

INTERNATIONAL COURT OF JUSTICE

**OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
(REQUEST FOR ADVISORY OPINION)**

WRITTEN COMMENT OF NEW ZEALAND

14 AUGUST 2024

PART 1: INTRODUCTION

1. New Zealand welcomes the opportunity, pursuant to Article 66(4) of the ICJ Statute and the Orders of 15 December 2023 and 30 May 2024, to provide written comments on the Written Statements submitted by 91 States and international organisations on the questions posed by the General Assembly in Resolution 77/276.
2. The unprecedented number of Written Statements received by the Court, and the length and detail of those submissions, is testament to the importance of these proceedings and the high regard in which States and international organisations hold the Court and the significance of the matters covered in the request for the advisory opinion. As set out in New Zealand’s Written Statement dated 22 March 2024 (**Written Statement**), States approach the Court with the shared objective of seeking clarity and coherence in their understanding of international law with respect to climate change in order to support the global effort to respond to climate change and lift ambition.¹
3. In these written comments, New Zealand does not respond to all the Written Statements made by others or to all submissions with which it disagrees. Instead, it seeks to identify the broad areas of common ground of which the Court should take note and addresses some key issues where there is a divergence in view among States.

PART 2: BROAD AREAS OF COMMON GROUND

4. The Written Statements demonstrate important areas of common ground which the Court should reflect in its opinion. With limited exceptions, there is broad agreement on the following matters.
5. The scientific consensus on the causes, as well as the existing and predicted impacts, of climate change:² As stated by the Cook Islands, “the scientific consensus on the causes and impacts of climate change is irrefutable” and “the UNGA Resolution 77/276 and

¹ See New Zealand Written Statement, para. 18.

² See, for example, African Union Written Statement, paras. 6–19; Antigua and Barbuda Written Statement, paras. 20–52; Australia Written Statement, para. 1.6; Barbados Written Statement, para. 83–114; Brazil Written Statement, paras. 59–61; Cook Islands Written Statement, para. 24–29, 39–130; COSIS Written Statement, para.13; European Union Written Statement, para. 49; Kiribati Written Statement, paras. 9–30; Mauritius Written Statement, para. 39; Melanesian Spearhead Group Written Statement, para. 222–223; Nauru Written Statement, para.8; Netherlands Written Statement, para. 2.4; OACPS Written Statement, para. 20–31; Philippines Written Statement, paras. 27–29; Saint Lucia Written Statement, para. 19–23; Saint Vincent and Grenadines Written Statement, paras. 38–53; Singapore Written Statement, para. 3.25; Solomon Islands Written Statement, paras. 25–51 and paras. 61–62; Timor-Leste Written Statement, para. 34–65; Tonga Written Statement, para. 135–136; Tuvalu Written Statement, para. 26; United Arab Emirates Written Statement, para. 9–10; United Kingdom Written Statement, para. 13; United States Written Statement, paras. 2.5–2.16; Vanuatu Written Statement, para. 67.

Summaries for Policymakers of IPCC reports together evidence both the scientific consensus on climate change and the global consensus of States on the science of climate change”.³ The Melanesian Spearhead Group echoes that the conclusions of the Sixth Assessment Report “have been repeatedly and consistently established in “Summaries for Policy Makers” produced by the IPCC. These documents represent both the scientific and political consensus on the matter of climate change”.⁴

6. The need to address climate change on the basis of best available science,⁵ reflected in the IPCC’s Sixth Assessment Report.⁶ As noted by Mauritius in its Written Statement, “UNFCCC and Paris Agreement expressly recognise that science is central to informing States’ obligations to protect the climate system and other parts of the environment from anthropogenic GHG emissions. Parties to the UNFCCC and the Paris Agreement have committed to addressing the causes and impacts of climate change on the basis of the “best available scientific knowledge”.⁷ The United Kingdom also observed that “the UK regards the IPCC’s assessments as the most authoritative source of information on the science of climate change. Specifically, the UK accepts the IPCC reports produced within the Sixth Assessment Cycle (2016-2023) reflect current ‘best available science’ in the context of climate change.”⁸
7. The centrality of the climate change treaty regime in delivering the coordinated global response needed to ensure effective mitigation, adaptation, finance and technology transfer.⁹ The Federated States of Micronesia stated that: “the UNFCCC and the Paris

³ Cook Islands Written Statement, para 39–40.

