 was embraced by the Group of 77 and China (G77/China), as a common position of the group and its 134 members. At COP28, in the context of discussions of the Global Stock (GST) under the Paris Agreement to the UNFCCC, Brazil once again

[35] https://unfccc.int/resource/docs/1997/agbm/03b.pdf.
[36] https://unfccc.int/files/na/application/pdf/substa_submission_by_brazil_-_brazilian_proposal_final_corrected.pdf.

submitted a proposal for Parties to invite IPCC to develop a methodology to enable them to quantify national historical contributions to climate change. Developed country Parties blocked formal discussions on the Brazilian proposals in each occasion - 1997, 2013, and 2023 -, thus preventing discussions on attribution for climate change from being undertaken in an equitable and scientifically-sound manner. These attempts demonstrate Brazil's good faith in objectively solving the issue of attribution between States' actions or omissions, on the one hand, and global warming, on the other, taking into account the physical double accumulation process, both with respect to accumulation from emissions to concentrations, and from GHG concentration in the atmosphere to temperature increase, as recognized by the IPCC.

51. Though the Paris Agreement, building on the Kyoto Protocol, represented a diplomatic breakthrough under the UNFCCC, the global response to climate change has so far been insufficient to secure the ultimate objective of the Convention. In its latest 2023 assessment, the IPCC indicated that:

> *"Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020. Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals."*[37]

52. At COP28 (Dubai, December 2023), Parties to the Paris Agreement finalized the first global stocktake (GST), which enshrined in a legal decision the state of advances and shortcomings in the multilateral climate change regime, including in relation to pre-2020 gaps in both mitigation ambition and implementation by developed country Parties. In decision 1/CMA.5, the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) stated:

> *"2. Underlines that, despite overall progress on mitigation, adaptation and means of implementation and support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals; [...]*
> *17. Notes with concern the pre-2020 gaps in both mitigation ambition and implementation by developed country Parties and that the Intergovernmental Panel on Climate Change had earlier indicated that developed countries must reduce emissions by 25–40 per cent below 1990 levels by 2020, which was not achieved; [...]*
> *25. Expresses concern that the carbon budget consistent with achieving the Paris Agreement temperature goal is now small and being rapidly depleted and acknowledges that historical cumulative net carbon dioxide emissions already account for about four fifths of the total carbon budget for a 50 per cent probability of limiting global warming to 1.5 °C; [...]*

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[37] IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001, https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, A. Current Status and Trends, Observed Warming and its Causes, A.1, page 4.

67. Highlights the growing gap between the needs of developing country Parties, in particular those due to the increasing impacts of climate change compounded by difficult macroeconomic circumstances, and the support provided and mobilized for their efforts to implement their nationally determined contributions, highlighting that such needs are currently estimated at USD 5.8–5.9 trillion for the pre-2030 period; [...]

71. Recalls that developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention and that other Parties are encouraged to provide or continue to provide such support voluntarily; [...]

73. Reiterates that support shall be provided to developing country Parties for the implementation of Article 4 of the Paris Agreement, in accordance with Articles 9–11 of the Paris Agreement, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions; [...]

80. Notes with deep regret that the goal of developed country Parties to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation was not met in 2021, including owing to challenges in mobilizing finance from private sources, and welcomes the ongoing efforts of developed country Parties towards achieving the goal of mobilizing jointly USD 100 billion per year;

81. Notes with concern that the adaptation finance gap is widening, and that current levels of climate finance, technology development and transfer, and capacity-building for adaptation remain insufficient to respond to worsening climate change impacts in developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change;[...]

103. Highlights the persistent gaps and challenges in technology development and transfer and the uneven pace of adoption of climate technologies around the world and urges Parties to address these barriers and strengthen cooperative action, including with non-Party stakeholders, particularly with the private sector, to rapidly scale up the deployment of existing technologies, the fostering of innovation and the development and transfer of new technologies; [...]

