

## **NOTE ON THE UN GENERAL ASSEMBLY REQUEST FOR AN ADVISORY OPINION ON THE LEGAL OBLIGATION OF STATES IN RESPONSE TO CLIMATE CHANGE**

Submitted on behalf of the  
**INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW (ICEL)**

18 September 2023

### **FOR CONSIDERATION BY MEMBER STATES, INTERNATIONAL ORGANIZATIONS, CIVIL SOCIETY AND ALL STAKEHOLDERS**

This Note is submitted to UN Member States, international organizations, civil society, and all interested stakeholders to provide a restatement of the relevant international law which the International Court of Justice (herein “the Court” or ICJ) will consider in response to the UN General Assembly Resolution 77/276 requesting an advisory opinion on:

(a) What are 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 greenhouse gases for States and for present and future generations; and

(b) What are 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:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”<sup>1</sup>

This is a watershed moment for the progressive development of international environmental law and for providing significance to the human right to a clean, healthy, and sustainable environment for present and future generations, recognized in UN General Assembly

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<sup>1</sup> G.A. Res. 77/276 (Mar.29, 2023).

Resolution 76/300 (July 28, 2022).<sup>2</sup> These questions call for a holistic interpretation of all rights and frameworks for the stewardship of Earth’s shared biosphere and the climate system.<sup>3</sup>

Procedurally, the ICJ has decided “that the United Nations and its Member States are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion and may do so within the time-limits fixed” and, in an Order dated 4 August 2023, extended the time-limits for the submissions of written statements and comments, as follows:

22 January 2024 as the time-limit within which written statements on the questions may be presented to the Court, in accordance with Article 66, paragraph 2, of the ICJ Statute; and

22 April 2024 as the time-limit within which States and organizations having presented written statements may submit written comments on the written statements made by other States or organizations, in accordance with Article 66, paragraph 4, of the ICJ Statute.

While civil society and interested stakeholders may not directly make submissions to the Court, they may, and should indeed, participate by way of urging Member States and international organizations to voice their views and concerns in this unparalleled consensually agreed ICJ advisory proceedings of the utmost importance for humankind.

Since its establishment in 1969 in New Delhi, the International Council of Environmental Law has advanced knowledge on international environmental law and the legal foundations for sustainable development.<sup>4</sup> As an international, non-governmental organization accredited to the

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<sup>2</sup> G.A. Res. 76/300 (July 28, 2022). See also G.A. Res. 37/7, World Charter for Nature (Oct. 28, 1982).

<sup>3</sup> “The climate system is the highly complex system consisting of five major components: the atmosphere, the hydrosphere, the cryosphere, the lithosphere and the biosphere and the interactions between them.” See UN Intergovernmental Panel on Climate (IPCC), 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)], available at <https://www.ipcc.ch/sr15/chapter/glossary/>. See also, UN Framework Convention on Climate Change (UNFCCC), *supra*, art. 1(3). The biosphere is composed of Earth’s ecosystems that sustain life. Kim Rutledge, Melissa McDaniel, Santani Teng, Hilary Hall, Tara Ramroop, Erin Sprout, Jeff Hunt, Diane Boudreau, Hilary Costa, *Biosphere*, NATIONAL GEOGRAPHIC (May 8, 2023), <https://education.nationalgeographic.org/resource/biosphere/>.

<sup>4</sup> ICEL was founded in New Delhi in 1969 and was originally constituted under Article 60 of the Swiss Civil Code. ICEL reconstituted in Madrid in 2020, under Spain’s Organic Law 1/2002, recognized on May 28, 2021. It maintains representatives in Bonn, Geneva, Nairobi, and New York. It is a Member of International Union for the Conservation of Nature (IUCN). See: <https://www.iceinternational.org>. This Note was prepared and published with support of the Coalition for Ecological Law, Inc. NY, Consortium For Ecological Law ([ecologicalaw.org](http://ecologicalaw.org)).

UN Economic and Social Council since 1973, ICEL has shared its expertise with ECOSOC, UN Members States, and international organizations. ICEL's members are senior experts drawn from all UN regions and all legal traditions: civil law, common law, socialist law, Islamic law, and customary law. ICEL is also an accredited observer with the UN Framework Convention on Climate Change (UNFCCC) Secretariat, the Convention for Biological Diversity (CBD) Secretariat, and the United Nations Environment Programme (UNEP), as well as other international and regional organizations.

