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CR 2024/42

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Thursday 5 December 2024, at 3.05 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)

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le jeudi 5 décembre 2024, à 15 h 5, au Palais de la Paix,

sous la présidence de M. Salam, président,

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

COMPTE RENDU

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

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

M. Gautier, greffier

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Ms Pekalani Fisher, Foreign Service Officer, Treaties, Multilaterals and Oceans Division, Ministry of Foreign Affairs and Immigration,

Mr Fuimaono Dylan Asafo, Senior Lecturer, Faculty of Law, University of Auckland.

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HE Ms Doreen deBrum, Ambassador and Permanent Representative of the Republic of the Marshall Islands to the United Nations Office and other international organizations in Geneva,

Mr Johnathen Kawakami, Deputy Attorney General,

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

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Mr Ahmad Bawazir, Minister Counsellor,

Ms Mia Padmasari, Counsellor,

Mr Andrea Albert Stefanus, First Secretary,

Ms Maudy Fitri Purliayu, Third Secretary,

Ms Fitri Nuril Islamy, Third Secretary.

M. F.X. Widiyarso, ministre-conseiller,

M. Ahmad Bawazir, ministre-conseiller,

M^me^ Mia Padmasari, conseillère,

M. Andrea Albert Stefanus, premier secrétaire,

M^me^ Maudy Fitri Purliayu, troisième secrétaire,

M^me^ Fitri Nuril Islamy, troisième secrétaire.

The PRESIDENT: Good afternoon. Please be seated. The sitting is now open.

The Court meets this afternoon to hear the Cook Islands, the Marshall Islands, the Solomon Islands, India, the Islamic Republic of Iran and Indonesia on the questions submitted by the United Nations General Assembly. Each of the delegations has been allocated 30 minutes for its presentation. The Court will observe a short break after the presentation of the Solomon Islands.

I shall now give the floor to the delegation of the Cook Islands. I call Ms Sandrina Thondoo to the podium. You have the floor, Madam.

Ms THONDOO:

PART I: STATES' OBLIGATIONS

A. Introduction

1. Mr President, Members of the Court, *kia orana tatou katoatoa.* I am honoured to present this statement to you on behalf of the Government of the Cook Islands.

2. It is the first time that the Cook Islands has presented itself to the Court, and this milestone reflects the great urgency of climate justice for our climate-vulnerable nation.

3. We also want to acknowledge that, this afternoon, the Court will hear from three different Pacific Island nations and — while each of us have our own unique histories, and cultures and traditions — our peoples have long been connected and united by our ocean and our fight for climate justice.

4. Mr President, Members of the Court, we call on you to listen to our statements open-heartedly. We speak on behalf of some of the most vulnerable and yet ever-resilient people in this climate crisis whose lives depend on a climate justice-centred opinion from this Court.

B. The Cook Islands' position

5. The Cook Islands' position on the questions put to the Court fully aligns with the positions of Vanuatu and the Melanesian Spearhead Group presented earlier this week.

6. We especially want to reiterate three of their arguments:

— *First*, that the relevant conduct to be evaluated by the Court in these proceedings is the anthropogenic emissions of greenhouse gas emissions over time, by a handful of States, to such an extent as to have caused significant harm to the climate system and other parts of the

environment. This conduct is the main cause of climate change according to the IPCC[1]. It is defined specifically in resolution 77/276, question *(a)*, then preambular paragraph 5, and then in question *(b)*[2];

— *Second*, that this conduct of States is unlawful under a range of applicable international obligations, including human rights obligations; and

— *Third*, that this unlawful conduct triggers a range of legal consequences under the general law of State responsibility.

7. In the time that we have today, our statement will highlight certain underrecognized aspects of the multidimensional realities of climate change. So, we will emphasize two points:

— *First*, that the States that have engaged in the relevant conduct responsible for the climate crisis have breached their human rights obligations regarding the prohibition of racial and gender discrimination; and

— *Second*, that there is an urgent need for structural remedies in the form of law reform at the domestic, regional and international levels as legal consequences arising from these breaches.

8. We will begin by outlining the impacts of climate change in the Cook Islands, with the support of a video statement by Ms Vaine Wichman. Following this, we will present the Cook Islands' arguments on States' obligations regarding the prohibition of racial and gender discrimination and explain how the relevant conduct of States is inconsistent with these obligations. Lastly, Mr Fuimaono Dylan Asafo will speak to the need for structural remedies.

C. The impacts of climate change in the Cook Islands

9. Turning now to the impacts of climate change in the Cook Islands. These impacts are not only shaped by our geographical circumstances as a big ocean State but also by colonialism and racism which largely inform our level of development and vulnerabilities in the face of climate change.

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[1] Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6).* Summary for Policymakers (2023), statement A.1.

[2] See Written Statement of Vanuatu, paras. 137-157.

10. Time constraints prevent a full exploration of how colonialism and racism have shaped our vulnerabilities. So instead, we will focus on how these systems have threatened and continue to threaten our traditional knowledge, our environment and in fact, our very existence.

11. In 1821, the flux of English missionaries to the Cook Islands led to the banning of our traditional knowledge in the form of our language, our songs, our dances, about our history, our land, our *Te Moana-Nui-o-Kiva* (which is our great Pacific Ocean)[3]. Then, in 1915, the colonial administration passed legislation to make English the only official working language in the Cook Islands, resulting in a ban of our traditional language and practices in schools[4].

12. It is important to understand that these bans came from the prejudiced belief that our language, knowledge and practices were inferior to those of Europeans and needed to be eradicated.

13. As a result of this systemic dismantling, our teachers lost much of their authority to pass on their traditional knowledge to future generations[5]. These and other racist and colonial acts led to "crops [being] wrongly planted and lagoons fished out, so that the biodiversity and natural food supply of the island dwindled alarmingly"[6].

14. However, by far and away, the greatest colonial and racist threat to our traditional knowledge and the lives of Cook Islanders has been, and continues to be, the relevant conduct of States currently on trial in these proceedings.

15. Like all indigenous peoples, our traditional knowledge depends on our ability to live in harmony with our natural environment[7]. But the unlawful conduct of States has increasingly impeded our access to our environment, especially as emissions continue to rise.

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[3] Tangata Vainerere, Ipukarea Timeline: *A Treasury of Momentous Events in Cook Islands History 400 CE – 2023,* (Parliament of the Cook Islands, 2022) p. 125. available at: https://parliament.gov.ck/history-of-our-nation/; see also, Cook Islands Travel, 'Our History & People', available here: https://cookislands.travel/islands/history-people.

[4] *Ibid.*, p. 125.

[5] Hannah Cutting-Jones, *Feasts of Change: Food and History in the Cook Islands, 1825–1975* (PhD Thesis, University of Auckland, 2017) p. 44, *citing* Ron G. Crocombe and Ross Holmes, *Southern Cook Islands Customary Law, History and Society: Akapapa'anga, kōrero tupuna, e te ākono'anga ture 'enua o te Pā 'enua Vols 1–3* (Cook Islands Museum and Library, 2014), p. 155.

[6] *Ibid.*, p. 155.

[7] See Annexes to the Written Comments of the Cook Islands, Annex No. 1, p. 3, Liam Koka'ua, *Traditional Knowledge and Climate Change Adaptation in the Cook Islands - Expert Report by Liam Koka'ua, 5 July 2024*, pp. 2-3.

16. This conduct has had significant economic, social and cultural impacts in the Cook Islands, in particular for our women. Ms Vaine Wichman will further speak to these impacts in her video statement to the Court. Mr President, I kindly request that the video be played for the Court now.

[On screen: pre-recorded statement by Ms Vaine Wichman.]

Transcript of statement by Ms Vaine Wichman

[Transcript provided by the Cook Islands.]

1. Mr President, Members of the Court — *Kia orana*. My name is Vaine Wichman. I am a Cook Islands woman, with bloodlines to the islands of Rarotonga, Aitutaki and Tongareva. I am the President of the Cook Islands National Council of Women. Our non-government agency is mandated to ensure the voice of our women and their families is heard. Thank you for allowing me to provide this statement to the Court.

2. It is important for this Court to hear our experiences in relation to how climate change has impacted our lives; to endear countries to recognize and respect our indigenous ways and human rights as women.

3. We are the custodians of many natural and cultural art forms and traditions. For example, throughout our outer islands, our women make and sell cultural handicrafts. These crafts vary in design and production from island to island. Women produce these as a source of income and as part of their gift-giving obligation to the island and family events.

4. The production of handicraft is mainly based in the informal invisible sector. Often this means that our women producers are not able to attract resources and support to assist in protecting the raw materials they rely on. This is a gender equality issue because women's food and handicraft products are not clearly acknowledged in the production of the country's national accounts.

5. The effects of climate change have compromised handicraft production even further. Today, sourcing natural fibres and materials from both the land and sea is challenged. Warmer temperatures are wreaking havoc on both ecosystems, adversely affecting handicraft production.

6. Also, our women are concerned about the non-economic loss and damage to their raw material ecosystems. The authenticity of our cultural products has eroded. This erosion influences the breakdown in family traditions, cultural identity and the practice of our Māori language.

7. Last year, research we did with an Australian University found that in spite of the loss of traditional practices and the decline in the use of the real Māori, our women continued to build resilience, through preserving handicraft production and traditional knowledge. This resilient character of our women will help our people better anticipate, respond to and recover from extreme weather events, such as cyclones and droughts.

8. In closing, our women's knowledge, spirit and community soul offer agency, hope and resilience in the face of climate change. This is why the Court must advise that the world respect our human rights as indigenous Cook Islands women in this climate crisis.

9. Mr President, Members of the Court, I pray that your opinion will do this as you listen through me to the voices of our women. Thank you for your time.

Ms THONDOO:

17. Mr President, Members of the Court, Ms Wichman's powerful words speak to how the impacts of the unlawful conduct of States are not abstract for indigenous Cook Islands women, but are incredibly real and devastating.

18. This brings us to our arguments on States' obligations regarding the prohibition of racial, gender and intersectional discrimination, as well as the consequences that must apply for breaches of these obligations.

D. Racial discrimination

19. States' obligations regarding racial discrimination arise from multiple sources, including treaty obligations from the ICCPR[8], ICESCR[9] and, of course, the ICERD[10], as well as customary

[8] International Covenant on Civil and Political Rights, Art. 26, Dec. 19, 1966, 999 *UNTS 171*.

[9] International Covenant on Economic, Social and Cultural Rights, Art. 12, Dec. 16, 1966, 993 *UNTS 3*.

[10] International Convention on the Elimination of All Forms of Racial Discrimination, Art. 1 (1), Jan. 14, 1969, 660 *UNTS 195*.

international law, including the *jus cogens* prohibition of racial discrimination[11] and the *erga omnes* obligation to prohibit racial discrimination[12].

20. As Vanuatu and the Melanesian Spearhead Group argued, these human rights obligations apply extraterritorially[13] and apply to all States who have engaged in the relevant conduct responsible for the climate crisis over time, irrespective of whether and when they ratified these treaties[14].

21. Notably, the prohibition of racial discrimination encompasses not only intentional or direct discrimination but also indirect discrimination — acts that are neutral on their face but have disproportionately adverse effects on certain racial or ethnic groups. The CERD, in 2018, reiterated that racial discrimination not only applies to purposive, direct or intentional discrimination but also indirect discrimination or discrimination in effect, which includes structural racial discrimination[15]. Similarly, the Court, in its recent *Ukraine* v. *Russian Federation* Judgment, recognized that the *jus cogens* prohibition of racial discrimination applies to differential and disproportionate treatment, even when such treatment is neutral on its face[16].

22. Mr President, Members of the Court, it does not matter whether States that have engaged in the relevant conduct have expressed explicit racial animus or overtly racist intentions. The fact that their conduct has created racially disparate impacts means that they have breached their racial equality and non-discrimination obligations under international law.

23. The Cook Islands submits that there is strong evidence and expert support for these racially disparate impacts.

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[11] See *Report of the International Law Commission to the General Assembly*, 77 UN GAOR Supp. No. 10, UN doc. A/77/10 (Aug. 12, 2022); Dire Tladi (Special Rapporteur of the International Law Commission), *Fourth Report on Peremptory Norms of General International Law* (Jus Cogens), UN doc. A/CN.4/727 (Jan. 31, 2019); see also *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*; *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, para. 81.

[12] *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, para. 34.

[13] Written Statement of Vanuatu, paras. 334-336.

[14] Written Statement of Vanuatu, para. 341.

[15] Committee on the Elimination of Racial Discrimination (CERD Committee), General Recommendation No. 32, paras. 6–7, UN doc. CERD/C/GC/32 (Sep. 24, 2009).

[16] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Judgment of 31 January 2024*, para. 196.

24. For example, Professor E. Tendayi Achiume advises, that "[t]he racially disparate impacts of environmental degradation and climate injustice amount to evidence that States that have caused significant harm to the climate system are in breach of . . . [their] racial equality and non-discrimination obligations"[17].

25. Furthermore, the IPCC stated that the vulnerability of ecosystems and people to climate change is, "exacerbated by inequity and marginalisation linked to gender, ethnicity, low income or combinations thereof, especially for many Indigenous Peoples and local communities"[18].

26. Mr President, Members of the Court, the racially disparate impacts of the unlawful conduct are also evident in how these advisory proceedings have taken shape. It is no coincidence that the majority of States appearing before you as the ones who suffer the most from unlawful conduct, but have engaged in it the least, are countries with predominantly indigenous and racially marginalized populations. In comparison, many States that have long engaged in the unlawful conduct are global north countries with predominantly white populations[19].

27. This deeply colonial and racialized patterning of the relevant conduct and its effects are also unsurprisingly embedded in the questions put to the Court, which highlight that small island developing States are "injured or specially affected by or are particularly vulnerable to the adverse effects of climate change"[20].

28. To adequately respond to these questions, it is clear that the Court must address the colonialism and racism that underpins the unlawful conduct and patterns its effects around the world.

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[17] Written Statement of the Organisation of African, Caribbean and Pacific States, Appendix B: Racial Equality and Racial Non-Discrimination Obligations of States in Respect of Climate Change, Expert Report of Professor E. Tendayi Achiume, March 2024, para. 36, as cited in Written Comments of the Cook Islands, para. 86.

