INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

WRITTEN COMMENTS ON THE WRITTEN STATEMENTS OF OTHER STATES AND ORGANIZATIONS BY THE INTERNATIONAL UNION FOR CONSERVATION OF NATURE (IUCN)

PREPARED BY THE IUCN WORLD COMMISSION ON ENVIRONMENTAL LAW (WCEL)

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I. INTRODUCTION

1. The International Union for Conservation of Nature (IUCN) is honoured to further contribute to these historic proceedings before the Court.[1] Pursuant to the Court's direction,[2] IUCN hereby provides its written comments on the written statements submitted by other States and organizations.

2. Rather than providing extensive comments, IUCN seeks to reinforce and emphasize key points made in its written statement by reference to the legal arguments and facts raised in other written statements. From the outset, it is important to note that the views expressed in a significant number of other written statements by participants in these proceedings align with key points in IUCN's written statement.

3. As explained in its written statement, IUCN has a unique role in these proceedings. It is the only international organization combining scientific and legal expertise and whose members include States, sub-national entities, non-governmental organizations, and organizations representing indigenous peoples.[3] Further, IUCN is a long-standing contributor to the development of international law in the field of conservation of nature and the sustainable use of natural resources.[4] IUCN fully recognizes the importance of the rule of law in the conservation of nature and the climate system. This is why IUCN is equipped with a Commission that focuses on environmental law, the IUCN World Commission on Environmental Law (WCEL), which has been tasked with representing IUCN in these important proceedings.[5] It is in that light that we ask the Court to consider our comments.

4. After this Introduction, IUCN, in **Chapter II,** will comment on the points made by other participants regarding the definition of the climate system. As explained in IUCN's written statement, it is necessary to establish an accurate understanding of the climate system to answer Questions (a) and (b) in the request for advisory opinion.

5. **Chapter III** emphasizes six key points raised in IUCN's written statement and sets out IUCN's comments on other participants' responses to Question (a) regarding State obligations to protect the climate system with respect to those six points.

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[1] Unless otherwise stated, all abbreviations used in this document are defined in IUCN's 'Written Statement of the International Union for Conservation of Nature (IUCN): Prepared by the IUCN World Commission on Environmental Law (WCEL)' (19 March 2024). ("IUCN's written statement".).

[2] ICJ Order, 'Fixing of Time-limits: Presentation of the written statements and written comments on those statements' (20 April 2023); Letter from the Court to IUCN (28 March 2024).

[3] International Union for Conservation of Nature, Statutes of 5 October 1948, revised on 22 October 1996, and last amended on 13 December 2023 (including Rules of Procedure of the World Conservation Congress, last amended on 13 December 2023) and Regulations revised on 22 October 1996 and last amended on 16 May 2024, 2024, 3-10. ("IUCN Statutes".)

[4] One example is the Convention on Wetlands of International Importance ("Ramsar Convention"), which IUCN helped to draft and hosts the Secretariat. For other examples, see IUCN, 'The Impact of IUCN Resolutions on International Conservation Efforts: An Overview' (2018) <https://portals.iucn.org/library/sites/library/files/documents/2018-011-En.pdf>.

[5] IUCN, 'World Commission on Environmental Law (WCEL): Mandate 2021–2025' Adopted by IUCN Members by electronic vote on 10 February 2021 <https://www.iucn.org/sites/default/files/2023-07/wcel_mandate_2021_2025_en_0.pdf>. ("WCEL Mandate 2021-2025".)

6. **Chapter IV** then turns to Question (b), setting out IUCN's comments on other participants' submissions on the legal consequences for the breach of State obligations to protect the climate system.

7. **Chapter V** concludes by summarizing IUCN's key points and comments.

8. Before setting out our substantive comments, there are three preliminary matters IUCN wishes to address.

9. First, IUCN considers that the Court has jurisdiction to give the advisory opinion requested by General Assembly resolution 77/276 and that there are no compelling reasons for the Court to decline giving an advisory opinion in the exercise of its discretion. The issues of the Court's jurisdiction and discretion were not explicitly addressed by IUCN in its written statement, so it is necessary to clarify our position in these written comments. As implicit in its written statement, IUCN proceeded on the basis that the Court has jurisdiction in these proceedings and should give the requested advisory opinion, given the legal nature of the questions posed by the General Assembly. IUCN notes that: "the Court has a discretionary power to decline to give an advisory opinion, [either in whole or in part], even if the conditions for jurisdiction are met".[6]

10. In line with the Court's established jurisprudence, IUCN submits that the Court has sufficient information to address all the legal questions contained in the request in a manner consistent with its judicial function. Thus, it should proceed to give its advisory opinion in this case.

11. Second, IUCN welcomes the Court's decision to hold oral proceedings in this case,[7] given the importance of the issues. These proceedings address one of the most dangerous and pressing global challenges, necessitating the urgent clarification of States' obligations under international law. Oral proceedings will enable participants to present their positions more effectively, further assisting the Court in rendering its advisory opinion.

12. Third, there have been significant developments in international climate change jurisprudence over the past year. Where relevant and appropriate, IUCN has incorporated legal points from a recent judgment of the ECtHR[8], the Advisory Opinion of ITLOS[9] and a recent decision of the IACtHR[10] into these comments.

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[6] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010 (II), pp. 415-416, para. 29. ("*Wall* Advisory Opinion" and "*Kosovo* Advisory Opinion").

[7] Statute of the International Court of Justice, 18th April 1946, XV UNCIO 355, Article 65(1) ("ICJ Statute"); Letter from the Court to IUCN (8 July 2024).

[8] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024). ("*KlimaSeniorinnen* case" or "*KlimaSeniorinnen*").

[9] *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 the Tribunal)* (ITLOS, Advisory Opinion of 21 May 2024).
<https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf>. ("*ITLOS Advisory Opinion on Climate Change*".)

[10] *Caso Habitantes de La Oroya v Peru*, Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 511 (27 November 2023). ("*Oroya case*" or "*Oroya*".)

II. THE CLIMATE SYSTEM

13. As explained in its written statement,[11] IUCN submits that the climate system is all-encompassing, defined as "the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions" in Article 1(3) of the UNFCCC, and recognizes the inter-connections between human and natural systems.

14. IUCN notes a broad consensus among the participants in these proceedings regarding this definition.[12] Although a small number of States referred to the definition of the climate system provided in the IPCC glossary,[13] this is largely consistent with the definition set out in the UNFCCC. Thus, there is widespread acceptance of the definition of the climate system contained in Article 1(3) of the UNFCCC, which IUCN submits the Court should adopt in its advisory opinion.

15. The comprehensive definition of the climate system in Article 1(3) of the UNFCCC has important implications for Question (a). As explained in IUCN's written statement,[14] this definition implies that State obligations to protect the climate system can be found across several treaties and other sources of law, each addressing different components and interactions within the climate system.

[11] IUCN's written statement, Part II, Chapter 4.

[12] eg, Australia's written statement, para 1.5; Commission of Small Island States (COSIS)'s written statement, para 64; Dominican Republic's written statement, para 4.14; Ecuador's written statement, para 3.6; Egypt's written statement, para 80; Kenya's written statement, para 2.4; Mauritius' written statement, para 94; Parties to the Nauru Agreement Office (PNAO)'s written statement, para 32; Saint Lucia's written statement, para 45; Saint Vincent and the Grenadines' written statement, para 113; Samoa's written statement, para 147; Thailand's written statement, para 6; United Kingdom's written statement, para 9; United States of America's written statement, p 3, footnote 2; Vanuatu's written statement, para 266; Vietnam's written statement, para 18.

[13] Written statements that refer to the definition in the IPCC glossary only include: Federated States of Micronesia's written statement, para 50; Kiribati's written statement, para 94; Seychelles' written statement, para 51; Tonga's written statement, paras 129-130. Written statements that refer to both the UNFCCC and IPCC glossary definitions include: Ecuador's written statement, para 3.6; Egypt's written statement, para 34; Vanuatu's written statement, paras 148 and 266.

[14] IUCN's written statement, paras 45-48.

III. STATE OBLIGATIONS TO PROTECT THE CLIMATE SYSTEM

16. IUCN has addressed Question (a) in its written statement.[15] Rather than repeat its submissions, IUCN considers it more helpful to the Court to emphasize the six key points below and comment on how other participants have addressed them:

    i. The Paris Agreement is the primary legal instrument addressing climate change. It contains State obligations to protect the climate system.

    ii. The Paris Agreement is not the only treaty containing State obligations to protect the climate system. Such obligations are also found in other treaties, in particular the United Nations Convention on the Law of the Sea (UNCLOS) and international human rights treaties, as well as the Convention on Biological Diversity (CBD), the Montreal Protocol and its Kigali Amendment, and the United Nations Convention to Combat Desertification.

    iii. States have the duty to protect the climate system under the customary international law obligation to prevent significant harm to the environment of other States and areas beyond national jurisdiction.

    iv. The obligations and commitments contained in the Paris Agreement inform the standard of due diligence in other relevant treaties and under customary international law.

    v. States have the duty under customary international law to cooperate to prevent significant harm to the climate system. This obligation of cooperation applies *erga omnes*.

    vi. It is imperative that measures to protect the climate system do not undermine nature protection.

17. Below, we will discuss these six points in more detail and include references to statements of other participants in these proceedings and to decisions and opinions of international courts and tribunals that were issued after IUCN submitted its written statement on 19 March 2024.

1. THE PARIS AGREEMENT IS THE PRIMARY LEGAL INSTRUMENT ADDRESSING CLIMATE CHANGE.

18. With respect to climate mitigation, each Party to the Paris Agreement has the obligation to prepare, communicate and maintain an NDC containing its objectives to mitigate climate change.[16] This core legal obligation is informed by due diligence standards that include the following elements:

[15] IUCN's written statement, Part I, Chapter 3 and Part III, Chapters 5, 6, 7 and 8.
[16] Paris Agreement, Article 4(2); IUCN's written statement, para 37(c).

a. alignment with the 1.5°C temperature threshold (Article 2(1)(a)) and corresponding timelines for emission pathways (Article (4)(1)). To stay within the 1.5ºC threshold, deep, rapid, and sustained reductions in global GHG emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero CO_2 emissions by 2050 are necessary.[17] According to the IPCC, this requires varying degrees of net-negative emissions thereafter.[18]

b. reflecting each Party's "highest possible ambition" and "progression" in ambition (Article 4(3)); and

c. being informed by the outcome of the Global Stocktake (Article 14(3)).[19]

19. It is the combination of these elements that sets the standard of due diligence when formulating NDC mitigation objectives whereby each Party is expected to take all appropriate measures at its disposal.

