

International Court of Justice

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



WRITTEN COMMENTS OF SAINT LUCIA

AUGUST 15, 2024

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I. Introduction

1. Pursuant to the Order of the President of the Court of 15 December 2023, Saint Lucia hereby submits its Written Comments on the Written Statements presented in connection with the request for an Advisory Opinion contained in UN General Assembly (UNGA) Resolution 77/276, adopted by consensus on 29 March 2023.
2. As Saint Lucia underscored in its Written Statement to this Honourable Court, and as is evidenced by the relatively high number of Written Statements filed by CARICOM Small Island Developing States (SIDS)¹, many of which – like Saint Lucia – consider these proceedings to be historic and monumental², the issues being debated are not just of academic or theoretical concern: the integrity of our homelands and the way of life of the people who inhabit our States is very much at stake. The world is careening towards ever higher temperatures, moving further and further away from the goals it has set for itself under the UNFCCC, Paris Agreement and other relevant international climate conventions.
3. In their unique ways, each of the SIDS has described in graphic detail to the Court how climate change has affected and is continuing to negatively impact, their flora, fauna, the atmosphere, biodiversity, land and ocean use, social and infrastructural systems, villages and indigenous communities, with many submitting factual evidence reflecting lived experiences of disaster and loss and damage caused by climate change.³ Saint Lucia highlighted in its Written Statement how its artistic communities and political leadership have responded to the demands of climate change, and how, even though it has done little to cause the disastrous impacts of anthropogenic greenhouse gas (GHG) emissions, it has used its comparatively limited resources, not only to respond to disastrous impacts but also to put in place the necessary legal, financial and infrastructural frameworks to comply with its climate obligations.⁴

¹ Other CARICOM SIDS that have presented Written Statements in these proceedings include Grenada, Saint Vincent and the Grenadines, Belize, The Bahamas, Antigua and Barbuda, and Belize.

² See for instance Belize's Written Statement, para. 3(a).

³ See for instance Annex submitted with Grenada's Written Statement; Saint Vincent and the Grenadines' Written Statement, paras. 32-37 (highlighting impacts on their indigenous communities, and experience of both volcanic eruptions and climate change).

⁴ See also Belize's Written Statement, Chapter 1; Saint Lucia's Written Statement, para. 7.

4. Since submitting its Written Statement in March this year, two consequential events that demonstrate why the world needs this Court’s opinion have occurred: First, in June/July 2024, Hurricane Beryl, the earliest Category 4/5 hurricane on record, made landfall in the Caribbean, causing widespread destruction. With winds reaching 165 mph, Beryl devastated Grenada’s Petite Martinique and Carriacou, and parts of Saint Vincent and the Grenadines, Jamaica, Barbados, and Trinidad and Tobago. The hurricane claimed at least six lives and caused significant damage to homes, infrastructure, and power and communications networks. The estimated costs of the impact of Beryl already range in the billions of dollars, and its severity highlights the increasing intensity of storms due to climate change, emphasising the urgent need for effective mitigation and adaptation, and loss and damage strategies in the region. More information about the impact of these events is shared in the Written Comments of Grenada and Saint Vincent and the Grenadines.
5. Second, as presaged in Saint Lucia’s Written Statement, the International Tribunal for the Law of Sea (ITLOS) issued, in May 2024, its Advisory Opinion⁵ pursuant to a request by the Commission of Small Island States on Climate Change and International Law (COSIS), to which Saint Lucia is a party. The request concerned States’ obligations under the United Nations Convention on the Law of the Sea (UNCLOS) to prevent harmful impacts of GHG emissions on marine resources. As will be explained below, that Opinion validates the arguments made by Saint Lucia on the applicability and relevance of provisions under UNCLOS and should be favourably taken into account by this Court as it addresses the legal questions raised in these proceedings.
6. Saint Lucia uses the opportunity to provide Comments to buttress arguments made by other SIDS in these proceedings, and to rebut arguments that are antithetical to its position. Specifically, these Comments are organised as follows:
 - i. Section II: Jurisdiction and admissibility of the request;
 - ii. Section III: The relevant conduct of States underpinning the two questions put to the Court;

⁵ See International Tribunal For The Law of The Sea, 21st May 2024, Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, available at: <https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf> last visited on 13 August 2024.

