

**INTERNATIONAL COURT OF JUSTICE**

**OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE**

**(REQUEST FOR AN ADVISORY OPINION)**

**WRITTEN COMMENTS OF THE REPUBLIC OF LATVIA**

**14 AUGUST 2024**

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## I. INTRODUCTION

1. Latvia hereby presents its written comments (“Comments”) on the written statements made by others States and organizations (“Written Statements”) in these proceedings before the International Court of Justice (“ICJ” or “the Court”), in accordance with its Order of 30 May 2024. Having carefully examined all of the Written Statements submitted, Latvia will elaborate in the Comments its position in relation to issues raised therein. Latvia’s position is consistent with the Written Statement of the European Union. Latvia also in many respects supports the thrust as well as particular views expressed in the Written Statements of Small Island Developing States (“SIDS”), particularly those of Vanuatu, Marshall Islands, Palau, Tuvalu, the Pacific Islands Forum (“PIF”), and the Commission of Small Island States on Climate Change and International Law (“COSIS”).
2. The Comments also address the advisory opinion of 21 May 2024 delivered by the International Tribunal for the Law of the Sea (“ITLOS” or “the Tribunal”) in *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (“Request by the COSIS”)*.<sup>1</sup> Latvia will explain how this advisory opinion is in line with and further supports the position taken in its earlier Written Statement.
3. The Comments will address in turn issues relating to the jurisdiction and discretion of the Court (Section II), question (a) (Section III), and question (b) (Section IV), concluding with submissions (Section IV).

## II. JURISDICTION AND DISCRETION

4. Latvia maintains that the Court has jurisdiction to render the advisory opinion requested by the General Assembly and that said request is admissible. There are no compelling

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<sup>1</sup> *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) <[https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory\\_Opinion/C31\\_Adv\\_Op\\_21.05.2024\\_orig.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf)>.

reasons for the Court to exercise its discretion not to give the advisory opinion. This view is broadly shared by the participants in the present proceedings.<sup>2</sup>

5. Latvia notes that the Court, in its most recent advisory opinion in *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (“*Occupied Palestinian Territory*”), has confirmed and further clarified certain aspects of its consistent jurisprudence on jurisdiction and the exercise of its discretion in the context of advisory proceedings. Latvia draws on two points from that advisory opinion, which are complementary to Latvia’s views as expressed in its Written Statement.
6. *First*, in response to an argument by some participants in *Occupied Palestinian Territory* that aspects of the questions before the Court had not been “presented in a clear way”<sup>3</sup>, the Court held that “the lack of clarity in the drafting of a question does not deprive the Court of jurisdiction”.<sup>4</sup> Rather, according to the Court, it “will interpret the questions put to it wherever clarification may be necessary”.<sup>5</sup> *Secondly*, the Court observed that it could not decline to give its opinion on the ground that the questions put to it were imbalanced,<sup>6</sup> but

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<sup>2</sup> See Written Statement (“WS”) European Union [23]-[39]; also WS Argentina [12]-[30]; WS Australia [1.23]-[1.37]; WS Brazil [6]-[11]; WS Colombia [1.12]-[1.22]; WS DRC [2]-[35]; WS Egypt [9]-[29]; WS France [4]-[7]; WS Sierra Leone [2.1]-[2.12]; WS Singapore [2.1]-[2.7]; WS Solomon Islands [11]. See also on the long-standing leadership on this effort. WS Palau [11].

References to Written Statements are, throughout, intended to indicate representative views and are not necessarily exhaustive.

<sup>3</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion of 19 July 2024) <<https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>> [29] (citing *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136 [38]).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid [49].

might, “where necessary, determine for itself the scope and the meaning of the questions put to it”.<sup>7</sup>

7. At least one of the participants in the present proceedings has presented similar arguments, suggesting in particular that the questions before the Court are too broad.<sup>8</sup> In Latvia’s view, the legal questions in the present proceedings are clearly formulated, and the Court does not need to reformulate them. Latvia is also of the view that the questions are neither imbalanced nor are they too broad. However, even if the Court were to conclude otherwise, it would not deprive the Court of its jurisdiction, and it could, when interpreting the questions, make any necessary clarifications.<sup>9</sup>

### III. QUESTION (A)

8. Latvia will address question (a) in six parts, dealing in turn with obligations under the UN climate change regime (sub-section A), the UN Convention for the Law of the Sea (“UNCLOS” or “the Convention”) (sub-section B), relevant rules of customary international law and general principles of law (sub-section C), international human rights law (sub-section D), and the UN Charter (sub-section E).

#### A. UN climate change regime

9. As explained in its Written Statement, Latvia considers the UN climate change regime, consisting of the United Nations Framework Convention on Climate Change

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<sup>7</sup> Ibid.

<sup>8</sup> WS Iran [10]-[30].

<sup>9</sup> See similarly WS Mexico [21]-[25]; WS Sierra Leone [2.11].

(“UNFCCC”)<sup>10</sup> and the Paris Agreement,<sup>11</sup> to be the key source of obligations to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases (“GHG”).<sup>12</sup> Latvia observes that the Written Statements of a number of participants in the proceedings do not focus on the UN climate change regime and, instead, address other sources of obligations to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions. Latvia itself has, from the outset,<sup>13</sup> consistently taken the view that the issue of climate change extends beyond the UN climate change regime.<sup>14</sup> The UN climate change regime, however, remains paramount in the global effort to address climate change and the legal rules which underpin it.

10. Latvia will address four points regarding the UN climate change regime: the applicable legal framework under the UN climate change regime (*i*); the temperature goal (*ii*); the existence and content of constraints upon the wide measure of discretion States have under the Paris Agreement (*iii*); and cooperation and assistance obligations under the UN climate change regime (*iv*).

*i. The legal framework: UNFCCC and Paris Agreement*

11. Latvia, in its Written Statement, set out its view that the Paris Agreement had to be interpreted in light of the UNFCCC framework and that its obligations operate against the

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<sup>10</sup> (adopted 9 May 1992, entry into force 21 March 1994) 1771 UNTS 107 (signed by Latvia on 11 June 1992, ratified on 23 March 1995) (“UNFCCC”).

<sup>11</sup> Adopted in Decision 1/CP.21, ‘Adoption of the Paris Agreement’ (adopted 12 December 2015) FCCC/CP/2015/L.9 (29 January 2016), (entry into force 4 November 2016) 3156 UNTS 79 (signed by Latvia on 22 April 2016, ratified on 16 March 2017) (“Paris Agreement”). Both instruments should be read together with the decisions of their conferences of the parties, in the case of the UNFCCC, the Conference of the Parties (“COP”), and, in the case of the Paris Agreement, the Conference of the Parties Serving as the Meeting of the Parties to the Agreement (“CMA”).

<sup>12</sup> WS Latvia [16].

<sup>13</sup> Official Records of the UNGA General Assembly Seventy-seventh session’s 64<sup>th</sup> plenary meeting (Wednesday, 29 March 2023, 10 a.m., New York) UN Doc A/77/PV.64 19 (Pildegovičs).

<sup>14</sup> WS Latvia Section III.B –E. See also below, Sections III.B–E.

background of the UNFCCC.<sup>15</sup> This accords with the views of other participants in these proceedings.<sup>16</sup> The Court should consider both the Paris Agreement, which is the principal source of climate change obligations, and the UNFCCC when determining the obligations of States under the climate change regime.

ii. *The temperature goal*

12. The Paris Agreement's temperature goal aims to hold the "increase in the global average temperature to well below 2°C above pre-industrial levels" and to pursue "efforts to limit the temperature increase to 1.5°C above pre-industrial levels".<sup>17</sup> Subsequent to the conclusion of the Paris Agreement, Parties have committed to "pursue efforts to limit the temperature increase to 1.5°C".<sup>18</sup> Participants in these proceedings have emphasized the importance of the 1.5°C goal.<sup>19</sup> For example, Vanuatu refers to the recognition by the Glasgow Climate Pact at the Conference of the Parties ("COP") 26 that, to achieve the 1.5°C temperature goal, there would need to be "rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century".<sup>20</sup>
13. Latvia agrees with the emphasis on the importance of the 1.5°C temperature goal and the importance of implementing the Parties' resolution to pursue efforts to achieve that goal. In its Written Statement, Latvia highlighted the 1.5°C target goal, and specifically drew

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<sup>15</sup> WS Latvia [17].

