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*CR 2024/38*

**International Court of Justice**

**THE HAGUE**

**Cour internationale de Justice**

**LA HAYE**

**YEAR 2024**

***Public sitting***

***held on Tuesday 3 December 2024, at 3 p.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)***

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**VERBATIM RECORD**

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**ANNÉE 2024**

***Audience publique***

***tenue le mardi 3 décembre 2024, à 15 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)***

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**COMPTE RENDU**

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| *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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Le PRÉSIDENT : Veuillez vous asseoir. L'audience est ouverte.

La Cour se réunit cet après-midi pour entendre le Canada, le Chili, la Chine, la Colombie, le Commonwealth de Dominique et la République de Corée 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 de la Chine.

Je donne maintenant la parole à la délégation du Canada. J'appelle M. Louis-Martin Aumais à la barre. Monsieur, vous avez la parole.

M. AUMAIS :

## INTRODUCTION

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les Membres de la Cour, en tant qu'agent du Canada, c'est un grand honneur et un grand privilège pour moi de m'adresser à vous dans cette procédure consultative.

2. Je suis ici aujourd'hui pour présenter le point de vue du Gouvernement du Canada sur la requête pour avis consultatif demandée par l'Assemblée générale des Nations Unies, dans sa résolution du 29 mars 2023, qui pose des questions relatives aux obligations des États en matière de changement climatique.

3. Ces observations s'inscrivent en complément, et dans le prolongement, de celles déjà soumises par le Canada à la Cour, par écrit le 20 mars 2024.

4. Je tiens d'abord à réaffirmer que la lutte contre les changements climatiques est sans aucun doute l'un des plus grands défis mondiaux de notre époque. Tous les acteurs concernés doivent prendre des mesures concrètes et ambitieuses pour s'attaquer à cet immense problème. Le Canada constate déjà les effets de ces changements, car l'Arctique se réchauffe environ trois fois plus vite que le reste de la planète. La hausse des températures, la diminution de l'étendue et de la stabilité de la glace de mer, les perturbations sur les ressources en eau et en nourriture, le dégel du pergélisol et les changements aux cycles de vie de la faune et de la flore ont déjà des répercussions sur notre pays. De plus, la diminution de l'accès aux sources alimentaires traditionnelles accentue ces problèmes et les facteurs de stress liés à la santé des peuples autochtones au Canada.

5. Bien que le Canada soit à l'avant-garde de la lutte pour le climat, tant sur son territoire qu'à l'étranger, nous sommes conscients qu'il reste encore beaucoup à faire à l'échelle nationale et mondiale. Ainsi notre pays cherche-t-il constamment de nouvelles façons de renforcer sa contribution face à cette crise mondiale.

6. Le Canada appuie fermement les efforts internationaux visant à atténuer les effets du changement climatique au moyen du régime international de lutte contre les changements climatiques, qui trouve ses fondements dans la convention-cadre des Nations Unies sur les changements climatiques (que j'appellerai dorénavant « la convention »), l'accord de Paris et leurs organes directeurs respectifs.

7. Dans le cadre de son intervention, le Canada abordera successivement les deux questions posées à la Cour. Par conséquent, ces observations porteront d'abord sur les obligations juridiques qui incombent aux États en vertu du droit international d'assurer la protection du système climatique. Il sera ensuite question des implications juridiques de ces obligations.

## OBLIGATIONS JURIDIQUES À L'ÉGARD DES CHANGEMENTS CLIMATIQUES

8. Le Canada souhaite appeler l'attention sur *cinq points* en lien avec la première question, à savoir les obligations juridiques à l'égard des changements climatiques.

9. *Premièrement*, le Canada estime que, pour déterminer les obligations juridiques internationales qui incombent aux États face aux changements climatiques, la Cour doit d'abord décider des règles de droit applicables.

10. Deux traités principaux énoncent des obligations juridiques spécifiques à la lutte contre les changements climatiques, soit la convention et l'accord de Paris. Au cours de nombreuses années de travail acharné et de négociations difficiles, la communauté internationale a placé sa confiance dans ces traités et leurs organes directeurs et constitués, y compris à titre d'autorités décisionnelles, pour discuter des efforts mondiaux face aux changements climatiques. Ces traités jouissent aujourd'hui d'une adhésion quasi universelle. Leurs organes directeurs, de même qu'une série d'organes constitués et subsidiaires spécialisés, sont les mieux placés pour évaluer comment les progrès scientifiques peuvent éclairer notre action internationale et servir à établir de nouvelles normes. Des mécanismes spécifiques ont également été créés pour assurer la transparence et rendre compte du

travail réalisé, tels le bilan mondial de l'accord de Paris et le cadre de transparence renforcé et ses rapports biennaux sur la transparence.

11. L'accord de Paris est l'expression la plus récente de l'engagement de ses États parties en faveur du régime de lutte contre les changements climatiques. Les obligations énoncées ont été conçues afin d'assurer une participation globale, tout en facilitant les progrès mondiaux vers la réalisation des objectifs de l'accord. Dans certains cas, il s'agit d'obligations collectives, dont le respect incombe à tous les États, alors que, dans d'autres, ce sont des obligations individuelles qui engagent la responsabilité de chaque État en particulier. Par exemple, l'article 4, paragraphe 1, de l'accord énonce un objectif collectif, à savoir parvenir au plafonnement mondial des émissions de gaz à effet de serre dans les meilleurs délais. S'y ajoute, par la suite, la nécessité d'opérer rapidement des réductions conformément aux meilleures données scientifiques disponibles. C'est là une obligation collective dont le respect incombe à *tous* les États. Par opposition, l'article 4, paragraphe 2, énonce l'obligation pour chaque État pris individuellement d'établir, de communiquer et d'actualiser les contributions déterminées au niveau national. En outre, l'article 4, paragraphe 3, réaffirme l'importance d'accroître le niveau d'ambition des contributions déterminées au niveau national subséquentes.

12. Dans le cas qui nous occupe, c'est l'action complémentaire des obligations individuelles et collectives ancrées dans la convention et l'accord de Paris — qui doit se poursuivre de manière de plus en plus ambitieuse — qui caractérise les règles applicables.

13. *En ce qui concerne mon deuxième point*, je souhaite présenter la position du Canada sur les interactions existantes entre le régime de lutte contre les changements climatiques et d'autres instruments internationaux.

14. Bien que la convention et l'accord de Paris soient les deux principaux traités négociés pour lutter contre les changements climatiques en soi, le Canada note que d'autres régimes créent des obligations juridiques internationales en matière d'émissions de gaz à effet de serre comme facteurs environnementaux.

15. À cet égard, le Canada accueille favorablement l'*avis consultatif sur le changement climatique et le droit international* du Tribunal international du droit de la mer, dans lequel ce dernier conclut que les émissions de gaz à effet de serre, qui contribuent aux changements climatiques,

constituent une forme de pollution marine. En effet, le Canada, tel qu'il l'a soumis au Tribunal, est d'avis que la convention des Nations Unies sur le droit de la mer a été rédigée d'une manière qui permet d'englober de nouvelles sources de pollution de l'environnement marin. Cette conclusion du Tribunal est pertinente pour les obligations des États en matière de prévention de la pollution du milieu marin et, plus généralement, pour l'action climatique.

16. La mise en œuvre effective des obligations juridiques découlant d'autres régimes applicables à certains secteurs ou certains polluants peut aussi aider les États à s'acquitter de leurs obligations en vertu d'instruments relatifs aux changements climatiques. Par exemple, il en est ainsi des obligations découlant de la convention de Vienne pour la protection de la couche d'ozone et du protocole de Montréal relatif à des substances qui appauvrissent la couche d'ozone, dont la mise en œuvre effective contribue sensiblement à la lutte contre les changements climatiques. Dans le préambule du protocole de Montréal, les parties reconnaissent spécifiquement le lien avec la lutte contre les changements climatiques en notant qu'elles ont « conscience des effets climatiques possibles des émissions de ces substances ».

17. De plus, lorsque les organes directeurs du régime de lutte contre les changements climatiques estiment qu'ils ne sont pas les mieux placés pour agir face à certains aspects des changements climatiques, ils coopèrent avec d'autres institutions compétentes. Par exemple, les États parties à la convention et à l'accord de Paris coopèrent avec l'Organisation maritime internationale et l'Organisation de l'aviation civile internationale. Ces organisations sont les mieux placées pour aider à la réduction des émissions de gaz à effet de serre provenant du transport maritime et de l'aviation civile internationale, puisqu'elles possèdent une expertise particulière, et également à la lumière du fait qu'il est difficile d'attribuer ces émissions à des États spécifiques.

18. Au vu de ces interactions et de ces complémentarités, force est de reconnaître que les États ont des obligations en matière d'émissions de gaz à effet de serre en vertu d'autres traités. Toutefois, ces autres traités ne peuvent être interprétés de manière à imposer des obligations juridiques internationales contraires ou incompatibles à celles négociées rigoureusement dans le cadre du régime international contre les changements climatiques.

19. Mr President, Madam Vice-President, distinguished Members of the Court, the *third remark from Canada* relates to the "no-harm" principle, also known as the principle of prevention.

As this Court has recognized, States have an obligation under this principle to ensure that activities within their territory and jurisdiction do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. The principle informs climate action and should therefore, to the extent possible, be interpreted consistently with the obligations found under the climate instruments. However, as can be seen from the variety of submissions made by Participants, Canada submits that there is no consistent practice and *opinio juris* on the application of the principle that would confirm its customary status in the particular context of climate change.

20. Furthermore, some Participants to these proceedings have suggested that additional principles and concepts, such as common but differentiated responsibilities, intergenerational equity, polluter-pays and the precautionary principle, among others, have also reached a customary status under international law, and would therefore need to be considered as applicable law in the case at hand. However, it is Canada's submission that none of these principles and concepts have gathered the necessary practice and *opinio juris* to crystallize as rules of customary law. Indeed, it was the very fact that there did not exist sufficiently specific customary international law with respect to climate change that prompted the initiation of the formal treaty-making process for the UN Framework Convention on Climate Change.

21. Rather, these principles and concepts are interpreted differently by different parties, and their acceptance, meaning and implications vary across treaty régimes. At most, these principles and concepts may inform the scope of the legal obligations found within the climate change régime, but they do not, in and of themselves, create obligations.

22. In light of the above, while Canada recognizes that various norms might inform the interpretation of legal obligations under the Convention and the Paris Agreement, they cannot be interpreted as imposing international legal obligations that are incompatible with those carefully negotiated through the international climate change régime.

23. My *fourth point* relates more specifically to the notion of common but differentiated responsibilities, also known as CBDR. This notion, which arose from the international climate change régime, is an evolving legal concept. Under earlier climate change instruments, responsibilities for addressing greenhouse gas emissions would vary between developed and developing States. This concept has now evolved, through the Paris Agreement, into the CBDR and

respective capabilities, in light of different national circumstances. This entails that *all* States have the responsibility to address greenhouse gas emissions and their impacts on climate change, to the full extent of their respective capabilities and national circumstances. Therefore, Canada argues against an interpretation of CBDR where differentiated action on environmental issues is linked to historical responsibility for degradation. Such an approach would be contrary to the responsibility of *each* State to take measures to tackle climate change. In this respect, Canada agrees with the position taken by the European Court of Human Rights in the case of *KlimaSeniorinnen* v. *Switzerland*, where the Court stated that this responsibility is determined "by the State's own capabilities rather than by any specific action or omission of any other State".

24. My *fifth and last point w*ith regard to the first question relates to the interaction between climate change and human rights.

25. Canada recognizes the importance of understanding and addressing the links between climate change and human rights to prevent the exacerbation of existing vulnerabilities and the appearance of new ones. Environmental harms — including climate change — negatively impact, directly and indirectly, the enjoyment of many human rights, in particular the right to life, the right to the enjoyment of the highest attainable standard of mental and physical health, and the right to an adequate standard of living. At the same time, States have human rights obligations related to the environment. For example, the progressive realization of economic, social and cultural rights may require States to adopt measures to mitigate the impacts of climate change and help persons subject to their jurisdiction to adapt to climate change. As such, effective implementation of international environmental obligations, including those under the Paris Agreement, assists States in meeting their respective human rights obligations.

26. In responding to climate change, States should adopt a human-rights based approach to adaptation and mitigation measures. They should also ensure that the climate measures adopted do not violate their human rights obligations under international treaties or pursuant to customary international law. This includes the obligation of States to ensure that measures taken do not discriminate on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. States likewise should provide for public participation in climate policy-making, and ensure public access to environmental information and education.

They must also protect the rights to freedom of expression, association and peaceful assembly as it relates to environmental action, and ensure access to justice in environmental matters.

27. In examining the extent of States' human rights obligations related to climate change, Canada respectfully submits four considerations.

28. *First*. When assessing the scope of States' human rights obligations in the context of climate change, it is important to be mindful that States must often make challenging resource allocation decisions.

29. *Second.* The positive impact that climate change action can have on human rights cannot be relied upon to broaden the scope of States' obligations under international human rights law. For example, the right to life, as guaranteed by Article 6 of the International Covenant on Civil and Political Rights, seeks to ensure that no one is arbitrarily deprived of their life without legal protection. However, it does not aim to protect against *any* foreseeable threat to the full enjoyment of this right.

30. It is also Canada's view that international environmental obligations do not inform the scope of the right to life under international human rights law. As explained by the United Kingdom in its written comments, Article 6 of the Covenant, along with other human rights obligations, were not designed to address mitigation of anthropogenic greenhouse gas emissions to protect the climate system. Indeed, these human rights obligations do not lend themselves to claims by any rights-holder for the protection of the climate system from anthropogenic greenhouse gas emissions which emanate from activities in all States.

31. *Third.* Certain aspects and principles of environmental law, including climate change law, do not translate to international human rights law. One example is the transboundary or extra-territorial application of some environmental principles, which does not broadly apply to human rights. As a general rule, States must respect, protect and promote the rights of rights-holders who are within their territory and subject to their jurisdiction. Canada has consistently maintained that the jurisdictional competence of a State is primarily territorial, and that it is only under very specific exceptions that States may incur extra-territorial obligations under international human rights law. The exception is peremptory norms of customary international law (*jus cogens*), such as

the prohibition against torture, which have no territorial limitation. Canada has however not accepted that environmental principles have risen to the status of *jus cogens* norms.

32. Furthermore, while the notion of CBDR has arisen in the régime for climate change, this does not apply in the specific context of human rights, because human rights are universal, inalienable and indivisible.

