Non corrigé
Uncorrected

CR 2024/48

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

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

President Salam presiding,

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

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le mardi 10 décembre 2024, à 15 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

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

COMPTE RENDU

Present:	President	Salam
	Vice-President	Sebutinde
	Judges	Tomka
		Abraham
		Yusuf
		Xue
		Bhandari
		Iwasawa
		Nolte
		Charlesworth
		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
Gómez Robledo
M^me^ Cleveland
MM. Aurescu
Tladi, juges

M. Gautier, greffier

The Government of the Portuguese Republic is represented by:

Ms Patrícia Galvão Teles, Director of the Department of Legal Affairs, Ministry of Foreign Affairs,

HE Ms Clara Nunes dos Santos, Ambassador of the Portuguese Republic to the Kingdom of the Netherlands,

Mr Mateus Kowalski, Head of the International Law Department, Ministry of Foreign Affairs,

Ms Inês Matos, Legal Adviser, Embassy of the Portuguese Republic in the Kingdom of the Netherlands.

The Government of the Dominican Republic is represented by:

Mr Boni Guerrero Canto, Director of Legal Affairs, Ministry of Foreign Affairs of the Dominican Republic,

HE Mr Juan Bautista Durán, Ambassador Extraordinary and Plenipotentiary of the Dominican Republic to the Kingdom of the Netherlands,

Ms Alejandra Torres Camprubí, Adjunct Professor on International Environmental Law, Faculty of Laws of IE University, International Legal Counsel at Torres Iuris, member of the Bars of Madrid and Paris,

Mr Julio Rojas Báez, Professor of International Law at Universidad Iberoamericana, Vice-President of the Inter-American Juridical Committee and Special Rapporteur on the Legal Implications of Sea-Level Rise in the Inter-American Regional Context, member of the Bar of the Dominican Republic.

The Government of Romania is represented by:

Ms Alina Orosan, Director General for Legal Affairs,

Ms Doina Doroftei, Diplomatic Counsellor.

The Government of the United Kingdom of Great Britain and Northern Ireland is represented by:

The Rt Hon. Lord Richard Hermer, KC, HM Attorney General for England and Wales,

Ms Sally Langrish, Legal Adviser and Director General, Legal, Foreign, Commonwealth and Development Office,

HE Ms Joanna Roper, CMG, Ambassador of the United Kingdom of Great Britain and Northern Ireland to the Kingdom of the Netherlands,

Mr Ben Juratowitch, KC, Barrister, member of the Bar of England and Wales, the Paris Bar and the Bar of Belize, Essex Court Chambers,

Mr Edward Haxton, Legal Counsellor, Embassy of the United Kingdom of Great Britain and Northern Ireland in the Kingdom of the Netherlands,

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For the complete list of delegations of all participants, please refer to CR 2024/35.

Le Gouvernement de la République portugaise est représenté par :

M^me^ Patrícia Galvão Teles, directrice du département des affaires juridiques au ministère des affaires étrangères,

S. Exc. M^me^ Clara Nunes dos Santos, ambassadrice de la République portugaise auprès du Royaume des Pays-Bas,

M. Mateus Kowalski, chef du département du droit international au ministère des affaires étrangères,

M^me^ Inês Matos, conseillère juridique à l'ambassade de la République portugaise au Royaume des Pays-Bas.

Le Gouvernement de la République dominicaine est représenté par :

M. Boni Guerrero Canto, directeur des affaires juridiques, ministère des affaires étrangères de la République dominicaine,

S. Exc. M. Juan Bautista Durán, ambassadeur extraordinaire et plénipotentiaire de la République dominicaine auprès du Royaume des Pays-Bas,

M^me^ Alejandra Torres Camprubí, professeure associée en droit international de l'environnement, faculté de droit de l'IE University, conseillère juridique internationale, cabinet Torres Iuris, membre des barreaux de Madrid et de Paris,

M. Julio Rojas Báez, professeur de droit international à l'Universidad Iberoamericana, vice-président du comité juridique interaméricain et rapporteur spécial sur le sujet des conséquences juridiques de l'élévation du niveau de la mer dans le contexte régional interaméricain, membre du barreau de la République dominicaine.

Le Gouvernement de la Roumanie est représenté par :

M^me^ Alina Orosan, directrice générale des affaires juridiques,

M^me^ Doina Doroftei, conseillère diplomatique.

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est représenté par :

S. Exc. Lord Richard Hermer, KC, *HM Attorney General* pour l'Angleterre et le pays de Galles,

M^me^ Sally Langrish, conseillère juridique et directrice générale, département des affaires juridiques, bureau des affaires étrangères, du Commonwealth et du développement,

S. Exc. M^me^ Joanna Roper, CMG, ambassadrice du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord auprès du Royaume des Pays-Bas,

M. Ben Juratowitch, KC, avocat, membre des barreaux d'Angleterre et du pays de Galles, de Paris ainsi que du Belize, Essex Court Chambers,

M. Edward Haxton, conseiller juridique, ambassade du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord au Royaume des Pays-Bas,

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

Mr Christopher McQuiggin, Special Adviser to the Attorney General for England and Wales,

Mr Nigel Best, Legal Adviser, Attorney General's Office,

Mr Joshua Crossley, Principal Private Secretary, Attorney General's Office,

Ms Penelope Nevill, Barrister, member of the Bar of England and Wales, Twenty Essex,

Mr Jason Pobjoy, Barrister, member of the Bar of England and Wales, member of the Bar of Ireland, Blackstone Chambers,

Ms Belinda McRae, Barrister, member of the Bar of England and Wales, Twenty Essex,

Ms Alyssa Glass, University of Oxford,

Mr Angus Ackroyd, Assistant Legal Adviser, Foreign, Commonwealth and Development Office,

Ms Deborah Monteiro-Ferrett, Assistant Legal Adviser, Foreign, Commonwealth and Development Office,

Ms Rebecca Hawkins, Head of International Climate Engagement, Foreign, Commonwealth and Development Office,

Ms Palika Bhasin, Second Secretary, Embassy of the United Kingdom of Great Britain and Northern Ireland in the Kingdom of the Netherlands,

Ms Laura Grant, Policy Adviser, International Law, Embassy of the United Kingdom of Great Britain and Northern Ireland in the Kingdom of the Netherlands,

Ms Pauline Pfaff, Policy Adviser, International Law, Embassy of the United Kingdom of Great Britain and Northern Ireland in the Kingdom of the Netherlands,

Mr Jack Andrews, Multilateral Support Officer, Embassy of the United Kingdom of Great Britain and Northern Ireland in the Kingdom of the Netherlands.

The Government of Saint Lucia is represented by:

Ms Jan Yves Remy, External Counsel, Director, Shridath Ramphal Centre,

Ms Kate Wilson, Legal Officer, Department of Sustainable Development,

Ms Rochelle John-Charles, Crown Counsel IV, Office of the Attorney General,

Mr Desmond Simon, Chargé d'affaires a.i., Embassies of the Eastern Caribbean States to the Kingdom of Belgium and Missions to the European Union.

M. Christopher McQuiggin, conseiller spécial de l'*Attorney General* pour l'Angleterre et le pays de Galles,

M. Nigel Best, conseiller juridique, bureau de l'*Attorney General*,

M. Joshua Crossley, directeur de cabinet, bureau de l'*Attorney General*,

M^me^ Penelope Nevill, avocate, membre du barreau d'Angleterre et du pays de Galles, cabinet Twenty Essex,

M. Jason Pobjoy, avocat, membre des barreaux d'Angleterre et du pays de Galles, ainsi que d'Irlande, Blackstone Chambers,

M^me^ Belinda McRae, avocate, membre du barreau d'Angleterre et du pays de Galles, cabinet Twenty Essex,

M^me^ Alyssa Glass, Université d'Oxford,

M. Angus Ackroyd, conseiller juridique adjoint, bureau des affaires étrangères, du Commonwealth et du développement,

M^me^ Deborah Monteiro-Ferrett, conseillère juridique adjointe, bureau des affaires étrangères, du Commonwealth et du développement,

M^me^ Rebecca Hawkins, cheffe du département de l'engagement international en matière de climat, bureau des affaires étrangères, du Commonwealth et du développement,

M^me^ Palika Bhasin, deuxième secrétaire, ambassade du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord au Royaume des Pays-Bas,

M^me^ Laura Grant, conseillère politique, droit international, ambassade du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord au Royaume des Pays-Bas,

M^me^ Pauline Pfaff, conseillère politique, droit international, ambassade du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord au Royaume des Pays-Bas,

M. Jack Andrews, chargé de l'appui multilatéral, ambassade du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord au Royaume des Pays-Bas.

Le Gouvernement de Sainte-Lucie est représenté par :

M^me^ Jan Yves Remy, directrice, Centre Shridath Ramphal, conseil externe,

M^me^ Kate Wilson, juriste, département du développement durable,

M^me^ Rochelle John-Charles, *Crown Counsel* IV, bureau de l'*Attorney General*,

M. Desmond Simon, chargé d'affaires par intérim, ambassades des États de la Caraïbe orientale au Royaume de Belgique et missions auprès de l'Union européenne.

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

For reasons duly made known to me, Judge Brant is unable to join us for this afternoon's sitting.

The Court meets this afternoon to hear Portugal, the Dominican Republic, Romania, the United Kingdom and Saint Lucia 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 Romania.

I shall now give the floor to the delegation of Portugal. I call Professor Patrícia Galvão Teles to the podium.

Ms GALVÃO TELES:

INTRODUCTION

1. Mr President, honourable Members of the Court, it is a great honour to appear again before you to present the Portuguese Republic's oral observations on the Request for an advisory opinion on the obligations of States in respect of climate change.

2. Scientific reports place Portugal among European countries with greatest risk of vulnerability to climate change. According to the IPCC — "the best available science" — Portugal is exposed to substantial impacts, including average temperature rises that could vary between 2ºC and 3ºC, sea level rise, coastal erosion, floods, heat waves, water scarcity, drought, and more frequent and intense forest fires.

3. Recognizing this significant exposure to the adverse impacts of climate change, as well as that of many other vulnerable States, in particular SIDS, Portugal integrated the core group led by Vanuatu that negotiated the consensus General Assembly resolution resulting in these historical proceedings and wishes to assist the Court in this regard, having presented written observations last March and now at the oral hearings, in its first participation in advisory proceedings before the International Court of Justice.

4. Today we wish to recall and further elaborate on certain arguments focusing on a common thread of paramount importance that permeates our written submissions, building also on what other

Participants have already put before the Court: the overarching relevance of the principle of international co-operation regarding all matters that the General Assembly identified in its Request.

5. We will therefore not repeat Portugal's written submissions on jurisdiction and questions *(a)* and *(b)*, that I respectfully ask the Court to take into consideration.

6. In our view, one of the various important contributions the Court could make when replying to this Request for an advisory opinion would be precisely to clarify the implications of the principle of international co-operation in the context of the obligations of States in respect of climate change.

7. States obligations to co-operate in the context of climate change derive from, and build on, a duty to co-operate under general international law, as provided for in the United Nations Charter, General Assembly resolution 2625 and more recent United Nations documents, including the "Pact for the Future", but also stem from specialized areas of international law as we will now discuss in three parts: (i) the obligation to co-operate in the context of the climate change régime; (ii) the obligation to co-operate in the context of a human right to a clean, healthy and sustainable environment; and (iii) the obligation to co-operate to protect persons affected by climate change.

I. THE OBLIGATION TO CO-OPERATE IN THE CLIMATE CHANGE RÉGIME

8. Mr President, honourable Members of the Court, let me address first the obligation to co-operate in the climate change régime.

9. It was recognized in the UNFCCC that tackling climate change depends on international co-operation and on an effective and appropriate participation of the entire international community.

10. The UNFCCC further admits that the responsibility for climate change is not evenly distributed, with varying contributions of developed and developing countries to global GHG emissions. Consequently, international co-operation to address climate change must be based on a mechanism of differentiated responsibilities that also reflects varying capabilities and economic and social conditions.

11. Parties to UNFCCC — particularly developed countries — must take precautionary action to anticipate, prevent or minimize the causes of climate change and its adverse impacts. In implementing this obligation, parties to the UNFCCC need to adopt mitigation measures to deal with

climate change that are comprehensive and cover all relevant sources of GHG emissions and adaptation measures that comprise all economic sectors.

12. Obligations stemming from Article 4 of the UNFCCC do not establish tangible or measurable individual targets in terms of concentrations of GHG emissions and Parties are not bound to achieve specific results, but rather to develop and implement national policies aimed at (i) protecting the climate system in the interest of present and future generations, and (ii) taking precautionary action to anticipate and prevent the causes of climate change.

13. The Paris Agreement, however, went a step further as it agreed certain and clear concrete targets.

14. The Paris Agreement established three core international obligations: (i) holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to l.5°C; (ii) increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low GHG emissions development; and (iii) making finance flows consistent with a pathway towards low GHG emissions and climate-resilient development.

15. While the second and third obligations must be attained — though not necessarily exclusively through domestic policies — by the parties to the Paris Agreement, the first obligation of limiting the global temperature increase to 1.5ºC is necessarily a collective goal, depending on joint efforts and international co-operation.

16. This long-term temperature goal is based on scientific evidence. Because the goal refers to a global average temperature, no party to the Paris Agreement is capable of achieving this threshold in an isolated manner.

17. While it is true that the main purpose of the goal is not one of attribution of responsibility or liability to the parties, in construing the obligation to ensure that long-term temperature goal as one for all States parties to achieve together, the Paris Agreement considers international co-operation, including the duty to co-operate for this purpose, as a necessary means and a goal in itself.

18. The Paris Agreement also expressly recognizes, in Article 7, “the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties”. In this regard, for instance, Portugal has converted debt from

Cabo Verde and São Tomé and Príncipe into climate investment and hopes to extend these partnerships with other countries in the future.

19. As ITLOS recently recalled in its Advisory Opinion of May this year, the obligation to co-operate in respect of climate change is an obligation of a continuing nature.

20. Compliance with the obligation to co-operate requires ongoing efforts, at multiple levels and avenues, that must take into account, with due diligence and good faith, the changing needs and circumstances, including the evolving science. The risk of harm and the urgency involved may, as ITLOS has considered, make the standard of due diligence more stringent, as other Participants have already recalled.

21. The ICJ's advisory opinion can therefore be, in the view of Portugal, of particular assistance in clarifying the specific content of the obligation to co-operate in the context of the climate change régimes and the benchmarks for assessing whether or not it has been satisfied taking into account the evolving science, the risk of harm and urgency and the current status of the implementation of the Paris Agreement's commitments.

II. THE OBLIGATION TO CO-OPERATE IN THE CONTEXT OF A HUMAN RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

22. Mr President, honourable Members of the Court, we move now to address the obligation to co-operate in the context of a human right to a clean, healthy and sustainable environment.

23. The Portuguese Republic has been one of the staunchest supporters of the international recognition of the human right to a clean, healthy, and sustainable environment, as expressed, *inter alia*, by its sponsorship of landmark instruments in this regard, such as Human Rights Council resolution 48/13 of 8 October 2021 and General Assembly resolution 76/300 of 28 July 2022.

24. Portugal is of the view that the human right to a clean, healthy, and sustainable environment is closely linked to the protection of persons affected by climate change that we will address later, and that the protection of the said right requires the full implementation of the multilateral environmental and climate change agreements as well as relevant principles and rules of customary international law.

25. The interconnection of human rights and the environment and climate change is clear at many levels, as other Participants have already stressed. Environmental degradation affects, both

directly and indirectly, the enjoyment of a broad range of human rights, and the severity of the threat of climate change facing the international community makes it imperative to take urgent action to effectively address such threats.

26. As we explained in our written submissions, climate change affects the enjoyment of the right to life and other civil and political rights, economic, social and cultural rights and the rights of the children. And as this Court has stated in the *Nuclear Weapons* Opinion "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn".

27. In the recent General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, the Committee on the Rights of the Child expressly recognizes an autonomous right to a clean, healthy, and sustainable environment as protected by the Convention on the Rights of the Child. The elements of this right include clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food. Additionally, this General Comment identifies climate change, pollution, and biodiversity loss as urgent examples of global threats to children's rights that require States to work together.

28. More than 150 States, including Portugal, recognize at the national or regional level the human right to a clean, healthy, and sustainable environment. In the case of Portugal, it was first included in our 1976 Constitution, in Article 66, nearly 50 years ago. For this reason, we support the ongoing process at the Council of Europe with a view to concluding a protocol to the European Convention on Human Rights recognizing a right to a healthy environment in a legally binding instrument as other regions have done.

29. Also in this domain, international co-operation is crucial to establish, maintain and enforce an effective international legal framework to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights, including the human right to a clean, healthy, and sustainable environment.

30. We encourage the Court to recognize the relevance of the human right to a clean, healthy, and sustainable environment in the context of States' obligations in respect of climate change.

III. THE OBLIGATION TO CO-OPERATE TO PROTECT PERSONS AFFECTED BY CLIMATE CHANGE

31. Mr President, honourable Members of the Court, the obligation to co-operate is especially relevant for the protection of persons affected by climate change. Even though the primary responsibility for protecting its own population rests with affected States, the protection of persons affected by climate change can ultimately only be fully achieved through international co-operation.

32. The International Law Association and the International Law Commission have been working on this matter in the context of climate change-induced sea-level rise. We draw the Court's attention to this work. International co-operation, including the duty to co-operate in the context of climate change-induced sea-level rise, is among the issues commanding widest support in statements by Member States in the debate in the General Assembly Sixth Committee on the topic of sea-level rise in relation to international law.

33. The role of the obligation to co-operate for the protection of persons is becoming increasingly significant, particularly where the impact of climate change undermines the capabilities of affected States to discharge their enduring obligation to protect and fulfil human rights.

34. The duty to co-operate is firmly established within international human rights law. The Universal Declaration of Human Rights, adopted 76 years ago this very day, states that all persons are "entitled to the realization, through national effort and international cooperation . . ., of the economic, social and cultural rights indispensable for [their] dignity and the free development of [their] personality" (Art. 22), and to an "international order in which the rights and freedoms set forth in this Declaration can be realized" (Art. 28).

35. Under Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, each State party is required "to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means". The Covenant further entails the obligation of States parties to co-operate in the scientific and cultural fields (Art. 15 (4)) and in ensuring the right of everyone to be free from hunger (Art. 11). It refers to ways in which international assistance and co-operation must be provided, thereby indicating the minimum positive action within its ambit.

