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YEAR 2024

Public sitting

held on Friday 13 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 vendredi 13 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
 Yusuf
 Xue
 Bhandari
 Iwasawa
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Aurescu
 Tladi

 Registrar Gautier

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

M. Gautier, greffier

The World Health Organization is represented by:

Mr Tedros Adhanom Ghebreyesus, Director-General,

Ms Maria Neira, Director, Environment, Climate Change and Health,

Mr Derek Walton, Legal Counsel,

Mr Steven Solomon, Principal Legal Officer,

Mr Kenneth Piercy, Senior Legal Officer,

Ms Holly Moore, Senior Legal Officer,

Ms Elena Villalobos-Prats, Technical Officer, Climate Change and Health,

Ms Marina Maiero, Technical Officer, Climate Change and Health,

Ms Catherine Amirfar, Debevoise & Plimpton LLP, member of the Bars of the Supreme Court of the United States of America and the State of New York,

Ms Natalie Reid, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Ms Beatrice A. Walton, member of the Bar of the State of New York,

Ms. Aleksandra Kuzmanovic, Social Media Officer.

The European Union is represented by:

Mr André Bouquet, Legal Adviser, member of the Legal Service of the European Commission,

Ms Margherita Bruti Liberati, member of the Legal Service of the European Commission,

Mr Bernhard Hofstötter, member of the Legal Service of the European Commission,

Ms Josephine Norris, member of the Legal Service of the European Commission,

Ms Klára Talabér-Ritz, member of the Legal Service of the European Commission,

Ms Caroline Richelle, Head, Political Reporting, Representation of the European Commission in the Netherlands,

Mr Enrico Macciotta, trainee to the Principal Adviser on the International Aspects of the European Union's Climate Policy, Directorate-General for Climate Action,

Ms Ana Rita Cunha, trainee, RELEX Team, Legal Service of the European Commission.

L'Organisation mondiale de la Santé est représentée par :

M. Tedros Adhanom Ghebreyesus, directeur général,

M^{me} Maria Neira, directrice, environnement, changements climatiques et santé,

M. Derek Walton, conseiller juridique,

M. Steven Solomon, juriste principal,

M. Kenneth Piercy, juriste hors classe,

M^{me} Holly Moore, juriste hors classe,

M^{me} Elena Villalobos-Prats, technicienne, changements climatiques et santé,

M^{me} Marina Maiero, technicienne, changements climatiques et santé,

M^{me} Catherine Amirfar, cabinet Debevoise & Plimpton LLP, membre des barreaux de la Cour suprême des États-Unis d'Amérique et de l'État de New York,

M^{me} Natalie Reid, cabinet Debevoise & Plimpton LLP, membre du barreau de l'État de New York,

M^{me} Beatrice A. Walton, membre du barreau de l'État de New York,

M^{me} Aleksandra Kuzmanovic, chargée des réseaux sociaux.

L'Union européenne est représentée par :

M. André Bouquet, conseiller juridique, membre du service juridique de la Commission européenne,

M^{me} Margherita Bruti Liberati, membre du service juridique de la Commission européenne,

M. Bernhard Hofstötter, membre du service juridique de la Commission européenne,

M^{me} Josephine Norris, membre du service juridique de la Commission européenne,

M^{me} Klára Talabér-Ritz, membre du service juridique de la Commission européenne,

M^{me} Caroline Richelle, cheffe d'équipe, rapporteuse politique, représentation de la Commission européenne aux Pays-Bas,

M. Enrico Macciotta, stagiaire auprès du conseiller principal sur les aspects internationaux de la politique européenne sur le changement climatique, direction générale de l'action pour le climat,

M^{me} Ana Rita Cunha, stagiaire au sein de l'équipe RELEX, service juridique de la Commission européenne.

The International Union for Conservation of Nature is represented by:

Ms Grethel Aguilar, Director General,

Ms Christina Voigt, Professor of Law, University of Oslo, Department of Public and International Law, Chair of the International Union for Conservation of Nature World Commission on Environmental Law,

Mr Francesco Sindico, Professor of International Law, University of Strathclyde, Co-Chair of the International Union for Conservation of Nature World Commission on Environmental Law Climate Change Law Specialist Group,

Mr Edgardo Sobenes, Consultant in International Law, ESILA BV, Advanced LLM, Leiden University, Master, Superior Institute of Law and Economics and the University of Barcelona.

L'Union internationale pour la conservation de la nature est représentée par :

M^{me} Grethel Aguilar, directrice générale,

M^{me} Christina Voigt, professeur de droit à l'Université d'Oslo, département de droit public et international, présidente de la Commission mondiale du droit de l'environnement de l'Union internationale pour la conservation de la nature,

M. Francesco Sindico, professeur de droit international à l'Université de Strathclyde, coprésident du groupe de spécialistes sur le changement climatique, Commission mondiale du droit de l'environnement de l'Union internationale pour la conservation de la nature,

M. Edgardo Sobenes, consultant en droit international, cabinet ESILA BV, Advanced LLM, Université de Leyde, master, Institut supérieur de droit et d'économie et Université de Barcelone.

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

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

The Court meets this afternoon to hear the World Health Organization, the European Union and the International Union for Conservation of Nature on the questions submitted by the United Nations General Assembly. Each of the delegations has 30 minutes at its disposal for its presentation.

I shall now give the floor to the delegation of the World Health Organization. I call Dr Tedros Adhanom Ghebreyesus to the podium. You have the floor Sir.

Mr GHEBREYESUS:

I. RESPONDING TO THE CLIMATE CHANGE HEALTH CRISIS

1. Good afternoon, Mr President, honourable Members of the Court. I am privileged as Director-General to appear before you on behalf of the World Health Organization, which I will refer to as "WHO".

2. Before I start my remarks, I would like to tell you about my visit to Tuvalu in 2019 — already five years ago. I had the privilege of meeting a remarkable young boy named Falou. He shared with me the conversations he had with his friends about the potential sinking of Tuvalu and the uncertain future they faced.

3. Some of his friends contemplated leaving the island in case Tuvalu sinks — by the way that is a high probability, they were actually specific, seeking refuge in Fiji — while others expressed their willingness to stay, to stay in Tuvalu and sink with their beloved homeland. These are children, eleven to thirteen years old, who are saying this. Falou's words touched my heart, serving as a clear and poignant reminder of the challenges faced by children in the Pacific. Children should be children. I would have loved if Falou was laughing and playing and being a child, but he was not. They worry about the survival of their island homes due to the emissions produced by distant nations.

4. This reality weighs heavily on their young shoulders. Imagine our children carrying this heavy weight on their shoulders, highlighting the profound impact our actions, or lack thereof, have on the lives of the most vulnerable.

5. While the climate crisis is multi-faceted, from the perspective of WHO, it is fundamentally a *health* crisis¹. It is among the most significant health challenges facing humanity today².

6. And it is not a hypothetical crisis in the future. It is here and now.

7. Climate change and extreme weather are wreaking havoc on humans and their health, disrupting societies, economies, and development³.

8. Without immediate action, climate-related increases in disease prevalence, destruction of health infrastructure, and growing societal burdens could overwhelm already over-burdened health systems around the world⁴.

A. WHO's assessment of the increasing severity of the health impacts due to climate change

9. Mr President and honourable Members of the Court, WHO has been collecting evidence on the health impacts of climate change for over 25 years⁵. Let me briefly illustrate some of the impacts.

10. Disease transmission is already changing. Transmission of diseases like malaria, dengue and cholera could significantly increase as weather becomes more extreme, reducing access to safe water and contributing to the expansion of disease-carrying vectors, such as mosquitoes⁶. Non-communicable diseases, including cancers and cardiovascular diseases, are all associated with climate change and air pollution⁷. WHO estimates that seven million deaths a year are linked to air pollution⁸.

¹ WHO, *WHO Director-General's Opening Remarks at the Strategic Roundtable: Climate Change and Health* (1 June 2024), available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-strategic-roundtable--climate-change-and-health--1-june-2024>.

² WHO, *COP29 Special Report on Climate Change and Health: Health is the Argument for Climate Action* (2024) ("COP29 Special Report"), pp. 3-10.

³ *Ibid.*, p. 1.

⁴ See *ibid.*, pp. 25, 57; see also WHO, *Climate Change*, available at <https://www.who.int/health-topics/climate-change>; WHO, *Global health community calls for urgent action on climate and health at COP28* (27 November 2023), available at <https://www.who.int/news/item/27-11-2023-global-health-community-calls-for-urgent-action-on-climate-and-health-at-cop28#>.

⁵ WHO, *Supporting countries to protect human health from climate change*, available at <https://www.who.int/teams/environment-climate-change-and-health/climate-change-and-health/country-support>; see also World Health Assembly, Resolution WHA61.19, *Climate Change and Health* (24 May 2008) ("Resolution WHA61.19"), para. 1(1); WHO Secretariat, *Report on Climate Change and Health*, document A62/11 (6 March 2009), para. 1.

