

**WRITTEN REPLY OF THE REPUBLIC OF ALBANIA TO THE QUESTIONS PUT BY  
JUDGES CLEVELAND, TLADI, AURESCU AND CHARLESWORTH**

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**Question from Judge Cleveland**

1. Judge Cleveland put the following question to the participants at the end of the oral proceedings:

*“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?”*

*Reply of Albania*

2. As Albania emphasised in its written submissions,<sup>1</sup> there is an irrefutable scientific consensus that the best available evidence confirms anthropogenic greenhouse gas emissions (“GHG”), or increased concentrations thereof (primarily driven by the burning of fossil fuel<sup>2</sup>), to be the leading cause of climate change. The United Nations Secretary-General has noted that “greenhouse gas emissions from fossil fuel burning and deforestation are choking our planet and putting billions of people at immediate risk”,<sup>3</sup> and the International Energy Agency has stated further that reducing fossil fuel production “holds the key to averting the worst effects climate change” and that achieving “net zero means a huge decline in use of fossil fuels”.<sup>4</sup>
3. In its 2022 report, the Intergovernmental Panel on Climate Change (“IPCC”) highlighted that in order to maintain a greater than 50% chance of limiting warming to 1.5°C – and in so doing avoid some of the most catastrophic and irreversible impacts of climate change – fossil fuel usage must decrease rapidly.<sup>5</sup> Projections indicate that coal usage must drop by up to 100% from 2019 levels by 2050, oil by up to 90%, and gas by up to 85%.<sup>6</sup> The best available science makes indisputable that fossil fuel phase-out cannot wait.
4. This said, as a preliminary matter, Albania observes that the responsibility to take meaningful action to ensure the protection of the climate system and other parts of the environment from

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<sup>1</sup> Written Statement of Albania dated 21 March 2024, Section III.A.; Written Comments of Albania dated 15 August 2024, para. 77.

<sup>2</sup> 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 (2021), Technical Summary.

<sup>3</sup> UN Secretary General, Statement on the IPCC Working Group I Report on the Physical Science Basis of the Sixth Assessment, 9 August 2021, available at <https://www.un.org/sg/en/content/sg/statement/2021-08-09/secretary-generals-statement-the-ipccworking-group-1-report-the-physical-science-basis-of-the-sixth-assessment>. See also Written Statement of Albania dated 21 March 2024, Section III.A.

<sup>4</sup> International Energy Agency, Net Zero by 2050 A Roadmap for the Global Energy Sector, 2021, available at <https://www.iea.org/reports/net-zero-by-2050>. Written Statement of Albania dated 21 March 2024, para. 78.

<sup>5</sup> IPCC, Climate Change 2022: Mitigation of Climate Change, Working Group III Contribution to the Sixth Assessment Report of the IPCC, Summary for Policymakers, para. C.3.2 (P. Shukla et al (eds.), 2022).

<sup>6</sup> IPCC, Climate Change 2022: Mitigation of Climate Change, Working Group III Contribution to the Sixth Assessment Report of the IPCC, Summary for Policymakers, para. C.3.2 (P. Shukla et al (eds.), 2022).

anthropogenic GHG emissions does not rest on one group of States alone, even if that responsibility (and its scope) is differential, resting more heavily on those whose actions are contributing most acutely to climate change, and on those who can most afford to take meaningful action to address the threats.<sup>7</sup> While States within whose jurisdiction fossil fuels are produced have a special responsibility, that responsibility cannot be addressed without regard to the responsibility of States where fossil fuels are consumed within their jurisdiction, and, in particular, consumed heavily. While a fossil fuel producing State may also be a heavy fossil fuel consuming State, this will not always be the case. And, while some fossil fuel producing States will be heavy consumers of the fossil fuel they produce, other fossil fuel producers may export more than they consume domestically.

