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Summary of the International Court of Justice Hearings on States' Obligations in Respect of Climate Change: 2-13 December 2024

With the adoption of the new collective quantified goal on climate finance at the Baku Climate Change Conference in November, the year 2024 already featured a key milestone in global climate governance. Convening just a week after this Conference, the hearings at the International Court of Justice (ICJ) provided yet another opportunity to set the course for ambitious climate action in this critical decade.

The much-anticipated hearings convened at the Peace Palace, the iconic harbor of "peace through law" located in The Hague, the Netherlands. It drew a different crowd compared to the climate negotiations—ambassadors, legal counsel of foreign ministries, and the "who's who" of international law. A record-breaking number of States and several international organizations had submitted written statements to inform the Court's advisory opinion on States' obligations in respect of climate change. They delineated their views on the questions formulated in the United Nations General Assembly's (UNGA) request to the Court and many commented on one another's written statements. The oral hearings gave them, as well as others who had not filed submissions, a platform to substantiate their views on obligations under international law and legal consequences for the breach of these obligations, especially with regard to small island developing States (SIDS) that are particularly vulnerable to the adverse effects of climate change—and to future generations. In total, 96 States and 11 international organizations presented oral statements.

Statements touched upon the role of the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement on climate change, and other environmental treaties, as well as human rights law, customary international law, and general principles of international law in defining the scope of States' obligations. Speakers debated the point in time at which knowledge of the adverse impacts of greenhouse gas (GHG) emissions gave rise to States' duty of due diligence to prevent harm to the environment. They also diverged in their perspectives on the legal consequences of breaching those obligations, with some underscoring the Convention's and Paris Agreement's facilitative, non-punitive approach to compliance and others emphasizing obligations to cease wrongful acts and compensate for harm done under the customary rules of State responsibility.

The central motivator behind the request for the advisory opinion is many countries' dissatisfaction with the pace of the climate negotiations and the effectiveness of the Paris Agreement. The current set of nationally determined contributions (NDCs) under the Agreement puts the world on track to 3°C of global warming compared to pre-industrial times, far above the 1.5°C goal. Negotiations in Baku raised significant doubts about many countries' commitment to transition away from fossil fuels, the key driver of climate change. During the hearings, numerous speakers highlighted their hope for the Court's advisory opinion to help course-correct.

States and admitted international organizations now have one last opportunity to inform the Court's deliberations by submitting written responses to the judges' questions regarding: fossil fuel production, the interpretation of mitigation obligations under the Paris Agreement, the right to a healthy environment, and declarations related to State responsibility and liability for loss and damage. The judges will take these responses into consideration when preparing their advisory opinion, which is expected to be delivered in open court sometime in 2025.

A Brief History of the Process Leading up to the Request for an ICJ Advisory Opinion

Eunice Newton Foote demonstrated the effects of carbon dioxide (CO2) on atmospheric temperatures as early as the mid-1800s, with subsequent research deepening our understanding of anthropogenic climate change and its variegated impacts. Building on the first "World Climate Conference," held in 1979, the Intergovernmental Panel on Climate Change (IPCC) was established in 1988 to prepare a comprehensive review of the state of climate science, the social and economic impacts of climate change, and potential response strategies. With its first assessment report, published in 1990, the IPCC showed that global average

In This Issue

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temperature had already increased as a result of anthropogenic GHG emissions and underlined climate change as a challenge with global consequences requiring international cooperation.

After the UNGA recognized climate change to be a common concern of humankind in Resolution 43/53 in 1988, the international political response to climate change began in 1992 with the adoption of the UNFCCC. The Convention sets out the basic legal framework and principles for international climate change cooperation with the aim of stabilizing atmospheric concentrations of GHGs to avoid "dangerous anthropogenic interference with the climate system." In December 2015, parties to the UNFCCC adopted the Paris Agreement, which aims to limit the global average temperature increase to "well below" 2°C above pre-industrial levels, and pursue efforts to limit it to 1.5°C. It also aims to increase parties' ability to adapt to the adverse impacts of climate change and make financial flows consistent with a pathway towards low-emissions and climate-resilient development. Each party shall communicate, at five-year intervals, progressively more ambitious NDCs. Collective progress towards implementing the Agreement and reaching its objective is to be reviewed every five years through a Global Stocktake (GST).

The first GST concluded in 2023, showing that parties are not on track to reach the Agreement's objectives. The decision concluding the GST, among others, encourages parties to ensure their next NDCs are 1.5°C-aligned and contain ambitious, economy-wide emission reduction targets, covering all GHGs, sectors, and categories. The decision also calls on parties to contribute, in a nationally determined manner, to global efforts to transition away from fossil fuels in energy systems, in a just, orderly, and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science.

The Advisory Opinion on Climate Change

Recent years have seen an increase in climate-related court cases as well as deeper engagement by legal scholars and judicial bodies on matters related to the environment more generally. In 2022, the UNGA recognized the human right to a clean, healthy, and sustainable environment, and nature rights laws have been passed in various jurisdictions around the globe. Stakeholders such as children, elderly women, and non-governmental organizations (NGOs) have turned to courts at the national and regional levels to bring about enhanced climate action.

Most recently, an advisory opinion of the International Tribunal for the Law of the Sea (ITLOS) confirmed that States have to prevent, reduce, and control marine pollution from GHG emissions and protect and preserve the marine environment from climate change impacts and Ocean acidification. Another advisory opinion is pending at the Inter-American Court of Human Rights on the individual and collective obligations of States to respond to the climate emergency within the framework of international human rights law, specifically under the American Convention on Human Rights and other inter-American treaties.

Building on a campaign by Pacific youth, the small island State of Vanuatu succeeded in gathering sufficient support for the UNGA to unanimously adopt Resolution 77/276 in 2023, requesting the ICJ to give an advisory opinion on the obligations of States in respect of climate change. Specifically, the UNGA requests the ICJ to clarify:

- the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of GHGs for States and for present and future generations; and
- the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
  - States, including, in particular, SIDS, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change; and
  - peoples and individuals of the present and future generations affected by the adverse effects of climate change.

All UN Member States are entitled to participate in the proceedings. Several international and regional organizations, including the Alliance of Small Island States (AOSIS), the Organization of the Petroleum Exporting Countries (OPEC), and the International Union for the Conservation of Nature (IUCN), were also authorized to participate.

States and admitted organizations submitted 91 written statements and 62 written comments to inform the Court's deliberations. The Court also received submissions by various NGOs. The oral proceedings, which took place in December 2024, provided an opportunity for States and organizations to further elaborate on their written submissions or voice additional perspectives. The Court is expected to deliver its advisory opinion in open court sometime in 2025.

The International Court of Justice

The Court is the principal judicial organ of the UN. It was established by the UN Charter in 1945 and is the only court with both general and universal jurisdiction. In that sense, its role differs from that of specialist international tribunals, such as ITLOS. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes between States submitted to it by them; and, second, to give advisory opinions on legal matters referred to it by UN organs and specialized agencies.

The Court is composed of 15 judges. They are elected by the UNGA and the UN Security Council. Their term of office is nine years. In order to ensure institutional continuity, one-third of the Court is elected every three years. Once elected, the judges exercise their powers independently and impartially. Counsel speaking before the Court are appointed by the State or organization on whose behalf they speak. They are not required to possess the nationality of the State on behalf of which they appear, and are chosen from among those practitioners, professors of international law, and jurists of all countries who appear most qualified to present the views of the parties.

By interpreting international law and applying it to specific cases, the Court clarifies the substance of that law and also contributes to its codification and progressive development. Judgments delivered by the Court in disputes between States are binding upon the parties concerned. Advisory opinions are non-binding. The UN organs and specialized agencies requesting the opinions can give effect to them or not, by whichever means they see fit. Since opening its doors in 1946, the Court has heard 195 cases, of which 30 are advisory opinions.

Even though the ICJ's advisory opinions are not legally binding, its assessment will provide authoritative guidance on the nature and scope of States' obligations regarding climate change under international law.

Report of the Hearings

ICJ President Nawaf Salam opened the hearings on Monday, 2 December.

Statements

On Monday, 2 December, the Court heard statements by: Vanuatu and the Melanesian Spearhead Group (jointly); South Africa; Albania; Germany; Antigua and Barbuda; Saudi Arabia; Australia; the Bahamas; Bangladesh; and Barbados.

VANUATU and the MELANESIAN SPEARHEAD GROUP lamented that anthropogenic contributions to global warming and the risks of GHG emissions have been known since the 1960s, and yet, global GHG emissions have increased by over 50% since the 1990s. They underlined that a handful of readily identifiable countries have produced the vast majority of historical and current GHG emissions.

VANUATU and the MELANESIAN SPEARHEAD GROUP further argued that under international law, States have obligations to act with due diligence to: prevent significant harm to the environment; reduce their emissions; provide support to the countries most vulnerable to the impact of their activities; protect the human rights of present and future generations; protect and preserve the marine environment; and respect the fundamental rights of countries, including island nations, to self-determination in their own lands. They stressed that the failure by a handful of large emitting States to fulfil these obligations constitutes an internationally wrongful act and triggers legal consequences under the international law of State responsibility, in accordance with the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).

On self-determination, they emphasized this right as a cornerstone of the international legal order, noting the Court has previously characterized it as both an essential principle of contemporary international law and as a fundamental human right with a broad scope of application. They recalled the UN Human Rights Committee's description of the realization of self-determination as an essential condition for the effective guarantee and observance of individual human rights. They further asserted that the right to self-determination gives rise to *erga omnes* obligations, that is, universally owed to all, and that it is also widely recognized as a peremptory norm of international law, that is, a norm from which no derogation is permitted under international law. Noting the impact of climate change on the Melanesian people and territories, they concluded that climate change is affecting their ability to enjoy the right to self-determination in their land.

VANUATU and the MELANESIAN SPEARHEAD GROUP identified the obligations of due diligence and prevention as core requirements of State conduct, as previously recognized by the ICJ, ITLOS in its Advisory Opinion on Climate Change, and in the preamble of the UNFCCC. They highlighted that these obligations require States to undertake rapid, deep, and urgent reduction of GHG emissions in all sectors in this decade, in line with IPCC findings. Yet, they argued, the largest emitting and producing States have breached these obligations by continuing to expand the extraction and use of fossil fuels, with fossil fuel subsidies from States reaching USD 7 trillion in 2022.

They called on the Court to affirm that the conduct of large emitting States has caused significant harm to the climate system and other parts of the environment, and has therefore breached international law with attendant legal consequences such as:

- cessation of the wrongful conduct, by refraining from fossil fuel exploitation, eliminating fossil fuel subsidies, and dismantling the systemic structures that drive emissions;
- assurances of non-repetition, including effective safeguards against false solutions that risk aggravating the harm, such as geo-engineering;
- reparations in proportion to the responsible States' historical contributions to the harm, which should include ecosystem restoration and monetary compensation for harms that cannot be undone; and
- satisfaction, to repair spiritual, dignitary, and other aspects of the injury that cannot be cured by compensation or restitution and should cover acknowledgement of the harm and commemoration and tribute to the victims.

SOUTH AFRICA noted that African countries have to devote nearly 1% of their gross domestic product (GDP) to climate adaptation and emphasized that any determination of States' rights and obligations must take both historical and current emissions into account. On the applicable law, they underscored the centrality of the UNFCCC, Kyoto Protocol, and Paris Agreement, while highlighting the intrinsic link of those treaties to the principle of sustainable development and the "emerging" right to development. They pointed to the compliance mechanisms available under these treaties and said that the international law of State responsibility should only apply where those mechanisms are not adhered to. As for the legal status of decisions of the Conference of the Parties (COP) to the UNFCCC, they maintained that these are not binding, but that their arduous negotiation reflects a common will of parties and they give practical effect to the provisions of the climate treaties.

On States' legal rights and obligations, SOUTH AFRICA recalled the importance of equity and the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) in interpreting the relevant legal provisions. They said the Paris Agreement imposes an obligation on parties to pursue progressively more ambitious mitigation measures in line with the prevention and due diligence principles within the "means at their disposal," emphasizing that countries have different capabilities. They underscored that developing countries cannot be held responsible for failing to reach NDCs if the promised support is not forthcoming. Further, they mentioned that the targets enshrined in the Kyoto Protocol must be the "starting point" in terms of specificity and ambition for developed countries' climate action under the Paris Agreement in line with the principle of progression.

ALBANIA highlighted the injustice of the climate crisis, urging the ICJ to issue a bold, direct, and clear advisory opinion affirming that, while all States must mitigate emissions, international law imposes differential obligations. They emphasized two complementary obligations under international law:

- developed States, with greater resources and disproportionate historical responsibility for GHG emissions, are obligated to significantly reduce emissions; and
- developed States must provide financial resources and facilitate technology transfer to support developing countries' mitigation and adaptation efforts.

ALBANIA underscored that human rights instruments and customary international law, alongside climate-specific instruments, form the basis of States' obligations. They pointed to the Paris Agreement's preamble recognizing the link between climate action and human rights, as well as national and regional court rulings affirming States' obligations under international human rights law in the climate context.

ALBANIA outlined three key obligations under international human rights law: preventing significant harm to the climate system that violates human rights; ensuring climate measures do not infringe on human rights; and providing redress for human rights violations resulting from climate change impacts. They emphasized these obligations may apply extraterritorially where clear causation exists and there is impact on an individual's human rights.

Highlighting climate change as a "threat multiplier," ALBANIA noted its disproportionate impacts on women, Indigenous Peoples, children, persons with disabilities, and those living in poverty. They called on the ICJ to adopt an intersectional approach, affirm the interconnected nature of international law, and rely on science to clarify States' obligations on climate change.

GERMANY emphasized the difference between legally binding obligations and voluntary political commitments, underscoring that clarity on this distinction is a precondition for States to continue to consent to both. They considered the Paris Agreement and the UNFCCC to be the decisive treaties to determine States' legal obligations on climate change. They highlighted that the Paris Agreement strikes a careful balance between legally binding and non-binding elements and avoids a static dichotomy between developed and developing countries, while recognizing national circumstances. GERMANY underscored that the Paris Agreement sets out 1.5°C as a binding goal that parties are obliged to achieve jointly and that all parties have the legal obligation to prepare NDCs, which are to reflect each party's highest possible level of ambition depending on their national circumstances.

While emphasizing their commitment to provide financial support, including through the Loss and Damage Fund, GERMANY underscored that the Paris Agreement does not entail a legal obligation to provide compensation for loss and damage. They noted that parties who leave the Paris Agreement would still be bound by obligations stemming from customary international law, especially the duty to cooperate. They emphasized the legality of past emissions can only be considered in light of the law applicable at that time and recalled that the IPCC published its first Assessment Report in 1990.

GERMANY also: rejected an "overbroad" expansion of extraterritorial jurisdiction; noted the goal of human rights treaties is to protect actual victims of concrete violations, not abstract persons from abstract risks; and considered the right to a safe, clean, healthy, and sustainable environment not to be part of customary law.

ANTIGUA AND BARBUDA lamented that while large wealthy countries can borrow on the capital markets at 3%, high-income SIDS have to borrow commercially at 10% to repeatedly rebuild their infrastructure damaged by hurricanes, due to the failure of other States to mitigate their emissions. They pointed out that the Loss and Damage Fund has only received pledges of USD 700 million, which is "significantly inadequate" to address needs.

ANTIGUA AND BARBUDA addressed assertions by some countries that the climate treaties replace customary law obligations or that compliance with the provisions of such treaties amounts to compliance with customary law. They recalled that, as the ICJ recognized, an important principle of customary international law should not be held to have been tacitly dispensed with unless there is an express and clear intention to do so. They asserted a lack of evidence of such express intention in both the climate treaties and countries' actions under the treaties.

ANTIGUA AND BARBUDA concluded that the customary international law of prevention continues to apply to climate change, underlining that compliance with the Paris Agreement is essential, but does not dispense with State obligations under customary law, the United Nations Convention on the Law of the Sea (UNCLOS), and human rights treaties, complementing these obligations instead.

ANTIGUA AND BARBUDA further underlined that the obligation of States under the Paris Agreement to submit NDCs is not simply procedural, as asserted by some countries. Instead, in accordance with Paris Agreement Article 4 (NDCs), these NDCs must be set to a level corresponding with the remaining carbon budget to achieve the 1.5°C temperature goal.

SAUDI ARABIA underlined the country's low historical emissions and emphasized that emission reductions must occur alongside energy security, poverty eradication, and sustainable development.

On the role of the ICJ and the applicable law, they maintained that "advisory opinions cannot be a substitute for negotiations" and urged the Court to disregard the legal materials listed in the chapeau of UNGA Resolution 77/276 requesting the advisory opinion. They further argued that going beyond *lex lata*, that is, the law as it is, would "undermine the framework for cooperation, negotiation, and consent" of the climate regime.

On substance, SAUDI ARABIA outlined their view that States' rights and obligations exclusively stem from the UNFCCC, Kyoto Protocol, and Paris Agreement, rejecting the relevance of UNCLOS, human rights treaties, the rights of future generations, or the ILC's work on harmonization and systematization.

SAUDI ARABIA said States have an obligation to formulate NDCs, but stressed that the content and implementation of NDCs are not legally binding. They considered that there is "no basis whatsoever under the specialized treaty regime to establish a limit on fossil fuel extraction and production" and said the temperature goal in Article 2 of the Paris Agreement is "aspirational" and cannot give rise to new rights and obligations. They also objected to the application of the no-harm principle and the law of State responsibility in the context of climate change, pointing to the compliance mechanism and the Loss and Damage Fund under the Paris Agreement as the apposite fora to deal with climate harm.

AUSTRALIA identified areas of consensus among speakers, including the ICJ's competence to issue an advisory opinion, the centrality of the UNFCCC and Paris Agreement as primary frameworks for establishing States' obligations on climate change, reliance on science, in particular the IPCC Sixth Assessment Report, and the need for increased cooperation and action.

On the role of other treaties and customary law, AUSTRALIA acknowledged the complementary relevance of obligations in treaties such as UNCLOS, international environmental agreements, and human rights treaties. They emphasized that the Court does not need to invoke the rule of *lex specialis*, that is, the precedence of specific law, noting this is designed to resolve normative conflicts. Instead, they called for a harmonious interpretation of obligations to protect the climate system, citing Article 31.3(c) of the Vienna Convention on the Law of Treaties that applies to external rules of international law to inform the interpretation of a treaty but that does not mean incorporating obligations from other treaties or customary law.

AUSTRALIA rejected the application of the principle of prevention of transboundary harm to GHG emissions. They argued that GHG emissions lack the direct causation and proximate temporal effects typical of transboundary harm case law. They also pointed to the absence of consistent *opinio juris* deriving

obligations under this principle for GHG emissions, which is evinced in the development of specific procedural and substantive mechanisms under the UNFCCC and Paris Agreement.

On the UNGA request, AUSTRALIA underscored that breaches of obligations and legal consequences depend on specific contexts and cautioned against broad findings on reparations without evidence-based causation. They highlighted challenges in attributing State responsibility according to ARSIWA Article 47, as separate wrongful acts would have contributed to indivisible harm. AUSTRALIA urged the ICJ to provide criteria for assessing obligations in the context of specific cases.

The BAHAMAS underscored that international law imposes robust individual obligations on States to mitigate GHG emissions, and challenged some countries' narrative that climate change is an unstoppable force that individual countries have no control over. They recognized and accepted the CBDR-RC principle, underlined it is not a "get out of jail free card," and affirmed the responsibility of major emitters that self-identify as developing countries to correct their current emissions trajectory.

The BAHAMAS said States have individual obligations to effect deep, rapid, and sustained GHG emission reductions under both customary international law and under treaty law. In this regard, they pointed to the duty to prevent significant damage to the environment of other States, as confirmed by the ICJ in the *Corfu Channel* case and developed in subsequent cases. Acknowledging that this duty has historically applied to damage that can be traced to one, often neighboring, State, they questioned why it would not apply in the same manner to the damage caused by GHG emissions. They asserted that the duty of prevention applies generally and is not limited to specific activities or to neighboring States only. They highlighted that the science is clear about the factual link between GHG emissions and serious harm to the environment, and that consequently, the excessive GHG emissions of large emitting States damage the environment of other States and trigger this obligation.

BANGLADESH underscored that they are the "victims of a grave injustice," pointing to the USD 400 billion needed for domestic adaptation efforts alone and to the shortfalls of the USD 300 billion new collective quantified goal on climate finance reached at the Baku Climate Change Conference.

On the relationship between different legal regimes, they said the customary international law on transboundary harm, the climate treaties, and fundamental norms of human rights law are all key to the questions at hand. Pushing back against the idea that the climate regime constitutes *lex specialis*, they noted that this position is inconsistent with the presumption against normative fragmentation, and that there is no normative inconsistency that would trigger the application of the *lex specialis* rule in the first place. They urged the Court to "reinvigorate" the "faltering" diplomatic process under the UNFCCC with a solid legal opinion. Moreover, they laid out how other States' conduct affects human rights on Bangladesh's territory, triggering the inter-State obligation of cooperation. They said these different norms should all be interpreted in line with the CBDR-RC principle, which requires developed countries to shoulder the largest burden of climate action.

On concrete obligations, BANGLADESH highlighted adaptation as an overlooked, but crucial element, and emphasized the duties to: provide adaptation finance; provide technology transfer, as well as scientific and legal information; preserve and restore ecosystems; and assist with capacity-building measures, in particular in relation to climate-related displacement, including measures to accommodate climate-displaced communities.