⁶ IPCC, Working Group II, "Health, Wellbeing and the Changing Structure of Communities", *Climate Change 2022: Impacts, Adaptation and Vulnerability* (2022) ("Impacts, Adaptation and Vulnerability (2022)"), p. 1046.

⁷ WHO, *Ambient (outdoor) air pollution* (24 October 2024), available at [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health).

⁸ *Ibid.*

11. Increasingly frequent and severe weather events linked to climate change are causing deaths and injuries, while destroying health infrastructure and overburdening health systems⁹. We are seeing record-breaking and often lethal temperatures (the highest record was July this year); megafires destroying homes; deadly hurricanes affecting island and coastal States; and floods that kill thousands and displace millions¹⁰.

12. Already, an estimated 920 million children face water scarcity. This will almost certainly worsen as climate change increases the severity and frequency of droughts, contamination of water supplies and water salinity in coastal areas¹¹. Extreme weather further disrupts agriculture and other food sources, increasing food insecurity and malnutrition¹². Crop yields and fisheries production are disrupted; fresh water supplies are degraded and depleted; eco-systems damaged.

13. Displacement will be massive, with 154 million people currently living less than one metre above sea level — remember the Tuvalu story I told you earlier¹³. Millions are expected to be pushed into poverty, with an estimate of extreme poverty for more than 130 million people by 2030¹⁴. This will dramatically increase health burdens and disparities¹⁵. Higher temperatures also mean increased heat-related deaths and illnesses.

14. Addressing climate change is a matter of equity. The health impacts of the climate crisis do not fall evenly on all populations¹⁶. Small island developing States and other low-lying coastal regions are especially at risk¹⁷. These States, known as “SIDS”, represent 1 per cent of the world’s population and economy and emit less than 1 per cent of greenhouse gas emissions, and yet they are disproportionately and severely affected by climate change, sea-level rise and natural disasters¹⁸.

⁹ Impacts, Adaptation and Vulnerability (2022), p. 1045.

¹⁰ COP29 Special Report, pp. viii, 8.

¹¹ *Ibid.*, pp. 7-8.

¹² *Ibid.*, p. 8; Impacts, Adaptation and Vulnerability (2022), p. 1045.

¹³ COP29 Special Report, p. 8.

¹⁴ *Ibid.*, p. 7.

¹⁵ *Ibid.*

¹⁶ WHO, *Climate Change* (12 October 2023) (“Climate Change Fact Sheet”), available at <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>; see also Impacts, Adaptation and Vulnerability (2022), p. 1126.

¹⁷ WHO, *Climate Change and Health in Small Island Developing States: A WHO Special Initiative, Pacific Island Countries and Areas* (12 November 2018), available at <https://www.who.int/publications/i/item/9789290618669>, p. 7.

¹⁸ WHO Director-General’s Opening Remarks at the Small Island Developing States (SIDS) Ministerial Conference on NCDs and Mental Health (14 June 2023), available at <https://www.who.int/director-general/speeches/detail/who->

15. Women, children, ethnic minorities, poor communities, migrants and displaced persons, older people, and those with underlying health conditions will suffer disproportionately¹⁹.

B. The immediate need for mitigation and adaptation

16. As dire as climate change is for health, the situation is not yet hopeless, but the world must act now.

17. In recent years, WHO has co-operated closely with its Member States and United Nations agencies to develop response measures and health protection strategies. In May 2008, the World Health Assembly, the decision-making body of WHO, adopted resolution 61.19 calling for WHO to take action on the health impact of climate change²⁰. Since then, and together with the wider health community, WHO has worked to promote health in national and international climate change responses, including in the Paris Agreement on climate change²¹.

18. But right now, not enough is being done. In our report published last month at COP29, WHO is clear about the need for mitigation and adaptation to protect and ensure health²².

19. Unfortunately, mitigation is not yet on pace to be effective to avoid the most catastrophic impacts related to climate change. Last year saw CO₂ emissions reach their highest levels to date²³. And while adaptation is important, we cannot rely on it, given the unknowns of climatic tipping points.

20. Fossil fuels also still account for 80 per cent of global primary energy, due in part to massive fossil fuel subsidies by governments²⁴ estimated at over US\$600 billion per year²⁵. As we

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¹⁹ Climate Change Fact Sheet; *see also* Impacts, Adaptation and Vulnerability (2022), p. 1126; COP29 Special Report, p. 8.

²⁰ Resolution WHA61.19.

²¹ WHO, Report by the Secretariat, *Health and climate change*, document EB139/6 (20 May 2016).

²² COP29 Special Report, p. 11 (emphasis added).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ P. Wooders, "The WTO Can Help Reform Subsidies to Fossil Fuels That Propel the Climate Crisis", Forum on Trade, Environment, & the SDGs (TESS), 22 May 2024, available at <https://tessforum.org/latest/the-wto-can-help-reform-subsidies-to-fossil-fuels-that-propel-the-climate-crisis>.

stated in our recent report to COP29, only a rapid and equitable phase-out of fossil fuels can protect the health of both people and the planet from the climate crisis²⁶.

21. At the same time, I want to stress that in working closely with Member States to study and recommend mitigation and adaptation measures, we also see many opportunities. At all turns, we look to capture what we call the “co-benefits” of policies that both reduce climate change and improve human health²⁷.

22. Take, for example, air pollution. The IMF suggests that pricing fossil fuels in line with their health and environmental impacts could save roughly 1.2 million people from air pollution-related deaths each year²⁸. Similar examples can be found in relation to mitigation and adaptation measures and outcomes for agriculture, access to water, prevention of communicable and non-communicable diseases, and more.

23. The value of health improvements from mitigation significantly outweighs the costs²⁹. WHO estimates that every US dollar spent on specific climate and health actions will bring an average return of US\$4³⁰.

24. In this way, the dichotomy sometimes suggested between the costs of taking action — or not — is false. The failure to respond to climate change is undoubtedly the most costly approach³¹.

C. The solution requires global action

25. This leads us to the necessity for global action.

26. Honourable Members of the Court, WHO was founded in 1948 as the world emerged from the devastation of the Second World War.

²⁶ COP29 Special Report, p. 11.

²⁷ WHO, “Promoting Health While Mitigating Climate Change”, Technical Briefing for the World Health Organization Conference on Health and Climate held in Geneva, 27–29 August 2014, p. 4.

²⁸ COP29 Special Report, pp. 42, 57–58.

²⁹ WHO, COP24 Special Report: Health and Climate Change (2018), p. 27; COP29 Special Report, pp. 15–16.

³⁰ See WHO News Release, “WHO demands urgent integration of health in climate negotiations ahead of COP29” (7 November 2024), available at <https://www.who.int/news/item/07-11-2024-who-demands-urgent-integration-of-health-in-climate-negotiations-ahead-of-cop29>.

³¹ See WHO News Release, “Health benefits far outweigh costs of meeting climate change goals” (5 December 2018), available at <https://www.who.int/news/item/05-12-2018-health-benefits-far-outweigh-the-costs-of-meeting-climate-change-goals>.

27. Like the United Nations of which we are part, WHO was born of the recognition that the only way to address shared health threats is with a shared response.

28. This was reiterated by the World Health Assembly, which determined, as with other global health challenges, that “solutions to the health impacts of climate change should be seen as a *joint responsibility* of all States”³².

29. We cannot wait to address the climate crisis. That means robust and sustained financing is essential both in relation to limiting greenhouse gas emissions and in preparing health systems and other adaptation measures³³. While developing countries are especially in need of assistance, ultimately all of us benefit from investments in climate change mitigation and from helping those bearing its burdens.

30. Addressing the climate crisis is about urgently protecting people, place and planet — for a healthier world now, and for the future we leave our children.

31. WHO’s Legal Counsel, Derek Walton, will now discuss the role of science and technical evidence in the Court’s deliberations and WHO’s mandate as it relates to the climate change health crisis. I thank you.

The PRESIDENT: I thank the Director of WHO. I now give the floor to Mr Derek Walton.

Mr WALTON:

II. THE ROLE OF SCIENCE IN THE COURT’S CONSIDERATION OF THE CLIMATE CHANGE HEALTH CRISIS

1. Good afternoon, Mr President, Madam Vice-President, Members of the Court. My name is Derek Walton and it is my honour to stand before you on behalf of the World Health Organization as its Legal Counsel.

2. My intervention will address two issues that supplement the intervention that you have just heard from the Director-General. The first is that the science and technical evidence should be at the heart of the Court’s consideration of the questions before it, guiding and informing the Court as it

³² Sixty-first World Health Assembly, resolution WHA61.19 (24 May 2008), preamble (emphasis added).