33. *Fourth*. Canada reiterates that it is supportive of the international momentum to highlight the connection between a healthy environment, climate change, and the enjoyment of human rights. In that light, Canada supported UN General Assembly resolution 76/300 of 2022 entitled "The human right to a clean, healthy and sustainable environment". Canada notes however that there is currently no common or internationally agreed upon understanding of the content and scope of a right to a clean, healthy and sustainable environment. Canada looks forward to exchanging information with others to support due consideration of what such a right may comprise, and what it may entail within the international human rights framework.

34. It is Canada's firm belief that these considerations do not, in any way, affect the undeniable obligations that States have to uphold their international human rights law obligations, including when taking action to address climate change, as stated in the preamble of the Paris Agreement.

35. This concludes the five points Canada wishes to make for the Court's consideration with regard to the first question.

## THE LEGAL CONSEQUENCES UNDER THOSE OBLIGATIONS

36. The second question that the Court is asked to examine relates to the legal consequences under the legal obligations of States with respect to climate change, which I just discussed today.

37. As I noted earlier, it is Canada's belief that, as of today, the legal obligations of States with respect to climate change are contained within the Convention and the Paris Agreement. If a State were to fail to fulfil some of its obligations under the core instruments of the climate change régime, parties to the Paris Agreement have agreed to a non-punitive and non-adversarial compliance mechanism through the Implementation and Compliance Committee. The co-operative and facilitative nature of the Committee illustrates that, to remedy an alleged failure to fulfil an obligation, States parties can resort to the Committee, which will look into the alleged failure in

collaboration with the State party in question and will determine the appropriate course of action to follow.

38. That said, the Convention also sets out the process for the resolution of a dispute between any two or more parties concerning the interpretation or application of the Convention. While parties are to seek first settlement through negotiation or other peaceful means, States parties have the option to accept the jurisdiction of this Court as a means of settlement. Where two (or more) States parties have accepted the Court's jurisdiction, and the Court is asked to consider the legal consequences of a failure to comply with the obligations under the Convention or the Paris Agreement, this would involve the consideration of State responsibility for an internationally wrongful act.

39. Under the ILC's Articles on the Responsibility of States for Internationally Wrongful Acts, which largely reflect customary international law, Article 1 states that: "Every internationally wrongful act of a State entails the international responsibility of that State." Therefore, for there to be responsibility, there must be an internationally wrongful act.

40. Article 2 of the Articles clarifies the elements of a wrongful act, namely (1) that it needs to be an action or an omission, (2) that it is attributable to the State under international law, and (3) that it constitutes a breach of an international obligation of the State.

41. Article 12 of the Articles further specifies that there is a breach of an international obligation when an act of that State is not in conformity with that obligation, regardless of its origin or character. However, Article 13 adds that there cannot be a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

42. As there does not yet exist a norm protecting against the effects of climate change that carries sufficient practice and *opinio juris* to be considered a part of customary international law, the earliest international obligations that directly arise in the context of climate change are those found in the Convention and the Paris Agreement. Under the principle of State responsibility, a State cannot be liable for something that was not a violation of international law at the time of the action. Consequently, any action that a State took prior to becoming a party to the Convention or the Paris Agreement could not be counted against it as a breach of international law in the context of climate change. Additionally, and as explained by Australia in its oral submissions presented yesterday, a specific causal nexus is necessary to establish attribution under the rules of State responsibility.

**CONCLUSION**

43. Climate change is a global challenge, for which States have established, over many years of negotiation, a climate change process, through the Convention and the Paris Agreement. Processes under these treaties involve the *whole* of the international community: this is the only viable route to effectively address the climate change crisis.

44. Much more will be done over the coming years; the ambitions of States must be raised, and global actions accelerated. However, the discussions at the governing bodies of the Convention and the Paris Agreement are having an impact and progress is being made. While recognizing that States have obligations that relate to the factors driving climate change under other treaties, Canada reiterates that these treaties need to be interpreted in a way that is consistent with the international legal obligations carefully negotiated through the climate change régime.

45. Canada remains firmly committed to the United Nations climate change process, through the Convention and the Paris Agreement. Their nearly universal acceptance is testament to their global importance. They are the world's best hope for combatting the climate change crisis.

46. Mr President, Madam Vice-President, distinguished Members of the Court, this concludes my submission. I thank you for the opportunity to present Canada's views on this matter.

The PRESIDENT: I thank the representative of Canada for his presentation. I now invite the delegation of Chile to address the Court and I give the floor to Her Excellency Ximena Fuentes Torrijo.

Ms FUENTES TORRIJO:

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the Republic of Chile in these advisory proceedings.

2. The Court has been asked to address two legal questions of the utmost importance that deal with the pressing challenges that climate change poses to our planet and life as we know it.

3. The Court has already had a chance to discuss the key scientific findings in the IPCC periodic assessment reports with their authors, and most certainly will also receive country-specific information during the coming days. It is important to underline that no single region on the planet is immune to the negative impacts of the climate crisis.

4. Addressing the climate change crisis requires significant reductions in greenhouse gas emissions. Unfortunately, not only have we been unable to reduce them, but they have reached a record high[3]. The problem is that while some regions are reducing their emissions, they continue to grow in other parts of the world, undermining the efforts to combat climate change and worsening its deleterious effects. Indeed, UNEP's 2024 Emissions Gap Report indicates that GHG emissions increased by 1.3 per cent compared to 2022 levels, and that their growth in 2023 exceeds the average rate of the previous decade.

5. The Request for this advisory opinion arrives, then, at the right time, precisely when the COP29 failed to agree on a new collective quantified goal on climate finance that properly addresses developing countries' needs[4].

6. In this presentation we will develop two key points: first, I will address the interaction of the Climate Change Regime and the general international obligations related to the protection of the environment and human rights; and then Ms Valeria Chiappini will address the legal consequences that arise from a breach of these obligations.

## I. INTERACTION BETWEEN THE CLIMATE CHANGE REGIME AND OTHER INTERNATIONAL OBLIGATIONS

7. The first question posed by the General Assembly to this Court focuses on the obligations of States to ensure the protection of the climate system and other parts of the environment. Therefore, the Court will need to determine the relationship between the general obligation not to cause harm to the territory of other States and areas beyond national jurisdiction, on the one side, and the specific obligations established in the climate change treaties, on the other.

8. For this purpose, some observations regarding the Climate Change Regime are important:

*(a)* First, the UNFCCC and the Paris Agreement are binding treaties.

*(b)* Second, the objective of the UNFCCC, as expressed in Article 2, is to achieve a particular result: the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

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[3] UNEP, "Emissions Gap Report 2024: No more hot air . . . please!", 24 October 2024, p. 4.

[4] Decision -/CMA.6, para. 3. (Draft decision entitled "Matters relating to finance. New collective quantified goal on climate finance", available at https://unfccc.int/documents/644460).

*(c)* Third, in enhancing the implementation of the UNFCCC, the Paris Agreement — as it explicitly declares — "aims to strengthen a global response to the threat of climate change"[5].

*(d)* Fourth, reduction of greenhouse gas emissions in the context of the Paris Agreement is to be attained through ambitious voluntary efforts undertaken by States in the form of "nationally determined contributions to the global response to climate change" (NDCs).

*(e)* Fifth and last observation: the duty to establish an NDC under the Paris Agreement is a binding legal obligation, but the extent of the specific reductions of greenhouse gas emissions is discretionary; in that respect, the determination of the specific contribution is voluntary and country-driven.

9. In this context, considering the binding and non-binding character of the specific obligations contained in the Climate Change Regime, we can ask whether this regime may exclude or apply with preference to the general obligation not to cause harm to the territory of other States or to areas beyond national jurisdiction.

10. Chile would like to underline that the general obligation not to cause harm is a binding obligation established by customary international law, that has been recognized as such in the case law of international tribunals, including this Court's. Indeed, in the first case heard in these halls, the *Corfu Channel* case, the Court ruled that every State has the obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.

11. The no-harm rule has continued to be recognized in subsequent decisions of this Court, such as in the 1996 *Nuclear Weapons* Advisory Opinion, the 2010 *Pulp Mills* Judgment, the 2015 *San Juan River* cases, and the 2022 *Silala* case.

12. With regard to the standard of responsibility, the obligation not to harm the territory of another State or areas beyond national jurisdiction is not a strict liability obligation, but rather a due diligence obligation. Due diligence is not a simple best effort obligation. The *Pulp Mills* Judgment greatly contributed to the understanding of due diligence in the context of environmental protection, explaining that it "entails not only the adoption of appropriate rules and measures, but also a certain

[5] Paris Agreement, Article 2 (1).

level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators"[6].

13. In examining the content of this obligation, some participants in these advisory proceedings have relied heavily on the distinction between obligations of result and obligations of conduct, stating that this distinction "informs the scope of the obligations themselves"[7]. Chile disagrees with this view. An obligation not to cause harm might take the form of an obligation of result or an obligation of due diligence, and in both cases the scope is clear: to do all that is necessary to prevent causing damage to another State.

14. A different question is whether the State causing harm should be held responsible. The answer will require an assessment of a State's conduct on the basis of the legal standards of State responsibility, either the standard of due diligence or of strict liability. In the first case, State responsibility will only be incurred if the State has acted without the required due diligence, taking into account the risks involved in the particular activity under scrutiny. In the case of the standard of strict liability, *culpa* or lack of diligence, would be irrelevant for establishing State responsibility; if harm has been caused by the actions of a State, then that State would have incurred responsibility.

15. Chile shares the view that the obligation to prevent harm to the environment, including the climate system, is a due diligence obligation. States ought to employ the adequate means necessary to prevent damage, taking into account the present knowledge about the cause-effect relationship between greenhouse gas emissions and climate change. Knowledge about the risks posed by greenhouse gas emissions plays a central role in the application of the standard of due diligence.

16. In this context, the climate change régime should not be understood as a special régime that excludes or applies with preference to the general obligation not to cause harm.

17. Rather, the climate change régime aims to strengthen a global response to the threat of climate change, which includes reducing greenhouse gas emissions and promoting adaptation measures to address the effects of climate change. It was never meant to be the yardstick against which to measure States' compliance with their due diligence obligation not to cause damage.

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[6] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I),* p.79, para. 197.

[7] Written Statement of the European Union, p. 20, para. 68.

18. As the International Tribunal for the Law of the Sea stated, compliance with the UNFCCC and the Paris Agreement alone does not satisfy the due diligence obligation not to cause harm to the territory of other States or areas beyond national jurisdiction[8].

19. Moving now to the interaction between the climate change régime and the international law of human rights, despite the fact that they are distinct legal régimes, they do overlap in their application to climate-related acts and omissions. It is evident that States' failures to limit greenhouse gas emissions may breach international human rights law[9].

20. In addition, compliance with the obligation to set an NDC in the context of the Paris Agreement might not be enough to prevent harm to human rights. In the *KlimaSeniorinnen* case, the European Court of Human Rights decided that Switzerland's failure to take actions to mitigate climate change breached the right to private and family life. In establishing whether the State conduct complied with its human rights obligations, the European Court of Human Rights affirmed that simply having an NDC was not enough. Adequate legislative and administrative measures, including a carbon budget or national GHG emissions limitations, were necessary. The State not only failed in establishing them but even in complying with its past greenhouse gas emission reduction targets, leading the Court to conclude that the State failed to adopt concrete measures to protect the human rights of the applicants[10].

21. Lastly, regarding climate change obligations, it is important to note that a State may also violate the human rights of individuals and peoples outside its territory. Indeed, the Human Rights Committee in its General Comment No. 31, clarified that the obligations under the ICCPR are owed to "anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party"[11].

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[8] *Request for an Advisory Opinion submitted by the Commission of Small Island States on climate change and international law*, Advisory Opinion, 21 May 2024, at pp. 80-81, paras. 223-224.

[9] HRC, Report of the Human Rights Council on its tenth session (25 March 2009) UN doc. 10/4A/HRC/10/29 (Dossier No. 265); HRC Res 41/21 (12 July 2019) UN doc. A/HRC/Res/41/21 (Dossier No. 272); [9] HRC Res 53/6 (12 July 2023) UN doc. A/HRC/Res/53/6 (Dossier No. 275-A).

[10] European Court of Human Rights, Case of *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland* (Application no. 53600/20), Judgment of 9 April 2024, at pp. 208-209, paras. 563-567.

[11] UN Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, UN doc. CCPR/C/21/Rev.1/Add. 13, para. 10.

22. However, with regard to extraterritorial harm caused by greenhouse gas emissions, some States have argued that it would not be possible to speak of a human rights violation situation in so far as the conduct concerned might not fall within the strict jurisdictional clauses of the particular human rights treaty in question[12].

23. Chile disagrees with that view. Instead, Chile is of the opinion that in a hypothetical situation where a State wilfully or knowingly harms the human rights of a person outside its territory, it would still be possible to describe the situation as conceptually constituting a human rights violation. This has been recognized by the German Constitutional Court in the *Neubauer et al* v. *Germany* case, when it considered that under the German Constitution it was conceivable that duties of protection arising from fundamental rights could place the German State under an obligation vis-à-vis complainants living outside Germany to take action against impairments caused by global climate change[13].

24. Likewise, the Committee on the Rights of the Child (CRC) in its *Chiara Sacchi et al.*[14] decision, found that the appropriate jurisdictional test was that adopted by the Inter-American Court of Human Rights in its advisory opinion OC-23/17 on the environment and human rights[15]. In this case, the CRC considered that when transboundary harm occurs, children fall under the jurisdiction of the State on the territory of which the emissions originated "if there is a causal link between the acts and omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question"[16].

25. Mr President, with this I conclude the first part of Chile's presentation and I kindly request that you give the floor to Ms Chiappini to address question *(b)*.

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[12] European Court of Human Rights, Case of *Duarte Agostinho and Others against Portugal and 32 Others* (Application no. 39371/20), Judgment of 9 April 2024, at pp. 73-76, paras. 205-214.

[13] German Federal Constitutional Court, *Neubauer, et al.* v. *Germany*, Judgment of 24 March 2021, at pp. 50-53 paras. 174-181.

[14] Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019*: *Chiara Sacchi et al.* v. *Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021.

[15] *Ibid.*, para. 10.7.

[16] *Ibid.*

The PRESIDENT: I thank Her Excellency Ms Ximena Fuentes Torrijo. I now give the floor to Ms Valeria Chiappini.

Ms CHIAPPINI KOSCINA:

## II. THE LEGAL CONSEQUENCES THAT ARISE FROM A BREACH OF THE OBLIGATIONS OF STATES TO ENSURE THE PROTECTION OF THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

1. Mr President, Members of the Court, it is an honour to appear before this Court on behalf of the Republic of Chile.

2. I will address the legal consequences under the obligations that have been already detailed by Ambassador Fuentes where States, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment with respect to particularly vulnerable States and present and future generations.