20. Further, each Party is obliged to pursue domestic mitigation measures with the aim of achieving the objectives set out in its NDC (Article 4(2), second sentence). This obligation is critical to the good functioning of the Paris Agreement. States' domestic mitigation measures must be calibrated to achieving the objectives of NDCs.

21. These obligations and due diligence standards were explained in IUCN's written statement.[20] As demonstrated below, a significant number of other participants in these proceedings take the same position.

22. IUCN's position is echoed in the EU's written statement, which states:

> "'Highest possible ambition' alongside 'progression' implies that the increase in ambition should match the best efforts a party can feasibly undertake, in light of its evolving responsibilities, capabilities, and informed by the best available science. 'Progression' implies that there is a floor for the next NDC, discouraging backsliding, and further sets a clear, substantive expectation that each Party should raise ambition as much as possible when preparing, communicating and maintaining its successive NDC. It is the combination of both factors, together with the overall aim reflected in the temperature goal, that delineates the standard of due diligence when formulating NDC mitigation objectives."[21]

23. The EU emphasized that:

> "These obligations [i.e. reflecting progression and highest possible ambition] are connected to the mandatory obligation that each Party communicate an NDC every five years in accordance with relevant decisions of the CMA and be informed by the outcomes of five-yearly global stocktake – the collective assessment of

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[17] Decision 1/CMA.5, para 27.
[18] IUCN's written statement, para 35 and Appendix II; IPCC, 2023: *Climate Change 2023: Synthesis Report.* Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, 92.
[19] IUCN's written statement, ibid, para 37(c).
[20] ibid, Chapter 5, paras 124-151 and Chapter 7, paras 342-456.
[21] European Union (EU)'s written statement, para 150.

progress towards achieving the Paris Agreement's purpose, including the long-term temperature goal (Article 4(9) and Article 14(1) and (2))."[22]

24. Colombia takes a similar approach by arguing that:

> "the principle of the highest possible ambition, which aligns with the duty of due diligence in international law, essentially requires that Parties deploy their best efforts in setting their national mitigation targets and in pursuing domestic measures to achieve them."[23]

25. Vanuatu clearly explains the relationship between the due diligence nature of the Paris Agreement's mitigation obligations and the parameters that States have to consider when implementing domestic mitigation measures, stating that:

> "The requisite 'progression' is further specified in that NDCs need to reflect a Party's 'highest possible ambition', their 'common but differentiated responsibilities […] in the light of different national circumstances', and 'leadership' from developed countries. These normative parameters are crucial. In relation to the procedural obligation identified in Article 4.2 to 'prepare, communicate and maintain' NDCs, these parameters import substantive and qualitative elements into what on the face of it appears to be a purely procedural obligation. In framing and implementing their NDCs, Parties must factor in these substantive parameters. In relation to the obligation of conduct identified in Article 4.2 to pursue domestic measures with the aim of meeting the objectives of the NDCs, these parameters provide regime-specific markers for due diligence. The domestic measures Parties undertake to meet the objectives of their NDCs must also comply with these parameters, and the extent to which they do so will determine the extent to which they have demonstrated due diligence."[24]

26. The due diligence standard contained in the Paris Agreement informs the interpretation, content and standard of relevant obligations in other treaties and customary international law. This includes both the temperature threshold of 1.5°C and corresponding timelines and pathways for emission reductions, as well as the normative requirements of "highest possible ambition" and "progression", as will be shown under section III.4 below.

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[22] ibid. The EU further states: "While the term 'highest possible ambition' is not defined within the Paris Agreement, the European Union considers that Article 4(3) implies a substantive expectation for each Party to exert its 'best efforts' or strive for optimal performance when crafting successive NDCs. The use of the term 'will' in Article 4(3) carries more weight than a term such as 'should' but does not elevate the obligation to one of result – for instance by using the term 'shall'. Given the terminology used, this provision signifies a behavioural standard, consistent with its status as an obligation of conduct requiring an exercise of due diligence, whereby each Party is expected to take all appropriate measures at its disposal". See EU's written statement, para 147. Other written statements aligning with IUCN's position that the requirements of highest possible ambition and progression for successive NDCs are due diligence obligations include, eg, China's written statement, paras 46-50; COSIS' written statement, paras 122-123; Ecuador's written statement, paras 3.81-3.82; France's written statement, para 49; Indonesia's written statement, paras 52-54; Korea's written statement, paras 20 and 22; Latvia's written statement, para 30; Russian Federation's written statement, p 6-7; Seychelles' written statement, paras 73-77; Solomon Islands' written statement, paras 78-86; Switzerland's written statement, para 57; Timor Leste's written statement, paras 118-125; Tonga's written statement, para 153; United Arab Emirates (UAE)'s written statement, paras 112 and 119; Vanuatu's written statement, para 409.

[23] Colombia's written statement, para 3.38.

[24] Vanuatu's written statement, para 411.

2. STATE OBLIGATIONS TO PROTECT THE CLIMATE SYSTEM ARE ALSO FOUND IN OTHER INTERNATIONAL TREATIES.

27. As explained above, the climate system has a broad and all-encompassing definition. It follows that, while the Paris Agreement is the primary international legal instrument to protect the climate system, it is not the only source of State obligations to protect the climate system. Such obligations are also contained in other international treaties. IUCN notes that a significant number of other participants in these proceedings agree with the position that the Paris Agreement is one source, but not the only source, of obligations to protect the climate system.[25]

28. The UN climate treaties, ie, UNFCCC and the Paris Agreement do not displace other obligations to protect the climate system contained in other international treaties and customary international law. In this sense, the UNFCCC and the Paris Agreement are not *lex specialis.*[26] This point was made clear by ITLOS when it stated that:

> "[i]n the Tribunal's view, the Paris Agreement is not *lex specialis* to the [United Nations] Convention [on the Law of the Sea] and thus, in the present context, *lex specialis derogat legi generali* has no place in the interpretation of the Convention."[27]

29. Thus, the obligations that fall within the scope of Question (a) are not limited to those found in the Paris Agreement. They also include, *inter alia,* obligations under UNCLOS, the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, the CBD, the UNCCD,[28] and international human rights treaties.[29] The obligations under UNCLOS and international human rights law merit further discussion, as set out below.

A. UNCLOS

30. The recent *ITLOS Advisory Opinion on Climate Change* clarified that UNCLOS contains the following obligations for its State Parties with respect to climate change:

    i. to take, with stringent due diligence, all necessary measures to prevent, reduce and control pollution of the marine environment by anthropogenic GHG emissions from any source (Article 194(1));
    ii. to take, with more stringent due diligence, all measures necessary to ensure that anthropogenic GHG emissions do not cause damage by pollution to other States and their environment (Article 194(2)); and

[25] For example, Colombia argues, at para 3.9 of its written statement, that "international law addressing climate change is not confined to the UNFCCC regime". A very similar argument is made by Vanuatu, at para 223 of its written statement, that "[t]he UNFCCC and the Paris Agreement do not, expressly or by necessary implication, cover the field of international law obligations in respect of climate change." See also, eg, COSIS' written statement, paras 64 and 123; Costa Rica's written statement, para 32; Mauritius' written statement, para 86; Saint Lucia's written statement, para 48; Sierra Leone's written statement, para 3.2; Tonga's written statement, para 124.

[26] See IUCN's written statement, Chapter 5, para 103. See also, eg, Cook Islands' written statement, paras 135, 245 and 266; Costa Rica's written statement, para 32.

[27] *ITLOS Advisory Opinion on Climate Change*, para 224.

[28] IUCN's written statement, Part III, Chapter 6.

[29] ibid, Chapters 7 and 8.

iii. to protect the marine environment against the impact of climate change and GHG emissions, and to preserve the marine environment, which entails maintaining ecosystem health and the natural balance of the marine environment and the duty to restore degraded ecosystems (Article 192).

31. What is required as a matter of 'due diligence' under UNCLOS is not static, but changes based on a number of circumstances. Risk is one of the most important factors. Other factors include the urgency to act, the scientific and technological information, and international rules and standards.[30] In the context of climate change, ITLOS defined the due diligence standard by relevant factors, including the Paris Agreement temperature target and corresponding emission timelines and pathways, best available science and the precautionary approach. This is particularly relevant with regard to the increasing risk of heightened damage due to the persistent lack of climate action.[31]

32. ITLOS further clarified what States Parties need to do to comply with their UNCLOS due diligence obligations:

> "The obligation of due diligence requires a State to put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective."[32]

33. As noted above, ITLOS states that, because of the high level of risk of serious and irreversible harm to the marine environment from anthropogenic GHG emissions, the level of due diligence by States in implementing their due diligence obligations to protect the marine environment is "stringent".[33] With respect to transboundary obligations under Article 194(2) of UNCLOS, the standard should even be "more stringent".[34]

34. ITLOS itself recognises that due diligence is to be objectively assessed:

> "… the Tribunal wishes to emphasize that an obligation of due diligence should not be understood as an obligation which depends largely on the discretion of a State or necessarily requires a lesser degree of effort to achieve the intended result. The content of an obligation of due diligence should be determined objectively under the circumstances, *taking into account relevant factors*. In many instances, an obligation of due diligence can be highly demanding. Therefore, it would not be correct to assume that the obligation under article 194, paragraph 2, of the Convention, as an obligation of due diligence, would be less conducive to the

[30] *ITLOS Advisory Opinion on Climate Change,* para 239.
[31] ibid, para 239: "It is difficult to describe due diligence in general terms, as the standard of due diligence varies depending on the particular circumstances to which an obligation of due diligence applies. There are several factors to be considered in this regard. They include scientific and technological information, relevant international rules and standards, the risk of harm and the urgency involved. The standard of due diligence may change over time, given that those factors constantly evolve. In general, as the Seabed Disputes Chamber stated, "[t]he standard of due diligence has to be more severe for the riskier activities" (ibid.). The notion of risk in this regard should be appreciated in terms of both the probability or foreseeability of the occurrence of harm and its severity or magnitude." (citation omitted)
[32] ibid, para 235.
[33] ibid, para 243.
[34] ibid, para 256.

prevention, reduction and control of marine pollution from anthropogenic GHG emissions."[35]

35. As mentioned above, ITLOS also confirms that the UNCLOS obligation to prevent, reduce and control marine pollution from GHG emissions requires Parties to adopt national laws and regulations that take into account standards contained in the Paris Agreement:

> "In adopting laws and regulations, States are required to take into account 'internationally agreed rules, standards and recommended practices and procedures'. There is no definition of this phrase in the Convention. Those rules, standards and practices and procedures encompass a broad range of norms, both binding and non-binding in nature. In the context of climate change, they include those contained in climate change treaties such as the UNFCCC and the Paris Agreement. Accordingly, States Parties to the Convention have an obligation to take into account those norms in adopting their laws and regulations to prevent, reduce and control marine pollution from GHG emissions."[36]

36. IUCN endorses the close link articulated by ITLOS between the obligation of due diligence and the precautionary approach. ITLOS held that in the exercise of the obligation of due diligence to prevent, reduce and control anthropogenic GHG emissions under the relevant provisions of UNCLOS, States must apply the precautionary approach.[37] The precautionary approach applies as an aspect of due diligence obligations to protect the climate system.