⁴ Melanesian Spearhead Group Written Statement, paras 222-223.

⁵ See, for example, African Union Written Statement, para 81–85; Antigua and Barbuda Written Statement, paras. 250–252; Australia Written Statement, para. 2.17; Barbados Written Statement, para. 304; Belize Written Statement, para. 45; Canada Written Statement, para. 17; China Written Statement, para. 81; COSIS Written Statement, para. 92 and 106; European Union Written Statement, para. 139; Kiribati Written Statement, para. 5; Mauritius Written Statement, para 105; Melanesian Spearhead Group Written Statement, para. 314; OACPS Written Statement, para, 26; Saint Lucia Written Statement, para. 83; Seychelles Written Statement, para. 80; Singapore Written Statement, para. 1.6; Solomon Islands Written Statement, para. 82 and 131; Timor-Leste Written Statement, para. 118.3; Tuvalu Written Statement, para. 148; United Arab Emirates Written Statement, para. 112; United Kingdom Written Statement, para. 4.2; United States of America Written Statement, para. 2.15.

⁶ See, for example, African Union Written Statement, para. 83; Antigua and Barbuda Written Statement, para. 252; Canada Written Statement, para. 37; Cook Islands Written Statement, para. 42–43; Kiribati Written Statement, para.5; European Union Written Statement, para. 139; Mauritius Written Statement, paras 104–105; Melanesian Spearhead Group Written Statement, para. 223–4; Nauru Written Statement, para. 16; OACPS Written Statement, para. 26; Philippines Written Statement, para. 28; Saint Lucia Written Statement, para. 19; Saint Vincent and Grenadines Written Statement, paras. 43–44; Seychelles Written Statement, para. 80; Singapore Written Statement, para. 1.6; Timor-Leste Written Statement, para. 60; Tuvalu Written Statement, para. 32; UAE Written Statement, para. 9; United Kingdom Written Statement, para. 4.2; United States of America Written Statement, para. 2.16.

⁷ Mauritius Written Statement, para. 105.

⁸ United Kingdom Written Statement, para. 4.2.

⁹ See, for example, African Union Written Statement, para. 123–124; Australia Written Statement, para. 2.2; Brazil Written Statement, paras. 32–57; Canada Written Statement, para. 11, 17 and 39; China Written Statement, para.

Agreement are critical elements of the international legal order for addressing the harmful effects of anthropogenic emissions of greenhouse gases on the climate system and other parts of the natural environment”.¹⁰ This is echoed by the United States, which noted “States have pursued international cooperation to address human-induced climate change primarily through the UN climate change regime. The Paris Agreement is at the regime’s core. It articulates an ambitious, quantitative global temperature goal and sets out a long-term framework for addressing mitigation of and adaptation to climate change, elaborating various provisions of the UNFCCC.”¹¹

8. The urgent need to increase ambition in the coordinated global response to climate change.¹² As stated by Canada, “Much more will need to be done over the coming years; the ambitions of States must be raised and global actions need to accelerate.”¹³ Tonga reflects in its Written Statement that: “The Paris Agreement does not define ‘progression’ nor ‘highest possible ambition’. However, Articles 3 and 4 of the Paris Agreement link together other key provisions of the Paris Agreement in relation to mitigation, adaptation, and support progression across these areas. ... Article 4(3) sets a clear expectation that Parties will communicate successive NDCs that progress beyond the existing and past NDCs, with a view to becoming more ambitious.”¹⁴
9. The need for international cooperation in the achievement of the objectives of the climate change treaty system.¹⁵ As captured in the statement of the Kingdom of the Netherlands

25; European Union Written Statement, paras. 90–163; Japan Written Statement, para. 13–15; Korea Written Statement, para. 18–23; Mauritius Written Statement, paras. 90–95; Micronesia Written Statement, paras. 89–91; the Netherlands Written Statement, para. 2.5; OACPS Written Statement, para. 129; OPEC Written Statement, paras. 104–111; Philippines Written Statement, para. 102; Russia Written Statement, page 5 and 17; Saint Lucia Written Statement, paras. 50–51; Seychelles Written Statement, para. 65 and 68–96; Singapore Written Statement, para. 3.27; Timor-Leste Written Statement, para. 83, 96–103; Tonga Written Statement, para. 138–140; UAE Written Statement, para.12; United Kingdom Written Statement, para. 4.3; United States Written Statement, para. 3.1.

