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CR 2024/37

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Tuesday 3 December 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

***on the* Obligations of States in respect of Climate Change**
(Request for advisory opinion submitted by the General Assembly of the United Nations)

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le mardi 3 décembre 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

***sur les* Obligations des États en matière de changement climatique**
(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

COMPTE RENDU

Present:	President	Salam
	Vice-President	Sebutinde
	Judges	Tomka
		Abraham
		Yusuf
		Xue
		Bhandari
		Iwasawa
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
	Registrar	Gautier

Présents : M. Salam, président
M^me^ Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^me^ Xue
MM. Bhandari
Iwasawa
Nolte
M^me^ Charlesworth
MM. Brant
Gómez Robledo
M^me^ Cleveland
MM. Aurescu
Tladi, juges

M. Gautier, greffier

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Pour consulter la liste complète de toutes les délégations, prière de se reporter au CR 2024/35.

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The PRESIDENT: Good morning. Please be seated. La séance est ouverte.

La Cour se réunit ce matin pour entendre le Belize, la Bolivie, le Brésil, le Burkina Faso, le Cameroun et les Philippines sur les questions que lui a soumises l'Assemblée générale des Nations Unies. Chaque délégation dispose de 30 minutes pour sa présentation. La Cour observera une courte pause après celle du Brésil.

I shall now give the floor to Mr Kenrick Williams, speaking on behalf of Belize. Sir, you have the floor.

Mr WILLIAMS:

INTRODUCTION

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour to appear before this esteemed Court on behalf of Belize, a small island developing State, that faces the existential threat from climate change. This advisory opinion represents a historic opportunity for the international community to clarify the obligations of States in addressing this global crisis. For Belize, the stakes could not be higher.

2. Belize is uniquely vulnerable to the impacts of climate change. Our nation is home to the second-largest coral reef system in the world, a UNESCO World Heritage Site, and the largest tract of forest outside the Amazon in Central America. These are not just natural treasures; they are lifelines for our biodiversity, economy and cultural heritage. Yet, they are under siege from rising sea levels, warming oceans and increasingly severe storms. Hurricane Lisa alone, in 2022, caused damages of nearly US$100 million, affecting nearly 40 per cent of our population[3].

3. Despite these vulnerabilities, Belize has been a beacon of commitment and action. Domestically, we have placed over 40 per cent of our territory under legal protection, transitioned toward renewable energy, and pioneered innovative financing mechanisms, including the groundbreaking Blue Bonds for marine conservation. Internationally, Belize has consistently advocated for ambitious climate action through platforms such as the UNFCCC and as a member of the Alliance of Small Island States (AOSIS).

[3] https://www.undp.org/belize/publications/post-disaster-needs-assessment-pdna-floods-due-hurricane-lisa-belize-executive-summary.

4. Let me take one example of the profound human and environmental toll of climate change on Belize and on small island developing States more generally, that is the case of Monkey River, once a thriving community engaged in fishing and ecotourism. It is now in crisis! Rising sea levels and intensifying storms — unmistakable markers of climate change — have stripped away its coastline, with some areas losing up to 2 m annually. Mangroves and seagrass beds, which historically served as barriers and biodiversity hotspots, have been critically degraded, leaving Monkey River exposed to further damage. This devastation has upended the lives of Monkey River's residents.

5. The tragedy of Monkey River is a reality of countless communities worldwide already enduring the impacts of climate change. The UNFCCC Standing Committee on Finance estimates that developing countries, including SIDS, require up to US$584 billion annually by 2030 to address their costed needs and respond to the climate crisis[4]. Yet, the recent COP29 decision pledged only US$300 billion per year, leaving a staggering gap that delays adaptation, deepens vulnerabilities, and worsens losses. This underscores the urgent need for clarity on States' obligations under international law to protect vulnerable nations.

6. Mr President, Mr Wordsworth and thereafter Ms Sander, members of Belize's counsel team, will address you today, developing Belize's legal arguments.

7. Mr President, honourable members of the Special Chamber, that concludes Belize's opening statement. I now ask that you give the floor to Mr Wordsworth.

The PRESIDENT: I thank Mr Williams. I now give the floor to Mr Sam Wordsworth. Sir, you have the floor.

Mr WORDSWORTH:

1. Mr President, Members of the Court, it is a privilege to appear before you for Belize, and I wish to start my brief remarks by recalling the deep importance of the current task before the Court, but also by asking whether there is such great legal complexity to one of the central issues before

[4] https://unfccc.int/sites/default/files/resource/UNFCCC_NDR2_Report_Web_Final.pdf.

you: that is, the application of the customary international law obligation of prevention in the current context[5].

2. The Court now has before it no fewer than six lines of argument that seek to neutralize the existence or impact of the prevention obligation in the context of climate change — a display of legal firepower from those States most engaged in carbon consumption or production that makes one raise a quizzical eyebrow as to the hope that there will ever be agreement within the COP to meaningful and binding treaty obligations to reduce emissions.

3. The first argument on neutralization is that greenhouse gas emissions are somehow the wrong sort of harm and thus fall outside the prevention obligation[6]. This is despite the fact that the harm occurs outside the emitting State's borders, constitutes existential harm to neighbouring and other States, and so is, by definition, significant transboundary harm. And of course, if this were not a relevant and applicable norm in this context, it would not be expressly referenced in the preamble to the UNFCCC. The argument is not serious, and it is irrelevant that the Court thus far happens only to have applied the prevention obligation with respect to environmental harm suffered by a neighbouring State[7].

4. A second and related argument is that the specific content of the prevention obligation has not been established by State practice and *opinio juris* in the current context of climate change[8]. But the relevant content *is* established: it is the due diligence obligation of prevention, which is universally recognized, and likewise, that this must be applied in the given fact-specific context, here, of climate change and greenhouse gas emissions.

5. The third argument aimed at neutralization invokes *lex specialis*[9]. It is as if this Court had not many times confirmed that the same factual situation can readily give rise to the application of

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[5] See generally the Second Written Statement of Belize, pp. 15-24. See also ITLOS Advisory Opinion, para. 224.

[6] See e.g. CR 2024/36 p. 33, para. 12 (Bajbaa); CR 2024/36 p. 43, paras. 10-11 (Donaghue).

[7] See *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 14; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 665.

[8] See e.g. CR 2024/36 p. 44, paras. 12-13 (Donaghue).

[9] See e.g. Written Statement of South Africa, para. 14; Written Statement of Kuwait, paras. 8-9, 75-76; Written Statement of Japan, paras. 14, 18; Written Statement of Saudi Arabia, para. 3.3.

two or more sets of legal norms[10], and this is all the more unproblematic where, to quote the ILC on this topic, there is no "actual inconsistency between them, or else a discernible intention that one provision is to exclude the other"[11]. Or plainly there is no inconsistency, and where is the evidence of a discernible intention to exclude the prevention obligation[12]? Nowhere in the UNFCCC, and nowhere in the Paris Agreement can one see that; and please recall the multiple declarations from States expressly clarifying that there had been no derogation[13].

6. The fourth attempt at neutralization seeks to invoke Article 31 (3) *(c)* of the Vienna Convention with respect to the interpretation of climate change treaties. I need not dwell on this because the customary rule of prevention anyway applies in parallel. But the requirement that an applicable rule of international law "shall be taken into account" does not in any event mean that the rule is to be treated as displaced or neutralized by the treaty provision at issue[14].

7. The fifth argument on neutralization, which one also saw deployed yesterday[15], is that compliance with obligations under the climate change treaties will automatically mean compliance with the obligation of due diligence under the prevention obligation[16]. But this makes no sense. What is required for due diligence depends on what an individual State has itself done, in the specific situation, to meet the specific obligations it owes under the prevention obligation. And the Court has stated in clear terms, and as can only be correct, that "the notion of 'due diligence' . . . calls for an assessment *in concreto*"[17].

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[10] See e.g. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Preliminary Objections, Judgment of 12 November 2024*, para. 77.

[11] International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN doc. A/56/10, 2001, p. 140, Article 55, para. 4.

[12] Cf. *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy), Judgment, I.C.J. Reports 1989*, p. 42, para. 50; see also *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2023 (I)*, pp. 120-121, para. 207. See also Report of the Study Group of the International Law Commission, finalized by Mr Martti Koskenniemi, *YILC* 2006, Vol. II, Part One, A/CN.4/SER.A/2006/Add.1 (Part 1/Add.2), p. 43, para. 184.

[13] See Second Written Statement of Belize, p. 19, fns. 113-115.

[14] Cf. International Law Commission, Report of the Study Group, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN doc. A/CN.4/L.682 and Add.1 (13 April 2006), Annex: Draft Conclusions of the Work of the Study Group, p. 105, para. (9).

[15] CR 2024/36 p. 44, para. 15 (Donaghue).

[16] See e.g. Written Statement of New Zealand, paras. 104–105; Written Statement of the United States, paras. 4.24-4.28; Written Statement of the People's Republic of China, para. 131; Written Statement of Romania, para. 106; Written Statement of the Organization of the Petroleum Exporting Countries, para. 82.

[17] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

8. The final argument on neutralization is that the UNFCCC and Paris Agreement establish a self-contained régime, displacing the usual rules on State responsibility. Where again, one might ask, can one locate any agreement to that effect? Again, there is none, and the argument is based on assertion and assumed difficulties of application alone[18].

9. Mr President, Members of the Court, if I can conclude with an analogy that seems apt. It is said that in order to catch a macaque monkey in the Philippines, all that is needed is a large glass jar with a narrow neck and a small mango. Having reached in, the macaque is hard-wired to hold onto a prized morsel of food, and so cannot remove its fist from the jar, clenched as it is around the mango. Although free to escape, it will not let go, and hence awaits an unpleasant fate.

10. The analogy is of course entirely clear. In human terms, it currently appears impossible voluntarily to let go of the lifestyles now enjoyed, in particular in the global north, and likewise for States to let go of carbon-based revenue streams[19]. But in terms of international law, we are in the realm of obligation, not discretion. Who knows when, or if, the competing interests of States will ever lead to meaningful treaty-based obligations of reduction within the COP; but hard-edged obligations already apply as a matter of the prevention obligation in customary international law.

11. Mr President, I ask you now to call on Ms Sander, who will develop Belize's submissions on the prevention obligation and the issue of causation. I thank you.

The PRESIDENT: I thank Mr Wordsworth. I now give the floor to Ms Amy Sander.

Ms SANDER:

A. INTRODUCTION

1. Mr President, Members of the Court, it is an honour to appear before you.

2. There is a river. The river flows through various States — States A, B, C and D. States A and B have, to varying but significant degrees, each dumped quantities of a metal pollutant in the river. For States C and D downstream, because of the cumulative presence of the metal pollutant, their harvests are decimated and biodiversity destroyed.

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[18] See e.g. CR 2024/36 p. 34, para. 23 (Bajbaa); Second Witness Statement of Saudia Arabia, para. 5.8 *et seq*.

[19] See e.g. *Stuck Monkey, The Deadly Planetary Cost of the Things We Love*, Hamilton-Paterson (Bloomsbury, 2024).

3. It could not seriously be contended that States A and B are not each subject to the well-established customary international law obligation to ensure that activities within their jurisdiction or control do not cause significant harm to the environment of other States — what Belize has termed "the Prevention Obligation". That obligation applies with respect to harm to States C and D, as well as to any other States in the same position — it makes no difference how many States may suffer the significant harm.

4. Yet replace the "metal pollutant" with "greenhouse gases", and the "river" with "atmosphere", and that is in essence what some States in these proceedings have contended. It has been said in categorical terms that, because the harm caused by greenhouse gas emissions results from cumulative emissions and various sources and impacts not just one neighbouring State, that the Prevention Obligation is simply "inapplicable" in this context[20].

5. That "inapplicability" contention is advanced despite the fact that the Court has never formulated the obligation in such restrictive terms, and despite the express reference to the obligation in the UNFCCC's preamble reflecting a clear acknowledgment that it does apply in the present context.

6. And this "inapplicability" contention is advanced despite the fact that we *know* — the best available science is unequivocal — that all greenhouse gas emissions above a *de minimis* level contribute to the risk of serious harm through climate change[21].

7. Furthermore, if that "inapplicability" contention were accepted, it would follow that a critical aspect of the Prevention Obligation, namely the obligation to carry out an *assessment* of potentially harmful activities — what Belize has termed "the Assessment Obligation" — would not apply to States' emissions. It would be perverse if a State were obliged under customary international law to assess the environmental impact of a factory in its territory emitting a metal pollutant into a river that risks causing significant harm to one or more States, yet not as regards the factory next door pumping greenhouse gases into the atmosphere contributing to catastrophic harm to all States.

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[20] Written Statement of China, para. 128. See also: Written Statement of Denmark, Finland, Iceland, Norway and Sweden, para. 71; Written Statement of the Russian Federation, pp. 16-17; Written Statement of the USA, paras. 4.17-4.19 and 5.10; Written Statement of Indonesia, para. 61; Written Comments of Saudi Arabia, para. 4.55; Written Comments of Australia, paras. 3.4 and 3.13. See e.g. CR 2024/36, p. 33, para. 12 (Bajbaa); CR 2024/36, p. 43, paras. 9-11 (Donaghue).

[21] Written Statement of Belize, para. 47.

The separate treaty obligation under Article 4 of the UNFCCC[22], a passing reference to "impact assessments" framed in broad terms as a possible "appropriate" method, and of course applicable only to States parties to the treaty, does nothing to displace the independent customary obligation.

8. Belize does recognize that some element of causation is wrapped up in the content of the Prevention Obligation itself. The obligation requires a State to exercise due diligence to prevent harm being *caused* to the environment of other States. So these proceedings present the Court with an opportunity to explain how causation operates with respect to the *applicability* of the Prevention Obligation. This is, of course, a distinct issue from the subsequent question of how causation may be treated when considering *reparation* for a breach of the obligation[23].

B. ANALYSIS OF THE CAUSATION ISSUE

9. Belize first sets out four foundational points which it considers to be uncontroversial, before turning to make three submissions on causation with respect to the applicability of the Prevention Obligation.

10. *First* foundational point: there is no single legal test under international law for determining whether a sufficient causal connection has been established in a given case[24]. Depending on the context, various tests of causation have been applied by international and domestic courts. Some are more demanding than others[25], driven at least in part by the recognition that the just solution to different kinds of cases may require different causal tests.

11. *Second* foundational point: the applicable causal test must be informed by the precise content of the relevant international law obligation[26].

12. *Third*, and as indicated earlier, the science is clear — greenhouse gas emissions of State A contribute to the total greenhouse gas concentrations in the atmosphere, and the total greenhouse gas

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[22] Written Comments of Australia, para. 3.9.

[23] See e.g. Written Comments of Australia, para. 6.20.

[24] See Written Comments of Belize, fn. 86, citing International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN doc A/56/10, 2001, p. 93, Article 31, para. 10.

[25] *R (on the application of Finch)* v. *Surrey County Council* [2024] UKSC 20 ("*Finch*"), para. 68; *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland*, Application No. 53600/20, Grand Chamber, 8 April 2024 ("*KlimaSeniorinnen*"), para. 439.

[26] *KlimaSeniorinnen*, para. 435.

concentrations will cause climate change harms[27]. So there is an indisputable chain of causation between State A's greenhouse gas emissions and the relevant harm. Belize referred to this in its written submissions as "General Causation"[28], to be contrasted with "Specific Causation" which refers to a *specific* act or policy causing a *specific* harm.

13. *Fourth* foundational point: the fact that a given harm has multiple causes does not mean that a State's obligation to take measures to avert that harm is somehow disapplied or even attenuated.