36. In other relevant specialized areas of international law, such as international disaster law, existing agreements provide specifications for the meaning of such co-operation, such as the commitment to exchange information and communicate with other States and relevant actors, including providing early warning, and to provide scientific and technical assistance. The Sendai Framework for Disaster Risk Reduction 2015-2030, in particular, highlights the importance of international co-operation, stating that

> "developing countries require an enhanced provision of means of implementation, including adequate, sustainable and timely resources, through international co-operation and global partnerships for development, and continued international support, so as to strengthen their efforts to reduce disaster risk".

37. Draft Article 7 of the International Law Commission's Draft Articles on the Protection of persons in the event of disasters, entitled "Duty to cooperate", also recalls in the application of the draft articles, that States shall, as appropriate, co-operate among themselves, with the United Nations and with other assisting actors.

38. Many other soft law instruments of international disaster law or related to humanitarian assistance deal with a duty to offer assistance. This is the case, for example, of the 1992 Guiding Principles on the Right to Humanitarian Assistance, the 2003 resolution of the Institut de droit international on humanitarian assistance ("the Bruges resolution"), and the 1995 Mohonk Criteria for Humanitarian Assistance in Complex Emergencies.

39. Likewise, some binding instruments similarly recognize — either implicitly or explicitly — a duty of assistance. The ASEAN Agreement on Disaster Management and Emergency Response, the Inter-American Convention to Facilitate Disaster Assistance, and the Framework Convention on civil defence assistance are examples in that regard that come from different regions of the world.

40. The role of co-operation is also highlighted in the Global Compact for Migration, that recognizes climate change as a driver for migration. The Global Compact aims "to facilitate safe, orderly and regular migration, while reducing the incidence and negative impact of irregular migration through international cooperation", and to "foster international cooperation among all relevant actors on migration, acknowledging that no State can address migration alone".

41. A form of co-operation which assumes great importance in the case of climate change relates to persons displaced as a consequence or in anticipation of its effects. Depending on the circumstances, States might have the duty to facilitate the cross-border movement of people or offer possibilities of temporary or permanent residence in their territory. Co-operation may also include the creation of bilateral or regional arrangements to manage migratory displacement patterns. It is also important to consider that, in certain circumstances, some effects of climate change, such as for instance sea-level rise, might make the return of persons to their place of original residence impractical or impossible. For this reason, co-operation should also include the co-ordination of efforts to find sustainable and durable solutions.

42. In its written submissions, the Portuguese Republic offered, in a non-exhaustive manner, examples of specific forms of assistance that flow from the obligation to co-operate resulting from the above-mentioned bodies of international law as applied to protection of persons from the effects of climate change and also a set of criteria, both factual and legal, derived from binding international law as well as from soft law, that might be offered to guide the identification of specific duty bearers and the extent of their obligations.

43. The Portuguese Republic believes that the present advisory proceedings constitute a unique opportunity for the Court to further clarify the operationalization and contours of the obligation to co-operate in relation to the protection of persons affected by climate change.

CONCLUSION

44. Mr President, honourable Members of the Court, to conclude, climate change presents an urgent and grave challenge with global causes and global impacts. It affects all States, some more in particular as SIDS and those that have less contributed to it. It raises complex questions of environmental, economic and social policies, as well as of scientific predictions, though the best available science presents us with a clear dim scenario.

45. As outlined in our written statement, many of the challenges raised by climate change are already addressed under the applicable international legal frameworks established under the UNFCCC, the Paris Agreement, UNCLOS, international human rights law, international disaster law and other fields of international law, of treaty or customary nature.

46. The obligations arising for States, however, need to be better clarified and implemented for a more effective and ambitious action against climate change that is imperative according to the best available science and as the window of opportunity is narrowing.

47. The Portuguese Republic considers that this is a unique opportunity for the Court to further clarify, in particular, the operationalization and contours of the obligation of States to co-operate in relation to climate change, in its different dimensions as the ones just outlined. Climate change is a challenge that can only be effectively fought through international action and co-operation.

48. As the IPCC has put it:

> "[c]limate change has the characteristics of a collective action problem at the global scale, because most GHGs accumulate over time and mix globally, and emissions by any agent (e.g. individual, community, company, country) affect other agents . . . Collective responses, including international co-operation, are therefore required to effectively mitigate GHG emissions and address other climate change issues."[3]

49. In closing, let me also refer to the existence of recent cases of climate change litigation before national and regional human rights courts and advisory opinions that are either pending before the Inter-American Court of Human Rights or have recently been decided by ITLOS. We suggest it would be suitable for the Court to analyse and take them into account as appropriate, as a matter of judicial comity, for the purpose of avoiding fragmentation in international law.

50. Mr President, honourable Members of the Court, I thank you for your kind attention and on behalf of the Portuguese Republic wish you all the best for the important work ahead of you in your deliberations in these historical proceedings regarding such a crucial matter for our common humanity. Thank you, Mr President.

The PRESIDENT: I thank the representative of Portugal for her presentation. I now invite the next participating delegation, the Dominican Republic, to address the Court and I call upon Mr Boni Guerrero Canto.

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[3] 2014 Synthesis Report, Summary for Policymakers, p. 17.

Mr GUERRERO CANTO:

INTRODUCTORY REMARKS

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is a great honour to appear before you on behalf of my country, the Dominican Republic, in this historic proceeding.

2. As the General Assembly defined, by consensus, in this Request for advisory opinion, climate change is "an unprecedented challenge of civilisational proportions"[4]. The two questions before the Court are indeed of profound significance for the preservation of life in our one and unique planet. *Survival* is *the* issue at heart of these proceedings.

3. For decades, small island developing States from all regions have alerted, in each of the main organs of the United Nations, of the need for more ambitious international co-operation to prevent our climate system from spiralling out of control. Before the General Assembly, the Republic of the Maldives prompted the adoption of the first resolution on the impacts of sea-level rise on island countries back in 1989[5]. At the Security Council, the Dominican Republic's Presidency resulted in two deliberations on the implications of sea-level rise for international peace and security in 2021[6]. Today, we commend the Republic of Vanuatu for its leadership in bringing climate change before this honourable Court, and also the youth representatives.

4. Mr President, the Dominican Republic appears before the Court for the first time in its history. We have come here because it is the Dominican Republic's firm belief that the Court is placed in a privileged position to assist the international community in rising to this existential challenge,

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[4] United Nations General Assembly (UNGA) resolution, "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change", UN doc. A/RES/77/276 (29 Mar. 2023), preambular para. 1. Written Statement of the Dominican Republic, para. 4.19.

[5] UNGA resolution, "Possible adverse effects of sea-level rise on islands and Coastal Areas, particularly Low-lying Coastal Areas", UN doc. A/RES/44/206 (22 Dec. 1989).

[6] Written Statement of the Dominican Republic, para. 1.5; Letter dated 2 January 2019 from the Permanent Representative of the Dominican Republic to the United Nations addressed to the Secretary-General, UN doc. S/2019/1 (3 Jan. 2019); United Nations Security Council (UNSC), 8451th Meeting Record, "Maintenance of International Peace and Security: Addressing the Impacts of Climate-related Disasters on International Peace and Security", UN doc. S/PV.8451 (25 Jan. 2019); UNSC, 8923rd Meeting Record, "Maintenance of International Peace and Security: Security in the Context of Terrorism and Climate Change", UN doc. S/PV.8923 (Resumption 1) (9 Dec. 2021), p. 18. See also, UNSC, 9260th Meeting Record, "Threats to International Peace and Security Sea-level Rise: Implications for International Peace and Security", UN doc. S/PV.9260 (Resumption 1) (14 Feb. 2023), p. 15; UNSC, Open Debate on "The Impact of Climate Change and Food Insecurity on Maintenance of International Peace and Security", Speech by H.E. Luis Abinader, President of the Dominican Republic, UN doc. S/PV.9547 (13 Feb. 2024), p. 25.

with the rule of law as its compass in this crucial hour. In a few months, State parties to the Paris Agreement will submit their updated nationally determined contributions[7], which should reflect per capita emissions *two to three times lower by 2050* to keep the temperature increase of 1.5ºC within reach[8]. A compelling opinion from the Court will undoubtedly help the international community take the immediate and stronger climate action that is so desperately needed[9].

5. Mr President, it is unquestionable that there is a scientific consensus on the causes and impacts of climate change, a point stressed by the Dominican Republic[10], along with several Participants[11]. Anthropogenic greenhouse gases have unequivocally caused a dangerous interference in the climate system[12] and vulnerable States, who have historically contributed the least[13], like the Dominican Republic, are disproportionately affected by its grave impacts[14].

6. The Dominican Republic shares the view that high-emitting States have breached and continue to breach their international obligations in respect of climate change[15]. Because climate change is multidimensional and, as former United Nations Secretary General Ban Ki-moon described it, "the defining issue of our age"[16], such obligations should be found in the entire corpus of international law.

7. Mr President, as one of the original founders of the United Nations, the Dominican Republic is especially concerned with the catastrophic impacts of greenhouse gas emissions on two of our

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[7] Written Statement of the Dominican Republic, paras. 4.21-4.30; Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), *UNTS*, Vol. 3156, p. 79, Arts. 4 (2), 4 (3) and 4 (9).

[8] UNFCCC Secretariat, NDC Synthesis Report (November 2023), FCCC/PA/CMA/2023/12, para. 13. Paris Agreement, Art. 2 (1) *(a)*.

[9] UNGA, Official record of the 64th Plenary Meeting, UN doc. A/77/PV.64 (29 Mar. 2023), Statement by the Secretary-General of the United Nations, António Guterres, p. 1.

[10] Written Statement of the Dominican Republic, paras. 2.2-2.9; Written Comments of the Dominican Republic, paras. 2.2-2.10.

[11] E.g., CR 2024/35, p. 96 (Vanuatu and the Melanesian Spearhead Group); CR 2024/37, pp. 62-64 (Philippines); CR 2024/ 39, pp. 43-47 (Nordic countries); CR 2024/39, p. 19 (Sierra Leone); and CR 2024/39, pp. 44-48 (Grenada).

[12] UNGA resolution 77/276 (29 March 2023), preambular para. 9. Intergovernmental Panel on Climate Change (IPCC), *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, para. A.1.

[13] United Nations Framework Convention on Climate Change (UNFCCC) (adopted 9 May 1992, entered into force 21 March 1994), *UNTS*, Vol. 1771, p. 107, preambular paragraph 3; Art. 3 (1). United Nations Environment Programme (UNEP), *Emissions Gap Report 2024*: *No More Hot Air…Please!* (24 Oct. 2024), p. XIII, point 2, table ES.1 ("Total, per capita and historical emissions of selected countries and regions").

[14] *Ibid*.; IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, para. B.1.

[15] Written Comments of the Dominican Republic, Updated Submissions, para. 6.1.

[16] Secretary-General Ban Ki-moon, Opening Remarks at 2014 Climate Summit, *UN News* (23 Sept. 2014).

defining elements: statehood and the ocean. In our oral submissions, Dr Alejandra Torres Camprubí will first address States' obligations in respect of the potential loss of statehood of small island developing States due to sea-level rise. Professor Julio Rojas Báez will conclude with State obligations to protect the marine and coastal environment from the impacts of human interference in the climate system.

8. Mr President, Madam Vice-president, distinguished Members of the Court, I thank you for your attention and may I request, Mr President, that you please call Dr Torres Camprubí to the podium. Thank you.

The PRESIDENT: I thank Mr Boni Guerrero Canto. I now give the floor to Ms Alejandra Torres Camprubí.

Ms TORRES CAMPRUBÍ:

OBLIGATIONS OF STATES IN RESPECT OF THE POTENTIAL LOSS OF STATEHOOD OF SMALL ISLAND DEVELOPING STATES DUE TO SEA-LEVEL RISE

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is a great honour to appear before you, and a privilege to do so on behalf of the Dominican Republic.

2. I will address the obligations of States in respect of the potential loss of statehood that small island developing States face due to sea-level rise. By now you have received written submissions on this point from 25 Participants[17], and heard oral argument and testimony by 19[18]. The issue is

[17] Written Statement of the Dominican Republic, paras. 4.35-4.42; Written comments of the Dominican Republic, paras. 4.25-4.27. See also, Written Statement of Albania, para. 136; Written Statement of Australia, para. 1.18; Written Statement of the Bahamas, paras. 217-226; Written Statement of Costa Rica, paras. 125-128; Written Statement of El Salvador, paras. 52-58; Written Statement of Kiribati, paras. 190-195; Written Statement of Liechtenstein, paras. 74-77; Written Statement of Micronesia, paras. 114-117; Written Statement of Nauru, paras. 12-13; Written Statement of the Solomon Islands, paras. 208-213; Written Statement of Sierra Leone, para. 3.91; Written Statement of Tonga, paras. 233-236; Written Comments of Tuvalu, paras. 3-7; Written Statement of the Commission of Small Island States, paras. 68-75; Written Comments of Colombia, para. 1.21; Written Comments of the Cook Islands, para. 111; Written Comments of Costa Rica, para. 41; Written Comments of El Salvador, paras. 4-12; Written Comments of Kiribati, para. 41; Written Comments of Mauritius, paras. 147-151; Written Comments of Nauru, paras. 64-66; Written Comments of Saint Vincent and the Grenadines, para. 50; Written Comments of Sierra Leone, para. 4.18; Written Comments of Sri Lanka, para. 75; Written Comments of Timor-Leste, paras. 80-82; Written Comments of the African Union, para. 101. Written Comments of the Pacific Islands Forum, paras. 5-13; Written Comments of the Parties to the Nauru Agreement Office, para. 19.

[18] CR 2024/35, pp. 96, 104 (Vanuatu and the Melanesian Spearhead Group); CR 2024/36, pp. 15-16 (Antigua and Barbuda); pp. 53-55 (Bahamas), pp. 77-78 (Barbados); CR 2024/37, p. 65 (Philippines); CR 2024/38, pp. 51-53 (Commonwealth of Dominica); CR 2024/39 (El Salvador), pp. 69-73; CR 2024/40, pp. 66-68 (Fiji); CR 2024/41 p. 42 (Grenada); CR 2024/42, p. 11 (Cook Islands), pp. 23-27 (Marshall Islands), p. 35 (Solomon Islands); CR 2024/43, p. 18 (Jamaica), pp. 26-27 (Papua New Guinea); CR 2024/44, p. 9 (Latvia), p. 26 (Liechtenstein); CR 2024/45, p. 19 (Federated States of Micronesia); CR 2024/46, p. 9 (Nauru); CR 2024/47, pp. 10-18 (Palau).

central to these proceedings. Preservation of States, the primary subject of international law and main social form of organization, is essential to the international legal order. I will first present the facts on sea-level rise, and its threat to the existence or integrity of many States, and will then address the two legal questions before the Court.

I. Ocean absorption of greenhouse gases results in sea-level rise and loss of territory of small island developing States

3. Mr President, I begin with the key scientific facts on the magnitude of human interference in the climate system, the causes of sea-level rise, and its disproportionate impacts on small island developing states, with a particular focus on the Caribbean region.

4. The ocean is a key element of the climate system and plays a dual role that is fundamental to maintaining the balance of such system[19]. First, the ocean is the earth's largest carbon sink[20]. It is also, crucially, the largest heat sink[21]. When energy reaches the earth's surface in the form of heat, the ocean stores it, redistributes it from the coast to the mid-ocean, swallows it to deep waters, and then slowly releases it back (much cooler) to the atmosphere. Through this process of storage and circulation, the ocean historically prevented abrupt changes in temperature, kept coastal weather mild and made high latitude areas habitable[22]. Most small island developing States acquired independence when the ocean was still able to provide such protection. But the ocean's capacity is not unlimited[23].

5. The day after the Court registered this Request for its advisory opinion, the World Meteorological Organization confirmed that "the Earth climate system is *out of energy balance* as a result of human climate change"[24]. The earth's energy *imbalance* (also known as "EEI") is considered

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[19] Written Comments of the Dominican Republic (4 July 2024), paras. 2.16-2.17. United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994), *UNTS*, Vol. 1771, p. 107, Art. 1 (3).

[20] Intergovernmental Panel on Climate Change (IPPC), *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), Summary for Policy-Makers, para. A.2.5. See also, UNEP/FAO/IUCN/CSIC, "Blue Carbon: the Role of Healthy Oceans in Binding Carbon: a Rapid Response Assessment" (2009), p. 25. N. Gruber et al., "Trends and Variability in the Ocean Carbon Sink", *Nature Reviews Earth & Environment* (2023), Vol. 4, pp. 119-134.

[21] IPPC, *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), Summary for Policy-Makers, para. A.2; United Nations, *The Impacts of Climate Change and Related Changes in the Atmosphere on the Oceans: a Technical Abstract of the First Global Integrated Marine Assessment* (2017), p. 3, para. 9.

[22] UNEP/FAO/IUCN/CSIC, "Blue Carbon: The Role of Healthy Oceans in Binding Carbon: a Rapid Response Assessment" (2009), p. 25.

[23] Written Comments of the Dominican Republic, paras. 2.18-2.19.

[24] World Meteorological Organization (WMO), "New Study Shows Earth Energy Imbalance", *WMO News* (19 April 2023); K. von Schuckmann et al., "Heat Stored in the Earth System 1960-2020: Where Does the Energy Go?" (17 April 2023), *Earth System Science Data*, Vol. 15, issue 4.

by the IPCC to be an important metric which tells us how much, how fast and where the earth's climate is warming, as well as how such warming will evolve in the future[25]. The Court can find in the record that this point was addressed by Dr James Hansen, member of the United States National Academy of Science and former Director of NASA Goddard Institute for Space Studies. Dr Hansen produced an expert report that accompanies the written comments of the Republic of Mauritius[26].

6. We know, from the IPCC's findings, that the ocean has absorbed 90 per cent of the energy released into the atmosphere through greenhouse gas emissions between 1971 and 2010[27]. What is more difficult to grasp is what these figures actually mean, in terms of *magnitude*. Dr Hansen calculated that the excess of energy trapped in the atmosphere as a result of greenhouse gas emissions is "equal to the energy of 400,000 Hiroshima atomic bombs per day"[28]. This is a calculation he made *in 2013*. Ten years later, he explains, fossil fuel emissions have grown[29], and the earth's energy imbalance has almost *doubled*[30].