37. IUCN submits that the Court should adopt a similar approach as ITLOS and declare that States must exercise a stringent level of due diligence when implementing their obligations to protect the climate system under all relevant treaties and under customary international law. The Paris Agreement's temperature threshold, together with other standards contained in that Agreement, should determine this heightened level of due diligence. Such a stringent level of due diligence should, in line with the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, be commensurate to the level of capacity and development of each State. Nevertheless, due diligence requires all States to do everything they can in accordance with their capabilities and available resources.[38]

38. States Parties to UNCLOS have further specific obligations under Articles 204, 205 and 206 of UNCLOS to monitor the risks or effects of pollution, to publish reports and to conduct environmental impact assessments to address marine pollution from anthropogenic GHG emissions. IUCN agrees with ITLOS' holding that the obligation to conduct environmental impact assessments under UNCLOS Article 206, as well as under customary international law, is crucial to ensure that activities do not harm the marine

[35] *ITLOS Advisory Opinion on Climate Change*, para 257. (Emphasis added)
[36] ibid, para 270.
[37] ibid, para 242.
[38] ibid, para 241: "However, its implementation may vary according to States' capabilities and available resources. Such implementation requires a State with greater capabilities and sufficient resources to do more than a State not so well placed. Nonetheless, implementing the obligation of due diligence requires even the latter State to do whatever it can in accordance with its capabilities and available resources to prevent, reduce and control marine pollution from anthropogenic GHG emissions."

environment and is an essential part of a comprehensive environmental management system.[39]

B. INTERNATIONAL HUMAN RIGHTS TREATIES

39. International human rights treaties impose positive obligations on States to take all necessary and appropriate measures aligned with the 1.5ºC threshold and corresponding timelines for emission pathways and to protect relevant human rights in an inter-temporal manner.

40. In their written statements, many participants emphasized the importance of human rights treaties and customary international law in shaping States' obligations regarding climate change, and the consequences of breaching these obligations. This included the widespread recognition that climate change impacts human rights,[40] and that States have

[39] ibid, para 354. The Tribunal further reaffirmed in para 355 that "this obligation also forms part of customary international law". In addition to the abovementioned obligations, ITLOS established that, with respect to anthropogenic GHG emissions, UNCLOS States Parties have the following obligations: a) to adopt laws and regulations to prevent, reduce and control marine pollution from GHG emissions from land-based sources and from or through the atmosphere, under Articles 207 and 212 of the Convention, respectively; b) to prevent, reduce and control marine pollution from GHG emissions from vessels flying their flag or of their registry, under Article 211 of the Convention; c) to enforce their national laws and regulations and to adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from anthropogenic GHG emissions from land-based sources and from or through the atmosphere, under Articles 213 and 222 of the Convention, respectively; d) to ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards established through the competent international organization or general diplomatic conference and with their laws and regulations for the prevention, reduction and control of marine pollution from GHG emissions from vessels, under Article 217 of the Convention; e) to cooperate, directly or through competent international organizations, continuously, meaningfully and in good faith, in order to prevent, reduce and control marine pollution from anthropogenic GHG emissions, under Articles 197, 200 and 201, read together with Articles 194 and 192 of the Convention; f) to assist developing States, in particular vulnerable developing States, in their efforts to address marine pollution from anthropogenic GHG emissions, under Article 202 of the Convention. This article provides for the obligation of appropriate assistance, directly or through competent international organizations, in terms of capacity-building, scientific expertise, technology transfer and other matters. Article 203 reinforces the support to developing States, in particular those vulnerable to the adverse effects of climate change, by granting them preferential treatment in funding, technical assistance and pertinent specialized services from international organizations. See *ITLOS Advisory Opinion on Climate Change,* para 441(f), (g), (h), (i), (j) and (k), respectively.

[40] See, eg, Albania's written statement, para 95; Antigua and Barbuda's written statement, para 186; Argentina's written statement, para 38; Australia's written statement, para 3.56; Bangladesh's written statement, para 105 and 115; Canada's written statement, paras 24-25; Chile's written statement, paras 64-70; China's written statement, para 15; Colombia's written statement, para 2.3; COSIS' written statement, para 129; Costa Rica's written statement, para 3; Dominican Republic's written statement, para 4.47; Ecuador's written statement, para 122; Egypt's written statement, para 198; EU's written statement, para 231; Federated States of Micronesia's written statement, paras 78-79; Pacific Islands Forum Fisheries Agency (PIFFA)'s written statement, paras 27 and 30; Germany's written statement, paras 100-117; India's written statement, paras 77-79; Kenya's written statement, paras 5.53; Korea's written statement, para 29; Latvia's Written Statement, paras 64-67; Liechtenstein's written statement, para 12; Marshall Islands' written statement, para 90; Mauritius' written statement, para 155; Namibia's written statement, para 7; Nauru's written statement, para 24; Netherlands' written statement, paras 3.25-3.26; New Zealand's written statement, para 112; Nordic's written statement, para 77-78; Portugal's written statement, para 33; Samoa's written statement, para 185; Seychelles' written statement, para 134; Sierra Leone's written statement, para 3.17; Singapore's written statement, para 3.73; Solomon Islands' written statement, para 64; Thailand's written statement, para 26; Slovenia's written statement, para 20; Timor Leste's written statement, paras 296-298; Tonga's written statement, para 245;

a positive human rights obligation to prevent and protect against significant climate-related harms,[41] including specifically through the adoption of mitigation measures[42] as well as adaptation measures.[43] Written statements also included frequent arguments emphasizing a human rights-based obligation to provide redress for climate-related human rights violations,[44] while several participants argued that human rights-based obligations concerning climate change extend also to persons outside a State's own territory.[45] Participants repeatedly emphasized the importance of interpreting human rights law in light of the international climate regime.[46] Some also argued that the right to a healthy environment has attained customary international law status.[47] A number also argued that States have an obligation to cooperate in the protection of human rights[48] and explained that States must assess, avoid and address environmental impacts caused by corporate actors.[49]

41. The ICCPR, the ICESCR, the UNCRC, and other core UN human rights treaties impose positive obligations on States to take all necessary and appropriate measures to protect relevant human rights in the context of climate change. IUCN confirms that these obligations are informed by the obligations and standards contained in the Paris

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Tuvalu's written statement, paras 8-9; Vanuatu's written statement, para 86; Vietnam's written statement, para 21.

[41] See, eg, Albania's written statement, paras 94 and 99-101; Dominican Republic's written statement, para 5(ii)(d); Korea's written statement, para 31; Netherlands' written statement, para 3.35; Philippines' written statement, para 106; Samoa's written statement, paras 183 and 185; Seychelles' written statement, para 150; Tuvalu's written statement, para 96; Samoa's written statement, para 191.

[42] See, eg, Antigua and Barbuda's written statement, para 356; Bangladesh's written statement, para 123; Canada's written statement, para 25; Chile's written statement, para 129; China's written statement, para 120; Dominican Republic's written statement, paras 4.46 and 4.48; Ecuador's written statement, para 3.114; EU's written statement, para 274; Federated States of Micronesia's written statement, paras 79 and 88; Namibia's written statement, paras 92, 94 and 113; Netherlands' written statement, para 3.23; Sierra Leone's written statement, paras 3.65 and 3.74; Singapore's written statement, para 5.1(w); Slovenia's written statement, paras 42-43.

[43] See, eg, Canada's written statement, para 25; Chile's written statement, para 129; China's written statement, para 120; Ecuador's written statement, para 3.114; EU's written statement, para 274; Russian Federation's written statement, p 19-20; Sierra Leone's written statement, paras 3.65 and 3.74; Singapore's written statement, para 5.1(w); Slovenia's written statement, paras 42-43.

[44] See, eg, Albania's written statement, para 103; Chile's written statement, para 125; Federated States of Micronesia's written statement, paras 120 and 126; Netherlands' written statement, para 5.32; Namibia's written statement, para 166; Singapore's written statement, paras 5.2(d), (e) and (j).

[45] See, eg, Antigua and Barbuda's written statement, para 355; Bangladesh's written statement, para 105; Ecuador's written statement, para 3.114; Chile's written statement, para 125.

[46] See, eg, Albania's written statement, para 110; Antigua and Barbuda's written statement, paras 358 and 374-375; Cook Islands' written statement, para 135; EU's written statement, para 92; Germany's written statement, para 90; Ghana's written statement, para 27; Korea's written statement para 31; Mauritius' written statement, para 165; Namibia's written statement, para 92; New Zealand's written statement, paras 118-119; Samoa's written statement, para 169; Singapore's written statement, paras 5.1(w) and (k); Slovenia's written statement, paras 42-43; Tonga's written statement, para 240.

