INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
REQUEST FOR ADVISORY OPINION

Written Comments of the Dominican Republic

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4 July 2024

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CHAPTER 1
INTRODUCTION

1.1 On 15 December 2023, the Court fixed 22 March 2024 as the deadline for States and authorized international organisations to file Written Statements on the questions referred to the Court by the General Assembly pursuant to Resolution 77/276 ("the Request"),[1] and 24 June 2024 as the deadline to the Parties to the proceedings to submit Written Comments on the submissions made by other States or organisations. In accordance with such Order, on 22 March 2024 the Dominican Republic initiated its relationship with the Court by submitting its Written Statement in these proceedings, a historical decision which was driven by the gravity and scale that climate change represents for the international community as a whole, and most prominently to those most vulnerable to the phenomenon—Small Island Developing States ("SIDS") and their peoples, including from the Caribbean. On 30 May 2024, the Court adopted an Order extending the time-limit for the filing of Written Comments to 15 August 2024. This Submission is filed by the Dominican Republic pursuant to the latest Order of the Court.

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I. HISTORICAL LEVEL OF PARTICIPATION IN THE PROCEEDINGS AND SUMMARY CONTENTS OF THE DOMINICAN REPUBLIC'S WRITTEN STATEMENT

1.2 In 1988, the General Assembly first characterized climate change as a "common concern for mankind".[2] Thirty-five years later, at the time when it decided by consensus to solicit the Court's assistance through the referral of the Request, it was no longer just facing a "common concern". We are now confronting, the General Assembly warns, an "unprecedented

[1] UN General Assembly Resolution, "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change", A/RES/77/276 (29 March 2023) (**hereinafter "the Request" or "AO Request"**). Pursuant to this Resolution, the General Assembly referred to the Court two closely intertwined questions (**hereinafter "the Questions"**). The key terms of the Questions where extensively commented on in the Dominican Republic's Written Statement (22 March 2024) (**hereinafter "Written Statement of the Dominican Republic"**), paras. 4.13-4.20 (commenting the terms included in the *chapeau* and Question A), and paras. 4.51-4.53 (commenting the terms of Question B).

[2] UN General Assembly Resolution, "Protection of Global Climate for Present and Future Generations", A/RES/43/53, (6 December 1988), preambular para. 11. The expression was reproduced in the four General Assembly resolutions on the same topic and with the same title that followed: A/RES/44/207 (22 December 1989), preambular para. 1; A/RES/45/212 (21 December 1990), preambular para. 1; A/RES/46/169 (19 December 1991), preambular para. 1; and A/RES/47/195 (1 March 1993), preambular para. 1. *See* Written Statement of the Dominican Republic, para. 1.3.

challenge of civilizational proportions".[3] These are indeed the terms of the opening paragraph of Resolution 77/287, which point to the heart of these proceedings.

1.3 It is therefore hardly surprising that 79 States from all regions of the world (including the Dominican Republic) and 12 international organisations authorized by the Court (together "the Participants") also submitted Written Statements in these proceedings—a historical level of participation which has no precedent in the Court's history. For more than a third of the participant States, originating from what may be referred to as "the Global South", these proceedings also mark their first appearance before the Court. The great significance of this case and the unprecedented participation it has attracted reflect the outmost trust that all Participants—regardless of their geographical differences, developmental disparities, or nature of their institutional mandate—have placed on the Court to render a compelling and unambiguous response to the Questions.

1.4 In its first written submission (the "Written Statement"), the Dominican Republic first underscored the existence of both a scientific and a political consensus on the causes and impacts of climate change, and invited the Court to ascertain the conclusions on the matter as reflected in the latest reports of the UN entity specifically tasked to objectively and comprehensively assess the state of development of climate change science—the Intergovernmental Panel on Climate Change ("IPCC" or "the Panel").[4] The Dominican Republic emphasises the relevance that the Court's acknowledgement of the Panel's scientific conclusions on the causes and impacts of climate change would represent. Such recognition would confirm the common factual framework in which global concerted efforts against climate change are to be enhanced, as well as protect such efforts from potential attempts to slow down further—or even frustrate—the ultimate objective of international climate change law.[5]

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[3] AO Request, preambular para. 1 (which reads in full "*Recognizing* that climate change is an unprecedented challenge of civilisational proportions and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it.") (emphasis in the original).

[4] *See* Principles Governing IPCC Work (approved at the Fourteenth Session (Vienna, 1-3 October 1998) on 1 October 1998, amended at the Twenty-First Session (Vienna, 3 and 6-7 November 2003), the Twenty-Fifth Session (Mauritius, 26-28 April 2006), the Thirty-Fifth Session (Geneva, 6-9 June 2012) and the Thirty-Seventh Session (Batumi, 14-18 October 2013), para. 2 ("The role of the IPCC is to assess on a comprehensive, objective, open and transparent basis the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation …."), available at: ANNEX 7 (ipcc.ch).

[5] *See* AO Request, preambular paragraph 1 (referring to the need for "urgent and immediate action"). *See also*, United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March

1.5 With regard to Question A, the Dominican Republic contended that Article 4 of the UNFCCC, and Article 4, paragraphs 2 and 9 of the Paris Agreement—establishing States' international obligations relating to mitigation of greenhouse gases ("GHGs")—are the "the primary locus where the relevant international obligations of States are to be identified",[6] without prejudice to other relevant primary obligations arising also from other specialised areas of international law, which the General Assembly expressly asked the Court to give due consideration to.[7] In the Dominican Republic's view, States' specific international mitigation obligations are complemented by important general principles of law and customary obligations, including *inter alia*, States' customary international obligation not to cause transboundary harm.[8] In addition, the Dominican Republic underscored the obligation under Article 2, paragraph 4 of the UN Charter to respect all States' territorial integrity and pointed out to the Court's prior recognition of "the fundamental right of every State to survival".[9] It equally identified as relevant primary obligations States' general duty under international human rights law to promote, respect and preserve peoples' right to self-determination and their right to development, as the effective exercise of these two rights is being hindered by the deleterious impacts of climate change.[10]

1994), UNTS 1771 (**hereinafter "UNFCCC" or "the Climate Change Convention")**, p. 107, Art. 2 ("the ultimate goal of the Convention is and any related legal instruments that the Conference of the Parties may adopt is *to achieve (…) stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*…") (emphasis added). Pursuant to the same provision, the ultimate objective of the UNFCCC is also applicable to "any related legal instruments that the Conference of the Parties may adopt", which includes the Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), UNTS 3156, p. 79 (**hereinafter the "Paris Agreement"**).

[6] Written Statement of the Dominican Republic, paras. 4.1 and 4.20. As addressed in Chapter 3 *infra*, the expression "primary locus where the relevant international obligations of States are to be identified" was employed by the Dominican Republic to mean "the *most directly relevant* applicable law governing the question of which is was seised" (*see Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports 1996 (**hereinafter "Legality of the Threat or Use of Nuclear Weapons Advisory Opinion"**), p. 226, para. 34 (emphasis added)), without prejudice to the applicability of additional international norms governing Question A. It was therefore not employed in an attempt to characterise the international regime on climate change (or "international climate change law") as *lex specialis*—a strong form of self-contained regime which, by definition, exclude the application of other international rules creating additional primary or secondary obligations relevant to the questions at stake.

[7] *Ibid.*, paras. 4.2-4.8 (addressing the broad scope of the Request, as reflected, *inter alia*, in text of the *chapeau*).

[8] *Ibid*., Chapter 4, Section II.B, para. 4.31.

[9] *Ibid*., paras. 3.34-3.42 (citing to *Legality of the Threat or Use of Nuclear Weapons Advisory Opinion*, para. 96).

[10] *Ibid.*, paras. 4.43-4.48.

1.6 With respect to Question B, the Dominican Republic submitted that the Court's clarification of the legal consequences arising from the primary obligations identified should be governed by the general law on State responsibility. It concluded that through their composite and continuous acts (*i.e.*, direct emission of greenhouse gases) as well as through their omissions (*i.e.*, failure to adopt the necessary legislative and administrative measures to prevent private actors from emitting greenhouse gases from their territory), States have breached and continue to breach the primary obligations identified by the Dominican Republic under Question A.[11] The legal consequences arising from States' continued breaches include, *inter alia*, the obligation of all States to put a halt to such actions and omissions, the obligation to perform the above-mentioned obligations, and the obligation to cooperate with a view to establish an effective system of reparation.

II. DEVELOPMENTS SINCE THE DATE OF SUBMISSION OF WRITTEN STATEMENTS AND SUMMARY CONTENTS OF THE DOMINICAN REPUBLIC'S WRITTEN COMMENTS

1.7 In the few months that have elapsed since the submission of Written Statements, developments have ensued in the advisory proceedings on climate change held in parallel before two other international judicial fora. In particular, on 21 May 2024, the International Tribunal for the Law of the Sea ("ITLOS") rendered the Advisory Opinion that had been requested by the Commission of Small Island States on Climate Change and International Law ("COSIS") on the obligations of States under the UN Convention of the Law of the Sea ("UNCLOS") relating to the protection and preservation of the marine environment from climate change impacts ("ITLOS Climate Change Advisory Opinion").[12] Relatedly, in the same period the Dominican Republic adopted two Presidential Decrees declaring the creation of the "Orlando Jorge Mera" Marine Sanctuary and expanding the limits of the existing Marine Mammals Sanctuary "Bancos de la Plata y Navidad". With these two national regulations, the

[11] *Ibid.*, para. 5.1(ii).

[12] ITLOS, Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion of 21 May 2024 (**hereinafter the "ITLOS Climate Change Advisory Opinion"**), available at: C31_Adv_Op_21.05.2024_orig.pdf (itlos.org). For its part, the Inter-American Court of Human Rights ("IACHR") convened public hearings in April and May 2024 and is at present in the deliberation stage of the advisory proceedings instituted by the Republic of Colombia and the Republic of Chile on 9 January 2023. *See* IACHR, Order (22 February 2024), available at: solicitud_22_02_2024_eng.pdf (corteidh.or.cr).

Dominican Republic aims at preserving and conserving the unique and irreplaceable ecosystems found in the "Ecozona Cordillera Beata" of the Caribbean Sea.[13]

1.8 Informed by these national and international developments, in its second written submission (the "Written Comments"), the Dominican Republic addresses the statements made by other Participants to the proceedings, updates its position on some points, and expands it by incorporating new points to both Questions.

1.9 **Chapter 2** first emphasises that the existence of a scientific consensus on the causes and impacts of climate change is not under question in these proceedings. Based on a report prepared by IPCC lead authors for the purposes of these proceedings and submitted by four Caribbean Island States, the Dominican Republic wishes to draw the Court's attention to the high level of vulnerability of the Caribbean region to sea-level rise and the degradation of the marine environment caused by ocean absorption of excess GHGs. **Chapter 3** highlights that the vast majority of the Participants have contended that the relevant applicable law is not confined to international climate change law, even though their positions on the legal approach to interpretation and harmonisation is varied.

1.10 **Chapter 4** identifies States' primary obligations under UNCLOS to prevent sea-level rise and its acceleration and preserve the marine environment, a point which the Dominican Republic is compelled to address in light of the new information and latest judicial developments. It also highlights how several Participants share the Dominican Republic's view that States' obligation to respect peoples' right to self-determination also governs Question A, for climate change affects their access livelihoods and contact with the territory that is inherently part of their cultural identity. This Chapter also contends, however, that the obligation to respect all States' territorial integrity and fundamental right to survival is an

[13] Dominican Republic, Presidential Decree Nº194-24, "Creation the Orlando Jorge Mera Marine Sanctuary, under the category IV of the International Union for Conservation of Nature (IUCN), with the objective of preserving the ecosystems associated with the unique and unmatched geological and physical characteristics of the Cordillera Beata Ecozone in the Caribbean, as well as also to maintain the ecosystem services provided by this space and conserve its biodiversity", Official Gazette, Nº 11146 (15 April 2024), available at: EXP_00145162_000001.pdf (bvearmb.do) (in Spanish); and Presidential Decree Nº 195-24 (12 April 2024), "Expansion of the limits of the Bancos Marine Mammal Sanctuary of La Plata and La Navidad, with the objective of including the conservation and protection of ecosystems and underwater geoforms to the north, east and southeast of the current limits of said sanctuary, as well as preserving the ecosystems associated with the characteristics unique geological and physical characteristics that it possesses, strengthen the connectivity processes of movement of species through biological corridors, providing greater protection to oceanic migratory species and maintain the ecosystem services provided in that space and its associated biodiversity, Official Gazette Nº 11146 (15 April 2024), available at: EXP_00145169_000001.pdf (bvearmb.do) (in Spanish).

additional *self-standing* primary obligation (closely connected, yet not conflated, with the obligation to respect peoples' right to self-determination).

1.11 **Chapter 5** reiterates, in light of the so far vague positions of most Participants, that specific causation is not required to conclude that States have breached the primary obligations identified by the Dominican Republic under Question A. Such breaches are necessarily governed by the general law on State responsibility, including the breaches to the primary obligations arising from international climate change law—which, despite its high level of technicality, is not in the Dominican Republic's view a self-contained regime or strict form of *lex specialis*. **Chapter 6** contains the Dominican Republic's updated Submissions.

1.12 Remarkably, the overwhelming majority of the Participants to these proceedings have not challenged the Court's jurisdiction, nor have they claimed that there are compelling reasons for the Court to decline to exercise its jurisdiction—something never done by this Court in response to a request for an Advisory Opinion by the General Assembly.[14] It is therefore beyond any doubt that the discussions in these proceedings are centered on the merits of the Questions referred to the Court. The Dominican Republic has full confidence that the Court will faithfully carry out the function it has been requested to perform by the General Assembly and will do so in accordance with its customary wisdom, fairness, and commitment to the rule of law.

