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CR 2024/39

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Wednesday 4 December 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

***on the* Obligations of States in respect of Climate Change**
(Request for advisory opinion submitted by the General Assembly of the United Nations)

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le mercredi 4 décembre 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

***sur les* Obligations des États en matière de changement climatique**
(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

COMPTE RENDU

Present:	President	Salam
	Vice-President	Sebutinde
	Judges	Tomka
		Abraham
		Yusuf
		Xue
		Bhandari
		Iwasawa
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
	Registrar	Gautier

Présents : M. Salam, président
M^me^ Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^me^ Xue
MM. Bhandari
Iwasawa
Nolte
M^me^ Charlesworth
MM. Brant
Gómez Robledo
M^me^ Cleveland
MM. Aurescu
Tladi, juges

M. Gautier, greffier

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HE Mr Arnoldo Brenes Castro, Ambassador of the Republic of Costa Rica to the Kingdom of the Netherlands,

Mr Marcelo Kohen, Professor Emeritus of International Law, Geneva Graduate Institute of International and Development Studies, titular member and former Secretary-General of the Institut de droit international,

Ms Sofía Cob Briceño, Minister Counsellor, Embassy of the Republic of Costa Rica in the Kingdom of the Netherlands.

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Ms Kaija Suvanto, Director General for Legal Affairs, Ministry of Foreign Affairs of the Republic of Finland,

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For the complete list of delegations of all participants, please refer to CR 2024/35.

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M. Marcelo Kohen, professeur émérite de droit international à l'Institut de hautes études internationales et du développement de Genève, membre titulaire et ancien secrétaire général de l'Institut de droit international,

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Pour consulter la liste complète de toutes les délégations, prière de se reporter au CR 2024/35.

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Ms Emma Långström, Junior Adviser, Embassy of the Republic of Finland in the Kingdom of the Netherlands,

HE Mr Erling Rimestad, Ambassador of the Kingdom of Norway to the Kingdom of the Netherlands,

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Ms Jasmine Moussa, PhD, Legal Counsellor, Cabinet of the Minister for Foreign Affairs, Emigration and Egyptian Expatriates, Ministry of Foreign Affairs, Emigration and Egyptian Expatriates,

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M. Fernando Bordin,

M. Josue Lievano,

M. Daniel Starr.

The PRESIDENT: Good morning. Please be seated. The sitting is now open.

The Court meets this morning to hear the oral statements of Costa Rica, Côte d'Ivoire, the joint statement of Denmark, Finland, Iceland, Norway and Sweden, and the oral statements of Egypt and El Salvador. Those Participants making an individual presentation have each been allocated 30 minutes, and those Participants making a joint presentation have 45 minutes at their disposal. The Court will observe a short break after the joint presentation of Denmark, Finland, Iceland, Norway and Sweden.

I shall now give the floor to His Excellency Mr Arnoldo Brenes Castro, speaking on behalf of Costa Rica. You have the floor, Sir.

Mr BRENES CASTRO:

THE RELEVANCE FOR COSTA RICA OF THE PRESENT PROCEEDINGS

1. Mr President, Members of the Court, it is an honour to appear before you today in these historical proceedings on behalf of my country, the Republic of Costa Rica.

2. Costa Rica is firmly convinced that this advisory opinion is of decisive importance for the international community and the future of the planet as a whole. For such a reason my country played, together with other Member States that composed the core group, a leading role in the process aiming at the adoption of the General Assembly's resolution requesting the Court to refer to the obligations of States in respect of climate change.

3. This active role was only natural. Costa Rica has a long-standing and well-known commitment not only to the protection of the environment, including climate change, but also an unwavering support for international law and multilateralism. As the principal judicial organ of the United Nations, the International Court of Justice is uniquely placed to play a vital role in identifying the relevant rules, the rights and obligations of States in respect of climate change, as well as the consequences when such obligations are not met.

4. Mr President, Members of the Court: climate change is already affecting millions of people around the world, especially the most vulnerable communities. Extreme phenomena such as hurricanes, droughts, heatwaves and rising sea levels are causing widespread destruction and suffering. The scientific evidence is clear: human activity, particularly the excessive emission of

greenhouse gases, has accelerated this process, and the effects are felt in every corner of the planet. The damage is not only environmental, but also economic, social and cultural. What is at stake may well be the survival of human and other species.

5. When addressing climate change, Costa Rica is aware of the paramount importance of this initiative. Although small in size, our country is rich in biodiversity. It is home to around 6 per cent of the world's species and possesses an extensive network of protected areas, including 28 national parks, that cover more than a quarter of the country's land area. My country has been a pioneer in sustainability and a world leader in environmental conservation and ecotourism. We have implemented a Payments for Environmental Services programme, which has contributed to slowing biodiversity loss, and not only halting deforestation, but actually increasing the country's forest cover to almost 60 per cent of its territory. In addition, Costa Rica is also recognized for producing most of its electricity from renewable energy, and committing to achieving the goal of zero net emissions by 2050.

6. Through its policies, the country has set out a long-term sustainable development strategy; it has reinforced its commitment to climate resilience through capacity building and informed decision-making, the inclusion of adaptation criteria in financing and planning instruments, the adaptation of public services, productive systems and infrastructure, and the implementation of nature-based solutions.

7. Costa Rica has aligned its national policies with international commitments such as the Paris Agreement and the 2030 Agenda for Sustainable Development, and is party to a number of international agreements, including: the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, the Kyoto Protocol, the United Nations Convention to Combat Desertification, the Vienna Convention for the Protection of the Ozone Layer, and the Ramsar Convention, among many other relevant international instruments. Recently, Costa Rica became the second country to sign the United Nations Convention on the Law of the Sea Framework Agreement on the Conservation and Sustainable Use of Marine Biological Diversity in Areas Beyond National Jurisdiction, known as BBNJ. Thanks to its efforts in favour of environmental preservation and its commitment to ambitious policies to combat climate change, the country has received several international awards.

8. Costa Rica has also led the way in the ascertainment of a specific human right to a healthy environment at the national and the international levels. At the national level, it is enshrined in Article 50 of our Constitution, and at the international level, Costa Rica promoted the adoption of the Human Rights Council resolution 48/13 of 8 October 2021 and the United Nations General Assembly resolution 76/300 of 28 July 2022, both entitled "The human right to a clean, healthy and sustainable environment". They are both indeed resolutions, but so is the Universal Declaration of Human Rights.

9. Having in mind that for a small, disarmed democracy like Costa Rica, the existence of an international law system that provides mechanisms for the defence of its interests and effective means to peacefully solving disputes is of utmost importance, in the recent past we have relied several times on this Court to resolve our disputes.

10. It is precisely in the context of one of these cases that this Court, for the first time in its history, adjudged and granted compensation for environmental damage. In the case *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*, the Court ordered Nicaragua to compensate Costa Rica for the environmental damage it had caused during its illegal occupation of Costa Rican territory. In that instance, the Court concluded that it is in line with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to assert that compensation is owed for damage caused to the environment.

11. Mr President, Members of the Court, Costa Rica is confident, once again, of the high relevance of this Court's role, and has absolute trust in the beneficial impact of the advisory opinion that it will deliver for the future action of the international community to enhance efforts to tackle climate change more effectively. The issuance of an advisory opinion on this matter is not only crucial, but absolutely necessary to ensure a clear and coherent international legal framework to guide the action of States. International law, in its capacity to interrelate global norms and realities, has a central role in building a co-ordinated and effective response. This advisory opinion on States' obligations in relation to climate change not only will provide a legal answer to two specific questions but can also set a milestone that inspires unified global action.

12. I thank you for your attention, Mr President, and I ask you to call on Professor Kohen to continue the presentation on behalf of Costa Rica.

The PRESIDENT: I thank His Excellency Mr Arnoldo Brenes Castro. Je passe maintenant la parole au professeur Marcelo Kohen. Vous avez la parole.

M. KOHEN :

LE DEVOIR DE COOPÉRER N'EFFACE PAS LES OBLIGATIONS DU DROIT INTERNATIONAL GÉNÉRAL

I. Introduction

1. Monsieur le président, Mesdames et Messieurs les juges, il y a un point au sujet duquel tous les intervenants à cette procédure sont absolument d'accord : les États ont l'obligation de coopérer en vue de faire face à l'urgence climatique. Cette coopération se concrétise essentiellement moyennant des traités. Mais, et ce serait un grand « mais », ce serait un piètre exercice juridique d'arrêter au seul cadre conventionnel l'examen des obligations internationales des États en la matière.

2. La réduction des émissions de gaz à effet de serre n'est pas un simple engagement que les États peuvent estimer bon d'accepter. Le financement des pertes et dommages déjà causés ou en cours n'est pas non plus un geste charitable. Cette réduction et ce financement puisent leur source non seulement dans les accords que les États veulent bien conclure, mais aussi et surtout dans des règles bien établies du droit international, tant substantielles que relatives à la responsabilité des États.

3. Voilà l'un des enjeux majeurs de l'exercice de votre compétence consultative : affirmer que le devoir de coopérer n'efface pas les autres obligations du droit international général. Pour répondre à la question *a)*, votre tâche est essentiellement d'identifier toutes les règles primaires pertinentes. Pour répondre à la question *b)*, il s'agit essentiellement d'identifier les conditions qui permettent d'appliquer la responsabilité des États pour fait illicite.

4. Je vais brièvement effleurer ces trois aspects. Je conclurai en présentant les contributions du Costa Rica aux réponses que vous êtes appelés à donner aux questions posées, ce qui me permettra — à tout le moins — de mentionner d'autres aspects non moins importants.

II. La *lex specialis* n'est pas une limite à votre compétence

5. Les participants qui vous invitent à réduire votre analyse à ce qu'ils appellent la *lex specialis* n'ont pas pris en considération une question fondamentale. *Lex specialis derogat legi generali* est pertinente lorsqu'on se trouve dans une situation de conflits des règles applicables à une même question. Ici, il n'est pas question de dérogation ou de choisir une règle en excluant une autre. De fait, toutes les règles invoquées sont pertinentes et peuvent s'appliquer sans craindre la contradiction, et ce, à des niveaux différents[3].

6. Que les États se soient mis d'accord pour coopérer face au changement climatique et qu'ils aient adopté des traités, c'est très bien. Pour autant, cela n'entame ni n'efface l'ensemble des règles de droit international pertinentes aux différentes conséquences produites par les émissions anthropiques de gaz à effet de serre. Bien au contraire, ces traités doivent être interprétés et appliqués à la lumière et dans le cadre de l'ensemble du système juridique en vigueur[4]. Et non l'inverse. En effet, la CCNUCC, le protocole de Kyoto, l'accord de Paris, les décisions des COP ou d'autres instruments conventionnels ne limitent pas la portée de ces obligations de droit international général. Dans l'avis consultatif de 1996, votre Cour ne s'est pas contentée d'examiner le seul régime conventionnel applicable aux armes nucléaires[5]. À plus forte raison ici, compte tenu des questions posées, vous devez examiner l'ensemble des règles applicables.

7. Pour mentionner juste un exemple, le mécanisme de mise en œuvre de l'article 15 de l'accord de Paris pour faciliter le respect de ses engagements ne remplace pas les règles relatives à la responsabilité des États pour faits illicites.

8. Certes, il y a à ce propos des divergences entre les participants. Ces divergences ne portent pas sur l'existence ou non d'une nouvelle règle de droit international, mais sur l'interprétation et l'application des règles déjà existantes. C'est précisément du fait de ces interprétations divergentes que votre haut avis juridique est demandé par l'Assemblée générale.

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[3] Cf. *Demande d'avis consultatif soumise par la Commission des petits États insulaires sur le changement climatique et le droit international, avis consultatif, TIDM Recueil 2024*, p. 87, par. 224.

[4] *Conséquences juridiques pour les États de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 31, par. 53.

[5] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 243, par. 34.

III. L'interprétation de certaines règles applicables

9. Je vais maintenant passer rapidement en revue certaines de ces règles. Le *devoir de diligence requise* et l'*obligation de ne pas causer un dommage transfrontière significatif* sont des obligations de droit international général que vous avez déjà reconnues et appliquées, tout comme d'autres organes juridictionnels[6]. Rien, absolument rien, n'empêche d'appliquer ces règles aux émissions de gaz à effet de serre qui produisent un dommage significatif à d'autres États et aux espaces non soumis à la juridiction nationale.

10. Par ailleurs, *l'obligation de ne pas causer un dommage transfrontière* n'est pas une obligation qui est née uniquement au moment où elle a été explicitement énoncée. Cette obligation découle d'un principe de base du droit international : l'égalité souveraine des États. S'ils sont obligés de se respecter les uns les autres, il n'est pas concevable d'imaginer qu'autrefois il était permis aux États de porter atteinte à l'environnement des autres. Et cela est aussi vrai pour les espaces qui étaient considérés communs ou non soumis aux juridictions nationales.

11. Le *devoir de diligence requise* est nécessairement élevé, comme l'a constaté le Tribunal international du droit de la mer (TIDM), pour le milieu marin[7], un constat également applicable à d'autres domaines ici pertinents.

12. La prétention selon laquelle l'*obligation de ne pas causer un dommage significatif transfrontière* s'applique uniquement dans le cadre des relations de voisinage n'a aucun fondement, ni juridique ni logique. L'essentiel est de savoir si les actions ou omissions d'un État produisent un tel dommage en dehors de son territoire, peu importe que ce soit à quelques mètres ou à des milliers de kilomètres. La distance, Mesdames et Messieurs les juges, n'est pas une circonstance excluant l'illicéité.

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[6] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 241-242, par. 29 ; *Usines de pâte à papier sur le fleuve Uruguay (Argentine c. Uruguay), arrêt, C.I.J. Recueil 2010 (I)*, p. 55-56, par. 101 ; *Certaines activités menées par le Nicaragua dans la région frontalière (Costa Rica c. Nicaragua)* et *Construction d'une route au Costa Rica le long du fleuve San Juan (Nicaragua c. Costa Rica), arrêt, C.I.J. Recueil 2015 (II)*, p. 706-707, par. 104 ; *Différend concernant le statut et l'utilisation des eaux du Silala (Chili c. Bolivie), arrêt, C.I.J. Recueil 2022 (II)*, p. 654, par. 126 ; *Demande d'avis consultatif soumise par la Commission des petits États insulaires sur le changement climatique et le droit international, avis consultatif, TIDM Recueil 2024*, p. 93, par. 239.

[7] *Demande d'avis consultatif soumise par la Commission des petits États insulaires sur le changement climatique et le droit international, avis consultatif, TIDM Recueil 2024*, p. 95, par. 243.

13. Le *droit à un environnement propre, sain et durable* fait partie du droit international général[8]. Il ne s'agit pas, comme certains l'ont prétendu[9], d'une simple aspiration. Qu'il soit exprimé explicitement dans un instrument normatif ou non, il découle du constat simple selon lequel les effets du changement climatique sur l'environnement affectent l'accès à l'eau, à l'alimentation, à la santé et même à la vie[10]. Il est indéniable que, comme le droit des peuples à disposer d'eux-mêmes, le droit à un environnement sain devient ainsi un présupposé fondamental pour l'exercice des autres droits humains.

14. Votre Cour a déjà établi que les États sont responsables de violations des droits humains même si elles sont commises en dehors de leur territoire[11]. Ce critère s'applique à toutes les actions ou omissions des États qui portent atteinte aux droits humains. Il ne faut pas confondre le domaine d'application des traités portant sur les droits humains et les obligations des États en la matière qui découlent du droit international coutumier. Pour ces dernières, au moins, ce n'est pas la juridiction territoriale qui détermine l'obligation et sa violation, c'est le résultat. Mesdames et Messieurs les juges, compte tenu de ce que nous avons entendu ces derniers jours, il est assez regrettable d'avoir raison de rappeler que le droit international contemporain n'autorise pas les États à violer les droits humains des personnes qui se trouvent en dehors de leur juridiction ou contrôle !

15. Des principes fondamentaux du droit international, tels que le *droit des peuples à l'autodétermination* et le *respect de l'intégrité territoriale* sont remis en question lorsque l'on prive des États et des peuples de leurs conditions de vie, de leurs ressources, de leurs territoires et de leurs espaces maritimes.

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[8] Nations Unies, Conseil des droits de l'homme, résolution 48/13 du 8 octobre 2021 ; Assemblée générale, résolution 76/300 du 28 juillet 2022 ; Cour interaméricaine des droits de l'homme, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity — interpretation and scope of Articles 4(1) and 5(1) of the American Convention of Human Rights), Advisory Opinion OC-23/17*, 15 novembre 2017, *Series A No. 23*, par. 56-68 ; *Indigenous Communities of the Lhaka Honhat Association* v. *Argentina*, arrêt du 6 février 2020 *(Merits, reparations and costs), Series C No. 400*, par. 202-209 ; Assemblée parlementaire du Conseil de l'Europe, recommandation 2211 (2021), 29 septembre 2021. Cf. exposé écrit du Costa Rica, par. 85-95.

[9] Cf. exposé écrit des États-Unis d'Amérique, note 373 ; exposé écrit du Canada, par. 24 ; exposé écrit de l'Indonésie, par. 43-44 ; exposé oral de l'Allemagne, CR 2024/35, p. 152, par. 29 (Allemagne).

[10] Cf. Cour européenne des droits de l'homme, *Verein KlimaSeniorinnen Schweiz et autres c. Suisse* [GC], n° 53600/20, 2024, par. 431-434.

[11] *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 180-181, par. 111-112 ; *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda), arrêt, C.I.J. Recueil 2005*, p. 243, par. 216.

16. L'*équité intergénérationnelle* constitue aussi un élément fondamental de votre analyse. Tout comme la Cour interaméricaine, la Cour européenne des droits de l'homme (CEDH) et d'autres organes, vous avez déjà reconnu l'importance de tenir compte des générations futures lorsqu'on définit l'environnement et sa protection[12].

IV. Le droit de la responsabilité est pleinement applicable

17. Certains participants vous invitent à ne pas examiner la question de la responsabilité internationale pour fait illicite dans le cadre d'une procédure consultative. Or, vous l'avez déjà fait plein de fois[13]. Par ailleurs, personne ne vous demande de condamner tel ou tel État. L'invitation qui vous est faite par certains d'éluder la question posée en raison d'une supposée lacune juridique n'est pas plus convaincante. Cette procédure vise précisément à éclairer les États sur la manière dont le droit de la responsabilité s'applique du fait du dommage transfrontière causé par les émissions de gaz à effet de serre. À eux d'examiner par la suite leurs comportements et leurs situations — soit d'État lésé, soit d'État fautif — afin de les rendre conformes au respect du droit. Les règles existantes permettent déjà de le faire.

18. Le *principe des responsabilités communes mais différenciées*, énoncé dans la déclaration de Rio, a sans cesse été invoqué et accepté par les États[14]. Ce principe joue aussi un rôle important en vue d'identifier la responsabilité des États dans le contexte du changement climatique.

19. La question n'est pas de savoir si telle émission de gaz à effet de serre par l'État A a directement causé des pertes et dommages à l'État B. Nous savons aujourd'hui que les émissions

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[12] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 241, par. 29 ; *Projet Gabčíkovo-Nagymaros (Hongrie/Slovaquie), arrêt, C.I.J. Recueil 1997*, p. 78, par. 140 ; Cour interaméricaine des droits de l'homme, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity — interpretation and scope of Articles 4(1) and 5(1) of the American Convention of Human Rights), Advisory Opinion OC-23/17*, 15 novembre 2017, *Series A No. 23* ; Cour européenne des droits de l'homme, *Verein KlimaSeniorinnen Schweiz et autres c. Suisse* [GC], nº 53600/20, 2024, par. 420 ; *Erste Senats des Bundesverfassungsgerichts* (premier sénat de la Cour fédérale constitutionnelle allemande), affaire 1 BvR 2656/18, 1 BvR 2656/18, 1 BvR 96/20, 1BvR 78/20, 1 BvR 288/20, arrêt du 24 mars 2021, par. 61.

[13] *Conséquences juridiques pour les États de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 54, par. 118 ; *Différend relatif à l'immunité de juridiction d'un rapporteur spécial de la Commission des droits de l'homme, avis consultatif, C.I.J. Recueil 1999 (I)*, p. 87, par. 61-62 ; *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 197, par. 147 ; *Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, avis consultatif, C.I.J. Recueil 2019 (I)*, p. 138-139, par. 177 ; *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif, C.I.J. Recueil 2024 (I)*, par. 265.

[14] Exposé écrit du Costa Rica, par. 68-74.

anthropiques sont les responsables du réchauffement climatique. Le lien de causalité se trouve à ce niveau-là.

20. La détermination de la responsabilité individuelle se fait ensuite sur la base des contributions historiques et actuelles, si bien que *la proportion* du dommage causé au système climatique et à l'environnement est quantifiable. Loin d'être du développement progressif, ce résultat découle du droit de la responsabilité tel qu'il existe aujourd'hui, et qui permet de déterminer, lorsque plusieurs États participent à un fait internationalement illicite, la responsabilité individuelle de chacun sur la base de leurs comportements, et ce, dans le domaine de l'environnement ou dans n'importe quel autre domaine[15]. Comme la Commission du droit international l'a affirmé dans son commentaire à l'article 47, « chaque État est séparément responsable du comportement qui lui est attribuable, cette responsabilité n'étant pas diminuée ou réduite par le fait qu'un ou plusieurs autres États en portent également la responsabilité »[16]. La preuve scientifique montre qu'il est possible de déterminer la relation causale entre les émissions de gaz à effet de serre de certains États et le changement climatique[17].