ICEL has previously provided a series of Notes in response to the Secretary General's Report on international environmental law and provided a briefing for all missions to the UN on December 10, 2018,<sup>5</sup> and subsequently participated in the UN consultations pursuant to Resolution 72/277 (10 May 2018) and Resolution 73/333 (30 August 2019), both in New York and in Nairobi. ICEL also organized a UN side-event Briefing on Strengthening Cooperation for International Environmental Law on 27 October 2020, co-sponsored by the Missions of Costa Rica and France to the UN in New York.<sup>6</sup>

The questions posed to the ICJ are now widely considered by courts around the globe. For a comprehensive list, visit the Sabin Center's Global Climate Change Litigation database.<sup>7</sup> Notably, other international tribunals are considering similar questions, such as the Inter-American Court of Human Rights and the International Tribunal Law of the Sea.<sup>8</sup> This Note serves as ICEL's response to the questions posed to all international and national tribunal and courts.

ICEL commends the Member States for the process launched by the consensual adoption of Resolution 77/276 requesting the IJC advisory opinion, which has been Member State-led, but inclusive of the voices of civil society and stakeholders, particularly of youth advocates for climate justice, who clearly see the interest of future generations. ICEL underscores this crucial opportunity for a non-adversarial legal opinion, grounded in science, with input from all Member

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<sup>5</sup> International Council of Environmental Law, United Nations Secretary-General's Report, "Gaps in international environmental law and environment-related instruments: towards a global pact for the environment," Dec. 3 2018.

<sup>6</sup> See UN Side-Event Briefing on Strengthening Cooperation for International Environmental Law – ICEL ([icelinternational.org](http://icelinternational.org)).

<sup>7</sup> Sabin Center for Climate Change Law, Climate Change Litigation Databases, <https://climatecasechart.com/non-us-climate-change-litigation/> (last visited Aug. 18, 2023).

<sup>8</sup> See the request before the Inter-American Court of Human Rights at: Corte Interamericana de Derechos Humanos - Solicitud de Opiniones Consultivas (corteidh.or.cr). See the Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal). See also International Union for the Conservation of Nature, Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law.



States, as well as the international organizations permitted to file comments with the ICJ, reflecting all views of all the peoples of the United Nations.

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INTERNATIONAL COUNCIL of ENVIRONMENTAL LAW  
CONSEIL INTERNATIONAL du DROIT de  
L'ENVIRONNEMENT  
CONSEJO INTERNACIONAL de DERECHO AMBIENTAL

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## Executive Summary

1. The basis for the protection of the biosphere, the climate system, and other parts of the environment is an integration of international law principles emmeshed with human rights, which together operate to “establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained,” and “to achieve international co-operation in solving international problems...,” at the heart of the UN Charter.<sup>9</sup>
2. The existential problem of climate change is global in nature because it concerns Earth’s shared and only biosphere. Thus, stewardship of the shared biosphere must be integrated as a pillar of international law.
3. Since 1988, the UN General Assembly “[r]ecognizes that climate change is a common concern of mankind, since climate is an essential condition which sustains life on earth.”<sup>10</sup>
4. The UN General Assembly has continuously worked on the “Protection of global climate for present and future generations of humankind”, with over 18 resolutions on the matter.<sup>11</sup>
5. ICEL stresses the urgency of formalizing States’ obligations under international law to protect the climate system because Earth is at a critical juncture. “[S]even of eight globally quantified safe and just Earth system boundaries ... have been exceeded.”<sup>12</sup> These boundaries are the quantified limits necessary to maintain stability and resilience for each of the major components of the Earth’s systems and processes like the atmosphere, cryosphere, and water and carbon cycles. Essentially, global environmental degradation has gone beyond nature’s “buffering capacity.”<sup>13</sup>

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<sup>9</sup> U.N. Charter ch. 1, preamble, art. 1, ¶ 3.

<sup>10</sup> G.A. Res.43/53 (6 December 1988).