BARBADOS emphasized that the entire corpus of international law, as identified in the ICJ Statute, is relevant and applicable to climate change. Citing some States' interventions in other proceedings, they argued that the UNFCCC and Paris Agreement should not be considered exhaustive statements of climate-relevant law, *lex specialis*, or exclusive, self-contained regimes.

BARBADOS contended that the obligation not to cause transboundary harm is an obligation of results, not means. They stressed that harm on its own gives rise to the obligation for reparation. Referring to the ILC's Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities, BARBADOS noted that compensation under strict liability rules applies when hazardous activities are undertaken. They asserted that climate change harm—which is driven by the extraction and use of fossil fuels, which are hazardous activities—falls within this regime.

Addressing claims that climate change is "too broad and complex" to attribute causally to any one State, BARBADOS countered that this is a matter of scope, not causation, and that the causes of climate change are direct, foreseeable, and proximate. BARBADOS stated that each major emitting State individually cannot avoid its obligation to provide redress simply because all major emitting States acted together to cause climate change.

On foreseeability, BARBADOS cited evidence showing that major emitters were aware for decades of the harm fossil fuel use would cause. Pointing to archival references from the US, the UK, France, West Germany, and the Union of Soviet Socialist Republics, they noted that these States knew for about 80 years that their actions would lead to "drought, famine, and political unrest" but chose to proceed regardless, breaching obligations of due diligence. BARBADOS urged the Court not to overlook these historical facts.

On Tuesday, 3 December, the Court heard statements by: Belize; Bolivia; Brazil; Burkina Faso; Cameroon; the Philippines; Canada; Chile; China; Colombia; Dominica; and the Republic of Korea.

BELIZE questioned whether the application of the customary international law obligation of prevention in the context of climate change is as legally complex as often argued. They countered common arguments used by major carbon-producing and consuming States to "neutralize" the prevention obligation. They emphasized that harm caused by GHG emissions is transboundary, existential, and significant, and falls within the scope of the prevention obligation referenced in the preamble of the UNFCCC. Responding to an alleged lack of *opinio juris*, BELIZE underscored that the due diligence obligation of prevention is universally recognized. On the invocation of *lex specialis*, they argued that this approach applies only in cases of normative inconsistency, which does not exist between the prevention obligation and climate treaties. Regarding the use of Article 31.3(c) of the Vienna Convention on the Law of Treaties to interpret the relationship between climate treaties and other norms of international law, they noted that harmonious interpretation does not neutralize the prevention obligation under customary law, which applies in parallel to the existing climate treaties.

BELIZE likened GHG emissions to a transboundary river polluted by upstream States, arguing that both cases involve potential transboundary harm and trigger the prevention obligation, including impact assessments based on best available

science. They added that general causation suffices to apply the prevention obligation in the context of climate change, and should be distinguished from specific causation, which is key for determining reparation obligations *in concreto*.

BELIZE emphasized that no single legal text establishes universal causation standards, and the content of the specific obligation must guide causal determination. As part of the prevention obligation, they highlighted the obligation to assess potential risks before they materialize, ensure public scrutiny, and cooperate with and notify potentially affected States.

BOLIVIA stressed that the climate crisis stems from the "capitalistic" development model that has dominated over the past two centuries. They said the "bitter fights" over climate finance at the recently concluded UNFCCC COP 29 illustrate that the international community needs clear legal guidance.

On the scope of States' obligations, they argued that climate treaties are not the only source of States' obligations and that compliance with those treaties cannot absolve States of all responsibility for climate change. They further asserted that the principles of prevention and due diligence apply to climate harm, and that the cumulative and global nature of the harm reinforces, rather than suspends, their application. They further said these substantive obligations are complemented by procedural ones—including the duty of cooperation—and pleaded with the Court not to allow countries to use the complexity of causation and attribution science to evade obligations under international law.

On CBDR-RC, BOLIVIA explained that this principle not only applies to the climate regime, but also shapes the understanding of human rights obligations in the context of environmental harm. They said CBDR-RC implies that the due diligence standards must differ between countries with different historical contributions and different capabilities to take climate action, as confirmed by the Advisory Opinion on Climate Change delivered by ITLOS. They added that CBDR-RC must inform the application of the law of State responsibility without displacing the latter.

On the duty of cooperation, they pointed to States' well-recognized obligation to engage in good faith in multilateral efforts to combat climate change. This duty, they said, implies that developed countries should provide assistance to developing countries under Articles 7, 8, 9, 10, and 11 of the Paris Agreement. They specified crucial avenues to discharge this duty, such as access to climate finance, providing grants and Special Drawing Rights rather than loans, and contributing to the Loss and Damage Fund. They underlined that voluntary cooperative measures do not replace, but are complementary to, the legally binding rules on State responsibility.

BRAZIL outlined the scientific basis for historical responsibility by pointing out that current global warming is predominantly the result of developed countries' historical emissions accumulated over the last 250 years. They added that these past emissions have not only reduced the carbon budget available today, but they also constrain the social and economic development of developing countries and affect the livelihoods of the most vulnerable. BRAZIL underlined that consequently, the CBDR-RC principle is the cornerstone of the international climate regime composed of the UNFCCC, Kyoto Protocol, and Paris Agreement. They stressed this principle translates historical responsibility into legal terms.

BRAZIL argued that there is no reason why the Court's case law on harm prevention, with due diligence at the core, should not apply to climate change. Underlining that due diligence must be understood on a case-by-case basis, they outlined the role of CBDR-RC in this context and asked the Court to confirm:

- the legal value of UNFCCC COP decisions, especially those on the provision of finance by developed to developing countries, and asked the Court to confirm these COP decisions constitute agreement and subsequent practice for interpreting the climate treaties, in accordance with the Vienna Convention on the Law of Treaties;
- the use of terms in climate treaties such as "may" and "should" is not the sole determinant of the binding nature of obligations; instead, parties' intentions must also be taken into account;
- that trade-related environmental matters must not result in discrimination between like products, in accordance with the General Agreement on Trade and Tariffs and World Trade Organization case law, as well as Article 3.5 of the UNFCCC; and
- that it is scientifically possible and feasible to quantify States' national historical responsibility for global warming, in order to address causation-related issues, and underlined their country's proposed methodology for achieving this.

In response to calls for caution in delivering an advisory opinion, BURKINA FASO urged the Court to exercise its jurisdictional competence as the supreme international judicial organ. They outlined States' *erga omnes* obligations to protect the climate system, including obligations to: refrain from causing significant harm to the climate system; take measures to avoid emissions by third parties within their territory; preserve and enhance the absorption capacities of carbon reservoirs and sinks; implement preventive measures to ensure activities within their territory do not infringe upon the rights of other States and individuals; and cooperate in good faith to address the challenges posed by GHG emissions and their adverse effects.

They also highlighted specific obligations for certain States, such as: taking the lead in addressing climate change; and providing technical and financial assistance to developing countries to help them meet their climate obligations, adapt to climate change, and uphold the right to development.

BURKINA FASO stressed that ordinary legal consequences under the law of State responsibility should apply to the breach of such obligations, including cessation, non-repetition, full reparation, and compensation. They emphasized that reparation or compensation should be provided by States identified as major contributors to climate change, many of which are listed in Annex I of the UNFCCC, particularly to benefit SIDS and States affected by desertification.

They concluded with a question: "Can a small group of States, in accordance with international law, destroy with impunity a common good indispensable for humanity, while shifting the burden to others?" "No one should achieve economic development at the expense of the enjoyment of rights of other peoples and States," they said.

CAMEROON noted in opening that the Court's large caseload in recent years demonstrates the extent to which States rely on its guidance and highlighted: the link between climate change and human rights; the CBDR-RC principle; and the "crime of ecocide" implied by the climate crisis and its attendant legal consequences in terms of State responsibility.

On the content of States' obligations, they submitted that the due diligence obligation, human rights obligations, and the duty to prevent transboundary harm, are all relevant to the questions at hand, in addition to the climate change treaties. They underscored

the African Charter on Human and Peoples' Rights as another key instrument and endorsed its focus on combining environmental protection with poverty eradication and sustainable development. Further, they urged the Court to recognize the "crime of ecocide" to prohibit acts that could lead to the destruction of the planet, and called for inviting States to exercise their criminal jurisdiction over such acts, so as to protect the rights of future generations. They also said the law of State responsibility and the principle of CBDR-RC dictate that developed countries provide compensation for harm accrued to developing countries, for instance through dedicated funds.

CAMEROON also pointed to Article 24 of the African Continental Free Trade Area Protocol on Investment, which stipulates that States have a "right to regulate" investments in line with climate policies, and specifies that any measures taken to comply with international law shall not give rise to compensation under international investment law.

The PHILIPPINES highlighted that States incur obligations under the UN Charter, UN Declaration of Human Rights, and UNCLOS, among others. They rejected some States' argument that climate-related obligations only arise from specific international treaties, asserting instead that the severity of climate change requires that the plethora of customary international law, general principles of international law, and various conventions and treaties, be correlated and applied simultaneously.

On custom, the PHILIPPINES argued that the obligation to prevent transboundary harm compels all States to ensure activities within their territory and control respect the environments of other States and of areas beyond national jurisdiction. They averred that this applies alongside States' obligation to exercise due diligence, through adopting appropriate measures and exercising vigilance in their enforcement.

On general principles of international law, the PHILIPPINES identified sustainable development and intergenerational equity as fundamental for scrutinizing the actions of States and of non-State actors in relation to their GHG emissions. They underlined that States' actions in this regard must not compromise the long-term sustainability of resources or the ability of future generations to meet their own needs. Regarding other treaties, the PHILIPPINES emphasized the applicability of all environmental and human rights-related treaties.

The PHILIPPINES asserted that States that do not comply with these obligations are committing internationally wrongful acts, triggering State responsibility, and that this requires a remedy. They proposed that a remedial measure similar to the "Writ of Kalikasan"—a legal remedy in the Philippines that protects the right to a healthy environment—be adopted at the international level to afford affected States the recourse needed.

CANADA highlighted how implementing pollutant-specific regimes, such as the Vienna Convention for the Protection of the Ozone Layer, supports climate goals. However, they cautioned that obligations arising from other treaties must not conflict with the carefully negotiated frameworks of climate treaties.

Regarding the no-harm principle, CANADA stated that it should be interpreted consistently with climate instruments, but noted insufficient State practice and *opinio juris* to establish its customary status in the climate context. Similarly, they argued that concepts like CBDR-RC, the precautionary principle, the polluter-pays principle, and intergenerational equity, while influential, lack consensus and do not constitute customary international law or binding obligations. On CBDR-RC, CANADA described it as an evolving concept emphasizing shared responsibility for mitigating GHG emissions while considering States' respective capabilities, and argued against linking it to historical environmental degradation.

CANADA advocated a rights-based approach to climate measures, affirming that effective implementation of environmental obligations supports meeting human rights obligations. However, they stressed that human rights obligations cannot be broadened to encompass universal duties for GHG mitigation. Additionally, CANADA emphasized that human rights law does not generally apply extraterritorially, except in cases involving *jus cogens* norms, which environmental principles are not.

On legal consequences, CANADA highlighted the non-punitive and collaborative compliance mechanisms under the UNFCCC and Paris Agreement particularly designed for the matter at hand. Pointing to these treaties as the primary sources of obligations on climate change, they emphasized that responsibility requires an attributable wrongful act at the time of breach, and obligations cannot retroactively apply to actions predating these treaties.

CHILE reiterated their view that the climate regime does not exclude or supersede general international law, such as the no-harm principle. They said this general obligation entails both an obligation of conduct in the form of due diligence and an obligation of result. They further submitted that mere compliance with the climate treaties cannot satisfy the due diligence obligation to avoid harm.

On the interaction between the climate treaties and human rights law, CHILE held that both regimes overlap and that States' failure to limit GHG emissions may constitute a breach of human rights, alluding to the finding of the European Court of Human Rights, in the *Klimaseniorinnen* case, that simply elaborating NDCs does not suffice to satisfy the requirements of human rights law. They also noted that these duties may apply extraterritorially.

In terms of State responsibility, CHILE insisted that the Warsaw International Mechanism for Loss and Damage and Paris Agreement do not address liability arising from climate change, and underlined the applicability of the law of State responsibility. They also noted the role of attribution science in determining individual countries' historical and current contributions to global warming. Denouncing the insufficiency of current NDCs, they recalled that the Court had previously found that responsibility for collective harm should be apportioned according to countries' contributions to that harm.

CHINA urged the Court to focus on the identification and clarification of *lex lata*, the law as it is, and refrain from developing and applying *lex ferenda*, that is, the law as it should be. They further urged the Court to uphold the UN climate change negotiations as the primary channel of global climate governance in order to, among other things, prevent fragmentation of international climate law.

CHINA identified the UNFCCC, Kyoto Protocol, and Paris Agreement as the basic legal regime on climate change, asserting that this regime constitutes *lex specialis* and should guide the Court's deliberations. They said that for areas not regulated by the UNFCCC regime, other branches of law, such as UNCLOS and human rights treaties, may play a complementary role but their application must be consistent with the purpose, principles, and rules of the UNFCCC regime.

CHINA identified specific obligations under the UNFCCC regime, specifying that the obligation to prepare NDCs is one of

conduct, with the scope, form, and ambition of NDCs subject to each party's determination. They emphasized developed countries' historical responsibility as being at the heart of the climate regime.

CHINA disagreed with the assertion that anthropogenic GHG emissions are pollutants, arguing against the ITLOS Advisory Opinion. They stated that adverse effects from anthropogenic GHG emissions have their own legal status, and urged the Court to leave this matter to be determined through scientific research and State practice, or international lawmaking. CHINA further affirmed that GHG emissions do not entail an internationally wrongful act under general international law, and that the resulting loss and damage cannot be addressed through State responsibility or a liability regime, but must be left to the UNFCCC's special assistance arrangements for loss and damage, and compliance.

COLOMBIA emphasized the need for a comprehensive advisory opinion to establish clear legal principles for unified global climate action. They advocated for a harmonious view of the climate regime, human rights law, and customary international law, as outlined in the Vienna Convention on the Law of Treaties, citing the Inter-American Court of Human Rights' 2017 Advisory Opinion to showcase how environmental protection and human rights were integrated.

COLOMBIA described due diligence as a dynamic obligation requiring States to proactively prevent harm within and beyond their jurisdictions, adapting measures based on evolving science. They argued that States with the greatest historical contributions and capabilities must lead mitigation efforts, while developing countries, often hosting large carbon sinks, require financial support, technology transfer, and capacity building.

Highlighting that human rights protections extend to harm caused by climate change, including transboundary impacts, COLOMBIA said States are required to act when activities in their jurisdiction affect the rights of others. On legal consequences, they referred to ARSIWA, emphasizing:

- GHG emissions leading to climate change can constitute a composite wrongful act under Article 15, resulting from accumulated actions;
- ongoing emissions by States represent continuous breaches of international law;
- remedies, including compensation, are obligations arising from the continued perpetration of wrongful acts, such as historical and ongoing GHG emissions; and
- compensation can include financial assistance, debt-for-climate action swaps, debt-for-nature swaps, or green bonds.

COLOMBIA argued that addressing loss and damage must be treated as a legal obligation rather than an act of goodwill.

DOMINICA described at length the devastating impacts of climate change on vulnerable island States, saying they are trapped in a vicious cycle and are in need of assistance from the international legal system. They reaffirmed the importance of the prevention principle, rejected the idea that this principle was replaced by the climate treaties, and recalled that the environment is not an abstraction but a living system crucial to human health—and life, including that of generations unborn.

On human rights, DOMINICA asked the Court to affirm the peremptory nature of the human rights to life and bodily integrity and argued that the rights to self-determination and development have been breached by the emission of GHG.

On State responsibility, they maintained that every wrongful act is the responsibility of that State and that collective harm can be attributed to individual States in line with the principles of equity and CBDR-RC. They said breaches of international obligations must be remedied by cessation of the internationally wrongful act, non-repetition, and compensation for damages. They mentioned technical assistance and borrowing at concessionary rates as potential compensation, while underlining that this should not be seen as a mere expression of goodwill, but as a moral and legal duty.

The REPUBLIC OF KOREA identified the UNFCCC and Paris Agreement as the primary sources of international law on climate change for the parties thereto, stressing their core obligations stem from these treaties. They affirmed that States that are not party to this treaty regime will be bound by applicable rules of customary international law, as well as other treaties to which they are party, such as UNCLOS or human rights treaties, if applicable.

The REPUBLIC OF KOREA asserted that climate change treaties must be given normative priority and centrality as *lex specialis*, but that this does not mean avoiding or setting aside other international legal obligations. They underlined that the climate regime stipulates specific obligations that cannot be derived from other sources of international law, but that other sources can complement this regime.

The REPUBLIC OF KOREA said customary international law obligations, particularly the duties of cooperation and prevention of significant harm to the environment, are applicable in the context of climate change. They said these obligations imply a duty of due diligence and can complement the climate change treaty obligations. They, however, urged the Court not to identify new customary international law obligations that are not sufficiently grounded in general practice accepted as law.

On the applicability of ARSIWA in the context of climate change, the REPUBLIC OF KOREA confirmed their applicability in principle, but stressed the legal consequences of wrongful acts are addressed primarily under the normative mechanisms specific to the climate regime, especially the Paris Agreement. They identified difficulties with applying ARSIWA more generally to climate change, such as the issue of the plurality of responsible States, noting all States have contributed to climate change to varying extents.

The REPUBLIC OF KOREA further underlined the importance of considering the approach used by the *lex specialis* when determining legal consequences, noting the Paris Agreement established cooperative and facilitative mechanisms to address the adverse effects of climate change.

On Wednesday, 4 December, the Court heard statements by: Costa Rica; Côte d'Ivoire; Denmark, Finland, Iceland, Norway, and Sweden (jointly); Egypt; El Salvador; the United Arab Emirates (UAE); Ecuador; Spain; the United States (US); the Russian Federation; and Fiji.

COSTA RICA underlined that the international obligation of States to reduce their GHG emissions and to provide finance for loss and damage caused by climate change can be found not only in treaty law, but also in well-established rules of international law, particularly the due diligence and no-harm obligations.

They rejected the argument that the no-harm obligation only applies between neighboring States, noting no State is permitted to damage the environment of another, regardless of proximity. They further highlighted the Court's previous confirmation that States are responsible for human rights breaches even if committed outside their territories, and underlined this applies to all acts and omissions of States that infringe human rights.

On causation, COSTA RICA said science proves that anthropogenic GHG emissions are responsible for global

warming. They recalled the ILC's commentary to Article 47 of ARSIWA, stipulating that each State is separately responsible for the conduct attributable to it, and that this responsibility is not diminished because other States are also responsible for the same act. They further stated that individual responsibility is to be subsequently determined on the basis of historical and current emission contributions.

On applicable remedies, COSTA RICA recommended cessation, guarantees of non-repetition, reparation, and compensation, among others.

CÔTE D'IVOIRE emphasized that international obligations on climate change must be interpreted in light of the CBDR-RC principle.

Highlighting the importance of harmonious legal interpretation, they noted the specific regime of the climate treaties (*lex specialis*) does not exclude customary law but should apply simultaneously with, *inter alia*, the no-harm principle, environmental impact assessments, and due diligence obligations.

On obligations under the Paris Agreement, CÔTE D'IVOIRE underscored that while the collective goal not to surpass global warming of 1.5°C is not legally binding, it provides the "internal context" for individual parties' obligations to develop and progressively enhance NDCs. These NDCs, they said, should be based on an effective regulatory framework including a national carbon budget.

They emphasized that the duty of due diligence, as recognized in international case law, requires States to vigilantly enforce rules and assess environmental impacts. CÔTE D'IVOIRE stressed that due diligence extends to indirect (scope 3) emissions, as seen in various countries' domestic cases on crude oil extraction and coal mining projects. They suggested mitigation obligations can support counterclaims in international investment disputes, including in cases of denial of permits to extract fossil fuels.

CÔTE D'IVOIRE advocated for a dynamic interpretation of CBDR-RC, adjusted to reflect national circumstances and capacities and rejected fossil fuel-dependent States' claims for slower decarbonization.

They called for recognition of statehood continuity for submerged States due to sea-level rise, asserting that maritime entitlements should remain intact. On causality, they also rejected strict liability and instead supported a proximity test based on scale and seriousness to establish legal causation.

In a joint statement, the NORDIC COUNTRIES (Denmark, Finland, Iceland, Norway, and Sweden) underlined that the climate regime is the principal body of law governing anthropogenic GHG emissions. They asserted that the decisions of the UNFCCC COP and the decisions of the COP serving as the Meeting of the Parties to the Paris Agreement (CMA) are also part of this regime.

The NORDIC COUNTRIES characterized the Paris Agreement as containing a mix of political targets, such as the long-term temperature goals, and legal obligations, which are primarily procedural in nature. They noted these obligations include the duty to prepare NDCs, which is an obligation of conduct, with every NDC constituting a progression beyond the previous one and reflecting the highest possible ambition. They highlighted the role of the GST in this process and noted that parties must submit new NDCs in 2025 to put the "world back on track" towards the long-term temperature goals and protect current and future generations.

On differentiation, the NORDIC COUNTRIES reiterated that the Paris Agreement establishes obligations for all parties, and that it prevails over the UNFCCC and Kyoto Protocol in case of conflict by virtue of being the latest (*lex posterior*) and more precise (*lex specialis*) treaty. They further said that CBDR-RC is not a static concept, and that parties' obligations evolve in line with their changing capacities and national circumstances.

On the interaction between different legal regimes, they noted that the Court is invited to consider the law of the sea, human rights, and customary law, next to the climate regime. Nevertheless, they asserted the "systemic relevance" of the climate regime in determining, for instance, the extent of due diligence obligations arising from other legal instruments.