- iii. Section IV: The governing law within the context of the scope of obligations;
- iv. Section V: The inconsistency of the conduct with international law;
- v. Section VI: The specific legal consequences of breach of relevant obligations;
- vi. Section VII: Conclusions

II. Jurisdiction and admissibility of the request

7. Saint Lucia responds to three recurring issues on which States have opined in their Written Statements regarding the jurisdiction of this Court and the admissibility of the Request made for an Advisory Opinion in these proceedings. These issues relate to: (i) whether the Court has the power to render the Advisory Opinion requested; (ii) whether there are any compelling reasons why the Court should not use the power it has to render the Advisory Opinion; and (iii) whether there are any exceptional grounds to reformulate the questions posed to this Court.
8. On issue (i), CARICOM SIDS argued in their Written Statements that the Court has the power to render the Advisory Opinion requested, since the UNGA is expressly authorised under Article 96(1) of the UN Charter to seek such an Opinion from the ICJ “*on any legal question*”; and Article 65(1) of the ICJ Statute indicates that “*the Court may give an Advisory Opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.*”⁶ Further, the questions before the Court are unquestionably “*legal questions*”⁷ because they were framed in legal terms and raise issues of international law.⁸
9. On issue (ii), Saint Lucia, like many CARICOM SIDS, submits that there exists no compelling reason for the Court to decline to exercise its discretion to provide an Advisory Opinion since the questions before it concern matters for which there is ample and reliable information for the Court to render its Opinion; and this Court has always

⁶ See for instance Saint Lucia’s Written Statement, para. 11; Grenada’s Written Statement, para. 9; Saint Vincent and the Grenadines’ Written Statement, para.18; The Bahamas’ Written Statement, para. 79; Barbados’ Written Statement, paras. 27-30.

⁷ For the purpose of Article 65(1) ICJ Statute and Article 96 (1) of the UN Charter.

⁸ Saint Lucia’s Written Statement, para. 12; Saint Vincent and the Grenadines’ Written Statement, para. 18; Grenada’s Written Statement, para. 9; Bahamas Written Statement, para. 79; Barbados’ Written Statement, paras. 27-30.

been inclined to render the Opinion requested by the UNGA.⁹ Saint Lucia supports Vanuatu's arguments¹⁰ that the criteria to refuse an advisory opinion, which was outlined by the ICJ in the case of *Eastern Carelia*,¹¹ have not been satisfied by this request for an Advisory Opinion. Saint Lucia also notes the argument of the Bahamas, that, in fact, there are compelling reasons *to* render the Advisory Opinion since it would provide the UNGA with the necessary legal guidance and framework to address the critical issue of climate change induced by anthropogenic GHG emissions which has "long been at the top of the General Assembly's priorities".¹²

10. Finally, as regards issue (iii), Saint Lucia reiterates its arguments, supported by other SIDS,¹³ that there are no legal grounds to reformulate or narrowly interpret the questions, since they are adequately and purposefully formulated; based on law¹⁴; and any reformation or restrictive interpretation will reverse the individual and collective consensual desire of countries to obtain the necessary clarification of two vital questions of international law.¹⁵ Contrary to some arguments requesting reformulation in this case¹⁶, Saint Lucia submits that the Court has only reformulated the questions put to it in exceptional cases, on grounds which are far from applicable in the present case.¹⁷ Moreover, the questions in these proceedings was adopted by consensus following intense negotiations on the specific wording, with no less than 132 States involved.
11. Saint Lucia takes note of the concern expressed by some States regarding the political nature of ongoing negotiations on the international law of climate change and the primary obligations which arise under the UNFCCC, the Kyoto Protocol and the Paris Agreement.¹⁸ Saint Lucia recalls that the political nature of a question, including the

⁹ Saint Lucia Written Statement, paras. 13-15; Grenada Written Statement, para 10; Saint Vincent and the Grenadines Written Statement, paras 20-24; Bahamas Written Statement, para 80; Barbados Written Statement, paras 35-36.

¹⁰ Vanuatu's Written Statement, paras 41-43.

¹¹ Status of Eastern Carelia, Request for an Advisory Opinion; available at <https://www.icj-cij.org/sites/default/files/permanent-court-of-international-justice/serie_B/B_05/Statut_de_la_Carelie_orientale_Avis_consultatif.pdf> last visited on 13 August 2024.

¹² The Bahamas' Written Statement, para. 80.

¹³ Grenada's Written Statement, para. 11; Saint Vincent and the Grenadines' Written Statement, paras. 25-26.

¹⁴ Vanuatu's Written Statement, paras. 59-60; Grenada's Written Statement, para. 11.

¹⁵ Vanuatu's Written Statement, paras. 64-65; Saint Vincent and the Grenadines' Written Statement, paras. 25-26 Grenada's Written Statement, para. 11.

¹⁶ South Africa's Written Statement, para. 11; Iran's Written Statement, paras. 14 and 17.

¹⁷ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403, para. 50. See further Vanuatu's Written Statement, paras. 59-65.