¹⁰ Federated States of Micronesia Written Statement, para 89.

¹¹ United States Written Statement, para 3.1.

¹² See, for example, African Union Written Statement, para. 148; Antigua and Barbuda Written Statement, paras. 253–266; Australia Written Statement, para. 1.3.7 and 1.9; Barbados Written Statement, para. 207; Belize Written Statement, para. 15 and 18; Brazil Written Statement, para. 96; Canada Written Statement, para. 38; Cook Islands Written Statement, para. 43; COSIS Written Statement, para. 124; European Union Written Statement, para. 377–379 and 386; Japan Written Statement, para. 30; Korea Written Statement paras, 8–9; Kiribati Written Statement, para. 23; Melanesian Spearhead Group Written Statement, para. 38; Micronesia Written Statement, para. 22; Saint Vincent and Grenadines Written Statement, para. 45(f); Seychelles Written Statement, para. 43; Solomon Islands Written Statement, para. 84; Timor Leste Written Statement, para. 115–117 and 163; Tonga Written Statement, 143–144; United Kingdom Written Statement, para. 4.4; United States Written Statement, para. 3.44; Vanuatu Written Statement, para. 101.

¹³ Canada Written Statement, para 38.

¹⁴ Tonga Written Statement, para 153.

¹⁵ See, for example, African Union Written Statement, paras. 125–129; Australia Written Statement, para. 2.1; Antigua and Barbuda Written Statement, paras. 343–346; Barbados Written Statement, paras. 208–226; Brazil Written Statement, paras. 64–69; Canada Written Statement, para. 17 and 18; China Written Statement, para. 40 and 83; Cook Islands Written Statement, para. 259; COSIS Written Statement, paras. 115–128; European Union

at 3.13, “[Article 14(3)] of the Paris Agreement also emphasises the importance of the global stocktake with response to “enhancing international cooperation for climate action” underscoring the necessity of collectively taking measures to combat climate change. The emphasis on international cooperation for climate action reflects, in the view of the Kingdom, the duty to cooperate.”¹⁶ The Solomon Islands also emphasises that: “Climate change is a ‘common concern of humankind’ and therefore cooperation amongst members of the international community is critical in addressing the adverse impacts of climate change. ... Within the context of a treaty, cooperation shifts from a general duty to cooperate, and instead to a duty to cooperate within the framework of the agreement, taking into account its object and purpose.”¹⁷

10. As highlighted in our Written Statement, the climate change treaty system is the forum in which the international community cooperates with a view to addressing climate change and the means by which a State discharges its legal duties to cooperate in the reduction and stabilisation of GHGs in the atmosphere:
 - a. The UNFCCC and the PA are underpinned by the need to promote international cooperation in the response to climate change;¹⁸
 - b. The UNFCCC and the PA impose substantive obligations on States, or encourage them, to cooperate as regards finance;¹⁹ adaptation;²⁰ averting, minimising and addressing loss and damage;²¹ technology development and transfer;²² capacity building;²³ the conservation and management of carbon sinks and reservoirs;²⁴ scientific, technological, technical, socio-economic and other research;²⁵ and education, training and public awareness.²⁶

Written Statement, para. 332 and 356; Korea Written Statement, paras. 38–40; Micronesia Written Statement, para. 65–66; Netherlands Written Statement, para. 3.13; OACPS Written Statement, para. 91–95; OPEC Written Statement, para. 92 and 104; Philippines Written Statement, para. 3 and 75; Russia Written Statement, page 5,14 and 18; Saint Lucia Written Statement, para. 56, 77–78; Singapore Written Statement, para. 3.36; Solomon Islands Written Statement, paras. 116–122; Timor-Leste Written Statement, para. 180–198; Tonga Written Statement, para. 203; Tuvalu Written Statement, para. 103; UAE Written Statement, paras. 72–75; United Kingdom Written Statement, para. 4.3; United States Written Statement, para. 4.27.

¹⁶ Netherlands Written Statement, para 3.13.

¹⁷ Solomon Islands, para 117.

¹⁸ New Zealand Written Statement, para. 26; UNFCCC, preamble and Article 3(3); 2007 Bali Action Plan, Decision 1/CP.13 para.1; PA, preamble.

