INTERNATIONAL COURT OF JUSTICE

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

WRITTEN COMMENTS OF THE COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW ON THE WRITTEN STATEMENTS MADE BY OTHER STATES AND INTERNATIONAL ORGANIZATIONS

14 AUGUST 2024

TABLE OF CONTENTS

I. Introduction

1. Pursuant to the order of the International Court of Justice (the "Court") of 20 April 2023, the Commission of Small Island States on Climate Change and International Law ("COSIS" or the "Commission") submits these written comments ("Written Comments") on the written statements made on the request of the United Nations General Assembly for an advisory opinion on the obligations of States in respect of climate change (the "Request").

2. The Court received 91 written statements on the Request from 95 States and international organizations[1]. The unprecedented and diverse participation in these proceedings underscores the global significance of the climate crisis and the urgent need for clear and specific guidance from the Court in response to the Request. The world stands on the precipice of escalating climate catastrophe as the Earth's remaining carbon budget to stay within 1.5ºC is nearly exhausted, with small island States among those suffering the worst consequences.

3. Even at current levels of global average temperature, small island States have already suffered extensive loss and damage, as recognized by Article 8 of the Paris Agreement. Those States that are responsible for the greenhouse gas ("GHG") concentrations leading to such loss and damage are in breach of their international obligations. As a result of their massive historical and ongoing emissions of GHGs, they are also in breach of their obligations to "protect and preserve" as well as "to prevent, reduce and control pollution" of the marine environment. The consequences of such breaches would be even more vast if major emitters fail to immediately curb their emissions of GHGs to limit global warming to within 1.5ºC above pre-industrial levels.

4. Time is running out to do so. The Intergovernmental Panel on Climate Change (the "IPCC") has concluded with very high confidence that, because the Earth's remaining global carbon budget for 1.5ºC of warming is nearly exhausted, "[t]here is a *rapidly closing window* of opportunity to secure a liveable and sustainable future for all"[2]. The consensus around the best available science is thus clear that States must undertake deep, rapid, and sustained reductions in GHG emissions to preserve any hope of averting deeper climate catastrophe.

5. The written statements submitted demonstrate broad agreement on the severity of anthropogenic climate change, the urgency of addressing it, the wide range of applicable legal obligations, and the need for science-based solutions to comply with these obligations in mitigating and adapting to climate change.

6. Since the submission of written statements in these proceedings, on 21 May 2024, the International Tribunal for the Law of the Sea ("ITLOS") issued an advisory opinion in response to a request filed by COSIS clarifying the specific obligations under the United Nations Convention on the Law of the Sea ("UNCLOS") to prevent, reduce, and control marine pollution through GHG emissions, and to protect and preserve the marine environment from climate change (the "*COSIS* advisory opinion"). The opinion followed participation of 40 States Parties and international organizations in written and oral proceedings in 2023. The

---

1 International Court of Justice, Press Release No. 2024/31, Obligations of States in Respect of Climate Change (Request for Advisory Opinion): Filing of Written Statements (12 April 2024).

2 IPCC, "Summary for Policymakers", *Sixth Assessment Synthesis Report* (2023) (Dossier No. 78), pp. 19–20, 24 (emphasis added).

opinion was unanimous, reflecting the views of ITLOS's 21 Judges sitting as the specialized tribunal charged with the interpretation and application of UNCLOS.

7. ITLOS's *COSIS* advisory opinion and the written statements in these proceedings affirmed COSIS's core submissions in these proceedings: (*i*) that States' specific obligations under UNCLOS and customary international law remain distinct from their obligations under the Paris Agreement and are breached by conduct that leads to pollution of the marine environment in a manner inconsistent with such obligations; (*ii*) that States are further required to limit their emissions of GHGs consistent with the best available science and to assist developing States in adapting to climate change; and (*iii*) that breaching their obligations under UNCLOS or customary international law entails State responsibility that attaches to the conduct that has caused significant harm to the climate system and other parts of the environment.

8. To assist the Court's consideration of the Request, COSIS focuses on the most important points of the agreement that have emerged in these proceedings and from ITLOS's advisory opinion. Silence on other issues addressed in the written statements should not be interpreted as agreement. The Commission sets out its focused comments in five chapters:

(a) Chapter I is this introduction.

(b) Chapter II provides a summary of the scientific consensus on the causes, impacts, and necessary mitigation measures of climate change as reflected in the best available science.

(c) Chapter III summarizes ITLOS's *COSIS* advisory opinion.

(d) Chapter IV addresses part (a) of the Request by discussing States' obligations under customary international environmental law with regard to climate change.

(e) Chapter V addresses part (b) of the Request by discussing the legal consequences for States where they, by their acts and omissions, have breached their obligations under part (a).

(f) Chapter VI restates the Commission's conclusions on the Request.

9. As with the written statements, some States that are Member States of COSIS are submitting their own written comments in the present proceedings. The respective positions of the COSIS Member States are aligned overall with the views expressed by COSIS as an international organization, but for the avoidance of doubt, in case of any differences between these Written Comments and the written comments submitted by a COSIS Member State, the latter express that State's full position with regard to the questions before the Court.

II. The Irrefutable Science of Climate Change

10. The written statements confirm that the best available scientific evidence is irrefutable: GHG emissions cause significant harm to the climate system, leading to widespread devastation to human and natural systems. This evidence demonstrates that further harm will occur with every increment of additional warming, but that the risk of catastrophic—and, for small island States, existential—harm increases dramatically at or beyond 1.5ºC above pre-industrial levels.

11. In this Chapter II, the Commission summarizes the overwhelming agreement across the written statements on the irrefutable scientific evidence of harms related to climate change. Specifically, it describes the consensus on the causes and effects of climate change (Section A); the critical importance of limiting global warming to no more than 1.5ºC above pre-industrial levels to avert catastrophic harm, particularly to small island States (Section B); and the methodologies for attributing GHG emissions to activities within specific States (Section C).

A. Best Available Climate Science and the Causes and Severe Effects of Climate Change

12. Nearly all participants before the Court agree that the IPCC's reports reflect the gold standard of internationally accepted, best available climate science. They endorse the IPCC's findings on the anthropogenic causes and severe effects of climate change, especially on small island States.

13. The vast majority of States and international organizations that have filed written statements in this case—86 in total across 82 written statements—rely on the IPCC's reporting as the source of the best available science on climate change[3]. Albania, for example, emphasizes that "the work and publications produced by the IPCC deserve special regard . . . and constitute the best available assessment of the current state of scientific knowledge"[4]. Bangladesh notes that "[t]he best available science on climate change is largely reflected in

[3] *See* Written statements of Albania, ¶ 50; Antigua and Barbuda, ¶ 15; Australia, ¶ 1.22; The Bahamas, ¶ 13; Bangladesh, ¶ 18; Barbados, ¶ 83; Belize, ¶ 47; Bolivia, ¶¶ 49, 54; Brazil, ¶¶ 3, 59; Burkina Faso, ¶ 6; Canada, ¶ 37; Chile, ¶ 22; China, ¶ 12; Colombia, ¶ 2.1; Cook Islands, ¶ 16; Costa Rica, ¶ 102; Democratic Republic of the Congo, ¶¶ 37–46; Denmark, Finland, Iceland, Norway, and Sweden ("Denmark et al."), ¶ 3; Dominican Republic, ¶ 1.4; Ecuador, ¶ 1.9; Egypt, ¶ 25; El Salvador, ¶ 11; France, ¶ 15; Germany, ¶ 40; Ghana, ¶ 30; Grenada, ¶ 4; India, ¶¶ 61–62; Indonesia, ¶ 75, fn. 59; Iran, ¶¶ 55, 111, 136; Kenya, ¶ 3.1; Kiribati, ¶ 15; Republic of Korea, ¶¶ 8, 25, fn. 10; Kuwait, ¶ 122; Liechtenstein, ¶¶ 19, fns. 26, 21; Madagascar, ¶¶ 11, 28; Marshall Islands, ¶ 66; Mauritius, § IV; Mexico, ¶¶ 17, 26; Federated States of Micronesia, ¶ 50; Namibia, ¶¶ 8, 24; Nauru, § II; Netherlands, § 2; New Zealand, ¶¶ 3–5; Pakistan, ¶ 4; Palau, ¶ 9; Peru, § III.A; Philippines, ¶ 28; Portugal, ¶ 14; Romania, ¶¶ 7, 12; Russia, p. 15, fn. 13; Saint Lucia, ¶¶ 15, 19; Saint Vincent and the Grenadines, ¶ 38; Samoa, ¶¶ 5–6; Saudi Arabia, ¶ 2.10, fns. 36, 40; Seychelles, § I.B; Sierra Leone, ¶ 1.4; Singapore, ¶ 1.6; Solomon Islands, ¶¶ 20, 143; South Africa, ¶¶ 24, 28, 109; Spain, ¶ 3; Sri Lanka, ¶ 13; Switzerland, ¶ 35; Thailand, ¶ 14; Timor-Leste, § IV; Tonga, ¶ 47; Tuvalu, ¶ 26; United Arab Emirates, ¶ 9; United Kingdom, ¶ 4.2; United States, ¶ 2.16; Uruguay, ¶ 16; Vanuatu, ¶ 23; Viet Nam, ¶ 12; African Union, ¶ 7; Alliance of Small Island States ("AOSIS"), ¶ 13; Commission of Small Island States on Climate Change and International Law ("COSIS"), § 2; European Union, ¶ 139; Forum Fisheries Agency, ¶¶ 41, 48, 57; International Union for the Conservation of Nature ("IUCN"), ¶ 35; Melanesian Spearhead Group, ¶ 13; Organization of African, Caribbean, and Pacific States ("OACPS"), ¶ 20; Parties to the Nauru Agreement Office ("PNAO"), ¶ 11; World Health Organization ("WHO"), ¶ 4.

[4] Albania written statement, ¶ 50.

the climate assessments and special reports of the IPCC"[5]. Similarly, the United States considers the IPCC reports as "represent[ing] the most comprehensive and robust assessment of climate change to date"[6]. No participant expressly challenges the conclusions of the IPCC or its standing as the authoritative source of internationally accepted climate science.

14. The IPCC's reports reflect the unequivocal scientific consensus that human activities—principally burning fossil fuels and biomass, coal mining, and land-use change—emit GHGs that cause global warming[7]. The IPCC has concluded that these emissions are driving unprecedented concentrations of GHGs in the atmosphere, leading to levels of planetary warming never before seen in human history[8]. Nearly all participants, 77 in total, explicitly accept this evidence[9], and none refutes it.

15. The IPCC concluded with very high confidence that "[c]limate change is a threat to human well-being and planetary health"[10], and that global warming has *already* caused "[w]idespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere", resulting in "adverse impacts on food and water security, human health and on economies and society and related losses and damages to nature and people"[11]. The IPCC further found with very high confidence that the "[r]isks and projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming"[12]. Nearly all participants also explicitly accept this irrefutable evidence of the wide-ranging and severe adverse impacts of climate change[13].

---

5 Bangladesh written statement, ¶ 18.

6 United States written statement, ¶ 2.16.

7 IPCC, Working Group I, "Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedbacks", *Sixth Assessment Report: The Physical Science Basis* (2021), p. 687; *see also* COSIS written statement, Annex 1 (Expert Report of Sarah R. Cooley, Ph.D., on Impacts of Anthropogenic Greenhouse Gas Emissions on the Marine Environment and Affected Communities), § II.A.

8 IPCC, "Longer Report", *Sixth Assessment Synthesis Report* (2023), pp. 6–8.

9 Written statements of Albania, ¶ 51; Antigua and Barbuda, § II.B; Australia, § 3; The Bahamas, ¶ 15; Bangladesh, § II.A(1)(a); Barbados, ¶¶ 83–91; Belize, ¶ 47; Bolivia, ¶ 13; Brazil, ¶¶ 31, 50; Burkina Faso, ¶ 14; Canada, ¶ 5; Chile, ¶¶ 27–29; China, ¶ 12; Colombia, ¶ 2.1; Cook Islands, § III.B.1; Costa Rica, ¶¶ 98–102; Democratic Republic of the Congo, ¶ 68; Denmark et al., ¶ 45; Dominican Republic ¶ 2.3, fn. 24; Ecuador, ¶ 1.9; Egypt, ¶¶ 37–40; El Salvador, ¶ 11; France, ¶ 22; Ghana, ¶ 30; Grenada, ¶¶ 69, 78; India, ¶ 61; Indonesia, ¶ 17; Iran, ¶ 6; Kenya, ¶¶ 3.4–3.6; Kiribati, § III.A; Kuwait, ¶ 122; Liechtenstein, ¶ 21; Madagascar, ¶ 15; Marshall Islands ¶ 46; Mauritius, § IV.B(1); Mexico ¶ 26; Namibia, ¶¶ 57, 125; Nauru, ¶ 48; Netherlands, ¶¶ 2.1–2.2; New Zealand, § 2.1; Pakistan, ¶ 4; Palau, ¶ 9; Peru, ¶ 9; Philippines, § IV.A; Portugal, ¶ 40; Romania, ¶ 17; Saint Lucia, ¶ 19; Saint Vincent and the Grenadines, ¶ 39; Samoa, ¶¶ 3–6; Saudi Arabia, ¶¶ 2.1–2.2; Seychelles, ¶¶ 57–58; Sierra Leone, ¶ 3.120; Singapore ¶¶ 1.6, 3.16; Solomon Islands, ¶ 133; Sri Lanka, § III.A; Switzerland, ¶ 27; Timor-Leste, § IV; Tonga, ¶ 135.1; Tuvalu, ¶ 26; United Arab Emirates, ¶ 9; United Kingdom, § II.B; United States, ¶ 2.16; Uruguay, ¶ 17; Vanuatu, § 2.3; Viet Nam, ¶ 12; African Union, ¶ 83; COSIS, § II.B; European Union, ¶ 12; IUCN, ¶ 50; Melanesian Spearhead Group, ¶ 222; OACPS, ¶¶ 28–31; Organization of Petroleum Exporting Countries ("OPEC"), ¶ 14; PNAO, ¶ 49.

10 IPCC, "Summary for Policymakers", *Sixth Assessment Synthesis Report* (2023) (Dossier No. 78), p. 24.

11 IPCC, "Longer Report", *Sixth Assessment Synthesis Report* (2023), pp. 6, 11.

12 IPCC, "Summary for Policymakers", *Sixth Assessment Synthesis Report* (2023) (Dossier No. 78), p. 15 (emphasis added).

13 Written statements of Albania, ¶¶ 53–56; Antigua and Barbuda, § II.C; The Bahamas, ¶ 14; Bangladesh, § II.A(1)(c); Barbados, ¶ 11; Belize, ¶ 47; Bolivia, ¶ 38; Brazil, ¶ 59; Burkina Faso, ¶ 13; Canada, ¶ 5; Chile, ¶¶ 27–30; Colombia, ¶ 2.7; Cook Islands, ¶ 42; Costa Rica, ¶¶ 98–102; Democratic Republic of the Congo, §§ II.A.3, II.B.1–2; Denmark et al., ¶ 45; Dominican Republic, § 2.II; Ecuador, ¶¶ 1.11–1.12; Egypt, ¶ 41; El Salvador, ¶¶ 13–15; France, ¶ 9; Germany, ¶ 40; Ghana, § IV.B; Grenada, ¶¶ 69–70; Indonesia,

16. At least 57 States address the far-ranging and profound harms that they have already suffered from climate change[14]. This is particularly true of small island States, which are, in the words of Saint Vincent and the Grenadines, "exceptionally vulnerable" to climate change[15]. As Australia rightly affirms, "climate change poses the single-greatest threat to the livelihoods, security and well-being of the peoples of small island developing States"[16]. And in the words of the Melanesian Spearhead Group, "climate change is unravelling the fabric of life" of small island States[17].

17. Twenty-four States and international organizations expressly agree in their written statements that the well-established risks of these emissions have been known for at least several decades[18]. Vanuatu, for example, submits a comprehensive report by Professor Naomi Oreskes, a historian of science and one of the world's leading experts on historical awareness of climate change, to maintain that, at least since the 1960s, several "States with high cumulative emissions of GHG were aware of . . . its potentially catastrophic effects"[19]. Barbados cites a study published in 1962 by the National Academy of Sciences of the United States on the harm caused by GHG emissions, as well as U.S. courts' reliance on that

---

¶ 38; Iran, ¶ 111; Kenya, ¶¶ 3.7–3.12; Kiribati, § III.B; Korea, ¶¶ 25, 27, 29, 41; Latvia, ¶ 18; Liechtenstein, ¶¶ 21–22; Madagascar, §§ IV.A–B; Marshall Islands, ¶ 78; Mauritius, § IV.B(2); Mexico, § III.A; Federated States of Micronesia, § III; Namibia, ¶ 139; Nauru, ¶¶ 16–18; Netherlands, ¶ 2.3; New Zealand, ¶ 4; Pakistan, ¶¶ 4–5; Palau, ¶ 8; Peru, ¶¶ 10–17; Philippines, ¶ 27; Portugal, § II; Romania, §§ II(b)–(d); Saint Lucia, ¶¶ 19, 22–26; Saint Vincent and the Grenadines, §§ IV–V; Samoa, § II.D; Seychelles, ¶ 58; *id*., § I.B; Singapore, ¶ 1.6; Solomon Islands, § IV; South Africa, ¶¶ 23–24; Spain, ¶ 4; Sierra Leone, ¶¶ 3.53–3.132; Sri Lanka, § III.A; Switzerland, ¶¶ 26, 59; Timor-Leste, § IV; Tonga, § IV; Tuvalu, §§ II.B–D; United Arab Emirates, ¶ 9; United Kingdom, ¶ 13.2; United States, ¶ 2.17; Uruguay, § II; Vanuatu, § 2.4; Viet Nam, ¶ 2; African Union, ¶¶ 6–9; AOSIS, Annex 3, ¶ 4; COSIS, § II.B(3); European Union, ¶ 316; Forum Fisheries Agency, § III; IUCN, ¶ 51; Melanesian Spearhead Group, § IV; OACPS, ¶¶ 30–31; PNAO, ¶ 25; Pacific Islands Forum, § C; World Health Organization, § II.

14 Written statements of Albania, ¶ 61; Antigua and Barbuda, § II.C.2; Australia, ¶ 1.6; The Bahamas, ¶¶ 30–37; Bangladesh, § II.B(1); Barbados, ¶ 13; Belize, ¶¶ 5–11; Burkina Faso, ¶¶ 26–32; Canada, ¶ 5; China, ¶ 3; Colombia, §§ 2.B–D; Cook Islands, § III.B; Democratic Republic of the Congo, § II.B.2; Dominican Republic, ¶¶ 2.16–2.18; Ecuador, Ch. 1 § III.A; Egypt, ¶ 54; El Salvador, § 3.B; France, ¶ 9; Ghana, § IV.B; Grenada, § III; India, ¶¶ 91–92; Indonesia, ¶¶ 68–69; Iran, ¶ 2; Kenya, § 3.III; Kiribati, § III.B; Kuwait, ¶ 128; Madagascar, ¶¶ 69–72; Marshall Islands, ¶¶ 96–106; Mauritius, § III.A; Federated States of Micronesia, § III; Namibia, § III; Nauru, ¶¶ 19–25; Nepal, ¶¶ 11–16; New Zealand, § 2.2; Pakistan, § I; Palau, § II; Peru, § III.C; Philippines, § IV.B; Portugal, § II; Romania, § II(d); Saint Lucia, ¶¶ 22–35; Saint Vincent and the Grenadines, § III; Samoa, § II.D; Seychelles, § I.B; Sierra Leone, ¶¶ 1.6–1.8; Solomon Islands, § IV; South Africa, ¶ 25; Spain, ¶ 4; Sri Lanka, § III.B; Switzerland, ¶ 5; Timor-Leste, § IV; Tonga, § IV; Tuvalu, § II.B; United Arab Emirates, ¶¶ 21–32; Uruguay, § II; Vanuatu, § 2.6.6; Viet Nam, ¶ 2.