[47] See, eg, Costa Rica's written statement, para 82; Ecuador's written statement, para 3.108; El Salvador's written statement, paras 42-43; Federated States of Micronesia's written statement, para 79; Namibia's written statement, para 119; Philippines' written statement, para 54.

[48] Chile's written statement, para 129; COSIS' written statement, para 141; Singapore's written statement, paras 5.1(w) and (x).

[49] eg, Egypt's written statement, para 247; Philippines' written statement, para 106; Portugal's written statement, para 85.

Agreement, with specific reference to the 1.5°C threshold, and require States to take appropriate measures to avoid known risks to the enjoyment of rights.[50]

42. In this context, it is noteworthy that the ECtHR held in *Verein KlimaSeniorinnen Schweiz v Switzerland*[51] regarding Article 8 ECHR, the right to respect for private and family life, which includes respect for physical and psychological integrity and the home, that States have positive regulatory obligations to set detailed emission reduction targets and quantify their remaining greenhouse gas emissions. It held that:

> "effective respect for the rights protected by Article 8 of the Convention requires that each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades. In this context, in order for the measures to be effective, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner."[52]

43. This obligation is primarily a regulatory one when it comes to mitigation cases. The ECtHR held that:

> "[i]n this context, the State's primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights."[53]

44. With respect to causality, the ECtHR rejected the application of a "but for" test, invoking the principle of common but differentiated responsibilities and respective capabilities and the concept of concurrent responsibility recognized in its case law, holding that:

> "each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State."[54]

45. It further noted that:

> "with regard to the 'drop in the ocean' argument implicit in the Government's submissions – namely, the capacity of individual States to affect global climate change – it (…) need not be determined with certainty that matters would have turned out differently if the authorities had acted otherwise. The relevant test does not require it to be shown that 'but for' the failing or omission of the authorities the harm would not have occurred. Rather, what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic

[50] IUCN's written statement, para 40. Several other written statements make similar arguments, eg, Antigua and Barbuda's written statement, paras 365 and 374-375; Bangladesh's written statement, para 123; COSIS' written statement, paras 129, 134 and 141; Dominican Republic's written statement, paras 4.42, 4.46 and 4.48; EU's written statement, paras 221-223 and 273-274; Singapore's written statement, para 5.1(w).
[51] *KlimaSeniorinnen*, paras 550, 562 and 572.
[52] ibid, para 548.
[53] ibid, 545; see also the *Oroya* case, para 108.
[54] *KlimaSeniorinnen*, ibid, paras 442-443.

authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm."[55]

46. Accordingly, the ECtHR held that:

> "the Contracting States need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights, notably the right to private and family life and home under Article 8 of the Convention."[56]

47. The ECtHR stressed the obligation of States to adopt and implement adequate and binding laws and regulations to avoid disproportionately burdening future generations.[57] In this regard, it held that adequate mitigation policies must be adopted immediately, that they must contain adequate intermediate reduction goals until net neutrality is reached, that the relevant targets and timelines must be an integral part of the regulatory framework (and not, like in the Swiss legislation under review, left open for later decision-making by the executive branch).[58] Here the Court applied a differentiated margin of appreciation, leaving States little discretion as concerns the requisite aims and objectives, but a wide margin of appreciation in the choice of means to pursue those aims and objectives.[59]

48. Importantly, the ECtHR listed measures to guide States' implementation of their human rights obligations under Article 8 of the ECHR, in the light of the Paris Agreement, noting that its assessment of whether States have stayed within their margin of appreciation will include consideration of whether they have had due regard for the need to:

> "(a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;
>
> (b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;
>
> (c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (…);
>
> (d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and

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[55] ibid, para 444.
[56] ibid, para 546.
[57] ibid, para 549.
[58] ibid.
[59] ibid.

(e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures."[60]

49. The ECtHR also noted that:

> "in the specific context of climate change, intergenerational burden-sharing assumes particular importance both in regard to the different generations of those currently living and in regard to future generations."[61]

50. This echoes the submissions on the rights of future generations and intergenerational equity in IUCN's written statement. There, IUCN argued that:

> "States' action or inaction on climate law and policy will affect future generations within and beyond them. As a matter of intergenerational equity, due regard for future generations is required not only vis-à-vis a State's own population, but also future generations on this planet."[62]

51. Overall, IUCN emphasizes that international human rights law contains obligations that are relevant to States' responses to climate change. This includes States' positive obligations to take all necessary and appropriate measures aligned with the 1.5°C threshold (which includes regulatory obligations and the obligation to take action to avert known risks of harm) and their obligation to protect human rights in an inter-temporal manner. Human rights law must accordingly play a meaningful role in determining the nature and scope of States' obligations to protect the climate system.

3. STATES HAVE THE DUTY TO PROTECT THE CLIMATE SYSTEM UNDER THE CUSTOMARY INTERNATIONAL LAW OBLIGATION TO PREVENT SIGNIFICANT HARM TO THE ENVIRONMENT OF OTHER STATES AND AREAS BEYOND NATIONAL JURISDICTION.

52. IUCN wishes to stress that, in answering Question (a), it is necessary and important for the Court to clarify States' obligations to protect the climate system under customary international law.

53. As explained in IUCN's written statement,[63] the obligation to prevent significant harm to the environment of other States and of areas beyond national jurisdiction is an obligation under customary international law.[64] IUCN submits that this obligation applies to the protection of the climate system. A preponderance of States and organisations in

[60] ibid, para 550.
[61] ibid, para 420.
[62] IUCN's written statement, para 390; Neubauer et al v Germany (2021) 1 BvR 2656/18, para 146.
[63] IUCN's written statement, ibid, paras 305, 308, 312-317.
[64] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, [1996] ICJ Reports 226, para 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.". For other references, see IUCN's written statement, para 308 and footnote 246.

these proceedings agree with this position.[65] IUCN therefore submits that the Court should find that the obligation applies to the protection of the climate system, considering the widespread acceptance of the applicability of the customary international law obligation to prevent significant harm to the climate system.

54. Treaty law in general and the Paris Agreement in particular does not displace the obligation under customary international law to protect the climate system. In this regard, the ITLOS held that UNCLOS and the Paris Agreement were separate agreements with separate set of obligations, rejecting arguments that the Paris Agreement is *lex specialis*.[66] Thus, States cannot excuse themselves from their customary international law obligation by invoking *lex specialis* arguments.

55. Customary international law and treaty law can run in parallel, as reflected in Article 38(1)(a) and (b) of the Court's Statute and established jurisprudence.[67] Thus, State parties and non-parties to the Paris Agreement both continue to be bound by their customary international law obligation to protect the climate system.

56. The customary international law obligation is triggered by the potential for 'significant harm'. The best available science that informs the understanding of what constitutes significant harm to the climate system are found in the IPCC reports. Some participants argue that significant harm has already occurred.[68] IUCN does not dispute this but maintains that establishing that significant harm may or will occur requires a case-by-

[65] See, eg, Albania's written statement, paras 63-65; Antigua and Barbuda's written statement, para 298; Bangladesh's written statement, paras 83-84; Belize's written statement, para 36; Chile's written statement, paras 35-39; COSIS' written statement, paras 79 and 86; Costa Rica's written statement, paras 40-44; Dominican Republic's written statement, paras 4.16 and 4.31; Ecuador's written statement, paras 3.25 and 3.28; Egypt's written statement, para 88; El Salvador's written statement, paras 32-37; EU's written statement, para 317; Federated States of Micronesia's written statement, para 62; Ghana's written statement, paras 25-26; Kenya's written statement, paras 5.3-5.8; Kiribati's written statement, paras 110-114 and 142-145; Korea's written statement, para 37; Marshall Islands' written statement, paras 21-22; Mauritius' written statement, paras 189-193; Mexico's written statement, paras 37 and 39 (submits that the prevention principle is relevant in the context of Question (a) and asks the Court to clarify the precise nature of State obligations); Namibia's written statement, paras 48-61; Nauru's written statement, para 26; Netherlands' written statement, paras 3.52 and 3.65; Nordic's written statement, para 69 (submits that "in theory there is nothing that excludes concrete harm, resulting from anthropogenic emissions from greenhouse gases, from the obligation to prevent transboundary environmental harm, as long as the harm qualifies as significant and affects the environment of another State or areas beyond national control"); Pakistan's written statement, para 36; Palau's written statement, para 16; Philippines' written statement, para 6; PNAO's written statement, paras 37-49; Saint Lucia's written statement, para 66; Samoa's written statement, para 103; Seychelles' written statement, para 124; Sierra Leone's written statement, para 3.19; Singapore's written statement, para 5.1(a); Solomon Islands' written statement, paras 146-149; Switzerland's written statement, para 21; Thailand's written statement, paras 9 and 15; Timor Leste's written statement, paras 195-198; Vanuatu's written statement, para 278; Vietnam's written statement, para 24.
[66] See present written comments, Chapter III.2.
[67] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment of 26 November 1984 [1984] ICJ Rep 392, para 73.
[68] See, eg, Antigua and Barbuda's written statement, para 110; COSIS' written statement, para 94; Costa Rica's written statement, para 44; Ecuador's written statement, para 3.25; Egypt's written statement, para 304; Kiribati's written statement, para 206; Namibia's written statement, paras 171 and 57-58; PNAO's written statement, para 49; Saint Lucia's written statement, para 83; Saint Vincent and the Grenadines' written statement, paras 39 and 131-134; Samoa's written statement, paras 113 and 136; Seychelles' written statement, para 112 and 115-118; Singapore's written statement, para 3.17; Solomon Islands' written statement, para 158; Switzerland's written statement, paras 25-26; Vanuatu's written statement, para 268; Vietnam's written statement, para 41.

case assessment.[69] However, it is unequivocal on the basis of IPCC-assessed best available science that significant harm **will** occur as a result of warming beyond 1.5°C.[70]

57. As explained,[71] the customary obligation to prevent transboundary harm is one of due diligence. Due diligence is to be determined by the risk at stake, the urgency involved as well as scientific and technological information and relevant international standards.[72] The Inter-American Court of Human Rights confirmed in the *Oroya case* that the obligation not to cause harm to the environment is a due diligence obligation, which must be commensurate with the level of risk to the environment, based on best available science.[73]

58. Given the high risks of serious and irreversible harm to the climate system, IUCN argues that a heightened level of diligence should be imposed.[74] This is supported by ITLOS which held in its advisory opinion that the due diligence standard in respect of pollution of the oceans by anthropogenic greenhouse gases is "stringent",[75] and "more stringent" in a transboundary context.[76] ITLOS also held that the due diligence standard in respect of States' obligations to protect and preserve the marine environment from anthropogenic greenhouse gases is "stringent".[77]

59. In terms of international standards, those contained in the Paris Agreement inform the customary international law obligation to prevent significant harm to the environment. IUCN maintains that these standards include the global temperature threshold of limiting temperature increase to 1.5°C and the timelines for emission pathways under the Paris Agreement, as well as the standards of highest possible ambition and progression contained in Article 4(3) of the Paris Agreement.[78]

60. IUCN also endorses the close link articulated by ITLOS between the obligation of due diligence and the precautionary approach. ITLOS found that in the exercise of the obligation of due diligence to prevent, reduce and control anthropogenic GHG emissions under the relevant provisions of UNCLOS, States must apply the precautionary approach.[79] The precautionary approach applies equally to due diligence obligations to protect the climate system under customary international law.