¹⁸ See for instance Saudi Arabia's Written Statement, paras. 3.11

existence of negotiations pertaining to it, has been expressly rejected by the Court as a relevant consideration for the decision of whether to render an Advisory Opinion. In fact, this Court has found that an Opinion may be “particularly necessary” to clarify “the legal principles applicable with respect to the matter under debate”.¹⁹ Given the slow pace of negotiations on the climate agenda, coupled with the continuing unmet obligations, especially owed to SIDS, this Court’s edification could provide an authoritative statement regarding the main obligations and their implications for the conduct which is the cause of climate change.²⁰

12. Finally, Saint Lucia rejects as a basis for refusing jurisdiction in this case, the fact that multiple international courts/tribunals on climate change are seized of similar issues which may lead to “fragmentation in international law, creating uncertainty and potentially allowing for forum shopping.”²¹
13. First, the existence of pending proceedings on related issues does not operate as a restriction or limitation on the Court. On the contrary, Saint Lucia views the existence of multiple proceedings in this case as an *opportunity* for much-needed clarity on how multiple regimes containing obligations to protect the climate system across a range of rules of international law can be harmonized even where rules appear to conflict.²² The Guidelines enunciated by the International Law Commission (ILC) on “Protection of the Atmosphere”²³ that were adopted by the UNGA contemplate the existence of overlapping

¹⁹ Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, p. 73, para. 33.

²⁰ See for instance, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 35.

²¹ South Africa’s Written Statement, para. 11.

²² See an attempt to harmonize for instance international trade law and climate law by the International Legal Expert Group on Trade-Related Climate Measures and Policies. (2023). Principles of international law relevant for consideration in the design and implementation of trade-related climate measures and policies. Report of an International Legal Expert Group. Forum on Trade, Environment, & the SDGs (TESS) <https://cdn2.assets-servd.host/lyrical-cormorant/production/assets/images/Publications/TRCMs_Principles_TESS.pdf?dm=1695371717> last visited on 16 March 2024. For work by Caribbean scholars on the interaction between trade and climate obligations see SRC Policy Brief # 3 The Trade and Climate Change Interface: Initial Considerations for CARICOM by Jan Yves Remy, Rueanna Haynes and Kaycia Ellis Bourne at: <<https://secureservercdn.net/198.71.233.86/dk4.d52.myftpupload.com/wp-content/uploads/2021/11/The-Trade-and-Climate-Change-Interface-Policy-Brief.pdf>> last visited on 16 March 2024; and see Jan Yves Remy (2023), Trade-related climate priorities for CARICOM at the World Trade Organization. Forum on Trade, Environment & the SDGs (TESS) and Shridath Ramphal Centre (SRC) <<https://shridathramphalcentre.com/wp-content/uploads/2023/02/TESS-Policy-Paper-Trade-Related-Priorities-for-CARICOM-at-the-WTO.pdf>> last visited on 19 March 2024.

²³ Seventy-sixth session Agenda item 82 Report of the International Law Commission on the work of its seventy-second session Resolution adopted by the General Assembly on 9 December 2021 [on the report of the Sixth

regimes on climate and expressly recognize the importance of prioritizing and harmonizing obligations across different rules of international law in a manner that gives “special consideration”²⁴ to climate-vulnerable groups, with specific reference to SIDS. Notably, in explaining why it was accepting jurisdiction, the ITLOS in the recent Advisory Opinion noted the particular importance of the issue for SIDS, as follows:

The Tribunal is mindful of the fact that climate change is recognized internationally as a common concern of humankind. The Tribunal is also conscious of the deleterious effects climate change has on the marine environment and the devastating consequences it has and will continue to have on small island States, considered to be among the most vulnerable to such impacts. Bearing this in mind, the Tribunal will provide clarification on the issues raised by the Commission.²⁵

14. In any event, Saint Lucia notes that the proceedings before UNCLOS and the American Convention on Human Rights concern more limited questions of law under more restricted regimes. Rather than fragmenting international law, these other proceedings will allow the Court to better appreciate the positions of the judicial bodies specifically established to interpret the relevant and specific treaties under their respective jurisdictions.

III. The relevant conduct

15. An underlying issue that has received varying degrees of attention across Written Statements concerns the specification of the conduct – that is the “relevant conduct”²⁶ as referred to by Vanuatu – which underpins the two questions before the Court. Saint Lucia takes note of Vanuatu’s fulsome elaboration of the respective elements of the relevant conduct as follows:

Relevant Conduct consists of acts and omissions of individual States – and of a specific group thereof – that have resulted over time in a level of anthropogenic GHG emissions from activities within their jurisdiction or control which have interfered with the climate system and other parts of the environment to an extent which amounts to at least significant harm to the latter, whether or not the anthropogenic GHG emissions of a given State over time are the only or the main

Committee (A/76/473, para. 12)] 76/112
<<https://documents.un.org/doc/undoc/gen/n21/348/19/pdf/n2134819.pdf?token=fAE8A69uNQX5v9eSiX&fe=tr>> last visited on 19 March 2024.

²⁴ *Ibid.*, Guideline 9(3).

²⁵ *Ibid.*, footnote 5, para. 122.