14. You already have my example of the river and the metal pollutant. Another helpful example is drawn from the Court's Judgment in *Bosnia Genocide*. The Court held that the fact that a State's compliance with its preventive obligation could not have averted the relevant result would be "irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result . . . which the efforts of only one State were insufficient to produce"[29].

15. Building on those four foundational points, Belize makes three submissions.

16. *First*, for the purpose of the *applicability* of the Prevention Obligation, General Causation suffices to meet what the European Court of Human Rights has termed the "legally relevant relationship of causation"[30]. This approach is consistent with ITLOS's position regarding the applicability of the UNCLOS obligation to prevent pollution of the marine environment in the context of climate change[31].

17. The relevance of General Causation here is evident from the precise content of the Prevention Obligation, and I recall here my second foundational point.

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[27] Written Comments of Belize, fn. 76, citing *Gloucester Resources Limited* v. *Minister for Planning*, Land and Environment Court of New South Wales, 8 February 2019, [2019] NSWLEC 7, para. 525.

[28] Written Comments of Belize, para. 26; Written Comments of Mauritius, para. 139.

[29] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

[30] *KlimaSeniorinnen*, para. 444, cited e.g. Written Comments of Albania, para. 75.

[31] *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, ITLOS, 21 May 2024 ("ITLOS Advisory Opinion"), para. 252.

18. Specifically, international courts have consistently spoken of the need to ascertain whether there is a *risk* of significant transboundary harm[32]. For the obligation to arise, it is not necessary that the State could foresee the precise form of possible harm or the precise victim States. Indeed, the Prevention Obligation encompasses the Assessment Obligation, and it is only through conducting an assessment in the first place that any such specific risks could be reliably identified. It is thus sufficient that States can foresee harm to the climate system as a whole — to all States — as a result of greenhouse gas emissions above a *de minimis* level.

19. Thus, applying a threshold of General Causation here is not, as has been suggested in these proceedings[33], an argument that rests on the Court generating any novel principle of international law; it is an orthodox application of the well-established elements of the existing customary rule.

20. *Second* submission: in assessing the risk of harm resulting from a particular activity or policy by reference to General Causation, the cumulative impacts of other activities — whether of the relevant State or a third State — must be taken into account.

21. Returning to my river example, before State A permits the release of the metal pollutant into the river from a factory on its territory, that State would clearly be obliged to consider the already accumulated levels of the metal pollutant in the river as well as any reasonably foreseeable future levels of the metal pollutant to be emitted by State A or any other State. Intuitively, the same applies to greenhouse gases. And this approach is reflected in the decisions of ITLOS[34] and the Inter-American Court of Human Rights[35].

22. *Third* submission: as to the separate question of Specific Causation — that is, whether a specific act of State A in fact caused a specific identifiable harm in a given other State — that Specific Causation is relevant at a *subsequent stage* of the invocation of responsibility, when reparations are

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[32] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II),* pp. 706-707, para. 104, and p. 720, para. 153; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I),* pp. 55-56, para. 101.

[33] Written Comments of France, paras. 62 and 64.

[34] ITLOS AO, paras. 365 and 367.

[35] *Advisory Opinion OC-23/17 on the Environment and Human Rights*, 15 November 2017, para. 165.

being sought and determined[36]. That was a point squarely made by ITLOS in the context of Article 194 of UNCLOS[37].

23. That subsequent stage would clearly be a fact-specific assessment, and several States agree that a threshold of "but for" causation would be inappropriate[38].

24. One could pose hypothetical cases involving large-scale emissions where a sufficiently quantifiable harm emanating from a specific project[39] or a specific State could in fact be evidenced by best available science, and we have seen domestic courts engaged in aspects of such quantification[40].

25. But the key point for present purposes is this: any difficulty in establishing Specific Causation in certain claims for reparation is not a principled basis to foreclose the *applicability* of the Prevention Obligation in this context altogether[41].

C. THE ASSESSMENT OBLIGATION

26. In these proceedings, pragmatic guidance from the Court is key. With that in mind, I focus now on one hard-edged, concrete aspect of the Prevention Obligation: the Assessment Obligation. ITLOS described this as a "crucial"[42] application of the Prevention Obligation, vital for identifying risks of harm before they materialize, as well as ensuring public awareness of the impact of activities and public participation on what is or is not done to our planet. To cite the apex court of the United Kingdom earlier this year, "you can only care about what you know about"[43].

27. With reference to the well-established jurisprudence of this Court, Belize identified three stages to the Assessment Obligation as follows.

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[36] Written Comments of Belize, para. 32; Written Comments of Bahamas, para. 122 *(a)*.

[37] ITLOS AO, para. 252.

[38] See e.g. Written Comments of Mauritius, para. 141; Written Comments of Barbados, para. 121; Written Comments of Vanuatu, para. 205; Written Comments of Antigua, para. 110.

[39] Cf. Written Comments of Saudia Arabia, para. 4.55.

[40] *Finch*, paras. 31 and 81; *The Greenpeace Nordic Association Nature and Youth* v. *The State v/Ministry of Energy*, Oslo District Court, 18 January 2024, p. 111, available at: https://www.greenpeace.org/static/planet4-sweden-stateless/2024/01/daf4fe59-oslo-tingretts-dom-og-kjennelse-18.01.2024-deepl-en.pdf.

[41] Written Comments of Samoa, para. 46; CR 2024/36, p. 60, para. 12 (Blake).

[42] ITLOS AO, para. 354.

[43] *Finch*, para. 21.

28. Stage 1: identifying an "activity having the potential adversely to affect the environment of another State"[44].

29. Stage 2: ascertaining whether the activity poses a "risk of significant transboundary harm".

30. Stage 3: where such risk exists, conducting the assessment itself.

31. The application of each stage to greenhouse gas emissions is addressed in detail in Belize's written submissions. Today, I highlight the following points.

32. *First*, it is well established that the Assessment Obligation applies to specific activities planned to occur within a State's territory or otherwise within the State's jurisdiction or control[45]. Applied to greenhouse gas emissions, it includes activities planned by a developer or contractor (including private actors) as well as a State's broader policy decisions to allow relevant emitting activities[46].

33. *Second*, as to the threshold of a "*risk* of significant transboundary harm", this denotes an objective assessment[47], referring to a possibility, rather than a likelihood[48]. The due diligence standard takes into account both the degree of the risk of harm and the gravity of the consequences if the risk materializes[49]. With respect to greenhouse gas emissions, of particular significance are *(a)* the best available science as reflected in the IPCC reports and *(b)* the precautionary principle[50], and there must be taken into account both sensitive receiving environments, such as Belize's coral reefs[51], as well, as indicated earlier, cumulative impacts.

34. My *third* point: the information contained in the assessment must be sufficient to allow informed decision-making in the State of origin and to meet the needs of potentially affected States

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[44] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, pp. 706-707, para. 104.

[45] Written Statement of Belize, para. 44 *(a)*.

[46] Written Statement of Belize, para. 45 *(c)*.

[47] Written Statement of Belize, para. 50 *(a)*.

[48] Written Statement of Belize, para. 50 *(b)*.

[49] Written Statement of Belize, paras. 50 *(d)* and 56 *(b)*; *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 43, para. 117.

[50] Written Statement of Belize, paras. 51 *(d)* and 56 *(c)*.

[51] Written Statement of Belize, paras. 51 *(b)* and 60.

in understanding the degree and seriousness of the risk of adverse transboundary impact. Whilst not authoritative, Appendix II of the Espoo Convention offers useful general guidance in that regard.

35. *Fourth*, the States must notify in good faith potentially affected States, where that is necessary to determine the appropriate measures to prevent or mitigate the risk, as was expressly confirmed in the *Certain Activities* case[52]. The existence of this obligation flows from both the nature of the requirement to exercise due diligence and the duty to co-operate[53].

36. *Finally*, the obligation to undertake the assessment is a "continuous one"[54], with monitoring of the relevant activity conducted in accordance with the best available science so as to evaluate the actual (as opposed to predicted) effects of the relevant activity[55]. Flowing from the nature of the requirement to exercise due diligence, the duty to co-operate, and the critical role of enhanced transparency and public scrutiny in the prevention of environmental harm, the monitoring reports must be made public.

37. In conclusion, an opinion affirming the applicability of the Prevention Obligation to the present context including an elucidation of the causation analysis, and guiding States by identifying the hard-edged contours of the assessment aspect of that obligation, would be a concrete outcome of real pragmatic significance.

38. Mr President, Members of the Court, that concludes Belize's submissions.

The PRESIDENT: I thank the representatives of Belize for their presentation. I now invite the delegation of Bolivia to address the Court and I call His Excellency Roberto Calzadilla Sarmiento to the podium.

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[52] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 707, para. 104.

[53] Written Statement of Belize, para. 59 (fn. 121), citing Stockholm Declaration, Principle 24; Rio Declaration, Principle 7; International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third Session, UN doc. A/56/10, 2001, Article 4, Commentary at p. 155, para. 1.

[54] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, pp. 722-723, para. 161.

[55] Written Statement of Belize, paras. 61-63.

Mr CALZADILLA SARMIENTO:

Mr President, Members of the Court, it is a great honour to appear again before you and to do so on behalf of the Plurinational State of Bolivia.

1. Mr President, climate change stands as the defining challenge of our time and the gravest threat facing humankind, including future generations. With global temperatures already approaching the critical 1.5°C threshold, we confront an unprecedented crisis that will shape the fate of generations to come. Its worst consequences are borne disproportionately by those who have contributed least to its cause, making this not merely a matter of scientific fact, but fundamentally an issue of justice.

2. Bolivia recognizes that the structural causes of climate change stem from the current anthropocentric model, particularly the capitalist system of development that has dominated the last two centuries. This system has precipitated the present climate crisis, violating basic human rights, disrupting Mother Earth's life cycles, leading to ecosystem collapse, upending traditional ways of life for hundreds of millions of people worldwide, and intensifying global hunger and poverty.

3. The question of State responsibility for climate change cannot be divorced from this reality. Not all States bear equal responsibility for anthropogenic climate change, yet developing States — particularly as Bolivia, a landlocked, developing country — bear a disproportionate burden of its consequences. This inequity fundamentally undermines the human rights of present and future generations.

4. Mr President, Bolivia fully maintains all positions articulated in its Written Statement, to which I respectfully refer you. Today we will endeavour to assist the Court on five central issues.

5. *First*, we will demonstrate that this Court possesses not only the jurisdiction but indeed the duty to render an advisory opinion on these questions, which are manifestly legal in nature and of paramount importance to the international community.

6. *Second*, we will examine the relationship between climate treaty obligations and other obligations under international law, establishing why compliance with climate treaties alone cannot absolve States of their broader international obligations.

7. *Third*, we will address the principles of common but differentiated responsibilities and respective capabilities (CBDR-RC), demonstrating its status as a fundamental principle of general application in international law that must inform the interpretation of all climate-related obligations.

8. And *finally*, we will examine the duty to co-operate and its specific implications for climate finance, showing how meaningful co-operation through climate finance constitutes not a discretionary act but a necessary implementation of established legal duties.

I. JURISDICTION AND DISCRETION

9. Mr President, Members of the Court, given the broad consensus among participating States regarding the Court's jurisdiction in this matter, we see no need to belabour this point. The questions before the Court are manifestly legal in character, and the General Assembly's competence to request this opinion is clear.

10. However, we would note that recent developments at COP29 in Baku demonstrate precisely why the Court's guidance on these questions is so vital. The ongoing struggles to secure financial commitments for climate action, and the bitter divisions between States over responsibilities and obligations illustrate how the international community urgently needs clear legal guidance on questions of obligation and responsibility.

11. In these circumstances, Mr President, we submit that not only does the Court have jurisdiction, but the exercise of this jurisdiction is particularly appropriate and necessary at this moment.

II. THE RELATIONSHIP BETWEEN THE OBLIGATIONS UNDER THE CLIMATE TREATIES AND OTHER OBLIGATIONS UNDER INTERNATIONAL LAW

12. Mr President, I turn to the fundamental question of the scope of States' obligations in respect of climate change. The first question posed to the Court requests it to identify the "obligations of States in respect to climate change". Bolivia notes that the UN Framework Convention on Climate Change regime has the fundamental and primary role in addressing climate change issues for the wide range of sources from which climate-related obligations stem. These obligations arise not only from the climate change treaties but also from customary international law, human rights law, and other international instruments.

13. It must be recorded that some of the Participants appear to object to the breadth of the request, arguing that the climate treaties alone apply to the phenomenon of climate change. Others have argued that the climate treaties constitute *lex specialis*, with the intended implication being that compliance with these treaties should be considered in all cases sufficient, irrespective of the existence of other obligations.

14. These views are untenable for three key reasons: *first*, the UNFCCC and the Paris Agreement themselves acknowledge the relevance of other obligations, indicating they were designed to complement, not replace, existing international law obligations. *Second*, the principle of systemic integration requires that treaties be interpreted in harmony with other applicable rules of international law. This means that obligations under the climate change regime must be read consistently with fundamental principles such as the principle of prevention and the protection of human rights. *Third*, even if the climate treaties were to be considered *lex specialis*, which we submit they are not, any displacement of obligations sourced elsewhere would occur as a result of a conflict. No such conflict occurs here.

15. As a result, it cannot be said that compliance with climate treaties may absolve States from their other international obligations. The recent advisory opinion of the International Tribunal for the Law of the Sea confirms this understanding, in so far as it rejected the notion that compliance with the Paris Agreement alone may satisfy States' obligations under UNCLOS[56]. Different legal régimes create distinct but complementary obligations regarding climate change.

16. Mr President, this conclusion carries several important implications, of which Bolivia wishes to highlight three. *First*, different legal obligations may impose varying standards of conduct which should be interpreted in conjunction to address climate change, with the UN Framework Convention on Climate Change regime playing a primary and fundamental role. *Second*, the historical responsibility for climate change remains relevant under general international law. *Third*, cross-cutting principles of such as the common but differentiated responsibilities must be understood to operate across these different legal frameworks.

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[56] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 223.

17. In conclusion of this point, Mr President, Bolivia submits that the Court must consider the full spectrum of international legal obligations bearing on climate change, recognizing that compliance with one set of obligations does not excuse non-compliance with others.

III. THE PREVENTION PRINCIPLE

18. In the *Nuclear Weapons* Advisory Opinion, the Court affirmed that this principle is "part of the corpus of international law relating to the environment"[57], and recently the ITLOS has confirmed that it applies to climate change. In its recent advisory opinion, the Tribunal has confirmed that in the context of UNCLOS "article 194, paragraph 2, . . . imposes upon States Parties a particular obligation . . . to take all measures necessary to ensure that anthropogenic GHG emissions under their jurisdiction or control do not cause damage to other States and their environment"[58]. The Tribunal emphasized that this amounts to an obligation of due diligence[59].

19. The key question is whether this established principle of international environmental law applies to GHG emissions, and more broadly, climate change. While most Participants agree that it does, some argue that it does not on the basis of three main objections. None withstands scrutiny.

20. *First*, some argue that the global nature of climate change precludes the application of prevention principle as traditionally applied to bilateral transboundary harm[60]. But this argument fundamentally misunderstands the nature of the obligation. The principle necessarily encompasses all forms of significant harm, regardless of the precise pathways through which that harm occurs[61]. Moreover, the global character of climate harm strengthens rather than weakens the application of the prevention principle. If States must prevent localized transboundary harm — the harm which threatens the rights of one State — they must *a fortiori* prevent contributions to global environmental damage that threatens the fundamental rights of *all States*.

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[57] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 242, para. 29.

[58] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 258.

[59] *Ibid.*, para. 309.

[60] Written Comments of the United Kingdom, Written Statement of the United States, paras. 4.15-4.28; Written Comments of Australia, para. 3.13 *(b)*.

[61] Written Statement of Nauru, para. 43.