61. In its written statement, IUCN submitted that acting with due diligence requires taking all necessary and appropriate measures to prevent harm to the climate system. This requires States to regulate the conduct of private actors by putting in place laws, policies and regulations and enforcing them with necessary vigilance.[80]

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[69] IUCN's written statement, para 39(m).
[70] IUCN's written statement, ibid, para 39(g). See also, eg, Dominican Republic's written statement, paras 4.23, 4.25, 4.28-4.30 and 4.61.
[71] ibid, para 305(c).
[72] *ITLOS Advisory Opinion on Climate Change,* para 239.
[73] *Oroya* case, para 126.
[74] IUCN's written statement, paras 39(i), 305(d), 353-354 and 378.
[75] *ITLOS Advisory Opinion on Climate Change*, paras 241, 243 and 441(3)(c).
[76] ibid, paras 248, 256, 441(3)(d).
[77] ibid, paras 398-400 and 441(4)(c).
[78] IUCN's written statement, para 39(j); *ITLOS Advisory Opinion on Climate Change*, ibid, paras 218 and 243.
[79] *ITLOS Advisory Opinion on Climate Change*, paras 213 and 242.
[80] IUCN's written statement, para 39(l).

62. IUCN's position in this respect aligns with ITLOS' Advisory Opinion on Climate Change, which states as follows:

> "This obligation of due diligence is particularly relevant in a situation in which the activities in question are mostly carried out by private persons or entities. The obligation to regulate marine pollution from anthropogenic GHG emissions is a primary example in this respect."[81]

63. The relevance of States' due diligence obligations in relation to State actors as well as the regulation of the activities of private actors was confirmed also by the IACtHR. The Court confirmed that the due diligence obligation not to cause harm to the environment applies both when the activities are carried out by the State and when they are carried out by a private actor.[82] In the latter circumstance, the State is under the obligation to take appropriate regulatory measures with respect to private actors' conduct.

64. Similar views were put forward by Antigua and Barbuda in these proceedings in the following terms:

> "The obligations of a State concerning emission reductions entail a primary obligation for the State to use its territorial and jurisdictional competences to regulate private conduct so as to achieve the requisite levels of emission reductions."[83]

65. Several participants recognize the regulation of private actors as an element of due diligence generally,[84] while some argue that this applies specifically in the context of GHG emissions and heavy emitting activities.[85]

66. It is also important to note that acting with due diligence requires States to conduct environmental impact assessments as an essential part of a comprehensive environmental management system. Conducting an environmental impact assessment is also a self-standing obligation under customary international law[86] as well as an obligation under relevant international treaties.[87] ITLOS pointed in this regard to Article 206 UNCLOS,

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[81] *ITLOS Advisory Opinion on Climate Change*, para 236.

[82] In the specific case, the industry that led to pollution was first operated by the Peruvian State and then by the private company Doe Run. The obligations of the Peruvian State to protect the environment did not disappear when the activities were carried out by the private actor (*Oroya*, paras 154 and 157).

[83] Antigua and Barbuda's written statement, para 596.

[84] See, eg, EU's written statement, para 86; Mexico's written statement, para 43; Saint Vincent and the Grenadines' written statement, paras 100-101 and 130; Sierra Leone's written statement, para 311; Singapore's written statement, para 3.5; Timor Leste's written statement, para 121; UAE's written statement, para 94; Vietnam's written statement, para 28.

[85] See, eg, Albania's written statement, paras 72 and 75; Bangladesh's written statement, paras 92, 132 and 139; COSIS' written statement, paras 145 and 148; Costa Rica's written statement, para 39; Ecuador's written statement, para 3.28; Egypt's written statement, paras 116 and 247; Kenya's written statement, para 5.5; Pakistan's written statement, para 37; Sierra Leone's written statement, para 311; Thailand's written statement, para 10.

[86] *Responsibilities and obligations of States with respect to activities in the Area*, (Advisory Opinion of 1 February 2011) ITLOS Reports 2011, 10, 50-51, paras 145 and 147 ("*ITLOS Area Advisory Opinion*"); see also *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay),* Judgment [2010] ICJ Rep 14, 83, para 204. ("*Pulp Mills*")

[87] IUCN's written statement, paras 39(k), 305(f) and 426, and Chapters 4 and 6, on the meaning of harm to the climate system and what is required to protect it, considering the inter-relatedness of the atmosphere, hydrosphere, biosphere and geosphere (discussed particularly in paras 45-48).

customary international law and the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement), which contains, *inter alia,* detailed provisions on environmental impact assessments relating to their thresholds and factors, the processes for conducting them and the reports of such assessments.[88] ITLOS' recognition of the need for environmental impact assessments to consider cumulative impacts was pertinent to UNCLOS, Article 206. IUCN has submitted that the monitoring and environmental assessment is also an essential part of the customary international law obligation of due diligence to prevent significant harm to the climate system.[89]

4. THE OBLIGATIONS AND COMMITMENTS CONTAINED IN THE PARIS AGREEMENT INFORM THE STANDARD OF DUE DILIGENCE IN OTHER RELEVANT TREATIES AND CUSTOMARY INTERNATIONAL LAW

67. The interpretation of relevant obligations to protect the climate system contained in treaties and under customary international law is informed by the normative standards[90] contained in the Paris Agreement, as the primary, but not exclusive, international treaty to address climate change. This includes both the normative requirements of "highest possible ambition" and "progression", as well as the temperature threshold of 1.5°C and corresponding timelines and pathways for emission reductions.

68. With respect to the temperature threshold, Ecuador noted that:

> "A first noteworthy aspect of the Paris Agreement is that, unlike the UNFCCC, it sets a clear target for States in terms of climate change mitigation: holding the increase of global average temperature to well below 2°-1.5°C above pre-industrial levels. … this establishes an international standard that must be taken into account also when applying other rules of international law relating to climate change."[91]

69. In particular, ITLOS confirmed that the Paris Agreement informs measures that States Parties have to take under UNCLOS to protect the marine environment, stating that:

> "In the view of the Tribunal, the UNFCCC and the Paris Agreement, as the primary legal instruments addressing the global problem of climate change, are relevant in interpreting and applying the Convention with respect to marine pollution from anthropogenic GHG emissions. In particular, the temperature goal and the timeline

[88] *ITLOS Advisory Opinion on Climate Change*, para 366.
[89] IUCN's written statement, paras 418-428.
[90] *ITLOS Advisory Opinion on Climate Change*, paras 222 and 241; IUCN's written statement, paras 114, 123, 158, 164, 200, 204-205, 257, 264, 267, 298, 300, 302, 323, 358-369, 414-415, 456, 459, 461, 514 and 516.
[91] Ecuador's written statement, para 3.77. The EU emphasizes at para 91 of its written statement, more generally, how the preamble of the Paris Agreement "calls on Parties to take into account the systemic interplay between that Agreement and other, relevant areas of international law. The Paris Agreement should, therefore, also be understood as informing the interpretation of, notably, international environmental, maritime and human rights law." The Nordic's written statement at para 61 brings in the principle of systemic integration as a tool to anchor the Paris Agreement as "a key interpretative factor in any process seeking to determine the possible existence and scope of obligations relative to that same issue under other instruments." Switzerland, at para 57 of its written statement, and the UAE, at para 156 of its written statement, also maintain that the Paris Agreement informs and gives content to other international law principles.

for emission pathways set out in the Paris Agreement inform the content of necessary measures to be taken under article 194, paragraph 1, of the Convention."[92]

70. The Tribunal further stated:

> "under article 194, paragraph 1, of the Convention, 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. Such measures should be determined objectively, taking into account, inter alia, the best available science and relevant international rules and standards contained in climate change treaties such as the UNFCCC and the Paris Agreement, *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." (emphasis added)[93]

71. While ITLOS applied Article 2(1)(a) and Article 4(1) of the Paris Agreement in its interpretation of UNCLOS provisions, it fell short of applying other due diligence standards contained in the Paris Agreement, such as "highest possible ambition" and "progression" (Article 4(3) Paris Agreement). There is no reason why only some of the standards in the Paris Agreement should have such function and not others. The Tribunal noted other standards in paragraph 218 of its advisory opinion, stating that:

> "Article 4, paragraph 2, of the Paris Agreement requires each Party to "prepare, communicate and maintain successive nationally determined contributions that it intends to achieve." Parties then "shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions." In addition, each Party's successive nationally determined contribution "will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."

72. However, it did not engage with these standards in interpreting relevant terms of UNCLOS. Neither did it provide an explanation for its selective application of Paris Agreement standards. IUCN submits that the standards of "highest possible ambition" and "progression" (Article 4(3) Paris Agreement) are also important in informing climate change mitigation obligations contained in other treaties, including UNCLOS, and in customary international law.[94]

73. The failure to consider these other norms and standards in the Paris Agreement led ITLOS to conclude, imprecisely, in paragraph 222 of its Advisory Opinion, that:

> "The Paris Agreement does not require the Parties to reduce GHG emissions to any specific level according to a mandatory timeline but leaves each Party to determine its own national contributions in this regard."