<sup>11</sup> G.A. resolutions on “Protection of global climate for present and future generations of humankind”: resolutions 43/53 of 6 December 1988, 54/222 of 22 December 1999, 62/86 of 10 December 2007, 63/32 of 26 November 2008, 64/73 of 7 December 2009, 65/159 of 20 December 2010, 66/200 of 22 December 2011, 67/210 of 21 December 2012, 68/212 of 20 December 2013, 69/220 of 19 December 2014, 70/205 of 22 December 2015, 71/228 of 21 December 2016, 72/219 of 20 December 2017, 73/232 of 20 December 2018, 74/219 of 19 December 2019, 75/217 of 21 December 2020 and 76/205 of 17 December 2021, 77/165 of 14 December 2022, and other resolutions and decisions relating to the protection of the global climate for present and future generations of humankind

<sup>12</sup> J. Rockström, J. Gupta, D. Qin, et al, *Safe and just Earth system boundaries*, NATURE (May 31, 2023), <https://www.nature.com/articles/s41586-023-06083-8>.

<sup>13</sup> Prof. Johan Rockström, Comment to *Safe and just Earth system boundaries published in Nature*, GLOBAL COMMONS ALLIANCE (May 31, 2023), <https://globalcommonsalliance.org/news/earth-commission/safe-and-just-earth-system-boundaries-published-in-nature/#:~:text=There%20are%20nine%20biophysical%20processes,for%20people%20and%20the%20planet.>

6. The UN Intergovernmental Panel on Climate Change (IPCC) findings concretely draw a correlation between human action and the degradation of Earth's biosphere, climate, and other interconnected systems.<sup>14</sup> The IPCC findings are the most authoritative source on the matter because of the transparent, cooperative nature reflecting global scientific consensus.<sup>15</sup> Similarly, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), an independent intergovernmental body established by States to strengthen the science-policy interface for biodiversity and ecosystem services, finds that: "Nature is declining globally at rates unprecedented in human history, and climate change is amongst the five direct drivers of change in nature with the largest relative global impacts so far."<sup>16</sup> This is recognized in the Kunming-Montreal Global Biodiversity Framework, section 2 and Target 8. In addition to the IPCC and IPBES reports, the ICJ may benefit from considering national sources of data collection concerning the adverse, local effects of climate change and of Indigenous peoples' voices and experiences consistent with the UN declaration on the rights of Indigenous peoples.<sup>17</sup>

7. The submissions that States present to the ICJ should be based on the fact that climate change is but one aspect of the critical degradation of the environment. Earth's systems are interconnected, and thus, States' obligations are not limited in scope to mere issues of climate.<sup>18</sup> States must address the climate crisis and protect Earth's interconnected systems in our shared biosphere, as well as the links among cycles and environmental conditions to sustain life. The urgency of this issue is acute because environmental decline disproportionately burdens the poor and vulnerable. Environmental degradation is also a transtemporal human rights disaster. To be sure, "Justice is a necessity for humanity to live within planetary limits."<sup>19</sup>

8. Five key principles enjoying global consensus in international law provide the foundation for States' positive obligation for the stewardship of the shared biosphere and the climate

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<sup>14</sup> IPCC Sixth Assessment Report, 2022: *Summary for Policymakers*, *Climate Change 2022: Impacts, Adaptation, and Vulnerability* (2022).

<sup>15</sup> IPCC, *About the IPCC* (2023), <https://www.ipcc.ch/about/>.

<sup>16</sup> See <https://www.cbd.int/doc/c/abb5/591f/2e46096d3f0330b08ce87a45/wg2020-03-03-en.pdf>; Media Release: Nature's Dangerous Decline 'Unprecedented'; Species Extinction Rates 'Accelerating' | IPBES secretariat; IPBES IPCC WR 12 2020.pdf; see also 5 key drivers of the nature crisis (unep.org).

<sup>17</sup> See G. A. Res. 61/295 (13 September 2007). See generally Torres Strait Islanders Petition (Daniel Billy and others v. Austl.), Judgment, 14, ¶ 8.10, CCPR/C/135/D/3624/2019 (U.N.H.R. Comm. 2022).

<sup>18</sup> UNEP, *Making Peace with Nature: A scientific blueprint to tackle the climate, biodiversity and pollution emergencies*, 107 (2021), <https://wedocs.unep.org/xmlui/bitstream/handle/20.500.11822/34948/MPN.pdf>

<sup>19</sup> Prof. Joyeeta Gupta, Comment to *Safe and just Earth system boundaries published in Nature*, GLOBAL COMMONS ALLIANCE (May 31, 2023), <https://globalcommonsalliance.org/news/earth-commission/safe-and-just-earth-system-boundaries-published-in-nature/#:~:text=There%20are%20nine%20biophysical%20processes,for%20people%20and%20the%20planet.>



system. These principles are elucidated by international case law, treaties, and customary law and are undergirded by general concepts of human rights.