¹⁹ New Zealand Written Statement, para. 63, referring to UNFCCC, Article 4(3); PA, Articles 2(1)(c), Article 6, and 9(1) and (2).

²⁰ New Zealand Written Statement, para. 45; UNFCCC, Article 4(1)(e); PA, Article 7

²¹ New Zealand Written Statement, para. 45; PA, Article 8.

²² New Zealand Written Statement, para. 66, referring to UNFCCC, Article 4(1)(c) and (5); PA, Article 10.

²³ New Zealand Written Statement, para. 68; PA, Article 11

²⁴ New Zealand Written Statement, para. 60, fn. 73; UNFCCC, Article 4(1)(d)

²⁵ New Zealand Written Statement, para. 36; UNFCCC, Article 4(1)(g) and (h) and Article 5.

²⁶ New Zealand Written Statement, para. 36; UNFCCC, Art 4(1)(i) and Art 6; PA, Article 12.

- c. The UNFCCC and PA also establish the procedural architecture to enable ongoing cooperation, including through:
 - i. the regular heartbeat of meetings of the COP, CMA, and subsidiary bodies;
 - ii. mechanisms to support ongoing cooperation on (among other things):
 - 1. mitigation (including through the PA crediting mechanism and the Article 6(4) Supervisory Body);
 - 2. adaptation (including through the Least Developed Countries Expert Group, the Nairobi Work Programme, the Cancun Adaptation Framework, the Adaptation Committee, and the Glasgow-Sharm-el-Sheikh work programme on the global goal)
 - 3. loss and damage (including through the Warsaw International Mechanism, the Santiago Network, and the Loss and Damage Fund);
 - 4. finance (including through the Financial Mechanism, Global Environment Facility, Green Climate Fund, Special Climate Change Fund, Least Developed Countries Fund, Adaptation Fund and the Standing Committee on Finance); and
 - 5. technology development and transfer (including through the Technology Mechanism).
 - 6. Capacity building (including through the Committee on Capacity Building).
 - iii. mechanisms to support ongoing cooperation in monitoring the implementation of obligations and commitments under the climate change treaty regime, including through facilitative multilateral consideration of progress, and through the PAICC.

- 11. These areas of common ground provide cause for optimism in the ability of States to cooperate towards the collective aim of stabilising GHG concentrations in the atmosphere at a level that will prevent dangerous anthropogenic interference with the climate system and should form the foundation of the Court's advisory opinion.

PART 3: KEY ISSUES OF DIVERGENCE

3.1 The breadth and scope of the question

- 12. A number of States have interpreted the question posed by the General Assembly expansively and provided submissions on legal obligations arising from a very wide range of treaties and customary sources that are not directly related to the protection of the climate system and other parts of the environment from anthropogenic emissions of

GHG. A number of other States have provided submissions involving novel interpretations of law for which there is no existing precedent.

13. In the view of New Zealand, the task before the Court is to:
 - a. opine on a question that is focused squarely on the obligations of States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of GHGs. This requires a primary focus on the obligations under the climate change treaty system and may also require consideration of other obligations that are relevant to the reduction and stabilisation of GHGs in the atmosphere, for example, Part XII of the UN Convention on the Law of the Sea. The Court has not been requested to provide an advisory opinion on international environmental and human rights law writ large.
 - b. provide its opinion on *lex lata*, not *lex ferenda*. As the Court noted in its *Advisory Opinion on the Threat or Use of Nuclear Weapons*:

“It is clear that the Court cannot legislate, and in the circumstances of the present case, it is not called upon to do so. Rather its task is to engage in its normal judicial function of ascertaining the existence or otherwise of legal principles and rules applicable to the threat or use of nuclear weapons.”