15 Saint Vincent and the Grenadines written statement, ¶ 8; *see also* written statements of Bangladesh, ¶ 145; Barbados, ¶¶ 311–312; Chile, ¶ 120; Denmark et al., ¶ 97; France, ¶ 9; Kiribati, ¶ 178; Madagascar, ¶¶ 69–72; the Marshall Islands, ¶ 96; Mauritius, ¶ 211(a); Federated States of Micronesia, ¶ 132; Nauru, ¶ 7; Seychelles, ¶ 17; Sierra Leone, ¶ 3.146; Singapore, ¶ 4.20; Tonga, ¶ 53; Tuvalu, ¶¶ 25–26; United Kingdom, ¶ 164; Vanuatu, ¶ 89; African Union, ¶ 233; Forum Fisheries Agency, ¶ 7; OACPS, ¶ 79; Pacific Islands Forum, ¶ 7; PNAO, ¶ 6.

16 Australia written statement, ¶ 5.2

17 Melanesian Spearhead Group written statement, ¶ 309.

18 *See* written statements of Albania, ¶ 98, fn. 140; Antigua and Barbuda, ¶ 107; Australia, ¶ 2.4; The Bahamas, ¶ 80; Barbados, ¶¶ 37–82; Brazil, ¶ 3; Burkina Faso, ¶¶ 33–38; Canada, ¶ 12; Chile, ¶ 28; Dominican Republic, ¶ 1.3; Egypt, ¶¶ 306–310; Kenya, ¶ 3.12; Kiribati, ¶¶ 183–186; Mauritius, ¶ 39; Netherlands, ¶ 5.6; New Zealand, ¶ 22; Russia, p. 16; Saint Lucia, ¶ 23; Samoa, ¶ 127; Switzerland, ¶¶ 35–36; United States, ¶ 2.12; Vanuatu, ¶¶ 73, 177; IUCN, ¶ 355; OACPS, ¶ 21.

19 Vanuatu written statement, ¶ 73; *see also id*., Exhibit D.

institution's scientific authority[20]. The United States acknowledges "general awareness" in the 1980s "among States of the significant global risks that could arise from global warming resulting from increased atmospheric concentrations of GHGs due to human activities"[21]. A few participants take the explicit position that the potential harm caused by anthropogenic GHG emissions was at least foreseeable since the early 1990s[22], citing the First Assessment Report of the IPCC[23].

B. Scientific Consensus on the Need to Limit Global Warming to Below 1.5ºC

18. The written statements broadly endorse the science-backed international standard concluding that 1.5ºC of average global warming above pre-industrial levels is a critical threshold above which the risk of further catastrophic harm due to climate change increases dramatically. States and international organizations also confirm the conclusion reflected in the IPCC reports that Earth's remaining global carbon budget to stay below 1.5ºC is already nearly exhausted.

1. Catastrophic Impacts Associated with Climate Change at or Above 1.5ºC

19. As noted above, the IPCC has concluded with high confidence that "[e]very increment of global warming will intensify multiple and concurrent hazards"[24]. In its written statement, COSIS presented further evidence showing that the risk of further catastrophic effects of climate change increases from moderate to high with average global warming of 1.5ºC above pre-industrial levels[25]. In its Technical Dialogue for the first Global Stocktake, the Secretariat of the United Nations Framework Convention on Climate Change (the "UNFCCC") confirmed that "[e]very fraction of a degree of temperature increase *closer to and beyond* 1.5ºC will cause increases in multiple climate hazards and present greater risks to human systems and ecosystems"[26].

20. Even temporary warming above 1.5ºC—what climate scientists call "overshoot"—will likely result in "more adverse impacts, some irreversible"[27]. The IPCC has concluded with high confidence that overshoot results in "additional risks for human and natural systems

---

[20] Barbados written statement, ¶¶ 54, 67, 81, fn. 69.

[21] United States written statement, ¶ 2.12.

[22] *See* written statements of Germany, ¶ 40; Russia, p. 16; Switzerland, ¶¶ 35–36.

[23] IPCC, First Assessment Report Overview and Policymaker Summaries (1990).

[24] IPCC, "Summary for Policymakers", *Sixth Assessment Synthesis Report* (2023) (Dossier No. 78), p. 12.

[25] *See* COSIS written statement, ¶¶ 29–35; *see also id.*, Annex 1, Expert Report of Sarah R. Cooley, Ph.D., on Impacts of Anthropogenic Greenhouse Gas Emissions on the Marine Environment and Affected Communities (22 March 2024) ("Cooley Report"), § IV.A. ("Systemic Risks of Warming Above 1.5°C"); Annex 2, Expert Report of Shobha Maharaj, D.Phil. (Oxon.), on Impacts of Climate Change on Small Island States (22 March 2024) ("Maharaj Report"), § III.D ("Increased Risk at or Above 1.5°C"). "Moderate" risk refers to where impacts/risks are detectable and attributable to climate change with at least medium confidence, whereas "high" risk indicates severe and widespread impacts/risks. *See* IPCC, "Technical Summary", *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), p. 59.

[26] UNFCCC Secretariat, Technical Dialogue of the First Global Stocktake: Synthesis Report by the Co-Facilitators on the Technical Dialogue, document FCCC/SB/2023/9 (8 September 2023), ¶ 139 (emphasis added). *See also* IPCC, "Summary for Policymakers", *Special Report: Global Warming of 1.5ºC* (2018), p. 5 (concluding that limiting global warming to 1.5°C will reduce risks to humans and the environment as compared with global warming of 2ºC).

[27] *See* COSIS written statement, ¶ 42 (quoting IPCC, "Longer Report", *Sixth Assessment Synthesis Report* (2023), p. 53).

compared to staying below that warming level, with risks growing with the magnitude and duration of overshoot"[28]. Coral reefs are particularly vulnerable to even low overshoot over a short period[29].

21. Many States and international organizations—including at least 55 participants across 51 written statements—acknowledge that the risks of further catastrophic harm increase dramatically with global warming above 1.5ºC[30]. The African Union, for example, stresses that climate change "poses serious threats to human well-being and planetary integrity" and that, if global warming reaches 1.5ºC, it will create a "very high risk of irreversible damage"[31].

22. For small island States and their peoples, the risks associated with global warming above 1.5ºC are existential. Projections for Tuvalu, for example, show that its low-lying atolls will suffer near-total inundation every five years by the end of this century should global warming exceed 1.5ºC without sufficient adaptation[32]. Tuvalu warns that "much of [its] land plus critical infrastructure will sit below the level of the current high tide by 2050"[33]. Antigua and Barbuda affirms that "[i]sland settlements are typically concentrated along coastlines, exposing decades of high-density urban development to multiple climate-related hazards" and that, "based on current sea level rise projections, almost all port and harbour facilities in the Caribbean will suffer inundation in the future"[34].

2. Near-Exhaustion of the Earth's Remaining Carbon Budget and the Urgent Need to Reduce Greenhouse Gas Emissions

23. The science is equally clear—and the written statements of at least 34 States and international organizations expressly underscore—that time is running out to prevent warming above 1.5°C[35]. The IPCC has concluded that Earth has already warmed at least 1.1ºC on

---

28 *Id*.

29 *Id*.

30 Written statements of Albania, ¶ 52; Antigua and Barbuda, ¶ 50; The Bahamas, ¶¶ 70–72; Bangladesh, § II.A(2)(a); Barbados, ¶¶ 90–91; Bolivia, ¶ 49; Brazil, ¶ 66; Burkina Faso, ¶¶ 84–85; Colombia, ¶ 2.2; Cook Islands, ¶ 76; Democratic Republic of the Congo, ¶ 86; Denmark et al., ¶ 47; Dominican Republic, ¶¶ 4.28–4.29; Ecuador, ¶¶ 3.27–3.28; Egypt, ¶ 53; El Salvador, ¶ 12; Grenada, ¶ 78; Kenya, ¶ 3.16; Kiribati, ¶ 23; Latvia, ¶ 18; Liechtenstein, ¶ 73; Marshall Islands, ¶ 76; Mauritius, ¶ 64; Federated States of Micronesia, ¶¶ 32–33; Namibia, ¶ 71; Nepal, ¶ 19; New Zealand, ¶ 50, fn. 64; Pakistan, ¶ 5(c); Saint Lucia, ¶¶ 23(v), 53, fn. 87; Saint Vincent and the Grenadines, ¶ 39; Samoa, ¶¶ 17, 77; Saudi Arabia, ¶ 4.57; Seychelles, ¶¶ 89–91; Sierra Leone, ¶ 3.23; Singapore, ¶ 3.30, fn. 72; Solomon Islands, ¶ 47; Timor-Leste, ¶ 99; Tonga, ¶ 54; Tuvalu, ¶ 107; United Kingdom, ¶ 63; United States, ¶ 2.56, fn. 164; Uruguay, ¶ 23; Vanuatu, ¶ 94; African Union, ¶ 93; COSIS, § II.B.5; European Union, ¶ 378; Forum Fisheries Agency, ¶ 23; IUCN, ¶ 34; OACPS, ¶ 48; OPEC, ¶ 78; PNAO, ¶ 21.

31 African Union written statement, ¶ 93.

32 Tuvalu written statement, ¶ 30.

33 *Id*., ¶ 40 (quoting NASA, Technical Report, N-SLCT-2023-01, Assessment of Sea Level Rise and Associated Impacts for Tuvalu (June 2023), p. 1).

34 Antigua and Barbuda written statement, ¶ 96.

35 Written statements of Albania, ¶ 52; Antigua and Barbuda, ¶¶ 45–46; The Bahamas, ¶¶ 66–70; Bangladesh, ¶ 44; Barbados, ¶¶ 90–91; Brazil, ¶ 52; Burkina Faso, ¶ 83; Colombia, ¶ 2.4; Democratic Republic of the Congo, ¶ 89; Dominican Republic, ¶ 2.3, fn. 24; Ecuador, ¶¶ 3.77–3.78; France, ¶ 9; Grenada, ¶ 78; India, ¶ 61; Kenya, ¶ 3.15; Republic of Korea, ¶ 8; Mauritius, ¶¶ 74–76; Namibia, ¶ 8; New Zealand, ¶ 5; Romania, ¶ 39; Saint Lucia, ¶ 4; Saint Vincent and the Grenadines, ¶ 48; Seychelles, ¶ 86; Sierra Leone, ¶ 1.9; Solomon Islands, ¶ 82; Timor-Leste, ¶ 103; Tuvalu, ¶¶ 61–64; United Kingdom, ¶ 13.5; Uruguay, ¶ 25; Vanuatu, ¶ 99; African Union, ¶ 97; COSIS, ¶ 40; European Union, ¶ 162; IUCN, ¶ 82.

average since the pre-industrial era[36]. The IPCC further found that the Earth's estimated "remaining carbon budget" for keeping global warming within 1.5°C is close to exhaustion[37]. That remaining budget from 2020 onwards was only 500 billion tonnes, which was "much smaller than the total CO_2 emissions released" up to that point[38]. The IPCC assessed that, to achieve at least a 50 percent chance of limiting warming to 1.5ºC, States must reduce GHG emissions, as measured against 2019 levels, by at least 43 percent by 2030, 60 percent by 2035, 69 percent by 2040, and 84 percent by 2050[39]. Variance from these targets is not an option[40].

24. Many participants—at least 73 States and international organizations across 69 written statements—expressly acknowledge the scientific basis for the IPCC's conclusion that mitigating catastrophic climate change requires deep, rapid, and sustained reductions in GHG emissions[41]. Pakistan, for instance, urges that "[t]he best available science is also clear that . . . unless greenhouse gas emissions are limited to below 1.5ºC above pre-industrial levels target, critical and irreversible thresholds will most likely be crossed, tipping the climate system into uncharted catastrophic territory"[42]. The United States recognizes that the scientific evidence "make[s] clear what is needed to limit" global warming to 1.5ºC: "net zero carbon dioxide emissions must be reached as soon as possible" and "strong reductions in other GHG emissions must be made"[43]. The United Kingdom notes that limiting global warming to 1.5ºC "requires CO_2 emissions to be reduced to at least net zero by the 2050s . . . alongside deep reductions in all other GHGs"[44].

25. The written statements of at least 34 States and international organizations recognize that achieving these mitigation pathways will necessarily require reducing fossil fuels[45],

---

36 IPCC, "Longer Report", *Sixth Assessment Synthesis Report* (2023), p. 42.

37 IPCC, "Summary for Policymakers", *Sixth Assessment Synthesis Report* (2023) (Dossier No. 78), pp. 19–20.

38 IPCC, Working Group I, "Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedbacks", *Sixth Assessment Report: The Physical Science Basis* (2021), p. 778.

39 IPCC, "Summary for Policymakers", *Sixth Assessment Synthesis Report* (2023) (Dossier No. 78), p. 21.

40 *See* written statements cited at footnote 30 above.

41 Written statements of Albania, ¶ 52; Antigua and Barbuda, ¶¶ 45–48; Australia, ¶ 2.53; The Bahamas, ¶¶ 68–73; Bangladesh, ¶ 44; Barbados, ¶ 91; Bolivia, ¶ 33, Brazil, ¶ 52; Burkina Faso, ¶ 83; Canada, ¶¶ 6, 17; Chile, ¶¶ 49–50; China, ¶ 65; Colombia, ¶¶ 2.4–2.6; Costa Rica, ¶ 124; Democratic Republic of the Congo, ¶ 37; Denmark et al., ¶¶ 3, 7–8; Dominican Republic, ¶¶ 4.28–4.30; Ecuador, ¶¶ 3.26–3.28, 3.78; Egypt, ¶ 42; El Salvador, ¶¶ 11–16; France, ¶ 8; Grenada, ¶ 26; India, ¶¶ 64, 67; Indonesia, ¶ 17, fns. 14–15; Kenya, ¶ 3.16; Kiribati, ¶ 23; Republic of Korea, ¶¶ 8–9; Liechtenstein, ¶ 21; Madagascar, ¶ 29; Marshall Islands, ¶ 76; Mauritius, §§ IV.B(6)–(7); Mexico, ¶¶ 26–27; Federated States of Micronesia, ¶ 89; Namibia, ¶¶ 60–61; Netherlands, ¶ 3.12; New Zealand, ¶ 5; Pakistan, ¶¶ 5, 46; Palau, Annex 3; Peru, ¶¶ 9–10, 81; Philippines, ¶ 28; Portugal, ¶ 14; Romania, ¶¶ 7, 37; Saint Lucia, ¶ 23; Saint Vincent and the Grenadines, ¶ 48; Samoa, ¶¶ 5–6, 128; Seychelles, ¶ 92; Sierra Leone, ¶ 3.38; Singapore, ¶¶ 1.5–1.6; Solomon Islands, ¶ 62; South Africa, ¶ 109; Spain, ¶ 3; Sri Lanka, ¶¶ 26–29; Switzerland, ¶ 5; Timor-Leste, ¶ 98; Tonga, ¶ 271; Tuvalu, ¶ 68; United Arab Emirates, ¶¶ 9–10; United Kingdom, ¶ 13.4; United States, ¶ 2.17, fn. 76; Uruguay, ¶ 24; Vanuatu, § 2.5; Viet Nam, ¶ 12; African Union, ¶¶ 7, 245; COSIS, ¶¶ 61–62; European Union, ¶ 145; IUCN, ¶ 35; Melanesian Spearhead Group, ¶¶ 314–315; OACPS, ¶ 165; PNAO, ¶ 11.

42 Pakistan written statement, ¶ 5(c).

43 United States written statement, ¶ 2.17.

44 United Kingdom written statement, ¶ 13.4.

45 Written statements of Albania, ¶ 78; Antigua and Barbuda, ¶ 117; Australia, ¶ 2.53; The Bahamas, ¶ 165; Bangladesh, ¶¶ 10, 91, 93, 130, 139, 148; Barbados, ¶¶ 86–91; Burkina Faso, ¶¶ 223, 231; China, ¶ 96; Colombia, ¶¶ 2.38, 2.76, 4.10; Costa Rica, ¶ 102; Democratic Republic of the Congo, ¶ 209; Denmark et al., ¶ 8; Dominican Republic, ¶ 4.62; Ecuador, ¶ 3.30; Egypt, ¶ 137; Grenada, ¶¶ 35, 80; Kenya, § 6.III; Madagascar, ¶ 46; Mauritius, ¶¶ 6(f)(iv), 127(a), 221(b); Saint Vincent and the Grenadines, ¶ 51; Solomon

which is in line with the IPCC's conclusions. Of those, 32 participants across 28 written statements note that it is necessary to transition away from[46] or phase out[47] fossil fuels entirely. Ecuador, for example, cites to the IPCC to conclude that "States must adopt and effectively implement the necessary measures to move away from an economy based on fossil fuels"[48]. Australia cites the global stocktake in committing to "transitioning away from fossil fuels in energy systems so as to achieve net zero by 2050"[49].

C. Attribution of Greenhouse Gas Emissions and Their Effects to Particular States

26. Scientific techniques have been developed for purposes of attributing GHG emissions and their effects to activities within the jurisdiction or control of particular States[50]. Vanuatu submitted a report by Professor Corinne Le Quéré, a leading expert in climate attribution science, in which she concludes that "[g]lobal warming can be attributed to countries based on their historical emissions . . . to establish the country's contributions to climate change"[51]. Bangladesh notes that "[r]ecent scientific developments have made it possible to identify the most significant emitter States, both in the present day and cumulatively since 1850, through GHG emissions inventories"[52]. Similarly, Sri Lanka states that there is "sound scientific data connecting the source of climate change to the impacts of climate change"[53].

* * *

27. In sum, the written statements overwhelmingly confirm that the IPCC is the source of the internationally accepted, best available science on climate change. The IPCC reflects the scientific consensus—also endorsed by most States and international organizations in these proceedings—that anthropogenic GHG emissions have already caused significant and widespread harm to humans and the environment, including as a result of global warming; that the risk of even more severe future harm increases dramatically with average global

---

Islands, ¶ 18; Tuvalu, § II.D, ¶ 61; United Arab Emirates, ¶ 61; Vanuatu, ¶¶ 144–145, 320, 511–512; African Union, ¶¶ 106–108; European Union, ¶ 162; COSIS, ¶ 62; IUCN, ¶ 77; Melanesian Spearhead Group, ¶¶ 315, 333; OACPS, ¶ 119.