²⁶ See Vanuatu’s Written Statement at Heading 3.2.2.

cause of climate change, and whether or not they are the only or the main cause of the specific harm suffered by another State, people or individual.²⁷

16. Saint Lucia notes that this articulation is expressly derived from the text of the Resolution: Question (a) refers to “*anthropogenic emissions of greenhouse gases*”; preambular paragraph 5 refers to “*the conduct of States over time in relation to activities that contribute to climate change and its adverse effects.*”; and Question (b) refers to “*acts and omissions*” whereby States “*have caused significant harm to the climate system and other parts of the environment*”.
17. Saint Lucia submits first, that there is a scientific consensus on the *cause of climate change*, namely anthropogenic emissions of greenhouse gases over time. The consensus is formulated in the reports of the Intergovernmental Panel on Climate Change (IPCC), including in their summaries for policymakers,²⁸ which are adopted by States, acting by consensus.²⁹ Saint Lucia, Grenada, Antigua and Barbuda, and Saint Vincent and the Grenadines submitted an Expert Report as part of their Written Statement that was prepared by three Caribbean lead authors of the IPCC’s Sixth Assessment Cycle (AR6) Reports.³⁰ That Report confirms, *inter alia*, that climate change was caused by human activities and is having a disproportionately adverse impact on Caribbean SIDS. Specifically, the Report finds that:

human activities have unequivocally caused global warming. Emissions of greenhouse gases that have been tracked since 1850 show wide regional disparities, with small island developing states (SIDS) across the globe contributing approximately only 0.5% of historical cumulative emissions. These

²⁷ Vanuatu’s Written Statement, para. 137.

²⁸ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1 (“Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020”); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1 (“It is unequivocal that human influence has warmed the atmosphere, ocean and land”)

²⁹ Intergovernmental Panel on Climate Change, Appendix A to the Principles Governing IPCC Work: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports (adopted 15th sess, San José, 15-18 April 1999; amended 37th sess, Batumi, 14-18 October 2013), sections 2 and 4.4.

³⁰ The hundreds of leading scientists who participated in the sixth assessment cycle were divided into three Working Groups. Working Group I examines the physical science underpinning past, present, and future climate change. Working Group II assesses the vulnerability of socioeconomic and natural systems to climate change, negative and positive consequences of climate change, and options for adapting to it. Working Group III focuses on climate change mitigation, assessing methods for reducing GHG emissions, and removing GHGs from the atmosphere.

emissions have caused warming of the atmosphere of approximately 1.1°C, which has resulted in widespread and rapid changes to environments across the globe.³¹

18. While some countries have expressed wariness about aspects of the science of attribution – calling it imprecise and uncertain in some respects³² – even these countries accept the central findings of AR6 that, for the first time, it is “unequivocal” that human influence – primarily through anthropogenic emissions of GHGs – has warmed the Earth’s atmosphere, oceans, and land, and that “increases in well-mixed [atmospheric GHG] concentrations since around 1750 are unequivocally caused by human activities” resulting in significant consequences of human-caused global warming.³³ Saint Lucia also takes note of several strong statements that validate attribution science contained in AR6³⁴ and recent studies.³⁵
19. Second, as Vanuatu notes, evidence of “relevant conduct” can be presented and examined by the Court based on a specific State; group of States; or as general conduct.³⁶ Saint Lucia notes with favour the specific empirical information presented by Vanuatu that identifies the main State emitters of greenhouse gases, individually and collectively,³⁷ as well as the share of both emissions and global warming for which each of them (and groups thereof) is responsible.³⁸ Saint Lucia also favourably highlights other Written Statements that identify the conduct responsible for climate change and its adverse effects *in general*, (See for instance Vanuatu, Kiribati, OACPS).³⁹ This approach latter is equally valid, as confirmed in the Advisory Opinion on the *Legality of Nuclear Weapons*. There, the Court was consulted about the permissibility “*under international law*” of the “*threat or use of nuclear weapons*” with regard to “*any circumstance*”. In its Opinion, it addressed the conduct in general, at times distinguishing between “*nuclear-*

³¹ *Ibid.*

³² See for instance United States’ Written Statement, paras. 2.20-2.26.

³³ United States’ Written Statement, paras. 2.20-2.26.

³⁴ See for instance A.3, A.3.1, A.3.2., A.3.4 (on event attribution).

³⁵ See for instance publication by Ilan Noy, Daithi Stone and Tomas Uher, *Extreme events impact attribution: A state of the art*, available at: <https://doi.org/10.1016/j.crsus.2024.100101>> last visited on 13 August 2024, and publication on impact attribution by Rebecca Newman and Ilan Noy, *The global costs of extreme weather that are attributable to climate change*, available at: <<https://www.nature.com/articles/s41467-023-41888-1>> last visited on 13 August 2024.

³⁶ Vanuatu’s Written Statement, para. 151.

³⁷ Vanuatu’s Written Statement, paras. 151-154, 162-170, 177-192.