3. In the present advisory proceedings, the Court has not been called to determine the responsibilities of individual States. Instead, it has been asked how the framework of State responsibility applies, in abstract, in case of harm to the environment due to climate change.

4. Somes States have argued during the present proceedings that the Climate Change Framework is a self-contained régime that excludes the application of the general rules on State responsibility, and they have further argued that, even if it were applicable, attribution to individual States would not be possible.

5. Chile disagrees with this view. The framework of State responsibility applies to the breach of climate change-related obligations for the following two reasons: (i) the climate change régime does not regulate State responsibility and liability for climate harm; and (ii) attribution can be established on the basis of accepted scientific consensus, which, in any case, would be a matter for potential contentious proceedings.

6. Regarding the first argument, Chile sustains that the so-called Warsaw Mechanism for Loss and Damage[17] established under the UNFCCC does not regulate liability for damages arising from breaches of obligations related to climate change, but it was rather meant to strengthen the capacity

[17] Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts.

of the parties and, in particular, that of developing States, to manage climate risk and implement adequate strategies[18].

7. In fact, the Warsaw Mechanism mainly focuses on collaborative actions, such as enhancing knowledge and understanding of risk management, and strengthening dialogue and synergies among relevant stakeholders. It is meant to increase action and support, including finance, technology, and capacity-building between States parties.

8. The subsequent adoption of the Paris Agreement only clarified that it was always the parties' understanding that the Warsaw Mechanism was not meant as a mechanism for compensation. Indeed, the inclusion of Article 8 in the Paris Agreement, which deals with loss and damage and the Warsaw Mechanism explicitly, was highly contentious during the negotiation of the Agreement, because developed countries viewed notions of liability and compensation as a red line. For this reason, the negotiating parties reached a compromise solution embodied in paragraph 51 of the COP decision which adopted the Paris Agreement[19], and clarified that Article 8 "does not involve or provide a basis for any liability or compensation"[20].

9. The only conclusion to be drawn from this compromise formula is that, while actions taken to implement this mechanism do not entail an admission of responsibility, they can never be deemed a waiver of any rights to liability claims, let alone an abrogation of general rules of international law such as the State responsibility régime.

10. Mr President, Members of the Court, I will now turn to my second argument regarding the question about attribution. Chile notes that the growing field of attribution science has provided new-found understandings on the contribution of anthropogenic climate change to natural disasters. It is very clear that global warming is proportional to the amount of anthropogenic $CO_2$ emissions[21]. Present-day scientific development allows us to determine, with incredible precision, current and historic emissions of individual countries and their corresponding contributions to the global mean surface temperature rise. It is even able to quantify the disparities between the emissions of major

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[18] UNFCCC COP Decision 2/CP.19 (31 January 2014) UN doc. FCCC/CP/2013/10/Add.1; and UNFCCC COP Decision 3/CP.18 (28 February 2013) UN doc. FCCC/CP/2012/8/Add.1.

[19] UNFCCC Decision 1/CP.21 (29 January 2016) UN doc. FCCC/CP/2015/10/Add.1.

[20] UNFCCC COP Decision 1/CP.21 (29 January 2016), para. 51, UN doc. FCCC/CP/2015/10/Add.1.

[21] UNEP, Emissions Gap Report 2023: Broken Record (20 November 2023), p. 27.

emitters and other world regions[22]. Science can further quantify the real impact that failure to adopt necessary measures has on the overarching temperature goals[23].

11. Indeed, the most recent scientific consensus has emphasized that the current commitments under NDCs are not enough to address the objectives set out in the Paris Agreement.

12. Currently, a 28 per cent reduction in expected emissions for 2030 is needed to keep the global temperature under the 2°C goal, and a 42 per cent reduction is required for the 1.5°C goal. However, the full implementation of current NDCs do not even theoretically address Article 2 objectives. Parties to the Paris Agreement have indeed fulfilled their obligation to submit their NDCs, but the sum of their commitments is not designed to meet our collective goal.

13. The biggest concern is that each year that those commitments are not updated to be fully aligned with the objectives of the Paris Agreement, global warming projections will increase making it harder to close the gap.

14. In this context, courts would be able to consider existing science regarding States' current and historic greenhouse gas emissions and their contributions to global warming, either to examine the adequacy of the commitments with the collective objective or assess how much climate change contributes to a particular loss and damage, determining legal consequences that are grounded on the scientific attribution evidence therein presented.

15. Some States have also argued in the present proceedings that climate change is a collective responsibility. But when all are guilty, no one is. That is the popular saying. Nevertheless, this Court's jurisprudence has shown that it is possible to attribute individual State responsibility in situations of multiple wrongdoers.

16. Indeed, the Court made clear in the *Armed Activities on the Territory of the Congo* reparations Judgment that when multiple actors contribute to causing harm, the responsibility for that harm should be divided among them based on their respective contributions[24]. The Court has found similarly in the *Corfu Channel* case and the *Certain Phosphate Lands in Nauru* case.

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[22] UNEP, Emissions Gap Report 2024: No more hot air … please! (24 October 2024), p. XIII.

[23] *Ibid.*, p. 33.

[24] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I),* p. 49, para. 98.

17. In fact, the ILC has also recognized that under the law of State responsibility "each State is separately responsible for the conduct attributable to it, and that responsibility is not diminished or reduced by the fact that one or more other States are also responsible for the same act"[25].

18. Lastly, regarding the causal nexus for the purposes of compensation, this Court has acknowledged that lack of sufficient evidence of the exact extent of damage does not always prevent awarding compensation[26]. To account for these exceptional situations, the Court has awarded compensation in the form of a global sum[27]. As the Court explained in the *Armed Activities* case, "[s]uch an approach may be called for where the evidence leaves no doubt that an internationally wrongful act has caused a substantiated injury, but does not allow a precise evaluation of the extent or scale of such injury"[28].

19. Mr President, Members of the Court, voluntary efforts to reduce global warming have thus far failed. As put by UNEP in their most recent report, "ambition means nothing without action"[29]. Mitigation efforts implied by current policies will lead global warming to a maximum of 3.1°C this century, exceeding all tipping points; if this ambition level continues there is virtually no chance of meeting our collective goals. We are on track to overpass the 1.5°C threshold above pre-industrial levels in less than a decade[30]. Through these proceedings, the Court has the historic opportunity to affirm the applicability of existing international law to the climate crisis, ensuring that the rights of present and future generations are not forsaken. Let us not inherit the regret of inaction; but instead, let us choose the courage to act.

20. Mr President, Members of the Court, this concludes Chile's presentation. Thank you for your kind attention.

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[25] *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 124, Commentary to Art. 47, para. 1.

[26] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 52, para. 106. *See also, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, pp. 26-27, para. 35

[27] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 52, para. 106.

[28] *Ibid.*, para. 106.

[29] UNEP, Emissions Gap Report 2024: No more hot air … please! (24 October 2024), p. XII.

[30] *Ibid.*, p. 33.

The PRESIDENT: I thank the representatives of Chile for their presentation. I now invite the delegation of China to address the Court and I give the floor to His Excellency Mr Ma Xinmin.

Mr MA:

## INTRODUCTION

1. Mr President, distinguished Members of the Court, good afternoon. It is a great honour and a privilege to appear before you on behalf of China.

2. Climate change is an unprecedented global challenge for humanity. As a developing country, China deeply understands the enormous difficulties faced by developing countries, particularly vulnerable small island States, in confronting its impacts.

3. Following China's written statement, my presentation will focus on six parts: first, jurisdiction; second, applicable laws; third, obligations of States; fourth, legal identification of GHG emissions; fifth, legal consequences; and finally, China's action.

## I. ADVISORY JURISDICTION

4. Mr President, I will start with the Court's advisory jurisdiction.

5. China affirms its support for the Court's exercise of advisory jurisdiction in accordance with international law. We hope the Court will focus on the identification and clarification of *lex lata*, and refrain from the development and application of *lex ferenda*.

6. China also hopes that the Court will uphold the United Nations climate change negotiation mechanism as the primary channel for global climate governance, promote harmonized and consistent interpretation and application of international law, and prevent fragmentation of international climate change law.

## II. APPLICABLE LAWS

7. Mr President, I will now turn to applicable laws.

8. In China's view, this advisory opinion engages multiple branches of international law. The UNFCCC, together with its Kyoto Protocol and Paris Agreement, constitute the basic legal régime

of global climate governance. It is a *lex specialis*[31], tailor-made to address climate change. Therefore, it should serve as the core and primary law guiding the Court's deliberations.

9. For matters not regulated by the UNFCCC regime, other branches of law, such as UNCLOS, human rights treaties and relevant rules of general international law, may play a complementary role. However, their application must be consistent with the purpose, principles and rules of the UNFCCC regime.

## III. OBLIGATIONS OF STATES UNDER THE UNFCCC REGIME

10. Mr President, I now turn to the obligations of States under the UNFCCC regime.

11. The UNFCCC and its Kyoto Protocol and Paris Agreement form a coherent and harmonious framework. The UNFCCC provides the foundation, while the Kyoto Protocol and the Paris Agreement are implementation agreements that build upon, supplement and develop the foundation. The three should be applied uniformly and interpreted consistently.

12. The rights, obligations and responsibilities of States under the regime must be determined fully and accurately in accordance with the ordinary rules of treaty interpretation[32]. I highlight three key points:

13. First, purpose. Climate action under the regime requires an integrated approach that co-ordinates multiple objectives. They aim not only to address climate change threats[33] but also to be "in the context of"[34], to "promote"[35] and "achieve"[36] sustainable development and poverty eradication[37], on the basis of equity[38].

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[31] See Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, *Yearbook of the International Law Commission*, 2006, Vol. II (Part Two), p. 178, para. 251 (7).

[32] See Vienna Convention on the Law of Treaties, Article 31.

[33] See UNFCCC, Article 2; Paris Agreement, Article 2 (1).

[34] Paris Agreement, Articles 2 (1) and 4 (1).

[35] UNFCCC, Article 3 (4); Kyoto Protocol, Article 2 (1); Paris Agreement, Articles 6 (1), 6 (2) and 10 (5).

[36] UNFCCC, Preambular paras. 21 and 22.

[37] See UNFCCC, Articles 2 and 4 (7); Paris Agreement, Preambular paras. 8 and 9, Articles 2 (1), 4 (1) and 6 (8).

[38] See UNFCCC, Article 3 (1); Paris Agreement, Articles 2 (2), 4 (1), 14 (1); Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, adopted at COP16 on 10-11 December 2010, FCCC/CP/2010/7/Add.1, paras. 1, 4 and 6.

14. China emphasizes that addressing climate change is a comprehensive and systematic undertaking with broad implications. Limiting climate action solely to the threat of climate change, without considering other compelling objectives, reflects an unduly narrow perspective.

15. Second, principles. Climate action must adhere to the principles of the regime, including sustainable development, equity, CBDR-RC and co-operation, with a particular focus on safeguarding the right to development for developing countries and their peoples.

16. The principle of sustainable development under the regime affirms that parties have both the right and responsibility to promote sustainable development[39]. Moreover, parties must respect, promote and consider their respective obligations regarding "the right to development"[40], which is both collective and primary[41]. Economic development and poverty eradication are the legitimate priority needs of developing countries[42]. This includes ensuring access to resources and acknowledging their energy consumption must increase[43].

17. The principle of equity under the regime requires parties to protect the climate system for all present and future generations[44]. In terms of the equity of the present generation, the regime requires consideration of developing countries' unique challenges and costs related to moving away from fossil fuels[45] and their limited capacity to withstand the negative impacts of climate action[46]. The Paris Agreement underscores the imperative to support developing countries[47].

18. In light of the above principles, the international community has a clear obligation to ensure that developing countries can enjoy their right to development, including equal access to development opportunities, and emission space.

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[39] See UNFCCC, Article 3 (4).

[40] Paris Agreement, Preambular para. 11.

[41] See the State Council Information Office of the People's Republic of China, The Communist Party of China and Human Rights Protection–A 100-Year Quest (White Paper), June 2021, available at http://english.scio.gov.cn/whitepapers/2021-06/24/content_77584416.htm; the State Council Information Office of the People's Republic of China, Seeking Happiness for People: 70 Years of Progress on Human Rights in China (White Paper), September 2019, available at http://english.scio.gov.cn/2019-09/23/content_75235239_3.htm.

[42] See UNFCCC, Preambular para. 21.

[43] See UNFCCC, Preambular para. 22.

[44] See UNFCCC, Preambular para. 23, Article 3 (1); Paris Agreement, Preambular para. 11.

[45] See UNFCCC, Preambular para. 20, Articles 3 (2) and 4 (10).

[46] See UNFCCC, Preambular para. 10, Article 4 (10).

[47] See Paris Agreement, Articles 3 and 4 (5).

19. In this context, certain States have imposed arbitrary and unjustified unilateral measures that stifle the growth of green industries in developing countries. These measures both undermine the right to development and violate the principle of co-operation to promote a supportive and open international economic system[48].

20. Third, obligations and responsibilities. Under the UNFCCC regime, States must adhere to the principle of CBDR-RC when fulfilling their obligations and responsibilities to protect the climate system.

**Adherence to the principle of CBDR-RC**

21. CBDR-RC remains the cornerstone of the international climate change régime. This principle, embodying equity, is established by the UNFCCC[49] and reaffirmed by its Kyoto Protocol and Paris Agreement. Claims that the Paris Agreement abandons this principle are baseless.

22. First, the Paris Agreement as an implementation agreement[50] "under the Convention"[51] inherits and carries forward this principle[52]. The Agreement's main provisions distinguish between the obligations and responsibilities of developed and developing countries in various areas, including mitigation[53], adaptation[54], finance[55], technology[56], capacity-building[57] and transparency[58].

23. Second, the Paris Agreement further reinforces the legal basis for differentiated responsibilities through the phrase "in the light of different national circumstances"[59].

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[48] See UNFCCC, Article 3 (5).

[49] See UNFCCC, Preambular para. 6, Articles 3 (1) and 4 (1).

[50] See Paris Agreement, Article 2 (1).

[51] Decision 1/CP.17, Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action, adopted at COP17 on 11 December 2011, FCCC/CP/2011/9/Add.1, para. 2.

[52] See Paris Agreement, Preambular para. 3, Articles 2 (2), 4 (3) and 4 (19).

[53] See Paris Agreement, Article 4 (4).

[54] See UNFCCC, Article 4 (4); Paris Agreement, Article 9 (1).

[55] See Paris Agreement, Articles 9 (1), 9 (2), 9 (3), 9 (5) and 9 (7).

[56] See Paris Agreement, Articles 10 (5) and 10 (6).

[57] See Paris Agreement, Articles 11 (1), 11 (3) and 11 (4).