46 *See* written statements of Antigua and Barbuda, ¶ 117; Australia, ¶ 2.53; Bangladesh, ¶¶ 91, 139, 148; Burkina Faso, ¶ 231; China, ¶ 96; Colombia, ¶¶ 2.38; Costa Rica, ¶ 102; Democratic Republic of the Congo, ¶ 209; Denmark et al., ¶ 8; Dominican Republic, ¶ 4.62; Ecuador, ¶ 3.30; Egypt, ¶ 137; Grenada, ¶¶ 35, 80; Madagascar, ¶ 46; Mauritius, ¶ 127(a); Saint Vincent and the Grenadines, ¶ 51; Solomon Islands, ¶ 18; Tuvalu, § II.D; United Arab Emirates, ¶ 61; Vanuatu, ¶¶ 144–145, 320; African Union, ¶¶ 106–108; COSIS, § II.E, ¶¶ 112, 203; European Union, ¶ 162; IUCN, ¶ 77; Melanesian Spearhead Group, ¶ 333.

47 *See* written statements of Albania, ¶ 78; Bangladesh, ¶¶ 93, 130; Colombia, ¶ 4.10; Democratic Republic of the Congo, ¶ 209; Kenya, § 6.III; Mauritius, ¶ 221(b); Tuvalu, ¶ 61; Vanuatu, ¶¶ 511–512; African Union, ¶¶ 106–108; COSIS, ¶ 62; IUCN, Appendix II § III; Melanesian Spearhead Group, ¶ 315; OACPS, ¶ 119.

48 Ecuador written statement, ¶ 3.30 (citing IPCC, "Summary for Policymakers", *Sixth Assessment Synthesis Report* (2023) (Dossier No. 78), p. 22 (urging that "mitigation pathways reaching net zero CO_2 and GHG emissions include transition from fossil fuels")).

49 Australia written statement, ¶ 2.53.

50 *See* written statements of Bangladesh, ¶ 22; Chile, ¶¶ 94–98; Philippines, ¶ 28(e); Samoa, ¶ 212; Sierra Leone, ¶ 3.144; Sri Lanka, ¶ 28; United States, § II.A.ii; Uruguay, ¶ 173; Vanuatu, Exhibit B (Expert Report of Professor Corinne Le Quéré on Attribution of Global Warming by Country).

51 Vanuatu written statement, Exhibit B (Expert Report of Professor Corinne Le Quéré on Attribution of Global Warming by Country), ¶¶ 6, 8.

52 Bangladesh written statement, ¶ 22.

53 Sri Lanka written statement, ¶ 28.

temperature rise beyond 1.5ºC above pre-industrial levels; that the window to prevent escalating climate catastrophe is rapidly closing with the near-exhaustion of Earth's remaining carbon budget; and that cuts in GHG emissions are indispensable to averting this escalation, which will entail transitioning away from fossil fuels. Expert testimony and evidence from the written statements also show that scientific techniques are available to attribute GHG emissions and resulting harms to activities under the jurisdiction or control of particular States.

III. ITLOS's *COSIS* Advisory Opinion on States Parties' Obligations Under UNCLOS

28. As noted, ITLOS's *COSIS* advisory opinion was unanimous, reflecting the views of ITLOS's 21 Judges sitting as the specialized tribunal charged with the interpretation and application of UNCLOS. That opinion set out a detailed analysis of the specific obligations under UNCLOS in respect of climate change and is directly relevant to these proceedings in three key respects: it confirms the critical role of science in informing States' obligations in respect of climate change (Section A); clarifies with specificity the relevant obligations under UNCLOS to mitigate GHG emissions and assist developing States in adapting to climate change (Section B); and addresses the relationship between UNCLOS and the Paris Agreement (Section C).

A. Critical Role of the Best Available Climate Science

29. ITLOS opens its *COSIS* advisory opinion by placing science at the heart of its analysis, noting that "[t]he phenomenon of climate change is central to the Request and the questions contained therein necessarily have scientific aspects"[54]. As COSIS argued and ITLOS confirms, the best available science plays a "crucial role" in determining States Parties' obligations regarding climate change, "as it is key to understanding the causes, effects and dynamics" of marine pollution through GHG emissions "and thus . . . providing the effective response"[55].

30. ITLOS confirms that, "[w]ith regard to climate change . . . the best available science is found in the works of the IPCC which reflect the scientific consensus"[56]. It recognizes the IPCC reports "as authoritative assessments of the scientific knowledge on climate change" and as reflecting "scientific consensus"[57]. ITLOS thus determines that "the assessments of the IPCC relating to climate-related risks and climate change mitigation deserve particular consideration", and it cites to them over 60 times[58].

31. Relying on the conclusions of the IPCC, ITLOS recognizes that human activities, principally through GHG emissions, "have unequivocally caused" climate change[59]. It further acknowledges the critical role of the ocean to the climate system, and in particular the "devastating consequences" that climate change "has and will continue to have on small island States, considered to be among the most vulnerable to such impacts"[60]. The Tribunal reaffirms that the best available science demonstrates the "high risk" that these outcomes will be "much worse" if temperature increases exceed 1.5°C above pre-industrial levels[61].

---

54 ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion Submitted to ITLOS)*, *Case No. 31*, *Advisory Opinion*, *ITLOS Reports 2024*, p. __ ("*COSIS* Advisory Opinion"), ¶ 46.

55 *Id*., ¶ 212.

56 *Id*., ¶ 208; *see also id*., ¶ 51 ("[M]ost of the participants in the proceedings referred to reports of the IPCC, recognizing them as authoritative assessments of the scientific knowledge on climate change, and . . . none of the participants challenged the authoritative value of these reports.").

57 *Id*., ¶¶ 51, 208.

58 *Id*., ¶ 208.

59 *Id*., ¶ 54.

60 *Id*., ¶ 122.

61 *Id*., ¶ 209.

32. ITLOS thus relies on the IPCC's conclusions to reaffirm the "broad agreement within the scientific community that if global temperature increases exceed 1.5°C, severe consequences for the marine environment would ensue"[62]. The Tribunal confirms the IPCC's conclusion that "[d]eep, rapid, and sustained GHG emissions reductions, reaching net zero CO_2 emissions and including strong emissions reductions of other GHGs . . . are necessary to limit warming to 1.5°C" by 2100[63].

B. OBLIGATIONS TO MITIGATE CLIMATE CHANGE

33. On the threshold definitional question, the point of cardinal importance to COSIS and its Member States is that ITLOS concludes that GHG emissions constitute "pollution of the marine environment" within the meaning of Article 1(1)(4) of UNCLOS on the basis of key scientific conclusions around the anthropogenic source of such emissions, the means of their introduction into the marine environment, and their deleterious effects[64].

34. As COSIS argued and the Tribunal accepts, under Article 194 of UNCLOS, "States Parties to the Convention have the specific obligations to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions and to endeavour to harmonize their policies in this connection"[65].

35. ITLOS also finds that States Parties, in determining what measures are necessary to mitigate climate change, must apply the "precautionary approach"[66]. The Tribunal confirms that Article 194 of UNCLOS requires States Parties to act with due diligence to prevent, reduce, and control marine pollution through GHG emissions[67]. Contrary to the submissions of some participants who sought to dilute what due diligence actually requires, ITLOS agrees with COSIS that the content of such obligations must be determined objectively, taking into account the best available science and "in particular the global temperature goal of limiting the temperature increase to 1.5°C above pre-industrial levels and the timeline for emission pathways to achieve that goal"[68].

36. ITLOS stresses that "an obligation of due diligence can be highly demanding"[69]. In the context of climate change, the Tribunal concludes that, given the high risk of severe harm that anthropogenic GHG emissions pose to the marine environment, "the standard of due diligence States must exercise in relation to marine pollution from anthropogenic GHG emissions needs to be stringent"[70]. Accordingly, States "are required to take measures as far-reaching and efficacious as possible" to mitigate climate change[71]. The Tribunal confirms that States' due diligence obligation requires them to regulate the conduct of private parties under

---

62 *Id*., ¶ 241.

63 *Id*., ¶ 65; *see also id*., ¶ 210 (noting imperative of reaching net zero emissions globally around 2050 to stay within that temperature threshold).

64 *Id*., ¶ 179.

65 *Id*., ¶ 243.

66 *Id*., ¶ 213.

67 *Id*., ¶ 234.

68 *Id*., ¶ 243.

69 *Id*., ¶ 257.

70 *Id*., ¶ 241.

71 *Id*., ¶ 399.

their jurisdiction or control[72]. It also finds that UNCLOS requires States Parties to "monitor the risks or effects of pollution, to publish reports and to conduct environmental impact assessments as a means to address marine pollution from anthropogenic GHG emissions"[73].

37. ITLOS underscores the importance of international cooperation in fulfilling States Parties' obligations under Article 194[74]. In particular, the Tribunal finds that the "global and transboundary nature" of marine pollution through GHG emissions demonstrates that "joint actions should be actively pursued"[75]. Critically from the perspective of COSIS, ITLOS makes clear that States Parties' mitigation obligations are not "discharged exclusively through participation in the global efforts to address the problems of climate change"[76]: "States are required to take all necessary measures, including individual actions as appropriate."[77]

38. The Tribunal also reaffirms that States Parties must comply with their mitigation obligations consistent with the principle of common but differentiated responsibilities and respective capabilities ("CBDR-RC"). Specifically, the Tribunal finds that "States with greater means and capabilities must do more to reduce such emissions than States with less means and capabilities"[78]. Noting that, "[a]lthough they contribute less to anthropogenic GHG emissions, [developing] States suffer more severely from their effects on the marine environment"[79], ITLOS finds that developed States Parties must provide "scientific, technical, educational and other assistance to developing States that are particularly vulnerable to the adverse effects of climate change", and that doing so would be "a means of addressing [the] inequitable situation" of climate change[80]. Likewise, ITLOS finds that UNCLOS requires developed States Parties to assist developing States in efforts to adapt to climate change[81]. In so holding, ITLOS puts particular emphasis on the evidence provided by COSIS *vis-à-vis* small island States, which ITLOS acknowledges are "considered to be among the most vulnerable" to climate change[82].

39. ITLOS further agreed with COSIS to confirm that the principle of CBDR-RC is *not* a pretext to justify noncompliance with States Parties' obligations to mitigate climate change. It stresses in particular that "the reference to available means and capabilities should not be used as an excuse to unduly postpone, or even be exempt from, the implementation of the obligation to take all necessary measures" to prevent, reduce, and control marine pollution through GHG emissions[83]. The Tribunal thus underscores a fundamental point made by COSIS, namely that "[a]ll States must make mitigation efforts"[84].

---

72 *Id*., ¶¶ 236, 247.

73 *Id*., ¶ 367.

74 *See id*., ¶ 297.

75 *Id*., ¶ 202.

76 *Id*.

77 *Id*.

78 *Id*., ¶ 227.

79 *Id*., ¶ 327.

80 *Id*.

81 *Id*., ¶¶ 75–76, 391.

82 *Id*., ¶ 122.

83 *Id*., ¶ 226.

84 *Id*., ¶ 229.

40. COSIS did not expressly raise questions of State responsibility in its request to ITLOS for an advisory opinion, which the Tribunal notes, stating that "if the Commission had intended for the Tribunal to address issues of responsibility and liability, it would have expressly formulated [its] Request accordingly"[85]. Nevertheless, ITLOS finds that if a State "fails to comply" with its obligations under UNCLOS, "international responsibility would be engaged for that State"[86]. While noting that the "diffused and cumulative causes and global effects of climate change" would make it "difficult to specify how . . . GHG emissions . . . of one State cause damage to other States", ITLOS emphasizes that this "has more to do with establishing the causation" for assessing States' responsibility than with "the applicability of an obligation"[87].

C. Relationship Between UNCLOS and the Paris Agreement

41. ITLOS confirms that "coordination and harmonization between [UNCLOS] and external rules are important to clarify, and to inform the meaning of, the provisions of the Convention"[88]. Specifically, the Tribunal agrees that the Paris Agreement is "relevant to the assessment of necessary measures"[89]. The Tribunal considers "the global temperature goal and the timeline for emission pathways set forth in the Paris Agreement particularly relevant" because they "are based upon the best available science"[90]. Furthermore, "[t]he dual temperature goal stipulated in the Paris Agreement has been further strengthened by the successive decisions of the Parties to the Paris Agreement"[91].

42. However, again in line with the arguments of COSIS, the Tribunal rejects the view, expressed by a minority of States Parties in the ITLOS proceedings, that the Paris Agreement constituted *lex specialis* that would displace States Parties' obligations under UNCLOS. The Tribunal finds that, "[w]hile the Paris Agreement complements [UNCLOS] in relation to the obligation to regulate marine pollution from anthropogenic GHG emissions, the former does not supersede the latter"[92]. It finds that they are "separate agreements, with separate sets of obligations"[93]. The Tribunal thus concludes that States Parties' UNCLOS obligations to mitigate GHG emissions would not be satisfied "simply by complying with the obligations and commitments under the Paris Agreement"[94]. COSIS considers this to be a point of particular importance.

---

85 *Id*., ¶ 146.

86 *Id*., ¶ 223.

87 *Id*., ¶ 252.

88 *Id*., ¶ 130.

89 *Id*., ¶ 215.

90 *Id*.

91 *Id*., ¶ 216.

92 *Id*., ¶ 223.

93 *Id*.

94 *Id*.

IV. Obligations of States Under Customary International Law Relating to Protection of the Environment in Relation to Climate Change

43. Participants in these proceedings confirm that multiple sources of international law apply to the climate crisis, and that they jointly and severally impose robust obligations on States to mitigate climate change and assist developing States in adapting to it. In light of its mandate and expertise, COSIS focuses its Written Comments on part (a) of the Request on the broad agreement around States' obligations under international law relating to protection of the environment, including those reflected in Part XII of UNCLOS.

44. In this Chapter, COSIS addresses the Court's unique role in the harmonization of sources of international law, including as to ITLOS's *COSIS* advisory opinion (Section A); States' obligations regarding climate change under customary international law relating to environmental protection (Section B); and the culmination of the applicable norms of international law and the best available scientific evidence to require States to adopt measures to, at a minimum, limit global warming to 1.5ºC above pre-industrial levels (Section C).

A. The Court's Role in Harmonizing Sources of International Law

45. As the principal judicial organ of the United Nations, the Court plays a unique role in ensuring consistency between the different legal regimes that apply to the climate crisis. The Request takes a broad approach, recognizing the wide range of potentially relevant and applicable sources of law. The General Assembly asks the Court to have "particular regard" to a non-exhaustive list of international legal instruments, including the United Nations Charter, human rights treaties, the UNFCCC, the Paris Agreement—and UNCLOS. The Assembly also refers to the principle of prevention and the duty to protect and preserve the marine environment.

46. Moreover, the broad nature of the Request in relation to question (a)—with its reference to the obligations of States under international law—reflects the role that advisory opinions play in assisting United Nations organs with their functions. The General Assembly is the plenary organ of the United Nations, which may "discuss *any questions* or *any matters* within the scope of the . . . Charter or relating to the powers and functions of any organs provided for in the . . . Charter"[95]. With the Request, the Assembly has turned to the Court for comprehensive guidance across a range of legal areas. As the Court has observed: "[I]t is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in light of its own needs."[96]

47. The Court's role in these advisory proceedings is therefore to "furnish[] to the requesting organ[] the elements of law necessary for them in their action"[97]. And where those elements of law are drawn from different areas of law (human rights, environmental law, law of the sea, State responsibility, and so on)[98], the Court's role is to provide clarity and facilitate

---

[95] United Nations Charter, Art. 10 (emphasis added).

[96] *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion*, *I.C.J. Reports 1996*, p. 226 ("*Nuclear Weapons* Advisory Opinion"), ¶ 16.

[97] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004*, p. 198 ("*Wall* Advisory Opinion"), ¶ 60.

[98] States and international organizations agree that many sources of law apply to climate change. *See* written statements of Albania, § IV; Antigua and Barbuda, § III.A; Argentina, § III; The Bahamas, § IV; Bangladesh, §IV; Barbados, § VI; Belize, § II; Bolivia, § II; Burkina Faso, § IV; Cameroon, § III; Chile,

a harmonized approach that will enhance the predictability and consistency of future action on climate change. The General Assembly, and the unprecedented number of States and organizations appearing before the Court, are seeking clear and practical guidance on individual, joint, and collective action in accordance with international law.

48. Other courts will, as they have done in the past, turn to the Court for authoritative statements on international law. In 2006, Dame Rosalyn Higgins, speaking as President of the Court on the occasion of ITLOS's 10th anniversary, observed with reference to Article 38 of the Statute:

> "Over the past decade, ITLOS has regularly referred to the Judgments of the International Court with respect to questions of international law and procedure. The International Court, for its part, has been following the Tribunal's work closely, and especially its already well-developed jurisprudence on provisional measures. . . . Our Statute clearly states in Article 38 that the Court can look to 'judicial decisions' as a subsidiary means for the determination of rules of law and the Judges do familiarise themselves with the jurisprudence of leading international courts, such as ITLOS."[99]

49. This mutual respect between ITLOS and the Court has continued. In 2019, Judge Jin-Hyun Paik echoed these themes as President of ITLOS in citing to the many references to Court judgments in ITLOS jurisprudence and *vice versa*, including in *Territorial and Maritime Dispute* and *Diallo*[100]. In 2021, an ITLOS special chamber confirmed Mauritius's sovereignty over the Chagos archipelago on the basis of the Court's *Chagos* advisory opinion. The chamber noted that "an advisory opinion entails an authoritative statement of international law on the questions with which it deals"[101]. This is because "judicial determinations made in advisory opinions carry no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the 'principal judicial organ' of the United Nations with competence in matters of international law"[102].

---

§§ III, IV; Colombia, § III; Cook Islands, §§ IV, V; Costa Rica, § D; Democratic Republic of the Congo, § III; Dominican Republic, § 4(II); Ecuador, § III; Egypt, §§ V, VI; El Salvador, §IV.B; Ghana, ¶¶ 25–27; Grenada, § IV.B; Kenya, § 5; Kiribati, § IV.B; Republic of Korea, § III; Latvia, § III; Liechtenstein, §§ 5, 6; Madagascar, ¶¶ 4, 31, 33–37, 59–65; Marshall Islands, Part A; Mauritius, § V; Mexico, § IV; Federated States of Micronesia, § IV; Namibia, § IV; Nauru, §§ III, IV, V; Nepal, § V; Netherlands, §§ III, IV; New Zealand, § II; Pakistan, § II; Palau, § III; Peru, § IV.A–C; Philippines, § V.A; Portugal, § IV; Romania, § IV; Saint Lucia, § V; Saint Vincent and the Grenadines, § VI.A–E; Samoa, § III; Seychelles, § II; Sierra Leone, §§ III(1)–(2); Singapore, § III; Slovenia, § II; Solomon Islands, §§ VI–IX; Sri Lanka, § IV.A–B; Switzerland, § II; Thailand, § III; Timor-Leste, §§ V–IX; Tonga, § VII–IX; Tuvalu, § III; United Kingdom, § III; Uruguay, § IV.A; Vanuatu, § IV; Viet Nam, § III.A; African Union, §§ III–IV; COSIS, § III; European Union, § 4; IUCN, § III.

99 ITLOS, Statement of Judge Rosalyn Higgins, President of the International Court of Justice, on the Occasion of the Tenth Anniversary of the Tribunal (29 September 2006), p. 2.