<sup>16</sup> See EU [90], [98]-[102]; also WS Germany [42]; WS Grenada [35]; WS Mauritius [94]; WS US [3.1]-[3.3]; WS Vanuatu [424].

<sup>17</sup> Paris Agreement (n 11) art Article 2(a).

<sup>18</sup> See Decision 1/CMA.3, 'Glasgow Climate Pact' (13 November 2021) FCCC/PA/CMA/2021/10/Add.1 [21]. The net zero goal is articulated in the Paris Agreement (n 11) art 4(1), and denotes "a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases".

<sup>19</sup> See WS EU [152]; also WS COSIS [110]-[111]; WS Dominican Republic [4.28]-[4.29]; WS Grenada [26]-[30]; WS Mauritius [101]; WS Seychelles [9]; WS Timor-Leste [98]-[99]; WS Tuvalu [105]-[110]; WS UK [63]; WS US [3.39].

<sup>20</sup> WS Vanuatu [403], generally [401]-[403].

attention to the Outcome of the First Global Stocktake (“Outcome”).<sup>21</sup> The Outcome “*resolves*” to pursue efforts towards 1.5°C and “*emphasizes* the need for urgent action and support to keep the 1.5°C goal within reach”.<sup>22</sup> The Outcome also “*recognizes*” that there must be “deep, rapid and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero carbon dioxide emissions by 2050”, in order to achieve the 1.5°C target.<sup>23</sup> Moreover, in pursuit of efforts to achieve the 1.5°C goal, Parties should act to enhance international cooperation in accordance with the “Roadmap to 1.5°C”.<sup>24</sup>

14. Parties are obliged to design and implement their nationally determined contributions (“NDC”) in light of the Outcome.<sup>25</sup> Consequently, current NDCs must be informed by the need to pursue efforts to make the deep, rapid and sustained reductions in anthropogenic GHG emissions that meaningfully contribute to the timely reductions in global greenhouse gas emissions needed to keep emissions in line with the 1.5°C goal.<sup>26</sup>

*iii. Binding GHG mitigation obligations*

15. Several participants have observed that the mitigation obligation in Article 4, paragraph 2, of the Paris Agreement is an obligation of conduct, not result, which is subject to requirements of due diligence.<sup>27</sup> A number of participants have also submitted that,

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<sup>21</sup> WS Latvia [18] and fn 28.

<sup>22</sup> Decision 1/CMA.5, ‘Outcome of the First Global Stocktake’ (13 December 2023) FCCC/PA/CMA/2023/16/Add.1 [4]-[5] (emphasis in the original).

<sup>23</sup> Ibid [27] (emphasis in the original). Moreover, the Outcome sets out a number of clearly defined ‘global efforts’ for achieving the necessary reductions, to which it “calls on” Parties to contribute. [28], and which should inform nationally determined contributions (“NDC”).

<sup>24</sup> ‘Outcome’ (n 22) [191].

<sup>25</sup> In accordance with Paris Agreement (n 11) arts 4(9), 14(3).

<sup>26</sup> Such efforts should be made in light of national circumstances, the best available science and in a nationally determined manner: ‘Outcome’ (n 22) [39].

<sup>27</sup> See WS EU [135]; also WS AU [132]; WS China [48]; WS New Zealand [61]; WS Portugal [55]; WS Solomon Islands [78]; WS Tonga [147].



notwithstanding the large measure of national discretion accorded to States in designing their NDCs and in designing measures to pursue their NDCs, that discretion is not unlimited.<sup>28</sup> For example, Vanuatu states that State obligations are bounded by “parameters” that provide “regime-specific markers for due diligence”.<sup>29</sup> Latvia agrees, and in its Written Statement made the same point in very similar terms.<sup>30</sup>

16. For several participants, the main limitations on the discretion to determine national contributions involve the temperature goal and objectives of the Paris Agreement<sup>31</sup> and criteria specified in Article 3 and Article 4, paragraphs 1, 3 and 4.<sup>32</sup> In addition, several participants consider that there is a need to take into account the best available scientific evidence<sup>33</sup> and to conform to the requirements of good faith.<sup>34</sup> Vanuatu, for example, states that due diligence involves the following standards: *first*, the requirements of “progression over time” and “highest possible ambition” as parameters that shape “the requisite due diligence of States in relation to addressing climate harms”;<sup>35</sup> *secondly*, the temperature goal and net zero that create a “normative expectation that Parties’ actions will be aligned with these goals”;<sup>36</sup> *thirdly*, an “expectation that Parties’ actions will reflect their common

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<sup>28</sup> See WS EU [135]; also WS Antigua and Barbuda [243]; WS AU [95]; WS France [28]; WS Singapore [3.35]; WS Solomon Islands [79]; WS Switzerland [57]; WS Tonga [156].

<sup>29</sup> WS Vanuatu [411].

<sup>30</sup> Generally WS Latvia [28]-[31].

<sup>31</sup> See WS EU [140]; also WS Bahamas [86]; WS COSIS [113]; WS France [29]; WS Germany [50]; WS Kenya [5.36]; WS New Zealand [61]; WS Portugal [53]; WS Singapore [3.35a]; WS Timor-Leste [118].

<sup>32</sup> See EU [140], [146]-[150]; also WS Antigua and Barbuda [253]-[266]; WS AU [133]; WS China [49]; WS Grenada [33]; WS Kenya [5.37]; WS Korea [20]; WS Marshall Islands [42]; WS Mauritius [107]; WS Seychelles [72]-[77]; WS Solomon Islands [74]-[78]; WS Timor-Leste [118]; WS Tonga [149]-[153]; WS US [3.18].

<sup>33</sup> See WS EU [138]-[139]; also WS Antigua and Barbuda [250]-[252]; WS COSIS [92]; WS Germany [48]; WS Mauritius [105]; WS Solomon Islands [82]; WS St Lucia [54].

<sup>34</sup> See WS AU [96]; WS Belize [56]; WS Colombia [3.21]-[3.22]; WS France [24], [55]; WS Korea [20]; WS Solomon Islands [78]; WS Tuvalu [88].

<sup>35</sup> WS Vanuatu [414]; also *ibid* [410], [411].

<sup>36</sup> *Ibid* [413].

but differentiated responsibilities and respective capabilities, in light of different national circumstances”;<sup>37</sup> *fourthly*, the nature and degree of harm that would be suffered in the absence of diligent action;<sup>38</sup> and, *fifthly*, the requirement of good faith.<sup>39</sup> Latvia generally agrees.

17. As Latvia stated in its Written Statement, in performing their obligations under Article 4, paragraph 2, States must act with due diligence “to ensure that the objectives of the Paris Agreement are met”, and that the standards of diligence are “informed by the ‘highest possible ambition’, progression over time and differentiation, as noted in Article 4, paragraphs 3 and 4”.<sup>40</sup> To this Latvia would add the need to act “in accordance with best available science”, noted in Article 4, paragraph 1, of the Paris Agreement. The application of these elements as regime-based parameters for due diligence derives support from the effective interpretation of Article 4, as well as from the Court’s approach to standards that, though “not being formally binding, are, to the extent relevant, to be taken into account”.<sup>41</sup>
18. Latvia also considers that good faith, together with the temperature goal, condition the performance of the obligations in Article 4, paragraph 2, to ensure that the Agreement’s objectives are properly pursued.<sup>42</sup> The Court has stated that “[t]he principle of good faith obliges the Parties to apply [the Treaty] in a reasonable way and in such a manner that its purpose can be realized”.<sup>43</sup> In relation to the performance of discretionary powers under a

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<sup>37</sup> Ibid [415].