³⁸ Vanuatu’s Written Statement, paras. 162-170.

³⁹ Vanuatu’s Written Statement paras.137; 143-146; 147; 150; Kiribati ‘s Written Statement paras. 90-106; OACPS’s Written Statement paras 40-41 and 49-51.

weapon States” and “*non-nuclear-weapon States*” as well as identifying other relevant subjects such as individual bearers of the human right to life.⁴⁰

20. Irrespective of which approach is taken, the Court has sufficient evidence before it to identify and assess the relevant conduct by States, as required by the two questions put to it.

IV. The governing law

21. Several States have suggested that the fact that rights and obligations under UNFCCC and the Paris Agreement specifically regulate climate change means that they displace or somehow override norms found in other sources of international law. For instance, the United States argues that:

[i]n the implementation of their respective obligations under the UN climate change regime, there is no indication of any widely held belief of Parties that they are subject to non-treaty-based international obligations to mitigate the risks posed by climate change. To the extent other sources of international law, such as customary international law, might establish obligations in respect of climate change, these obligations would be, at most, quite general.⁴¹

22. In its Written Statement, Saint Lucia relied heavily on the UNFCCC and Paris Agreement to support its contention that special and differentiated obligations are owed to SIDS. While certainly highly relevant, the UNFCCC and Paris Agreement do not however exhaust the sources of obligations to which this Court should have regard. Indeed, as argued by The Bahamas, this Court has confirmed in *Costa Rica v. Nicaragua*, that as a matter of principle, customary international law continues to apply alongside treaty provisions regulating the same subject-matter.⁴²
23. Saint Lucia reiterates that Resolution 77/276 itself specifically calls on the Court not to limit itself to the interpretation and application of one or two treaties, but to identify the relevant obligations, and assess legal consequences of breaches, from the entire corpus of international law change.⁴³ This involves taking into consideration both treaty law and

⁴⁰ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 1; p. 226, paras. 24-25, 60-63.

⁴¹ United States’ Written Statement, para. 4.1.

⁴² The Bahamas’ Written Statement, para. 170.

⁴³ Saint Lucia’s Written Statement, para. 38.

general international law, as well as other sources of law that may not have attained the formal status of international law. As Saint Lucia submitted in its Written Statement:

the diversity of instruments referred to in the preamble of Resolution 77/276 and in the introductory paragraph to the question, demonstrate that climate change law is a burgeoning area that is interdependent and derived from multiple sources, including traditional sources of law as well as emerging peremptory norms, secondary legislation from international organizations, and soft law, all of which . . . should be taken into account.⁴⁴

24. Second, the formal application of human rights treaties and the UNCLOS to govern the anthropogenic emissions of greenhouse gases from a State have been specifically confirmed by the European Court of Human Rights,⁴⁵ the Human Rights Committee⁴⁶; by the ITLOS in its recent advisory opinion of 21 May 2024⁴⁷; and, will likely be confirmed by the Inter-American Court of Human Rights which will soon render an opinion.⁴⁸

25. Third, the climate conventions themselves do not exclude the relevance of other rules of international law to the regulation of the conduct at issue. As submitted by The Bahamas:

nothing in the existing climate treaties suggests an intention to circumscribe the scope and effect of customary rules. To the contrary, the treaties reaffirm and expressly refer to the customary law obligation to prevent transboundary harm and seek to operationalise that obligation by agreeing more specific quantified reduction targets—both collective and individual.⁴⁹

26. Similarly, the preamble of the Paris Agreement “acknowledges” the application of human rights to Parties “when taking action to address climate change” and, specifically,

⁴⁴ Alina Kaczorowska-Ireland, *Public International Law*, 6th edition (Routledge, 14 July 2023).

⁴⁵ *Case of Verein Klimaseniorinnen Schweiz and others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 410-411.

⁴⁶ Saint Lucia’s Written Statement, para. 38.

⁴⁷ *Ibid.*, footnote 5 at para. 136. ITLOS found in this regard:

The Tribunal is of the view that... the provisions of the [UNCLOS] and external rules should, to the extent possible, be interpreted consistently. In this context, the Tribunal notes that the Study Group of the International Law Commission (hereinafter “the ILC”), in its 2006 Report on the Fragmentation of International Law, concluded that “[i]t is a generally accepted principle that when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations””, para. 136 of the Advisory Opinion, referring to (Fragmentation of International Law, Report of the Study Group of the ILC, 2006, p. 8; see also Guideline 9 of the 2021 ILC Guidelines on the protection of the atmosphere).

⁴⁸ *Solicitud de Opinión Consultiva presentada por Colombia y Chile ante la Corte Interamericana de Derechos Humanos*, 9 de enero de 2023, pending, available at:

https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634 last visited on 13 August 2024.