V. Les réponses aux questions posées

21. Pour conclure, Mesdames et Messieurs les juges, nous vous invitons à considérer les éléments de réponse suivants[18] :

a) En réponse à la question *a)*, le droit international impose aux États les obligations suivantes :

1) l'obligation de faire preuve de la diligence requise dans le traitement des émissions de gaz à effet de serre ;
2) l'obligation de prévenir les dommages environnementaux causés par les émissions de gaz à effet de serre provenant du territoire sous la souveraineté ou le contrôle de l'État ;

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[15] Cf. article 47 des articles sur la responsabilité des États élaborés par la Commission du droit international ; Cour européenne des droits de l'homme, Affaire *Verein KlimaSeniorinnen Schweiz et autres c. Suisse* [GC], nº 53600/20, 2024, par. 443.

[16] Commission du droit international, projet d'articles sur la responsabilité de l'État pour fait internationalement illicite et commentaires y relatifs, 2001, p. 337.

[17] UNEP, *The Closing Window. Emissions Gap Report 2022*, Executive Summary, p. V et *No more hot air . . . please. Emissions Gap Report 2024*, table ES.1, p. XIII.

[18] Cf. observations écrites du Costa Rica, par. 42.

3) l'obligation de ne pas causer de dommages environnementaux transfrontières significatifs au territoire d'un autre État ou à des zones situées au-delà de la juridiction nationale ;
4) l'obligation de protéger les écosystèmes ;
5) l'obligation de prendre en compte les conséquences des émissions de gaz à effet de serre pour les générations futures ;
6) l'obligation de protéger le milieu marin ;
7) l'obligation de respecter les droits humains fondamentaux, qui comprennent :
    i) le droit à un environnement propre, sain et durable,
    ii) le droit à la vie,
    iii) le droit à la santé, et
    iv) le droit à l'alimentation et à l'eau ;
8) l'obligation de respecter l'égalité des droits et le droit des peuples à disposer d'eux-mêmes ;
9) l'obligation de respecter l'intégrité territoriale des États et des peuples ;
10) l'obligation de réparer les conséquences des faits internationalement illicites ;
11) l'obligation générale de coopération.

Dans l'accomplissement de ces obligations, les États sont tenus de prendre dûment en compte

i) l'approche écosystémique,
ii) le principe d'équité intergénérationnelle, et
iii) le principe de responsabilité commune mais différenciée et les capacités respectives des États.

b) En réponse à la question *b)* :

1) les États tenus responsables d'avoir violé les obligations internationales mentionnées ont l'obligation de cesser cet acte et d'offrir des assurances et garanties appropriées de non-répétition, si les circonstances l'exigent, et ont le devoir continu d'exécuter les obligations violées ;
2) cesser le comportement en question comprend la prise de mesures d'atténuation pour parvenir à une réduction drastique des émissions de gaz à effet de serre ;
3) les États tenus responsables, par leurs actions ou omissions, de la commission d'actes internationalement illicites, en raison de leurs émissions historiques ou actuelles de gaz à

effet de serre, ont l'obligation de réparer les pertes et dommages causés aux autres États, peuples et individus ; cela comprend, selon les circonstances, la restitution, l'indemnisation et la satisfaction ;

4) l'effet de l'élévation du niveau de la mer due au réchauffement climatique anthropique affectant les côtes et les formations insulaires n'entraîne pas la perte des espaces maritimes ;
5) tous les États et autres acteurs internationaux sont tenus de reconnaître le maintien des espaces maritimes existants tels qu'ils ont été mesurés et communiqués conformément au droit international ou tels que décidés par une cour ou un tribunal international ;
6) les États ont le devoir de coopérer afin d'obtenir la cessation des violations des obligations internationales qui viennent d'être mentionnées et la réparation intégrale des pertes et dommages causés ;
7) les États ont le devoir de coopérer en ce qui concerne les responsabilités communes mais différenciées et selon leurs capacités respectives dans la protection de l'environnement.

22. Monsieur le président, Mesdames et Messieurs les juges, nous ne vous demandons pas de vous transformer en héros sauvant le monde à travers le droit. On ne vous suggère pas du tout de rendre un avis *de lege ferenda*, pas plus que de statuer *ex aequo et bono*. On vous propose, ni plus ni moins, d'exercer votre compétence consultative dans toute son étendue[19]. Si vous remplissez votre fonction, vous aurez fait un vrai pas en avant, petit si l'on mesure l'ampleur de tout ce qui reste à faire, mais grand pour ce qui est de faire jouer au droit international général le rôle qui lui revient. Tel un tocsin, votre réponse pourrait réveiller les grands décideurs globaux pour qu'ils prennent, sur la base du droit et une fois pour toutes, les mesures requises pour faire face à la crise écologique actuelle.

23. Monsieur le président, Mesdames et Messieurs les juges, merci de votre attention. Ainsi s'achève l'exposé oral du Costa Rica.

Le PRÉSIDENT : Je remercie les représentants du Costa Rica pour leur présentation. J'invite à présent la délégation de la Côte d'Ivoire à prendre la parole et appelle M. Eugène Zagre à la barre.

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[19] Cf. *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 237, par. 18.

M. ZAGRE :

A. INTRODUCTION

1. Monsieur le président, honorables Membres de la Cour, c'est un honneur pour moi de me présenter devant vous ce matin au nom de la République de Côte d'Ivoire. Je vous exposerai les observations de mon gouvernement sur la question pendante devant votre auguste Cour, à savoir les obligations des États en matière de changement climatique. Monsieur le président, à l'image de l'ensemble des États dans le monde, la lutte contre les changements climatiques est une préoccupation majeure et pressante pour la Côte d'Ivoire, en raison de sa grande vulnérabilité. En effet, la situation se caractérise ces dernières années par la recrudescence des effets néfastes des changements climatiques qui perturbent d'une manière inquiétante l'équilibre écologique et la vie socioéconomique. L'analyse des secteurs, notamment les secteurs de l'agriculture, de la foresterie, des ressources en eau, des zones côtières, de l'énergie, des infrastructures, du transport et de la santé, met en relief des risques climatiques majeurs.

2. Ainsi, selon le rapport climat et développement de la Banque mondiale 2023 (CCDR), les *impacts du changement climatique pourraient faire basculer dans l'extrême pauvreté 1 630 000 personnes d'ici 2030 et réduire le PIB de 13 % d'ici 2050.*

3. Selon l'indice ND-GAIN sur les vulnérabilités, la Côte d'Ivoire fait partie des pays les plus vulnérables aux changements climatiques. Elle occupe le 47e rang des pays les moins préparés. Dans ce contexte marqué par des insuffisances, la Côte d'Ivoire s'est dotée d'un système de protection par l'adoption de politiques, de stratégies, de programmes, de projets et de plans et d'un cadre normatif et institutionnel plus robuste, conformes à ses engagements internationaux.

4. La Côte d'Ivoire est partie à de nombreux accords et conventions internationaux dont les principaux sont en cette matière la convention-cadre des Nations Unies sur les changements climatiques, la convention sur la lutte contre la désertification et la sécheresse, la convention sur la diversité biologique et l'accord de Paris de 2015 sur le climat. Elle a signé cette année même à New York, l'accord BBNJ portant sur la conservation et l'utilisation durable de la biodiversité marine des zones ne relevant pas de la juridiction nationale. Il en est de même au plan régional. La Côte d'Ivoire, au plan juridique, a donc adopté une nouvelle législation novatrice et protectrice. Au plan

institutionnel, la Côte d'Ivoire a procédé au renforcement de la coordination en matière de gouvernance climatique par la création d'une police de l'environnement, d'une agence nationale de gestion intégrée du littoral, de la commission nationale de lutte contre les changements climatiques et d'un bureau de marché carbone. Monsieur le président, les obligations découlant des dispositions internationales doivent être appliquées dans le respect du principe des responsabilités communes mais différenciées et des capacités respectives. En particulier, les devoirs des pays développés sont clés en matière de transfert de technologie, de renforcement de capacité et *surtout* de financement lié au changement climatique. Le rehaussement des crédits d'investissement verts est nécessaire pour financer les objectifs de conservation ou de durabilité. Pour ce faire, la Côte d'Ivoire s'est dotée d'un important portefeuille de projets pour le développement durable, portant notamment sur l'agriculture et la foresterie, l'énergie solaire, la mobilité électrique, l'économie circulaire et la gestion des déchets et l'utilisation durable des terres.

5. Monsieur le président, face à la hausse des températures, aux effets néfastes des phénomènes climatiques et météorologiques extrêmes, ainsi qu'à des phénomènes à évolution lente, la Côte d'Ivoire plaide pour un renforcement urgent de l'action des États, aux fins d'améliorer la capacité des pays en développement en matière d'adaptation et d'atténuation, dans le cadre d'une coopération stratégique à long terme. *Le défi fondamental reste le financement.* Ainsi, le respect des obligations liées au climat permettrait d'éviter de compromettre les efforts visant à éliminer la pauvreté sous toutes ses formes et à assurer un développement durable à tous.

6. En outre, la Côte d'Ivoire plaide pour une justice climatique, qui vise notamment à protéger non seulement l'environnement actuel, mais aussi l'environnement pour les générations futures. À ce stade de mon propos, Monsieur le président, je voudrais remercier les autorités de mon pays.

7. Monsieur le président, avec votre permission, je vais maintenant passer la parole au professeur Arman Sarvarian pour poursuivre la plaidoirie.

Le PRÉSIDENT : Et je passe maintenant la parole à M. Arman Sarvarian. Vous avez la parole.

M. SARVARIAN :

B. L'INTERPRÉTATION SYSTÉMIQUE DU DROIT PERTINENT APPLICABLE

1. Monsieur le président, Mesdames et Messieurs les juges, la Côte d'Ivoire se rallie à l'observation des participants[20] affirmant le commentaire de la CDI : « It is a generally accepted principle that when several norms bear on a single issue they should, to the extent possible, be interpreted so as giving rise to a single set of compatible obligations. »[21] Vu la jurisprudence des cours nationales, du TIDM et des cours des droits de l'homme, nous saluons l'observation du Portugal[22] et d'autres États[23] selon laquelle la compétence de la Cour est une opportunité pour préciser le droit de façon systémique, afin d'éviter la fragmentation[24].

2. Nous soutenons l'observation de l'Espagne[25], parmi d'autres[26], concernant l'importance de la règle sur l'interprétation harmonieuse exprimée dans l'article 31, alinéa 3 *c)*, de la convention de Vienne sur le droit des traités (CVDT)[27]. Quant à l'application des deux formes de « *lex specialis* » identifiées par la CDI[28] et débattues au second tour des plaidoiries écrites[29], nous affirmons qu'il ne

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[20] E.g. Netherlands, Written Comments (15 August 2024), para. 2.2; The Gambia, Written Comments (15 August 2024), para. 3.9.

[21] International Law Commission, 'Conclusions of the Work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', *Yearbook of the International Law Commission*, 2006, Vol. II, Part Two.

[22] Portugal, Written Statement (March 2024), para. 163.

[23] Albania, Written Statement (22 March 2024), para. 111; Timor-Leste, Written Comments (15 August 2024), para. 58; Timor-Leste, Written Statement (22 March 2024), para. 82. See also: Solomon Islands, Written Statement (22 March 2024), para. 57.

[24] ILC, Conclusions on Fragmentation (note 211), annex (para. 4).

[25] Spain, Written Statement (March 2024), para. 18.

[26] Namibia, Written Statement (22 March 2024), paras. 43-46; Colombia, Written Statement (11 March 2024), paras. 3.3-3.7; France, observations écrites (15 août 2024), par. 20; France, exposé écrit (22 mars 2024), par. 13; New Zealand, Written Comments (14 August 2024), par. 14 ; Suisse, observations écrites (7 août 2024), par. 10; Albania, Written Statement (22 March 2024), par. 111; Solomon Islands, Written Statement (22 March 2024), par. 56-57; République démocratique du Congo, observations écrites (2 août 2024), par. 6-8; Burkina Faso, exposé écrit (2 avril 2024), par. 68; Germany, Written Statement (March 2024), par. 35; Mauritius, Written Statement (22 March 2024), par. 147, 162-163; Ecuador, Written Statement (22 March 2024), par. 3.67; Chile, Written Statement (22 March 2024), par. 76-77; Saint Lucia, Written Statement (21 March 2024), par. 38; Timor-Leste, Written Statement (22 March 2024), par. 85. Voir aussi : Kenya, Written Statement (22 March 2024), par. 5.51; Namibia, Written Statement (22 March 2024), par. 71; Solomon Islands, Written Statement (22 March 2024), par. 56; Saint Vincent and the Grenadines, Written Statement (21 March 2024), par. 94; Tonga, Written Statement (15 March 2024), par. 126; Albania, Written Statement (22 March 2024), par. 13.

[27] Convention de Vienne sur le droit des traités 1969, 1155 UNTS 331. Voir aussi : Oliver Dörr, « Article 31: General rule of interpretation » in Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (2012) 521, 561-564 ; Sorel and Eveno, « Article 31: Convention of 1969 » in Corten and Klein, *The Vienna Convention on the Law of Treaties: A Commentary* (2011) 289, 304-307.

[28] ILC, Conclusions on Fragmentation (note 211), para. 88.

[29] Netherlands, Written Comments (15 August 2024), para. 2.3; Namibia, Written Comments (15 August 2024), paras. 28-39; Albania, Written Comments (15 August 2024), paras. 7-8; Colombia, Written Comments (14 August 2024),

s'agit pas de l'exclusion totale de l'une par l'autre. Plutôt, la question est l'application de chaque forme de *lex specialis* à chaque problématique respective[30].

3. Premièrement, la règle harmonise les relations entre la CCNUCC et l'accord de Paris. La « convention-cadre » a été conclue en 1992 dans les circonstances spécifiques de cette période, tandis que l'accord de Paris est un traité d'implémentation élaboré en 2015[31]. Nous sommes d'accord avec l'Afrique du Sud[32], le Brésil[33], les pays nordiques[34], le Koweït[35] et la France[36] par rapport à l'interprétation harmonieuse en général : par exemple, l'intégration des mécanismes pour la fourniture d'assistance financière et technologique. Or, nous appuyons le commentaire des États-Unis[37] et autres[38] que la règle du *lex posterior* prévoit que la convention-cadre « ne s'applique que dans la mesure où ces dispositions sont compatibles avec celles »[39] de l'accord de Paris[40].

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paras. 3.64-3.68; Burkina Faso, observations écrites (14 août 2024), par. 17-35; Samoa, Written Comments (15 August 2024), paras. 11-29, 34-36; Sri Lanka, Written Comments (August 2024), paras. 8-15, 16-24; Costa Rica, Written Comments (15 August 2024), paras. 18-21; Chile, Written Comments (15 August 2024), paras. 48-49; Sierra Leone, Written Comments (15 August 2024), paras. 3.36-3.40; Ghana, Written Comments (15 August 2024), paras. 3.17-3.20; Egypt, Written Comments (15 August 2024), paras. 42-51; Bangladesh, Written Comments (15 August 2024), paras. 28-34; St Vincent and the Grenadines, Written Comments (15 August 2024), paras. 39-40; Saint Lucia, Written Comments (15 August 2024), para. 21; Ecuador, Written Comments (15 August 2024), paras. 9-25; Mexico, Written Comments (August 2024), paras. 7-9, 18-23; Pakistan, Written Comments (15 August 2024), para. 17; Belize, Written Comments (15 August 2024), paras. 35-36; Nauru, Written Comments (15 August 2024), paras. 4-33; Mauritius, Written Comments (15 August 2024), paras. 87-96; Barbados, Written Comments (15 August 2024), paras. 17-33, 42-55; République dominicaine, observations écrites (15 août 2024), par. 30-31; Timor-Leste, Written Comments (15 August 2024), paras. 23-26; Kenya, Written Comments (13 August 2024), para. 2.4; Antigua and Barbuda, Written Comments (13 August 2024), paras. 59-61, 70-81; Bahamas, Written Comments (14 August 2024), paras. 15-17; Cook Islands, Written Comments (15 August 2024), paras. 43, 50-51; The Gambia, Written Comments (15 August 2024), paras. 3.3-3.8, 3.31; African Union, Written Comments (15 August 2024), paras. 18-30. *Contra*: Saudi Arabia, Written Comments (15 August 2024), para. 2.9, 4.39-4.41.

[30] ILC, Conclusions on Fragmentation (note 211), paras. 62-63, 97-105.

[31] France, observations écrites (15 août 2024), par. 28 ; Suisse, observations écrites (7 août 2024), par. 52. Voir aussi CR 2024/36, p. 30, par. 11 (Arabie saoudite).

[32] South Africa, Written Statement (22 March 2024), paras. 40-41. Voir aussi CR 2024/35, p. 121, par. 11 (Afrique du Sud).

[33] Brazil, Written Comments (15 August 2024), para. 23.

[34] Denmark, Finland, Iceland, Norway and Sweden, Written Statement (21 March 2024), para. 61.

[35] Kuwait, Written Statement (22 March 2024), para. 28.

[36] France, observations écrites (15 août 2024), par. 27.

[37] United States of America, Written Statement (22 March 2024), para. 3.3.

[38] United Kingdom, Written Comments (12 August 2024), paras. 30-31 ; Suisse, observations écrites (7 août 2024), par. 53 ; France, exposé écrit (22 mars 2024), par. 24 ; Uruguay, Written Comments (15 August 2024), para. 76. *Contra*: Egypt, Written Comments (15 August 2024), paras. 52-55 ; Seychelles, Written Comments (15 August 2024), paras. 53-54 ; Saudi Arabia, Written Comments (15 August 2024), paras. 3.7, 3.11.

[39] CVDT, art. 30(3).

[40] Odendahl, 'Article 30: Application of successive treaties relating to the same subject matter' in Dörr (note 27) 505, 514.

4. Deuxièmement, cette règle intègre le droit du climat au droit coutumier[41] comme dans le cas de l'affaire relative à des *Usines de pâte à papier*[42]. Nous affirmons que le *lex specialis* s'applique en sa première façon, à savoir « l'*application simultanée* de la règle spéciale et de la règle générale »[43] non pour l'*exclusion* du droit coutumier[44], mais sa *manifestation* par le droit conventionnel en liaison avec l'*augmentation* dynamique du droit conventionnel par le droit coutumier en évolution[45]. Par conséquent, les deux régimes sont alignés[46] ; selon le Royaume-Uni, « [a]ccordingly, the Climate Change treaties and any [applicable customary] rule … would not give rise to parallel regimes operating simultaneously with different content »[47].

5. Troisièmement, cette règle gère les rapports entre les deux traités du climat et les traités des autres champs spécialisés comme le droit de la mer, les droits de l'homme et le droit des investissements[48]. À cet égard, nous affirmons que les dispositions de l'accord de Paris s'appliquent

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[41] France, observations écrites (15 août 2024), par. 12, 17-19 ; Kenya, Written Comments (13 August 2024), para. 2.5; Suisse, observations écrites (7 août 2024), par. 13 ; Switzerland, Written Statement (18 March 2024), para. 13; European Union, Written Statement (March 2024), paras. 229-230; Romania, Written Statement (February 2024), para. 97; New Zealand, Written Statement (22 March 2024), paras. 85-86, 107; Russian Federation, Written Statement (22 March 2024) p. 8; Japan, Written Statement (22 March 2024), paras. 13-18; Republic of Korea, Written Statement (22 March 2024), para. 40; Sierra Leone, Written Statement (22 March 2024), para. 3.19; Madagascar, exposé écrit (22 mars 2024), par. 34-35; Egypt, Written Statement (22 March 2024), para. 328; Burkina Faso, exposé écrit (2 avril 2024), par. 69; Colombia, Written Statement (11 March 2024), para. 3.71; Germany, Written Statement (March 2024), para. 163. *Contra*: United States of America, Written Statement (22 March 2024), para. 4.1; Saudi Arabia, Written Statement (21 March 2024), para. 4.90; Brazil, Written Statement (21 March 2024), para. 27; Samoa, Written Statement (22 March 2024), paras. 131-139.

[42] *Usines de pâte à papier sur le fleuve Uruguay (Argentine c. Uruguay) (arrêt)* [2010] CIJ Rec. 14, par. 55, 64-65. Voir aussi : *Arbitration regarding the Iron Rhine ('Izjeren Rijn') Railway (Belgium* v. *Netherlands)(Award)* Permanent Court of Arbitration (24 May 2005) XXVII RIAA 33, paras. 58-59; *Indus Waters Kishenganga Arbitration (Pakistan* v. *India)(Partial Award)* Permanent Court of Arbitration (18 February 2013) XXXI RIAA 55, paras. 449-452; *Plates-formes pétrolières (République islamique d'Iran c. États-Unis d'Amérique)* [2004] CIJ Rec. 161, par. 41.

[43] ILC, Fragmentation Conclusions (note 211), para. 88.

[44] Saudi Arabia, Written Statement (21 March 2024), paras. 5.6-5.10; Kuwait, Written Statement (21 March 2024), paras. 61-64; Organisation of the Petroleum Exporting Countries, Written Statement (19 March 2024), para. 9; Australia, Written Statement (22 March 2024), para. 4.11.

[45] European Union, Written Comments (August 2024), para. 37; Palau, Written Comments (June 2024), para. 5; République démocratique du Congo, observations écrites (2 août 2024), par. 16 ; Antigua and Barbuda, Written Statement (22 March 2024), para. 128. Voir aussi : Gardiner, *Treaty Interpretation* (2015) 328-331, 332-334.

[46] *Indus Waters Kishenganga Arbitration (Pakistan* v. *India) (Final Award)* Permanent Court of Arbitration (18 February 2013) XXXI RIAA 309, para. 112.