<sup>38</sup> Ibid [416].

<sup>39</sup> Ibid [417].

<sup>40</sup> WS Latvia WS [30]. In addition to these “parameters”, Latvia also highlighted the existence of other procedural obligations, notably under Paris Agreement (n 11) arts 4(8), (9), (15), 14(3), see WS Latvia [31].

<sup>41</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (Judgment) [2010] ICJ Rep 14 [62].

<sup>42</sup> WS Latvia [29].

<sup>43</sup> *Gabčíkovo-Nagyymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep 7 [142].

treaty, such powers “must be exercised reasonably and in good faith”,<sup>44</sup> and in line with factors set out in the treaty.<sup>45</sup> Such factors include objectives expressly contained within the relevant treaty, “in the light of which the other Treaty provisions are to be interpreted and applied”.<sup>46</sup> Where there is a duty, under a treaty, to act for a particular purpose, the duty of good faith performance requires that measures undertaken in reliance on the treaty should pursue that purpose,<sup>47</sup> and that both the design and implementation of any measures taken in pursuit of that purpose should be reasonable in relation to achieving their stated objectives.<sup>48</sup>

19. The temperature goal in Article 2, read in line with subsequent decisions of the Conference of the Parties serving as the meeting of the Parties (“CMA”), constitutes one of the three express objectives of the Paris Agreement. As stated in Article 3, the general purpose of “nationally determined contributions”, under all parts of the Paris Agreement, expressly including Article 4, is to achieve the temperature goal.<sup>49</sup> Moreover, according to Article 4, paragraph 1, the objective of climate change mitigation measures is “[i]n order to achieve the long-term temperature goal set out in Article 2”. The design and implementation of NDCs, understood in accordance with the ordinary meaning of the terms, in their context within Article 4 and the immediately preceding Articles 2 and 3, and in light of the Paris

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<sup>44</sup> *Immunities and Criminal Proceedings (Equatorial Guinea v. France)* (Judgment) [2020] ICJ Rep 300 [73].

<sup>45</sup> *Rights of Nationals of the United States of America in Morocco (France v. United States of America)* (Judgment) [1952] ICJ Rep 176, 212.

<sup>46</sup> *Oil Platforms (Islamic Republic of Iran v. United States of America)* (Preliminary Objections) [1996] ICJ Rep 803 [28].

<sup>47</sup> *Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening)* (Judgment) [2014] ICJ Rep 226 [68].

<sup>48</sup> *Ibid* [67]. See also *ibid* Separate Opinion of Judge Xue 420 [9].

<sup>49</sup> Paris Agreement (n 11) art 3: “At nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.” (Emphasis added)

Agreement's object and purpose, must be for the purpose of achieving the temperature goal.

20. In Latvia's view, this entails that, although there is a wide discretion for States to determine the content of their NDCs, under Article 4, paragraph 2, the NDC must be genuinely for the purpose of, and bear a reasonable relation to the objectives of, achieving the temperature goal. Moreover, good faith performance of the obligation to "pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions" requires that domestic mitigation measures are for the purpose of achieving such contributions and bear a reasonable relation to the Party's stated objectives.

*iv. Other obligations in the Paris Agreement*

21. Many participants highlight the existence of several other kinds of obligations under the Paris Agreement, notably adaptation obligations, financing obligations, technology transfer obligations, and transparency obligations.<sup>50</sup> Latvia, likewise, highlighted the importance of these obligations in its Written Statement.<sup>51</sup>

22. Some participants place particular emphasis upon the duties upon Parties to cooperate and, in particular, the duties to assist developing countries in achieving mitigation and adaptation efforts.<sup>52</sup> Latvia agrees that developed country Parties must provide assistance, including financial assistance to developing country Parties, especially those Parties that are most vulnerable to the adverse effects of climate change. Such obligations include the duty under Article 4, paragraph 4, of the UNFCCC, incumbent upon developed country Parties and other Parties included in Annex II to assist developing country Parties, especially those most vulnerable to the adverse effects of climate change, with meeting the costs of adaptation to those adverse effects. They also include the obligation of developed

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<sup>50</sup> See WS Australia [2.24]-[2.41]; WS Mauritius [108]-[117]; WS New Zealand [62]-[75]; WS US [3.13], [3.20].

<sup>51</sup> WS Latvia [33]-[37].

<sup>52</sup> See WS Australia [2.23]; WS COSIS [127]; WS Marshall Islands [33]-[38]; WS Mauritius [120]; WS Vanuatu [424]-[427]; WS US [3.13].

country Parties assist developing country Parties with their mitigation efforts, established both in Article 4, paragraph 3, of the UNFCCC, and Article 4, paragraph 5, and Article 9, paragraph 1, of the Paris Agreement. Ongoing cooperation, assistance, and support under the UN climate change regime occurs through existing mechanisms as well as negotiation of new mechanisms and contributions at COP and CMA. The central importance of international cooperation to an effective global response to climate change has been recently reaffirmed in the Outcome of the first global stocktake.<sup>53</sup>

## **B. UN Convention on the Law of the Sea**

23. Latvia maintains its views on the interpretation of UNCLOS expressed in its Written Statement.<sup>54</sup> Latvia notes that many of its views are consistent with other participants in the present proceedings and, more fundamentally, are reflected in the recent advisory opinion delivered by ITLOS in *Request by the COSIS*.<sup>55</sup> Latvia considers that this advisory opinion is a well-reasoned unanimous judicial decision rendered by a specialised international tribunal, which the Court should take into account when replying to question (a).
24. Latvia will address what it considers to be the most important findings made by ITLOS for the purposes of the Court's reply to question (a). These include two findings of a general nature relating to the scope of application of the Convention and its relationship with external rules, and five findings on the specific content and scope of Articles 192 and 194

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<sup>53</sup> 'Outcome' (n 22): see preambular paras 4, 6; on mitigation [22], [31], [34]; on adaptation [48]-[49], [52]-[54], and [64]; on finance [67]-[100]; on technology transfer [102]-[103] and [106]-[108]; on capacity-building [115], [117] and [120]; on loss and damage [121]-[135]; and generally [153]-[163]. For other instances highlighting the importance of cooperation and performance of cooperative obligations, see, on adaptation, Decision 2/CMA.5, 'Global Goal on Adaptation' (13 December 2023) FCCC/PA/CMA/2023/16/Add.1 [18]-[19], [29], and [32]-[34]. On 'just transition', see Decision 3/CMA.5, 'United Arab Emirates just transition work programme' (13 December 2023) FCCC/PA/CMA/2023/16/Add.1 [2g]. On loss and damage funding, see Decision 5/CMA.5, 'Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2-3 of decisions 2/CP.27 and 2/CMA.4' (13 December 2023) FCCC/PA/CMA/2023/16/Add.1, preambular para 5, and [12]-[13].

<sup>54</sup> WS Latvia [39]-[50].

<sup>55</sup> *Request by the COSIS* (n 1).

of the Convention as well as other provisions in Part XII of UNCLOS. Before turning to those findings, however, Latvia wishes to highlight the Tribunal's detailed and compelling account of the science that explains the phenomenon of climate change and its deleterious effects with a particular focus on the marine environment.<sup>56</sup> In Latvia's view, this account is a useful description of the context within which the legal questions before the Court have been posed (insofar as they concern the law of the sea), and within which they are to be answered.