⁴⁹ The Bahamas’ Written Statement, paras. 70, 92 and 102.

the need for them to “respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”.⁵⁰

27. Saint Lucia relied heavily in its Written Statement on the UNFCCC and Paris Agreement for the proposition that SIDS have been accorded special treatment under climate law, both as a matter of treaty law and as a reflection of the equitable principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC). These obligations collectively reinforce the differentiated responsibilities of States in addressing climate change, with a particular focus on developed countries providing support to SIDS in areas of finance, loss and damage, mitigation, and technological assistance. That position appears to be uncontested by most States, including developed ones.
28. Saint Lucia also argued that the UNCLOS regime incorporates the equitable principle of CBDR-RC in Articles 194(1), 202, 203 and 266.⁵¹ In its most recent Opinion, the ITLOS upheld these arguments⁵², and took the opportunity to highlight the special obligations owed to vulnerable SIDS:

Under Article 202 of the Convention, States Parties have the specific obligation to assist developing States, in particular vulnerable developing States, in their efforts to address marine pollution from anthropogenic GHG emissions. 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.⁵³

29. Saint Lucia notes the added support provided in several Written Statements for the view that SIDS and other particularly vulnerable States are legally entitled to be compensated for environmental harm caused by climate change. Barbados points to numerous legal instruments, general principles, writings of publicists and customary international law

⁵⁰ Paris Agreement, 12 December 2015, 3156 UNTS 79, preambular paragraph 11.

⁵¹ Saint Lucia’s Written Statement, paras. 69-74.

⁵² *Ibid*, footnote 5 at paras. 229 and 329.

⁵³ *Ibid*, footnote 5 at para. 441(3)(k).

demonstrating the existence of *primary* obligations to compensate – or pay reparations – for environmental harm, and in particular, climate change harm.⁵⁴

30. Saint Lucia also highlights arguments made by CARICOM SIDS that provide further detail regarding the scope of obligations that the Court should find applicable in these proceedings:
- i. The obligations to prevent significant environmental harm in the context of anthropogenic GHGs (for instance, Belize’s Written Statement, paras. 30-63; Barbados’ Written Statement, paras. 133-150);
 - ii. The obligation of the State to act as “trustee” for future generations in the context of human rights and the environment (Grenada’s Written Statement, paras. 48-65);
 - iii. The obligations of States under international human rights law, and with respect to future generations (for instance, The Bahamas’ Written Statement, paras. 141-182; Antigua and Barbuda’s Written Statement , paras. 171-197);
 - iv. Obligations arising under the Convention on Biological Diversity and International Trade Law (Antigua and Barbuda’s Written Statement, paras. 215-227).
 - v. Cross-cutting procedural obligations (including global co-operation and those arising within a State (The Bahamas Written Statement, paras. 208-232).

V. The conduct is inconsistent with international law

31. While Saint Lucia argued in its Written Statement that the relevant conduct is inconsistent with the specific provisions, it did not set out in detail how the conduct identified in Question (b) is in breach of the obligations identified in Question (a). Saint Lucia takes this opportunity to clarify its position on a number of core issues.

⁵⁴ See Barbados’ Written Statement, paras. 231-269. See also arguments below regarding obligations under ARSIWA to pay compensation to SIDS.

32. First, the requirement to show a causal connection between the legal obligations and breach has been demonstrated on the strength of the arguments already made concerning the relevant conduct. Saint Lucia supports the argument by Vanuatu that:

... there is no uncertainty regarding either the cause of climate change, i.e. the Relevant Conduct, and the adverse effects of climate change. In the context of this advisory proceedings, it is enough that the Relevant Conduct displayed by specific States has caused significant harm “to the climate system and other parts of the environment”, irrespective of the ascertainment of a causal link between the specific conduct of a given State and specific impacts on Vanuatu or other States who are victims of climate injustice. It is also sufficient for the Court to base its answer on the consensus finding of the IPCC that the Relevant Conduct displayed by a specific group of States, taken together, has caused not only significant harm to the climate system and other parts of the environment but catastrophic harm in the form of climate change, with its “widespread adverse impacts and related losses and damages to nature and people”. That causal link is incontrovertible given the existing scientific consensus politically endorsed by all States of the IPCC. Whether the Court analyzes the legal consequences of the Relevant Conduct displayed by one or more specific States, or by a group of States taken as a whole, or even of whichever State performs the Relevant Conduct, there is no uncertainty arising from Question (b) in relation to the causal link.⁵⁵

33. Second, Saint Lucia incorporates by reference the legal and factual arguments made by Vanuatu as to why the conduct constitutes a breach of most of the obligations identified in response to Question (a).⁵⁶
34. Third, Article 13 of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) – which Saint Lucia referenced in its Written Submission – requires that the legality of acts, facts, and situations must be assessed at the moment when they occur. Acts and omissions that have caused significant harm to the climate system and other parts of the environment were at all relevant times governed by international law. States that have significantly contributed to cumulative GHG emissions were bound by international law obligations and their conduct, individually and collectively, constitutes a composite act amounting to a breach, within the meaning of Article 15 of ARSIWA. This means that, in relation to States’ obligations under the principle of prevention of significant harm to the environment for instance, States that

⁵⁵ Vanuatu’s Written Statement, para. 562.