100 ITLOS, Statement of Judge Jin-Hyun Paik, President of the International Tribunal for the Law of the Sea, Is There a Place for Judicial Dialogue Between ITLOS and the ICJ? (29 October 2019), p. 4.

101 *Dispute Concerning Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, *Case No. 28*, *Judgment (Preliminary Objections)*, *ITLOS Reports 2021*, p. 17, ¶ 202.

102 *Id*., ¶ 203.

50. The Inter-American Court of Human Rights, in its own advisory opinion on environmental matters, makes multiple references to the Court's jurisprudence to support its conclusions that there is an obligation on American States not to allow their territory to be used against the rights of third States, as well as to use all available means to prevent activities taking place in their territory or in any area under their jurisdiction causing significant environmental damage against third States; and that the obligation to cooperate is indispensable for the protection of the environment[103]. Outside of the environmental context, other international courts have accorded importance to the jurisprudence of the Court, including its advisory opinions. For example, the Court of Justice of the European Union has applied the Court's factual and legal findings from *Wall* and *Western Sahara*[104].

51. As regards international law pertaining to the protection of the environment, the Request specifically mentions the UNFCCC; the Paris Agreement; UNCLOS (which includes Part XII on the protection and preservation of the marine environment); the duty of due diligence; the principle of prevention of significant harm to the environment; and the duty to protect and preserve the marine environment[105]. ITLOS's *COSIS* advisory opinion includes multiple references to Court judgments and opinions in relation to treaty interpretation[106], the definition of "environment" and the existence of a general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or areas beyond national control[107], the obligation to act with due diligence and to conduct environmental impact assessments[108], the due diligence obligation being stringent in the environmental context due to the often irreversible character of damage[109], and the nature of conservation and management measures[110]. It is clearly a "judicial decision[]" that the Court may look to as a subsidiary means for the determination of rules of law in response to the Request per Article 38 of the Court's Statute and thus among the sources to be taken into account in the harmonization of the international law applicable to climate change.

52. COSIS urges the Court to fulfil its role in response to this Request by not only providing assistance to the General Assembly in discharging its multiple and complex

---

103 *See* Inter-American Court of Human Rights, *State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity*, Case No. OC-23/17, Advisory Opinion (15 November 2017), ¶¶ 97, 135, 153, 158, 170, 177, 184, 192, 195, 197, 200, 202–204.

104 *See* Court of Justice of the European Union, *Organisation Juive Européenne & Vignoble Psagot Ltd v. Ministre de l'Économie et des Finances*, *Judgment (Grand Chamber)*, Case C-363/18 (12 November 2019), ¶¶ 35, 48, 56; Court of Justice of the European Union, *Council v. Front Polisario, Judgment (Grand Chamber)*, Case C-104/16P (21 December 2016), ¶¶ 28–30, 88, 91, 104–105.

105 *See* General Assembly, resolution 77/276, Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change, document A/RES/77/276 (29 March 2023) (Dossier No. 2).

106 ITLOS, *COSIS* Advisory Opinion, ¶ 135 (citing *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, *I.C.J. Reports 1971*, p. 16 ("*South West Africa* Advisory Opinion"), ¶ 53).

107 *Id*., ¶¶ 166, 246 (citing *Nuclear Weapons* Advisory Opinion, ¶ 29).

108 *Id*., ¶¶ 235, 356, 363 (citing *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*, *Judgment*, *I.C.J. Reports 2010*, p. 14 ("*Pulp Mills* Judgment")).

109 *Id*., ¶ 398 (citing *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment*, *I.C.J. Reports 1997*, p. 7 ("*Gabčíkovo-Nagymaros* Judgment"), ¶ 140).

110 *Id*., ¶ 413 (citing (*Fisheries Jurisdiction (Spain* v. *Canada)*, *Judgment (Jurisdiction)*, *I.C.J. Reports 1998*, p. 432), ¶ 70).

functions in relation to climate change, but also by guiding the States, organizations, and other courts that will benefit from the Court's harmonization of the applicable legal regimes.

B. Obligations Under Customary International Law to Mitigate and Adapt to Climate Change

53. The written statements in these proceedings reflect broad agreement that States have obligations under customary international law related to the protection of the environment to address climate change (Section 1), including duties of cooperation and coordination (Section 2). The vast majority of participants also agree that the UNFCCC and the Paris Agreement inform, but do not displace, States' obligations under customary international law with respect to climate change (Section 3).

54. It is important to emphasize that limiting global warming to 1.5ºC is necessary but not sufficient to satisfy States' mitigation obligations under the harm prevention rule. As many States and international organizations recognize, States are already suffering severe harm due to GHG emissions from other States since the pre-industrial era[111], and States have been aware of the harm GHG emissions have caused for at least many decades[112]. Accordingly, as Vanuatu and other participants acknowledge, States may already be in continuing breach of their obligations under the harm prevention rule with respect to GHG emissions[113].

1. Obligation to Prevent Significant Transboundary Harm to the Environment from Activities Within a State's Jurisdiction or Control

55. UNCLOS represented significant progress for the codification of international law for the protection and preservation of the marine environment at its signature in 1982. Key aspects of its provisions relating to the marine environment reflect customary international law, and thus bind States irrespective of whether they are States Parties to UNCLOS itself[114]. For example, the obligation contained in Article 192 requiring States to take positive action to

---

111 *See* § II.A above.

112 *See id*.

113 *See, e.g.*, written statements of Albania, ¶ 130(d); Antigua and Barbuda, ¶¶ 37, 538, 598; Colombia, ¶¶ 4.2–4.8; Dominican Republic, ¶ 4.62; Egypt, ¶ 323; Saint Lucia, ¶¶ 89, 95; Sierra Leone, ¶¶ 3.136–3.137, 4.7; Solomon Islands, ¶ 229; Vanuatu, ¶ 564.

114 There are 169 States Parties to UNCLOS, plus the European Union. Of Member States of the United Nations, only Colombia, El Salvador, Iran, Liechtenstein, Peru, the United Arab Emirates, and the United States are not party to UNCLOS. Colombia and Peru, at least, have been clear that they consider the obligations to protect and conserve the marine environment as a rule of customary international law. *See, e.g., Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, Verbatim Record, 29 September 2021, CR 2021/18, p. 22 (Colombia) ("*Le régime de la zone économique exclusive ne peut, en effet, être lu en isolation clinique des règles pertinentes en matière de protection de l'environnement marin de la partie XII de la convention, laquelle lie le Nicaragua et reflète le droit coutumier.*"); Peru written statement, ¶¶ 74, 86 (noting that "Peru accepts and applies the rules of customary international law of the sea as reflected in the Convention" and emphasizing that the "general obligation to protect and conserve the marine environment as a rule of customary international law, the effects of which are *erga omnes*"). In its written statement, the United States states that it "views the Convention's provisions with respect to traditional uses of the ocean as reflective of customary international law". United States written statement, ¶ 4.29.

protect and preserve the marine environment, as well as to refrain from degrading the marine environment, is widely accepted as customary international law[115].

56. Likewise, the obligation to take all necessary measures to prevent significant transboundary harm to the environment of other States or to areas beyond national jurisdiction—to which COSIS refers as the harm prevention rule—is a rule of customary international law. As many participants acknowledge, it has bound States since at least the mid-20th century, covering most if not all of the period that States have been aware of the risks of GHG emissions[116]. The harm prevention rule was first articulated in the landmark 1941 *Trail Smelter* arbitration[117] and later found expression in the 1972 Stockholm Declaration[118] and the 1992 Rio Declaration[119], as well as in decisions of international courts and tribunals[120]. The Court cited this principle in its 1949 *Corfu Channel* judgment, which noted as a general principle of international law "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of others"[121]. The Court has acknowledged "[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment"[122].

---

115 *See* COSIS written statement, ¶ 97 (citing M. Nordquist et al. (eds.), "Article 192: General Obligation", in *United Nations on the Law of the Sea 1982: A Commentary* (2012), Vol. IV (2002), p. 39; D. Czybulka, "Article 192: General Obligation", in *United Nations Convention on the Law of the Sea: A Commentary* (A. Prölß ed., 2017), pp. 1284–1286).

116 *See* written statements of Albania, ¶¶ 65–67; Antigua and Barbuda, ¶¶ 125–128; Australia, ¶¶ 4.7–4.8; The Bahamas, ¶¶ 92–98; Bangladesh, ¶¶ 88–89; Barbados, § VI.A; Belize, ¶¶ 31–36; Brazil, ¶ 70; Burkina Faso, ¶ 286; Chile, ¶¶ 35–39; China, ¶ 127; Costa Rica, ¶¶ 40–49; Democratic Republic of the Congo, ¶ 126; Denmark et al., ¶¶ 65–67; Dominican Republic, ¶ 4.31; Ecuador, ¶¶ 3.18–3.19; Egypt, ¶¶ 298–328; Grenada, ¶¶ 38–40; India, ¶¶ 9–11; Indonesia, ¶ 60; Kenya, ¶ 5.3; Kiribati, ¶ 112; Republic of Korea, ¶ 33; Kuwait, ¶ 72; Latvia, ¶ 53; Marshall Islands, ¶ 22; Mauritius, ¶ 189–190; Federated States of Micronesia, ¶¶ 53–62; Mexico, ¶¶ 40–41; Namibia, ¶¶ 49–52; Nauru, ¶¶ 26–31; Netherlands, ¶ 3.52; New Zealand, ¶¶ 97–98; Pakistan, ¶¶ 29–33; Saint Vincent and the Grenadines, ¶¶ 98–99; Samoa, ¶¶ 87–89; Sierra Leone, ¶¶ 3.10–3.11; Singapore, ¶ 3.1; Seychelles, § II.C.1; South Africa, ¶ 74; Spain, ¶ 8; Sri Lanka, ¶¶ 95–96; Switzerland, ¶ 14; Thailand, ¶¶ 7–9; Tuvalu, ¶ 73; United Arab Emirates, ¶ 92; Uruguay, § IV.A.1; Vanuatu, ¶¶ 261–264; African Union, ¶¶ 90–92; European Union, ¶¶ 297–300; IUCN, ¶¶ 308–309; Melanesian Spearhead Group, ¶ 298; OACPS, ¶¶ 101, 148–150; *see also* § II.A.

117 *See Trail Smelter (United States / Canada)*, Final Award, 11 March 1941, *Reports of International Arbitral Awards*, Vol. III, pp. 1905–1982, p. 1965.

118 Report of the United Nations Conference on the Human Environment, document A/CONF.48/14/Rev.1 (16 June 1972), § 1 (Declaration of the United Nations Conference on the Human Environment) (Dossier No. 136) ("Stockholm Declaration"), Principle 21.

119 Report of the United Nations Conference on Environment and Development, document A/CONF.151/26 (Vol. I) (12 August 1992), Annex I (Rio Declaration on Environment and Development) (Dossier No. 137) ("Rio Declaration"), Principle 2.

120 *See* COSIS written statement, § III.B.1 (citing *Pulp Mills* Judgment, ¶ 197; *Nuclear Weapons* Advisory Opinion, ¶ 29; ITLOS, *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Request for Advisory Opinion Submitted to the Seabed Disputes Chamber)*, *Advisory Opinion of 1 February 2011*, *ITLOS Reports 2011*, p. 10 ("*Area* Advisory Opinion"), ¶ 180).

121 *See Pulp Mills* Judgment, ¶ 101 (citing *Corfu Channel (United Kingdom* v. *Albania)*, *Judgment (Merits)*, *I.C.J. Reports 1949* ("*Corfu Channel* Judgment"), p. 22).

122 *Nuclear Weapons* Advisory Opinion, ¶ 29 ("The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."); *see also* Stockholm Declaration, Principle 21 ("States have . . . the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."). The Action Plan for the Human Environment, also adopted at the Stockholm

57. The harm prevention rule is also manifested in Article 194(2) of UNCLOS, which requires States Parties to "ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment"; this, too, is recognized as reflecting a rule of customary international law[123]. ITLOS's *COSIS* advisory opinion notes that that obligation "bears a close resemblance to the well-established principle of harm prevention"[124] and that due diligence obligations under Article 194(2) "can be even more stringent" than those under Article 194(1)[125].

58. In their written statements in these proceedings, at least 26 States and international organizations explicitly agree that either or both of the obligation to protect and preserve the marine environment, as well as to refrain from degrading it, as reflected in Article 192 of UNCLOS[126], and the harm prevention rule, as reflected in Article 194(2) of UNCLOS[127], are rules of customary international law. Sixty States and international organizations further agree in their written statements that some or all of these obligations oblige States to mitigate climate change[128]. Nauru emphasizes that "[t]he prohibition of transboundary harm is among

---

conference, went further by urging States to "[p]articipate fully . . . in the Conference on the Law of the Sea scheduled to begin in 1973 . . . with a view to bringing all significant sources of pollution within the environment . . . under appropriate controls". Report of the United Nations Conference on the Human Environment, document A/CONF.48/14/Rev.1 (16 June 1972), § II (Action Plan for the Human Environment) (Dossier No. 136), Recommendation 86(e).

123 *See* M. Nordquist et al. (eds.), "Article 194: Measures to Prevent, Reduce and Control Pollution of the Marine Environment", in *United Nations on the Law of the Sea 1982: A Commentary* (2012), Vol. IV (2002) (Annex 7), p. 65 ("Paragraph 2 is a specific application of the general rule that a State is under an obligation not to allow its territory, or any territory over which it is exercising jurisdiction or control, to be used to the detriment of another State."); *see also* D. Czybulka, "Article 194: Measures to Prevent, Reduce and Control Pollution of the Marine Environment", in *United Nations Convention on the Law of the Sea: A Commentary* (A. Prölß ed., 2017), pp. 1305–1306.

124 *See* ITLOS, *COSIS* Advisory Opinion, ¶ 246.

125 ITLOS, *COSIS* Advisory Opinion, ¶ 258.

126 Written statements of Albania, ¶ 67; Australia, ¶ 3.8; Barbados, ¶¶ 159(b), 180(d); Burkina Faso, ¶ 149; Costa Rica, ¶ 68; Ecuador, ¶ 3.90; Latvia, ¶ 51; Mexico, ¶ 47 & fn. 30; Federated States of Micronesia, ¶ 99; Peru, ¶¶ 74, 86; Seychelles, ¶ 63; Singapore, ¶ 5.1(o); Solomon Islands, ¶ 206; Thailand, ¶ 15; Uruguay, ¶ 102; Vanuatu, ¶¶ 279–280, 442; African Union, ¶ 57; COSIS, ¶ 97; European Union, ¶¶ 286–287, 293; IUCN, ¶ 305(i); OACPS, ¶ 105; *see also* Kenya, ¶ 5.44.

127 Written statements of Albania, ¶ 93; The Bahamas, ¶ 123; Barbados, ¶ 141(b); Chile, ¶ 46 & fn. 46; Democratic Republic of the Congo, ¶ 133; Mexico, ¶ 47 & fn. 30; Peru, ¶ 74; Philippines, ¶¶ 60–61; Seychelles, ¶ 63; Singapore, ¶ 5.1(o); Solomon Islands, ¶ 206; Switzerland, ¶ 18, fn. 14; Thailand, ¶ 8; COSIS, ¶ 97; IUCN, ¶ 305(i); *see also* Argentina, p. 24; Cook Islands, ¶¶ 159–161.

128 Written statements of Albania, § IV.A; Antigua and Barbuda, §§ III.B.1.b, d; Argentina, ¶ 48; The Bahamas, §§ IV.A.2, B; Bangladesh, ¶¶ 99, 139; Barbados, ¶¶ 134, 166, 185, 193, 200; Belize, ¶¶ 35–36; Chile, ¶¶ 35–39, 50; Colombia, ¶ 3.10; Cook Islands, ¶¶ 149, 172, 175, 178, 235; Costa Rica, ¶¶ 44, 49, 68–70; Democratic Republic of the Congo, §§ III.A.1.a–b, III.B; Dominican Republic, ¶¶ 4.31–4.32; Ecuador, ¶¶ 3.27–3.28, 3.86–3.96; Egypt, ¶¶ 102, 277–282; El Salvador, ¶ 37; Ghana, ¶ 26; Grenada, ¶¶ 38–41; Kenya, ¶¶ 5.10–5.12, 5.42–5.50, 5.81; Republic of Korea, ¶¶ 27, 37; Latvia, ¶¶ 39–50, 51–61; Marshall Islands, ¶¶ 45–46; Mauritius, §§ V.C, E; Mexico, § IV.a; Federated States of Micronesia, ¶¶ 62, 92–117; Namibia, ¶¶ 55, 57–61; Nauru, § III; Nepal, ¶ 26; Netherlands, ¶¶ 3.45, 3.49, 3.52–3.66; New Zealand, ¶ 90; Pakistan, ¶¶ 36, 39(d); Palau, ¶ 16; Peru, ¶¶ 85–87; Philippines, § V.A; Portugal, ¶¶ 57–68; Romania, ¶¶ 97–98, 102; Russia, p. 8; Saint Lucia, ¶¶ 66–68, 69–73; Saint Vincent and the Grenadines, ¶¶ 97–111; Samoa, ¶¶ 87–130; Seychelles, § II.C; Sierra Leone, ¶¶ 3.12–3.132; Singapore, ¶¶ 5.1(a)–(b), (o)–(v); Slovenia, ¶¶ 17–19; Solomon Islands, ¶¶ 1.6, 1.8, 146–160, 205–206; Spain, ¶ 8; Sri Lanka, ¶¶ 95–97; Switzerland, ¶¶ 14–47; Thailand, ¶¶ 15–17; Timor-Leste, §§ VII(B)–(C); Tonga, ¶ 224; Tuvalu, ¶ 73; United Kingdom, ¶ 117; Uruguay, § IV.A; Vanuatu, §§ 4.4.3.A, C, 4.4.4.E; Viet Nam, ¶¶ 20, 25–29; African Union, § IV.B, ¶¶ 167–172; European Union, ¶¶ 292–293, 317; IUCN, ¶¶ 87, 90, 158, 305; OACPS, ¶¶ 96, 101, 104–111.

'the most directly relevant applicable law[s] governing the question' of which the Court has been seised in these advisory proceedings"[129]. Saint Lucia notes that, "[u]nder the duty of prevention . . . States are under an obligation to use all means at their disposal to prevent transboundary harms caused by anthropogenic GHGs"[130]. The Netherlands underscores that the obligation to prevent harm to shared natural resources such as the atmosphere is an obligation *erga omnes*[131]. Several participants recognize that violations of certain obligations of States in respect of protection of the environment in relation to climate change—such as prevention of massive pollution of the atmosphere and ocean—may amount to serious breaches of peremptory norms of international law[132].

59. Consistent with the Court's jurisprudence[133], at least 40 participants also agree that these customary rules of international law relating to the protection of the environment require States to act with due diligence to protect and preserve the marine environment and to prevent transboundary harm[134]. In meeting this obligation, States must "use all means at [their] disposal" and "do the utmost" to prevent transboundary harm, including by regulating private actors[135]. States also must conduct environmental impact assessments—which the Court has already made clear is itself a rule of customary international law[136]—to account for the impacts of marine pollution from anthropogenic GHG emissions, as ITLOS also finds[137].