³³ Dr T.A. Ghebreyesus, Dr S.A. Al Jaber, Dr V. Kerry, “We must fight one of the world’s biggest health threats: climate change”, WHO Newsroom, 3 November 2023, available at <https://www.who.int/news-room/commentaries/detail/we-must-fight-one-of-the-world-s-biggest-health-threats-climate-change>.

conducts its analysis of the legal issues. The second is that the role and mandate of the World Health Organization means that it is uniquely placed to address the Court on the science and the technical aspects of the health dimensions of the climate crisis.

A. The role of scientific and technical evidence in these proceedings

3. As the Director-General has explained, the climate crisis is a health crisis. Other organs of the United Nations system have recognized as much. In seeking this advisory opinion, for example, the General Assembly explicitly referred to the right to a “clean, healthy and sustainable environment”³⁴, and invoked prior resolutions and decisions of the General Assembly and of the Human Rights Council regarding the health impacts of climate change³⁵.

4. The Court has also recognized that the environment cannot be considered separately from health. As it stated nearly three decades ago in its Advisory Opinion in *Nuclear Weapons*, “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”³⁶. The Court reiterated this in *Gabčíkovo-Nagymaros*, where it again stressed “the great significance that [the Court] attaches to respect for the environment, not only for States but also for the *whole of mankind*”³⁷.

5. Members of the Court, WHO submits that the fact that the climate crisis is a health crisis reinforces the need to ensure that science guides the Court’s advisory opinion in these proceedings. Science is key to understanding both climate change and the health dimension, and it should inform and guide the Court’s analysis of the legal issues before it.

6. The Court has, on many occasions, taken care to give weight to the science and to the technical evidence in its judgments, its orders and its advisory opinions³⁸. In doing so, the Court has frequently relied on the technical evidence offered by WHO and other international organizations on

³⁴ UNGA res. 77/276, “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 March 2023), p. 1.

³⁵ *Ibid.*

³⁶ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 241, para. 29 (emphasis added).

³⁷ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 41, para. 53 (emphasis added).

³⁸ See e.g. *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014*, pp. 272-292, paras. 147–222; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 31, para. 52, pp. 37-29, paras. 79 and 86; *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia), Judgment, I.C.J. Reports 2022 (II)*, p. 624, para. 22 and p. 647, para. 94.

matters falling within their competence³⁹. We submit that the Court should do so again on this occasion.

7. In the advisory opinion context, the technical and scientific information offered by specialized agencies of the United Nations on issues within their competence takes on yet another dimension⁴⁰: that of fostering alignment within the United Nations system and ensuring that States receive consistent guidance.

B. WHO's role in global health and climate change

8. Members of the Court, the World Health Organization is uniquely placed to address the Court on the health aspects of climate change. WHO is a specialized agency of the United Nations and it is the agency charged with acting as the directing and co-ordinating authority on international health work⁴¹. It is also expressly mandated in its Constitution to provide information, counsel and assistance in the field of health⁴².

9. Over the last decades, WHO has developed extensive technical and scientific expertise on the health impacts of climate change. Based on its close collaboration with its member States and health communities around the world, WHO has served as a repository for the best available scientific and technical evidence on these matters and it has prepared technical assessments and practical guidance for States and other stakeholders on how to respond to the crisis.

10. If I can give you an example, in 2016, in response to a request from the Human Rights Council to “conduct . . . a detailed analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and

³⁹ See e.g. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 239, paras. 206–207, pp. 249–253, paras. 237–250; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004 (I), pp. 175–176, paras. 97; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, para. 48.

⁴⁰ Statute of the Court, Art. 66; cf. *ibid.*, Art. 34; Rules of Court (1978), Art. 69.

⁴¹ See Constitution of the World Health Organization, United Nations, *Treaty Series (UNTS)*, Vol. 14, p. 185 (1948) (“WHO Constitution”), Art. 2 (a).

⁴² *Ibid.*, Art. 2 (q).

mental health”⁴³, WHO prepared a submission to the Office of the High Commissioner for Human Rights. That submission highlighted three key points⁴⁴:

- Firstly, as early as 1992, the parties to the United Nations Framework Convention on Climate Change recognized negative health impacts to be one of the three main adverse effects of climate change. Specifically, Article 1 of that treaty defined the “adverse effects of climate change” as including those changes that have “significant deleterious effects . . . on human health and welfare”.
- Secondly, the submission explained that “[h]ealth can be protected against climate change” by investing in adaptation funds and improving social and environmental determinants of health — investments that “are proven to save lives now, and can also strengthen long-term resilience to climate change”⁴⁵.
- Thirdly, WHO’s submission underscored that mitigating climate change through policies to reduce carbon emissions can yield substantial health and economic gains⁴⁶.

11. Similarly, in 2021, WHO contributed to a joint statement of 15 United Nations entities on the right to a healthy environment, which was submitted to the 46th Session of the Human Rights Council⁴⁷. The joint statement acknowledged the climate change crisis and reaffirmed that the “[r]ights of present and future generations depend on a healthy environment”⁴⁸.

12. In addition, as a repository of the scientific and technical evidence on these issues, WHO concurs with the overwhelming agreement among States, international tribunals and other international organizations that the IPCC’s reports represent the best available science on the causes and severe effects of climate change⁴⁹. For example, WHO refers extensively to the IPCC’s evidence

⁴³ United Nations Human Rights Council, resolution 29/15, Human Rights and Climate Change, document A/HRC/RES/29/15 (22 July 2015), para. 4.

⁴⁴ WHO submission to the OHCHR on climate change and the right to health (2016), p. 3, available at <https://www.ohchr.org/Documents/Issues/ClimateChange/Impact/WHO.pdf>.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ United Nations entities, “Joint statement of United Nations entities on the right to healthy environment”, UN Environment Programme (8 March 2021), available at <https://www.unep.org/news-and-stories/statements/joint-statement-united-nations-entities-right-healthy-environment>.

⁴⁸ *Ibid.*

⁴⁹ See Written Statement of the World Health Organization, para. 4. See e.g. Written Statements of Albania, para. 50; Antigua and Barbuda, para. 15; Australia, para. 1.22; the Bahamas, para. 13; Bangladesh, para. 18; Barbados, para. 83; Belize, para. 47; Bolivia, paras. 49, 54; Brazil, paras. 3, 59; Burkina Faso, para. 6; Canada, para. 37; Chile,

in its written statement⁵⁰ and the Director-General has today cited IPCC evidence on the health impacts of climate change and the pace of rising greenhouse gases and temperatures.

C. Conclusions

13. Members of the Court, as you consider the legal issues in this matter, we respectfully ask you to allow the science and the technical evidence to guide your analysis. In particular, and as the Director-General has just said, WHO respectfully requests the Court to place health at the centre of its advisory opinion and in this regard to give full effect to the fundamental right of every human being to the highest attainable standard of health, as enshrined in the Constitution of the World Health Organization⁵¹.

14. Honourable Members of the Court, thank you very much for your time and for your attention. This concludes the oral submissions of the World Health Organization. Thank you

The PRESIDENT: I thank the representatives of the World Health Organization for their presentation. I now invite the next participating delegation, the European Union, to address the Court and I call upon Mr André Bouquet to take the floor.

para. 22; China, para. 12; Colombia, para. 2.1; Cook Islands, para. 16; Costa Rica, para. 102; Democratic Republic of the Congo, paras. 37-46; Denmark, Finland, Iceland, Norway and Sweden, para. 3; Dominican Republic, para. 1.4; Ecuador, para. 1.9; Egypt, para. 25; El Salvador, para. 11; France, para. 15; Germany, para. 40; Ghana, para. 30; Grenada, para. 4; India, paras. 61-62; Indonesia, para. 75, fn. 59; Iran, paras. 55, 111, 136; Kenya, para. 3.1; Kiribati, para. 15; Republic of Korea, paras. 8, 25, fn. 10; Kuwait, para. 122; Liechtenstein, paras. 19, fns. 26, 21; Madagascar, paras. 11, 28; Marshall Islands, para. 66; Mauritius, Sec. IV; Mexico, paras. 17, 26; Federated States of Micronesia, para. 50; Namibia, paras. 8, 24; Nauru, Sec. II; Netherlands, Sec. 2; New Zealand, paras. 3, 5; Pakistan, para. 4; Palau, para. 9; Peru, Sec. III.A; Philippines, para. 28; Portugal, para. 14; Romania, paras. 7, 12; Russia, p. 16, fn. 13; Saint Lucia, paras. 15, 19; Saint Vincent and the Grenadines, para. 38; Samoa, paras. 5-6; Saudi Arabia, para. 2.10, fns. 36, 40; Seychelles, Sec. I.B; Sierra Leone, para. 1.4; Singapore, para. 1.6; Solomon Islands, paras. 20, 143; South Africa, paras. 24, 28, 109; Spain, para. 3; Sri Lanka, para. 13; Switzerland, para. 35; Thailand, para. 14; Timor-Leste, Sec. IV; Tonga, para. 47; Tuvalu, para. 26; United Arab Emirates, para. 9; United Kingdom, para. 4.2; United States, para. 2.16; Uruguay, para. 16; Vanuatu, para. 23; Viet Nam, para. 12; African Union, para. 7; Alliance of Small Island States, para. 13; Commission of Small Island States on Climate Change and International Law, Sec. 2; European Union, para. 139; Forum Fisheries Agency, paras. 41, 48, 57; International Union for the Conservation of Nature, para. 35; Melanesian Spearhead Group, para. 13; Organization of African, Caribbean and Pacific States, para. 20; Parties to the Nauru Agreement Office, para. 11; see also ITLOS, *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 ITLOS), Case No. 31, Advisory Opinion, ITLOS Reports 2024, paras. 210-212.