On customary law, the NORDIC COUNTRIES affirmed the relevance of the prevention and due diligence principles in cases of transboundary harm, but doubted whether these customary rules—which were developed in the context of bilateral State practice—could also apply to GHG emissions. They noted lack of agreement on a specific standard to govern the causal attribution of harm to individual States, and reminded the Court that any assessment of due diligence would need to take States' compliance with its obligations under the climate regime into account.

The NORDIC COUNTRIES rejected that State responsibility includes historical responsibility, noting that such framing, along with the notion of fair share, was explicitly rejected during the negotiation of the Paris Agreement. They further said climate finance is governed by the Paris Agreement and COP and CMA decisions, and does not constitute climate reparations. Recognizing the customary status of ARSIWA, they doubted that climate change could satisfy the causation and legal breach requirements laid out therein, and said that States "assume both the roles of the injured and the responsible party."

EGYPT requested the Court to consider the entire corpus of international law, asserting that the climate regime does not address climate change in a comprehensive manner and therefore cannot be deemed the sole source of obligations. They specified that the regime does not address the protection of human rights or of the marine environment from climate change. They also affirmed that the existence of treaties dealing with climate change does not preclude the application of general rules of international law or other treaty rules, as there is no conflict and inconsistency between these rules.

Regarding temporal aspects, EGYPT underscored that knowledge of the adverse impacts of climate change predates the adoption of the UNFCCC in 1992, and that States' conduct was, and continues to be, guided by international law, including the no-harm and due diligence obligations.

On State responsibility, EGYPT highlighted Article 15 of ARSIWA, which deals with breaches of international obligations consisting of a composite act. They asserted that developed countries' cumulative GHG emissions have reached the threshold of causing significant harm to the climate system and therefore amount to a composite act sufficient to constitute an internationally wrongful act. As such, they affirmed that developed countries have individually and collectively violated their international obligations, and are separately responsible for this breach.

Regarding legal consequences, EGYPT stated that since restitution of the climate system to its original condition is materially impossible, the appropriate remedy is compensation. They further expounded that neither the provision of financial assistance nor addressing loss and damage under the climate regime is a substitute for reparations.

EL SALVADOR called on the Court to clarify the linkages between human rights obligations and climate change, referencing

UNGA Resolution 76/300 on the human right to a clean, healthy, and sustainable environment.

Expressing concerns about maritime zones and statehood continuity in scenarios where territories are rendered uninhabitable due to sea-level rise, EL SALVADOR noted that several States have urged the Court to affirm that sovereign jurisdictional rights remain intact despite such climate change impacts. They invited the Court to consider the principles of legal certainty, stability, territorial integrity, self-determination, and permanent sovereignty over natural resources as critical to supporting the presumption of statehood continuity. Citing the ICJ's 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, they reaffirmed the fundamental right of every State to survival, and the necessity of adapting international law to address the physical impacts of climate change.

EL SALVADOR highlighted State practice aligning with these principles, including two Pacific Island Forum's Declarations of 2021 and 2023, which recognize the rights of Pacific Island States to maintain their maritime zones and associated rights despite sea-level rise, and address its implications for statehood and displaced populations. They concluded by urging the Court to provide a general framework of principles to guide on these issues, should the need arise.

The UAE emphasized that the UN climate regime gives effect to, and informs, the obligations of States in line with the no-harm principle, whereby States have to ensure that activities within their jurisdiction respect the environment of other States and areas beyond national jurisdiction. They underscored that climate change clearly engages the no-harm principle, considering that GHG emissions mix in the atmosphere and therefore interfere with the climate system as a whole. They highlighted the no-harm principle entails an obligation of conduct, not result, and is therefore subject to the standard of due diligence. What is requires of each State, they said, depends on the severity of the harm and the State's capacity, among others.

The UAE identified widespread agreement on the duty to pursue climate action with the highest possible ambition, emphasizing that this duty does not compel developing countries to act without regard to their development needs. They underscored that the CBDR-RC principle and the differentiated obligations under the UNFCCC, Kyoto Protocol, and Paris Agreement reflect equity in light of varying historical emissions and current capabilities, emphasizing that the CBDR-RC principle cannot be used by developing countries as a pretext to avoid responsibility.

They recalled that the IPCC identified international cooperation as a critical enabler of effective climate action and emphasized that the negotiations under the climate regime are crucial to elaborate, and facilitate the implementation of, relevant commitments.

ECUADOR affirmed the applicability of general rules of customary international law to climate change, countering arguments that the international climate regime is *lex specialis*. They identified the principle of equity and the due diligence obligation as two applicable customary rules.

ECUADOR called for using the CBDR-RC and intergenerational equity principles as interpretive tools when determining the content of existing rights and obligations under climate change. They concluded that: CBDR-RC operates to correct the disproportionate burden on States that have not contributed, or have only marginally contributed, to climate change; and intergenerational equity requires States' actions to be undertaken while considering the interests of future generations.

ECUADOR also emphasized the applicability of the duty of cooperation, noting it is acknowledged in the UNFCCC and is also part of customary international law. They affirmed that cooperation must address matters of loss and damage, including through the provision of financial assistance. They further asserted that although it complements other obligations, cooperation is also a distinct obligation and its breach entails State responsibility with the ensuing legal consequences.

Regarding legal consequences, ECUADOR urged cessation of the unlawful conduct, combined with restitution and compensation in respect of States that are injured, specially affected, or particularly vulnerable.

SPAIN referenced the human right to a clean, healthy, and sustainable environment, stressing that protecting the environment is critical for safeguarding the dignity and prosperity of present and future generations. They highlighted disproportionate climate change impacts on marginalized groups, including women, children, Indigenous Peoples, persons with disabilities, coastal communities, and those in SIDS. They underlined the dual nature of environmental rights, comprising substantive elements like clean air, a stable climate, water access, and biodiversity conservation, alongside procedural elements like access to information, public participation, and access to justice. They also underscored the domestic recognition of the Mar Menor lagoon's legal personality as a pioneer citizen-led legislative initiative.

SPAIN advocated for a systemic approach to interpreting obligations under the UNFCCC and Paris Agreement, emphasizing their alignment with principles of cooperation, progression, and harm prevention. They noted that no single legal regime suffices to address climate change, requiring coordination across international environmental law, the prevention of transboundary harm, and human rights law.

SPAIN also cited the European Court of Human Rights' *Klimaseniorinnen* ruling recognizing that climate change is a common concern of humankind, reaffirming climate science and the need to foster intergenerational burden sharing, and confirming that governments have human rights obligations in relation to the response to climate change.

On due diligence, SPAIN cited ITLOS and ARSIWA, stressing that:

- the due diligence standard evolves with scientific and technological advancements;
- transboundary harm prevention necessitates cooperation frameworks, including notification and information sharing with potentially affected States; and
- legal responsibility arises from wrongful acts under these frameworks, requiring case-specific analysis of causality.

The US said the climate regime provides the primary legal framework applicable to climate change. They argued that a party does not breach the Paris Agreement if it fails to achieve its NDC, and that the Agreement does not set any standard that would allow judging the sufficiency of an NDC or allow for apportioning fair shares of the "so-called global carbon budget." They stressed the differentiation provisions of the Paris Agreement must be interpreted on their own terms, and stated that the CBDR-RC principle is not an overarching principle of the Agreement, does not constitute customary law, and is not a general principle of international law. They also denied that the right to a healthy environment constitutes customary law.

On the prevention principle, the US noted that the customary obligation to prevent transboundary harm has only applied in cases

where harm can be traced to specific, identifiable sources, which is unlike anthropogenic climate change. They also said the existence of such an obligation depends on States' awareness of harm or the risk thereof, and rejected historical assessment of when States gained awareness, saying "what matters is that States have that awareness today." They further submitted that prevention imposes "an obligation of effort," the applicable standard being that of due diligence, which is context-specific and varies over time. They advocated granting countries a wide margin of appreciation as to what constitutes due diligence.

While recognizing the application of ARSIWA to climate change, the US said emissions that occurred before the creation of specific climate obligations do not constitute internationally wrongful acts. They pointed out that establishing a causal link between a given State's internationally wrongful act and a specific injury would be complicated, and that the IPCC reports cannot replace such a legal assessment.

The RUSSIAN FEDERATION asserted that the international legal obligations of States to protect the climate system are enshrined exclusively in the specialized treaties, specifically the UNFCCC and Paris Agreement. They added that the only exception is the no-harm obligation, which is customary international law, and should apply subsidiarily and only from the point at which the adverse effects of climate change were scientifically established, making such harm foreseeable.

Underscoring that the Paris Agreement is the principal legal instrument for combating climate change, they affirmed that CMA decisions do not affect the scope and content of State obligations under the Paris Agreement, and do not constitute subsequent agreement within the context of Article 31.3(a) of the Vienna Convention on the Law of Treaties. In this regard, they said transitioning away from fossil fuels is not a legal obligation but a political appeal to States, highlighting that the Paris Agreement neither prohibits the use of certain energy sources nor mandates the use of specific ones.

The RUSSIAN FEDERATION noted that climate change mitigation obligations are forward-looking and global in nature, while human rights obligations are territorial and focus on the present. They concluded that human rights obligations cannot imply a requirement to adopt mitigation measures and that adopting adaptation measures is not a precondition for a State to fulfil their human rights obligations.

On legal consequences, the RUSSIAN FEDERATION argued these can only arise in cases where States have breached obligations that were in force for them at the relevant time, and therefore consequences can only arise for specific States from when the UNFCCC entered into force for them. They added that the consequences of breaching the no-harm obligation would only arise from when humanity became sufficiently aware of the impacts of anthropogenic GHG emissions on the environment. Asserting this was in the 1990s, they said States cannot be held responsible for GHG emissions they produced before this period.

FIJI highlighted the devastating impacts of climate change on its people, despite their minimal contribution to global emissions. Some nations, they stressed, face existential risks of territorial loss, framing the crisis as one of survival and equity that disproportionately affects marginalized groups.

Based on "irrefutable" scientific evidence from the IPCC, they asserted that anthropogenic GHG emissions are the primary cause of climate change. They said industrialized nations bear the overwhelming responsibility for these emissions and their harmful impacts.

On legal obligations, FIJI emphasized States' international legal duty to address climate change. Citing the UN Charter principles of sovereign equality, good faith, and cooperation, they argued that the duty to prevent transboundary harm predates the UNFCCC and is referenced twice in its preamble. As a result, it does not only apply in this context but also implies that the conduct of GHG emissions was regulated before the adoption of the UNFCCC. They also referenced the ITLOS Advisory Opinion affirming that fulfilling obligations under climate treaties does not absolve States of other international responsibilities.

FIJI underscored the right to self-determination, linking it to sovereignty, culture, and identity. They argued that climate-related displacement threatens this right and others, such as the right to life. They emphasized that the right to survival requires States to protect individuals from foreseeable threats, including those posed by climate change, and that this obligation applies with an extraterritorial dimension. They argued that States' inaction undermines the rights of current and future generations, pointing to the principle of intergenerational equity.

On legal consequences, FIJI listed cessation, reparations, and compensation for, *inter alia*, economic and non-economic losses, and safeguarding cultural identities and access to ancestral lands for displaced communities.

On Thursday, 5 December, the Court heard statements from: France; Sierra Leone; Ghana; Grenada; Guatemala; the Cook Islands; the Marshall Islands; Solomon Islands; India; Iran; and Indonesia.

FRANCE underscored the ICJ's advisory opinion might not only clarify the scope and nature of States' obligations, but also bolster regional and domestic litigation efforts to achieve climate justice.

They examined Article 4.2 of the Paris Agreement, which stipulates that parties shall prepare NDCs. FRANCE asserted this implies a legally binding obligation of conduct in light of different national capacities and circumstances, which "can never be an excuse for inertia." Highlighting the standard for NDCs to reflect the highest possible ambition and constant progression, they argued that this implies a heightened level of diligence. This conclusion, they said, is also supported by the customary international law principle of prevention, which requires that diligence be higher for riskier activities, and that in the case of climate change, the risk of harm is at the highest level.

FRANCE said Article 4.2 must be interpreted in light of other norms, including: the principle of CBDR-RC; the decision on the first GST, which calls for a just and equitable transition away from fossil fuels in energy systems and for conserving and restoring GHG sinks such as forests and marine ecosystems; and human rights, including the duty to preserve the choices and meet the needs of future generations.

Turning to legal consequences, FRANCE said attribution of responsibility to individual States is beyond the Court's mandate, but that the opinion could clarify the date from which States incurred an obligation to avert climate harm. They stated this could include the point at which international law recognized a general principle of prevention in relation to climate harm, and when States became aware of the need to take measures to prevent risks from GHG emissions. The Court could also provide guidance on the establishment of a causal link between a State's wrongful act and injuries to other States, they said, noting this would need to happen on a case-by-case basis.

Pointing to legal consequences beyond the scope of State responsibility, FRANCE underscored climate finance and efforts to address loss and damage as grounded in international solidarity.

SIERRA LEONE highlighted that climate change is not just a major threat to the environment, but also to humankind, and that it undermines citizens' fundamental rights to life, health, food, water, and self-determination. They urged the Court to take into account all relevant sub-regimes of international law.

They emphasized that, under the principle of prevention, States are required to prevent the risk of significant harm to other States or areas beyond national jurisdiction, especially considering the often irreversible nature of environmental damage. They underscored that while due diligence affords States a margin of appreciation, discretion must be exercised in accordance with best available science. SIERRA LEONE further noted that the due diligence obligation to meet the Paris Agreement's temperature goals also arises under human rights law, which provides that no one shall be arbitrarily deprived of their life without legal protection, and that it also applies when the source of harm is anthropogenic GHG emissions.

They urged the Court to confirm that States enjoy a margin of appreciation in regulating, in the public interest, the conduct of private actors within their jurisdiction, underscoring this would give States greater confidence in taking steps to address climate change without fear of claims by foreign investors.

SIERRA LEONE called on the Court to give effect to the duty to cooperate and the CBDR-RC principle, noting that standards that are fair for developed or high-emitting countries may not be fair for developing or low-emitting ones. Stressing that international law is "a vital equalizer of States, regardless of size or power," they called on the Court to determine that GHG emissions cause material and non-material damages and that States responsible for such are obligated to provide full reparation. They pointed to debt relief and debt restructuring as possible options, underscoring that many African countries spend more on servicing their debt than on their people and that no one should be surprised that highly indebted countries feel compelled to engage in polluting activities to secure funds to pay their debt.

GHANA drew a parallel between climate change and nuclear weapons, emphasizing both as global threats requiring comprehensive legal and moral responses. They cited the Court's Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, where ecological harm was recognized as non-abstract, and requiring restitution for transboundary damage. GHANA argued that the entire corpus of law is relevant to climate change obligations and that a narrow approach risks undermining justice for developing countries, particularly in Africa, adding, "developing countries cannot become sacrifice zones for the benefit of wealthier nations."

They highlighted that the principle of CBDR-RC predates climate treaties, tracing its origins to a 1967 Maltese proposal to declare the deep seabed and Ocean floor as the common heritage of humankind.

They emphasized that the omission of liability or compensation in Article 8 of the Paris Agreement does not displace international law on State responsibility for loss and damage. Supporting Vanuatu's submission, they asserted that causality between specific States' emissions and climate harm can be scientifically established, with responsibility arising once States became aware that GHG emissions cause global warming.

Referencing ARSIWA, they recalled that the drafters included serious breaches of international obligations essential for safeguarding the environment—such as the prohibition of massive atmospheric pollution—alongside State crimes like aggression, slavery, genocide, and apartheid in the now-deleted Article 19. They suggested that these breaches fall under *ius cogens*, underscoring their universal and peremptory character.

GRENADA recalled the findings of the IPCC about the intensification of tropical cyclones and tropical storms. Urging the Court to reject all arguments that deny this science, they acknowledged that while science does not outline States' legal obligations, it provides clear evidence of the causes and adverse impacts of climate change. They described the devastation caused by Hurricane Beryl that made landfall in 2024, highlighting the destruction of hospitals, schools, and a recently-completed solar farm, and the washing away of graves of loved ones into the Ocean, with loss and damage to national infrastructure of about USD 22 million.

Underlining that this is climate injustice, not misfortune, GRENADA lamented the vicious financial cycle of borrowing at commercial interest rates to rebuild, followed by waiting for the next extreme event to occur. They also highlighted mental health impacts, particularly identifying with two categories of emerging psychological syndromes—climate worry and climate trauma.

On legal consequences, GRENADA called for debt restructuring for all SIDS, improved access to climate funds, and scaled up support to the Loss and Damage Fund. They highlighted cessation and non-repetition and reparation, including restitution, compensation, and satisfaction, as remedies, underlining the need for major polluters to pay for the harm they are causing to the climate system. GRENADA also affirmed that States owe a fiduciary obligation to future generations to act as trustees of the climate system and the environment, based on the principle of intergenerational equity. They described this obligation as comprising duties of good management and good conscience, and urged the Court to declare so.

GUATEMALA said climate change "affects every square meter of this Earth" but it does not do so equally. Elaborating on the scope of the UNGA's request to the Court, they remarked that relevant conduct concerns anthropogenic GHG emissions, and that the "climate system" should be defined holistically, as set out in the UNFCCC. They urged the Court to be "as clear as possible" in determining which adverse effects of climate change are relevant to States' obligations, and argued that these entail effects on living and non-living parts of nature that are essential to socioeconomic systems, human health and well-being, and intergenerational concerns.

On legal obligations, GUATEMALA stressed:

- the applicability of a variety of legal instruments, and the need to interpret them harmoniously;
- the distinction between legally binding and non-binding provisions, saying that States cannot invoke the non-binding nature of a provision to defeat the purpose of a treaty;
- the principle of CBDR-RC; and
- the application of human rights law and the duty to cooperate and provide assistance, saying the "human dimension at the center of these proceedings" should not be overlooked.

GUATEMALA further asserted that the law of State responsibility is not replaced by the climate treaties, but contains secondary norms describing the consequences of violating obligations enshrined in primary law. As such, they said, it operates concurrently with the compliance regime of the Paris Agreement. They also stressed that the Court need not prove

causation to attribute conduct, noting that a specific causal link is only required for full reparation.

The COOK ISLANDS urged the Court to adopt an intersectional lens and deliver a climate justice-centered opinion confirming that by contributing to the climate crisis a handful of States have breached their human rights obligations regarding the prohibition of racial and gender discrimination.

They affirmed that the greatest "colonial and racist" threat to the traditional knowledge and lives of Cook Islanders is the unlawful conduct of States that have fueled climate change, emphasizing that Indigenous Peoples' traditional knowledge depends on their ability to live in harmony with their natural environment.

The COOK ISLANDS argued that State obligations regarding racial discrimination arise from multiple sources, including human rights treaties, as well as the *ius cogens* and *erga omnes* prohibitions of racial discrimination. They argued these human rights obligations apply extraterritorially and to all States, regardless of whether and when they ratified specific human rights treaties. They further affirmed that the prohibition of discrimination encompasses both intentional or direct, as well as indirect discrimination related to seemingly neutral actions. They concluded that as a result of the racially and gender-disparate impacts of climate change, the responsible States have breached their racial equality and non-discrimination obligations under international law.

Citing the interlocked systems of domination of "colonialism, racism, imperialism, hetero-patriarchy, and ableism" underlying the climate crisis, the COOK ISLANDS highlighted the need for structural remedies, particularly law reforms at the domestic, regional, and international levels. They identified, for instance, legislative and constitutional prohibitions on fossil fuel expansion and subsidies. At the international level, they called for dismantling the current system that enables the rights-violating conduct and building a new one that guarantees the rights of all living things, including "our lands and Oceans."

The MARSHALL ISLANDS highlighted their unique situation as a small island State grappling with the compounding effects of a nuclear testing legacy and climate change, stressing the existential threat posed by sea-level rise. They urged the Court to prevent climate-vulnerable developing countries from being condemned to "watery graves" and to hold accountable those responsible for the impacts of climate change.

They demonstrated the devastating impacts climate change will have this century, stating that with "just" 50 centimeters of sea-level rise, minor flooding events will become disasters, causing displacement, food insecurity, and destruction of critical infrastructure and livelihoods. They warned that unchecked emissions will render their islands uninhabitable. Lamenting challenges in accessing finance, they said the *status quo* is unaffordable, with adaptation costs for just two urban centers estimated at USD 9 billion—far beyond the nation's capacity.

The MARSHALL ISLANDS called on the Court to refer to the entire corpus of international law, including customary law and principles, when determining obligations. They emphasized that the risk—not the occurrence—of transboundary harm triggers States' duty of due diligence to minimize risks and prevent harm. They noted that States have known about these risks since at least the 1960s, long before climate treaties were adopted. Due diligence, they said, requires rapid, deep emission cuts.

On legal consequences, the MARSHALL ISLANDS argued these should be determined under the law of State responsibility, which applies to composite acts of States. They said States have obligations to take reasonable steps to prevent harm, including cutting emissions, ending fossil fuel subsidies, and providing full reparation for damages already caused.

SOLOMON ISLANDS opened by illustrating how climate change affects their diverse nation, lamenting that five islands have already been lost to sea-level rise. They underscored the problem of climate-related displacement and noted that relocation not only implies a profound loss of identity and culture, but also risks causing social strife and conflict in the country's customary land ownership system.

They joined other speakers in calling on the Court to consider the entire corpus of international law to answer the questions before it, and highlighted CBDR-RC as a central principle governing States' differentiated climate obligations. They explained that the principle evolves with changing circumstances and that States whose capacities have grown must assume a larger burden.