[47] United Kingdom, Written Comments (12 August 2024), para. 35.3; United States of America, Written Comments (15 August 2024), para. 3.1. *Contra*: République démocratique du Congo, observations écrites (2 août 2024), par. 18 ; Seychelles, Written Comments (15 August 2024), para. 55; Bahamas, Written Comments (14 August 2024), para. 76. CIJ, *Obligations des États en matière du changement climatique*, Audience publique, Compte rendu (2 décembre 2024, l'après-midi) 32, para. 10 (Arabie Saoudite).

[48] Germany, Written Statement (March 2024), paras. 86-90 ; Canada, Written Statement (20 March 2024), para. 22 ; République démocratique du Congo, observations écrites (2 août 2024), par. 198 ; Sierra Leone, Written Statement (22 March 2024), paras. 3.1-3.4 ; Cameroun, exposé écrit (22 mars 2024), par. 14 ; Madagascar, exposé écrit (22 mars 2024), par. 25 ; Burkina Faso, exposé écrit (2 avril 2024), par. 70 ; Colombia, Written Statement (11 March 2024), paras. 3.7, 3.9, 3.71 ; Tonga, Written Statement (15 March 2024), para. 230 ; Singapore, Written Statement (20 March 2024), paras. 3.87-3.88 ; Germany, Written Statement (March 2024), para. 162. *Contra* : Saudi Arabia, Written Statement

à l'interprétation des règles pertinentes des autres régimes conventionnels en ce qui concerne les questions du droit du climat[49]. Or, les autres régimes restent distincts relativement à leurs règles spécifiques qui ne sont pas couvertes par l'accord de Paris ; la Nouvelle-Zélande a invoqué[50] l'article 192 de la convention des Nations Unies sur le droit de la mer (CNUDM), qui prévoit de « prendre des mesures aussi ambitieuses et efficaces que possible pour prévenir ou réduire les effets nuisibles du changement climatique et de l'acidification des océans sur le milieu marin »[51].

6. Nous nous rallions à l'argument de l'UE :

> « The European Union therefore does not understand Article 194(1) of UNCLOS to [have] the effect of imposing general substantive requirements regarding the limiting of GHG emissions on State Parties, … but rather as setting an exacting and stringent standard. »[52]

Nonobstant les obligations distinctes susmentionnées de la CNUDM et les autres régimes, nous affirmons que les États parties peuvent respecter leurs obligations sous la CNUDM par le biais de la mise en œuvre de leurs devoirs sous l'accord de Paris, *telles que complétées par* la règle coutumière sur la prévention des dommages transfrontaliers[53].

7. L'évolution dynamique et continuelle du droit coutumier soude les deux régimes conventionnels et empêche ainsi quelque conflit de loi sur la même matière. Si la Cour décide, par contre, que le droit coutumier ne s'applique pas à l'interprétation de l'accord de Paris, la Côte d'Ivoire estime que son exécution ne satisfera pas le niveau « élevé »[54] de l'article 194 de la CNUDM. Selon cette approche, par exemple, il faudra inclure l'obligation coutumière à évaluer l'impact sur l'environnement[55] dans la portée de l'article 4 pour se conformer à l'article 194[56].

(21 March 2024), paras. 4.95-4.99 ; Vanuatu, Written Statement (21 March 2024), paras. 225, 399. Voir aussi : Gardiner (note 45) 324-326.

[49] United Kingdom, Written Comments (12 August 2024), paras. 57-59 ; United States of America, Written Comments (15 August 2024), para. 3.46.

[50] New Zealand, Written Comments (14 August 2024), para. 18. Voir aussi : Albania, Written Comments (15 August 2024), paras. 55-58.

[51] *Demande d'avis consultatif soumise par la Commission des petits États insulaires sur le changement climatique et le droit international (Avis consultatif)*, Tribunal international du droit de la mer (21 mai 2024), par. 399.

[52] European Union, Written Comments (August 2024), para. 39.

[53] Netherlands, Written Comments (15 August 2024), para. 2.4 ; New Zealand, Written Comments (14 August 2024), para. 20.

[54] TIDM, *avis consultatif*, par. 241, 243, 256, 258, 398-400.

[55] Belize, Written Comments (15 August 2024), paras. 7-11 ; Mauritius, Written Comments (15 August 2024), para. 51 ; Namibia, Written Comments (15 August 2024), para. 49.

[56] TIDM, *avis consultatif*, par. 345, 352-359. Voir aussi : *Arbitration regarding the Chagos Marine Protected Area (Mauritius* v. *United Kingdom) (Award of 18 March 2015)* 31 RIAA 359, para. 322.

C. LA QUESTION *A)* : LES OBLIGATIONS DES ÉTATS LIÉES AU CHANGEMENT CLIMATIQUE

L'objectif collectif de l'accord de Paris

8. Relativement à la question *a)*, la Côte d'Ivoire soutient le commentaire du Pakistan[57] et d'autres[58] estimant que la pierre angulaire de l'accord de Paris est l'objectif collectif en matière de température globale[59]. Comme cette disposition n'utilise aucun terme contraignant[60], nous appuyons l'Australie[61] et d'autres[62] affirmant son caractère non contraignant à la lumière de son historique de rédaction[63]. Vu le consensus sur le caractère contraignant des devoirs au titre individuel sous l'article 4[64], nous affirmons que l'objectif collectif tout comme « le contexte interne »[65] imprègnent leur interprétation[66].

9. En conséquence, la question du niveau de l'objectif collectif est la clé pour que nous précisions le niveau des obligations au titre individuel. À cet égard, ni le texte ni aucune décision subséquente[67] ne clarifient le sens des mots « nettement en dessous de 2°C ». While we concur with

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[57] Pakistan, Written Statement (22 March 2024), paras. 50-51.

[58] Ecuador, Written Statement (22 March 2024), paras. 3.76-3.77; Grenada, Written Statement (21 March 2024), paras. 25-30; Indonesia, Written Statement (22 March 2024), paras. 51-53. Voir aussi : CIJ, *Obligations des États en matière du changement climatique*, audience publique, CR 2024/35, p.142, par. 12 (Allemagne).

[59] E.g. Colombia, Written Statement (11 March 2024), paras. 3.32-3.34 ; Chile, Written Statement (22 March 2024), paras. 55, 59 ; El Salvador, Written Statement (22 March 2024), para. 30 ; Solomon Islands, Written Statement (22 March 2024), paras. 61-63 ; Micronesia, Written Statement (25 March 2024), para. 89 ; Timor-Leste, Written Statement (22 March 2024), paras. 96-101. The temperature target 'reduces the uncertainty that has long attached to the UNFCCC's Objective' – Navraj Singh Ghaleigh, 'Article 2: Aims, Objectives and Principles' in Geert van Calster and Léonie Reins, *The Paris Agreement on Climate Change: A Commentary* (2021) 73, 80 ; Halldór Thorgeirsson, 'Objective (Article 2.1)' in Klein et al., *The Paris Agreement on Climate Change: Analysis and Commentary* (2017) 123, 127-128.

[60] Ghaleigh (note 61) 81; Thorgeirsson (note 61) 128.

[61] Australia, Written Comments (15 August 2024), paras. 2.23-2.24 ; Australia, Written Statement (22 March 2024), para. 2.62.

[62] Saint Lucia, Written Statement (21 March 2024), para. 53; Saudi Arabia, Written Comments (15 August 2024), paras. 4.22-4.30 ; Saudi Arabia, Written Statement (21 March 2024), para. 4.58-4.60; United States of America, Written Statement (22 March 2024), para. 3.15; United Kingdom, Written Comments (12 August 2024), para. 14-18 ; Kuwait, Written Statement (22 March 2024), paras. 31-32.

[63] *Contra*: Sierra Leone, Written Statement (22 March 2024), paras. 3.23-3.24 ; Germany, Written Statement (March 2024), para. 44, 100-102 ; Nepal, Written Statement (22 March 2024), paras. 18-19 ; Romania, Written Statement (February 2024), para. 88 ; Marshall Islands (March 2024), paras. 64-65 ; Viet Nam, Written Statement (22 March 2024), para. 19 ; Namibia, Written Statement (22 March 2024), paras. 46, 72 ; Portugal, Written Statement (March 2024), paras. 51, 53.

[64] United Kingdom, Written Comments (12 August 2024), para. 20.

[65] Convention de Vienne sur le droit des traités, art. 31, al. 2.

[66] Latvia, Written Comments (14 August 2024), para. 19 ; Sierra Leone, Written Comments (15 August 2024), para. 3.5 ; Samoa, Written Comments (15 August 2024), para. 52 ; Mauritius, Written Comments (15 August 2024), paras. 40-42 ; Kenya, Written Comments (13 August 2024), paras. 4.36-4.37, 4.44.

[67] CMA.5 ('First global stocktake'), UN Doc. FCCC/PA/CMA/2023/L.17 (13 December 2023), paras. 3-4.

China that the collective temperature goal "is a range instead of one fixed level"[68], it is submitted that a ceiling exists between the hortatory ambition to "pursue efforts to limit the temperature increase to 1.5ºC"[69] and the reference point of 2ºC[70]. Bien que certains participants soutiennent que la limite est au-dessous de 1,5ºC[71], cette interprétation n'est pas justifiée à la lumière des mots « poursuivant l'action menée ». Dans le « contexte interne »[72] suivant le principe de précaution[73], il est affirmé que l'interprétation la plus fidèle à l'intention commune est le niveau de 1,6°C qui constitue le moins dangereux parmi les cinq « futurs climatiques possibles » au-delà de 1,5°C présentés par le GIEC[74].

10. Canada[75] and the United Kingdom[76] have argued that the mitigation of international aviation and shipping emissions is delegated to the ICAO and IMO. While Article 2 (2) of the Kyoto Protocol is spent[77], New Zealand[78] has noted that the Paris Agreement and CMA decisions thereto do not provide for their exclusion from mitigation duties. Segregated reporting by State Parties in greenhouse gas inventories reflects the special methodologies for the attribution of transnational

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[68] China, Written Statement (22 March 2024), para. 22. *Contra*: Sierra Leone, Written Comments (15 August 2024), para. 3.5.

[69] CMA.5 (note 67), paras. 3-4.

[70] *Contra*: China, Written Statement (22 March 2024), para. 24.

[71] E.g. Namibia, Written Statement (22 March 2024), paras. 46, 69 ; Vanuatu, Written Statement (21 March 2024), paras. 401-403 ; Tuvalu, Written Statement (22 March 2024), paras. 105-111 ; Tuvalu, Written Comments (14 August 2024), paras. 30-33.

[72] Convention de Vienne sur le droit des traités, art. 3, al. 2.

[73] Convention-cadre des Nations-Unis sur le changement climatique, signée le 9 mai 1992, 1771 UNTS 107, préambule. Voir aussi : Xue Hanqin, *Transboundary Damage in International Law* (2003) 256.

[74] GIEC, « Changement climatique 2021 les bases scientifiques physiques : Contribution du groupe de travail I au sixième Rapport d'évaluation » p. 15 (octobre 2021) https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WG1_SPM_French.pdf.

[75] Canada, Written Statement (20 March 2024), para. 18.

[76] United Kingdom, Written Statement (18 March 2024), paras. 30.1, 83.

[77] United Kingdom, Written Comments (12 August 2024), para. 31.4; Kuwait, Written Statement (22 March 2024), para. 27; Brazil, Written Statement (21 March 2024), para. 41; Kenya, Written Comments (13 August 2024), para. 4.30.

[78] New Zealand, Written Statement (22 March 2024), paras. 78-79.

emissions[79]. The CORSIA[80] and MARPOL[81] are voluntary schemes[82] while civil aviation alone accounted for 2.76 per cent of global emissions in 2019[83]. Not addressed by the ITLOS[84], it is submitted that their exclusion from mitigation duties without a collective decision is inconsistent with Article 4 (1).

Les obligations en matière d'atténuation des émissions de GES

11. As the United States[85] and others[86] have noted, Article 4 as the "core mitigation provision" applies to *all* State parties. Though "ambiguous" on its own terms[87], the drafting history of paragraph 1[88] shows it to be "internal context"[89] linking the binding duties in paragraphs 2 and 3 to the collective objective in Article 2(1)[90]. Building upon a consensus that paragraphs 2 and 3 are obligations of conduct rather than result[91], Côte d'Ivoire supports the argument of the European Union[92],

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[79] Working Group III contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, "Climate Change 2022: Mitigation of Climate Change", TS-24, TS-67, paras. 1.12-1.13.

[80] Carbon Offsetting and Reduction Scheme for International Aviation, ICAO Res A41-22 (Dec. 2022).

[81] Amendments to the Annex of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships 1973 (inclusion of regulations on energy efficiency for ships in MARPOL Annex VI) Resolution MEPC.203(62) adopted on 15 July 2011, https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMO Resolutions/MEPCDocuments/MEPC.203(62).pdf.

[82] United Kingdom, Written Statement (18 March 2024), paras. 87, 99; United States of America, Written Statement (22 March 2024), paras. 3.48-3.51; New Zealand, Written Statement (22 March 2024), paras. 80-83. *Contra*: United Arab Emirates (22 March 2024), para. 88.

[83] Working Group III contribution to the Sixth Assessment Report (note 79), para. 1.2.4.

[84] ITLOS, *Advisory Opinion* (note 51), paras. 75-82, 137, 214, 277, 280, 291.

[85] United States of America, Written Comments (15 August 2024), para. 3.9; United States of America, Written Statement (22 March 2024), para. 3.1.

[86] European Union, Written Statement (March 2024), para. 95; Spain, Written Statement (March 2024), para. 7; Latvia, Written Statement (19 March 2024), para. 26; Colombia, Written Statement (11 March 2024), para. 3.31; United Kingdom, Written Statement (18 March 2024), para. 66; Australia, Written Statement (22 March 2024), para. 2.18; Kuwait, Written Statement (22 March 2024), para. 36; Saudi Arabia, Written Comments (15 August 2024), para. 4.12. *Contra*: Saudi Arabia, Written Statement (21 March 2024), paras. 4.62, 4.67; Vanuatu, Written Statement (21 March 2024), para. 222.

[87] VCLT, Art. 32. See also: Oliver Dörr, "Article 32: Supplementary means of interpretation" in Dörr (note 27) 571, 582-585.

[88] Harald Winkler, "Mitigation: Article 4" in Klein (note 59) 141, 144; Benoît Mayer, "Article 4: Mitigation" in van Calster (note 59) 109, 112.

[89] VCLT, Art. 31(2). See further: Gardiner (note 45) 210.

[90] Winkler (note 88) 144.

[91] E.g. Australia, Written Comments (15 August 2024), para. 2.27; Iran, Written Statement (22 March 2024), para. 117-118; Russian Federation, Written Statement (22 March 2024) p. 8; Vanuatu, Written Statement (21 March 2024), para. 409; Republic of Korea, Written Statement (22 March 2024), paras. 20, 22; Tonga, Written Statement (15 March 2024), paras. 147-148; Samoa, Written Statement (22 March 2024), paras. 167-168.

[92] European Union, Written Statement (March 2024), para. 77.

Seychelles[93] and others[94] that they are obligations of conduct *leading to* a precise result[95]. As the Court stated in the *Nuclear Weapons* Advisory Opinion:

> "The legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result — nuclear disarmament in all its aspects — by adopting a particular course of conduct, namely, the pursuit of negotiations . . . in good faith."[96]

Just as the destructive power of nuclear weapons "cannot be contained in either space or time", so does severe global warming carry "the potential to destroy all civilization and the entire ecosystem of the planet"[97]. It is this *global* scope that distinguishes them even from the duty in the Genocide Convention to prevent and punish the "crime of crimes"[98].

12. Nous observons que la grande majorité des participants sont d'accord[99] sur l'application aux alinéas 2 et 3 de la règle coutumière sur la prévention des dommages transfrontaliers en liaison

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[93] Seychelles, Written Comments (15 August 2024), para. 49.

[94] Mauritius, Written Comments (15 August 2024), paras. 40-44; Latvia, Written Comments (14 August 2024), para. 19; South Africa, Written Statement (22 March 2024), para. 69; Suisse, Observations écrites (7 août 2024), par. 31-33.

[95] *Responsibilities and obligations of States with respect to activities in the Area*, *Advisory Opinion*, *ITLOS Reports 2011*, p. 41, para. 110.

[96] *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion*, *I.C.J. Reports 1996 (I)*, p. 264, para. 99.

[97] *Ibid.*, p. 243. para. 35.

[98] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, *Judgment, I.C.J. Reports 2007 (I)*, p. 43, para. 430. See also: *Responsibilities and obligations of States with respect to activities in the Area* (note 95), para. 110.

[99] European Union, Written Comments (August 2024), paras. 86-87; European Union, Written Statement (March 2024), paras. 275-285; Pakistan, Written Statement (22 March 2024), para. 35; Slovenia, Written Statement (22 March 2024), paras. 39-41; Philippines, Written Comments (15 August 2024), paras. 42-50; Latvia, Written Comments (14 August 2024), para. 35; Seychelles, Written Comments (15 August 2024), paras. 39-48; Albania, Written Comments (15 August 2024), paras. 18-24; Australia, Written Comments (15 August 2024), paras. 3.2-3.3, 3.14; Bangladesh, Written Comments (15 August 2024), paras. 10-18; Nauru, Written Comments (15 August 2024), paras. 34-48; Samoa, Written Comments (15 August 2024), paras. 38-48; Ghana, Written Comments (15 August 2024), paras. 3.21-3.26; United Kingdom, Written Comments (12 August 2024), para. 35; Portugal, Written Statement (March 2024), para. 55; Kenya, Written Statement (22 March 2024), paras. 5.3-5.11; Solomon Islands, Written Statement (22 March 2024), paras. 146-160; Colombia, Written Statement (11 March 2024), paras. 3.13-3.30; Pakistan, Written Statement (22 March 2024), paras. 29-31, 36; Sierra Leone, Written Statement (22 March 2024), paras. 3.10-3.12; Nepal, Written Statement (22 March 2024), para. 26; Indonesia, Written Statement (22 March 2024), para. 60; France, Exposé écrit (22 mars 2024), par. 49-52, 57, 68, 73, 191; Switzerland, Written Statement (18 March 2024), para. 57; Albania, Written Statement (22 March 2024), para. 70; United Arab Emirates, Written Statement (22 March 2024), paras. 92-94, 99-100; Russia, Written Statement (22 March 2024) p. 8; Denmark, Finland, Iceland, Norway, Sweden, Joint Written Statement (21 March 2024), para. 74; Sri Lanka, Written Statement (22 March 2024), paras. 95-98; Thailand, Written Statement (22 March 2024), paras. 7-8, 11, 16; Republic of Korea, Written Statement (22 March 2024), paras. 33-37; Bangladesh, Written Statement (22 March 2024), paras. 88-90; South Africa, Written Statement (22 March 2024), para. 74; Cameroun, Exposé écrit (22 mars 2024), par. 13; Egypt, Written Statement (22 March 2024), paras. 83-100; Namibia, Written Statement (22 March 2024), paras. 49-53; Ghana, Written Statement (22 March 2024), para. 26; Burkina Faso, Exposé écrit (2 avril 2024), par. 160-182; Belize, Written Statement (21 March 2024), paras. 31-63; Ecuador, Written Statement (22 March 2024), paras. 3.18-3.28; Uruguay, Written Statement (22 March 2024), paras. 89-102; Chile, Written Statement (22 March 2024), paras. 35-39, 81-90; El Salvador, Written Statement (22 March 2024), paras. 32-37; Dominican Republic, Written Statement (22 March 2024), paras. 4.21-4.27; Palau (March 2024), paras. 13-16; Singapore, Written Statement (20 March 2024), paras. 3.1-3.20; Seychelles, Written Statement (22 March 2024), paras. 100-129; Grenada, Written Statement (21 March 2024), para. 41; Nauru, Written Statement (22 March 2024), paras. 26-33; Marshall Islands, Written Statement (March 2024), paras. 21-24,

avec la norme[100] de la diligence requise[101]. Tandis que la Cour a appliqué ce principe aux environnements locaux jusqu'à présent[102], nous soutenons qu'il se rattache également à l'environnement global[103].

13. As the Nordics[104] and others[105] have argued, paragraph 3 does not set a numerical duty of mitigation. Whilst State parties enjoy a margin of appreciation to design and implement their NDCs, they must nevertheless comply with the prescribed criteria[106]. In particular, the stipulation of "progression" entails a continuous rise in ambition[107]. Whilst Kuwait[108] and the United States[109] have

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70-72; Saint Vincent and the Grenadines, Written Statement (21 March 2024), paras. 97-101; Micronesia, Written Statement (25 March 2024), paras. 53-58; Saint Lucia, Written Statement (21 March 2024), paras. 66-68; Samoa, Written Statement (22 March 2024), paras. 87-101; Bahamas, Written Statement (22 March 2024), paras. 89-104; Barbados, Written Statement (22 March 2024), paras. 133-150, 200-201; Germany, Written Statement (March 2024), paras. 189-195; Antigua and Barbuda, Written Statement (22 March 2024), paras. 125-142. *Contra*: Pakistan, Written Comments (15 August 2024), para. 10; United States of America, Written Comments (15 August 2024), paras. 3.23-3.30; United Kingdom, Written Comments (12 August 2024), para. 34; New Zealand, Written Statement (22 March 2024), paras. 105-107; China, Written Statement (22 March 2024), paras. 127-129; Kuwait, Written Statement (22 March 2024), para. 76; India, Written Statement (22 March 2024), para. 17; Vanuatu, Written Statement (21 March 2024), paras. 231-248; Saudi Arabia, Written Comments (15 August 2024), paras. 4.53-4.65, 4.90; OPEC, Written Statement (19 March 2024), para. 87. See, however: China, Written Statement (22 March 2024), paras. 130-131. Voir aussi : CR 2024/36, p. 43-44, par. 9-14 (Australie).

[100] United Kingdom, Written Comments (12 August 2024), paras. 32-33, 36.