[58] See Paris Agreement, Articles 13 (9) and 13 (10).

[59] Paris Agreement, Preambular para. 3, Articles 2 (2), 4 (3) and 4 (19).

24. Third, while the mechanism of NDCs applies universally, their scope, ambition and level reflect CBDR-RC, acknowledging the differing capabilities and circumstances of developed and developing countries.

25. The UNFCCC regime imposes CBDR on parties. It includes legally binding obligations, non-legally binding political commitments, moral responsibilities and other advisory or voluntary actions. Although these provisions differ in their effects or functions, they collectively represent the international community's consensus and constitute a package agreement that parties must implement in its entirety.

**Common obligations and responsibilities for all parties**

26. Mr President, regarding common obligations and responsibilities of all parties, I underscore common objectives and general commitment.

27. Firstly, all parties should collectively pursue common objectives of climate action.

28. The Paris Agreement sets out three specific goals for strengthening the global response to the threat of climate change[60]: limiting global warming[61], addressing adaptation[62] and aligning financial flows[63].

29. Regarding the long-term temperature goal, the Paris Agreement sets a time frame[64] for global mitigation efforts, and recognizes that developing countries require longer time frames for emissions peaking[65]. It clearly demonstrates that developed and developing countries follow different paths toward carbon neutrality.

30. These goals are collective, applying to parties as a whole rather than individual parties. They constitute shared political commitments, not concrete legal obligations. Importantly, they combine temperature limits, application, adaptation and finance goals, rather than focusing solely on one temperature goal. The long-term temperature goal sets a range from 1.5°C to 2°C, rather than a singular 1.5°C target.

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[60] See Paris Agreement, Article 2 (1).

[61] See Paris Agreement, Article 2 (1) *(a)*.

[62] See Paris Agreement, Articles 2 (1) *(b)* and 7 (1).

[63] See Paris Agreement, Article 2 (1) *(c)*.

[64] See Paris Agreement, Article 4 (1).

[65] See Paris Agreement, Article 4 (1).

31. Secondly, all parties "are to" collectively undertake and communicate their ambitious climate efforts to achieve the purpose of the Paris Agreement[66]. The term "are to" indicates direction rather than legal obligation, expressing the parties' general commitment to progressive efforts in various areas[67].

32. Regarding each party's specific obligations and responsibilities, each party shall prepare, communicate and update[68] progressive[69] and ambitious[70] NDCs, and pursue domestic measures to mitigate[71] and adapt[72] to climate change. The obligation related to NDCs are conduct-based ones undertaken at the international level. However, the scope, form, and ambition of NDCs remain subject to each party's determination.

33. Mr President, next I will examine the differing obligations and responsibilities of developed and developing countries.

34. Why distinguish between developed and developing countries? Let me be clear: this distinction is not a gift from developed countries, it is firmly grounded in justice and law. Three factors determine the distinction that is: historical GHG emissions before the UNFCCC's adoption, the capacity to tackle climate change and national circumstances.

35. In terms of national circumstances, the following aspects should be taken into account, in particular:

— development stages;

— peoples' basic needs for survival, livelihood and development;

— resource endowments;

— industrial structures;

— population size;

— transference of emissions between countries; and

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[66] See Paris Agreement, Article 3.

[67] See Paris Agreement, Article 3.

[68] See Paris Agreement, Articles 4 (2) and 4 (9).

[69] See Paris Agreement, Article 4 (3).

[70] See Paris Agreement, Article 4 (3).

[71] See UNFCCC, Article 4 (1) *(b)*; Paris Agreement, Article 4 (2).

[72] See UNFCCC, Article 4 (1) *(b)*; Paris Agreement, Article 7 (9).

— cost effectiveness.

**Obligations and responsibilities of developed countries**

36. For developed countries, they bear more and greater obligations and responsibilities.

37. First, developed countries should undertake quantified emission reductions,[73] and should lead mitigation efforts[74] and adopt economy-wide absolute emission reduction targets[75].

38. Second, they shall provide developing countries with means of implementation[76], and shall report information regarding such means provided[77]. Also, they will fulfil their commitments to lead in providing and mobilizing climate finance of at least US$300 billion annually by 2035[78], and the doubling of adaptation finance by 2025[79].

39. China submits that developed countries have an obligation to bear their historical responsibilities. IPCC reports[80] reveal that historical emissions from developed countries are the primary cause of the current climate crisis and injustice. The UNFCCC explicitly "[notes] that the largest share of historical and current global emissions of GHGs have originated in developed countries"[81].

40. Moreover, historical responsibility lies at the very heart of the UNFCCC régime. Developed countries should bear greater legal obligations and moral responsibilities based on climate justice[82], the principle of equity[83] and the provisions of the régime[84]. The Cancun Agreements

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[73] See Kyoto Protocol, Article 3 (1); Doha Amendment, Article 1 (C).

[74] See UNFCCC, Articles 3 (1) and 4 (2) *(a)*; Paris Agreement, Article 4 (4).

[75] See Paris Agreement, Article 4 (4).

[76] See e.g. UNFCCC, Articles 4 (3), 4 (4) and 4 (5); Paris Agreement, Articles 4 (5), 7 (13), 9 (1), 9 (3), 10 (6), 11 (3), 13 (14) and 13 (15).

[77] See Paris Agreement, Articles 9 (5) and 13 (9).

[78] See Draft Decision -/CMA.6, New Collective Quantified Goal on Climate Finance, adopted at COP29 on 24 November 2024, FCCC/PA/CMA/2024/L.22, para. 8.

[79] See Decision 1/CMA.3, Glasgow Climate Pact, adopted at COP26 on 13 November 2021, FCCC/PA/CMA/2021/10/Add.1, para. 18.

[80] See e.g. Climate Change: The IPCC 1990 and 1992 Assessments, p. 57; IPCC AR 6 Climate Change 2022: Mitigation of Climate Change, p. 218.

[81] UNFCCC, Preambular para. 3.

[82] See Paris Agreement, Preambular para. 13.

[83] See UNFCCC, Article 3 (1); Paris Agreement, Preambular paras. 3 and 11, Articles 2 (2), 4 (1) and 14.

[84] See e.g. UNFCCC, Articles 3 (1), 4 (2) *(a)*, 4 (3), 4 (4) and 4 (5); Kyoto Protocol, Article 3 (1); Doha Amendment, Article 1 (C); Paris Agreement, Articles 4 (4), 9 (1), 9 (3), 9 (5) and 13 (9).

reaffirm that developed countries, due to their historical responsibilities, must lead efforts to address climate change and its adverse effects[85].

**Responsibilities of developing countries**

41. For developing countries, they will make the greatest efforts within their respective capabilities, in the context of their sustainable development. Beyond common obligations and responsibilities, they are encouraged to gradually move forward economy-wide emission reduction or limitation targets[86]. Moreover, they may voluntarily provide finance to support other developing countries' mitigation and adaptation efforts[87].

42. It must be emphasized that developing countries' implementation of commitments depends on developed countries' effective meeting of their obligations regarding means of implementation[88]. Any finance flow between developing countries remains completely voluntary without any legal obligation.

## IV. LEGAL IDENTIFICATION OF ANTHROPOGENIC GHG EMISSIONS

43. Mr President, I now turn to the legal identification of GHG emissions.

44. Some countries have characterized anthropogenic GHG emissions as "pollution of the marine environment" under UNCLOS[89]. China holds a different view on this matter.

45. First, such identification goes against UNCLOS's intent. The Convention does not mention terms such as "climate change" or "greenhouse gases". The Convention's preparatory materials clearly establish that State parties did not intend to include GHG emissions within the scope of marine pollution. While treaty interpretation may evolve, it must respect the State parties' original intent. Any attempt at *de facto* legislation beyond the Convention's intent would contradict the principle of State consent.

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[85] See Report of the Conference of the Parties on its 16th, held in Cancun from 29 November to 10 December 2010, Part Two: Decisions adopted by the COP. Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, UN doc. FCCC/CP/2010/7/Add.1, preamble of Part III (A).

[86] See Paris Agreement, Article 4 (4).

[87] See Paris Agreement, Article 9 (2).

[88] See UNFCCC, Article 4 (7); Paris Agreement, Article 4 (5).

[89] UNCLOS, Article 1 (1) (4).

46. Second, such identification is not supported by scientific evidence. Determining whether the adverse effects of anthropogenic GHGs constitute marine pollution is fundamentally a scientific question. Such a determination cannot rely solely on legal reasoning. $CO_2$, the primary anthropogenic GHG, is not inherently harmful — it is essential for life on Earth and its ecosystems. Determining whether the adverse effects of the ocean's absorption of $CO_2$ constitute pollution requires an evidence-based scientific assessment.

47. Last but not least, such identification fails to account for the unique nature of adverse effects from GHG emissions. Unlike conventional environmental pollution, the effects from GHG emissions are global and historical, making it difficult to identify specific sources, establish causation or attribute responsibility. Accordingly, the legal rules governing environmental pollution do not apply. The International Law Commission's "Draft Guidelines on the Protection of the Atmosphere" defines climate change as "atmospheric degradation", distinguishing it from atmospheric pollution[90]. Also, no international consensus exists to recognize GHG emissions as pollution[91].

48. China is of the view that adverse effects from anthropogenic GHG emissions are in a *sui generis* legal status. The Court is respectfully urged to leave this matter to be determined through scientific research and State practice or international law-making.

## V. LEGAL CONSEQUENCES

49. Mr President, I move on to the second question raised in the request.

50. GHG emissions do not constitute internationally wrongful acts under general international law. The resulting loss and damage cannot be addressed through State responsibility[92] or liability[93] régimes. The UNFCCC régime has established a special assistance arrangement for loss and damage and a unique compliance procedure.

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[90] See Draft Guidelines on the Protection of the Atmosphere adopted by the ILC: Report of the International Law Commission's 72nd Session, UN doc. A/76/10, p. 23, para. 12.

[91] See e.g. Written Statement of India, para. 17; Written Statement of the Russian Federation, p. 12. See also IPCC Special Report on the Ocean and Cryosphere in a Changing Climate, 2019, pp. 16, 62.

[92] See Draft Articles on Responsibilities of States for Internationally Wrongful Acts, *YILC*, 2001, Vol. II, Part Two.

[93] See Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities, *YILC*, 2006, Vol. II, Part Two.

## VI. CHINA'S ACTIONS AND CONTRIBUTIONS

51. Mr President, I now turn my attention to China's actions and contributions.

52. China has firmly implemented its national strategy to actively address climate change. President Xi Jinping has underscored that our climate action stems from our choosing, not external pressure. Guided by Xi Jinping Thought on Ecological Civilization, China's climate action remains unshakable, regardless of international development.

53. Consider these examples.

54. Since the 1990s, China has lifted 658 million people out of poverty, accounting for 75 per cent of global progress in the poverty reduction. This marks the greatest achievement in human history.

55. China is advancing its dual carbon targets comprehensively, with its carbon peaking plans spanning 12 industries and 31 provinces. At the recent COP 29, China further pledged to submit its 2035 NDCs covering the whole economy and all GHGs.

56. China leads the global green and low-carbon transition, contributing 60 per cent of the world's newly installed renewable energy capacity.

57. Despite no obligation, China has provided and mobilized over RMB177 billion for fellow developing countries since 2016 through South-South co-operation.

## CONCLUSION

58. Mr President, action is key to addressing climate change. As a responsible major developing country, China stands firmly as both a committed practitioner and driving force in climate action. We are committed to working with the rest of the world to protect Earth, our shared home. Together, we can build a community with a shared future for humankind.

59. Mr President, distinguished Members of the Court, that concludes China's statement. On behalf of the Chinese delegation, thank you for your kind attention. I also thank the Registry and the staff for their assistance. Thank you all.

The PRESIDENT: I thank the representative of China for his 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 4.30 p.m. to 4.45 p.m.*

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, Colombia, to address the Court and I call His Excellency Luis Gilberto Murillo Urrutia to the podium. You have the floor, Sir.

Mr MURILLO URRUTIA:

## I. OPENING REMARKS

1. Mr President, Members of the Court. It is an honour to address this distinguished Court, on behalf of the Republic of Colombia, in these proceedings of historical importance.

2. Colombia appears today before this Court to emphasize the existential threat that climate change represents for humanity and to advocate for a comprehensive response, including the legal aspects that must support and provide legitimacy to our actions.

3. The impacts of climate change transcend environmental damage, affecting human lives and global stability.

4. Such a critical juncture demands urgent action, not only to reverse and repair the significant damage that has already been caused, but also to ensure a sustainable future for the communities and the people of present and future generations.

5. Distinguished judges of the Court, Colombia's ecosystems, vital for the preservation of human life, are threatened due to the current and foreseeable negative effects of climate change.

6. Moreover, instability related to climate events and disruptions creates a significant threat to international peace, stability and security.

7. This instability exacerbates internal conflicts, increasing competition for scarce resources and displacing populations. As a country that has suffered several decades of armed conflict, we recognize that peacebuilding also requires making peace with nature.

8. For example, rising ocean and sea levels, in particular, pose a serious threat to island and coastal States.

9. In the case of Colombia, it is the low coastal areas that are in danger, as evidenced in the islands of San Andrés, Providencia and Santa Catalina: they are suffering from this impact. The life

of the native communities of this territory, we call them the Raizal communities, is closely linked with the marine and coastal ecosystems.

10. Those islands are home to one of the largest coral reef systems in the world, which unfortunately is suffering from serious degradation caused by ocean acidification and rising water temperatures, therefore depleting this essential ecosystem for fishing and marine biodiversity. This is the same situation of my own people in the State of Chocó, Black and Indigenous communities, that are underwater, impacted by flooding.

11. Mr President, since climate change is a common concern of all humanity, no nation can address this crisis alone; multilateralism and the duty to co-operate are key to confront this crisis.

12. Colombia, being a megadiverse country, suffers disproportionately from the adverse effects of climate change, despite not contributing significantly to global emissions. However, Colombia remains steady in its fight against climate change.

13. As the President of Colombia, Gustavo Petro, has constantly pointed out, addressing the structural causes of global environmental degradation implies re-evaluation of the economic and development model, as well as the financial and international governance architecture.

14. Many middle-income countries, like Colombia, face serious constraints while addressing climate and economic crises, including financial debt impact.

15.Therefore, Colombia proposes and advocates for adoption of innovative solutions, such as the debt swaps for climate action and debt swaps for environmental conservation, which would free up resources for mitigation, adaptation, recovery and restoration initiatives.

16. Colombia upholds these measures, and we state that it should not be the result of the good will of developed States, but rather a real legal obligation derived from loss and damages caused by the commission of internationally illicit acts, including continual international wrongful acts resulting from historic and current carbon emissions.