3.2 The centrality of the climate change treaty system

3.2.1 Introduction

14. As set out at paragraph 86 of our Written Statement, New Zealand does not consider it necessary to have regard to the rule of *lex specialis* when considering the mutually supporting obligations that exist under international law in relation to the protection of the climate system and other parts of the environment from anthropogenic emissions of GHGs. However, New Zealand endorses the view expressed by many States that the specialist climate change treaty regime should nonetheless be given very significant weight as the centrepiece of the international legal framework relevant to the question the Court is invited to answer.²⁷

²⁷ See, for example, African Union Written Statement, para. 123–124; Australia Written Statement, para. 2.2; Brazil Written Statement, paras. 32–57; Canada Written Statement, para. 11, 17 and 39; China Written Statement, para. 25; European Union Written Statement, paras. 90–163; Japan Written Statement, para. 13–15; Korea Written Statement, para. 18–23; Mauritius Written Statement, paras. 90–95; Micronesia Written Statement, paras. 89–91; the Netherlands Written Statement, para. 2.5; OACPS Written Statement, para. 129; OPEC Written Statement, paras. 104–111; Philippines Written Statement, para. 102; Russia Written Statement, page 5 and 17; Saint Lucia Written Statement, paras. 50–51; Seychelles Written Statement, para. 65 and 68–96; Singapore Written Statement, para. 3.27; Timor-Leste Written Statement, para. 83, 96–103; Tonga Written Statement; para. 138–140; UAE Written Statement, para.12; United Kingdom Written Statement, para. 4.3; United States Written Statement, para. 3.1.

15. The climate change treaty regime is the sole international legal regime negotiated with the objective of preventing dangerous anthropogenic interference with the climate system. It is the product of more than 30 years of almost continuous negotiation; it benefits from near universal ratification; and it embodies the bargains reached by States when seeking to balance the complex competing interests arising from the unique characteristics of climate change. Any parallel obligations arising from other sources of international law should – to the extent possible – be interpreted consistently with the obligations in the climate change treaty regime.

3.2.2 Consistency with UNCLOS

16. On 21 May 2024, the International Tribunal for the Law of the Sea issued an advisory opinion on States’ obligations under UNCLOS to protect and preserve the marine environment from the adverse effects of climate change (**‘the ITLOS Advisory Opinion’**).²⁸ New Zealand welcomes the Tribunal’s helpful guidance on the obligations owed by States under UNCLOS to protect the marine environment from pollution.
17. The Tribunal concluded that anthropogenic GHGs constitute marine pollution capable of deleterious effects on the marine environment, including ocean warming, ocean acidification, coral bleaching and other effects. It held that, pursuant to Article 194 UNCLOS, States Parties must use due diligence in taking all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHGs, taking into account, *inter alia*, the best available science and relevant international rules and standards contained in climate change treaties such as the UNFCCC and the PA.
18. The Tribunal considered that the “stringent” due diligence requirements of Article 194(1) UNCLOS would not be satisfied simply by complying with the obligations and commitments under the PA.²⁹ In making this statement, the Tribunal established, as a point of principle, that compliance with a provision of UNCLOS is determined by the requirements of UNCLOS and not by reference to a complementary treaty regime that is not *lex specialis*.³⁰ That is clearly correct. Certain obligations in UNCLOS that apply to the pollution caused by GHGs are specific to UNCLOS, for example the obligation to take measures in response to deleterious effects on the marine environment that have been caused by climate change and ocean acidification.

²⁸ *Advisory Opinion on the Request Submitted by the Commission on Small Island States on Climate Change and International Law*, 21 May 2024.

²⁹ Para. 223.

³⁰ See para. 223 “the Convention and the Paris Agreement are separate agreements, with separate sets of obligations”.

19. Appropriately, the Tribunal did not purport to carry out any detailed analysis of the obligations and commitments within the climate change treaty regime. Such an analysis would be a prerequisite to arriving at a view on whether compliance with the obligations and commitments in that regime would either likely or very likely satisfy the “stringent” due diligence requirements of Article 194(1) UNCLOS.
20. As set out in our Written Statement,³¹ the PA provides a comprehensive framework for global action on climate change which embodies standards of conduct equivalent to the due diligence standard required by Article 194(1) UNCLOS. States have committed to prepare, communicate and maintain NDCs informed by the global stocktake, reflecting their “*highest possible ambition*” with a view to achieving the temperature goal. States are also required to pursue domestic controls (including policies, legislation and/or administrative controls) which, in conjunction with any utilisation of cooperative approaches, are reasonably capable of delivering the objectives of the NDC. Compliance with these obligations and commitments will, in New Zealand’s submission, constitute compliance with the stringent due diligence standard under UNCLOS.
21. The Tribunal placed significant weight on the duty to cooperate under UNCLOS.³² New Zealand agrees that cooperation is essential to address climate change, and has submitted that the primary mechanism through which States discharge that duty in the context of climate change is through the climate change treaty regime.³³
22. In New Zealand’s view, the obligations arising under UNCLOS, as articulated by ITLOS, are capable of interpretation and application consistently with the obligations arising under the climate change treaty regime as discussed in our First Statement.³⁴