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[14] The Dominican Republic notes that one Participant expressed the view that the Court should not exercise its jurisdiction in so far as the Opinion rendered could interfere in the on-going climate change negotiations (s*ee* Written Statement of Saudi Arabia, para. 3.11). However, the Dominican Republic notes that the Court's *jurisprudence constante* has found that this potential risk does not constitute a "compelling reason" justifying the use by the Court of its discretionary power to decline to render the opinion requested. *See*, *e.g.*, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Reports 2004, p. 136, para. 53 ("It is not clear, however, what influence the Court's opinion might have on those negotiations: *participants in the present proceedings have expressed differing views in this regard. The Court cannot regard this factor as a compelling reason to decline to exercise its jurisdiction*."); *Legality of the Threat or Use of Nuclear Weapons*, para. 17 ("The Court is aware that, no matter what might be its conclusions in any opinion it might give, they would have relevance for the continuing debate on the matter in the General Assembly and would present an additional element in the negotiations on the matter. *Beyond that, the effect of the opinion is a matter of appreciation. The Court has heard contrary positions advanced and there are no evident criteria by which it can prefer one assessment to another. That being so, the Court cannot regard this factor as a compelling reason to decline to exercise its jurisdiction*."); *Western Sahara*, Advisory Opinion of 16 October 1975, ICJ Reports 1975, p. 37, para. 73 ("In any event, to what extent or degree its opinion will have an impact on the action of the General Assembly is not for the Court to decide. *The function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect and, consequently, are not devoid of object or purpose*.") (all emphasis added).

CHAPTER 2

THE EXISTENCE OF A SCIENTIFIC AND POLITICAL CONSENSUS ON THE CAUSES AND IMPACTS OF CLIMATE CHANGE IS NOT QUESTIONED BY THE PARTICIPANTS

2.1 The Questions referred to the Court by the General Assembly are inextricably linked to the state of scientific knowledge about the causes and impacts of climate change, the level of certainty of the scientific conclusions on the matter, and the recognition by the international community that such findings constitute the best available science and information about the phenomenon. The first round of written submissions has confirmed that the facts of this proceedings are fully within the Court's reach. **Section I** of this Chapter highlights that the overwhelming majority of the Participants does not question the existence of a "scientific consensus" on the causes and impacts of climate change and authoritative nature of the IPCC reports. **Section II** draws the Court's attention to a report prepared for the purposes of these proceedings by three lead authors of the IPCC's Sixth Assessment Cycle Reports, which was submitted by four Caribbean Island States as an annex to their Written Statements (the "Caribbean Climate Science Report").[15] This report underscores the extreme vulnerability of the Caribbean region to sea-level rise, amongst other climate change impacts. Given the gravity of the matter, the Dominican Republic is compelled to update its submission by addressing the impacts of GHG emissions on the Ocean as part of the factual context informing its written submissions.

I. A SIGNIFICANT NUMBER OF PARTICIPANTS EITHER ACKNOWLEDGE THE EXISTENCE OF A "SCIENTIFIC CONSENSUS" ON THE CAUSES AND IMPACTS OF CLIMATE CHANGE OR RELY ON IPCC REPORTS AS AUTHORITATIVE SCIENCE

2.2 In its first written submission, the Dominican Republic expressed its adherence to the statement made by the Republic of Vanuatu at the General Assembly session in which Resolution 77/276 was adopted. Vanuatu's opening words then were: "the science is settled".[16]

[15] Dr. Adelle Thomas (Climate Analytics, IPCC AR6 Lead Author, IPCC AR7 WGII Vice-Chair), Professor Michelle Mycoo (University of The West Indies, IPCC AR6 Coordinating Lead Author), and Professor Michael Taylor (University of The West Indies), IPCC AR6 Coordinating Lead Author, "Science of Climate Change and the Caribbean: Findings from the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Cycle (AR6)" (5 March 2024) (unpublished) (**hereinafter the "Caribbean Climate Science Report"**), *cited in* Written Statement of St Lucia (21 March 2024), para. 22 and Annex 1; Written Statement of Antigua and Barbuda (22 March 2024), para. 10 and Annex 1; Written Statement of St Vincent and the Grenadines, paras. 23, 38 and Annex 1; and Written Statement of Barbados (22 March 2024), paras. 113, 125 and Annex 61bis.

[16] Written Statement of the Dominican Republic, para. 2.2.

Several States which made statements in explanation of position at the same session expressly referred to or quoted the IPCC's latest publication—the "AR6 Synthesis Report: Climate Change 2023"— and relied on it to support the adoption of the Resolution.[17] The Dominican Republic also underscored that the text of the Resolution itself (which informs the interpretation of the Questions referred to the Court) expressly referred to the Panel's latest report in its preamble.[18]

2.3 In addition to the Dominican Republic, a quarter of the participant States have expressly contended in their Written Statements that there is, indeed, a "scientific consensus" on the causes and impacts of climate change.[19] This is hardly surprising, given that Resolution 77/276 was adopted by consensus and its wording included the General Assembly's "*utmost concern"* about "*the scientific consensus*, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change", which found that "anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming observed since the mid-20th century".[20]

[17] *Ibid*., note 24 (*quoting to* the statements in explanation of position expressly referred to the IPCC reports made by Vanuatu, Bangladesh, Costa Rica, Trinidad and Tobago, Liechtenstein, Singapore, Vietnam, United Kingdom, Mexico, Korea, Iceland, Portugal, Seychelles, Norway, Samoa, along with the European Union and the UN Secretary General).

[18] *Ibid*., para. 2.3; *See also* AO Request, preambular para. 9 ("*Noting with utmost concern* the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected ….") (italics in the original; underlying added).

[19] *See*, *e.g*., Written Statement of Bangladesh (22 March 2024), para. 16; Written Statement of Barbados (22 March 2024), para. 83; Written Statement of the Cook Islands (20 March 2024), para. 39; Exposé écrit de la République démocratique du Congo (4 mars 2024), para. 43; Written Statement of El Salvador (22 March 2024), para. 11; Exposé écrit de la République française (22 mars 2024), para. 15; Written Statement of Ghana (21 March 2024), p. 11 (title of section IV.A); Written Statement of Kiribati (22 March 2024), para. 15; Written Statement of Mexico (March 2024), para. 17; Written Statement of New Zealand (22 March 2024), para. 50; Written Statement of Peru (20 March 2024), p. 4 (title of section III, A.); Written Statement of The Philippines, p. 13 (title of section IV.A); Written Statement of Sierra Leone (15 March 2024), para.1.4; Written Statement of Sri Lanka (March 2024), para. 13; Written Statement of Tuvalu (22 March 2024), para. 26; Written Statement of the United Arab Emirates (22 March 2024), para. 9; Written Statement of The United Kingdom (18 March 2024), p. 8 (title of Chapter II.B); Written Statement of Uruguay (20 March 2024), p. 4 (title of section III.A); Written Statement of Vanuatu (21 March 2024), para.51; (all further references to Participants' Written Statements will be made in their abridged version).

[20] AO Request, preambular para. 9.

2.4 For instance, within the Caribbean region, Barbados recalled that IPCC reports were relied on by the participants to the advisory proceeding before ITLOS and concluded that "the scientific consensus is as clear as it is undeniable".[21] El Salvador referred to the scientific consensus on climate change and its impacts as "indisputable",[22] a position shared by other States from the Americas. For instance, in Mexico's view, the Court shall discharge its judicial function "from [the] premise that there is a clear scientific consensus on climate change reflected in the reports of the Intergovernmental Panel on Climate Change (IPCC), particularly in the Summaries for Policymakers, which are approved by consensus, line-by-line, by all 195 member States of the IPCC".[23] Uruguay for its part also found that "the facts underlying the legal questions posed to the Court are not disputed",[24] and that Resolution 77/276 was driven by the "scientific consensus on the grave harmful effects that GHG emissions arising from human activity have caused and will continue to cause to the global climate system".[25]

2.5 Similar contentions can be found in the submissions of four SIDS from the Pacific—Vanuatu, Tuvalu, Kiribati and the Cook Islands. In the words of the lead proponent of these proceedings, "there is a clear, incontrovertible, and unbroken record of scientific consensus" about the fact that GHG emissions are the cause of climate change.[26] Importantly, two low-lying island States whose very existence as a State is jeopardized by climate change, emphasised how IPCC reports contain a scientific consensus *as endorsed by States*. While Tuvalu characterized the "global scientific consensus"[27] on climate change as "irrefutable",[28] Kiribati underscored that the IPCC Summaries for Policymakers are "*the expression not only of scientific consensus, but also of State consensus on the science of climate change*".[29] The

[21] Written Statement of Barbados, para. 83.

[22] Written Statement of El Salvador, para. 11.

[23] Written Statement of Mexico, para. 17

[24] Written Statement of Uruguay, para. 3.

[25] *Ibid*., para. 12.

[26] Written Statement of Vanuatu, para. 73.

[27] Written Statement of Tuvalu, para. 26 (relying on the statement made by the Commission on Small Island Developing States (COSIS) in the advisory opinion before ITLOS).

[28] *Ibid*., para. 106.

[29] Written Statement of Kiribati, para. 22 ("there is no need for the ICJ to engage or feel drawn into a trial of the science. The science is settled in all relevant aspects.") (emphasis added).

Cook Islands also shared that "fundamentally, there is a clear scientific consensus on climate change, reflected in the reports of the IPCC, particularly in the Summaries for Policymakers, which are approved by consensus, line-by-line, by all 195 member States of the IPCC."[30]

2.6 For its part, Sri Lanka—an island State located in the Indian Ocean—found that this approval procedure implied that the IPCC Summaries for Policymakers are "*elevat[ed] from the status of scientific consensus to State consensus*".[31] New Zealand, a large island State closely connected to the reality of Pacific low-lying island States, also submitted that "scientific consensus is the earth is warming and the emissions of GHGs from human activity is the principal cause",[32] and pointed out that "the scientific consensus now suggests that warming of 2°C is likely to carry substantially greater risks of adverse outcomes than 1.5°C".[33] Bangladesh, a low-lying continental State with more than half of its territory risking submergence,[34] referred to the present existence of an "*unprecedented global scientific consensus*".[35] It also noted that such consensus is not only reflected in the reports of the IPCC, but also in international treaties on climate change themselves, which explicitly recognise the need to take urgent steps to limit global average temperature increase to 1.5ºC above pre-industrial levels.[36] The Philippines—an archipelagic State ranked nº1 in the 2023 World Risk

[30] Written Statement of the Cook Islands, para. 16.

[31] Written Statement of Sri Lanka, para. 27 (emphasis added).

[32] Written Statement of New Zealand, title of Part 2, Section 2.1.

[33] *Ibid*., note. 64.

[34] Written Statement of Bangladesh, para. 47 ("More than half of Bangladesh's territory is comprised of the Ganges Delta: the world's largest river delta, located between the Hindu Kush Himalayan region to the north and the Bay of Bengal to the south. The Delta spans over 100,000 square kilometers—about the size of Iceland or the Republic of Korea—and lies fewer than five meters above sea level at its highest points.").

[35] *Ibid.*, para. 3 (emphasis added).

[36] *Ibid.*, para. 30. This point was also highlighted in the Written Statement of the Dominican Republic, para. 2.7 and notes 28, 34 (*noting that* Article 21, paragraph 2 of the UNFCCC mandates the Convention's Secretariat to "cooperate closely" with the IPCC "to ensure that the Panel can respond to the need for objective scientific and technical advice", which has been necessary for the Conference of the Parties to pursue the ongoing negotiations of the international regime on climate change. Denying the IPCC report the authoritative nature that the Convention itself recognises, and that the Parties to the UNFCCC have respected and used for more than three decades as the factual information on the phenomenon informing and guiding the climate change negotiations, would be contradictory and arguably a breach of principle of good faith governing international relations.).

Index, also found that "the magnitude of climate change and its links to global impacts are at present heavily backed up by scientific consensus".[37]

2.7 Several African States and the African Union have taken a similar position. The Democratic Republic of Congo referred to the IPCC Summary for Policy Makers as "*de[s] faits scentifiques validés par la communauté internationale des Etats*",[38] while Ghana underscored that the Questions themselves "emerged from 'scientific consensus'" documented by resolutions and declarations of the General Assembly, the Security Council, IPCC reports and NGOs.[39] Sierra Leone characterised as "overwhelming" the scientific consensus that human-induced emissions have altered the Earth's climate system and other parts of the environment,[40] and the African Union pointed to the fact that in the preamble of Resolution 77/276 "the UN General Assembly recalls the scientific consensus on the harmful implications of States' conduct for the climate system and other parts of the environment, reflected, *inter alia*, in the reports of the Intergovernmental Panel on Climate Change (IPCC)".[41]

2.8 Developed States have also endorsed and further confirmed this view. The European Union characterised the IPCC reports as reflecting "*the global consensus of the scientific community* on climate change [which] are *endorsed by IPCC member governments*."[42] France further submitted that "la Cour peut utilement s'appuyer sur les travaux reflétant le consensus scientifique sur la question des changements climatiques, en particulier sur les travaux du GIEC".[43] It also found it unnecessary for the Court to request a scientific expert report on climate change, for the phenomenon is "une réalité constatée".[44] Last but not least, the United Arab Emirates—host of the 2023 climate change negotiations as well as member of the Organisation of Petroleum Exporting Countries— expressed its support of the

[37] Written Statement of The Philippines, para. 31.

[38] Exposé écrit de la République Démocratique du Congo, para. 43 ("scientific facts validated by the international community of States"; translation of the Dominican Republic) (emphasis in the original).