17. Mr President and Members of the Court. Colombia recently hosted the 16th Conference of the Parties to the Convention on Biological Diversity (COP16).

18. COP16 recognized the urgent need to halt and reverse the crisis of biodiversity loss and its intrinsic relationship with climate change.

19. A clear example of this is seen in the unbearable pressure exerted on the Amazon and the biogeographic Chocó regions, two ecosystems critical for climate regulation, carbon capture and water supply.

20. In the high-level segment of COP16, a voluntary declaration was approved and released.

21. In its call, the declaration reaffirms the importance of due respect and observance of international law as a crucial tool against actions that threaten the lives of human beings and nature itself. We call this declaration "A Peace with Nature: A Call for Life".

22. Without any doubt, the world expects this Court to issue a comprehensive advisory opinion that establishes clear legal principles applicable to climate change and reinforces the obligation for unified and co-ordinated global actions.

23. Colombia requests the Court to recognize the interconnection and interdependence between environmental protection, climate change, human rights and sustainable development.

24. Mr President, distinguished Members of the Court, I thank all of you for your attention, and I respectfully invite you to give the floor to Her Excellency Ambassador Carolina Olarte Bácares, in order to continue with the delivery of Colombia's oral statement. Thank you very much.

The PRESIDENT: I thank His Excellency Luis Gilberto Murillo Urrutia. J'appelle à présent à la barre, S. Exc. M^me^ Carolina Olarte Bácares. Vous avez la parole, Madame.

M^me^ OLARTE BÁCARES :

## II. RÉPONSE AUX QUESTIONS *A)* ET *B)*

### Introduction

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les juges, c'est un honneur pour moi de me présenter devant votre Cour au nom de la République de Colombie.

2. Le ministre des affaires étrangères a souligné l'engagement résolu de notre pays à lutter contre le changement climatique par le biais d'actions nationales conséquentes. Cependant, comme nous en sommes tous parfaitement conscients, les efforts nationaux seuls sont insuffisants en raison de la nature globale de la crise, laquelle requiert une réponse collective et universelle fondée sur le droit international.

3. La position de la Colombie sur les nombreux points soulevés est décrite en détail dans notre exposé écrit et nos observations écrites. Ma présentation orale ne portera donc que sur quelques aspects clés ayant trait aux deux questions principales soumises à la Cour.

4. Je me permettrai à ce stade d'aborder la première partie de ma plaidoirie, laquelle portera sur les obligations juridiques internationales qui trouvent application dans le contexte du changement climatique.

**Réponse à la question *a)***

**Principes fondamentaux de droit international applicables au changement climatique**

5. Les obligations juridiques liées au changement climatique sont ancrées non seulement dans les régimes établis par la convention-cadre des Nations Unies sur les changements climatiques, (ou convention-cadre), le protocole de Kyoto et l'accord de Paris, mais s'étendent également au-delà de ces instruments. Nous invitons de ce fait la Cour à considérer qu'une approche fragmentée du droit international ne peut en aucun cas trouver place pour faire face à la crise climatique.

6. Dans ce contexte, la Colombie soutient que les principes du droit international de l'environnement sont indispensables à la compréhension et à l'interprétation des obligations des États en matière de lutte contre le changement climatique. Je présenterai certains d'entre eux.

7. Premièrement, au cœur du droit international de l'environnement se trouve l'obligation pour les États de prévenir les dommages significatifs à l'environnement, tant à l'intérieur qu'à l'extérieur de leurs frontières[94]. Dans le contexte du changement climatique, cette obligation s'étend à la réduction des émissions de gaz à effet de serre et à la sauvegarde des écosystèmes qui sont essentiels à la santé de la planète[95].

8. En second lieu, le principe de diligence raisonnable impose aux États de prendre toutes les mesures nécessaires, raisonnables et appropriées, pour prévenir les dommages résultant d'activités relevant de leur juridiction. Étant donné la nature évolutive de la science du climat, ce principe exige des États qu'ils évaluent les risques de manière proactive et qu'ils mettent en œuvre des mesures d'atténuation[96]. La diligence raisonnable n'est pas une obligation statique, elle évolue au gré des

[94] Voir, par exemple, Thaïlande, exposé écrit, par. 15 ; Pakistan, exposé écrit, par. 33 et 36-37.

[95] Voir, par exemple, Émirats arabes unis, exposé écrit, par. 9-13 ; Inde, exposé écrit, par. 79 et 90 ; Népal, exposé écrit, par. 25.

[96] Voir, par exemple, Thaïlande, exposé écrit, par. 11 ; Viet Nam, exposé écrit, par. 25.

progrès des connaissances scientifiques. La Colombie exhorte la Cour à reconnaître que le manque de diligence raisonnable dans le contexte des changements climatiques, du fait d'actions inadéquates ou d'inaction, pourrait entraîner des dommages irréversibles[97].

9. En troisième lieu, la Colombie rappelle que la crise du changement climatique ne peut pas être traitée de manière efficace sans coopération internationale entre les États. Tant la convention-cadre que l'accord de Paris précisent que la coopération internationale est nécessaire pour atteindre les objectifs climatiques. Le principe des responsabilités communes mais différenciées et des capacités nationales stipule que si tous les États partagent la responsabilité de lutter contre le changement climatique, ceux dont les émissions historiques et les capacités sont les plus importantes devraient assumer une plus grande part du fardeau. Ces principes doivent guider les efforts d'atténuation et d'adaptation dans le cadre des actions mondiales en faveur du climat[98]. Les pays en développement, qui souvent détiennent les puits de carbone les plus importants et qui sont confrontés à des défis de développement considérables, ont besoin d'un soutien en termes de financement, de transfert de technologies à faible émission de carbone et de renforcement des capacités pour pleinement atteindre ces objectifs.

10. En dernier lieu, la Colombie note qu'il existe une large convergence entre les soumissions écrites sur la pertinence de l'interprétation et de l'application des obligations étatiques en vertu du principe de l'équité intergénérationnelle. La Colombie considère que, dans le contexte de l'urgence climatique, les États doivent s'efforcer de garantir justice et équité dans l'utilisation et la conservation de l'environnement et des ressources naturelles, ce qui les oblige à prendre en compte les inégalités entre les générations[99]. La Colombie invite la Cour à considérer que l'équité intergénérationnelle, en tant que norme juridique de droit international coutumier, est au cœur des obligations, des politiques et des négociations relatives aux changements climatiques.

11. Monsieur le président, si la convention-cadre et l'accord de Paris sont indispensables à l'action climatique internationale, ils ne doivent pas être considérés de manière isolée. La Colombie estime que ces accords doivent être interprétés en conjonction avec d'autres régimes juridiques

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[97] Mexique, exposé écrit, par. 43.

[98] Colombie, exposé écrit, par. 3.56.

[99] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 243.

internationaux, notamment les droits de la personne humaine et le droit de l'environnement, afin de garantir que les États respectent toutes leurs obligations en vertu du droit international, tout en se conformant à leurs engagements en matière de climat.

12. La Colombie rejette l'argument selon lequel une approche fondée sur la *lex specialis* exclurait l'application des principes de droit international de l'environnement ou d'autres régimes juridiques. Les obligations découlant de la convention-cadre et de l'accord de Paris sont complémentaires aux autres engagements juridiques et ne les remplacent pas, ni ne les excluent.

**Éviter les approches fragmentées : un cadre juridique cohérent**

13. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, la lutte contre le changement climatique n'exige rien de moins qu'une interprétation et une application cohérentes et globales des divers corpus juridiques pertinents.

14. Le manque de cohérence entre régimes juridiques se traduit souvent par de profondes difficultés à harmoniser leur application. Cette fragmentation compromet l'efficacité et exacerbe les contradictions entre obligations.

15. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, soyons plus précis : le changement climatique n'est pas seulement une question environnementale, il est aussi une menace profonde pour les droits fondamentaux de la personne humaine, notamment les droits à la vie, à la santé et à un environnement sain[100]. La dégradation de l'environnement causée par le changement climatique a des répercussions directes et graves sur la jouissance de ces droits.

16. La Colombie, à l'instar de nombreux États, est fermement convaincue que les dommages causés par le climat ne peuvent être exclus du champ d'application des obligations en matière de droits de la personne humaine[101]. Les États ont le devoir d'intégrer les considérations relatives aux droits humains dans leurs politiques et actions en matière de climat[102]. S'ils ne le font pas, non seulement ils contreviendront au droit international, mais les populations les plus vulnérables ne bénéficieront pas d'une protection adéquate.

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[100] Colombie, exposé écrit, par. 3.66-3.72.

[101] Voir, par exemple, Tonga, exposé écrit, par. 240-242 ; Colombie, exposé écrit, par. 3.70 ; Népal, exposé écrit, par. 19 ; Allemagne, exposé écrit, par. 84.

[102] Voir, par exemple, Bangladesh, exposé écrit, par. 4 et 103 ; voir également Inde, exposé écrit, par. 77-79 ; Union européenne, exposé écrit, par. 68 et 92 ; Népal, exposé écrit, par. 31.

17. Les obligations découlant des traités relatifs aux droits de la personne humaine s'étendent sans aucun doute aux dommages liés au climat. La Colombie s'oppose fermement à la position des États qui ont soutenu le contraire[103]. Une interprétation restrictive ne peut qu'être source additionnelle de fragmentation.

18. La jurisprudence des organismes et juridictions des droits humains souligne les liens intrinsèques entre protection de l'environnement et droits de la personne humaine[104]. Le devoir de prévenir les dommages et l'obligation de diligence raisonnable s'appliquent de manière générale et ne sont pas limités par des dispositions conventionnelles spécifiques. Ils comprennent le devoir de protéger les individus contre les dommages prévisibles, y compris ceux causés par le changement climatique.

19. En outre, la nature extraterritoriale des impacts climatiques souligne avec acuité la nécessité pour les États d'agir au-delà de leurs frontières lorsque leurs actions ou omissions affectent les droits d'autrui[105]. La Colombie fait valoir que l'application extraterritoriale des droits de la personne humaine est cruciale dans le contexte du changement climatique. Les impacts du changement climatique ne se limitent pas aux frontières nationales, et les États doivent donc reconnaître que leurs actions ou inactions peuvent avoir des conséquences considérables sur les personnes et les communautés au-delà de leurs propres frontières.

20. Les obligations liées au changement climatique doivent être comprises en harmonie avec les autres régimes juridiques applicables. En interprétant ces obligations dans leur ensemble, les États ne peuvent pas se soustraire de manière sélective à leurs responsabilités internationales. En d'autres termes, la violation des obligations liées à l'environnement et au changement climatique constitue également une violation des droits humains.

21. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, conformément à l'article 31, paragraphe 3, alinéa *c)*, de la convention de Vienne sur le droit des traités, les traités

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[103] Voir, par exemple, Arabie saoudite, exposé écrit, par. 4.97-4.98 ; Danemark, Finlande, Islande, Norvège et Suède, exposé écrit, par. 85-86 ; El Salvador, exposé écrit, par. 42 ; Portugal, exposé écrit, par. 70 ; Costa Rica, exposé écrit, par. 82 ; Iran, exposé écrit, par. 141.

[104] Inter-American Court of Human Rights, *Request for an Advisory Opinion OC-32 Climate Emergency and Human Rights. Written Observations submitted by States, NGOs, academia, individuals and companies*. Available at: https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634.

[105] Voir, par exemple, Costa Rica, exposé écrit, par. 75.

doivent être interprétés conjointement avec d'autres règles pertinentes du droit international. Le principe de l'intégration systémique exige que le régime des Nations Unies en matière de changement climatique soit interprété de manière harmonieuse avec d'autres normes juridiques applicables, telles que les droits humains et le droit international coutumier.

22. En clair, il n'est pas demandé à la Cour de créer de nouvelles obligations juridiques, mais de clarifier le corpus juridique existant relatif au changement climatique. L'avis de votre juridiction sur les relations entre les traités relatifs au climat et les autres normes internationales applicables contribuera à préciser les obligations des États, en renforçant le cadre juridique global de la lutte contre le changement climatique.

23. Ainsi, par exemple, la Cour interaméricaine des droits de l'homme, dans son avis consultatif OC-23/2017 reconnaissant l'interconnexion entre les obligations environnementales et les droits humains, a démontré qu'une telle harmonisation est réalisable.

24. Une approche cohérente et intégrée non seulement clarifierait les contours des obligations des États en matière de changement climatique, mais renforcerait également l'efficacité de la coopération internationale dans la lutte contre ce défi mondial urgent. L'avis consultatif jouera de ce fait un rôle essentiel dans le renforcement de la cohérence du droit international pour mener l'effort collectif de la lutte contre le changement climatique[106].

**Réponse à la question *b)***

25. Monsieur le président, Mesdames et Messieurs les juges, je vais maintenant aborder les questions cruciales soulevées dans la question *b)* de la demande d'avis consultatif.

26. Au cœur de cette demande se trouve la question des conséquences juridiques pour les États dont les actes ou les omissions ont causé des dommages importants au système climatique et à l'environnement.

27. La Cour a une longue tradition de clarification des conséquences des faits internationalement illicites, y inclus dans le cadre des procédures consultatives. Récemment, dans son avis consultatif sur les *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est* de 2024, la Cour a réaffirmé le

[106] Voir, par exemple, Suisse, exposé écrit, par. 8 ; Australie, exposé écrit, par. 1.31.

principe selon lequel les actes illicites entraînent des conséquences juridiques, notamment la cessation du comportement illicite, la réparation et, le cas échéant, l'indemnisation[107]. La Colombie soumet respectueusement que la Cour devrait poursuivre cette pratique bien établie en élucidant les conséquences des manquements des États à leurs obligations en matière de climat, en particulier ceux qui entraînent des dommages importants pour les populations vulnérables et les écosystèmes.

**Manquements aux obligations internationales**

28. La Colombie souligne que de nombreuses obligations juridiques internationales sont actuellement violées, ce qui donne lieu à des actes internationalement illicites. Ces obligations ne se limitent pas aux régimes spécifiques de la convention-cadre et de l'accord de Paris, mais s'étendent aux principes de droit international, y compris le devoir de prévenir les dommages significatifs, l'obligation de respecter les droits de la personne humaine, ainsi que d'autres corps d'obligations.

29. Rappelons tout d'abord que les articles de la Commission du droit international sur la responsabilité de l'État sont directement applicables dans le contexte du changement climatique. Ni la convention-cadre ni l'accord de Paris ne contiennent de règles secondaires spéciales en la matière. Il n'est donc pas possible d'exclure les principes des articles de la CDI par le biais d'une approche de *lex specialis*.