21. *Second*, it is suggested that the cumulative nature of emissions negates individual State obligations, *inter alia*, because the resolution of the climate crisis requires collective efforts and co-operation[62].

22. This too must be rejected. The principle of prevention has always encompassed forms of harm resulting from aggregate conduct. Moreover, the objection is, strictly speaking, a classification error: obligations do not become collective by virtue of their breach contributing to cumulative harm. Thus, it cannot be said that the nature of the harm absolves individual States of their obligations, understanding those obligations within the framework of historical responsibilities and the principles of equity and common but differentiated responsibilities.

23. *Third*, this understanding is reinforced, rather than undermined, by the fact that substantive obligations are accompanied by procedural obligations, because it is only through co-operation that States can effectively manage and prevent environmental risks[63]. Procedural obligations such as of those of co-operation, notification and consultation are vital for protecting shared resources that can only be safeguarded through continuous co-operation. But the Court has emphasized that prevention requires co-operation precisely because environmental challenges cannot be addressed in isolation, not because shared challenges absolve individual States of their primary obligations[64].

24. *Fourth*, some States point to difficulties of causation and attribution[65]. The complexity of climate science cannot be used to evade obligations under international law. And, in any event, matters of causation and attribution must be examined in relation to the relevant rules concerning the consequences of the breach of primary obligations, which Bolivia submits are to be found in the law of State responsibility. On the contrary, causation and attribution play no role in determining the existence and scope of the primary obligations.

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[62] Written Statement of Singapore, para. 3.15.

[63] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II),* p. 649, paras. 100-101.

[64] *Ibid.*

[65] Written Statement of Denmark, Finland, Iceland, Norway and Sweden, para. 71; Written Statement of India, para. 17; Written Comments of Saudi Arabia, para. 4.57.

IV. DIFFERENTIATION

25. Mr President, I turn now to the principle of common but differentiated responsibilities and respective capabilities.

26. The question of the legal status of the CBDR-RC principle has generated significant debate. Some states contend that this principle operates exclusively within the framework of environmental treaties, particularly the climate change régime. Others maintain that it may instead inform obligations across different legal régimes. Bolivia aligns itself with this latter view.

27. Two key considerations support recognizing common but differentiated responsibilities and respective capabilities as a principle of general application in international law.

28. *First*, this principle may be seen as a specification of the principle of equity. It operationalizes the recognition that States which have contributed differently to the climate crisis, and which have different capacities to address them, cannot be held to identical standards.

29. *Second*, there is growing recognition that this principle is applicable to the question of climate change beyond the scope of environmental treaties. For example, the International Tribunal for the Law of the Sea recently confirmed that while the United Nations Convention on the Law of the Sea does not explicitly reference the principle of common but differentiated responsibilities, it contains elements common to this principle. Similarly, the principle has been found to shape the understanding of human rights obligations in the context of environmental protection.

30. The implications of recognizing this principle's broader status are significant. It means that the principle must inform the interpretation of all obligations relevant to climate change, not just those under the climate treaties.

31. In this connection, Bolivia wishes to draw attention to two specific points.

32. *First*, CBDR-RC affects the assessment of due diligence standards across different legal systems. What constitutes appropriate measures to prevent environmental harm necessarily varies according to both States' historical contributions and present capabilities. The standard expected of States must reflect both their differential contribution to environmental harm and their varying capacities to address it. In its advisory opinion, ITLOS confirmed that the scope of measures to reduce anthropogenic greenhouse gas emissions "may differ between developed States and developing States" and while all States must make mitigation efforts, developed States should

"continue taking the lead"[66]. This differentiation is particularly relevant for landlocked developing countries, such as Bolivia, whose historical contribution to the climate crisis has been insignificant.

33. *Second*, CBDR-RC may be relevant not just for the assessment of the obligations of States in respect of climate change, but also for the consequences of their breach.

34. Mr President, on this point some States emphasize that this principle necessarily influences how State responsibility operates in the climate context. They argue that responsibility cannot be assessed without reference to States' historical contributions to the problem. Some Participants point to the paradox of applying identical standards of responsibility to States that have contributed vastly different amounts to cumulative emissions[67]. Other States strongly contest any link between this principle and State responsibility[68]. They argue that the common but differentiated responsibilities and respective capabilities is forward-looking and co-operative in nature, designed to facilitate future action rather than assign responsibility for past conduct. These States maintain that the principle cannot modify the established rules of State responsibility, which they argue operate independently of States' different circumstances or capabilities.

35. Bolivia submits that the truth lies between these extremes. The principle neither displaces nor overrides the law of State responsibility. The basic elements required to establish responsibility — breach of an obligation, attribution and causation, absence of circumstances precluding wrongfulness — remain unchanged. However, CBDR-RC necessarily informs how these elements are assessed in the climate context, including on the basis of the historical contribution to the harm.

36. This is particularly relevant in three ways. *First*, in determining whether a breach has occurred, the content of the primary obligation itself should be assessed on the basis of the principle of common but differentiated responsibilities. *Second*, in assessing causation, the historical dimension of greenhouse gas emissions cannot be ignored, as it forms part of the factual matrix against which responsibility must be determined. *Third*, in considering appropriate reparation, the

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[66] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 229.

[67] Written Statement of the Solomon Islands, para. 246.

[68] Written Comments of the United Kingdom, paras. 65-57.

principle of full reparation must be understood in light of States' different capabilities and circumstances[69].

37. This understanding better reflects both the reality of climate change and the foundational nature of the common but differentiated responsibilities principle as a specification of the general principle of equity. It allows for responsibility to be determined in a manner that accounts for historical contributions while preserving the essential features of the law of State responsibility.

38. This principle informs the duty of co-operation, to which I now turn.

V. THE DUTY TO CO-OPERATE

39. Mr President, when States co-operate to address global challenges, they must do so in a manner that accounts for different levels of responsibility and capability. This requirement operates independently of specific treaty provisions.

40. The duty to co-operate stands as a fundamental pillar of international environmental law, particularly in addressing the climate crisis. This obligation derives from multiple sources of international law and has been consistently recognized by international courts and tribunals[70]. Given that impacts on the global climate system result from cumulative actions over an extended period, no single State can halt it, nor address its consequences in isolation[71].

41. This duty finds its expression in Article 1 of the United Nations Charter, which commits States to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character. The Charter obligation is further reinforced by Article 56, under which Member States "pledge themselves to take joint and separate action in cooperation with the Organization" to achieve the purposes set out in Article 55[72]. In the environmental context, the duty to co-operate is reflected in foundational instruments including Principle 24 of the Stockholm

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[69] Written Statement of Costa Rica, para. 116; Written Statement of Vietnam, para. 46; Written Statement of Seychelles, para. 154; Written Comments of the African Union, para. 100.

[70] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I),* p. 14, para. 77.

[71] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, 21 May 2024, para. 318.

[72] UN Charter, Articles 1 (3), 55, 56.

Declaration[73] and Principle 7 of the Rio Declaration[74]. Most recently, ITLOS characterized co-operation as "a fundamental principle in the prevention of pollution of the marine environment"[75].

42. The climate change treaty régime provides specific expression to these co-operative duties without displacing broader obligations under general international law. The UNFCCC preamble explicitly acknowledges that "the global nature of climate change calls for the widest possible co-operation by all countries"[76]. The Paris Agreement elaborates concrete mechanisms through Article 7 on adaptation, Article 8 on loss and damage, Article 9 on finance, Article 10 on technology and Article 11 on capacity building[77].

43. The duty to co-operate, which emerges as a specification of the principle of good faith[78], is not merely a general obligation under customary international law but requires specific content to be effective. This duty extends beyond formulating and elaborating commitments in multilateral framework agreements and it is a continuing nature that cannot be satisfied by a one-time act[79].

44. The duty to co-operate is neither an aspirational policy preference nor an inchoate obligation lacking any meaningful content. In the climate context, this co-operation must primarily flow from developed to developing States, and constitutes an obligation for developing countries, particularly as regards the provision of technical and financial support.

45. Meaningful co-operation in climate finance represents a necessary implementation of this duty. Moreover, this duty must be informed by the principle of common but differentiated responsibilities, which requires States to conduct consistent efforts to assist developing countries, with modalities of climate finance must evolve to meet the urgency of the climate crisis and considerations of equity. Therefore, States cannot be said to have satisfied their duty to co-operate if they do so through financing mechanisms that place additional burdens on those already most

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[73] Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972, UN doc. A/CONF.48/14/Rev.1.

[74] Rio Declaration on Environment and Development, 13 June 1992, UN doc. A/CONF.151/26.

[75] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 296.

[76] United Nations Framework Convention on Climate Change, 9 May 1992, 1771 *UNTS* 107, preamble.

[77] "The Paris Agreement", Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, Articles 7-9.

[78] The ICJ *Nuclear Tests* Judgments of 1974.

[79] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), paras. 296-311.

vulnerable to climate impacts, or through processes that create *de facto* barriers to accessing necessary support.

46. The duty to co-operate in the context of climate finance requires four fundamental transformations. *First*, access to climate finance must be simplified and expedited. The current bureaucratic barriers to accessing climate funds constitute a *de facto* limitation on developing States' ability to implement necessary climate measures. The duty to co-operate requires paying heed to the special needs of developing countries and ensuring that international co-operation enables effective implementation of treaty obligations.

47. *Second*, as Bolivia emphasized at the COP29, climate finance must prioritize grants over loans, and greater use of special drawing rights (SDRs) as debt-free financing options. This approach aligns with the established principle that co-operation must flow primarily from developed to developing countries and cannot be reduced to mere voluntary or solidarity measures. The obligations to provide financial resources represents an authentic interpretation by the parties of their obligations previously established in the climate change treaties. Moreover, the practice of providing climate assistance primarily through debt instruments effectively transfers the burden of climate actions to those least responsible for the crisis and undermines, rather than respect, the principle of common but differentiated responsibilities.

48. *Third*, developing countries have an obligation to provide financial assistance, technology and support. The establishment and operationalization of the Loss and Damage Fund represents the practical implementation of this obligation and constitutes a core requirement.

49. *Fourth*, the established obligation to co-operate requires meaningful participation and engagement in relevant processes. This obligation to co-operate meaningfully and in good faith includes participation in both technical and financial processes to support developing countries.

50. In the context of climate change, this duty must be implemented in line with the principle of common but differentiated responsibilities, meaning States with greater capacities should conduct consistent efforts to co-operate with and assist other States in their fight against climate change.

51. Mr President, the Plurinational State of Bolivia submits that the Court's advisory opinion should recognize that the adequacy of climate finance — in terms of both quantity and accessibility — is integral to assessing compliance with international obligations regarding climate

change. This includes both procedural obligations, and substantive obligations to provide meaningful support[80].

52. The implications are clear: developed States cannot claim to be meeting their international obligations while maintaining systems of climate finance that are inadequate, effectively inaccessible to those most in need, or while imposing additional debt burdens on developing States for addressing a crisis they did not create[81].

53. For the avoidance of any doubt, the duty to co-operate and the rules of State responsibility operate in a complementary rather than mutually exclusive manner. As evidenced by numerous State submissions, the existence of co-operative frameworks in the climate régime does not displace the application of the general rules.[82].

54. The complementary nature of these obligations is particularly evident in the context of climate finance. Voluntary contributions to co-operative mechanisms cannot satisfy or substitute for the legal obligation of developed countries to provide compensation for harm caused by internationally wrongful acts[83]. As multiple States have emphasized, the distinction between voluntary co-operative mechanisms and legally binding obligations of reparation must be maintained[84].

55. The practice of co-operation through climate finance mechanisms must therefore be understood as operating alongside, rather than replacing, obligations arising from State responsibility

56. Moreover, Mr President, maintaining the distinction between co-operation and responsibility is essential for the effectiveness of the climate régime. If co-operative mechanisms were to be understood as displacing responsibility, this would undermine both the deterrent effect of State responsibility and the voluntary nature of co-operation. The Court should therefore affirm that, while States must engage in good faith co-operation to address climate change, such co-operation operates in addition to, not in place of, their responsibility for internationally wrongful acts.

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[80] Written Statement of Colombia, paras. 77-78.

[81] Written Statement of Micronesia, para. 66.

[82] The Paris Agreement, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, para. 51.

[83] ILC Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, *YILC*, 2001, Vol. II, Part Two, as corrected, Article 55 and commentary, para. 3.

[84] Vanuatu, paras. 215-218.

Mr President, Members of the Court, that concludes my statement on behalf of the Plurinational State of Bolivia. I should like to thank the Court for its careful attention.

The PRESIDENT: I thank the representative of Bolivia for his presentation. I now invite the delegation of Brazil to make its oral statement and I call upon His Excellency Luiz Alberto Figueiredo Machado to take the floor.

Mr FIGUEIREDO MACHADO:

PART ONE

1. Mr President, Members of the Court, I am deeply honoured to appear before this distinguished Court today. It has been Brazil's long-standing policy to support the International Court of Justice, to stand up for the rule of law in international affairs, and to embrace multilateralism and international co-operation to combat climate change. As we prepare to host next year the 30th Conference of the Parties to the United Nations Framework Convention on Climate Change, I take personal pride in representing my country in these proceedings, which aim to deepen our collective understanding of State's obligations regarding climate change. At the outset, I would like to thank the Government of Vanuatu for the initiative of bringing this fundamental issue to the consideration of the Court.

2. In these opening remarks, I will outline Brazil's perspective on climate change and the notion of historical responsibilities that underpins it.

A. Brazil's vision on climate change

3. Brazil is acutely aware of the devastating impacts of climate change. Our people have been enduring extreme weather events, from severe droughts in the north to relentless rain and floods in the south. Intense forest fires have ravaged vital biomes such as the Amazon, the Cerrado and the Pantanal. Sadly, these extreme events disproportionately affect our most vulnerable populations.

4. Our vision for the next decades is deeply rooted in the principle of climate justice. At its core, climate justice seeks to combine environmental protection and social inclusion, ensuring that individuals, economies and nature interact sustainably. On a global scale, it requires prioritizing the needs of the most vulnerable — those who have contributed the least to climate change but bear its

heaviest burden — including indigenous peoples, traditional communities, women and children. This vision reflects the broader tenet of common, but differentiated, responsibilities and respective capacities (CBDR-RC). Each nation must contribute to combating climate change in proportion to its socio-economic capacity and historical role in global emissions. Furthermore, to achieve climate justice, our collective action must address inequalities, both among nations and within them, leaving no one behind.

5. Brazil, as a developing country, still faces significant socio-economic challenges. Ranking 89th in the Human Development Index, our primary focus remains eradicating poverty, hunger and inequality. In 2022, 12.7 million Brazilians lived in extreme poverty, with government social programs accounting for 67 per cent of the household income for this population segment.

6. Despite these challenges, Brazil has demonstrated ambition and leadership. Last month, we unveiled a new and enhanced nationally determined contribution (NDC), pledging to reduce greenhouse gas emissions by 59-67 per cent by 2035 compared to 2005 levels. This represents a 13-29 per cent increase in ambition compared to our previously established 2030 target. Our range-based target allows flexibility to adapt to evolving economic conditions, international co-operation and technological progress.

7. Brazil's commitment, reflected in its new NDC, extends far beyond what could be reasonably expected based on our historical responsibility for global temperature rise. As a developing country with multiple economic and social challenges, we have nevertheless adopted an economy-wide absolute emissions reduction target. The ambition, scale, and scope of Brazil's efforts reflect a level of ambition that often surpasses those of historically high-emitting developed countries. This is the ambition of a nation that faces much higher costs of capital and less fiscal space than developed countries to finance its just transition towards low-carbon and climate-resilient development.

B. Historical responsibilities

8. Mr President, the issue of historical responsibilities has been a recurring theme in these procedures. I wish to address its scientific basis.