[39] Written Statement of Ghana, para. 6.

[40] Written Statement of Sierra Leone, para. 1.4.

[41] Written Statement of the African Union, para. 83.

[42] Written Statement of the European Union, para. 253 (emphasis added).

[43] Written Statement of France, para. 15.

[44] *Ibid.* ("a confirmed reality") (translation of the Dominican Republic).

findings of the IPCC and submitted that "there exists *ample and overwhelming scientific evidence* which demonstrates that the increasing concentration of GHGs from anthropogenic sources in the atmosphere is correlated to an unprecedented transformation of the climate system".[45]

2.9 Therefore, a significant number of participant States, from all regions and differing levels of development and vulnerability against climate change, including States whose national interest is closely intertwined with the fossil fuels industry,[46] have expressly acknowledged that there is scientific consensus on the causes and impacts of climate change—as reflected in IPCC reports and endorsed by the General Assembly in Resolution 77/276 referring the Questions to the Court. Other States which did not expressly employ the terms "scientific consensus", relied nonetheless on IPCC reports—particularly on AR6 Synthesis Report and the AR6 Summary for Policymakers—as authoritative science informing their first written submissions. More importantly, *no Participant has questioned* that IPCC reports constitute the best available science and information on the causes and impacts of climate change.

2.10 The same position was adopted by the 43 States and nine intergovernmental organisations (whose submissions were authorised to be part of the case file) in the climate change advisory proceeding before ITLOS.[47] In its Advisory Opinion, the Tribunal remarked that "most of the participants in the proceedings referred to reports of the IPCC, recognizing them as authoritative assessments of the scientific knowledge on climate change, and that none of the participants challenged the authoritative value of these reports".[48] It thus found IPCC

[45] Written Statement of the United Arab Emirates, para. 9 (emphasis added).

[46] *See* UNFCCC, preambular paras. 16-17 (*recognising that* "low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought a desertification, and developing countries with fragile mountainous ecosystems *are particularly vulnerable to the adverse effects of climate change*," as well as "*the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production*, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions.").

[47] The list of participants to the ITLOS Climate change advisory proceedings can be found here: Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (itlos.org) (of the 43 participating States, 34 of them submitted individual statements, while nine acted jointly as members to the Commission of Small Island States on Climate Change and International Law).

[48] ITLOS Climate Change Advisory Opinion, para. 51.

reports to "reflect the scientific consensus" on climate change and ocean acidification,[49] and proceeded to respond to the questions posed by COSIS on such basis, without appointing additional Tribunal experts.

II. IPCC FINDINGS CHARACTERISE THE CARIBBEAN REGION AS MOST VULNERABLE TO SEA-LEVEL RISE AND OTHER CLIMATE CHANGE IMPACTS

A. BETWEEN 8.7% AND 49.2% OF CARIBBEAN ISLANDS COULD BECOME ENTIRELY SUBMERGED UNDER A CONSERVATIVE PROJECTION SCENARIO

2.11 The Dominican Republic's first written submission was informed by the vulnerability of Caribbean Island States against climate change, which it described on the basis of General Assembly Resolution 77/163 of 2022,[50] as well as several findings of the IPCC.[51] After close examination of the first round of written submissions, the Dominican Republic wishes to draw the Court's attention to the Caribbean Climate Science Report. As previously mentioned, this Report was authored for the purposes of these proceedings by four Caribbean IPCC lead authors for the 6th Assessment Cycle and summarises the Panel's findings in seven of its most recent reports relating to the Caribbean region.[52]

2.12 The Report underscores several tipping points that make the Caribbean region highly vulnerable to climate change. *On temperature rise and precipitation*, it confirms that "much of the Caribbean region showed statistically significant warming (at the 95% level) over the period 1901–2010",[53] and that the region is undergoing a "significant warming trend of 0.19ºC per decade and 0.28ºC per decade in daily maximum and minimum temperatures",[54]

[49] *Ibid*., para. 208.

[50] General Assembly Resolution 77/163, "Towards the sustainable development of the Caribbean Sea for present and future generations" A/RES/77/163 (14 December 2022), preambular para. 14 (*recognising* the Caribbean Sea as a "critical asset" with "unique biodiversity and highly fragile ecosystems" which is jeopardized by the "high degree of vulnerability occasioned by climate change, climate variability and associated phenomena" in particular, hurricane activity and the proliferation of invasive alien species such as lionfish and sargassum seaweed influx).

[51] *See* Written Statement of the Dominican Republic, Chapter 2, Section II, paras. 2.10-2.19.

[52] Caribbean Climate Science Report, p. 13.

[53] *Ibid.*

[54] *Ibid.*

compounded with "significant increases" in the number of warm days and nights between 1961 and 2010.[55]

2.13 These changes in temperature rise and precipitation in turn bring about several additional deleterious impacts. *On biodiversity*, the report confirms that "significant losses to coastal wetlands" have already been observed,[56] and points out that since 2011 the Caribbean region has witnesses "extraordinary sargassum 'blooms'"—a highly invasive alien species leading to "damage to coastal habitats, mortality of seagrass beds and associated corals, as well as consequences for fisheries and tourism". [57] *On the devastating impacts of hurricanes*, the Report underscores how the 2017 Hurricanes Maria and Irma "swept through 15 Caribbean countries, causing major damages and casualties across numerous islands".[58] It also describes the economic impact of these climate-related disasters, estimating that the rebuilding in three of the affected countries alone —Dominica, Barbuda and the British Virgin Islands—will cost an estimated 5 billion USD.[59] These points ably confirm and complement the assessment that the Dominican Republic had developed in its first written submission on the specific characteristics of the Caribbean region's vulnerability to climate change impacts.[60]

2.14 The Caribbean Climate Science Report yet highlights one point which the Dominican Republic had not expressly addressed in its first submission—the region's extreme vulnerability to sea-level rise. This report finds that, under a conservative projection scenario, "*Caribbean islands are among those projected to suffer the most habitat loss with projections of between 8.7% and 49.2% of its islands entirely submerged, respectively, from 1-m to 6-m SLR [sea-level rise]*".[61] This high level of exposure to sea-level rise in the region, the report explains, is connected to the high level of cyclone activity.[62] In addition to representing a direct

[55] *Ibid.*

[56] *Ibid*., p. 15.

[57] *Ibid.*

[58] *Ibid*., p. 19.

[59] *Ibid*.

[60] *See* Written Statement of the Dominican Republic, Chapter II, Section II, paras. 2.14-2.18.

[61] Caribbean Climate Science Report, p. 4 (emphasis added).

[62] *Ibid*., p. 26 ("[E]xtreme sea levels for small islands, particularly in the Caribbean, are linked to tropical cyclone occurrence.").

existential threat to some Caribbean Island States, the economic impacts of sea-level rise in the region of the word most tourist dependent are severe. It is projected that "an eventual 1 m SLR [sea-level rise] could partially or fully inundate 29% of 900 coastal resorts in 19 Caribbean countries, with a substantially higher proportion (49–60%) vulnerable to associated coastal erosion".[63]

2.15 Given the gravity of the matter and its potentially overwhelming impacts on Caribbean Island States and its peoples, compounded with the recent national legislative action seeking to protect and preserve the marine environment, the Dominican Republic is obliged to complete the factual background of both of its written submissions by addressing how sea-level rise is a deleterious impact resulting from Ocean absorption of GHG emissions.

B. SEA-LEVEL RISE RESULTS FROM OCEAN ABSORPTION OF GHG EMISSIONS INTO THE ATMOSPHERE

2.16 As defined in Article 1, paragraph 3 of the Climate Change Convention, the climate system is formed by four core natural elements—the atmosphere, the hydrosphere, the biosphere, and the geosphere. These elements, and their interactions, are what determine our climate cycle.[64]

2.17 As an intrinsic and central element of the climate system, the Ocean plays a key role in maintaining the balance of the Earth's climate, which it significantly helps preserve in two main ways. First, the Ocean has absorbed around 30% of all the anthropogenically produced carbon dioxide ("CO_2") released into the atmosphere since the beginning of the industrial era,[65] which makes it the Earth's largest carbon sink. Besides, the Ocean has also

[63] Caribbean Climate Science Report, p. 29 (emphasis omitted).

[64] UNFCCC, Art. 1(3) (defining "climate system" as "the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions."). *See also*, UNEP/FAO/IUCN/CSIC, "Blue Carbon: The Role of Healthy Oceans in Binding Carbon: a Rapid Response Assessment" (2009), p. 11 (explaining that "water moves in a continuous cycle that begins and ends in the ocean. This hydrologic cycle is powered by solar radiation, which provides energy for evaporation. Then precipitation, transpiration from plants, runoff into streams and infiltration to ground water reservoirs complete the cycle, which will start over again when most of the initial evaporated water reaches the ocean … Oceans have been influencing the climate and the ecology of the planet since the very beginning of life on earth."), available at: -Blue Carbon The Role of Healthy Oceans in Binding Carbon-2009883.pdf

[65] N. Gruber et al, "Trends and Variability in the Ocean Carbon Sink", *Nature Reviews Earth & Environment* (2023), vol. 4, pp. 119-134 ("the ocean has absorbed $25 \pm 2\%$ of the total anthropogenic CO_2 emissions from the early 1960s to the late 2010s, with rates more than tripling over this period and with a mean uptake of -2.7 ± 0.3 Pg C year^{-1} for the period 1990 through 2019."), available at: Trends and variability in the ocean carbon sink | Nature Reviews Earth & Environment; *see also, e.g.*, UNEP/FAO/IUCN/CSIC, "Blue Carbon: the Role of Healthy Oceans in Binding Carbon: a Rapid Response Assessment" (2009), p. 11; and UNESCO

absorbed more than 90% of the added energy and heat released into the atmosphere between 1971 and 2010 by anthropogenic GHG emissions.[66] Global warming has thus mostly been offset by the protective heat absorption action of the Ocean.[67]

2.18 Yet, the preservation of the Earth's climate balance has come at a high cost for the Ocean itself, progressively diminishing—and even jeopardizing—its protective role.[68]

2.19 First, the absorption by the Ocean of such an important share of excess heat and energy results in *ocean warming.* In its latest 2021 report on the physical science basis of climate change, the IPCC Working Group I found that the average global sea-surface temperature has risen by 0.6°C since 1980.[69] This rate of ocean warming over the past century has been faster than "since the end of the last deglacial transition (around 11,000 years ago)",[70]and is likely to result in alterations of El Niño Southern Oscillation, which governs

Intergovernmental Oceanographic Commission, "State of the Ocean Report 2024" (3 June 2024), p. 19, available at: State of ocean report_May2024_final.pdf.

[66] IPCC, "Summary for Policymakers" in Thomas F. Stocker et al. (eds.), Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge University Press 2013), p. 8, para. B.2 ("Ocean warming dominates the increase in energy stored in the climate system, accounting for more than 90% of the energy accumulated between 1971 and 2010 (high confidence)."), available at: WG1AR5_SPM_FINAL.pdf (ipcc.ch); *see also* United Nations, The Impacts of Climate Change and Related Changes in the Atmosphere on the Oceans: a Technical Abstract of the First Global Integrated Marine Assessment (2017), p. 3, para. 9, available at: Technical_Abstract_on_the_Impacts_of_Climate_Change_and_Related_Changes_in_the_Atmosphere_on_the_Ocean.pdf (un.org)

[67] UNEP/FAO/IUCN/CSIC, "Blue Carbon: the Role of Healthy Oceans in Binding Carbon: a Rapid Response Assessment" (2009), p. 25 ("Oceans are absorbing both heat and carbon from the atmosphere, therefore alleviating the impacts of global warming in the environment. Covering more than two-thirds of the earth's surface, *the oceans store the sun's energy that reaches earth's surface in the form of heat, redistribute it, from the coast to the mid-ocean, shallow to deep waters, polar to tropical, and then slowly release it back to the atmosphere. These storage and circulation processes prevent abrupt changes in temperature, making coastal weather mild and some high latitude areas of the globe habitable*."), available at: portals.iucn.org/library/sites/library/files/documents/2009-052.pdf.