9. First, international law principles of cooperation, solidarity, and good faith are vital in determining States' duties based on the negative environmental impact of climate change on all States.

10. Second, the principle of prevention of significant harm implies an affirmative duty to prevent transboundary harm to other States and shared resources.

11. Third, States have an obligation under customary international law to exercise procedural due diligence. Further, due diligence embeds the duty of States to operate in good faith, thus ensuring compliance with affirmative environmental duties and not causing harm to another state, which may also imply notification and consultation.

12. Fourth, customary international law imposes a specific obligation to undertake an environmental impact assessment (EIA) where there is a risk of significant transboundary environmental harm. The customary law duty of conducting EIA to identify the environmental impact of State action in a transboundary context has been implemented and enforced at a regional, national, and subnational level and enjoys customary law recognition under several ICJ decisions.<sup>20</sup> State practice supports the application of EIA procedures since virtually every state has adopted national legislation requiring the use of EIA, consistent with Principle 17 of the 1992 Rio Declaration.<sup>21</sup>

13. Fifth, to protect the human rights of present and future generations, States must also have a duty to protect the biosphere, the climate system, and other parts of the environment, as human rights are dependent upon environmentally habitable conditions. Consequently, the UN General Assembly has formally recognized the human right to a clean, healthy, and sustainable environment, as underlying the law of human rights and sustainable development.

14. These five principles that obligate States to preserve Earth's shared biosphere are based on customary law and on codifications in many multilateral treaties, regional agreements, and the global consensus on the application of these international principles to the environmental context, as noted in the [ICEL Charts](#) annexed to this Note.

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<sup>20</sup> For one example, see [Pulp Mills on the River Uruguay](#) (Arg. v. Uru.), Judgment, 2010 I.C.J. 14 (Apr. 20).

<sup>21</sup> [Rio Declaration on Environment and Development](#), June 13, 1992, 31 I.L.M. 874, U.N. Doc. A/CONF.151/26/Rev.1, principle 17.

15. The advisory opinion will inevitably focus upon integration of these principles. Building upon existing core principles affords “an opportunity to advance or update existing principles and include emerging principles in response to developments in the last decades, such as non-regression, progression, equity, resilience, and access to environmental justice.”<sup>22</sup>

16. These core principles are reflected in the ICJ Dossier compiled by the UN Secretariat pursuant to Article 65, paragraph 2, of the ICJ Statute.<sup>23</sup> The Introductory Note to the Dossier is annexed to this Note, following the ICEL Charts.

17. The ICJ Dossier is divided into eight parts, as follows: (I) request by the General Assembly for an advisory opinion of the Court, (II) multilateral treaties, (III) scientific reports, (IV) development of international law, (V) protection of the climate system and other parts of the environment, (VI) outcomes of United Nations conferences and follow-up processes and related documents, (VII) law of the sea and (VIII) human rights and climate change.

18. Given the broad nature of the subject of climate change and the large amount of documentation available from the relevant intergovernmental processes of the United Nations that refer to or touch upon climate-related matters, the selection of documents included in the Dossier was based on the documents, instruments and principles referenced in General Assembly Resolution 77/276, including its preamble and the question put to the Court.

19. In sum, the supporting principles of international law create an interwoven foundation strengthened by their inclusion in international agreements and position as customary law. Moreover, customary law and international agreements have become legally binding for most of the world through multilateral agreements, regional treaties, and national action in the environmental context. With a solid consensus on state practice and *opinio juris* of States, there is an obligation to protect the biosphere, the climate system, and consequently, all interconnected Earth systems.

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<sup>22</sup> ICEL, *Note on Options to Address Gaps Under resolution 72/277 “Towards a Global Pact for the Environment,”* (2018), [https://libraryguides.law.pace.edu/ld.php?content\\_id=47187496](https://libraryguides.law.pace.edu/ld.php?content_id=47187496).

<sup>23</sup> See ICJ Dossier at [Obligations of States in respect of Climate Change&nbsp; \(icj-cij.org\)](https://www.icj-cij.org).