5. In Albania's submission, this appreciation is relevant and important in the context of Judge Cleveland's question as the production of fossil fuels is inextricably tied to its consumption, and the key to the reduction in the *production* of fossil fuels is for States, all States, to take meaningful and effective action domestically to reduce their *consumption* of fossil fuels.
6. Albania, Europe's poorest nation just three decades ago, has undertaken just such action through a remarkable transformation in its sourcing of energy, with nearly 100% of its electricity now coming from renewable energy sources, primarily hydropower. Albania's achievement highlights not simply what is possible but also that developed, industrialised States, which have long relied heavily on fossil fuels for their energy needs, cannot justify their inaction, or dilatory action, when it comes to reducing their reliance on fossil fuels.
7. Without detracting from the preceding appreciation – that the key to reducing the production of fossil fuels is to reduce its consumption – an appreciation which Albania considers to be the pivotal issue in these advisory proceedings, Judge Cleveland's question enquires about the specific obligations, if any, 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 GHG emissions.
8. Just as the unconstrained and unmitigated *consumption* of fossil fuels, which is widely accepted to cause significant harm to the climate system and other parts of the environment, is inconsistent with settled principles of international law, so too is the unconstrained and unmitigated *production* of fossil fuels. These are two sides of the same coin. The responsibility to take meaningful and effective action rests on both consumers and producers of fossil fuels.
9. In Albania's submission, the production of fossil fuels which is *unmitigated* by reference to the harm to the climate system and other parts of the environment, and thereby inconsistent with relevant and applicable international law, includes the *subsidised* production of fossil fuels, i.e., the below-cost production of fossil fuels. Action to mitigate the effects of fossil fuels on the climate system and other parts of the environment has unavoidable costs. If the action that is required by international law is to be meaningful and effective, the costs of such action must be internalised in the price of the fossil fuels. The subsidised production of fossil fuels will have market consequences for energy generation through the use of renewable sources of energy.

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<sup>7</sup> Verbatim Record of Public Sitting on the Obligations of States in Respect of Climate Change dated 2 December 2024, p. 131.

10. It follows from the preceding, in Albania’s view, that settled principles of international law that require constraints on the use of fossil fuels – including implicitly and indirectly – also require constraints on the production of fossil fuels. The law is not a one-way ratchet. It applies to both sides of the market exchange. Ultimately, as the Human Rights Council Advisory Committee unequivocally stated, “[t]he main way for States to be human rights compliant is to rapidly phase out fossil fuels”.<sup>8</sup>
11. Such settled principles of international law include the following:
- a. **Under the UN Climate Change Treaty Regime**, that States are required to reduce or mitigate anthropogenic GHG emissions arising from their jurisdictions,<sup>9</sup> guided by the best available science.<sup>10</sup> The Paris Agreement aims to limit the global temperature increase to well below 2°C above pre-industrial levels and to pursue efforts to limit it to 1.5°C. As noted above, achieving these targets necessitates immediate and comprehensive action to phase out fossil fuels and undertake a ‘just transition’ toward renewable energy sources. This transition is essential for aligning national policies with international commitments under the Paris Agreement and related instruments.
  - b. **Customary international law** imposes due diligence obligations on States to prevent transboundary harm, including harm caused by GHG emissions, and to adopt adequate measures to address this global threat and ensure robust enforcement and oversight.<sup>11</sup> As noted above, the scientific consensus unequivocally shows that immediate and rapid action to phase out fossil fuels is essential for remedying the climate crisis.<sup>12</sup>
  - c. **International human rights law** imposes positive obligations upon States to mitigate and reduce GHG emissions.<sup>13</sup> As remarked upon by Albania in its Oral Statement to the Court, “UN human rights treaty bodies, national and regional courts, as well as numerous soft law instruments, have all recognised that States owe obligations under international human rights law to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions”.<sup>14</sup> This centrality of the imposition of

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<sup>8</sup> The Human Rights Council Advisory Committee adopted, in August 2023, a report on new technologies for climate protection (UN Doc. A/HRC/54/47), which addresses States’ human rights obligations with regard to geoengineering technologies. It reiterates that “[t]he main way for States to be human rights compliant is to rapidly phase out fossil fuels through viable, scientifically proven technologies and approaches” (para. 71).