[101] France, Observations écrites (15 août 2024), par. 56-57 ; Suisse, Observations écrites (7 août 2024), par. 21-25 ; European Union, Written Comments (August 2024), paras. 16-17.

[102] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II)*, p. 614, para. 99. Voir aussi : *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 665, paras. 104, 118; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2009 (I)*, p. 14, paras. 101, 197, 204; *Gabčikovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7, para. 140. See also: *Responsibilities and obligations of States with respect to activities in the Area* (note 95), para. 131.

[103] France, Exposé écrit (22 mars 2024), par. 58-59. *Contra*: United States of America, Written Statement (22 March 2024), paras. 4.10-4.19. Voir aussi : Fitzmaurice, "The Older Generation of International Lawyer and the Question of Human Rights" (1968) 21 *Revista espanola de derecho internacional* 481; Nauru, Written Comments (15 August 2024), para. 43; Pakistan, Written Comments (15 August 2024), para. 6 (note 25).

[104] Denmark, Finland, Iceland, Norway, Sweden, Joint Written Statement (21 March 2024), para. 108.

[105] European Union, Written Comments (August 2024), paras. 42-47; Netherlands, Written Statement (21 March 2024), para. 3.8; Australia, Written Statement (22 March 2024), paras. 2.15, 2.23; Germany, Written Statement (March 2024), para. 47; France, Observations écrites (15 août 2024), par. 31; United States of America, Written Comments (15 August 2024), para. 3.16; United States of America, Written Statement (22 March 2024), para. 3.15; New Zealand, Written Comments (14 August 2024), para. 24.

[106] United Kingdom, Written Comments (12 August 2024), para. 51; France, Observations écrites (15 août 2024), par. 28-29 ; France, Exposé écrit (22 mars 2024) 49-53, 193 ; Cameroun, Observations écrites (7 août 2024), par. 15, 31-33 ; European Union, Written Statement (March 2024), paras. 148-153; United Arab Emirates, Written Statement (22 March 2024), para. 113; Mexico, Written Comments (August 2024), paras. 30; Mexico, Written Statement (March 2024), para. 48; Singapore, Written Statement (20 March 2024), paras. 3.6. *Contra :* Saudi Arabia, Written Statement (21 March 2024), para. 4.107; Ecuador, Written Statement (22 March 2024), para. 3.81; Saint Lucia, Written Statement (21 March 2024), para. 55.

[107] E.g. France, Observations écrites (15 août 2024), par. 36 ; Australia, Written Comments (15 August 2024), para. 2.29; United Arab Emirates (22 March 2024), para. 112; India, Written Statement (22 March 2024), para. 33; Egypt, Written Statement (22 March 2024), para. 135; Colombia, Written Statement (11 March 2024), para. 3.37; Timor-Leste, Written Statement (22 March 2024), paras. 118-120.

[108] Kuwait, Written Statement (22 March 2024), para. 40.

[109] United States of America, Written Comments (15 August 2024), paras. 3.10, 3.15; United States of America,

argued that the word "will" instead of "shall" carries a hortatory meaning, Côte d'Ivoire concurs with the European Union and others[110] that the word "carries more weight than a term such as "should" but does not elevate the obligation to one of result — for instance by using the word "shall"[111].

14. Whereas Kuwait[112], Saudi Arabia[113] and the United States[114] maintain that the standard of NDCs is exclusively determined by each State party, Côte d'Ivoire agrees with Australia[115] and others[116] that they must be aligned to the "object and purpose"[117] of the collective objective, as decided by the CMA in 2022[118]. This alignment is evaluated against the global stocktake in the annual synthesis reports under the enhanced transparency framework[119].

15. Whilst Iran[120], India[121], China[122] and others have argued that performance by developing States of their mitigation duties is conditional upon the performance by developed States of their duties of co-operation and assistance[123], we concur with Colombia[124], the European Union[125] and

Written Statement (22 March 2024), para. 3.18.

[110] Solomon Islands, Written Statement (22 March 2024), paras. 76, 85; Mauritius, Written Comments (15 August 2024), para. 44; Antigua and Barbuda, Written Statement (22 March 2024), para. 255; Tonga, Written Statement (15 March 2024), paras. 152-153.

[111] European Union, Written Statement (March 2024), para. 147.

[112] Kuwait, Written Statement (22 March 2024), paras. 42, 51, 54-55.

[113] Saudi Arabia, Written Statement (21 March 2024), paras. 4.66-4.68.

[114] United States of America, Written Comments (15 August 2024), para. 3.13.

[115] Australia, Written Comments (15 August 2024), para. 2.28.

[116] République démocratique du Congo, Exposé écrit (4 mars 2024), par. 208 ; Mauritius, Written Comments (15 August 2024), paras. 44, 48; Seychelles, Written Statement (22 March 2024), para. 96; Vanuatu, Written Statement (21 March 2024), para. 404.

[117] VCLT, Art. 31 (1). See further: Gardiner (note 45) 210-222.

[118] CMA Decision 1/CMA.4, UN Doc. FCCC/PCA/CMA/2022/10/Add.1 (17 March 2023), para. 23.

[119] Bahamas, Written Comments (14 August 2024), paras. 46-47; Latvia, Written Comments (14 August 2024), paras. 12-14, 16; United Kingdom, Written Comments (12 August 2024), paras. 25-26; Australia, Written Comments (15 August 2024), paras. 2.34-2.37; Australia, Written Statement (22 March 2024), paras. 2.47-2.53; European Union, Written Statement (March 2024), paras. 145, 162; Mexico, Written Comments (August 2024), para. 33; Germany, Written Statement (March 2024), para. 57; New Zealand, Written Statement (22 March 2024), para. 54; Indonesia, Written Statement (22 March 2024), para. 55; Madagascar, Exposé écrit (22 mars 2024), par. 42 ; Dominican Republic, Written Statement (22 March 2024), para. 4.26, 4.31; Singapore, Written Statement (20 March 2024), paras. 3.32, 3.35; Antigua and Barbuda, Written Statement (22 March 2024), paras. 263-284; Solomon Islands, Written Comments (15 August 2024), para. 50.

[120] Iran, Written Statement (22 March 2024), paras. 125-130.

[121] India, Written Statement (22 March 2024), para. 48.

[122] China, Written Statement (22 March 2024), para. 54.

[123] See also: New Zealand, Written Statement (22 March 2024), para. 62; Indonesia, Written Statement (22 March 2024), para. 56; South Africa, Written Statement (22 March 2024), para. 128; Egypt, Written Statement (22 March 2024), para. 151; Bolivia, Written Statement (22 March 2024), paras. 32-33.

[124] Colombia, Written Comments (14 August 2024), para. 3.37.

[125] European Union, Written Comments (August 2024), para. 64; European Union, Written Statement (March

others[126] that no such derogation is permitted. Whilst Timor-Leste[127] and Colombia[128] note the reality that States dependent upon the provision of assistance "cannot meet their own obligations to the fullest", *conditionality* of performance under Article 4 (7) of the UNFCCC has been replaced under the *lex posterior* rule by the universality of Article 4 of the Paris Agreement, *alongside* the duties of assistance under Articles 9 and 10. This accords with the conclusion reached by the ITLOS in May[129].

16. Whilst paragraph 4 uses the hortatory word "should"[130], it forms part of the "internal context"[131] to paragraphs 2 and 3 to construe the higher standards of mitigation for developed States[132]. In the *Urgenda* case, the Supreme Court held the Netherlands to be bound to fulfil its individual duty[133] to *implement* the collective objective[134]. This interpretation is also reflected in the *Grande-Synthe*[135], *Oxfam France*[136] and *Neubauer*[137] judgments as well as the pending case of *Klimatzaak*[138]. In *Klimaseniorinnen*, the Court found Switzerland to have breached the Convention

2024), para. 214.

[126] E.g. New Zealand, Written Comments (14 August 2024), paras. 28-29.

[127] Timor-Leste, Written Statement (22 March 2024), para. 145.

[128] Colombia, Written Comments (14 August 2024), paras. 3.43-3.44.

[129] ITLOS *Advisory Opinion* (note 51), para. 229.

[130] United States of America, Written Comments (15 August 2024), para. 3.14.

[131] CVDT, art. 31, al. 2.

[132] E.g. Japan, Written Comments (15 August 2024), para. 67; Australia, Written Comments (15 August 2024), para. 2.29; Colombia, Written Comments (14 August 2024), para. 3.37; Sierra Leone, Written Comments (15 August 2024), para. 3.52; Ghana, Written Comments (15 August 2024), para. 3.10; Cameroun, Observations écrites (7 août 2024), par. 15-16 ; Iran, Written Statement (22 March 2024), paras. 122-124; Kuwait, Written Statement (22 March 2024), paras. 57-58; Philippines, Written Statement (21 March 2024), paras. 95, 99, 102; China, Written Statement (22 March 2024), paras. 37, 52; India, Written Statement (22 March 2024), paras. 43-47; Japan, Written Statement (22 March 2024), paras. 27-38; République démocratique du Congo, Exposé écrit (4 mars 2024), par. 209 ; Sierra Leone, Written Statement (22 March 2024), paras. 3.40-3.42; South Africa, Written Statement (22 March 2024), paras. 75-77; Madagascar, Exposé écrit (22 mars 2024), par. 49 ; Colombia, Written Statement (11 March 2024), paras. 3.39-3.40; Argentina, Written Statement (March 2024), para. 38; Tonga, Written Statement (15 March 2024), para. 172; Saint Lucia, Written Statement (21 March 2024), para. 63; Timor-Leste, Written Statement (22 March 2024), para. 141; Barbados, Written Statement (22 March 2024), para. 207; Antigua and Barbuda, Written Statement (22 March 2024), paras. 328-337; Kenya, Written Comments (13 August 2024), para. 4.27.

[133] *Urgenda Foundation* v. *The State of Netherlands*, C/09/456689/ HA ZA 13-1396, Supreme Court of the Netherlands (9 October 2019), para. 5.7.1.

[134] *Ibid.*, paras. 5.7.2 -5.7.6.

[135] App. No. 7189/21 *Carême* v. *France (Decision)* European Court of Human Rights (9 April 2024), paras. 26-38.

[136] *Association Oxfam France et autres c. République française*, Tribunal administratif de Paris (14 octobre 2021) par. 7, 11-13.

[137] *Neubauer and Others* v. *Germany (Order)* Federal Constitutional Court (24 March 2021) 1 BvR 2656/18, paras. 215-229.

[138] Affaires nº 2021/AR/1589, 2022/AR737, 2022/AR891 *VZW Klimatzaak c. Belgique et autres (Arrêt)* Cour d'appel de Bruxelles (30 novembre 2023), par. 137-145, 229-243.

by failing to set a carbon budget from 2020[139]. Like the German Constitutional Court[140], the Court declared NDCs lacking an "effective regulatory framework", including a carbon budget, insufficient[141].

17. Côte d'Ivoire thus submits it to be a requirement under paragraph 3 to produce a carbon budget and align it to the annual synthesis reports[142]. As the 2023 Report shows that 94 per cent of State parties produce carbon budgets and 80 per cent "economy-wide targets"[143], we agree with the United States that "there is now a clear expectation that all Parties' next NDCs . . . should have economy-wide emission reduction targets covering all GHGs, and that such NDCs should be 1.5º-aligned"[144]. This practice accords with the *Urgenda*[145] and other judgments in which the courts held the authorities to have fixed inadequate national targets over the respective periods.

18. La Côte d'Ivoire soutient le commentaire de la Suisse[146] et d'autres[147], selon lequel il y a un consensus que l'alinéa 3 n'exige pas la réalisation des cibles prévues par les CDN *quelles que soient* les circonstances. L'expression « le plus élevé possible » stipule un devoir « de *mettre en place* les moyens appropriés, de s'efforcer dans la mesure du possible et de faire le maximum » pour obtenir le résultat recherché[148]. Bien que les États aient une certaine marge d'appréciation[149], ils doivent

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[139] App. No. 53600/20 *Verein Klimaseniorinnen and Others* v. *Switzerland (Judgment)* European Court of Human Rights (9 April 2024), paras. 561, 570-573.

[140] *Neubauer* (note 137), para. 266.

[141] *Ibid.*, paras. 570-571.

[142] UNFCCC, Decision 1/CMA.3 (13 November 2021) UN doc FCCC/PA/CMA/2021/10/Add.1; Decision 1/CMA.5 (2024), para. 28; *Klimaseniorinnen* (note 139), para. 563; United Kingdom, Written Statement (18 March 2024), para. 80.1.

[143] UNFCCC, "Nationally Determined Contributions under the Paris Agreement: Synthesis Report by the Secretariat" (14 November 2023) UN doc FCCC/PA/CMA/2023/12.

[144] United States of America, Written Statement (22 March 2024), para. 3.44.

[145] *Urgenda* (note 133), para. 7.2.7-7.2.11.

[146] Suisse, observations écrites (7 août 2024), par. 22.

[147] Uruguay, Written Comments (15 August 2024), para. 71; United Kingdom, Written Comments (12 August 2024), para. 22.4; Seychelles, Written Comments (15 August 2024), paras. 53-54; Australia, Written Comments (15 August 2024), para. 2.28; See also: European Union, Written Statement (March 2024), paras. 130, 154; Colombia, Written Statement (11 March 2024), para. 3.41; South Africa, Written Statement (22 March 2024), para. 73; Indonesia, Written Statement (22 March 2024), para. 54; Latvia, Written Statement (19 March 2024), paras. 27, 29; Portugal, Written Statement (March 2024), para. 54; Tonga, Written Statement (15 March 2024), paras. 147-151; Australia, Written Statement (22 March 2024), para. 4.7-4.14; New Zealand, Written Statement (22 March 2024), para. 61; Ecuador, Written Statement (22 March 2024), para. 3.80; Solomon Islands, Written Statement (22 March 2024), paras. 78-79; Seychelles, Written Statement (22 March 2024), paras. 71-77; Bahamas, Written Comments (14 August 2024), para. 49.

[148] TIDM, *Avis consultatif* (note 51) 233 (les italiques sont de nous).

[149] E.g. European Union, Written Statement (March 2024), para. 215; Denmark, Finland, Iceland, Norway, Sweden, Joint Written Statement (21 March 2024), para. 87; Ecuador, Written Statement (22 March 2024), para. 3.81.

mettre en œuvre leurs contributions déterminées au niveau national (CDN) et budgets carbone[150]. Cette approche se reflète dans l'affaire *Urgenda* dans laquelle les autorités n'avaient pas justifié la diminution des objectifs néerlandais à 20 %, lorsque le principe de précaution exigeait un rabaissement de plus de 25 %[151].

19. Selon l'Union européenne (UE)[152], la France[153] et les Pays-Bas[154], le devoir de prendre des mesures réglementaires en application de l'alinéa 2 évolue avec le droit coutumier[155]. Dans les affaires *Grande-Synthe*[156] et *Oxfam France*[157], les tribunaux français ont ordonné l'adoption de mesures supplémentaires pour l'atteinte des objectifs nationaux, après avoir jugé les réductions d'émissions en 2019 et 2020 insuffisantes. In May, the High Court of Justice held in *Friends of the Earth* that the carbon budget of the United Kingdom was based upon the flawed assumption that each measure would be fully implemented[158].

20. Côte d'Ivoire supports the arguments of the Bahamas[159] and others[160] that the due diligence standard of the *Pulp Mills* case requires the "vigilant" enforcement of rules and "administrative

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[150] *Klimaseniorinnen* (note 139), para. 559. *Contra*: Japan, Written Comments (15 August 2024), paras. 58-59; United States of America, Written Comments (15 August 2024), paras. 3.18-3.20. Voir aussi : United States of America, Written Statement (22 March 2024), para. 3.17.

[151] *Urgenda* (note 133), paras. 6.5, 7.4.1-7.5.2. See also: Netherlands, Written Statement (21 March 2024), para. 3.39.

[152] European Union, Written Statement (March 2024), paras. 74, 84.

[153] France, exposé écrit (22 mars 2024), par. 72.

[154] Netherlands, Written Statement (21 March 2024), para. 3.54.

[155] *Usines de pâte à papier sur le fleuve Uruguay (Argentine c. Uruguay), arrêt, C.I.J. Recueil 2010 (I)*, p. 42-43, par. 55, 64-65. Voir aussi : *Arbitration regarding the Iron Rhine ('Izjeren Rijn') Railway (Belgium* v. *Netherlands)(Award)* Permanent Court of Arbitration (24 May 2005) XXVII RIAA 33, paras. 58-59 ; *Indus Waters Kishenganga Arbitration (Pakistan* v. *India)(Partial Award)* Permanent Court of Arbitration (18 February 2013) XXXI RIAA 55, paras. 449-452 ; *Plates-formes pétrolières (République islamique d'Iran c. États-Unis d'Amérique), arrêt, C.I.J. Recueil 2003*, p. 182, par. 41.

[156] *Carême* v. *France* (note 135), paras. 35, 38.

[157] *Oxfam France* (note 136).

[158] *Friends of the Earth and Others* v. *Secretary of State for Energy Security and Net Zero*, High Court of Justice, King's Bench Division, Administrative Court [2024] EWHC 995 (Admin), paras. 1-5, 72-93, 116-142.

[159] Bahamas, Written Comments (14 August 2024), para. 100; Bahamas, Written Statement (22 March 2024), paras. 191-203.

[160] Mexico, Written Statement (March 2024), paras. 40-47; République démocratique du Congo, observations écrites (4 mars 2024), par. 124-136, 200; Thailand, Written Statement (22 March 2024), para. 13; Sierra Leone, Written Statement (22 March 2024), paras. 3.13-3.14; Philippines, Written Statement (21 March 2024), paras. 55-63; Nepal, Written Statement (22 March 2024), para. 26; Albania, Written Statement (22 March 2024), para. 72; Tonga, Written Statement (15 March 2024), paras. 155-160; Namibia, Written Statement (22 March 2024), paras. 56-61; Ecuador, Written Statement (22 March 2024), para. 3.23; Solomon Islands, Written Statement (22 March 2024), para. 80; Timor-Leste, Written Statement (22 March 2024), para. 121; The Gambia, Written Comments (15 August 2024), para. 3.13.

control [of] public and private operators"[161]. As Sierra Leone[162] and others[163] have argued[164], a key duty is "to evaluate the environmental impacts of a planned activity under its jurisdiction or control"[165] at the project and sector levels[166]. Holding it to be "imperative for states like India to uphold their obligations under international law . . . to mitigate greenhouse gas emissions", the Supreme Court of India decided in March to balance its NDCs on transitioning from fossil fuels to renewable energy with the need to protect biodiversity[167]. In 2020, the Supreme Court of Mexico relied upon its NDCs under Article 4 (3) in annulling an executive decision increasing the maximum percentage of ethanol in petroleum due to a failure to evaluate its emissions impact[168].

21. As Singapore[169], Cameroon[170] and others[171] have averred, customary international law obliges States to apply the precautionary principle. Whilst Switzerland rightly notes that Article 4 is

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[161] *Pulp Mills* (note 102), para. 197.

[162] Sierra Leone, Written Comments (15 August 2024), para. 3.14; Sierra Leone, Written Statement (22 March 2024), paras. 3.13-3.14.

[163] Saint Vincent and the Grenadines, Written Statement (21 March 2024), para. 102; Netherlands, Written Statement (21 March 2024), para. 3.58; Colombia, Written Statement (11 March 2024), para. 3.23; Republic of Korea, Written Statement (22 March 2024), paras. 36-37; Kenya, Written Statement (22 March 2024), paras. 5.12-5.14; Ecuador, Written Statement (22 March 2024), paras. 3.32-3.42; Seychelles, Written Statement (22 March 2024), paras. 130-132; Chile, Written Comments (15 August 2024), para. 38; The Gambia, Written Comments (15 August 2024), paras. 3.13,3.23; Namibia, Written Comments (15 August 2024), paras. 48-50; Thailand, Written Statement (22 March 2024), para. 16; Namibia, Written Statement (22 March 2024), paras. 55-56; Ghana, Written Statement (22 March 2024), para. 26; Micronesia, Written Statement (25 March 2024), para. 59; Bahamas, Written Statement (22 March 2024), para. 94.

[164] *Contra*: Australia, Written Comments (15 August 2024), para. 3.9; Saudi Arabia, Written Statement (21 March 2024), para. 6.7.

[165] *Pulp Mills* (note 102), para. 281.

[166] France, exposé écrit (22 mars 2024), par. 71.

[167] *MK Ranjitsinh & Others* v. *Union of India & Others*, Supreme Court of India (21 March 2024) [2024] INSC 280, paras. 35, 42, 44, 56, 58.

[168] *Derecho a un medio ambiente sano y participación ciudadana (modificación de una norma oficial mexicana sobre calidad del aire)* amparo en revisión 610/2019, Suprema Corte de Justicia de la Nación (15 de enero 2020) pág. 80-85.

[169] Singapore, Written Statement (20 March 2024), para. 3.10.

[170] Cameroun, observations écrites (7 août 2024), par. 40-42.