9. The Intergovernmental Panel on Climate Change, in its sixth assessment report, acknowledges that global greenhouse gas emissions have risen sharply since the industrial revolution. These emissions have disproportionately resulted from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production in developed regions[85]. The warming we face today is predominantly the result of historical emissions accumulated over the last 250 years.

10. According to science, the causality link between greenhouse gas emissions and global warming involves a three-step process: first, emissions increase atmospheric concentrations of greenhouse gases; then, the higher concentration drives temperature rises, which in turn result in associated harm. However, this is not a linear process, but rather a dynamic interaction in which past emissions contribute exponentially more to current global warming than present-day emissions.

11. Moreover, historical emissions have significantly depleted the remaining carbon budget, which is the amount of greenhouse gases that can still be emitted while limiting warming to 1.5°C or well below 2°C, as required by the Paris Agreement. The IPCC has estimated that approximately 45 per cent of historical greenhouse gas emissions remain in the atmosphere today[86]. The unequal appropriation of the global carbon budget by developed countries not only creates new constraints to the economic and social development of developing countries, but also dramatically affects the livelihoods of the most vulnerable populations.

12. Thus, the main provisions differentiating between developed and developing countries, enshrined in the three core instruments of the climate régime — the UNFCCC and the instruments adopted thereunder, namely the Kyoto Protocol and the Paris Agreement — reflect not only different capabilities and circumstances but also varying historical responsibilities.

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[85] "Global greenhouse gas emissions have continued to increase [since the industrial revolution], with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals", 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, p. 4.

[86] Canadell, J.G., P.M.S. Monteiro, M.H. Costa, L. Cotrim da Cunha, P.M. Cox, A.V. Eliseev, S. Henson, M. Ishii, S. Jaccard, C. Koven, A. Lohila, P.K. Patra, S. Piao, J. Rogelj, S. Syampungani, S. Zaehle, and K. Zickfeld, 2021: Global Carbon and other Biogeochemical Cycles and Feedbacks. In *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 777–778.

13. Climate justice demands that nations benefiting the most from historical emissions that still deplete the global carbon budget must bear the greater burden in addressing climate change.

14. Mr President, our legal adviser will take you through the main elements of our legal reasoning. He will comment on topics that may hopefully assist the Court in rendering its opinion. I must point out that legal issues not covered in this intervention — such as the strong relationship between climate change and human rights — cannot be construed as unimportant to us, or that Brazil agrees to a particular legal reasoning we are not commenting on. I would now most kindly ask you, Mr President, to invite Professor George Galindo to continue the presentation of Brazil's case. I thank you very much for your attention.

The PRESIDENT: I thank His Excellency Luiz Alberto Figueiredo Machado. I now give the floor to Professor George Galindo. Professor, you have the floor.

Mr BANDEIRA GALINDO:

PART TWO

A. Issues of admissibility

1. Mr President, Members of the Court, Brazil concurs with many States that the advisory opinion requested by the General Assembly, through resolution 77/276, raises issues of international law of paramount importance. These questions fall within the Court's jurisdiction, and we trust the Court will provide its invaluable guidance.

B. Common but differentiated responsibilities

2. In its written comments, Brazil stressed the centrality of the principle of common but differentiated responsibilities and respective capabilities to the advisory opinion to be delivered by this Court and to the climate change international legal régime as a whole.

3. Brazil views the CBDR-RC principle as the cornerstone of the international climate change legal framework. This principle underpins the UNFCCC and the two instruments adopted under it, namely the Kyoto Protocol and the Paris Agreement, ensuring equity in both interpretation and implementation. In many senses, it is the translation of the idea of historical responsibilities to international legal terms.

4. The fact that many States, in their written comments, referred to it as the "cornerstone" of the régime or its "core principle" is not a rhetorical statement. Such comments represent a strong *opinio juris* that recognizes the centrality of the principle. The International Tribunal for the Law of the Sea, in its last advisory opinion on climate change and international law, was straightforward in recognizing the principle, as established in the UNFCCC and the Paris Agreement thereunder, as "a key principle in their implementation".

5. The Paris Agreement states unequivocally "this Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances". It is clearly a principle paramount to the entire implementation of that agreement.

6. The reason for differentiation in the Paris Agreement and previous treaties on climate change is more than evident: States have historically contributed differently to anthropogenic emissions of greenhouse gases and have distinct capabilities and resources to prevent and cope with the adverse effects of climate change. The Paris Agreement did not diminish the CBDR-RC principle; rather, it expanded the ambition and commitments of all parties. Developed countries must take the lead, reflecting their historical responsibilities and greater capabilities.

7. In this sense, developed nations, which historically emitted the most greenhouse gases, must lead by achieving net-zero emissions earlier, investing in transformative technologies, and providing financial and technical support for developing nations to fulfil their commitments.

C. Types of obligations of States

8. Brazil sees no reason why the Court's case law on the obligations of States to prevent transboundary harm should not be applicable in the domain of climate change. These are undoubtedly due diligence obligations and, thus, obligations of conduct. Since due diligence obligations can only be understood on a case-by-case basis, differentiation among States must be considered while assessing the reach of such obligations. In other words, the CBDR-RC principle is widely applicable in due diligence obligations under the climate change international legal régime.

9. We understand that the CBDR-RC principle does not exempt developing States from their obligations of due diligence. However, this does not mean that due diligence expected from

developing States will be the same conduct expected from developed States. Differentiation still applies. In the history of negotiations of all climate change treaties, differentiation has always preceded the idea of setting international legal obligations. Once more, the International Tribunal for the Law of the Sea, in its advisory opinion on climate change and international law, properly understood the issue by stating that the implementation of the standard of due diligence "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." This Court's *Pulp Mills* case corroborates such understanding of the International Tribunal for the Law of the Sea by referring to the term "the means at its disposal" in its paragraph 101.

10. Regarding the types of obligations a State has in the climate change international legal régime, Brazil wants to stress that these treaties also establish obligations of result. That is the case, for example, of Article 9 (1) of the Paris Agreement, one that undoubtedly establishes the legal obligation of developed States parties to "provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention". This obligation is of the utmost importance for the Court to emphasize in its advisory opinion, especially considering that the recent COP29 once more showed the centrality of financial resources to tackle the harmful effects of climate change in all parts of the world.

D. The core treaties of the climate change international legal régime

11. Mr President, Brazil highlights that the core climate change international legal régime treaties are the UNFCCC, as well as the Kyoto Protocol and the Paris Agreement adopted thereunder. They fulfil different and complementary regulatory functions. Although a few States are not parties to the Kyoto Protocol, it is undeniable that those treaties were framed to form the basis of the régime. Obligations arising from those treaties are essential to tackle the harmful effects of climate change.

12. The climate change legal régime must be understood and applied in an integrated and systemic way. It is a matter of fact that the Kyoto Protocol and the Paris Agreement were adopted under the UNFCCC. They support and enhance the core provisions of the Convention. It is self-evident that they do not replace the UNFCCC or revoke it. Quite the opposite, as set out in Article 2 (1), the very purpose of the Paris Agreement is to enhance the implementation of the

Convention, including its ultimate objective. Financial obligations by developed countries under the Paris Agreement are expressly "in continuation of their existing obligations under the Convention", as I mentioned above.

E. The duty of co-operation

13. From Brazil's perspective, the treaties composing the climate change international legal régime provide for co-operation among States and establish a genuine duty of co-operation in light of the CBDR-RC principle.

14. Such a duty may be found in several parts of the UNFCCC. Still, Article 4 of the Convention clearly shows how essential co-operation is to the fulfilment of all obligations of the climate change régime: both for mitigation and adaption. References to co-operation in instruments such as the Kyoto Protocol and the Paris Agreement shall be read in light of the essential role the UNFCCC attributes to co-operation as a duty of States.

F. Other issues

15. Brazil would like to point out four remaining issues. We understand that the Court should address the following issues in its advisory opinion.

16. First, it is time for the Court to recognize the legal value of at least some of the decisions of the Conferences of the Parties to the climate change international legal régime. They can at least constitute agreements and subsequent practice for the interpretation of the treaties composing the régime in the sense of Article 31 (3) of the Vienna Convention on the Law of Treaties — one of a customary nature. Judge Charlesworth's opinion in the *Whaling in the Antarctic* case before this Court suggested such an understanding.

17. Specifically, Brazil believes that the decisions of the COPs, which established, in light of the CBDR-RC principle, the need for developed countries to mobilize resources to address the adverse effects of climate change in developing countries, represent an authentic interpretation by the Parties of their obligations previously established in the climate change treaties.

18. Second, the use of specific terms in climate change treaties, such as "may" or "will", is not the only factor determining whether provisions should be viewed as binding. Assessing the intention

of parties while adopting those terms is essential to determining the binding character of a given provision.

19. Third, Brazil is concerned about some States' growing use of climate change rhetoric to breach free trade obligations. In this regard, it is useful to recall that, according to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) case law, trade-related environmental measures must not, as a rule, result in discrimination between "like" products. On similar lines, UNFCCC Article 3 (5) provides that: "Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade."

20. Fourth, although we recognize how complex causality-related issues are in climate change, Brazil has already proposed a methodological work to enable States parties to climate change treaties to quantify their national historical responsibility to global warming. Contrary to what some States argued, such a methodology is scientifically possible and feasible.

G. Conclusions

21. In conclusion, Mr President, Brazil wants to emphasize its full commitment to international co-operation and multilateralism to combat climate change. Our vision on the issue is grounded in the idea of climate justice, and we expect that the Court will contribute to making climate change a central topic to the rule of law in international affairs, taking into due consideration the importance of historical responsibilities for the climate crisis.

22. Brazil reputes the CBDR-RC as a central legal principle to the whole international legal régime. Obligations in that régime must be of conduct but also of result. While the UNFCCC, the Kyoto Protocol, and the Paris Agreement are the core treaties of the régime, the latter two were established under the first and must be interpreted in light of it. Furthermore, a duty of co-operation, especially from developed States towards developing States, is key to the régime.

23. Additionally, Brazil expects that the Court recognizes that COP decisions, especially those related to the need for developed countries to mobilize resources to address the adverse effects of climate change, are at least subsequent agreements and subsequent practice regarding the interpretation of treaties. We also expect that the Court recognizes that intention, instead of the mere

usage of some terms, determines the binding character of provisions in climate change treaties. The Court should also recognize that climate change may not excuse States from breaching their free trade obligations. Moreover, a methodology to assess past emissions is possible and feasible.

24. Finally, Brazil avails itself of the possibility of responding to further questions posed by this Court in written form at a later stage.

25. I thank you very much indeed, Mr President.

The PRESIDENT: I thank the representatives of Brazil for their presentation. Before I invite the next delegation to take the floor, the Court will observe a break of 15 minutes. The hearing is suspended.

The Court is adjourned from 11.30 a.m. to 11.45 a.m.

Le PRÉSIDENT : Veuillez vous asseoir. L'audience reprend. J'invite maintenant la délégation du participant suivant, le Burkina Faso, à prendre la parole et appelle Son Excellence M. Léopold Bonkoungou à la barre.

M. BONKOUNGOU :

INTRODUCTION

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les Membres de la Cour, c'est un honneur pour moi de paraître devant votre haute juridiction au nom de mon pays, le Burkina Faso. Pays résilient de la région du Sahel, le Burkina Faso est profondément attaché à l'idéal de la justice par le droit. C'est pourquoi mon pays reste un fervent soutien de la Cour et n'a jamais hésité à se présenter devant elle.

2. Aujourd'hui, la même confiance habite le Burkina Faso. En effet, la présente procédure consultative pose un problème élémentaire de justice : les émissions anthropiques de gaz à effet de serre dues aux actes et omissions d'un nombre limité d'États ont causé des dommages significatifs et multiformes au système climatique, faisant reposer le fardeau le plus lourd de leurs effets néfastes sur des États, comme le Burkina Faso, qui y sont complètement étrangers et ne peuvent y faire face seuls.

3. Ces faits, bien connus, forment la trame de la présente procédure et n'ont été contestés par aucun participant. Ils sont corroborés par les rapports du Groupe intergouvernemental sur l'évolution du climat (GIEC) dont les conclusions jouissent, en vertu des critères établis par votre jurisprudence[87], de la plus haute valeur probatoire[88].

4. Le cas du Burkina Faso est symptomatique de cette injustice. Selon certaines évaluations, le Burkina Faso n'a contribué qu'à hauteur de 0,12 % aux émissions globales de gaz à effet de serre[89]. Pourtant, les déterminants clés de son développement, à savoir les ressources en eau, l'agriculture, l'élevage, les ressources halieutiques, la santé, l'énergie, les infrastructures et l'habitat, sont tous déjà gravement affectés par les effets néfastes des émissions de gaz à effet de serre et les changements climatiques y afférents[90].

5. Selon le GIEC, l'économie burkinabé a perdu, entre 1991 et 2010, plus de 20 % de son produit intérieur brut par individu du fait des effets néfastes des changements climatiques causés par les émissions anthropiques des gaz à effet de serre[91]. L'avenir est plus que sombre. Le Burkina Faso est le 29e État le plus vulnérable aux changements climatiques et le 158e État le mieux préparé pour y faire face[92]. L'action climatique, y compris celle de la présente Cour, est plus qu'urgente.

6. Monsieur le président, les changements climatiques, ce n'est pas seulement l'élévation du niveau de la mer. Chronologiquement, la désertification fut la première catastrophe climatique. Les membres de la Cour se rappellent, sans doute, la grande sécheresse de 1973. Celle-ci arriva exactement deux décennies après le début de l'augmentation vertigineuse des émissions de gaz à

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[87] Voir exposé écrit du Burkina Faso, 2 avril 2024, par. 7-12.

[88] Voir notamment, *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 135, par. 227. Exposé écrit du Burkina Faso, par. 7-12.

[89] PNUD, *Climate Promise : Burkina Faso* (accessible à l'adresse suivante : https://climatepromise.undp.org/fr/what-we-do/where-we-work/burkina-faso).

[90] Burkina Faso, *Troisième communication nationale sur les changements climatiques sous la convention-cadre des Nations Unies sur les changements climatiques* (CCNUCC, avril 2022), p. 15 (accessible à l'adresse suivante : https://unfccc.int/sites/default/files/resource/Troisième-Communication-Burkina Faso.pdf).

[91] Trisos, C.H. *et al., 2022: Africa. In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (accessible à l'adresse suivante : https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter09.pdf), p. 1386.

[92] Notre Dame Global Adaptation Initiative, Country Ranking: Burkina Faso (accessible à l'adresse suivante : https://gain.nd.edu/our-work/country-index/rankings/).

effet de serre[93]. L'Assemblée générale des Nations Unies l'avait qualifiée de « tragédie » et avait appelé à assister et à soutenir la « région soudano-sahélienne »[94].

7. Le Burkina Faso avait, dès le début des années 1980, notamment à travers le président Thomas Sankara, dénoncé les pollutions déversées dans la nature qui perturbent l'ordre établi des choses[95]. Le président Sankara avait appelé à la responsabilisation de « tous ceux qui, loin de chez nous, provoquent de façon directe et indirecte les perturbations climatiques et écologiques »[96]. En 1986, lors de la conférence de Paris sur la forêt et l'eau, il avait proposé « qu'au moins 1 % des sommes colossales sacrifiées dans la recherche de la cohabitation avec les autres astres servent à financer, de façon compensatoire, des projets de lutte pour sauver les arbres et la vie »[97]. Tant l'alerte donnée que les solutions proposées par le Burkina Faso furent ignorées.