<sup>9</sup> Written Statement of Albania dated 21 March 2024, para. 102.. See also Written Statement of Peru dated 19 March 2024, para. 81; Written Statement of Chile dated 22 March 2024, para. 133; Written Statement of Vanuatu dated 21 March 2024, para. 408.

<sup>10</sup> Written Statement of Albania dated 21 March 2024, Section III.A; Written Comments of Albania dated 15 August 2024, paras. 16(c) and 78; Verbatim Record of Public Sitting on the Obligations of States in Respect of Climate Change dated 2 December 2024, p. 139.

<sup>11</sup> Written Statement of Albania dated 21 March 2024, Section IV.A.1; Written Comments of Albania dated 15 August 2024, paras. 5(b).

<sup>12</sup> Written Statement of Albania dated 21 March 2024, para. 71.

<sup>13</sup> Written Statement of Albania dated 21 March 2024, Section IV.B.2.

<sup>14</sup> Written Statement of Albania dated 21 March 2024, paras. 94-111; Written Comments of Albania dated 15 August 2024, para. 28; UNHRC, General Comment No. 36 “The right to life”, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 62; UNHRC, Billy et al. v. Australia, Communication No. 3624/2019, UN Doc. CCPR/C/135/D/3624/2019, 18 September 2023 (views adopted on 21 July 2022); UN Committee on the Rights of the Child in five cases: *Sacchi et al v. Brazil, Argentina, Türkiye, France, and Germany*; Written Statement of Albania dated 21 March 2024, fn. 147; Written Comments of Albania dated 15 August 2024,

meaningful and effective constraints on the production and consumption of fossil fuels to the fulfilment of these obligations is found in the November 2023 joint statement by six UN Special Rapporteurs, which stated: “*fossil fuels are at the heart of the planetary ecological crisis, and their tremendous negative impacts on human rights are felt throughout their life cycle, from exploration and extraction to combustion and contamination.*”<sup>15</sup> General Recommendation 37 of the Committee on the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) also underscores these obligations.<sup>16</sup>

- d. **The law of the sea** – in particular, but not limited to the UN Convention on the Law of the Sea – requires States to take “*all necessary measures*”, in line with the best available science, to reduce their GHG emissions,<sup>17</sup> an obligation that necessarily includes action to constrain both the production and consumption of fossil fuels.
12. This is not to suggest that fossil fuel production and consumption are inherently unlawful.<sup>18</sup> However, the undeniable link between climate change and the production and consumption of fossil fuels makes their continued use increasingly indefensible. As highlighted by the African Union, this perspective is echoed in the global community's commitment to “*to a fair and accelerated process of phasing down unabated coal power and phase out of inefficient fossil fuel subsidies*”.<sup>19</sup>
13. There must, therefore, be a “*just transition*”, ensuring that the shift to sustainable energy is inclusive and equitable for all. The timeline for diminishing fossil fuel use is also critical – according to the IPCC, action by 2030 is crucial:

“*climate resilient development prospects are increasingly limited if current greenhouse gas emissions do not rapidly decline, especially if 1.5°C global warming is exceeded in the near-term (high confidence)*”.<sup>20</sup>

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para. 28; *Urgenda Foundation v. The State of The Netherlands* [2019] ECLI:NL:HR:2019:2006; *Neubauer, et al. v. Germany, Bundesverfassungsgericht* [BVerfG]; and Brussels Court of First Instance, *VZW Klimaatzaak v. Kingdom of Belgium & Others*, 17 November 2021.