**Actes composites et violations continues**

30. La Colombie soutient en outre que les émissions anthropiques de gaz à effet de serre doivent être considérées comme un fait illicite composite en vertu du droit international[108]. Le préjudice causé par le changement climatique n'est pas le résultat d'incidents isolés, mais plutôt d'une accumulation d'actions et d'omissions de la part des États au fil du temps. Le concept d'acte composite, tel que défini à l'article 15 des articles de la CDI, s'applique à une série d'actions ou d'omissions qui entraînent collectivement une violation d'obligations internationales.

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[107] *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. 54, par. 117-118 ; *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 197-198, par. 148-153 ; *Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, avis consultatif, C.I.J. Recueil 2019 (I)*, p. 138-139, par. 175-177 ; *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. 265.

[108] Projet d'articles sur la responsabilité de l'État pour fait internationalement illicite, avec commentaires, *Annuaire de la Commission du droit international*, 2001, vol. II, deuxième partie, tel que corrigé, art. 15.

31. Monsieur le président, les dommages environnementaux continus qui sont au cœur de la crise climatique ont profondément affecté les États, en particulier leur environnement et leur capacité à garantir les droits de la personne humaine, ce qui constitue un préjudice important[109]. Ce comportement est une violation internationale qui a un caractère continu, qui persiste dans le temps et qui comprend tant les actes que les omissions des États responsables[110].

32. Certains États ont fait valoir que la complexité de l'attribution des dommages causés par les émissions liées au changement climatique rendait difficile l'établissement de la responsabilité de l'État. Cependant, la présente procédure consultative n'exige pas de la Cour qu'elle se prononce de manière spécifique sur des questions d'attribution. L'accent devrait plutôt être mis sur la clarification des principes juridiques qui trouvent application lors de telles violations.

**Conséquences juridiques et réparations**

33. Monsieur le président, Mesdames et Messieurs les juges, permettez-moi d'aborder maintenant le deuxième aspect de la responsabilité internationale.

34. Les conséquences juridiques du non-respect des obligations en matière de climat sont claires : elles comprennent la cessation et la non-répétition des activités nuisibles, la réparation des dommages causés et, le cas échéant, l'indemnisation. L'obligation de mettre fin aux violations en cours, telles que la poursuite d'émissions excessives de gaz à effet de serre, est fondamentale en droit international. Si des violations se poursuivent, les États ont le devoir de prendre toutes les mesures nécessaires pour mettre fin au préjudice.

35. Il incombe à la Cour de déterminer les contours juridiques de la réparation appropriée du préjudice subi. La complexité et l'ampleur de la présente demande ne devraient pas empêcher la Cour d'appliquer les règles du droit international pour répondre à ces questions, en tenant compte des circonstances spécifiques liées au type de préjudice causé et des sources de ce préjudice. La réparation des dommages climatiques doit être envisagée sous l'angle de la responsabilité juridique, en reconnaissant la contribution disproportionnée de certains États aux émissions mondiales de gaz à effet de serre.

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[109] Colombie, exposé écrit, par. 4.2 ; Colombie, exposé écrit, par. 2.14-2.15 ; voir, par exemple, Bangladesh, exposé écrit, par. 105 et 115.

[110] Colombie, exposé écrit, par. 4.2.

36. Le principe de restitution devrait guider les efforts visant à restaurer l'environnement dans son état antérieur, dans la mesure du possible. Dans les cas où la restitution n'est pas possible en raison des dommages irréversibles, la compensation devient une forme de réparation nécessaire. Comme l'a indiqué la Colombie, la compensation peut consister en une assistance financière aux États vulnérables, ou prendre la forme d'instruments tels des debt for climate action swaps, debt for nature swaps ou des green bonds.

37. Pour la Colombie, la compensation ne doit pas être considérée comme une question de bonne volonté discrétionnaire, mais comme une obligation découlant de la violation continue du droit international en raison de la commission de divers actes internationalement illicites et continus résultant des émissions historiques et actuelles de gaz à effet de serre.

**Conclusion**

38. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, la Colombie exhorte respectueusement la Cour à adopter une approche systémique de l'interprétation du droit international applicable à la lutte contre le changement climatique. Une interprétation fragmentée du droit applicable compromettrait l'action mondiale en faveur du climat.

39. Pour la Colombie, la Cour est particulièrement bien placée pour apporter une clarification complète et faisant autorité sur les conséquences juridiques des actes internationalement illicites liés au changement climatique, tant pour les violations en cours que les violations potentielles futures. Cette clarification est essentielle pour donner aux Nations Unies et à ses États Membres des indications sur la portée complète de leurs obligations juridiques et sur les conséquences d'un manquement à celles-ci.

40. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les juges, je vous remercie de votre attention. Ceci conclut l'exposé oral de la République de Colombie.

Le PRÉSIDENT : Je remercie les représentants de la Colombie pour leur présentation. I now invite the next participating delegation, the Commonwealth of Dominica, to address the Court and I call upon Mr Levi Peter to take the floor.

Mr PETER:

## I. INTRODUCTION

1. Thank you Mr President. Mr President, honourable Members of the Court, it is a sobering subject upon which I have the honour of making this opening statement to the Court, on behalf of the Government and People of the Commonwealth of Dominica, and I am pleased to be doing so in unison with nations of the global community.

2. To echo the words of our honourable Prime Minister, Roosevelt Skeritt, at the 72nd Session of the United Nations General Assembly, in September 2017: "We in Dominica are on the front line of the war on climate change . . . a war we did not start and a war in which we are the innocent casualties."

## II. COUNTRY PROFILE: DOMINICA

### A. Political Features

3. Politically, Mr President, Dominica attained independence from the United Kingdom on 3 November 1978. Mr President, that therefore means that exactly one month ago today, Dominica celebrated its 46th anniversary of independence.

### B. Information on Dominica as a small island developing State (SIDS)

4. Mr President, the Commonwealth of Dominica is approximately 750 sq km and has a coastline of some 148 km. It is located at the approximate geographic centre of the archipelagic chain of islands in the Caribbean Sea known as the Lesser Antilles.

5. Mr President, slide 1 is a map of Dominica and indicates its topography and positioning. Our population is approximately 73,000[111], the majority of whom are of Black African descent, and the second largest grouping, Mr President, are indigenous Kalinagos[112].

6. Mr President, topographically, the Commonwealth of Dominica is a mountainous and rugged volcanic island, whose terrain is criss-crossed by numerous deep valleys, rivers, streams, waterfalls, sulphur vents, natural hot springs and is widely covered by dense tropical rainforests.

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[111] Dominica: country data and statistics, available at https://www.worlddata.info/america/dominica/index.php.

[112] Dominica Climate Recovery and Resilience Plan (CRRP), p. 3, available at https://odm.gov.dm/wp-content/uploads/2022/02/CRRP-Final-042020.pdf.

7. Our tropical rainforests are home to an array of once thriving biodiversity including flora and fauna, some of which is not found elsewhere in the region or in some instances — for example the Sisserou parrot[113] (Dominica's national bird) — anywhere else in the world. Also under threat is the mountain chicken (aka the Crapaud)[114]. Both of these are listed as critically endangered species, and together with other species are at increased threat to their survival in consequence of the increasingly extreme climatic events.

8. Mr President, in keeping with the foregoing and Dominica's widely accepted status as "the Nature Isle of the Caribbean", some say of the world, special protection areas including two large forest reserves and the Morne Trois Pitons National Park — a UNESCO World Heritage site, have been created to protect and preserve the environment.

### C. Economic features

9. Economically, Mr President, as with many small island development States, the Commonwealth of Dominica has a relatively small and open economy. The Commonwealth of Dominica is actively and sustainably nurturing its tourism industry and an increasingly promising small and micro-manufacturing sector, all while making a significant investment in the development of geothermal energy production[115]. However, Mr President, the nation's growth and development have been, and continue to be significantly put at risk and in several cases, stymied by the repeated destructive climate-related crises that we face.

## III. CLIMATE CHANGE: DOMINICA'S EXPERIENCES

### Climate change events and impacts on Dominica

### 1. Introduction

10. Mr President, in terms of climate change events and impacts on Dominica, it is important to note that Dominica's location at the centre of the Lesser Antilles positions it squarely in the "bullseye" of the Atlantic hurricane belt — directly in the crosshairs of the ferociously intensifying

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[113] Scientific name: *Amazona imperialis* (Imperial Amazon), International Union for the Conservation of Nature (IUCN).

[114] *Leptodactylus fallax* (Mountain Chicken), IUCN.

[115] Geothermal Information available at https://webtv.un.org/en/asset/k1p/k1pjwfsmes and Commonwealth of Dominica's NDCs available at https://unfccc.int/sites/default/files/2022-07/The%20Commonwealth%20of%20Dominica%20updated%20NDC%20July%204%20%2C.pdf.

storms. These storms form off the coast of West Africa and journey across the Atlantic Ocean to unleash havoc and destruction on Dominica, and the wider Caribbean.

11. Mr President, the second slide indicates the positioning and Dominica is highlighted by a circle. The human-induced climate change is greatly exacerbating this geographic vulnerability by supercharging the ocean waters and increasingly making Dominica and other small island development States particularly susceptible to these hydrometeorological hazards[116], causing the increased frequency and intensity of high powered hurricanes, tropical storms, floods, drought, storm surges and sea level rise that we have been experiencing and are projected to continue to experience into the foreseeable future, if urgent action is not taken.

**2. Hurricanes, tropical storms, flooding, storm surges**

12. Dominica has been badly affected by hurricanes, tropical storms and other climate events but, particularly, Mr President, by hurricanes and tropical storms. These have impacted Dominica with increased frequency and intensity over the past 60 years as is demonstrated by the following:

— between 1967 and 1978 — Dominica experienced just one major storm, namely Hurricane Dorothy; and one recorded significant rainfall event;

— however, Mr President, between 1978 and 1989 — Dominica experienced seven hurricanes (one being hurricane David), which history revealed as one of the most powerful of the last century. In addition to that was one tropical storm, and one recorded significant rainfall event;

— between 1989 and 2018 — Dominica experienced eleven hurricanes, five tropical storms, and eight recorded significant rainfall events.[117] It will be noted that that period also saw Dominica visited by the dreadful hurricane Maria in 2017 about which I shall say a little more shortly;

— between 2018 and current time — Dominica has been affected by *twenty-one* hurricanes. Not all have hit Dominica directly but *all of the 21* (which are named in the documentation highlighted in the footnote reference) have affected Dominica in some way, in some fashion.

13. This, Mr President, represents an explosion in the number of major climate events adversely affecting Dominica and includes, as I indicated, the monstrous Hurricane Maria, which

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[116] Commonwealth of Dominica Updated NDC final (NDC), p. 4.

[117] Historical Disasters — Dominica, available at https://www.cdema.org/virtuallibrary/index.php/charim-hbook/country-data/countrydocs-dom/dominica-historical-disasters.

utterly decimated the island in September 2017. Mr President, a slide is included, slide 3 and also another slide 4, which indicate some of the damage but in no way encapsulate the extent of the damage suffered by Dominica as a result of Hurricane Maria. Mr President, I shall say a little more to Hurricane Maria, but I think I will turn to the current video — and allow me to play it for a short moment — which relates to Tropical Storm Erika in 2015.

*[Audiovisual material presented.]*

14. Mr President, the consequence of these storms has been immense causing immense damage and loss and of course, as a small island state, we are in a cycle of storm, damage, and then recovery and reconstruction and debt incurrence — and that cycle continues. Mr President, we need the protection of the international legal system and structure and with that Mr President, with your leave, I yield to Ms Sobers-Joseph, who will conclude the presentation for Dominica. Thank you, Mr President.

The PRESIDENT: I thank Mr Levi Peter. I now give the floor to Ms Sobers-Joseph.

Ms SOBERS-JOSEPH:

1. Mr President, Madam Vice-President, and all the Members of the Court, it is my privilege to appear before you and an honour to do so on behalf of the Commonwealth of Dominica.

**JURISDICTION, SCIENCE, LEGAL OBLIGATIONS AND CONSEQUENCES**

2. Today, it falls to me to address the Court on why the Commonwealth of Dominica submits that the Court's opinion on climate change is needed to authoritatively clarify, *first*, States' legal obligations with respect to climate and environment and, *second*, the legal consequences of those obligations where there has been a breach, with particular regard to small island developing States like the Commonwealth of Dominica due to our special circumstances and with particular regard to the future generations.

## Preliminaries

3. Preliminarily, I wish to address the Court on three points.

4. Firstly, it is without a doubt there is consensus among States appearing before the Court that the Court has the jurisdiction to deliver the requested opinion.

5. Secondly, the question before the Court is a question of law, *clarifying* the law[118].

6. Thirdly, the science: the Court is asked to affirm that the science relating to climate change is clear as it is the best available science and it is widely accepted that there has been an unprecedented adverse change in the climate system from the end of the industrial revolution in 1850 to 2020[119].

7. The IPCC reports[120] — which are credible reports of climate change and were adopted by consensus by most States here today — clearly with *high confidence* state (i) the *cause* of climate change *despite other States suggesting otherwise to the Court*, and (ii) *the impacts* of climate change.

8. Science confirms that the surface temperature of the ocean or sea is warmer than ever before and warm sea waters lead to greater intensity in hurricanes[121]. You will have seen, on 18 September 2017, Hurricane Maria intensified into a category 5 hurricane, roughly 24 hours after being upgraded from a tropical storm[122]. The potential intensity of Hurricane Maria was not realized until *two hours before landfall on the Commonwealth of Dominica. Two hundred and twenty-six per cent of the Commonwealth of Dominica's GDP* was wiped out overnight[123].

9. The Commonwealth of Dominica echoes the sentiments of other small island developing States[124] that, despite historically contributing less to the current climate crisis, the Commonwealth of Dominica is on the frontlines of those disproportionately affected[125].

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[118] 2019, 2022, 2023, quoted by a large number of States, Written Statement of Vanuatu, paras. 2, 23, 28, 38, 45, 58, 66 and 644 (A). Written Comments of Vanuatu, paras. 17, 22, 26, 232.

[119] Synthesis Report of the IPCC Sixth Assessment Report as quoted by the Written Statement of Vanuatu, paras. 77, 161, 170, 206, canvassed by the Written Statement of the Bahamas, paras. 14-22, the Republic of Vanuatu, Antigua and Barbuda in paras. 20-64 of its Written Statement.

[120] Quoted extensively in the Written Statements of Antigua and Barbuda, the Republic of Vanuatu, the Bahamas.

[121] Summary for Policymakers of the IPCC's 2023 Synthesis Report, also quoted and referenced in para. 82 of the Written Statement of Vanuatu, SVG, Grenada.