*i. General aspects of UNCLOS and climate change*

25. ITLOS has made two important general findings relating to the scope of the Convention and its relationship with external rules. Latvia considers that these findings are correct and has consistently advocated a similar position, both before the Tribunal and before the Court in the present proceedings.<sup>57</sup>

26. *First*, ITLOS found that the anthropogenic GHG emissions into the atmosphere fall within the definition of "pollution of the marine environment" under Article 1, paragraph 1, subparagraph 4, of UNCLOS.<sup>58</sup> ITLOS highlighted that the definition contained in that provision "does not provide a list of pollutants or forms of pollution of the marine environment".<sup>59</sup> The Tribunal found that the anthropogenic GHG emissions met all the three requirements for an activity to be regarded as "pollution of the marine environment", namely that: (1) there must be a substance or energy; (2) this substance or energy must be

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<sup>56</sup> Ibid [46-66].

<sup>57</sup> WS Latvia [39], [44]; see also *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Oral Proceedings, ITLOS/PV.23/C31/9 (15 September 2023) <[https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral\\_proceedings/verbatim\\_records\\_rev/ITLOS\\_PV23\\_C31\\_9\\_Rev.1\\_E.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/verbatim_records_rev/ITLOS_PV23_C31_9_Rev.1_E.pdf)> 12 (Paparinskis).

<sup>58</sup> *Request by the COSIS* (n 1) [159]-[179].

<sup>59</sup> Ibid [161].

introduced by humans, directly or indirectly, into the marine environment, and (3) such introduction must result or be likely to result in deleterious effects.<sup>60</sup>

27. *Secondly*, the Tribunal clarified the relationship that existed between the Convention and rules external to it, including the obligations that States have undertaken in respect of climate change under the UNFCCC or the Paris Agreement.<sup>61</sup> The Tribunal held 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”.<sup>62</sup> In the context of climate change and its deleterious effect upon the marine environment specifically, that coordination and harmonization between the Convention and external rules is possible through: (i) the so-called rules of reference in Part XII of the Convention; (ii) Article 237 of the Convention which “reflects the need for consistency and mutual supportiveness between the applicable rules”; and (iii) Article 31, paragraph 3(c), of the Vienna Convention on the Law of Treaties, which reflects customary international law and dictates that account be taken, together with the context, of any relevant rules of international law applicable in the relations between the parties.<sup>63</sup> In the Tribunal’s view, “the provisions of the Convention and external rules should, to the extent possible, be interpreted consistently”.<sup>64</sup>

*ii. Specific provisions of UNCLOS*

28. In *Request by the COSIS*, ITLOS also made important findings in respect of the specific content and scope of obligations that States Parties have engaged in respect of pollution caused by the anthropogenic GHG emissions.<sup>65</sup> In Latvia’s view, *five* of those findings are

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<sup>60</sup> Ibid [161]-[178].

<sup>61</sup> Ibid [67]-[82].

<sup>62</sup> Ibid [130].

<sup>63</sup> Ibid [131]-[135].

<sup>64</sup> Ibid [136].

<sup>65</sup> Ibid [441].

particularly important because of what they add to the prior understanding of those provisions, based principally on the decisions of international courts and tribunals.

29. *First*, concerning the scope of substantive protection of the marine environment under the Convention, the Tribunal clarified that while “the obligation to protect and preserve the marine environment [in Article 192] 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”.<sup>66</sup> According to the Tribunal, many other provisions of Part XII “are directly or indirectly concerned with the prevention, reduction and control of pollution of the marine environment” and “are structured in such a way as to provide...the regime for regulating marine pollution”.<sup>67</sup> In particular, while the obligations found in Article 194 of the Convention are complemented by other provisions in Sections 5 and 6 of Part XII, which focus on the specific sources of marine pollution,<sup>68</sup> the obligations set out in Article 194 apply “to any kind of pollution”.<sup>69</sup>

30. *Secondly*, in addressing the obligation of States Parties to take all necessary measures to prevent, reduce and control marine pollution from the anthropogenic GHG emissions under Article 194, paragraph 1, of the Convention, the Tribunal made important findings regarding the nature of that obligation, the measures required of States Parties to discharge it, and the modalities for its implementation. The Tribunal highlighted that the obligation in question is one of due diligence, since “what is required under this provision is not to guarantee the prevention, reduction and control of marine pollution at all times but to make their best efforts to achieve such result”.<sup>70</sup> While the standard of due diligence may vary with the passage of time and the nature of the risk involved, the Tribunal stated that “[t]he

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<sup>66</sup> Ibid [188].

<sup>67</sup> Ibid [189].

<sup>68</sup> Ibid [190].

<sup>69</sup> Ibid [197].

<sup>70</sup> Ibid [233].



notion of risk in this regard should be appreciated in terms of both the probability or foreseeability of the occurrence of harm and its severity or magnitude”.<sup>71</sup> Importantly, the Tribunal concluded that the standard of due diligence is “stringent, given the high risks of serious and irreversible harm to the marine environment from” the anthropogenic GHG emissions.<sup>72</sup> The measures expected from States Parties “should be determined objectively, taking into account, *inter alia*, the best available science and relevant international rules and standards”.<sup>73</sup> By contrast, the “implementation of the obligation of due diligence may vary according to States’ capabilities and available resources”<sup>74</sup>, which is consistent with the position advocated by Latvia both before the Tribunal and the Court.<sup>75</sup>

31. *Thirdly*, concerning the obligation set out in Article 194, paragraph 2, of the Convention, the Tribunal noted that it arises in respect of “transboundary pollution”<sup>76</sup> and “bears a close resemblance to the well-established principle of harm prevention”<sup>77</sup>. The obligation in Article 194, paragraph 2, of the Convention, has two limbs. On the one hand, States Parties have to ensure that “activities under their jurisdiction or control do not cause damage by pollution to other States and their environment”.<sup>78</sup> On the other hand, they have to ensure that “pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights”.<sup>79</sup> Importantly, the Tribunal found that the second limb covers both “actual and potential deleterious effects

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<sup>71</sup> Ibid [239].

<sup>72</sup> Ibid [243]. See also [240]-[241].

<sup>73</sup> Ibid [243].

<sup>74</sup> Ibid [243]. See also [232]-[242].

<sup>75</sup> WS Latvia [47].

<sup>76</sup> *Request by the COSIS* (n 1) [244].

<sup>77</sup> Ibid [246].

<sup>78</sup> Ibid [245].

<sup>79</sup> Ibid [245].

on the marine environment” as a result of climate change.<sup>80</sup> In the case of Article 194, paragraph 1, this is “an obligation of due diligence, and its implementation may vary in relation to several factors, including the capabilities of each State”.<sup>81</sup> The Tribunal further noted that, “given the diffused and cumulative causes and global effects of climate change, it would be difficult to specify how the anthropogenic GHG emissions from activities under the jurisdiction or control of one State cause damage to other States”.<sup>82</sup> However, according to the Tribunal, “this difficulty has more to do with establishing the causation between such emissions of one State and damage caused to other States and their environment”, which is different from the question of the applicability of an obligation under Article 194, paragraph 2, to marine pollution from the anthropogenic GHG emissions.<sup>83</sup>

32. *Fourthly*, the Tribunal held that the obligation contained in Article 192 of the Convention “has a broad scope, encompassing any type of harm or threat to the marine environment”.<sup>84</sup> Importantly, the general obligation in Article 192 “applies to all maritime areas and can be invoked to combat any form of degradation of the marine environment, including climate change impacts, such as ocean warming and sea level rise, and ocean acidification”.<sup>85</sup> In particular, the Tribunal emphasized that, “[w]here the marine environment has been degraded, this may require restoring marine habitats and ecosystems”.<sup>86</sup>
33. *Fifthly*, the Tribunal held that “the duty to cooperate is an integral part of the general obligations under articles 194 and 192 of the Convention given that the global effects of

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<sup>80</sup> Ibid [248].