With respect to climate displacement, SOLOMON ISLANDS recalled the IPCC finding as early as 1990 that climate change could lead to forced displacement, saying "this is not an issue the Court can afford to overlook." They argued that States incur an obligation under the Paris Agreement, human rights law, and refugee law to provide technical and financial assistance for dealing with climate displacement. Citing the 1951 Refugee Convention, they asserted that those displaced by climate change beyond borders should be recognized as refugees and be afforded protection as such. In support, they referenced the 1984 Cartagena Declaration on Refugees, which extends the notion of "refugee" to those displaced by "circumstances which have seriously disrupted public order" and said that climate change poses such a disruption. Acknowledging that the Cartagena Declaration is a Central American non-binding instrument, they invited the Court to recognize the "disruption to public order" formulation as an evolving norm enjoying considerable State practice. They also argued that returning persons to territories threatened by sea-level rise would violate the non-refoulement obligation.

INDIA highlighted the complexity of climate change, emphasizing historical responsibility, unjust enrichment from resource exploitation, intergenerational equity, fairness, and developmental disparities. They criticized demands from developed nations for developing countries to limit the use of their natural energy resources despite benefiting from decades of fossil fuel-based development.

On State obligations, they stressed that obligations under general international law to prevent transboundary harm are further elaborated by the UNFCCC, Kyoto Protocol, and Paris Agreement. They said these instruments aim to strengthen the global response to climate change while respecting the priorities of developing countries, such as poverty eradication and sustainable development. INDIA emphasized the principles of equity, climate justice, and CBDR-RC, which they said guide the differentiation of obligations based on historical emissions and States' capacities.

They pointed to the inequalities in *per capita* emissions, highlighting that developed countries have disproportionately consumed the global carbon budget and "appropriated the commons." They urged the Court not to impose new or additional obligations beyond those agreed upon under the existing climate regime, emphasizing the need to respect the balance of interests achieved in these instruments. They stressed that any meaningful assessment of obligations must include an evaluation of the

financial and technological support to be provided by developed to developing nations.

INDIA recognized the duty to prevent transboundary harm as key in international law but noted that climate change's diffuse nature requires a broader approach to responsibility. They suggested attribution focus on aggregate national contributions to emissions and be linked to States' commitments as reflected, for example, in the Kyoto Protocol.

On legal remedies, INDIA noted that State responsibility includes reparation and compensation, welcoming the establishment of the Loss and Damage Fund as a step forward.

IRAN urged the Court to address the UNGA's questions within the framework of the international climate regime. They affirmed CBDR-RC, equity, and international cooperation as the core principles under this regime, which should govern the Court's interpretation of States' obligations.

They stressed CBDR-RC is the manifestation of equity in, and cornerstone of, the climate regime. They identified its three components as financial support, technology transfer, and capacity building, from developed to developing countries. Underlining these components, they outlined duties of commission and omission, highlighting the need for developed countries not only to facilitate but also to refrain from creating obstacles to technology transfer to developing countries.

IRAN argued that unilateral coercive measures are contrary to developed countries' explicit legal obligations under the UNFCCC. They stressed these measures affect the full and effective implementation of the climate regime by undermining affected countries' ability to comply with their mitigation commitments and also opening them up to unsustainable "survivalist" policies. IRAN identified the EU's Carbon Border Adjustment Mechanism as a trade-limiting measure that contradicts Article 3.5 of the UNFCCC, which prohibits measures that constitute arbitrary or unjustifiable discrimination or disguised restrictions on international trade. They therefore urged the Court to declare that CBDR-RC obligates developed countries to refrain from imposing unilateral coercive measures affecting the transfer of funds, technology, and technical support to developing countries.

IRAN highlighted that the global challenge of climate change necessitates a collaborative approach that transcends national boundaries, asserting that implementation of developed countries' financial and capacity-building obligations is essential to enable developing countries to overcome their numerous challenges.

INDONESIA underscored the relevance of UNCLOS—in particular, the obligation for parties to prevent, reduce, and control pollution to the marine environment "from any source"—in the context of climate change, as highlighted by the recent Advisory Opinion issued by ITLOS. They said the Ocean is particularly important for their country, which is composed of more than 17,000 islands, and although the Paris Agreement only mentions the Ocean once, the obligation to prepare, communicate, and maintain NDCs that reflect the highest ambition is crucial to combating challenges like sea-level rise. They also called for increased financial commitments and capacity-building assistance from developed to developing countries, saying "the rhetoric of highest ambition collapses when it comes to mobilizing climate finance." Emphasizing they do not wish to dwell on reparations, which would require separate proceedings, INDONESIA pointed to the Paris Agreement's compliance mechanism as the apposite forum to ensure that States achieve their NDCs.

On human rights obligations, they argued that existing treaties and customary law do not give rise to climate change-specific obligations, and that any potential obligations are limited to States' own populations and territories, referencing Indonesia's constitutional recognition of the right to a healthy environment.

On Friday, 6 December, the Court heard statements by: Jamaica; Papua New Guinea; Kenya; Kiribati; Kuwait; Latvia; Liechtenstein; Malawi; Maldives; and the African Union.

JAMAICA delineated how climate change affects freshwater resources, human health, infrastructure, and the country's primary productive sectors. Noting that the right to health extends to the underlying determinants of health, such as food and nutrition, housing, potable water, safe working conditions, and a healthy environment, they underscored the interconnected nature of human rights. They urged the Court to confirm that human rights obligations of States in the context of climate change extend beyond their borders.

JAMAICA emphasized the need to distinguish between primary obligations regarding States' acts and omissions under different sources of international law and secondary rules of State responsibility, including the duty to make full reparations. In this regard, they underscored that the existence of the Loss and Damage Fund and the "meager," voluntary contributions to the Fund do not satisfy the duty to make reparations whose purpose is to erase all consequences of illegal acts.

They noted it is too late to completely undo the harm caused by GHG emissions, but highlighted measures that could amount to restitution: assistance with land reclamation; support for adaptation measures; and the recognition of existing sovereign and maritime spaces of SIDS who may lose their territory to sea-level rise. They underscored States' obligation to provide compensation for both material and non-material loss, including redress for the psychological toll associated with displacement and compromised food security. They underscored that monetary compensation on its own is not sufficient and called for: technology transfer; capacity building; support for national and regional scientific research; and reasonable access to climate finance.

PAPUA NEW GUINEA said climate change is the greatest security threat to Pacific island States, pointing to impacts such as: biodiversity loss; loss of land areas due to sea-level rise; forced displacement; social strife; and loss of Indigenous languages, cultures, and governance arrangements.

On applicable law, they urged the Court to consider the entire corpus of international law, saying that climate change is an "inherently cross-cutting and multidimensional" issue. In addition to the principle of CBDR-RC, PAPUA NEW GUINEA underlined the right to self-determination as "cardinal," and asserted this peremptory norm had been violated through the conduct responsible for climate change—a breach evidenced by the forced displacement of people from their ancestral territories. Countering the argument that States incurred no obligation under international law at the time that historical emissions occurred, they pointed out that the right to self-determination has been recognized since 1945.

In terms of legal consequences, they called for ensuring the continuity of statehood and maritime zones, as demanded by the principle of permanent sovereignty over natural resources, among others. They also requested additional technical and financial assistance in line with the three reparation modalities under the law of State responsibility: restitution; compensation; and satisfaction.

KENYA asserted that even if climate change treaties, or some of their rules, have attained customary law status, these treaties exist alongside, and do not subsume, the customary law obligations of prevention and due diligence. They further affirmed that the climate regime, comprising the UNFCCC, Kyoto Protocol, and Paris Agreement, operates as a consistent whole, and urged the Court to dismiss the argument that the Paris Agreement has replaced the former two as the sole governing instrument for climate change.

Highlighting that the pressing issue at the heart of these hearings is States' historical responsibility for GHG emissions, KENYA urged the Court to clarify the temporal scope of legal obligations, including the extent to which historical emissions should influence the content and application of CBDR-RC. Noting that since 1992 the climate change treaty regime has applied in parallel with customary international law, they urged the Court to clarify that the customary law obligation not to cause harm from excessive GHG emissions existed before 1992.

KENYA argued that States that have caused significant harm to the global climate system through their GHG emissions must bear the legal consequences under the law of State responsibility, encompassing cessation and reparation, including compensation for loss and damage. They proposed further measures as forms of satisfaction, asking the Court to confirm that:

- debt cancellation arrangements are appropriate satisfaction, as they would free up resources that can be used for mitigation and adaptation in countries where debt servicing accounts for a significant portion of the national budget;
- unilateral debt restructuring or cancellation by vulnerable States, where climate change harms constitute grave and imminent peril, may be a legitimate circumstance precluding wrongfulness under international law, in accordance with Article 25 of ARSIWA; and
- where States implement regulatory measures that are inconsistent with obligations owed to investors, such measures are justified when necessary to mitigate adverse effects of climate change.

KIRIBATI emphasized their aim to secure self-determination and permanent sovereignty over their natural resources, deeply tied to their traditional way of life and relationship with nature, which are threatened by climate change-induced sea-level rise. They highlighted the applicability of the well-established no-harm obligation to GHG emissions, arguing that the invisibility and global dispersion of emissions are legally irrelevant. States, they stressed, must ensure their actions do not violate collective rights, particularly when such actions threaten the survival and sovereignty of others.

KIRIBATI said the principle of sovereign equality ensures no State possesses greater rights than others, including in the governance of shared resources. Whether the atmosphere belongs to everyone or no one, they said no State may appropriate it at will. Accordingly, they argued the global carbon budget must be subject to equitable and reasonable use and to the obligation to prevent significant harm. States, they added, lack sovereign discretion to exploit common resources in ways that harm the atmosphere, as one State's freedom ends where it harms others' rights. They linked these arguments to the duty of all States to act positively to support others' right to self-determination, forming the foundation of the obligation to cooperate.

On extraterritorial human rights, KIRIBATI said the principle that views States as primary rights protectors collapses when emissions threaten their very existence, leaving "victim States" unable to protect their citizens. They called claims of sovereign discretion by emitting States "deeply cynical," asserting that human rights jurisdiction arises from emitters' failure to prevent harmful emissions that irreparably harm human rights elsewhere.

KUWAIT underscored the country's economic dependence on the production and export of fossil fuels and outlined domestic efforts taken to mitigate GHG emissions and adapt to climate change impacts, despite the country's low historical contribution to climate change. For instance, they highlighted the country's State-owned Kuwait National Petroleum Company's Clean Fuels Project aimed at producing "environmentally friendly oil products."

On State obligations, they asserted these are governed and limited by the specialized climate treaty regime, which imposes obligations of conduct, not of result. They stressed the importance of taking national circumstances into account when assessing States' obligations, including the specific circumstances of fossil fuel-dependent countries, as recognized by Article 4.8(h) of the UNFCCC. None of these obligations, they argued, can be interpreted to prohibit the production or export of fossil fuels. Emphasizing the carefully negotiated balance of the climate treaties, KUWAIT asserted these incorporate and subsume customary law, such as the prevention and precautionary principles. Consequently, they submitted, any State in compliance with its treaty obligations automatically complies with its due diligence and precautionary duties.

On legal consequences, KUWAIT suggested that since the treaty regime does not prohibit GHG emissions *tout court*, these emissions cannot constitute an internationally wrongful act. They further submitted that the customary law contained in ARSIWA has been replaced by the climate treaties, including the compliance mechanism of the Paris Agreement, which adopts a facilitative approach and does not impose sanctions or include any obligation to make reparations. Elaborating the difficulties involved in establishing a causal link in cases of historical and cumulative contributions to climate harms, they doubted whether the acts of private actors responsible for GHG emissions could be attributed to States.

LATVIA affirmed the idea of "State continuity," asserting that existing rights are not affected by climate change-related sea-level rise because factual control is not always required for statehood. As an example, they highlighted how Latvia's statehood, first gained in 1918, was maintained throughout "decades of Soviet occupation."

They submitted that the UNFCCC and the Paris Agreement are the primary legal instruments addressing climate change, but that States' obligations extend beyond this regime. Like others, they recognized that obligations under the climate regime, including under Article 4.2 of the Paris Agreement (on the preparation of NDCs), constitute an obligation of conduct, not result. They argued that the discretion given to States in Article 4.2 is wide but not unlimited, and requires them to act with due diligence and in good faith to ensure their activities are in line with the Agreement's purpose and objectives, particularly the long-term temperature goal.

LATVIA further submitted that States may incur obligations under international human rights law to provide effective protection against the impacts of climate change when the impacts on an individual's human rights are both foreseeable and serious. They said when this threshold is met, the human rights

norms require due diligence comprising both general obligations to implement appropriate regulatory measures based on best available science, and special obligations to protect the rights of particular individuals or groups. They therefore supported a human rights-integrated approach to tackling climate change.

LIECHTENSTEIN stressed that climate change impacts jeopardize health and human rights for current and future generations. They urged the Court to "help the international community correct its course" and support the ongoing climate negotiations. They emphasized that climate change-related obligations flow from States' universal duty to uphold human rights while considering international climate and environmental law.

Citing the UN Human Rights Council, LIECHTENSTEIN stated that climate change jeopardizes the right to self-determination, which is a peremptory norm from which no derogation is permitted and which is enforceable against all. Emphasizing that States must take all necessary measures to protect this right, they also cited the non-binding Maastricht Principles on the Human Rights of Future Generations, which extend this right to future generations.

Referring to the findings of the IPCC, LIECHTENSTEIN warned that sea-level rise poses an existential threat to low-lying island States, leading to potential climate-induced statelessness. They reaffirmed the inalienable nature of self-determination and the presumption of continued statehood, even for States whose land territories become inundated and whose populations are relocated. Referring to UNCLOS, they said baselines for State territory should remain fixed, even as sea levels move landward. They supported the recognition of States in their "deterritorialized" form and added that States which no longer meet the criteria under the Montevideo Convention on the Rights and Duties of States should retain their statehood due to the strong presumption of State continuity.

Failure to achieve the Paris Agreement's 1.5°C temperature goal, they cautioned, would severely threaten the habitability of territories worldwide and infringe on multiple human rights, not just to self-determination, but also other dependent rights such as the right to life, housing, water, sanitation, food, cultural heritage, and a clean, healthy, and sustainable environment. LIECHTENSTEIN emphasized States' duty of due diligence to take all necessary steps to meet the 1.5°C target and implement effective mitigation and adaptation measures. On CBDR-RC, they called for reassessing the obligations between Annex I and non-Annex I parties under the UNFCCC, noting that some non-Annex I parties have become significant GHG emitters since 1992.

LIECHTENSTEIN said failure to fulfill international legal obligations generates State responsibility, stressing the need for both individual claims against States and collective accountability measures. On remedies, they advocated for collective obligations for major emitters to finance mitigation and adaptation actions, as well as preventive measures, such as environmental impact assessments.

MALAWI reiterated the climate crisis is a "crisis of inequity" and expounded the particular perspective of least developed countries (LDCs). They said that recently suffered climate harms led to a "massive setback" in their progress toward the Sustainable Development Goals and the African Union's Agenda 2063, and hampered their ability to repay debt.

Noting they did not come to the Court to "legislate" or create new law, MALAWI urged the Court to recognize the central importance of the CBDR-RC principle and to consider the entire corpus of international law. Rebutting arguments that applicable law is limited to the climate treaties, they called this position "radical and wrong" and pointed to the UNFCCC's reference to the prevention principle as evidence of the latter's applicability to GHG emissions. They said legal obligations are also found in customary norms, including a stringent due diligence obligation that respects national circumstances. They mentioned the phasing down of unabated coal power plants and the phasing out of inefficient fossil fuel subsidies in this regard.

On legal consequences, MALAWI stressed the "cardinal principle" that an internationally wrongful act gives rise to legal consequences. Recognizing that an assessment of reparations owed would need to be discussed in specific cases, they asked the Court to affirm the responsibilities of States in the abstract, highlighting:

- cessation of wrongful conduct;
- assurances of non-repetition;
- restitution, including material restoration where possible; and
- compensation for the benefit of present and future generations.

They also proposed the creation of a reparation fund and a damage register modeled after institutions established by the UN in the context of the conflicts in Ukraine and Gaza, respectively.

MALDIVES described the devastating impact of climate change on their communities and territory, in particular slow-onset events such as sea-level rise, and emphasized their refusal to adopt a policy on forced relocation or accept it as inevitable. Lamenting that the cost of adaptation exceeds their financial capacity, MALDIVES stressed they should not have to choose between funding sea walls or funding education and clean water. They highlighted developed countries have concrete legal obligations, not just moral ones, to provide support for adaptation, and argued these obligations exist under both the climate change treaty regime and customary international law.

MALDIVES outlined mandatory obligations imposed by the Paris Agreement on developed countries, including: Article 7.13, which provides that continuous and enhanced international support shall be provided to developing countries to implement, among other things, mitigation and adaptation measures; and Article 10.2, which provides that parties shall strengthen cooperative action on technology development and transfer. They further highlighted specific reporting requirements, including mandatory ones, such as for the review of the adequacy and effectiveness of adaptation and adaptation support in the context of the GST.

MALDIVES submitted that the customary duty to cooperate, which is part of the duty to prevent transboundary environmental harm, also applies in the context of climate change. On the procedural elements of this duty, they identified the duty to notify and consult in good faith with States that may be affected by an activity that can cause transboundary harm. However, they argued that the duty goes beyond this, and requires States to collaborate with others in good faith with a view to achieving agreed outcomes.

In this context, MALDIVES lamented that despite repeated commitments and pledges from developed countries, the Loss and Damage Fund is still not accessible to developing countries. They argued the duty to cooperate encompasses cooperation to achieve universal respect for, and observance of, human rights. They asserted the threat of climate change-induced relocation requires developed countries to provide financial and technical assistance to countries like Maldives to enable them to adapt to their changing environment, rather than be torn from it.

The AFRICAN UNION highlighted Africa's paradoxical role as the least contributor to global GHG emissions and the bearer of disproportionate climate change impacts. Africa's vulnerability, they noted, stems from geographical, developmental, and historical factors, including its colonial past. They warned that neglecting climate justice and human rights would rewrite international climate law to the detriment of Africa and the Global South.

The AFRICAN UNION called on the Court to issue an opinion grounded in climate justice, which they said is central to the Paris Agreement. They framed climate justice as an *erga omnes* norm owed towards all, requiring proportional obligations based on States' contributions to climate change. They urged the Court to base such determination on factual assessments of the origins, causes, and impacts of climate change, emphasizing that science compels recognition of obligations to protect the climate system and accountability for harm caused.

Reaffirming core obligations, they identified climate-specific duties under the climate regime, environmental obligations under multilateral agreements, human rights obligations under human rights instruments, and trade-related obligations under investment and trade treaties. Failure to identify these obligations, they warned, would enable States to harm the climate system with impunity. They rejected confining obligations to the UNFCCC and Paris Agreement, citing ITLOS' dismissal of such arguments.

They called on the Court to declare preventive duties under customary international law, including adopting science-based measures, conducting environmental impact assessments, notifying affected States, cooperating in good faith, adhering to international standards, and monitoring public and private activities. They also urged recognition of CBDR-RC, intergenerational equity, and sustainable development as customary international legal principles.

The AFRICAN UNION requested tailored legal consequences for the benefit of vulnerable States, peoples, and individuals, emphasizing the need to address disparities in geography and development. They proposed debt cancellation as a form of restitution, promoting intergenerational equity and protecting future generations from climate change and debt burdens.

On Monday, 9 December, the Court heard statements by: Mexico; Micronesia; Myanmar; Namibia; Japan; Nauru; Nepal; New Zealand; Palestine; and Pakistan.

MEXICO acknowledged that the climate crisis transcends borders and generations and is not gender-neutral. Rebutting the idea that the climate treaties constitute a self-contained regime, they argued for a harmonious interpretation of the climate treaties and general international law.

On State obligations, MEXICO highlighted the due diligence principle and the concomitant duty of prevention, asserting that compliance with these norms can be assessed through four factors:

- the preparation and implementation of NDCs that reflect the highest possible ambition;
- addressing loss and damage, including through the Santiago Network and the Loss and Damage Fund;
- climate finance, whose provision is a legal obligation for developed States; and
- technology transfer and capacity building through "inclusive" mechanisms that integrate cultural and gender perspectives.

They urged the Court to recognize these obligations as obligations of result that States must achieve. MEXICO further highlighted the principle of CBDR-RC as a "well-established and cross-cutting" principle and rejected characterizations of CBDR-RC as an "evolving notion."

On State responsibility and the difficulties of attribution, they recognized that much climate harm emanates from private entities but reiterated States' due diligence obligation to regulate private actors. They also said obligations under the climate regime are owed to all, that is, *erga omnes*. Countering arguments that highlight the complexity of attributing specific GHG emissions to States, they said this complexity cannot become a shield for States to avoid accountability. They called for innovative tools to overcome evidentiary burdens, underscoring information provided by civil society organizations.

As for consequences arising from a breach of State obligations, MEXICO emphasized the importance of reparations, in particular compensation, saying that compensation must cover non-economic harm and the loss of ecosystem services. They said climate change is a human rights challenge and called on the Court to consider human rights obligations, including those of non-State actors.

The FEDERATED STATES OF MICRONESIA (FSM) countered the contention that the UNFCCC, Kyoto Protocol, and Paris Agreement constitute *lex specialis*, and supported the ITLOS Advisory Opinion stating that GHG emissions amount to pollution of the marine environment under UNCLOS, and obligations under UNCLOS are not fulfilled simply by complying with obligations under the Paris Agreement.