[68] IPCC, *Climate Change 2021: The Physical Science Basis*, Summary for Policymakers, para. B. 5.1 ("Past GHG emissions since 1750 have committed the global ocean to future warming (high confidence). Over the rest of the 21st century, likely *ocean warming* ranges from 2–4 (SSP1-2.6) to 4–8 times (SSP5-8.5) the 1971–2018 change. Based on multiple lines of evidence, *upper ocean stratification* (virtually certain), ocean acidification (virtually certain) and *ocean deoxygenation* (high confidence) will continue to increase in the 21st century, at rates dependent on future emissions. Changes are irreversible on centennial to millennial time scales in global ocean temperature (very high confidence), *deep-ocean acidification* (very high confidence) and deoxygenation (medium confidence)."), available at: Summary for Policymakers (ipcc.ch)

[69] IPCC, *Climate Change 2021: The Physical Science Basis (2023)*, Full Report, Chapter 9: Ocean, Cryosphere and Sea Level Change, p. 1214 (contribution of the IPCC Working Group I to the Sixth Assessment Report), available at: report.ipcc.ch/ar6/wg1/IPCC_AR6_WGI_FullReport.pdf

[70] IPCC, *Climate Change 2021: The Physical Science Basis* (2023), Summary for Policymakers, para. A.2.4.

rainfall variability.[71] Second, the absorption of excess CO_2 emissions also leads to *ocean acidification*. The Ocean's pH levels are decreasing by -0.016 to -0.026 pH units per decade since 1980,[72] and acidification has spread deeper in the Ocean, "surpassing 2000 m depth in the northern North Atlantic and in the Southern Ocean".[73] Such a significant change in seawater chemistry reduces the saturation state of calcium carbonate, a key component of several marine species, including corals, skeletons or shells. Third, given that warmer water retains less oxygen, ocean warming triggers *ocean de-oxygenation*, forcing species to migrate to surface levels. Between 1970 and 2010, the upper 1,000 meters of the open ocean lost between 0.5 to 3.3% of its oxygen, and oxygen minimum zones are expanding by a range of 3-8% in the tropical oceans.[74] Finally, ocean warming also leads to *ocean stratification*. The upper 200 meters of the ocean surface have suffered a stratification increase between 2.18-2.42% from 1970 to 2017.Warmer water makes the surface ocean less dense over time, relative to the deeper ocean. This inhibits the exchange between the surface and the deep water, affecting food production from shellfish aquaculture and fisheries and impacting the several marine food species.[75]

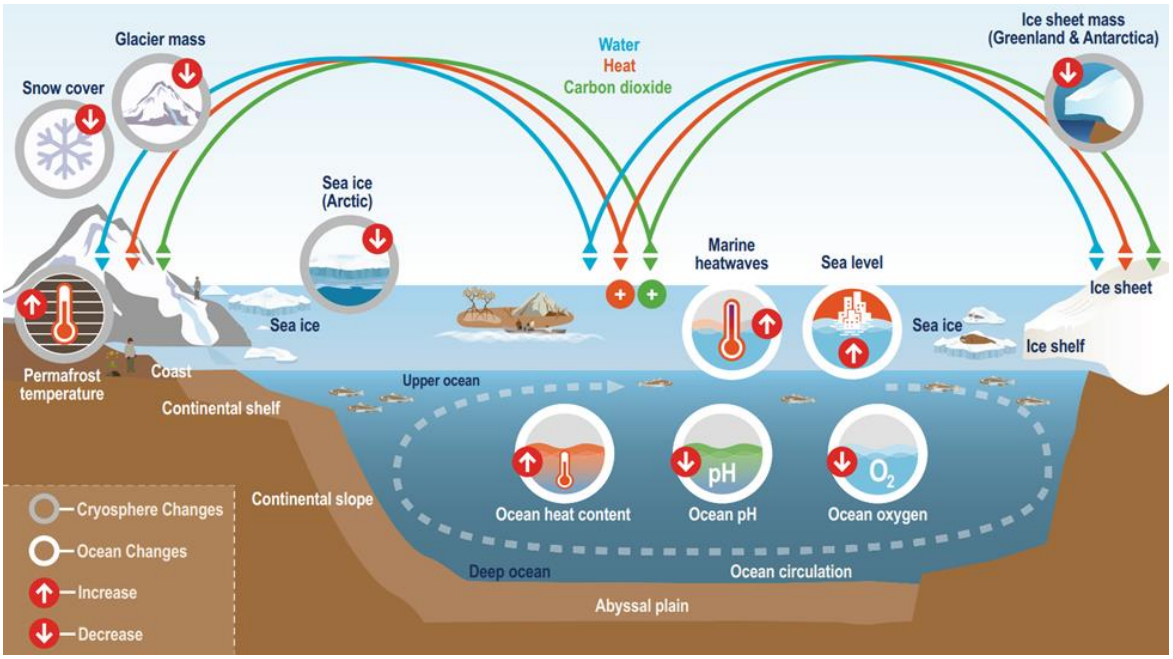
[71] IPCC, *Climate Change 2021: The Physical Science Basis*, Technical Summary, p. 114 ("it is very likely that rainfall variability related to ENSO [El Niño Southern Oscillation] will be enhanced significantly by the latter half of the 21st century"), available at: Technical Summary (ipcc.ch)

[72] *Ibid.*, Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedbacks, p. 677, available at: Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedbacks (ipcc.ch)

[73] *Ibid.*

[74] IPCC, *Special Report on Ocean and Cryosphere in a Changing Climate* (2019), Technical Summary, p. 59, available at: 9781009157971 merged.pdf (ipcc.ch)

[75] *Ibid.*



Key Components and Interactions of the Climate System and Impacts of GHG Absorption by the Ocean (IPCC, 2019)[76]

2.20 The first of these negative impacts of GHG emissions on the Ocean—ocean warming— is the root cause of sea-level rise.

2.21 The IPCC has confirmed that global mean sea-level "is rising" and "accelerating".[77] While thermal expansion explained 50% of sea level rise between 1971–2018, at present the two dominant contributors of sea level rise are glacier and ice sheet melting.[78] In addition, significant sea level rise contributions from Antarctic ice sheet mass loss, which would result in "abrupt responses and tipping points of the climate change"[79] (and were not

[76] *Ibid*., Figure TS.2.

[77] IPCC, *Special Report on Ocean and Cryosphere in a Changing Climate* (2019), Technical summary, p. 55; *see also* IPCC *Climate Change 2021: The Physical Science Basis* (2023), Summary for Policymakers, A.1.7 ("Global mean sea level increased by 0.20 [0.15 to 0.25] m between 1901 and 2018. The average rate of sea level rise was 1.3 [0.6 to 2.1] mm yr–1 between 1901 and 1971, increasing to 1.9 [0.8 to 2.9] mm yr–1 between 1971 and 2006, and further increasing to 3.7 [3.2 to 4.2] mm yr–1 between 2006 and 2018 (high confidence). Human influence was very likely the main driver of these increases since at least 1971.").

[78] IPCC, *Climate Change 2021: The Physical Science Basis* (2023), Summary for Policymakers, para. A.4.3.

[79] *Ibid.*, para.C.3.2.

originally expected to manifest this century), "cannot be ruled out".[80] Sea-level rise projections by 2100 range from 0.28-0.55 meters under the very low GHG emissions scenario, to 0.63-1.01 meters under the very high GHG emissions scenario, relative to 1995-2014.[81] Yet, "due to deep uncertainty in ice-sheet processes", the possibility of sea level rise approaching 2 meters by 2100 and 5 meters by 2150 under a very high GHG emissions scenario cannot be discarded.[82]

2.22 As sea-level rise "is not globally uniform and varies regionally", some places will experience significant deviations of local and regional change, which can differ from the global average rate by more than +/- 30%.[83] In November 2023, the World Meteorological Organisation ("WMO") warned that "2023 has shattered climate records", with global mean sea level reaching "a record high in the satellite record".[84] In the words of Secretary General Antonio Guterres, such results indicate that "the era of global warming has ended; the era of global boiling has arrived".[85]

2.23 The following WMO graphic depicts how the rate of global mean sea level rise in the past ten years (2013-2022) "is more than twice the rate of sea level rise in the first decade of the satellite record (1993-2022)".[86]

[80] IPCC, *Climate Change 2021: The Physical Science Basis* (2023), Summary for Policymakers, para. C.3.2; and para. A.2.4 ("Global mean sea level has risen faster since 1900 than over any preceding century in at least the last 3000 years (high confidence). The global ocean has warmed faster over the past century than since the end of the last deglacial transition (around 11,000 years ago) (medium confidence). A long-term increase in surface open ocean pH occurred over the past 50 million years (high confidence). However, surface open ocean pH as low as recent decades is unusual in the last 2 million years (medium confidence).").

[81] IPCC, *Climate Change 2021: The Physical Science Basis* (2023), Summary for Policymakers, para.B.5.3.

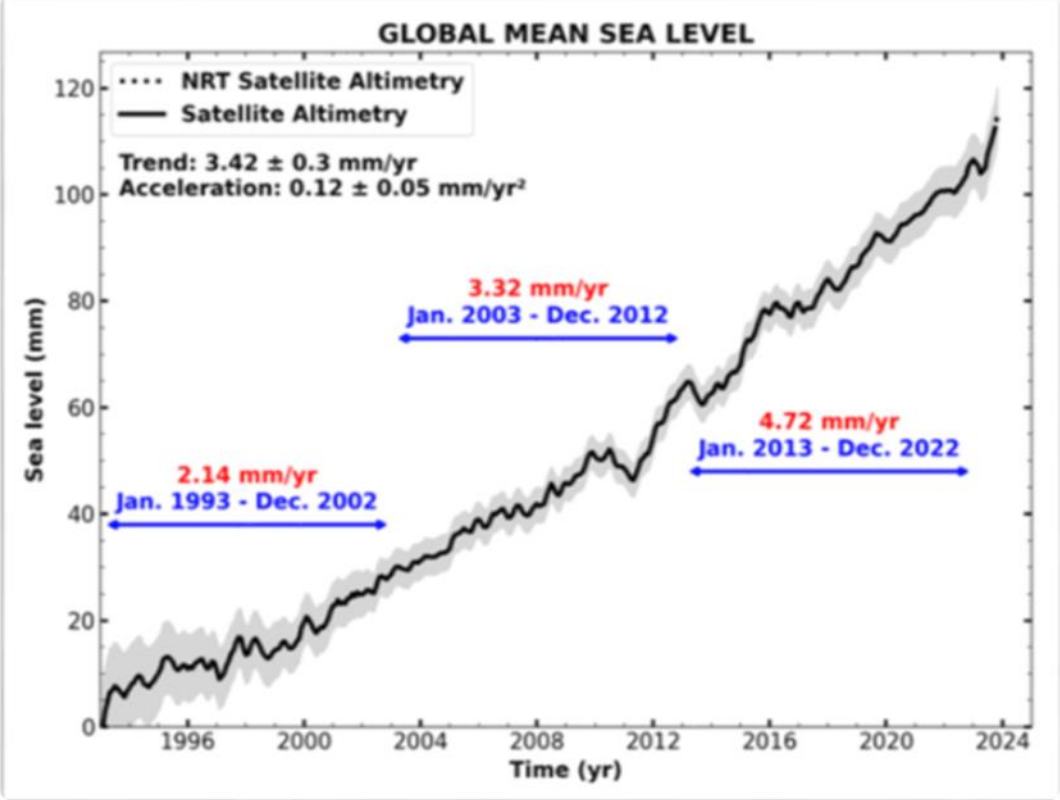
[82] *Ibid.*

[83] IPCC, Special Report on Ocean and Cryosphere in a Changing Climate (2019), Technical Summary, p. 56.

[84] World Meteorological Organisation, "2023 Shatters Climate Records, with Major Impacts", WMO News (30 November 2023), available at: 2023 shatters climate records, with major impacts (wmo.int)

[85] Secretary General's Opening Remarks at Press Conference on Climate (27 July 2023), *UN News*, available at: Secretary-General's opening remarks at press conference on climate | United Nations Secretary-General

[86] World Meteorological Organisation, "2023 Shatters Climate Records, with Major Impacts", WMO News (30 November 2023), available at: 2023 shatters climate records, with major impacts (wmo.int).



Global Mean Sea Level Rise – WMO Satellite Record (1993-2022)[87]

2.24 All in all, no matter how successful the efforts of the international community are to restrain and stabilize GHG emissions and meet the targets under the international climate change law, the IPCC has concluded that "*changes in the ocean, ice sheets and global sea level* due to past and future greenhouse gas emissions *are irreversible* for centuries to millennia".[88]

2.25 Therefore, in light of: (i) the significant number of Participants to these proceedings that expressly recognised the existence of a scientific and political consensus on the causes and impacts of climate change, compounded with (ii) the great majority of the Participants that relied on IPCC reports as the authoritative source on the matter, and (iii) the fact that no Participant has challenged the Panel's reports, the Dominican Republic respectfully requests that, following the course adopted by ITLOS, the Court acknowledges and relies on the Panel's latest findings to establish the scientific and factual elements necessary to respond to the Questions posed by the General Assembly. Such relevant facts include the particular

[87] *Ibid.*

[88] IPCC, *Climate Change 2021: The Physical Science Basis* (2023), Summary for Policymakers, para. B.5 (emphasis added).

characteristics of the vulnerability to the phenomenon faced by Caribbean Island States, which are summarised in the Dominican Republic's first submission and further complemented by the Caribbean Climate Science Report.

2.26 It is against this scientific background that the obligations of States under international law in respect of climate change, which include the obligations to prevent sea-level rise from further accelerating, should be assessed.

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CHAPTER 3

OBSERVATIONS ON PARTICIPANTS' SUBMISSIONS RELATING TO THE SCOPE OF THE REQUEST AND APPLICABLE LAW

3.1 This Chapter addresses the Participants' position with respect to the scope of the Request and applicable law. **Section I** highlights that the vast majority of the Participants views the scope of the Request and applicable law as not confined to the legal instruments relating to climate change (nor international environmental law more generally). **Section II** addresses the fact that the Participants' position differs, however, on how the Court should approach the relationship between the different legal instruments governing Question A.

I. THE VAST MAJORITY OF THE PARTICIPANTS AGREE THAT THE RELEVANT APPLICABLE LAW IS NOT CONFINED TO INTERNATIONAL CLIMATE CHANGE LAW NOR INTERNATIONAL ENVIRONMENTAL LAW

3.2 In its first written submission, the Dominican Republic addressed as a preliminary matter the meaning of the key terms of the Questions posed to the Court.[89] Based on a close assessment of their wording, the Dominican Republic found it indisputable that the General Assembly expressly requested the Court not to limit the scope of the law governing the Questions to the legal instruments and principles relating to climate change or international environmental law. The Dominican Republic reiterates that, for the Court to remain faithful to the *chapeau* of the Request as adopted by the General Assembly, it should also identify States' obligations with respect to climate change in other specialised areas— including the international law of the sea, international human rights law, and principles enshrined in the UN Charter, such as the obligation to respect every State's territorial integrity.[90]

3.3 The Dominican Republic notes that the same view is shared by close to 75% of the total number of Participants (corresponding to more than 75 Participating States and five intergovernmental organisations), all of which expressly referred to legal instruments pertaining to other specialized areas of international law as directly relevant to Question A. Human rights obligations with respect to climate change were raised by at least 56 Participants,

[89] *See* Written Statement of the Dominican Republic, Chapter 3, Section I, paras. 4.1-4.8 (on the meaning of key terms relating to Question A); and paras. 4.51-4.56 (on the meaning of key terms relating to Question B).