[171] China, Written Statement (22 March 2024), paras. 42-43; Colombia, Written Comments (14 August 2024), para. 3.20; Colombia, Written Statement (11 March 2024), paras. 3.25-3.30; Sierra Leone, Written Comments (15 August 2024), paras. 3.18-3.24; Sierra Leone, Written Statement (22 March 2024), paras. 3.15-3.16; Pakistan, Written Statement (22 March 2024), para. 38; Grenada, Written Statement (21 March 2024), para. 42; Ecuador, Written Statement (22 March 2024), paras. 3.43-3.49; Philippines, Written Statement (21 March 2024), paras. 89-91; Uruguay, Written Statement (22 March 2024), paras. 103-109; Solomon Islands, Written Statement (22 March 2024), paras. 133-145; Saint Vincent and the Grenadines, Written Statement (21 March 2024), paras. 103-108; Bangladesh, Written Statement (22 March 2024), para. 94; Mexico, Written Statement (March 2024), paras. 54-57, 67-73; Micronesia, Written Statement (25 March 2024), paras. 63-64; Samoa, Written Statement (22 March 2024), para. 102; Mauritius, Written Comments (15 August 2024), para. 105; Germany, Written Statement (March 2024), paras. 196-201; Kenya, Written Comments (13 August 2024), paras. 5.6-5.13. *Contra*: Indonesia, Written Statement (22 March 2024), paras. 62-63; United Kingdom, Written Comments (12 August 2024), paras. 37-38; United States of America, Written Comments (15 August 2024), paras. 4.24-4.29.

based upon territoriality[172], Côte d'Ivoire concurs with Mauritius[173], Belize[174] and Namibia[175] that the due diligence standard applies not only to direct emissions from controlled sources and acquired energy ("Scope 1 and 2 emissions") but also *indirect* emissions from downstream consumption ("Scope 3 emissions")[176]. In June, the UK Supreme Court held in the *Finch* case that the EIA of a local government for the extraction of crude oil had failed to account for the Scope 3 emissions that would "inevitably" result from its combustion[177]. In the *Gray*[178] and *Gloucester*[179] cases, the Australian courts reached the same conclusion for coal mining projects. As Albania[180] and others[181] have argued, this mitigation duty can provide a host State with a defence or counterclaim in international investment law, such as the denial of a fossil fuel mining permit[182], taxes imposed on the hydrocarbons sector[183] or a ban on fossil fuels[184].

22. À propos de l'expression « ses responsabilités communes mais différenciées et de ses capacités respectives »[185], la Côte d'Ivoire se rallie aux observations de la France et d'autres pays[186]

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[172] Suisse, observations écrites (7 août 2024), par. 65-67.

[173] Mauritius, Written Comments (15 August 2024), para. 50; Germany, Written Statement (March 2024), paras. 195, 202-205.

[174] Belize, Written Comments (15 August 2024), para. 11.

[175] Namibia, Written Comments (15 August 2024), para. 51.

[176] Suisse, observations écrites (7 août 2024), par. 36; Bangladesh, Written Statement (22 March 2024), para. 94. *Contra*: Saudi Arabia, Written Statement (21 March 2024), para. 4.70.

[177] *R (on the application of Finch on behalf of the Weald Action Group* v. *Surrey County Council and others*, Supreme Court of the United Kingdom [2024] UKSC 20, paras. 45, 59-60, 79-81, 112-139, 174, 321-325.

[178] *Gray* v. *Minister for Planning, New South Wales Land and Environment Court*, Judgment (27 November 2006) (NSWLEC 720), para. 138.

[179] *Gloucester Resources Limited* v. *Minister for Planning, New South Wales Land and Environment Court*, Judgment (8 February 2019) (NSWLEC 7), paras. 428, 486-514, 688.

[180] Albania, Written Statement (22 March 2024), paras. 119-128.

[181] Sierra Leone, Written Comments (15 August 2024), para. 3.66; République démocratique du Congo, exposé écrit (4 mars 2024), par. 244-247; Colombia, Written Comments (14 August 2024), para. 3.12.

[182] PCA Case No. 2023-67 *Zeph Investments Pte Ltd* v. *Australia (II)*, https://pca-cpa.org/en/cases/304/.

[183] ICSID Case No. ARB/23/49 *Klesch Group Holdings Limited and Raffinerie Heide GmbH* v. *Germany*, https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/49; ICSID Case No. ARB/08/6 *Perenco* v. *Ecuador (Interim Decision on the Environmental Counterclaim of 11 August 2015)*, paras. 317–611.

[184] ICSID Case No. ARB/21/4 *RWE AG and Another* v. *Netherlands (Counter-Memorial of 5 September 2022)*, paras. 175-187, 359-532. See also e.g. Bolivia, Written Statement (22 March 2024), para. 50.

[185] United Arab Emirates, Written Statement (22 March 2024), paras. 142, 145; République démocratique du Congo, exposé écrit (4 mars 2024), par. 209 ; South Africa, Written Statement (22 March 2024), paras. 62-68; Colombia, Written Statement (11 March 2024), para. 3.38; Tonga, Written Statement (15 March 2024), paras. 170-174; Solomon Islands, Written Statement (22 March 2024), paras. 92, 97, 99.

[186] E.g. Suisse, observations écrites (7 août 2024), par. 56-57, 60 ; United Kingdom, Written Statement (18 March 2024), para. 142; United States of America, Written Statement (22 March 2024), paras. 3.24-3.29; Japan, Written Comments (15 August 2024), para. 69; Sierra Leone, Written Comments (15 August 2024), para. 3.54. *Contra*: Saudi

selon lesquelles la définition des termes « pays développé » et « pays en développement » ne reprend pas « une structure statique … mais repose sur une structure dynamique et adaptable aux circonstances propres à chaque État »[187]. Cette approche a été précisée par le TIDM[188]. As China[189], Brazil[190] and others[191] have argued, differentiation according to national circumstances is reflected in wealth, technical capacity and human development. Some States with high socio-economic indicators[192], such as Saudi Arabia[193] and Kuwait[194], have argued that they should benefit from a slower pace of decarbonization under Article 4 (10) of the UNFCCC due to their reliance upon fossil fuel production for national income. However, it is submitted that they are obliged under Article 4 (3) as *lex posterior* to "transition away from fossil fuels"[195] deeper and faster than exporters with low indicators, such as Timor-Leste[196] and Colombia[197].

Les obligations en matière d'atténuation sous les autres traités spécialisés

23. Concernant la question de la portée spatiale des deux Pactes internationaux, la Côte d'Ivoire se rallie aux observations de l'Australie[198], entre autres[199], qui indiquent que ceux-ci sont

Arabia, Written Comments (15 August 2024), para. 4.9.

[187] France, observations écrites (15 août 2024), par. 32 ; France, exposé écrit (22 mars 2024), par. 43-48, 67. Voir aussi : Germany, Written Statement (March 2024), para. 58.

[188] ITLOS, *Advisory Opinion* (note 51), par. 226-229, 239, 246, 249. Voir aussi : Suisse, observations écrites (7 août 2024), par. 27, 43-45.

[189] China, Written Statement (22 March 2024), para. 56.

[190] Brazil, Written Statement (21 March 2024), paras. 24-26.

[191] E.g. Albania, Written Statement (22 March 2024), para. 80; Colombia, Written Statement (11 March 2024), para. 3.54.

[192] E.g. World Bank, 'Gross National Income per capita, Atlas method – World', https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=1W.

[193] Saudi Arabia, Written Comments (15 August 2024), paras. 4.32-4.33; Saudi Arabia, Written Statement (21 March 2024), paras. 4.17-4.19. CR 2024/36, p. 32, par. 7 (Arabie saoudite).

[194] Kuwait, Written Statement (22 March 2024), para. 59.

[195] Decision CMA.5, para. 28 *(d)*.

[196] Timor-Leste, Written Statement (22 March 2024), paras. 157-160.

[197] Colombia, Written Comments (14 August 2024), para. 3.44. See also: *Billy* v. *Australia*, UN doc. CCPR/C/135/D/3624/2019 (31 July 2022), para. 7.8.

[198] Australia, Written Comments (15 August 2024), paras. 4.14; Australia, Written Statement (22 March 2024), para. 3.64; Ecuador, Written Statement (22 March 2024), paras. 3.112-3.114; China, Written Statement (22 March 2024), para. 119; European Union, Written Statement (March 2024), para. 278; Cook Islands, Written Statement (20 March 2024), paras. 184-194, 320-329.

[199] Suisse, observations écrites (7 août 2024), par. 66; France, exposé écrit (22 mars 2024), par. 133-134; United Kingdom, Written Comments (12 August 2024), para. 50; United Kingdom, Written Statement (18 March 2024), para. 127.4; Germany, Written Statement (March 2024), paras. 91-94; Albania, Written Comments (15 August 2024), para. 38; Timor-Leste, Written Comments (15 August 2024), para. 77; New Zealand, Written Comments (14 August 2024), para. 33; Canada, Written Statement (20 March 2024), para. 28; New Zealand, Written Statement (22 March 2024),

fondés sur la territorialité, mais s'appliquent de manière transfrontalière aux circonstances spécifiques. Cette interprétation correspond à l'article 2, alinéa 1, du Pacte relatif aux droits civils et politiques ainsi qu'aux avis consultatifs rendus dans les affaires *Namibie*[200] et *Édification d'un mur*[201]. Nous appuyons en conséquence l'approche étroite de la CEDH dans l'affaire *Agostinho*[202] plutôt que celle plus large de la Cour interaméricaine des droits de l'homme (CIDH)[203] et du Comité des droits de l'homme (CDH)[204].

24. Bien que certains participants affirment qu'il n'existe aucun devoir d'atténuation sous les conventions sur les droits de l'homme[205], d'autres admettent que ceci a été reconnu par la CEDH, la CIDH et le CDH[206]. Whilst the HRC found there to have been insufficient information in *Billy* v. *Australia* to uphold the alleged failure to take adequate mitigation measures, it nonetheless ruled the

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para. 116; Namibia, Written Statement (22 March 2024), para. 93; Bahamas, Written Statement (22 March 2024), paras. 170-171; Antigua and Barbuda, Written Statement (22 March 2024), paras. 349-355. See also: Colombia, Written Statement (11 March 2024), para. 3.72; Kiribati, Written Statement (22 March 2024), paras. 156-162. *Contra*: Kenya, Written Comments (13 August 2024), para. 4.59; Ghana, Written Comments (15 August 2024), paras. 3.32-3.33; Seychelles, Written Comments (15 August 2024), paras. 66-71; Namibia, Written Comments (15 August 2024), para. 19; Colombia, Written Comments (14 August 2024), para. 3.48; Sri Lanka, Written Comments (August 2024), paras. 51-53; Sierra Leone, Written Comments (15 August 2024), paras. 3.31-3.35; Ecuador, Written Comments (15 August 2024), paras. 75-77; Samoa, Written Comments (15 August 2024), paras. 153-164; The Gambia, Written Comments (15 August 2024), paras. 3.49-3.53.

[200] *Legal Consequences for States of the Continued Present of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] ICJ Rep. 16, para. 118.

[201] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep. 136, paras. 109-112.

[202] *Duarte Agostinho* (note 247), par. 208, 213.

[203] *State Obligations in relation to the Environment (Advisory Opinion OC-23/17)*, Inter-American Court of Human Rights (15 November 2017), paras. 72-82.

[204] Human Rights Committee, General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN doc. CCPR/C/GC/36 (3 September 2019), paras. 22, 63-64. See also: Australia, Written Statement (22 March 2024), para. 3.64 (note 205).

[205] E.g. Australia, Written Comments (15 August 2024), paras. 4.5-4.6; France, exposé écrit (22 mars 2024), par. 129; United Kingdom, Written Statement (18 March 2024), para. 123; *Contra*: United States of America, Written Comments (15 August 2024), paras. 4.42-4.51; United States of America, Written Statement (22 March 2024), paras. 4.42, 4.48, 4.50; New Zealand, Written Statement (22 March 2024), paras. 115-116.

[206] E.g. Netherlands, Written Comments (15 August 2024), para. 2.7; Switzerland, Written Statement (18 March 2024), para. 62; Russian Federation, Written Statement (22 March 2024) pp. 10-11; Albania, Written Comments (15 August 2024), para. 28; Philippines, Written Statement (21 March 2024), para. 106; Nepal, Written Statement (22 March 2024), para. 19; Bangladesh, Written Statement (22 March 2024), paras. 105-106; Uruguay, Written Statement (22 March 2024), paras. 110-113; Bolivia, Written Statement (22 March 2024), paras. 56, 63, 66-67; Marshall Islands (March 2024), paras. 85-95; Barbados, Written Statement (22 March 2024), paras. 202-206; Antigua and Barbuda, Written Statement (22 March 2024), paras. 361-384; Namibia, Written Comments (15 August 2024), paras. 10-11; Sri Lanka, Written Comments (August 2024), para. 68; Sierra Leone, Written Comments (15 August 2024), paras. 3.25-3.27; Saint Lucia, Written Comments (15 August 2024), paras. 20, 78; Cook Islands, Written Comments (15 August 2024), para. 44.

complaint admissible[207]. Côte d'Ivoire supports the majority of participants[208] that mitigation can be incidentally engaged by a human right.

D. QUESTION *(B)*: LEGAL CONSEQUENCES FOR STATES FOR SIGNIFICANT HARM TO THE CLIMATE

25. Turning to question *(b)*, whereas some participants have argued that Article 8 of the Paris Agreement implicitly excludes the general law of State responsibility[209], Côte d'Ivoire concurs with Samoa[210], Canada[211] and Ecuador[212] that this construction contradicts the existence of a compromissory clause in Article 24. Whilst Article 8 does not *itself* "provide a basis for any liability or compensation"[213], we support Japan[214], Latvia[215] and others[216] in submitting that it is not a

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[207] *Billy* v. *Australia*, UN doc. CCPR/C/135/D/3624/2019 (31 July 2022), paras. 7.8, 8.8. See also: Human Rights Committee, "General Comment No. 36, Article 6: right to life", UN doc. CCPR/C/GC/36 (3 September 1999), paras. 26 and 62. See also: United Kingdom, Written Statement (18 March 2024), para. 127.3; New Zealand, Written Statement (22 March 2024), para. 117. *Contra*: Australia, Written Comments (15 August 2024), para. 4.6.

[208] Uruguay, Written Comments (15 August 2024), paras. 135-116-123; Ghana, Written Comments (15 August 2024), paras. 3.39-3.51; Samoa, Written Comments (15 August 2024), paras. 72-152; Egypt, Written Statement (22 March 2024), paras. 205-211; Thailand, Written Statement (22 March 2024), paras. 26-27; Burkina Faso, exposé écrit (2 avril 2024), par. 183-189, 195-219 ; Cameroun, observations écrites (7 août 2024), par. 66-96; Tonga, Written Statement (15 March 2024), paras. 240-272; China, Written Statement (22 March 2024), para. 117; Sierra Leone, Written Statement (22 March 2024), paras. 3.61-3.87; Sri Lanka, Written Statement (22 March 2024), para. 100; Republic of Korea, Written Statement (22 March 2024), paras. 28-31; Bangladesh, Written Statement (22 March 2024), paras. 108-110; Madagascar, exposé écrit (22 mars 2024), par. 61; Chile, Written Statement (22 March 2024), paras. 68-70, 122-130; Singapore, Written Statement (20 March 2024), para. 3.74; Solomon Islands, Written Statement (22 March 2024), paras. 165-204; Cook Islands, Written Statement (20 March 2024), paras. 212-249; Seychelles, Written Statement (22 March 2024), para. 145; Vanuatu, Written Statement (21 March 2024), paras. 258, 329-396; Micronesia, Written Statement (25 March 2024), para. 80; Bahamas, Written Statement (22 March 2024), paras. 145-158; Kiribati, Written Statement (22 March 2024), paras. 163-167; Timor-Leste, Written Statement (22 March 2024), para. 367; Tuvalu, Written Statement (22 March 2024), paras. 98-104; Germany, Written Statement (March 2024), paras. 167-187; Antigua and Barbuda, Written Statement (22 March 2024), paras. 186-197; Ecuador, Written Statement (22 March 2024), paras. 3.103-3.124; Albania, Written Statement (22 March 2024), para. 96.

[209] Kuwait, Written Statement (22 March 2024), paras. 86-107; Japan, Written Statement (22 March 2024), paras. 41-45; European Union, Written Comments (August 2024), paras. 91-92; Germany, Written Statement (March 2024), para. 62; China, Written Statement (22 March 2024), paras. 134-135; Saudi Arabia, Written Comments (15 August 2024), para. 5.37-5.38.

[210] Samoa, Written Comments (15 August 2024), para. 33.

[211] Canada, Written Statement (20 March 2024), paras. 33-35.

[212] Ecuador, Written Statement (22 March 2024), para. 4.21.

[213] Calliari, Vanhala et al., "Article 8 : Loss and Damage" in van Calster (note 59) 200, 210-211.

[214] Japan, Written Comments (15 August 2024), para. 85.

[215] Latvia, Written Statement (19 March 2024), paras. 38, 74.

[216] Peru, Written Statement (20 March 2024), paras. 92-96; Palau, Written Statement (March 2024), paras. 19-20; Kenya, Written Statement (22 March 2024), paras. 6.97-6.101; Bahamas, Written Comments (14 August 2024), para. 104; Costa Rica, Written Comments (15 August 2024), paras. 27-34; Sierra Leone, Written Comments (15 August 2024), paras. 4.3-4.6; République démocratique du Congo, observations écrites (2 août 2024), par. 42-44; Philippines, Written Comments (15 August 2024), paras. 32-37; Albania, Written Comments (15 August 2024), paras. 65-66; Sri Lanka, Written Comments (August 2024), paras. 61, 87-88; Micronesia, Written Comments (15 August 2024), paras. 13-14; Colombia, Written Comments (14 August 2024), para. 4.21; Chile, Written Statement (22 March 2024), paras. 93, 108-110; El Salvador, Written Statement (22 March 2024), para. 50; Solomon Islands, Written Statement (22 March 2024), paras. 230-233; Micronesia, Written Statement (25 March 2024), para. 122. Vanuatu, Written Statement (21 March 2024),

waiver[217] and that the *lex specialis* rule in Article 55 of the 2001 Articles does *not* apply in the absence of general rules of responsibility in the Paris Agreement.

26. La RDC explique que le droit sur la responsabilité internationale peut s'appliquer au droit du changement climatique dans plusieurs contextes, notamment les réclamations interétatiques et les plaintes individuelles contre un État au niveau national, suivi des tribunaux internationaux des droits de l'homme[218]. Les réclamations sous la clause compromissoire susmentionnée se limitent à la première, alors que les deux formes sont possibles dans le cadre des deux Pactes internationaux.

Breach

27 Côte d'Ivoire supports the view of Timor-Leste[219] and others[220] that Article 13 excludes "historical responsibility" for emissions produced before the entry into force of the mitigation duties prescribed by the climate change treaties. As Australia has submitted, even if a "composite act" or "continuing act" within the meaning of Articles 14 and 15 could be shown[221], whether "the State has breached the obligation could only be assessed by reference to the conduct of the State that occurred *after* that obligation came into existence"[222].

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para. 494; Saint Lucia, Written Statement (21 March 2024), para. 86; Egypt, Written Comments (15 August 2024), paras. 68-75; Ecuador, Written Comments (15 August 2024), paras. 95-100; Mexico, Written Comments (August 2024), paras. 15; Uruguay, Written Comments (15 August 2024), paras. 135-142; Nauru, Written Comments (15 August 2024), para. 86; Chile, Written Comments (15 August 2024), paras. 67-84; Samoa, Written Comments (15 August 2024), paras. 30-32; Mauritius, Written Comments (15 August 2024), paras. 110-111; République dominicaine, observations écrites (15 août 2024), par. 5.6-5.9; Kenya, Written Comments (13 August 2024), para. 2.11; Cook Islands, Written Comments (15 August 2024), paras. 53-56; The Gambia, Written Comments (15 August 2024), paras. 5.3-5.4; Namibia, Written Statement (22 March 2024), paras. 130-131; Burkina Faso, exposé écrit (2 avril 2024), par. 263, 266-272.

[217] CMA Decision 1/CP.21, Doc. FCCC/CP/2015/10/Add.1, para. 51.

[218] République démocratique du Congo, observations écrites (4 mars 2024), par. 140-145, 320-343. Voir aussi : Namibia, Written Statement (22 March 2024), paras. 149-150.

[219] Timor-Leste, Written Comments (15 August 2024), paras. 116-117.

[220] E.g. Suisse, observations écrites (7 août 2024), par. 39-42; Canada, Written Statement (20 March 2024), para. 32; Russian Federation, Written Statement (22 March 2024) p. 16; Dominican Republic, Written Statement (22 March 2024), para. 4.59. *Contra*: Egypt, Written Comments (15 August 2024), paras. 56-67; Egypt, Written Statement (22 March 2024), paras. 304-335; Burkina Faso, exposé écrit (2 avril 2024), par. 284-309; Brazil, Written Comments (15 August 2024), paras. 8-10; Brazil, Written Statement (21 March 2024), para. 85; Vanuatu, Written Statement (21 March 2024), paras. 528-535; Saint Lucia, Written Statement (21 March 2024), para. 87; Ghana, Written Comments (15 August 2024), paras. 4.10-4.13; Bangladesh, Written Comments (15 August 2024), para. 59; Mauritius, Written Comments (15 August 2024), paras. 135-137; Barbados, Written Comments (15 August 2024), paras. 106-108.

[221] Kiribati, Written Comments (15 August 2024), para. 65; Micronesia, Written Comments (15 August 2024), paras. 11-12; St Vincent and the Grenadines, Written Comments (15 August 2024), para. 49; Saint Lucia, Written Comments (15 August 2024), para. 34; Mauritius, Written Comments (15 August 2024), para. 138; Marshall Islands, Written Comments (August 2024), para. 40; The Gambia, Written Comments (15 August 2024), para. 5.9; African Union, Written Comments (15 August 2024), paras. 49-51.

[222] Australia, Written Comments (15 August 2024), para. 6.12 (emphasis in original).

28. Côte d'Ivoire concurs with the Solomons[223] and others that the question of breach principally entails evaluation of performance under due diligence. As the Bahamas[224], Australia[225] and Solomons[226] have noted, duties of adaptation can arise for displaced persons. In the *Teitiota* case, the HRC accepted the arguments of a "climate refugee" applicant that Kiribati would likely become uninhabitable within 10 to 15 years due to sea level rise and *non-refoulement* obligations can be engaged under the Covenant[227].