7. Mr President, the absorption by the ocean of 90 per cent of this colossal amount of heat results, as it could not be otherwise, in ocean warming[31]. This is *the root cause* of sea-level rise. The IPCC has confirmed that global mean sea level is rising and accelerating[32]; that it is primarily due to glacier mass loss and thermal expansion[33]; and that such changes are "irreversible for centuries to

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[25] IPPC, *Climate Change 2021: The Physical Science Basis*. *Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Chapter 7 ("The Earth's Energy Budget, Climate Feedbacks and Climate Sensitivity"), Section 7.2.

[26] Expert Report of Dr James E. Hansen in Support of the Republic of Mauritius (6 August 2024), in Written Comments of the Republic of Mauritius (15 August 2024), Annex I, p. 1.

[27] IPPC, *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), Summary for Policy-Makers, para. A.2.

[28] J. Hansen et al., "How We Know that Global Warming is Accelerating and that the Goal of the Paris Agreement is Dead", *Columbia University Earth Institute* (10 November 2023), p. 3.

[29] *Ibid.*; see also United Nations Environment Program (UNEP), *Emission Gap Report 2024: No More Hot Air . . . Please!* (24 October 2024), p. XII, Point 1, Figure ES.1 ("Total GHG Emissions in 2023").

[30] J. Hansen et al., "How We Know that Global Warming is Accelerating and that the Goal of the Paris Agreement is Dead", *Columbia University Earth Institute* (10 November 2023), p. 3.

[31] IPPC, *Special Report on Ocean and Cryosphere in a Changing Climate* (2019), Summary for Policymakers, A.3. See also UNESCO Intergovernmental Oceanographic Commission, *The State of the Ocean Report* (2024), pp. 24-27; and *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case No. 31, Advisory Opinion of 21 May 2024, para. 58.

[32] IPPC, *Special Report on Ocean and Cryosphere in a Changing Climate* (2019), Summary for Policymakers, A.3.

[33] *Ibid.*; see also IPPC, *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, para. A.4.3.

millennia"[34]. Sea-level rise will reach over 1 m by 2100 if we remain on track for a high emissions scenario, and a rise approaching even 5 m by 2150 cannot be ruled out, due to deep uncertainty about ice-sheet processes[35].

8. In its 2022 Summary for Policy Makers, the IPCC's Second Working Group concluded that "sea level rise poses an existential threat for some Small Islands"[36]. Yet, sea-level rise is not a homogeneous phenomenon. It has an important regional component, and its *impacts* disproportionately affect the Caribbean. The World Meteorological Organization found that, in 2022, sea-level rise in the Caribbean rose at the rate of 0.3 mm per year higher than the global average, and that the surface temperature of the Caribbean Sea reached a new record high in 2020[37]. This directly jeopardizes the territory of Caribbean island States. The report prepared by four IPCC lead authors for the purposes of these proceedings — which was submitted with the written statements of Antigua and Barbuda, Saint Vincent and the Grenadines, Saint Lucia, and Barbados — projects that under an extreme, yet foreseeable, scenario, up to 49.2 per cent of Caribbean islands will be entirely submerged[38].

II. PRIMARY OBLIGATIONS UNDER GENERAL INTERNATIONAL LAW TO RESPECT AND PRESERVE SMALL ISLAND DEVELOPING STATES' FUNDAMENTAL RIGHT TO SURVIVAL FROM SEA-LEVEL RISE AND NOT TO CAUSE SIGNIFICANT TRANSBOUNDARY HARM TO THE ENVIRONMENT OF OTHER STATES

9. Mr President, I now turn to the two legal questions the Court is concerned with.

10. The fact that sea-level rise constitutes, in itself, a threat to the existence of several small island developing States is widely acknowledged. The United Nations Secretary-General has

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[34] IPPC, *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, para. B.5.

[35] *Ibid.*

[36] IPPC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, para. B.4.5. See also WMO, *State of the Climate in Latin America and the Caribbean 2021* (2022), p. 8.

[37] Written Comments of the Dominican Republic, paras. 2.11-2.15.

[38] Dr Adelle Thomas (Climate Analytics, IPCC AR6 Lead Author, IPCC AR7 WGII Vice-Chair), Professor Michelle Mycoo (University of The West Indies, IPCC AR6 Co-ordinating Lead Author) and Professor Michael Taylor (University of The West Indies), IPCC AR6 Co-ordinating Lead Author, "Science of Climate Change and the Caribbean: Findings from the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Cycle (AR6)" (5 March 2024) (unpublished), p. 4, in Written Statement of St Lucia (21 March 2024), Annex 1; Written Statement of Antigua and Barbuda (22 March 2024), Annex 1; Written Statement of Saint Vincent and the Grenadines, Annex 1; and Written Statement of Barbados (22 March 2024), Annex 61*bis*.

acknowledged it[39], the General Assembly has acknowledged it[40], even the Security Council has expressly acknowledged it[41]. You have heard it directly from several affected States, at this hearing[42]. This case offers the opportunity for the Court, as the highest judicial organ of the United Nations, to spell out the legal obligations resulting from such fact, and the legal consequences for failure to fulfil those obligations.

11. Mr President, small island developing States often equate the threat that climate change poses to their survival with that of nuclear weapons[43], and they have a point. Scientific evidence also shows, I dare say, that this is not an exaggeration. They would know well, as some of these island States were testing grounds for nuclear weapons during the colonial period[44].

12. In its Opinion on the legality of the threat or use of nuclear weapons, the Court observed that "[it] cannot lose sight of the fundamental right of every State to survival"[45]. It is only logical to request that the Court expressly recognizes, in the context of climate change, the same "fundamental right to survival", only this time applied to peaceful small island developing States, whose only weapon of self-defence is the rule of law, as interpreted and applied by this Court. There is no attempt to revive pre-Charter theories on the "right of self-preservation", as pretext for an unlawful use of force against other States. On the contrary, in the context of climate change, recognizing the fundamental right to survival of small island developing States protects *them* as much as it protects *every other State*, and humanity as a whole.

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[39] United Nations, Report of the Secretary-General, "Climate Change and its Possible Security Implications" (11 September 2009), UN doc. A/64/350, Box III, paras. 71-73.

[40] UN General Assembly (UNGA) resolution, "Possible Adverse Effects of Sea-level Rise on Islands and Coastal Areas, Particularly Low-lying Coastal Areas", UN doc. A/RES/44/206 (22 December 1989), preambular para. 5.

[41] UN Security Council (UNSC), Presidential Statement (20 July 2011), UN doc. S/PRST/2011/15, para. 7.

[42] E.g. CR 2024/35, pp. 96, 104 (Vanuatu and the Melanesian Spearhead Group); CR 2024/36, pp. 15-16 (Antigua and Barbuda); pp. 53-55 (Bahamas); pp. 77-78 (Barbados); CR 2024/38, pp. 51-53 (Commonwealth of Dominica); CR 2024/40, pp. 66-68 (Fiji); CR 2024/41, p. 42 (Grenada); CR 2024/42, p. 11 (Cook Islands); pp. 23-27 (Marshall Islands); p. 35 (Solomon Islands); CR 2024/43, p. 18 (Jamaica); pp. 26-27 (Papua New Guinea).

[43] E.g. Statement by the Pacific Islands Forum on the International Day for the Total Elimination of Nuclear Weapons (26 September 2022) (submitted for the UN High-level plenary meeting to commemorate and promote the International Day for the Total Elimination of Nuclear Weapons — General Assembly, 77th session). See also CR 2024/34, p. 115 (Vanuatu and the Melanesian Spearhead Group); CR 2024/42, p. 23 (Marshall Islands).

[44] United Nations Human Rights Council resolution, "Technical Assistance and Capacity-Building to Address the Human Rights Implications of the Nuclear Legacy in the Marshall Islands", UN doc. A/HRC/RES/51/35 (7 October 2022), preambular para. 8.

[45] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 263, para. 96.

13. Therefore, in response to question *(a)*, the Dominican Republic submits that the Court should find that one of the primary obligations of States in respect of climate change is the obligation under general international law to respect and preserve small island developing States' fundamental right to survival. This is complementary to the obligation not to cause transboundary harm, whose status as customary international law was also recognized by the Court in its *Nuclear Weapons* Advisory Opinion[46]. As mentioned by previous Participants[47], the Court further clarified in *Pulp Mills*, *Certain Activities in the Border Area* and, more recently, in the *Silala* case that States are obliged to use "all the means at [their] disposal" to avoid that activities in their territory cause significant harm to the environment of another State[48].

III. SECONDARY OBLIGATIONS UNDER GENERAL INTERNATIONAL LAW ON STATE RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACTS

14. Mr President, I now turn to, and conclude with, question *(b)*. The best available science just mentioned shows that greenhouse gas emissions result in the submergence of large parts of small island developing States' territory. Therefore, the Dominican Republic asks the Court to declare that by failing to comply with their international mitigation obligations, particularly under Article 4, paragraphs 2 and 9, of the Paris Agreement, States breach not only their obligations under the climate treaties[49], but also the general obligation to respect and preserve small island developing States' fundamental right to survival, as well as the obligation to use all means at their disposal not to cause significant harm to the environment of other States.

15. Mr President, under the general law on State responsibility, the first legal consequence arising from States' continued breach of these primary obligations is the obligation to begin to

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[46] Written Statement of the Dominican Republic, para. 4.31; Stockholm Declaration on the Human Environment (1972), Principle 21; Rio Declaration on Environment and Development (1992), Principle 2; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 241-242, para. 29.

[47] CR 2024/35, pp. 107-110 (Vanuatu and the Melanesian Spearhead Group); CR 2024/37 p. 16 (Belize); p. 66 (Philippines); CR 2024/38, pp. 21-23 (Chile); CR 2024/43, p. 40 (Malawi).

[48] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I),* p. 56, para. 101; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II),* p. 706, para. 104; *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II),* p. 648, para. 99. See also *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case No. 31, Advisory Opinion of 21 May 2024, para. 258.

[49] Written Statement of the Dominican Republic, paras. 4.57-4.62. Written Comments of the Dominican Republic, paras. 5.6-5.10.

perform them[50], and put a halt to the wrongful conduct[51]. The second legal consequence is the obligation of reparation *in integrum*. While at present, the loss of statehood due to sea-level rise is still a foreseeable threat, more than it is an accomplished fact, the threat to survival in itself constitutes significant harm to the affected States. The Dominican Republic thus supports the view of the International Law Commission Study Group on sea-level rise in relation to international law, according to which, in the context of climate change, "a strong presumption in favour of continuing statehood should be considered"[52]. The Dominican Republic respectfully requests that the Court endorse the ILC's recommendation and acknowledge the relevant developments in State practice referred to in the Dominican Republic's written statement[53]. As a representative of Fiji once explained to the General Assembly, "[a]ll else will be immaterial, if statehood is lost"[54].

16. Mr President, Madam Vice-President, distinguished Members of the Court, I thank you for your kind attention. May I respectfully request, Mr President, that you call Professor Julio Rojas Báez to the podium.

The PRESIDENT: I thank Ms Torres Camprubí. I now give the floor to Professor Julio José Rojas Báez. You have the floor, Sir.

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[50] Written Statement of the Dominican Republic, paras. 4.64; 5.1 (iii). Written Comments of the Dominican Republic, para. 6.2. International Law Commission (ILC), Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session, UN doc. A/56/10, *Yearbook of the International Law Commission (YILC)*, 2001, Vol. II, Part Two, commentary to Article 26, p. 309.

[51] ILC Draft Articles on State Responsibility, with Commentaries, commentary to Article 30, p. 312.

[52] Written Statement of the Dominican Republic, paras. 4.34-4.42; Written Comments of the Dominican Republic, paras. 4.26-4.27. ILC, Sea-Level Rise in Relation to International Law, Second issues paper by Patricia Galvao Teles and Juan José Ruda Santolaria (co-chairs), UN doc. A/CN.4/752 (19 April 2022), para. 194. See also International Law Association, Committee on International Law and Sea-Level Rise, 2024 Final Report, adopted at the 81st ILA Conference (Athens, June 2024), p. 48.

[53] Written Statement of the Dominican Republic, paras. 4.34-4.45. Alliance of Small Island States Leaders' Declaration (22 September 2021), preambular para. 3. Pacific Islands Forum, Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise, adopted at the 52nd Pacific Islands Forum (Aitutaki, Cook Islands) (9 November 2023), para. 11.

[54] UNGA, 88th Plenary meeting record A/63/PV.85 (3 June 2009), Statement of the Republic of Fiji, p. 15.

Mr ROJAS BÁEZ:

OBLIGATIONS OF STATES IN RESPECT OF THE SIGNIFICANT HARM CAUSED TO THE MARINE AND COASTAL ENVIRONMENT BY OCEAN ABSORPTION OF GREENHOUSE GASES

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour to appear before you for the first time. Today, I have the privilege to speak on behalf of my country, the Dominican Republic. However, as Special Rapporteur of the Inter-American Juridical Committee on the Legal Implications of Sea-Level Rise in the Inter-American Regional Context, I must also commend the constructive work in this historic proceeding of the 25 States from the Americas. Dr Torres Camprubí just addressed how ocean absorption of greenhouse gases jeopardizes the very fabric of our nations above water. It is now my task to address States' obligations in respect of the catastrophic effects of the same process to the underwater world and the coastal environment[55].

I. Ocean absorption of greenhouse gases causes significant harm to the marine and coastal environments

2. Mr President, I begin with the scientific consensus. In addition to ocean warming, ocean absorption of greenhouse gases results in ocean acidification, deoxygenation and stratification[56]. In its 2023 Synthesis Report, the IPCC confirmed that this process has caused "*substantial* damages and increasingly *irreversible* losses" to coastal and ocean ecosystems[57]. This is not a projection, but a fact confirmed by the IPCC with "high confidence" and endorsed by the International Tribunal for the Law of the Sea in its advisory opinion of 21 May 2024[58].

3. In all ocean regions, food-web structures are suffering large-scale changes[59]. Severe coral bleaching due to ocean acidification has been confirmed, particularly in the Pacific and Indian

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[55] Written Comments of the Dominican Republic, paras. 4.2-4.19. *See also,* CR 2024/36, pp. 45-48 (Australia), pp. 73-75 (Bangladesh); CR 2024/37, p. 22 (Bolivia), pp. 63-65 (Philippines); CR 2024/38, pp. 64-65 (Korea); CR 2024/40, pp. 20-21(Ecuador); CR 2024/41, pp. 58-60 (Guatemala); CR 2024/42, p. 38 (Solomon Islands); CR 2024/45 (Federated States of Micronesia).

[56] Written Comments of the Dominican Republic, paras. 2.16-2.19.

[57] Intergovernmental Panel on Climate Change, *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*, Summary for Policymakers, para. A.2.3.

[58] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, ITLOS Case No. 31, Advisory Opinion of 21 May 2024, para. 57.

[59] Intergovernmental Panel on Climate Change, *Special Report on the Impacts of Global Warming of 1.5°C* (2018), Chap. 3, p. 227, para. 3.4.4.11.

Oceans[60]. In the Caribbean region, since 2011 unprecedented "blooms" of the sargassum seaweed — a highly invasive and odorous species associated with ocean warming — have caused significant damage to coastal habitats, seagrass beds and corals[61]. Last year, the National Authority of Maritime Affairs of the Dominican Republic estimated that approximately *four million cubic tons* of sargassum had invaded some of the most world-renowned Dominican coasts, including Punta Cana, Guyacanes and Boca Chica[62]. Four million cubic tons, in one year, in my country alone.

4. Mr President, the projections are no less discouraging. They depict, in fact, a rather apocalyptic scenario. In its 2022 Synthesis Report, the Second Working Group of the IPCC concluded that even achieving emission reduction targets consistent with the goal of 1.5ºC, there will be "further loss of 70-90% of reef-building corals compared to today, with 99% of corals being lost under warming of 2ºC"[63]. To no surprise, the same year the General Assembly declared being "deeply alarmed by the *global emergency* facing the ocean"[64].

5. The unique and highly fragile ecosystems of the Caribbean Sea[65], a critical asset for the world[66], is therefore in jeopardy. As the region in the world most dependent on tourism relative to its size[67], Caribbean peoples' main source of livelihoods and fundamental element of our identity, is gravely compromised.

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[60] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,* Summary for Policymakers, Figure SPM.3, para. C.3.3.

[61] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,* Chap. 15 (Small Islands), p. 2057.

[62] Written Statement of the Dominican Republic, paras. 2.14-2.15. "El País ha recibido 4 millones de toneladas de sargazo este año" [The country has received 4 million tons of sargassum this year], *Listin Diario* (16 June 2023).

[63] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,* Chap. 15 (Small Islands), p. 2046.

[64] UN General Assembly Resolution, "Our Ocean, our Future, our Responsibility" (25 July 2022), A/RES/76/296, Annex, para. 4.

[65] CR 2024/36, pp. 53-54 (The Bahamas); CR 2024/37, pp. 7-9 (Belize); CR 2024/37, p. 63 (Philippines); CR 2024/38, p. 40 (Colombia).

[66] Written Statement of the Dominican Republic, para. 2.15; Written Comments of the Dominican Republic, paras. 2.11-2.15. UN General Assembly Resolution, "Towards the Sustainable Development of the Caribbean Sea for Present and Future Generations" A/RES/77/163 (14 December 2022), preambular para. 14.

[67] *Ibid.*

II. Primary obligations of States to prevent, reduce and control pollution to the marine environment under the international law of the sea and the international law on the protection of biological diversity

6. Mr President, I now turn to question *(a)* before the Court. The consequences I have just described fall directly within the realm of Part XII of the United Nations Convention on the Law of the Sea on the protection of the marine environment. As previously addressed by several Participants[68], the International Tribunal for the Law of the Sea has concluded that greenhouse gases emissions constitute a form of pollution to the marine environment under Article 1, paragraph 1, subparagraph 4, of the Convention[69]. The Dominican Republic respectfully requests that the Court reaches the same conclusion.

7. The Tribunal also clarified that under Article 194, paragraph 1, of UNCLOS, States' obligation to "prevent, reduce and control pollution of the marine environment" implies an obligation *of preventing future or potential pollution* as well as *reducing existing pollution*. Critically, the Tribunal emphasized that "necessary measures include not only measures which are indispensable to prevent, reduce and control marine pollution but also *other measures* which make it possible to achieve that objective"[70]. The Tribunal therefore found that "necessary measures" under that provision encompasses mitigation obligations under the Paris Agreement, and the goal of not exceeding global temperature increase above 1.5ºC[71].