<sup>15</sup> OHCHR, ‘Fossils Fuels at the Heart of the Planetary Environmental Crisis: UN Experts’, 30 November 2023, available at <https://www.ohchr.org/en/press-releases/2023/11/fossils-fuels-heart-planetary-environmental-crisis-un-experts>.

<sup>16</sup> CEDAW, General Recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, 13 March 2018, para. 14. CEDAW provided this input in the context of “*women and girls experiencing greater risks, burdens and impacts*” from climate change, where “[s]ituations of crisis exacerbate pre-existing gender inequalities and compound the intersecting forms of discrimination,” and it is in recognition of this that Albania draws the Court’s attention to the particular impact of fossil fuel usage against women and girls, and the requirement to address their usage to uphold the protection of international human rights for all.

<sup>17</sup> ITLOS, Advisory Opinion, paras. 179 and 329, 441(d). Written Comments of Albania dated 15 August 2024, paras. 14; 43-53; Verbatim Record of Public Sitting on the Obligations of States in Respect of Climate Change dated 2 December 2024, p. 132.

<sup>18</sup> Written Statement of the African Union dated 22 March 2024, para. 105(b).

<sup>19</sup> Written Statement of the African Union dated 22 March 2024, para. 106. Decision 1/CP.26, ‘Glasgow Climate Pact’, para. 20; Decision 1/CP.27, ‘Sharm el-Sheikh Implementation Plan’, para. 13.

<sup>20</sup> IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II Contribution to the Sixth Assessment Report of the IPCC, Summary for Policymakers, para. SPM D.5 (“*Societal choices and actions implemented in the next decade determine the extent to which medium- and long-term pathways will deliver higher or lower climate resilient development (high confidence).*”), para. SPM D.5.3 (warning

14. As set out in more detail in Albania’s written submissions (see also below in response to Judge Charlesworth’s question), *unmitigated* fossil fuel production engages the responsibility of producer States, requiring them, in particular, to cease urgently all subsidisation and other unmitigated production of fossil fuels, and to take meaningful and effective steps, including (as appropriate) in coordination with fossil fuel consuming States, to move away from fossil fuel production.<sup>21</sup> Albania’s Written Statement emphasised the need for immediate and significant reductions consistent with IPCC projections<sup>22</sup> and the pathways identified in UNEP’s Production and Emission Gap Reports.<sup>23</sup> This may involve taking a wide range of actions depending on the State involved and its particular circumstances. For instance, it may require industrialised States to adopt legislative measures to require emissions reductions across a wide range of industries or may require more extreme measures such as refusing to approve or not supporting any new fossil fuel projects.<sup>24</sup>

### Question from Judge Tladi

15. Judge Tladi put the following question to the participants at the of the oral proceedings:

*“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?”*

### Reply by Albania

16. Article 4 of the Paris Agreement outlines the commitments of State Parties concerning Nationally Determined Contributions (“NDCs”). While it prescribes procedural obligations – such as the preparation, communication, and maintenance of successive NDCs – Albania reiterates its position, as expressed in its previous submissions to the Court, that these obligations are inseparable from States’ **substantive obligations** arising from the Climate Change Treaty Regime and other relevant sources of international law.<sup>25</sup> This is borne out by the object and

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that “[a]ny further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all (very high confidence)”.

<sup>21</sup> Written Statement of Albania dated 21 March 2024, para. 133.

<sup>22</sup> See, e.g., IPCC, “Summary for Policymakers”, Synthesis Report of the IPCC Sixth Assessment Report (AR6), March 2023.

<sup>23</sup> UNEP, Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises, November 2023; UNEP, Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions, November 2023.

<sup>24</sup> Written Statement of Albania dated 21 March 2024, para. 133. See also para. 134.

<sup>25</sup> Written Statement of Albania, paras. 91,134; Written Comments of Albania, para. 16 (a).

purpose of both the Paris Agreement and the United Nations Framework Convention on Climate Change (“UNFCCC”).