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[92] *ITLOS Advisory Opinion on Climate Change*, para 222.
[93] ibid, para 243.
[94] ibid, para 218; IUCN's written statement, para 93(c).

74. As explained in IUCN's written statement,[95] the Paris Agreement does not set up a fully discretionary approach to climate action, completely deferential to States' own choices. In fact, while contributions under the Paris Agreement are nationally determined, such determination needs to be carried out within the norms and standards set by the Agreement, in particular "progression" and "highest possible ambition" (Article 4(3)). Not all these standards establish legal obligations of result. However, they are due diligence standards that inform the conduct of Parties when preparing and implementing their climate plans and domestic mitigation measures.

75. Importantly, as explained above,[96] the Paris Agreement and the obligations and normative standards for climate change mitigation it contains, are relevant for the interpretation of other State obligations to protect the climate system under other treaties and customary international law, most of which are also of a due diligence nature.[97] The Vienna Convention for the Protection of the Ozone Layer, the CBD[98] and the UNCCD all contain obligations for States that require protecting various parts of the climate system. All such obligations are informed by the 1.5°C threshold in the Paris Agreement and the corresponding timelines for emission pathways, as well as other relevant obligations and standards in the Paris Agreement.[99] The same applies, as showed above[100], to the identification of the standards of care for positive obligations under international human rights treaties.

5. THE DUTY TO COOPERATE TO PREVENT SIGNIFICANT HARM IS ALSO A CUSTOMARY OBLIGATION AND APPLIES *ERGA OMNES*.

76. As explained in IUCN's written statement, an important component of the customary international law obligation to prevent significant harm is the obligation to cooperate.[101]

77. For the present purpose, IUCN wishes to stress three important points. First, the obligation to cooperate is part of the customary duty to prevent significant harm, but it is also a self-standing obligation under customary international law, existing independently of the harm prevention rule.[102]

78. Second, IUCN submits that the obligation to cooperate to protect the climate system is owed *erga omnes*, because:

[95] IUCN's written statement, paras 127-130.
[96] Chapter III.4 of the present written comments.
[97] IUCN's written statement, para 37(d).
[98] ibid, para 253: "States are obliged to implement the NBSAP by acting with due diligence, which requires them to undertake best efforts to develop and pursue an NBSAP, including the adoption of legislation and policies, as appropriate, as well as their compliance and enforcement"; para 267: "acting with due diligence under the biodiversity regime requires the Parties to undertake all appropriate measures to reduce GHG emissions, as part of their obligations under the CBD, in a manner aligned with the Paris Agreement, i.e. informed by the 1.5°C threshold and is also reflective of each Party's highest possible ambition." See the EU's written statement at para 162.
[99] IUCN's written statement, ibid, para 38(e).
[100] Chapter III.2.B of the present written comments.
[101] IUCN's written statement, paras 447-456.
[102] See, eg, Ecuador's written statement, paras 3.50-3.53; Philippines' written statement, para 71; Republic of the Marshall Islands' written statement, paras 31-32; Saint Lucia's written statement, para 75; Vanuatu's written statement, paras 308-313.

"[i]n view of the importance of the rights involved, all States can be held to have a legal interest in [its] protection."[103]

This places all States in a position to ensure that other States conduct themselves cooperatively in preventing the significant harm to the climate system.

79. Third, the duty of cooperation is of a continuing nature and requires constant commitment and conduct.[104]

80. Further, the Court's prior jurisprudence supports the view that distinct legal consequences follow from failure to comply with obligations *erga omnes*. These consequences include the obligation of the international community to bring to an end a situation where a State's conduct does not fulfil an obligation *erga omnes*. It also includes an obligation on all States not to recognise as legal the situations that may result from the non-fulfilment of obligations *erga omnes* and not to render aid or assistance in maintaining the situation.[105]

81. The ITLOS has explicitly recognised that climate change is a collective action problem, as the IPCC has also observed, and therefore requires a collective response from States, while emphasising at the same time that States' individual obligations in respect of pollution of the oceans through greenhouse gas emissions remain.[106] Global warming is also a matter of common concern. As stated by The Netherlands:

"[t]he duty to cooperate is a fundamental principle underlying international environmental law, and especially important for the issue of global warming considering its characterization of *common concern of humankind*."[107]

82. The obligation of cooperation has several key facets. ITLOS has held in respect of cooperative obligations under Article 197 of UNCLOS that States are obliged to

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[103] *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain)*, Second Phase, Judgment [1970], ICJ Rep 3, para 33, recognizing the obligation to cooperate to prevent significant harm to the climate system as an *erga omnes* obligation has important practical implications. As an *erga omnes* obligation, any member of the international community has a right to invoke such obligation against a State who is not complying with it.

[104] *ITLOS Advisory Opinion on Climate Change*, para 311.

[105] *Wall Advisory Opinion*, paras 155-106, 163(3)(d) and (e); *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion of 25 February 2019), ICJ Rep 95, paras 180 and 183(5); *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion of 19 July 2024, ICJ <HTTPS://WWW.ICJ-CIJ.ORG/SITES/DEFAULT/FILES/CASE-RELATED/186/186-20240719-ADV-01-00-EN.PDF> paras 96, 274, 280 and 285(7).

[106] *ITLOS Advisory Opinion on Climate Change*, para 297, citing IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151, Summary for Policy Makers, 17.

[107] The Netherlands' written statement, para 111 (emphasis added). Sierra Leone's written statement presents similar arguments at para 328 ("The duty of cooperation is enshrined in all three of the principal governing treaties on climate change, reflecting the shared understanding that climate change...can only be addressed through enhanced international cooperation. The UNFCCC acknowledges that *climate change is a common concern of humankind* and one that necessitates an international response with the widest possible cooperation and participation by all countries" (emphasis added), as does the Timor-Leste's written statement at para 182 ("Cooperation is central to the Climate Change Regime's recognition of *climate change as a common concern of humankind*" (emphasis added)).

participate meaningfully in relevant processes.[108] This is an obligation of conduct. The results achieved by States through cooperation may, however, be relevant in assessing States' compliance with the obligation to cooperate.[109] The obligation of cooperation set out in Article 197 of the Convention is of a continuing nature.[110] The adoption of a particular treaty, such as the UNFCCC or the Paris Agreement, does not discharge a State from its obligation to cooperate, as the obligation requires an ongoing effort on the part of States both in the implementation of these instruments, and in the development of new or revised regulatory instruments, particularly in the light of evolving scientific knowledge.[111]

6. IT IS IMPERATIVE THAT MEASURES TO PROTECT THE CLIMATE SYSTEM DO NOT UNDERMINE NATURE PROTECTION.

83. Addressing the inter-connected crises of climate change and biodiversity loss requires a complementary and mutually supportive approach. IUCN wants to emphasize in these comments that there are critical links between the protection of the climate system and nature and biodiversity protection. This is an important point that several other written statements also raised.[112] IUCN, as the leading international organisation on nature conservation, with 75 years of expertise on this matter,[113] is uniquely placed to emphasise these inter-connections and draw the Court's attention to the implications.

84. For instance, in the context of the promotion and conservation of biological diversity, it is important to highlight that the biosphere is part of the climate system and will not be protected if climate change is not addressed.[114]

85. In this connection, as explained in IUCN's written statement, the Parties to the CBD are expected to include in their revised 2024 National Biodiversity Strategies and Action Plans (NBSAPs) measures to minimize the impact of climate change and ocean acidification on biodiversity, including through nature-based solutions and/or ecosystem-based approaches, in accordance with Target 8 of the Kunming-Montreal Global Biodiversity Framework (KMGBF).[115] Several other written statements acknowledge the relevance of Target 8 of the Kunming-Montreal Global Biodiversity Framework in mitigating the impacts of climate change and ocean acidification on biodiversity,[116]

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[108] *ITLOS Advisory Opinion on Climate Change*, paras 307 and 310, citing *Request for Advisory Opinion Submitted by the Sub-Regional Fisheries Commission* (Advisory Opinion of 2 April 2015), ITLOS Rep 4, 59-60, para 210; *Pulp Mills*, para 77.

[109] ITLOS Advisory Opinion on Climate Change, ibid, para 310.

[110] ibid, para 311.

[111] ibid.

[112] Other written statements acknowledging a link between protection of the climate system and/or GHG emissions and the protection of nature and/or biodiversity include, eg, Australia's written statement, paras 1.16 and 3.48; China's written statement, paras 151-152; Costa Rica's written statement, paras 52 and 54; Dominican Republic's written statement, para 4.15; Germany's written statement, paras 62 and 65; Indonesia's written statement, para 48; Micronesia's written statement, para 111; Pakistan's written statement, para 24; Timor Leste's written statement, paras 50-51; USA's written statement, para 2.27.

[113] IUCN, 'The Impact of IUCN Resolutions on International Conservation Efforts: An Overview'; IUCN, 'Seventy-five years of experience' (IUCN, 2023) <https://www.iucn.org/about-iucn/history>.

[114] KMGBF, Target 8; IUCN's written statement, Chapter 4 and paras 167-172, 177, 183-186, 194-196, 204-205, 228-231, 242-243, 246-256, 266-268, 316, and 323-325.

[115] IUCN's written statement, Chapter 6, particularly paras 251-254, 256 and 267.

[116] See, eg, Australia's written statement, para 3.50; Timor Leste's written statement, paras 259 and 271; USA's written statement, para 3.46 and footnote 265.

underscoring the need for NBSAPs to integrate climate adaptation and mitigation measures and highlighting the complementary nature of these actions with broader international commitments under the Paris Agreement.

86. At the same time, parties to the Paris Agreement should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4(1)(d) of the UNFCCC, including forests.[117] As part of the 2023 CMA Decision on the 'Outcome of the First Global Stocktake', parties emphasized "the importance of conserving, protecting and restoring nature and ecosystems towards achieving the Paris Agreement temperature goal, including through enhanced efforts towards halting and reversing deforestation and forest degradation by 2030, and other terrestrial and marine ecosystems acting as sinks and reservoirs of greenhouse gases and by conserving biodiversity, while ensuring social and environmental safeguards, in line with the Kunming-Montreal Global Biodiversity Framework",[118] and referred to the need "to preserve and restore oceans and coastal ecosystems".[119] These references illustrate the inter-connectedness between climate change, nature and biodiversity protection.