3.2.3 Consistency with the CIL duty to prevent transboundary harm, to the extent applicable

23. A significant number of States have made submissions on the application or non-application of the customary international law duty to prevent significant transboundary harm to the climate change context. It is clear from the diversity of views expressed on this issue that there is no widespread and reasonably consistent state practice with *opinio*

³¹ New Zealand Written Statement, paras. 44–77.

³² Paragraphs 295–299 as to the duty to cooperate in general; and paras. 300–320 addressing Arts. 197, 200 and 201 of UNCLOS.

³³ See para 10 above.

³⁴ See New Zealand Written Statement, para. 91. This view is shared by a significant number of States making written submissions, including for example, Canada Written Statement, para. 22; China Written Statement, para. 100–101; COSIS Written Statement, para. 106; Mauritius Written Statement, para. 145–147; Tonga Written Statement, at para. 219–220; United Kingdom Written Statement, paras. 108–110; United States of America Written Statement, para. 4.29.

juris on the application, or the scope, of the duty in the climate change context.³⁵ The Court should, accordingly, proceed with caution in seeking to identify the application or scope of the duty in that context.

24. That said, to the extent that the duty applies in the climate change context, New Zealand endorses the observations of a number of States that the commitments and obligations in the climate change treaty regime reflect States' agreement on what is needed to respond effectively to climate change and thus what is required to meet the due diligence standard.³⁶ In that context, New Zealand emphasises that the conduct required to meet the due diligence standard is variable.³⁷ States have agreed that the only effective response to climate change is one which recognises that States have common but differentiated responsibilities and respective capabilities in light of different national circumstances, and – in that context – it is for each State to determine for itself what constitutes its highest possible ambition when deciding its contribution to the collective achievement of the temperature goal, having regard to the global stocktake. That makes the objective assessment of a State's compliance with any customary due diligence obligation extremely challenging in the climate change context, given it would a) require the adoption of a fixed methodology for assessing a State's "fair share" when such a methodology has been explicitly rejected by States; and b) undermine the near-universal endorsement of the "bottom up" approach that is central to the success of the PA.

3.3 Specific issues arising in relation to the climate change treaty regime

3.3.1 There is no conflict within the climate change treaty regime between the right to development and the mitigation objectives.

25. A small number of Written Statements suggest that the climate change treaty regime balances a conflict between the need to protect the climate system from anthropogenic emissions of GHGs and sustainable development and the eradication of poverty.³⁸ New Zealand submits this is a false conflict which is not reflected in the PA.
26. The objective of sustainable development is woven through the PA and complements, rather than conflicts with, the mitigation objectives:

³⁵ See, for example, the statements of Mauritius Written Statement, paras. 202–205; Bahamas Written Statement, paras. 92–104, Belize Written Statement, para. 51; and Vanuatu Written Statement, para. 235–247, Singapore Written Statement, para. 3.22; China Written Statement, para. 128–130; United States of America Written Statement, paras. 4.5–4.21.

³⁶ See, for example, Antigua and Barbuda Written Statement, paras. 310 onwards; China Written Statement, para. 131; Mauritius Written Statement, para. 193–195 and 205; United States of America Written Statement, paras. 4.25–4.28.

³⁷ See, for example, Vanuatu Written Statement at para. 260–278; and COSIS Written Statement, para. 113; as compared with the European Union Written Statement, para. 84 and para. 318.

³⁸ See for instance Saudi Arabia Written Statement at para. 4.14 and China Written Statement, para. 27.