114. Acknowledges that developing country Parties continue to have persistent gaps in capacity and urgent needs for effectively implementing the Paris Agreement, including related to skills development, institutional capacity for governance and coordination, technical assessment and modelling, strategic policy development and implementation and capacity retention and recognizes the urgent need to address these gaps and needs that are constraining effective implementation of the Paris Agreement;"

53. The outcome of the GST consensually demonstrates developed countries' failed obligations under the UNFCCC, including their failure to reduce their own GHG emissions at levels recommended by science and to provide adequate finance, technology and capacity-building support for mitigation and adaptation in developing countries. Brazil is of the view these two core breaches by developed countries of treaty law obligations under the Convention, its Kyoto Protocol and its Paris Agreement - further regulated in COP decisions - have fundamentally derailed the global response to climate change. On the one hand, developed countries have consistently failed to reduce their own emissions in the timeframe recommended by the IPCC, going against the precautionary principle and their obligation to take the lead in combating climate change and the adverse effects thereof, in accordance with CBDR-RC. On

the other hand, they have failed to provide finance, technology and capacity-building for mitigation and adaptation by developing countries, cognizant that "the extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology" – a legal provision that was reaffirmed in Paris Agreement Article 9.[38]

54. Much of the lack of climate action and ambition by developed countries, both in climate mitigation and finance, has been justified by political difficulties, in particular within national parliaments. Brazil recalls international law does not allow domestic law provisions to excuse a Party to the Convention from its fulfillment, since, in accordance with Article 27 of the Vienna Convention on the Law of Treaties – one of an international customary nature[39] - a "party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[40]

55. Moreover, though the IPCC signals the need of trillions of US dollars (USD) for climate action and for financial support in developing countries, developed countries continue to defend that such a sum is politically and economically unfeasible, especially if it were to come exclusively from budgetary sources. Paradoxically, in 2020 developed countries adopted economic relief packages amounting to around 10 trillion USD in the first two months following rigid social isolation measures worldwide.[41] This sum is around 100 times what they have failed to deliver yearly through the USD 100 billion financial goal over more than a decade. Between 2014 and 2023, Parties to the North Atlantic Treaty Organization (NATO), whose members mostly correspond to developed country Parties listed in Annex II of the UNFCCC, expended from USD 896 billion to over USD 1 trillion yearly on defense, so defined by NATO as payments made by a national government, from public, budgetary sources.[42] Developed countries excuses on climate finance therefore do not sustain under international law.

56. In the Political Declaration adopted at the High-level Political Forum on Sustainable Development (HLPF), under the auspices of the General Assembly in September 2023, the Heads of State and Government and high representatives reaffirmed that "climate change is one of the greatest challenges of our time", while emphasizing "that mitigation of and adaptation to climate change represent an immediate and urgent priority":

> *"We also reaffirm that climate change is one of the greatest challenges of our time. We express profound alarm that emissions of greenhouse gases continue to rise globally, and remain deeply*

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[38] UNFCCC, Article 4.7.

[39] Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, *I.C.J. Reports 2012*, p. 422, para. 113.

[40] https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[41] Cassim, Z., Handjiski, B., Schubert, J., & Zouaoui, Y. (2020). *The $10 trillion rescue: How governments can deliver impact*. McKinsey & Company, Public Sector Practice(June), 1-13. McKinsey.com; Harvard Business School. (2020, May March). Global Policy Tracker. *COVID-19 Business Impact Center*.

[42] https://www.nato.int/nato_static_fl2014/assets/pdf/2024/2/pdf/FACTSHEET-NATO-defence-spending-en.pdf.

concerned that all countries, particularly developing countries, are vulnerable to the adverse impacts of climate change. We emphasize in this regard that mitigation of and adaptation to climate change represent an immediate and urgent priority."[43]

57. The declaration establishes climate change as a global priority, second only to eradicating poverty in all its forms and dimensions:

"We emphasize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development."[44]

58. Brazil sees no justification under international law for all countries, and developed countries in particular, not to prioritize climate change, always 'in the context of sustainable development and of efforts to eradicate poverty", as mandates the UNFCCC and its Paris Agreement, and as agreed by world leaders at UNGA.