⁵⁶ For a summary overview referring to most relevant obligations see the Written Statement of Vanuatu, paras. ages 241-266.

significantly contributed to cumulative GHG emissions were also at all times bound by these obligations, including in relation to the duty of due diligence to the specific context of environmental protection.⁵⁷ These States were at all times required to exercise due diligence that required that they not allow their territory to be used in a manner that could cause significant harm to the interests of other States. Temporally, this duty to exercise due diligence existed from when these States had awareness and knowledge of the catastrophic implications of anthropogenic GHG emissions, in other words, the harm caused by fossil fuel combustion, as already referred to in the Expert Report by Naomi Oreskes submitted in these proceedings by Vanuatu.⁵⁸ Failing to fulfill these obligations has led to well-documented irreversible loss and damage, which is clearly a breach of the duty of due diligence.

35. Saint Lucia notes the arguments in some Written Statements, for example, the European Union's, that downplay the effectiveness of these regimes in dealing with breaches of commitments owed to SIDS, under the UNFCCC and Paris Agreements in particular. While acknowledging that there are specific provisions and obligations owed to vulnerable groups like SIDS, the European Union argues that those regimes do not specifically identify compensatory or remedial provisions engaging the liability of the State for failure to comply with them.⁵⁹
36. Saint Lucia has not limited its claims to the UNFCCC and Paris Agreements and has noted – in paragraph 29 above – the existence of other international law obligations that demonstrate the existence of a duty to compensate for loss and damage and provide reparations for harm caused by anthropogenic GHGs emitted by developed countries which have not complied with their duties under international law.⁶⁰
37. In any event, as is submitted below, even if those regimes do not set out detailed rules, the Court must refer to ARSIWA rules which specify the general remedies that apply for breach of obligations by States that have caused significant harm to the climate system.

⁵⁷ See Saint Lucia's Written Statement, paras. 86-88.

⁵⁸ Expert Report by Naomi Oreskes, 'Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change', Annexed to the Written Statement of the Republic of Vanuatu.

⁵⁹ European Union's Written Statement, paras. 335-341.

⁶⁰ Saint Lucia's Written Statement, paras. 39-21 and 70.

VI. The specific legal consequences of breach

38. Saint Lucia's Written Statement⁶¹ sets out in fairly general terms that consequences arising from a breach can be determined by the rules of ARSIWA. To supplement its arguments, Saint Lucia incorporates, by reference, the more specific legal consequences that apply for breaches of climate-related obligations, drawing on the Written Statements of Vanuatu, The Bahamas, Barbados and Antigua and Barbuda.
39. Saint Lucia highlights, in particular, the arguments that support the view that States in breach must provide full monetary reparation for climate damage under international law generally and environmental law in particular and that they must offer redress by contributing to climate change funds, offering financial resources and ensuring transfers of technology. Saint Lucia supports the view that full reparations and assistance must take account of the special circumstances of SIDS⁶² as well as the particular situations of people and individuals of present and future generations affected by the adverse effects of climate change.⁶³
40. In addition to these arguments, Saint Lucia calls for **cessation and non-repetition** that would require high-emitting subsidizing States to drastically reduce GHG emissions caused by fossil fuels in line with their obligations under several evolving international agreements and norms. Saint Lucia notes the lack of agreement at COP28 on fossil fuels, but highlights the ongoing work in other regimes. For instance, recognizing that in 2022, implicit fossil fuel subsidies amounted to \$7 trillion⁶⁴, the World Trade Organization since 2022 has begun plurilateral negotiations for Fossil Fuel Subsidy Reform aimed at reducing fossil fuel subsidies. These and other international efforts should be recognized by the Court.⁶⁵
41. On **restitution**, Saint Lucia takes note of the effects of Hurricane Beryl on certain communities in the Caribbean, including in Petite Martinique, Carriacou and the

⁶¹ Saint Lucia's Written Statement, paras. 92-95.

⁶² Barbados' Written Statement, paras. 310-322.

⁶³ Barbados' Written Statement, paras. 323-342.

⁶⁴ See < <https://www.imf.org/en/Blogs/Articles/2023/08/24/fossil-fuel-subsidies-surged-to-record-7-trillion>> last visited on 13 August 2024.

⁶⁵ See *Villars Framework for a Sustainable Global Trade System, 2.0*, pages 51-53, available at <<https://drive.google.com/file/d/15d4EulWl5DAny0K5T-U79glJkwGs9shx/view>> last visited on 13 August 2024.