[122] Executive Summary and p. 17 of the World Bank's Post Maria Disaster Needs Assessment, found at https://www.gfdrr.org/en/dominica-hurricane-maria-post-disaster-assessment-and-support-recovery-planning.

[123] *Ibid.*, Executive Summary and pp. 1, 23.

[124] As does the submissions of Vanuatu and all the other small island developing States.

[125] Summary for Policymakers of the IPCC's 2023 Synthesis Report, also quoted in the Written Statement of Vanuatu, paras. 157, 172, 173, and Written Comments, para. 49.

10. By the World Bank's assessment, there is a clear impact, and visible correlation between the incidence of climate events and the Commonwealth of Dominica's economic growth[126]. The World Bank states: "Climate change could disproportionately magnify disaster risk in Dominica, due to rising temperatures and sea level and associated coastal erosion, flood and storm surge."[127]

**Outline**

11. The Commonwealth of Dominica does not intend to examine the entire body of international law or all the treaties referenced in the question. The treaty discussion was well ventilated by other States' submissions, written and oral.

12. I will, however, address the Court on two specific areas: firstly, the obligation of prevention and principle of due diligence; and, secondly, considerations of international human rights. I will thereafter address the Court on legal consequences referring to three specific areas: (i) cessation; (ii) compensation; and (iii) non-repetition.

**International law**

13. The Court will agree that the obligation of prevention is a fundamental principle of international law. Under customary international law, a State cannot allow its territory to be used for acts contrary to the rights of another State. The Commonwealth of Dominica submits there is wide consensus in the written statements of States here that the principle of prevention is a general principle of international environmental law and applies to all forms of significant environmental harm from climate change and as such legal obligations are found in more than the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement[128].

14. As the Court set out in the *Pulp Mills*[129] case (in the context of international environmental law), each State is required to use all means at its disposal in order to avoid activities in its territories or in any area under its jurisdiction from causing significant harm to another State. The obligation to prevent transboundary harm was very recently discussed by the Court in 2022 in the *Dispute over*

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[126] Pp. 11 and 130 of the Post Maria Disaster Needs Assessment, found at https://www.gfdrr.org/en/dominica-hurricane-maria-post-disaster-assessment-and-support-recovery-planning.

[127] *Ibid.*

[128] Also see Written Comments of Chile, paras. 65, 67-77, Belize Witness Statement, paras. 31, 32, 35-63; Solomon Islands, paras. 40, 81, 133-162.

[129] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I),* para. 187.

*the Status and Use of the Waters of the Silala (Chile* v. *Bolivia)*[130]. The Court said that States must use all means at their disposal to fulfil their obligations not to cause harm. The Court recognized in the *Legality of the Threat or Use of Nuclear Weapons* Advisory Opinion that there is "the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control"[131]. The Court said:

> "The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes that the environment is not an abstraction but represents the *living space, the quality of life and the very health of human beings, including generations unborn*. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."

It is no hyperbole that green house gas (GHG) emissions have weaponized the sea into a catastrophic threat.

15. It is the Commonwealth of Dominica's submission that climate change is a daily threat to the life and the very health of human beings, including generations unborn. The caution urged by some States regarding the Court's approach to this question is misplaced. Small island developing States are not asking the Court to act recklessly, but rather to provide a clear and authoritative interpretation of existing law. As there is no caution in the relentless winds, torrential rains and extreme weather that batter and ravage our islands, nor in the rising sea that threatens to engulf and swallow our island home.

16. The Commonwealth of Dominica affirms and adopts Belize's oral submissions and written submissions on the prevention obligations, causation and assessment obligations to prevent transboundary harm and the duty of due diligence and asks the Court to affirm that treaties have not displaced the independent customary international law obligation.

17. I now turn to consider international human rights. International law recognizes that the obligation to refrain from large-scale violations of human rights are obligations which are "*erga omnes*", recognized as peremptory norms of international law.

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[130] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II),* p. 263, para. 99.

[131] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I),* p. 242, paras. 29-30.

18. It bears repeating that "every human being has an inherent right to life"[132]. "A clean and healthy environment is intrinsic to this right to life, as is the right to enjoy that life with dignity and to be free from acts and omissions that would cause unnatural death"[133].

19. Climate change and the resulting adverse weather conditions is a *direct* threat to the life and enjoyment of life and the mental well-being of every citizen of the Commonwealth of Dominica. It is no small feat to rebuild your home and life after hurricanes and recover from the constant onslaught of adverse climate conditions and have to prepare again and again every year for this uncontrollable threat.

20. The Commonwealth of Dominica supports the position of States that the right to life, the right to a healthy environment and the right to self-determination are human rights that have been breached by the emission of green house gases and climate change[134].

21. Furthermore, the ITLOS advisory opinion spoke in very clear terms that greenhouse gases *is pollution* — I repeat, greenhouse gases is pollution — for the purposes of UNCLOS[135]. The Court is asked and invited to affirm the advisory opinion of ITLOS and set out in this requested opinion that a State's legal obligations require it to take all measures with a view to reducing and controlling pollution from greenhouse gases and to protect the marine environment[136].

22. The Court is asked to reject any *lex specialis* arguments, particularly those which seek to position the questions before the Court as solely under the ambit of the UNFCCC.

23. The Court in this advisory opinion is asked to similarly hold the view as the Chamber in *ELSI* did: "finds itself unable to accept that an important principle of customary international law should be held to have been tacitly dispensed with, *in the absence of any words making clear an intention to do so*"[137].

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[132] ICCPR at Article 6 affirms this.

[133] Similarly as the Bahamas submitted in its Written Statement at paras. 144-175, and Antigua and Barbuda at para. 190 specifically, Colombia at para. 3.67 of its Written Statement and para. 3.55 of Colombia's Written Comments.

[134] Solomon Islands, paras. 163-204, St Lucia at para.

[135] C31_Adv_Op_21.05.2024.

[136] Also set out by Colombia in para. 3.20 of its written comments and Belize's written statement.

[137] *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy), Judgment, I.C.J. Reports 1989*, p. 42, para. 50 (emphasis added).

24. High-emitting States are skirting any responsibility with nuanced but, it is submitted, flawed arguments. We ask the Court to set aside these arguments as flawed and re-state that in the context of climate change, customary international law principles have *not been* replaced by *and cannot be* replaced by treaty provisions because there have been no clear words with intention to do so. Any arguments that suggest otherwise should also be rejected.

25. It is a matter of fact that some States such as Nauru, Kiribati and Fiji specifically declared that signing the UNFCCC was not a renunciation of any rights under customary international law.

26. The Paris Agreement acknowledges that Article 8 is not meant to create legally binding obligations on liability; this as one State said "exemplifies why other sources or rules of international law are required to clarify the full extent of States' obligations in relation to climate change beyond the UNFCCC and Paris Agreement"[138].

**Legal consequences**

27. As to legal consequences, the Commonwealth of Dominica believes the Court is well placed to pronounce on liability and the accountability for environmental damage as it relates to climate change. Further, that the Articles on Responsibility of States for Internationally Wrongful Acts, or the ILC Articles on State Responsibility, is a fundamental concept of international law and is *fully applicable* in the context of greenhouse gases and climate change.

28. Although some States may argue that the ILC Articles on State Responsibility should not apply in the climate change context and feel there is a great deal of merit in that argument, the Commonwealth of Dominica asks the Court not to accept these arguments despite how skillfully crafted and attractive they are, and pronounce that breaches of State's international obligations arose from "a composite act", in terms of Article 15 (1) of the ILC Articles on State Responsibility, "a series of actions or omissions defined in aggregate as wrongful"[139].

29. The Commonwealth of Dominica submits that

> "every intentionally wrongful act of a State is the international responsibility of that State *and* where several states independently commit separate acts that contribute to harm; responsibility may be allocated based on equity and proportionality or in

[138] Written Statement of Saint Lucia, para. 52.

[139] As succinctly stated by Colombia in para. 4.6 of its written comments and supported by Vanuatu's own submissions, that of COSIS at paras. 82, 85, 109 and 111, St Lucia para. 95 *(v)*.

accordance with the principle of joint and several liability *depending on the particular circumstances*"[140].

30. The Court is asked to bring accountability to the forefront of climate change and accountability to greenhouse gas emissions and similarly pronounce now, as the Court did in the *Barcelona Traction* case, that "all States have a legal interest in obligations owed to the international community *as a whole* in view of the importance of the rights involved"[141].

31. With respect to legal consequences, the Commonwealth of Dominica states:

(1) A State's human rights obligations and due diligence obligations require them to reduce greenhouse gases emissions[142] and provide guarantees of non-repetition[143].

(2) The Court is invited to pronounce that breaching States are liable to compensate the vulnerable States that have been harmed by their composite conduct[144].

32. There is international authority for the proposition that reparations for environmental harm may vary depending on the obligations violated and the nature of the injury: in the cases of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*[145], paragraphs 93-94, and *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*[146], para. 34, referred very helpfully and canvassed in Vanuatu's written submissions and comments[147].

33. The Commonwealth of Dominica, as other States have set out, said that the Court's consideration of compensation may include:

(1) Technical assistance that ensures States like Dominica, vulnerable governments, enhance resilience without jeopardizing fiscal stability or diverting funds from development goals; and

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[140] This is a position similarly put forward by Antigua at 309, 314, 333 362 and 539; the Bahamas at paras. 233-239; Barbados at paras. 161, 168-169, 175, 177, 193 and 207; and Colombia at paras 4.6-4.18 of these States' written submissions.

[141] Also supported by written submissions of the Bahamas at para. 249; Vanuatu's paras. 343, 536, 558 601-604, 643.

[142] Written Comments of Colombia, para. 3.55.

[143] *Ibid.*, para. 4.6.

[144] Written Comments of Vanuatu, para. 193 *(b)*.

[145] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*.

[146] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I).*

[147] Vanuatu's written comments at para. 197 has helpfully canvassed most States' position on this.

that any assistance should not be seen as stated by Colombia in their written and oral submissions as "a mere expression of goodwill by developed States but as an *actual obligation stemming from the commission of various and continued internationally wrongful acts against the environment resulting from historic and current GHG emissions*"[148].

(2) Another consideration could be providing funds to small island developing States at concessionary rates[149].

**Non-repetition**

34. As to non-repetition, the Court is asked to reaffirm that there should be a commitment by States to not repeat the harm.

**Conclusion**

35. In conclusion, the Commonwealth of Dominica asks the Court to, in a very frontal way, address the responsibility for emissions of greenhouse gases and climate change in the context of customary international law and rightly reaffirm the human rights responsibility and State responsibility relating to climate change are *erga omnes*[150].

36. On behalf of the citizens of the Commonwealth of Dominica and its future generations (our children and our children's children), we ask the Court to use this opportunity in this advisory opinion to promote justice and accountability in climate change. We ask the Court to choose to be on the right side of climate history, for this our earthly home, to not do this will be to deny the existence of a legal obligation to address climate change and the resulting responsibility for the conduct of States. It is to mock the lived reality of the people of the Commonwealth of Dominica, a small island developing State. I thank you.

The PRESIDENT: I thank the representatives of the Commonwealth of Dominica for their presentation. I now invite the Republic of Korea to make its oral statement before the Court and I call upon Mr Hwang Jun-shik to take the floor.

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[148] As Colombia submitted in para. 4.15 of its written comments.

[149] Bridgetown Initiative.

[150] A position supported by COSIS's written statement at paras. 109 and 111.

Mr HWANG:

## I. INTRODUCTION

1. Mr President, Members of the Court, it is an honour to appear before you today on behalf of the Republic of Korea.

2. In our written statement, we presented several general observations on the two questions posed by the General Assembly. We emphasized that the purpose of the request for the Court's advisory opinion would be fulfilled by the Court "clarifying the existing law, rather than by seeking to lay down new rules in relation to complex matters of policy that are the subject of ongoing negotiations among States"[151].

3. Today, I will elaborate on certain issues related to the first question, question *(a)*. I will be followed by Professor Lee Keun-Gwan, who will address question *(b)*.

4. I will begin by addressing the significance of an advisory opinion in the present context, as well as the relationship between the climate change treaty régime and other sources of international legal obligations that may be relevant. Next, I will discuss more specifically the relevance of the law of the sea and international human rights law. I will then highlight the need for a rigorous approach to the determination of any applicable rules of customary international law, before asking you to call on Professor Lee to take the floor.

## II. THE NEED TO DO MORE TO COMBAT CLIMATE CHANGE

5. Mr President, there is no doubt that the climate crisis is the most pressing challenge faced by humanity at this time. The impressive number of States that are participating in these proceedings demonstrates the significance attached to this issue — and to this case. Given that the world is suffering greatly from climate change, especially small island developing States that are particularly vulnerable to its adverse effects, there is a broad consensus that a co-ordinated response by the international community is urgently needed.

6. In this regard, let me reiterate our view that the Court has jurisdiction to give the requested advisory opinion, and there is no compelling reason for it to decline to do so.

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[151] Written Statement of the Republic of Korea, para. 4.

7. Again, we also consider that the Court can make a very important contribution by clarifying the existing law relating to obligations in respect of climate change. It should do so without hindering ongoing negotiations on this subject, especially those taking place at the Conference of the Parties of the UNFCCC, which serves as the central forum for discussion and agreement on joint action. The centrality of the climate change treaty régime in delivering a co-ordinated global response appears to be common ground in this proceeding. In this vein, heads of States and Governments have recently committed, through the Pact for the Future adopted by the General Assembly in September this year, "to accelerate meeting . . . our obligations under the United Nations Framework Convention on Climate Change and the Paris Agreement"[152].

8. The Republic of Korea has been an active participant in the international community's response to the climate crisis. In addition to the efforts already mentioned in our written statement[153], we hosted last year in Seoul the first Korea-Pacific Islands Summit, after which the participating leaders declared that "climate change remains the single greatest threat to . . . the peoples of the Pacific", and that "they will work together on the implementation of the Paris Agreement"[154]. We have also been contributing to projects such as the Rising Nations Initiative to safeguard the rights and heritage of the Pacific population from rising sea levels[155].

9. In July this year, the Republic of Korea announced a contribution of US$7 million to the Fund for responding to Loss and Damage to help developing countries cope with the adverse effects of climate change. And, at the recent COP29, Korea also announced a contribution of US$20 million to the Partnership for ASEAN-ROK Methane Action (PARMA), for a large-scale project that aims to catalyse the reduction of methane emissions in the ASEAN region in response to climate change.

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[152] A/RES/79/1, adopted by the General Assembly on 22 September 2024, para. 11; see also para. 28.

[153] Written Statement of the Republic of Korea, paras. 8-13.

[154] 2023 Korea-Pacific Islands Leaders' Declaration: A Partnership in Pursuit of Freedom, Peace and Prosperity for a Resilient Pacific, para. 18: see https://eng.president.go.kr/briefing/EYexaLA6.