F. Impacts of climate change

59. More than 30 years after the IPCC first sounded the alert on potential impacts of global warming, the Panel's latest report now indicates climate change is already impacting our societies:

"Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people (high confidence). Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected (high confidence)."[45]

60. Decision 1/CMA.5 incorporated the sense of urgency related to climate change:

"126. [The CMA] acknowledges that climate change has already caused and will increasingly cause losses and damages and that, as temperatures rise, the impacts of climate and weather extremes, as well as slow onset events, will pose an ever-greater social, economic and environmental threat; [...]
128. Acknowledges the significant gaps, including finance, that remain in responding to the increased scale and frequency of loss and damage, and the associated economic and non-economic losses;
129. Expresses deep concern regarding the significant economic and non-economic loss and damage associated with the adverse effects of climate change for developing countries, resulting, inter alia, in reduced fiscal space and constraints in realizing the Sustainable Development Goals;"

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[43] Political Declaration adopted at the High-level Political Forum on Sustainable Development (HLPF), under the auspices of the General Assembly in September 2023, Resolution A/RES/78/1, para. 7. https://documents.un.org/doc/undoc/gen/n23/306/65/pdf/n2330665.pdf?token=13rIpablN2d9bdgIrI&fe=true.
[44] Ibid, para. 3.
[45] Ibid, Observed Changes and Impacts A.2, page 5.

61. The COP28 and CMA5 decisions on "Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4"[46] specifically urges developed country Parties to provide support to developing countries to address loss and damage, a provision that is replicated in the GST decision 1/CMA.5:

> *"88. Urges developed country Parties to continue to provide support and encourages other Parties to provide, or continue to provide support, on a voluntary basis, for activities to address loss and damage in line with decisions -/CP.28 and -/CMA.5;"*[47]

G. Impacts of climate change response measures on developing countries

62. There have been many concerns related to climate change being raised to justify unilateral measures by developed countries that constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade against developing countries. Such measures violate UNFCCC principles and provisions, including Article 3.5 of the Convention and Article 4.15 of the Paris Agreement thereunder. In 2021, the United Nations Conference on Trade and Development (UNCTAD) indicated, for instance, that the European Union (EU) carbon border adjustment mechanism (CBAM) "could help avoid "carbon leakage", but its impact on climate change would be limited – only a 0.1% drop in global CO2 emissions – with higher trade costs for developing countries"[48].

63. In January 2024, Heads of State and Government of the Member Countries of the Group of 77 and China, involving more than 130 developing countries, expressly voiced these concerns:

> *"62. We also express deep concern regarding unilateral protectionist measures taken by some trade partners that would constitute a means of arbitrary or unjustifiable discrimination between countries or a disguised restriction on international trade, including, unilateral and discriminatory border adjustment mechanisms and taxes.*
> *63. We recall that Article 3.5 of the UNFCCC , which states that "The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade," and Article 4.15 of the Paris Agreement, which states that "Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties." In this regard, we welcome the recognition in the Global Stock Take at COP28 that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or*

[46] https://unfccc.int/sites/default/files/resource/cma5_auv_10g_LnDfunding.pdf.
[47] Decision 1/CMA.5, CMA5, Dubai, 2023, para 88.
[48] https://unctad.org/news/eu-should-consider-trade-impacts-new-climate-change-mechanism.

unjustifiable discrimination or a disguised restriction on international trade, and we call on parties to reconsider such measures and suspend their implementation."[49]

H. International cooperation and multilateralism

64. Brazil sees with concern that every single principle of the UNFCCC is being routinely disregarded in global climate action, despite recent diplomatic breakthroughs, such as the adoption of the 2015 Paris Agreement and the 2023 "UAE Consensus", which have strengthened multilateralism. In breach of CBDR-RC, developed countries have failed on their mitigation and finance commitments, as well as their obligation to take the lead in the fight against climate change. Specific needs and special circumstances of developing country Parties have not been fully taken into consideration. Quite the opposite, unilateral measures impacting developing countries go against the obligation to "cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties". Precautionary measures have not been taken to prevent dangerous climate change, while efforts to promote sustainable development are also short of the right and obligation thereto.

65. Furthermore, since the adoption of the Paris Agreement in 2015, developed countries have been questioning the continued validity of the Convention and the application of its principles and provisions to the Paris Agreement thereunder. This further disregards the obligation of good faith regarding 'pacta sunt servanda', jeopardizing legal certainty and trust.