[18] IPCC, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (International Panel on Climate Change, 2023), pp. 51, 101.

[19] Written Statement of the Organisation of African, Caribbean and Pacific States, Appendix B: Racial Equality and Racial Non-Discrimination Obligations of States in Respect of Climate Change, Expert Report of Professor E. Tendayi Achiume, March 2024, paras. 6-8.

[20] UN General Assembly resolution 77/276: Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023, operative part.

E. Gender and intersectional discrimination

29. Turning to obligations regarding gender equality and non-discrimination, these include treaty obligations under the ICCPR,[21] the ICESCR[22] and the CEDAW[23], as well as the *jus cogens* prohibition of gender discrimination[24], which covers disproportionate treatment or impact even when it is neutral on its face[25].

30. The Cook Islands submits that there is strong and growing evidence and expert support for the disproportionate impacts of the unlawful conduct between genders.

31. For example, the Committee on the Elimination of Discrimination against Women said: "Women, girls, men and boys are affected differently by climate change and disasters, with many women and girls experiencing greater risks, burdens and impacts."[26]

32. Also as Albania aptly noted earlier this week, the Court only needs to look at the submissions in these proceedings and the national communications of States to the UNFCCC for compelling examples of the gendered impacts of climate change around the world — from Albania to Vanuatu, to the Cook Islands, as made clear by Ms Wichman's statement.

33. Ms Wichman's statement also speaks to how Cook Islands women face racial discrimination because our ability to practise and pass on our traditional knowledge through handicrafts and other cultural practices has been significantly impeded by the unlawful conduct.

34. These co-existing multiple forms of discrimination highlight the urgency for the Court to adopt an intersectional approach to the questions before it. To quote Judge Charlesworth's declaration

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[21] ICCPR, Article 2 (1).

[22] ICESCR, Article 12.

[23] See Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 18 December 1979, *UNTS*, Vol. 249, Arts. 2-4, 12-14.

[24] See Hilary Charlesworth and Christine Chinkin, 'The Gender of Jus Cogens' (1993) 15 *Human Rights Quarterly* 63. See also decisions of the Inter-American Court of Human Rights establishing that prohibition of gender discrimination has a Jus Cogens character: *Yatama* v. *Nicaragua, Judgment (Preliminary objections, merits, reparations and costs)*, Inter-American Court of Human Rights, 23 June 2005, Series C, No. 127, para. 184; *Servellon Garcia et al.* v. *Honduras, Judgment (Merits, reparations and costs)*, Inter-American Court of Human Rights, 21 September 2006, Series C, No. 152, para. 94; *Expelled Dominicans and Haitians* v. *Dominican Republic, Judgment (Preliminary objections, merits, reparations and costs)*, Inter-American Court of Human Rights, 28 August 2014, Series C, No. 282, para. 264*; Veliz Franco et al.* v. *Guatemala, Judgment (Preliminary objections, merits, reparations and costs)*, Inter-American Court of Human Rights, 19 May 2014, Series C, No. 277, para. 205.

[25] Committee on the Elimination of Racial Discrimination (CERD Committee), General Recommendation No. 32, paras. 6–7, UN doc. CERD/C/GC/32 (Sep. 24, 2009).

[26] Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change (CEDAW/C/GC/37), paras. 2-3.

in the recent Advisory Opinion on the *Occupied Palestinian Territory*: "A multiple or intersectional approach sheds light on the complexity of discrimination" where "discrimination may be experienced differently by differently situated individuals sharing a[n] identity"[27].

35. In undertaking such a nuanced approach, it is clear that indigenous and racially marginalized women, like those from the Cook Islands, are uniquely and significantly impacted by the unlawful conduct. The Cook Islands joins Albania in calling upon the Court to give the intersectional dimension of the climate crisis the prominence it deserves.

36. Mr President, I respectfully request that you call Mr Fuimaono Dylan Asafo to the podium to speak to the legal consequences of these breaches. *Metikai ma'ata*, thank you very much.

The PRESIDENT: I thank Ms Sandrina Thondoo. I now give the floor to Mr Fuimaono Dylan Asafo.

Mr ASAFO:

PART II: LEGAL CONSEQUENCES

1. Mr President, Members of the Court, *kia orana kotou katoatoa*. It is a great privilege to appear before you on behalf of the Government of the Cook Islands.

2. In the time remaining, we will focus on emphasizing the great importance of structural remedies as legal consequences for States that have engaged in unlawful conduct.

3. In 2004, the UN Human Rights Committee noted there is a frequent need for remedies that go "beyond a victim-specific remedy, to . . . avoid recurrence of the type of violation in question" and also that "[s]uch measures may require changes in . . . laws or practices"[28].

4. These kinds of remedies are also known as structural remedies. These aim to target the "system problem[s]" and structures that underpin and drive human rights violations[29].

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[27] *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, declaration of Judge Charlesworth, paras. 5-6.

[28] 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, CCPR/C/21/Rev.1/Add.13, para. 17, as cited in Written Comments of the Cook Islands, para. 128 *(d)*.

[29] Veronika Fikfak, "Structural Remedies: Human Rights Law", in *Max Planck Encyclopedia of Public International Law*, paras. 4 and 8, as cited in Written Comments of the Cook Islands, para. 128 *(d)*.

5. The General Assembly outlined several of these kinds of remedies in resolution 60/147 on the basic principles and guidelines on the right to a remedy and reparation[30].

6. We particularly want to highlight Principle 23 *(h)*, which states that guarantees of non-repetition and prevention of human rights violations should include, where applicable, measures such as "[r]eviewing and reforming laws contributing to or allowing gross violations of international human rights law"[31].

7. The Cook Islands submits that a range of law reform measures are urgently required to guarantee cessation, non-repetition and prevention of the rights-violating conduct. For example, to help target the systems and structures that allow fossil fuel industries to expand, States must introduce legislative and constitutional prohibitions on fossil fuel expansion and subsidies, as well as mechanisms to prevent the under-regulation of emissions from public and private sources under a State's jurisdiction or control[32].

8. However, while these and many other kinds of domestic and regional law reforms are urgently required — it is undeniable that to truly and fully guarantee cessation and non-repetition, States must urgently pursue law reform at the international level as well.

9. Mr President, Members of the Court, it is no secret that our international legal system — as well as our interconnected economic, financial and political systems — are deeply implicated in the climate crisis we face today[33].

10. For many decades, major emitters have been able to rely on these systems, and the institutions and fora they contain, like the annual COPs, to expand fossil fuel industries, increase their emissions and evade responsibility for the significant harms their emissions have caused[34]. In doing so, they have been able to maintain and grow the broader systems of domination that drive the

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[30] UNGA resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 15 December 2005, UN doc A/RES/60/147, Annex, Title IX Reparation for harm suffered.

[31] *Ibid.*, Principle 23 *(h)*.

[32] Written Comments of the Cook Islands, para. 66 *(a)*; Written Comments of Vanuatu, para. 177.

[33] Written Comments of the Cook Islands, paras. 137-139. See also Sarah Mason-Case and Julia Dehm "Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present" in *Debating Climate Law* (Benoit Mayer and Alexander Zahar, eds., 2021), pp. 184-185.

[34] *Ibid.*; Julia Dehm, "Climate change, 'slow violence' and the indefinite deferral of responsibility for 'loss and damage'", *Griffith Law Review*, Vol. 29 (2) (2020), p. 220; Carmen G. Gonzalez, "Climate change, race, and migration" (2020), *Journal of Law & Political Econ.*, Vol. 1, p. 109.

climate crisis today — including imperialism, colonialism, racial capitalism, heteropatriarchy and ableism[35].

11. Understanding this grim reality of our international systems means understanding that to truly guarantee cessation and non-repetition, States must dismantle these systems and imagine and build new ones capable of allowing everyone to live lives of joy and dignity, so that they are able to determine their own futures and destinies[36].

12. Importantly, all States are required to co-operate in this dismantling and imagining given States' *erga omnes* obligations to prohibit racial discrimination[37] and respect the right to self-determination[38].

13. Therefore, the Cook Islands respectfully requests that the Court advise in its opinion that existing international law in fact requires all States to enact domestic, regional and international law reforms not only geared towards dismantling the systems that enable the rights-violating conduct but also towards building new systems that guarantee and protect the rights of all living things, including our lands and oceans.

14. This approach to "non-reformist reform" requires an unflinching commitment by all States to fundamentally redistribute power and resources in our world to achieve climate justice, and not simply dress up the status quo or give it another name[39].

15. But this approach raises the question: what type of international law reforms would make this transformation possible? We need reform that will oblige high emitting States and corporations to provide reparations to injured or specially affected States, peoples, and individuals for the historical and contemporary effects of their greenhouse gas emissions.

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[35] Written Statement of the Organisation of African, Caribbean and Pacific States, Appendix B: Racial Equality and Racial Non-Discrimination Obligations of States in Respect of Climate Change, Expert Report of Professor E. Tendayi Achiume, March 2024, paras. 6 and 10. See also Farhana Sultana, "The unbearable heaviness of climate coloniality", *Political Geography*, Vol. 99 (2020), p. 102638.

[36] *Ibid.*, para. 46.

[37] *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 34.

[38] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, pp. 139-140, paras. 180-182.

[39] Amna A. Akbar, "Non-reformist reforms and struggles over life, death, and democracy", *Yale Law Journal,* Vol. 2497 (2022), p. 2507.

16. For these reparations to be truly equitable and transformational, they must not only include compensation and restitution, but genuine, heartfelt apologies with unequivocal commitments to cease engaging in the unlawful conduct as well. These holistic reparations are urgently needed to work towards building relationships between States and peoples of the world, based on trust, reciprocity and care rather than domination and oppression[40]. As such, these reparations are, as Professor Achiume puts it, "a precondition for reorienting the global order away from racial injustice and ecological crisis"[41].

17. It is important to note that international law already requires and authorizes reparations like this, as Vanuatu and the Melanesian Spearhead Group have rightfully argued in their written and oral statements. Reparations are also not prevented by any difficulties in establishing causal links between the unlawful conduct and harm and are not barred by the intertemporal principle either[42].

18. Furthermore, the Cook Islands submits that States must also owe reparations if they fail to discharge their mitigation and adaptation obligations, and the adverse effects of climate change lead to displacement, migration and relocation[43], as Solomon Islands will speak to in their upcoming statement.

19. However, while these types of reparations are currently required by existing international law, it is also inevitable that the vast range and depth of reparations needed to fully remedy historical and contemporary climate injustices will require further international law reform.

20. States must then work co-operatively to pursue these reforms. As Professor Achiume has powerfully stated:

> "To the extent that contemporary international legal principles present barriers to historical responsibility for climate change, the law must be decolonised or transformed in a manner that makes it capable of guaranteeing genuine equality and self-determination for all peoples."[44]

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[40] Written Comments of the Cook Islands, para. 138, citing Maxine Burkett, "Climate Reparations", *Melbourne Journal of International Law*, Vol. 10 (2) (2009), p. 526). See also Sarah Mason-Case and Julia Dehm, "Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present", p. 187.

[41] Written Comments of the Cook Islands, para. 125 *(f)*, citing Written Statement of the Organisation of African, Caribbean and Pacific States, Appendix B: Racial Equality and Racial Non-Discrimination Obligations of States in Respect of Climate Change, Expert Report of Professor E. Tendayi Achiume, March 2024, para. 46.

[42] Written Comments of the Cook Islands, para. 129.

[43] Written Comments of the Cook Islands, para. 111 *(b)*.

[44] Written Comments of the Cook Islands, para. 125 *(f)*, citing Written Statement of the Organisation of African, Caribbean and Pacific States, Appendix B: Racial Equality and Racial Non-Discrimination Obligations of States in Respect of Climate Change, Expert Report of Professor E. Tendayi Achiume, March 2024, para. 46.

21. Mr President, Members of the Court, we wish to end by emphasizing that the unlawful conduct contributing to climate change constitutes structural and systemic racial, gender and intersectional discrimination. This means that we must all confront the truth that our current international legal, financial, economic and political systems are deeply implicated in the climate crisis. That said, the General Assembly's Request for an advisory opinion offers the Court the most precious opportunity to interpret and advise on *existing* international law in its best possible light in order to empower all States and peoples to work together to decolonize international law and build a more equitable and just world for us all.

22. Mr President, this concludes the statement of the Cook Islands. *Meitaki ma'ata*, thank you very much for your kind attention.

The PRESIDENT: I thank the representatives of the Cook Islands for their presentation. I now invite the next participating delegation, the Marshall Islands, to address the Court and I call upon His Excellency John Silk to take the floor.

Mr SILK:

INTRODUCTION

1. Mr President, Madam Vice-President, Members of the Court, the Marshall Islands is among the most climate-vulnerable nations and people on earth. Our nation, of 29 coral atolls and 5 islands, was bequeathed to us by our forefathers who boldly ventured in their canoes across the vast Pacific Ocean, many centuries ago, and has been home to our people for thousands of years since[45]. Now climate change — a problem we did not create — threatens our society, our cultural heritage and our connection to our land and ancestors.

2. I bear the responsibility of conveying to this honourable Court the lived experiences, challenges and fears of the Marshallese people. I also come to share our hope that this moment, your decision, will mark the turning point in the fight to secure a liveable future. Every inch of land lost to human-induced sea level rise represents a loss of our heritage. When I walk our shores, I see more than eroding coastlines, I see the disappearing footprints of generations of Marshallese who lived in

[45] Preamble of the Constitution of the Republic of the Marshall Islands.

harmony on these islands. I am reminded of past generations of Marshallese women sitting under the shades of coconut trees, weaving traditional mats and passing on their skills to the next generation.

3. When we speak of climate change at home, we speak of communities redefining their traditional boundaries. Traditional markers like coconut trees have been claimed by the sea. Young Marshallese enrolled in our traditional canoe-building institute, wondering if the islands they navigate will exist for their children and the generations to come.

4. In our traditional calendar, we once knew precisely when to plant, when to fish and when to harvest. This knowledge, passed down over generations, is disrupted as climate change corrupts weather patterns and alters our environment. Our fishermen, who once read the clouds and the currents like a book, now return home with smaller catches from warming seas. Our breadfruit and pandanus trees, vital to our food security and cultural practices, are being poisoned by salt water.