[90] Written Statement of the Dominican Republic, para. 4.1.

while close to 20 Participants referred to obligations under the international law of the sea, and at least seven mentioned international obligations relating to the protection of States' territorial integrity. The vast majority of the Participants also referred to several general principles of law and customary international obligations—including, *inter alia*, the duty of due diligence,[91] the principle of common but differentiated responsibilities and respective capabilities,[92] the principle of inter-generational justice,[93] the duty to cooperate,[94] and the customary obligation not to cause transboundary harm.[95] Importantly, from the remaining Participants that did not step outside of international climate change law or international environmental law in their Written Statements, only two expressly contended that States' international obligations with respect to climate change are exclusively governed by the UNFCCC and the Paris Agreement, to the exclusion of any other treaty, customary international rule or general principle of law.[96]

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[91] *See, e.g.*, Written Statement of Colombia, paras. 3.13-3-30; Written Statement of Costa Rica, paras. 37-39; Written Statement of Egypt, paras. 97-138; Written Statement of Latvia, paras. 51-56; Written Statement of Spain, paras. 6-7. Other Participants which also addressed this principle include: Australia, Bangladesh, China, Mauritius, The Philippines, Solomon Islands, Timor Leste, and the European Union.

[92] *See, e.g.*, Written Statements of Antigua & Barbuda, paras. 143-170; Written Statement of Bolivia, paras. 21-39; Written Statement of Costa Rica, paras. 58-64; Written Statement of El Salvador, paras. 38-41. Other Participants which also addressed this principle include: Argentina, Bangladesh, Brazil, Cameroon, Colombia, Germany, India, Indonesia, Iran, Kenya Liechtenstein, Marshall Islands Micronesia, Namibia, Pakistan, Philippines, Romania, Seychelles, South Africa, Timor Leste, Tonga, Vanuatu, Uruguay, Vietnam, the African Union and COSIS.,

[93] *See, e.g.*, Written Statements of El Salvador, paras. 44-45; Written Statement of Albania, paras. 112-117; Written Statement of Cameroon, paras. 18-29; Written Statement of the Marshall Islands, paras. 118-122; Written Statement of Thailand, paras. 35-41; and Written Statement of Bangladesh, paras. 124-126.

[94] *See, e.g.*, Written Statements of The Bahamas, paras. 105-111; Written Statement of Barbados, paras. 208-226; Written Statement of Mexico, paras. 74-85. Other Participants that also addressed this principle include: Argentina, Australia, Brazil, Democratic Republic of Congo, Ecuador, Kenya, Korea, Marshall Islands, Mauritius, Micronesia, Peru, Philippines, Sierra Leone, Singapore, South Africa, Timor Leste, Vietnam, Uruguay and COSIS.

[95] *See, e.g.*, Written Statement of The Bahamas, paras. 92-111; Written Statement of Barbados, paras. 133-150; Written Statement of Costa Rica, paras. 45-49. Other Participants that also addressed this international customary obligation include: Albania, India, Kiribati, Micronesia, Nauru, Tuvalu, Singapore, Solomon Islands, Sri Lanka, Pakistan, Palau, Philippines, and COSIS.

[96] *See* Written Statement of Japan, paras.11-12 ("Except for the UNFCCC and the Paris Agreement, the other sources mentioned in the chapeau do not govern climate change issues directly and specifically. This is the case of the environmental treaties and also of the principles of customary law invoked, such as the duty of due diligence, the obligation of prevention of significant transboundary harm or harm to the environment, the duty to protect and preserve the marine environment."); and Written Statement of Saudi Arabia, paras. 1.9-1.10, 1.15 ("In formulating its request for an advisory opinion, the United Nations General Assembly invites the ICJ to have "particular regard" to a number of specific instruments and principles when considering the legal questions before it. However, … the ICJ need look no further than the specialized treaty regie on climate change when determining what the legal obligations on States are in respect of climate change…No other environmental treaties address climate change related to anthropogenic greenhouse gas emissions such that they cannot and do not override the specialized treaty regime on climate change. The same can be said for the United Nations Convention on the Law

3.4 In light of the clear position adopted by the vast majority of the Participants, which is in line with the ordinary meaning of the chapeau of the Request, the Dominican Republic respectfully submits that the Court states and applies the law governing Question A taking due consideration of the *corpus juris* as a whole.

II. THE PARTICIPANTS DIFFER ON THEIR APPROACH TO THE RELATIONSHIP BETWEEN DIFFERENT LEGAL INSTRUMENTS RELEVANT TO QUESTION A

3.5 In contrast with the widespread recognition that States' international obligations in respect of climate change are established by several legal instruments pertaining to different specialised areas of law, as well as customary international rules and general principles of law, the Participants' approach to the relationship between those multiple applicable legal instruments varies widely.

3.6 Some States have submitted that international climate change law is the *principal* or *primary* source of obligations with respect to climate change governing Question A, without prejudice to the fact that the implementation of such obligations must be informed by the obligations existing under international legal instruments from other specialised areas of law.[97] Other States, including the Dominican Republic, have adopted a different approach and suggest that even if international climate change law is most directly relevant to the Questions referred to the Court, it is only *part of* the applicable law governing Question A, compounded with obligations from other specialised areas of international law—which govern the relevant conduct from a different perspective but on an equal footing to international climate change law.[98] On this point, as will be addressed in Chapter 4, the Dominican Republic

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of the Sea ("UNCLOS") and any environmental or human rights treaty."). *See also*, United States of America, Written Statement, paras. 3.46-3.51; 4.1 (accepting only that the Paris Agreement may only be supplemented by other sectoral treaties such as the Montreal Protocol).

[97] *See, e.g.*, Written Statement of Brazil, para. 10; Written Statement of Canada, para. 1; Written Statement of China, paras. 19-20; Written Statement of France, paras. 11,13; Written Statement of India, paras. 19, 79; Written Statement of The Netherlands, para. 3.3; Written Statement of New Zealand, para.21; Written Statement of the United Arab Emirates, para. 17; Written Statement of the United Kingdom, paras. 4.3, 29; and Written Statement of the European Union, paras. 53-58.

[98] *See, e.g*. Written Statement of the Dominican Republic, para. 4.1 ("[W]hile the international regime on climate change is at the heart of these proceedings and the primary locus where the relevant international obligations of States are to be identified, the General Assembly sought to give due consideration to all types of climate change impacts, and expressly called upon the Court to identify the legal obligations of States with respect of climate change without limitation as to the sources of law to be assessed."). As previously noted, the expression "primary locus where the relevant international obligations of States are to be identified" was employed by the Dominican Republic to mean what the Court defined in *Legality of the Threat or Use of Nuclear Weapons* as "the *most directly relevant* applicable law governing the question of which is was seised", not to characterise the international regime on climate change (or "international climate change law" as *lex specialis* excluding the application of other

notes that ITLOS's most recent Advisory Opinion has already confirmed that States have obligations in respect of climate arising directly from UNCLOS, and general principles of law.[99] This Opinion may serve as a reference for the Court to state and apply States' obligations in respect of climate change also beyond international climate change law.

3.7 Depending on the position taken by each Participant as to the relationship (hierarchical or not) between the different legal instruments invoked, the solutions or methodological techniques proposed to determine how the multiple legal instruments identified and obligations therein should be interpreted to respond to Question A also differ. For instance, while some Participants have raised that the rules on conflicts of laws as codified in Article 30 of the Vienna Convention on the Law of Treaties ("VCLT") may be relevant,[100] others have approached the matter through the lenses of the principle of systemic integration, enshrined in Article 31(3)(c) of the same instrument and part of the codified rule on treaty interpretation.[101]

3.8 In the Dominican Republic's view, at the heart of this key legal question lies a conceptual one—how to translate in legal and judicial terms the complexities of a multidimensional phenomenon such as climate change, which is challenging *all aspects of civilisation*: its socio-political structures (such as the State), the survival of the identity and livelihoods of communities, and the future of human life on the Planet. Climate change has led civilisation to a "limit situation" not too distant from the one that the Court was faced with in the advisory proceeding on the *Legality of the Threat or Use of Nuclear Weapons*. As Judge Weeramantry then put it "since nuclear weapons can destroy all life on the planet, they imperil all that humanity has ever stood for, and humanity itself".[102] To a great extent, his words highly

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international rules creating additional primary or secondary obligations also relevant to the questions at stake. *See supra*, note 5.

[99] *See infra*, Chapter 4.

[100] *See, e.g.*, Written Statement of Canada, para. 22 ("States cannot use the purported fulfilment of international obligations in one subject-matter area to justify not meeting their international legal obligations in another unless there is a matter of the conflict, in which case, Article 30 of the Vienna Convention on the Law of Treaties, and any conflict clauses in the treaty, must be considered.").

[101] *See, e.g.*, Written Statement of Albania, para. 114; Joint Written Statement of Denmark, Finland, Iceland, Norway and Sweden, para. 42; Written Statement of Ecuador, para.3.67; Written Statement of Egypt, para. 74; Written Statement of New Zealand, para. 86; Written Statement of Sierra Leone, para. 3.125; Written Statement of Switzerland, para. 69; Written Statement of Thailand, para. 5; Written Statement of Tonga, paras. 125-126; Written Statement of the Solomon Islands, paras. 56-47; Written Statement of Vanuatu, paras. 226, 227.

[102] *Legality of the Threat or Use of Nuclear Weapons*, Dissenting Opinion of Judge Weeramantry, p. 225.

resonate with the "limit situation" created by climate change, of which the Court is seised in the present proceedings. How can such a civilizational challenge be adequately approached from a legal perspective, without leaving any substantive aspects of the issue unaddressed?

3.9 In this context, the broad scope of the Request must be understood as a reflection of the international community's understanding that it requires the Court's assistance to identify the legal obligations of States under international law in respect to climate change, but also to define how shall States understand the relationship between all of such obligations as a collected and coherent kaleidoscope, rather than a set of unconnected crystals of a variety of colors. In the words of the International Law Commission Study Group on Fragmentation of international law, "instead of a random collection of directives, the law begins to assume the shape of a purposive (legal) system".[103]

3.10 The relevance and applicability of multiple legal instruments pertaining to different specialised areas of international law is certainly not a new phenomenon to the Court. For instance, in its advisory opinion on *South West Africa*, the Court explained that treaties are "interpreted and applied *within the framework of the entire legal system* prevailing at the time of the interpretation".[104] Similarly, in its Advisory Opinion on the protection of the marine environment from climate change—where ITLOS was called upon applying UNCLOS, as well as "other rules of international law not incompatible with this Convention" (referred to as "external rules")—[105], the Tribunal first underscored that "*coordination* and *harmonization* between the Convention and external rules are important *to clarify, and to inform the meaning of, the provisions of the Convention* and to ensure that the Convention serves as a living instrument".[106] Relying on the previously mentioned finding of the Court in *South West Africa*, the Tribunal concluded that "the provisions of the Convention and external rules should, to the

[103] International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law (13 April 2006), Report of the Study Group (finalized by Martii Koskenniemi), A/cn.4/l.682 (**hereinafter the "ILC Report on Fragmentation of International Law"**), para. 36.

[104] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Sout West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16, at p. 31, para. 53.

[105] UNCLOS, Art. 293(1) ("A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.") (*cited in* ITLOS Climate Change Advisory Opinion, para. 126).

[106] ITLOS Climate Change Advisory Opinion, para. 130 (emphasis added).

extent possible, be interpreted consistently"— that is, multiple rules governing the same issue should be interpreted "so as to give rise to a single set of compatible obligations".[107]

3.11 In light of the Court's jurisprudence, most recently upheld and applied by ITLOS, the Dominican Republic reiterates its view that international climate change law is at the heart of these proceedings as "the most directly relevant" applicable law governing Question A. The interpretation and application of the international climate change rules should be informed, however, by the additional obligations of States *which also govern the Questions*—including, *inter alia*, other rules and principles of international environmental law, the international law of the sea, international human rights law, and States' obligations to respect other States' territorial integrity.[108]

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[107] *Ibid.* (*citing to* ILC Report on Fragmentation of International Law, p. 8). In line with these decisions, the Dominican Republic also recalls the conclusion reached by International Law Commission Study Group on Fragmentation of International Law, according to which in international law "there is a strong presumption against normative conflict". In addition, when creating new obligations (such as mitigation and adaptation obligations under the UNFCCC), "States are assumed not to derogate from their obligations such as States" (such as human rights obligations under the ICCPR and the ICECS, which preceded the adoption of the Climate Change Convention). *See* ILC Report on Fragmentation of International Law, paras. 36-37.

[108] *See* Written Statement of the Dominican Republic, para. 4.48.

CHAPTER 4

COMMENTS ON PARTICIPANTS' SUBMISSIONS RELATING TO QUESTION A: INTERNATIONAL OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

4.1 In this Chapter, the Dominican Republic reiterates that the UNFCCC and the Paris Agreement are not the only instruments that ensure the protection of the climate system from significant harm caused by GHG emissions. **Section I** expands on the relevant international obligations in respect of climate change that the Dominican Republic had identified in its first written submission. Mindful of ITLOS's Climate Change Advisory Opinion and the Caribbean region's extreme vulnerability to sea-level rise, it addresses States' obligations under the international law of the sea to protect the Ocean from the deleterious impacts of climate change, included sea-level rise and its acceleration. **Section II** highlights that several Participants, including the Dominican Republic, have contended that States' conduct in respect of climate change is also governed by the international obligations relating to the protection of peoples' right to self-determination and the fundamental right of every State to survival. While agreeing with the position taken by most Participants on this point, the Dominican Republic stresses that the two obligations arise from different sources of law and concern a different right holder. Therefore, even if closely connected, they should not be conflated.