29. Regarding the impact of sea level rise on the maritime rights of "particularly vulnerable" States[228], Côte d'Ivoire supports the arguments of Tonga[229], Latvia[230], the Solomons[231] and others[232] that the submerged "territory" and displaced "population" of such States would satisfy the customary criteria for statehood by the presumption of continuity[233]. Through reinterpretation of the UNCLOS in State practice, maritime entitlements, including those connected to ambulatory baselines, should be retained by States[234] while submerged "islands" should continue to satisfy the Article 121 definition[235].

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[223] Solomon Islands, Written Statement (22 March 2024), paras. 218-227.

[224] Bahamas, Written Statement (22 March 2024), paras. 227-231.

[225] Australia, Written Comments (15 August 2024), para. 4.7.

[226] Solomon Islands, Written Comments (15 August 2024), paras. 37-47.

[227] *Ioane Teitiota* v. *New Zealand*, UN Doc. CCPR/C/127/D/2728/2016 (7 January 2020), paras. 9.11-9.12.

[228] ITLOS *Advisory Opinion* (note 51), paras. 149-150.

[229] Tonga, Written Statement (15 March 2024), paras. 237-239.

[230] Latvia, Written Comments (14 August 2024), para. 59.

[231] Solomon Islands, Written Statement (22 March 2024), paras. 214-217.

[232] E.g. Bahamas, Written Comments (14 August 2024), para. 96.

[233] Crawford, *The Creation of States in International Law* (2007) 52, 221-222, 700-717.

[234] Tonga, Written Statement (15 March 2024), paras. 233-236; Solomon Islands, Written Comments (15 August 2024), paras. 13-14; Solomon Islands, Written Statement (22 March 2024), paras. 208-213; Nauru, Written Statement (22 March 2024), paras. 12-13; Kiribati, Written Statement (22 March 2024), paras. 191-192; Mauritius, Written Comments (15 August 2024), paras. 143-151; Bahamas, Written Comments (14 August 2024), paras. 90-95. See further: Snjólaug Árnadóttir, *Climate Change and Maritime Boundaries: Legal Consequences of Sea Level Rise* (CUP 2021) 221-238.

[235] International Law Commission, "First issues paper by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law", UN doc. A/CN.4/740 (28 February 2020), paras. 105-171; International Law Commission, "Additional paper to the second issues paper (2022) by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on sea-level rise in relation to international law", UN doc. A/CN.4/774 (19 February 2024), para. 83.

Causalité

30. Quant à la question de la « causalité indirecte » soulevée par la Chine[236] et d'autres[237], la Côte d'Ivoire n'a découvert[238] aucune pratique étatique en faveur de la « responsabilité stricte »[239] dans le droit de la responsabilité internationale. Nous considérons que les tribunaux sont capables d'évaluer à la lumière des témoignages d'experts et preuves documentaires les questions de la responsabilité factuelle[240], c'est-à-dire les effets du réchauffement global sur les dommages réclamés ainsi que les émissions de gaz à effet de serre (GES) produites par le défendeur au cours de la période en question[241]. La Cour a souligné dans *Certaines activités menées par le Nicaragua* qu'il faut « décider s'il existe un lien de causalité suffisant entre le fait illicite et le préjudice subi »[242].

31. Nous soutenons le commentaire de la France qui rappelle « l'attribution d'un comportement à l'État en tant que sujet de droit international repose sur des critères déterminés par ce droit et non sur la simple reconnaissance d'un lien de causalité factuel »[243]. Dans le contexte spécifique du réchauffement global, nous affirmons que la question essentielle de la causalité

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[236] China, Written Statement (22 March 2024), paras. 136, 138.

[237] Denmark, Finland, Iceland, Norway, Sweden, Joint Written Statement (21 March 2024), para. 107; United Kingdom, Written Comments (12 August 2024), para. 46.6; United Kingdom, Written Statement (18 March 2024), para. 137.4.3; Russian Federation, Written Statement (22 March 2024) pp. 10-11, 17; E.g. Albania, Written Statement (22 March 2024), para. 130; United States of America, Written Comments (15 August 2024), paras. 5.12-5.13; Netherlands, Written Statement (21 March 2024), para. 5.10-5.12; Saudi Arabia, Written Statement (21 March 2024), para. 6.7; France, exposé écrit (22 mars 2024), par. 184; New Zealand, Written Statement (22 March 2024), para. 102; Australia, Written Statement (22 March 2024), para. 5.9; Germany, Written Statement (March 2024), paras. 97-99; Indonesia, Written Statement (22 March 2024), para. 61; Republic of Korea, Written Statement (22 March 2024), paras. 16, 46-47; Kuwait, Written Statement (22 March 2024), paras. 120-121; Portugal, Written Statement (March 2024), para. 124.

[238] Voir par exemple : rapport du Secrétaire général, « Responsabilité de l'État pour fait internationalement illicite : Compilation des décisions des juridictions internationales et autres organes internationaux », Nations Unies, doc. A/77/74 (29 avril 2022).

[239] Voir par exemple : European Union, Written Comments (August 2024), paras. 31-33. *Contra*: Mauritius, Written Comments (15 August 2024), paras. 143-144.

[240] *Urgenda* (note 133), para. 6.3-6.5; France, exposé écrit (22 mars 2024), par. 15, 181-182; Albania, Written Statement (22 March 2024), para. 69.

[241] *Billy* (note 207), para. 7.8.

[242] *Certaines activités menées par le Nicaragua dans la région frontalière (Costa Rica c. Nicaragua), indemnisation, C.I.J. Recueil 2018 (I)*, p. 26, par. 34. Voir aussi, par exemple : *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda), réparations, C.I.J. Recueil 2022 (I)*, p. 44-45, par. 78, p. 48-50, par. 93-98. Voir aussi : Paparinskis, « Indemnisation des dommages causés par un fait internationalement illicite », Rapport de la Commission du droit international, Nations Unies, doc. A/79/10 (août 2024), par. 14.

[243] France, exposé écrit (22 mars 2024), par. 181 ; France, observations écrites (15 août 2024), par. 62. Voir aussi par exemple : Australia, Written Comments (15 August 2024), paras. 6.19-6.31.

juridique est l'élaboration d'un critère de *proximité*[244]. Nous soutenons que la norme est l'*échelle* ou la *gravité* de la violation des devoirs d'atténuation[245].

32. Tandis que les divers tribunaux n'ont pas évalué les dommages dans les affaires *Urgenda*[246] et autres[247], nous considérons que cette approche serait compatible avec la jurisprudence. Selon la France, « la CEDH ne propose pas d'écarter la condition du lien de causalité mais bien de l'ajuster aux caractéristiques spécifiques des changements climatiques »[248].

Invocation

33. Turning to invocation, it is submitted that Article 47 (1), as cited in *KlimaSeniorinnen*[249], *Urgenda*[250] and others[251], enables the *apportionment* of responsibility on an individual basis[252]. Though agreeing with Portugal[253] that *erga omnes* standing under Article 48 (1) *(b)* does not yet reflect customary international law, we concur with the Netherlands[254], Mexico[255], Ecuador[256] and others[257] that State practice and *opiniones juris* have sufficiently gestated for the crystallization of

[244] E.g. France, exposé écrit, par. 58, 206, 251; Kuwait, Written Statement (22 March 2024), paras. 115-124; Nepal, Written Statement (22 March 2024), para. 27; Tuvalu, Written Statement (22 March 2024), paras. 131-132. *Contra*: Namibia, Written Statement (22 March 2024), para. 139; Pakistan, Written Comments (15 August 2024), para. 49; Bahamas, Written Comments (14 August 2024), para. 108.

[245] *Contra :* CR 2024/36, p. 51, par. 3(b) (Australie).

[246] *Urgenda* (note 133), para. 5.6.2.

[247] *KlimaSeniorinnen* (note 139), para. 425, 439 ; Requête nº 39371/20, *Affaire Duarte Agostinho et autres c. Portugal et 32 autres (décision du 9 avril 2024)*, Cour européenne des droits de l'homme [GC] par. 193-194.

[248] France, exposé écrit (22 mars 2024), par. 181.

[249] *Klimaseniorinnen* (note 139), paras. 441, 545.

[250] Note 134.

[251] Notes 135-138, 158 and 167-168.

[252] Ecuador, Written Statement (22 March 2024), paras. 4.19-4.20. *Contra*: Australia, Written Comments (15 August 2024), paras. 6.13-6.18 ; CR 2024/36, p. 51-52, par. 3(d) (Australie).

[253] Portugal, Written Statement (March 2024), para. 120. *Contra*, e.g. Bahamas, Written Statement (22 March 2024), paras. 246-249.

[254] Netherlands, Written Statement (21 March 2024), para. 3.49.

[255] Mexico, Written Comments (August 2024), paras. 124-126.

[256] Ecuador, Written Statement (22 March 2024), para. 4.11.

[257] Antigua and Barbuda, Written Statement (22 March 2024), para. 571.

erga omnes partes under 48 (1) *(a)*[258]. As a treaty of general concern, States other than the injured State may thus invoke responsibility under the Paris Agreement[259].

34. Mr President, Members of the Court, we thank you for your attention. Those are our submissions.

The PRESIDENT: I thank the representatives of Côte d'Ivoire for their presentation. I now invite the representatives of Denmark, Finland, Iceland, Norway and Sweden to make their joint presentation to the Court. I shall call upon Ms Kaija Suvanto, speaking on behalf of this group of States, to address the Court. Madam, you have the floor.

Ms SUVANTO:

PART I

I. Introduction

1. Mr President, distinguished Members of the Court, I have the honour to appear before you today in the present proceedings on behalf of the Nordic countries — Denmark, Finland, Iceland, Norway and Sweden.

2. I am here today as the legal adviser of my own country, Finland, and joined by the legal advisers of all the other Nordic countries. We wish to use this opportunity to convey our shared views on the key issues engaged by the questions put to the Court.

3. The Nordic countries recognize that climate change poses an existential threat and constitutes a defining challenge of our time.

4. The science is clear. It speaks of rising sea levels with the possibility of severe consequences for low-lying coastal areas. It speaks of extreme weather, drought and changes to ocean currents. We

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[258] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar)(Preliminary Objections)* [2022] ICJ Rep. 477, paras. 96-105, 106-114; *Questions Relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)(Judgment)* [2012] ICJ Rep. 450, para. 70; *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)(Judgment)* [2014] ICJ Rep. 226, paras. 24-27, 40-41. See also: *Responsibilities and obligations of States with respect to activities in the Area* (note 95), para. 180; WTO Panel Report, European Communities — Regime for the Importation, Sale and Distribution of Bananas, WT/DS27/R/ECU, WT/DS27/R/MEX, WT/DS27/R/USA, WT/DS27/R/GTM and WT/DS27/R/HND (22 May 1997), para. 7.50, note 361; Case No. IT-95-14 *Prosecutor* v. *Tihomir Blaškić ("Lasva Valley") (Judgment of 29 October 1997)* International Tribunal for the Former Yugoslavia, Appeals Chamber, para. 26.

[259] France, exposé écrit (22 mars 2024), par. 208.

see climate change affecting patterns of migration and displacement. We fear increased potential for conflict over scarce resources and other dramatic impacts on life on earth.

5. The Nordic countries welcome the Court's consideration of the obligations of States in respect of climate change.

6. The unique role and composition of the Court as the principal judicial organ of the United Nations, sets the Court apart from other judicial bodies and tribunals — domestic or international — that may be engaged with similar questions. In a context of a significant number of proceedings and overlapping litigation initiatives, we trust that the Court's examination of applicable law will offer a much-valued contribution in terms of clarifying existing obligations.

7. Its decision may hopefully also highlight and inform the interrelationship between the relevant rules of international law that may be applicable to the issue at hand.

8. Mr President, in the remainder of the time allotted to us, I shall first address the role of the United Nations climate change régime, as part of the international response to the threat of climate change.

9. Mr Kristian Jervell, the legal adviser of Norway, will, thereafter, address the core obligations enshrined in that régime and the interrelationship between the United Nations climate change régime and other relevant rules of international law relating to the obligation to prevent damage to the climate system and the environment caused by anthropogenic emissions of greenhouse gasses.

10. Ms Vibeke Pasternak Jørgensen, the legal adviser of Denmark, will then finally address the question of customary international law and possible legal consequences under relevant international obligations, to the extent relevant to these advisory proceedings.

II. The United Nations climate change régime is the primary vehicle for addressing the global threat of climate change

11. Mr President, the questions posed to the Court and the interventions made during these proceedings, refer to the rules and instruments from several fields of international law. In this context, the Nordic countries underline that the United Nations climate change régime is the principal body of international regulations setting out obligations of States to ensure the protection of the climate system from anthropogenic emissions of greenhouse gases. It is also the primary vehicle for driving forward the global response to climate change.

12. The United Nations climate change régime has been carefully developed through political negotiations over the course of the last 30 years. It comprises the 1992 United Nations Framework Convention on Climate Change, the 1997 Kyoto Protocol to the Framework Convention and the 2015 Paris Agreement.

13. It also comprises several supporting institutions and arrangements, such as the Conference of the Parties to the Framework Convention, the COP, and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, the CMA. The large number of decisions taken within these frameworks to facilitate the implementation of the agreements is also part of the régime.

14. The negotiations and political work within this framework constitute the main forum for increasing global action to respond to the threat of climate change. It has delivered carefully formulated decisions over the years.

15. Combatting climate change is a global challenge and it depends on global solutions. This is what the United Nations climate change régime is established to facilitate, including through the provision for the negotiation of any further obligations within the COP and the CMA.

16. Mr President, honourable Members of the Court, I thank you for your attention. I will now ask Mr Kristian Jervell, the legal adviser of Norway, to come to the podium to elaborate on the core obligations of the United Nations climate change régime.

The PRESIDENT: I thank Ms Suvanto. I now give the floor to Mr Kristian Jervell. You have the floor, Sir.

Mr JERVELL:

PART II

III. The core obligations of the UN climate change régime

1. Mr President, distinguished Members of the Court, it is a privilege to appear before you today as the legal advisor of Norway and present these observations on behalf of the Nordic countries.

2. Turning now to the structure and operation of the UN climate change régime.

3. The views of the Nordic countries concerning the details and operation of this system are set out in our Written Statement offered to the Court in these advisory proceedings. I shall briefly

recapitulate some main observations, with an emphasis on the Paris Agreement, which constitutes the most recent international consensus on critical issues within the UN climate change régime.

4. The objective of the Paris Agreement, as well as of the UN climate change régime itself, is to strengthen the global response to the threat of climate change through a combination of legal obligations and political targets, including within areas such as mitigation, adaptation and finance. The Paris Agreement is built on a system of collective responsibilities for all parties, which ensures progression over time, and furthers the global response to the threat of climate change.

5. As set out in Article 2, paragraph 1 *(a)*, of the Paris Agreement, the long-term temperature target is to hold the increase of the global average temperature to well below 2°C above pre-industrial levels, and to pursue efforts to limit the temperature increase to 1.5°C.

6. The core obligations of the Paris Agreement are procedural in nature. At the centre of these obligations is the five-year ambition mechanism established in Article 4 of the Agreement. This mechanism lays out an obligation for all parties to prepare, communicate and maintain a nationally determined contribution, an NDC.

7. The procedural obligation to prepare, communicate and maintain an NDC every five years is an obligation of result. The achievement of the NDCs is an obligation of conduct. Parties shall pursue domestic mitigation measures with the aim of achieving the objectives of the NDCs.

8. To this end, each party's successive NDCs will represent progression and reflect the highest possible ambition, reflecting common but differentiated responsibilities and respective capabilities in the light of different national circumstances. When communicating an NDC, the parties shall be informed by the outcomes of the global stocktake.

9. Together with the long-term temperature goal of the Paris Agreement, the element of progression and highest possible ambition, as well as the link to the global stocktake, all this together lay out a standard of due diligence for each party in formulating its NDC.

10. Mr President, science is clear, we are not on track to meet the goals of the Paris Agreement. Our efforts are currently insufficient, and our actions towards climate change have been criticized for being insufficient and not up to the challenge it represents for present and future generations.

11. The Nordic countries share the sense of urgency and the impatience with regards to seeing solutions take effect and we recognize that we must step up our actions. However, it is the view of

the Nordic countries that the Paris Agreement and the structure that it offers provides the best possible available avenue to facilitate the global solutions that we need — and that it is up to us, as parties to the Agreement, to step up our efforts.

12. In this regard, the Nordic countries would like to note that the Paris Agreement is designed and structured to work over time and ensure the parties increase their efforts in five-year cycles.

13. The first global stocktake took place at COP28 in 2023, where the States parties took stock of the implementation of the Agreement and assessed the collective progress towards achieving the purpose of the Agreement. It was agreed to an ambitious roadmap for getting the world on track to the Paris Agreement's long-term goals.

14. In 2025 States parties shall submit their second NDCs, and for the first time the parties must develop NDCs that are to be informed by the result of the global stocktake. The new NDCs must also represent progression from the previous NDCs and represent the parties' highest possible ambition.

IV. The UN climate change régime establishes obligations for all States parties

15. Mr President, different views have been expressed in the course of these proceedings concerning the differentiation of obligations in the Paris Agreement.

16. In this regard, the Nordic countries would like to reiterate that the Paris Agreement establishes obligations for *all* parties.

17. The structure of the Framework Convention and the Kyoto Protocol have been intentionally developed or replaced in favour of new solutions in the Paris Agreement. This was a conscious choice taken in the interest of furthering the core objective of the Paris Agreement, namely, to *strengthen the global response to the threat of climate change*, and to do so by improving upon and enhancing the implementation of the Framework Convention.

18. Mr President, in the case of norm conflict between the various instruments in the UN climate change régime, the Paris Agreement should prevail. I refer here to the fact that the Paris Agreement is both the latest treaty and the treaty with the most precisely delimited scope of application. The well-established techniques for the resolution of norm conflicts, including the

principles of *lex posterior* and *lex specialis*, imply that the most recent consensus amongst the State parties to the UN climate change régime shall take precedence.

19. One of the central departures from the former instruments was the agreed change from the annex-based system in the Framework Convention, under which only a limited number of the parties had specific commitments. Contrary to that system, the Paris Agreement establishes obligations and targets for *all* parties, reflecting their capabilities and their different national circumstances.

20. This is reflected in Article 2, paragraph 2, 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".

21. This means that the level of ambition will depend on the individual capacity of each State to meet its obligations. This is not a static concept. The capacity of any State with regard to contributing towards our common responsibility may evolve over time as national circumstances change. The principle of common but differentiated responsibilities and respective capabilities, as applied in the Paris Agreement, serves to inform the understanding of what can be expected from each State.

22. Against this backdrop, it is the view of the Nordic countries that the Paris Agreement represents a more dynamic approach to the question of differentiation of responsibilities between the parties compared to the arrangements included in previous instruments.

23. While parties may implement and fulfil the obligations differently, the model of progressive ambition ensures that all State parties are regularly increasing contributions to be on track to fulfil our common overarching responsibility. This notably serves to abandon the bifurcated and static approach of linking obligations to annexes, as set out in the Framework Convention. It also creates a structure to facilitate that all State parties make effective contributions towards addressing our common concerns. Nature is not interested in the origin of a contribution, but its net effect for the mitigation of climate change and environmental harm. That is why it is important that the Paris Agreement creates a system that establishes obligations for all. We cannot solve the climate crisis without the best efforts of all.

V. The systemic relevance of the UN climate change régime for interpretation and determination of rules relevant to the protection of the climate system and the environment from anthropogenic emissions of greenhouse gases

24. Mr President, I will now turn to the systemic relevance of the United Nations climate change régime for the interpretation of rules external to that régime.

25. The questions posed to the Court are broad in their scope and invite examination of rules and principles under several fields of international law. In addition to the already mentioned rules under the UN climate change régime, the resolution refers, *inter alia*, to the law of the sea, human rights and customary international law. In this context, the interrelationship between the various legal régimes and instruments applicable to the issues of anthropogenic emissions of greenhouse gases is brought to the fore.

26. The Nordic countries believe that the Court's role as the principal judicial organ of the United Nations, and the international system more broadly, places it in a unique position to inform these issues and clarify the interrelationship between relevant rules.

27. While the formation of international law is not in all regards a co-ordinated process based on plans for the construction of logically coherent systems of norms, meaningful relationships do exist, and may be identified, between rules and legal régimes in the international legal system.

28. The key principle for the organization of the interrelationship of rules in the international legal system is the presumption of compatibility between obligations applicable between the same parties. This has been referred to by the International Law Commission as the "generally accepted principle that when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations".

29. Within the law of treaties specifically, a principle of systemic integration is reflected in Article 31, paragraph 3 *(c)*, of the Vienna Convention on the Law of Treaties, which provides that any relevant rules of international law applicable in the relations between the parties shall be taken into account in the interpretation of treaties, together with the context.

30. Mr President, the Nordic countries believe that the UN climate change régime is central to the global response to climate change and that it must be accorded systemic relevance when examining the possible obligations of States under other instruments and fields of law to ensure the protection of the climate system and other parts of the environment from anthropogenic emission of

greenhouse gases. The UN climate change régime, and the Paris Agreement in particular, is a key interpretative factor in any process seeking to determine the possible existence and scope of obligations relative to that same issue under other instruments.

31. Where such instruments establish obligations of conduct, and where such instruments are to be applied to evaluate whether a State has acted with the appropriate due diligence with regard to reducing anthropogenic emissions of greenhouse gases, the determination of what constitutes due diligence in that context would be informed by the expectations for such reductions as set out in the Paris Agreement, which reflects the most recent consensus among States on the matter.