8. Mr President, the Dominican Republic submits that, in response to question *(a)*, the Court should confirm that States' obligations in respect of climate change include not only mitigation obligations under Article 4 of the Paris Agreement, but also the obligation to prevent, reduce and control marine pollution under Article 194, paragraph 1, of the Law of the Sea Convention.

9. This is complemented with the obligation to take *additional actions* to protect marine and coastal ecosystems under the law on conservation of biological diversity, whose importance for the

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[68] *E.g.*, CR 2024/36, pp. 45-48 (Australia), pp. 73-75 (Bangladesh); CR 2024/37, p. 28 (Bolivia); CR 2024/38, p. 56 (Commonwealth of Dominica).

[69] Written Comments of the Dominican Republic, paras. 4.2-4.6. *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, ITLOS Case No. 31, Advisory Opinion of 21 May 2024, paras. 159-173.

[70] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, ITLOS Case No. 31, Advisory Opinion of 21 May 2024, para. 203.

[71] *Ibid.*, paras. 214-224.

stabilization of the climate system is recognized in the Paris Agreement[72]. In December 2022, the 196 Parties to the Convention on Biodiversity agreed, under the Kunming-Montreal Global Biodiversity Framework, to conserve 30 per cent of Earth's water, marine and coastal areas by 2030[73]. Yet, in its 2024 Protected Planet Report, the United Nations Environment Program revealed that globally only 8.4 per cent of the ocean and coastal areas are, at present, protected. States' efforts must more than triple for the 30 per cent target to be reached by 2030[74].

10. The Caribbean region has shown that adopting ocean biodiversity conservation measures is feasible[75]. For instance, in May 2024, the Dominican Republic and the Republic of Colombia together created the corridor "Beata-Taino: Orlando Jorge Mera", the biggest conservation corridor in the Caribbean Sea, covering over 3.2 million hectares[76].

III. Secondary obligations of States under general law of State responsibility for internationally wrongful acts

11. Mr President, I conclude by addressing question *(b)*. The Dominican Republic submits that by failing to comply with their mitigation obligations under Article 4 of the Paris Agreement, as well as with their ocean conservation commitments under the Convention on Biological Diversity, States have breached and continue to breach their obligations under the climate treaties, as well as their obligation to prevent, reduce and control pollution of the marine environment under Article 194.

12. Mr President, Madam Vice-President, distinguished Members of the Court, this concludes the oral arguments of the Dominican Republic. I thank you for your kind attention.

The PRESIDENT: I thank the representatives of the Dominican Republic for their presentation. I now invite the delegation of Romania to address the Court and I call upon Ms Alina Orosan to take the floor.

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[72] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), *UNTS* 3156, p. 79, preambular para. 12.

[73] Convention on Biological Diversity, Decision 15/4, "Kunming-Montreal Global Biodiversity Framework" (19 December 2022), CBD/COP/DEC/15/4, Target 3.

[74] United Nations Environment Programme, Protected Planet Report 2024, Executive Summary, para. 1.

[75] *See also, e.g.*, CR 2024/39, p. 8 (Belize); CR 2024/28, p. 51 (Commonwealth of Dominica); CR 2024/39, p. 9 (Costa Rica).

[76] Written Comments of the Dominican Republic, para. 1.7. Dominican Republic, Presidential Decree No. 194-24, Official Gazette, No. 11146 (15 April 2024); Dominican Republic, Presidential Decree No. 195-24 (12 April 2024), Official Gazette No. 11146 (15 April 2024).

Ms OROSAN:

I. INTRODUCTION

1. Mr President and honourable Members of the Court, it is with great respect that Romania stands before this Court to present its perspective in the context of the advisory proceedings on the obligations of States with respect to climate change.

2. The questions that are before the Court raise issues of profound significance for the entire globe both for its present and, more importantly, for its future.

3. Romania has been, from the very beginning, a strong supporter of the effort led by Vanuatu, to prepare the questions, adopted by consensus in the United Nations General Assembly, to be addressed to this Court.

4. Romania also takes this opportunity to commend and stress the significance of the large number of written statements submitted by States, intergovernmental organizations and civil society in support of the Court's deliberations on this matter. The breadth and diversity of these submissions underscore the widespread recognition of the urgency of climate action and the need for clear legal guidance.

5. We are encouraged by the engagement of so many stakeholders, as it highlights the common understanding that the issue of climate change cannot be addressed in isolation, but requires a global, collaborative approach rooted in respect for international law.

6. The issue before us is not only one of environmental protection with implications on the existence of human life itself, but also one of justice, equity and shared responsibility. Climate change is an existential threat to humanity, transcending borders and demanding urgent, collective action from *all States*.

7. At the heart of this crisis is the recognition that climate change affects us all, but not in the same way. The impacts of rising sea levels, extreme weather events and environmental degradation are felt by all, but most acutely by vulnerable communities, particularly those in small island nations, least-developed countries and the global south.

8. Romania has been striving and is committed to taking its own actions to meet its obligations under international law, but we consider essential that the legal framework must ensure that *all States are held accountable to the same fundamental standards of climate action.*

9. *All* States — regardless of their size, economic power or level of development — are contributors to this global problem and must, therefore, be bound by *clear legal obligations to mitigate its impacts.*

10. This principle underpins our submission to the Court today and we trust that the Court's advisory opinion will offer the legal clarity needed to ensure effective and equitable global mitigation efforts.

11. Mr President, honourable Members of the Court, as a European Union (EU) Member State, Romania has assumed the targets and actions adopted at EU level. Nationally, our objective is to be *climate neutral by 2050.*

12. According to the national inventory of greenhouse gas emissions 2022 submission, the total emissions and removals represent a reduction of 73 per cent compared to the emission level in 1989. Romania's emissions accounted for 0.36 per cent of the world's emissions in 2020.

13. Romania has constantly pledged for higher mitigation objectives in its national policies, according to its Paris Agreement obligations. To further increase its action, Romania has adopted, in 2023, the Neutral Romania scenario for 2050, targeting 99 per cent net emission reduction in 2050 compared to 1990.

II. CLIMATE CHANGE FACTS

14. We will not repeat the global climate change facts included in our written statement. Nevertheless, new scientific data show more dire impacts every day.

15. The 2024 State of the Global Climate[77] of the World Meteorological Organization acknowledges that:

— 2023 and 2024 will be the two warmest years on record, with the latter being on track to be the warmest, making the past ten years, that is 2015 to 2024, the warmest ten years in the 175-year

[77] State of the climate, update for COP29, available at https://library.wmo.int/records/item/69075-state-of-the-climate-2024, last visited on 9 December 2024.

observational record. Greenhouse gases reached record observed levels in 2023. Real time data indicate that they continued to rise in 2024.

— Ocean heat content in 2023 was the highest on record. Preliminary data show 2024 has continued at comparable levels. Sea-level rise is accelerating. From 2014 to 2023, global mean sea level rose at a rate of 4.77 mm per year.

III. MITIGATION AND CLIMATE-CHANGE BUDGET GAP

16. These figures are both daunting and forewarning. Against this background, climate change mitigation action is the main tool to slow down the disastrous effects of a warming climate. Adaptation obligations must follow and are intrinsically linked, but adaptation should be done to the lowest possible climate change effect.

17. That is why Romania's written submission was focused on the climate change mitigation obligations pursuant to international law.

18. Some future climate changes are unavoidable and/or irreversible, but can be limited by deep, rapid and sustained global greenhouse gas emissions reduction.

19. Some countries have referred to the climate change budget gap as a resource, arguing that it allows them not only to avoid reducing, but even to increase their greenhouse gas emissions. This is a misrepresentation of the concept of budget gap.

20. The climate change budget gap is a concept key to understanding the scale of action needed to avoid dangerous levels of global warming. It underscores the difference between the reductions in emissions required to stay within a safe carbon budget and what is currently projected to happen based on existing policies and trends.

21. To close this gap (which seems to be widening according to the reports of the Intergovernmental Panel on Climate Change (IPCC)), the world needs urgent, co-ordinated mitigation action from all States, in order to ensure climate justice for all nations. Allowing for distinct legal obligations for a certain group of States, to increase emissions, will have an increasing effect on this budget gap, which is contrary to the legal obligations under the climate change régime.

22. Romania submits that a core principle in addressing climate change through international law is that *States should operate on an equal playing field when it comes to their obligations to mitigate climate change.*

23. While recognizing the historical contributions to emissions by some States and the differing capacities of others, it is essential that the legal framework provides a common baseline of obligations that all States must meet. This is critical for ensuring that all States contribute to the global effort to combat climate change.

24. Equity as a general principle of international law is both a source of norms and a procedural step in applying international norms. We adhere to the concept that *equity* itself is a manifestation of the idea of *justice*.

25. Equity can be applied through the setting of obligations in the paradigm of the developing-developed States or through defining the obligations under the climate-change régime as obligations *erga omnes*.

26. By framing climate obligations as duties owed to the entire humanity, the international community can foster greater solidarity and ensure a fairer distribution of responsibilities in addressing climate change.

27. This approach encompasses enough flexibility to allow for distinct roles in the developing–developed States paradigm, depending on their respective capabilities.

28. It is against this background that the surge and evolution of the common but differentiated responsibilities (CBDR) approach is explained in detail in our written statement. We concluded that CBDR approach is incorporated within due diligence, in the sense that it entails a commitment for all States to different levels of ambition in what concerns mitigation and at different speed, according to their respective capabilities and national circumstances.

IV. HUMAN RIGHTS

29. Romania has not expanded in its written contribution on the topic of human rights and climate change, although it is clear and undebatable that climate change affects human rights.

30. At the same time, we recognize that, in terms of mitigation, the scope of international human rights obligations can only be defined within the broader framework of State responsibility under international climate change norms.

31. This is also the conclusion on the substantive human rights standards on climate change of the European Court of Human Rights in the recent *KlimaSeniorinnen* case.

32. In the mentioned case, the court found that,

> "in line with the international commitments undertaken by the member States, most notably under the UNFCCC and the Paris Agreement, and the cogent scientific evidence provided, in particular, by the IPCC, the Contracting States need to put in place the necessary regulations and measures aimed at preventing an increase in greenhouse gas emissions concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights"[78].

33. To this end, the court required that

> "each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades"[79].

34. Such requirement implies both "immediate action" and "adequate intermediate goals", "incorporated into a binding regulatory framework at the national level, followed by adequate implementation"[80].

35. In linking the Paris Agreement to the European Convention on Human Rights, the European Court of Human Rights emphasized that international climate targets and means — such as those set in the Paris Agreement — should inform a State's action in fulfilling its positive obligations under the Convention.

36. The European Court of Human Rights also answered Romania's concern regarding the establishment of an equal and equitable playing field for all States in relation to human rights in what concerns the jurisdictional aspects.

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[78] Judgment of the Grand Chamber in the Case of *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland*, para. 546 (https://hudoc.echr.coe.int/eng?i=001-233206).

[79] *Ibid.*, para. 548.

[80] *Ibid.*, para. 549.

37. Thus, the court's decision in the *Duarte Agostinho* case indicates that "jurisdiction should be differentiated from the issue of responsibility"[81]. If not, "this would turn the Convention into a global climate-change treaty"[82].

38. In this regard, Romania considers that States' efforts to develop the scope and the enforcement of the positive obligations to protect human rights climate connected should take place at global level, to ensure similar standards of application among all States.

39. This Court could also bring more legal clarity on the international human rights framework climate change related and the respective legal obligations for States.

V. THE OBLIGATION TO MITIGATE

40. One of the key questions is whether all States have a legal obligation to protect the climate system from harmful activities, i.e. greenhouse gas emissions. *Romania submits that the answer is yes, under both customary law and treaty law.*

41. Romania argues that all States, individually and collectively, are legally bound under customary international law and a range of international instruments — such as the United Nations Framework Convention on Climate Change and the Paris Agreement to take effective measures to mitigate the climate change.

42. These are specialized climate documents, but they do not form a self-contained *lex specialis* régime.

43. On this point, Romania follows the interpretation of the advisory opinion of ITLOS on climate change and international law, which states that "the Paris Agreement is not *lex specialis* to the Convention [UNCLOS] and thus, in the present context, *lex specialis derogat legi generali* has no place in the interpretation of the Convention"[83].

44. The Paris Agreement and the other climate treaties do not come in a vacuum in what concerns the international legal framework. Due diligence, prevention, no-harm and precautionary

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[81] Decision of the Grand Chamber in the Case of *Duarte Agostinho and Others* v. *Portugal and 32 Others*, para. 208 (https://hudoc.echr.coe.int/eng?i=001-233261).

[82] *Ibid*.

[83] Advisory Opinion of the International Tribunal on the Law of the Sea on the Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, para. 224 (https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_corr.pdf).

principles, international co-operation, the rules regarding environmental impact assessment are fully applicable.

45. Climate treaties must be interpreted "in accordance with any relevant rules of international law applicable in the relations between the Parties"[84], in a harmonious manner.

46. General obligations concerning climate change mitigation *are obligations of due diligence* that require States to take the appropriate and necessary measures in order to mitigate climate change.

47. This Court, in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* states that:

> "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."[85]

48. The Paris Agreement imposes[86] clear obligations to all State parties to adopt "ambitious" and "progressive" mitigation measures for the fulfilment of its primary objectives, which are, among others, to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels. As the target is collective and continuous in nature, the obligations and the responsibility are also collective.

49. The "ambition" within the mitigation obligations for the State parties provides for the substance of the due diligence obligations established by this Paris Agreement. The main obligation is to prepare, communicate and maintain nationally determined contributions (NDCs), which must:

(i) be successive and progressive;

(ii) be clear and transparent;

(iii) provide for peaking of greenhouse gas emissions "as soon as possible";

(iv) reflect the "highest possible ambition"[87].

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[84] Vienna Convention on the Law of the Treaties, Art. 31.

[85] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I),* pp. 241-242, para. 29.

[86] Article 3 of the Paris Agreement.

[87] Article 4.2 of the Paris Agreement.

50. These are obligations for all parties, but different roles are assigned, in the light of different national circumstances and reflecting special circumstances:

(i) support for developing country parties shall be granted to allow for higher ambition in their actions;

(ii) leading role for developed country parties is established in undertaking economy-wide absolute emission reduction targets;

(iii) least developed countries and small island developing States are exempted from preparing NDCs, but they may prepare and communicate strategies for low greenhouse gas emissions development[88].

51. The Agreement allows all State parties to determine their best effort, which must fulfil the conditions explained above, while placing certain sets of expectations on developed and developing countries, least developed countries and small island developing States.

52. Thus, the Paris Agreement establishes a subjective standard of due diligence, based on the best available science, appraised in a progression, and always entailing the highest possible ambition.

53. The ITLOS Advisory Opinion on climate change and international law declared that:

> "the standard of due diligence States must exercise in relation to marine pollution from anthropogenic GHG emissions needs to be stringent. However, its implementation may vary according to States' capabilities and available resources. Such implementation requires a State with greater capabilities and sufficient resources to do more than a State not so well placed."[89]

54. At its best, due diligence is expressed by the prevention and precautionary principles, which — Romania argues — are intrinsically linked to due diligence in the context of climate change.

55. If prevention is not possible, then the *obligations to reduce* ensue, which must take place at the highest ambition level possible, up to the cessation of emissions altogether.

56. In the *Pulp Mills on the River Uruguay* Judgment, this Court, while assessing the content of due diligence, stated that the obligation to act with due diligence

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[88] Article 4.6 of the Paris Agreement.

[89] Advisory Opinion of the International Tribunal on the Law of the Sea on the Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, para. 243 (https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_corr.pdf)

> "is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party"[90].

57. When comparing the articulation of the concept of due diligence in this case with the one resulting from the Paris Agreement, there is no overarching difference. The Paris Agreement, in addition, establishes concrete measures, which, if taken, should lead to the collective objectives.

58. The level of vigilance, as a procedural step, is also indicated in the Paris Agreement for the collective group of States. The objective criteria against which to measure — for each individual State party — the "highest possible ambition", especially if placed against the right of individual States to develop, is the one missing.

59. The exercise to establish such factors for an "equitable balance of interests" has already been undertaken by the ILC in the 2001 Draft Articles on Transboundary Harm from Hazardous Activities, adopted by United Nations General Assembly resolution 62/68[91]:

> "In order to achieve an equitable balance of interests as referred to in paragraph 2 of article 9, the States concerned shall take into account all relevant factors and circumstances, including:
>
> *(a)* The degree of risk of significant transboundary harm and of the availability of means of preventing such harm, or minimizing the risk thereof or repairing the harm;
>
> *(b)* The importance of the activity, taking into account its overall advantages of a social, economic and technical character for the State of origin in relation to the potential harm for the State likely to be affected;
>
> *(c)* The risk of significant harm to the environment and the availability of means of preventing such harm, or minimizing the risk thereof or restoring the environment;
>
> *(d)* The degree to which the State of origin and, as appropriate, the State likely to be affected are prepared to contribute to the costs of prevention;
>
> *(e)* The economic viability of the activity in relation to the costs of prevention and to the possibility of carrying out the activity elsewhere or by other means or replacing it with an alternative activity;
>
> *(f)* The standards of prevention which the State likely to be affected applies to the same or comparable activities and the standards applied in comparable regional or international practice."

60. While the balance of interests is constructed in this case for individual activities, in the case of climate change, the balance is already contained in the concept of "sustainable development".

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

[91] *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two.

61. The climate change paradigm is thus more complex than the individual environment activities paradigm that international tribunals have dealt with until now. With regard to the latter, in the *Gabčíkovo-Nagymaros Project* case, this Court referred to the need to reconcile environmental protection and economic development[92]. In the climate change paradigm, nevertheless, climate change mitigation cannot be envisaged outside the sphere of sustainable economic development.

62. Romania recalls that the last IPCC report also points out the paradox of measuring development costs against climate costs, considering that they influence each other: "Climate change is a threat to human well-being and planetary health (*very high confidence*). There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all"[93].

63. States have an *obligation to take preventive measures* to avoid significant harm to the environment, particularly when their activities contribute to transboundary harm. Climate change undoubtedly falls within this category, as emissions from any single State can have global consequences.

64. The approach of common but differentiated responsibilities articulated in the UNFCCC and the Paris Agreement underscores the idea that all States must contribute to the fight against climate change, but in accordance with their capacities and depending on the national circumstances.

65. Romania supports this approach and argues that historical responsibility cannot be part of its legal scope.

66. If historical responsibility *would* bear a role in establishing legal responsibilities, it is an oxymoron for the States that promote this argument to also consider that they should continue with the same level of emissions or even to increase them as part of their right to development, which would only lead to increasing their own historical responsibilities in the future.