⁵⁰ Written Statement of the World Health Organization, paras. 4, 10-22.

⁵¹ WHO Constitution, preamble.

Mr BOUQUET:

INTRODUCTION AND GENERAL OBSERVATIONS

1. Mr President, Madam Vice-President, honourable Members of the Court, *to start* the European Union extends warm congratulations to the initiators of these proceedings for achieving something truly exceptional in the current international context. It began as a grassroots movement led by youth, and then successfully secured a unanimous General Assembly resolution seeking the opinion of this Court on the legal obligations of States in respect of climate change, a matter of collective and existential importance for humankind.

2. In introduction, the European Union makes three general observations.

3. *First*, the European Union recalls the *inherently non-adversarial character of the advisory opinion procedure* before the Court. As such, there should be no scope for findings of established, or even of probable, breaches by States or groups of States. Rather, the Court is invited to clarify the main obligations of States, under different relevant treaty régimes and customary international law rules. It was precisely by avoiding engaging in a dispute between developing and industrialized countries that a consensus could be reached at the General Assembly to refer these important questions to the Court.

4. In particular, with regard to the second question, which may have been read by some as the basis for the Court to make findings on breaches or probable breaches, this consideration calls for caution, as the Court is called upon to focus its response on the codified customary law on the secondary obligations, without going as far as finding *in concreto* that certain States or groups might or might not have breached their obligations.

5. *Second*, while the States' views may differ on the existence and content of the treaty and customary rules setting out certain obligations to address and combat climate change, their views largely converge in recognizing the central role of the United Nations Framework Convention and the Paris Agreement. While these sources of law set out a range of obligations applicable to parties individually and collectively as groups of parties, all States parties, not merely those with the greatest capabilities, are required to work diligently together to curb anthropogenic emissions to the greatest extent possible. They must also take appropriate measures to adapt to the impacts of climate change.

This collective effort underscores the shared duty to address the global climate crisis. There is also a very clear convergence to interpret the quantified objectives and the material obligations under the United Nations Framework Convention and the Paris Agreement as obligations of conduct or best efforts, for which the standard of due diligence has to be observed, and thus not as obligations of result, where any failure to achieve such an objective or a result would *ipso facto* be considered as a breach.

6. In this respect, the European Union would want to stress that the customary obligation to prevent transboundary harm does not change the nature of the material obligations under the United Nations Framework Convention and the Paris Agreement. In itself, the obligation to prevent transboundary harm, as an obligation of conduct, cannot be interpreted as implying that the occurrence of transboundary harm alone establishes a breach. This being said, the European Union agrees that in view of the seriousness of the climate change crisis, as regularly recalled by the Intergovernmental Panel on Climate Change, such obligations of conduct have to be understood as particularly “stringent”. The International Tribunal on the Law of the Sea has rightly said so in its own advisory opinion⁵². The nature of the obligation of conduct does not stand therefore in the way of recognizing the necessity, as is reflected in the Paris Agreement and the subsequent decisions of its parties, for each party to undertake ambitious efforts to prevent dangerous climate change in line with the Paris Agreement’s goals.

7. *Third*, the different relevant international instruments and rules on climate change should be interpreted and applied in a coherent manner. Therefore, the different treaty systems which have been mentioned in the questions referred to the Court should work in harmony with each other, without losing sight of the autonomy of the different treaty systems.

8. For this reason, the European Union would suggest not to read the points 223 and 224 of the ITLOS Advisory Opinion, which were mentioned this morning, as meaning that the full compliance with the Paris Agreement would materially be insufficient to comply with the climate change obligations stemming from UNCLOS. It is to be understood rather as seeking to explain that the autonomy of the Paris Agreement obligations and the obligations stemming from UNCLOS has

⁵² ITLOS, Advisory Opinion *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, paras. 241, 243, 248, 256, 258, 279, 398, 399, 400 and 441.

to be taken into account and that the interaction between both régimes is not to be explained through *lex specialis*. In other words, the respect of the autonomy of the Paris and UNCLOS treaty systems, as underlined by the Tribunal, cannot lead to the isolation of all the different treaty systems dealing with climate change from their respective perspectives as if they were in silos.

9. Now Ms Norris will, with your permission, address the Court on the common but differentiated responsibilities and respective capabilities, or CBDR-RC. Thank you.

The PRESIDENT: I thank Mr Bouquet. I now give the floor to Ms Josephine Norris.

Ms NORRIS:

**COMMON BUT DIFFERENTIATED RESPONSIBILITIES
AND RESPECTIVE CAPABILITIES**

1. Mr President, Madam Vice-President, honourable Members of the Court, given the many submissions addressing the relevance of the principle of CBDR-RC for resolving the questions before the Court, the European Union takes this opportunity to highlight three points.

2. *First*, the European Union considers that when answering the questions before it, the Court must interpret the role of CBDR-RC within the specific legal framework governing the obligations on States in respect of climate change.

3. It is clear from the written statements and oral submissions that there is broad consensus that the principle of CBDR-RC, as reflected in the Paris Agreement and other multilateral environmental conventions and instruments, is relevant and should inform this Court's interpretation of the obligations on States regarding climate change.

4. There is far less consensus as to how precisely the CBDR-RC principle interacts with the obligations and responsibilities of States to address and mitigate climate change. Without clarification on the contemporary scope and relevance of the CBDR-RC principle, there is a risk that States will continue to have diverging interpretations of the precise content of their obligations to protect the climate system under international law as well as the legal consequences flowing from such obligations. Hence, the European Union would welcome that the Court address and clarify these important issues.

5. *Second*, the European Union submits that this Court should interpret the principle of CBDR-RC, which is referred to in the Paris Agreement itself, in such a way as to reinforce the core obligations in that same Agreement.

6. The reference to CBDR-RC as a guiding principle in the preamble to the Paris Agreement does not impose a separate legal obligation on the parties but rather reflects its function to underpin the design of the substantive provisions and hence, its relevance for interpreting the latter. This principle must not be interpreted in a manner that would undermine the obligation to mitigate climate change that binds all parties — developed and developing.

7. There is widespread accord that States do not currently have the same capacity to address and mitigate climate change. Economic resources and technical capacities are not fairly or equally distributed amongst or within States. Exposure to the adverse effects of climate change varies and certain States are particularly vulnerable. Indeed, this Court has heard compelling submissions outlining some of those vulnerabilities, including from Vanuatu.

8. Parties to the Paris Agreement have committed to contribute to mitigating climate change with the highest possible level of ambition. CBDR-RC as a principle reflects that the conduct required of each party to the Paris Agreement when meeting that common obligation may be tailored to national circumstances and may take into account socio-economic differences and specific vulnerabilities. In other words, each party must meet its due diligence obligation to mitigate climate change, and it is the ambition of the contribution that is differentiated to account for the level of capacity and development of each State. This calibration is substantial and dynamic.

9. The CBDR-RC principle does not, however, dilute the core obligation itself. States define their respective contributions, through their NDCs but do not have unlimited discretion in this respect. In particular, this remains subject to the obligation, common to all parties to the Paris Agreement, to do as much as possible as fast as possible with a view to achieving the collective temperature goal. Nor therefore, is it open to States to argue that their respective obligation to take measures in line with the principle of CBDR-RC is conditional on the provision of a defined level of financial and technical assistance from developed countries.

10. *Third*, the European Union observes that certain States have suggested that the principle of CBDR-RC requires a division of States' obligations to control and reduce their greenhouse gas

emissions on the basis of “fair shares” calculated by reference to past anthropogenic greenhouse gas emissions and the remaining “atmospheric space” allowable to prevent dangerous climate change. The European Union disagrees with this interpretative approach for two main reasons.

11. In the first place, this interpretation does not reflect the contemporary understanding of CBDR-RC, which is a dynamic principle.