## States Obligations Under International Environmental Law

20. The importance of principles as “building blocks” for international law is well recognized. Significantly, the UN General Assembly and the UN Environment Assembly<sup>24</sup> have heralded the importance of advancing the development of principles of international environmental law.<sup>25</sup> The work of the UN International Law Commission<sup>26</sup> on such matters, as well as decisions of the Court and relevant tribunals, serve as basis for interpreting and integrating these principles to address the questions before the ICJ. This includes draft conclusions on General Principles of Law recently adopted by the International Law Commission on first reading at its seventy-fourth session in 2023, which are annexed to this Note, following the ICEL Charts and ICJ Dossier.<sup>27</sup>

### I. Cooperation, Solidarity, and Good Faith

21. The duty to cooperate in environmental matters and its customary nature have been recognized by the ICJ as well as arbitral tribunals,<sup>28</sup> and the International Tribunal for the Law of the Sea. The duty to cooperate is derived from the principle of good faith in international relations,<sup>29</sup> is essential for protection of the environment,<sup>30</sup> and allows States jointly to manage and prevent risks of environmental damage.<sup>31</sup> The International Tribunal for the Law of the Sea has determined that “the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under [...] general international law.”<sup>32</sup>

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<sup>24</sup> “Invite Member States and members of specialized agencies to address relevant principles of international environmental law in their domestic legal systems, as appropriate, noting, in this context, the ongoing work by the International Law Commission on general principles of law.” U.N. Environment Programme, *Political declaration of the special session of the United Nations Environment Assembly to commemorate the fiftieth anniversary of the establishment of the United Nations Environment Programme*, ¶8, U.N. Doc. UNEP/EA.SS.1/4 (Mar. 8, 2022).

<sup>25</sup> See G.A. Res. 72/277 (May 10, 2018); G.A. Res. 73/333 (Aug. 30, 2019); See also ICEL Note on Options to Address Gaps.

<sup>26</sup> See ICJ Dossier, PART IV Development of international law (documents received from the Secretariat of the United Nations): (A): Responsibility of States for internationally wrongful acts; (B): Protection of the atmosphere; (C): Protection of persons in the event of disasters; (D): Protection of the environment in relation to armed conflict; (E): Transboundary harm from hazardous activities; (F): Sea-level rise in relation to international law.

<sup>27</sup> Report on the work of the seventy-fourth session (2023) — International Law Commission (un.org).

<sup>28</sup> See generally *Lake Lanoux Arbitration* (Fr. v. Spain), 7 R.I.A.A. 283, 308, (Trib. Arb. 1957).

<sup>29</sup> See *Nuclear Tests* (Austl. v. Fr.), Judgment, 1974 I.C.J. 268, ¶ 46, 49 (Dec. 20); *Legality of the threat or use of nuclear weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 102 (July 8); *Pulp Mills on the River Uruguay* (Arg. v. Uru.), Judgment, 2010 I.C.J. 14, ¶ 145 (Apr. 20).

<sup>30</sup> See *Gabčíkovo-Nagymaros Project* (Hung. v. Slovak.), Judgment, 1997 I.C.J. 7, ¶ 17, ¶ 140 (Sept. 25).

<sup>31</sup> See *Pulp Mills on the River Uruguay* (Arg. v. Uru.), Judgment, 2010 I.C.J. 14, ¶ 77 (Apr. 20).

<sup>32</sup> See ITLOS, *MOX Plant* (Ir. v. U.K.), Case No. 10, Order of Dec. 3, 2001, ITLOS Rep 95, ¶ 82.

22. The principle of cooperation, which is the foundation of the UN Charter, is the most essential of the international law principles for UN Members States, as without such principle neither international law nor the United Nations would exist. Because it is the bedrock of international law and the UN system, it is consequently referenced and affirmed in nearly all international agreements regardless of area of law. Cooperation is a particularly important principle to apply concerning international environmental law as the effects of environmental degradation are not siloed within sovereign borders. Both developed and developing nations of diversified cultural, natural, and economic wealth must act conjunctively to have resilience, prevent adverse environmental impact, and address climate change justice.