On applicable law, FSM asserted the relevance of intergenerational equity, affirming that States have obligations to prevent the harmful impact of GHG emissions from compromising the ability of future generations, including Indigenous Peoples, to enjoy the planet's natural resources in perpetuity. They also affirmed the applicability of human rights obligations, rejecting assertions that these do not apply extraterritorially. In this regard, they submitted that the Court should consider the effective control of a particular State over emission sources rather than effective control over the territories where the impacts occur or over the persons affected by the impacts. They further asserted that even if human rights generally do not apply extraterritorially, the right to self-determination is a peremptory norm of international law applicable to all, and thus applies extraterritorially. They argued that meeting States' obligations to protect the environment from GHG emissions is essential to avoid undermining the right to self-determination.

Regarding the relevant conduct, FSM pointed to individual and cumulative releases of GHG emissions from activities within the jurisdiction or control of "particular States" that have resulted in significant harm to: States, particularly SIDS; peoples, including Indigenous Peoples; and to individuals of present and future generations, including rights holders. They identified these "particular States" as those with historical responsibility for the majority of GHG emissions, as established by the IPCC.

FSM argued the legal consequences of breaching obligations should be determined in accordance with the law of State responsibility as set out in ARSIWA, and could comprise: cessation and non-repetition, including eliminating fossil fuel subsidies, adopting binding regulations to cut emissions in the near term, and eventually phasing out fossil fuels; and reparation, including restitution, monetary compensation, and satisfaction. They asserted the Court must differentiate, to the extent possible, between the reparations owed to States, peoples, and individuals.

MYANMAR highlighted the principle of CBDR-RC and emphasized that responsibility for climate action must consider

historical contributions, climate vulnerability, and national capacity. Accordingly, they said, industrialized nations, as historical emitters, have the responsibility to provide financial support, technology transfer, and adaptation assistance to developing countries.

MYANMAR affirmed States' duty of due diligence in preventing transboundary environmental harm, including conducting environmental impact assessments, and said breaches of these duties would trigger legal consequences under ARSIWA.

They further called for recognition of the right to a clean, healthy, and sustainable environment as fundamental to protecting human life, dignity, and well-being. They argued that this right must be accompanied by State obligations to limit activities causing GHG emissions and harming human rights within and beyond borders.

MYANMAR lamented the repeated deferral of the consideration of its representatives' credentials and the resulting exclusion from the climate negotiations, which, they argued, hinders its efforts to address climate challenges and infringes on fundamental rights. They called for inclusive global cooperation, warning that excluding any nation undermines collective climate action and justice.

NAMIBIA explained the catastrophic impacts of climate-related drought on its population and ecosystems, warning that the country risks becoming locked into a permanent state of aridity. Noting that "the hydrosphere knows no boundaries," they characterized water scarcity as a human rights issue.

In terms of State obligations, NAMIBIA highlighted the harm caused by GHG emissions to the hydrosphere and adverse consequences on human rights, including the right to water. They stressed obligations arising from the no-harm, due diligence, and prevention principles to protect the hydrological system. These obligations, they asserted, entail: mitigation, including through regulation of private entities; adaptation, including through increasing resilience of the water system; and cooperation to ensure other States are aware of activities impacting the hydrosphere. Recalling the Court's case law on transboundary water streams, they argued the rights and obligations of upstream and downstream States must be extended to every State in the global water cycle.

On human rights, NAMIBIA asked the Court to affirm the right to water under customary and treaty law, and, stressing its relevance to the right to self-determination, asked the Court to recognize its *erga omnes* character. They emphasized States' responsibility to respect, protect, and fulfill the right to water, and rebutted arguments that human rights law was not applicable based on:

- location, upholding the extraterritorial application of the right to water;
- substance, saying that obligations to respect and protect human rights apply irrespective of the source of infringement and that compliance with the climate treaties alone does not guarantee compliance with human rights obligations; and
- personality, saying that future generations are not "abstract" and that States are under a fiduciary obligation to protect water resources as trustees.

NAMIBIA also affirmed the applicability of the law of State responsibility, said the science is clear that GHG emissions are responsible for the harm witnessed, and called for mandatory compensation alongside voluntary mechanisms such as the Loss and Damage Fund.

JAPAN emphasized the need for all countries, particularly major emitters, to be united in addressing climate change by peaking emissions and reaching net zero. They emphasized the climate treaties as "most relevant" for the matter before the Court.

JAPAN noted the legal scope of due diligence is not well defined and varies according to: individual States' primary obligations and specific circumstances and capacity; scientific and technological advances; the risk of harm and level of urgency; and evolving rules and standards. They considered that CBDR-RC provides guidance on how relevant obligations should be interpreted and applied, underscoring that the principle's application should not undermine the fulfilment of obligations and the achievement of the Paris Agreement's objective.

They emphasized that the expression "legal consequences" is not synonymous with secondary obligations of reparations. They underscored that the proceedings do not allow for the consideration of secondary obligations of State responsibility because the questions addressed to the Court are posed in abstract terms and do not identify specific States or categories of States or the conduct in question.

JAPAN noted that even if there is scientific consensus on their adverse effects, activities such as fossil fuel extraction, sales, or subsidies are not prohibited under international law, but only regulated. They noted the call for transitioning away from fossil fuels in energy systems was welcomed as a victory in the UN climate negotiations, but said the implementation of the decision requires a new industrial revolution in most countries and stressed that economies are not transformed by "applying jolts of secondary obligations."

They emphasized that historical responsibility and responsibility for wrongful acts are different concepts, asserting that accepting a leadership role in reducing emissions is not the same as accepting retroactive obligations or the existence of the secondary obligation of reparation. JAPAN further highlighted that while parties to the Paris Agreement recognized the importance of addressing loss and damage, this does not provide a basis for liability or compensation. With regard to the Paris Agreement's provisions on climate finance, they said "climate solidarity cannot be held hostage by outdated categories frozen in time."

NAURU asserted that the most important obligations in the current proceedings are those under general international law. Underlining that the UNFCCC, Kyoto Protocol, and Paris Agreement do not derogate from these international law obligations, they identified the obligation to prevent transboundary harm to the environment of another State, and the due diligence duty arising from this obligation, as of particular importance in this context.

NAURU rejected as outdated the Greek historian Thucydides' adage that "the strong do what they can and the weak suffer what they must." Stressing that "might does not make right," they said powerful States cannot avoid the consequences of the harm they have caused to vulnerable States. They explained that rising sea levels currently pose a threat violating the country's rights to sovereignty, territorial integrity, and self-determination, and its peoples' right not to be deprived of their means of subsistence. Recalling the *Alabama Claims* arbitration decision that due diligence must be exercised in proportion to the risks to which other States are exposed, NAURU affirmed that States are required to take all necessary measures to mitigate the risk of environmental harm.

NAURU rejected others' submission that the prevention duty only applies bilaterally or that the Court needs to identify a

particular point in time from which the duty applies in the context of climate change. They argued that the duty has always been understood to apply generally and in the full range of factual contexts possible, as evidenced by State practice.

NAURU also asserted the Court's advice in these proceedings will be retrospective, arguing that the Court, in making its pronouncements, would be stating existing law rather than legislating new law. They affirmed that should the Court conclude that the prevention obligation applies to climate change, this means it has applied since the obligation first came into being, and any State that has acted inconsistently with the prevention obligation has violated an obligation by which it was bound at the time of commission of the act.

NEPAL invoked the 2023 address of UN Secretary-General António Guterres to Nepal's Federal Parliament, quoting: "What is happening in this country as a result of climate change is an appalling injustice and a searing indictment of the fossil fuel age." They expressed gratitude to global youth for their pivotal role in advancing the ICJ proceedings.

NEPAL emphasized that climate change impedes fundamental human rights, including the rights to life, food, health, housing, sanitation, and water, disproportionately affecting women, children, persons with disabilities, and the cultural rights of minorities and Indigenous communities. They said human rights law governs State-to-individual obligations and international environmental law addresses State-to-State duties, arguing that GHG emissions from beyond Nepal's borders directly infringe upon its citizens' rights.

Citing the principle of harm prevention, NEPAL noted that this customary rule, rooted in due diligence, obligates States to use all means at their disposal to prevent harm from activities within their jurisdiction or control. They argued that if isolated transboundary pollution is unlawful, the same must apply to widespread GHG emissions. High-emitting States, they stressed, bear heightened responsibility to reduce emissions and urgently raise their climate ambitions.

NEPAL called for the Court to consider States' historical and current emissions, vulnerabilities, and capacities when clarifying obligations, consistent with the principle of CBDR-RC.

On legal consequences, NEPAL identified State responsibility under ARSIWA to address climate harms. Referring to the *Costa Rica v. Nicaragua* case, they highlighted that environmental damage and ecosystem service losses are compensable under international law. They argued that developed States bear a collective duty to compensate for harm caused by historical emissions, urging the operationalization of the Loss and Damage Fund as a compensatory mechanism under the polluter-pays principle. They emphasized that this is about justice, not charity, for vulnerable States.

NEW ZEALAND recalled the Pacific Island Forum's declarations on the continuity of statehood and maritime zones under sea-level rise.

On applicable law, they submitted that the climate treaties are the key framework for climate action and said this regime is a "package deal" allowing no reservations. They conceded that other treaties, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, the Chicago Convention on International Civil Aviation, or UNCLOS, as well as customary rules, such as the precautionary principle, may bear on the interpretation of obligations arising from the climate regime. They urged the Court to interpret these obligations in line with systemic integration, give due regard to the ITLOS Advisory Opinion, and reject *lex specialis* arguments.

NEW ZEALAND underscored that the well-recognized duty of cooperation is central to States' obligations under customary and treaty law. They highlighted the role of the climate change negotiations and the GST, and characterized cooperation as an obligation of conduct, rather than result. The signing of the Paris Agreement, they noted, reflected a "starting point for cooperation rather than an end point."

NEW ZEALAND acknowledged that the law of State responsibility applies to transboundary harm, but said its application to climate change is uncertain and involves complex calculations that go beyond the mandate of the Court in these advisory proceedings. Irrespective of duties under the law of State responsibility, they emphasized existing cooperation mechanisms, including the Warsaw International Mechanism, the Santiago Network, and the Loss and Damage Fund. They also underscored the Paris Agreement's facilitative, multilateral consideration of progress and its facilitative, non-adversarial, and non-punitive approach to compliance.

PALESTINE supported the applicability of the entire corpus of international law to climate change, highlighting that States' obligations under the international climate regime intersect with different areas of law, including the laws of armed conflict. They affirmed the responsibility of States for the contribution of armed conflict and other military activities, including occupation, to exacerbating climate change. They noted that even when there is no armed conflict, military exercises and weapons production, testing, and transport generate vast amounts of GHG emissions and contribute to climate change.

PALESTINE noted that States do not report GHG emissions from these activities, leading to a significant underestimation of global GHG emissions and of the action needed to address climate change. They highlighted, for instance, that the first 120 days of the ongoing war in the Gaza Strip caused between 420,000 and 650,000 tonnes of CO2 and other GHG emissions, equivalent to the total annual emissions of 26 of the lowest-emitting States. Once post-war reconstruction is factored in, they said, the estimate rises to over 52 million tonnes of CO2 equivalent emissions, higher than the annual emissions of 126 States and territories. PALESTINE emphasized this does not take into consideration the devastating effect on ecosystems and biodiversity, including the degradation and destruction of carbon sinks, which also threaten the climate system.

PALESTINE argued that the customary international law of prevention and due diligence applies to climate change, including emissions from armed conflict and other military activities such as occupation. They highlighted Article 35 of Additional Protocol I to the 1949 Geneva Conventions, which prohibits the use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term, and severe damage to the natural environment. They further pointed to the ILC's Draft Principles on Protection of the Environment in Relation to Armed Conflicts.

They urged the Court to address and clarify the legal rules applicable to the climate catastrophe, including the obligations of States engaged in armed conflict, occupation, and other military activities.

PAKISTAN outlined the "apocalyptic" impacts of climate change on its population and economy, highlighting the 2022 floods that submerged one-third of the country, affected 33 million people, and resulted in reconstruction costs estimated to exceed

USD 16 billion. Quoting the UN Secretary-General's 2022 address to the UNGA, they noted: "Pakistan contributed less than 1% of global GHG emissions but its people are 15 times more likely to face death from climate-related impacts than other States."

PAKISTAN emphasized three key points:

- the Paris Agreement under the UNFCCC is the primary framework for addressing climate obligations;
- climate obligations must align with equity and CBDR-RC, encompassing provisions for climate finance, mitigation, and cooperation; and
- disputes regarding treaty obligations must be resolved through mechanisms established within those treaties.

PAKISTAN argued that the obligation of prevention, rooted in due diligence, operates alongside treaty obligations and forms part of the applicable law. They explained that due diligence requires a case-specific assessment of potential harm. They pointed to several conventions, including the UNFCCC, the Vienna Convention for the Protection of the Ozone Layer, the Convention on Long-Range Transboundary Air Pollution, and the UN Convention to Combat Desertification, as evidence that the obligation of prevention applies to diffuse harm, like GHG emissions. They added that many of the States contesting its applicability to GHG emissions are parties to these Conventions.

Rejecting claims that the UNFCCC and Paris Agreement constitute *lex specialis*, PAKISTAN argued that these treaties do not override stricter obligations under general international law. They emphasized that the obligation of prevention is triggered once a State possesses or ought to possess the "requisite knowledge" of the harmful effects of its activities. In the context of GHG emissions, they underscored that claiming ignorance is no excuse.

PAKISTAN concluded: "We are the first generation to feel the impact of climate change and undoubtedly the last generation that can do something about it."

On Tuesday, 10 December, the Court heard statements by: Palau; Panama; the Netherlands; Peru; the Democratic Republic of the Congo (DRC); Portugal; the Dominican Republic; Romania; the United Kingdom (UK); and Saint Lucia.

PALAU recalled its long history of colonial rule and said the freedom of independence comes with a basic responsibility: "Every State must ensure that its activities do not harm its neighbors." They illustrated the threat posed by climate change to Palau's right to self-determination, showing that the country's only port, hospital, and airport risk becoming inaccessible. They further decried the cultural and political effects of sea-level rise, lamenting that their children stand to inherit a country that no longer reflects the stories and values of their ancestors. They emphasized that internal, landward displacement creates additional pressure on biodiversity in the areas where displaced people resettle.

PALAU said the issue of climate change is straightforward as a matter of international law, noting that it is a basic principle of the international community that one's property may not be used to cause harm to others—known as nuisance in common law systems, as a servitude established by law in civil law systems, "and simply as a golden rule in most moral systems." They referenced the long-standing jurisprudence on this principle, and stressed that breaches must give rise to legal consequences under the law of State responsibility, including full reparation of, and compensation for, damage caused. They rebutted arguments that the no-harm principle should not apply to climate change based on:

- the complexity of attribution, affirming that practical difficulties in establishing causation should not rule out obligations in principle and that it is the responsibility of experts to meet the burden of proof; and
- the climate treaties superseding general international law as *lex specialis*, asserting there is no support for this argument in the negotiating history or the text of the treaties.

PALAU urged the Court to disregard some States' request to "rewrite" the climate treaties in ways that these States could not achieve during negotiations. They closed by narrating the traditional Palauan legend of the breadfruit tree as a warning against greed and overconsumption.

PANAMA highlighted the hearings as an opportunity for the Court to address the inadequacies of the UNFCCC process and inspire a stronger determination to tackle the global climate crisis. They lamented that high-emitting States, that are consequently responsible for transboundary pollution, are adversely affecting Panama's self-determination.

They described the increasing unpredictability of climate change, including rapid swings from severe drought to devastating floods, noting that it continues to push the boundaries of what States can adapt to.

PANAMA recalled the UN Charter, where all peoples determined to, among other things, "reaffirm faith in fundamental human rights" and "practice tolerance and live together in peace with one another as good neighbors." They highlighted that human rights are universal and that the Charter's aims cannot be achieved if human-induced climate change is allowed to destroy the living conditions of millions all over the world. They further cited Articles 55 and 56 of the Charter, where all peoples: determine to promote, *inter alia*, higher standards of living and solutions for international economic, social, health, and related problems; and pledge to take joint and separate action to achieve these goals. PANAMA urged the Court to take these far-reaching provisions into account and advise that they cannot be achieved without due respect for the global environment by all States under international law.

PANAMA affirmed the applicability of ARSIWA and called for reparation, including restitution, compensation, and satisfaction, as well as payment of interest on any amount due, in accordance with Articles 35-38 of ARSIWA.

The NETHERLANDS highlighted the unprecedented threat posed by anthropogenic GHG emissions, emphasizing that climate change transcends borders and generations. They warned that further delays in mitigation and adaptation will close the opportunity to secure a livable future for all and emphasized that greater levels of mitigation can reduce adaptation needs in the future.

They delineated the country's own experience fighting against submersion, building on, among others, coastal protection, maintaining open river connections, and floating infrastructure. They also addressed the different adaptation needs in their Caribbean territories arising due to higher temperatures, increased wind speeds, and more frequent droughts.

The NETHERLANDS stressed the obligation to implement mitigation policies has entered the general corpus of international law as a universally applicable *erga omnes* norm, requiring long-term strategies to achieve net-zero emissions by 2050 and phase out fossil fuels.

They noted human rights law obliges States to protect rights threatened by climate change through reasonable mitigation and adaptation measures. They lamented the absence of adequate legal protection for climate-displaced persons, calling for this issue to

be placed on the agenda of the climate change negotiations, and urged the Court to consider the ILC's ongoing work on sea-level rise. They underscored obligations under the Convention on the Rights of the Child and States' responsibilities to prevent child mortality from climate change impacts.

The NETHERLANDS stressed that international collaboration is critical for capacity building, technology transfer, and climate finance. They called for a significant increase in mitigation and adaptation financing, highlighting the need for both public and private contributions. They stressed, "there is no room for free riders on this planet."

PERU underscored that climate change constitutes an unprecedented threat to present and future generations, and affects countries and peoples differently. They emphasized intergenerational equity, which requires States and present generations to take measures to mitigate and adapt to the effects of global warming to prevent impacts on the well-being and rights of future generations.

They recalled that States decided that the Paris Agreement "will be implemented to reflect equity and the principle of CBDR-RC, in the light of different national circumstances," arguing that this supports a dynamic and evolving interpretation of States' obligations. PERU emphasized taking into account the specific needs and special circumstances of developing countries, especially those particularly vulnerable to the adverse effects of climate change. They lamented that the new climate finance goal falls short of what is needed in this decade and urged enhanced, non-debt-inducing financial support to unlock climate action in developing countries. They also highlighted: the precautionary principle; the principle of cooperation; and the general obligation to protect and conserve the marine environment.

PERU further underscored the interlinkages between climate change and the enjoyment and realization of human rights. They called for the Court to consider the risks faced by people in vulnerable situations, such as Indigenous Peoples, local and rural communities, children, women, older persons, people living in extreme poverty, minorities, persons with disabilities, migrants, refugees, and internally displaced persons.

As examples of financial mechanisms established as forms of reparation, they pointed to the Loss and Damage Fund and the International Oil Pollution Compensation Funds. PERU noted that the Court will help set out a path to a balanced climate system and asserted that the Court is not limited to assessing commitments, but may also develop them in line with the need for effective reparation to third States.

DRC argued that States may fully comply with the Paris Agreement and still be in breach of their human rights obligations. The climate regime alone, they said, will not prevent significant harm to the climate system, and underscored the "complementary" obligations of due diligence and prevention. They asserted that States' standard of due diligence must be informed by other international norms, including the ones contained in the Paris Agreement, as well as by the best available science, including the IPCC reports.

On State responsibility, DRC pushed back against the claim that GHG emissions are too remote for other States to be held accountable. They noted that the requisite causal link is grounded in the foreseeability of harm, and that it is not required to know with "full certainty which State will suffer which harm and when" because the harm emanating from GHG emissions is indiscriminate in nature. They asserted that the matter is akin to "hunters firing blindly in the woods, fully aware that there are vulnerable people at risk." In terms of legal consequences, DRC underlined the importance of full reparations and stressed that, in situations of multiple causes to a single injury, any single contributor may be required to compensate for the entire harm. As such, they said, any high emitter may be held individually responsible for harm incurred by vulnerable States, noting this is both "necessary and proportionate" to ensure effective relief for victims of climate harm.

On CBDR-RC, DRC recalled Article 3.2 of the UNFCCC on the specific needs of developing countries and said it would be "absurd" to exclusively focus on the formal equality and joint responsibility of States in light of different historical and current contributions to, and capabilities to address, climate change. They called for the provision of technical and financial assistance, *inter alia*, to allow countries in the Global South to preserve carbon sinks. DRC invited the Court to break up the traditional distinction between developed and developing countries, taking into account the evolving economic and environmental characteristics of emerging economies and clarifying that all major emitters incur legal responsibilities, "whoever they may be."

PORTUGAL highlighted that States' duty to cooperate in the context of climate change arises from: the international climate regime; the human right to a clean, healthy, and sustainable environment; and the need to protect persons affected by climate change.

They reiterated that the UNFCCC recognizes the need for international cooperation and effective participation by the entire international community in addressing climate change, based on States' differentiated responsibilities and varying capacities. They further identified cooperation requirements under the Paris Agreement, noting, for instance, that the Agreement's temperature goals are collective goals which no single party can achieve on its own. They urged the Court to clarify the specific content of the duty to cooperate in the context of the climate regime and the benchmarks for assessing whether this duty has been satisfied, taking account of evolving science, the risk of harm, and urgency, as well as the current state of implementation of the Paris Agreement.