87. The interconnectedness is particularly pronounced with respect to the marine environment. Under UNCLOS, States have the obligation to protect and preserve the marine environment (Article 192). According to ITLOS, this obligation has a broad scope, encompassing any type of harm or threat to the marine environment, including climate change impacts and ocean acidification.[120] The obligation under this provision has two distinct elements: (i) the obligation to protect the marine environment which is linked to the duty to prevent, or at least mitigate, environmental harm through the mitigation of GHG emissions, and (ii) the obligation to preserve the marine environment, which entails maintaining ecosystem health and the natural balance of the marine environment, including restoring marine habitats and ecosystems where the marine environment has been degraded.[121] In this context, ITLOS noted that:

> "[t]he obligation to protect and preserve the marine environment is therefore of dual significance in that it promotes the conservation and resilience of living marine resources, while also mitigating anthropogenic GHG emissions by enhancing carbon sequestration through measures to restore the marine environment (see also Article 4, paragraph 1(d), of the UNFCCC and Article 5, paragraph 1, of the Paris Agreement)."[122]

88. In fulfilment of these obligations, UNCLOS Parties are required to take measures as far-reaching and efficacious as possible to prevent or reduce the deleterious effects of climate

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[117] Article 5(1), Paris Agreement. IUCN's written statement, paras 143 and 272. Several other written statements also refer to the Paris Agreement Article 5(1) mitigation obligation to conserve and enhance sinks and reservoirs, though not necessarily while making an argument for nature protection. See, eg, COSIS' written statement, para 109; Egypt's written statement, para 274; Iran's written statement, para 115; Organization of the Petroleum Exporting Countries (OPEC)'s written statement, p 35, footnote 105; Pakistan's written statement, para 56; United Kingdom's written statement, para 68.

[118] IUCN's written statement, Chapter 3, para 142 and Chapter IV, para 231; Decision 1/CMA.5, para 33.

[119] IUCN's written statement, Chapter 3, para 142; Decision 1/CMA.5, para 35.

[120] *ITLOS Advisory Opinion on Climate Change*, para 385.

[121] ibid. In para 386, the Tribunal further noted: "The term "restoration" is not used in article 192 of the Convention but flows from the obligation to preserve the marine environment where the process of reversing degraded ecosystems is necessary in order to regain ecological balance."

[122] ibid, para 390.

change and ocean acidification on the marine environment. This obligation is one of due diligence. ITLOS viewed the standard of due diligence under Article 192 in the context of climate change as a standard that is

> "*stringent* given the high risks of serious and irreversible harm to the marine environment by climate change impacts and ocean acidification."[123]

89. At the same time, States need to take into account the potential negative impacts on nature and biological diversity when developing climate change mitigation policies and measures, such as large-scale monocultural plantations, hydro-power dams or geoengineering technologies.[124] A systemic understanding of the CBD and BBNJ Agreement, once the latter enters into force, in the context of obligations to protect the climate system shows that State obligations to mitigate climate change shall be undertaken in a way that minimizes negative impacts and fosters positive impacts on biodiversity.[125] In addition to rapid and sustained reductions in GHG emissions, this also calls for the deployment of actions to protect, sustainably manage, and restore natural or modified ecosystems that contribute positively to climate change mitigation (so called nature-based solutions for climate change mitigation). Importantly, such actions should have a net positive impact on biodiversity and provide human well-being benefits, as defined by the IUCN Global Standard for Nature-based Solutions.[126]

90. As noted above,[127] in circumstances where there is a lack of scientific certainty about the specific impacts of climate change, States must apply the precautionary approach in their regulatory frameworks.[128]

91. The CBD and, when it enters into force, the BBNJ Agreement, are also relevant international rules and standards that inform the due diligence obligation to protect the climate system.[129] For example, under the CBD, where a significant adverse effect on biological diversity has been determined, each Party to the CBD shall, as far as possible and as appropriate, regulate or manage the relevant processes and categories of activities.[130] This links obligations to put in place national measures to keep to the temperature threshold with regulatory activities to protect biodiversity. Domestic legislation and other regulatory processes and activities must also include rules, standards and procedures that are tuned to the needs of biodiversity and ecological integrity. NBSAPs and other sectoral plans are an important part of these efforts, as required by CBD Article 6(a) and (b), as previously discussed.[131]

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[123] ibid, para 399. (Emphasis added).
[124] IUCN's written statement, paras 269-273 and Appendix II: Pathways to 1.5°C, Net-Zero Emissions and the Need for Systemic Change.
[125] ibid, para 273; KMGBF, Target 8.
[126] IUCN, 'IUCN Global Standard for Nature-based Solutions: A user-friendly framework for the verification, design and scaling up of NbS' (IUCN, 2020) <
https://portals.iucn.org/library/sites/library/files/documents/2020-020-En.pdf>.
[127] Chapter III.2.A and III.2.B of the present written comments.
[128] *ITLOS Advisory Opinion on Climate Change*, para 242. Citing its *Area* Advisory Opinion, the Tribunal reaffirmed that the precautionary approach was "an integral part of the general obligation of due diligence", *ITLOS Area Advisory Opinion*, para 131.
[129] A parallel principle in the CBD recognises that alongside a State's sovereign rights is the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (Article 3).
[130] CBD, Article 8(l).
[131] See further, IUCN's written statement, paras 244 and 251-254.

92. Moreover, as IUCN stressed in its written statement, the KMGBF refers to the need for Parties to 'minimize negative' and 'foster positive' impacts of climate action on biodiversity.[132] The obligation of due diligence to prevent harm to the climate system thus includes an obligation to develop biodiversity safeguards when adopting mitigation policies.

93. The principles agreed to in the BBNJ Agreement are relevant in this regard. Although the BBNJ Agreement has not yet entered into force, it is instructive that ITLOS referred to its provisions as expressing a need for a global framework to better address certain issues of conservation and sustainable use.[133] It is particularly salient that Parties "shall be guided" by "an approach that builds ecosystem resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity".[134] IUCN submits that this approach expresses the content of the obligation of due diligence to protect the climate system in a way that is complementary and mutually supportive to the conservation of nature and biological diversity.

[132] ibid, para 271.
[133] *ITLOS Advisory Opinion on Climate Change*, para 440.
[134] BBNJ Agreement, Article 7(h).

IV. LEGAL CONSEQUENCES FOR THE BREACH OF THE STATE OBLIGATIONS TO PROTECT THE CLIMATE SYSTEM

94. In its written comments on other statements responding to Question (b), IUCN wishes to focus on five key points as set out below.

95. First, the law of State responsibility is the most relevant legal framework for addressing Question (b). IUCN notes that this position is shared by most participants that made submissions on this question.[135]

96. Second, the breach of any obligation identified in part III above, when attributable to a State, constitutes an internationally wrongful act which gives rise to the responsibility of that State.

97. As explained in IUCN's written statement,[136] where there is an internationally wrongful act, (i) the obligation of continued performance of the obligation breached applies, together with the legal consequences of State responsibility, including (ii) the cessation of the breach, (iii) the offer of appropriate assurances and guarantees of non-repetition, (iv) full reparation for the injury caused by the internationally wrongful act, which can take the form of restitution, compensation and satisfaction, either singly or in combination. As IUCN emphasized in its written statement, the specific consequences cannot be determined in the abstract. This position is echoed by some other participants.[137]

98. Third, IUCN aligns itself with participants who argue that issues of causation are beyond the scope of these proceedings and need to be assessed on a case-by-case basis.[138] This does not imply that States can shield themselves from responsibility by citing some of the complexities of climate change attribution. Rather, IUCN's position is that issues of

[135] See, eg, Albania's written statement, para 130(a); Antigua and Barbuda's written statement, para 533; Australia written statement, paras 1.4 and 5.6; Brazil's written statement, paras 78-79; Chile's written statement, para 135; Colombia's written statement, para 4.5; COSIS' written statement, para 200; Costa Rica's written statement, paras 95 and 97; Dominican Republic's written statement, para 4.57; Ecuador's written statement, para 4.2; Egypt's written statement, paras 287 and 296; El Salvador's written statement, para 50; Federated States of Micronesia's written statement, para 120; India's written statement, para 82; Kenya's written statement, para 6.85; Kiribati's written statement, paras 179 and 182; Korea's written statement, para 45; Latvia's written statement, para 74; Mauritius' written statement, para 210; Namibia's written statement, para 13; Netherlands's written statement, paras 5.4-5.5; New Zealand's written statement, para 138; Nordic's written statement, para 106; Palau's written statement, para 19; Peru's written statement, para 92; Portugal's written statement, para 115; Russian Federation's written statement, p 16; Saint Lucia's written statement, para 86; Saint Vincent and the Grenadines' written statement, para 128; Samoa's written statement, paras 4.2, 190 and 194; Seychelles' written statement, para 152; Sierra Leone's written statement, para 3.134; Singapore's written statement, paras 5.2(a) and (b); Solomon Islands' written statement, para 229-230; Switzerland's written statement, para 72; Thailand's written statement, para 29; Timor Leste's written statement, paras 354-355; Tonga's written statement, para 285 and 288; Tuvalu's written statement, p 47-48; United Kingdom's written statement, para 134; USA's written statement, para 5.2; Vanuatu's written statement, para 487.
[136] IUCN's written statement, paras 581 and 583.
[137] eg, Nordic's written statement, paras 98-99; Portugal's written statement, para 124, South Africa's written statement, para 130; Slovenia's written statement, para 15.
[138] Antigua and Barbuda's written statement puts this in very clear terms at its para 547 ("Specific causation between the wrongful act and the particular injury suffered in a given situation will have to be assessed on a case-by-case basis").

causation, which necessarily involve addressing such complexities, should be determined in specific cases where the particular facts and circumstances can be more closely examined. General and abstract formulations on causation, particularly on an issue as complex as climate change, should be avoided for the present purpose.