8. Depuis la sécheresse de 1973, tout le Sahel, cette bande désertique allant du Sénégal à la Somalie, en passant par la Mauritanie, le Mali, le Burkina Faso, le Niger, le Tchad, le Soudan, l'Éthiopie, l'Érythrée et Djibouti, est traversé par des conflits internes qui hypothèquent tout espoir de développement. Tant pour le Conseil de sécurité[98] que pour le GIEC[99], les changements climatiques et, partant, les émissions de gaz à effet de serre sont l'une des causes de ces conflits, de leur fréquence, de l'augmentation de leur durée et de l'intensification de leur degré de violence[100].

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[93] Voir « Historical Carbon Dioxide emissions from Global Fossile Fuel Combustion and Industrial Processes in Selected Years from 1750 to 2022 » (accessible à l'adresse suivante : https://www.statista.com/statistics/264699/worldwide-co2-emissions/).

[94] Voir, la résolution 3253 (XXIX) de l'Assemblée générale : Examen de la situation économique et sociale de la région soudano-sahélienne victime de la sécheresse et mesures à prendre en sa faveur (4 décembre 1974).

[95] Thomas Sankara, « Sauver l'arbre, l'environnement et la vie tout court, Conférence pour la protection de l'arbre et de la forêt, Paris, 5 février 1986 », dans Daniel Gakunzi, *« Oser inventer l'avenir » : la parole de Sankara (1983-1987)*, Paris, L'Harmattan, 1988, p. 163-164.

[96] Thomas Sankara « Invité — Thomas Sankara, Président du Burkina Faso » (accessible à l'adresse suivante : https://www.youtube.com/watch?v=LA92O8VQdDc).

[97] Thomas Sankara, « Sauver l'arbre, l'environnement et la vie tout court : Conférence pour la protection de l'arbre et de la forêt, Paris, 5 février 1986 », dans Daniel Gakunzi, *« Oser inventer l'avenir » : la parole de Sankara (1983-1987)*, Paris, L'Harmattan, 1988, p. 166.

[98] Voir résolution 2349 (2017) du Conseil de sécurité (S/RES/2349 (2017)) (31 mars 2017), par. 26 (accessible à l'adresse suivante : https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2349(2017)&Language=E&DeviceType=Desktop&LangRequested=False) (les italiques sont de nous).

[99] *IPCC, 2022: Summary for Policymakers In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, p. 11, B.1.7. (accessible à l'adresse suivante : https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf).

[100] Voir résolution 2349 (2017) du Conseil de sécurité (S/RES/2349 (2017)) (31 mars 2017), par. 26 (accessible à l'adresse suivante : https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2349(2017)&Language=E&DeviceType=Desktop&LangRequested=False) ; Voir également, *IPCC, 2022: Summary for Policymakers, In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth*

9. Monsieur le président, face à cette grave injustice, le Burkina Faso place sa confiance dans le droit international et en la Cour qui en est la voix la plus autorisée. Le Burkina Faso se réjouit qu'aucun État n'ait véritablement contesté la compétence de la Cour pour rendre le présent avis consultatif. Quelques États ont timidement suggéré que la Cour devait examiner prudemment les questions posées. Ils ont prétexté notamment les négociations en cours sur les changements climatiques[101]. Tous les arguments soulevés dans ce contexte se heurtent à la jurisprudence établie de la Cour[102]. Le Burkina Faso ne les examinera donc pas davantage[103].

10. Pour le Burkina Faso, la Cour doit contribuer, conformément à la Charte, à l'œuvre des Nations Unies dont elle est l'« organe judiciaire principal ». Elle doit exercer sa compétence comme à son habitude et éviter de donner une réponse incomplète qui serait inefficace et risquerait d'induire en erreur l'Assemblée générale sur l'étendue et la portée des obligations pertinentes[104]. La Cour doit donc, en vertu de la question *a)*, indiquer *toutes* les obligations des États en matière d'émissions anthropiques de gaz à effet de serre et, en vertu de la question *b)*, clarifier *toutes* les conséquences juridiques de leurs violations.

Ce faisant, elle doit mettre un accent particulier sur les préjudices humains, environnementaux et socioéconomiques résultant de la désertification due aux émissions anthropiques de gaz à effet de serre.

11. Je voudrais, Monsieur le président, vous remercier pour votre aimable attention et vous prier de bien vouloir passer la parole au professeur Mamadou Hébié, qui fournira à la Cour quelques éléments de réponse aux deux questions posées par l'Assemblée générale.

Le PRÉSIDENT : Je remercie Son excellence M. Léopold Bonkoungou. Je passe maintenant la parole au professeur Mamadou Hébié.

Assessment Report of the Intergovernmental Panel on Climate Change, p. 12, B. 2.4 (accessible à l'adresse suivante : https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf).

[101] Voir notamment exposé écrit de la Chine, par. 9.

[102] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 237, par. 17 ; *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 159-160, par. 51-53.

[103] Voir *Obligations des États en matière de changement climatique (requête pour avis consultatif)* : observations écrites du Burkina Faso (14 août 2024) (ci-après, observations écrites du Burkina Faso), par. 15-16.

[104] Cf. *Interprétation de l'accord du 25 mars 1951 entre l'OMS et l'Égypte, avis consultatif, C.I.J. Recueil 1980*, p. 76, par. 10.

M. HÉBIÉ :

I. LES OBLIGATIONS DES ÉTATS EN MATIÈRE D'ÉMISSIONS ANTHROPIQUES DE GAZ À EFFET DE SERRE

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les Membres de la Cour, c'est un grand honneur pour moi de paraître devant votre haute juridiction et de le faire au nom de mon pays, le Burkina Faso. Je vais examiner, à tour de rôle, les deux questions qui ont été posées par l'Assemblée générale.

2. Mais avant toute chose, le Burkina Faso observe que tous les participants à la présente procédure reconnaissent que le droit international impose des obligations aux États et qu'il attache des conséquences juridiques à leur violation. Aucun ne soutient que les émissions de gaz à effet de serre évoluent dans un vide juridique. En revanche, et c'est la contradiction principale dans la présente procédure, certains États allèguent, sur le fondement de la doctrine de la *lex specialis*, que seulement la convention-cadre des Nations Unies sur les changements climatiques, le protocole de Kyoto et l'accord de Paris sont les seuls éléments du droit applicable, tant pour le contenu des obligations[105] que pour les conséquences juridiques de leurs violations[106].

3. Cependant, aucun de ces participants n'a apporté la preuve d'une dérogation expresse à toutes ces règles du droit international. Aucun n'a apporté la preuve d'une dérogation implicite à ces règles, comme cela est requis par le droit international[107]. Pour ces participants, le simple fait de la conclusion de ces traités sur les changements climatiques serait en lui-même la preuve de l'intention implicite de déroger à toutes les normes primaires du droit international et à toutes les normes secondaires, y inclus les obligations *erga omnes* et les règles du *jus cogens*.

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[105] Voir, entre autres, l'exposé écrit du Koweït, par. 60-65 ; l'exposé écrit du Japon, par. 4-18 ; l'exposé écrit de la Russie, p. 5 ; l'exposé écrit de l'OPEP, par. 62 ; l'exposé écrit de l'Arabie saoudite, par. 4.1-4.5 (voir plus généralement le chapitre IV de l'exposé écrit de l'Arabie saoudite) ; l'exposé écrit de l'Afrique du Sud, par. 12-20 ; l'exposé écrit conjoint des pays d'Europe du Nord, par. 52.

[106] Voir l'exposé écrit de l'Union européenne, par. 326-328 ; l'exposé écrit de l'Arabie saoudite, par. 4.6-4.9 et par. 6.3 ; l'exposé écrit de l'OPEP, par. 103 et 121 ; l'exposé écrit de l'Iran, par. 162 ; l'exposé écrit du Japon, par. 41 ; l'exposé écrit du Koweït, par. 85 et 93-107 ; l'exposé écrit de l'Afrique du Sud, par. 131.

[107] Articles de la CDI sur la responsabilité de l'État pour faits internationalement illicites et commentaires y relatifs (2001), *Annuaire de la Commission du droit international*, 2001, commentaire de l'article 55, vol. II, deuxième partie, p. 385, par. 4.

4. La Cour, qui a fait preuve de beaucoup de réserves à l'égard de la doctrine de la *lex specialis*[108], ne saurait accepter cette pétition de principe. Les dispositions des conventions onusiennes elles-mêmes indiquent qu'elles se soutiennent mutuellement avec les autres obligations du droit international, notamment celles qui protègent les droits humains et l'environnement marin[109]. Par ailleurs, selon la jurisprudence de la Cour, la renonciation au droit de mettre en œuvre la responsabilité internationale doit être « claire et non équivoque »[110]. Pourtant, aucune preuve n'a été apportée que tous les pays, qui ont adhéré à ces conventions, ont renoncé à leur droit de recevoir réparation pour les dommages causés par les émissions de gaz à effet de serre, certainement pas le Burkina Faso. Le Burkina Faso conclut, dès lors, que tout le droit international demeure applicable aux questions posées par l'Assemblée générale.

5. Monsieur le président, je passe maintenant à l'examen de la question *a)*. Celle-ci demande à la Cour de déterminer quelles sont « les obligations qui incombent aux États en ce qui concerne la protection du système climatique et d'autres composantes de l'environnement contre les émissions anthropiques de gaz à effet de serre »[111].

6. Monsieur le président, la question posée par l'Assemblée générale est claire. Elle ne demande pas de déterminer les obligations qui ont été adoptées spécifiquement sur la question des changements climatiques[112]. Elle concerne, je le répète, « les obligations qui incombent aux États en ce qui concerne la protection du système climatique et d'autres composantes de l'environnement contre les émissions anthropiques de gaz à effet de serre »[113].

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[108] *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda), arrêt, C.I.J. Recueil 2005*, p. 243, par. 216 ; *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif, C.I.J Recueil 2024 (I)*, par. 99.

[109] Voir notamment, préambule de l'accord de Paris, 12 décembre 2015, Nations Unies, *Recueil des traités*, vol. 3156, p. 79 (accessible à l'adresse suivante : https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-7-d&chapter=27&clang=_fr) ; voir aussi le préambule de la de la convention-cadre des Nations Unies sur les changements climatiques, 9 mai 1992, *Recueil des traités*, vol. 1771, p. 1007 (accessible à l'adresse suivante : https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII7&chapter=27&Temp=mtdsg3&clang=_fr).

[110] *Certaines terres à phosphates à Nauru (Nauru c. Australie), exceptions préliminaires, arrêt, C.I.J. Recueil 1992*, p. 247, par. 13.

[111] Question *a)* de la résolution 77/276 de l'Assemblée générale : demande d'avis consultatif de la Cour internationale de Justice sur les obligations des États à l'égard des changements climatiques (29 mars 2023).

[112] CR 2024/36, p. 26-35 (Arabie saoudite) ; voir également les observations écrites du Royaume-Uni, par. 10.1 et 11.

[113] Question *a)* de la résolution 77/276 de l'Assemblée générale : demande d'avis consultatif de la Cour internationale de Justice sur les obligations des États à l'égard des changements climatiques (29 mars 2023).

7. Pour le Burkina Faso, les obligations concernées sont donc non seulement des obligations dont l'objet principal est la protection du système climatique que nous avons examinées dans nos écritures[114], mais également celles qui exigent, de façon incidente, que l'État protège le système climatique afin de pouvoir se conformer à d'autres de ses obligations, notamment ses obligations de respecter les droits humains[115], les droits des peuples à l'existence et au développement[116], ainsi que le droit de coopérer de bonne foi en vertu de la Charte[117].

8. Toutefois, pour le Burkina Faso, l'avis de la Cour ne doit pas se résumer à un catalogue de toutes ces sources du droit international. La Cour doit, comme par le passé[118], rendre cette pratique digeste et opérationnelle pour l'Assemblée générale. Elle doit le faire en reconnaissant que ce dense faisceau normatif qui protège, à titre principal et à titre incident, le système climatique ainsi que la riche pratique étatique y relative, indique l'existence, dans l'*opinio juris* des États, d'obligations coutumières spécifiques aux émissions anthropiques de gaz à effet de serre et leurs effets néfastes dont les changements climatiques. Certaines de ces obligations sont applicables à tous les États. D'autres le sont seulement aux États développés.

9. Les obligations qui sont applicables à tous les États, et qui sont donc *erga omnes* et dont aucun État *ne saurait y déroger*, sont : 1) l'obligation générale de protéger et de préserver le système climatique, et cette obligation générale implique des *obligations* spécifiques, notamment 2) l'obligation de ne pas causer de dommages importants au système climatique ; 3) l'obligation de ne pas aggraver les vulnérabilités existantes du système climatique ; 4) l'obligation de ne pas adopter des mesures législatives, administratives ou autres qui facilitent les émissions de gaz à effet de serre par des tiers, y inclus les personnes privées ; 5) l'obligation de protéger, conserver et améliorer,

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[114] Voir exposé écrit du Burkina Faso, par. 101-182 (où le Burkina examine ces obligations qui émanent 1) du protocole de Montréal relatif à des substances qui appauvrissent la couche d'ozone ; 2) de la convention-cadre des Nations Unies sur les changements climatiques ; 3) de la convention des Nations Unies sur la lutte contre la désertification dans les pays gravement touchés par la sécheresse et ou la désertification, en particulier en Afrique ; 4) de la convention des Nations Unies sur le droit de la mer ; 5) de l'obligation coutumière générale de « due diligence » (diligence requise) ; et 6) de l'obligation de prévenir des dommages importants à l'environnement).

[115] Voir exposé écrit du Burkina Faso, par. 183-231.

[116] Voir *ibid.*, par. 201-210.

[117] Voir *ibid.*, par. 232-240.

[118] Voir *Réparation des dommages subis au service des Nations Unies, avis consultatif, C.I.J. Recueil 1949*, p. 177-180 ; *Réserves à la convention pour la prévention et la répression du crime de génocide, avis consultatif, C.I.J. Recueil 1951*, p. 18-21 ; *Mandat d'arrêt du 11 avril 2000 (République démocratique du Congo c. Belgique), arrêt, C.I.J. Recueil 2002*, p. 20-21, par. 51. Pour l'analyse de cette jurisprudence, voir l'exposé écrit du Burkina Faso, par. 241-244.

quantitativement et qualitativement, les capacités d'absorption des réservoirs et des puits de gaz à effet de serre ; 6) l'obligation de prendre les mesures de prévention nécessaires pour que les activités qui se déroulent sur les territoires des États ne causent pas de dommages importants au système climatique, et n'affectent pas la jouissance effective par les autres États, peuples et individus de leurs droits, y inclus les individus en dehors de la juridiction nationale ; 7) l'obligation d'adopter les mesures d'adaptation requises pour renforcer la résilience du système climatique et des autres composantes de l'environnement face aux effets néfastes des émissions de gaz à effet de serre ; et, enfin, 8) l'obligation de coopérer de bonne foi à la résolution des défis posés par les émissions de gaz à effet de serre, les changements climatiques et leurs effets néfastes.

10. Quant aux obligations supplémentaires qui sont applicables seulement aux États développés, conformément au principe de la responsabilité commune mais différenciée, il s'agit : 1) de l'obligation d'être à l'avant-garde de la lutte contre les changements climatiques, en prenant les mesures appropriées pour réduire drastiquement leurs émissions de gaz à effet de serre ; et 2) de l'obligation de fournir l'assistance technique, financière et le transfert de technologie requis par les pays en voie de développement, pour que ceux-ci puissent i) mettre en œuvre leurs obligations en matière de changement climatique, ii) s'adapter aux effets néfastes des changements climatiques ; et, enfin, iii) réaliser le droit de leurs peuples au développement.