60. Many participants also agree with COSIS that, although States retain a margin of appreciation in the means of compliance[138], the measures necessary to fulfil the obligation of due diligence must be determined objectively in accordance not only with the best available science[139], including in determining both the level of risk and severity of harm, as well as the

---

129 Nauru written statement, ¶ 26 (quoting *Nuclear Weapons* Advisory Opinion, ¶ 34).

130 Saint Lucia written statement, ¶ 68.

131 Netherlands written statement, ¶ 5.8.

132 *See* written statements of Burkina Faso, ¶¶ 389–396; Costa Rica, ¶¶ 106, 128; Tuvalu, ¶ 73; COSIS, ¶ 96; Melanesian Spearhead Group, ¶¶ 323–325.

133 *Pulp Mills* Judgment, ¶ 101; *see also* ITLOS, *Area* Advisory Opinion, ¶ 117 (applying the due diligence standard to marine environmental protection and preservation); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, *Judgment*, *I.C.J. Reports 2007*, p. 43 ("*Bosnian Genocide* Judgment"), ¶ 430 (articulating the due diligence standard beyond the environmental context as requiring "to employ all means reasonably available to them, so as to prevent [harm] so far as possible").

134 *See* written statements of Albania, ¶¶ 65–67, 72–82; Australia, ¶¶ 3.8, 4.7–4.11; Bangladesh, ¶ 89; Burkina Faso, ¶ 181; Cameroon, ¶ 13; Chile, ¶¶ 35–39; Colombia, ¶¶ 3.13–3.30; Cook Islands, ¶¶ 165–166; Costa Rica, ¶ 40; Democratic Republic of the Congo, ¶ 128; Ecuador, ¶¶ 3.23–3.25; Egypt, ¶¶ 97–98; Ghana, ¶ 26; India, ¶ 12; Japan, ¶ 12; Kenya, ¶¶ 5.9–5.11; 5.81; Republic of Korea, ¶¶ 33–37; Latvia, ¶¶ 51–61; Marshall Islands, ¶ 23; Mexico, ¶¶ 42–43; Federated States of Micronesia, ¶ 57; Namibia, ¶¶ 49–51; New Zealand, ¶¶ 90, 98; Pakistan, ¶ 39; Philippines, ¶¶ 62–63; Portugal, ¶ 55; Romania, ¶¶ 97–99; Samoa, ¶¶ 98–104; Seychelles, ¶ 126; Sierra Leone, ¶¶ 3.11–3.15; Singapore, ¶¶ 3.4–3.6; South Africa, ¶ 74; Sri Lanka, ¶¶ 96–97; Switzerland, ¶¶ 37–47; Thailand, ¶¶ 11–14; United Arab Emirates, ¶ 94; United States, ¶ 4.5; Uruguay, ¶¶ 89–98; Vanuatu, ¶ 235; Viet Nam, ¶ 25.

135 *Pulp Mills* Judgment, ¶ 101; ITLOS, *Area* Advisory Opinion, ¶ 110.

136 *Pulp Mills* Judgment, ¶ 204.

137 ITLOS, *COSIS* Advisory Opinion, ¶¶ 345, 352–354, 356–367; *see also* Belize written statement, § 2(II).

138 Written statements of Albania, ¶ 73; Antigua and Barbuda, ¶ 136; The Bahamas, ¶ 94; Bangladesh, ¶ 90; China, ¶ 130; Colombia, ¶ 3.22; Mexico, ¶ 44; New Zealand, ¶ 99; Pakistan, ¶ 45; Romania, ¶¶ 104–105; Saint Lucia, ¶ 67; Samoa, ¶ 128; Singapore, ¶ 3.6; Switzerland, ¶ 43; Tuvalu, ¶ 73; United States, ¶¶ 4.13–4.14; African Union, ¶ 97; COSIS, ¶¶ 89–90; European Union, ¶ 84.

139 Written statements of Albania, ¶¶ 76, 78, 145(b); Antigua and Barbuda, ¶¶ 133, 138–139; Argentina, ¶ 44; Australia, ¶ 4.15; The Bahamas, ¶¶ 60, 95; Bangladesh, ¶ 90; Belize, ¶ 51; Burkina Faso, ¶ 165; Cook

measures objectively indispensable to mitigate the harm, but also with applicable and well-accepted international rules and standards[140] and each State's respective capabilities[141].

2. Duty to Cooperate to Limit Global Warming to 1.5ºC, and the Principle of Common but Differentiated Responsibilities and Respective Capabilities

61. As ITLOS confirmed and as is reflected in the UNFCCC and the Paris Agreement, the duty to cooperate is essential to responding to the global problem of climate change. This is manifested in part through the CBDR-RC principle.

62. COSIS observes that no written statements challenge the importance of global cooperation on climate change, and participants agree on the applicability of the duty to cooperate in this context[142]. ITLOS's *COSIS* advisory opinion rightly noted that "the duty to

---

Islands, ¶¶ 176–178; Democratic Republic of the Congo, ¶ 179; Dominican Republic, ¶ 4.10; Ecuador, ¶ 3.24; Egypt, ¶¶ 109, 322; Japan, ¶ 11 & fn. 18; Kenya, ¶¶ 5.10–5.12, 6.122; Republic of Korea, ¶ 37; Latvia, ¶ 48; Mauritius, ¶¶ 200–201; Mexico, ¶ 44; Federated States of Micronesia, ¶ 107; Namibia, ¶ 163; Netherlands, ¶ 3.68; New Zealand, ¶ 99; Peru, ¶ 107; Samoa, ¶ 121; Seychelles, ¶ 129; Sierra Leone, ¶¶ 3.15, 3.19; Singapore, ¶¶ 3.17, 5.1(b); Solomon Islands, ¶¶ 81–82; Spain, ¶ 7; Switzerland, ¶ 44; Thailand, ¶ 14; Timor-Leste, ¶ 121; Tonga, ¶¶ 157, 159; Tuvalu, ¶ 73; United States, ¶ 4.14; Uruguay, ¶ 93; Vanuatu, ¶¶ 269, 282; African Union, ¶ 97(a); COSIS, ¶ 106; European Union, ¶ 162; IUCN, ¶¶ 352, 356, 360; PNAO, ¶ 38.

[140] Written statements of Albania, ¶¶ 71–82; Antigua and Barbuda, ¶¶ 136–140; The Bahamas, ¶¶ 94–99; Bangladesh, ¶¶ 90–95; Belize, ¶ 35; China, ¶ 130; Colombia, ¶¶ 3.22–3.24; Cook Islands, ¶¶ 161–165; Democratic Republic of the Congo, ¶ 179; Ecuador, ¶ 3.24; Egypt, ¶¶ 103–117; Kenya, ¶¶ 5.10–5.14; Latvia, ¶¶ 46–50; Mauritius, ¶¶ 192–195; Mexico, ¶ 44; Federated States of Micronesia, ¶¶ 57–58; Netherlands, ¶ 3.68; New Zealand, ¶¶ 98–100; Pakistan, ¶ 39(d); Saint Lucia, ¶ 67; Samoa, ¶¶ 95–99, 114; Seychelles, ¶ 129; Sierra Leone, ¶¶ 3.15–3.19; Singapore, ¶¶ 3.6–3.11; Solomon Islands, ¶¶ 81–86; Spain, ¶ 7; Switzerland, ¶¶ 39–47; Thailand, ¶ 14; Tuvalu, ¶ 73; United States, ¶ 4.14; Uruguay, ¶¶ 93–97; Vanuatu, ¶¶ 236–248; African Union, ¶¶ 96–97; COSIS, ¶¶ 91–93; European Union, ¶¶ 83–89; IUCN, ¶¶ 347–369, PNAO, ¶¶ 37–39.

[141] Written statements of Albania ¶¶ 79–81; Antigua and Barbuda, ¶¶ 136, 140; Argentina, ¶ 48; The Bahamas, ¶ 95; Bangladesh, ¶ 90; China, ¶ 130; Democratic Republic of the Congo, ¶ 191; Ecuador, ¶ 3.61; Egypt, ¶ 117; Kenya, ¶ 7.125(b); Kiribati, ¶ 149; Latvia, ¶ 55; Mexico, ¶ 55; New Zealand, ¶ 99; Pakistan, ¶ 45; Romania, ¶¶ 104–105; Saint Lucia, ¶ 67; Samoa, ¶¶ 114–116; Sierra Leone, ¶ 3.34; Singapore, ¶ 3.9; Solomon Islands, ¶ 86; South Africa, ¶ 75; Spain, ¶ 7; Switzerland, ¶¶ 43, 46; Thailand, ¶ 20; Tuvalu, ¶ 73; Uruguay, ¶ 143; Vanuatu, ¶ 329; African Union, § IV.B.4; COSIS, ¶ 90; European Union, ¶ 83; IUCN, ¶ 354; *see also* ITLOS, *COSIS* Advisory Opinion, ¶¶ 206, 207, 212, 239, 241, 243, 441(3)(b) (confirming elements of States' due obligations under general international law applicable to the environment, while also noting that the standard for due diligence is "stringent"); *Pulp Mills* Judgment, ¶ 101; ITLOS *Area* Advisory Opinion, ¶ 117; *Gabčíkovo-Nagymaros* Judgment, ¶ 140; Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), document A/56/10 (2001) ("ILC Articles on Transboundary Harm"), Commentary to Art. 1, ¶ 14; International Law Association, Study Group on Due Diligence in International Law, Second Report (2016), pp. 7–8. ITLOS also confirms that these cannot be fulfilled merely by compliance with obligations under the Paris Agreement. ITLOS, *COSIS* Advisory Opinion, ¶ 223; *see also* § IV.B.3 below.

[142] *See, e.g.*, written statements of Albania, ¶ 83; Antigua and Barbuda, ¶¶ 343–346; Argentina, ¶ 50; Bangladesh, § IV.B.3; Barbados, § VI.E; Burkina Faso, ¶¶ 123–128; Chile, ¶ 129; Colombia, § 3.F; Costa Rica, ¶¶ 92, 128; Democratic Republic of the Congo, ¶¶ 136–144, 229–233; Dominican Republic, ¶¶ 4.42, 4.67; Ecuador, ¶¶ 3.50–3.53; El Salvador, ¶ 16; France, ¶¶ 77, 103, 152–153, 224; Grenada, ¶¶ 43–45; Iran, §§ III.C, VI; Kiribati, ¶ 146; Republic of Korea, ¶ 32; Madagascar, ¶ 56; Marshall Islands, ¶¶ 31–38; Mauritius, ¶¶ 206–207; Mexico, ¶¶ 74–81; Netherlands, ¶ 3.73; New Zealand, ¶¶ 15, 28, 76; Peru, ¶ 80; Portugal, ¶¶ 136–161; Samoa, ¶ 149; Singapore, § III.A.3; South Africa, ¶ 105; Sri Lanka, ¶ 94(c); Switzerland, ¶ 7; Thailand, ¶ 16, fn. 20; Timor-Leste, § VI.G; United Arab Emirates, § III; Uruguay, ¶ 124; Vanuatu, ¶¶ 308–313; Viet Nam, ¶¶ 33–36.

cooperate is a fundamental principle in the prevention of pollution of the marine environment under . . . general international law"[143]. It explains that

> "[m]ost multilateral climate change treaties, including the UNFCCC and the Paris Agreement, contemplate and variously give substance to the duty to cooperate on the assumption, as indicated in the preamble of the UNFCCC, that 'the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response'"[144].

63. COSIS contends that central to the duty of cooperation to mitigate and adapt to climate change, including to stay within 1.5ºC, is the principle of CBDR-RC. It is the principle that enables every State to contribute to climate goals according to its capabilities while requiring that these contributions reflect each State's historical responsibility for causing climate change. The direct connection between the duty of cooperation and CBDR-RC is emphasized by several States[145].

64. Most participants agree that CBDR-RC is foundational to international environmental law, as reflected in, for example, the Rio Declaration, the UNFCCC, the Paris Agreement, and UNCLOS[146]. Argentina explains that CBDR-RC is "paramount and should be reaffirmed since it is the core guiding principle of the whole climate change regime"[147]. Brazil states that CBDR-RC is "an essential component of the primary rules that define State[] obligations under the international legal regime on climate change"[148]. COSIS agrees with Namibia that "[t]he CBDR principle is a cornerstone of international environmental law"[149].

65. As ITLOS noted, the UNFCCC and the Paris Agreement recognize CBDR-RC as a "key principle in their implementation"[150]. In the context of marine pollution from anthropogenic GHG emissions—but in terms that are applicable more broadly to other aspects

---

143 ITLOS, *COSIS* Advisory Opinion, ¶ 296.

144 *Id*., ¶ 298.

145 *See* written statements of Bangladesh, ¶ 129; Barbados, ¶¶ 216–217; Grenada, ¶ 43; Kenya, ¶ 5.21; Kuwait, ¶ 137(3)(i); New Zealand, ¶ 16.

146 *See* written statements of Albania, ¶ 81; Antigua and Barbuda, ¶¶ 143–150; Argentina, ¶ 39; Australia, ¶¶ 2.14–2.15; The Bahamas, ¶¶ 88, 138; Bangladesh, ¶ 129; Barbados, ¶¶ 281–282; Bolivia, ¶ 42; Brazil, ¶¶ 12–25; Cameroon, ¶ 15; China, ¶ 64; Colombia, ¶ 5.3; Cook Islands, ¶¶ 135, 137; Costa Rica, ¶¶ 58–64; Denmark et al., ¶ 54; Ecuador, ¶¶ 3.59–3.62; Egypt, ¶¶ 139–147; El Salvador, ¶¶ 38–41; India, ¶¶ 21(i), 37; Indonesia, ¶ 65; Iran, ¶¶ 34–35; Japan, ¶¶ 22–24; Kenya, ¶¶ 5.23–5.24; Kiribati, ¶¶ 146–147; Republic of Korea, ¶ 20; Madagascar, ¶ 49; Marshall Islands, ¶¶ 15–17; Mauritius, ¶¶ 118–121; Federated States of Micronesia, ¶ 68; Netherlands, ¶ 3.6; New Zealand, ¶ 16; Pakistan, ¶ 43; Peru, ¶ 76; Philippines, ¶ 93; Portugal, ¶ 128; Russia, § 1.1; Saint Lucia, ¶ 58; Samoa, ¶¶ 152–153; Saudi Arabia, ¶¶ 4.11–4.13; Seychelles, ¶ 151; Sierra Leone, ¶ 3.39; Solomon Islands, ¶¶ 58.3, 92; South Africa, ¶ 47; Switzerland, ¶ 45; Thailand, ¶¶ 18–20; Timor-Leste, ¶¶ 135–136; Tonga, ¶¶ 165–171; United Arab Emirates, ¶¶ 133–145; United Kingdom, ¶ 143; Uruguay, ¶¶ 133–145; Vanuatu, ¶ 415; Viet Nam, ¶ 16; African Union, ¶ 109; European Union, ¶ 185; OACPS, ¶ 135.

147 Argentina written statement, ¶ 39.

148 Brazil written statement, ¶¶ 26–28; *see also* Iran written statement, ¶ 41.

149 Namibia written statement, ¶ 75.

150 ITLOS, *COSIS* Advisory Opinion, ¶ 227.

of climate change—ITLOS concluded that "States with greater means and capabilities must do more to reduce such emissions than States with less means and capabilities"[151].

66. ITLOS's *COSIS* advisory opinion provides useful guidance as to what it means for States to "do more" if their means and capabilities permit. In its view, "scientific, technical, educational and other assistance to developing States that are particularly vulnerable to the adverse effects of climate change is a means of addressing an inequitable situation"[152]: "Although they contribute less to anthropogenic GHG emissions, such States suffer more severely from their effects on the marine environment."[153] It notes the relevance of the Paris Agreement in recognizing the specific needs and special circumstances of certain countries, "especially those that are particularly vulnerable to the adverse effects of climate change"[154].

67. ITLOS's approach is consistent with the views expressed in many of the written statements. The Solomon Islands, Uruguay, and Kenya, for example, link CBDR-RC with the provision of assistance to discharging their climate mitigation and adaptation obligations[155]. Bangladesh emphasizes that CBDR-RC "requires developed and high-emitting States to contribute to global climate solutions according to their greater financial and technical capacities, including through climate finance and technology transfer"[156].

68. States that downplay the role of historical contributions in the CBDR-RC analysis overlook the inequitable situation of climate-vulnerable States, especially small island States which have contributed much less to emissions and yet suffer severe and ongoing effects[157]. As Vanuatu notes, when major GHG emitters deliberately aim to increase their production of fossil fuels, they breach the duty to cooperate[158]. The need for compliance with this obligation is urgent given the near-exhaustion of Earth's carbon budget and the ever more severe losses and damages that small island States experience[159].

69. At the same time, CBDR-RC does not allow States to justify continued GHG emissions to fuel domestic development, as suggested by a minority of participants[160]. The correct application of the CBDR-RC principle to climate change—expressed by the majority of States and many international organizations[161]—is that high-emitting States must take the

---

151 *Id*.

152 *Id*., ¶ 327.

153 *Id*.

154 *Id*.

155 Written statements of Kenya, ¶ 5.21; Solomon Islands, ¶ 94; Uruguay, ¶ 145; *see also* written statements of Cook Islands, ¶ 263; Nepal, ¶ 21; South Africa, ¶ 59.

156 Bangladesh written statement, ¶ 131.

157 *Cf*. Written statements of Germany, ¶ 59; United States, ¶ 3.26.

158 Vanuatu written statement, ¶ 313.

159 *Id*.

160 *Cf*. written statements of China, ¶¶ 51–67; Egypt, ¶¶ 139–151; India, §§ V, VI; Iran, § III.A; Kuwait, § II.A; Pakistan, ¶¶ 40–46; Saudi Arabia, ¶¶ 4.11–4.19, 4.49–4.55; Timor-Leste, §§ VI.D–E; United Arab Emirates, § IV.D; OPEC, ¶¶ 33–60, 84–87.

161 Written statements of Albania, ¶¶ 80–81; Antigua and Barbuda, § III.A.2; Argentina, ¶ 39; The Bahamas, ¶ 88; Bangladesh, ¶¶ 129–131; Barbados, ¶¶ 196, 207; Bolivia, ¶¶ 21–24, 44; Burkina Faso, ¶¶ 131–132; Cameroon, ¶¶ 15–17, 29; Colombia, § 3.E; Costa Rica, § D.a.vi; Democratic Republic of the Congo, ¶¶ 191–195; Denmark et al., ¶ 58; Ecuador, ¶¶ 3.59–3.61; El Salvador, ¶¶ 38–41; France, ¶¶ 44–47; Indonesia, ¶ 65; Japan, ¶¶ 22–31; Kenya, ¶¶ 5.23–5.25, 5.32, 5.41; Kiribati, ¶¶ 146–154; Madagascar, ¶¶ 49–51; Mauritius, ¶¶ 118–121; Federated States of Micronesia, ¶¶ 67–68; Namibia, ¶¶ 74–77;

lead in cutting emissions. As ITLOS makes clear: "[I]t is not only for developed States to take action, even if they should 'continue taking the lead'. *All States* must make mitigation efforts."[162] Further, as the IPCC concluded, "[l]imiting warming to 1.5°C can be achieved synergistically with poverty alleviation"[163], and, indeed, many developing States note that sustainable development and climate action are mutually reinforcing[164]. Palau, for example, affirmed its own phaseout of fossil fuels while noting the possibility of "developing policies for incorporating renewable energy sources into the existing power grid"[165].