32. In relation to the marine environment, for example, the Court should look at the United Nations Convention on the Law of the Sea, which sets out the legal framework within which all activities in the oceans and the seas must be carried out. However, in the application of a standard of due diligence under the Convention relating to marine pollution from anthropogenic emission of greenhouse gases, the Convention cannot be considered in a vacuum. This entails that the Convention must be understood with due regard to other relevant and compatible rules of international law applicable in the relation between the parties.

33. The Nordic countries note that this view is also substantiated by the observation of the International Tribunal of the Law of the Sea in its advisory opinion of 21 May 2024. I quote from paragraph 222:

> "[T]he UNFCCC and the Paris Agreement, as the primary legal instruments addressing the global problem of climate change, are relevant in interpreting and applying the Convention with respect to marine pollution from anthropogenic GHG emissions. In particular, the temperature goal and the timeline for emission pathways set out in the Paris Agreement inform the content of necessary measures to be taken under Article 194, paragraph 1, of the Convention."

34. Mr President, honourable Members of the Court, I thank you for your kind attention. I will now ask Ms Vibeke Pasternak Jørgensen, the Legal Adviser of Denmark, to come to the podium to address the question of customary international law.

The PRESIDENT: I thank Mr Jervell. I now give the floor to Ms Vibeke Pasternak Jørgensen. You have the floor, Madam.

Ms PASTERNAK JØRGENSEN:

PART III

VI. The obligations of States under customary international law

1. Mr President, distinguished Members of the Court, it is an honour for me also to appear before you today and deliver the final part of the statement on behalf of the Nordic countries.

2. The questions put to the Court invite an examination of possible obligations under customary international law that may have a bearing on environmental damage stemming from anthropogenic emissions of greenhouse gases.

3. The Court has in the *Corfu Channel* case, among other cases dealing with transboundary environmental consequences, stated that States have an obligation under customary international law to exercise due diligence in not knowingly allowing their territory to be used for acts that prejudice the rights of other States; this would include acts that cause significant damage to the environment of another State.

4. Also, in the *Pulp Mills* case, the Court further referred to the principle of prevention, as a customary rule, with origins in due diligence that is required of a State in its territory stating that "[a] State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State"[260].

5. Mr President, we note that the argument has been made in the course of these proceedings that the obligation to prevent transboundary environmental harm also applies with regard to anthropogenic emissions of greenhouse gases.

6. The Nordic countries wish to point out that the standard applied in the cases that I just referred to has been developed based on State practice relating to direct and manifest injury in *bilateral* affairs. It has not in any situation thus far been applied outside that context to cases of alleged harm to natural systems or other more abstract elements that *might* in turn lead to consequences somewhere else on the planet.

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[260] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*, *Judgment, I.C.J. Reports 2010 (I)*, p. 56, para. 101.

7. The obligation of States under customary international law to prevent significant transboundary harm to other States, or to areas beyond national jurisdiction is generally worded and neutral as to the source of harm.

8. Furthermore, there is no evidence in State practice or *opinio juris* among States that this obligation can be transposed to a specific obligation under international law to ensure the protection of the climate system or the prevention of consequences due to climate change.

9. It is, in our opinion, important to note that the harm in question must qualify as significant damage and affect the environment of another State or area beyond national control. A significant harm evidentially resulting from the anthropogenic emissions of one State within its own jurisdiction could in principle qualify as a relevant source of significant harm to an area beyond that State's jurisdiction.

10. However, the ascertainment of a link between the emissions of one particular State and a specific harm beyond that State's jurisdiction, attains particular complexity considering that there is no generally accepted standard for the determination of the effects of a specific act on the climate system and other parts of the environment.

11. Nor is there any specific standard that is accepted by States for the apportionment and causal interrelationship of the combined emissions of States.

12. The Nordic countries stress that a determination as to whether a State, through anthropogenic emissions of greenhouse gases, has reneged on a general obligation to act with due diligence to prevent significant transboundary harm, would need to take into account the extent to which that State has taken the steps expected of it under relevant instruments of international law, including, of course, in particular the Paris Agreement.

13. In line with the points mentioned, the Nordic countries question whether the obligation under customary international law to prevent significant transboundary environmental harm can be applied as such to climate change resulting from the shared activities of humankind.

VII. Question of legal consequences

14. Mr President, with the Court's permission, I will now present the observations of the Nordic countries concerning question *(b)*.

15. I shall first note that the Nordic countries read the question of legal consequences as referring to an application of the rules of State responsibility to any situation of violation of primary rules identified under question *(a)*.

16. In this context, the Nordic countries note the arguments put forward in the course of these proceedings that raise questions relating to historical responsibility and the view according to which certain States should bear a responsibility towards others.

17. It is important to note that in connection with the adoption of the resolution that requested this advisory opinion from the Court, numerous States stressed the need for the Court to approach the issue of legal consequences and responsibilities with a view to clarifying existing international law and, by that, offer a contribution to future compliance.

18. The questions posed to the Court are thus not based on any assumptions, presumptions or allegations towards certain States. The approach is forward looking and not aimed at an assessment of any specific historical acts or omissions, or any specific case.

19. Bearing this in mind, the Nordic countries also wish to highlight that the Paris Agreement is a result of careful considerations regarding the roles of *all* States, both developed and developing.

20. The Paris Agreement does not refer to historical responsibility. During the negotiations of the Paris Agreement, questions of "fair" burden sharing were raised, and different models were proposed to include such concepts. In the end, these ideas were all rejected.

21. The Paris Agreement, however, does reflect differentiation in various provisions such as under Article 4, paragraph 4, where developed country parties should continue to take the lead by undertaking economy-wide absolute emission reduction targets.

22. Another such example is found in Article 9, paragraph 1, according to which developed country parties shall provide financial resources to assist developing country parties with respect to both mitigation and adaption.

23. At the recent COP29, parties agreed to set a new collective quantified goal on climate finance of at least US$300 billion annually by 2035, with developed countries continuing to take the lead and developing countries being encouraged to contribute. The decision also includes a call to all actors to work together to scale up finance to developing countries, from all public and private sources to the amount of at least US$1.3 trillion per year by 2035. The climate finance is not a matter

of reparation, but a means to facilitating contributions towards achievement of our common goals of the Paris Agreement, with a view to strengthening the global response to the threat of climate change.

24. Let me now turn to the wording of question *(a)* and our remarks on State responsibility.

25. The question refers to acts or omissions that have caused "significant harm to the climate system and other parts of the environment". In the view of the Nordic countries, this does not constitute a *legal* standard but a standard that must be established through interpretation of applicable and specific primary obligations.

26. Turning to the assessment of any legal consequences for States under international law, we present our observations based on the Draft Articles on the Responsibility of States for Internationally Wrongful Acts that were adopted by the ILC in 2001. We consider that the Draft Articles in general reflect customary international law, as already recognized by this Court.

27. To determine that a State is responsible for an internationally wrongful act, the conduct in question must be attributable to the State under international law, and the conduct must constitute a breach of an international legal obligation that is in force for the State at that time.

28. To consider contribution to climate change a potential internationally wrongful act is also conditioned upon the establishment of causality between one State's anthropogenic emissions of greenhouse gases and its interference with the climate system, thus giving rise to a breach of an international obligation of that State.

29. The attribution of detrimental environmental impacts flowing from anthropogenic emissions of greenhouse gases engage complex questions of causation. These are intricately connected to the nature and function of global consumption patterns, of energy systems and the combined requirements of life worldwide.

30. There is no generally accepted set of criteria for the determination of a qualified link between the acts of one State and a specific detrimental consequence.

31. In addition, the transboundary nature and global consequences of climate change give reason to draw attention specifically to Articles 46 and 47 of the Draft Articles that deal with plurality of injured States and plurality of responsible States, respectively.

32. We have noted the view put forward during the proceedings according to which it is possible to identify a specific set or group of States to constitute a plurality of responsible States within the meaning of Article 47.

33. However, the Nordic countries wish to highlight that this question cannot be prescribed in abstract but must rely on an assessment of the primary obligation in question of each State concerned.

34. In relation to climate change and State responsibility the rationale behind the Draft Articles 46 and 47 raises complex questions relating to distinguishing between the injured State and the responsible State: States assume both roles at the same time.

35. The threat of climate change is a serious global challenge that requires a common and immediate response by all States and the international community. It is not a matter that can be reduced to an identifiable act or omission by any one State.

36. In the view of the Nordic countries, the UN climate change régime, and in particular the Paris Agreement, is key to assessing to which extent any State has acted with the necessary due diligence to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.

VIII. Closing

37. Mr President, honourable Members of the Court, in conclusion I will reiterate the main points of the Nordic countries.

38. The global community is not on track to reach the long-term climate goals of the Paris Agreement. Further action is needed to combat the adverse effects of climate change. The Nordic countries stress that this is a global challenge that calls for ambitious political action by all States.

39. In the view of the Nordic countries the Paris Agreement provides a comprehensive and global framework for achieving our common goal. The objective of the Agreement is to strengthen the global response to the threat of climate change through a combination of legal obligations and political targets.

40. This particular régime establishes obligations and commitments for *all* Parties reflecting their capabilities and different national circumstances. The capacity of any State with regards to

contributing towards our common responsibility is not static and it may evolve over time as national circumstances change.

41. We believe that possible obligations of States under other instruments and fields of law in respect of climate change must be addressed in careful consideration of the interrelationship with the United Nations climate change régime and the Paris Agreement.

42. We recognize this Court's unique position to inform the understanding of the interplay between the various fields of law applicable to the protection of the climate system and the environment.

43. The Nordic countries trust that the Court's forthcoming assessment and clarification of applicable international law will assist *all* States in identifying and advancing political decisions to further the global response to the threat of climate change.

44. Mr President, distinguished Members of the Court, this concludes our intervention, and we thank the Court for its kind attention.

The PRESIDENT: I thank the representatives of Denmark, Finland, Iceland, Norway and Sweden for their joint presentation. Before I invite the next delegation to take the floor, the Court will observe a break of 15 minutes. The hearing is suspended.

The Court is adjourned from 11.45 a.m. to 12.00 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, Egypt, to address the Court and I give the floor to Mr Wael Aboulmagd.

Mr ABOULMAGD:

1. Mr President, distinguished Members of the Court, it is my privilege to appear today before this solemn sitting on behalf of the Arab Republic of Egypt. In the time allotted to our submission, we will focus on four main issues:

— jurisdiction and competence,

— applicable law,

— the conduct of States underpinning the questions submitted to the Court,

— the applicability of the rules on State responsibility, and the legal consequences arising from the breach of obligations identified under the question submitted to the Court.

2. Egypt is one of the most vulnerable countries to the impacts of climate change in Africa and the East Mediterranean. And despite accounting for only 0.6 per cent of annual global carbon dioxide (CO_2) emissions. Egypt's vulnerability is particularly elevated due to its 98 per cent dependence on the Nile River for potable water, agriculture, industry and fish farming. With a population of nearly 110 million, the current per capita annual availability of water in Egypt is just 510 cubic metres, which is significantly below the water scarcity threshold of 1,000 cubic metres and dangerously close to the internationally defined "absolute water scarcity" threshold of 500 cubic metres per person per year — this in addition to the cascading effects of water-related climate impacts on the Nile, upstream. This is further exacerbated by the risks of unplanned and unco-ordinated mitigation measures elsewhere in the basin, particularly those involving excessive water consumption.

3. Further, Egypt's Nile Delta, which lies approximately 1 m above mean sea level, is recognized as one of the world's three "extreme" vulnerability hotspots[261]. Most of the country's population and infrastructure are concentrated in the Delta, making the country additionally vulnerable to the impacts of sea-level rise.

4. Mr President, the aforementioned facts on the severity of the impacts of climate change on the lives and livelihoods of Egyptians, are mirrored by comparable suffering in all developing countries most of whom lack the capacity and the resources to adapt, and hence the urgency of addressing the issues related to State obligations and the legal consequences arising from the breach of these obligations which are the subject of the advisory opinion sought by the United Nations General Assembly.

5. Mr President, I will now address the four main points related to the questions.

6. *First, on the matter of jurisdiction and competence*. Egypt wishes to recall the long-standing position of this Court, which confirmed that the answer to a request for an advisory opinion "represents [the Court's] participation in the activities of the Organization [i.e. the United Nations],

[261] UNDP (2018). National Adaptation Plans in Focus: Lessons from Egypt, available at https://www.adaptation-undp.org/sites/default/files/ resources/naps_in_focus_lessons_from_egypt.pdf.

and, in principle, should not be refused"[262]. The Court's jurisprudence also has been consistent in maintaining that only "compelling reasons" may lead this Court to decline the request for an advisory opinion[263].

7. The Request presents two legal questions that are precisely formulated in clear legal terms and on issues of international law. Accordingly, we conclude that the Court is invited to render the requested advisory opinion given that there are no compelling reasons to decline to provide the advice requested by the United Nations General Assembly.

8. As for the claim that the questions are of a political nature, we submit that the political nature of a question, including the existence of ongoing negotiations, does not prevent the Court from exercising its jurisdiction. As this Court has previously stated "the fact that a question has political aspects does not suffice to deprive it of its character as a legal question"[264], or to "deprive the Court of a competence expressly conferred on it by its Statute"[265].

9. *I now turn to the issue of applicable law.* First, Egypt is of the clear view that in answering the questions the Court should take into account the entire corpus of international law, and should not limit itself to interpreting and applying the climate change legal régime as some submissions have suggested, but rather should identify the obligations relevant to climate change from the entire corpus of international law, and determine the legal consequences of conduct resulting in climate change under international law.

10. The formulation of the question requires the Court to determine the obligations of States "*under international law* to ensure the protection of the climate system and *other parts of the environment*", this formulation could hardly be construed as limiting the obligations to those found

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[262] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 113, para. 65 (hereinafter the "*Chagos Archipelago Advisory Opinion*"); *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, pp. 78-79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J., Reports 2004 (I)*, p. 156, para. 44.

[263] *Chagos Archipelago Advisory Opinion*, p. 113, para. 65.

[264] *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 415, para. 27; *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 172, para. 14. (hereinafter the "*United Nations Administrative Tribunal Advisory Opinion*").

[265] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 234, para. 13; *United Nations Administrative Tribunal Advisory Opinion*, p. 172, para. 14.

in the climate change régime, but rather expressly invites the Court to include in its consideration other relevant international instruments and rules of international law.

11. Indeed, adding the phrase "and other parts of the environment" is further indication that the response to the questions should encompass the broader components of environment protection, which are not addressed — let alone governed by — the narrow climate change régime, but are covered by other legal treaties and instruments

12. *Second*, Egypt further submits that the climate change régime does not address climate change in an integrated, comprehensive manner and, hence, cannot be deemed the sole source of obligations regarding *all* aspects of climate change. For instance, the climate change régime does not address *ratione materiae* the protection of human rights impacted by climate change, nor the protection of the marine environment, or the protection of the atmosphere from emissions from airlines or shipping; nor does it encompass the other rules of general international law in relation to the protection of the environment as it does not address these issues.

13. Arguments supporting an exclusive application of the régime as a *lex specialis* neglect that in accordance with Article 31 (3) *(c)* as well as Article 3 of the Vienna Convention on the Law of Treaties, the existence of treaties dealing with climate change does not preclude the application of general rules of international law, nor other treaties' rules, as there is no conflict, no inconsistency between all these rules and ought therefore to "be interpreted as to give rise to a single set of compatible obligations"[266] in accordance with the principle of harmonization and systemic integration.

14. We also submit that the climate change legal régime cannot be the only source of obligations with regard to climate change, as that would result in any given State not party to the climate change régime, or which has withdrawn from it, being under *no* legal obligation regarding the protection of the climate from anthropogenic emissions of GHGs, which is inconceivable given the magnitude of the climate crisis.

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[266] International Law Commission (ILC), Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, (2006) 2 (2) *Yearbook of the International Law Commission*, paras. 5-10 (hereinafter "*ILC, Conclusions of the work of the Study Group on the Fragmentation of International Law*"); M. Koskenniemi et al., Fragmentation of international law: difficulties arising from the diversification and expansion of international law, Report of the Study Group of the International Law Commission, UN doc. A/CN.4/L.682, 13 April 2006, para. 88.

15. *Third*, on the temporal aspect: Egypt submits that knowledge of the adverse impacts of GHG emissions on the environment predates the UNFCCC process, and therefore the climate change legal régime cannot be the only source of legal obligations addressing the climate crisis. States had, before the adoption of the UNFCCC in 1992, and still have the obligation not to cause environmental damage to other States or in areas outside their jurisdiction[267]. This includes the climate system. In our written submissions we have provided multiple statements and decisions and resolutions establishing that knowledge of the adverse impacts, and that they all predate the adoption of the UNFCCC in 1992.

16. In the next part of our submission, we will focus on the conduct of States underpinning the questions submitted to the Court.

17. Resolution 77/276 clearly identifies this conduct in its preambular paragraphs and in the formulation of the questions.

18. As indicated in the resolution, this conduct is the acts and omissions of individual states or a particular group of States that, over time, have caused significant harm to the climate through cumulative anthropogenic emissions of GHGs, as well as to other States, peoples and individuals of the present and future generations. In identifying precisely which group of States are concerned with undertaking this conduct, it suffices to consider the extensive scientific data provided by the IPCC, and other UN agencies.

19. And although *all* States may have contributed to the climate crisis, this contribution, past or present, is by no means equal. The IPCC has confirmed that "developed countries contributed 57 % [to cumulative CO_2 emissions between 1850 and 2019]"[268], whereas over the same period "the three developing regions [i.e. Africa, Asia and the Pacific] together contributed 28%"[269], while noting that Africa's contribution was only 3 per cent[270].

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[267] Written Statement of Egypt, para. 83.

[268] Dhakal, S., J.C. Minx, F.L. Toth, A. Abdel-Aziz, M.J. Figueroa Meza, K. Hubacek, I.G.C. Jonckheere, Yong-Gun Kim, G.F. Nemet, S. Pachauri, X.C. Tan, T. Wiedmann, 2022: Emissions Trends and Drivers. In IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (P.R. Shukla, J. Skea, R. Slade, A. Al Khourdajie, R. van Diemen, D. McCollum, M. Pathak, S. Some, P. Vyas, R. Fradera, M. Belkacemi, A. Hasija, G. Lisboa, S. Luz, J. Malley, (eds.)). Cambridge University Press, Cambridge, UK and New York, NY, USA. doi: 10.1017/9781009157926.004, p. 4.

[269] *Ibid*.

[270] *Ibid*.

20. Paradoxically, the very countries which top the list for historical emissions are today continuing to expand oil and gas exploration. These countries are some of the wealthiest in the world. Yet, and despite their low dependence on fossil fuels, they are continuing to grant drilling licences at an unprecedented rate. In 2023, your Honour, 825 new licences were granted which is the largest number since records began. Five of the wealthiest, most advanced countries in the world account for 67 per cent of all new oil and gas licences issued globally since 2020.

21. The aforementioned data on historical emissions *and* on new fossil fuel licensing is intended to highlight the central, underlying rationale for the pursuit by developing countries of this advisory opinion. Namely, the deep-rooted, inherent injustice in the global response to the climate emergency, whereby the industrialized nations of the world who have built their wealth and prosperity on the unconstrained exploitation of fossil fuels and the resultant emission of GHGs over decades, are currently continuing to cause significant harm to the environment through further exploration and licensing, while the developing countries of the global south — most of whom had negligible historic emissions, and many with insignificant current emissions — continue to suffer the most due to their lack of the financial, technological and capacity means to adapt and recover from climate impacts, yet are relentlessly pressured to do more to reduce their emissions with little to no support, as demonstrated by the underwhelming, inadequate pledges on climate finance announced under the New Collective Quantified Goal, most recently in Baku almost last week.

22. In part four, Mr President, we will address the issue of State responsibility. Some States have argued against the applicability of general rules of State responsibility for reasons such as the difficulty in establishing a causation link between the breach and the harm caused, and the contribution by each State to climate change, the fact that emissions of GHGs in themselves do not constitute a wrongful act, that the climate change legal régime contains a compliance mechanism and/or is a self-contained régime, and the contention that it was agreed by the UNFCCC COP that Article 8 of the Paris Agreement does not provide a basis for compensation, and that the financial assistance provided for under the climate change legal régime addresses the issue of harm caused.

23. Egypt respectfully submits that these arguments are refutable for the following reasons: *first*, it is important to correctly characterize the relevant conduct underpinning the questions submitted to the Court. And understanding that it is a breach arising from a *composite act* as

elaborated under Article 15 of the Articles on the Responsibility of States for Internationally Wrongful Acts. As such, States are being held responsible *for a series of actions or omissions that are defined in aggregate as wrongful*. This means that each individual act or omission does not need to be unlawful for a composite act, in breach of international law, to be formed. The breach of an obligation occurs when a series of acts or omissions, assessed as a whole is considered a violation of that international obligation[271].

24. Developed countries have, individually, violated their obligations under international law in relation to the protection of the climate, when each State through its cumulative anthropogenic emissions of GHGs over time, has reached the threshold of causing significant harm to the environment, and as a consequence to the climate system.

25. On the collective level, anthropogenic emissions of GHGs of developed countries taken together are proven by science to be the main reason causing climate change. The conduct (aggregate acts or omissions) of developed countries over time in relation to activities within their jurisdiction or control that have emitted anthropogenic GHGs resulting in an interference with the climate system, have caused not only significant harm to the climate system and to the environment but resulted in climate change. This is a composite act undertaken by several responsible States that has resulted in harm to the environment in the form of climate change. The responsibility of developed States is thus not only individual but also collective. As a group, their responsibility is engaged for causing climate change, and each State is "separately responsible"[272] for its contribution to climate change.