II. LES CONSÉQUENCES JURIDIQUES POUR LES ÉTATS QUI, PAR LEURS ACTES ET OMISSIONS, ONT CAUSÉ DES DOMMAGES SIGNIFICATIFS AU SYSTÈME CLIMATIQUE

11. Monsieur le président, je passe maintenant à l'examen de la deuxième question, la question *b)*, qui invite la Cour à déterminer « les conséquences juridiques pour les États qui, par leurs actions ou omissions, ont causé des dommages significatifs au système climatique et à d'autres composantes de l'environnement »[119] en violation des obligations ci-avant mentionnées.

12. Pour le Burkina Faso, la question *b)* demande que la Cour établisse seulement le *principe de la responsabilité internationale* des États qui, par leurs émissions significatives de gaz à effet de serre, ont causé des dommages importants au système climatique. Pour accomplir cette tâche, il n'est

[119] Question *b)* de la résolution 77/276 de l'Assemblée générale : demande d'avis consultatif de la Cour internationale de Justice sur les obligations des États à l'égard des changements climatiques (29 mars 2023).

point besoin d'identifier individuellement quel État a émis quelle quantité de gaz à effet de serre pour quel dommage, à quelle partie du système climatique. Ce qu'il faut constater c'est qu'une immense majorité de pays, dont le Burkina Faso, n'y sont pour rien et qu'une minorité de pays qui sont relativement bien identifiés à l'annexe I de la convention-cadre[120] ont permis l'émission d'une quantité exorbitante de gaz à effet de serre qui a causé des dommages importants au système climatique, en violation des obligations applicables à tous les membres de ce groupe[121].

13. Donc, pour donner avis utile à l'Assemblée générale, la Cour doit seulement répondre à deux questions : 1) *Quelles sont les obligations internationales qui sont violées par* les actes et omissions des États visés qui ont conduit à des émissions significatives de gaz à effet de serre et les dommages y afférents ? et 2) Quelles conséquences juridiques s'attachent à ces violations ?

14. En réponse à la première question, le Burkina Faso a prouvé dans ses écritures que les États visés par la question *b)* ont violé 1) leur obligation de prendre les mesures de prévention nécessaires pour que les activités qui se déroulent sur leurs territoires ne causent pas de dommages importants au système climatique et n'affectent pas négativement la jouissance effective par les États, les peuples et les individus de leurs droits[122] ; 2) ils ont également violé l'obligation d'être à l'avant-garde de la lutte contre les changements climatiques du fait de n'avoir pas réduit drastiquement leurs émissions de gaz à effet de serre[123] ; 3) ils ont aussi violé l'obligation de ne pas adopter des mesures législatives, administratives ou autres qui favorisent ou facilitent les émissions de gaz à effet de serre par des tiers, y inclus par les personnes privées, ainsi que leur obligation de retirer les mesures déjà adoptées[124] ; 4) ils ont en outre violé l'obligation de fournir l'assistance financière, technique et le transfert de technologie requis pour permettre aux pays en voie de développement, et particulièrement les pays affectés par la désertification, de mettre en œuvre leurs obligations en matière de changement climatique et réaliser le droit de leurs peuples au

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[120] Voir, annexe I de la convention-cadre des Nations Unies sur les changements climatiques, 9 mai 1992, *Recueil des traités*, vol. 1771, p. 1007 (accessible à l'adresse suivante : https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_fr).

[121] Exposé écrit du Burkina Faso, par. 254-260.

[122] *Ibid.*, par. 278-313.

[123] *Ibid.*, par. 314-319.

[124] *Ibid.*, par. 320-325.

développement[125] ; enfin, 5) ils ont violé l'obligation de coopérer de bonne foi à la résolution des défis posés par les émissions de gaz à effet de serre et les changements climatiques, et leurs effets néfastes[126].]

15. Sur ce dernier point, le Burkina Faso n'ignore pas que la bonne foi doit toujours être présumée[127]. Toutefois, cette présomption simple doit être levée pour la question qui nous concerne. En effet, la bonne foi exige que tout État qui est soumis à une obligation internationale s'abstienne de tout acte visant à en empêcher l'exécution ou à réduire son objet à néant[128]. Pourtant, les États visés, au lieu de réduire drastiquement leurs émissions de gaz à effet de serre conformément à leurs obligations, ont accordé des subventions à la production, à la consommation, au transport et au stockage d'énergie fossile, décuplant ainsi les concentrations de gaz à effet de serre et leurs effets néfastes sur le système climatique. Contrairement à la détermination et au dynamisme avec lesquels ils ont fait preuve lorsqu'il s'agissait d'affronter la crise résultant de l'appauvrissement de la couche d'ozone dont les effets les concernaient plus directement[129], ici ils traînent des pieds pour exécuter leurs obligations d'assistance financière, technique et de transfert de technologie qui permettraient aux pays les plus affectés, dont ceux du Sahel, de faire face aux effets néfastes des gaz à effet de serre. Par ailleurs, ils refusent toute réforme du système financier et monétaire international qui permettrait aux États les plus affectés d'utiliser leurs propres moyens pour pouvoir faire face au péril existentiel auquel ils sont confrontés.

16. Monsieur le président, je passe à l'examen de la deuxième question à laquelle la Cour doit répondre pour pouvoir répondre à la question *b)* de l'avis consultatif. Le Burkina Faso soutient que les conséquences juridiques ordinaires du droit de la responsabilité internationale, la cessation, la non-répétition et la réparation pleine et intégrale s'appliquent.

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[125] Exposé écrit du Burkina Faso, par. 326-330.

[126] *Ibid.*, par. 331-336.

[127] *Affaire du lac Lanoux (Espagne/France)* (16 novembre 1957), *Recueil des sentences arbitrales*, vol. XII, p. 305.

[128] Commission du droit international, « Troisième rapport sur le droit des traités par Sir Humphrey Waldock », rapporteur spécial (doc. A/CN.4/167 et Add.l-3), p. 3 (accessible à l'adresse suivante : https://legal.un.org/ilc/documentation/french/a_cn4_167.pdf) ; rapport de la Commission à l'Assemblée générale (doc. A/5809) : rapport de la Commission du droit international sur les travaux de sa seizième session (11 mai-24 juillet 1964), commentaire de l'article 55, *Annuaire de la Commission du droit international*, 1964, vol. II, p. 185-186, par. 4.

[129] Exposé écrit du Burkina Faso, par. 104-111.

17. *Concernant l'obligation de cessation*, les États visés doivent, *premièrement*, retirer toutes les mesures administratives, législatives et autres, notamment les aides, subventions et autres incitations à la production, au stockage, au transport ou à la consommation d'énergies fossiles.

18. *Deuxièmement,* ils doivent prendre toutes les mesures nécessaires pour que les activités qui se déroulent sur leurs territoires, notamment celles des compagnies pétrolières, ne causent pas d'émissions de gaz à effet de serre affectant la jouissance effective par les États, peuples et individus de leurs droits.

19. *Troisièmement*, ils doivent fournir l'assistance technique, financière et le transfert de technologie requis pour que les États en voie de développement, et plus particulièrement ceux affectés par la désertification, puissent faire face aux défis des changements climatiques. En particulier, ils doivent soutenir l'« Initiative de la Grande Muraille Verte », portée à ses débuts par le Burkina Faso et endossée par l'Union africaine[130], en tant que mesure de restauration active requise afin de rétablir l'environnement sahélien en son état d'origine[131].

20. *Quatrièmement*, ils doivent désormais coopérer de bonne foi à la résolution des problèmes posés par les changements climatiques. Concrètement, ces États, qui sont les principaux architectes du système économique et financier mondial actuel et en sont les principaux bénéficiaires, doivent prendre l'initiative de sa réforme en suivant, en cela, les lignes tracées dans la déclaration concernant l'instauration d'un nouvel ordre économique international[132] et la Charte des droits et devoirs économiques des États[133]. En effet, la grande majorité des traités qui visent à protéger le système climatique et les autres composantes de l'environnement s'accordent sur le fait que les inégalités du système monétaire, économique et financier actuel constituent un obstacle majeur à l'atteinte de leurs objectifs[134].

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[130] Voir « Initiative de la Grande Muraille Verte : Plan d'investissement prioritaire décennal 2021-2030 (PIPD/GMV) » (accessible à l'adresse suivante : https://www.grandemurailleverte.org/images/FR-PIPD.pdf).

[131] Cf. *Certaines activités menées par le Nicaragua dans la région frontalière (Costa Rica c. Nicaragua), indemnisation, arrêt, C.I.J. Recueil 2018 (I)*, p. 28-29, par. 42-43.

[132] Résolution 3201 (S-VI) intitulée « Déclaration concernant l'instauration d'un nouvel ordre économique international » (1er mai 1974). Exposé écrit du Burkina Faso, par. 399-401.

[133] Voir résolution 3281 (XXIX) de l'Assemblée générale intitulée « Charte des droits et devoirs économiques des États » (12 décembre 1974).

[134] Article 3 de la convention-cadre des Nations Unies sur les changements climatiques, 9 mai 1992, *Recueil des traités*, vol. 1771, p. 1007 (accessible à l'adresse suivante : https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_fr) ; voir également l'article 5, paragraphe 3, du protocole de Montréal relatif à des substances qui appauvrissent la couche d'ozone (avec

21. S'agissant de la réparation du préjudice causé, les États visés par la question *b)* doivent offrir une indemnisation prompte, adéquate et effective aux États spécialement lésés par la violation de leurs obligations, en accordant priorité aux États frappés par la désertification et aux petits États insulaires en développement. Ils doivent également compenser l'immense préjudice socioéconomique causé par les émissions anthropiques de gaz à effet de serre et leurs effets néfastes dont la désertification, y inclus les pertes de produit intérieur brut mentionnées plus avant[135].

22. Enfin, puisque l'obligation de protéger le système climatique est une obligation *erga omnes* et que son noyau dur, l'obligation de ne pas causer de dommages significatifs au système climatique est une norme de *jus cogens*[136], toutes les conséquences juridiques du régime spécial du droit de la responsabilité internationale sont aussi applicables dans la présente procédure[137].

III. CONCLUSION

23. Monsieur le président, pour le Burkina Faso, l'heure est venue que la Cour reconnaisse que l'obligation générale de tous les États de protéger et de préserver le système climatique est une obligation *erga omnes*, opposable à tous les États membres de la communauté internationale. L'heure est également venue de reconnaître que l'obligation de ne pas causer de dommages importants au système climatique est une règle de *jus cogens*.

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annexe), conclu à Montréal le 16 septembre 1987, *Recueil des traités*, vol. 1522, p. 29 (accessible à l'adresse suivante : https://treaties.un.org/doc/publication/unts/volume%201522/volume-1522-i-26369-french.pdf) ; article 12 de la convention des Nations Unies sur la lutte contre la désertification dans les pays gravement touchés par la sécheresse et/ou la désertification, en particulier en Afrique, 14 octobre 1994, *Recueil des traités*, vol. 1954, p. 3 (accessible à l'adresse suivante https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-10&chapter=27&clang=_fr) ; paragraphe 6 du préambule de la convention des Nations Unies sur le droit de la mer, 10 décembre 1982, *Recueil des traités*, vol. 1834, p. 3 (accessible à l'adresse suivante : https ://treaties.un.org/pages/ViewDetails III.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_fr).

[135] Exposé écrit du Burkina Faso, par. 377-388.

[136] Projet de conclusions sur la détermination et les conséquences juridiques des normes impératives du droit international général (*jus cogens)* et commentaires y relatifs, *Annuaire de la Commission du droit international*, 2022, vol. II, deuxième partie, p. 92-93, par. 15 ; voir également, articles sur la responsabilité de l'État pour faits internationalement illicites et commentaires y relatifs (2001), *Annuaire de la Commission du droit international*, 2001, vol. II, deuxième partie, p. 307, note de bas de page 687 ; rapport de la Commission du droit international sur les travaux de sa vingt-huitième session (3 mai-23 juillet 1976) (doc. A31/10) : cinquième rapport du rapporteur spécial, M. Ago, *Annuaire de la Commission du droit international*, 1976, vol. II, deuxième partie, p. 101, commentaire de l'article 19, par. 33.

[137] Voir exposé écrit du Burkina Faso, par. 389-401. Voir également *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif du 19 juillet 2024*, par. 273-279 ; *Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, avis consultatif, C.I.J. Recueil 2019 (I)*, p. 139, par. 180 ; *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, ordonnance du 19 décembre 2003, C.I.J. Recueil 2004 (I)*, p. 200, par. 159 ; *Conséquences juridiques pour les États de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 55-56, par. 122 et 125-127.

24. Monsieur le président, pour terminer, si nous devions résumer la présente procédure en une simple question, elle serait la suivante, peut-être un peu longue : un groupe limité d'États peuvent-ils, conformément au droit international, détruire un bien commun indispensable à la survie de l'humanité (je parle du système climatique) pour s'enrichir, et déplacer tout le fardeau des effets néfastes de leurs actions sur des États, peuples et individus tiers, tout en remettant toujours à plus tard, sinon à jamais, la question de leur responsabilité et de leur solidarité ? La réponse du Burkina Faso, pays des hommes intègres, est : *non*. Non, nul ne peut s'enrichir injustement[138] et se développer économiquement au prix du sacrifice des droits des États, des peuples et des individus tiers[139]. *Non* ; ces États sont tenus par toutes leurs obligations émanant du droit international et de toutes les conséquences juridiques de leurs faits internationalement illicites. Je vous remercie, Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les Membres de la Cour, pour votre bienveillante attention.

Le PRÉSIDENT : Je remercie les représentants du Burkina Faso pour leur présentation. J'invite à présent la délégation du Cameroun à prendre la parole et appelle S. Exc. M^me^ Madeleine Liguemoh Ondoua à la barre.

M^me^ LIGUEMOH ONDOUA :

INTRODUCTION

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les juges, honorables Membres de la Cour en vos rangs et qualités, la République du Cameroun, par la voix de son ambassadrice, fait écho des propos d'autres parties pour une fois de plus saluer la contribution significative de la Cour à la construction inexorable d'une société internationale fondée sur le respect de la règle de droit.

2. Le rôle de la présente session marque un pas historique en ce sens qu'il appelle votre auguste Cour à se prononcer sur une question d'importance particulière au regard des enjeux climatiques

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[138] Sur l'impact du principe de l'enrichissement sans cause dans la présente procédure, voir exposé écrit du Burkina Faso, par. 407-408.

[139] Voir résolution 3281 (XXIX) de l'Assemblée générale intitulée « Charte des droits et devoirs économiques des États » (12 décembre 1974), art. 30.

susceptibles d'hypothéquer l'avenir commun de l'humanité. Il s'agit pour la Cour de reconnaître solennellement puis de consacrer le lien inextricable qui existe entre le changement climatique et les droits humains et, enfin, d'affirmer la responsabilité des parties dans les faits climatiques constatés. Par conséquent la Cour devra certes faire sien le principe de la responsabilité commune mais différenciée des États admis en droit international depuis la conférence de Rio, mais surtout inférer les obligations qui en découlent et incombent aux pays développés qui détiennent la très grande majorité de stocks de carbone dans l'atmosphère avec des pesanteurs sur les progrès humains et économiques des pays en développement.

3. Au nom du Cameroun, c'est un honneur de présenter nos hommages à la Cour et de la remercier pour son apport substantiel à la résolution des différends internationaux ainsi qu'au développement du droit international. La Cour a été particulièrement sollicitée ces dernières années, preuve de la confiance que lui accordent de plus en plus les États.

4. La présente analyse implique aussi l'importance de reconnaître le droit des générations futures dans le contexte des droits des peuples, notamment à la lumière de la Charte africaine des droits humains et des peuples de 1981 et d'autres normes internationales pertinentes.

5. Mr President, for this noble cause to be heard for our State, the Republic of Cameroon wishes that the Court recognizes the crime of ecocide in order to complete the legal framework essential for the recognition of the State responsibility for the environmental disasters described and, where appropriate, the relating compensatory measures should be deducted.