5. The Marshall Islands faces uniquely complex challenges because of our colonial and nuclear legacy. The burden left by nuclear testing is now compounded by rising seas. Our people live with mounting anxiety as the dome containing nuclear waste — a remnant of a painful past — faces submersion with the rising seas, threatening further nuclear contamination. Communities which have been displaced because of nuclear testing are now at risk of being displaced a second time because of climate change.

6. Like our nuclear legacy, climate change is being inflicted on the Marshall Islands and our people by other countries acting for their own benefit and enrichment, while we bear the costs and consequences. As an independent State, climate change threatens our self-determination: our land is once again being stolen from us — this time by rising sea levels caused by other States.

7. Mr President, Madam Vice-President and Members of the Court, the Paris Agreement was a lifeline. The Marshallese people were proud to be a key part of that process. We were infused with hope for the future. It was an acknowledgment that the world understood the threat we face and was obligated to act. Yet we watch with growing alarm as major emitting States fail to meet their obligations and, in some cases, even expand fossil fuel production. As seas rise faster than predicted, these States must stop. This Court must not permit them to condemn our lands and our people to watery graves.

8. The Marshall Islands continues to advocate for global climate action, and have ambitious national adaptation plans. Unfortunately, our efforts alone cannot stem the rising tides.

9. We need this Court to affirm the binding nature of States' legal obligations to protect vulnerable nations like ours. We urge this Court to consider the human cost of inaction and the urgency of holding States accountable for the catastrophic impacts of climate change.

10. Mr President, Madam Vice-President, Members of this Court, the Marshallese people have a saying: "Wa kuk wa jimor" — meaning "We are in this canoe together." Today, I extend this principle to our global community — and to this Court.

11. Let us extend to each other what we know we need from each other, our profound humanity. Let us ensure that future generations will know, not just of our climate struggle, but of how climate justice prevailed when it matters the most.

12. Mr President, Madam Vice-President, Members of the Court, the Court will first hear from our climate envoy, Ms Kathy Jetnil-Kijiner, followed by our Deputy Attorney General, Mr Johnathen Kawakami. I now respectfully ask the Court to call upon Ms Kathy Jetnil-Kijiner. Kommol tata, and thank you very much.

The PRESIDENT: I thank His Excellency John Silk. I now give the floor to Ms Kathy Jetnil-Kijiner. Madam, you have the floor.

Ms JETNIL-KIJINER:

PROJECTIONS OF THE IMPACTS OF CLIMATE CHANGE IN THE MARSHALL ISLANDS

1. Honourable President, Madam Vice-President, Members of the Court, many speak of 1.5°C as the best-case scenario. But those of us on atolls have already experienced serious injury because of climate change. My people are experiencing adverse impacts, including heat, drought and sea level rise, which undermines our livelihoods, compromises our food and water security, damages our infrastructure, harms our health and imperils our very lives.

2. Worse is yet to come, even if warming is limited to 1.5°C. Such warming will cause serious damage and require urgent adaptation measures to ensure our islands remain liveable. Today, I will show you how sea level rise will cause even more severe injury to our islands and our people — and

within this century. The scenarios you are about to see are based on the best available science and IPCC reports and projections[46].

3. This is the atoll of Majuro, our capital, where my family and most of our people live. Marked there is Laura village — our widest and highest point on island. It is only 2 metres above sea level.

4. This is a close-up of Laura village. Marked on the map is our freshwater lens, which is the largest natural source of fresh water for our country. The white rings on the outer border represent the shallowest parts, and the blue represent the deepest. If salt water intrudes on the freshwater lens, it turns the water brackish — this means it is undrinkable and we cannot use it on crops. Please note that the yellow dots mark wells that draw from the lens which community members use for drinking, cooking, bathing and for watering their crops.

5. First, I will show you some baseline scenarios which show how Laura is affected by flooding events without sea level rise.

6. This slide shows the impact of a storm surge that is expected once every ten years[47]. The red buildings represent damaged infrastructure. You can see the flooding penetrates the shallow edge of the freshwater lens, which causes some salination — but the community wells are fine.

7. This slide shows a disaster event which we would expect once every 100 years. This is supposed to be rare — but I can tell you I have seen this already in my lifetime. And as you can see, there is significant infrastructure damage, and penetration of the freshwater lens, but the flooding does not reach our community wells.

8. But now let me show you what will happen with sea level rise. The image on the left shows the baseline flooding event that I showed you earlier — the one in ten year flooding event before sea level rise. The image on the right shows what it will look like after 50 cm of sea level rise[48]. As you can see, just 50 cm of sea level rise turns a minor flooding event into a disaster.

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[46] See IPCC AR6 WGII, *Summary for Policy Makers* D.5 ("Societal choices and actions implemented in the next decade determine the extent to which medium and long-term pathways will deliver higher or lower climate resilient development (high confidence)"); and *Summary for Policy Makers* D.5.3 ("[a]ny further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all (very high confidence)") at 35.

[47] See the online portal of the sea level rise model, available at https://landscapeknowledge.net/majuro-atoll-map/.

[48] International Organization for Migration, Jo-Jikum, Marshall Islands Conservation Society, The University of Melbourne and Women United Together Marshall Islands, 2023. *My heritage is here: Report on Consultations with Communities in the Marshall in Support of the Development of the National Adaptation Plan*.

9. Let us look closer at what this means. As you can see — there is a lot more infrastructure damaged by the flooding. This includes homes, schools and health centres. This will cause extensive displacement, more disease and even greater water and food insecurity. It will also disrupt livelihoods and critical services. You can also see at least three wells connected to the lens are flooded, which makes the water unpotable. On a best-case scenario, it would take 9-12 months for the wells to recover. But with the droughts projected with climate change, it could take up to four years before the community could use these wells[49].

10. With climate change, this kind of flooding event will happen every 10 years, not every 100 years. This is ten times the frequency. This scenario will happen — and it could happen as early as 2070 if we do not rapidly curb emissions[50]. Without transformational mitigation and adaptation measures, our current emissions trajectory is projected to render our islands uninhabitable by the end of this century. We need to begin extreme adaptation measures now. In fact, we needed to begin yesterday.

11. But it is not too late to prevent these doom scenarios. There is still time. With rapid emission cuts and adaptation measures, we can protect our people from the most serious human rights violations and forced displacement resulting from the loss of our land.

12. In short, we need time and finance. We need temperatures to stop rising so we have more time. And we urgently need finance because we just cannot afford the adaptation that is necessary. Our early estimate for adaptation of just two urban centres is US$9 billion. And that is just for hard adaptation measures — like building sea walls and investing in land elevation and land reclamation. That estimate does not cover internal relocation, resettlement in another island and other costs.

13. We cannot afford this. And we should not have to pay it because we did not create this problem. We continue to advocate, in the UNFCCC, for enough finance to meet the needs of countries like ours, as temperatures continue to rise. But according to all expert analysis, the outcome at this year's COP — with just US$300 billion committed — falls far short. For many years we have

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[49] Goyetche T., Pool, Maria, Guimera, Jordi, Abarca, Elena. 2024. Development of a numerical Groundwater Model to assist with groundwater management in Laura Majuro Atoll, Republic of Marshall Islands: completed by AMPHOS21. Barcelona: Amphos 21 Consulting S.L.

[50] International Organization for Migration, Jo-Jikum, Marshall Islands Conservation Society, The University of Melbourne and Women United Together Marshall Islands, 2023. *My heritage is here: Report on Consultations with Communities in the Marshall in Support of the Development of the National Adaptation Plan*.

watched as commitments go unmet. As it is, the funding process is so complex and slow that it takes years for funds to reach small island developing States like ours. The lack of climate finance imperils the lives and livelihoods of the Marshallese people. We cannot afford the status quo.

14. As temperatures rise, the damage compounds — along with the costs.

15. This slide is heartbreaking — but this is what will happen at just 1 m of sea level rise. And remember this is the widest and highest part of our island. So you can only imagine the damage to the more lower lying, more densely populated areas of Majuro. This is what will happen if the international community does not act now.

16. This is a crucial moment — and one we need to get right. We urge this Court to make this advisory opinion the moment that international law rose to meet the urgency of the crisis we all face.

17. This image shows a grave site from Ebeye atoll which is being washed out to sea. I leave you with this image to remind you of the grave cost of inaction.

18. Komol tata, thank you. I now respectfully ask the Court to call upon our Deputy Attorney General to address the Court.

The PRESIDENT: I thank Ms Kathy Jetnil-Kijiner. I now give the floor to Mr Johnathen Kawakami. Sir, you have the floor.

Mr KAWAKAMI:

LEGAL STATEMENT

1. Mr President, Madam Vice-President, and Members of the Court, my constitutional role as Deputy Attorney General is to uphold the law and protect the rights of the Marshallese people. The Court has just seen how climate-induced sea level rise will affect our islands. We face catastrophic harm, which is not of our making. We know what causes it and we know how to stop it. But emissions continue to rise, along with sea levels. If this continues unabated, it will destroy our environment and our economy. Our people are already suffering human rights violations because of climate change — and it is only going to get worse.

2. Our parliament cannot legislate to stop it. Our government cannot regulate to stop it. And I cannot litigate in our courts to stop it.

3. Those engaging in the conduct which causes climate change are beyond my jurisdiction and control. That is why we need this Court to act. We join an unprecedented number of States urging this Court to answer the questions before you.

4. In addressing question *(a)*, the Court should set out the obligations of States by reference to the entire corpus of international law, including the sources of law explicitly referenced in the chapeau[51].

5. States have long had obligations under customary international law to prevent damage to the environment and otherwise to reduce, limit or control activities that may cause such damage[52]. States are required to act with due diligence, to ensure that actions on their territory and/or under their control do not cause significant harm to other States, to prevent significant harm to the environment, and to protect and preserve the marine environment[53]. It is important to note: harm is not an element of the primary rule of prevention. The prevention principle is not triggered by actual harm; it is the risk of causing transboundary harm that gives rise to the State's obligation to exercise due diligence, to minimize the risk and avoid the harm.

6. The customary international law preventative principle governed the conduct — as defined in resolution 77/276 — from the moment the *risk* of harm was known[54]. As this Court has heard, States have known that emissions would cause significant harm to the climate system since at least the 1960s[55] — long before the adoption of the UNFCCC and the Paris Agreement. These treaties do not displace or exclude States' customary law obligations under the preventative principle. Indeed, the climate treaties do not displace any other customary international law and treaty obligations that are engaged by the conduct which causes climate change and its consequences. This includes the

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[51] UN General Assembly, 29 March 2023, A/RES/77/276: Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change.

[52] Republic of the Marshall Islands Written Statement, paras. 21-27; Republic of the Marshall Islands Written Comments, paras. 29-32; *Trail Smelter Arbitration*, III *Reports of International Arbitral Awards*, p. 1965; *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22.

[53] Republic of the Marshall Islands Written Statement, paras. 22-27, 70-73; Republic of the Marshall Islands Written Comments, paras. 29-32; Vanuatu Written Statement, paras. 235-248, 261-287; Vanuatu Written Comments, paras. 131-142.

[54] Republic of the Marshall Islands Written Statement, paras. 23-24; Republic of the Marshall Islands Written Comments, para. 29. And even the United States and Russia have agreed that it applies to the conduct, see United States Written Statement, para. 4.5; Russian Federation Written Statement, p. 8.

[55] Vanuatu Written Statement, paras. 177-192 and Expert Reports of Corinne Le Quéré CBE FRS, Professor Naomi Oreskes; Barbados Written Statement, paras. 38-82 and Annexes 1-35 ("Scientific Reports 1850-1991").

right to self-determination and other human rights obligations[56]. This is supported by the fact that the UNFCCC's preamble explicitly refers to the prevention principle and human rights[57]. Compliance with the climate treaties does *not* mean that States can be taken to have complied with their obligations under other areas of international law[58].

7. In the context of climate change, given the high risk of serious and irreversible harm to the environment, the standard of due diligence is stringent[59]. The IPCC has made clear that due diligence requires rapid, deep and immediate emissions cuts[60]. States' obligations therefore require them to drastically and immediately cut emissions.

8. For the Marshall Islands, catastrophic consequences flow from States' failure to prevent and protect against damage to the climate system. Our land is threatened, violating our right to self-determination, as our people are displaced from the islands and atolls that they call home and are disconnected from their identity. Transboundary damage caused by climate change violates our people's rights — including, but not limited to, our rights to health, life, food, water and cultural identity[61].

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[56] Republic of the Marshall Islands Written Statement, paras. 49-50, 86-95; Republic of the Marshall Islands Written Comments, paras. 19-28.

[57] United Nations Framework Convention on Climate Change 1992, Preambular para. 8 ("Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law . . . the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction"); Paris Agreement 2015, Preambular Para. 11 ("Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity"); Republic of the Marshall Islands Written Comments, paras. 12, 29-36, 38-39.

[58] *Climate Change and International Law*, Advisory Opinion, Case No. 31, International Tribunal for the Law of the Sea (21 May 2024), paras. 223-224.

[59] *Ibid.*, para. 398.

[60] Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement B.1.

[61] See Republic of the Marshall Islands Written Statement, paras. 50, 96-102, 106-108; Republic of the Marshall Islands Written Comments, paras. 53-54. See also in the context of Small Island Developing States: Vanuatu Written Statement, paras. 329-377.

9. States have comprehensive positive obligations to protect these rights: they must respect and ensure them to all individuals within their territory or subject to their jurisdiction[62], they must also protect them from the foreseeable acts of private actors who are within their effective control[63] and provide effective remedy[64]. Given the transboundary harm caused by the conduct in question, these human rights obligations are extraterritorial in scope. States are responsible for the human rights violations caused to my people in their failure to regulate emissions over which they have effective control[65]. This approach was adopted by the UN Committee on the Rights of the Child in a case which considered climate change impacts, including on Marshallese children[66]. We respectfully submit that this Court should do the same.

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[62] International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Article 2 (1); 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. 5. See also on ICESCR: Vanuatu Written Statement, para. 336. See in the context of emissions and harm to the environment: 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, para. 10.10; *Advisory Opinion OC-23/17 ("The Environment and Human Rights")*, Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 95, 101-102.