3. Relationship Between the UNFCCC and the Paris Agreement and Other Sources of International Law

70. The application of multiple rules or principles to a particular subject matter is common in international law[166]. The United Nations International Law Commission (the "ILC") makes clear that "it is a generally accepted principle that when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations" [167]. It is well accepted that for the principle of *lex specialis derogat legi generali* to apply to displace or exclude certain sets of obligations, "there must be some actual inconsistency" between those obligations, "or else a discernible intention that one provision is to exclude the other"[168]. The ILC endorsed a "strong presumption" against finding such an inconsistency or conflict[169]. This is consistent with the Commission's view that no "specialised" regime under international law is a "self-contained regime" in the sense

---

Netherlands, § 3; New Zealand, ¶¶ 33, 58; Peru, ¶¶ 76–79; Philippines, ¶¶ 92–96; Portugal, ¶¶ 46, 50; Saint Lucia, ¶ 58; Samoa, ¶¶ 129, 144; Seychelles, ¶ 151; Sierra Leone, ¶ 3.9; Singapore, ¶¶ 3.9, 3.31–3.33; Sri Lanka, ¶ 115; Switzerland, ¶¶ 45–46; Thailand, ¶¶ 18–25; Tuvalu, § III; United Kingdom, ¶¶ 143, 145; Vanuatu, ¶¶ 415, 435; Viet Nam, ¶¶ 16–17; African Union, ¶ 109; IUCN, ¶¶ 131–137; COSIS, § III.C.3; OACPS, ¶¶ 135–137.

162 ITLOS, *COSIS* Advisory Opinion, ¶ 229 (emphasis added); *see also* Thailand written statement, ¶ 21. As noted above, ITLOS emphasizes that "the reference to available means and capabilities should not be used as an excuse to unduly postpone, or even be exempt from" the obligation to take all necessary measures under Article 194(1) of UNCLOS. ITLOS, *COSIS* Advisory Opinion, ¶ 226.

163 IPCC, "Chapter 2: Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development", *Special Report on 1.5°C* (2018), p. 97; *see also* IPCC, Working Group III, "Chapter 17: Accelerating the Transition in the Context of Sustainable Development", *Sixth Assessment Report: Mitigation of Climate Change* (2022), pp. 1740–1741.

164 Written statements of Albania, ¶¶ 17–18; Belize, ¶¶ 19–20; Cook Islands, ¶ 271; Costa Rica, ¶ 25; Democratic Republic of the Congo, ¶ 257; Ecuador, ¶ 4.34; Indonesia, ¶ 38; Kenya, ¶ 3.33; Kuwait, ¶¶ 129–130, 135; Pakistan, ¶ 10; Palau, Document 3, p. 39; Romania, ¶ 38; Seychelles, ¶ 41; Sierra Leone, ¶¶ 3.102–3.103; Solomon Islands, ¶ 18; Sri Lanka, ¶ 33; Tonga, ¶ 113; United Arab Emirates, ¶ 32.

165 Palau written statement, Document 3, p. 39.

166 *See, e.g.*, ILC, Report of the Study Group, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, document A/CN.4/L.682 (13 April 2006), Annex, § B(a)(2) ("In applying international law, it is often necessary to determine the precise relationship between two or more rules and principles that are both valid and applicable in respect of a situation.").

167 *See id*., § B(a)(4); *see also* VCLT, Art. 31(3)(c).

168 Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two) ("ARSIWA"), Commentary to Art. 55, ¶ 4; *see also* ILC, Report of the Study Group, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, document A/CN.4/L.682 (13 April 2006), ¶ 89.

169 ILC, Report of the Study Group, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, document A/CN.4/L.682 (13 April 2006), ¶ 37.

that it excludes the application of general international law, and with the widespread emphasis on and application in judicial practice of the principle of systemic integration[170].

71. Fifty-three States and international organizations expressly agree that the UNFCCC and the Paris Agreement are relevant to interpreting States' customary obligations to protect the environment from the harmful effect of climate change[171]. Notably, the obligations on a State under the UNFCCC and the Paris Agreement are largely procedural in nature, including the core duty to "*prepare*, *communicate* and *maintain* successive nationally determined contributions [NDCs] that it intends to achieve" and that "represent a progression . . . and reflect its highest possible ambition" over time[172]. These treaties are independent of other sources of obligations under international law related to the protection of the environment[173]. ITLOS concurs that the Paris Agreement on the one hand, and Article 194(1) of UNCLOS, on the other, reflect "separate sets of obligations"[174].

72. At the same time, the independent procedural obligations contained in the UNFCCC and the Paris Agreement are complementary to, and reinforce, customary rules of international law related to the protection of the environment noted above. Nothing in UNFCCC and/or the Paris Agreement suggests that they purport to cover the field in terms of the international response to climate change exclusively and exhaustively. In other words, they are not "self-contained" regimes that apply to the exclusion of general international law[175]. For example, the preamble to the UNFCCC recalls:

---

170 *See id*., ¶¶ 172–185.

171 *See* written statements of Albania, ¶ 99; Antigua and Barbuda, ¶ 220; The Bahamas, ¶¶ 89–91; Bangladesh, ¶¶ 13, 87; Barbados, ¶¶ 197, 207; Belize, § 2; Burkina Faso, ¶ 101; Cameroon, § III; Chile, ¶¶ 34, 60; Colombia, §§ 3.A–D; Cook Islands, § V; Costa Rica, ¶¶ 32, 35; Democratic Republic of the Congo, ¶ 123; Dominican Republic, ¶¶ 4.31–4.32; Ecuador, §§ 3 II–III; Egypt, ¶¶ 68–75; El Salvador, ¶¶ 27–28; Grenada, § IV.B; Kenya, ¶¶ 5.40–5.51; Kiribati, ¶ 109; Liechtenstein, ¶ 25; Madagascar, ¶ 25; Marshall Islands, Part A; Mauritius, § V.E; Mexico, § IV; Federated States of Micronesia, § IV; Namibia, ¶¶ 39–47; Nauru, § III; Nepal, ¶¶ 17–23; Netherlands, §§ 3.A–D; Pakistan, § II(a)–(c); Palau, § III; Philippines, § V.A; Saint Lucia, ¶¶ 38–42; Saint Vincent and the Grenadines, §§ VI.A–E; Samoa, § III.A.2; Seychelles, § II.A.2; Sierra Leone, ¶ 3.1; Singapore, §§ III.A–D; Slovenia, § II; Solomon Islands, ¶¶ 52–58; Sri Lanka, ¶¶ 93–101; Switzerland, § II.E; Thailand, §§ II–III; Tuvalu, § III; Uruguay, § IV.A; Vanuatu, §§ 4.3.2–4.3.3; Viet Nam, § III.A; African Union, § III.A; COSIS, § III.B; IUCN, § 7; OACPS, § III.B; PNAO, ¶¶ 32–40.

172 Paris Agreement, Arts. 4(2)–(3) (emphases added); *see also* COSIS written statement, § III.C.1.ii.

173 *See* written statements of Albania, ¶ 93; Antigua and Barbuda, ¶ 230; The Bahamas, ¶¶ 89–91; Bangladesh, § IV; Barbados, ¶ 197; Belize, § 2; Burkina Faso, § IV.B.1.a.iii; Cameroon, § III; Chile, ¶¶ 34, 60; Colombia, §§ 3.A–D; Cook Islands, § V; Costa Rica, § D; Democratic Republic of the Congo, ¶ 132; Dominican Republic, ¶¶ 4.31–4.32; Ecuador, §§ 3.II–III; Egypt, ¶¶ 68–75; El Salvador, ¶¶ 27–28; Grenada, § IV.B; Kenya, ¶¶ 5.41–5.51; Kiribati, ¶ 109; Liechtenstein, ¶ 25; Marshall Islands, Part A; Madagascar, ¶¶ 39, 42; Mauritius, § V; Mexico, § IV; Federated States of Micronesia, § IV; Namibia, § IV.A; Nauru, § III; Nepal, ¶¶ 17–23; Netherlands, §§ 3.A–D; Pakistan, § II(a)–(c); Palau, § III; Philippines, § V.A; Saint Lucia, ¶¶ 38–42; Saint Vincent and the Grenadines, §§ VI.A–E; Samoa, § III.A; Seychelles, § II.C; Sierra Leone, ¶ 3.1; Singapore, §§ III.A–D; Slovenia, § II; Solomon Islands, §§ VI.A, VI.G; Sri Lanka, ¶¶ 93–101; Switzerland, § II.E; Thailand, §§ II–III; Tuvalu, § III; Uruguay, § IV.A; Vanuatu, § 4.4.3; Viet Nam, § III.A; African Union, §§ III.A, IV.B; COSIS, § III.B; IUCN, § 7; OACPS, § III.B; PNAO, ¶¶ 32–40.

174 ITLOS, *COSIS* Advisory Opinion, ¶ 233.

175 ILC, Report of the Study Group, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, document A/CN.4/L.682 (13 April 2006), ¶ 172 ("None of the treaty regimes in existence today is self-contained in the sense that the application of general international law would be generally excluded.").

> "States have, in accordance with the Charter of the United Nations and the *principles of international law*, . . . the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction . . . ."[176]

73. Article 2(1) of the Paris Agreement likewise explicitly provides:

> "This Agreement, in enhancing the implementation of the Convention, including its objective, *aims to strengthen* the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, *including by* . . . [h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change . . . ."[177]

The language used in the Paris Agreement such as "strengthen" and "including by" points clearly to the non-exclusive and non-exhaustive.

74. It thus follows—and most participants accept—that the *lex specialis* principle is not relevant to States' customary obligations under international law in respect of protection of the environment when it comes to climate change, and specifically that the Paris Agreement does not displace or diminish States' other obligations under international law. Sixty-two States and international organizations thus affirm the applicability of the harm prevention rule or of the obligation to protect and preserve the marine environment in the context of climate change, without limitation by virtue of the Paris Agreement or otherwise[178], and seven States took this position expressly[179].

---

[176] UNFCCC, Preamble (emphasis added). The preamble also underscores the "global nature of climate change" and its adverse effects on "natural ecosystems and humankind" without any geographical limitation, affirming the applicability of the rule related to the prevention of transboundary harm as one of its animating objectives.

[177] Paris Agreement, Art. 2(1) (emphases added).

[178] *See* written statements of Albania, § IV.A; Antigua and Barbuda, § III.B.1.c; Argentina, ¶ 47; Australia, § III.A; The Bahamas, § IV.A.2; Bangladesh, § IV.A.1; Barbados, § VI.A; Belize, § 2; Brazil, ¶ 70; Burkina Faso, § IV.B.1; Cameroon, § III.A; Canada ¶ 19; Chile, § IV; Colombia, § 3.C; Cook Islands § V.A; Costa Rica, ¶ 92; Democratic Republic of the Congo, § III.A; Dominican Republic, § 4.II.B; Ecuador, §§ 3.II.A, 3.III.C; Egypt, §§ VI.B.1–2; El Salvador, § IV.B.i; Grenada, § IV.B.III; Kenya, § 5.I; Kiribati, § IV.B; Madagascar, § III.B; Marshall Islands, ¶¶ 21–24; Mauritius, § V.E; Mexico, § IV(a); Federated States of Micronesia, ¶¶ 53–62; Namibia, § IV.A.1; Nauru, § III; Nepal, ¶ 28; Netherlands, § 3.D; New Zealand, Part 3.3; Pakistan, § II.A; Palau, § III; Philippines, § V.A.1; Portugal, § IV(ii); Romania, § IV(b); Saint Lucia, ¶ 66; Saint Vincent and the Grenadines, § VI.C; Samoa, § III.A.1; Seychelles, § II.C; Sierra Leone, § 2.I.A; Singapore, § III.A; Solomon Islands, §§ VI.F, VI.G; Slovenia, ¶ 40; Spain, ¶ 8; Sri Lanka, § IV.B; Switzerland, § II.B; Thailand, ¶¶ 7–14; Uruguay, §§ IV.A.1–2; Vanuatu, § IV.4.3; Viet Nam, § III.A.1; African Union, §IV.B.1–2; AOSIS, Annex 3; COSIS, § III.B.1; European Union, § 4; IUCN, § 7; Melanesian Spearhead Group, ¶ 323; OACPS, § III; PNAO, § VIII.

[179] *See* written statements of Cook Islands, ¶¶ 135–136; Costa Rica, ¶¶ 32–35, 68; Egypt, ¶¶ 73–75; New Zealand, ¶¶ 86–109; Samoa, ¶¶ 131–139; Switzerland, ¶ 68; Vanuatu ¶ 517.

75. Only two participants took a contrary view[180], and they cannot demonstrate the high bar to establish an actual conflict between the two regimes. As the Court has observed, "customary international law continues to exist alongside treaty law"[181], including in the context of international environmental obligations[182]. And to quote ITLOS, "the Paris Agreement is not *lex specialis* to the Convention" with regard to States Parties' obligations under UNCLOS Part XII, and "thus, in the present context, *lex specialis derogat legi generali* has no place in the interpretation of the Convention"[183].

76. States' implementation of the Paris Agreement also cannot be "understood as satisfying any general standard of due diligence in the particular context of anthropogenic GHG emissions", as a minority of States suggest[184]. The objective scientific evidence is clear on this point: General Assembly resolution 78/153 notes with concern the findings of the UNFCCC Secretariat that NDCs published pursuant to the Paris Agreement "are not sufficient" to meet the 1.5ºC limit[185]. And in fact, the IPCC has calculated that published NDCs will achieve only a 4 percent reduction by 2030 as compared to the 43 percent that is needed, and that the trend from *implemented* NDCs shows that emissions are on track to *increase* by 5 percent[186]. Based on its own assessment of these data, the UNFCCC Secretariat concluded in 2023 that "much more ambition in action and support is needed in implementing domestic mitigation measures and setting more ambitious targets in NDCs to realize existing and emerging opportunities across contexts"[187].

77. The gap between the ambition of the Paris Agreement and reality of implementation is not limited to mitigation efforts. For example, the UNFCCC Secretariat further concluded that collective progress on adaptation and loss and damages also "must undergo a step change in fulfilling the ambition set out in the Paris Agreement", and that "[c]limate impacts are eroding past human development gains, and without sufficient adaptation action, will impede the ability to make such gains in the future"[188].

---

180 Written statements of Saudi Arabia, §§ 4–5; OPEC, §§ IV.A–B.

181 *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua* v. *United States)*, *Judgment (Merits)*, *I.C.J. Reports 1986*, p. 14, ¶¶ 176, 179; *see also Elettronica Sicula S.p.A. (ELSI) (United States v. Italy)*, *Judgment*, *I.C.J. Reports 1989*, p. 15 ¶ 50 (rejecting the argument that "an important principle of customary international law should be held to have been tacitly dispensed with, in the absence of any words making clear an intention to do so").

182 *See Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment*, *I.C.J. Reports 2015*, p. 665, ¶ 108 ("[T]he fact that the 1858 Treaty may contain limited obligations concerning notification or consultation in specific situations does not exclude any other procedural obligations with regard to transboundary harm which may exist in treaty or customary international law.").

183 ITLOS, *COSIS* Advisory Opinion, ¶ 224.

184 *Cf*. United States written statement, ¶ 4.25; *cf*. *also* written statements of China, § VI.B; Denmark et al., ¶ 72; Japan, ¶¶ 11–18; Republic of Korea, ¶ 51; Kuwait, § II.B; Russia, p. 8; United Arab Emirates, ¶¶ 91–103.

185 United Nations General Assembly, resolution 78/153, Protection of Global Climate for Present and Future Generations of Humankind, document A/RES/78/153 (21 December 2023), ¶ 9.

186 *See* COSIS written statement, ¶ 39 (citing United Nations Environment Programme, *Emissions Gap Report* (2022); CAT Emissions Gap, "Climate Action Tracker", https://climateactiontracker.org/global/cat-emissions-gaps; IPCC, "Longer Report", *Sixth Assessment Synthesis Report* (2023), p. 25).

187 UNFCCC Secretariat, Technical Dialogue of the First Global Stocktake: Synthesis Report by the Co-Facilitators on the Technical Dialogue, document FCCC/SB/2023/9 (8 September 2023), ¶ 15.

188 *Id*., ¶ 30.

78. It thus may be necessary but cannot be sufficient for States to fulfil their obligations under the UNFCCC and the Paris Agreement—for example, to produce NDCs—as a means to meet their "stringent" customary obligations discussed above, including to take all measures necessary to prevent transboundary harm in line with the best available science[189].

C. Specific Obligations Under Customary International Law to Limit Global Warming to Within 1.5°C

79. The principles of customary international law related to the protection of the environment, understood in light of the best available climate science—which determines the high level of risk and severity of catastrophic harm, as well as the measures objectively indispensable to mitigate the harm posed by climate change—require States to adopt measures to, at a minimum, limit global warming to 1.5ºC above pre-industrial levels[190]. Again, it is important to emphasize that States are already suffering severe harm due to GHG emissions from other States that have occurred since the pre-industrial era[191]. This means that, as Vanuatu and others recognize, even more stringent mitigation measures are needed to address circumstances of ongoing breach[192].

80. In light of the applicable law and best available science, there can be only one conclusion: States must adopt measures to, at a minimum, limit global warming to 1.5ºC above pre-industrial levels. At least 42 States—spanning all regions and economic strata—and four international organizations concur on this point in their written statements[193]. Albania, for example, maintains that, in accordance with the "scientific data serv[ing] as a crucial benchmark by which the Court can assess States' compliance" with their obligations, "States *must* limit global warming consistent with the tipping point standard of 1.5°C above pre-industrial levels"[194]. For another example, the Seychelles states that the harm prevention rule requires States to "adopt and implement *rapid* and *substantial* domestic measures to

---

189 *See* § IV.B.1 above. ITLOS came to the same conclusion in its COSIS Advisory Opinion when it stated that it does not consider that the obligation under Article 194(1) of UNCLOS "would be satisfied simply by complying with the obligations and commitments under the Paris Agreement". ITLOS, *COSIS* Advisory Opinion, ¶ 223.

190 See COSIS written statement, § III.B.3.

191 *See* § II.B above. As discussed, States have been aware of the harm GHG emissions have caused for at least many decades. *See id*. § II.A.

192 *See, e.g.*, written statements of Albania, ¶ 130(d); Antigua and Barbuda, § III.B.3; Colombia, ¶¶ 4.2–4.10; Dominican Republic, ¶¶ 4.62–4.64; Egypt, ¶¶ 322–328; Saint Lucia, ¶¶ 89, 92, 95; Sierra Leone, ¶¶ 3.136–3.137, 4.7; Solomon Islands, ¶¶ 229, 249; Vanuatu, ¶¶ 564, 570.