PORTUGAL affirmed that environmental degradation directly and indirectly affects the enjoyment of a broad range of human rights, including the right to life and the rights of the child.

They noted that cooperation is required in relation to persons displaced as a consequence, or in anticipation, of climate change impacts, and asserted that States might have a duty to: facilitate cross-border movement of people; offer possibilities of temporary or permanent residence in their territories; make bilateral or regional arrangements to manage migratory displacement patterns; and coordinate to find sustainable and durable solutions, considering that sea-level rise may make it impossible for displaced persons to return to their original locations.

The DOMINICAN REPUBLIC argued that a compelling opinion from the Court could drive stronger and immediate climate action, particularly in the context of NDCs to be submitted in 2025. They underscored that high-emitting States have breached their international obligations, which should be derived from the entire corpus of international law.

They explained that between 1971 and 2010, the Ocean absorbed 90% of the excess heat energy stemming from anthropogenic GHG emissions, underscoring that this contributes to sea-level rise and Ocean acidification and deoxygenation, with

devastating effects on marine ecosystems and the livelihoods and identity of Caribbean peoples. They noted sea-level rise will persist for centuries, with nearly 50% of Caribbean islands at risk of submersion.

Equating the existential threat of climate change to that of nuclear weapons, the DOMINICAN REPUBLIC emphasized the "fundamental right of every State to survival" and urged the Court to recognize this right. Complementing the customary international law obligation not to cause transboundary harm, they said States must comply with mitigation obligations under the Paris Agreement, halt wrongful conduct, and provide reparations under the law of State responsibility where breaches of obligations lead to harm. They added that while loss of statehood has not yet materialized, the mere threat to survival constitutes significant harm. They requested the Court to endorse the ILC's recommendation of a "strong presumption in favor of continuing statehood" for States affected by sea-level rise.

ROMANIA underscored that all States, regardless of size, economic power, or level of development, must take climate action and meet their commitments under international law. They argued against considering historical responsibility in the context of CBDR-RC, saying it is an "oxymoron" for some States to invoke this principle or the global carbon budget in support of their right to pursue carbon-intensive development. They highlighted that equity must guide the interpretation of States' obligations under the climate regime and characterized these as *erga omnes* obligations to "foster greater solidarity."

On the link between climate change and human rights, ROMANIA supported the European Court of Human Rights' ruling in *Klimaseniorinnen*, which found that States must undertake measures in pursuit of substantial and progressive reduction of their GHG emissions, and that these must be incorporated in a binding national framework. They also asserted that the climate treaties do not form *lex specialis* but apply alongside general international law, including the due diligence principle. They argued that the Paris Agreement sets a "subjective standard" of due diligence that must guide the duty to prepare, communicate, and maintain NDCs. ROMANIA also underscored the need for a certain "level of vigilance" in enforcing climate measures, and emphasized the "equitable balance of interests" in assessing States' compliance with the duty of prevention, referencing the ILC's Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities.

ROMANIA also emphasized the Pacific Islands Forum's Declarations on the continuity of statehood and maritime zones in the face of sea-level rise, pointing to existing State practice and scholarship on this topic, and argued all States have a duty to cooperate for the benefit of States most affected by sea-level rise.

The UK affirmed that the most effective way to address climate change is through the legally binding obligations contained in the climate change treaties—most importantly the Paris Agreement—and complementary treaties, such as on substances that deplete the ozone layer or long-range transboundary air pollution. They outlined States' obligations under the Paris Agreement, including those relating to NDCs, the temperature goals, and domestic mitigation measures, among others. Highlighting these as obligations of conduct governed by the due diligence standard, they asserted that while parties are not obliged to achieve the content of their NDCs, they must perform the Agreement's obligations in good faith and in accordance with the best available evidence.

The UK rejected the claim that the second question before the Court is about States' responsibility for breaching international obligations, arguing this would require the Court to assess the conduct attributable to a given State against the content of an obligation binding that State at the time of the impeached conduct. They affirmed that, rather, the Paris Agreement itself sets out the relevant legal consequences where States have caused significant harm to the climate system and other parts of the environment, and outlined two key principles in this context: those that can, must do more; and cooperation is essential to address climate change.

The UK also rejected the assertion that the prevention principle applies to GHG emissions, arguing that neither State practice nor *opinio juris* support this assertion. They pointed out that the principle was articulated in limited circumstances such as transboundary air or river pollution, and maintained it is not applicable to anthropogenic climate change, which is the result of GHG emissions from all States over time accumulating in the global atmosphere. They pointed to the fact that those who assert the applicability of the prevention principle also claim that a significant number of States are in long-standing breach, and submitted this as proof of insufficient State practice to support the principle's applicability to climate change. They further contended that even if the prevention principle covered GHG emissions, its content does not require more than the substantive provisions of the climate change and complementary treaties.

SAINT LUCIA warned that global warming will lead to catastrophic consequences, including irreversible coral reef loss, island submersion, and population displacement. They highlighted that SIDS face mounting debt exacerbated by climate disasters, and paid 18 times more in debt servicing than they received in climate finance from 2016 to 2020.

They denounced major emitters for ignoring science, evading responsibilities, and downplaying their historical cumulative emissions, which they described as "the very conduct this Court must address." They argued that major emitting States owe SIDS heightened obligations under both climate treaties and customary international law. Under the climate treaties, they asserted, these include obligations for climate finance, loss and damage assistance, mitigation, and technical support. Under customary law, they cited stringent due diligence standards affirmed in ITLOS' Advisory Opinion.

SAINT LUCIA advocated for a holistic approach that considers the entire corpus of international law. They cautioned that limiting obligations to the climate treaties would imply that harmful conduct by major emitters—who had known since the 1960s about the impacts of their activities—was unregulated and unaccountable. Rejecting claims that the Paris Agreement supersedes other obligations, they stressed that it does not excuse failures to meet customary law standards, obligations under the law of the sea, human rights commitments, or peremptory norms such as the right to self-determination. They urged the Court to clarify that the principles of systemic integration and harmonious interpretation allow for obligations to apply autonomously.

On human rights, SAINT LUCIA pointed to the Paris Agreement's preamble, which provides that when addressing climate change, parties must respect, promote, and consider their respective obligations related to human rights, including intergenerational equity and the rights of women, children, and Indigenous Peoples. They highlighted the Escazú Agreement, the world's first treaty that includes protection for environmental human rights defenders, as part of the broader international human rights framework.

Countering arguments that climate treaties are self-contained regimes, SAINT LUCIA cited the *Gabčíkovo-Nagymaros* case, where the ICJ confirmed the enforceability of ARSIWA in environmental cases. They noted that major emitters have conspicuously failed to meet treaty obligations, particularly on mitigation and finance, emphasizing that the Loss and Damage Fund remains "an empty promise."

On legal remedies, SAINT LUCIA called for cessation of wrongful acts through immediate GHG emissions reductions and elimination of fossil fuel subsidies, which distort markets and hinder low-carbon technologies. They emphasized the importance of restitution, including through ecosystem restoration and, where restitution is inadequate or impossible, compensation for damages, including income loss, infrastructure damage, and displacement costs. Referencing the Bridgetown Initiative, they also identified debt relief and equitable climate finance as critical compensation tools. They stressed that the Loss and Damage Fund complements, but does not replace, compensation obligations. They called for satisfaction through formal acknowledgment of wrongdoing by responsible States to restore dignity and address the moral and structural dimensions of the climate crisis.

On Wednesday, 11 December, the Court heard statements by: Saint Vincent and the Grenadines; Samoa; Senegal; Seychelles; the Gambia; Singapore; Slovenia; the Sudan; Sri Lanka; Switzerland; and Serbia.

SAINT VINCENT AND THE GRENADINES called climate change "colonization on repeat," recalling the forced exile and cultural annihilation of the country's native population in the 1700s.

On applicable law, they "firmly" refuted any argument that the UNFCCC and Paris Agreement replaced existing customary international law. They placed particular emphasis on the right to self-determination, which holds a peremptory *ius cogens* status and allows no derogation, and asked the Court to confirm this right's "systematic significance" in the context of climate change. SAINT VINCENT AND THE GRENADINES noted that international financial institutions are ill-aligned to address the needs of vulnerable States, with funding taking years to materialize and States of the Global North being able to borrow at much lower interest rates than countries in the Global South. Pointing to the principle of CBDR-RC, they denounced the new climate finance goal as inadequate, questioning whether the climate negotiations are still fit-for-purpose. They urged increased support in the form of technology transfer, capacity building, and pledges to the Loss and Damage Fund.

SAINT VINCENT AND THE GRENADINES supported applying the no-harm rule to climate change, recalling its solid foundations in international law and saying that the scope of the rule is evolutionary, not static. They invited the Court to clarify the meaning of the principle of common concern of humankind in relation to climate change, asserting that the atmosphere is such a common concern and that no State has the right to use it as a "personal dumping ground." Rather, they said it must be held in collective trust for the benefit of present and future generations.

SAMOA outlined constant threats of relocation due to climate change impacts, noting this disrupts social structures and Indigenous ways of life. They emphasized that this harm is not an unfortunate accident but the foreseeable result of actions and omissions by those who have long known about the consequences of their conduct. They lamented that decades of scientific warnings and advocacy by vulnerable States were ignored in favor of short-term economic interests, denouncing the casting aside of the prevention and due diligence principles in violation of international law and neighborly responsibility.

Regarding legal obligations, they refuted some States' argument in favor of *lex specialis*, stating that the UNFCCC and Paris Agreement are not the only or the primary elements of international law that apply to the conduct at hand. They underscored that States had the requisite knowledge of the causal link between GHG emissions, observed climate change, and related risks since at least the 1960s—long before the entry into force of the climate treaties. They emphasized that other treaties and general principles of international law were in place at the time, such as the obligation to prevent transboundary harm to the environment of other States and areas beyond national jurisdiction, and the obligation of due diligence.

SAMOA underscored that the wrongful conduct of some States violates the right to self-determination, cultural rights, the right to family life, and the right to life. They cited the findings of the IPCC on increased ill health and premature deaths related to climate change, underscoring that this violates children's rights and the rights of future generations.

On legal consequences, they rejected others' claim that establishing causation is too complex, and underscored that science can identify, with precision, the contribution of individual States to total GHG emissions, global mean temperature rise, and sea-level rise. They urged the Court to adopt a "material contribution" approach and view conduct as a composite act, with contributions apportioned to individual States. They emphasized the importance of immediate cessation of wrongdoing, noting that while reparations are important, they will not "assure our survival."

SAMOA considered that the Court is "the final bastion of hope" for those seeking justice when their rights are being "ignored and trampled on," and asked the Court for a fair application of sound and well-established legal principles.

SENEGAL affirmed the existence of a number of international legal rules, both general and specific, that give rise to State obligations relevant to climate change. On general rules of international law, they asserted the applicability of the no-harm rule and the precautionary approach. They argued that the no-harm rule is customary in nature and as such, applies to all States. They noted the Court's previous ruling that the no-harm rule is an obligation to act with due diligence, which, *inter alia*, entails adopting and vigilantly enforcing appropriate rules and measures.

SENEGAL further affirmed the applicability of human rights laws and obligations, highlighting the right to life, which is threatened by climate change. They cited the jurisprudence of the African Commission on Human and Peoples' Rights to illustrate that the violation of the right to a healthy environment has cascading effects, compromising other human rights.

Regarding the legal consequences of breaching these obligations, SENEGAL identified two key terms in the questions before the Court: "significant harm"; and "adverse effects." On "significant harm," they referred to the ILC's definition that "significant harm" is something more than "detectable" but need not be at the level of "serious" or "substantial." On "adverse effects," they: referred to the definition in Article 2 of the Vienna Convention for the Protection of the Ozone Layer, which is replicated in Article 1 of the UNFCCC; and highlighted a Human Rights Council resolution emphasizing that the adverse effects of climate change have a range of implications, both direct and indirect, for the effective enjoyment of human rights.

SEYCHELLES urged the Court to confirm that States have a legal obligation to take urgent action to limit global warming to 1.5°C above pre-industrial levels and to recognize that all States have an individual obligation to take objectively necessary measures to prevent further harm, including by implementing their NDCs. They said these obligations are owed to all (*erga omnes*), and any conduct contrary to the Paris Agreement's goals constitutes a breach of the obligation of prevention. They described the obligation of undertaking ambitious efforts as an obligation of conduct, assessed against the due diligence standard. A State's failure to meet its own NDC, they said, constitutes non-compliance with its self-imposed due diligence. However, they emphasized that NDCs can only serve as a standard for non-compliance, not for compliance with due diligence obligations, considering the inadequacy of current NDCs.

SEYCHELLES requested the Court to confirm that States' responsibility to protect human rights from climate harm is not territorially limited. On State responsibility, they referenced Articles 14, 15, 42, and 46 of ARSIWA, which address composite and continuous wrongful acts. They stressed that identifying States responsible for climate harm should be guided by law, facts, and science, clarifying that SIDS had no role in causing the climate disaster.

On Article 8 of the Paris Agreement not providing a basis for liability or compensation for loss and damage, they recalled that several parties, in the context of their ratification of the Agreement, explicitly declared that they were not renouncing rights under international law related to State responsibility or reparations.

SEYCHELLES said each high-emitting State can be attributed a share of climate injuries. They stressed cessation and non-repetition as urgent and critical remedies. Compensation, they remarked, could be determined based on equitable considerations, while lack of adequate evidence as to the extent of material damage cannot preclude compensation.

The GAMBIA laid out its specific vulnerabilities to climate change as a small, low-lying, coastal LDC: "Every single death is a reminder of the price we are paying for the failure to take immediate, coordinated, and ambitious climate action."

On applicable law, they argued the Court should pay attention to a wide variety of principles and rules, including resolutions adopted by human rights bodies and decisions of the UNFCCC COP. They emphasized the need for systemic integration when interpreting different norms governing States' obligations, and recalled the close link between human rights and environmental harm, as explicitly recognized by Article 24 of the African Charter on Human and Peoples' Rights.

In relation to the transboundary harm principle, the GAMBIA said the only instance where this principle does not apply is where harm is exclusively confined within one State. On prevention and due diligence, they asserted these principles serve to interpret treaty obligations, including the obligation to prepare NDCs under the Paris Agreement. Warning against "fossilizing" duties from three decades ago, they argued for a dynamic evolution of the due diligence standard in line with the IPCC reports, and rejected the Paris Agreement's long-term goal of limiting global warming to 2°C as outdated in light of recent science.

The GAMBIA maintained that compliance with the Paris Agreement does not automatically satisfy human rights obligations, as highlighted by the UN Human Rights Committee and the European Court of Human Rights, among others. On legal consequences, they underscored that any breach of obligations must cease, and supported granting States a wide margin of appreciation in regulating activities under their jurisdiction or control to combat climate change.

SINGAPORE noted the country's unique geographical characteristics—such as its small territory, low wind speeds, and lack of major river systems—limit the country's access to alternative energy sources such as wind and hydropower.

SINGAPORE acknowledged the "primary" obligations contained in the UNFCCC and Paris Agreement, including submitting NDCs and undertaking domestic mitigation measures. However, these obligations, they argued, do not preclude the application of obligations under other treaties or customary international law. Emphasizing the multifaceted impacts of climate change, including on terrestrial, freshwater, and marine ecosystems, as well as human health and well-being, they said the international response must address these different facets.

Regarding the prevention principle, SINGAPORE identified the procedural obligation to conduct environmental impact assessments of planned activities that may have significant adverse effects on the environment. They requested the Court to elaborate how this obligation can be discharged in practical terms, noting that individual projects are unlikely to make a significant difference to overall GHG emission levels.

SINGAPORE further highlighted States' duty to cooperate in the context of climate change, which arises under the UN Charter, the UN Convention on the Rights of the Child, UNCLOS, and the UNFCCC, as well as under customary international law. They asserted that, although this duty is not one of result, it must be fulfilled continuously, meaningfully, and in good faith, either directly or through participation in relevant international cooperative processes such as the UNFCCC. Pointing to the "inequalities of the past, diversity of the present, and uncertainties of the future," they asserted that historical responsibility remains an essential element of the CBDR-RC principle and continues to determine how States should act to address climate change.

SLOVENIA emphasized the need for a holistic, rights-based approach to addressing legal obligations concerning climate change. They underlined that States must align their climate actions with their human rights obligations and proactively protect the climate system and environment in ways that enhance human rights.

Highlighting the right to a clean, healthy, and sustainable environment as a dynamic and essential element of the international legal framework, SLOVENIA pointed to its explicit recognition in agreements such as the Aarhus Convention and the Escazú Agreement. They stressed that this right obliges States, individually and collectively, to respect and promote it. They said this spans negative obligations, such as refraining from unjustified environmental interventions, and positive obligations, such as defining and implementing measures to safeguard the climate system, adapt to climate change impacts, and provide financial assistance, technology transfer, and capacity building to vulnerable populations.

They underscored the interoperability between international environmental law and human rights law, asserting that decisions by human rights bodies should carry significant weight in ensuring consistent interpretation of international law. They emphasized the right to a clean, healthy, and sustainable environment as a precondition for the enjoyment of other rights, with two key implications:

- it requires systematic consideration when interpreting States' obligations under international law related to climate change; and
- it entails compliance with due diligence, obliging States to prevent, control, and address environmental harm, not only when it affects other States but also when it threatens individuals within their jurisdiction.

SLOVENIA stressed that due diligence, along with vigilance and prevention, cannot be considered fulfilled unless States engage in robust efforts to prevent adverse climate change impacts, aligned with the CBDR-RC principle.

They said the Court is not requested to delve into issues of State responsibility but to clarify primary obligations of States to protect the climate system, which are incumbent on all States in line with the CBDR-RC principle. The aim, they concluded, is not to condemn past conduct but to foster collective action to protect humanity from the impacts of climate change.

The SUDAN underscored that rising temperatures, drought, land degradation, and water scarcity foster competition over limited resources and exacerbate tension and conflict among communities, as manifested in the Darfur crisis. They lamented that ongoing economic and political sanctions restrict their access to bilateral climate finance and have left the country increasingly vulnerable to climate change impacts.

They called upon the Court to ground its advisory opinion in the entire body of international law, rejecting the existence of *lex specialis* in the context of climate change. They recalled the history and evolution of the CBDR-RC principle, and noted that the Paris Agreement builds on a more nuanced approach to the distinction between developed and developing countries, through the reference to CBDR-RC "in the light of different national circumstances." They underscored that the categorization agreed upon in the UNFCCC and Paris Agreement should be respected and any attempt to introduce new categorizations without international consensus should be avoided.

They asserted that any assessment of whether a State breached its obligations must take into account the respective capabilities and circumstances of the State in question, as well as developed countries' failure to provide adequate means of implementation.

SRI LANKA pointed to relevant obligations, such as: the right to health, saying that clean water, air, and food are crucial to good health; the right to a healthy environment, recalling its history up until UNGA Resolution 76/300; the no-harm rule, referencing its recognition in the Court's jurisprudence; and the "foundational" duty to refrain from depriving people of their subsistence, mentioning extreme heat preventing outdoor work as an example. They said these principles and rules extend beyond national territories and present generations, and rejected restricting the advisory opinion to the UNFCCC and Paris Agreement only.

They said climate harm must trigger legal consequences in line with ARSIWA, underscoring three main consequences: cessation, specifying cutting fossil fuel subsidies and phasing out fossil fuel production as potential remedies while rejecting geo-engineering as "highly speculative and counterproductive"; restitution, where this is not wholly impossible or grossly disproportionate; and compensation, but stressed this does not absolve States from fulfilling their other financial obligations.

SWITZERLAND explained that the customary obligation of due diligence in preventing significant transboundary harm arises when a State can reasonably foresee the risk of significant harm and the causal link between its activities and the harm. In the context of climate change, they invited the Court to confirm the obligation has been binding on all States since 1990, when the IPCC concluded that anthropogenic emissions "could lead to irreversible climate change." They suggested this applies to States' present and future, but not past, emissions.

SWITZERLAND underscored that the standard of due diligence evolves with scientific insights and technological advancements and is more stringent for current and future larger emitters and for States with significant capacities, such as those "launching rockets into space or producing nuclear weapons." They stressed that no State can avoid its obligations by invoking the responsibility of others.

On the relationship between the due diligence obligation and climate treaty obligations, SWITZERLAND stated that the two are distinct but complementary. They noted that while both sets of obligations aim to combat climate change, compliance with the Paris Agreement does not automatically fulfill the customary due diligence obligation, which requires a case-by-case assessment of measures taken by States.

SWITZERLAND argued that while obligations of cessation and non-repetition are enforceable, attributing specific, quantifiable compensation obligations to individual States is impossible under current international law. They explained that there is no agreed threshold on how the remaining emissions budget should be allocated to individual States, which is "a matter that politics but not international law can determine." They added that damage arises from both lawful emissions and those that, based on due diligence, should have been avoided, and that the lack of an agreed threshold makes it difficult to determine when emissions exceed due diligence standards. Additionally, they emphasized that national policies or actions in affected States, such as poor planning, often significantly contribute to the damage caused by climate change.

SWITZERLAND supported the polluter-pays principle as a framework to guide considerations of responsibility and future negotiations. They highlighted that Western industrialized countries were responsible for 43% of global GHG emissions between 1850 and 2019 but, as of 2023, represented only three of the ten largest emitters. They argued that the CBDR-RC principle must reflect current realities, emphasizing that it should not be seen as a static concept that absolves today's largest emitters and States with significant capacities, from addressing climate change.

SERBIA affirmed that States' obligations in the context of climate change are contained in the climate treaties, but that these are without prejudice to States' obligations and responsibilities under other international environmental treaties.