- a. The preamble to the PA expressly recognises the intrinsic relationship that climate change responses and impacts have with equitable access to sustainable development and the eradication of poverty. That is, the PA recognises that climate change responses can *enhance* sustainable development and *support* the eradication of poverty and climate change impacts can *undermine* sustainable development and the eradication of poverty.
 - b. The preamble to the PA recognises that when taking action to address climate change Parties should respect, promote and consider the right to development.
 - c. Article 2 of the PA situates the aims of the Convention in the context of sustainable development and efforts to eradicate poverty and emphasises an objective of fostering low GHG emissions development and climate resilient development.
 - d. Article 4(1) of the PA recognises that the peaking of GHGs will take longer for developing country Parties but affirms that the delivery of global net zero in the second half of the century is consistent with equity, sustainable development and efforts to eradicate poverty. Through the principle of CBDR-RC in light of different national circumstances, Article 4(3) of the PA recognises that Parties' contribution to the collective achievement of the temperature goal will depend on their different capacities and national circumstances but all Parties are required to contribute effectively to the achievement of that goal.
 - e. Article 6 of the PA contemplates voluntary cooperation in the implementation of NDCs as an opportunity to promote mitigation of GHG emissions and sustainable development.
 - f. Article 7 of the PA establishes the global goal on adaptation with a view to contributing to sustainable development.
 - g. Articles 9, 10 and 11 of the PA provide for finance, technology transfer and capacity building to support mitigation and adaptation efforts and encourage sustainable development.
27. The PA does not "balance" supposedly competing interests of decarbonisation and economic development; instead, it promotes both objectives in tandem as necessary elements of "sustainable development". The collective performance of the obligations and commitments in the PA is intended to deliver sustainable development.

Unmitigated or insufficiently mitigated climate change frustrates sustainable development.

28. A key breakthrough of the PA, and a feature of its success, was the agreement that all States must drive mitigation action with highest possible ambition in order to deliver sustainable development for all. While the PA expects developed countries to “*take the lead*” it does not identify any conflict between emissions reductions and sustainable development and rejects the previous bifurcation of mitigation responsibility as between developed and developing countries that had previously applied under the UNFCCC and the KP.
29. For this reason, New Zealand rejects the implication in a limited number of written submissions that the UNFCCC’s Annex 1 / non-Annex 1 approach, the CBDR-RC principle, and/or the right to development and the need to reduce poverty permits or supports any group of States to ignore the Paris Agreement’s mitigation objectives when pursuing development objectives.

3.4 The relevance of international human rights law

30. A wide range of views have been expressed by States on the extent to which (if at all) international human rights law imposes obligations on States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.
31. New Zealand restates its position that while the effects of climate change are capable of interfering with the enjoyment of a wide range of human rights, international human rights law does not impose a generalized obligation to mitigate climate change through emissions reductions and removals. It repeats Part 4 of its of its Written Statement and refers the Court to the Written Statements of Australia,³⁹ the Governments of Denmark, Finland, Iceland, Norway and Sweden⁴⁰, the United Kingdom⁴¹, and the United States⁴².
32. New Zealand also restates its position that the right to a clean and healthy environment is not sufficiently well defined and currently lacks the requisite widespread and consistent state practice and *opinio juris* to constitute customary international law. In particular, the resolutions of the UN General Assembly and the Human Rights Council “recognizing” such a right did not have legal effect and did not, in themselves, reflect state practice and *opinio juris*.

³⁹ Australia Written Statement, para. 3.56.

⁴⁰ Denmark, Finland, Iceland, Norway and Sweden Joint Written Statement, paras. 77–89.

⁴¹ United Kingdom Written Statement, paras. 122–130.

⁴² United States of America Written Statement, paras. 4.38–4.53.

33. Since the filing of Written Statements in March 2024 (and as anticipated in paragraph 113 of New Zealand’s Written Statement) the European Court of Human Rights (**‘the ECtHR’**) has given judgment in the linked cases of *Duarte Agostinho and Others v Portugal and 32 Others*,⁴³ *Careme v France*,⁴⁴ and *Verein KlimaSeniorinnen Schweiz v Switzerland* (**“the 9 April ECtHR Decision”**).⁴⁵ That judgment does not alter New Zealand’s position on the application of international human rights law in the climate change context. In particular, the Court’s ruling on the scope and meaning of the European Convention on Human Rights (**‘ECHR’**) does not bear on the scope and meaning of the international human rights instruments the Court is invited to consider by the questions posed by the General Assembly. Nonetheless, New Zealand notes that:
- a. The ECtHR affirmed that jurisdiction under the ECHR is essentially territorial and rejected the notion that extraterritorial jurisdiction arose in the climate change context merely because state action or inaction *“has an impact of the situation of a person abroad”*.⁴⁶ It held that extraterritorial jurisdiction would entail an *“unlimited expansion”* of States’ extraterritorial jurisdiction, *“towards people practically anywhere in the world”*, and would *“turn the Convention into a global climate-change treaty”*.⁴⁷
 - b. Although the ECtHR found that Article 8 of the ECHR imposes an obligation on States to *“do their part”*⁴⁸ to ensure effective protection from serious adverse effects of climate change on the life, health, well-being and quality of life of those within their jurisdiction,⁴⁹ it emphasised that States have a wide margin of appreciation in the choice of means to do so.⁵⁰
 - c. In stressing the wide margin of appreciation afforded to States, the ECtHR emphasized the *“polycentric”* nature of climate change and the need for governments to weigh competing social, economic and political interests when deciding how best to respond to it.⁵¹ The ECtHR stressed, in that context, the *“fundamentally subsidiary role of the Convention”*⁵² and set out a largely proceduralist conception of the Court’s supervisory role.⁵³