I. IN ADDITION TO THEIR OBLIGATIONS UNDER INTERNATIONAL CLIMATE CHANGE LAW, STATES HAVE TREATY OBLIGATIONS UNDER UNCLOS TO PROTECT AND PRESERVE THE MARINE ENVIRONMENT FROM CLIMATE CHANGE IMPACTS SUCH AS SEA-LEVEL RISE

A. GHG EMISSIONS RESULTING IN SEA-LEVEL RISE CONSTITUTE "POLLUTION TO THE MARINE ENVIRONMENT" UNDER ARTICLE 1(1)(4) OF UNCLOS

4.2 The Dominican Republic submits that the emission of GHGs into the atmosphere—which are then absorbed by the Ocean and result in sea-level rise—[109] constitutes a form of "pollution to the marine environment", a concept defined by Article 1(1)(4) of UNCLOS as:

> "[T]he *introduction by man*, directly or indirectly, *of substances or energy into the marine environment*, including estuaries, *which results or is likely to result in such deleterious effects* as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing

[109] *See* Chapter 2, Section I *supra.*

> and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities".[110]

4.3 As recently confirmed by ITLOS, this definition is broadly inclusive.[111] It is also scientifically based,[112] and has been relied on in other agreements.[113] First, it expressly recognizes that "energy" may constitute a form of pollution (not just substances). This inclusion results from the recommendation of the Intergovernmental Oceanographic Commission of 1970, which noted that:

> "The world ocean is receiving in increasing *amounts and variety* waste substances *and energy* from our civilization, but it does not have an unlimited capacity to absorb them (…) *Many pollutants reach the ocean from many sources:* rivers and coasts, particularly urban and industrial effluents; *the atmosphere*; ships and equipment operating in the marine environment including underwater operations".[114]

4.4 Second, it encompasses sources of pollution that enter the marine environment through indirect means, and thus the emission of GHGs into the atmosphere which are then absorbed by the Ocean qualifies as a source of pollution under this definition. Third, even though scientific knowledge about climate change was limited at the time when the Convention was being negotiated, the fact that the Oceans and the atmosphere are connected elements was

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[110] UNCLOS, Art. 1(1)(4) (emphasis added).

[111] A. Prölß ed., *United Nations Convention on the Law of the Sea: a Commentary*, Article 1: Use of Terms and Scope (Y. Tanaka), p. 23.

[112] ITLOS Climate Change Advisory Opinion, para. 163 ("The terms "substance" and "energy" have a broad meaning. The Tribunal is of the view that, in the context of the present case, the term "substance" refers to any particular kind of matter with uniform properties or a kind of matter of a definite chemical composition. As to the term "energy", the Tribunal notes that one of the forms of energy is thermal energy or heat. It further notes that the ILC, in its commentary to the definition of "atmospheric pollution" – and specifically to the "introduction of energy" – in the 2021 Draft guidelines on the protection of the atmosphere, explains that this reference to energy is understood to include heat (ILC Draft guidelines on the protection of the atmosphere, Commentary to Guideline 1, subpara. (b)).") (emphasis added); *See also*, Judge Païk, "Disputes Involving Scientific and Technical Matters and the International Tribunal for the Law of the Sea", in Judge Heidar ed., *New Knowledge and Changing Circumstances in the Law of the Sea* (2020), p. 16 (noting that the definition "derived from wording developed by the Joint Group of Experts in the Scientific Aspects of Marine Environmental Pollution").

[113] P. Sands, *Principles of International Environmental Law* (2nd ed. 2003), p. 398. See also, M. Tomczak, "The Definition of Marine Pollution: a Comparison of Definitions Used by International Conventions", *Marine Policy*, vol. 8 (1984), p. 311.

[114] Intergovernmental Oceanographic Commission, "Comprehensive Outline of the Scope of the Long-term and Expanded Programme of Oceanic Exploration and Research", approved by IOC at its Sixth Session (UNESCO, 2-13 September 1969), p. 16, available at: 133279engo.pdf (emphasis added).

acknowledged. The 1970 IOC report—which began with an assessment of "problems of Ocean-Atmosphere interaction"— explained that:

> "*The ocean and the atmosphere are two parts of a vast thermal engine with a common source of energy, solar radiation. The two parts interact strongly and continuously* with each other. Progress in many problems in oceanography and in meteorology is largely dependent upon *close collaboration between oceanographers and meteorologists*".[115]

The Convention reflects this understanding, as it expressly refers to the "atmosphere" in several of its provisions.[116]

4.5 In addition, Article 1(1)(4) "distinguishes between 'pollution' and 'damage'",[117] insofar as it does not require proof that the introduction of the source of pollution (whether in the form of energy or a substance) has already resulted in deleterious effects to qualify as pollution to the marine environment. The probability that such harm may occur suffices—as reflected in the expression "or is likely to result". This is consistent with the overall objective of *preventing* pollution to the marine environment, set forth in Article 194(1) discussed below,[118] as well as in the duty to protect the marine environment.[119] In any event, the fact that GHG emissions result in harm to the marine environment, and are likely to continue to do so, has already been confirmed by the best available science.[120]

4.6 In its Climate Change Advisory Opinion, ITLOS confirmed that Article 1(1)(4) of UNCLOS "does not provide *a list* of pollutants or forms of pollution" to the marine

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[115] *Ibid,* p. 9 (emphasis added).

[116] *See, e.g.*, UNCLOS, Art. 194(3)(a) (providing that measures to "deal with all sources of pollution of the marine environment" include measures designed to minimize the "release of toxic, harmful or noxious substances ... from or through the atmosphere"; (ii) Art. 212, which requires that States Parties adopt measures "to prevent, reduce and control pollution of the marine environment from or through the atmosphere ..."; (iii) Art. 222, which requires that States Parties take measures to enforce rules "to prevent, reduce and control pollution of the marine environment from or through the atmosphere.").

[117] P. Sands, *Principles of International Environmental Law* (2nd ed. 2003), p. 398.

[118] *See infra*, Section I.B and I.C.

[119] *See* P. Birnie, A. Boyle and C. Redgwell, *International Law & the Environment* (3rd ed. 2009), p. 387 (noting that "the emergence of a more strongly expressed obligation to protect the marine environment is evidenced by Articles 192-5 of the 1982 UNCLOS, by regional treaties and by other multilateral agreements negotiated progressively since 1954).

[120] *See supra*, Chapter II, Section II.

environment, but instead "sets out *criteria* to determine what constitutes pollution": (i) whether there is a substance or energy; (ii) whether such substance or energy is introduced by humans (directly or indirectly) into the marine environment; and (iii) whether such introduction resulted or is likely to result in deleterious effects.[121] After careful consideration, the Tribunal concluded that "anthropogenic GHG emissions into the atmosphere constitute pollution of the marine environment within the meaning of article 1, paragraph 1, subparagraph 4 of the Convention".[122] Therefore, this preliminary issue, which may have been considered as undefined or even controversial at the time of preparation of Written Statements in these proceedings,[123] has since been settled by the Tribunal. The Dominican Republic respectfully requests that the Court endorses the Tribunal's finding that GHG emissions constitute "pollution of the marine environment" under Article 1(1)(4) of UNCLOS.

B. STATES' GENERAL OBLIGATION TO "PROTECT AND PRESERVE THE MARINE ENVIRONMENT" (ARTICLE 192 OF UNCLOS)

4.7 Part XII of UNCLOS concerns the protection and preservation of the marine environment and sets forth obligations that apply to the marine environment *as a whole*.[124] The opening provision of Part XII, Article 192, sets forth the general obligation of States to "protect and preserve the marine environment".[125] In the words of the Tribunal "while Article 192 imposes upon States a legal obligation, this provision is, at the same time, a statement of principle upon which the legal order for the protection and preservation of the marine environment under the Convention is based".[126]

4.8 As noted by Professors Birnie, Boyle and Redgwell, this signals the priority given to the treatment of marine pollution under UNCLOS, where "it is no longer essentially a matter of high seas freedom moderated by reasonable use, but one of legal obligation to protect

[121] ITLOS Climate Change Advisory Opinion, para. 161 (emphasis added) (the Tribunal also noted that these criteria are cumulative).

[122] ITLOS Climate Change Advisory Opinion, para. 179.

[123] *See, e.g.* Written Statement of China, para. 102 (noting that "[t]here is a view that anthropogenic GHG emissions are "pollution of the marine environment", which is a matter of controversy in the international community.").

[124] P. Birnie, A. Boyle and C. Redgwell, *International Law & the Environment* (3rd ed. 2009), p. 384.

[125] *Ibid.*, p. 390.

[126] ITLOS Climate Change Advisory Opinion, para. 184.

the environment".[127] Part XII of UNCLOS is closely associated with Chapter 27 of Agenda 21, which was adopted at the 1992 Rio Conference of Environment and Development and introduced "several new elements not found in UNCLOS, including an emphasis on integrated and precautionary approaches to protection of the marine and coastal environment".[128] These elements seem to have been taken into account by ITLOS in interpreting the Convention.[129] On numerous occasions, the Tribunal has indeed reiterated that States "must act with prudence and caution to prevent serious harm to the marine environment".[130]

4.9 The content of the general obligation in Article 192 is further detailed in the subsequent provisions of Part XII. In its Advisory Opinion, ITLOS recalled that Article 193 put a "constraint" upon States' right to exploit their natural resources, which must be done "in accordance with their duty to protect and preserve the marine environment".[131] In addition, the Tribunal clarified the relationship between the general obligation under Article 192, and subsequent provisions under Part XII of the Convention. In the Tribunal's words:

> "While the obligation to protect and preserve the marine environment is much broader in scope than the obligation to prevent, reduce and control marine pollution, *the latter obligation constitutes the main component of the former obligation under the Convention*".[132]

[127] *Ibid*., p. 387 ("It is evident from the Convention, first, that its protection extends not only to states and the marine environment, but to the marine environment as a whole. This goes beyond the older customary rule based on the Trail Smelter arbitration, and reflects its extension to global common areas contemplated by Principle 21 pf the Stockholm Declaration."). This was expressly confirmed by the arbitral tribunal in *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, PCA Case No. 2013-19, Award (12 July 2016), para. 940.

[128] *Ibid.*

[129] *Ibid.*

[130] *Dispute Concerning Delamination of the Maritime Boundary Between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana v. Côte d'Ivoire)*, Provisional Measures Order (25 April 2015), para. 72. *See also, e.g. M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Provisional Measures Order (23 December 2010), para. 70; *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Provisional Measures Order (27 August 1999), para. 77; and *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion (1 February 2011), para. 132.

[131] UNCLOS, Art. 193; ITLOS Climate Change Advisory Opinion, para. 187.

[132] ITLOS Climate Change Advisory Opinion, para. 188.

The Dominican Republic hereafter addresses States' specific obligations under UNCLOS to protect and preserve the marine environment from the deleterious impacts of GHG emissions on the Oceans, including sea-level rise and its acceleration.

C. STATES' OBLIGATION TO PREVENT, REDUCE AND CONTROL POLLUTION TO THE MARINE ENVIRONMENT (ARTICLE 194(1) OF UNCLOS)

4.10 Under Article 194(1)—the "key provision" on "the regime for regulating marine pollution"[133]—States Parties to UNCLOS have an obligation to take "*all measures necessary* to prevent, reduce and control pollution of the marine environment *from any source*".[134] As confirmed by ITLOS, the expression "from any source" implies that the provision establishes an obligation "common to all sources of pollution with which States must comply".[135] Given that GHG emissions constitute pollution of the marine environment, this provision applies to such kind of pollution.[136]

4.11 The duty to protect the environment (as opposed to the responsibility not to cause damage by pollution to other States or the environment),[137] "extends to measures focused primarily on conservation and the preservation of ecosystems".[138] Applied to GHG emissions, the Tribunal found that "the objective of preventing, reducing and controlling pollution means *preventing future or potential pollution and reducing existing pollution*".[139]The necessary measures can be taken individually or jointly (without priority of one form over the other),[140] underscoring the importance of the duty to cooperate—defined by ITLOS as "a fundamental

[133] *Ibid.*, para. 189.

[134] UNCLOS, Art. 194(1).

[135] ITLOS Climate Change Advisory Opinion, para. 189 (emphasis added).

[136] *Ibid.*, para. 197.

[137] P. Sands, P. Sands, *Principles of International Environmental Law* (2nd ed. 2003), p. 397 (noting that this the duty to protect the environment (under Article 194(1)) is distinguished from the responsibility not to cause damage by pollution to other States or the environment, covered by Article 194(3)).

[138] *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom*), PCA Case No. 2011-03, Award (18 March 2015), para. 538.

[139] ITLOS Advisory Opinion, para. 198 (emphasis added).