<sup>81</sup> Ibid [249].

<sup>82</sup> Ibid [252].

<sup>83</sup> Ibid [252].

<sup>84</sup> Ibid [385].

<sup>85</sup> Ibid [400].

<sup>86</sup> Ibid [400].

these emissions necessarily require States' collective action".<sup>87</sup> This is consistent with the position that Latvia has taken before the Tribunal and the Court, singling out the obligation contained in Article 197 of the Convention as a means for implementing the general obligations under Articles 192 and 194. The Tribunal further noted that "[t]he obligation of cooperation in article 197 of the Convention is of a continuing nature".<sup>88</sup> Importantly, it added that "[t]he adoption of a particular treaty, such as the UNFCCC or the Paris Agreement, does not discharge a State from its obligation to cooperate, as the obligation requires an ongoing effort on the part of the States in the development of new or revised regulatory instruments, in particular in light of the evolution of scientific knowledge".<sup>89</sup>

34. In sum, Latvia submits that the Court should consider the above findings of ITLOS when addressing the obligations of States Parties under the Convention. It is important to do so in the interest of ensuring a consistent interpretation of the Convention, read in harmony with the obligations that States have engaged under other legal instruments such as the UNFCCC and the Paris Agreement.

**C. The duty of due diligence and the principle of prevention of significant harm to the environment**

35. Latvia maintains the views it expressed in its Written Statement on the relevance of customary international law to question (a) and, specifically, the duty of due diligence and the principle of prevention of significant harm to the environment.<sup>90</sup> Latvia notes that its position on this issue is broadly consistent with the views held by other participants.<sup>91</sup> Latvia takes this opportunity to complement its Written Statement on the scope of

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<sup>87</sup> Ibid [299].

<sup>88</sup> Ibid [311].

<sup>89</sup> Ibid.

<sup>90</sup> WS Latvia [51]-[61].

<sup>91</sup> See WS Belize [35]-[63]; WS Marshall Islands [22]-[24], [70]-[73]; WS Mauritius [189]-[207]; WS Nauru [26]-[33]; WS Samoa [87]-[139]; WS Seychelles [100]-[133].

application and the content of the duty of due diligence and the principle of prevention of significant harm to the environment with two points.

36. *First*, Latvia considers that, in fulfilling their duty of due diligence and the obligation to prevent significant harm to the environment, States have to abide by the “precautionary approach”.<sup>92</sup> The precautionary approach is expressly set out in a number of legal instruments, including Article 3 of the UNFCCC, but may be considered as reflecting customary international law and informing the general obligations of due diligence and the obligation not to cause significant harm to the environment.<sup>93</sup> Its application is all the more relevant given the serious and irreversible damage to the environment caused by the anthropogenic GHG emissions. Thus, even where there is uncertainty as to the precise nature or scope of the risk that a particular activity or project poses to the environment, States shall act “with prudence and caution”<sup>94</sup> to prevent the harm from occurring. In the same vein, Latvia agrees with *Request by the COSIS* that States should also take the best available science together with other indicators in determining the most appropriate measures to prevent environmental harm caused by the anthropogenic GHG emissions.<sup>95</sup>
37. *Secondly*, the substantive obligations under customary international law not to allow the use of their territory so as to cause significant harm to the environment “are accompanied and complemented by narrower and more specific procedural obligations”, including the

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<sup>92</sup> See *Responsibilities and obligations of States with respect to activities in the Area* (Advisory Opinion) [2011] ITLOS Rep 10 [131] (observing that the precautionary approach is applicable “even outside the scope of the Regulations” governing activities in the Area) and [135] (noting the development of the precautionary approach as a principle of customary international law). See also *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)* (Provisional Measures) (Order of 27 August 1999) [1999] ITLOS Rep 280 [77]-[80]; *MOX Plant (Ireland v. United Kingdom)* (Provisional Measures) (Order of 3 December 2001) [2001] ITLOS Rep 95 [71]; *Land Reclamation in and Around the Straits of Johor (Malaysia v. Singapore)* (Provisional Measures) (Order of 8 October 2003) [2003] ITLOS Rep 10 [74]. See also *WS Marshall Islands* [25]-[27].

<sup>93</sup> *Area* ibid [135]; *Request by the COSIS* (n 1) [242].

<sup>94</sup> *Southern Bluefin Tuna Cases* (n 92) [77].

<sup>95</sup> *Request by the COSIS* (n 1) [212]-[213]; see also *WS COSIS* [84]; *WS Mauritius* [200]-[201]; *WS Micronesia* [63]-[64]; *WS Saint Vincent and Grenadines* [103]-[106].

duties to notify, to cooperate and to consult.<sup>96</sup> According to the Court, these are an “important complement” to the substantive obligations of States in a transboundary context, including when the proposed activity or project concerns a shared resource.<sup>97</sup> Moreover, States have a duty to carry out an environmental impact assessment (“EIA”) where there is a risk that the proposed activity or project may have “a significant adverse impact in a transboundary context”, in particular, on a shared resource.<sup>98</sup> While the specific content and scope of these procedural obligations may differ under certain conventional regimes and under customary international law, they are all triggered by the existence of a risk of significant harm to the environment.<sup>99</sup> Latvia agrees with the arbitral tribunal in the *Chagos Marine Protected Area Arbitration* that these procedural obligations, including the requirement to conduct an EIA, “may, indeed, be of equal or even greater importance than the substantive standards existing in international law”.<sup>100</sup> Latvia also agrees with ITLOS that “[c]ompliance with these procedural obligations is a relevant factor in meeting the general obligations under articles 194 and 192 of the Convention [UNCLOS]”.<sup>101</sup> In Latvia’s view, the same rationale applies to the relevant obligations under customary international law. At the same time, even if a State may have complied with the procedural obligations in any given circumstances, it does not automatically follow that it has thereby discharged its substantive obligations of due diligence and prevention of significant harm to the environment under customary international law.

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<sup>96</sup> *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)* (Judgment) [2022] ICJ Rep 614 [100]-[101].

<sup>97</sup> *Ibid* [101].

<sup>98</sup> *Pulp Mills* (n 41) [204]; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (Judgment) [2015] ICJ Rep 665 [104].

<sup>99</sup> *Silala* (n 96) [115]-[118].

<sup>100</sup> *Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland* (Award of 18 March 2015) 31 RIAA 359 [322].

<sup>101</sup> *Request by the COSIS* (n 1) [345].

#### D. International law of human rights

38. Latvia reiterates its view in its Written Statement that climate change and human rights norms are interwoven and that measures to combat climate change must involve a ‘human rights-integrated approach’.<sup>102</sup> Latvia also maintains its position that human rights obligations are relevant to climate change in three distinct ways:<sup>103</sup> *first*, measures to tackle climate change must not infringe upon human rights; *secondly*, environmental procedural human rights, such as rights to information, public participation etc, must be ensured as part of the approach taken to combat climate change; and, *thirdly*, State action to combat climate change may be necessary to secure the enjoyment of human rights. In Latvia’s view, the Court should, in providing a complete answer to question (a), address all three ways in which human rights obligations are relevant for climate change.
39. A number of participants address the first<sup>104</sup> and second issues,<sup>105</sup> and no participant appears to disagree with Latvia’s position on either of them. The majority of Written Statements to address human rights concentrate on the third issue, namely whether climate change action is required under international human rights law.<sup>106</sup> In light of this focus, Latvia will also elaborate its position on the third issue. To that end, Latvia will in turn consider the relevance of human rights obligations to climate change (*i*), examine the general approach to be taken to the test for breach (*ii*), and consider how human rights and climate change norms can be integrated in light of the continuities and discontinuities between the two regimes (*iii*).