[63] 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. 8; Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, paras. 7, 18. See also African Commission on Human and Peoples' Rights, *General Comment No. 3 on the African Charter of Human and Peoples' Rights: The Right to Life (Article 4)*, 12 December 2015, paras. 38, 41; Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 on the Environment and Human Rights*, Series A No. 23, 15 November 2017, para. 119.

[64] International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Article 2 (3); 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, paras. 15-17; Committee on the Rights of the Child, *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, paras. 24-25; *I.D.G.* v. *Spain*, ESCRC Communication No 2/2014, Decision (17 June 2015), para. 11.3 (deriving the right to a remedy from International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, Article 2 (1)).

[65] 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, para. 10.7.

[66] *Ibid.* See also *Advisory Opinion OC-23/17 ("The Environment and Human Rights")*, Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 95, 101-102.

10. The Marshall Islands also underlines the need to consider future generations. This Court recognized the principle of intergenerational equity in the *Nuclear Weapons* case[67]. The threshold test for its application is indisputably met for climate change. As you heard from my colleague, the best available science tells us, *with certainty*, that the conduct in question condemns future generations of Marshallese people to an unliveable environment[68]. I think of my 2-year-old daughter and her future children. We submit the Court *must* consider their rights, too.

11. Mr President, Madam Vice-President, Members of the Court, in answer to question *(b)*, we join the majority of States before this Court to submit that the legal consequences of the violations of these obligations should be determined, in the usual way, by the law on State responsibility under the ILC Articles[69].

12. The conduct in question here, under resolution 77/276, is the acts and omissions of States, which have caused significant harm to the climate system. The law of responsibility applies to the composite acts of States (Article 15). Where multiple States display the same wrongful conduct, the responsibility of each State can be invoked (Article 47). These two provisions, read and applied together, means that responsibility arises for the conduct in question[70].

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[67] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 22, para. 36. See Republic of the Marshall Islands Written Statement, paras. 118-122; Republic of the Marshall Islands Written Comments, paras. 24-27; Paris Agreement 2015, Preambular Para. 11. This principle has already been applied in the climate context by international and domestic courts, see: *Verein Klimaseniorinnen Schweiz and others* v. *Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 416, 419; UN Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol of the International Covenant on Civil and Political Rights, concerning Communication No. 3624/2019: *Daniel Billy et al.* v. *Australia* (CCPR/C/135/D/3624/2019), 22 September 2022, para. 5.8; UN Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol of the International Covenant on Civil and Political Rights, concerning Communication No. 2728/2016: *Ioane Teitiota* v. *New Zealand* (CCPR/C/127/D/2728/2016), 23 September 2020, para. 9.4; *Neuebauer et al* v. *Germany* [2022] Bundesverfassungsgericht [BVerfG] [1 BvR 3084/20] (German Federal Constitutional Court), para. 142; The Hague District Court, *Urgenda* v. *The State of the Netherlands*, Case. No. C/09/456689/HA ZA 13-1396, 24 June 2015 (English translation), para. 4.76.

[68] See Republic of the Marshall Islands Written Statement, paras. 118-122.

[69] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, as corrected; Republic of the Marshall Islands Written Statement, paras. 55-61; Republic of the Marshall Islands Written Comments, para. 37-40. See *Verein Klimaseniorinnen Schweiz and others* v. *Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 439-444; *Climate Change and International Law*, Advisory Opinion, Case No. 31, International Tribunal for the Law of the Sea (21 May 2024), paras. 223, 286.

[70] Republic of the Marshall Islands Written Comments, paras. 40, 43-44; CR 2024/37, p. 16, paras. 20-21 (Sander); CR 2024/26, pp. 24-25, paras. 32-36 (Phillips); Vanuatu Written Statement, paras. 530-535.

13. The Marshall Islands has already suffered significant environmental harm due to the actions and omissions of other States. If this continues, we face catastrophic harm. For this reason, we urge the Court to make clear that the wrongful conduct must cease[71].

14. The failure of a State to take reasonable steps to prevent transboundary harm is a continuing act of omission, which must be ceased through the adoption of appropriate policies. This includes policies to enact regulation designed to reduce emissions from sources under their jurisdiction. If, for instance, the nationally determined contribution of a State was considered insufficiently ambitious, the State would need to adjust it. States should also cease subsidizing the consumption of fossil fuels and the expansion of fossil fuel production.

15. States must also make full reparation, including restitution, compensation and satisfaction[72]. Among other things, this requires compensation for damage already done, including for internally displaced people, as well as funds required for the adaptation to mitigate future damage[73]. It is important for the Court to make clear that finances provided under the COP process does not displace or replace the obligation of compensation arising from violations of States' obligations under international law.

16. The Court has heard from some that the problem is too big or too complex for State responsibility to arise. This cannot be right as a matter of law or principle. Put simply, where there is a right, there is a remedy. Equity cannot suffer a wrong without a remedy. The harm caused to the climate system by the combined emissions of certain States is posing an existential threat to the planet and to all of humanity. How can it be that States will be held responsible for discrete incidents of transboundary environmental harm, but *no* State is legally responsible for the greatest harm ever caused to the environment?

17. We respectfully submit that this cannot be right, and we respectfully invite the Court to make this clear.

18. Mr President, Madam Vice-President, Members of the Court, the Court has now seen how climate change, if unabated, will affect the Marshall Islands. For this reason, we have travelled long

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[71] Republic of the Marshall Islands Written Comments, paras. 47-48.

[72] *Ibid.*, paras. 49-52.

[73] Republic of the Marshall Islands Written Statement, paras. 74-84, 107-117, 125; Republic of the Marshall Islands Written Comments, para. 51.

and far to impress upon this Court the urgent need for action. The Court has heard stories of our suffering. We are not just here to share our stories; we are here to save our land, our people and the world.

19. Climate change presents an unprecedented threat to us and to all of humanity. This Court has been given an unprecedented mandate to set the precedent to protect us all. We respectfully urge that this Court does so.

20. Mr President, Madam Vice-President and Members of the Court, I thank you for your time and attention.

21. Kommol Tata, thank you.

The PRESIDENT: I thank the representatives of the Marshall Islands for their presentation. I now invite the delegation of the Soloman Islands to address the Court and I give the floor to Mr John Muria Jr.

Mr MURIA:

I. INTRODUCTION

1. Mr President, your Excellencies. It is an honour to appear before the Court in these landmark advisory proceedings as Agent for Solomon Islands, in my position as Attorney-General. I appear with our legal counsel, Mr Harjeevan Narulla.

2. I commend the efforts of the Pacific Island countries who provided the foundational support for this Request for an advisory opinion. We are fortunate to be joined in this session by our Pacific neighbours, Cook Islands and the Republic of Marshall Islands.

3. I also acknowledge the inspiration and impact of the Pacific Islands Students Fighting Climate Change, the President of which is Solomon Islander, Ms Cynthia Houniuhi. Those students campaigned before the Pacific Islands Forum leaders in 2019 which led to the Republic of Vanuatu championing this initiative at the General Assembly. I extend our gratitude to Vanuatu for its leadership and passion, which has brought us to this Court today.

4. In this submission, I will address two issues.

(i) I will describe the ways in which climate change worsens Solomons' vulnerabilities as a developing nation; and

(ii) I will discuss the significant impacts that climate change is having in Solomons, which impacts the lives of so many of our people on a daily basis.

5. It is vital to Solomons to have the voices of our people represented in our submission before this honourable Court. As such, I will be sharing sentiments from Solomon Islanders whose lives are impacted by climate change, particularly those who deal with the threat of sea-level rise.

Solomon Islands: vulnerability to climate change

6. Turning now to my first point. As we have heard this week, while the impacts of our changing climate will continue to affect us all, those impacts are not distributed equally. As a small island developing State and least developed country in the Pacific, Solomons is on the front lines of the most severe and devastating impacts of climate change.

7. My country is made up of over half a million people across approximately 1,000 islands, with diverse linguistic, ethnic and cultural backgrounds. More than 80 per cent of our people reside in rural, low-lying coastal areas relying heavily on traditional knowledge of subsistence agriculture and fishing for food and income[74].

8. Solomons' agricultural-based economy is largely unprepared to adapt and mitigate against climate change impacts[75]. For example, fresh water supplies and staple crops such as taro are being severely impacted by increased salinity of soil caused by sea-level rise[76]. Sixty-five per cent of the population lives less than 1 km from the sea, meaning over a quarter of a million people are among those most vulnerable to sea-level rise, king tides and storm surges[77].

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[74] World Bank, "Climate Risk Country Profile: Solomon Islands" (2021: https://climateknowledgeportal.worldbank.org/sites/default/files/country-profiles/15822-WB_Solomon%20Islands%20Country%20Profile-WEB.pdf) ("Climate Risk Country Profile"); UNDP, "Climate Change Adaptation: Solomon Islands" (2024: https://www.adaptation-undp.org/explore/asia-and-pacific/solomon-islands).

[75] Solomon Islands Government 'Agriculture Sector Growth Strategy and Investment Plan 2021-2030' (2021: https://solomons.gov.sb/wp-content/uploads/2021/10/Solomon-Islands-Agriculture-Sector-Growth-Strategy-and-Investment-Plan-ASGSIP-2021-2030_Final.pdf); Bob Warner, 'Smallholders and rural growth in Solomon Islands' *Pacific Economic Bulletin.* Vol. 22 (3) (2007).

[76] Secretariat of the Pacific Regional Environment Programme, 'Vulnerability and Adaptation (V&A) Assessment for Ontong Java Atoll, Solomon Islands: Pacific Coral Action Plan 2021-2030' (Report, 2014), available at https://www.sprep.org/attachments/Publications/CC/PACCTechRep4.pdf.

[77] Neil L Andrew et al, 'Coastal proximity of populations in 22 Pacific Island Countries and Territories' (2019) 14(9) *PLoS ONE* 8.

9. These facts mean that, by no fault of our own, Solomons has been ranked as the second-most vulnerable State in the world to the devastating impacts of climate change[78].

Impacts of climate change on Solomon Islands

10. While the impacts of climate change pose tremendous challenges to the ordinary Solomon Islanders, one of the most significant is climate-related displacement and mobility. In Solomons, people have already been displaced by sudden or slow-onset disasters. These impacts are only going to get worse. This includes rising sea levels encroaching on homes; storms and floods damaging infrastructure beyond repair; and damage to marine and terrestrial ecosystems such that they no longer provide reliable sources of food and water.

11. I wanted to share some of the stories of our people already suffering these impacts. Mr Alex Akwai of Lilisiana Village, in Malaita Province in Solomons, stated that

> "[e]very year when the king tides come, the water flows into our communities of Siwai and Lilisiana. This is making it hard for us to do gardening and to do to other necessary activities for our survival. High tides and powerful storms have become a regular occurrence threatening our homes, livelihoods and our cultural heritage."

12. This story is shared among many communities across Solomon Islands. As each tide grows higher, the risk of land, homes and communities being totally submerged becomes a tragic reality. Already we have lost five islands entirely to sea-level rise, with further islands experiencing severe erosion, which has caused permanent displacement of communities[79]. Sierra Bird, from the village of Babanga, in Western Province of Solomon Islands, is afraid that she will lose her home. She asks: "Will Babanga remain a home for the future generation or will it be submerged under water and become the historical legacy for the future generation?"

13. The immense social and cultural impacts of climate change are hard to quantify. In particular, sea-level rise threatens our history, our future and our very existence. Mr Akwai said:

> "The community cemetery has almost completely disappeared. [T]he graves not only served as a site to bury our deceased loved ones but they tell of the history of our

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[78] University of Notre Dame, 'ND-GAIN Country Index: Vulnerability' (Report, 2022), available at https://gain-new.crc.nd.edu/ranking/vulnerability.

[79] Gladys Habu 'Engulfed by the sea: the loss and damage from climate change' (Web Page, 2020) https://www.iied.org/engulfed-sea-loss-damage-climate-change; Albert et al. 'Interactions between sea-level rise and wave exposure on reef island dynamics in the Solomon Islands' (2016) 11 (5) *Environmental Research Letters*; Climate Risk Country Profile (No. 1).

> community since our forefathers have settled. [W]hen these graves are gone, we lose part of our history."

14. As a people we hold dear those who have gone before us, they are our connection to our traditions, rituals and religious beliefs and continue to shape our lives and identity.

15. Our Government is working on relocation strategies for those impacted by sea-level rise or extreme weather events[80]. However, there are also social challenges that come with relocation, which Ethel Loku, from Haleta Village in Ngella Central Province, in Solomons has described:

> "[T]he sea level rise will be so high that water will completely cover our community and leaders will need to step in to assist our community to relocate. However, relocation is easy to say but harder to do. Our community's lives and livelihoods are in Haleta and we have strong cultural ties because it is the place where many generations of our families have lived before us."

16. Not only is there resistance from communities who receive displaced persons, but people in Solomon Islands do not want to leave their homelands. As you have heard in the testimonies of our people, the cultural significance of land is immense. Food production, cultural identity and history are inextricably linked to the land. A proverb common in Guadalcanal Province, home of our capital, Honiara, summarizes the above as follows: "The land is me, the land is you and the land is our life." Being displaced from land is synonymous with being displaced from culture and identity.

17. Over 80 per cent of land in Solomons is under customary ownership and occupation. It is very complex to have communities relocate to land already occupied by another tribe, particularly as they have no connection to the land. This movement often escalates into tensions and, at worst, violence[81].

18. Given that climate change is a threat multiplier for Solomon Islands, the Court's opinion is crucial. It will clarify pathways that can address the issues that our people and the rest of the world are facing due to climate change.

19. Thank you, Mr President, Your Excellencies. May I have the Court's permission to invite counsel Mr Narulla to address the Court.

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[80] International Organisation for Migration and Solomon Islands Government, "Solomon Islands Planned Relocation Guidelines" (2022) https://roasiapacific.iom.int/sites/g/files/tmzbdl671/files/documents/2023-03/Solomon%20Islands%20Planned%20Relocation%20Guidelines.pdf; Solomon Islands Government, "Discussions underway with MPG on relocation of vulnerable communities" (Web Page, 13 September 2024), https://solomons.gov.sb/discussions-underway-with-mpg-on-relocation-of-vulnerable-communities/.