Regarding the classification of climate change as a common concern of humankind, they argued this identifies climate change as a problem requiring international cooperation, but does not create rights and obligations or entail judicial *erga omnes* obligations. Rather, they contended, it is a policy issue containing some legal elements that oblige States to address climate change in order to protect peoples and individuals of present and future generations. They submitted that CBDR-RC underlies States' commitments and obligations under the climate regime, but does not constitute customary international law, as its normative status is closely tied to the UNFCCC and Paris Agreement.

SERBIA asserted that States' obligations with respect to climate change, as set out in the Paris Agreement, are obligations of conduct, not result. They interpreted the due diligence

obligation as requiring States to make their best efforts in good faith and in accordance with national circumstances. They argued that even when significant adverse effects materialize, these do not constitute failure of due diligence, but that such failure is limited to States' negligence to take all appropriate measures to prevent, reduce, or control human activities that have or are likely to have significant adverse effects. They said States should hold non-State actors within their territories responsible for their actions or omissions that may have negative effects on the climate system.

On State responsibility, SERBIA submitted that this is governed by customary international law as codified in ARSIWA, and that the climate regime does not contain any specific rules deviating from custom. However, they affirmed that due regard should be had to the mechanisms for correcting deviations from mandatory requirements contained in the climate regime.

On Thursday, 12 December, the Court heard statements by: Thailand; Timor-Leste; Tonga; Tuvalu;

the Comoros; Uruguay; Viet Nam; Zambia; the Pacific Islands Forum Fisheries Agency; and the Alliance of Small Island States (AOSIS).

THAILAND reminded the Court that nature is "interdependent and interconnected." Highlighting the importance of words as "seeds for actions," they reiterated their hopes for the advisory opinion and suggested the Court: reaffirm justice for all, not for a few; state clearly what the law is; and construe the different international rules applying to climate change harmoniously. THAILAND said States' obligations to protect the climate system are obligations of conduct, not result, while noting that the due diligence standard is "stringent and objective" as well as oriented towards the best available science. Acknowledging that States are allowed a level of discretion in determining what measures are necessary, they said "discretion is not a license for inaction" and emphasized the need for States to calculate their remaining carbon budget.

THAILAND highlighted three dimensions of equity as crucial for interpreting the obligations in question:

- equity within States, underscoring the importance of just transition and respecting socioeconomic rights;
- equity across States, emphasizing the principle of CBDR-RC and the duty to cooperate, including through the provision of scientific, technological, and financial assistance to developing countries; and
- equity across generations, noting the recognition of intergenerational equity in various legal instruments and the upsurge in domestic and regional climate litigation seeking to protect the rights of future generations.

TIMOR-LESTE emphasized that the climate crisis cannot be considered in isolation from problems of global poverty and inequality, and affirmed that the global economic system is organized against the interests of people from LDCs. They further submitted that the climate crisis is the result of the historical and ongoing actions of industrialized nations who have reaped the benefits of rapid economic growth powered by colonial exploitation and carbon-intensive industries and practices.

TIMOR-LESTE highlighted the distinction between subsistence pollution—necessary for survival—and luxury pollution. Acknowledging that all States have a common duty to address climate change and need to change their consumption habits, they underlined this duty must reflect both their historical responsibility and current capabilities. They underlined that despite their country's heavy reliance on the petroleum sector to support their socioeconomic development, their emissions remain extremely low. They said that while the transition to a low-carbon future is necessary, its costs cannot be disproportionately borne by the most vulnerable.

On the applicable law, TIMOR-LESTE asserted that while the international climate regime does not replace customary international law, it is the latest expression of States' consent and must be given its due weight. They therefore submitted that pre-existing and more general rules of customary international law, such as the prevention duty, human rights treaties, UNCLOS, and the Convention on Biological Diversity, serve as interpretive tools to complement and enhance the regime. Noting that the climate regime has not succeeded in averting the climate crisis, TIMOR-LESTE urged the Court to find that in implementing their duty to cooperate, States are under an obligation to negotiate new agreements in good faith that adapt to the evolving best available science.

TIMOR-LESTE also clarified that the CBDR-RC principle, as expressed under the climate regime, recognizes not just present capabilities, but also normative elements of climate justice and historical emissions. They recalled provisions in the climate treaties that: require consideration of States with economies that are highly dependent on fossil fuel-generated income; and acknowledge that developing countries' emissions will increase in the near term. They highlighted these aspects as critical to protect LDCs and SIDS that are entirely dependent on their energy sector to stay afloat. They said questions before the Court pertain to all GHG emissions from all sources, not just the energy sector.

TONGA highlighted its extreme vulnerability to climate change, citing severe impacts on its economy, food security, and population's well-being, including the devastation caused by Tropical Cyclone Gita in 2018, which resulted in damages amounting to one-third of the country's GDP. They hoped the advisory opinion would drive States to fulfill and exceed their commitments through transformational actions.

TONGA emphasized that systemic integration applies across the relevant rules of international law, which include climate change and human rights treaties, as well as UNCLOS. Citing the Court's jurisprudence, they stressed that principles like CBDR-RC are crucial to achieving equitable results, requiring consideration of the capabilities and circumstances of developing States, while placing a greater burden on those that have contributed the most to the crisis and benefited from it, particularly through obligations to provide financial and technical assistance.

TONGA urged the Court to confirm that the scope of the duty to cooperate, which they called an "uncontroversial" principle of international law, includes positive obligations in the climate change treaties. They emphasized that meaningful cooperation on climate finance is necessary to satisfy such duty and underscored that fulfillment of developed States' obligations to provide financial and technical support is key for developing States to meet their treaty obligations.

TUVALU explained it is the first country expected to be completely lost to climate-related sea-level rise—first rendering its islands uninhabitable, before submerging them completely. They outlined steps taken, including a coastline adaptation project, land reclamation, and an initiative for digital preservation of the nation's culture, and vouched that "Tuvalu will not go quietly into the rising sea."

TUVALU reiterated the right to self-determination, which "cuts to the very core" of the UN Charter, the international human rights

covenants, and the UN Declaration on the Rights of Indigenous Peoples. They stressed that the Court has recognized self-determination to be an *erga omnes*, non-derogable international norm extending beyond its origins in decolonization, and said there could be no doubt that Tuvalu's right to self-determination is being violated by threats to its territorial integrity, forced displacement of Tuvaluans, and deprivation of the local population of means of subsistence. They said the fact that the nation's very survival is at stake must inform the Court's assessment of States' obligations, and warned that SIDS will not stay above the rising tides without technical and financial assistance for adaptation.

Highlighting the basic nature of a nation's right to survival, TUVALU noted there is no well-developed jurisprudence on this right yet and invited the Court to contribute to its development. With reference to the concept of statehood continuity, they specified that the Montevideo Convention on the Rights and Duties of States provides that the recognition of a State is "unconditional and irrevocable." On the principle of territorial integrity, they said this norm covers both tangible and intangible assets, and is reinforced by the principle of permanent sovereignty over natural resources. They demanded: deep and immediate emission cuts; ambitious adaptation action and support; and respect for existing maritime zones.

The COMOROS emphasized the country is under serious threat from climate change impacts, particularly sea-level rise, lamenting that over the last 25 years, more than 90% of its beaches have disappeared.

On applicable law, the COMOROS asserted that relevant obligations can be derived not just from the international climate regime, but also from UNCLOS, human rights law, and general international law. On the climate regime, they: highlighted obligations relating to mitigation, adaptation, finance, and cooperation; and submitted that these obligations are not discretionary, but are governed by objective criteria, and diligence tests and standards set out in the Paris Agreement. When interpreting these obligations, they urged the Court to take account of the principles underpinning the climate treaties, such as CBDR-RC and intergenerational equity.

The COMOROS further requested the Court to affirm that States' primary obligations under international human rights law apply fully to climate change, and should take the form of positive obligations to adopt mitigation, adaptation, and loss and damage measures. They further submitted that States' fundamental right to survival implies recognition of statehood continuity and their international boundaries, even where parts of their land territory are submerged under water. They affirmed that this right imposes a duty on polluting States to reduce their GHG emissions, as climate change threatens the survival of island States and infringes on their rights to self-determination and subsistence.

On legal consequences, the COMOROS asserted the applicability of the law of State responsibility as outlined in ARSIWA, identifying wrongful acts as States' failure to adopt all necessary measures to prevent atmospheric and marine pollution caused by GHG emissions from activities under their jurisdiction or control, as well as their failure to cooperate. Arguing that SIDS are directly injured by GHG emissions, they asserted that the Comoros is entitled to invoke the responsibility of high-emitting States both individually and as a member of SIDS, in accordance with Articles 42(a) and (b) of ARSIWA.

URUGUAY lamented the severe threats to its territory and to present and future generations, and urged leading economies to redouble their commitment to address climate change. They called for a good faith assessment based on the entire corpus of international law, including customary international law principles and human rights law. They emphasized the principle of sustainable development, "duly framed to avoid so-called green protectionism."

They considered that the duty to prevent transboundary harm applies to climate change, even in the absence of full certainty of the potential damage to be prevented. URUGUAY further noted the customary obligation of due diligence to prevent transboundary harm is not superseded by obligations under environmental treaties. They asserted that, in light of CBDR-RC, the duty to cooperate is primarily owed by developed States, who have contributed the most to GHG emissions, and takes the form of financial and technical support for developing countries' adaptation and mitigation actions.

URUGUAY underscored that challenges in establishing a causal link between the conduct of specific States and specific harm does not mean States that have caused harm should be released from legal consequences of the breach of obligations. Noting the UNGA's request for an advisory opinion specifically refers to SIDS, they underscored that other States, including Uruguay, are also "severely vulnerable." They argued no distinction should be made between categories of States based on their vulnerability or exposure to harm, suggesting that questions of legal consequences be addressed more generally from the perspective of wide-ranging harm to the environment.

VIET NAM said obligations under international law to protect the climate system and environment extend beyond the climate treaties, citing instruments such as the UN Charter, UNCLOS, and customary international law, including the no-harm principle. They stressed that the CBDR-RC principle should guide the application of broader international obligations, including the duties to prevent harm and to cooperate.

They affirmed that due diligence, rooted in the customary no-harm principle, entails vigilance and proper control of public and private operators, proportionality to the degree of risk, and reliance on scientific and technological information, as noted in ITLOS' Advisory Opinion. They argued that the standard of due diligence must be stringent, given the scientific evidence on climate risks, while incorporating CBDR-RC. Addressing divergent views on when the obligation to prevent harm to the climate system came into being, they pointed to scientific evidence of harm dating back to the 1960s and noted the adoption of the UNFCCC in 1992 was the culmination of efforts to address existing concerns about GHG emissions.

VIET NAM highlighted the duty to cooperate, as stipulated in the UNFCCC, Paris Agreement, and customary international law, and said the duty requires cooperation on technology transfer, conservation and enhancement of carbon sinks and reservoirs, adaptation to climate change impacts, research, and education.

They said States must take immediate and concrete actions to reduce GHG emissions, as per recommendations of the IPCC, with developed States taking the lead, given their historical responsibility. Reparation measures, they stressed, must reflect the specific injuries and circumstances of affected States and include compensation for damages, restorative measures such as reforestation and biodiversity recovery, support for mitigation and adaptation efforts through financial and technical assistance, and resilience actions such as disaster relief and infrastructure rebuilding.

ZAMBIA described the debt crisis as a "python wrapped around [their] neck," leaving no space to invest in adaptation and mitigation measures and address loss and damage. Showing pictures of the dried up Victoria Falls, they underscored that droughts have deprived their country of essential income from tourism and compromised food security and hydropower production, leaving them no choice but to reactivate a retired coal power plant.

ZAMBIA highlighted that States have a due diligence duty to prevent transboundary harm from GHG emissions, which must be construed in line with the CBDR-RC principle. They said the same principle should guide the interpretation of the duty to cooperate, meaning developed countries must provide financial and other assistance to developing countries. They lamented that climate finance is oftentimes not additional to humanitarian aid and takes the form of loans, and called for measures tailored to the needs of vulnerable countries, including debt relief and debt-for-climate swaps.

ZAMBIA further urged the Court "not to be afraid of State responsibility," noting that "no amount of legal or semantic acrobatics" can read State responsibility out of the UNGA's request. They also dismissed the UK's argument that State responsibility must be limited to obligations in the Paris Agreement. They underlined that finding a State responsible for a wrongful act does not require a causal nexus as long as the State has breached its obligations. Causation, they said, only matters in the determination of reparations, noting that, as per the Court's earlier jurisprudence, the evidentiary burden must not be set excessively high.

The PACIFIC ISLANDS FORUM FISHERIES AGENCY (the AGENCY) highlighted fishery resources as vulnerable to climate change impacts, hence the interest of the Agency and its members, which are predominantly SIDS, in the current proceedings. They delineated already materializing impacts, particularly Ocean warming, deoxygenation, and acidification, underscoring their catastrophic repercussions on regional tuna stocks, coral reef systems, and coastal fisheries, on which many SIDS communities are heavily reliant.

The AGENCY underlined that climate change is driving tuna outside of its members' exclusive economic zones and into the high seas, thereby threatening the food security of Pacific SIDS, their economies, and the sustainable management of the world's largest tuna fishery, whose stocks are the largest and healthiest in the world, with none overfished.

They lamented that climate change-exacerbated environmental impacts have forced many coastal communities to abandon their traditional lands and important traditional food sources, leading to: loss of cultural heritage, identity, and practices; loss of social cohesion; and economic instability and insecurity.

The AGENCY stressed that these current and expected impacts could be mitigated by reducing GHG emissions and urged the international community to swiftly take the necessary action to address the issue of anthropogenic GHG emissions and the consequences for SIDS.

AOSIS emphasized that, despite their negligible contribution to climate change, SIDS face existential threats to their economies, cultures, and ecosystems.

They submitted that, in the context of climate change, the unique circumstances of SIDS should be considered not only as a matter of equity but also in the development of customary international law and the interpretation of treaty obligations. Citing the *North Sea Continental Shelf* cases, where the Court noted that States whose interests are especially affected have a particular role in the development of customary international law, they highlighted that widespread and representative participation by such States can lead to the rapid emergence of general rules of international law. They also noted the Paris Agreement's acknowledgment of the specific needs and vulnerabilities of SIDS in various provisions, such as those related to mitigation, adaptation, finance, capacity building, and transparency requirements. They said recognizing SIDS as "specially affected States" in the climate context ensures those most impacted by circumstances beyond their control are given appropriate consideration when interpreting and applying legal rules.

AOSIS underscored the duty of cooperation as a general principle of international law, supported by significant State practice and enshrined in the UN Charter and Paris Agreement.

They stressed the stability of maritime zones as a foundational principle under UNCLOS and customary international law, asserting the need for legal stability, security, certainty, and predictability. They urged the Court to affirm that maritime zones, once established and notified in accordance with UNCLOS, shall remain unchanged despite physical changes caused by sea-level rise. They argued this is essential to safeguard the legal entitlements and sovereign rights of SIDS and to uphold the principles of justice and equity that are fundamental to the international legal order.

AOSIS explained that the principle of statehood continuity is well established in international law and that statehood, once established, endures despite physical changes to, or complete inundation of, a State's land territory due to sea-level rise.

On Friday, 13 December, the Court heard statements by: the Commission of Small Island States on Climate Change and International Law (COSIS); the Pacific Community; the Pacific Islands Forum; the Organisation of African, Caribbean, and Pacific States (OACPS); the World Health Organization (WHO); the European Union (EU); and the International Union for Conservation of Nature (IUCN).

COSIS recalled the IPCC's unequivocal findings that: anthropogenic GHG emissions have caused, are causing, and will continue to cause, harm to the climate system; the risk of harm to human and natural systems increases dramatically with each increment of warming, even below 1.5°C; significant harm has already materialized, and a rapid quantum leap in mitigation is needed to avoid catastrophic effects; and effects are felt first and worst in SIDS.

They underscored that due diligence is not merely a procedural obligation, but a stringent standard. They asserted that best available science determines the degree of due diligence necessary to meet obligations by providing an objective basis for assessing the risk, urgency, and magnitude of the threat of harm. They recalled that science is clear on the causal link between GHG emissions and harm and highlighted that current NDCs are "clearly inadequate" to prevent environmental harm.

COSIS submitted that science also informs the content of obligations, emphasizing that due diligence measures to prevent climate change impacts must include mitigation in line with specific IPCC emission pathways to stay in line with 1.5°C with no or limited overshoot, that is reducing global GHG emissions by 43% below 2019 levels by 2030 and 84% by 2050. This, they underscored, requires transitioning away from fossil fuels.

They denounced high emitters' attempt to "resuscitate defunct *lex specialis* theories," which, they said, finds no support in legal

logic or reason. COSIS also countered the argument that the rules of State responsibility do not apply to climate change, underscoring this would result in "a world with sacrifice zones and zones of impunity for major polluters." Noting these are not contentious proceedings, they said only general, not detailed, findings on attribution are needed. They underscored the Court's role in reflecting on legal consequences for breaches of obligations, pointing to debt relief and the Loss and Damage Fund. They also highlighted cessation and non-repetition, which require a deep, rapid, and sustained transition away from fossil fuels in response to the imminent risk of harm. In this regard, they pointed to the initiative for a fossil fuel non-proliferation treaty.

COSIS emphasized the Court's role in harmonizing emerging jurisprudence, calling attention to regional human rights courts and the UN human rights treaty bodies whose jurisprudence in their specific purview, they said, must be accorded significant weight in the Court's opinion. They highlighted the UN Committee on the Rights of the Child's decision which, drawing on the Inter-American Court of Human Rights 2017 Advisory Opinion on the environment and human rights, considered that when transboundary harm occurs, children are under the jurisdiction of the State in whose territory the emissions originated. They also called on the Court to consider, in the spirit of pluralistic international law, principles of Indigenous customary law applied in SIDS and several other nations.

They noted that States have consented to protect the environment, guided by best available science. "Presumably they did not consent to mass extinction and the collapse of civilizations," COSIS underscored, noting this is the reality under 3°C of warming resulting from current NDCs.

The PACIFIC COMMUNITY said the law adopts a reductionist approach to the natural environment, with separate legal frameworks addressing different ecosystem components, risking significant issues "falling through the gaps." They lamented that Ocean issues remain sidelined in the climate regime. They noted that climate change is projected to displace 20% of the combined tuna catch from their members' exclusive economic zones to the high seas by 2050. This, they emphasized, will result in severe economic losses for Pacific SIDS, for which tuna licensing fees generate up to 84% of government revenue. They also highlighted that climate change threatens the Runit Dome nuclear waste site in the Marshall Islands, which could impact the entire Pacific. They pointed to systemic failures in addressing SIDS' unique needs, citing the devastating impact of cyclone Heta in Niue, which resulted in damages equivalent to five times the country's GDP or 200 years of exports, and destroyed over 90% of its cultural artifacts.

The PACIFIC COMMUNITY called for clear, accessible, and timely climate finance, denouncing systemic failures, including:

- the unfulfilled 16-year-old promise of mobilizing USD 100 billion per year by 2020, further undermined by "creative accounting";
- the lack of a special access window for SIDS in the Green Climate Fund;
- SIDS receiving just 3% of the USD 100 billion in climate finance in 2022;
- the fragmented and overly complex climate finance architecture, with projects taking up to eight years to be approved and implemented while the Pacific experiences 40 millimeters of sea-level rise and 32 severe cyclones of category 3 or higher in the same timeframe; and
- the inadequate capitalization of the Loss and Damage Fund, which took 30 years to be established.

A youth representative from Pacific Islands Students Fighting Climate Change explained that their campaign for an ICJ advisory opinion began five years earlier in a classroom in Vanuatu and was born out of frustration with the inability of the UNFCCC processes to deliver urgent climate action. They recounted youth's efforts to achieve the seemingly impossible—bring climate change to the world's highest Court and present their stories. Pointing to the Peoples' Petition, they urged the Court to help course-correct, hold those responsible accountable, and end "emissions impunity."

The PACIFIC ISLANDS FORUM highlighted the significance of the Ocean for the identity and way of life of Pacific islanders, stressing their dependence on it for survival, livelihoods, and national development. Affirming that the Pacific region's past, present, and future development is based on the rights and entitlements guaranteed under UNCLOS, they lamented that sea-level rise imperils the region and its ability to realize a peaceful, secure, and sustainable future.

The PACIFIC ISLANDS FORUM therefore:

- called on the Court to affirm that the maritime zones of States as established and notified to the UN Secretary-General in accordance with UNCLOS, together with the rights and entitlements flowing from these zones, shall continue to apply regardless of any physical changes connected to sea-level rise;
- urged the Court to further affirm the presumption of continuity of statehood under international law, and confirm that the statehood and sovereignty of States will continue, with the rights and duties inherent thereto, notwithstanding the impacts of sea-level rise; and
- urged the international community, in line with the duty to cooperate and the principles of equity and justice, to support the Forum in achieving the purposes of its 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise, particularly with respect to protecting persons affected by sea-level rise.

The OACPS extracted some conclusions from the statements heard over the course of the hearings. They noted that: no State had questioned the Court's jurisdiction; the "unlawful and discriminatory" practices of a small number of States are responsible for climate change; and the due diligence duty extends to the marine environment and human rights protections, among others. They denounced some States trying to "hide in plain sight."