12. States’ understanding of their own and each other’s responsibilities and capabilities evolve, and this evolution is reflected in the drafting of the Paris Agreement which deliberately applies a different structure to that of the United Nations Framework Convention or that under the 1997 Kyoto Protocol. However, and regrettably, this understanding has never evolved, even amongst the developing countries, to an agreed understanding of how to allocate specific emissions reduction obligations. It is for this reason that the Paris Agreement provides for “nationally determined contributions”.

13. Developed countries must continue to take the lead and have accepted obligations to provide financial and technical assistance — commitments which have recently been affirmed at COP29 in Baku. This does not, however, exempt any other party from taking measures to mitigate climate change in line with their national circumstances and at their highest level of ambition.

14. In short, it is the obligation to adopt the most ambitious measures possible in the light of national circumstances that should inform the scope of each party’s respective contribution, not an estimated quantification of past GHG emissions.

15. In the second place, the framework set down in the Paris Agreement to which many States across the world have consented to be bound, was chosen for a reason as was the role attributed to the principle of CBDR-RC as a guiding principle within that framework.

16. There is no commonly agreed mechanism for allocating or attributing so-called “fair shares” or for calculating so-called “carbon-budgets”. If the Court were to accede to the request to introduce such a mechanism, this would undermine the basis on which the parties consented to the Paris Agreement and introduce concepts of causation at the expense of the primacy of the obligation to act with the highest possible level of ambition. This is not in the interest of any party to the Paris Agreement. It would not lead to a better outcome for humankind.

17. Since the methodology and conceptual approach set down in the Paris Agreement is the clearest expression of States' common understanding of their obligations on climate change, it should inform the interpretation, relevance and application of the principle of CBDR-RC across the full spectrum of obligations to mitigate climate change.

18. Now Ms Bruti Liberati will address certain aspects regarding human rights and climate change.

The PRESIDENT: I thank Ms Josephine Norris. I now give the floor to Ms Margherita Bruti Liberati.

Ms BRUTI LIBERATI:

HUMAN RIGHTS

1. Given the extent to which human rights have been addressed in other written submissions, the European Union wishes to highlight three key points in this regard.

2. *First*, the European Union notes that most Participants recognize the relevance of international human rights law to climate change and support its systemic integration with the Paris Agreement. The European Union considers that this results from Article 31 (3) (c) of the Vienna Convention on the Law of Treaties.

3. Specialized international tribunals⁵³ and regional human rights courts⁵⁴ already relied in essence on the principle of systemic integration to analyze the interlinkage between international law régimes in the context of climate change. The European Union invites the Court to further clarify the relevance and the implications of this principle for the interplay between the international law régimes mentioned in the General Assembly Request.

4. The European Union considers that the Court should interpret systemic integration to the effect that the obligations of States under the international climate change, human rights,

⁵³ See: Advisory Opinion of the ITLOS, *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, Case No. 31, para. 135).

⁵⁴ See notably: Judgment of the European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20), paras. 455-456.

environmental and maritime law régimes, as well as the principle of intergenerational equity, mutually inform each other⁵⁵.

5. This leads, notably, to the following three outcomes:

- (a) The due diligence required of States when taking mitigation and adaptation measures under the Paris Agreement should be consistent with the obligations to protect⁵⁶, respect and fulfil the human rights guaranteed under customary international law.
- (b) The obligation to protect, respect and fulfil human rights required under customary international law should be consistent with the long-term goal enshrined in the Paris Agreement and with the due diligence required towards achieving that goal.
- (c) The due diligence required by international human rights obligations should be consistent with other rules of international law, notably the duty to prevent transboundary harm and the United Nations Convention on the Law of the Sea.

At the same time, the principle of systemic integration is not capable of altering the nature of the relevant obligations — which are, and remain, obligations of conduct rather than of result.

6. *Second*, the European Union invites the Court to clarify the legal relevance and meaning of “*causation*” in the present context.

7. Some written submissions exclude the relevance of international human rights law based on the alleged impossibility to establish a direct causal link between States’ individual mitigation actions and the effective protection of individuals’ human rights from the global impacts of climate change.

8. The European Union considers this approach not to be supported by international law. This is because causation mainly relates to secondary rather than to primary obligations.

9. Indeed, States’ *primary* adaptation and mitigation obligations exist independently of the actual contribution of those States’ conducts to the deleterious effects of climate change.

10. Therefore, issues of causation are to be addressed based on the customary rules of State responsibility laid down in the Articles on Responsibility of States for Internationally Wrongful Acts.

⁵⁵ See in this regard: *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, *I.C.J. Reports 2003*, p. 182, para. 41.

⁵⁶ For the due diligence required under international human rights obligations and the prevention of human rights violations with regard to the conduct of private operators, see also paragraph 269 and footnote 196 of the Written Statement of the European Union.

Pursuant to those rules, the relevant test to establish State responsibility is “attribution”, which is not based on the mere recognition of a link of factual causality⁵⁷. A “causal link” between a wrongful act attributed to a State and a certain injury is then only relevant to determine the *legal consequences* of States’ responsibility for an internationally wrongful act⁵⁸.

11. For the reasons the European Union has already explained, the assessment of whether these conditions exist *in concreto* is beyond the scope of the present Request for an advisory opinion⁵⁹.

12. Further, the European Union considers that the global nature of climate change and the impossibility for States to single-handedly mitigate its effect has no bearing on the applicability of the principle of systemic integration between the human rights and the climate change régimes. Indeed, the Articles on Responsibility of States for Internationally Wrongful Acts make it clear that, even where the same wrongful act can be attributed to a plurality of States, each State may still be separately responsible for its own conduct⁶⁰. What is required of each State by international law is thus to do its part to respect, protect and fulfil the human rights of individuals subject to its jurisdiction from the effects of climate change — acting in accordance with best efforts and regardless of what other States do.

13. *Third*, and last, the European Union takes this opportunity to comment on the issue of *extraterritoriality* of human rights obligations in the context of climate change.

14. The European Union recalls first that questions of jurisdiction and extraterritoriality are clearly distinct from matters of responsibility and of liability.

15. While in the written submissions there is broad recognition that the scope of States’ human rights obligations extends beyond their territorial borders — to the limits of their “jurisdiction” — there is far less consensus on what the latter concept actually means in the context of climate change.

16. In this regard, the European Union wishes to recall the recent judgment of the European Court of Human Rights in the *Duarte Agostinho* case. In that case, the applicants sought to establish extraterritorial jurisdiction on the grounds that the States’ emissions and/or failures to regulate or

⁵⁷ Report of the International Law Commission on the work of its fifty-third session, Commentary to Chapter II, para. (4).

⁵⁸ See para. (9) of the commentary on Article 31 of the Articles on Responsibility of States for Internationally Wrongful Acts.

⁵⁹ See Written Comments of the European Union, para. 35.

⁶⁰ Article 47 of the Articles on Responsibility of States for Internationally Wrongful Acts.

limit them produced effects outside those States' territories and thereby brought the applicants within their jurisdiction⁶¹. The European Court of Human Rights rejected that argument, notably by stressing that the jurisdictional criterion of "effective control" requires control over the alleged victims rather than over their interests as such⁶².

17. At the same time, the European Court of Human Rights did not question that a certain causal link exists between polluting activities based on a State's territory and their adverse impacts on the rights of people residing outside that State's borders⁶³. It also made it clear that other instruments of international law may provide for a different scope of human rights obligations⁶⁴.

18. Therefore, in light of the divergent findings of regional courts and United Nations bodies, and of the requisite systemic integration between international law régimes, the European Union invites the Court to clarify the concept of "jurisdiction" as well as the jurisdictional criterion of "effective control" in the context of climate change.

19. Now Mr Hofstötter will conclude on behalf of the European Union.

The PRESIDENT: I thank Ms Margherita Bruti Liberati. I now give the floor to Mr Bernhard Hofstötter.

Mr HOFSTÖTTER:

CONCLUDING REMARKS

1. Mr President, distinguished Members of the Court, climate change is one of the most pressing issues confronting humankind. The link between anthropogenic greenhouse gas emissions and climate change is globally accepted and has been scientifically established, most notably in the work of the Intergovernmental Panel on Climate Change. The International Tribunal for the Law of the Sea (ITLOS) has recently referred to these works as "the best available science . . . which reflect the scientific consensus".

⁶¹ ECtHR, case of *Duarte Agostinho and Others v. Portugal and 32 Others* (Application no. 39371/20), para. 121.

⁶² *Ibid.*, para. 205.

⁶³ *Ibid.*, para. 193.

⁶⁴ *Ibid.*, para. 209.

2. The challenges posed by climate change are manifold, requiring a major transformation of our societies, a collective response and a holistic approach extending to all economic sectors and different areas of the law. These challenges have driven and in fact are driving the development of international law.