193 *See* written statements of Albania, ¶ 78; Antigua and Barbuda, ¶¶ 110, 339–342; Australia, ¶ 1.10; The Bahamas, ¶¶ 69, 86; Bangladesh, § IV.C.1; Brazil, ¶ 69; Burkina Faso ¶ 83; Colombia, ¶ 3.39; Cook Islands, ¶ 247; Democratic Republic of the Congo, ¶ 86; Ecuador, ¶¶ 3.27, 3.77; El Salvador, ¶ 12; Germany, ¶ 118(b); Grenada, ¶¶ 7, 26; Japan, ¶ 38; Kenya, ¶¶ 5.35–5.36, 7.125(c); Liechtenstein, ¶ 73; Madagascar, ¶ 47; Marshall Islands, ¶¶ 41–42, 66; Mauritius, ¶¶ 100–101, 221(b); Mexico, ¶ 27; Federated States of Micronesia, ¶¶ 89–91; Namibia, ¶¶ 46, 99; Nepal, ¶ 19; Netherlands, ¶¶ 2.4, 3.12, 3.19; Pakistan, ¶¶ 5, 51; Portugal, ¶¶ 50, 103; Romania, ¶ 89; Saint Lucia, ¶¶ 53, 79(ii); Saint Vincent and the Grenadines, ¶¶ 8, 39; Samoa, ¶ 162; Seychelles, ¶ 133; Sierra Leone, ¶¶ 3.8, 4.2; Solomon Islands, ¶¶ 59, 61; Spain, ¶ 7; Sri Lanka, ¶ 115; Switzerland, ¶ 6; Timor-Leste, ¶¶ 97–100; Tuvalu, ¶¶ 105–111; United Kingdom, ¶ 4.4; Vanuatu, § 4.4.4.D; Viet Nam, ¶ 19; African Union, ¶¶ 100, 299; OACPS, ¶ 133; COSIS, § III.B.3; IUCN, § 4.III.

194 Albania written statement, ¶ 78 (emphasis added).

mitigate climate change by limiting the temperature increase to, at most, 1.5°C above pre-industrial levels"[195].

81. Although States have some discretion of the means chosen, their obligations under international environmental law require them to take specific necessary measures based objectively on the best available science. The 1.5ºC temperature threshold and other points of formal agreement reached by States under the Paris Agreement also reflect an internationally agreed, science-backed standard informing what is necessary to prevent the most catastrophic levels of climate change.

[195] Seychelles written statement, ¶ 133.

V. Legal Consequences for Breaches of International Obligations in Respect of Climate Change

82. This Chapter addresses part (b) of the Request, which asks the Court to consider the legal consequences for States "where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment" in relation to the obligations considered under part (a) of the Request.

83. COSIS focuses its Written Comments on the broad agreement among participants addressing part (b) that the customary rules of State responsibility apply to breaches of obligations in respect of climate change considered under part (a) (Section A); that States, including small island States, can invoke responsibility for breaches of those obligations (Section B); and, where States violate the obligations considered under part (a), that they incur remedial obligations, including obligations to cease the wrongful conduct and repair damage caused by their breaches (Section C).

A. Scope of Part (b) of the Request

84. The written statements that address the legal consequences of States under part (b) overwhelmingly agree that States are responsible for their internationally wrongful acts in the context of climate change. As COSIS identifies in its written statement[196], and as many States concur[197], the relevant rules for considering legal consequences in part (b) are thus the customary rules of State responsibility, as reflected in the ILC's Articles on Responsibility of States for Internationally Wrongful Acts (the "ARSIWA").

1. State Responsibility

85. Part (b) of the Request clearly addresses State responsibility. It takes language directly from the ARSIWA. As COSIS notes, this language includes references to "legal consequences", "injured" States, and States that are "specially affected"[198].

86. The suggestion by a few States that, despite this clear language, part (b) concerns only consequences for States "under" the primary rules[199] is inconsistent with the Court's jurisprudence on requests for advisory opinions using the term "legal consequences"[200]. The Court addressed questions of State responsibility in all prior advisory opinions rendered in response to requests that adopted this phrasing, declining to consider consequences under

---

196 COSIS written statement, § IV.

197 *See* written statements of Albania, ¶¶ 129–130; Antigua and Barbuda, ¶¶ 532–533; The Bahamas, ¶ 233; Barbados, ¶ 200; Brazil, ¶¶ 79, 86, 88; Burkina Faso, § V.A; Chile, ¶ 110; Colombia, ¶¶ 4.6–4.18; Costa Rica, ¶ 95; Democratic Republic of the Congo, ¶ 251; Dominican Republic, ¶¶ 4.63–4.67; Ecuador, ¶¶ 4.6, 4.9–4.21; Egypt, ¶¶ 351–396; El Salvador, ¶¶ 49–58; Grenada, ¶¶ 74–77; Kenya, ¶ 2.7; Kiribati, ¶¶ 173–205; Latvia, ¶¶ 73–77, 78(g); Madagascar, ¶ 67; Marshall Islands, ¶¶ 55–58; Mauritius, ¶¶ 208–210; Federated States of Micronesia, ¶¶ 120–122; Namibia, ¶¶ 128–130; Palau, ¶¶ 18–19; Philippines, ¶¶ 108–138; Peru, ¶¶ 90–92; Saint Lucia, ¶¶ 81–86; Saint Vincent and the Grenadines, ¶ 128; Samoa, ¶¶ 187–213; Sierra Leone, ¶ 3.134; Solomon Islands, ¶¶ 229–230; Sri Lanka, ¶¶ 102–104; Thailand, ¶ 29; Timor-Leste, ¶¶ 354–355; Tonga, ¶¶ 284–285, 288; Uruguay, ¶¶ 155–162; Vanuatu, § V; OACPS, ¶¶ 138–140, 143; African Union, ¶¶ 222–226; COSIS, § IV; IUCN, ¶¶ 529–532, 551; Melanesian Spearhead Group, ¶¶ 290–292; United States, § V.

198 *See* COSIS written statement, ¶ 146.

199 *Cf.* written statements of Japan, ¶ 40; Slovenia, ¶ 14; United Kingdom, ¶¶ 136–137.

200 *See Wall* Advisory Opinion, ¶¶ 36–40; *see also* Denmark et al. written statement, ¶ 102.

only the primary rules. In *Chagos*, for example, the General Assembly asked the Court to opine on the "consequences under international law" of the continued administration of the Chagos archipelago[201]. The Court answered that it "constitute[d] a wrongful act entailing the international responsibility of that State"[202]. The Court further referred to the *erga omnes* character of the violated obligations and its implications for third States[203].

87. The suggestion that part (b) is limited to consequences under the primary rules also overlooks the clear structure of the Request, which, in separating the questions into two parts, avoids redundancy with the already broad question in part (a) by expressly reaching State responsibility in part (b). Had the General Assembly intended to limit the Court's consideration to consequences under the primary rules, it could have omitted part (b), as part (a) asks the Court to consider obligations to "ensure" protection of the climate system under international law. That formulation is broad enough to include first-level consequences. Instead, part (b) is even more detailed than part (a), in line with a request for comprehensive treatment of the relevant legal consequences.

88. Statements made in connection with the adoption of resolution 77/276 demonstrate the understanding that part (b) asks the Court to address State responsibility[204]. The United Kingdom at least initially "welcome[d] the [Court] considering . . . the legal consequences when States, by their acts or omissions, *breach such obligations*, causing significant harm", noting that the Request "look[s] at the *consequences* if and when" breaches do occur[205]. The European Union also observed that the Request would ideally clarify "the legal consequences for all States for the breach" of obligations related to climate change[206]. And the United States noted that the Request considered the "consequences" of "breaches" of obligations[207].

89. Even if the Court identifies any technical limitation in the drafting of this Request, including with respect to State responsibility (*quod non*), it has the power to "broaden,

---

201 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, *Advisory Opinion*, *I.C.J. Reports 2019*, p. 129 ("*Chagos* Advisory Opinion"), ¶ 1.

202 *Id*., ¶ 177; *see also Wall* Advisory Opinion, ¶¶ 1, 147 (finding that, in response to the request concerning "legal consequences", Israel's "responsibility . . . is engaged under international law"); *South West Africa* Advisory Opinion, ¶¶ 1, 118 (finding that, in response to the request concerning "legal consequences", "South Africa, being responsible for having created and maintained a situation which the Court has found to have been validly declared illegal, has the obligation to put an end to it"); *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, *Advisory Opinion*, *I.C.J. Reports 2024*, p. __, ¶¶ 1, 267 (finding that, in response to the request concerning "legal consequences", that "Israel's continued presence in the Occupied Palestinian Territory is illegal, the Court considers that such presence constitutes a wrongful act entailing its international responsibility").

203 *Chagos* Advisory Opinion, ¶ 180.

204 *See* General Assembly, 77th Session, Official Record of the 64th Plenary Meeting, document A/77/PV.64 (29 March 2023), p. 22 (Republic of Korea) ("Moreover, the second question addresses the issue of legal consequences, if and when any *breaches of obligation occur*, and serves as a forward-looking catalyst." (emphasis added)); *id*., p. 26 (Norway) ("Furthermore, we note that the questions do not assume that breaches of any relevant obligations have already occurred or are occurring now, but look rather to clarify the existence and content of obligations and the legal consequences if *breaches* occur." (emphasis added)).

205 General Assembly 77th Session, Official Record of the 64th Plenary Meeting, document A/77/PV.64 (29 March 2023), p. 20 (emphasis added). *But see* United Kingdom written statement, ¶ 137.2 ("Question B does not refer, explicitly or implicitly, to a State's breach of the obligations addressed in Question A . . . .").

206 General Assembly, 77th Session, Official Record of the 64th Plenary Meeting, document A/77/PV.64 (29 March 2023), p. 8 (European Union).

207 *Id*., p. 28 (United States).

interpret and even reformulate the questions put" to it[208]. This is particularly the case where the Court seeks to sharpen the legal formulation of the questions raised in a request[209]. There is no doubt that part (b) asks the Court to opine on the legal consequences of breaches of the obligations outlined in response to the question in part (a).

2. Compatibility with the Court's Advisory Jurisdiction

90. Most States and international organizations in their written statements expressly or implicitly agree that part (b) is compatible with the Court's exercise of its advisory jurisdiction[210]. As virtually all participants agreed, the Court may opine on the legal framework of State responsibility without determining the responsibility of specific States, consistent with the Request and the Court's advisory posture[211].

91. Following from prior advisory cases, the Court's central task is to clarify the law applicable to the "situation" of climate change caused by anthropogenic GHG emissions, including the relevant legal consequences[212]. The Request does not ask the Court to inquire into facts and circumstances specific to certain States, though it may explain implications for broad categories of States in line with the rules of State responsibility[213]. By addressing the applicability, content, and scope of the rules of State responsibility, the Court's answer to part (b) will have significant implications for the work of the General Assembly and the conduct of States going forward, including efforts to account for violations of obligations[214]. Any purported difficulty, as discussed by some States[215], in the technical aspects of how to

---

208 *Wall* Advisory Opinion, ¶ 38; *see also Chagos* Advisory Opinion, ¶ 135; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, *Advisory Opinion*, *I.C.J. Reports 1962*, pp. 157–162; *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*, *I.C.J. Reports 1982*, ¶ 46.

209 *See Interpretation of the Agreement of 25 March 1951 Between WHO and Egypt*, *Advisory Opinion*, *I.C.J. Reports 1989*, p. 73, ¶ 35 ("The Court points out that, if it is to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction, it must ascertain what are the legal questions really in issue in questions formulated in a request.").

210 *See, e.g.*, written statements of Barbados, § III; Burkina Faso, § II; Colombia, § 1; Cook Islands, § II; Costa Rica, § B; Democratic Republic of the Congo, § I; Kiribati, § II; Liechtenstein, § 3; Madagascar, § II; Mauritius, § II; Mexico, § II; Federated States of Micronesia, § II; Philippines, § III; Saint Vincent and the Grenadines, § II; Sierra Leone, § II; Vanuatu, § 1.3; African Union, § II; AOSIS, § III.

211 *Cf. Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, *I.C.J. Reports 1989*, p. 177, ¶ 38 (distinguishing between the "applicability" of obligations and their "application" in the advisory opinion context).

212 *Nuclear Weapons* Advisory Opinion, ¶ 15 ("The Court does not consider that, in giving an advisory opinion in the present case, it would necessarily have to write 'scenarios', to study various types of nuclear weapons and to evaluate highly complex and controversial technological, strategic and scientific information. The Court will simply address the issues arising in all their aspects by applying the legal rules relevant to the *situation*." (emphasis added)).

213 *See generally Chagos* Advisory Opinion, ¶¶ 180–182; *Wall* Advisory Opinion, ¶¶ 148–159; *South West Africa* Advisory Opinion, ¶¶ 119–127 (examples of the Court referring to consequences for third States under the circumstances).

214 *See* Costa Rica written statement, ¶ 96 ("The point here is not to identify particular States having breached the relevant international obligations. Instead, the task of the Court is to determine the legal framework under which States can analyse their conduct in order to determine whether, on the one hand, they have breached their international obligations or whether, on the other hand, they have been an injured State.").

215 *See* written statements of Australia, ¶ 5.3; Denmark et al., ¶¶ 105–109; Indonesia, ¶ 74; Netherlands, ¶¶ 5.10–5.11; New Zealand, ¶ 140(c); Portugal, ¶¶ 53, 115–119; Russia, pp. 16–18; Singapore, ¶ 4.11; Switzerland, ¶¶ 75–80; South Africa, ¶ 13; United States, ¶¶ 2.20–2.26.

attribute GHG emissions from activities within the jurisdiction or control of any given State to observed harm neither impedes the Court's role in answering question (b) nor, as a matter of law, undermines States' responsibility for breaches of international obligations in respect of climate change[216].

3. Lack of Lex Specialis *for State Responsibility*

92. The suggestion of some States that the UNFCCC and the Paris Agreement somehow displace customary rules of State responsibility[217] fundamentally misinterprets the principle of *lex specialis*, especially its application in relation to legal consequences under secondary rules of State responsibility[218]. As an initial matter, the argument overlooks the ILC's acknowledgment of a "strong presumption" against finding conflict between layers of the international legal system[219], which applies equally in relation to the law of State responsibility.

93. For the same reasons set out in Section IV.B.3 above in relation to the primary obligations under part (a), there is no actual inconsistency or conflict—as required for *lex specialis* effect—between any loss and damage provisions or procedural compliance systems under the UNFCCC or the Paris Agreement, on the one hand, and the customary rules of State responsibility, on the other. Compliance and damage mechanisms under primary rules routinely co-exist with the rules of State responsibility[220].

B. INVOCATION OF RESPONSIBILITY

94. The written statements express broad agreement on the various aspects of how States may invoke the responsibility of States that have caused, by their actions or omissions, significant harm to the climate system and the environment. Specifically, the written statements reflect agreement on the various bases for the invocation of responsibility available to small island States (Section 1), that the relevant wrongful conduct may implicate a plurality of injured and responsible States (Section 2), and the lack of temporal limitation on the invocation of State responsibility in the climate change context (Section 3).

---

216 *See* written statements of Antigua and Barbuda, ¶¶ 545–551; Chile, ¶¶ 94–103; Costa Rica, ¶ 103; Dominican Republic, ¶ 4.59; Kenya, ¶¶ 6.102–6.109; Samoa, ¶¶ 211–212; Sierra Leone, ¶ 3.145; Tuvalu, § IV.B; Uruguay, ¶¶ 166–174. In any event, several States presented compelling evidence on the best scientific approaches to attributing particular harms to GHG emissions from specific States. *See* Section II.C above.

217 *See* written statements of Canada, ¶ 33; China, ¶¶ 95, 133, 139–144; Denmark et al., ¶ 101; Iran, ¶¶ 155–165; Kuwait, §§ III.A–B; Saudi Arabia, ¶¶ 6.3–6.8; United Kingdom, ¶¶ 136, 139.

218 *See Bosnian Genocide* Judgment, ¶ 401 ("The rules for attributing alleged internationally wrongful conduct to a State do not vary with the nature of the wrongful act in question in the absence of a clearly expressed *lex specialis*."); *see also* Chile written statement, ¶¶ 104–110.

219 *See* § III.C above.

220 *See, e.g.*, C. Voigt, "International Responsibility and Liability", *Oxford Handbook of International Environmental Law* (J. Rajamani & J. Peel eds., 2d ed. 2021), pp. 1008–1010.

1. Invocation of Responsibility by Small Island States

95. As COSIS explains in detail in its written statement[221], small island States are entitled to invoke the responsibility of other States for breaches of international obligations in respect of climate change on any one of three bases, which are not mutually exclusive[222].

96. *First*, a small island State is entitled to invoke the responsibility of another State if the obligation breached was owed to it individually[223]. *Second*, an injured State can invoke the responsibility of another State if the obligation was owed to a group of States including the injured State or the international community as a whole and the breach "specially affects that State"[224]. That situation describes all small island States in light of their particular vulnerability to climate change, as described in Section II.A above and confirmed by the General Assembly and the preamble to the Request. And *third*, any State other than the injured State can invoke the responsibility of a State if the obligations are owed *erga omnes* or *erga omnes partes*[225]. No written statement meaningfully disputes these points.

2. Plurality of Injured and Responsible States

97. Relevant wrongful conduct may implicate a plurality of injured and responsible States. Participants widely recognized the global nature of State responsibility[226]. In Albania's words, "climate change is a large-scale event caused in a cumulative manner by the action of a plurality of States, and the effects of which are felt by all States"[227].

98. As COSIS explains and no participant disputes, State responsibility in relation to injuries to multiple States by climate change may fall into one or both of two scenarios that the Court has recognized: where the actions or omissions that breached an obligation constitute the *same* internationally wrongful act or *different* ones[228]. Determining which scenario applies depends on the nature of the obligation and the conduct that breached it.

99. Under the first scenario, where several States are injured by the same internationally wrongful act, Articles 46 and 47 of the ARSIWA together confirm that each injured State may invoke the responsibility of the breaching State[229]. Furthermore, where more than one State is responsible for the same wrongful act, each responsible State may be held accountable in accordance with the law of State responsibility for the entirety of the harm[230]. To quote the

---

221 COSIS written statement, ¶¶ 153–162.

222 *See* written statements of The Bahamas, § VII; Saint Vincent and the Grenadines, ¶ 133; Vanuatu, ¶¶ 545–555, 601; Melanesian Spearhead Group, ¶¶ 302–311.

223 ARSIWA, Art. 42(a).

224 *Id*., Art. 42(b)(i); *id*., Commentary to Art. 42, ¶ 12.

225 ARSIWA, Art. 48.

226 *See, e.g.*, Solomon Islands written statement, ¶ 244.

227 Albania written statement, ¶ 130(d) (emphasis in original); *see also* Denmark et al. written statement, ¶ 106.

228 COSIS written statement, ¶¶ 163–171.

229 ARSIWA, Art. 46 ("Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act."). ARSIWA, Art. 47 ("Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.").