6. Mr President, we wish that you give the floor to our legal expert, Barrister Pierre-Olivier Savoie, to present the gist of the legal point defended by the Republic of Cameroon. Thank you for your kind attention.

Le PRÉSIDENT : Je remercie S. Exc. M^me^ Madeleine Liguemoh Ondua et, avant de passer la parole à M. Pierre-Olivier Savoie, je voudrais m'assurer que … il y a un problème technique... Bon. Vous avez la parole, M. Pierre-Olivier Savoie.

M. SAVOIE :

OBLIGATIONS LIÉES AU SYSTÈME CLIMATIQUE, DROIT DES PEUPLES ET DES GÉNÉRATIONS FUTURES, OBLIGATIONS DIFFÉRENCIÉES, ÉCOCIDE, DROITS HUMAINS, RESPONSABILITÉ DE L'ÉTAT, PROTECTION CLIMATIQUE ET PROTECTION DES INVESTISSEMENTS ÉTRANGERS

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les juges, c'est évidemment un plaisir et un honneur d'être de retour devant la Cour. La première partie de l'exposé oral du Cameroun devait être présentée par M. Mougnal Sidi, directeur des affaires juridiques au ministère des relations extérieures, signataire des observations écrites du Cameroun. Je me vois malheureusement contraint de vous présenter ses hommages, car il ne pourra être des nôtres aujourd'hui, ce qu'il aurait vivement souhaité — notamment pour demander à la Cour d'endosser la notion d'écocide. Je vais donc essayer de rendre justice aujourd'hui aux idées et positions que M. Sidi voulait présenter au nom du Cameroun et de la nation camerounaise. C'est une grande responsabilité pour moi, dont je vais essayer de m'acquitter avec honneur et respect. J'en profite pour remercier S. Exc. M^me^ l'ambassadrice du Cameroun, Madeleine Liguemoh Ondoua, pour ses propos introductifs.

2. Je voudrais aussi vous avertir que je vais alterner entre le français et l'anglais dans ma plaidoirie, en hommage aux deux langues officielles de la Cour, qui sont aussi celles du Cameroun.

3. Dans un premier temps, la Cour est évidemment compétente pour répondre à la demande d'avis consultatif de l'Assemblée générale. La demande est aussi recevable, et le Cameroun remercie à l'avance la Cour pour sa contribution au développement du droit international et au bon fonctionnement de l'Organisation des Nations Unies, de par l'avis qu'elle rendra.

4. La première question posée à la Cour lui demande d'identifier les obligations qui incombent aux États en ce qui concerne la protection du système climatique, incluant pour les générations présentes et futures.

5. Il existe des obligations liées à la protection du système climatique dans de nombreuses conventions internationales, au-delà de celles spécifiquement sur le sujet. Nous les avons mentionnées dans les observations écrites du Cameroun. Elles incluent :

— la Charte des Nations Unies ;

— le Pacte international relatif aux droits civils et politiques ;

— le Pacte international relatif aux droits sociaux, économiques et culturels ;

— la convention-cadre des Nations Unies sur les changements climatiques ;

— l'accord de Paris, bien sûr ; et

— la convention des Nations Unies sur le droit de la mer.

6. Les obligations suivantes incombent aussi aux États en la matière :

— l'obligation de diligence requise (et nous soutenons les observations du Brésil de ce matin sur l'obligation de *due diligence*) ;

— les droits reconnus dans la Déclaration universelle des droits humains ;

— le principe de prévention des dommages significatifs à l'environnement, incluant les dommages transfrontières ; et

— l'obligation de protéger et de préserver le milieu marin.

7. Le Cameroun veut aussi attirer l'attention de la Cour sur un type d'obligations reconnues — et j'insiste sur le mot « reconnues », plutôt que « créées » — par l'accord de Paris, parce que ces obligations doivent être considérées comme existant en plus et indépendamment de cet accord. Il s'agit des *obligations différenciées et des capacités respectives* mentionnées aux articles 2)-4) notamment de l'accord de Paris. Ces obligations sont importantes pour le Cameroun et il en découle des conséquences significatives, sur lesquelles nous invitons la Cour à fournir l'élaboration nécessaire. En effet, les pays africains et les autres pays en voie de développement ne sont pas à l'origine de la crise climatique et n'ont pas non plus bénéficié des avantages économiques résultant des niveaux élevés d'industrialisation.

8. Les pays développés doivent aussi assurer un soutien financier aux pays en voie de développement afin de les aider à atteindre les objectifs climatiques. La Cour est invitée à clarifier autant que possible les obligations financières des pays développés en ce sens.

9. Il faut aussi aborder le droit des générations non seulement présentes mais aussi futures.

10. Le droit des générations à venir a été reconnu par la Cour dès son avis consultatif sur la *Licéité de la menace ou de l'emploi d'armes nucléaires*, en 1996. La Cour s'est aussi référée au principe d'équité intergénérationnelle dans son arrêt *Gabčíkovo-Nagymaros*, en 1997. Il y a maintenant 14 ans, le juge Cançado-Trindade énonçait un principe que la Cour pourra certainement reconnaître aujourd'hui : « De nos jours, en 2010, on ne peut guère douter que la reconnaissance de

l'équité intergénérationnelle procède de la sagesse conventionnelle en droit international de l'environnement. »

11. Un grand nombre de traités et d'autres instruments internationaux, que nous énumérons dans nos observations écrites, et qui incluent l'accord de Paris, se réfèrent aussi au principe de l'équité intergénérationnelle.

12. Il faut aussi rappeler que le Cameroun a porté à l'attention de la Cour la Charte africaine des droits humains et des peuples et, en particulier, ses articles 19 à 24 sur l'égalité des peuples. Vous avez avec vous un extrait de cette pièce n° 1, la Charte africaine, dans ses versions française et anglaise. Les articles 19 à 24, que vous avez devant vous, sont pertinents non seulement sur l'équité intergénérationnelle, mais aussi parce qu'ils confirment de larges obligations, existantes, en matière d'obligations communes mais différenciées, comme je le mentionnais plus tôt, au-delà des termes de l'accord de Paris.

13. Sur le droit des générations futures, la Cour pourra s'inspirer de la tradition africaine du droit international, notamment des principes énoncés à l'article 24 de la Charte africaine. Celui-ci prévoit, en français, que « [t]ous les peuples ont droit à un environnement satisfaisant et global, propice à leur développement ». Et en anglais : "All peoples shall have the right to a general satisfactory environment favourable to their development."

14. Qui dit droit des peuples, dit nécessairement droit des générations futures, qu'il faut considérer dès aujourd'hui. Les observations du Vanuatu d'hier allaient certainement dans ce sens.

15. C'est une des raisons pour lesquelles le Cameroun invite la Cour à reconnaître la notion d'écocide, ainsi que les conséquences juridiques qui doivent découler d'un tel acte. Pour le Cameroun, il existe certainement une norme impérative de droit international à l'effet que nulle personne, physique ou morale, ne peut commettre ou laisser commettre, des actes d'une telle gravité qu'ils pourraient être considérés comme pouvant mener à la destruction de l'environnement, de la planète, ou des peuples ou de leur territoire, notamment si leur environnement est menacé. Le niveau de gravité requis pour constituer un « écocide » devra être jugé au cas par cas, et pourra évoluer avec le temps. Ce qui est certain aujourd'hui est qu'un tel niveau de crime ou de violation du droit international se doit d'exister et que de telles actions pouvant mener à la destruction de la planète ou des peuples ou de leur territoire se doivent d'être prohibées comme telles.

16. La Cour pourra reconnaître que des actes graves d'une telle nature mettraient évidemment en œuvre le régime de l'article 41 des articles sur la responsabilité des États, requérant la coopération de tous les États pour mettre fin à une telle violation ou situation et toutes les autres conséquences qui en découlent. Nous avons aussi noté la référence au *jus cogens* du Burkina Faso qui peut-être, en un sens, dit un peu la même chose.

17. La reconnaissance d'un tel régime de responsabilité, requérant aussi aux États d'exercer leur juridiction pénale sur les individus concernés — dans la mesure où cela serait pertinent —, est aussi dans l'intérêt des générations futures.

18. Cet intérêt inclut aussi la nécessité de transferts financiers substantiels vers les pays en voie de développement pour rencontrer les objectifs climatiques. Comme le Cameroun l'a déjà indiqué, la Cour est invitée à se pencher autant que possible sur le détail de ces obligations. Dans l'intérêt des générations futures, il pourra aussi être approprié, pour la Cour, de souligner l'importance des obligations anticorruption applicables à tous les États, afin d'assurer un bon fonctionnement du système de protection climatique et une transition énergétique appropriée, tel que le Cameroun l'a indiqué dans ses secondes observations écrites.

19. C'est maintenant le temps de passer de la langue de Laferrière et Senghor à celle de Mandela, Mbue et Morrison.

20. I will address three further issues. First, I will address the importance of the human rights framework in relation to climate change obligations. Second, I will address certain issues arising from State responsibility and the consequences stemming from violations of obligations related to climate change. Finally, I will conclude on the interaction between international law for the protection of foreign investment and international law obligations on climate change, a subject on which Cameroon believes the Court could help clarify legal obligations and the hierarchy of norms, in the interest of a good and proper energy transition.

21. In respect of human rights, Cameroon invites the Court to recognize the links between climate change and human rights obligations. For Cameroon, paragraph 11 of the preamble of the Paris Agreement, which recalls that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights", actually applies more

generally and, in reality, stems from and reflects an independent binding obligation on all States to do so.

22. There is no conflict, for Cameroon, between human rights obligations and climate change obligations, since their relationship is one of both interpretation and integration. The same applies to other international law obligations, whether conventional or customary, outside the climate change agreements framework.

23. Cameroon respectfully requests the Court to recognize the impact of climate change on human rights — in particular the right to self-determination, which includes the right to territorial integrity, as recalled by our friends from island nations yesterday, the right to life, the right to access to water, the right to food, the right to health, the right to private and family life, and the right to development. Moreover, the Court should also recognize the repercussions of climate change on these rights, and that such repercussions are all the more significant for vulnerable persons.

24. With respect to specifically the right to development, Cameroon would like to associate itself with the position of the African Union that the right to development must be interpreted in the light of the objective of eradicating poverty, an issue referenced by Brazil earlier today, which is essential for sustainable development.

25. Cameroon would also like to associate itself with the request from the European Union that the Court confirm the existence of the right to a healthy environment as a customary international law norm. Cameroon recalls, again, because it is important, that Article 24 of the African Charter of Human and Peoples' Rights confirms a right of all peoples to a "general satisfactory environmental favourable to their development". The African Commission on Human and Peoples' Rights has significantly developed this right, as underscored in Cameroon's second written submission.

26. J'aimerais maintenant me pencher sur quelques éléments concernant la responsabilité des États. Pour le Cameroun, les conséquences juridiques découlant de la violation des obligations concernant le régime de protection climatique s'analysent au regard du droit général de la responsabilité des États, tel que reflété dans les articles sur la responsabilité des États pour fait internationalement illicite.

27. Il existe en tous les cas plusieurs obligations coutumières qui s'appliquent au régime de protection climatique, telles que déjà énumérées. Leur violation entraîne la responsabilité en vertu du régime général de responsabilité. Il est important, Monsieur le président, que la Cour le confirme.

28. Le Cameroun considère aussi qu'il existe une différenciation entre les pays développés et les pays en voie de développement, qui sont plus vulnérables aux conséquences du changement climatique et qui ont contribué de manière marginale aux émissions de gaz à effets de serre. Ainsi, au regard de la contribution historique des pays développés, les pays en développement, premières victimes des changements climatiques, devraient recevoir une indemnisation pour les préjudices subis. L'indemnisation comme forme de réparation joue un rôle essentiel pour soutenir les pays en développement dans leurs actions. Elle peut s'opérer par le biais de fonds dédiés, ou autrement.

29. I will now discuss my third point: the interaction between States' compliance with international climate change obligations and international obligations pertaining to the protection of foreign investment. To recall, the first question to be addressed by the Court is:

> "*(a)* What *are the obligations of States* under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and present and future generations?"

30. As the Court has held before, it can rewrite advisory questions posed to it or re-interpret them when answering the question. That said, what Cameroon will now outline are obligations, including how they are to be applied, in relation to the protection of the climate system. In its second submission, Cameroon brought to the Court's attention the Continental African Free Trade Area (CAFTA) Investment Protocol — its Exhibit 12, which you have with you — adopted by 54 African countries in October 2022. We have provided you with an extract as I mentioned, so you can read for yourself Article 24, which we will examine together. We have provided the 2022 final version adopted by States parties, as well as a later 2023 identical text in French and English. What matters for our climate change purposes, is that relevant parts of the treaty, and in particular its Article 24, because of how it is drafted, reflects the consensual position of all 54 African States, from which the Court can and should draw conclusions.

31. The text of Article 24 (Right to Regulate) of the CAFTA Investment Protocol provides:

> "In accordance with customary international law and other general principles of international law, each State Party has the right to regulate, including to take measures to ensure that investment in its territory is consistent with the goals and principles of

> *sustainable development*, and with other national [in the English or legitimate, in the French] *environmental, health, climate* [the word we are looking for], social and economic policy objectives and essential security interests.
>
> [Now let's note the next three words:] *For greater certainty* measures taken by a State Party to comply with its international obligations under other relevant treaties [like the Paris Agreement or the other treaties we have mentioned] do not constitute a violation of this Protocol.
>
> [Then it says:] For avoidance of doubt, the exercise of the right to regulate under paragraphs 1 and 2 shall not give rise to any claim by an investor for compensation."

So, the measures adopted to ensure the compatibility of investments with "the objectives and principles of sustainable development" and other good faith, national, legitimate "environmental, health, *climate*, . . . policy objectives", do not violate the investment protection obligations of the pan-African Investment Protocol — or, in essence, international investment obligations more generally — and cannot give rise to compensation.

32. Article 24 uses the words "*Il est entendu*" in French and "For greater certainty" in English, to recall that compliance with climate obligations is not a breach of investment protection obligations. As reflected by other Cameroonian treaty practice pointed out in Cameroon's second written submission, "*Il est entendu*" and "For greater certainty" in treaty drafting means that the parties having concluded a treaty containing such terms consider that the relevant obligation or principle referred to applies even absent a treaty obligation.

33. Article 24 of the Investment Protocol of the African Continental Free Trade Agreement therefore demonstrates a continent-wide view that the rules I have referred to apply even in the absence of treaty standards.

34. The application, in good faith, of legitimate climate obligations, like the Paris Agreement or the other rules that we have talked about, by States therefore cannot lead to breach of investment protection obligations and the grant of compensation. Cameroon, as one of the 54 African States, therefore considers that this norm generally reflects custom. The Court — or judges in any individual opinions — are thus invited to recognize, at least, a regional custom applicable to the entire African continent, and possibly a larger universal one, to this effect, whether or not the CAFTA, or any other treaty, is directly applicable. That is, a good-faith application of climate obligations cannot lead to a breach of foreign investment protection obligations, or compensation. Such clarification from the

Court would be very helpful for States' implementation of the right to regulate in the application of climate obligations and, as such, the protection of the climate system.

35. Pour terminer, Monsieur le président, Madame la vice-présidente, Vos Excellences Mesdames et Messieurs les juges, j'aimerais vous remercier pour votre attention. En guise de conclusion, j'aimerais ajouter ce qui suit. Vous aurez peut-être l'impression, cette semaine et la semaine prochaine, que les plaidoiries se suivent et se ressemblent, sur le contenu. Mais cela est une vertu, sans rien enlever à la créativité et l'ingéniosité des différents plaideuses et plaideurs dans le Grand Hall de la Paix. S'il y a un sentiment de déjà-vu d'un plaideur à l'autre, d'une plaideuse à l'autre, c'est tout simplement parce que nous avons essentiellement un consensus, sur une majorité de points d'importance capitale pour l'humanité et l'avenir de la planète, des peuples, des Nations Unies, et des générations présentes et futures. Ce consensus, la Cour saura certainement le rappeler dans son avis consultatif. Et pour cela, la République du Cameroun vous en remercie à l'avance. Merci, Monsieur le président.