17. The UNFCCC establishes as its ultimate objective “*the stabilization of greenhouse concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*”, in accordance with States’ common but differentiated responsibilities and respective capabilities.<sup>26</sup> This applies to “*any related legal instruments that the Conference of the Parties may adopt*”.<sup>27</sup>
18. The Paris Agreement, as an instrument “*enhancing the implementation of the [UNFCCC]*”, aims to “*strengthen the global response to the threat of climate change*”.<sup>28</sup> Article 2 of the Paris Agreement articulates this purpose,<sup>29</sup> emphasising efforts to limit the global temperature increase, to increase the ability of States to adapt to the adverse impacts of climate change and foster climate resilience and the lowering of greenhouse gas emissions, and to make finance flows consistent with pathways towards low GHG emissions and climate-resilient development.<sup>30</sup> Furthermore, Article 2(2) stipulates that the Paris Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities (and respective capabilities) in light of different national circumstances.<sup>31</sup>
19. Developed, industrialised States in particular are under heightened obligations to take the lead in responding to the climate crisis, where they must undertake economy-wide targets for the reduction of GHG emissions, and commit to provide developing States with the finance, technology transfer and capacity-building required to contribute maximally to global climate action (Article 9(1) of the Paris Agreement).<sup>32</sup> These heightened obligations must also be reflected in the content of these States’ NDCs.
20. Further, the object and purpose of the Paris Agreement also requires that all States should not backslide in their climate commitments.<sup>33</sup> Each successive NDC is expected to represent a

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<sup>26</sup> Article 2 of the UNFCCC.

<sup>27</sup> Article 2 of the UNFCCC: “*The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner*”.

<sup>28</sup> Article 2(1) of the Paris Agreement.

<sup>29</sup> Article 3 of the Paris Agreement: “As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to **achieving the purpose of this Agreement as set out in Article 2.**” (emphasis added).

<sup>30</sup> Article 2(1)(a) to (c). See also Written Statement of Albania, para. 117.

<sup>31</sup> Written Statement of Albania dated 22 March 2024, paras. 81, 91, 115, 117, 134; Written Comments of Albania dated 15 August 2024, paras. 12 and 16(a).

<sup>32</sup> Written Statement of Albania, para. 91. Written Comments of Albania, para. 16 (a).

<sup>33</sup> The principle of progression lies at the heart of the Paris Agreement, underpinning its framework and objectives. In the Preamble, Parties “*recognise the need for an effective and progressive response to the urgent threat of climate change*”. Article 3 further reinforces this by stating that “*the efforts of all Parties will represent a progression over time*”. Similarly, Article 14(1) establishes that the Conference of the Parties serves to “*assess the collective progress towards achieving the purpose of [the Paris Agreement] and its long-term goals*”. This principle is particularly central to the Paris Agreement given the recognition of urgency in reaching the specific and ambitious temperature goals set out in Article 2. For example,

progression beyond the current one, reflecting the highest possible ambition.<sup>34</sup> This expectation is also articulated in Article 4(3) of the Agreement, which states that each Party's successive NDC will represent “*a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition*”.

21. It follows from the preceding, in Albania's submission, that the object and purpose of the Paris Agreement mandates an interpretation of Article 4 that takes it beyond purely procedural obligations. The procedural obligations concerning NDCs are designed to facilitate substantive outcomes – namely the reduction of GHG emissions in alignment with the Agreement's temperature goals, and the principles of equity and common but differentiated responsibilities.