The OACPS rebutted various arguments on:

- the supposedly narrow scope of the prevention obligation, saying that jurisprudence and treaty references made it more than clear that prevention applies to climate change;
- difficulties in establishing causality, arguing that the prevention obligation covers both harm to other States and to areas beyond national jurisdiction, and that the causal link for harm to the atmosphere and other aspects of the climate system beyond national jurisdiction is scientifically clear; and
- the idea that complying with the Paris Agreement would mean complying with all climate obligations, saying this attempt to turn the Paris Agreement into a "safe harbor" was undermined by the same countries insisting on their unfettered discretion to set NDCs and denying any obligations to provide financial assistance for loss and damage.

On legal consequences, the OACPS urged the Court to recognize the need for cessation, non-repetition, and reparations, while stressing that the technicalities of the latter would need to be determined on a case-by-case basis. They warned that geo-engineering is not a miracle solution and insisted on the distinction between reparations for past harm and forward-looking obligations

to provide climate finance to support developing States in the energy transition.

The OACPS' youth representative stressed that youth are the "custodians of the Earth's resources" and asked the Court to uphold intergenerational equity.

WHO described the climate crisis as "fundamentally a health crisis" and one of the most significant challenges facing humanity today. Emphasizing the fundamental right of every human being to the highest attainable standard of health, WHO presented evidence on the health impacts of climate change, noting:

- record-breaking heatwaves, wildfires, hurricanes, and floods are causing deaths, injuries, and destruction of health infrastructure, with July 2024 marking the highest temperatures on record;
- transmission of diseases like malaria, dengue, and cholera could significantly increase with more extreme weather and the range expansion of vectors, such as mosquitoes;
- 920 million children are already facing water scarcity, and this figure is expected to grow with worsening droughts, water contamination, and salinity in coastal areas; and
- seven million deaths annually are linked to air pollution—a major consequence of climate change.

WHO emphasized the co-benefits of mitigation and adaptation measures, stating that "every USD 1 spent on climate action yields an average return of USD 4 in health benefits." They also noted that pricing fossil fuels to reflect their health and environmental impacts could prevent 1.2 million air pollution-related deaths annually. WHO urged the Court to: ensure scientific and technical evidence guides its legal analysis; and place health at the center of its advisory opinion.

The EU underscored the non-adversarial nature of the Court's advisory opinion and affirmed there is no scope for identifying established or even probable breaches of obligations, stressing that climate change-related obligations are conduct-, not result-, based.

The EU submitted that the relevant international instruments and rules on climate change should be applied coherently and harmoniously while maintaining the autonomy of the different treaty systems. They further submitted that the customary obligation of prevention does not change the nature of the material obligations under the UNFCCC and Paris Agreement, underlining that the occurrence of transboundary harm in itself does not amount to a breach of the prevention obligation of conduct. They however pointed out that these obligations of conduct must be understood as stringent, given the seriousness of the climate crisis.

Regarding the CBDR-RC principle, the EU urged the Court to interpret its role within the specific legal framework governing State obligations in respect of climate change and in a manner that reinforces the core obligations in the Paris Agreement. They submitted that the principle requires that the conduct of parties be tailored to national circumstances and take into account socioeconomic differences and specific vulnerabilities, and that based on these, parties must "do as much as possible as fast as possible" to achieve the collective temperature goal of the Paris Agreement. They therefore rejected the contention that CBDR-RC requires dividing States' mitigation obligation on the basis of a "fair share" calculated by reference to past anthropogenic GHG emissions and the remaining atmospheric space available to prevent dangerous climate change. They noted there is no mechanism for calculating a "fair share" and asserted that if the Court introduced such a mechanism, this would exceed the request before it and undermine the basis of States' consent to the Paris Agreement, introducing concepts of causation at the expense of the primacy of the obligation to act with the highest possible ambition. They argued that the obligation to adopt the most ambitious measures in the light of national circumstances, rather than an estimated quantification of past GHG emissions, should inform the scope of States' mitigation contribution.

On States' human rights obligations, the EU urged the Court to clarify the relevance and implications of systemic integration on the interplay between the international law regimes mentioned in the questions before the Court. They asserted that State obligations under the climate change, human rights, environmental, and maritime law regimes, as well as intergenerational equity, mutually inform one another but cannot alter the nature of the obligations.

On causation, the EU argued the relevant test, according to ARSIWA, is attribution but asserted that the assessment of this is beyond the scope of the current request before the Court. They also invited the Court to clarify the question of jurisdiction and the jurisdictional criterion of "effective control" in the context of human rights and climate change.

IUCN noted its unique status and membership—comprising both States and NGOs—and said the only way to conserve nature is through a rights-based approach and participatory procedures.

They explained that the answer to the first question posed to the Court is "clear and straightforward:" "every State has the obligation to do its utmost." This stringent due diligence obligation, they said, hails from different sources. They noted common misconceptions of the Paris Agreement ranging from "being worth nothing" to "being all there is," and denounced both views as "incorrect and simplistic." They noted that the obligation to prepare NDCs is complemented and informed by other norms such as the temperature goals in the Agreement's Article 2.1(a) as well as the standards of "highest possible ambition" and progression in Article 4.3. Moreover, they noted, parties have an obligation to take "necessary, timely, and effective" measures to achieve their NDCs. They further reiterated the findings in the ITLOS Advisory Opinion, that due diligence must be objectively determined by relevant factors such as the risk involved, its urgency, available information, and the precautionary principle.

IUCN said core international and regional human rights treaties impose positive mitigation and adaptation obligations on States to pass legislation aligned with the 1.5°C goal and to preserve human rights from climate change impacts. They said treaty law does not displace customary obligations, which continue to apply even to non-parties of the Paris Agreement. As examples, they cited the obligations to cooperate and to prevent harm to the climate system. The latter obligation, they said, requires a case-by-case assessment, which may show that even global warming below 1.5°C can cause harm.

In relation to legal consequences, IUCN argued that: the customary law of State responsibility applies to climate change; the exact content of a State's responsibility depends on specific circumstances and cannot be determined in the abstract; cessation, non-repetition, and full reparation for injury are required where a State has breached its obligations; and legal consequences also need to consider future generations.

Closing Segment

After the last statement, ICJ President Salam invited members of the Court to pose questions to the participants. Noting that multiple speakers had referred to the production of fossil fuels and to fossil fuel subsidies, Judge Sarah Cleveland asked what, if any, specific obligations arise under international law for States within whose jurisdictions fossil fuels are produced.

Judge Dire Tladi recalled that many participants had interpreted Article 4 of the Paris Agreement (on mitigation, including the

preparation of NDCs) based on the "ordinary meaning of the words, context, and elements of Article 31(3) of the Vienna Convention on the Law of Treaties." He said many participants concluded that the obligations of NDCs are procedural. He asked whether the "object and purpose" of the Paris Agreement and the climate regime more generally influenced such interpretation, and if so, how.

Judge Bogdan Aurescu highlighted the argument that there exists a right to a healthy environment in international law and asked what the legal content of this right is and what its relation is to other human rights relevant to the advisory opinion.

Judge Hilary Charlesworth asked participants what is, in their view, the significance of some States' declaration when ratifying the UNFCCC and Paris Agreement that "ratification does not constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change, and that no provision in the treaties can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation and liability due to the adverse effects of climate change."

President Salam invited States to respond to these questions in writing by Friday, 20 December 2024, noting that no written comments on these replies are envisioned. Thanking all participants, he closed the oral hearings at 4:33 pm on Friday, 13 December.

A Brief Analysis of the ICJ Hearings

"This is a crucial moment for the very idea of international law." — Commission of Small Island States on Climate Change and International Law

No stranger to international controversy, rarely has the International Court of Justice (ICJ) seen so much interest in its work. Over the past year, the Court received a record number of written submissions to shed light on the questions posed to it by the United Nations General Assembly (UNGA) about the obligations of States in respect of climate change. The unprecedented amount of ink spilled was matched by words spoken over two weeks in no less than 102 oral submissions heard at the Peace Palace. The hearings were a crucial opportunity for States and international organizations to bear witness to the impacts of climate change, substantiate their legal claims, and use the illustrious stage to convince both the judges—and broader public—of their views.

This brief analysis places the arguments voiced before the ICJ in the context of a rising tide of legal mobilization for climate action, increasing frustration with the political process under the United Nations Framework Convention on Climate Change (UNFCCC), and the pressing need for a normative compass to lead the international community through the political conundrums of the climate emergency. It does so by reflecting on the specificities of the legal genre, paying heed to the courtroom as a space for arriving at a common set of facts and apportioning responsibility in the perennial pursuit of justice.

Witness for the International Community

Justice is blind, but those who seek it must have their eyes wide open." — From the 1957 movie Witness for the Prosecution

A crucial function of the legal process is for judges to establish an authoritative record of the facts at hand, in order determine what laws to apply and how. To this effect, the members of the Court had a private meeting with prominent scientists from the Intergovernmental Panel on Climate Change (IPCC) the week prior to the hearings. During the hearings there was a clear consensus on the first set of facts. Many States cited the IPCC's findings and all acknowledged that climate change is caused by the emission of greenhouse gases (GHGs) into the atmosphere.

However, another factual question proved more controversial: When exactly did States know that their GHG emissions were causing harm to the environment? Some speakers cited archival records of governmental and parliamentary discussions to demonstrate that countries such as the United States, the United Kingdom, France, Germany, and the Union of Soviet Socialist Republics knew, at least since the 1960s, about the risks involved. Unsurprisingly, some industrialized States picked a different date. Some pointed to 1988, when the first resolution recognizing climate change as a common concern of humankind was passed. Others pinned down the publication of the IPCC's first Assessment Report in 1990 as the crucial date when there was sufficient global consensus about the dangers of human-induced climate change. The answer to this question will inform the Court's answer to the second question before it: in determining when major emitters became aware—or should have been aware—of the harm caused by their activities, the Court could ascertain from when they can be held responsible for the resulting damage. What the legal consequences should be, including, potentially, the assessment of remedial relief, would flow from this determination. Some States argued that what counts is the adoption of the UNFCCC in 1992 or even the date at which it entered into force for them.

More than just reiterating climate science in the abstract, however, vulnerable States seized the opportunity to showcase their lived experiences and bear witness to the havoc already being wrought by climate change. They did so using a range of tools—from photos and videos to cultural artefacts and ancient legends—to frame and buttress their legal arguments. Hearing from the frontlines of the climate catastrophe once again demonstrated the existential threats already faced by millions of people across the world, which will increase exponentially in the future. If the current trajectory continues, the IPCC warns of a catastrophic 3ºC rise in global temperatures by 2100, which will profoundly affect and shape the living conditions of generations to come. Against this backdrop, Germany's contention that future generations are "abstract persons" facing "abstract risks" was directly and vehemently refuted by many small island States. The irony of this statement was not lost on observers, who could not help but point out that the German Constitutional Court itself had extended domestic human rights protections to future generations in a crucial 2021 climate ruling.

If bearing witness was one of the hearings' key functions, it was only partially fulfilled. Although a small number of States attempted to provide space to the voices of directly impacted individuals and communities, the ICJ's State-centric character made the hearings a somewhat exclusive affair. In stark contrast to the hearings organized earlier this year by the Inter-American Court of Human Rights in the context of its own advisory opinion on climate change, which served as a platform for dozens of civil society organizations and Indigenous Peoples to provide input, the ICJ's proceedings limited participation to States and international organizations. Observers were assured a small number of reserved seats on the public gallery as well as a room in the Peace Palace, but very few followed this invitation. Instead, various civil society activities were organized elsewhere in The Hague and online, including the creation of a digital "Witness Stand" for affected individuals to voice their concerns in video messages.

Anatomy of Global Injustice

"… the law—and only the law—is what keeps our society from bursting apart at the seams… . The law is society's safety valve, its most painless way to achieve social catharsis." — From the 1959 movie Anatomy of a Murder

Freed from the straitjacket of gridlocked climate negotiations and the mandate of geographically or thematically limited tribunals, the ICJ hearings provided States with an opportunity to reframe the problem at hand. Many States were emphatic in their description of climate change as an issue of justice at its core. The Cook Islands were explicit in denouncing the climate crisis as fueled by "colonialism, racism, imperialism, hetero-patriarchy, and ableism." Other countries, too, pointed to the fundamental inequities brought about by the planet's predicament—not only among but also within States, with women and girls, children, and Indigenous Peoples frequently being the most affected. This narrative pervaded arguments when addressing the issues at stake.

The first question before the Court touched upon the nature of States' climate obligations. But a preliminary issue emerged as a key battleground: Where can these obligations be found? The UNGA's request to the Court, which formed the basis of these proceedings, contained a menu of options for possible sources of States' obligations in the context of climate change. Nevertheless, some States advanced a so-called *lex specialis* argument, saying it was only the core climate treaties—the UNFCCC, the Kyoto Protocol, and the Paris Agreement—that were relevant. The scarcity of binding obligations contained within this regime, however, would grant States a wide margin of discretion in how exactly to take climate action forward—apart from their arguably mostly procedural duty to submit nationally determined contributions (NDCs). Many emphasized the importance of the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, for interpreting States' obligations.

A large majority of countries differed, arguing that the Court should take a close look at the plethora of international rules found in both treaty and customary, that is, practice-based, sources. With this widened view, a different, much more demanding set of obligations emerges, including duties: to prevent transboundary harm arising from GHG emissions; to act with due diligence; or to respect, protect, and fulfill different human rights, which are often infringed by climate change impacts. Vulnerable countries were adamant that developed and emerging economies must not shirk their responsibilities by limiting the international legal debate to the narrow norms of the climate treaties. Doing so, they said, would undermine the coherence and functionality of international law as a holistic body of law governing inter-State relations.

Many ideas were floated as to the precise extent and content of climate obligations. Foundational principles of international law—including those mandating prevention, due diligence, or cooperation—found repeated mention. Some States decided to hone in on specific issues such as the right to self-determination, the right to water, the rights of women and girls, or the rights of future generations. Jointly, these arguments made clear that the climate system is not a free-for-all or a "personal dumping ground" for some States, as one speaker put it. International law tightly regulates what States may and may not do to the climate, and to one another. It is now for the Court to decide which arguments to accept.

If the content and nature of State's obligations were controversial, the second question before the Court was all the more so: What happens if a State breaches its obligations? Some major emitters—both developed and developing countries—concerned about the potential implications of their responsibility for GHG emissions, emphasized that the facilitative and non-punitive mechanisms established under the Paris Agreement were the appropriate framework for addressing legal consequences. In contrast, vulnerable countries insisted that major emitters causing harm to other States should be subject to the more stringent rules of State responsibility, codified by the International Law Commission in 2001.

Accordingly, vulnerable States urged that major emitters be found responsible for internationally wrongful acts, and be required both to immediately cease emissions and to provide reparations, including compensation, for the harms they face. Several industrial countries and major emitting developing countries were skeptical of the possibility to establish a causal link between a specific State's GHG emissions and the particular harm caused to another—and argued that the invocation of State responsibility requires that a direct causal link be established. Vulnerable States countered that, for one, there is no need for causation to find a State responsible; any State found to have breached its obligations must immediately cease the breach and assure "non-repetition," such as by phasing out fossil fuels. Moreover, as Samoa argued, "science can identify, with precision, the contribution of individual States to total GHG emissions, global mean temperature rise, and sea-level rise." This is one of the key issues the Court is expected to pronounce on.

As a famous legal maxim goes, where there is a right, there must be a remedy. And where a State has been injured by the wrongful conduct of another State, they are entitled to reparations. What once seemed like a radical demand—climate reparations—was repeated like a mantra during the hearings. A good point to start, as many small island and least developed States pointed out, was to ease the debt burden weighing down on their vulnerable economies "like a Python wrapped around their neck." They argued that the "woefully inadequate" climate finance goal reached at the Baku Climate Change Conference is unlikely to live up to the task. Debt relief, debt-for-climate swaps, concessional loans, and the allocation of Special Drawing Rights to vulnerable countries as highlighted by the Bridgetown Initiative were some of the proposals made. Kenya went as far as to put unilateral debt restructuring and cancellation on the table, highlighting the dire situation of fiscally constrained governments having to choose between servicing their debt, investing in health and education, or confronting catastrophic climate change impacts.

But reparations cannot stop at finance. Calls for technology sharing and capacity building were equally prominent. Importantly, many countries insisted on the difference between development cooperation and climate finance obligations on the one hand and reparations for the unjust harm suffered due to climate change on the other. The undercapitalized Loss and Damage Fund served as a clear example of why such a distinction was needed. Not only has the Fund been 30 years in the making and is still not operational, it relies on voluntary contributions and has yet to define disbursement modalities, which, affected countries underscored, is inadequate to meet reparation obligations. The Cook Islands charted a crucial first step— "genuine, heartfelt apologies" to serve as the foundation of an international system "based on trust, reciprocity, and care, rather than oppression and domination."

Judgement at The Hague

"We do not accept the paradox that legal responsibility should be least where the power is the greatest." — From the 1961 movie Judgement at Nuremberg

The ICJ's advisory proceedings are part of a tidal wave of climate litigation. All across the world, individuals, communities, and States are turning to the law to demand more stringent climate

action on mitigation, adaptation, and loss and damage. Earlier this year, the International Tribunal for the Law of the Sea issued a landmark advisory opinion in which it classified GHG emissions as marine pollutants and confirmed States' due diligence obligations to prevent such pollution. The Inter-American Court of Human Rights is expected to issue its own advisory opinion on climate change in the coming months. But no Court has as broad a mandate as the ICJ, and none has a similar history of addressing the issues at the heart of the international order.

The importance of these hearings was highlighted by the fact that dozens of nations made their first-ever appearances before the Court. They did not do so light-heartedly, recognizing that framing claims to climate justice in the language of international law is an intrinsically fraught endeavor. The Federated States of Micronesia, among others, recalled the role played by international law in sustaining colonization and noted that they—and many other formerly-colonized States—had no part in the creation of this body of rules and norms. And yet, they appealed to the Court to uphold the very foundations of an international order stacked against them—permanent sovereignty, statehood, and self-determination, all of which are threatened by climate change and its impacts. Vulnerable States look to international law as a "vital equalizer" and a forum of last resort where all other avenues have failed them.

The turn to law as a partial escape from politics is no coincidence. The arguments heard over the past two weeks illustrated just how broken many consider the climate negotiations to be. Many States openly welcomed the change in format that enabled them to voice new issues and positions that had no space in the regular negotiations. Climate reparations, continuity of maritime zones under sea-level rise, climate-related displacement, and criminalizing ecocide—all these issues would stand little chance of making it onto the negotiation agenda. At the ICJ, every country was free to highlight whatever topic was close to its heart in the thirty minutes allocated to them. Similarly, the judicial format meant that countries usually speaking as part of major negotiating groups—such as the European Union—were free to articulate their own positions, often with surprising divergences from other speakers in the same negotiating group.

One thing became abundantly clear throughout the two weeks of the hearings: the advisory proceedings enjoy significant buy-in from States and other stakeholders. Once the Court releases its opinion sometime in 2025, it will, in all likelihood, mark a watershed moment for international climate governance. Despite its non-binding nature, the opinion will likely be picked up and referenced in climate litigation around the globe, and perhaps even stir up the climate negotiations and foster enhanced action—this is certainly the hope of many. "Justice," said one speaker, "is on the lips of the countless advocates who have spoken, it is in the Court's foundational documents, it is in its very name." Will future generations look back to this moment as a turning point on the long and arduous road towards climate justice?

Upcoming Meetings

62nd Session of the IPCC: The meeting will be the fourth meeting of the seventh assessment cycle. **dates:** 24 February - 1 March 2025 (TBC) **location:** Hangzhou, China (TBC) **www:** ipcc.ch/

69th Meeting of the Global Environment Facility (GEF) Council: The Council develops, adopts, and evaluates the operational policies and programs for GEF-financed activities. The UNFCCC invited the GEF to consider a number of issues emerging from COP 29. **dates:** 2-5 June 2025 **location:** Washington, DC, US **www:** thegef.org

Global NDC Conference 2025: The conference will bring together policymakers and practitioners to share experiences on climate governance, finance, and transparency, with the aim of inspiring accelerated, transformational climate action around the world. **dates:** 11-13 June 2025 **location:** Berlin, Germany **www:** globalndcconference.org/

62nd Sessions of the UNFCCC Subsidiary Bodies (SB 62): The Subsidiary Body for Scientific and Technological Advice and Subsidiary Body for Implementation will meet for their regular intersessional gatherings, taking up a range of issues including follow up from COP 29. **dates:** 16-26 June 2025 **location:** Bonn, Germany **www:** unfccc.int

2025 World Bank Group/International Monetary Fund (IMF) Annual Meeting: The World Bank and IMF will take up various topics, including invitations from the UNFCCC to consider outcomes from COP 29. **dates:** 17-19 October 2025 **location:** Washington DC, US **www:** www.worldbank.org/en/meetings/splash/about#sec1

UNFCCC COP 30: The 30th session of the Conference of the Parties (COP 30), the 20th meeting of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP 20), and the sixth meeting of the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA 7) will convene. **dates:** 10-21 November 2025 **location:** Belém, Brazil **www:** unfccc.int

For additional upcoming events, see sdg.iisd.org/

Glossary

AOSIS	Alliance of Small Island States
ARSIWA	Draft Articles on Responsibility of States for Internationally Wrongful Acts
CBDR-RC	Common but differentiated responsibilities and respective capabilities
CMA	Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement
COP	Conference of the Parties
COSIS	Commission of Small Island States on Climate Change and International Law
GHG	Greenhouse gases
ICJ	International Court of Justice
ILC	International Law Commission
IPCC	Intergovernmental Panel on Climate Change
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
LDC	Least Developed Country
NDCs	Nationally determined contributions
OACPS	Organisation of African, Caribbean and Pacific States
SIDS	Small island developing States
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
WHO	World Health Organization