66. In the run-up to COP28, Brazil submitted a proposal for Parties to the Convention and the Paris Agreement to unite around "Mission 1.5," calling "humanity to join hands around a mission to keep the 1.5°C alive, through a shared sense of purpose, in which our societies are united in diversity, mutually-supporting each other."[50] Brazil proposed that:

> *"[...] expediting and scaling-up climate action must necessarily contribute to the UN Sustainable Development Goals (SDGs), in order to abide by both equity and the best available science.*[51] *AR6 similarly concludes that tradeoffs between climate response and the SDGs could constrain individual and collective actions - a scenario the world cannot afford... Achieving the SDGs and the 1.5°C goal is a daunting task which many consider impossible. But not pursuing such a mission would not be a tolerable alternative for humanity. The international community must come together in a united front to fight climate change as our common enemy. Climate change has already been affecting our societies. We cannot wait the emergence of the first tipping-point until we genuinely put the 1.5°C mission as our topmost priority, alongside sustainable development and efforts to eradicate poverty. Achieving the SDGs and the 1.5°C goal must come before geopolitical, economic and technological competitions. The world must shift priorities now. [...]*

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[49] https://www.g77.org/doc/3southsummit_outcome.htm.

[50] Brazil proposal to COP28 and CMA.5: "Mission 1.5: positive incentives for accelerating early-actions and policies that are nationally-determined," available at https://unfccc.int/sites/default/files/resource/Brazil%20-%20agenda%20item%20-%20Mission%201.5%20and%20positive%20incentives.pdf.

[51] AR6 Synthesis Report, Summary for Policymakers, Figure SPM6, page 25. https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

As we deliver the first GST under the Paris Agreement for informing international cooperation and the next round of NDCs, "Mission 1.5" can pave the way from COP28 to COP30 for immediately responding to the sense of urgency and gravity alerted by AR6 – on the basis of hope and trust, instead of dismay and polarization. "Mission 1.5" can bring countries to work together on the ground with a view to immediate implementation that can trigger unity, ambition and action, whilst acknowledging national circumstances of developed and developing countries alike.

67. At COP28, Parties to the Paris Agreement committed to accelerate action in this critical decade on the basis of "equity and the principle of common but differentiated responsibilities and respective capabilities" while reaffirming their commitment to multilateralism and to international cooperation:

"6. Commits to accelerate action in this critical decade on the basis of the best available science, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty;
7. Underscores Article 2, paragraph 2, of the Paris Agreement, which stipulates that the Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances;
8. Emphasizes that finance, capacity-building and technology transfer are critical enablers of climate action;
153. Reaffirms its commitment to multilateralism, especially in the light of the progress made under the Paris Agreement and resolves to remain united in the pursuit of efforts to achieve the purpose and long-term goals of the Agreement;
154. Recognizes that Parties should cooperate on promoting a supportive and open international economic system aimed at achieving sustainable economic growth and development in all countries and thus enabling them to better to address the problems of climate change, noting that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade;
155. Notes that the Sixth Assessment Report of the Intergovernmental Panel on Climate Change states that international cooperation is a critical enabler for achieving ambitious climate action and encouraging development and implementation of climate policies;" [52]

68. Humanity now faces an unprecedented existential threat that puts in jeopardy the very spirit of the United Nations and its 1945 Charter. Principles and provisions of the UNFCCC and its Paris Agreement are interlinked to sustainable development: aligned with Article 3.4 of the Convention,[53] the Paris Agreement specifically "aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty" (Article 2.1). Achieving the SDGs must stand as the central priority of the

[52] Decision 1/CMA.5, CMA5, Dubai, 2023.
[53] Article 3 of the Convention, on "Principles", paragraph 4, states: "The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change."

international community, as the 2030 Agenda on Sustainable Development provides the systemic and long-term set of social, economic and environmental solutions that the complexity of climate change requires, while also embedding dedicated goals on poverty eradication and climate action.[54]

69. For the reasoning above, Brazil respectfully submits to this Court that international law, including international treaty law under the UNFCCC, its Kyoto Protocol and its Paris Agreement, establishes international legal obligations, in accordance with equity and CBDR-RC, for all states to work together towards mobilizing all of humanity's resources to achieving the SDGs and limiting global warming to 1.5° C above pre-industrial levels, while paving the way for just transitions towards low-carbon and climate resilient societies.