⁴³ App. No. 39371/20, judgment of 9 April 2024.

⁴⁴ App. No. 7189/21, judgment of 9 April 2024.

⁴⁵ App. No. 53600/20, judgment of 9 April 2024.

⁴⁶ 9 April ECtHR Decision, para. 184.

⁴⁷ 9 April ECtHR Decision, para. 208.

⁴⁸ 9 April ECtHR Decision, para. 545.

⁴⁹ 9 April ECtHR Decision, para. 519. For reasons set out in its Written Statement, New Zealand does not consider that an equivalent obligation arises under the instruments the Court is asked to consider in these proceedings.

⁵⁰ 9 April ECtHR Decision, para. 543.

⁵¹ 9 April ECtHR Decision, para. 419–421.

⁵² 9 April ECtHR Decision, para. 449.

⁵³ 9 April ECtHR Decision, para. 538.

3.5 The consequences for those who breach their obligations

34. The Written Statements, taken as a whole, illustrate broad agreement on the rules of state responsibility for internationally wrongful acts, and – with some exceptions⁵⁴ – agreement on their ‘in principle’ application to the obligations considered in Part A of the question. However, the Written Statements illustrate that:
- a. Part B of the question can only be answered at a theoretical level as far as the rules on state responsibility are concerned because the legal consequences that flow from an actual breach of an international law obligation depend heavily on the facts, the proof of causation, and the extent of any loss.
 - b. Part B of the question can be answered in a more concrete way as regards the procedure for the resolution of disputes. Although only a few States focused their Part B submissions on the dispute resolution provisions in the climate change treaty regime, those provisions are the starting point for the resolution of disputes relating to the obligations addressed in Part A. As set out in our Written Statement,⁵⁵ the default method of dispute resolution under the UNFCCC is conciliation, a procedure which seeks to encourage facilitative dialogue to ensure effective forward-looking remedies rather than adjudicative determination of obligations and consequences.

PART 4: CONCLUSION

35. In requesting this advisory opinion, States have a shared objective of seeking clarity and coherence in their understanding of international law with respect to climate change and a shared ambition that this can support the collective lifting of ambition in response to the shared threat from climate change.
36. As set out above, the number of Written Statements made by States is a testament to the importance of the advisory opinion and the high regard with which States hold this Court. The volume of submissions, and the detail they contain, may, however, obscure and complicate rather than reveal and clarify the obligations on States to protect the climate system and other parts of the environment from anthropogenic emissions of GHGs.
37. The Court’s vital task in this advisory opinion is to clarify those obligations. New Zealand submits that a good starting point for this task is the identification of areas

⁵⁴ See Barbados, paras. 167–176 and paras. 227–8.

⁵⁵ New Zealand Written Statement, paras. 134–7.

of common ground as set out in Part Two above, in particular the agreement among States on the centrality of the climate change treaty regime. That regime has near-universal ratification and is the result of more than 30 years of negotiation. It contains a complex mix of legally binding obligations and politically binding commitments which, together, set out the steps required by States to protect the climate system and other parts of the environment from anthropogenic emissions of GHGs. The climate change treaty system is specifically directed at answering Part A of the question. While States have a range of co-existing obligations that bear on their response to climate change, the Court is urged to interpret those obligations in a holistic and mutually supportive way, consistent with the principle of systemic integration.

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