26. *Second*, the climate change legal régime is not a self-contained régime. It does not have a distinct set of rules concerning breach and reactions to breach[273] necessary to qualify it as a self-contained régime that would displace the customary international law of State responsibility. Indeed, Article 15 of the Paris Agreement on compliance is very clear and explicit in its wording: it talks of a mechanism to facilitate implementation and promote compliance, and facilitate this in a non-

[271] Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, 2001, text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10), Article 15, ARSIWA, para. 8, Commentary.

[272] Article 47, ARSIWA, para. 1, Commentary.

[273] *ILC, Conclusions of the work of the Study Group on the Fragmentation of International Law*, para. 12.

adversarial and non-punitive manner. All of these are indications in the wording of the Paris Agreement itself of the very nature of this compliance mechanism.

27. Furthermore, several States upon ratifying the UNFCCC and the Paris Agreement declared that ratifying these conventions does not constitute a renunciation of any right under international law concerning State responsibility for the adverse effects of climate change, and that no provisions in these agreements can be interpreted as derogation from principles of general international law or any claims or rights concerning compensation due to the impacts of climate change. These declarations — by those States, at that time — reflect their apprehension that the claim could be made in the future, that responsibility of States is limited to obligations under the UNFCCC and the Paris Agreement to the exclusion of obligations emanating from international law, which apprehension is now clearly justified by claims alleging exactly that.

28. *Third*, the claim that the provisions of the climate change régime regarding loss and damage exclude the applicability of the general law of State responsibility does not stand. The issue of loss and damage under the climate change régime is not a substitute for *reparation* in the form of compensation arising from a breach of an international obligation which caused injury to States, simply due to the discretionary near-voluntary nature of the aforementioned provisions within the UNFCCC structure. States now claiming that the provisions on loss and damage preclude the applicability of the law of State responsibility have consistently, themselves, maintained that the decisions and provisions under the UNFCCC process do not involve or provide a basis for any liability or compensation[274], it would appear self-contradictory for those same States at this time to use the loss and damage argument to now claim that it replaces reparation in the form of compensation.

29. *Fourth*, some States have claimed that financial assistance provided under the climate change legal régime addresses the issue of the harm caused and therefore it is not possible to resort to the legal consequences identified under the general principles of State responsibility and, precisely, compensation. Egypt submits that there is a clear distinction between financial assistance under the climate change legal régime and compensation under the responsibility of States for internationally

[274] COP Decision 1/CP. 21, para. 51, of this decision states that the Conference of the Parties: "agrees that Article 8 of the [Paris] Agreement does not involve or provide a basis for any liability or compensation", can be accessed through: https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf.

wrongful acts. The former is a primary obligation provided for under the climate change legal régime, while the latter is the consequence of a wrongful act that has caused harm.

30. *In conclusion and summary*, Mr President, Egypt respectfully submits the following. First, Egypt respectfully submits that the Court has jurisdiction and that there are no compelling reasons preventing the Court from rendering this Request for an advisory opinion.

31. Second, Egypt respectfully submits that the whole corpus of international law should be considered by the Court when answering the questions submitted to it. The Court should not limit itself to the climate change legal régime (i.e. the UNFCCC, the Kyoto Protocol and the Paris Agreement), for the following reasons:

(a) The formulation of the questions in resolution 77/276, adopted by consensus, clearly requests the Court to consider the whole corpus of international law when answering the questions submitted to it.

(b) The climate change legal régime is not *lex specialis* in addressing climate change, and the Paris Agreement in particular is only part of this whole corpus addressing climate change.

(c) General international law, along with the climate change legal régime, are compatible and are to be applied concurrently, and interpreted harmoniously.

32. Third, from a *ratione temporis* standpoint, knowledge of the effects of the GHG emissions on the environment was established long before the adoption of the climate change legal régime with the UNFCCC in 1992, and there are rules of international law that were already formed (before the 1990s) in relation to the protection of the environment from harm, that States were expected to comply with, particularly the duty of due diligence, and the no harm principle.

33. Third, when considering all of the above, the Court is also requested under question *(b)* to apply the principles of State responsibility to any breach of the relevant obligations identified under question *(a)* which, as a consequence, engage the responsibility of States. The climate change legal régime is not a self-contained régime, as it lacks rules "concerning breach and reactions to breach"[275]. In other words, it does not contain any rules on State responsibility.

[275] *ILC, Conclusions of the work of the Study Group on the Fragmentation of International Law*, para. 12.

34. Fourth, Egypt submits that it is of crucial importance for the Court to identify the conduct of States subject of the questions submitted to the Court (i.e. the relevant conduct). This is essential in determining whether there is a breach of the obligations indicated under question *(a)* submitted to the Court, and to determine the legal consequences arising from such breach as indicated under question *(b)*.

35. In this regard, Egypt submits that the relevant conduct is clearly identified in the text of resolution 77/276. It consists of the acts and omissions of developed countries, which *over time* have caused significant harm to the climate through their cumulative anthropogenic emissions of GHGs. This relevant conduct is a breach arising from a composite act as reflected under Article 15 of ARSIWA.

36. In light of the above, Egypt concludes that each developed country has, *individually*, violated the obligations indicated under question *(a)* by causing significant harm to the environment, and as a consequence to the climate, through its cumulative GHG emissions. Developed countries are also *collectively* responsible for causing climate change in light of their cumulative GHG emissions (the collective aggregate of their acts and omissions in relation to anthropogenic GHG emissions that have not only caused harm to the environment and to the climate, but also caused climate change).

37. Consequently, States responsible for the breach of rules of international law are required to continue performing the obligation breached, to cease the wrongful act, and to make full reparation for the injury caused by their breach of their relevant obligations.

38. Egypt considers that, since restitution of the climate system to where it was before is materially impossible, compensation would be the suitable choice for reparation of climate change damage. The issue of loss and damage provided for under the climate change legal régime and COP decisions is not a substitute for reparation arising from a breach of international obligations that has caused harm to the environment and the climate system that caused injury to States, nor is the provision of financial assistance which is a primary obligation provided for under the climate change legal régime and *not* a result of breach of an internationally wrongful act. That, Your Honour, brings me to the conclusion of our submission. Thank you very much.

The PRESIDENT: I thank the representative of Egypt for his presentation. I now invite the delegation of El Salvador to address the Court and I call upon His Excellency Mr Agustín Vásquez Gómez to take the floor.

Mr VÁSQUEZ:

1. Mr President, distinguished Members of the Court, good afternoon. It is my honour to address you on behalf of the Republic of El Salvador. El Salvador is conscious of the sheer scope of the request that the General Assembly has made to the Court. It has submitted in its written statement, and it takes the opportunity to reiterate the point here, that the Court should give the fullest answer possible to the questions asked. This is a once-in-a-generation opportunity for the Court to clarify how international law applies to one of the greatest challenges that humanity has ever faced, and El Salvador would respectfully encourage you to make the most of this opportunity.

2. At the same time, we are conscious that this is only the third day of a hectic fortnight of hearings, and that much of substance that can be said has already been said in the written statements submitted by the Participants in these proceedings. For these submissions, we will thus restrain ourselves to making two general points relating to the framing of the case, and then zoom in on one of the specific legal questions that we hope the Court will address in its opinion, namely the issue of the preservation of the sovereign and jurisdictional rights of States in the face of sea level rise. The two general points I will make myself, leaving for Professor Bordin to address the more specific legal question.

INTERNATIONAL LAW APPLIES ALONGSIDE THE CLIMATE CHANGE TREATIES

3. Mr President, Members of the Court, my first general point concerns the relationship between the *lex specialis* found in the climate change treaties and the other international rules and principles that protect the natural environment and the persons that suffer the consequences of environmental harm. El Salvador stands with those Participants in the proceedings who argue, persuasively, that the climate change treaties do not exclude, without more, the application of other rules of international law. In fact, in our written statement, to which we respectfully refer you, we focused on the general rules and principles of environmental law and human rights law, on the conviction that they are fundamental to the questions now presented to the Court.

4. There is no doubt that the climate change treaties play an invaluable role in structuring the international co-operation through which we fight climate change. They define goals to be pursued, and they establish mechanisms, strategies and incentives for the pursuit of these goals. But they do not exhaust the international regulation of climate change. They have nothing to say, for example, about the obligation of States to ensure, within their jurisdiction, that no environmental harm is caused to other States or to other global commons — or about the legal consequences of the breach of that obligation. They have nothing to say, likewise, about the obligations that States owe to persons whose rights are affected by climate change.

5. Mr President, Members of the Court, it is El Salvador's view that the more we understand the nature and the extent of the harm caused by climate change, and the more we understand how that harm is caused, the more capable we are of applying the existing law to the facts on the ground. Any attempt to suggest otherwise would make the law terribly incoherent. It would suggest that international law somehow permits States to cause climate change-related harm, while evading the obligations that bind them in other domains.

6. The contribution that the Court is poised to make here is to provide a clearer understanding of the obligations that States have to prevent, address and redress climate change under *all* relevant existing rules. Indeed, an opinion providing a systematic and robust account will not only reveal and reinforce the coherence of the existing law, it will also pave the way for better and bolder future action. In particular, it will help treaty drafters and domestic regulators ensure that the mechanisms and strategies that they design do enough to comply with existing law. It will also help them to ensure that future action lives up to the existing law's immanent ambition.

7. In this connection, El Salvador respectfully encourages the Court to explore the ways the human rights obligations of States intersect with the effects of climate change. That includes the right to a healthy, clean and sustainable environment affirmed by the General Assembly in resolution 76/300 of 2022, which, we submit, constitutes a rule of customary international law. That rule fits perfectly within the legal framework for the protection of human rights that we already find in treaties such as the two Covenants of 1966, and in the customary rules that they have come to reflect. It also relates to other important rules, such as the principle of non-refoulement, on which we focused in our written statement to the Court.

COMMON BUT DIFFERENTIATED RESPONSIBILITIES

8. Mr President, Members of the Court, my second general point concerns the principle of common but differentiated responsibilities, and the crucial role that it plays in framing and informing the Court's analysis of the obligations of States in respect of climate change. Some Participants in the proceedings have sought to downplay the relevance of the principle, suggesting that it only applies within the confines of the climate change treaties, or that it is not a customary rule.

9. In El Salvador's view, the principle of common but differentiated responsibility is very well established in international law. It dates back to the Rio Declaration on Environment and Development and has been incorporated in several pivotal instruments. It was famously invoked by the WTO compliance panel in the *Shrimp Turtle* case as a basis for the parties to co-operate in the conclusion of an agreement capable of balancing trade and environmental concerns — a pronouncement that further illustrates the principle's systematic reach[276].

10. But in some ways the debate over whether or not the principle reflects custom misses the point. For common but differentiated responsibilities is an essential concept — an essential premise — for the identification and delineation of the obligations of States in respect of climate change. It reflects the basic fact that the responsibilities, obligations and liabilities of developed States are greater because those States were, and remain, the main contributors to the problem. It is within their power to take the bulk of the action that will prevent further harm, and to provide for the mitigation and redress of the harm that has already been caused.

11. El Salvador does not deny that climate change is a truly global problem that needs to be tackled by the international community as a whole. The point here is that the law can only be apprehended from the perspective of "climate justice" — justice in both its distributive form and in its corrective form. It stands to reason that existing rules will demand that States be distinguished according to their contributions to the problem. El Salvador thus submits that the principle of common but differentiated responsibilities is the appropriate normative background against which the findings of the Court on obligations and legal consequences need to be made.

12. Mr President, with your permission, I would now like to ask Professor Bordin to address the question of preservation of sovereign and jurisdictional rights. Thank you very much.

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[276] United States — Import Prohibition of Certain Shrimps, WT/DS58/RW, Report of 15 June 2001, para 7.

The PRESIDENT: I thank His Excellency Mr Agustín Vásquez Gómez. I now give the floor to Professor Fernando Lusa Bordin. You have the floor, Professor.

Mr BORDIN:

PRESERVATION OF SOVEREIGN AND JURISDICTIONAL RIGHTS

1. Mr President, Members of the Court, it is an honour to appear before you today. As the present proceedings throw into sharp relief, much is lost to climate change: human life and health, the integrity of our ecosystems and biodiversity, economic prosperity, and the quality of life of peoples around the globe. The enormity of the problem is such that we see it even affects that most abstract of legal constructs: the legal person of the State itself.

2. That is because one of the losses that climate change has caused, and will continue to cause, is the loss of territory, one of the constitutive elements of statehood under international law. With the loss of territory to sea level rise, the question arises of what happens to sovereign and jurisdictional rights that are linked to the territory lost. In the first instance, we are of course speaking about the jurisdictional entitlements that States enjoy over their maritime zones under the law of the sea. But in extreme cases, where a State might find itself, and let us hope that that never ever happens, submerged to the point where it can no longer be inhabited, the question becomes one concerning the continuity of statehood as such.

3. I propose to address the question of sovereign and jurisdictional rights in two parts: first explaining why it falls under the purview of the Court's jurisdiction in the present proceedings, and secondly by presenting our submissions on how the Court ought to address it.

4. Mr President, Members of the Court, no less than 25 Participants in the present proceedings, of which 21 are States, have raised the preservation of sovereign and jurisdictional rights in their written submissions[277]. That attests to the widespread interest that the international community has in the Court making a pronouncement upon the issue.

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[277] African Union WC, para. 101; Albania WS, para. 136; Australia WS, para. 1.18; Bahamas WS, paras. 217-226; COSIS WS, paras. 68-75; Colombia WC, para. 1.21; Cook Islands WC, para. 111; Costa Rica WS, paras. 125-128, and WC, para. 41; Dominican Republic WS, paras. 4.34-4.42; El Salvador WS, paras. 52-58, and WC, paras. 4-12; Kiribati WS, paras. 190-195, and WC, para. 41; Liechtenstein WS, paras. 74-77; Mauritius WC, paras. 147-151; Micronesia WS, paras. 114-117; Nauru WS, paras. 12-13, and WC, paras. 64-66; Pacific Islands Forum WC, paras. 5-13; PANO WC, para. 19; Saint Vincent and the Grenadines WC, para. 50; Salomon Islands WS, paras. 208-213; Sierra Leone WS, para. 3.91, and WC, para. 4.18; Sri Lanka WC, para. 75; Timor Leste WC, paras. 80-82; Tonga WS, paras. 233-236; Tuvalu WC,

5. A majority of Participants views the issue as falling under the scope of question *(b)*, as it pertains to the legal consequences, under the law of the sea, under the law of statehood, under the law of State responsibility, of loss of territory resulting from climate change — losses that are especially and acutely felt by small island developing States and vulnerable coastal States. Other Participants framed the issue as part of question *(a)*, that is, as relating more generally to the obligations that States have with respect to climate change, which only goes to show that the issue really permeates the Request of the General Assembly.

6. The Court will no doubt be aware that the International Tribunal for the Law of the Sea declined to address the consequences of sea level rise for maritime zones established under the UN Convention on the Law of the Sea (UNCLOS) — of course when it gave its Advisory Opinion on 24 May earlier this year. But that was due to the specific wording of the request that the Tribunal received, which focused specifically on marine pollution[278]. And, indeed, it may have been wise for ITLOS to refrain from addressing a question to which it might only have been able to give an incomplete answer. After all, the question goes beyond the mere application of UNCLOS, which at any rate is not yet a universal treaty, with El Salvador itself having chosen not to become a party to it.

7. Rather, the preservation of sovereign and jurisdictional rights is a distinctively legal question having a distinctively systemic character. It invites the Court, as we will show shortly, to consider not only the rapidly emerging practice in this field, but also the application of various principles of international law. And the Court, being the principal judicial organ of the United Nations, and the only international tribunal with general jurisdiction, the Court is uniquely well positioned to deal with that type of question.

8. Mr President, Members of the Court, allow me to turn to the second part of my presentation and articulate El Salvador's position on what advice you should be providing. Here again, the written submissions of the 25 participants who addressed the issue will offer you some very valuable guidance. Essentially, they all converge — converge in inviting the Court to find that existing sovereign and jurisdictional rights are not affected by sea level rise caused by climate change.

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paras. 10-12; Vanuatu WS, paras. 582-588, and WC, paras. 198-199 and 204.

[278] *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS, Advisory Opinion of 21 May 2024, para. 150.

9. That position is supported both by the normative practice of States and also by legal principle. An apt starting-point are the two declarations issued under the auspices of the Pacific Islands Forum, which constitute a stunning contribution to the consolidation of the international law applicable in this field by States of that region, in their majority small island developing States.

10. The first declaration, which was adopted in 2021, states that "maintaining maritime zones . . ., and rights and entitlements that flow from them, notwithstanding climate change-related sea-level rise, is supported by both [UNCLOS] and the legal principles underpinning it"[279].

11. The second declaration, adopted in 2023, affirms that "international law supports a presumption of continuity of statehood and does not contemplate its demise in the context of climate change-related sea-level rise".

12. Mr President, Members of the Court, it is not an exaggeration to suggest that the 2021 Declaration has caused a chain reaction in what was already emerging State practice. The International Law Association's Committee on International Law and Sea Level Rise has observed in its recent final report, issued earlier this year, that "[s]everal major maritime nations and industrially developed States began to clarify their views and/or adopt policies specifically addressing the legal stability of baselines and the limits of maritime zones"[280] — and they did so, crucially, by either aligning themselves with the Pacific Islands Forum's approach or by emphasizing that they would not oppose that approach. In the written phase of the present proceedings, the Commission of Small Island Sates on Climate Change and International Law (COSIS) has provided us all with a helpful compilation of the practice of over 100 States confirming the preservation of jurisdictional rights, and we would like to respectfully refer the Court to that compilation[281].

13. The emergence and the crystallization of State practice in this domain is nothing short of striking. And that is a fortunate development, because the position that it encapsulates is also supported by legal principle. Please allow me to elaborate.

14. First are the principles of legal certainty and stability. We find those principles front and centre in the current study of the International Law Commission on sea level rise and international

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[279] Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, 6 August 2021.

[280] International Law Association, International Law and Sea Level Rise, Final Report (2024), at pp. 40-42.

[281] COSIS WS, para. 72, and fn. 209.

law, which has come to the preliminary conclusion that "legal stability, security, certainty and predictability" support "the preservation of baselines and outer limits of the maritime zones measured therefrom"[282]. The Commission's study also shows — and this is really important — how a large number of States have been alluding to those principles in their pronouncements on the issue, which both confirms their relevance and their applicability[283].

15. We find the same position endorsed in the work of publicists, most notably the recent resolution that the International Law Association adopted, where it says that

> "[o]n the grounds of legal certainty and stability, provided that the baselines and the outer limits of maritime zones . . . have been properly determined . . ., these baselines and limits are not required to be redetermined should climate change related sea level rise affect the geographical reality of the coastline"[284].

16. Secondly, we have the interlocking principles of territorial integrity, self-determination and permanent sovereignty over natural resources, which have been cited in the written submissions of several participants in these proceedings. Those principles form a package, a package that underpins the basic legal status of States as the main subjects of international law who get to represent their peoples on the international plane. And when applied to the present problem, those principles all point to a solution of stability, of continuity, of preservation of existing sovereign and jurisdictional rights that may be affected by climate change.

17. The same legal principles — stability and certainty, territorial integrity, self-determination, permanent sovereignty over natural resources — also support that presumption of continuity of statehood that the 2023 Declaration of the Pacific Islands Forum articulates. Granted, State practice around this issue is comparatively more scarce — and that is just as well, since it is imperative that the international community make every effort to ensure that tragic scenarios where States are fully submerged remain mere hypotheticals. But a legal presumption of continuity has an important role to play as a safety net for States who are vulnerable to that exceedingly serious, exceedingly severe scenario. A presumption of continuity is further supported by "the fundamental right of every State

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[282] "Sea-level rise in relation to international law: First issues paper by Bogdan Aurescu and Nilüfer Oral", UN doc. A/CN.4/740, p. 41, para. 104.

[283] "Sea-level rise in relation to international law: Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilüfer Oral", UN doc. A/CN.4/761, pp. 32-41.

[284] International Law Association, resolution 2024/1, available at https://www.ila-hq.org/en_GB/documents/ila-resolution-1-committee-on-international-law-and-sea-level-rise-en-1.

to survival", which this Court said we cannot lose sight of in the Advisory Opinion that it gave to the General Assembly back in 1996[285].

18. Mr President, Members of the Court, in El Salvador's view, what is at stake here is the resilience of the most fundamental structural principles of the international legal system when faced with the severe physical effects of climate change. Just as human life needs to adapt to those effects, the effects that cannot be prevented, the effects that cannot be mitigated, so does international law itself. And international law is indeed capable of adapting. It comprises structural principles that enable stability, that enable continuity, that enable preservation of the rights of States and peoples over time.

19. You have the opportunity, in the present advisory proceedings, to confirm that this is precisely the case, putting the international community of States on surer legal footing as it rises to some of the greatest challenges of climate change. I should emphasize, in this connection, that the Court does not need to give a detailed answer about every facet of the issue, of course. On the contrary, it will suffice that the Court provides a general statement of principle, which can serve as the starting-point for the working out of practical solutions at a later time, if or as the need arises.

20. Mr President, Members of the Court, that concludes El Salvador's presentation. I hope neither you, nor those attending or watching these hearings, will begrudge the extra minutes that we are adding to the lunch break for finishing slightly ahead of schedule. I thank you for your patient attention.

The PRESIDENT: I thank the representatives of El Salvador for their presentation. This concludes this morning's sitting. The oral proceedings will resume, at 3 p.m., in order for the United Arab Emirates, Ecuador, Spain, the United States of America, the Russian Federation and Fiji to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 12.55 p.m.

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[285] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I),* p. 263, para. 96.