67. To allow for replacing one group of greenhouse gas emitting States with another group is certainly not an equitable approach.

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[92] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997,* p. 78, para. 140.

[93] AR6 Synthesis Report, Climate Change 2023, Headline Statements available at https://www.ipcc.ch/report/ar6/syr/resources/spm-headline-statements/, last visited on 9 December 2024.

VI. THE OBLIGATIONS OF STATES IN MANAGING THE EFFECTS OF CLIMATE CHANGE

68. Before concluding, I would like to briefly address aspects intrinsically related to climate change, from the perspective of managing some of its consequences of critical importance for States. The following elements add to the written contribution submitted by Romania.

69. As mentioned in the introductory part of this statement, some of the consequences of climate change are irreversible; in the face of this, the Court would greatly assist States by providing legal certainty as to their obligations in managing the consequences of climate change. We see this as part of the larger scope of the questions addressed to the Court.

70. Romania would like to address the issue of the specific duties incumbent upon States in the context of climate change-related sea-level rise, in particular in relation to possible impact on baselines, outer limits of maritime zones, and maritime boundaries of States, as well as on their statehood.

71. There is, already, a significant body of practice of States (public statements and policies) in respect of the implications of sea-level rise under international law that deals with such topics.

72. Romania would like to highlight in this connection, in particular, the declaration on preserving the maritime zones in the face of climate-change related sea-level rise of 2021, as well as the declaration on the continuity of statehood and the protection of persons in the face of climate change-related sea-level rise of 2023, both adopted in the framework of the Pacific Islands Forum. Also, the work of the International Law Commission on the sea-level rise has substantially advanced the understanding of the legal issues engendered by the phenomenon of the sea-level rise and of the lawful approaches that States are entitled to adopt in response to it.

73. A few conclusions seem to be warranted on the basis of the existing practice and scholarship.

74. Romania would posit that the general principles of equity, fairness, legal stability and predictability should guide the actions of States in this area. Emphasis should be equally placed on such fundamental norms of international law as respect for the sovereignty and territorial integrity of States, of the self-determination of peoples and of the permanent sovereignty over natural resources.

75. As to specific duties, or lack thereof, it seems certain that States are not under any obligation to review charts or lists of geographical co-ordinates once deposited with the Secretary-

General of the United Nations, in accordance with the relevant provisions of the United Nations Convention on the Law of the Sea, nor to update the submitted charts or lists of co-ordinates, in order to reflect physical changes in the configuration of the coastline due to sea-level rise (while retaining the option to do so).

76. Further, States have a positive obligation to respect the baselines, as well as the outer limits of the maritime spaces that are measured from such baselines, established by other States, in compliance with UNCLOS, irrespective of subsequent changes in the morphology or shape of the coast. The same holds true in connection to the duty to respect maritime delimitations settled by States, either by agreement or by recourse to judicial adjudication. This implies the obligation for States to refrain from challenging the limits of maritime zones duly established by other States, notwithstanding submergence, erosion or other such changes suffered by the land territories on the basis of which such maritime areas were determined.

77. In respect of statehood, States directly affected have not only the right, but the positive obligation to act in order to preserve their statehood in face of the effects of sea-level rise, using various lawful means at their disposal.

78. Conversely, States have the continuous duty to respect the statehood of other States, even in the eventuality that their land territory has been rendered uninhabitable or has become submerged as a consequence of sea-level rise. Furthermore, this obligation extends to the maintenance by the affected States of permanent sovereignty over its natural resources.

79. All States are under the obligation to co-operate in order to alleviate the negative impacts of climate change-related sea-level rise, in particular for the benefit of the most affected States.

80. It is Romania's view that the specific recognition of such obligations would assist the most affected States, in particular the low-lying and small island States, to address the unprecedented challenges posed by sea-level rise.

VII. CONCLUSION

81. Mr President, honourable Members of the Court, this concludes my statement and I thank you very much for the attention.

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

The Court adjourned from 4.30 p.m. to 4.50 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, the United Kingdom, to address the Court and I call Lord Richard Hermer to the podium.

Lord HERMER:

I. INTRODUCTION

1. Mr President, Madam Vice-President, distinguished Members of the Court, as His Majesty's Attorney General, I have the honour to appear before you on behalf of the United Kingdom.

2. Climate change is one of the defining challenges of our time.

3. The science is clear. There is unequivocal evidence that human activity is leading the planet to warm at unprecedented rates.

4. And the impact is equally clear — the profound effects of climate change fall on each and every State.

5. Yet, some States feel that impact far more than others. And the cruel irony is it is predominantly those States that are historically the lowest emitters that feel its greatest impact.

6. Those States face the greatest impact on their territorial integrity, on their economy, on their culture and heritage — and as the representative of Palau so eloquently explained this morning, there is an impact on the very identity of their people.

7. So it is therefore right that these important questions have been placed before this Court. The United Kingdom supported this Request for an advisory opinion in the General Assembly precisely because — as the submissions over the last seven days demonstrate — there is a pressing, urgent need for the world to tackle climate change, and for this Court to affirm the role that international law should play.

8. My submissions today will seek to demonstrate that the climate crisis can only be met by States working together. The most constructive, the most concrete and thus the most legally effective

way is through the legally binding agreements setting out States' obligations to tackle the challenges of climate change.

9. I shall refer to these as the "Climate Change Treaties"[94] and the "Complementary Treaties"[95].

10. At the heart of this treaty framework, at the heart of the global response to climate change, is the landmark Paris Agreement.

11. Reached in 2015, with 195 parties, the Agreement articulates how States have chosen to meet the challenges of climate change.

12. It was an Agreement carefully negotiated, an outcome achieved through co-operation and consensus. It sets out what we submit are meaningful obligations on States to mitigate greenhouse gas emissions. The Agreement implements three core goals of the United Nations climate change régime[96], namely mitigation, adaptation and finance[97].

13. The United Kingdom well understands the frustration expressed in these proceedings that many States are failing to fulfil their obligations under the Paris Agreement. We also share disappointment that some submissions have sought to denude those obligations of meaningful content. Yet, in our respectful submission, the Paris Agreement represents not only, as a matter of law, the most relevant applicable international instrument for addressing the challenge[98], but also, as

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[94] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UN Dossier No. 4) ("UNFCCC"); Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, opened for signature 16 March 1998, entered into force 16 February 2005) 2303 UNTS 162 (UN Dossier No. 11) ("Kyoto Protocol"); Paris Agreement (adopted 12 December 2015, opened for signature 22 April 2016, entered into force 4 November 2016) 3156 UNTS 79 (UN Dossier No. 16) (together, the "Climate Change Treaties").

[95] Convention on International Civil Aviation (signed 7 December 1944, entered into force 4 April 1947) 15 UNTS 295 ("Chicago Convention"); International Convention for the Prevention of Pollution from Ships (adopted 2 November 1973, opened for signature 15 January 1974), as amended by Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships (adopted 17 February 1978, opened for signature 1 June 1978, entered into force 2 October 1983) 1340 UNTS 61 ("MARPOL"); Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, entered into force 1 January 1989), 1522 UNTS 3 (UN Dossier No. 26) ("Montreal Protocol"); 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone to the Convention on Long-range Transboundary Air Pollution, as amended on 4 May 2012 (adopted 30 November 1999, entered into force 17 May 2005) 2319 UNTS 80 ("Gothenburg Protocol") (together, the "Complementary Treaties").

[96] Written Statement of the United Kingdom of Great Britain and Northern Ireland, 18 March 2024 ("UK Written Statement"), para. 17.

[97] Paris Agreement (UN Dossier No. 16), Art. 2 (1).

[98] See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 226 ("*Nuclear Weapons*"), para. 34; UK Written Statement, paras. 4.3, 24.3, 26, 27.3-27.5, 29-33; Written Comments of the United Kingdom of Great Britain and Northern Ireland, 12 August 2024 ("UK Written Comments"), paras. 8.2-8.3, 10-11. See also oral submissions of Australia, CR 2024/36, pp. 36-39 (paras. 5, 8) (Clarke), 40 (para. 2) (Donaghue); Canada, CR 2024/38, pp. 11-13 (paras. 9-10, 14-17) (Aumais); Denmark, Finland, Iceland, Norway and Sweden ("Nordic countries"), CR 2024/39, pp. 44-45 (paras. 11-15) (Suvanto); France, CR 2024/41, p. 9 (para. 6) (Colas); Guatemala, CR 2024/41, p. 58 (para. 22) (Rodríguez Pineda); Japan, CR 2024/45, p. 50 (para. 6) (Nakamura); New Zealand, CR 2024/46, pp. 33-34 (paras. 14-16), 36 (para. 21) (Hallum); Republic of Korea, CR 2024/38, p. 63 (para. 10) (Hwang); South Africa, CR

a matter of fact, the most realistic framework for the concerted action necessary to respond to the crisis.

14. The United Kingdom has provided the Court with detailed written pleadings, which I hope are of assistance. For today's purposes, I will make three submissions.

(a) *First*, that the Paris Agreement contains binding and meaningful mitigation obligations to ensure the protection of the climate system from anthropogenic greenhouse gas emissions, and therefore contains the answer to the first question before the Court.

(b) *Second*, that the Paris Agreement also provides the answer to the second question before the Court.

(c) *Third*, and finally, that the prevention principle in customary international law does not cover anthropogenic greenhouse gas emissions, but even if it does, it does not contain obligations beyond those contained in the Paris Agreement.

II. THE PARIS AGREEMENT RESPONDS TO THE FIRST QUESTION

15. So if I may move to the first question. At the outset, I note that other States to these proceedings have not sought to deny the applicability of the Paris Agreement. But, regrettably, a number of States have sought to empty that Agreement of meaningful content[99].

16. That is not the view of the United Kingdom. My submission today is that the Paris Agreement contains, *inter alia*, three core mitigation obligations in Article 4[100].

17. The first of those three obligations is contained in the first sentence of Article 4, paragraph 2. This is the obligation that falls on *every* party to prepare, communicate and maintain successive nationally determined contributions to the global response to climate change. That

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2024/35, p. 120 (para. 5) (Brammer); Written Statements of Argentina, para. 32; Australia, paras. 1.32, 2.1-2.2 Brazil, para. 10; Canada, para. 11; Dominican Republic, para. 3.11; France, para. 13; Japan, paras. 4-10; New Zealand, paras. 21, 30; South Africa, paras. 16-17; Timor-Leste, para. 83; United Arab Emirates ("UAE"), paras. 16-17; Written Comments of France, paras. 17-18; Japan, para. 5; New Zealand, paras. 12-13 *(a)*. Cf. e.g. Written Statement of Sierra Leone, para. 3.5; Written Comments of African Union, paras. 22, 24; Organisation of African Caribbean and Pacific States ("OACPS"), paras. 78-79.

[99] See e.g. oral submissions of China, CR 2024/38, p. 34 (para. 32) (Ma); Kuwait, CR 2024/43, pp. 54-55 (para. 3) (Sarooshi); Saudi Arabia, CR 2024/36, p. 31 (para. 4) (Bajbaa); United States of America ("USA"), CR 2024/40, p. 42 (para. 17) (Taylor); Written Statements of Kuwait, paras. 35, 40, 42; Saudi Arabia, paras. 4.60-4.62, 4.68; USA, para. 3.18; Written Comments of Saudi Arabia, para. 4.15; USA, paras. 3.13, 3.15. Compare oral submissions of Antigua and Barbuda, CR 2024/36, p. 17 (para. 6) (Phillips); Bahamas, CR 2024/36, pp. 58 (para. 2), 62 (para. 20) (Blake).

[100] UK Written Comments, para. 29.

response includes pursuing the temperature goal as expressed in Article 2. This obligation has several key components:

(a) parties must — must, in the words of Article 4 — "intend to achieve" their NDCs. This is an obligation of conduct that is governed by a due diligence standard[101];

(b) NDCs must be communicated every five years[102];

(c) they must be prepared in a standardized way to facilitate clarity, transparency and understanding, and to enable meaningful comparison[103];

(d) they are made public by the UNFCCC Secretariat[104]; and

(e) parties must prepare accounts of their emissions and removals corresponding to their NDCs, and this must be done in accordance with guidance adopted by the Conference of the Parties[105].

18. The *second obligation* is contained in the second sentence of Article 4, paragraph 2. This requires each party to pursue domestic mitigation measures with the aim of achieving its NDCs. This is also an obligation of conduct, and is also subject to a due diligence standard[106]. States are required to pursue domestic mitigation measures which are targeted towards, and appropriate for, the achievement of the objectives identified in their NDCs.

19. The *third obligation* is contained in Article 4, paragraph 3. In the United Kingdom's view each party's NDCs must *objectively* — and I stress, objectively — represent a progression beyond its previous one, and *objectively* reflect that party's highest possible ambition, in turn "reflecting its common but differentiated responsibilities and respective capabilities, in the light of different

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[101] UK Written Comments, paras. 22.1-22.5. See e.g. *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I),* p. 14 ("*Pulp Mills*"), paras. 186-187; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II),* p. 665 ("*Costa Rica* v. *Nicaragua*"), sep. op. Donoghue, para. 9, sep. op. Dugard, paras. 7, 9; *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion), ITLOS Case No. 31, 21 May 2024 ("ITLOS Advisory Opinion (Case No. 31)"), paras. 233, 241, 243, 398-400. See also Written Statements of Australia, paras. 4.13-4.15; EU, paras. 69-86, 130; Seychelles, para. 153; Singapore, para. 3.5; Timor-Leste, para. 113; Written Comments of Bahamas, para. 109; EU, paras. 11, 97.

[102] Paris Agreement (UN Dossier No. 16), Art. 4 (9).

[103] Paris Agreement (UN Dossier No. 16), Art. 4 (8).

[104] Paris Agreement (UN Dossier No. 16), Art. 4 (12).

[105] Paris Agreement (UN Dossier No. 16), Art. 4 (13). See also UK Written Statement, para. 70.

[106] UK Written Comments, paras. 23.1-23.3.

national circumstances"[107]. Determining whether an NDC satisfies these criteria involves reference to the "best available science" as referred to in Article 4, paragraph 1.

20. The Paris Agreement does not prescribe quantified targets for emissions reductions[108]. Nor are the parties obliged to *achieve* the content of their NDCs. However, each party must perform the mitigation obligations expressly set out in the Agreement, informed by the "best available science" and in good faith. This is true as a matter of ordinary treaty law[109], and each State's express obligation in the first sentence of Article 4, paragraph 2, of an intention "to achieve" its NDCs.

21. These mitigation obligations are binding on *all* parties. The Paris Agreement provides for differentiation between the obligations of States, but it does so in a manner which is sensitive to changing circumstances, and not frozen in annexes compiled decades ago[110].

22. I emphasize that the mitigation obligations in Article 4 are supported by the review and transparency obligations in Articles 13 and 14[111]. They are designed for the progress of States to be monitored by the Conference of the Parties, by other States, by civil society, including scientists.

(a) A global stocktake is required of progress towards achieving the purpose of the Paris Agreement to be undertaken every five years, with the first having been conducted in 2023[112]. The outcome of that stocktake shall inform parties in updating and enhancing their NDCs[113].

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[107] UK Written Comments, paras. 24-27.

[108] *Contra* oral submissions of Antigua and Barbuda, CR 2024/36, pp. 21-22 (para. 23 *(a)*) (Phillips); Written Statements of Antigua and Barbuda, paras. 275-277, 285, 297, 593 *(a)*; Democratic Republic of the Congo ("DRC"), paras. 191-210; India, para. 67; Vanuatu, paras. 415 *(b)*, 435-441, 520; Written Comments of Bahamas, para. 12; Vanuatu, paras. 110, 165-166. Compare e.g. oral submissions of Côte d'Ivoire, CR 2024/39, pp. 29-30 (para. 13) (Sarvarian); France, CR 2024/41, p. 12 (paras. 16-17) (Colas); Written Statements of European Union ("EU"), para. 159; International Union for the Conservation of Nature ("IUCN"), para. 127; Latvia, para. 27; New Zealand, paras. 54-59; Nordic countries, paras. 57, 74, 108; South Africa, para. 73; Timor-Leste, para. 113; Written Comments of EU, paras. 41-47; Japan, para. 59; USA, para. 3.16. And see generally, UK Written Comments, paras. 13-29.

[109] Vienna Convention on the Law of Treaties (adopted 22 May 1969, opened for signature 23 May 1969, entered into force 27 January 1980), 1155 UNTS 331, Art. 26. See also UK Written Comments, para. 22.5.

[110] UK Written Statement, paras. 59-61, 141-142; UK Written Comments, paras. 31.3-31.4. See also oral submissions of Canada, CR 2024/38, pp. 14-15 (para. 23) (Aumais); Côte d'Ivoire, CR 2024/39, pp. 22, 30-31, 35-36 (paras. 3, 15, 22) (Sarvarian); Germany, CR 2024/35, pp. 142 (para. 14), 144 (paras. 24-26) (Rückert); Japan, CR 2024/45, pp. 53 (para. 13) (Nakamura), 55 (para. 12) (Takamura); Liechtenstein, CR 2024/44, pp. 31-32 (para. 29) (Schafhauser); Nordic countries, CR 2024/39, pp. 47-48 (paras. 15-23) (Jervell); Solomon Islands, CR 2024/42, p. 39 (para. 10 (i)) (Narulla); USA, CR 2024/40, p. 34 (para. 20) (Taylor); Written Statements of Japan, paras. 25-36; New Zealand, paras. 47-49; USA, paras. 2.36-2.51; Written Comments of Australia, paras. 2.7-2.14; Bahamas, paras. 55-56; France, paras. 29-31, 33-35; Japan, paras. 65-69; Kenya, para. 4.29; New Zealand, paras. 28-29; Switzerland, paras. 51-64.

[111] United Kingdom Written Statement, paras. 71, 81-82; United Kingdom Written Comments, paras. 28-29.

[112] Paris Agreement (UN Dossier No. 16), Arts. 14 (1)-(2).

[113] *Ibid.*, Art. 14 (3).

(b) Parties are obliged to provide the information necessary to track progress in implementing and achieving their NDCs[114]. That information undergoes a technical review by experts on the UNFCCC Roster of Experts, and parties must participate in multilateral consideration of progress with respect to their NDCs[115].