IV – LEGAL CONSEQUENCES

70. All States have the obligation of conduct to take all appropriate measures to prevent transboundary harm. In the Corfu Channel case, the Court recognized "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States"[55]. In the multilateral regime of climate change, States have the "responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction", according to Principle 2 of the Rio Declaration, also reflected on Principle 21 of the Stockholm Declaration.

71. In addition, on the basis of CBDR-RC, as highlighted above, developed States shall comply with their specific obligations under the Kyoto Protocol, and with their obligation to mobilize jointly USD 100 billion per year to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation. These are obligations of result.

72. It is worth recalling that according to the case-law of the Court, unilateral commitments concerning legal or factual situations may have the effect of creating legal obligations. An undertaking of this kind, if given publicly, and with an intent to be bound is binding.[56] The financial commitment to mobilize USD 100 billion per year was publicly agreed upon at COP 15 in 2009, and endorsed in the UNFCCC Cancun Agreements at COP16 in 2010, at COP 21 in 2015, and at COP 27 in 2021.

73. Even if one disagrees that such financial commitments was a unilateral act entailing legal obligations for states, they can be seen as subsequent agreements and subsequent practice of state parties to the UNFCCC.

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[54] SDG1 and SDG13, UNGA Resolution A/RES/70/1, "Transforming our world: the 2030 Agenda for Sustainable Development," https://documents.un.org/doc/undoc/gen/n15/291/89/pdf/n1529189.pdf?token=ihi40N6sTFOu8GdQ1q&fe=true.

[55] *Corfu Channel Case (United Kingdom v. Albania)*, Merits, 1949 p.22.

[56] *Nuclear Tests (Australia v. France; New Zealand v. France)*, Judgments dated 20 December 1974, *I.C.J. Reports 1974*, pp. 267-8, paras. 43 and 46 and pp. 472-3, paras. 46 and 49.

74. Subsequent agreements and subsequent practice of State Parties – as provided for under Article 31 of the VCLT – are "objective evidence of the understanding of the Parties as to the meaning of the treaty", and an "authentic means of interpretation".[57] A number of decisions adopted at Conferences of State Parties to the UNFCCC express agreements or practices in the application of the Convention. They provide this Court with objective evidence of the understanding of the Parties as to the meaning of climate change obligations ("authentic interpretation").

75. Many other "subsequent agreements and practices in the application of the UNFCCC" take the form of a decision of the Conference of State Parties. They are absolutely relevant to interpret the obligations established in the Convention.

76. In Whaling in the Antarctic Case (Australia v. Japan; New Zealand intervening), Judge Charlesworth touched on the legal value of decisions adopted by conferences of states parties, noting that "they are relevant to the interpretation of the ICRW if they come within the terms of Article 31, paragraph 3 (a) or (b) of the Vienna Convention on the Law of Treaties 1969". Her Excellency also added that, even when decisions are adopted by a vote, state parties are "required to consider these resolutions in good faith".[58]

77. The second question submitted by the General Assembly relates to the legal consequences under these obligations where States, by their acts and omissions, have caused significant harm to the climate system.

78. It is widely recognized in general international law that every act or omission that constitutes a breach of an international obligation attributed to a State, regardless of its origin or character, entails the international responsibility of that State.

79. As a consequence, a new legal relationship arises, and the responsible State is under obligations to cease its conduct, if it is continuing, and to make full reparation for damages, according to the rules reflected in Part II of the 2001 draft articles on the responsibility of States for internationally wrongful acts (ARSIWA).

80. The Court should address this question in light of the specific international legal obligations relevant to climate change, especially the principle of common but differentiated responsibilities. It bears reminding that, under Art. 4.7 of the UNFCCC, "the extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology".

81. Historical emissions have fueled lingering structural inequalities among countries, as some States historically achieved high levels of economic and social development at the expense of other peoples. Colonialism and imperialism are at the roots of practices that historically increased global temperatures.