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<sup>102</sup> WS Latvia [62].

<sup>103</sup> Ibid [65]-[67].

<sup>104</sup> See WS Australia [3.59]; WS Canada [26]; WS Portugal [78]; WS Timor-Leste [314]-[315]; WS Tonga [241]; WS UK [129]; WS US [4.40].

<sup>105</sup> See WS Canada [26]; WS Marshall Islands [92]; WS Netherlands [3.36]-[3.44]; WS Philippines [106f]; WS Portugal [78], [84]. See also *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* (application no 53600/20) Grand Chamber Judgment of 9 April 2024 [538]-[539].

<sup>106</sup> See Section III.D.i-ii.

*i. Relationship between human rights obligations and climate change*

40. Latvia agrees with the view taken by many participants that the impacts of climate change are capable of affecting the enjoyment of human rights.<sup>107</sup> As Latvia noted in its Written Statement, “the protection of the climate system is important for the effective enjoyment of rights protected under international human rights law”.<sup>108</sup>
41. Many, though not all, States, argue that States may be under obligations, arising from international human rights law, to take measures to tackle climate change in order to secure the enjoyment of human rights.<sup>109</sup> Many States further identify rights that are susceptible to impairment from climate change and may thus impose climate change obligations upon States to secure their enjoyment. Rights thus mentioned include right to life,<sup>110</sup> right to a private and family life,<sup>111</sup> right to food,<sup>112</sup> right to water,<sup>113</sup> right to participate in the cultural

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<sup>107</sup> See WS Albania [95]; WS Antigua and Barbuda [190]-[196]; WS Australia [3.61]; WS Canada [25]; WS Denmark, Finland, Iceland, Norway, and Sweden [78]; WS Dominican Republic [4.33]; WS Germany [84]; WS Kenya section V; WS Marshall Islands [86]-[90]; WS Mauritius [156]; WS Micronesia [80]; WS Philippines [106f]; WS Portugal [73]; WS Seychelles [145]; WS Sierra Leone [3.53]ff; WS Solomon Islands [169]; WS Switzerland [59]ff; WS Timor-Leste [298]; WS Tonga [245]; WS Tuvalu [98]; WS Vanuatu [342].

<sup>108</sup> WS Latvia [67].

<sup>109</sup> See WS EU [231]; also WS Albania [95]; WS Antigua and Barbuda [190]-[196]; WS AU [190]; WS Australia [3.61]; WS Canada [25]; WS COSIS [132]; WS Denmark, Finland, Iceland, Norway, and Sweden [78]; WS Dominican Republic [4.43]; WS Germany [84]; WS Kenya Section V; WS Mauritius [156]; WS Micronesia [80]; WS Philippines [106f]; WS Portugal [73]-[78]; WS Seychelles [145]; WS Sierra Leone [3.53]-[3.61]; WS Solomon Islands [193]; WS Switzerland [60]; WS Timor-Leste [298]; WS Tonga [245]-[281]; WS Tuvalu [98]-[99]; WS UK [125]-[127]; WS Vanuatu [342].

<sup>110</sup> See WS Australia [3.61]; WS Canada [25]; WS COSIS [132]; WS Kenya [5.54]; WS Marshall Islands [86]; WS Mauritius [156]; WS Micronesia [80]; WS Portugal [74]; WS Seychelles [145]; WS Solomon Islands [165]; WS Timor-Leste [298]; WS Tonga [245].

<sup>111</sup> See WS Australia [3.61]; WS COSIS [132]; WS Kenya [5.78]; WS Seychelles [145]; WS Solomon Islands [180].

<sup>112</sup> See WS Australia [3.61]; WS Canada [25]; WS COSIS [132]; WS Kenya [5.62]; WS Mauritius [156]; WS Micronesia [80]; WS Portugal [75]; WS Seychelles [145]; WS Timor-Leste [298].

<sup>113</sup> See WS Australia [3.61]; WS Canada [25]; WS COSIS [132]; WS Kenya [5.58]; WS Micronesia [80]; WS Portugal [75]; WS Seychelles [145]; WS Timor-Leste [298].

life of the community,<sup>114</sup> right to housing,<sup>115</sup> and right to an adequate standard of living.<sup>116</sup> While Latvia in its Written Statement did not focus on particular rights, it did suggest that the rights which the Court should examine be those enshrined in the instruments specified in the question.<sup>117</sup> Latvia agrees that States may be under obligations, arising from international human rights law, to take measures to tackle climate change.<sup>118</sup> Latvia also agrees with those States that argue that the impacts of climate change are capable, as a matter of principle, of impairing the enjoyment of many of the rights contained within the specified instruments.<sup>119</sup>

42. Latvia draws the Court's attention to the submissions of participants that highlight the uneven impacts of climate change on the enjoyment of human rights. In Latvia's view, the Court should acknowledge the differential impacts of climate change upon the rights of, *first*, individuals within SIDS (in particular, the effects of sea-level rise upon rights to self-determination and subsistence, as well as the enjoyment of various other rights, which are affected by the threats to the continued existence of the territories of the States affected);<sup>120</sup> *secondly*, individuals within Least Developed Countries and Developing Countries, (especially due to unequal geographical impacts of climate change);<sup>121</sup> and, *thirdly*,

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<sup>114</sup> See WS Kenya [5.69]; WS Micronesia [80]; WS Seychelles [145].

<sup>115</sup> See WS Australia [3.61]; WS Canada [25]; WS COSTS [132]; WS Portugal [75]; WS Seychelles [145]; WS Timor-Leste [298].

<sup>116</sup> See WS Micronesia [80]; WS Kenya [5.76]; WS Portugal [75]; WS Seychelles [145].

<sup>117</sup> WS Latvia [68].

<sup>118</sup> WS Latvia [67]-[71]. See also Section III.D.ii.

<sup>119</sup> See WS Portugal [73] ("a broad range of rights"); WS Tonga [245] ("a wide range of rights"); WS Tuvalu [98] ("manifold human rights protected under international international law"); WS Vanuatu [342] ("all", "many, if not all").

<sup>120</sup> See WS Palau [8.b] ("If the high-end sea-level rise scenarios (2.0m-2.5m) come to pass, large portions of several Palauan states will be underwater by 2100"); also WS Marshall Islands [50], [96]-[102]; WS Portugal [89]ff; WS Tuvalu [25]-[53], [104]; WS Vanuatu [45]-[46].

<sup>121</sup> See WS AU [196a, c]; WS Kenya [5.52]; WS Sierra Leone [3.53].



vulnerable persons, including the elderly, persons with disabilities, indigenous peoples, and children.<sup>122</sup>

ii. *Compliance with human rights obligations in the context of climate change*

43. Many States have observed that the connections between the impacts of climate change and the impairment of the enjoyment of individual rights raise complex legal and factual issues of causation, limits to the scope of application, responsibility and identification of the particular harm, given the diffuse, long-term, and global nature of climate change in both its causes and its effects.<sup>123</sup> Moreover, as COSIS has noted, the content of States' human rights obligations depends upon the right and instrument in question.<sup>124</sup> Latvia confines its observations to two general points.