### Question by Judge Aurescu

22. Judge Aurescu put the following question to the participants at the of the oral proceedings:

*“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?”*

### Reply by Albania

23. Albania re-iterates its position that the “*right to a clean, healthy and sustainable environment*” has been accepted as a universal human right across the decisions of the UN General Assembly and UN Human Rights Council, relevant UN Special Rapporteurs and regional agreements.<sup>35</sup>
24. Numerous States, including Albania, made reference in their submissions to the resolution of the UN General Assembly recognising the “*right to a clean, healthy and sustainable environment*” as a universal human right.<sup>36</sup> This position is supported by the expert reports of *inter alia* the UN Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment who expressed in a 2020 report that there are “*110 States where the [right to a safe, clean, healthy and sustainable environment] enjoys constitutional protection*”, is “*explicitly included in regional treaties ratified by 126 States*” and “*recognized in law by more than 80 per cent (156 out of 193) of States Members of the United Nations.*”<sup>37</sup>

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Article 4(1) emphasises that “*In order to achieve the long-term temperature goals set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible [...]*”.

<sup>34</sup> Written Statement of Albania, para. 134; Written Comments of Albania, para. 16 (a).

<sup>35</sup> Written Statement of Albania dated 21 March 2024, paras. 90; 96(c); UNGA Resolution, The human right to a clean, healthy and sustainable environment, UN Doc. A/RES/76/300, adopted on 28 July 2022, Preamble (emphasis added). See also UNGA Resolution, Co-operation between States in the field of the environment, UN Doc. A/RES/2995(XXVII), 15 December 1972 and UNEP, Shared Natural Resources, Environmental law guidelines and principles, 1978, p. 2; See also Written Comments of Albania dated 15 August 2024, para. 35.

<sup>36</sup> Written Statement of Albania dated 21 March 2024, para. 96(c); Written Statement of Vanuatu dated 21 March 2024, para. 378; Written Statement of Chile dated 22 March 2024, para. 64.

<sup>37</sup> Right to a Healthy Environment: Good Practices, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Summary and paras. 10-11.

25. In addition, the African Union made reference to the provisions of regional agreements in Africa, where the right to a clean, healthy and sustainable environment finds itself expressed further, including in the African Charter (“[a]ll peoples shall have the right to a general satisfactory environment favorable to their development”) and the Protocol to the African Charter on the Rights of Women in Africa (the “**Maputo Protocol**”) which provides women “*the right to live in a healthy and sustainable environment*”.<sup>38</sup>
26. Similarly, Colombia’s Written Statement also drew attention to the right to a clean, healthy and sustainable environment as enshrined in regional agreements, evidencing further the global understanding of such right standing as a universal human right: “[u]nder the inter-American human rights system, the right to a healthy environment is established expressly in Article 11 of the [Additional Protocol to the ACtHR (“**Protocol of San Salvador**”)]: “*Everyone shall have the right to live in a healthy environment and to have access to basic public services.*”<sup>39</sup>
27. Albania itself has enshrined “*robust environmental principles*”, in its Constitution, which “*directs the State to channel its constitutional powers and resources, in conjunction with private initiatives, to guarantee a healthy environment for present and future generations.*”<sup>40</sup>
28. The right to a clean, healthy and sustainable environment is thus widely acknowledged in international law, attracting a wide consensus of States as exemplified by national legislation, regional agreements, and the overwhelming support given to the UN General Assembly’s Resolution 76/300 and the UN Human Rights Council’s Resolution 48/13, where no States voted against either resolution.
29. Judge Aurescu’s question enquires about:
  - a. the legal content of the “*right to a clean, healthy and sustainable environment*” is; and
  - b. the relationship between this right and other human rights considered relevant for this advisory opinion.
30. As referenced in Albania’s written statement, the right to a clean, healthy and sustainable environment is constituted by substantive elements which include: “*a safe climate, clean air, clean water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.*”<sup>41</sup>

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<sup>38</sup> Written Statement of the African Union dated 22 March 2024, paras. 68-69; African Charter on Human and Peoples’ Rights, (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986); the Maputo Protocol, African Union; 11 July 2003, Articles 18 and 19.

<sup>39</sup> Written Statement of Colombia dated 11 March 2024, para. 56.