Grenadines (as noted in Comments by Grenada and Saint Vincent and the Grenadines) which have rendered many persons homeless. This Court should pronounce on the need of the international community to support those facing climate-induced displacement and migration - whether as a result of rapid, or slow onset events.

42. Finally, in addition to the primary obligation to pay compensation and reparations under several norms of international law, this Court should reiterate the obligation by developed countries to provide **compensation** through financing for the Loss and Damage Fund⁶⁶, the Green Climate Fund, the Least Developed Countries Fund and the Special Climate Change Fund, among others, but which, as highlighted by the most recent Global Stocktake, fall well short of the trillions of dollars needed to support developing countries with clean energy transitions, implementing their national climate plans and adaptation efforts.⁶⁷ Saint Lucia also highlights efforts led by SIDS at the International Maritime Organization, to meet the requirements of the just and equitable transition under the 2023 IMO Strategy on Reduction of GHG Emissions From Ships⁶⁸ through economic measures such as a maritime levy that would go into a Fund designed to meet the needs of developing countries, and in particular the SIDS and LDCs.⁶⁹
43. Compensation should come in the form of reform of the global financial architecture through international efforts – such as the Bridgetown Initiative being led by Barbados⁷⁰ – that promotes access to concessionary funds by vulnerable economies to meet climate-induced debt and other climate-related obligations.

⁶⁶ See Saint Lucia's Written Statement, para. 94.

⁶⁷ See Report of the First Global Stocktake, available at:

https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf

⁶⁸ See Resolution MEPC377 (80) (adopted on 7 July 2023) on 2023 IMO Strategy on Reduction of GHG Emissions from Ships: available at:

<https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/annex/MEPC%2080/Annex%2015.pdf>

⁶⁹ Saint Lucia recalls the finding of ITLOS that Article 203 of UNCLOS 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 specialised services from international organizations.

⁷⁰ The Bridgetown Agenda calls for a reformed global financial architecture that includes provisions for trade. This initiative recognizes the critical need for developing countries to have access to financial resources and mechanisms that support their investment and trade capabilities while addressing broader sustainable development goals. (See <https://www.bridgetown-initiative.org/>)

VII. Conclusions

44. On the basis of the foregoing considerations, Saint Lucia respectfully submits that, in addition to its Written Statement, the following arguments in these Written Comments should be part of the answers of the Court to the questions raised by the General Assembly in its request for an Advisory Opinion contained in Resolution 77/276:

- i. The Court has the clear authority to render the advisory opinion requested by the UN General Assembly, as the questions posed are legal in nature and fall within the jurisdiction conferred by Article 96(1) of the UN Charter and Article 65(1) of the ICJ Statute. There are no compelling reasons for the Court to decline its jurisdiction and any reformulation of the questions should be avoided, given the careful and consensual negotiation process that led to their current formulation.
- ii. The conduct at issue, primarily the anthropogenic emissions of greenhouse gases by humans, has been widely recognized as the principal cause of climate change. This conduct constitutes a significant breach of international obligations, particularly for those States that have contributed disproportionately to global emissions. The Court should recognize the collective and individual responsibilities of States in causing significant harm to the climate system and other parts of the environment.
- iii. The obligations of States under the UNFCCC, the Paris Agreement, UNCLOS, and customary international law all remain applicable and enforceable. These legal frameworks, particularly the principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC), mandate that States, especially developed ones, take appropriate measures to mitigate and adapt to climate change and comply with obligations owed to SIDS. The obligations extend beyond treaty-specific commitments and encompass broader international law norms.
- iv. The conduct of States that have significantly contributed to anthropogenic greenhouse gas emissions is inconsistent with their obligations under international law. This breach necessitates full reparation, including

compensation for loss and damage, particularly for SIDS like Saint Lucia. The failure to adhere to due diligence obligations and the ongoing harm caused by climate change underscore the need for remedial action by responsible States.

- v. The breaches of international obligations by States that have contributed to climate change trigger specific legal consequences, including the duty to provide full reparation. This includes not only monetary compensation but also the provision of financial resources, technology transfer, and other forms of assistance to affected States, particularly SIDS. The Court should affirm that these reparations must be comprehensive and take into account the disproportionate impact of climate change on SIDS and vulnerable populations.

45. Saint Lucia thanks the Court, the Republic of Vanuatu, our sister CARICOM SIDS – Saint Vincent and the Grenadines, Grenada, Antigua and Barbuda, Belize, Barbados, The Bahamas – and all other States and entities that have submitted Written Statements and Written Comments in seeking an Opinion that will provide much-needed clarity on the scope of climate-related obligations and legal consequences of their breach. We look forward to an Advisory Opinion that not only reflects the vulnerability of our islands but addresses the core aspirations of our peoples.

Mr Desmond Simon

Charge d' Affaires, Embassies of the Eastern Caribbean States and Missions to the European Union, Organisation of Eastern Caribbean States

15 August 2024