[140] *Ibid.*, para. 201.

principle in the prevention of pollution of the marine environment".[141] Importantly, in the context of pollution of the marine environment from GHG emissions, the Tribunal found that joint actions alone are insufficient:

> "While the importance of joint actions in regulating marine pollution from anthropogenic GHG emissions is undisputed, *it does not follow that the obligation under article 194, paragraph 1, of the Convention is discharged exclusively through participation in the global efforts* to address the problems of climate change. *States are required to take all necessary measures, including individual actions as appropriate*".[142]

4.12 The expression "all measures necessary" implies that the nature and breadth of the measures that States ought to adopt must correspond to what is *objectively* necessary to prevent pollution.[143] The Tribunal also indicated that this expression must be interpreted "broadly", so that "necessary measures include *not only measures which are indispensable* to prevent, reduce and control marine pollution *but also other measures which make it possible to achieve that objective*".[144] It confirmed that, in the context of climate change, "necessary measures" are mitigation measures,[145] and the obligation under Article 194(1) of UNCLOS would *not* be satisfied "simply by complying with the obligations and commitments under the Paris Agreement", for the two are separate instruments with separate sets of obligations.[146]

4.13 This is only qualified by the provision that such measures should be taken "in accordance with [States]' capabilities", which introduces the element of differentiated responsibilities which, as noted by ITLOS and also remarked by the Dominican Republic's Written Statement, is also central to the Climate Change Convention.[147] However, the Tribunal

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[141] *Dispute Concerning Delamination of the Maritime Boundary Between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana v. Côte d'Ivoire)*, Provisional Measures Order (25 April 2015), para. 72. *See also, MOX Plant (Ireland v. United Kingdom),* Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001 p. 95, at p. 110, para. 82; *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)*, Order of 10 September 2003, ITLOS Reports 2003, p. 10, at p. 25, para. 92; and *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission,* Advisory Opinion of 2 April 2015, para. 140).

[142] ITLOS Climate Change Advisory Opinion, para. 202 (emphasis added).

[143] *Ibid.*, para. 207.

[144] *Ibid.*, para. 203.

[145] *Ibid.*, para. 205.

[146] *Ibid.*, para. 223.

[147] *See* ITLOS Climate Change Advisory Opinion, para. 229; and Written Statement of the Dominican Republic, paras. 4.23-4.24.

pointed out that "the reference to available means and capabilities "should not be used as an excuse to unduly postpone, or even be exempt from, the implementation of the obligation to take all necessary measures under Article 194(1) of UNCLOS.[148] This is consistent with the fact that the general obligation to protect the marine environment under Article 192 is "further detailed … by reference to specific obligations set out in other international agreements, as envisaged in Article 23(7) of the Convention",[149] and under the Paris Agreement, *all* States have now committed to reducing their GHG emissions in accordance with the long-term temperature targets.

4.14 Thus, the Dominican Republic submits that Article 194(1) requires all State Parties to UNCLOS who are also Parties to the Paris Agreement to fulfil their mitigation obligations under the Article 4, paragraphs 2 and 9 of the latter, including by updating on an urgent basis their Nationally Determined Contributions ("NDCs") so as to keep the 1.5ºC long-term temperature increase goal within reach.[150] As concluded by ITLOS, in performing such update developed States should "continue to take the lead".[151]

D. STATES' OBLIGATION TO TAKE LEGISLATIVE AND ENFORCEMENT MEASURES LIMITING GHG EMISSIONS FROM THEIR TERRITORY (ARTICLES 207,211 212, 213, 217 AND 222 OF UNCLOS)

4.15 The provisions in Section 5 of Part XII of UNCLOS (Articles 207 to 212), complement and elaborate upon the obligation under Article 194 by addressing the obligations of States with respect to six different specific sources of pollution,[152] each of which give rise to a different kind of reference to international rules and standards.[153] A fundamental means through which States are able (and obliged to) discharge their obligations under Articles 192 and 194 is through the adoption of appropriate legislative measures seeking to prevent, reduce

[148] ITLOS Climate Change Advisory Opinion, para. 226.

[149] *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, PCA Case No. 2013-19, Award (12 July 2016), para. 942.

[150] *See* Written Statement of the Dominican Republic, para.4.30.

[151] ITLOS Climate Change Advisory Opinion, para. 229.

[152] *Ibid*., para. 260 (these are: pollution from land-based sources (Art.207 of UNCLOS); pollution from seabed activities subject to national jurisdiction (Art. 208); pollution from activities in the Area (Art.209); pollution by dumping (Art.201); pollution from vessels (Art. 211) and pollution from or through the atmosphere (Art. 212).

[153] *Ibid.*

and control pollution to the marine environment, and ensure their implementation.[154] In addition, States must also ensure that the laws and regulations they adopt are implemented and enforced. Section 6 of Part XII (Articles 213 to 222) thus complements Article 194 by addressing the obligations of States to enforce national legislation and to implement international rules and standards Articles 213 through 222 of UNCLOS specifically set forth a list of possible enforcement actions.[155]

4.16 In its Advisory Opinion, ITLOS considered land-based sources, vessels and aircrafts to be the most relevant sources of GHG emissions that result in the pollution of the marine environment.[156]

4.17 With regard to GHG emissions from land-based sources, the Tribunal found that Article 207 of UNCLOS imposes on States three obligations: (i) to adopt national legislation; (ii) to take other necessary measures; and (iii) to endeavor to establish international rules, standards and practices and procedures so as to control GHG emissions from land-based sources.[157] The scope and content of obligations under Article 212 on pollution from or through the atmosphere "is similar to that of the obligations under Article 207".[158] The enforcement obligations with respect to pollution from land-based sources, set forth in Article 213 of UNCLOS, should be interpreted broadly. As the Tribunal notes, it encompasses "the variety of ways and means to ensure compliance with laws and regulations within the framework of the national legal system", including "monitoring and inspection, administrative guidance, investigation and prosecution for breaches of laws, and judicial or quasi-judicial proceedings".[159]

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[154] See UNCLOS, Arts. 207-212 (requiring States to adopt specific laws and regulations to protect the marine environment from all sources of pollution, whether from land-based sources or from or through the atmosphere. This is complemented under Article 222 by the obligation to "take other measures necessary to implement applicable international rules and standards established through competent international organisations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere.").

[155] ITLOS Climate Change Advisory Opinion, para. 190.

[156] *Ibid.*, para. 264.

[157] *Ibid.*, para. 267.

[158] *Ibid.*, para. 277.

[159] *Ibid.*, para. 284.

4.18 Regarding GHG emissions from vessels, the Tribunal concluded that Article 211(2) of UNCLOS imposes on flag States the obligation to adopt laws and regulations to prevent, reduce and control marine pollution from vessels flying their flag that have "the same effect" as that of generally accepted international rules and regulations",[160] as opposed to simply taking them into account. The Tribunal also found the scope and content of the obligations with respect to pollution from or through the atmosphere under Article 222 as similar to land-based pollution under article 213. In the words of the Tribunal, in the context of marine pollution from all anthropogenic GHG emissions, Article 222 and 213 "should be interpreted as imposing an obligation to adopt laws and regulations and to take measures necessary to implement, among others, rules and standards set out in climate change treaties and other relevant instrument".[161]

4.19 The Dominican Republic notes that the obligations under UNCLOS identified by ITLOS which are relevant to protect and preserve the marine environment from the deleterious impacts of GHG emissions, including sea-level rise and its acceleration, contribute to the preservation of the territorial integrity of low-lying island States most threatened by submergence. These obligations under UNCLOS are therefore also informed by the parallel obligation of States to respect the territorial integrity and fundamental right to survival of every State, as well as peoples' right to self-determination. The following Section comments on how the Participants have addressed this point in their Written Statements.

II. SEVERAL PARTICIPANTS RECOGNISE THAT STATES' CONDUCT IN RESPECT OF CLIMATE CHANGE IS ALSO GOVERNED BY INTERNATIONAL OBLIGATIONS RELATING TO THE PROTECTION OF PEOPLES' RIGHT TO SELF-DETERMINATION AND THE FUNDAMENTAL RIGHT OF EVERY STATE TO SURVIVAL

A. STATES' DUTY TO PROMOTE, RESPECT AND PRESERVE PEOPLES' RIGHT TO SELF-DETERMINATION FROM CLIMATE CHANGE IMPACTS ON THEIR TERRITORY, LIVELIHOODS AND CULTURAL IDENTITY

4.20 As previously noted, the great majority of the Participants to these proceedings have referred to international human rights obligations as also governing Question A. Amongst

[160] *Ibid.*, para. 279.

[161] *Ibid.*, para. 286.

those, more than 20 Participants (including the Dominican Republic) specifically referred to the right to self-determination of peoples, in three main ways.[162]

4.21 *First*, the majority of these States submitted that a breach of the right to self-determination can already be characterised, in so far as climate change gravely impacts on peoples' exclusive right to dispose of their national resources and not to be deprived of their own means of subsistence.[163] As the Dominican Republic noted in its first written submission, both the Office of the High Commissioner for Human Rights and three Special Rapporteurs on Human Rights & Climate Change, Toxics & Human Rights, and Human Rights & the Environment, have indeed recently confirmed that these two elements of the right to self-determination are indeed greatly threatened by climate change.[164]

4.22 *Second*, some States have taken a step further and contended that *a breach* of peoples' right to self-determination can already be characterised—particularly for peoples low-lying SIDS highly threatened —in so far as climate change's deleterious consequences, particularly sea-level rise and coastal salinisation, have already gravely impacted on these peoples' lands and identity. For instance, the Solomon Islands underscored that climate change's threat to self-determination is particularly acute for peoples from SIDS given that they face "loss of cultural identity, loss of physical connection with ancestral land, and a loss of effective nationality".[165] Similarly, Costa Rica submitted that "the fact that some peoples can be deprived of the territory where they have lived for generations is also constituting a breach to their right to self-determination",[166] while the Melanesian Spearhead Group explained that, "by damaging—and in some cases causing the complete loss of—these

[162] *See, e.g.*, Written Statements of Albania, The Bahamas, Bangladesh, Cook Islands, Costa Rica, Kenya, Liechtenstein, Madagascar, Micronesia, Nauru, Sierra Leone, Singapore, Solomon Islands, Timor Leste, The Philippines, Portugal, Tuvalu, Vanuatu, Melanesian Spearhead Group, OACPS, European Union.

[163] *See, e.g.* Written Statement of Timor Leste, paras. 339-45 (noting that "any hinderance to their [Least Developed Countries'] right to freely develop their natural resources then can violate the right to self-determination."); *see also*, Written Statement of the Melanesian Spearhead Group, paras.238-239.

[164] *See, e.g*. Written Statement of the Dominican Republic, para. 4.45 (*citing to* Amicus brief submitted to the International Tribunal for the Law of the Sea by the UN Special Rapporteurs on Human Rights & Climate Change (Ian Fry), Toxics & Human Rights (Marcos Orellana), and Human Rights & the Environment (David Boyd) (30 May 2023), para. 47, and Amicus brief submitted to the International Tribunal for the Law of the Sea by the UN Special Rapporteurs on Human Rights & Climate Change (Ian Fry), Toxics & Human Rights (Marcos Orellana), and Human Rights & the Environment (David Boyd) (30 May 2023), para. 48.).

[165] Written Statement of the Solomon Islands, para. 173.

[166] Written Statement of Costa Rica, para. 112.

important natural resources, *climate change is causing the very fabric of life to unravel. These losses are such that indigenous peoples across Melanesia are now unable to engage in their ways of life".*[167] The Dominican Republic fully agrees and endorses this position and recalls the view of the Office of the High Commissioner on Human Rights, according to whom "*States have a duty to take action, individually and collectively, to avert and address the threats to the right of self-determination, by mitigating climate change*".[168]

4.23 *Finally*, some Participants have connected the threat to the right to self-determination to the forthcoming consequences of climate change impacts *for the survival of the low-lying island States themselves*, whose continuity is also directly jeopardized by climate change impacts. The Philippines rightly noted that "the violation of the right to self-determination is most evident in SIDS, who are most at risk of losing entire territories and population due to alarming sea level rises that will eventually completely submerge their land".[169] Similarly, Nauru contended that States have an obligation not to engage, in their own territory, "in activities that produce greenhouse gas emissions which have the effect of breaching the rights of small island developing States such as Nauru to territorial integrity and that of their peoples to self-determination".[170] The Organisation of African Caribbean and Pacific States for its part noted that climate change affects the right of peoples to existence by threatening their physical integrity (including the territorial integrity of the States they belong to), and depriving them of the means of their subsistence.[171] The Dominican Republic also agrees with this position, which conforms with the Court's view, as expressed in the *Chagos* advisory opinion, that the right to self-determination is connected with the obligation to respect territorial integrity.[172]

[167] Written Statement of the Melanesian Spearhead Group, para. 241 (emphasis added).

[168] Written Statement of the Dominican Republic, para. 4.46 (*citing to* Office of the UN High Commissioner on Human Rights, Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet nº38, p. 5).

[169] Written Statement of the Philippines, para. 106b.

[170] Written Statement of Nauru, para. 46.

[171] Written Statement of the Organisation of African Caribbean and Pacific States, paras. 68-69.

[172] *See* Written Statement of the Dominican Republic, para. 4.46 (citing to *Chagos* advisory opinion, para. 160, "Both State practice and opinio juris at the relevant time confirm the customary law character of the right to territorial integrity of a non-self- governing territory as a corollary of the right to self- determination (…) The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-

4.24 However, in the Dominican Republic's view, it is equally important to acknowledge that climate change affects not only peoples' right to self-determination in relation to their territory as a whole; it equally affects the fundamental right to survival low-lying island States themselves, as primary subjects of international law.