23. Thus the United Kingdom submits that the Paris Agreement, properly interpreted, contains robust obligations that meaningfully address protection of the climate system and require progression and highest possible ambition. These are all binding legal obligations, and breach of them will attract responsibility for internationally wrongful conduct.

24. And I am pleased to say that there is considerable agreement between Participants on the scope and content of the three core mitigation obligations in Article 4[116].

25. Mr President, in concluding on the Paris Agreement on the first question, I wish to emphasize that it contains binding mitigation obligations and the compliance with them is capable of meaningful impact.

26. Much have already been achieved, including that the 195 parties participate, that there are developed processes and metrics for measuring emissions, reductions and removals, and all have prepared and submitted NDCs[117].

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[114] Paris Agreement (UN Dossier No. 16), Art. 13 (7) *(b)*. See also United Kingdom Written Statement, para. 71 and fn. 135.

[115] Paris Agreement (UN Dossier No. 16), Art. 13 (11).

[116] See e.g. oral submissions of Australia, CR 2024/36, pp. 40-41 (paras. 3-4) (Donaghue); Bahamas, CR 2024/36, pp. 62-63 (paras. 20-26) (Blake); Côte d'Ivoire, CR 2024/39, pp. 25, 27-30, 32 (paras. 8, 11-14, 18) (Sarvarian); Nordic countries, CR 2024/39, p. 46 (paras. 4-9) (Jervell); France, CR 2024/41, pp. 10-13 (paras. 9-22) (Colas); Germany, CR 2024/35, pp. 142-144 (paras. 11-23) (Rückert); Japan, CR 2024/45, pp. 54-55 (paras. 7-10) (Takamura); Latvia, CR 2024/44, pp. 12-13 (paras. 7-9) (Paparinskis); Written Statements of Australia, paras. 2.16-2.23; Colombia, paras. 3.35-3.41; Ecuador, paras. 3.79-3.81; European Union, paras. 129-132, 135-159; France, paras. 23-55, 65-68; International Union for Conservation of Nature (IUCN), paras. 125--151; Latvia, paras. 26-31; Netherlands, paras. 3.8-3.13; Portugal, paras. 52, 54-55; Republic of Korea, paras. 20, 22; Samoa, paras. 166-168; Seychelles, paras. 70-86; Singapore, paras. 3.32, 3.35-3.36; Solomon Islands, para. 78-81, 84-86; Timor-Leste, paras. 104-127; Tonga, paras. 138, 145-160; United Arab Emirates, paras. 111-116; Written Comments of Australia, paras. 2.25-2.37; Bahamas, paras. 41-43, 45-50; Colombia, paras. 3.27-3.32, 3.34; EU, paras. 8-9; France, para. 13; International Union for Conservation of Nature (IUCN), paras. 18-25; Japan, paras. 45-46, 54, 56-62; Kenya, paras. 4.37-4.44, 4.47-4.52; Latvia, paras. 14-20; Mauritius, paras. 35-36, 40-44, 46-49; Mexico, paras. 26-35; Samoa, paras. 15-16; Switzerland, paras. 22-28; Uruguay, paras. 56-59, 69-72. Cf. Written Statements of Kuwait, paras. 35, 40, 42; United States of America, paras. 3.17-3.18; Written Comments of the United States of America, paras. 3.10, 3.13, 3.15.

[117] United Kingdom Written Statement, paras. 79-82.

27. However, as reflected in the first global stocktake and in the submissions of many Participants before you[118], more ambition and more implementation are urgently needed. This is required by the Agreement itself and it is now for parties to comply with what they have agreed.

III. THE PARIS AGREEMENT RESPONDS TO THE SECOND QUESTION

28. May I turn to the second question.

29. This is not, in our respectful submission, a question about State responsibility as the consequences are found within the Paris Agreement.

30. That is for two reasons[119].

31. *First*, and quite simply, the question refers to "the legal consequences *under these obligations*" and that can only be a reference to the obligations identified in response to the first question[120]. It is not a reference to legal consequences in general terms.

32. *Second*, nothing in the question refers, even implicitly, to any State's *breach* of international obligations[121]. That omission, we respectfully submit, cannot be circumvented by assuming that conduct contributing to significant harm to the climate system necessarily breaches one or more obligations identified in response to the first question[122].

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[118] See e.g. oral submissions of the Bahamas, CR 2024/36, pp. 62-63, paras. 22-26 (Blake); Ghana, CR 2024/41, p. 32, para. 5 (Adusu); Maldives, CR 2024/44, p. 47, paras. 3-4 (Wells); Marshall Islands, CR 2024/42, p. 23, para. 7 (Silk); Vanuatu and Melanesian Spearhead Group ("MSG"), CR 2024/35, p. 98, para. 6 (Regenvanu) and p. 116, para. 8 (Houniuhi).

[119] United Kingdom Written Statement, paras. 133-138; United Kingdom Written Comments, paras. 64-68. And see oral submissions of Japan, CR 2024/45, pp. 56-60, paras. 1-14 (Miron). Compare also oral submissions of France, CR 2024/41, p. 14, para. 24, and p. 16, para. 33 (Colas); Sierra Leone, CR 2024/41, pp. 26-27, para. 29 (Jalloh); Written Statements of the European Union, paras. 65, 322ff; France, paras. 170-176; Japan, paras. 40-41; Written Comments of Japan, paras. 13-14, 22-23, 73, 86. Compare also Written Statements of Netherlands, paras. 5.3-5.44; New Zealand, paras. 126-129.

[120] United Kingdom Written Statement, para. 137.2. See oral submissions of the Republic of Korea, CR 2024/38, p. 66, para. 4 (Lee); and compare oral submissions of Latvia, CR 2024/44, p. 21, paras. 31-32 (Paparinskis). See also Written Statements of Australia, para. 1.36; Japan, para. 41; Kenya, para. 2.7; Nordic countries, para. 101; Written Comments of Japan, paras. 23, 73; Saudi Arabia, para. 5.5.

[121] United Kingdom Written Statement, paras. 137.1-137.2. See also Written Statements of the European Union, para. 21; France, paras. 171-176; Japan, para. 40; Nordic countries, para. 100; Portugal, para. 109; Republic of Korea, para. 42; Slovenia, para. 14; Written Comments of Japan, paras. 13-14; Saudi Arabia, para. 5.5; USA, para. 5.3. *Contra* e.g. Written Statements of the Dominican Republic, para. 4.57; Ecuador, para. 4.3; IUCN, paras. 546-548, 555-557; Written Comments of the African Union, paras. 34 *(e)*, 36.

[122] See oral submissions of Nordic countries, CR 2024/39, p. 54, paras. 27-28 (Pasternak Jørgensen); Republic of Korea, CR 2024/38, p. 68, para. 12 (Lee). *Contra* oral submissions of the African Union, CR 2024/44, pp. 70-71, paras. 27-29 (Mbengue); Burkina Faso, CR 2024/37, pp. 46-47, para. 12 (Hébié); Costa Rica, CR 2024/39, pp. 15-16 (Kohen); Ecuador, CR 2024/40, p. 21, para. 23 (Vázquez-Bermúdez); Egypt, CR 2024/39, pp. 60-62, paras. 18, 23-24 (Aboulmagd); Jamaica, CR 2024/43, p. 16, para. 3 (Walker); Kenya, CR 2024/43, p. 37, para. 29 (Okowa); Philippines, CR 2024/37, p. 66, para. 1 (Guevarra); Vanuatu and MSG, CR 2024/35, p. 112, para. 5 (Wewerinke-Singh).

33. We submit that to reach a conclusion such as that would be well beyond the scope of the proceedings, and would require a careful examination of the conduct attributable to a given State, assessed against the content of an obligation binding on that State at the time of the impeached conduct[123].

34. Accordingly, the United Kingdom submits that it is the Paris Agreement that is the answer to the second question[124]. That is because it specifies in terms the "legal consequences under these obligations" where States "have caused significant harm to the climate system and other parts of the environment".

35. Expanding on those "legal consequences", the climate change treaties, and in particular the Paris Agreement, recognize that there are differing levels of contribution from States to causing harm to the climate system[125]. In other words, the Agreement acknowledges and caters for those States who may have contributed the *least* to climate change but who are suffering most profoundly from its impact.

36. The Paris Agreement does that in six important respects.

37. *First*, by providing that NDCs must reflect common but differentiated *responsibilities* and respective capabilities, in the light of different national circumstances[126].

38. *Second*, certain provisions of the Paris Agreement are expressly for the benefit of "small island developing States . . . particularly vulnerable to the adverse effects of climate change"[127].

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[123] United Kingdom Written Statement, paras. 136-138; United Kingdom Written Comments, paras. 9, 65-68. See also oral submissions of Australia, CR 2024/36, p. 37, para. 7 (Clarke), p. 49, para. 2 (Parlett); France, CR 2024/41, pp. 14-15, paras. 25 and 30 (Colas); Nordic countries, CR 2024/39, pp. 53-55, paras. 18, 27-28 and 33 (Pasternak Jørgensen); Spain, CR 2024/40, p. 38, para. 20 (Ripol Carulla); United States of America, CR 2024/40, p. 47, paras. 34-35 (Taylor); Written Statements of Australia, paras. 1.36, 5.3-5.10; the European Union, para. 21; France, paras. 171-173, 178-186; Indonesia, paras. 74-75; New Zealand, para. 140; Nordic countries, paras. 98-100, 105-107; Russian Federation, pp. 16-18; Saudi Arabia, para. 6.2; Slovenia, para. 15; USA, paras. 5.2-5.10; Written Comments of Australia, paras. 6.2 *(h)*, 6.4-6.31; Bahamas, para. 102; European Union, paras. 12, 88-89, 97-99; France, paras. 6, 56-65; International Union for Conservation of Nature (IUCN), para. 98; Japan, paras. 22-23, 85-96; New Zealand, para. 34 *(a)*; Saudi Arabia, paras. 5.4-5.5; USA, paras. 5.3-5.16.

[124] Compare oral submissions of France, CR 2024/41, p. 14, para. 24, and p. 16, paras. 32-33 (Colas); Japan, CR 2024/45, pp. 56-60, paras. 1-14 (Miron); Republic of Korea, CR 2024/38, pp. 67-69, paras. 9, and 15-18 (Lee); Sierra Leone, CR 2024/41, pp. 26-27, para. 29 (Jalloh).

[125] See e.g. oral submissions of Japan, CR 2024/45, pp. 58-60, paras. 8-14 (Miron); Nordic countries, CR 2024/39, pp. 53-54, paras. 19-23 (Pasternak Jørgensen); Sierra Leone, CR 2024/41, pp. 26-27, para. 29 (Jalloh).

[126] Paris Agreement (UN Dossier No. 16), Art. 4 (3). See further, United Kingdom Written Statement, paras. 139.1, and 141-147.

[127] United Kingdom Written Statement, paras. 164-165.

39. *Third*, the Agreement recognizes, in terms,

(a) that "enhanced support for developing country Parties will allow for higher ambition in their actions"[128];

(b) and that developing country parties need support "for the effective implementation" of the Agreement[129]; and

(c) that "[d]eveloped country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets"[130].

40. *Fourth* of my six points is on adoption: the global goal established by Article 7 expressly takes into account "the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change"[131].

41. *Fifth*, differentiation is also reflected in the finance provisions of the Paris Agreement[132]. Although providing financial resources is not only a matter for developed-country parties[133], Article 9, paragraph 1, imposes a binding obligation on them to "provide financial resources to assist developing country Parties with respect to both mitigation and adaptation"[134]. Article 9, paragraph 3, also expressly recognizes the role that developed-country parties play in climate finance[135]. This, we acknowledge, is an area of acute frustration for many Participants, but the frustration is again with good-faith compliance rather than the meaning or content of the obligations themselves in the Paris Agreement[136].

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[128] Paris Agreement (UN Dossier No. 16), Art. 4 (5).

[129] *Ibid.*, Art. 3.

[130] *Ibid.*, Art. 4 (4).

[131] Paris Agreement (UN Dossier No. 16), Art. 7 (2); see also Arts. 7 (6)-(7). See further, United Kingdom Written Statement, paras. 148-153. And see oral submissions of Bangladesh, CR 2024/36, pp. 72-73, paras. 5-6 (Amirfar).

[132] United Kingdom Written Statement, paras. 154-161.

[133] Paris Agreement (UN Dossier No. 16), Art. 9 (2). See United Kingdom Written Statement, para. 158.2.

[134] Paris Agreement (UN Dossier No. 16), Art. 9 (1). See further, oral submissions of Bangladesh, CR 2024/36, pp. 74-75, paras. 10-13 (Amirfar).

[135] Paris Agreement (UN Dossier No. 16), Art. 9 (3).

[136] See e.g. oral submissions of Indonesia, CR 2024/42, p. 65, paras. 18-19 (Oegroseno); Jamaica, CR 2024/43, p. 16, para. 5 (Walker); Kenya, CR 2024/43, p. 30, para. 7 (Mucheke), p. 37, paras. 27-28 (Okowa); Maldives, CR 2024/44, p. 49, paras. 9-12 (Wells); South Africa, CR 2024/35, pp. 126-127, paras. 16 and 18 (Scholtz).

42. *Finally*, other provisions of the Paris Agreement, including in relation to capacity-building[137], technology development and transfer[138], loss and damage[139], reinforce, what we submit, is the Agreement's carefully calibrated approach to accounting for States' differing levels of contribution[140].

43. These treaty provisions include meaningful legal obligations giving specific form to two principles. They are that those who can do more *must* do more, and that co-operation is essential to addressing the problem that confronts us all. The Paris Agreement thus adopts an approach of forward-looking solidarity and co-operation.

44. I have explained that the obligations contained are meaningful and include legal consequences for States that have contributed more to the harm that has already occurred. In this way they answer the second question. Breach of the Paris Agreement obligations will of course entail State responsibility in the ordinary way. The Paris Agreement does not *exclude* the rules of State responsibility[141], just as it does not exclude any other applicable primary rules[142], but it does provide the answer, we respectfully submit, to *both* questions before the Court.

45. I therefore invite the Court to affirm the central role of the climate change treaties, and the complementary treaties, in combatting climate change[143]. And I invite the Court to clarify the binding character and correct interpretation of the key terms of the Paris Agreement as I have just set out.

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[137] Paris Agreement (UN Dossier No. 16), Arts. 6 (8), 11, 13 (9)-(11).

[138] *Ibid.*, 10, 13 (9)-(11).

[139] Paris Agreement (UN Dossier No. 16), Art. 8.

[140] United Kingdom Written Statement, paras. 162-163.

[141] United Kingdom Written Statement, para. 134; United Kingdom Written Comments, para. 68.

[142] Compare oral submissions of the African Union, CR 2024/44, pp. 67-68, paras. 18-19 (Mbengue); Bangladesh, CR 2024/36, pp. 68-70, paras. 8-12; Barbados, CR 2024/36, pp. 82-83, paras. 4-11 (Volterra); Bolivia, CR 2024/37, pp. 22-23, paras. 13-17 (Calzadilla Sarmiento); Burkina Faso, CR 2024/37, pp. 43-44, paras. 2-4 (Hébié); Colombia, CR 2024/38, p. 44, para. 12 (Olarte Bácares); Costa Rica, CR 2024/39, p. 12, paras. 5-7 (Kohen); Dominica, CR 2024/38, pp. 57-58, paras. 22-26 (Sobers-Joseph); Ecuador, CR 2024/40, pp. 18-19, paras. 9-13 (Vázquez-Bermúdez); Micronesia, CR 2024/45, p. 22 (Mulalap); Nauru, CR 2024/46, pp. 16-17, paras. 8-11 (Bjorge); Pakistan, CR 2024/46, p. 63, paras. 30-33 (Awan); Solomon Islands, CR 2024/42, pp. 37-38, paras. 2 *(i)*, and 5-7 (Narulla).

[143] See United Kingdom Written Statement, paras. 35-106; United Kingdom Written Comments, paras. 12-31. See also oral submissions of Canada, CR 2024/38, pp. 11-13, paras. 9-10 and 14-17) (Aumais); Guatemala, CR 2024/41, p. 58, para. 22 (Rodríguez Pineda); New Zealand, CR 2024/46, pp. 33-34, paras. 14-16 and p. 36, para. 21 (Hallum); Written Statements of Australia, paras. 1.32, 2.1-2.2, 3.1, 3.3, 3.30-3.31; New Zealand, paras. 21, 30, 78-83, 90, 94.

IV. THE PREVENTION PRINCIPLE DOES NOT ANSWER THE QUESTIONS

46. Can I then turn to my third and final submission: the issue of customary international law. In light of the magnitude of the crisis, the United Kingdom well understands why a number of States seek an expansion of the prevention principle, it is a well-understood context[144]. However, with respect we submit that the Court will be well aware of the dangers inherent in declaring that the law is in front of the actual practice and *opinio juris* of States. It would be, we submit, contrary to well-established rules for the identification of custom. And in that regard, I develop three points[145].

47. *First*, the prevention principle has, of course, been progressively articulated, but in limited and confined circumstances: the context of sulphur dioxide fumes from a smelter near a boundary being blown by wind across that boundary[146], the potential use of nuclear weapons[147] and the discharge of effluent from an industrial process into a transboundary river[148]. That principle is now said by some before this Court to constitute a rule that covers emissions from within States of greenhouse gases that are the by-product of daily life and of common commercial and agricultural processes, occurring to differing degrees across virtually the entire territory of all States.

48. It is not gases being emitted near or crossing any boundary that is an issue here. It is the accumulation in the global atmosphere of emissions from within all States over time that creates a cumulative effect on the climate system.

49. Now, I stress, this is not to deny the gravity of the problem, but it is a very different problem from those cases in which the prevention principle was articulated.

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[144] See e.g. oral submissions of Antigua and Barbuda, CR 2024/36, pp. 18-22, paras. 11 and 14-24 (Phillips); Bahamas, CR 2024/36, pp. 59-61, paras. 6-17 (Blake); Bolivia, CR 2024/37, pp. 22-24, paras. 15 and 18-24 (Calzadilla Sarmiento); Kenya, CR 2024/43, p. 31-34, paras. 3-5 and paras. 13-16 (Okowa); Kiribati, CR 2024/43, pp. 44-47, paras. 5-21 (Benvenisti); Marshall Islands, CR 2024/42, pp. 28-29, paras. 5-8 (Kawakami); Vanuatu and MSG, CR 2024/35, pp. 106-110, paras. 1-12 (Viñuales).