44. The *first* point concerns the threshold at which the effects of climate change engage obligations on the part of States under the specific human rights instruments to protect individuals from such effects. The general view is that not every risk of impairment of the enjoyment of a human right as a result of the effects of climate change implicates an obligation on the part of a State. Many States contend, in broadly similar terms, that it must be shown that there is a reasonably foreseeable risk of serious harm to an individual's rights resulting from the effects of climate change.<sup>125</sup> Latvia agrees and has made the same point in its Written Statement.<sup>126</sup>

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<sup>122</sup> See WS Denmark, Finland, Iceland, Norway, and Sweden [78]; WS DRC [159]; WS Micronesia [80]; WS Portugal [78]; WS Solomon Islands [193]; WS Tonga [281].

<sup>123</sup> See WS Antigua and Barbuda [355]; WS China [123]-[125]; WS Colombia [3.72]; WS Denmark, Finland, Iceland, Norway, and Sweden [84]; WS Germany [96]-[97]; WS Marshall Islands [59]-[68]; WS UK [127.3]; WS Vanuatu [3.34]-[3.36].

<sup>124</sup> See WS COSIS [134]; similarly WS Tuvalu [101]. Cf. WS Latvia [68].

<sup>125</sup> See WS EU [2.70]; also WS Albania [96a]; WS DRC [155]; Denmark, Finland, Iceland, Norway, and Sweden [86]; WS Netherlands [3.30]; WS Philippines [106e]; WS Solomon Islands [168]; WS Tonga [248]; WS UK [127.1]; WS Vanuatu [346].

<sup>126</sup> WS Latvia [69].

45. The Human Rights Committee in *Billy v. Australia* required that the degradation of the environment may constitute foreseeable and serious violations of human rights where there are or will be both “direct repercussions on the right” and “the adverse consequences of those impacts are serious because of their intensity or duration and the physical or mental harm that they cause”.<sup>127</sup> In Latvia’s view, before the impacts of climate change are capable of impairing an individual’s human rights, and thus of engaging a State’s human rights obligations, the impacts on their rights must be foreseeable and serious. This requires there to be, or likely to be, a direct, adverse effect on the individual’s right; the seriousness of these adverse effects is determined according to their intensity and duration.
46. The *second* point concerns the broad content of human rights obligations in respect of the effects of climate change. Where States examine the content of these obligations, many appear to take the view that, when the scope of particular instruments is engaged, States are under positive obligations, and that such positive obligations are not absolute but instead require due diligence.<sup>128</sup> Latvia agrees.
47. In Latvia’s view, it is helpful to distinguish two different kinds of positive obligations arising from human rights instruments. The first set of obligations are general obligations to put in place an appropriate legislative and administrative framework, and a number of measures, to tackle climate change. The second set of obligations that States may have in respect of climate change arising from human rights norms are obligations to have due regard to the need to take specific measures to protect the rights of particular individuals or groups.
48. In relation to the first set of general obligations, some State observe that there are positive obligations, under international human rights law, for States to have in place an appropriate

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<sup>127</sup> *Billy and others v. Australia* (21 July 2022) CCPR/C/135/D/6324/2019 [8.12]. See also *Verein* (n 105) [513], [514].

<sup>128</sup> See WS EU [2.64], [2.69]; also WS WS DRC [155]; WS Mauritius [172]; WS Netherlands [3.30]; WS Portugal [85]; WS Singapore [3.82]; WS Tonga [248]; WS UK [127]; WS Vanuatu [3.39].

regulatory framework.<sup>129</sup> In Latvia's view, this requires a regulatory framework that seeks to address the specific challenges of climate change in a way that pursues the global temperature goal. The objective of such a framework in the human rights context is to ensure that States take reasonable measures within their power to protect against the impairment of legally protected rights. This requires States to act with due diligence, in adopting timely policies devised on the basis of the best available scientific evidence that are capable of reducing their anthropogenic GHG emissions in a manner that is reasonably related to the overall goal of global emissions peaking and reduction.<sup>130</sup> In addition, States must act with due diligence in implementing the framework. In assessing the adequacy of the framework and measures adopted, it is important to take into account obligations under the UNFCCC and Paris Agreement, as well as the relevant decisions of the COP and CMA.<sup>131</sup>

49. The second set of obligations are obligations to have due regard to the need to take specific measures to protect the rights of particular individuals or groups. The existence of a serious threat to the enjoyment of a specific right by certain individuals may entail that States are under an obligation to have due regard to the situation of those individuals in formulating climate adaptation policies. This was the case in *Billy v. Australia*.<sup>132</sup> In Latvia's view, States should, when engaging in the planning and implementation of domestic measures to tackle climate change, have appropriate regard to the human rights impacts of climate change on individuals and groups falling within the scope of application of the relevant instruments.

50. In summary, Latvia considers that States may be under obligations arising from international human rights law to provide effective protection against foreseeable and

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<sup>129</sup> See WS EU [2.68], [2.72]; also WS Netherlands [3.35]; WS Portugal [85]; WS Tonga [248]; WS Vanuatu [3.39].

<sup>130</sup> See WS EU [2.69], [2.72]; also WS Antigua and Barbuda [358]. See also *Verein* (n 105) [550].

<sup>131</sup> See WS Colombia [3.70]-[3.71]; WS Germany [86]; WS New Zealand [119]-[122]; WS Singapore [3.87]; WS Solomon Islands [169]. For similar views see *Verein* (n 105) [546].

<sup>132</sup> *Billy*; (n 127) [8.3], [8.9], [8.12]. See also *Verein* (n 105) [552].

serious adverse impacts of climate change. These obligations comprise both general obligations to implement appropriate regulatory measures to protect against the adverse impacts of climate change, and special obligations, in certain cases, to take or consider taking specific measures to protect particular individuals or groups.

*iii. Integration of human rights and climate change obligations*

51. Latvia, in its Written Statement, argued in favour of a human rights-integrated approach to tackling climate change, while identifying principled parameters for the manner of integration.<sup>133</sup> Latvia notes that there is disagreement among the positions taken by other participants over the extent to which the fields of human rights law and climate change law can or should be integrated.<sup>134</sup> In the following paragraphs, Latvia will elaborate its position by making three points: *first*, as a general matter, human rights and climate change obligations should be integrated, also in respect of cooperation obligations in the climate change regime; *secondly*, the important differences between both fields should be acknowledged and taken into account; *thirdly*, the most appropriate framework for discussing integration is provided by margin of discretion.

52. *First*, the three distinct ways in which human rights obligations are relevant to climate change, explained in paragraph 38, all involve substantial linkages between the two fields. Consequently, positive obligations to protect human rights should be interpreted in light of States' mitigation, adaptation and assistance obligations under the UNFCCC, Paris Agreement, and relevant decisions of the COP and CMA.<sup>135</sup>

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<sup>133</sup> WS Latvia [70]-[71].

<sup>134</sup> Cf. participants supportive of integration. WS EU Section 4.6.2.1; also WS Colombia [3.70]-[3.71]; WS Cook Islands [135]-[142]; WS Dominican Republic [4.48]; WS Germany [86]; WS Indonesia [38]; WS Marshall Islands [95]; WS Mauritius [162]-[165]; WS New Zealand [119]-[122]; WS Sierra Leone [3.58]; WS Singapore [3.87]; WS Solomon Islands [169]; and participants less supportive of integration. WS Canada [27]-[28]; WS China [123]-[125]; WS Saudi Arabia [4.98]; WS Switzerland [61].

<sup>135</sup> WS Latvia [70]. Similarly WS Colombia [3.71]; WS Germany [86]; WS New Zealand [119]-[122]; WS Singapore [3.81]. See also *Verein* (n 105) [546]-[547].