230 *See*, *e.g.*, Written statements of Albania, ¶ 130(d); Bangladesh, ¶¶ 146–147; Chile, ¶ 100; Denmark et al., ¶ 106; Democratic Republic of the Congo, ¶ 291; Ecuador, ¶¶ 4.19–4.20; Egypt, ¶ 295; Kenya, ¶ 6.116;

ILC, where "a single course of conduct is at the same time attributable to several States"[231]—amounting to the "same internationally wrongful act"—each State among a plurality of States may be responsible for the wrongful conduct as a whole[232]. Where a series of actions or omissions that breach obligations may be defined in the aggregate as wrongful, they can constitute a single wrongful act[233]. Relatedly, a breach consisting of a composite act must not be considered "merely as a succession of isolated acts, but as a composite act, *i.e.*, an act defined in aggregate as wrongful"[234]. The ILC has made clear that, in such situations, the focus is not on individual acts but rather on a series of acts that unfold over time and that taken together are wrongful[235]. As the Organisation of African, Caribbean, and Pacific States rightly puts it, "the conduct must be considered in its entirety as an aggregate conduct, rather than as a multitude of independent acts and omissions separate from one another"[236].

100. Under the second scenario, several states by "separate internationally wrongful conduct have contributed to causing the same damage"[237]. The ILC notes that, in such cases, "the responsibility of each participating State is determined individually, on the basis of its own conduct and by reference to its own international obligations"[238]. As the Court held in *Armed Activities on the Territory of the Congo*, "the fact that the damage was the result of concurrent causes is not sufficient to exempt [a responsible State] from any obligation to make reparation"[239].

101. Some breaches of international obligations under part (a) of the Request may be considered the "same internationally wrongful act". For example, a small island State suffering the catastrophic effects of sea-level rise is injured by a single course of conduct by high-emitter States that have breached, *inter alia*, obligations to take all measures necessary to prevent, reduce, and control pollution of the marine environment by mitigating GHG emissions consistent with the best available science[240]. The fact that the single course of conduct involves actions or omissions by a number of States taken on a cumulative, aggregated basis does not diminish or reduce each State's separate responsibility for the same act. In other words, responsible States' series of actions or omissions in failing to mitigate GHG emissions, both jointly and individually, may be considered the "same" internationally wrongful act[241].

Marshall Islands, ¶ 61; Mauritius, ¶¶ 210(e)–(f); Federated States of Micronesia, ¶ 124; Samoa, ¶ 213; ARSIWA, Commentary to Art. 47, ¶ 1.

231 ARSIWA, Commentary to Art. 47, ¶ 3.

232 *Id*., ¶ 2; *see also* written statements of Democratic Republic of the Congo, ¶¶ 295, 300–301; COSIS, ¶ 166.

233 ARSIWA Article 15(1) ("The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act".).

234 *Id*., Commentary to Art. 15, ¶ 7.

235 *Id*., ¶ 2.

236 OACPS written statement, ¶ 155.

237 ARSIWA, Commentary to Art. 47, ¶ 8.

238 *Id*.; *see also* written statements of Denmark et al., ¶ 106; Tuvalu, ¶¶ 122–124; COSIS, ¶¶ 170–171.

239 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, *Judgment (Reparations)*, *I.C.J. Reports 2022*, p. 48, ¶ 97; *id*., ¶¶ 94, 349; *see also* Antigua and Barbuda written statement, ¶ 548.

240 *Cf.* § III.B above (citing ITLOS, *COSIS* Advisory Opinion, ¶ 243).

241 *See*, *e.g.*, written statements of Tuvalu, ¶ 123; COSIS, ¶ 167.

102. Equally, in other circumstances, States' actions and omissions in the context of climate change may constitute different wrongful acts that contribute to the same damage. As COSIS explains, the Court in *Corfu Channel* made clear that the concurrent responsibility of multiple States does not reduce or preclude the responsibility of each breaching State on the basis of its own conduct[242]. Analogous situations may arise out of multiple States' independent failures to prevent significant transboundary environmental harm due to climate change. For example, several developed States may be in breach not only of obligations to provide technical assistance to developing States related to mitigation and adaptation measures, but also the related, independent obligation to cooperate to mitigate GHG emissions at levels necessary to limit global warming to 1.5°C. In that scenario, each developed State may be responsible for the entirety of the damage to which it contributed; the mere existence of concurrent causes does not exempt any State from its obligation to make reparation.

3. Absence of Temporal Limitation

103. A few States attempt to place limits on the invocation of State responsibility on temporal grounds, noting that a State cannot be held responsible for acts or omissions that would not have been contrary to international law at the time they were committed[243]. Any such principle of nonretroactivity has no bearing on the answer to the Request.

104. As noted in Section IV.B.1 above, international obligations mandating protection of the climate system and environment have been in force since at least the middle of the 20th century. This means that they were in force during the many decades that the risks of GHG emissions have been known to States, as described in Section II.A above.

105. Attempts to apply the nonretroactivity principle in this context are also wrong as a matter of law. As reflected in Article 13 of the ARISIWA, the rule against retroactivity does not entail that acts or omissions committed at a time where they may not have been wrongful may not become relevant in the future assessment of breach consisting of a composite act. When a breach consists of a composite act, not every single act or omission taken in isolation needs to have been contrary to international obligations at the time it was committed [244]. As Vanuatu notes, in light of the composite nature of the breach as one resulting from a composite act, "the Court does not need to say exactly when each of these obligations emerged and became binding because the Relevant Conduct is not only a conduct with a continuous character, but also a breach resulting from a composite act spanning well over a century"[245].

C. REMEDIAL CONSEQUENCES OF STATE RESPONSIBILITY

106. The participants that address the legal consequences of breaches of obligations with respect to climate change in their written statements overwhelmingly state that the responsibility of States entails remedial consequences under the ARSIWA. In line with the

---

242 COSIS written statement, ¶¶ 170–171 (citing *Corfu Channel* Judgment, pp. 22–23; C. Dominicé, "Attribution of Conduct to Multiple States and the Implication of a State in the Act of Another State", in *The Law of International Responsibility* (J. Crawford et al. eds. 2010) (Annex 11), pp. 281–284).

243 *See* written statements of Canada, ¶ 32; Liechtenstein, ¶ 80; United Kingdom, ¶ 137.4; United States, ¶ 5.4.

244 *See* § IV.B.2 above; *see also* Kiribati written statement, ¶ 176.

245 Vanuatu written statement, ¶ 529; *see also* written statements of African Union, ¶ 231; OACPS, ¶¶ 153–156.

customary ARSIWA framework, and as set out in COSIS's written statement[246], the submissions thus largely agree that States injured by a breach of obligations in respect of climate change are entitled to demand (*1*) performance of breached obligations and cessation of the wrongful conduct; (*2*) assurances and guarantees of non-repetition; and (*3*) reparation.

107. In relation to cessation and performance, most participants agree with COSIS on the critical importance of these remedial consequences in relation to violations of the obligations discussed in part (a)[247]. Given the compounding nature of harms caused by GHG emissions, several States, including Antigua and Barbuda and Vanuatu, recall that compliance with these obligations will necessarily entail making immediate and significant reductions of GHG emissions and setting out plans for further reductions[248]. As Colombia points out, where breaching States have a history of failing to meet their emissions targets, assurances and guarantees of non-repetition will be of utmost importance, especially in cases of breach by high-emitting States[249].

108. Numerous States also align with COSIS in drawing attention to the importance of reparation as a remedial obligation under the ARSIWA[250]. As COSIS notes in its written statement, reparation for violations of obligations in relation to climate change can take a variety of forms, including restitution[251], compensation[252], satisfaction[253], or a combination of these means[254]. The injured State may indicate the form of reparation that it considers most appropriate[255]. The written statements further confirm the relevance of reparation. As several participants point out, adequately repairing violations of obligations involving harms caused by GHG emissions will almost certainly require the transfer of resources of one form or another from developed States to developing States[256].

109. Several States recall that specific reparations can be assessed on a case-by-case basis in light of all relevant factors, and that the Court's task at this stage is only to remind States

---

246 COSIS written statement, ¶ 173.

247 *See, e.g.*, written statements of Albania, ¶¶ 133–134; Chile, ¶¶ 111–114; Colombia, ¶¶ 4.6–4.10; Kenya, §§ 6.I(A), III; Namibia, § V(A)(1); Palau, ¶¶ 4, 20–24; Samoa, ¶¶ 196–197; Singapore § IV(A)(1).

248 *See* written statements of Antigua and Barbuda, ¶¶ 538, 598; Vanuatu, ¶¶ 567–569; Sierra Leone, ¶¶ 3.135–3.137; Tuvalu, ¶ 127.

249 *See* Colombia written statement, ¶ 4.10.

250 *See* COSIS written statement, ¶ 178 (citing ARSIWA, Art. 31); *see also* written statements of Albania, ¶¶ 135–140; Antigua and Barbuda, ¶¶ 540–563; The Bahamas § VI.C; Bangladesh, ¶ 147; Barbados, § VII; Brazil, § IV.B; Burkina Faso ¶ 356; Chile, ¶¶ 115–135; Colombia, § 4.B; Costa Rica, ¶¶ 116–122; Democratic Republic of the Congo, § IV.B.4; Ecuador, ¶¶ 4.13–4.16; Egypt, ¶¶ 364–387; Grenada, § IV.D; Kiribati, ¶¶ 181–191; Madagascar, § IV.C; Marshall Islands, ¶¶ 55–58; Mauritius, ¶ 210(c); Federated States of Micronesia, ¶¶ 120, 128–131; Namibia, ¶¶ 135–146; Palau, ¶¶ 4, 23–24; Philippines, ¶¶ 120–132, 124; Saint Lucia, ¶¶ 86, 91–95; Saint Vincent and the Grenadines, ¶¶ 128, 134; Samoa, ¶¶ 199–201; Sierra Leone, ¶ 3.135; Solomon Islands, § X.C; Sri Lanka, ¶ 104; Timor-Leste, ¶¶ 363–364; Tuvalu, ¶¶ 128–130; Uruguay, ¶ 158; Vanuatu, ¶¶ 563–566, 580–600; Viet Nam, ¶¶ 42–49; African Union, ¶¶ 269–288.

251 ARSIWA, Art. 35.

252 *Id*., Art. 36(1).

253 *Id*., Art. 37.

254 *Id*., Arts. 31, 34–37.

255 *See id*., Art. 43(2).

256 *See, e.g.*, written statements of Barbados, § VII.D; Colombia, ¶¶ 4.15–4.16; Kenya, ¶¶ 6.111–6.112; Saint Lucia, ¶¶ 93–94; Samoa, ¶ 216; Vanuatu, ¶ 597; Melanesian Spearhead Group, ¶¶ 318–322.

now that such remedial obligations may apply[257]. As these States observe, and as COSIS agrees, any technical difficulty in calculating reparation does not undermine the legal entitlement to it[258]. As noted above, ITLOS confirms this view, finding that the "diffused and cumulative causes and global effects of climate change" concern causation, not States' responsibility to make full reparation for breach of an international obligation[259]. Several States went further to also recall that reparation may be owed in relation to harms that are difficult to quantify by their nature, including environmental harms, as COSIS agrees[260].

110. In addition to reparation in the form of financial compensation, many States echo COSIS's position on the importance of support for adaptation measures as a form of reparation[261]. A number of States refer to adaptation as a means of carrying out reparation obligations, including transfers of resources and technology[262]. The African Union, for example, draws attention to the Nairobi Declaration on Climate Change Call to Action, which calls for a commitment of resources of at least the same magnitude as were devoted to fight the COVID-19 pandemic, observing that "many developing countries that are struggling to adapt to climate change are . . . in need of financing to accomplish their objectives"[263]. Tuvalu likewise notes its need for assistance with land reclamation, an adaptation measure that will help protect it from submergence in the face of rising sea levels[264].

111. Finally, as noted above, several participants join COSIS in recognizing that some violations of States' obligations in respect of climate change may amount to serious breaches of peremptory norms of international law[265]. In relation to such breaches, the ARSIWA establish additional consequences for all States, including the obligation of all States to cooperate to bring an end to those breaches[266] and the obligation of States not to recognize any situation resulting from such breaches[267]. Several States align with COSIS in affirmatively connecting the remedial obligation regarding recognition with the emerging customary international law norm under which States are required to respect existing maritime spaces and the continued sovereignty of those States that lose territory as a result of sea-level rise[268]. States also agree with COSIS on the critical importance of the cooperation of

---

257 Written statements of Albania, ¶ 130(c); Antigua and Barbuda, ¶ 547; Egypt, ¶ 348; Marshall Islands, ¶¶ 60, 62; Netherlands, ¶ 5.10; New Zealand, ¶ 140; Sierra Leone, ¶ 3.145.

258 *See* written statements of Antigua and Barbuda, ¶ 547; Albania, ¶ 139; Barbados, ¶ 260; Chile, ¶¶ 119–120; Egypt, ¶ 371; Marshall Islands, ¶ 63; Samoa, ¶ 212; Sierra Leone, ¶ 3.145; Vanuatu, ¶ 562; Dominican Republic, ¶¶ 4.52, 4.66–4.67; Kenya, ¶ 6.103.

259 *COSIS* Advisory Opinion, ¶ 252.

260 *See* written statements of Antigua and Barbuda, ¶ 608; Bangladesh, ¶ 147; Costa Rica, ¶¶ 116–122; Grenada, ¶ 75; Marshall Islands, ¶ 58; Palau, ¶ 23; Philippines, ¶ 129; Sierra Leone, ¶ 3.148; IUCN, ¶ 589.

261 *See* COSIS written statement, ¶¶ 181–182.

262 *See* written statements of Barbados, § VII.C, ¶ 328; Brazil, ¶¶ 95–96; Costa Rica, ¶ 122; Colombia, ¶ 4.15; Kenya, ¶ 6.89; Kiribati, ¶¶ 196; Liechtenstein, ¶ 80; Namibia, ¶ 144; Saint Lucia, ¶ 92; Tuvalu, ¶¶ 133, 136–140; Vanuatu, ¶¶ 583–584.

263 African Union written statement, ¶ 140 (citing African Union, The African Leaders Nairobi Declaration on Climate Change and Call to Action (2023)).

264 Tuvalu written statement, ¶¶ 136–139.

265 *See* written statements of Burkina Faso, ¶¶ 389–401; Costa Rica, ¶¶ 106, 128; Sierra Leone, ¶ 3.138; Vanuatu, ¶ 602; Melanesian Spearhead Group, ¶¶ 323–325; OACPS, ¶ 194.

266 ARSIWA, Art. 41(1).

267 *Id*., Art. 41(2).

268 *See* written statements of Burkina Faso, ¶¶ 389–401; Costa Rica, ¶ 125; Vanuatu, ¶ 605; Melanesian Spearhead Group, ¶ 326; *cf*. COSIS written statement, ¶ 196.

all States, including both breaching and non-breaching States, to bring an end to the serious violations of obligations underway in relation to climate change[269].

* * *

112. The written statements evince clear agreement that the customary rules of State responsibility apply to breaches of obligations in respect of climate change no less than in relation to other international legal obligations. Where States breach those obligations, other States are entitled to invoke responsibility in relation to harms resulting from those breaches. States that violate their obligations in respect of climate change incur remedial obligations, including to cease breaches that are underway, perform obligations, make assurances and guarantees of non-repetition, and provide reparation for damage caused.

[269] *See* written statements of Canada, ¶ 81; Republic of Korea, ¶ 49; Philippines, ¶ 120; Portugal, ¶¶ 126–161; Switzerland, ¶ 81; Vanuatu, ¶¶ 515, 606.

VI. Conclusions

113. In response to the Request, and for the reasons set out in its written statement and these Written Comments, COSIS submits that—

(a) In light of the specific obligations imposed by international law, all States must, as a matter of urgency, and consistent with the principle of common but differentiated responsibilities:

(i) Take all measures necessary on the basis of the best available scientific and international standards, which require, at a minimum, (*1*) limiting average global temperature rise to no more than 1.5ºC above pre-industrial levels, without overshoot, and accounting for any current emissions gaps and the need to transition away from fossil fuels, where current levels of fossil fuel use already exceed Earth's remaining carbon budget[270]; and (*2*) reaching global peaking of GHG emissions as soon as possible and undertaking rapid reductions thereafter;

(ii) Take all measures necessary to ensure that GHG emissions from activities under their jurisdiction or control do not cause damage to other States and their environment, and do not spread beyond the areas over which they exercise sovereign rights, as informed by the duty of due diligence and best available scientific and international standards, consistent with the specific temperature limit and timetable noted in sub-subparagraph (i) above;

(iii) Adopt and enforce laws and regulations to prevent, reduce, and control pollution by GHG emissions, taking account of the best available scientific and international standards, consistent with the specific temperature limit and timetable noted in sub-subparagraph (i) above;

(iv) Cooperate directly or through international organizations to (*1*) prevent, reduce, and control pollution by GHG emissions and (*2*) promote, protect, and respect human and peoples' rights implicated by climate change and its effects;

(v) Make finance flows consistent with a pathway toward low GHG emissions consistent with the specific temperature limit and timetable noted in sub-subparagraph (i) above;

(vi) For developed States, provide technical, financial, and other appropriate assistance to developing States, directly or through international organizations, to assess the impacts of GHG emissions and to prevent, mitigate, and adapt to negative impacts of GHG emissions as informed by the best available scientific and international standards, consistent with the specific temperature limit and timetable noted in sub-subparagraph (i) above;

[270] *See* ¶ 23 above (citing IPCC, "Summary for Policymakers", *Sixth Assessment Synthesis Report* (2023) (Dossier No. 78), pp. 19–21).

(vii) Monitor and assess planned activities under their jurisdiction or control, including through environmental impact assessments and contingency plans, to determine whether such activities may cause substantial damage by GHG emissions, and publish any such reports; and

(viii) Assist developing States in meeting their mitigation and adaptation needs in the face of the adverse impacts of climate change; and

(b) Although afforded a measure of discretion in the means taken, States must be guided by the IPCC's concrete recommendations for reducing GHG emissions through legislation and policy governing energy generation, industry, transportation, agriculture, land use, and other areas;

(c) Where a State or multiple States, by their acts or omissions, breach obligation(s) under subparagraph (a) above by causing significant harm to the climate system and other parts of the environment:

(i) Each State is responsible for any such breaches attributable to it under international law; and, in the case of multiple breaching States responsible for the same internationally wrongful act, States entitled to invoke the responsibility of a breaching State may do so for the full extent of the breach;

(ii) Injured States specially affected by any such breaches, including small island developing States, may invoke the responsibility of the breaching State(s) for any breach of an obligation owed to (*1*) the injured State individually or (*2*) a group of States, including that specially affected State;

(iii) Any State may invoke the responsibility of the breaching State(s) for failure to comply with obligations owed to the international community as a whole;

(iv) The breaching State(s) must (*1*) continue to perform the breached obligation, (*2*) cease any continuing breaches and offer appropriate assurances and guarantees of non-repetition, and (*3*) make full reparation—including restitution, compensation, and/or satisfaction, as appropriate—for the injury caused to the injured State by the internationally wrongful act, including for any damage, whether material or moral, caused by such act; and

(v) All other States must (*1*) refrain from recognizing or aiding or assisting in the continuation of a situation resulting from any such breach amounting to a serious breach of a peremptory norm of international law, and (*2*) cooperate to bring an end to that breach, including through frameworks supplied under multilateral environmental conventions and international organizations, including the United Nations.

(*Signed*)

Hon. Gaston Browne, Prime Minister
Government of Antigua and Barbuda
Co-Chair of the Commission

(*Signed*)

Hon. Feleti Penitala Teo, Prime Minister
Government of Tuvalu
Co-Chair of the Commission