[145] See United Kingdom Written Comments, paras. 32-34. See also e.g. oral submissions of Australia, CR 2024/36, pp. 42-44, paras. 8-14 (Donaghue); Canada, CR 2024/38, pp. 13-14, para. 19 (Aumais); Nordic countries, CR 2024/39, p. 52, para. 8 (Pasternak Jørgensen); Written Statements of Australia, paras. 4.7-4.10; Canada, para. 32; China, paras. 127-129; India, para. 17; Indonesia, para. 61; New Zealand, paras. 96, 101-103; Nordic countries, paras. 70-71; United States of America, paras. 4.1-4.2, 4.5-4.21; Written Comments of Australia, paras. 3.4-3.13; Japan, paras. 27-28, 97; New Zealand, para. 23; Saudi Arabia, paras. 1.9, 4.39, 4.53-4.60, 4.65; Timor-Leste, paras. 44-53, 76; United States of America, para. 3.23.

[146] *Trail Smelter (United States of America/Canada),* Award (16 April 1938 and 11 March 1941), III *RIAA* 1905, p. 1965.

[147] *Nuclear Weapons*, para. 29.

[148] *Pulp Mills*, para. 101.

50. Some States say that in previous cases the prevention principle has been articulated with such a breadth that greenhouse gas emissions come within that articulation. We respectfully disagree with those who consider that to be the end of the analysis, since in determining the scope of a rule of custom, the crucial questions always concern what States do in practice and whether they regard themselves as legally bound[149].

51. Looking at the terms in which the Court has described a customary rule in other cases may be a convenient shortcut to its identification, but it can never, we submit, be its source[150]. That is particularly important when a customary principle described in previous cases in broad terms is later said to cover quite different circumstances. This is not just a question of the application of a broadly articulated rule to a specific type of environmental harm[151]. It is, we submit, about the content of the rule.

52. My *second* of three points is that the Court would need to be satisfied that State practice and *opinio juris* supported any rule of custom said to cover the problem. One indication, we submit, that there is no such rule, is that the States that now say that there *is* a rule *also* say that a significant number of other States are in long-standing breach of that rule[152]. The States said to be in breach include those said to be most constrained by the putative rule. This calls into question whether there can be sufficient State practice to support such a rule in the first place.

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[149] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports*, p. 13 ("*Continental Shelf (Libya/Malta)*"), para. 27; *Nuclear Weapons*, para. 64.

[150] *Costa Rica* v. *Nicaragua*, sep. op. Donoghue, para. 19; International Law Commission ("ILC"), "Draft Conclusions on Identification of Customary International Law, with Commentaries" (2018) UN doc. A/73/10 ("ILC Customary International Law Conclusions"), p. 149 (Conclusion 13 (1) and Commentary, para. 2); ILC, "Third Report on Identification of Customary International Law, by Sir Michael Wood, Special Rapporteur" (2015) UN doc. A/CN.4/682, para. 60.

[151] *Contra* oral submissions of Antigua and Barbuda, CR 2024/36, p. 20, para. 16 (Phillips); Belize, CR 2024/37, p. 10, para. 4 (Wordsworth); Nauru, CR 2024/46, pp. 14-15, paras. 2-4 (Bjorge).

[152] See e.g. oral submissions of the African Union, CR 2024/44, p. 70, para. 27 (Mbengue); Antigua and Barbuda, CR 2024/36, p. 20, para. 17 (Phillips); Barbados, CR 2024/36, p. 86, para. 20 (Volterra); Colombia, CR 2024/38, p. 47, para. 28 (Olarte Bácares); Egypt, CR 2024/39, pp. 61-62, paras. 23-25, p. 65, paras. 35-36 (Aboulmagd); Kiribati, CR 2024/43, p. 47, para. 21 (Benvenisti); Vanuatu and Melanesian Spearhead Group, CR 2024/35, pp. 96-98, paras. 3-5 (Regenvanu), pp. 99-100, paras. 2-5 (Loughman), pp. 109-110, paras. 9-11 (Viñuales). See also, oral submissions of Burkina Faso, CR 2024/37, pp. 46-47, para. 12 (Hébié). And see Written Statements of the African Union, paras. 227-232, 296-297; Albania, para. 144; Burkina Faso, paras. 251-261, 273-336; Commission of Small Island States on Climate Change and International Law ("COSIS"), paras. 95, 149; Dominican Republic, para. 5.1 (ii) *(b)*; DRC, paras. 124, 173, 271-277, 302, 313; Egypt, paras. 297-328; Kiribati, paras. 174-176, 206 (2)-(3); MSG, paras. 298-300, 340; OACPS, paras. 104, 143-157; Saint Lucia, paras. 88-90; Vanuatu, paras. 1, 4, 6 *(a)*, 20, 131, 137, 152-153, 162-170, 192-193, 484 *(a)*, 509-510, 512; Written Comments of the African Union, paras. 34-36; Colombia, paras. 4.1-4.9, 5.5-5.6; Cook Islands, paras. 81-85, 105-106; COSIS, para. 54; DRC, paras. 39, 50-53; Egypt, paras. 88-114, 123-126; MSG, paras. 193-200, 203, 234-235, 243-244; OACPS, paras. 5, 85-96; Saint Lucia, paras. 31-37, 44 (ii), 44 (iv); Saint Vincent and the Grenadines, paras. 14-15, 48-49; Vanuatu, paras. 110, 165-166. See also Written Statements of Namibia, paras. 128, 133-134; Philippines, para. 50; Written Comments of Dominican Republic, para. 6.1 (ii) *(b)*; Kiribati, paras. 62, 64-65.

53. Customary international law, we submit, must reflect the settled practice of States considering themselves to be under an obligation. If breach of the postulated rule is effectively the norm, particularly for the States said to be most constrained by it, then it cannot, we submit, by definition be a customary rule[153].

54. The *third* and *final* point is to observe that no State has referred to any instance of any State in the course of its ordinary inter-State relations over time invoking another State's responsibility for breach of the prevention principle on the basis of greenhouse gas emissions[154]. If there were settled practice, if there was *opinio juris* establishing an applicable customary rule, that is certainly something, we would observe, that the Court would have expected to see.

55. And so, for all those reasons, our primary submission is the prevention principle under customary international law simply does not cover greenhouse gas emissions[155].

56. But we also, for the consideration of the Court, advance an *alternative, secondary position*, namely that if the customary prevention principle *does* cover such emissions, its content *does not* require more than the substantive provisions of the Climate Change and Complementary Treaties in respect of the mitigation of emissions to which those treaties apply.

57. So, our secondary stance would mean accepting that the customary principle recognized in *Pulp Mills* would be sufficiently broad to cover the effects of anthropogenic greenhouse gas emissions, but that the specific manifestation of that principle would come from State practice and *opinio juris* reflected in the terms of the treaties.

58. The Court has seen that reflected in submissions made last week about what the prevention principle would require if it applied to greenhouse gas emissions[156]. Everything that it is said to require is provided for in the Paris Agreement.

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[153] See ILC Customary International Law Conclusions, pp. 135-137 (Conclusion 8 (1) and Commentary, para. 4); *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 3, paras. 73-74; *Nuclear Weapons*, para. 73. Compare *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14 ("*Nicaragua*"), para. 186.

[154] Compare *Nicaragua*, para. 186.

[155] See also oral submissions of Australia, CR 2024/36, pp. 42-44, paras. 8-14 (Donaghue).

[156] See e.g. oral submissions of the African Union, CR 2024/44, pp. 68-69, para. 21 (Mbengue); Bahamas, CR 2024/36, pp. 61-62, paras. 14-16, 18 (Blake); Belize, CR 2024/37, p. 10, para. 4 (Wordsworth), pp. 17-19, paras. 26-36 (Sander); Bolivia, CR 2024/37, p. 24, para. 23 (Calzadilla Sarmiento); Latvia, CR 2024/44, pp. 17-18, paras. 19-21 (Paparinskis); Malawi, CR 2024/44, pp. 40-41, paras. 11-13 (Pasipanodya); Maldives, CR 2024/44, pp. 51-52, paras. 3-5 (Hart).

59. The prevention principle is an obligation of conduct that involves a standard of due diligence[157]. That is, we submit, precisely what is contained within the Climate Change Treaties[158].

(a) The Paris Agreement requires each State to pursue its "highest possible ambition" for this to progress over time, and for it to be informed by the best available scientific evidence.

(b) The principle also requires co-operation and fulfilment of related procedural duties[159]. That co-operation is manifested in, and facilitated by, the Climate Change Treaties[160].

(c) Those treaties also require States to have regard to international rules and standards[161]. Those are found in the treaties to which I have referred.

60. Members of the Court, States do not have, we submit, practice and *opinio juris* on the prevention of harm to the climate system through greenhouse gas emissions that is parallel to but different from the content of those treaties. States recalled the prevention principle in the preamble to the Framework Convention[162], and then in that Convention and now in the Paris Agreement they gave the due diligence standard specific and stringent content appropriate for the nature and severity of the challenge presented by climate change.

61. The treaty régimes would be the embodiment, we submit, of the relevant State practice and *opinio juris*[163]. Reciprocally, any applicable customary rule would be an aid to interpretation of the

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[157] *Pulp Mills*, para. 197. See also UK Written Comments, para. 35.1.

[158] See e.g. oral submissions of Australia, CR 2024/36, p. 44, para. 15 (Donaghue); Bahamas, CR 2024/36, pp. 62-63, paras. 18-26 (Blake); Côte d'Ivoire, CR 2024/39, p. 23, para. 4 (Sarvarian); Nordic countries, CR 2024/39, p. 50, para. 31 (Jervell), p. 52, para. 12, p. 55, para. 36 (Pasternak Jørgensen); United Arab Emirates, CR 2024/40, pp. 9-11, paras. 10-20 (Balalaa). Compare also oral submissions of Sierra Leone, CR 2024/41, pp. 21-22, paras. 9-13 (Jalloh).

[159] *Pulp Mills*, paras. 102, 113; *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II)*, p. 614, para. 101; and see ITLOS Advisory Opinion (Case No. 31), paras. 296-299.

[160] See e.g. Paris Agreement (UN Dossier No. 16), preamble para. 14, Arts. 4 (5), 4 (8)-(13), 4 (15), 5 (2), 6, 7 (6)-(7), 7(13), 8-16. See also UK Written Statement, paras. 4.3, 4.7, 15-21, 64-76, 79-82, 145-163; oral submissions of Brazil, CR 2024/37, p. 37, paras. 13-14 (Bandeira Galindo); Ecuador, CR 2024/40, pp. 27-29, paras. 3, 5-8 (Sender); Guatemala, CR 2024/41, p. 62, paras. 44-45 (Rodríguez Pineda); Maldives, CR 2024/44, pp. 47-49. paras. 3-9, 12-13 (Wells), p. 53, para. 9 (Hart); Sierra Leone, CR 2024/41, pp. 25-26, paras. 25-26 (Jalloh); Spain, CR 2024/40, pp. 36-37, paras. 7-11 (Ripol Carulla); United Arab Emirates, CR 2024/40, pp. 14-16, paras. 37-47 (Balalaa); Written Comments of the EU, paras. 54-68.

[161] See *Pulp Mills*, para. 197; compare ITLOS Advisory Opinion (Case No. 31), paras. 207, 214, 239.

[162] UNFCCC (UN Dossier No. 4), preamble para. 8.

[163] See ILC Customary International Law Conclusions, pp. 133 (Conclusion 6 (2) and Commentary, para. 5), 140-141 (Conclusion 10 (2) and Commentary, para. 6); ILC, "Second Report on Identification of Customary International Law, by Sir Michael Wood, Special Rapporteur" (2014) UN doc. A/CN.4/672, paras. 41 *(h)*, 76 *(f)*. See e.g. *Nottebohm (Liechtenstein* v. *Guatemala), (Second Phase), Judgment, I.C.J. Reports 1955*, p. 4, pp. 22-23; *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 3, para. 58; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 18, para. 109; *Continental Shelf (Libya/Malta)*, paras. 44, 65; *Jurisdictional*

treaty régimes[164].

62. Now, of course it is possible for custom and treaty law to exist in parallel on the same or overlapping subject-matter[165], but where the treaty régimes are so recent, have virtually universal membership and have highly specific content that includes mechanisms for co-operation and for development and for amendment over time[166], it would be very difficult indeed, we submit, to demonstrate that any parallel customary rule has a different content.

63. This is not a point about compliance by any given State on any given facts[167]. We accept that could only be determined on the basis of the given facts, and clearly that is not an exercise before you. This is a point about the content of the prevention principle and the intensity of the due diligence standards associated with it. The point is that even if they apply in customary form to greenhouse gas emissions, their content is as reflected in the terms of the Paris Agreement.

V. CONCLUSION

64. Mr President, Members of the Court, in conclusion: this Court is rightly being asked to make its contribution to addressing the existential problem of climate change. That contribution, we respectfully submit, is to declare and explain what the law already is.

65. The answers to the questions before the Court lie in the Climate Change and Complementary Treaties; they provide a robust, dynamic and progressive legal framework that is capable of evolution. It is through good-faith interpretation of and compliance with those existing, meaningful obligations that States must continue to pursue the structured co-operation that is so essential.

66. I thank the Court for its attention. Those are the submissions of the United Kingdom.

Immunities of the State (Germany v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 99, para. 89.

[164] UK Written Comments, paras. 35.3, 59.3.

[165] *Nicaragua*, paras. 174-175, 177-179.

[166] UNFCCC (UN Dossier No. 4), Arts. 2, 4 (2) *(d)-(g)*, 7 (2), 15, 16 (4), 17; Paris Agreement (UN Dossier No. 16), Arts. 4 (3), 4 (8)-(11), 13, 14. See also oral submissions of Australia, CR 2024/36, pp. 40-41, paras. 2-4 (Donaghue); Nordic countries, CR 2024/39, p. 47, paras. 12-14 (Jervell).

[167] Cf. oral submissions of Belize, CR 2024/37, p. 11, para. 7 (Wordsworth); Pakistan, CR 2024/46, p. 60, para. 18 (Awan).

The PRESIDENT: I thank the representative of the United Kingdom for his presentation. I now invite the next participating delegation, Saint Lucia, to address the Court and I call upon Mr Desmond Simon to take the floor.

Mr SIMON:

I. INTRODUCTION

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

2. Mr President, it is my distinct privilege to introduce the members of the delegation of Saint Lucia, who will present Saint Lucia's case in the order in which they will address the Court:

— Dr Jan Yves Remy will provide general framing for the submission and address the impacts of climate change on Saint Lucia.

— Ms Kate Wilson will discuss the relevant legal obligations in response to question *(a)* of the Request.

— In conclusion, Ms Rochelle John-Charles will address the legal consequences applicable under question *(b)* of the Request.

3. Mr President, I kindly ask that you invite Dr Jan Ives Remy to address this honourable Court.

The PRESIDENT: I thank Mr Desmond Simon. I now give the floor to Ms Jan Yves Remy.

Ms REMY:

II. FRAMING AND IMPACTS OF CLIMATE CHANGE ON SAINT LUCIA

1. Mr President, honourable Members of the Court, the child in this painting is Helen. She is not an "abstract person"[168], as one delegate in these hearings would have you believe. She, and the impact of climate change, are very real. She is the daughter of another Helen — Saint Lucia — the only country in the world named after a woman, called the "the Helen of the West" on account of her natural beauty. That beauty caused Britain and France to fight over her 14 times. She gained her independence from Britain only in 1979.

[168] CR 2024/35, p. 151, para. 26 (Germany, Zimmermann).

2. Helen, the child, and Helen, the nation, share an intricate bond with the sea: the sea carried our ancestors to our shores, and as our Nobel Laureate Derek Walcott wrote in his poem, "The Sea is History", it is that sea that holds our "tribal memory" "locked" in its "grey vault".

3. Today, that sea rises, ever warmer, with an unforgiving tide threatening a dark future that neither Helen has had a hand in writing.

4. It is in her name, and the name of all Saint Lucians, that I appear before this Court, for the first time ever, seeking answers. We ask you to be clear and unequivocal in the decision you render, because like the ribbons that run through Helen's petticoat, our destiny is interwoven in the larger fabric of mankind's.

5. Honourable President and Members of the Court, we all know the cause of climate change: the International Tribunal on the Law of the Sea (ITLOS), which recognized the Intergovernmental Panel on Climate Change (IPCC) as the leading authority on climate change reflecting a global scientific consensus, made key factual findings in its advisory opinion: the devastating impacts of rising sea levels on small island developing States (SIDS) are disproportionate[169], and there is a "high risk of a much worse outcome if temperature increases exceed 1.5°C above pre-industrial levels"[170].

6. Saint Lucia, along with other Caribbean States, submitted in its written statement a report compiled by Caribbean IPCC scientists, drawn from the findings of the Sixth Assessment Report[171]. That report is of particular relevance to small island States and it warns that, on current trends, warming will exceed 1.5°C this century. At that temperature, there will be irreversible loss of coral reefs and biodiversity; our livelihoods based on tourism and fisheries will be destroyed; and some of our islands will be submerged, causing displacement of our people. Severe water shortages and droughts will threaten agricultural production and yield and, in turn, our fragile food systems.

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[169] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 122.

[170] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 209.

[171] Attached as Annex I of Saint Lucia's Written Statement: The Science of Climate Change and the Caribbean: Findings from the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Cycle (AR6) by Dr Adelle Thomas, Professor Michelle Mycoo and Professor Michael Taylor (5 March 2024).

7. These predictions of Armageddon are not "abstract risks"[172]. They are happening. Saint Lucians live with a ticking clock at the start of every single hurricane season, which, as you have seen in these proceedings from our sister islands, causes cataclysmic devastation. Our fisherfolk complain already of dwindling catches; many of our pristine beaches, including the one my father grew up on in his village of Laborie, have been replaced by barren rocks. You heard from the Dominican Republic about the sargassum seaweed that is increasingly washing on our shores. Our governments struggle with the cycles of debt, compounded by these unrelenting climatic disasters that some estimates say will cost up to 24.5 per cent of gross domestic product (GDP)[173]. Between 2016 and 2020, SIDS paid in debt service *18 times more* than we received in climate finance[174]. Our "at risk" groups like women, the children like Helen, young men, rural communities, indigenous groups, the elderly, the disabled, they suffer the most under the strain of that debt.

8. These lived realities have not prevented our Saint Lucians from playing our part — from our artists as you saw, our poets, our musicians to our Government. We have signed up to all the climate agreements and we were members of COSIS, the entity that brought and sought clarification before ITLOS.