Le PRÉSIDENT : Je remercie les représentants du Cameroun pour leur présentation. I now invite the delegation of the Philippines to address the Court and I call upon His Excellency Eduardo Malaya to take the floor.

Mr MALAYA:

INTRODUCTION

1. Mr President, distinguished Members of the Court, it is an honour and privilege to appear before this Court on behalf of the Republic of the Philippines. Together with the head of our delegation, Solicitor General Menardo I. Guevarra, Ambassador Carlos Sorreta and Assistant Solicitor General Bernard Hernandez, the Philippines will address an issue which pertains to the greatest existential threat that we as a humanity face — the climate change crisis.

2. The Philippines, as we speak, is at the tail end of the tropical cyclone season, but the recent seven destructive typhoons that successively barrelled through the country within a month's time were unprecedented in its frequency. In a matter of hours, homes were inundated, livelihoods

shattered, years of development work swept away, and precious lives lost. Filipinos are resilient and have coped with calamities, but the typhoons' increasing severity is outstripping adaptive capacities.

3. The reality of extreme weather events, rising sea levels and other adverse effects of warming temperatures around the world, all of which are beyond natural climate variability, requires all of us to take bold and decisive actions.

4. Mr President, the Philippines has consistently understood the nexus between the environment, the well-being of States and peoples, and international peace and stability. For one, the Philippines now hosts the Loss and Damage Fund Board, a mechanism operationalized at COP28 as a lifeline for vulnerable peoples and places. In addition, President Ferdinand R. Marcos, Jr., in his statement at the High-Level General Debate of the Seventy-seventh Session of the UN General Assembly, characterized the threats to *kalikasan*, the Filipino word for the natural environment, as "the greatest threat affecting our nations and peoples". It is this understanding that informs our submissions to the Court as we address the Request of the General Assembly.

5. In fact, in September 2023, the Philippines urged the International Tribunal for the Law of the Sea to view the warming of our planet and the resulting changes to the natural environment as a threat to humanity and a key risk to international peace and stability.

6. As we convey our gratitude to the Court for convening these oral proceedings, we look to it to provide authoritative guidance to address the worsening global catastrophe and to fulfil our respective obligations in ensuring the well-being of present and future generations in this shared home we call Earth.

7. Mr President, may I introduce Solicitor General, Menardo I. Guevarra, who will speak on the scientific consensus and Philippine situation, to be followed by Permanent Representative to the United Nations in Geneva, Carlos Sorreta, to speak on the UN Charter, human rights and UNCLOS. The Solicitor General will speak again to make further legal arguments and conclude with the Philippine Government's submission. I thank you.

The PRESIDENT: I thank His Excellency Eduardo Malaya. I now give the floor to Mr Menardo Guevarra. Sir, you have the floor.

Mr GUEVARRA:

SCIENTIFIC CONSENSUS AND PHILIPPINE SITUATION

1. Mr President, your Honours, the denial of climate change and the impact of anthropogenic emissions is negated by overwhelming scientific consensus. The 2023 Synthesis Report of the Intergovernmental Panel on Climate Change shows unprecedented global warming of 1.1°C above pre-industrial levels from 2011 to 2020 and has predicted that the warming will more likely reach or surpass 1.5°C between 2021 and 2040.

2. This prediction has come to pass. As of August 2024, the earth's temperature crossed a critical barrier never experienced in all of human history.

3. The dire consequences of the increasing global temperature, such as severe and extreme weather events, intense heatwaves, devastating typhoons with violent storm surges, prolonged droughts, wildfires, catastrophic floods and their tremendous human toll are life and death realities for many developing States like the Philippines. They are not abstractions.

4. The Philippines, a mid-ocean archipelago, perennially suffers the brunt of devastating tropical cyclones. Historically, East Asia experiences twenty tropical cyclones annually; and about eight or nine of them batter the Philippines, with increasing frequency and intensity due to the climate change crisis.

5. In December 2012, Super Typhoon Bopha (locally known as Pablo) made landfall in Davao Oriental province and crossed over to Davao de Oro. These two provinces in southern Philippines have never before experienced super typhoons. Torrential rains generated enormous debris flow from the Mayo River watershed and wiped out an entire village and, in the process, displaced thousands of families, damaged billions of pesos worth of infrastructure and livelihood and caused the loss of lives of hundreds of Filipinos.

6. Coming on the heels of such devastation was Super Typhoon Haiyan (locally known as Yolanda) which made landfall as a category five storm in the Philippines in November 2013. Its deadly and extremely destructive winds exceeded 315 kilometres per hour, causing storm surges that reached up to 5 metres high. It affected more than 14 million people across 44 provinces, claiming over 8,000 lives, and displacing 4 million Filipinos.

7. While undoubtedly the most powerful tropical cyclone to ever make landfall in recent memory, Super Typhoon Haiyan is less likely to hold this record for long.

8. Over the course of six weeks, from 1 October to 14 November 2024, the Philippines experienced seven typhoons. Of this number, three reached super typhoon category (namely Krathon, Kong-rey and Man-yi), and one reached tropical cyclone warning signal No. 4 (namely Yinxing). Two of those typhoons alone affected an estimated 9.6 million people, damaged 208,000 homes, displaced 258,000 people and resulted in 158 deaths.

9. While the typhoon and monsoon seasons bring torrential amounts of rain, the dry months, on the other hand, cause unprecedented levels of extreme heat indices. When we are not being drenched, we are being scorched.

10. In May 2024, the highest recorded heat index in the Philippines reached an alarming 55°C — an "extreme danger" category which caused successive class suspensions, significantly affecting the quality of education of hundreds of thousands of schoolchildren.

11. Data from the Philippine education department show that in recent past, an annual average of almost 15 days of on-site learning were lost on account of extreme heat.

12. Not only that, the extreme danger heat index contributed to serious loss in agricultural productivity, affected power supply, and exposed vulnerable sectors of society, such as the elderly, children, pregnant women and persons with respiratory illnesses, to heat stroke and, in some cases, death.

13. Moreover, in our oceans, higher atmospheric temperature has caused major concerns about rising sea temperatures, ocean acidification and coral bleaching. These phenomena ultimately affect the ocean biodiversity that is essential to food security and the livelihood of millions of Filipino fisherfolk.

14. Filipino marine biologists have found extensive coral damage in Escoda Shoal which they attribute to the "anomalous warming" of the waters in the West Philippine Sea.

[On screen: short video of an interview with Filipino marine biologist, Dr Jonathan A. Anticamara.]

15. It is our humble submission, Mr President, that this environmental crisis attributed to anthropogenic GHG emissions is surely not experienced in isolation by the Philippines. As we have

learned from Vanuatu, the Bahamas, Bangladesh and South Africa, among others, these unusual and unprecedented climate changes have become a global phenomenon.

16. Mr President, at this point, I turn over the floor to Ambassador Sorreta.

The PRESIDENT: I thank Mr Guevarra. I now give the floor to His Excellency Carlos Sorreta. Sir, you have the floor.

Mr SORRETA:

UN CHARTER, HUMAN RIGHTS AND UNCLOS

1. Mr President, your Honours, I will speak on the United Nations Charter, human rights and UNCLOS. Mr President, climate change is a critical environmental issue. But it is also a serious threat to the maintenance of peace and security of mankind — the maintenance of which is a solemn obligation under the United Nations Charter.

2. Rising sea levels, extreme weather events and resource scarcity, fuelled by the climate crisis, destabilize regions, exacerbate conflicts, displace peoples and imperil sovereignty and territorial integrity.

3. This complex crisis creates unprecedented challenges, particularly for marginalized and resource-limited populations.

4. The Request pays special attention to small island developing States, and the Philippines finds affinity with their plight, as a nation with thousands of small, populated islands facing very complicated maritime disputes.

5. The Charter's provisions on sovereignty and territorial integrity resonate in this context.

6. Climate change induced sea level rise poses a severe threat to the territorial integrity of low-lying and island nations, analogous to the loss of territory by invasion through the use of force, but without the possibility of exercising the inherent right of self-defence. This can also ignite boundary conflicts.

7. Although climate change was not foreseen when drafted, the Charter is a living document and provides a constitutional basis for interpreting obligations relevant to this crisis, and exemplifies what Judge de Visscher described as the "unforeseen and, indeed, unforeseeable" events that the

Charter must address. The Charter was created to save the succeeding generations from the scourge of war; it must now save future generations from the ravages of climate change.

8. Mr President, climate change is, at its core, also an existential human rights issue.

9. States have clear obligations to protect and respect these rights, including those impacted by climate change.

10. These obligations are rooted in the foundational principles of the United Nations Charter and elaborated in the Universal Declaration of Human Rights, a crucial interpretative framework, affirming the inherent right to dignity and well-being — all seriously threatened by climate change.

11. The International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, enshrine these obligations.

12. General Assembly resolution 76/30 recognizes the right to a clean, healthy and sustainable environment as essential for the enjoyment of all other human rights. The Human Rights Council has also passed several resolutions on human rights and climate change.

13. The *Urgenda* and *Future Generations* decisions, as well as recent decisions by the European and Inter-American Courts of Human Rights, provide compelling legal arguments that States bear obligations to prevent foreseeable human rights harms caused by climate change.

14. The Office of the United Nations High Commissioner for Human Rights has outlined specific obligations for human rights harms caused by climate change, including accountability and effective remedy.

15. Mr President, the United Nations Convention on the Law of the Sea is the fundamental legal framework, the constitution for our seas and our oceans.

16. So fundamental and organic, that the International Tribunal for the Law of the Sea applied it and extensively discussed UNCLOS obligations in relation to climate change, even though this phenomenon was not contemplated when UNCLOS was negotiated. The Tribunal, citing the 2016 *South China Sea* arbitration award, emphasized that UNCLOS obligations extend to both "protection" from future damage and "preservation".

17. Mr President, States are bound to address the climate crisis within a legal framework that maintains peace and security, respects sovereignty and upholds human rights. Law is essential to

ensure a future where all can live with dignity, security and resilience in the face of a dramatically changing climate.

18. With the Court's permission, I would now like to turn to Solicitor General Guevarra to continue and conclude our oral presentation. Thank you, Mr President.

The PRESIDENT: I thank His Excellency Carlos Sorreta. I give the floor back to Mr Guevarra. Sir, you have the floor.

Mr GUEVARRA:

OTHER OBLIGATIONS UNDER CUSTOMARY INTERNATIONAL LAW, GENERAL PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW, TREATIES, CONVENTIONS AND OTHER INTERNATIONAL AGREEMENTS

1. Mr President, in addressing the United Nations General Assembly's Request, the Philippines submits that any act or omission attributable to a State which results, or has resulted, in anthropogenic GHG emissions over time thereby causing climate change is a breach of a State's obligation under international law. Such act or omission is an internationally wrongful act which necessarily gives rise to a corresponding legal consequence pursuant to international law.

2. Contrary to the submission of some States and non-State parties, the Philippines respectfully proffers that the obligations in respect of the environment cannot be confined within the strict limits of specific international agreements. The insidious effects of climate change require that the entire plethora of customary international law, general principles of international law, and various conventions and treaties be correlated and applied simultaneously.

3. On customary international law, the Philippines submits that the obligation not to cause transboundary harm — enunciated in the early cases of *Trail Smelter* and *Corfu Channel*, reiterated in this Court's *Nuclear Weapons* Advisory Opinion, the *Iron Rhine Arbitration* and the *Pulp Mills* case, and included in various multilateral treaties involving the protection of the environment, management of hazardous wastes and prevention of marine pollution — compels all States to ensure that activities within their territory and control must respect the environment of other States or of areas beyond national jurisdiction.

4. Hand in hand with the obligation not to cause transboundary harm is the State's obligation to exercise due diligence. Attendant to this obligation is the adoption of appropriate measures and the exercise of vigilance in their enforcement, as well as the exercise of administrative control applicable to all public and private entities under its jurisdiction.

5. On the general principles of international environmental law, the Philippines submits that the principles of sustainable development and intergenerational equity are twin principles that are most fundamental when looking into the actions of States and non-State actors as they relate to anthropogenic GHG emissions.

6. While the Philippines concedes that economic development is necessary to further the growth of countries and peoples, it posits that actions relative thereto must operate within a paradigm of non-compromise — we should not compromise the long-term sustainability of resources; we should not compromise the ability of future generations to meet their own needs.

7. On treaties, conventions and other international agreements, the Philippines respectfully puts forward that the entire gamut of international environmental treaties and documents, as well as that relating to international human rights law, are relevant in the present proceedings.

8. At the core of the actions of States and non-State actors is the most basic of all principles — that the fundamental rights of all races and nationalities, present and future generations alike, must, with no exception, be respected.

9. Mr President, within the context of customary international law, general principles of international law, and various conventions and treaties, the Philippines maintains that when a State — by itself or through its State actors or other entities whose actions or omissions may be attributable to the State — commits acts or omissions that do not faithfully conform to its international obligations, the same constitutes a breach of a State obligation and, under international law, is an internationally wrongful act.

10. The commission of such internationally wrongful act triggers State responsibility, with its necessary consequences, and carries with it the obligation of the responsible State to cease the wrongful conduct and make full reparation therefor.

11. Accordingly, States affected by internationally wrongful acts of other States in respect of climate change may demand the enforcement of remedial actions, including cessation and/or reparation, following the injury caused by such internationally wrongful acts.

12. In the Philippine context, these remedial measures are set out in our Rules of Procedure for Environmental Cases (RPEC). The Rules govern cases involving the enforcement of environmental and other related laws, rules and regulations, including enforcement of remedies and redress for violation of said environmental laws.

13. The RPEC provides for the remedy of a Writ of Kalikasan or Writ of Nature, a unique and innovative legal remedy espoused by the Philippines and which appears to be the very first of its kind in the entire world.

14. The Writ of Kalikasan is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. It is designed for a narrow but special purpose: to accord stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats.

15. Upon the grant of the Writ of Kalikasan, the reliefs of permanent cessation and desistance, rehabilitation or restoration, strict compliance, periodic reports, and such other reliefs which relate to the right of the people to a balanced and healthful ecology may be granted.

16. Indeed, while the *sui generis* remedy of our Writ of Kalikasan is concededly still of municipal application, such remedial innovation is of value in the present discourse where climate change is of such magnitude that it imperils present and future generations. Thus, the Philippines respectfully submits the proposition that a similar remedial measure be considered and adopted in the international setting to afford seriously affected States, and their peoples, with immediate recourse and relief from environmental damage arising from breaches of State obligations under international law.

CONCLUSION

17. To conclude, Mr President, Your Honours, the Philippines has no inch of doubt that the entire gamut of international law informs the obligation of States for their anthropogenic GHG emissions in a manner that is far more encompassing than what has already been achieved by the international community under the climate change régime. Now more than ever, the authoritative guidance of this Court is being sought to express in no uncertain terms that the contributory conduct of States in relation to climate change is bound by established conventions, customary law and general principles. We hope and trust that the Court will do so.

18. On behalf of the Republic of the Philippines, we thank the honourable Court for your time and consideration.

The PRESIDENT: I thank the representatives of the Philippines for their presentation. This concludes this morning's sitting. The oral proceedings will resume this afternoon at 3 p.m., in order for Canada, Chile, China, Colombia, the Commonwealth of Dominica and the Republic of Korea to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 1.10 p.m.