3. Whilst the Paris Agreement is the central instrument, it does not operate in a legal vacuum. Rather, it interacts with and is informed by a wealth of other relevant rules of international law, whether deriving from treaty law, customary international law or the general principles of law, including UNCLOS, human rights and the duty of prevention.

4. Against this background, an advisory opinion of the Court has the potential to clarify the current state of international law regarding the obligations of States in respect of climate change, with all the legal persuasiveness and moral authority attaching to advisory opinions of this Court.

5. I will make four brief concluding remarks in this context.

6. *First*, such clarification is timely. It could provide impetus for all States, whether developed or developing, to be more ambitious and decisive in addressing the challenges posed by climate change.

7. *Second*, a very recent expression of the responsibilities of all States is the outcome of the COP29 United Nations Climate Change Conference which includes:

- the New Collective Quantified Goal amounting to at least US\$300 billion a year of public and mobilized private finance by 2035; and
- a call on all actors, public and private alike, to scale up climate financing to developing countries by at least US\$1.3 trillion.

8. These new goals reflect the dynamic nature of the Paris treaty régime, through a commitment of developed countries to continue to take the lead, while encouraging other parties with the capacity to do so to join in the effort to provide financial and technical assistance to those developing countries in need of this support.

9. *Third*, the European Union continues for its own part to be ambitious in its domestic legislation and policy. As indicated in the recent Climate Action Progress Report of 2024⁶⁵, the

⁶⁵ Report from the European Commission to the European Parliament and the Council — EU Climate Action Progress Report 2024, 31.10.2024, COM(2024) 498 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2024%3A498%3AFIN>.

European Union achieved a net reduction of 37 per cent in greenhouse gas emissions in 2023 compared to the 1990 baseline. Over the same period, the GDP grew by 68 per cent, showing the continued decoupling between emissions and economic growth in the European Union. Furthermore, as part of its commitment to staying on the pathway to climate neutrality by 2050, the European Commission is preparing a legislative proposal to amend the European Climate Law⁶⁶ and introduce a new legally binding target of a net reduction of greenhouse gas emissions by 90 per cent by 2040 compared to 1990⁶⁷. More generally, in its legislation and policy the European Union takes due account of the objective to promote sustainable development, a high level of protection and improvement of the quality of the environment, and solidarity between generations.

10. *Fourth and finally*, these advisory opinion proceedings provide an opportunity for the Court to affirm that the existing obligations of conduct should be interpreted as imposing highly stringent standards of due diligence, as recently underlined by the International Tribunal for the Law of the Sea.

11. Mr President, distinguished Members of the Court, this concludes the oral statement of the European Union. We thank you for your kind attention.

The PRESIDENT: I thank the representatives of the European Union for their presentation. I now invite the delegation of the International Union for Conservation of Nature to address the Court and I give the floor to Ms Grethel Aguilar.

Ms AGUILAR:

I. OPENING REMARKS

1. Mr President, Madam Vice-President, honourable judges, I would like to start by thanking the Court for authorizing the International Union for Conservation of Nature (IUCN) to participate

⁶⁶ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No. 401/2009 and (EU) 2018/1999 (“European Climate Law”), Official Journal (EU) L 243, 9.7.2021, p. 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1119>.

⁶⁷ Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Securing our future — Europe’s 2040 climate target and path to climate neutrality by 2050 building a sustainable, just and prosperous society, 6.2.2024, COM/2024/63 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2024%3A63%3AFIN>.

in these historic proceedings. I am Grethel Aguilar, IUCN Director General, and we are honoured to be here today.

2. In its 76-year history, IUCN has established itself as the international authority on the status of the natural world and the measures needed to safeguard it. The organization is unique among the parties in these proceedings as we are formed by 1,400 Members — among them States, governmental and non-governmental organizations — and is supported by 17,000 experts from around the world.

3. Honourable judges, this advisory opinion is pivotal in clarifying international law, shaping future climate action and addressing the global climate crisis in a manner that is equitable, effective and enforceable.

4. Your opinion matters to those that are most vulnerable to the impacts of climate change, be it States that are fighting to protect their peoples and territories, vulnerable communities, indigenous peoples, migrants, women and children — and of course the natural world. Your opinion will send a powerful message to States and other actors responsible for greenhouse gas emissions, emphasizing the need for deep, rapid and sustained reductions aligned with 1.5°C pathways.

5. Scientists have warned for many decades about what is now our reality: floods, wildfires, hurricanes, heatwaves, including in the ocean; all unprecedented in magnitude and frequency. Every year a temperature record is broken. Every year, the impacts on people and nature are more devastating.

6. The IPCC stressed the urgency of action in its Sixth Assessment Report by saying:

“Climate change is a threat to human well-being and planetary health. There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all . . . The choices and actions implemented in this decade will have impacts now and for thousands of years.”⁶⁸

In this harsh reality, your opinion is awaited by the entire world and its impact will reverberate far into the future, including for generations yet unborn.

7. To act now, in light of such danger, is a moral and a legal imperative.

⁶⁸ IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, C.1.

8. Climate change impacts must be linked to human rights, particularly those to life, health, housing and culture. States must comply with their obligations under the United Nations human rights treaties and the Universal Declaration of Human Rights.

9. The only way to conserve nature is with a rights-based approach to conservation. This includes consultations and participatory procedures — to make the voices of the many count. States, as indicated in the Paris Agreement, must respect their obligations on human rights when taking climate action. Furthermore, protecting indigenous peoples and local communities against the effects of climate change is only possible if there is accountability for all actors in society. As a basis for accountability, the Paris Agreement pursues clarity in reporting, tracking of progress and promoting compliance.

10. At the national level, many constitutions around the world include the right to a clean, healthy and sustainable environment, which also was recently recognized both by the United Nations Human Rights Council⁶⁹ and the United Nations General Assembly⁷⁰. The effects of climate change make implementation of this right and its corresponding duties more important, but also more challenging, than ever before.

11. Honourable judges, it is us “humans” who have put our planet and ourselves in this challenging situation, so it is us “humans” that must take responsibility and be accountable for our actions. We must turn the tide and put in place remedies to this crisis before it is too late. The law is not yet moving at the same pace as the escalation of the climate change crisis. This is why this advisory opinion will mark the lives of millions and shape our own destinies on planet Earth.

12. IUCN has submitted a written statement and comments to this Court, outlining in detail its position and key considerations. We respectfully reaffirm our stance and kindly request the Court to consider and incorporate our position into its opinion.

13. Honourable judges, I would like to thank you and kindly ask the Court to please give the floor to Professor Dr Christina Voigt, Chair of the IUCN World Commission on Environmental Law, to address the Court on IUCN’s legal response to question (a).

⁶⁹ United Nations Human Rights Council, resolution 48/13. *The human right to a clean, healthy and sustainable environment*, A/HRC/RES/48/13, 18 October 2021.

⁷⁰ United Nations General Assembly, resolution 76/300. *The human right to a clean, healthy and sustainable environment*, A/RES/76/300, 1 August 2022.

The PRESIDENT: I thank Ms Aguilar. I now give the floor to Professor Christina Voigt.

Ms VOIGT:

II. IUCN'S RESPONSE TO QUESTION (A)

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour to appear before you on behalf of IUCN in addressing question (a).

2. Given the extreme risk humanity is facing by climate change, we respectfully invite the Court to consider that the answer to question (a) is clear and straightforward.

3. In IUCN's view, the answer is: every State has the obligation under international law to do its utmost to limit global warming to 1.5°C, and to limit any overshoot as much as possible, and to reverse it.

4. This is an obligation of stringent due diligence, and it varies according to States' different responsibilities and capabilities.

5. As we will argue, this obligation — to do the utmost — comes from different, independent and cumulative international legal sources, including the Paris Agreement, the United Nations Convention on the Law of the Sea, international human rights treaties and customary international law.

6. I will start with obligations in international treaties.

7. First, I turn to the Paris Agreement.

8. Adopted under the United Nations Framework Convention on Climate Change, the Paris Agreement is the primary legal instrument addressing the issue. It is the most recent, most comprehensive and most specific climate treaty.

9. I will first address the standards contained in the Paris Agreement, and after that, State obligations.

10. The Paris Agreement sets in its Article 2, paragraph 1 (a), the international standard of holding temperature increases to well below 2°C and to pursue efforts to limit the increase to 1.5°C⁷¹. Parties, in successive decisions, have accepted the 1.5°C threshold as a priority.

⁷¹ Paris Agreement, Art. 2.1 (a).

11. The Paris Agreement contains, also as an international standard, the emission reduction pathway and timelines for holding warming to 1.5°C, in its Article 4, paragraph 1.

12. According to the IPCC, and endorsed by consensus in the global stocktake decision, the only way to hold warming to 1.5°C is by deep, rapid and sustained reduction of global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035, relative to 2019 levels. Honourable judges, this is only five to ten years from now. Thereafter, CO₂ emissions need to reach global net zero by 2050 and remain net negative thereafter⁷². As COSIS stated this morning, this requires a quantum leap in mitigation action.