[81] Kate Higgins and Josiah Maesua, 'Climate Change, Conflict and Peacebuilding in Solomon Islands (Policy Brief No 36)' (2019) *Toda Peace Institute*; Internal Displacement Monitoring Centre (IDMC) 'When land, knowledge and roots are lost: indigenous peoples and displacement' (Briefing Paper, 2021).

The PRESIDENT: I thank Mr John Muria Jr. I now give the floor to Mr Harjeevan Narulla. You have the floor.

Mr NARULLA:

II. OBLIGATIONS OF STATES AND LEGAL CONSEQUENCES

1. Mr President and Members of the Court, as counsel for Solomon Islands, it is a great honour and privilege to appear before you today in these advisory proceedings on the vital issue of climate change.

2. We are not yet at the halfway mark of these hearings, and already the Court has heard diverse and varied legal arguments on a vast range of points. We will not be reiterating our position on each point in issue. We will instead respectfully refer the Court to our comprehensive written submissions, and focus today on three key issues:

(i) The *first* issue is whether the UNFCCC, the Kyoto Protocol and the Paris Agreement are *lex specialis* or the principal source of obligations relating to climate change under international law. Our submission is that those treaties are not *lex specialis*, and that this Court should follow the line of reasoning adopted by the International Tribunal for the Law of the Sea in its advisory opinion on climate change.

(ii) The *second* issue concerns the correct application of the principle of common but differentiated responsibilities and respective capabilities in light of different national circumstances, known as CBDR-RC. We say that CBDR-RC is a dynamic standard that can become more stringent over time and requires States under the Paris Agreement to set emissions reduction targets consistent with their "fair share" of the global effort.

(iii) The *third* issue concerns State obligations to address the challenges of climate displacement, migration and relocation. These challenges are often collectively referred to as climate mobility issues, which is the term we will use today.

3. I will spend the majority of my time addressing this final topic, given its particular importance to Solomon Islands and other small island developing States (SIDS) and least developed countries (LDCs).

4. Now, with your permission, Mr President, I will briefly deal with our first submission relating to *lex specialis*.

First issue: *lex specialis* argument should be rejected by this Court

5. As Your Excellencies have already heard this week, one of the key issues in these proceedings is the legal status of the UNFCCC, the Kyoto Protocol and the Paris Agreement under international law.

6. Our position is simple, and shared with the large majority of States in these proceedings: the climate treaties are not *lex specialis*, and do not limit or modify State obligations relating to climate change stemming from other sources of law. Solomon Islands considers that the *chapeau* to the Request identifies a non-exhaustive list of treaties and rules from which State obligations can be derived.

7. We respectfully encourage the Court to follow the line of reasoning developed by ITLOS on this point. The Tribunal considered arguments very similar to those advanced in these proceedings and was clear in its finding that the Paris Agreement does not modify or limit the obligation to reduce greenhouse gas emissions established under Article 194 (1) of UNCLOS[82]. The Tribunal was unambiguous in stating that "the Paris Agreement is not *lex specialis* to the Convention", and that the Convention is a separate agreement with a separate set of obligations[83]. While, of course, the Tribunal was analysing the question of *lex specialis* in the context of UNCLOS, in our submission, we consider that the Tribunal's reasoning readily applies to other sources of law, including international environmental law, human rights law, general and customary international law and refugee law. In short, we say that this Court should consider the whole corpus of international law in defining State obligations in relation to climate change, and should not be limited to just the climate treaties.

8. Mr President, and Members of the Court, I will now come on to my second, equally brief, submission, regarding the application of CBDR-RC.

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[82] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal) (Advisory Opinion)* (International Tribunal for the Law of the Sea, Case No 31, 21 May 2024), para. 244.

[83] *Ibid.*

Second issue: CBDR-RC is a dynamic standard requiring "fair share" targets

9. As Your Excellencies are well aware, the principle of CBDR-RC is a keystone principle under the UNFCCC and the Paris Agreement. The principle is central to the Request, given that not every State bears common responsibility, nor common capacity to address the causes and effects of climate change.

10. Solomon Islands has contributed less than 0.01 per cent of all global emissions and, as the Attorney General has just explained, is among the most vulnerable countries in the world to rising sea levels, devastating tropical cyclones and flooding[84]. As a least developed country, Solomon Islands will simply not have the financial and technical capacity to meet the challenges of climate change without the assistance of other States under the Paris framework. Given this context, we make two short points:

(i) *First*, the principle of CBDR-RC under the Paris Agreement differentiates obligations owed by developed and developing States according to their respective capabilities and in light of "different national circumstances"[85]. But what does that mean? Our submission is that as national circumstances change, the obligations owed by States can similarly evolve to become more stringent in line with their changing social and economic circumstances. This means that developed States and States previously exempt from the obligations under the Kyoto Protocol that have grown in capacity and emissions levels, must assume the greatest responsibility for action on climate change, including in relation to mitigation, adaptation, the provision of climate finance and the transfer of technology.

(ii) Our *second* submission is that the national mitigation contribution of States under Article 4 of the Paris Agreement must reflect their "fair share" of the global effort. This fair share should be calculated in line with CBDR-RC, and should be used by States to set their carbon budgets.

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[84] Government of the Solomon Islands, *Solomon Islands First Nationally Determined Contribution* (2021) https://unfccc.int/sites/default/files/NDC/2022-06/NDC%20Report%202021%20Final%20Solomon%20Islands%20%281%29.pdf, p. 3.

[85] *Paris Agreement*, opened for signature 22 April 2016, 1155 *UNTS* 146 (entered into force 4 November 2016), preamble, Arts. 2(2) and 4(3) ("*Paris Agreement*").

11. Mr President, that concludes our second point, and with your permission, I will now turn to our third and main submission, on the topic of climate displacement, migration and relocation.

Third issue: climate displacement, migration and relocation

12. The Attorney General has just taken the Court through some of the reasons why climate mobility is an issue of vital significance to the Solomon Islands. By way of introduction to this issue, I would add to his remarks that climate displacement, migration and relocation are existential challenges not only for SIDS and LDCs, but for all States. This reality has been reflected in the submissions of many States this week[86] and some of our Pacific colleagues today. For example, on Monday, Bangladesh made clear to the Court that it was facing "an unprecedented displacement crisis", with up to 20 million people due to be internally displaced by 2050[87]. On Tuesday, the Philippines showed the Court confronting visual evidence of climate impacts and explained how a single typhoon had displaced over 4 million people[88]. Yesterday, our Pacific neighbour Fiji told the Court about the displacement and relocation of its villages, and described forced displacement as a "crisis of survival" and a "crisis of equity"[89].

13. Your Excellencies, the harm being experienced all around the world is already catastrophic and will only become more severe in the years ahead.

14. As early as 1990, the IPCC observed that the single greatest impact of climate change will be felt through the forced displacement of people[90]. They also projected that by 2050, one billion people will be living in low-lying coastal areas and threatened by climate change and displacement[91]. Populations in small island States are of course uniquely vulnerable to displacement, given sea-level rise, threats to their food systems and the simple loss of habitable land.

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[86] See CR 2024/36, pp. 54-55 (Leo Pinder, Bahamas) and p. 76 (Catherine Amirfar, Bangladesh); CR 2024/39, p. 40 (Arman Sarvarian, Côte d'Ivoire) and p. 67 (Agustín Vásquez, El Salvador).

[87] CR 2024/36, p. 64 (Tareque Muhammad, Bangladesh).

[88] CR 2024/37, p. 62 (Menardo Guevarra, Philippines).

[89] CR 2024/40, p. 66 (Luke Daunivalu, Fiji).

[90] Intergovernmental Panel on Climate Change, "Policymaker Summary of Working Group II (Potential Impacts of Climate Change)" in *Climate Change: The IPCC 1990 and 1992 Assessments* (1992) 103, para. 5.0.10.

[91] Intergovernmental Panel on Climate Change, "Summary for Policymakers" in *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2023), p. 32.

15. In our respectful submission, Your Excellencies, this is not an issue that the Court can afford to overlook in its opinion. These historic proceedings will determine State obligations in the context of climate change for the pivotal decades to come, and the international community simply must have a clear understanding of State obligations relating to climate displacement, migration and relocation if it is to safely navigate the years ahead. The Court has a unique opportunity in these proceedings to make practical findings that will benefit States hit hardest by climate mobility challenges. To that end, we make two principal legal submissions:

(i) The *first* is that States have obligations to provide technical and financial support to developing States facing both internal and cross-border displacement, migration and relocation caused by climate change.

(ii) And *secondly*, we will propose that people displaced across borders by climate change should be subject to increased co-operation by States, and importantly, afforded protection under the 1951 Refugee Convention, regional instruments, international human rights law and complementary forms of international protection.

16. I will take those two points in turn. On the first point, our submission is that State obligations relating to both internal and cross-border displacement, migration and relocation derive from, *inter alia*, the Paris Agreement, international and regional human rights law, and refugee law. I will go through each of these régimes separately.

17. Under the Paris Agreement, all States have both mitigation and adaptation obligations which are relevant for climate mobility. For example, States must take mitigation measures which will reduce greenhouse gas emissions and in turn prevent the irreversible damage which causes displacement, migration and relocation in the first place. Under Article 7 (6), States must co-operate on adaptation efforts and have particular regard to the needs of developing States in that process[92]. It is therefore our submission that developed States must provide technical and financial assistance to developing States, LDCs and SIDS to mitigate climate change and, relevantly, for climate mobility, to adapt to climate change impacts and develop climate resilience.

[92] Paris Agreement (fn. 85), Article 7 (6). See also Arts. 2 (1) *(b)*, 7 and 8.

18. We would also make clear that these obligations can be found well beyond the Paris Agreement and derived from international human rights law as well. A number of States in these proceedings have stated and agreed that displacement caused by sea-level rise and climate change impacts will prevent the realization of fundamental human rights, such as the right to self-determination, the right to be free from hunger, the right to adequate housing, the right to cultural identity, and the right to an adequate standard of living[93]. Some written statements further noted that all States have an obligation to co-operate to ensure people who are forcibly displaced due to climate change impacts are safely accommodated, either domestically or elsewhere[94].

19. Before turning to my second point on climate mobility, I will briefly note that on the question of State responsibility, our submission is that where States fail to discharge their mitigation and adaptation obligations, and the adverse effects of climate change lead to displacement, migration and relocation, States will be internationally responsible for reparations in the form of restitution and/or compensation[95].

20. With your permission Mr President, I will now come on to our second substantive argument regarding protection of people displaced across borders.

21. Our primary submission on this point is that people displaced beyond borders due to climate change should be considered for protection under the 1951 Refugee Convention and its 1967 Protocol[96], in addition to regional refugee instruments such as the 1969 Organisation of African Unity Convention and the 1984 Cartagena Declaration[97], and also afforded complementary protection under international human rights law. As I noted earlier, consideration of obligations under the

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[93] See for example the written statements of the following States and international organizations in *Obligations of States in respect of Climate Change*: Bahamas, para. 229; Kiribati, para. 138; Liechtenstein, paras. 43 and 63; Tonga, para. 262; Vanuatu, para. 301.

[94] See for example the written statements of the following States and international organizations in *Obligations of States in respect of Climate Change*: Kingdom of the Netherlands, para. 5.44; Portugal, para. 148.

[95] ILC Articles on Responsibility of States for Internationally Wrongful Acts ("ILC Articles") in Report of the International Law Commission on the Work of its Fifty-third Session, UNGAOR, 56th Sess., Supp. No. 10, p. 43, UN doc. A/56/10 (2001), Arts 31 and 34; See also the written statements of the following States and international organizations in *Obligations of States in respect of Climate Change*: Kiribati, para. 77; Saint Vincent and the Grenadines, para. 50; Vanuatu, para. 197; African Union, paras. 96 and 116.

[96] Convention Relating to the Status of Refugees, opened for signature 28 July 1951, *UNTS*, Vol. 189, p. 150 (entered into force 22 April 1954) ("Refugee Convention"); Protocol Relating to the Status of Refugees, opened for signature 31 January 1967, *UNTS*, Vol. 606, p. 267 (entered into force 4 October 1967) ("Refugee Protocol").

[97] Organisation of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa, opened for signature 10 September 1969, *UNTS*, Vol. 1001, p. 45 (entered into force 20 June 1974) ("OAU Convention"); Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (22 November 1984) ("Cartagena Declaration").

Refugee Convention is within the scope of these proceedings, as the sources of law listed in the chapeau to the Request are non-exhaustive.

22. As Your Excellencies well know, the need for international protection arises where a person is outside their own country and is unable to return due to a well-founded fear of persecution or serious human rights violations, which the State cannot or will not protect them from[98]. There are many circumstances in which people will be forced across borders due to climate change; for example, the slow-onset, irreversible impacts of sea-level rise for populations in small island States like the Solomons, Cook Islands, and the Marshall Islands. In 2020, UNHCR issued guidance on protection claims in the context of climate change, clarifying that people forced to cross international borders in the context of disasters or events linked to climate change can fall within the international legal definition of a refugee under the 1951 Refugee Convention[99].

23. UNHCR's guidance is supplemented by an expanded definition of protection provided for in the Cartagena Declaration and OAU Convention, which both recognize refugees who have fled their country due to "circumstances which have seriously disturbed public order"[100]. Disturbances to public order are broadly defined, and include human or other causes, such as climate change impacts. While the Cartagena Declaration is, of course, not a treaty, the Inter-American Court of Human Rights established in its advisory opinion on the rights and guarantees of children that there is State practice consistent with its expanded definition to include circumstances which have seriously disturbed public order[101]. Solomons therefore respectfully invites the Court to recognize the expanded definition contained in the Cartagena Declaration and OAU Convention to be an evolving norm of international law that acknowledges the humanitarian impact of climate change and supports broader protection frameworks for those affected.

24. Before concluding, I will briefly note that beyond international refugee law treaties and frameworks, States owe obligations to people displaced across borders in a climate change context under international human rights law as well. In particular, the principle of non-refoulement applies,

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[98] Refugee Convention (n 96), Article 1 A (2).

[99] UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters* (1 October 2020), available at www.refworld.org/docid/5f75f2734.html.