<sup>40</sup> Written Statement of Albania dated 21 March 2024, para. 16.

<sup>41</sup> Written Statement of Albania dated 21 March 2024, para. 96(c); UN Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, ‘Right to a healthy environment: good practices’, UN Doc. A/HRC/43/53, 30 December 2019, para. 2; *see also* Written Statement of Liechtenstein dated 22 March 2024, para. 47.



31. Further, the protection of that right also imposes upon States the obligation to “*take responsible measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources, as well as to monitor projects that could affect the environment.*”<sup>42</sup> In addition, as stated by the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, healthy and sustainable environment – “*a safe climate dovetails with the objective of the UNFCCC to prevent dangerous anthropogenic interference with the climate system*”.<sup>43</sup>
32. These substantive elements, comprising the ‘legal content’ of the right to a clean environment, operate “*temporally*”, “*spatially*” and “*extraterritorially*” – with its protection extending to: (i) present and future generations (including the rights of children); (ii) representing a common concern of humankind, and (iii) recognition of the inherently transboundary nature of environmental harms and climate change.<sup>44</sup>
33. Further, the right “*also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life.*”<sup>45</sup> The right to a clean, healthy and sustainable environment is indeed intrinsically linked to the realisation of such other human rights, including *inter alia* the rights to life, health, housing, culture, work, development and self-determination.<sup>46</sup> A healthy environment is a prerequisite for the full enjoyment of human rights, including the rights to life and health.<sup>47</sup> The realisation of such rights must then require the protection of a clean, healthy and sustainable environment as a necessary precondition and derivation from other existing rights.
34. Albania reiterates the critical importance of an intersectional approach when considering the impacts of climate change on the safeguarding of a clean, healthy and sustainable environment. As addressed in Albania’s submissions, certain groups are disproportionately affected by the impacts of climate change, particularly women, children and indigenous groups. These heightened impacts must be fully recognised and integrated into the design and implementation of climate action to effectively uphold this universal right.<sup>48</sup>

### Question by Judge Charlesworth

35. Judge Charlesworth put the following question to the participants at the end of the oral proceedings:

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<sup>42</sup> Written Statement of Colombia dated 11 March 2024, para. 61.

<sup>43</sup> Written Statement of Vanuatu dated 21 March 2024, para. 283; David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, 15 July 2019, UN Doc A/74/161, para. 43.

<sup>44</sup> Written Statement of Vanuatu dated 21 March 2024, para. 383; *see also* Written Statement of Liechtenstein dated 22 March 2024, para. 46; Written Statement of the African Union dated 22 March 2024, paras. 119; 249.

<sup>45</sup> Written Statement of Colombia dated 11 March 2024, para. 59.

<sup>46</sup> Written Statement of Vanuatu dated 21 March 2024, para. 382; Written Statement of Chile dated 22 March 2024, para. 64.

<sup>47</sup> *See also* Written Statement of Liechtenstein dated 22 March 2024, para. 45.

<sup>48</sup> Written Statement of Albania dated 21 March 2024, paras. 11; 104 and 105.