23. This core principle as applied to the environmental context first appeared in a soft law instrument—the seminal 1972 Stockholm Declaration, Principle 22—and later in the 1992 Rio Declaration, which establishes that “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem.”<sup>33</sup> The 2030 Agenda for Sustainable Development that incorporated the Sustainable Development Goals (SDGs) relies on increased cooperation as the key driver for their attainment, including SDG-13 to “Take urgent action to combat climate change and its impacts.”<sup>34</sup>

**Going beyond legal references to include specific examples of how inter and intra state cooperation has yielded important protection from environmental degradation will exemplify the necessity of cooperatives to reach the SDGs, prevent further environmental degradation and protect the climate system.**

24. States have continually reiterated this principle in the UN Convention of the Law of the Sea (UNCLOS), Part XII,<sup>35</sup> and multiplicity of environmental treaties,<sup>36</sup> from the 1979 Geneva Convention on Long-Range Transboundary Air Pollution<sup>37</sup> and the 1987 Montreal Protocol, to the 1992 UNFCCC<sup>38</sup> and CBD, the 2001

<sup>33</sup> Rio Declaration on Environment and Development, June 13, 1992, 31 I.L.M. 874, U.N. Doc. A/CONF.151/26/Rev.1, principles 7, 19.

<sup>34</sup> G.A. Res. 70/1, at 2 (Sept. 25, 2015).

<sup>35</sup> See UNCLOS+ANNEXES+RES.+AGREEMENT, Part XII, articles 192, 194, 200-203, among others.

<sup>36</sup> For a detailed list of multilateral agreements, see the ICEL Charts. See also, Framework Convention for the Protection of the Environment of the Caspian Sea, arts. 4(d), 6, Aug. 12, 2006; Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD), art. V.1, Oct. 5, 1978, 1108 U.N.T.S. 151.

In Europe, the duty of cooperation is established in Article 8 of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context, Feb, 25, 1991, 1989 UNTS 309, art. 8.

<sup>37</sup> Convention on Long-Range Transboundary Air Pollution, preamble, Mar. 16, 1979, 1302 UNTS 217; *Id.* at. 7.

<sup>38</sup> United Nations Framework Convention on Climate Change, preamble, Mar. 21, 1994, 1771 UNTS 107. *Id.* at arts. 3.3, 5, 4.1 (c), 5(c), and 6(b).

Convention on Persistent Organic Pollutants, and the 2014 Convention on the Law of the Non-Navigational Uses of International Watercourses.<sup>39</sup>

25. Furthermore, this principle is explicitly embraced by many States party to regional political groupings like the African Union States, South Asian Cooperative Environment Program, Caribbean Community, Commonwealth of Independent States, Association of Southeast Asian Nations, League of Arab States, Pacific Islands Forum, and the South Asian Association for Regional Cooperation, adhering member states to cooperation in the environmental context.

26. The principle of cooperation has become codified in the context of nuclear weapons. The ICJ affirms this duty to cooperate in the *Nuclear Test Case (Australia v. France)*, *Legality of the Threat or Use of Nuclear Weapons* advisory opinion, *United Kingdom v. Iceland*, and others, even if not explicitly.<sup>40</sup>

27. The importance of the advisory opinion is underscored by the current climate change impacts and disasters in every State, such as floods, fires, and desertification. Application of shared principles of law are essential to the cooperation of States to protect the biosphere, climate system, and other parts of the environment. Going beyond legal references to include specific examples of how inter and intra state cooperation has yielded important protection from environmental degradation will exemplify the necessity of cooperation to reach the SDGs, prevent further environmental degradation, and protect the climate system. This is consistent with State obligations in multilateral and regional agreements in which cooperation led to the achievement of a targeted outcome.<sup>41</sup>

28. The Sendai Framework for Disaster Risk Reduction 2015-2030 that complements the U.N. 2030 Sustainable Development Agenda provides States with an action plan to “protect development gains from the risk of disaster.”<sup>42</sup> The Agreement identifies international, regional, subregional and transboundary cooperation as a central component to disaster relief.

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<sup>39</sup> Convention on the Law of the Non-Navigational Uses of International Watercourses, art. 5, 8, Aug. 17, 2014, 2999 UNTS 77. See also Draft articles on the Law of Transboundary Aquifers, art. 7. Prepared by the International Law Commission and annexed to United Nations General Assembly Resolution 68/118 of December 19, 2013, UN Doc. A/RES/68/118.