[100] Cartagena Declaration (n 97), Conclusion III (3); OAU Convention (n 97), Article I (2).

[101] *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection (Advisory Opinion)* (Inter-American Court of Human Rights, Series A No 21, 19 August 2014) para. 79.

which is an established norm of customary international law and international human rights law[102]. Solomons considers that a State would be in breach of their non-refoulement obligations if they return a person displaced by sea-level rise or some other climate change impact and do not consider, for example, potential threats to the right to life, such as difficulties obtaining habitable land, securing water resources and accessing food. In short, and to summarize my second point on climate mobility, we respectfully invite the Court to recognize that States owe obligations to protect persons displaced across borders due to the impacts of climate change under the Refugee Convention, regional instruments and complementary forms of international protection.

25. To conclude, Mr President and Members of the Court, we respectfully call upon the Court to recognize that protecting vulnerable nations from climate change is to protect the collective future of all humanity. Our hope is that by ensuring climate justice for countries like the Solomon Islands, this Court will establish a legal framework capable of safeguarding all nations in the decades to come. That concludes our submission, I thank you very much for your kind attention.

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

The Court adjourned from 4.35 p.m. to 4.55 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, India, to address the Court and I call Mr Luther Rangreji to the podium. You have the floor, Sir.

Mr RANGREJI:

1. Mr President, Madam Vice-President, distinguished Members of the Court: good afternoon!

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[102] See New York Declaration for Refugees and Migrants, UNGA res 71/1, UN doc A/RES/71/1 (3 Oct. 2016, adopted 19 Sept. 2016) para. 67; *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection (Advisory Opinion)* (Inter-American Court of Human Rights, Series A No. 21, 19 August 2014) para. 211; Nigel S Rodley and Matt Pollard, *The Treatment of Prisoners under International Law* (2009) 3rd ed., Oxford. *The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection (Interpretation and Scope of Articles 4, 22.7 and 22.8 in relation to Article 1(1) of the American Convention on Human Rights) (Advisory Opinion)* (Inter-American Court of Human Rights Series A No. 24, 30 May 2018) (only available in Spanish, unofficial English translation available at Inter-American Court of Human Rights), "Advisory Opinion OC-25/18 of 30 May 2018 Requested by the Republic of Ecuador" para. 81.

2. It is a singular honour for me to appear before this Court representing the Republic of India. Mr President, with your permission, I would like to first highlight the complexity of the issue at hand before addressing the specific questions before the Court.

3. Climate change is perhaps the most complex challenge that we face in our entire history with linkages to practically all aspects of life on planet Earth. There are several dimensions to this challenge: historical responsibility, unjust enrichment through overexploitation of natural resources, intergenerational equity, fairness and justice, developmental, geographical, geopolitical, and technological dimensions, to name a few.

4. There are some fundamental elements that are critical to our understanding of this complex phenomenon. The developing world, which is the most affected by climate change, has contributed the least to it, while the developed world, which historically contributed the most, is ironically, the best equipped with the technological and economic means to address this challenge.

5. The shrinking carbon space has been taken up by the very countries which are pushing for more constraints on less developed countries. While developing countries are struggling to bring millions out of extreme poverty, countries which have reaped development benefits from exploiting fossil fuels demand developing countries to not utilize national energy resources available to them.

6. Even as the international community continues to find a balance in all these areas, the science behind climate change continues to evolve. Science alone cannot dictate who needs to do what. The scientific scenarios may never be bereft of bias of choice in considering evidence. The IPCC itself affirms in its Sixth Assessment Report that modelled scenarios and pathways used to explore climate change and related impacts are not based on global equity, environmental justice or intraregional income distribution.

7. Against this backdrop, I would now like to highlight some of the specific issues that define India's approach to these questions. India's oral statement would be in the following parts: (i) Jurisdiction; (ii) International legal framework regulating climate change; (iii) Principal needs of support, namely climate finance and climate justice; (iv) Legal consequences arising out of obligations of States; and finally, Conclusions.

I. JURISDICTION

8. Mr President, Members of the Court, considering the Request from the United Nations General Assembly for this Court's advisory opinion *vide* resolution 77/276, and this Court being the only Court of general competence and the principal judicial organ of the United Nations, India requests the Court to provide clarification and guidance on the questions before it. While doing so, we request the Court to take due consideration of the complexity of the climate change issue, historical responsibilities, and national circumstances. We also request the Court to bear in mind that the Court should avoid the creation of any new or additional obligations, beyond those already existing under the climate change régime.

9. Mr President, a general obligation to prevent transboundary harm is well established in international law in general and environmental law, in particular. The jurisprudence of this Court beginning with the *Corfu Channel* case (1949) and later, the Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons* (1996), the *Gabčíkovo-Nagymaros* case (1997), and the *Pulp Mills* case (2010), has recognized, among others, the duty of prevention of transboundary harm, and also the duty to undertake due diligence obligations.

10. However, Mr President, the challenge of climate change cannot be equated and conflated merely as an issue of transboundary pollution or transboundary harm. While climate change has been recognized as a common concern of mankind, no single State can address the issue on its own, especially the large number of developing and lesser developed countries that have contributed the least to the degradation of the available global carbon budget.

II. INTERNATIONAL LEGAL FRAMEWORK REGULATING CLIMATE CHANGE

11. Mr President, distinguished Members of the Court, climate change is a complex issue calling for concerted global co-operation and responsibility, requiring a comprehensive legal framework. The UNFCCC, its Kyoto Protocol and the Paris Agreement provide a comprehensive international legal framework regulating climate change. These three treaties, which were painstakingly negotiated, reflect a delicate balance among varying interests, and enjoy almost universal adherence. Taken together, these three treaties address the obligations of States with respect to climate change in a manner that respects the balance of different aspects of climate change that

need to be seen together as a whole, namely mitigation, adaptation, climate finance, transfer of technology and capacity building.

12. The core principles that guide the implementation of the UNFCCC, among others, include common but differentiated responsibilities and respective capabilities (CBDR-RC), the precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects; the right to promote sustainable development; and the co-operation among States to promote and support an open international economic system, leading to sustainable growth and development of all parties.

13. Mr President, the heart of the climate change régime is differentiation of obligations on the principle of CBDR-RC. The Convention differentiates between the obligations of the parties in two principal categories: (i) developed country parties and the others included in Annex I, and (ii) developing country parties as non-Annex I parties. Moreover, all parties have different commitments under the UNFCCC to take actions and to address climate change and report on their activities.

14. The obligations applicable to "all parties" are subject to CBDR-RC and developmental priorities of individual State parties. These obligations need to be understood in the context of the acknowledgment, in the preamble of the UNFCCC that reads:

> "[T]he largest share of historical and current global emission of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and the share of global emissions originating in developing countries will grow to meet their social and developmental needs".

15. Thus, the principle of CBDR-RC places an obligation on developed countries to take the lead as they have contributed the maximum to the cumulative global emission of greenhouse gases and have the economic and technological capacity to address the problem. Furthermore, Annex II country parties also have an obligation to provide "new and additional financial resources to developing country Parties to assist them in meeting the costs of fulfilling their obligations under the Convention".

16. Mr President, the UNFCCC has created on the basis of the principle of CBDR-RC a legal obligation based on the historic contribution of developed country parties to the problem of climate

change, as these countries have been the principal beneficiaries of activities harmful to the environment in general, and the climate system, in particular.

17. Mr President, the most obvious reason for existence of a differential set of obligations is the different contribution States have made to the present state of environmental degradation. Therefore, if contribution to the global environmental degradation is unequal, the responsibility should also be unequal.

18. The science of climate change in the IPCC AR6 provides a powerful support to the fundamental principles of UNFCCC. According to Chapter 2 of the IPCC AR6 WG-III, developed countries have disproportionately appropriated the global commons in the form of the total carbon budget. The developed countries contributed 57 per cent of the cumulative emissions between 1850 and 2019 from fossil fuels, despite being only 16 per cent of the current global population. As the developed countries' cumulative emissions are disproportionately high, they have to compensate for their excess use of the total carbon budget.

19. Mr President, it may be important to note that the Kyoto Protocol of the UNFCCC imposes binding greenhouse gas targets on 37 developed countries and the European Union to ensure either individually or jointly that their aggregate anthropogenic GHG emissions do not exceed their existing assigned emission amounts. The mandatory language "shall" in Article 3 of the Protocol clearly evinces the binding nature of these commitments.

20. Mr President, the Paris Agreement governs the post-2020 climate actions, which provides a bottoms-up approach to climate action wherein implementation of the UNFCCC is through elements of mitigation, adaptation, finance, technology transfer and capacity building. All of these elements are implemented based on the principle of equity and CBDR-RC. The Agreement firmly acknowledges the development imperatives of developing countries, especially eradication of poverty and sustainable development.

21. The Paris Agreement provides for a five-year cycle by increasing ambitious climate action through national climate action plans, also known as nationally determined contributions (or NDCs). The Agreement further provides that through these NDCs, countries are required to indicate actions they will undertake to reduce GHG emissions with a view to achieving the purposes of the Paris Agreement. In this context, the Agreement provides, under Article 4.4, that developed country parties

should continue to take the lead by undertaking economy-wide absolute emission reduction targets. Whereas, developing country parties should also continue enhancing their mitigation efforts and are encouraged to move over time towards economy-wide emission reduction or limitation targets, in the light of different national circumstances.

22. Mr President, it may be important to understand that the obligations of developing country parties under the Paris Agreement are dependent on the fulfilment of two important aspects: (i) access to climate finance, and (ii) climate justice.

23. Mr President, Article 4, paragraph 7, of the UNFCCC clearly states that

> "the extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of developing country Parties".

24. Mr President, climate finance is a critical enabler for planning and implementing ambitious climate actions and an essential element for building trust in climate multilateralism. Developing countries can only scale up their climate actions — whether mitigation or adaptation actions — depending on the support of climate finance they receive from developed countries. Developing countries have stated in very clear terms that mobilization of climate finance should represent a progression beyond previous efforts by developed countries, in furtherance of their obligations under Article 4 and Article 9 of the UNFCCC and the Paris Agreement, respectively.

25. Mr President, the US$100 billion pledged at the Copenhagen COP in 2009 by developed country parties, and the doubling of the contribution to the Adaptation Fund, have not yet been translated into any concrete actions.

26. Mr President, based on the urgent requirement of ambitious flow of financial resources, and considering the needs and priorities of developing countries amounting to trillions, parties had agreed at the time of the adoption of the Paris Agreement that a quantum leap in climate finance would be essential in the period post-2025. In this regard, India had called for a quantum of US$1 trillion per year, based primarily of grants and concessional finance. However, the new collective quantified goal (or NCQG) at the recently held COP29 in Baku agreed to a climate finance

package of US$300 billion annually by 2035 which, from the developing countries' perspective, is too little, too distant and is not in keeping with the remit of Article 9 of the Paris Agreement.

27. Mr President, Members of the Court, human-induced climate change is a consequence of more than a century of net GHG emission from unsustainable use, land use, land-use change, lifestyles and patterns of consumption and production. The available global carbon budget which is consistent with achieving the temperature goal of the Paris Agreement is rapidly depleting. The IPCC AR6 indicates that four fifths of the total carbon budget for a 50 per cent probability of limiting global warming to 1.5°C and about two thirds of the total carbon budget for limiting global warming to 2°C have been exhausted.

28. The IPCC AR6 has provided evidence that historical emissions and the use of the world's carbon budget are not equitably distributed. There are inequalities in the per capita emissions across different countries and regions, which have created issues of climate justice. Developed countries have disproportionately appropriated the global commons in the form of the total carbon budget.

29. Mr President, equitable access to carbon space based on climate justice is provided for under the various provisions of the UNFCCC and its Paris Agreement. The imperatives of achieving sustainable development as well as eradication of poverty have been provided for under the Paris Agreement, based on the understanding that each country shall determine, on the basis of its own national circumstances, what its nationally determined contribution should be.

30. This brings us to the larger issue of sustainable development or the right to development being viewed at the national, regional and international levels, as a human right.

31. Mr President, Members of the Court, Article 1 of the 1986 Declaration on the Right to Development states that the right to development is an inalienable human right. India's environmental jurisprudence, in more ways than one, recognizes the same. The Supreme Court of India in a number of judgments has reiterated that intergenerational equity and sustainable development are firmly embedded in our constitutional jurisprudence as an integral part of our fundamental rights, conferred in Article 21 of the Indian Constitution that guarantees the right to life.

III. LEGAL CONSEQUENCES

32. Mr President, Members of the Court, now coming to question *(b)* dealing with legal consequences, it is submitted that the ILC's Articles on State Responsibility are the international law proper with regard to responsibilities of acts and omissions of States for violations of international obligations. Some of its provisions, especially regarding the definition of State responsibility and attribution, have by and large been regarded as reflective of customary law. While it would be easy in many other instances to identify acts or omissions attributable to one single State or more States, the same cannot be said to be true with regard to the adverse effects caused by the impacts of climate change. These adverse effects may not be attributable to a single State entailing responsibility, and therefore it may be necessary to look at attribution in a different way.

33. One way is to look at the aggregate national contribution of States to the problem, and to match that with the quantified commitments different States have undertaken in international law. For instance, the commitments under the Kyoto Protocol are obligations of outcome, quantifiable in terms of emissions of GHGs. While there is no hierarchy among different violations, the diffuse nature of climate change probably warrants a primary focus on the obligations of developed countries because of three reasons:

(i) As per the scientific consensus on the subject of climate change, it is indisputable that developed countries have contributed to the problem, historically as well as in the present, more than developing countries and lesser developed countries.

(ii) They have the financial and technological resources to address the problem; and

(iii) Lastly, the UNFCCC and its Paris Agreement impose obligations on developed countries to continue taking the lead by undertaking economy-wide absolute emissions reduction targets.

On the basis of these three factors, Mr President, it can be said that the primary responsibility to fulfil obligations under the existing climate change régime rests on developed countries.

34. Mr President, Members of the Court, as has been brought out in our written statement, remedies of cessation, non-repetition, full reparation, restitution, compensation and satisfaction are remedies available under the rules of State responsibility. In this regard, it may be pointed out that reparation and compensation remain an important demand of a large number of developing countries,

especially small island States which are particularly vulnerable to the adverse effects of climate change. In this regard, it is important to know that a Loss and Damage Fund is being operationalized for assisting developing countries that are affected by the adverse effects of climate change. It is expected that developed countries would contribute a major amount towards this Fund.