53. Latvia also wishes to highlight the continuity between the performance of cooperative human rights obligations<sup>136</sup> and obligations of cooperation and assistance under the UNFCCC and Paris Agreement, noted by several States. Tonga, for instance, observes that the ability of developing countries, and in particular small-island developing states and least developed countries, to protect the human rights of those within their jurisdiction is contingent upon the performance of assistance obligations by other States under the climate change regime.<sup>137</sup> Latvia also agrees with Singapore that there is continuity between assistance obligations under the climate change regime and the pledge of States under article 56, of the UN Charter, to cooperate with the United Nations in order to achieve universal respect for, and observance of, human rights and fundamental freedoms.<sup>138</sup> Human rights considerations are and should be a factor in the development of and performance of climate change assistance commitments.
54. *Secondly*, the fields of human rights and climate change law serve different purposes and are structured and function in different ways.<sup>139</sup>
55. The field of climate change is concerned with the coordination of State action to reduce adverse effects of anthropogenic GHG emissions on the climate system. The effects of climate change and the choices States make to address them raise complex questions of distributive justice that require long-term choices to be made that impact the entire economy and society of each State.<sup>140</sup>

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<sup>136</sup> As highlighted in WS COSIS [ 29] ff; WS Tuvalu [103].

<sup>137</sup> WS Tonga [250]. This is also reflected in UNFCCC (n 10) art 4(7).

<sup>138</sup> WS Singapore [3.83], [3.92]; also WS Australia [3.66]-[3.67].

<sup>139</sup> See WS Australia [3.58]; WS China [123]-[125]; WS Denmark, Finland, Iceland, Norway, and Sweden [83]; WS Germany [86]; WS Switzerland [61]. Many States that take this position do not consider that this precludes integration.

<sup>140</sup> WS Latvia [70]. See also *Verein* (n 105) Partly Concurring and Partly Dissenting Opinion of Judge Eicke [11].

56. Human rights law is concerned with the protection of individuals, grounded in “inherent dignity and of the equal and inalienable rights of all members of the human family”.<sup>141</sup> It is principally concerned with the conduct of the State in respecting, ensuring and fulfilling the rights of each individual or group. Human rights instruments delineate the scope of the individuals whose rights each State is obliged to respect and ensure. While distributive questions are relevant to human rights, notably as justifications for legitimate restrictions on qualified rights or in relation to the full realization of economic, social and cultural rights,<sup>142</sup> the primary purpose of each specified instrument is to provide legal security for individual rights. As Timor-Leste has observed, while the protection of economic, social and cultural rights might require climate action, the necessities of a “just transition” that respects human rights might also constrain the measures that can be taken by certain States at certain times.<sup>143</sup>
57. Latvia agrees that the two fields are different and that it is important to attend carefully to their differences. The differences do not, however, preclude appropriate integration.<sup>144</sup> Without engaging in interpretation or application of treaty obligations in ways that conflict with or fundamentally alter the purposes of the applicable treaty, to the extent possible, the two regimes may be integrated in accordance with principles of treaty interpretation.
58. *Thirdly*, in Latvia’s view, the integration of human rights and climate change law should recognize that, in complying with their climate change and human rights obligations, States possess a wide discretion. The content of human rights obligations in respect of climate change takes into account particular national circumstances.<sup>145</sup> National discretion flows from the non-absolute, due diligence character of positive obligations under international human rights law. The margin of discretion is necessarily wide in order to enable States,

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<sup>141</sup> Universal Declaration of Human Rights preambular para 1.

<sup>142</sup> International Covenant on Economic, Social and Cultural Rights (16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (accessed to by Latvia on 14 April 1992) art 2(1).

<sup>143</sup> WS Timor-Leste [307].

<sup>144</sup> WS Latvia [70]-[71].

<sup>145</sup> See also WS Denmark, Finland, Iceland, Norway, and Sweden [87]-[88].

and in particular governments, individually and collectively, to make appropriate distributive choices regarding requisite measures to protect the climate system and other parts of the environment. States also have discretion in striking the balance in adoption of climate change-related measures between the need to ensure that individual rights, and social and economic well-being, are not harmed by measures taken to tackle climate change and the need to protect individual rights from the adverse consequences of climate change. Under both the Paris Agreement and the relevant human rights instruments, States do not have a wide margin of discretion in determining *whether* to take measures to combat climate change, but they do have such discretion for deciding *which* measures are appropriate in light of national circumstances.<sup>146</sup>

#### **E. United Nations Charter**

59. Latvia reiterates its “view that, as a matter of positive international law, statehood of small island developing States is not affected by climate change-related sea-level rise because factual control over territory is not always a necessary criterion for the continued juridical existence of States”.<sup>147</sup> Latvia considers that the description of international law applicable to determination of the continuity of statehood notwithstanding the impact of climate change-related sea-level rise, given in the Written Statement of the PIF, is correct and consistent with Latvia’s position.<sup>148</sup>

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<sup>146</sup> *Verein* (n 105) [543].

<sup>147</sup> WS Latvia [72].

<sup>148</sup> WS PIF [32]-[33] (“32. A core element of the 2023 Declaration [on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise] is PIF Members’ declaration that their statehood and sovereignty will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise [2023 Declaration, Para 13]. 33. The 2023 Declaration also recognises that the continuity of statehood in the face of climate change-related sea-level rise is consistent with important principles and rights of international law. This includes the right of peoples to self-determination, the right to a nationality, the protection of territorial integrity and political independence, principles of equity and fairness, the maintenance of international peace and security which in turn requires stability in international relations, the right of a state to provide for its preservation, the duty of cooperation, the sovereign equality of states, and permanent sovereignty over natural resources”).

#### IV. QUESTION (B)

60. In the Written Statement, Latvia took the view that “question (b) is predominantly directed at secondary rules of international law regarding State responsibility”.<sup>149</sup> This position is confirmed by the approach recently taken by the Court to the interpretation of the question considered in *Occupied Palestinian Territory* that used the same operative phrase (“what are the legal consequences”).<sup>150</sup>
61. Latvia reiterates its view that, “[i]f and to the extent that question (b) also addresses “legal consequences” under particular primary rules, Latvia’s position has already been provided in answering question (a)”.<sup>151</sup>
62. Latvia also reiterates its view that if State responsibility is engaged – i.e. particular conduct is attributable to the State under international law and constitutes a breach of an international obligation of the State<sup>152</sup> – general secondary rules will apply to determine the content of State responsibility in these circumstances just as in any others, in light of the applicable *lex specialis* secondary rules and particular mechanisms, such as for settlement of disputes.<sup>153</sup> The Court has recently confirmed the position taken in Latvia’s Written Statement regarding the general rules<sup>154</sup> that “the obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general

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See also WS AOSIS [6] Annex 4 [6]-[10], Annex 5 [13]-[16], Annex 6 [5]-[7]; WS Australia [1.18]-[1.19]; WS Bahamas [226]; WS COSTS [196]; WS Kiribati [188]-[190]; WS Marshall Islands [104]; WS New Zealand [13]; WS Solomon Islands [215]-[217]; WS Tonga [237]-[239]; WS Tuvalu [54]; WS US [1.13]; WS Vanuatu [605].

<sup>149</sup> WS Latvia [74].

<sup>150</sup> *Occupied Palestinian Territory*, (n 7) [83].

<sup>151</sup> WS Latvia [77].

<sup>152</sup> *Occupied Palestinian Territory*, (n 7) [265].

<sup>153</sup> WS Latvia [75], [76].

<sup>154</sup> *Ibid* [76].



international law”, just as the “obligation to provide full reparation for the damage caused by its internationally wrongful acts”.<sup>155</sup>

63. Latvia may provide more granular answers in its oral statement on the issues raised by participants in written comments and oral proceedings.

## V. SUBMISSIONS

64. Latvia maintains its submissions set out in paragraph 78 of the Written Statement.

Respectfully,

(Signed) Solvita ĀBOLTIŅA.

Co-agent of the Republic of Latvia



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<sup>155</sup> *Occupied Palestinian Territory* (n 7) [267], [269].