[155] Action Plan for Freedom, Peace and Prosperity in the Pacific 2023 Korea-Pacific Islands Summit: see https://eng.president.go.kr/briefing/PPZpzzTA.

## III. QUESTION *(A)*: OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW TO ENSURE PROTECTION FROM ANTHROPOGENIC EMISSIONS OF GREENHOUSE GASES

### A. The relationship among sources of international law: the centrality of the climate change treaty régime

10. Mr President, turning now to the relationship between the climate change treaty régime and other sources of international legal obligations that may be relevant, it is widely recognized, and indeed uncontested, that the UNFCCC and the Paris Agreement are the primary sources of international law addressing climate change for the parties thereto. It is these treaties which most clearly lay down obligations for ensuring the protection of the climate system and the environment from the anthropogenic emission of greenhouse gases. As ITLOS observed in its recent advisory opinion, "there is an extensive treaty regime addressing climate change", and the UNFCCC and the Paris Agreement are "primary treaties addressing climate change"[156]. Core obligations that are laid down in the Paris Agreement, including in Article 4 thereof[157], stem exclusively from this treaty and do not flow from other sources of international law. In this light, for those States that are parties to the climate change treaties, the essence of the answer to question *(a)* is grounded in the UNFCCC and the Paris Agreement.

11. However, this does not mean that the climate change treaty régime is the only source of law applicable to combating climate change, and that international legal norms outside the climate change treaty régime are entirely irrelevant.

12. This becomes clear when we think about a State which is not a party to the climate change treaties. Such a State would be bound by corresponding or other applicable rules of customary international law. In addition, other treaties to which the State is a party may be of relevance. For example, as long as the State is a party to the UN Convention on the Law of the Sea (UNCLOS) or to human rights treaties, it would be obliged, as the case may be, to exercise due diligence in protecting the marine environment from the negative impacts of climate change and to ensure the protection of the relevant human rights of individuals within its territory.

13. Indeed, giving normative priority and centrality to the climate change treaties and regarding them as *lex specialis* does not mean evading or setting aside other international legal

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[156] *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, paras. 137, 214.

[157] Written Statement of the Republic of Korea, para. 20.

obligations. The ILC's Study Group on "Fragmentation of international law" had recognized in the same vein that characterizing a treaty as *lex specialis* "may not always lead to the setting aside of the general treaty"[158].

## B. Other sources of international legal obligations

### (1) UNCLOS

14. Mr President, while the climate change treaty régime stipulates certain specific obligations that cannot be derived from other sources of international law, other sources of international law can undoubtedly complement that régime. UNCLOS, for its part, does not expressly refer to an obligation to protect the climate system from greenhouse gas emissions, but is clearly relevant to climate change, as was confirmed in the advisory opinion given by ITLOS last May. In that advisory proceeding, the Republic of Korea expressed its view that a general obligation of conduct to protect the marine environment from climate change can be derived from Articles 192 and 194 of UNCLOS[159]. We also stated in our written statement in that case (and in the present one[160]) that the Convention provides a basic legal framework for addressing aspects of climate change through the obligations to protect and conserve the marine environment.

15. Several points in the advisory opinion given by ITLOS, which we generally support, may have benefited from further explanation. This may be said, for instance, of the statement that the standard of due diligence is "even more stringent" with respect to transboundary pollution affecting the environment of other States than in relation to the more general obligation to prevent, reduce and control marine pollution from anthropogenic greenhouse gas emissions[161].

16. That said, the ITLOS advisory opinion contains a sound analysis of the relationship between UNCLOS and climate change based on the concept of "obligations of conduct" and the "due diligence" standard. Therefore, there seems to be no reason for this Court to depart from the approach

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[158] Report of the Study Group of the International Law Commission, *Yearbook of the International Law Commission 2006*, Volume II, Part One, p. 14, para. 31.

[159] See https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/1/C31-WS-1-16-ROK.pdf, p. 3; https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/C31_Minutes.pdf, pp. 314-318.

[160] Written Statement of the Republic of Korea, para. 17.

[161] *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, para. 256.

adopted by ITLOS, also bearing in mind that the Tribunal is entrusted with providing authoritative interpretations of UNCLOS.

**(2) International human rights law**

17. Like UNCLOS, international human rights law does not expressly refer to climate change. However, it may be said that human rights treaties in general require parties to act diligently in relation to climate change so as to take appropriate measures to prevent, to the greatest extent possible, adverse impacts on the enjoyment of human rights, including the right to life and the right to health. Moreover, States should respect, promote and consider their respective human rights obligations when taking action to address climate change[162].

18. At the same time, it needs to be kept in mind that international human rights law was not designed to address climate change. Looking at the issue of climate change through the prism of human rights is neither straightforward nor necessarily effective. It is also important to note that a State's obligations under human rights treaties only extend to individuals within its territory or under its jurisdiction.

**(3) Customary international law**

19. Mr President, some obligations in respect of climate change may also be found in customary international law. We are aware that States have different views on whether and, if so, how rules of customary international law also apply to climate change. Our own view, on which we elaborated in our written statement[163], is that the obligations under customary international law, especially the principle of prevention of significant harm to the environment, and the duty of co-operation, are applicable in the context of climate change, as obligations to be undertaken with due diligence and can complement the relevant treaty obligations.

20. We also consider that the determination of rules of customary international law must be rigorous, in the present context as in others. Since the Court must not "anticipate the law before the legislator has laid it down"[164], it must be careful not to identify new obligations under customary

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[162] Written Statement of the Republic of Korea, para. 31.

[163] Written Statement of the Republic of Korea, paras. 32-40.

[164] *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 192, para. 45.

international law that are not sufficiently grounded in "a general practice accepted as law"[165]. As the Court explained in a previous Advisory Opinion, it "states the existing law and does not legislate. This is so even if, in stating and applying the law, the Court necessarily has to specify its scope and sometimes note its general trend."[166]

21. Mr President, Members of the Court, I thank you for your attention, and now respectfully ask that you invite Professor Lee to take the floor.

The PRESIDENT: I thank Mr Hwang and I now give the floor to Professor Lee. You have the floor, Professor.

Mr LEE:

1. Mr President, Madam Vice-President, Members of the Court, it is a great honour for me to appear before you today on behalf of the Republic of Korea to address the question of legal consequences for States under the obligations concerned where they have, by their acts and omissions, caused significant harm to the climate system and other parts of the environment.

2. In my presentation, I would like to address the following three questions: (I) applicability of Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) in the context of climate change; (II) challenges in applying the general rules of State responsibility; and (III) possible consequences specific to the obligations of due diligence and co-operation.

## I. APPLICABILITY OF ARSIWA IN THE CONTEXT OF CLIMATE CHANGE

3. Mr President, let me first address the applicability of ARSIWA in the context of climate change.

4. Question *(b)* is closely linked to question *(a)* through the phrase "legal consequences under these obligations". The words "these obligations" refer to the "obligations of States under international law" as referred to in question *(a)*.

5. My colleague, Mr Hwang, has already addressed the question of these obligations of States under international law. In doing so, he highlighted the centrality of the obligations of States arising

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[165] Statute of the Court, Article 38 (1) *(b)*.

[166] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 18.

under the climate change treaty régime. He also affirmed that this régime can be complemented by obligations of States under other sources of international law such as UNCLOS, international human rights law and customary international law.

6. In our written statement, we pointed out that the obligations referred to in question *(a)* are mostly obligations of conduct to be discharged with due diligence[167]. Despite this commonality running through the obligations of States under international law as referred to in question *(a)*, obligations under the climate change treaties are not identical to those under customary international law, or under other applicable treaties, not least in respect of specific mitigation obligations. That is the reason why the treaties that directly address climate change, in particular the Paris Agreement, may be regarded as *lex specialis* with all the applicable consequences.

7. It is against this background that the question arises whether the rules codified in ARSIWA are applicable to the situation under consideration in question *(b)*.

8. Concerning this question, we submit that ARSIWA is applicable in principle to question *(b)*. The Court has previously used the same expression that appears in question *(b)*, that is, "legal consequences", in discussing State responsibility. Examples include, among others, *Legal Consequences for States of the Continued Presence of South Africa in Namibia* (1971) and *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (2024)[168].

9. We believe that the obligations arising under the climate change treaty régime are not entirely immune from the operation of the relevant provisions of ARSIWA, although the applicable legal consequences are addressed primarily under the normative mechanisms specific to the climate change treaty régime, in particular, the Paris Agreement.

10. Now let me address the challenges in applying the general rules of State responsibility in the context of climate change.

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[167] Written Statement of the Republic of Korea, paras. 22, 26, 37, 40.

[168] See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) and *Legal Consequences on the Separation of the Chagos Archipelago from Mauritius in 1965* (2019).

## II. THE CHALLENGES IN APPLYING THE GENERAL RULES OF STATE RESPONSIBILITY

11. Having affirmed the applicability in principle of ARSIWA, one needs to be cautious in applying the general rules of State responsibility in the context of climate change. Some of the well-known difficulties involved in applying ARSIWA to the question of climate change include, among others, *(a)* the intertemporal law, *(b)* the separate responsibility of the State for conduct attributable to it, and *(c)* the proof of causation.

12. Concerning the intertemporal law, the relevant provision of ARSIWA is Article 13 that reads: "An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs." This question poses an acute challenge in the specific context of climate change, because emissions of greenhouse gases have occurred for an extended period of time. Moreover, emissions are not prohibited per se.

13. As regards the separate responsibility of the State for conduct attributable to it, the commentary to Article 47 of ARSIWA (which deals with "plurality of responsible States") holds much relevance. According to it, "[i]n international law, the general principle in the case of a plurality of responsible States is that each State is separately responsible for conduct attributable to it"[169]. In the context of climate change, the application of the principle of separate responsibility poses another challenge, given that all States have contributed to climate change to varying degrees, with all the known difficulties in attribution and allocation of legal responsibility.

14. In a similar vein, the challenge involved in proving causation is well known. In the *Certain Activities Carried Out by Nicaragua in the Border Area* case, the Court noted that, in the case of alleged environmental damage, there may be difficulties as "[t]he damage may be due to several concurrent causes, or the state of science regarding the causal link between the wrongful act and the damage may be uncertain"[170]. This statement by the Court was made in a bilateral context, but it can no doubt assume greater relevance in the case of climate change occurring on a global scale.

15. Mr President, these considerations require one to be cautious in contemplating the application of the general rules of State responsibility to the question of climate change. In this

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[169] *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 124, para. 3.

[170] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 34.

connection, one has to pay due regard to the characteristics of the climate change régime composed mainly of the UNFCCC and the Paris Agreement. This régime, in particular the Paris Agreement, includes various provisions relating to, among others, mitigation, adaptation, and loss and damage. These provisions, operating under the overarching principle of common but differentiated responsibilities and respective capabilities, are responsive to and are "tailor-made" for the existential threat posed by climate change. They constitute the agreement of the parties as to how these matters are to be governed.

16. It is important to note that in stipulating various provisions relating to mitigation, adaptation, and loss and damage, the Paris Agreement adopts a "co-operative and facilitative"[171] approach to the adverse effects of climate change. This approach is elaborated upon particularly by the provisions on loss and damage in Article 8 of the Paris Agreement and the relevant instruments, such as those adopted by COPs and CMAs. In particular, according to the COP's decision 1/CP. 21, "Article 8 of the [Paris] Agreement does not involve or provide a basis for any liability or compensation"[172]. This decision, as "[an] agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty" under Article 31 (2) of the Vienna Convention on the Law of Treaties, constitutes a "context" for the purpose of interpreting the Paris Agreement[173]. Article 8 of the Paris Agreement must be read in light of this crucial decision.

17. The "co-operative and facilitative" approach was further clarified at the COP28, where agreement was reached on the operationalization of the Fund for responding to Loss and Damage to help developing countries cope with the adverse effects of climate change.

18. Thus, the legal consequences as referred to in question *(b)* are, indeed, determined primarily by the climate change treaty régime within which the Paris Agreement occupies a central position. The relevant provisions of the Paris Agreement and the related instruments should therefore be taken into account on a priority basis when considering the legal consequences under question *(b)*.

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[171] See Paris Agreement, Article 8.3.

[172] UNFCCC, Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015. Addendum. Part two: Action taken by the Conference of the Parties at its twenty-first session, FCCC/CP/2015/10/Add.1, p. 8 para. 51.

[173] Vienna Convention on the Law of Treaties, Article 31 (2) *(a)*.

## III. POSSIBLE CONSEQUENCES SPECIFIC TO THE OBLIGATIONS OF DUE DILIGENCE AND CO-OPERATION

19. Mr President, now let me address the question of possible consequences specific to the obligations of due diligence and co-operation. We have already said that the obligations of States under international law as referred to in question *(a)* are mostly obligations of conduct to be discharged with due diligence. These obligations were developed to "ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases".

20. Concerning due diligence, ITLOS observed in its recent advisory opinion that

> "the content of the due diligence obligation depends on the nature of the specific treaty obligation so qualified and may vary over time. The standard of this obligation is determined by, among other factors, an assessment of the risk and level of harm combined"[174].

If significant harm occurs to the climate system and other parts of the environment, a possible legal consequence would be the application of a more strict standard in the assessment of due diligence to be exercised by States.

21. A similar observation can be made concerning the duty of co-operation which, as we have stated, is crucial in the context of climate change. The duty to co-operate is, according to ITLOS, "an obligation of conduct which requires States to act with 'due diligence'"[175], and the standard of this obligation is determined by, among other factors, an assessment of the risk and level of harm combined. Thus, in the event of significant harm occurring to the climate system and other parts of the environment, States would be placed under an enhanced duty of co-operation to address the grave threat posed by climate change.

## IV. CONCLUSION

22. Mr President, Madam Vice-President, Members of the Court, let me conclude by expressing our hope that the Court will clarify the existing law concerning the obligations of States to ensure the protection of the climate system and other parts of the environment, thereby paving the

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[174] See ITLOS Advisory Opinion on Climate Change, para. 397; see also James Crawford, *State Responsibility: The General Part* (Cambridge University Press, 2013), p. 229.

[175] ITLOS Advisory Opinion on Climate Change, para. 309.

way for further international co-operation in responding to the pressing global challenge of climate change. Thank you for your attention.

The PRESIDENT: I thank the representatives of the Republic of Korea for their presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow at 10 a.m., in order for the Court to hear the oral presentations of Costa Rica, Côte d'Ivoire, the joint oral presentation of Denmark, Finland, Iceland, Norway and Sweden, and the oral presentations of Egypt and El Salvador. The sitting is closed.

*The Court rose at 6.15 p.m.*