IV. CLIMATE CHANGE AND INDIA

35. Mr President, Members of the Court, India is home to about 17.8 per cent of the current global population. However, India's contribution to climate change is less than 4 per cent historically. Currently, our per capita GHG emissions are less than half of the global average. Nevertheless, India has been undertaking ambitious national climate actions in good faith. As a solutions provider, India has also pioneered several global initiatives to combat climate change and its adverse impacts. To name a few: the International Solar Alliance, the Coalition for Disaster Resilient Infrastructure (CDRI) and its initiative of Infrastructure for Resilient Island States (IRIS), the Leadership Group on Industry Transition (LeadIT), the Mission Lifestyle for Environment (LiFE), the Global Biofuels Alliance and the Global Green Credit Initiative.

36. Mr President, India is pursuing ambitious climate actions based our own domestic resources, despite the fact that our developed country partners have not fulfilled their obligations to provide climate finance and low-carbon technologies. Naturally, there is a limit on how much we burden our citizens, even when India is pursuing sustainable development goals for one sixth of humanity. Based on our national energy resources and developmental imperatives, India is also pursuing its long-term low-emission development strategy in a nationally determined manner. Despite having overriding priorities for poverty eradication and achieving SDGs, India has contributed more than its fair share in the global climate actions.

CONCLUSIONS

37. Mr President, Madam Vice-President, Members of the Court, coming to the conclusions of our submission, it is requested that while rendering its advisory opinion on the Request of the United Nations General Assembly vide resolution 77/276, the Court may wish to consider the following:

(i) Although there are obligations of States under general international law for preventing transboundary harm, obligations of States with respect to climate change are provided under the UNFCCC and its instruments: the Kyoto Protocol and the Paris Agreement.

(ii) The UNFCCC and its two instruments aim to strengthen the global response to the threat of climate change in the context of the overriding priorities of developing countries, which continue to remain poverty eradication and sustainable development.

(iii) The obligations of States with respect to climate change are common but differentiated as they are guided by climate justice, principles of equity and CBDR-RC.

(iv) Climate finance is the principal critical enabler for developing countries to take effective climate actions. Any fair or meaningful assessment of obligations of States cannot be conducted without simultaneously assessing the climate finance support provided.

(v) And finally, in rendering its advisory opinion, the Court may exercise due caution to avoid devising new or additional obligations beyond what is already agreed under the existing climate change régime, which take into consideration historic emissions, climate justice and the principle of equity and CDBR-RC, as well as the equitable access to the global carbon budget.

38. Mr President, this brings me to the end of my submission on behalf of the Republic of India. I thank the Court for its kind attention.

The PRESIDENT: I thank the representative of India for his presentation. I now invite the next participating delegation, the Islamic Republic of Iran, to address the Court and I call upon His Excellency Mr Seyed Ali Mousavi to take the floor.

Mr MOUSAVI:

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

1. Mr President, Members of the Court, in my statement, I *firstly* highlight the significance of States' efforts in addressing climate change consistent with international law and the relevant underlying principles; *secondly*, we underline that the principles of "common but differentiated responsibilities and respective capabilities" (CBDR-RC), "equity" and "international co-operation"

play crucial roles in informing State practice as regards climate change; and *thirdly*, we emphasize international co-operation as the most viable response to the questions arising in this respect.

I. Introduction

2. Mr President, the Islamic Republic of Iran has not been spared from the toll climate change has taken on the world; as such we attach great importance to combatting severe climate change and its adverse environmental ramifications. This encouraged Iran to join others at the General Assembly in requesting the Court to render an advisory opinion on the question submitted. This is notwithstanding the fact that, as reiterated by the Islamic Republic of Iran in explaining its vote, the question focuses on one assumed cause of climate change, while the matter concerns a highly complex issue, and the question as formulated needs to be limited to treaty commitments of States.

3. The nature, scope and consequences of climate change are directly linked to the scope and level of the commitments and undertakings by States, in particular, in light of the well-established and long-standing recognition of the differentiation between the developed and developing countries in terms of their specific needs, national circumstances, and different levels of development, and their individual capacities to take measures on mitigation, adaptation, technology transfer, financing as well as capacity-building.

4. While noting the significance of the ICJ as the principal judicial organ of the United Nations, and its considerable role in relation to international environmental law, we consider this an opportune time to highlight the existing treaty frameworks dealing with the efforts in place "to protect the climate system, and other parts of the environment, against the anthropogenic emissions of greenhouse gases (GHGs)" as referred to in the question posed by the United Nations General Assembly, which in our view, needs to be interpreted by the Court within the relevant framework of treaty obligations undertaken by States.

II. Principles underlying climate change efforts

5. Mr President, reference to "under international law" in paragraph *(a)* of the General Assembly's question makes it inevitable to address certain core principles of the climate change régime that underlie States' efforts to address climate change, in particular, based on the 1992

United Nations Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol, as well as the 2015 Paris Agreement.

6. The pivotal principles that underpin States' obligations and commitments within the climate change régime include the principles of CBDR-RC, equity and international co-operation. These three principles should, as such, govern interpretation of the said obligations and commitments in light of the instruments mentioned above.

1. CBDR-RC

7. First and foremost, we highlight that the CBDR-RC principle underlies any discussion of climate change commitments. Considering the greater share of developed countries in the accumulation of greenhouse gases during the past century, and their different financial and technological capacities and capabilities, the climate change régime has placed them at the forefront of countering the effects of climate change.

8. This principle guides States in the implementation of their climate obligations by differentiating between the responsibilities of developed and developing countries. Accordingly, differentiated standards with regard to the type, stringency and effectiveness of climate mitigation measures have to be applied to different States based on their level of economic development and historic emission levels.

9. Hence, the CBDR-RC is considered the bedrock of most multilateral environmental agreements and its current form can be traced back to the 1992 Rio Declaration on Environment and Development.

10. Principle 7 of the Rio Declaration explicitly states that the developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command. Likewise, Article 3 of the UNFCCC clearly determines the CBDR-RC as the guiding principle in achieving the objective of the Convention.

11. This clearly demonstrates the predominance and priority of the CBDR-RC over other obligations in the climate change régime as an overarching principle. Consequently, various

obligations are illustrated for developed and developing countries in protecting the climate system, and the same is followed in the Kyoto Protocol and the Paris Agreement.

12. Besides the specialized climate change régime, the CBDR-RC has been, and continues to be, an indispensable part of multilateral environmental agreements.

13. It is clear that the appropriate implementation of the said instruments in light of the CBDR-RC contributes to counter the adverse effects of climate change, which are not limited to sea-level rise and global warming, and phenomena such as drought, dust storms and landslides, as well as social crises like forced migration and famine are some of the other consequences thereof. Hence, realization of the CBDR-RC principle as reflected in all multilateral environmental agreements cannot be ignored.

14. Serving as the cornerstone of the treaty régimes on climate change and the environment at large, the obligations of States as concerns the question put to the Court are conditioned upon the implementation of the principle of CBDR-RC to which there are three main components: *(a)* financial support, *(b)* transfer of technology and *(c)* capacity-building.

(a) ***Financial support***

15. As concerns "financial support", developing countries will not be able to participate effectively in international arrangements for environmental protection, including climate change, without receiving financial support.

16. For this very reason, the UNFCCC has committed developed country parties to provide financial resources to meet the agreed full cost incurred by the developing country parties in complying with their obligations under the Convention and obligations related to adaptation measures of these countries. In this regard, Article 4 (3) of the UNFCCC requires the developed country parties to provide the necessary financial resources to meet the agreed full costs incurred by developing country parties.

(b) ***Transfer of technology***

17. As regards the "transfer of technology", despite the historical role of developed countries in today's environmental challenges, including the accumulation of GHGs and global warming, the participation of all States, including developing countries, in protecting and rehabilitation of the

environment is necessary. By the same token, combating the adverse effects of climate change is impossible without access to technology as enshrined in the Rio Declaration, the UNFCCC and the Paris Agreement, as well as multilateral environmental agreements such as the Montreal Protocol on substances that deplete the ozone layer.

18. Mr President, the Islamic Republic of Iran believes that this obligation can have both positive and negative aspects, i.e. duty of commission and duty of omission. It means that the developed country parties to the relevant instruments are bound to transfer the necessary technologies to developing countries for their participation in climate mitigation and adaptation efforts; meanwhile, they are, *a fortiori*, bound to refrain from creating obstacles to transfer the technology to developing countries.

19. It follows that unilateral coercive measures are contrary to the explicit legal obligations of developed States parties to the abovesaid instruments on transfer of technology.

20. Unilateral coercive measures adversely affect the full and effective implementation of the climate change régime in a number of ways. These measures not only reduce the participation of other countries in the climate change régime and undermine their capacity for compliance with emission commitments, but also lead those countries to unsustainable survivalist policies. Unilateral coercive measures are illegal and their introduction and application must therefore come to an end. It is of crucial importance, due particularly to their negative consequences for the capacities of the States in terms of environmental protection including for compliance with their climate commitments[103].

21. In light of the aforementioned, effective measures to address climate change depends on compliance with the obligation to transfer technology to developing countries. Hence, any obstacle to such transfer of technology would be inconsistent with the obligations of developed countries undertaken under the treaty framework of the climate change régime.

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[103] Mohsen Abdollahi, "Economic Sanctions and the Effectiveness of the Global Climate Change Regime: Lessons from Iran", in Danilola S. Olawuyi (ed), *Climate Change Law and Policy in the Middle East and North Africa Region*, Routledge, 2022, p. 130.

(c) ***Capacity building***

22. In tandem with transfer of technology and financial support, capacity building is another component of the CBDR-RC. Enshrined in the UNFCCC, Kyoto Protocol, and the Paris Agreement, capacity building is highlighted as the responsibility of the developed countries in supporting developing countries. Without capacity building, developing countries would be practically deprived of conditions required for meeting their goals and objectives in terms of the climate change efforts.

23. Nonetheless, politicization of capacity building continues to hamper the climate change efforts by developing countries. What makes this politicization even more challenging is imposition of the unilateral coercive measures which hinder transfer of finance, technology and technical assistance to developing countries.

24. In view of the above, the Islamic Republic of Iran hopes, and expects, that the Court will call for an end to such restrictions and opine that the CBDR-RC obliges developed countries to refrain from imposing unilateral coercive measures on the transfer of funds, technology and technical support for the protection of the climate system.

2. Equity

25. Mr President, Members of the Court, at this juncture, I would like to draw your attention to the principle of equity and the role of this principle to exercise climate change obligations. Relevant to the question put before the Court, Article 3 of the UNFCCC underlines protection of the climate system for the benefit of the present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.

26. Developing countries have played a lesser role in causing climate change and have limited capabilities, both economically and in terms of resources, to respond thereto. Additionally, they bear the brunt of the adverse impacts of climate change. Droughts, sand and dust storms, land subsidence, and other natural disasters are among the countless challenges faced by these countries. Therefore, it is essential to treat developing countries in accordance with the principle of equity, which has the CBDR-RC as its external manifestation.

27. As such, national circumstances and historical contribution to the environmental degradation and degree of access to technological and financial resources should be taken into

account when interpreting commitments of States within the climate change régime. That is where the leading role of the developed countries arises, as set forth in Article 3 (1) of the UNFCCC.

28. We submit that the term "leadership" here underscores taking the lead in public actions to achieve the climate change goals. To fulfil this role, and in relation to the General Assembly's question, developed countries have specific obligations as contained in Article 4 of the UNFCCC which explicitly stipulates that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions. This leading role is likewise highlighted by the Paris Agreement both in terms of sustainable lifestyles and sustainable patterns of consumption and production[104], and as regards economy-wide absolute emission reduction targets[105].

29. Based on the above-mentioned, Iran believes that any measure to address climate change issues is not effective without taking into account the special responsibility of the developed countries, which, apart from their historic role in terms of emission levels, are better equipped with the capabilities to address climate change.

3. International co-operation

30. Mr President, Members of the Court, last and of no lesser importance is "international co-operation". The global challenge of climate change necessitates a collaborative approach that transcends national boundaries. International co-operation has emerged as an essential principle underlying other commitments and obligations undertaken by States in their climate change efforts. The UNFCCC and its Kyoto Protocol and the Paris Agreement underscore the significance of international co-operation in addressing climate change.

31. The numerous challenges faced by the developing nations in addressing climate change, including limited resources, inadequate infrastructures, and vulnerability to climate impacts may be more effectively overcome through international co-operation. It is evident that the implementation of developed nations' obligations to provide financial support and technical assistance for capacity building is essential to bridge this gap.

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[104] Paris Agreement, preamble.

[105] *Ibid.*, Article 4, para. 4.

32. Besides the fact that climate change commitments are generally premised upon international co-operation, certain provisions of the UNFCCC and its Kyoto Protocol and Paris Agreement operate specifically and exclusively through co-operation. Under the UNFCCC, for instance, different provisions commit and oblige States to co-operate with respect to the development, application and diffusion, including transfer of technologies, and further relate to co-operation with respect to sinks and reservoirs, and adaptation to the impacts of climate change, co-operation on scientific, technological, technical, socio-economic and other research, co-operation on systematic observation and development of data archives related to climate change, as well as co-operation on exchange of relevant scientific, technological and technical information related to climate change. Co-operation is also prescribed in the Kyoto Protocol and the Paris Agreement in similar areas.

33. Hence, since the UNFCCC and its two important parcels govern States' climate change efforts, international co-operation emerges as the only viable response in this regard. It is therefore submitted that the Court should address the prohibition of measures that hinder co-operation among States.

34. In this context, since the question refers to "States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change", co-operation remains the only practical response to that end.

35. The same is true with regard to the legal consequences in relation to climate change commitments, as per the question, with respect to "[p]eoples and individuals of the present and future generations affected by the adverse effects of climate change". We submit that international co-operation may be resorted to, in line with the overarching principle of CBDR-RC and its components, as a complementary step in this context.