B. STATES' SELF-STANDING OBLIGATION TO RESPECT EVERY STATE'S TERRITORIAL INTEGRITY AND FUNDAMENTAL RIGHT TO SURVIVAL

4.25 The Dominican Republic notes that only two States have specifically discussed the consequences of climate change *for the continuity of statehood* of low-lying island States. The Solomon Islands submitted that "international law does not presently contemplate the extinguishing of statehood as a result of climate change-induced sea-level rise, and that in circumstances of the complete loss of a State's territory and displacement of its population, the presumption of continuity of statehood ought still to apply".[173] Similarly, Costa Rica noted that the obligation to respect the territorial integrity of States and peoples is breached if the relevant conduct produces sea level rise, which in turn affects the coast of riparian States and their maritime areas.[174]

4.26 As developed by the Dominican Republic's Written Statement,[175] climate change constitutes nothing short of an existential threat, a challenge to what the Court has characterized in *Legality of the Threat of Use of Nuclear Weapons* as "the fundamental right of every State to survival".[176] As Judge Koroma explained in *the Kosovo Advisory Opinion*, the principle of territorial integrity, enshrined in Article 2, paragraph 4 of the UN Charter, entails "*an obligation to respect the definition, delineation and territorial integrity of an existing State*".[177] While it is undisputed that the principle of territorial integrity was historically framed within the context of conventional forms of use of force, in multiple sessions of the General Assembly and the Security Council dating back at least fifteen years,

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determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power.").

[173] Written Statement of the Solomon Islands, paras. 214-217.

[174] Written Statement of Costa Rica, para. 113.

[175] *See* Written Statement of the Dominican Republic, paras. 4.34-4.42.

[176] *Ibid.*, para. 4.36.

[177] *Ibid.*, para. 4.35 (*citing to Kosovo Advisory Opinion*, Dissenting Opinion of Judge Koroma, para. 21) (emphasis added).

the international community has expressly acknowledged that climate change directly jeopardised the continuity of low-lying island States, and has discussed it as a new form of threat to the international peace and security.[178] The Dominican Republic further notes with the view expressed by the ILA Committee on International Law and Sea-Level Rise, which in its 2024 Final Report concluded that:

> "*Affected States not only have the right but to some extent also the duty to provide for their own preservation using the various means at their disposal – including through international cooperation*. Such duty can be derived from States' human rights obligation to protect the life, security and health of affected members of their population, guarantees that may require taking physical measures to safeguard territory. *The principle set out in Article 6 of the Montevideo Convention, that the recognition of a State is 'unconditional and irrevocable', provides for and supports the objective of international law to facilitate legal certainty and stability*. In the Committee's view, it should therefore be recognized as the key guidance for addressing the unprecedented challenge faced by low-lying SIDS in a mid- to long-term perspective, when most of their land territory may become uninhabitable or submerged in consequence of sea level rise".[179]

4.27 The Committee's conclusions were reached after 12 years of work, concurring with the Co-Chairs of the ILC Study Group on Sea-Level Rise in Relation to International Law and the views expressed by several States in recent debates held at the UN Sixth Committee.[180] Therefore, the Dominican Republic reiterates its view that the principle of territorial integrity as well as States' fundamental right to survival must inform the Court's interpretation of States' international mitigation obligations under the international regime on climate change, as well as be recognised by the Court as self-standing obligations arising from Article 2, paragraph 4 of the UN Charter and governing Question A.[181]

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[178] *See* Written Statement of the Dominican Republic, para. 4.37-4.38.

[179] ILA Committee on International Law and Sea-Level Rise, 2024 Final Report, adopted at the 81st ILA Conference (Athens, June 2024), available at: 01-final-report-committee-on-international-law-and-sea-level-rise (ila-hq.org)

[180] *Ibid.*

[181] Written Statement of the Dominican Republic, para. 4.42.

CHAPTER 5

COMMENTS ON PARTICIPANTS' SUBMISSIONS RELATING TO QUESTION B: LEGAL CONSEQUENCES OF THE INTERNATIONAL OBLIGATIONS IN RESPECT OF CLIMATE CHANGE

5.1 In contrast with the generalised agreement on the existence of a scientific consensus on the causes and impacts of climate change, which directly attribute the phenomenon to the anthropogenic emissions of GHGs into the atmosphere, and the identification of multiple primary obligations under several specialised areas of international law relevant to Question A, Participants have expressed differing views when addressing Question B, relating to the legal consequences (or secondary norms) arising from such primary obligations. In this Chapter, **Section I** addresses the Participants' views as to whether the relevant conduct can be characterised as a breach of the international obligations with respect to climate change identified under Question A, and comments on some of the Participants' views relating to causation. **Section II** responds to the position expressed by some States, according to which the general law on State responsibility is not applicable and should be set aside in favor of the specific implementation or compliance mechanisms enshrined in international climate change law.

I. MOST PARTICIPANTS' POSITIONS REMAIN VAGUE AS TO WHETHER THE RELEVANT CONDUCT CAN BE CHARACTERISED AS A BREACH OF THE PRIMARY OBLIGATIONS IDENTIFIED UNDER QUESTION A

5.2 The Dominican Republic notes that more than two thirds of the Participants to the proceedings did not expressly address in their first written submissions whether, in their view, the relevant conduct could be characterised as a breach of the primary obligations of States with respect to climate change that they had identified under Question A. However, the great majority of the Participants belonging to the remaining group (that took an express position on the matter) submitted that a breach *may or will occur*.

5.3 Such difficulty stems from the fact that international mitigation obligations (as the international climate change law in general) are, by definition, collective obligations of conduct. Mindful of this observation, the Dominican Republic nonetheless reiterates that, "at the time the Court is seized with this proceeding, there is both scientific and political consensus

that *general causation* between human-made atmospheric greenhouse gas emissions and resulting in climate change is, undisputedly, established".[182]

5.4 The Court can find such an express acknowledgment from the General Assembly itself in Resolution 77/276 referring the Request to the Court. Indeed, preambular paragraph 5 of the Resolution emphasises the importance of several conventional and customary international "to *the conduct of States over time* in relation *to activities that contribute to climate change and its adverse effects*".[183] This wording clearly underscores the historical cumulation of GHG emissions referred to in Question A and connection of the State conduct in Question B to the applicable obligations identified in Question A. In addition, paragraph 9 of the Request's preamble endorses the existing "unequivocal" scientific consensus on the "dominant cause" and main "widespread adverse impacts" of climate change:

> "*Noting with utmost concern* the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected...."[184]

5.5 In the Dominican Republic's view, the General Assembly has not requested the Court to determine the legality of the acts and omissions of specific States regarding GHG emissions which resulted in such significant harm, so that it would be required to draw any direct link between specific acts and omissions, on one hand, and specific adverse effects of

[182] Written Statement of the Dominican Republic, para. 4.16 (emphasis in the original).

[183] AO Request, preambular para. 5 (italics in the original, underlying added).

[184] *See also*, C. Voigt, "The Potential Roles of the ICJ in Climate Change-Related Claims", in D. Farber *et al* eds. *Climate Change Law* (2016), p. 161 ("It is further necessary that there is a causal link between the activity and the occurring damage. It is useful here to distinguish between general causation and specific causation. The first type refers to a general link between increasing anthropogenic GHG emissions and climate change damages. This causation chain is not discussed here as almost universal international scientific consensus exists on these issues."). After thirty-two years of comprehensive, in-depth scientific research and modelling, by 2023 the IPCC has been able to conclude that "human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020". Specifically, the Panel noted "with high confidence" that in 2019, atmospheric CO2 concentrations were "higher than at any time in at least 2 million years", and with "very high confidence" that concentrations of methane and nitrous oxide "were higher than at any time in at least 800,000 years". *See* IPCC, 6th Assessment Report, Climate Change 2023: Synthesis Report, Summary for Policymakers (March 2023), para. A.1.4.

climate change, on the other. Rather, the Court is requested to identify all obligations of States to ensure the protection of the climate system from significant harm and then determine whether States which have significantly contributed to causing climate change are, in principle, in breach of their obligations, with the resulting legal consequences.

II. THE MAJORITY OF THE PARTICIPANTS REGARD THE GENERAL LAW ON STATE RESPONSIBILITY AS APPLICABLE

5.6 The Dominican Republic notes that the majority of the Participants regard the general law on the secondary rules on State responsibility as governing Question B. Only a small number of Participants have contended that the general law on State responsibility is not applicable to the relevant conduct, because the implementation and compliance mechanisms of international climate change law are exclusively applicable as *lex specialis.*[185]

5.7 On this point, the Dominican Republic notes that international climate change law, also referred to as international climate change law or the international regime on climate change, is not, in fact, a "self-contained regime".[186] As the ILC Study Group on Fragmentation of International Law defined self-contained regimes as "as a subcategory (namely a "strong form") of *lex specialis* within the law of State responsibility" which "appears to cover the case where a special set of secondary rules claims priority over the secondary rules in the general law of State responsibility".[187] Such definition is aligned with the Court's finding in the *United States Diplomatic and Consular Staff in Tehran* case, whereby the Court identified diplomatic law as a self-contained regime by reference to the way it had set up its own "internal" system for reacting to breaches.[188]

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[185] *See* Written Statement of Japan, para. 11; and Written Statement of Saudi Arabia, paras. 1.9-1.10, 1.15.

[186] ILC Fragmentation Report, para. 124.

[187] *Ibid.*

[188] *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran*), Judgement of 24 May 1980, ICJ Reports, p. 3, para. 86 ("The rules of diplomatic law, in short, constitute a self-contained régime which, on the one hand, lays down the receiving State's obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposa1 of the receiving State to counter any such abuse. *These means are, by their nature, entirely efficacious,* for unless the sending State recalls the member of the mission objected to forthwith, the prospect of the almost immediate loss of his privileges and immunities, because of the withdrawal by the receiving State of his recognition as a member of the mission, will in practice compel that person, in his own interest, to depart at once.") (emphasis added).

5.8 However, the implementation and compliance mechanism established by Article 15 of the Paris Agreement—which is by definition "non adversarial and non-punitive"—can hardly be equated with the special and "highly efficacious" secondary rules applying in case of breach of diplomatic law.[189] Nor is it a substitute to the general law on State responsibility, the applicability of which is reflected in Article 14 of the UNFCCC containing the dispute settlement clause "in the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention".[190] Similarly, the Warsaw International Mechanism for Loss and Damage is also distinct from compensation as a form of reparation or redress caused by an internationally wrongful act under the general law of State responsibility. Indeed, the parties to the Paris Agreement expressly decided on its adoption that Article 8 of the Paris Agreement, governing loss and damage, would not involve nor provide a basis for any liability or compensation.[191]

5.9 The application of the general law of State responsibility in determining the legal consequences of the breach of treaty obligations causing significant harm to the climate system is further supported by recent decisions of international and regional tribunals. In its Climate Change Advisory Opinion, ITLOS found that the law of State responsibility would be applicable to the breaches of the obligations under UNCLOS relating to the protection of the marine environment from pollution caused by GHG emissions,[192] while the European Court of Human Rights applied it in the context of human rights violations relating to climate change.[193]

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[189] Paris Agreement, Art. 15(2) ("The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.").

[190] UNFCCC, Art. 14(1) (also applicable to disputes arising from the interpretation or application of the Paris Agreement; *see* Article 24 of the Paris Agreement).

[191] *See, e.g.* U. Natarajan, "Measuring the Immeasurable: Loss and Damage from Climate Change in International Law", in M. Doelle & S. Seck eds., *Research Handbook on Climate Change Law and Loss and Damage* (2021), Chapter 4, pp. 60-74.

[192] ITLOS Climate Change Advisory Opinion, paras. 223, 286.

[193] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, ECtHR (Grand Chamber) Application No. 53600/20, Judgment (9 April 2024), paras. 442-444, available at: VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS v. SWITZERLAND (coe.int)

5.10 The Dominican Republic thus respectfully submits that the Court states and applies the general law on State responsibility to Question B.

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CHAPTER 6

SUBMISSIONS

6.1 On the basis of the foregoing considerations, the Dominican Republic respectfully updates its Submissions and requests that the following elements be taken into consideration by the Court to render its Opinion:

(i) As concluded by the best available science and information, reflected, in particular, in the 2023 Climate Change Synthesis Report (Summary for Policymakers) prepared by the Intergovernmental Panel on Climate Change for its Sixth Assessment Cycle, anthropogenic greenhouse gas emissions have unequivocally caused a dangerous interference in the climate system, defeating the ultimate goal of the international regime on climate change as defined in Article 2 of the United Nations Framework Convention on Climate Change;

(ii) Through their composite and continuous acts (direct emission of greenhouse gases), as well as through their omissions (failure to adopt the necessary legislative and administrative measures to prevent, regulate, supervise and monitor private actors' greenhouse gas emissions from their territory), States have breached and continue to breach, *inter alia*:

a. their international mitigation obligations under Article 4, paragraphs 2 and 9 of the Paris Agreement, whose goal is to ensure that the global average temperature is held well below 2ºC above pre-industrial levels and pursue efforts to limit the temperature increase to 1º.5ºC above preindustrial levels;

b. their customary international obligation to ensure that activities carried out within every State jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction;

c. their international obligations under Article 192 on the United Nations Convention on the Law of the Sea to protect and preserve the marine environment as well as under Article 194 of the same instrument to prevent, reduce and control pollution of the marine environment in the form of anthropogenic GHG emissions;

d. their international obligation under Article 2, paragraph 4 of the UN Charter to respect every State's territorial integrity and fundamental right to survival; and

e. their general duty to promote, respect and preserve the human rights of their populations against the deleterious impacts of climate change, including the right to self-determination, the right to development and the right to a healthy environment.

6.2 The legal consequences arising from States' continued breach of the above-mentioned obligations under the general law on State responsibility include, *inter alia*:

(i) The obligation of all States to put a halt on the actions and omissions that have breached, and continue to breach, the international obligations listed in point (ii) above;

(ii) the obligation of all States to perform such obligations;

(iii) the obligation of all States to cooperate with a view to establish an effective system of reparation directed at States which are particularly vulnerable to the deleterious impacts of climate change, including but not limited to through the Loss and Damage Mechanism established under the international climate change law.

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On behalf of

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