13. States must follow this pathway and timeline to avoid serious and irreversible harm to the climate system, the planet and its people.

14. These normative international standards in the Paris Agreement have significant legal implications. They inform State obligations to protect the climate system, both the obligations in the Agreement, and those in other treaties and in customary international law.

15. I now turn to individual State obligations in the Paris Agreement.

16. Honourable judges, we need to take the Paris Agreement seriously. There are a lot of misconceptions about the Agreement, ranging from “being worth nothing” to “being all there is, but at the sheer discretion of its parties”.

17. Both these views are incorrect and over-simplistic.

18. Each party to the Paris Agreement has several individual obligations.

19. The core obligation of each party is to prepare, communicate and maintain successive nationally determined contributions (NDCs)⁷³, every five years, to achieve the temperature goal.

20. In addition, and in relation to this core obligation, the Agreement establishes requirements of a certain conduct — or due diligence obligations.

21. An obligation of due diligence should not be understood as an obligation which lies only in the discretion of a State or requires less effort. To the opposite, an obligation of due diligence can

⁷² IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, B.6. Decision 1/CMA.5, para. 27.

⁷³ Paris Agreement, Article 4 (2).

be highly demanding, as recognized by the International Tribunal on the Law of the Sea in its recent advisory opinion⁷⁴.

22. Central here is Article 4, paragraph 3, of the Paris Agreement, according to which “each Party’s successive NDC will represent a progression beyond the Party’s then current NDC and reflect its highest possible ambition, reflecting common but differentiated responsibilities and respective capabilities, in the light of different national circumstances”.

23. “Highest possible ambition” alongside “progression” implies that the increase in ambition in each NDC should match the best efforts and the maximum performance a party can feasibly undertake. These two concepts together set a clear, substantive requirement that each party will raise its ambition as much as possible, in each NDC, in light of its evolving responsibilities and capabilities and aligned with the temperature goal. These requirements establish due diligence obligations in the Paris Agreement.

24. The reference to common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, in Article 4, paragraph 3, means that States with greater responsibilities and/or capabilities must act faster and must do more, including to support efforts in other States. However, also States with lesser responsibilities or capabilities are required to do their utmost. No State is exempt. Here, it is important to highlight that the concept of “responsibilities” in the context of CBDR is evolving and dynamic, including past, present and projected future emissions.

25. Moreover, as a legal requirement, parties’ NDCs must be informed by the outcome of the global stocktake⁷⁵. And it is in the first global stocktake decision from 2023 where we find, *inter alia*, the reference to “transitioning away from fossil fuels in energy systems” and “conserving, protecting and restoring nature and ecosystems”, which all parties need to duly consider when preparing their next NDC.

⁷⁴ *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, Advisory Opinion of 21 May 2024), https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf, para. 257.

⁷⁵ Paris Agreement, Article 14 and Article 4 (9). The global stocktake (GST) took place for the first time in 2023 and every five years thereafter. The outcome of the GST shall inform the next round of NDCs which are due on 10 February 2025 and every five years thereafter. Articles 14 (3) and 4 (9) establish the relationship between the outcome of the GST and NDCs.

26. Importantly, parties also have the obligation to implement domestic mitigation measures under Article 4, paragraph 2, second sentence. It may not be an obligation of result to achieve the NDC. Still, it is an obligation of conduct to adopt measures that are necessary, meaningful, timely and, indeed, effective.

27. Honourable judges, please note that these obligations are not a “one-off”. They must be met again, and again, and again. They are repetitive and embedded in the iterative five-year processes under the Paris Agreement, which are purpose-built to increase climate ambition over time. Many of these processes have just been set in motion. Effectively implementing the Paris Agreement is a continuous effort. It has been characterized as “humanity’s life raft”⁷⁶. It must be kept afloat to allow us any chance of survival.

28. Honourable judges, after having discussed the Paris Agreement, I will now turn to obligations in other international treaties.

29. In the interest of time, I will here focus only on the United Nations Convention on the Law of the Sea and human rights treaties, and I refer to IUCN’s written submission for further treaty-based obligations.

30. The recent advisory opinion on climate change by the International Tribunal for the Law of the Sea clarified that all anthropogenic greenhouse gas emissions, from all sources, are pollution of the marine environment⁷⁷.

31. Accordingly, while recognizing the Paris Agreement as the primary international legal instrument to address climate change, the Tribunal clarified that States have, under UNCLOS, additional obligations with respect to climate change⁷⁸.

32. These are obligations of stringent due diligence, which require “a State with greater capabilities and sufficient resources to do more than a State not so well placed. Nonetheless, implementing the obligation of due diligence requires even the latter State to do whatever it can in accordance with its capabilities and available resources”.

⁷⁶ Simon Stiell, UNFCCC Executive Secretary, Statement, Closing Plenary COP29, Baku, Azerbaijan.

⁷⁷ ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024 (“*ITLOS Advisory Opinion on Climate Change*”).

⁷⁸ UNCLOS, Article 194 (1) and (2), and Article 192.

33. Due diligence is objectively determined by relevant factors, such as the risk at stake, the urgency to act, scientific and technological information, precaution and international rules and standards⁷⁹. In the context of climate change, the Tribunal concluded that due diligence is informed by the standards contained in the Paris Agreement: the 1.5°C threshold and the corresponding emission pathways and timelines of net-zero CO₂ emissions by 2050⁸⁰.

34. By interpreting UNCLOS in the light of the Paris Agreement, the Tribunal adopted a systemic approach to international law, which is crucial for the harmonization and coordination between different international treaties. Such approach also safeguards against creating parallel and potentially conflicting standards.

35. IUCN submits respectfully that this Court should follow the Tribunal's approach.

36. I will now address international human rights law.

37. As the IUCN Director General stressed, the impact of climate change on human rights is undeniable and devastating.

38. IUCN submits that core international and regional human rights treaties impose positive obligations on States to take all necessary and appropriate mitigation and adaptation measures to respect, protect and fulfil relevant human rights of all persons on their territory or under their jurisdiction.

39. IUCN stresses that also these obligations are informed by the standards contained in the Paris Agreement.

40. With respect to mitigation, states have the duty to legislate, aligned with 1.5°C, for the substantial and progressive reduction of greenhouse gas emissions, as recognized by the European Court on Human Rights in its *KlimaSeniorinnen* Judgment⁸¹.

41. With respect to adaptation, States must adopt *timely and adequate measures* to protect human rights, such as those to life, private life and family, dignity and indigenous culture. This view was supported by the United Nations Human Rights Committee in *Torres Strait Islanders*⁸².

⁷⁹ *ITLOS Advisory Opinion on Climate Change*, para. 239.

⁸⁰ *Ibid.*

⁸¹ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* App no 53600/20 (ECtHR, 9 April 2024), paras. 550, 562 and 572.

⁸² UNHRC, "Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, Communication submitted by Daniel Billy, UN doc. CCPR/C/135/D/3624/2019

42. IUCN further submits that human rights obligations of States require avoiding disproportionate burdens on future generations⁸³. Due regard for future generations, as a matter of intergenerational equity, was recognized by this Court in its *Nuclear Weapons* Advisory Opinion⁸⁴.

43. Honourable judges, after having expressed IUCN's view on question (a) with respect to treaty law, I will now turn to obligations under customary international law.

44. Treaty law in general, and the Paris Agreement in particular, do not displace the obligations under customary international law. They are neither *lex specialis* nor an excuse for States from their customary obligations. Rather, customary international law and treaty law run in parallel. Thus, State parties and non-parties to the Paris Agreement, or to any other treaty, both continue to be bound by their customary obligations.

45. IUCN submits that the customary international obligations to co-operate and to prevent significant harm to the environment of other States and of areas beyond national jurisdiction⁸⁵ apply to the protection of the climate system.

46. The latter obligation is triggered by the risk of "significant harm". The best available science for what constitutes such harm is found in the IPCC reports. Still, establishing significant harm requires a case-by-case assessment⁸⁶, which may show that already warming below 1.5°C could risk such harm. However, it is unequivocal that significant harm will occur as a result of warming beyond 1.5°C⁸⁷.

47. The obligation to prevent harm is one of due diligence, the level of which is to be determined objectively by the relevant factors mentioned previously — risk, urgency, best available science — and international standards⁸⁸, such as, again, those contained in the Paris Agreement⁸⁹.

(18 September 2023).

⁸³ IUCN's Written Statement, para 390; *Neubauer et al. v. Germany* (2021) 1 BvR 2656/18, para. 146.

⁸⁴ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*.

⁸⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, para. 29; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, pp. 241-242, para. 140; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I)*, pp. 55-56, 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)*, pp. 711-712, para. 118.