III. Conclusion

36. Before concluding, Mr President, I must emphasize that the major commitments incumbent upon States with respect to climate change are the obligation to undertake mitigation

efforts and the obligation to reduce emissions of greenhouse gases in line with their treaty undertakings.

37. In this context, principles of the "CBDR-RC", "equity" and "international co-operation" govern all treaty relationships, based on which developed countries are obliged, *inter alia*, to provide financial support, and transfer technology to developing countries.

38. Therefore, imposition of restrictions, by developed countries, hampering financial support, transfer of technology and capacity building to developing countries are inconsistent with the above principles. The advisory opinion of the Court is hence expected to take into account the full observance of the abovesaid principles, underlining the inconsistency of unilateral coercive measures with climate change obligations.

39. As a final point, we submit that the creation of a carbon border adjustment mechanism is a trade limiting factor particularly for developing countries in contradiction with Article 3 (5) of the UNFCCC that clearly prohibits arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

40. To conclude my statement, Mr President, response to the question put before the Court needs to be based upon the well-established principles governing climate change efforts, including the CBDR-RC, equity, international co-operation and needless to say State sovereignty, which run through the undertakings and obligations of States both in the climate change régime and other multilateral environmental agreements, where relevant.

41. I thank you, Mr President and Members of the Court.

The PRESIDENT: I thank the representative of the Islamic Republic of Iran for his presentation. I now invite the next participating delegation, Indonesia, to make its oral statement before the Court and I call upon His Excellency Mr Havas Oegroseno to take the floor.

Mr OEGROSENO:

1. Mr President, Madam Vice-President, honourable judges of the Court, I have the utmost honour and privilege today to deliver a submission on behalf of the Republic of Indonesia, on the Request for an advisory opinion of this Court, concerning the obligations of States in respect of climate change.

2. Climate change stood as one of the greatest environmental challenges to humankind. It is recognized as one of the most complex, multifaceted and urgent threats. The Intergovernmental Panel on Climate Change reported that there is a rapidly closing window of opportunity to secure a liveable and sustainable future for all. Climate-resilient development integrates adaptations and mitigations to advance sustainable development for all and is enabled by increased international co-operation including improved access to adequate financial resources, particularly for vulnerable regions, sectors and groups, as well as inclusive governance and co-ordinated policies.

3. To address the adverse impact of climate change, countries agreed to take efforts, individually and collectively, to take necessary adaptation and mitigation measures, guided by the principles that are enshrined in the Rio Declaration on Environment and Development (1992), and the Paris Agreement (2015).

4. I wish to go through these instruments and also other instruments such as the United Nations Convention on the Law of the Sea (1982) and those of a human rights nature, taking into account Indonesia's perspectives of their role in stipulating States' obligations regarding climate change and greenhouse gas emissions, and what these obligations entail for State and community of States.

5. Mr President, honourable judges of the Court, the Rio Declaration, as we are all aware of, plays a pivotal role in the establishment of the global governance on environment. Principle 7 of the Rio Declaration clearly underlined the importance for global partnerships in protecting and restoring the earth ecosystem, highlighting the common but differentiated responsibilities and respective capabilities of countries in light of their different level of development as well as their level of emissions.

6. Not long after the Rio Declaration was agreed upon, the United Nations Convention on the Law of the Sea (1982) entered into force in 1994. While UNCLOS does not specifically mention climate change nor the effect of greenhouse gas emissions in the marine environment, Article 192 imposes a general obligation on States to "protect and preserve the marine environment". This provision encompasses all forms of marine environmental harm, including those resulting from anthropogenic activities such as greenhouse gas emissions.

7. Building on Article 192, other provisions within Part XII elaborate specific duties that contextualize this obligation in the face of contemporary challenges, including climate change. For

example, Article 194 (1) requires States to take "all measures consistent with this Convention that are necessary to prevent, reduce, and control pollution of the marine environment from any source". Clearly, the negotiator of UNCLOS had long vision on the condition of the environment of our ocean from various sources of pollution.

8. It is also pertinent to consider international climate change agreements complementing the obligations under UNCLOS. Article 4 of the UNFCCC underscores the commitment of all parties to "[promote] and cooperate in the development, application, and diffusion, including transfer, of technologies, practices, and processes that control, reduce, or prevent anthropogenic emissions of greenhouse gases in all relevant sectors". This commitment directly supports the objectives of marine environmental protection under UNCLOS by addressing land and atmosphere-based sources of pollution that ultimately affect the marine environment.

9. Furthermore, it is important to also take into account the recent Advisory Opinion on Climate Change and International Law by the International Tribunal of the Law of the Sea (ITLOS). The Tribunal explored States' obligation under a number of UNCLOS articles. On Article 192, the Tribunal states that it imposes a general obligation on State parties to protect and preserve the marine environment, and can be invoked to combat any form of degradation of the marine environment, including climate change impacts.

10. In relation to Article 194 (1), while it does not mention GHG emissions, the Tribunal noted that the compound objective should be understood in the context of the comprehensive nature of the obligation and thus interpreted that this paragraph also covers anthropogenic GHG emissions.

11. ITLOS stipulated that State parties' measures to prevent, reduce and control marine environments from anthropogenic GHG emissions should be determined objectively. The scope and necessary measures may vary in accordance with the means available to State parties and their capabilities.

12. As the largest archipelagic State in the world, with more than 17,000 islands, Indonesia is not immune to the multidimensional impact and existential threats of climate change. On the contrary, it brings particular challenge to the coastal environment and communities. They are vulnerable to

one of several impacts of climate change: sea level rise. Data compiled at the national level[106] shows that Indonesia experiences about 4.0 to 7.6 mm increase of sea level per year since 1992.

13. The rising sea level threatens to flood many coastal and low-lying areas of Indonesia, both in large islands as well as in small and outermost islands. Such areas have experienced damage to the infrastructure, disruptions of livelihood and economic activities, as well as displacement of millions of people.

14. Currently the main instrument for States to protect the climate system from greenhouse gas emissions is the Paris Agreement. While the Paris Agreement has referred to the word "ocean" — the large part of our planet — only once, in just one paragraph, it stipulates obligations for States to take major efforts through their NDCs to address the effect of climate change. The Paris Agreement sets temperature targets in Article 2 and outlines objectives to enhance climate resilience.

15. To achieve these goals, Article 4 obligates parties to prepare, communicate, and maintain NDCs, reflecting their highest ambitions.

16. To align with these objectives, Indonesia has taken various steps, including decreasing fossil fuel consumption, transitioning to clean energy through the net-zero emission roadmap 2060, to reduce marine plastic debris by 70 per cent in 2025, and implementing a moratorium on new permits[107] for clearing forest areas and peatlands which contributed to a decrease in deforestation. Indonesia has managed to reduce deforestation by 75 per cent and rewet more than 800,000 hectares of peatland and restore over 2 million hectares of peatland.

17. Mitigation and adaptation measures require substantial financial resources, and the Paris Agreement highlights the need for developed countries to take the lead by providing financial support, transferring environmentally sound technologies, and building capacity in developing nations.

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[106] Coordinating Ministry for Maritime and Investment Affairs, Ministry of Maritime Affairs and Fisheries, and the Meteorological, Climatological, and Geophysical Agency of the Republic of Indonesia.

[107] Presidential Instruction Number 5 of 2019 concerning Stopping New Permits and Improving Primary Natural Forest and Peatland Governance, and as elaborated in the Indicative Map of New Permit Issuance Moratorium (*Peta Indikatif Penundaan Pemberian Izin Baru/*PIPPIB).

18. Articles 6, 9, 10 and 11 create the space for countries like Indonesia to tailor their policies while relying on international co-operation to address resource and capacity gaps. Thus, while universal in scope, the Agreement enables diverse strategies to achieve shared climate goals.

19. However, while the Paris Agreement is legally binding, financial commitments, technology transfer and capacity-building often fall short, undermining the ability of developing nations to meet their climate objectives. The rhetoric of highly ambitious climate actions collapses, as illustrated in many negotiations in any multilateral environmental matters, when it comes to mobilizing finance. The recently concluded COP29 in Baku, while indeed concluded with a deal of US$ 300 billion annually, did fall short from the request of the States most affected by the impacts of climate change.

20. To provide some perspective on the magnitude of financial requirement to mitigate and adapt to climate change, Indonesia alone will require US$281 billion from 2015 to 2030 to address climate change challenges. And our national budget can only cover 18 per cent of such financial requirements. This means that we need external financing on climate change challenges.

21. Mr President, honourable judges of the Court, the point of climate finance obligation is to provide states with less capabilities with resources needed to implement their obligations in protecting the environment. That is the context that Indonesia wishes to elaborate, and not in regard to reparations. The latter point requires a Court to establish that a clear violation has occurred under certain international provisions and to assess the harm, in order to enable it to come to a decision. That is not a course of action that we pursue here through this process. Particularly noting that the Paris Agreement does not include any clause of article on liability if a State fails to reach its NDCs, this further underlines the notion that the Agreement confers on its State parties an “obligation of conduct”, not “obligation of results”.

22. In relation to compliance to the stipulated obligations, the Agreement followed previous multilateral environmental agreements which established non-punitive mechanisms for monitoring, assessing and providing recommendations for States to facilitate better compliance and enhance implementation. Instead, the Paris Agreement encourages international co-operation to support countries, especially the developing countries, to reach their climate goals.

23. Mr President, distinguished Members of the Court, let me turn to human rights instruments such as the ICCPR, the ICESCR and the Universal Declaration of Human Rights. Our perspective

on the relations between these instruments, many of which Indonesia is a State party to, and environmental law or with climate change or environmental degradation are indirect.

24. The Study Group of the ILC, 2006, revealed that where one impact of globalization is the increasing fragmentation in the sphere of social action and structure, which was accompanied by the emergence of specialized and autonomous rules, legal institutions and sphere of legal practices, such as environmental law, law of the sea, human rights law and other specialist systems, with their own principles and institutions.

25. It further views that the interaction between two or more different bodies of law may create the danger of conflicting and incompatible rules, principles, rule systems and institutional practices, that might undermine their effective implementation.

26. Thus, in relation to the current request for advisory opinion, save from the preamble of the Paris Agreement, which mentioned that "Parties *should,* when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health and the rights of [different groups]", the convergence of obligations under human rights law and particular obligations under environmental law has not been firmly articulated in the existing relevant treaties.

27. The Universal Declaration of Human Rights as a foundational document laid the groundwork for the recognition of individual rights, which were further elaborated by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. But neither instrument specifically addresses the environment or climate change[108].

28. Despite this, it is worth noting that the discussion on environmental issues by different international bodies or actors through the resolutions, general comments of United Nations treaty bodies, scientific reports, publications and joint statements suggests the emerging recognition of the linkage between human rights and protection of the environment in a generic manner.

29. Nevertheless, the non-legally binding nature of those decisions and resolutions is well defined in international law.

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[108] ICESCR, Article 12 references the environment by mentioning "the improvement of all aspects of environmental and industrial hygiene" within the context of the right to the highest attainable standard of physical and mental health.

30. Thus, while the corpus of international human rights law does not create specific obligations relating to the protection of the climate system or other parts of the environment from anthropogenic emission of greenhouse gases, there is general recognition of the connections between environmental protection and human rights.

31. In this context, States' obligations and their implementation relating to the climate system within the framework of human rights, if it exists, should only be limited to their own population within their territories.

32. At the national level, in our case, the Indonesian Constitution, in specifically Article 28H, and the Indonesian Law on Environmental Protection of 2009, specifically Article 65, stated that: "All people have the right to a good and healthy environment as part of the human rights". Article 2 of the Law states "the protection and management of environment is carried out based on the principle of state's responsibility". Thus, Indonesia in its domestic legal instruments does recognize a healthy environment as human rights.

33. However, in our jurisprudence, in numerous environmental cases involving both the Government and corporations, courts have ruled that unlawful acts were committed, requiring the responsible parties to compensate for material and non-material damages resulting from environmental harm. But these cases often address issues such as deforestation, pollution and other forms of environmental degradation. While the rulings frequently mandate remedies for ecological and economic harm, they so far did not recognize violations of environmental laws in Indonesia as a violation of human rights.

34. As Indonesia stated in its written statement that in order to render the advisory opinion as requested, it is important that the Court would elaborate within the ambit of the existing international legal framework which directly governs the issue of climate change adaptation and mitigation efforts. Strict application of legal rules will help facilitate clarity and comprehension in the climate change deliberations and especially mitigation and adaptation efforts globally.

35. Against this background, Indonesia offers the following points:

(a) that the implementation of various environmental obligations requires effective co-operation between States and within the relevant organization based on the principle of equity and common but differentiated responsibilities and respective capabilities in light of different national

circumstances, taking into account the level of development and geographical circumstances between States, and particular attention to least developed States and vulnerable countries as well as archipelagic States, noting their particular susceptibility to the repercussions of rising sea level;

(b) that States have an obligation to take climate action and contribute to the global response to climate change in line with their respective NDCs and the best available science, and also the responsibility of developed States to take the lead in reducing emissions and supporting developing countries through financial contributions, technology transfer and capacity-building;

(c) that under existing human rights treaties, there are no particular obligations for States to ensure the protection of the climate system. This position is taken with cognizance of an emerging political recognition of the linkages between environmental protection and human rights; and

(d) while noting the attempt to develop a new human rights instrument to a decent and healthy environment, the fact of the matter is that such human rights instrument is not yet discussed or planned to be discussed in any multilateral settings.

36. In line with the existing international legal framework, particularly the Paris Agreement 2015, Indonesia urges developed countries to fulfil their existing obligations in assisting developing countries with respect to both mitigation and adaptation by providing financial resources.

37. Mr President, honourable Members of the Court, Indonesia believes that the opinion of the Court would serve as a meaningful guidance for many stakeholders to interpret international law on climate change. It will also influence the future political deliberation to shape the next global climate change governance.

38. To conclude, it is our fervent hope that the information and observations furnished by Indonesia in its written statements and again today in this oral proceeding will be of assistance to the Court.

39. I thank you for your attention.

The PRESIDENT: I thank the representative of Indonesia for his presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow, at 10 a.m., in order for Jamaica,

Papua New Guinea, Kenya, Kiribati and Kuwait to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 6.10 p.m.

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