9. Mr President and Members of the Court, greenhouse gas emissions, tracked since 1850, demonstrate that SIDS contribute only 0.5 per cent of historical cumulative emissions; Saint Lucia itself contributed 0.0009 per cent in 2018[175]. But we still play our part because we understand the duty we have to our children and to the global community.

10. By contrast, major emitters that have contributed — and continue to contribute — most to greenhouse gas emissions ignore the science, seek to evade their responsibilities and reduce the scope of their international obligations. They tout their current domestic efforts at mitigation, but in these proceedings, they deny their significant historical cumulative emissions — the very conduct that this

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[172] CR 2024/35, p. 151, para. 26 (Germany, Zimmermann).

[173] Bueno, R., Herzfeld, C., Stanton, E.A., & Ackerman, F. (2008). *The Caribbean and Climate Change: The Costs of Inaction.* Stockholm Environment Institute — US Center and Global Development and Environment Institute, Tufts University (cited in Saint Lucia's National Adaptation Plan: 2018-2028)

[174] Making Climate Finance Work for SIDS: Building on the Outcomes of UNFCCC COP28 Background Note 1 for the Interactive Dialogue 3, 4th International Conference on Small Island Developing States "Charting the Course Toward Resilient Prosperity" (available at: https://sdgs.un.org/sites/default/files/2024-05/ID%203%20Clean%20rev_0.pdf); last visited 8 December 2024.

175 See Saint Lucia's First Biennial Update Report (2021) last visited on 8 December 2024.

Court must address. They hide behind the purported voluntary nature of nationally determined contributions (NDCs) under the Paris Agreement. But, as you will hear from my colleagues, that agreement only entered into force in 2016. The conduct responsible for climate change was regulated by customary international law and treaty law well before 2016, indeed before 1994, when the UNFCCC entered into force. That conduct, responsible for climate change and its adverse effects, constitutes a composite act amounting to breach under Article 15 of the Articles of State Responsibility and there is ample evidence before this Court to identify which States, acting individually or collectively, displayed this conduct.

11. Saint Lucia does not need to descend into a "who is to blame" game: what is clear is that none of the SIDS has displayed the unlawful conduct, a fact that enjoys unanimous support in these proceedings. As Saint Lucia has detailed in its written submissions, there are important legal consequences that flow from that fact: consistent with the principles of equity and CBDR-RC, a special set of heightened legal obligations on developed and major emitting States are due to SIDS under climate treaties and customary international law[176]. Under the former, we heard that there are obligations on finance, loss and damage, mitigation, technological and technical assistance, and under the latter, stringent standards of due diligence apply as the ITLOS decision confirms[177].

12. Thank you, Mr President and this honourable Court. I now respectfully request that you allow my colleague, Ms Kate Wilson, to address the Court on the first question of legal obligations. I thank you.

The PRESIDENT: I thank Ms Jan Yves Remy. I now give the floor to Ms Kate Wilson.

Ms WILSON:

III. QUESTION *(A)* REGARDING THE LEGAL OBLIGATIONS

1. Mr President, Members of this honourable Court, you have heard the scientific evidence, which is indisputable. You have heard the impacts on my country, which are devastating! So, as

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[176] For more, see Saint Lucia's Written Statement, paras. 58-66 and Annex II.

[177] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 243.

I address you on the legal obligations, I urge this Court to remember Helen, the child, my island, that has contributed little to the effects of climate change, yet finds herself submerged in this colossal and impossible crisis, bearing the brunt of disproportionate impacts, while the major emitters continue to shirk their responsibilities, for the harms that they have caused, to my dear Helen.

2. These countries seek to deny responsibility through variations of a central argument: they contend that the régime of climate treaties — particularly the UNFCCC, the Paris Agreement, "complementary treaties" — and UNCLOS, which apply to anthropogenic GHG gases, represent the primary or sole applicable law to which this Court should refer. According to these States, human rights law, and even customary international law, do not contain existing or current obligations which ensure the protection of the climate system from GHG emissions and therefore should not form part of this answer to the question before this Court[178].

3. These arguments, Mr President, are misguided and should be rejected by this honourable Court. Let me tell you, respectfully, why.

4. First, the text of the question provides no support for these claims. Notably, the question does not refer to "existing" or "current" obligations, nor does it limit the Court's inquiry into obligations to protect only "the climate system". Rather, the specific focus of the question includes obligations including "other parts of the environment", as they relate to "States" and to "present and future generations". Further, Mr President, the *chapeau* explicitly invites the Court to consider diverse sources of law — not merely climate treaties or complementary agreements — and in so doing, it encourages a holistic approach to the entire corpus of international law which applies to the relevant conduct of States.

5. Secondly, Mr President, the posture adopted by these major emitters is contradicted not only by resolution 77/276, but also by the provisions of those very climate treaties that these States invoke. The UNFCCC and the Paris Agreement confirm that other rules, including customary international law, were not disengaged by their adoption. For instance, the preamble of the UNFCCC refers to the declaration of the Stockholm Conference on the Human Environment, which codified the principle of prevention, and then reproduces the very content of this principle[179], as was later recognized by

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[178] See United Kingdom's Written Comments, para. 11.

[179] UNFCCC, preambular paragraphs 7 and 8.

this very Court in its Advisory Opinion on the *Legality of Nuclear Weapons*[180]. The preamble of the Paris Agreement also expressly reserves the application of human rights[181].

6. Mr President, thirdly, accepting the arguments of major emitters would lead to dangerous consequences. It would mean that harm caused by their conduct, in full knowledge of its implications since the 1960s[182], before the entry into force of climate treaties — in 1994, 2005 and 2016, respectively — were entirely unregulated and could not be accounted for. This cannot be legally correct. In rejecting similar arguments about the exclusivity of the Paris Agreement, ITLOS dispelled any notion of displacement, confirming that obligations under UNCLOS remain applicable as governing law[183]. The Paris Agreement, in that instance, served as an interpretive tool, not a substitute. Similarly, other sources of law must inform the Court's task of determining relevant obligations.

7. Fourthly, as Saint Lucia has detailed in its written submissions[184], the principle of prevention of significant harm to the environment and, more generally, the duty of due diligence applied to the conduct responsible for climate change well before the climate treaties entered into force, and has continued to apply since then. These principles are firmly rooted in customary international law.

8. The Court itself recognized in the *Legality of Nuclear Weapons*:

> "The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."[185]

9. Some States argue that the obligation to prevent harm applies only in bilateral or contiguous contexts. Mr President, Members of this Court, this is a formalistic view that contradicts the very essence of the due diligence principle which is inherently linked to the prevention of harm. It requires

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[180] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 241, para. 29.

[181] Paris Agreement, preambular paragraph 11.

[182] CR 2024/36, pp. 87-89 (Barbados); CR 2024/37, pp. 40-41 (Burkina Faso); Written Statement of Vanuatu, paras. 177-192; Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (29 January 2024).

[183] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), ITLOS Case No. 31, Advisory Opinion (21 May 2024), paras. 223-224.

[184] Saint Lucia Written Statement, paras. 66-68; Saint Lucia Written Comments, para. 34.

[185] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 241-242, para. 29.

States to adopt measures to prevent activities not only within their jurisdiction and control which cause significant transboundary harm but also including areas beyond national jurisdiction, including the global commons.

10. While the specific measures may vary, the due diligence standard is stringent[186]. It must be assessed based on the severity and likelihood of harm, the passage of time and the economic capacity of States[187]. Moreover, the due diligence requires States to use "all the means at [their] disposal"[188] to prevent significant environmental damage.

11. While some of those same major emitting States accept due diligence as an obligation of conduct under the Paris Agreement — such as preparing, communicating and maintaining NDCs — they seek to limit its impact. They argue that it supersedes other obligations while implying that it grants a safe harbour to polluters to set, in their discretion, the lowest levels of mitigation ambition. This is misleading. Even if we accept, say for argument's sake, that the Paris Agreement would allow for full discretion in setting mitigation standards, that would be no excuse to fall short of the due diligence which is required under customary international law, or under the obligations which are codified in Part XII of UNCLOS, or of the respect of human rights, or even to breach a peremptory norm, such as the right to self-determination.

12. Mr President, given the importance of the sea to Saint Lucia and our membership of COSIS, let me reiterate a couple of findings by ITLOS: first and foremost that the marine environment is part of the climate system[189]; GHG gases constitute pollution of the marine environment[190]; and that several articles in Part XII of UNCLOS[191] govern GHG gases[192]. These

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[186] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 243.

[187] See International Legal Expert Group on Trade-Related Climate Measures and Policies. (2023), p. 19 and footnote 51 (referring to see e.g. International Law Committee (ILC) Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (2001), Commentary to Article 3.11.

[188] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 56, para. 101.

[189] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 55.

[190] *Ibid.*, paras. 179, 441.

[191] See in particular UNCLOS, Articles 192, 193, 194, 207, 211 and 212.

[192] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal), ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 441.

provisions codify general international law principles and require developed States to assist vulnerable States like Saint Lucia in adapting to climate change.

13. Saint Lucia urges this Court, this honourable Court, to apply and extend these findings from ITLOS as it would reinforce the cohesion of international law and send a clear signal about the direction of global jurisprudence on the issue of legal obligations as it pertains to climate change. This Court should make it clear that there is nothing in the principle of systemic integration or of harmonious interpretation which prevents obligations from applying autonomously and subjecting actions to its specific requirements, as was expressed by ITLOS in the context of climate change[193] and this very Court's jurisprudence in its decision in *Nicaragua* v. *United States*[194].

14. Mr President, Members of this honourable Court, this Court should reject attempts to exclude human rights from its consideration. The preamble of the Paris Agreement provides that when taking action to address climate change, parties must respect, promote and consider their respective obligations on human rights, the rights of indigenous persons and local communities, the rights of women and children, and intergenerational equity[195].

15. The wonderful thing about this Court is that it is a Court of general jurisprudence and as a result it can draw on the work of tribunals and other courts. For example, the ruling of the European Court of Human Rights in *Osmun* v. *United Kingdom*[196], which upheld the State's responsibility to protect the right to a clean, healthy and sustainable environment, included the responsibility to protect persons and communities from environmentally harmful interference. Intergenerational justice — it shows that protecting the environment for present and future generations — provides that this right is justiciable for injuries derived from environmental degradation. The Stockholm Declaration and the Inter-American Court of Human Rights in *Future Generations* v. *Ministry of the Environment and others*[197] confirm the importance of that right. Finally Mr President, Members of this honourable Court, the Escazu Agreement, the first agreement in the world with protections for human rights

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[193] *Ibid.*, para. 223.

[194] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment. I.C.J. Reports 1986*, p. 14, para. 175.

[195] Paris Agreement, preamble, paragraph 11.

196 *Osman* v. *United Kingdom*, European Court of Human Rights (ECtHR) 1998-VIII 3124.

[197] *Future Generations* v. *Ministry of the Environment and Others*, Supreme Court of Justice of Colombia, Judgment STC4360-2018 (5 Apr. 2018).

defenders in environmental matters, and with wide-ranging implications for environmental access rights, it should form part of the global corpus, the general body of international human rights law that this Court should consider when you are adopting a holistic approach to clarifying those legal obligations, which Helen, the child, my island, so desperately deserves.

16. I thank you, Mr President, and I seek your permission to invite Ms Rochelle John-Charles, to address you on the question of legal consequences.

The PRESIDENT: I thank Ms Kate Wilson. I now give the floor to Ms Rochelle John-Charles.

Ms JOHN-CHARLES:

IV. QUESTION *(B)* REGARDING THE LEGAL CONSEQUENCES

Legal consequences of breach

1. Mr President, honourable Members of the Court, Helen's fate demands that remedial consequences flow from the breach of obligations by those who have caused the significant harm that small island developing States have faced, continue to face and are on target to face in the future. Indeed, international law dictates that where legal obligations are breached, consequences must follow.

2. The underlying conduct by responsible States involves a series of acts and omissions over time — a composite act amounting to breach of their legal obligations within the meaning of Article 15 of the Articles on State Responsibility whereby responsible States have caused, individually and collectively, significant harm to the climate system as a part of the environment.

3. This provision removes the need to establish the illegality of every single act and/or omission in the series, as long as the series itself, taken together, amounts to a breach of an international legal obligation. Each main contributor to climate change has individually displayed the composite conduct that breaches international law. The respective responsibility of each of them is addressed in Article 47 of the Articles on State Responsibility, which was expressly referred to by

the Grand Chamber of the European Court of Human Rights in its recent decision in *KlimaSeniorinnen* v. *Switzerland*[198].

4. Many of the world's top emitters argue that there is no need to engage the secondary rules of international law as contained in the Articles on State Responsibility. They claim that the climate treaties are self-contained régimes that provide all necessary remedies[199]. Mr President, this is simply inaccurate. As far back as 1997, in the case concerning the *Gabčíkovo-Nagymaros Project*, this very Court confirmed the enforceability of the Articles on State Responsibility in environmental cases[200].

5. Even if it were true that only the climate treaties contain all the relevant remedies, Saint Lucia submits that the major emitting States have conspicuously failed to meet their legal obligations under these treaties, particularly as regards mitigation action and the provision of financial support to small island developing States. The Loss and Damage Fund, the principle of which was adopted at COP27, has confirmed that the obligation to provide finance in Article 9 of the Paris Agreement also applies to loss and damage. Yet, this Fund remains an empty promise.

6. The breach of any primary rule of obligation, including all those mentioned in our submission, triggers the legal consequences described by the rules governing the responsibility of States for internationally wrongful acts.

7. A fundamental consequence for States that have caused significant harm to the climate system is the obligation to cease the wrongful act. This means taking immediate steps to drastically reduce emissions of greenhouse gases from their territory as well as discontinuing fossil fuel subsidies, which reached an all-time high of US$7 trillion in 2022[201]. Although some may argue that such steps are unrealistic, the first step amounts essentially to require fossil fuel producers to face the markets without undue aid. The very distortion generated by fossil fuel subsidies is a major

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[198] *Verein KlimaSeniorinnen Schweiz and others* v. *Switzerland*, European Court of Human Rights (ECtHR) Application No. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 442-443.

[199] See Written Statement of Japan, para. 11; Written Statement of Kuwait, para. 3; Written Statement of OPEC, para. 17 and 64ff; Written Statement of Saudi Arabia, paras. 1.9, 1.15; Written Statement of South Africa, paras. 14-15; Written Statement of the United States of America, paras. 3.1-3.4. 4.1; Written Statement of Australia, paras. 2.61-2.62; Written Statement of Brazil, para. 10; Written Statement of China, paras. 92, 131; Written Statement of Denmark, Finland, Iceland, Norway and Sweden, paras. 61, 63, 74, 95; Written Statement of France, paras. 11-13; Written Statement of Germany, paras. 37, 42, 118 *(a)*; Written Statement of Iran, paras. 31-32; Written Statement of Korea, paras. 17, 27, 37, 51; Written Statement of New Zealand, paras. 21, 30, 80-86; Written Statement of the United Arab Emirates, paras. 17-18; Written Statement of Timor-Leste, paras. 83-93.

[200] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7.

[201] S. Black and others, IMF Fossil Fuel Subsidies Data: 2023 Update (August 2023) IMF Working Paper, WP/23/169, p. 3.

obstacle for the development of low-carbon or carbon-free technologies. States should co-operate and actively pursue action in other multilateral fora, including the World Trade Organization, where ongoing discussions on fossil fuel subsidies and green trade policies are critical to global mitigation efforts.

8. Guarantees of non-repetition must also be provided[202].

9. Mr President, while cessation and guarantees of non-repetition are fundamental, the legal consequences do not end there. They are, by themselves, insufficient to remedy the harm to the climate system which has already occurred and the injuries to States and people already sustained. The Court is urged to recognize that reparations — in terms of restitution, compensation and satisfaction — are also due[203].

10. Firstly, restitution in the context of climate change may seem impossible to achieve completely, but its pursuit to the greatest possible extent is critical to Helen's recovery. In that regard, efforts to restore damaged ecosystems such as coral reefs and mangroves are essential. Restitution should also include financial and significant technological assistance by responsible States to support transformative adaptation and mitigation measures in small island developing States.

11. Secondly, where restitution is not adequate or possible, compensation is required to address the material damage caused by the breach. Compensation should cover any financially assessable damage[204], including loss of income, agricultural productivity, infrastructure damage, as well as the cost of human mobility including displacement and migration. Saint Lucia submits that any suggestion that it is too difficult to quantify such losses is simply an overstatement. Initiatives like the Bridgetown Agenda[205] that has emanated from the Caribbean region which calls for debt relief, equitable financing for climate adaptation and an overall reshaping of climate finance, align with the broader goal of climate justice. Saint Lucia wishes to submit that the Loss and Damage Fund is

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[202] 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, Art. 30.

[203] *Ibid.*, Arts. 34-37.

[204] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the ILC*, 2001, Vol. II, Part Two; *Report of the Commission to the General Assembly on the Work of its Fifty-Third Session*, UN doc. A/CN.4/SER.A/2001/Add.1 (Part 2), Art. 36.

[205] See Bridgetown Initiative 3.0, available at: https://www.bridgetown-initiative.org/bridgetown-initiative-3-0/.

complementary to, and not a substitute for, any compensation obligations arising from internationally wrongful acts.

12. Thirdly, satisfaction for Saint Lucia means a formal acknowledgment of wrongdoing by responsible States, which would serve to restore some dignity and demonstrate genuine accountability. Satisfaction offers a unique opportunity to address the moral, historical and structural dimensions of the climate crisis and plays a vital role in fostering understanding and laying the groundwork for more equitable global climate co-operation.

13. Mr President, Members of this honourable Court, to conclude, I return once more to Helen, daughter of Saint Lucia. She is not just a symbol of resilience but a reminder of what is at stake and to whom we, as responsible trustees, owe to those who come next. Helen's history is bound to the sea, but her future depends on human action. Saint Lucia therefore asks this Court to clarify for her and for all of us the obligations owed to States and the consequences for those who breach them. Without accountability the sea will rise higher, eroding and erasing lives and histories — Helen's history. The tide of inaction must be turned. This Court is asked to provide the clarity and justice our Helens so desperately need. I thank the Court for its attention. These are the extent of Saint Lucia's submissions.

The PRESIDENT: I thank the representatives of Saint Lucia for their presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow at 10 a.m., in order for Saint Vincent and the Grenadines, Samoa, Senegal, the Seychelles and The Gambia to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 5.50 p.m.