⁸⁶ IUCN's Written Statement, para. 39 (m).

⁸⁷ IUCN's Written Statement, para. 39 (g).

⁸⁸ *ITLOS Advisory Opinion on Climate Change*, para. 239.

⁸⁹ IUCN's Written Statement, para. 39 (j); *ITLOS Advisory Opinion on Climate Change, ibid.*, paras. 218 and 243.

48. Given the urgency of addressing climate change and the high risk of serious and irreversible harm to the climate system, IUCN argues that States must act with stringent due diligence⁹⁰. This requires every State to “deploy adequate means, exercise best possible efforts, and to do its utmost”⁹¹ to reduce greenhouse gas emissions aligned with 1.5°C.

49. This also includes regulating the conduct of private actors by putting in place adequate laws and by enforcing them with necessary vigilance⁹².

50. Honourable Members of the Court, to summarize, in IUCN’s view the answer to question (a) is clear: every State has the obligation under international law to do its utmost to reduce greenhouse gas emissions with holding warming to 1.5°C, to limit any overshoot as much as possible, and to reverse it. The standard of conduct is of objective, stringent due diligence and varies according to States’ evolving responsibilities and capabilities. This obligation stems from parallel, complementary and cumulative international legal sources.

51. Honourable judges, I thank you, and I kindly ask you to please give the floor to Professor Dr Francesco Sindico, Co-Chair of the Specialist Group on Climate Change Law of the IUCN World Commission on Environmental Law, to lay out IUCN’s response to question (b).

The PRESIDENT: I thank Professor Voigt. I now give the floor to Professor Francesco Sindico.

Mr SINDICO:

III. IUCN’S RESPONSE TO QUESTION (B)

1. Mr President, Members of the Court, I will present IUCN’s five key arguments in relation to question (b).

2. First, the customary rules on State responsibility⁹³ are the relevant legal framework for addressing question (b). These rules also apply in case of breach of any obligation to protect the

⁹⁰ IUCN’s Written Statement, paras. 39 (i), 305 (d), 353-354 and 378.

⁹¹ ITLOS (2011) *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)* para. 110; *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission* (Advisory Opinion of 2 April 2014), paras. 128-129.

⁹² IUCN’s Written Statement, para. 39 (l). *ITLOS Advisory Opinion on Climate Change*, para. 236.

⁹³ International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)*, Report of the International Law Commission on the Work of its 53rd Session (23 April-1 June and 2 July-10 August 2001), UN doc. A/56/10, 26-30.

climate system, identified under question (a). No specific legal instrument exists under the treaties and customary international law outlined by Professor Voigt which would set aside the framework of State responsibility.

3. Our second point is that the exact content of a State's international responsibility will depend on the circumstances of a *specific* case. The determination of an internationally wrongful act, and the consequences arising from it, cannot be made in the abstract.

4. But, and this is our third point, *if* such a case were to arise in the future and *if* an internationally wrongful act were established, certain consequences will arise for the responsible State. Such consequences include the continued duty to perform the obligation the State has breached and to cease any breaches. In a climate change context, the State would need to implement and effectively enforce the necessary measures to fulfil its climate obligations. The State would also need to offer appropriate assurances and guarantees that it will not breach those obligations again and would have to make full reparation for the injury in the form of restitution, compensation and/or satisfaction.

5. Fourth, in the absence of a special régime, these rules apply equally to all States, including to situations where the injured parties are small island developing States or vulnerable peoples or individuals adversely affected by climate change. However, the general rules of State responsibility and their consequences are broad and flexible enough to account for particular circumstances and heightened vulnerabilities.

6. Fifth, and final, legal consequences need to consider also the devastating climate change impacts on future generations. The principle of intergenerational equity requires the Court to give due regard to the long-term impacts of the wrongful act. This is in line with this Court's recognition in the Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, that the environment is not a mere abstraction, but "represents the living space, the quality of life and the very health of human beings, including generations unborn"⁹⁴. In this context, the *immediate* cessation of the wrongful act is *imperative* to protecting the climate system, and the rights and interests of current and future generations.

⁹⁴ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 241, para. 29.

7. Mr President, distinguished Members of the Court, we trust that this Court will find the arguments presented by the IUCN helpful when preparing your advisory opinion and your recommendations to the United Nations General Assembly.

8. We are confident that your opinion will contribute to protecting our climate system on which life on this planet always has and always will depend. The hopes of present and future generations rest upon your wisdom. History will mark this as the day this Court provided clarity in addressing the most urgent and defining challenge of our time.

9. This concludes IUCN's presentation. Thank you for your kind attention. I would also like to thank the Registry, its staff and the interpreters for their invaluable assistance.

The PRESIDENT: I thank the representatives of the International Union for Conservation of Nature for their presentation.

This presentation concludes the oral statements by all the Participants who have expressed a wish to participate in the present oral proceedings.

As I indicated during my speech on the first day of this series of sittings, any questions by Members of the Court to Participants would be posed this afternoon. Having been informed by various judges that they have questions for the participating delegations, I shall now give the floor to each of them. First, I give the floor to Judge Cleveland.

Judge CLEVELAND: Thank you, Mr President. My question is addressed to any of the Participants who may wish to answer it.

“During these proceedings, a number of Participants have referred to the production of fossil fuels in the context of climate change, including with respect to subsidies. In your view, what are the specific obligations under international law of States within whose jurisdiction fossil fuels are produced to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, if any?”

Thank you.

The PRESIDENT: I thank Judge Cleveland. I now give the floor to Judge Tladi.

Judge TLADI: Thank you Mr President.

“In their written and oral pleadings, Participants have generally engaged in an interpretation of the various paragraphs of Article 4 of the Paris Agreement. Many Participants have, on the basis of this interpretation, come to the conclusion that, to the extent that Article 4 imposes any obligations in respect of nationally determined contributions, these are procedural obligations. Participants coming to this conclusion have, in general, relied on the ordinary meaning of the words, context and sometimes some elements in Article 31 (3) of the Vienna Convention on the Law of Treaties. I would like to know from the Participants whether, according to them, ‘the object and purpose’ of the Paris Agreement, and the object and purpose of the climate change treaty framework in general, has any effect on this interpretation and if so, what effect does it have?”

I thank you again, Mr President.

The PRESIDENT: I thank Judge Tladi. I now give the floor to Judge Aurescu.

Judge AURESCU: Thank you, Mr President. I will present my question in both English and French. My question is the following:

“Some Participants have argued, during the written and/or oral stages of the proceedings, that there exists the right to a clean, healthy and sustainable environment in international law. Could you please develop what is, in your view, the legal content of this right and its relation with the other human rights which you consider relevant for this advisory opinion?”

And the French text is:

« Certains participants ont fait valoir, dans leurs écritures et/ou lors de la phase orale de la procédure, que le droit à un environnement propre, sain et durable existe en droit international. Pourriez-vous expliciter, de votre point de vue, quel est le contenu juridique de ce droit et quelle est sa relation avec les autres droits de l’homme que vous considérez pertinents aux fins du présent avis consultatif ? »

Merci, Monsieur le président.

Le PRÉSIDENT : Je remercie M. le juge Aurescu. I now give the floor to Judge Charlesworth.

Judge CHARLESWORTH: Thank you, President.

“My question is addressed to any of the Participants in the proceedings that may wish to answer it:

In your understanding, what is the significance of the declarations made by some States on becoming parties to the UNFCCC and the Paris Agreement to the effect that no provision in these agreements may be interpreted as derogating from principles of general international law or any claims or rights concerning compensation or liability due to the adverse effects of climate change?”

Thank you, President.

The PRESIDENT: I thank Judge Charlesworth.

The written text of these questions will be transmitted to the Participants by the Registrar. Let me recall that those Participants who may want to respond to one or all of these questions, should provide their written replies by Friday 20 December 2024, at 6 p.m. No written comments on these replies are envisaged.

Je note que les audiences consacrées à la demande d'avis consultatif sur les *Obligations des États en matière de changement climatique* dont l'Assemblée générale des Nations Unies a saisi la Cour sont à présent closes. J'aimerais transmettre les remerciements de la Cour à l'ensemble des délégations qui se sont adressées à elle au cours de ces deux semaines, ainsi qu'aux participants à la procédure écrite. Je prie les représentants de tous les participants de rester à la disposition de la Cour pour tous renseignements ou explications complémentaires dont elle pourrait avoir besoin.

La Cour va maintenant se retirer pour délibérer. Le greffier avisera en temps utile l'ensemble des participants et des membres de l'Assemblée générale des Nations Unies de la date et de l'heure à laquelle la Cour rendra son avis consultatif.

La Cour n'étant saisie d'aucune autre question aujourd'hui, l'audience est levée.

L'audience est levée à 16 h 35.