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[57] A/73/10, Report of the International Law Commission, 70th session (2018), p. 13.
[58] Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgment, *I.C.J. Reports 2014*, p. 226. Separate Opinion of Judge Ad Hoc Charlesworth, paras. 4, 13.

82. When assessing the legal consequences under these obligations, the Court should enforce proportionality and equity, considering the historical responsibility of developed States and their failure to mitigate foreseeable damages to the environment, while bearing in mind that developing States are particularly vulnerable to the adverse effects of climate change.

83. Brazil recalls that the obligations arising from internationally wrongful acts may be owed to another State, to several States, or to the international community as a whole. In its commentaries to the legal consequences of internationally wrongful acts, the ILC noted that "pollution of the sea, if it is massive and widespread, may affect the international community as a whole or the coastal States of a region".[59]

A. Attribution

84. A State is responsible for its actions or omissions which have caused significant harm to the climate system, when those are attributable to that State. In the present case, the relevant relation of causality involves the link between emissions, concentrations, temperature increase, and damage. This three-step causality is essential to identify the legal consequences for States.

85. In order to establish the causal link between GHG emissions and adverse impacts, it is essential to consider that past emissions contribute exponentially more to current global warming than present-day emissions, which only marginally add to the cumulative historical emissions. Therefore, it is crucial to identify the historical contribution of each country to climate change, in order to establish the respective legal consequences.

B. Cessation and reparation

86. According to customary international law reflected in article 30 of ARSIWA, a State responsible for the internationally wrongful act is under an obligation to cease that act, if it is continuing. In the present case, States shall comply with their obligations under the UNFCCC, its Kyoto Protocol, its Paris Agreement, and the principles of International Environmental Law enshrined, inter alia, in the Rio Declaration.

87. As established in the long-standing case-law of the Court, "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form", and that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed".[60]

88. The obligation to provide reparation for damages is "an imperative of justice".[61] According to customary international law reflected in article 31 of ARSIWA, "The responsible

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[59] Yearbook of the International Law Commission, 2001, vol. II, Part Two, p. 95. In its previous article 19 on state responsibility, adopted in first reading in 1996, the Commission even considered as an international crime "a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas". Yearbook of the International Law Commission, 1976, vol. II, Part Two, P. 96.

[60] *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J.*, Series A, No. 9, p. 21 and 41.

[61] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* Separate Opinion of Judge Cançado Trindade, para. 97.

State is under an obligation to make full reparation for the injury caused by the internationally wrongful act".

89. When addressing the legal consequences with respect to developing States, Brazil expects that the Court will reiterate that they may be specially affected by significant harm to the climate system and other parts of the environment, despite not having substantially contributed to causing this harm.

90. In this context, the General Assembly noted with utmost concern that human-induced climate change has caused widespread adverse impacts and related losses and damages to nature and people, especially in developing countries. Such impacts include persistent drought, extreme weather events, land loss and degradation, sea level rise, coastal erosion, ocean acidification and the retreat of mountain glaciers.

91. According to article 34 of ARSIWA, "full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination".

92. Special rules of International Environmental Law reiterate the obligation to make reparation for environmental damages, according to the polluter-pays principle, enshrined in principle 16 of the Rio Declaration: "the polluter should, in principle, bear the cost of pollution".[62] The idea on which such principle is grounded was abundantly applied by the Court in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation.[63]

93. According to Principle 13 of the Rio Declaration, "States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction".

94. All States must look afresh at and consider the norms and standards foreseen in the conventional and customary international climate change law regimes, not only when contemplating "new activities but also when continuing with activities begun in the past".[64]

95. Owing to their uncontested failure to fulfil their obligations of providing necessary and adequate means of implementation to enable just transitions in developing States, developed States, in particular, must look afresh at their mitigation, adaptation and resilience efforts, as well as decisions on budgetary allocation and international cooperation measures, in the light of CBDR-RC.

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[62] In specific contexts, the ILC has reiterated the obligation to make full reparation for damages to the environment. For instance, in its principle 9 on protection of the environment in relation to armed conflicts, the Commission asserted that "an internationally wrongful act of a State, in relation to an armed conflict, that causes damage to the environment entails the international responsibility of that State, which is under an obligation to make full reparation for such damage, including damage to the environment in and of itself".