99. Fourth, IUCN notes that some participants argue that States do not bear responsibility for the actions of private actors. However, as explained in our written statement, States may bear international responsibility if they fail to exercise due diligence to control the activities of private actors who cause significant harm to the climate system.[139] This is also in line with ITLOS' reasoning that

> "[t]he obligation of due diligence is particularly relevant in a situation in which the activities in question are mostly carried out by private persons or entities. The obligation to regulate marine pollution from anthropogenic GHG emissions is a primary example in this respect."[140]

100. Fifth, as explained in IUCN's written statement, there are no specific rules that govern how the consequences should be determined where the injured parties are SIDS or vulnerable peoples or individuals adversely affected by climate change.[141] Rather, the law of State responsibility would apply to determine the consequences in such situations. This position equally applies to a situation where the significant harm is suffered by peoples and individuals of present and future generations,[142] except that, based on the principle of inter-generational equity, IUCN argues that claims and requests for the cessation of wrongful acts may be put forward on behalf of future generations, not just current ones.[143]

[139] IUCN's written statement, para 554: "States bear international responsibility when they fail in their due diligence obligation to control private actors' activities within their jurisdiction or control. This is particularly relevant in relation to GHG emissions since many of the activities within a State that could lead to a breach of State obligations to protect the climate system stem from the actions and/or omissions of private actors."
[140] *ITLOS Advisory Opinion on Climate Change*, para 236.
[141] IUCN's written statement, para 598.
[142] ibid, para 600.
[143] ibid, submission, para 603.

V. CONCLUSION

101. There is no doubt that States are under obligations to address climate change, and that these exist in treaties and in custom. In particular, it is a global imperative to limit the temperature increase to 1.5ºC, with the awareness that, even at that level of warming, significant harm to the climate system will occur.

102. The harmful impact of climate change has been established by scientific findings leaving no doubt that, without immediate and urgent action by States, the climate system, the ocean, biodiversity and humans, particularly those most vulnerable, face catastrophic consequences.

103. This requires that States' utmost priority must be to prevent temperature increases from overshooting 1.5ºC. As IUCN has explained in its written statement and in these comments, as supported by many other participants in these proceedings, States have clear obligations under international law to hold the temperature increase within this threshold and to prevent significant harm to the climate system, peoples, nature and the planet.

104. Climate change will cause significantly more harm to those that are young today and to future generations. As a matter of solidarity, non-discrimination and human dignity, the climate system needs to be protected **now**. This requires each State to do the best it can in adopting, implementing and enforcing climate mitigation measures that are aligned with the temperature threshold as well as with the corresponding timelines for emission pathways. This obligation may vary according to States' capabilities and available resources. It requires a State with greater responsibility and greater capabilities and sufficient resources to do more than a State not so well placed. Nonetheless, it requires even the latter State to do whatever it can in accordance with its capabilities and available resources to adopt measures at this level of ambition.

105. To assist the Court, IUCN's written comments can be summarized as follows:

    i. The Paris Agreement is the primary legal instrument addressing climate change. It contains State obligations to protect the climate system.

    ii. The Paris Agreement is not the only treaty containing State obligations to protect the climate system. Such obligations are also found in other treaties, in particular UNCLOS and international human rights treaties, as well as the CBD, the Montreal Protocol and its Kigali Amendment, and the United Nations Convention to Combat Desertification. For example,

        a. UNCLOS imposes on its Parties the obligations:
        to take, with "stringent" due diligence, all necessary measures to prevent, reduce and control pollution of the marine environment by anthropogenic GHG emissions from any source (Article 194(1));
        to take, with "more stringent" due diligence, all measures necessary to ensure that anthropogenic GHG emissions do not to cause damage by pollution to other States and their environment (Article 194(2)); and

to protect the marine environment against the impact of climate change and GHG emissions, and to preserve the marine environment, which entails maintaining ecosystem health and the natural balance of the marine environment and the duty to restore degraded ecosystems (Article 192).

b. International human rights treaties impose on States positive obligations to take all necessary and appropriate measures aligned with the 1.5°C threshold and corresponding timelines for emission pathways. They also require States to protect relevant human rights in an inter-temporal manner.

iii. States also have the duty to protect the climate system under the customary international law obligation to prevent significant harm to the environment of other States and areas beyond national jurisdiction. Warming of 1.5ºC provides a benchmark to ascertain when harm to the climate system will be significant under customary international law. However, harm can, in certain situations, be significant even at temperature increases below 1.5ºC.

iv. In addition, States have the duty under customary international law to cooperate to prevent significant harm to the climate system. This obligation applies *erga omnes.*

v. The obligations in treaties and customary international law to protect the climate system are of due diligence. The standard of due diligence is “stringent”, given the high risks of serious and irreversible harm to the climate system. As the primary international treaty to address climate change, the Paris Agreement sets out normative standards that inform the obligations of States under other treaties as well as customary international law to protect the climate system. The 1.5ºC temperature threshold and the corresponding timelines for emission pathways are key standards, as well as the requirements for highest possible ambition and constant progression.

vi. Addressing the inter-connected crises of climate change and biodiversity loss requires a complementary and mutually supportive approach, making it imperative that measures to protect the climate system do not undermine nature protection.

vii. A breach of a legal obligation to protect the climate system that is attributable to a State, gives rise to the international responsibility of that State.

106. In closing, IUCN would like to draw the Court’s attention to the summary of arguments provided in its written submission of March 2024 (reproduced in the Annex below). As these written comments have shown, IUCN’s arguments are supported by submissions from many other participants as well as the recent jurisprudence from other international courts and tribunals, in particular ITLOS, ECtHR and IACtHR.

107. IUCN is grateful to the Court for this renewed opportunity to present written comments in these proceedings. IUCN stands ready and willing to assist the Court in any further stages in this case.

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ANNEX

SUMMARY OF ARGUMENTS (as submitted to the Court on 19 March 2024)

1. The climate system is all-encompassing, defined as “the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions” in Article 1(3) of the UNFCCC. It also includes the interconnections between human and the natural systems.

2. The climate system is on the brink of collapse. To protect it, global average temperature increases must be limited to a maximum of 1.5°C above pre-industrial levels. 1.5°C is the critical threshold set in the Paris Agreement against which to determine States’ obligations to protect the climate system. However, global average temperature increases of below 1.5°C will still involve significant risks and impacts, some of them irreversible, for human and natural systems.

3. The Intergovernmental Panel on Climate Change (IPCC) has provided clear, scientifically assessed emissions pathways and timelines which are likely to limit global average temperature increases to 1.5°C – with no or limited overshoot. These pathways require a global reduction of carbon dioxide (CO_2) by at least 45% by 2030 compared to 2019 emission levels, and to reach global net-zero CO_2 emissions by 2050 as well as net-zero emissions of other GHGs by 2070, followed by varying degrees of net-negative emissions. This is the pathway that States have to take if they want to avoid serious and irreversible harm to the climate system, and the planet, its people and nature due to climate change.

4. Given the above understanding of the climate system and the 1.5°C threshold for protecting it, States are obliged to protect the climate system and other parts of the environment. These obligations are contained in the Paris Agreement and other relevant international treaties (the United Nations Convention on the Law of the Sea (UNCLOS), the Vienna Convention for the Protection of the Ozone Layer (Vienna Ozone Convention) and the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), the Convention on Biological Diversity (CBD) and the United Nations Convention to Combat Desertification (UNCCD)), as well as under customary international law and international human rights treaties.

5. In relation to the Paris Agreement, the IUCN submits that:

   a) It is the latest and most comprehensive international treaty on climate change.
   b) It sets the threshold of holding temperature increase to 1.5°C above pre-industrial levels.
   c) In order to stay below this threshold, each Party to the Paris Agreement has an obligation to prepare, communicate and maintain a Nationally Determined Contribution (NDC) at the level of its “highest possible ambition” and informed by the outcome of the Global Stocktake, and has to progress in ambition every five years beyond its then current NDC. Each Party is obliged to pursue domestic mitigation measures with the aim of achieving the objective set out in its NDC.
   d) These obligations and normative standards for climate change mitigation ambition are also relevant for the interpretation of other State obligations under treaty and customary international law to protect the climate system.
6. In relation to other relevant treaties:

e) The United Nations Convention on the Law of the Sea, the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification all contain obligations for States that require protecting the various parts of the climate system. All such obligations are informed by the 1.5°C Paris Agreement threshold, as well as other relevant obligations and standards in the Paris Agreement.

7. In relation to customary international law:

f) States are obliged under customary international law to prevent significant harm to the climate system.
g) Harm to the climate system is considered as significant if anthropogenic changes in atmospheric GHG concentrations cause the global average temperature to increase beyond 1.5°C above pre-industrial levels.
h) The obligation to prevent significant harm to the climate system is a due diligence obligation.
i) Given the urgency of addressing climate change and the magnitude of risk, States must act with a significantly heightened level of due diligence. Due diligence requires States to take all appropriate and necessary measures in the light of best available science and in proportion to the risk at stake to prevent significant harm.
j) Due diligence is informed by the 1.5°C threshold and by other obligations and standards contained in the Paris Agreement.
k) Acting with due diligence includes a duty on States to cooperate with each other and to carry out environmental impact assessment(s) for planned activities that may cause significant harm to the climate system.
l) States are obliged to regulate the conduct of private actors by putting in place laws, policies and regulations and to enforce them with the necessary vigilance.
m) Whether States' acts and/or omissions cause significant harm at temperature increases below 1.5°C needs to be assessed on a case-by-case basis.

8. In relation to international human rights treaties:

n) The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Economic and Cultural Rights (ICSECR), the United Nations Convention on the Rights of the Child (UNCRC), and other core UN human rights treaties place States under positive obligations to take all necessary and appropriate measures to protect relevant human rights. These obligations are informed by the obligations and standards contained in the Paris Agreement, with specific reference to the 1.5°C threshold, and require States to take appropriate measures to avoid known risks to the enjoyment of rights.

9. Given the above understanding of the climate system and the 1.5°C threshold for protecting it, IUCN answers the second question by submitting that breaches of the obligations identified under Question (a) entail State responsibility under international law. Obligations of continued performance apply, and State responsibility entails the legal consequences of cessation of the internationally wrongful act, non-repetition and full reparation. However, when and how these legal consequences apply depends on the facts of a particular case and cannot be determined *in abstracto*.