*“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?”*

*Reply by Albania*

36. The UNFCCC and the Paris Agreement do not include express provisions addressing the legal consequences of a breach of the obligations set out therein. Accordingly, it is to the general rules of State responsibility that one must look for purposes of assessing and addressing the consequences of breach.<sup>49</sup> Declarations or reservations by States on becoming parties to the UNFCCC or the Paris Agreement cannot oust the law of State responsibility.
37. In respect of the UNFCCC, Albania notes that, to avoid any risk of misunderstanding on precisely this point, a number of States made declarations to the effect that their ratification: *“shall, in no way, constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law”*.<sup>50</sup> As regards the Paris Agreement, although paragraph 51 of Decision 1/CP.21 states that *“Article 8 of the Agreement does not involve or provide a basis for any liability and compensation”*, COP decisions cannot without more alter the content of binding obligations already agreed.<sup>51</sup>
38. Albania also reiterates its position that liability is not eliminated by challenges in determining causation.<sup>52</sup> Article 47 of the Articles on the Responsibility of States for Internationally Wrongful Acts (*“ARSIWA”*)<sup>53</sup> addresses some of these difficulties. The existence of causation and damages should be assessed based on a rebuttable presumption resulting from general scientific evidence, and any victim shall be entitled to claim compensation from each co-perpetrator State in proportion to their contribution to anthropogenic GHG emissions.<sup>54</sup>
39. The application of ARSIWA to the anthropogenic emissions of GHG from a State has been expressly recognised and examined by other international and regional courts. In the context of States’ obligations with respect to anthropogenic GHG emissions under the UNCLOS, ITLOS recently indicated that *“if a State fails to comply with [its] obligations, international responsibility would be engaged for that State”*.<sup>55</sup> In *Verein Klimaseniorinnen Schweiz v. Switzerland*, the

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<sup>49</sup> Written Statement of Albania dated 21 March 2024, para. 129.

<sup>50</sup> Declarations to this effect were made by the Philippines, Cook Islands, Federated States of Micronesia, Nauru, Niue, Solomon Islands, and Tuvalu. In addition, Vanuatu and the Marshall Islands declared that ratification of the Paris Agreement *“shall in no way constitute a renunciation of any rights under any other laws, including international law”* (see United Nations Treaty Collection, *“Status of Ratification of the Paris Agreement”*, available [here](#)).

<sup>51</sup> Written Statement of Albania dated 21 March 2024, para. 129, fn. 195.

<sup>52</sup> Written Comments of Albania dated 15 August 2024, Section II.D.2.

<sup>53</sup> ILC, *“Articles on Responsibility of States for Internationally Wrongful Acts”*, with commentaries, Yearbook of the International Law Commission, 2001, Vol. II, Part Two.

<sup>54</sup> Written Statement of Albania dated 21 March 2024, para. 145(c); Written Comments of Albania dated 15 August 2024, paras. 76-79. *See also* Written Statement of Switzerland dated 18 March 2024, para. 29, and Written Statement of Uruguay dated 22 March 2024, paras. 169-174.

<sup>55</sup> Climate Change and International Law, Advisory Opinion, Case No. 31, International Tribunal for the Law of the Sea (21 May 2024), paras. 223, 286. *See also* Written Comments of Vanuatu, para. 160.

European Court of Human Rights specifically emphasised the relevance of the rule codified in Article 47 of the ARSIWA regarding the contribution of multiple States to climate change.<sup>56</sup>

40. Finally, Albania reaffirms its position that the harm caused by anthropogenic emissions of GHG is neither speculative nor confined to the future. It is historic, it is ongoing, it is well-documented, and it is significant, constituting a breach of longstanding obligations under the comprehensive framework of international law.<sup>57</sup> Settled principles of the law of State responsibility apply, requiring responsible States to cease their wrongful conduct, provide guarantees of non-repetition, and fully compensate those harmed.<sup>58</sup> The Court's advisory opinion must be bold, direct and clear in its statement of what the law requires to meaningfully address the pressing, existential threats we face. It should affirm that decades of anthropogenic GHG emissions have been and are in breach of international law, recognised indisputably by the global scientific consensus as harmful, and that they – cannot be permitted persist with impunity.

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<sup>56</sup> *Verein Klimaseniorinnen Schweiz and others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 442-443. *See also* Written Statement of Vanuatu dated 21 March 2024, para. 440.

<sup>57</sup> *See* Verbatim Record of Public Sitting on the Obligations of States in Respect of Climate Change dated 2 December 2024, p. 123; 131; 133; Written Statement of Albania dated 21 March 2024, Section III.

<sup>58</sup> Written Statement of Albania dated 21 March 2024, para. 133-144; *see above* at para. 7(b).