[63] Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, *I.C.J. Reports 2018*, p. 15, paras. 72-87.

[64] *Gabcikovo-Nagymaros (1997)*, para 140.

96. In this sense, reparation by developed States may be effected by a range of measures, all and each of which is to be adopted in close coordination with developing countries and with maximum climate ambition:

1) Ceasing unlawful, unilateral trade measures which amount to disguised restrictions of international trade and/or arbitrary or unjustifiable discrimination, and, where material injury has been committed, providing compensation to injured States;[65]

2) Stepping up national and international mitigation and adaptation efforts, in keeping with CBDR-RC, including by submitting ambitious NDCs under the Paris Agreement and long-term low GHG emission development strategies, and ensuring due priority is given to climate change funding in public budget allocation;

3) Channelling mitigation and adaptation finance to developing countries, in conditions conducive to just transitions and in a magnitude commensurate to developed States' collective 100 billion USD financial obligation, and stepping up efforts and support for developing countries in regard of means of implementation, such as development and transfer of technology and capacity-building;

4) Negotiating in earnest in climate change fora – including, in particular, financial mechanisms relevant for climate change –, with a view to achieving maximum climate ambition, in light of CBDR-RC, and ensuring ample participation of developing countries in relevant decision-making bodies.

97. The obligations expressed in the various relevant international climate change legal norms include their discharge in accordance with "the basic principle of good faith".[66] As this Court posited in the *Nuclear Tests* case, "[t]rust and confidence are inherent in international cooperation, in particular in an age when this cooperation in many fields is becoming increasingly essential"[67] – a remark which is poignantly appropriate for the unprecedented collective existential threat posed by climate change.

98. With respect to peoples and individuals of the present and future generations affected by the adverse effects of climate change, beyond material damage, legal consequences may include moral damage, and satisfaction should be considered in each case. According to article 37 of ARSIWA, it "may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality". It may also consist in public memorials, safeguards against repetition, the payment of symbolic or nominal damages, and, chiefly, changes in relevant laws and practices.[68]

99. This is particularly important when considering that the protection of the environment is also grounded on intergenerational equity. As judge Cançado Trindade highlighted in the Pulp Mills Case, "The long-term temporal dimension marks its presence, in a notorious way,

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[65] *Construction of a Road in Costa Rica* (2015), para 226; Pulp Mills (2010), paras 271-272;
[66] *Nuclear Weapons Advisory Opinion* (1996), para 102.
[67] *Nuclear Tests case* (1974), para 46.
[68] *Rainbow Warrior affair*, UNRIAA, vol. XX (Sales No. E/F.93.V.3), p. 215 (1990); See also HRC, General Comment No. 31, of 2004.

in the domain of environmental protection (...) In fact, concern with future generations underlies some environmental law conventions".[69]

CONCLUSION

100. For the reasons presented above, Brazil submits that:

1) The Court has and should exercise its advisory jurisdiction;

2) The principle of common but differentiated responsibilities and respective capabilities is a structural legal principle for the implementation and interpretation of the international legal regime on climate change;

3) International law, including the United Nations Framework Convention on Climate Change (UNFCCC), its Kyoto Protocol and its Paris Agreement, in accordance with equity and the Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) principle, establishes international legal obligations for states to work together towards mobilizing all of humanity's resources to achieving the Sustainable Development Goals (SDGs) and limiting global warming to 1.5° C above pre-industrial levels, while paving the way for just transitions towards low-carbon and climate-resilient societies;

4) The international legal obligations on climate change entail to the State to which a wrongful act or omission is attributable obligations of cessation and reparation;

5) Supporting the adoption of a science-based methodology to quantify historical national contributions to global warming, in order to underpin the practical application of the CBDR-RC principle.

101. The present statement is without prejudice to the possibility to submit further comments regarding the statements presented by other States and organizations, in accordance with the timetable set by the Court. The Federative Republic of Brazil also reserves its right to participate in the hearing, as set by the Court in due course.

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Ambassador Extraordinary and Plenipotentiary

of the Federative Republic of Brazil to the Kingdom of the Netherlands

[69] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* Separate Opinion of Judge Cançado Trindade, para. 114).