<sup>40</sup> See also Fisheries Jurisdiction (U.K. v. Ice.), Judgment, 1973 I.C.J. 3 (Feb. 2), where the ICJ held that the States must undertake negotiations in good faith to find an equitable solution of fishing rights.

<sup>41</sup> For examples of achievements of environmental targeted outcomes, see generally U.N. Environment Programme, *2022 Assessment Report, Environmental Effects of Stratospheric Ozone Depletion, UV Radiation, and Interactions with Climate Change*, (Mar. 2023) on the progress toward a healed ozone following the Montreal Protocol on Substances that Deplete the Ozone Layer.

<sup>42</sup> U.N.O.D.R.R., *Implementing the Sendai Agreement, What is the Sendai Framework for Disaster Risk Reduction?*, <https://www.undrr.org/implementing-sendai-framework/what-sendai-framework>.

Furthermore, Section VI explicitly details how the principle of cooperation is intimately intertwined other principles of international environmental law such as solidarity.<sup>43</sup>

29. Each State has unique examples of how climate disruption already harms their wellbeing. Framing cooperation in terms of reducing the risks of climate change is essential. Tying in regional examples can also provide a comprehensive understanding of how general issues of climate change interrelate to other environmental disasters such as extreme biodiversity loss, drought, food insecurity, and reconfiguration of waterways. Consequently, these regional environmental risks negatively impact all areas of the UN SDGs, such as economic growth and the amelioration of poverty. Therefore, achieving these goals, while preventing further environmental degradation, requires a collaborative and coordinated global effort for resilience.

30. Climate disruption does more than undermine environmental security. It impairs the capacity of States to ensure the future wellbeing of their societies. Implementing the Resilience Principle counterbalances the assaults that a society experiences.

**Climate disruption impairs the capacity of States to ensure the future wellbeing of their societies. Implementing the Resilience Principle counterbalances the assaults that a society experiences. Resilience, then, has legal dimensions, which have increasingly been acknowledged.**

31. The UN Office for Disaster Risk Reduction highlights the role of Resilience as “The ability of a system, community or society exposed to hazards to resist, absorb, accommodate, adapt to, transform and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions through risk management.”<sup>44</sup>

32. Resilience, then, has legal dimensions, which have increasingly been acknowledged. The Resilience Principle is a legal norm that obliges States to govern with the policies and tools of adaptive management.<sup>45</sup> For

<sup>43</sup> U.N. Disaster Risk Reduction, *Sendai Framework for Disaster Risk Reduction 2015-2030*, 24, ¶ 41.

<sup>44</sup> See <https://www.undrr.org/terminology/resilience>.

<sup>45</sup> See, for example, Nicholas A. Robinson, *The Resilience Principle*, 5 *IUCN Acad. Envtl. L. eJournal* 19 (2014) <http://digitalcommons.pace.edu/lawfaculty/953/>. The Cambridge Center for Environment, Energy & Natural Resource Governance featured the Resilience Principles in its study on the legal foundations for a Global Pact on the Environment (Yann Aguilar and Jorge E. Viñuales, editors, March 2019). J. B. Ruhl, Barbara Cosens, and Niko Soinen, in their study entitled “Resilience of Legal Systems: Toward Adaptive Governance” (<https://doi.org/10.1093/oso/9780190095888.003.0027>) (March 2021), examine the legal roles that resilience serves in terms of (a) reliability, (b) efficiency, (c) scalability, (d) modularity, and (e) evolvability. The most obvious objective of Resilience is to provide redundancy and back-up systems to compensate for those that may be compromised.

instance, the Kunming-Montreal Global Biodiversity Framework, Target 8: “Minimize the impact of climate change and ocean acidification on biodiversity and increase its resilience through mitigation, adaptation, and disaster risk reduction actions, including through nature-based solutions and/or ecosystem-based approaches, while minimizing negative and fostering positive impacts of climate action on biodiversity.”

33. The principle of cooperation is closely related to the principle of solidarity among States. Solidarity enjoys broad incorporation in international treaties, including the UNFCCC, articles 4 and 13 of the Paris Agreement,<sup>46</sup> the UN Convention to Combat Desertification.<sup>47</sup> It will support arguments to compensate State victims of climate change.

34. The principle of solidarity is a duty to collaborate with another state without the expectation of reciprocity, reflecting a distributive fairness of access to internationally accepted rights.<sup>48</sup> Because climate change disproportionately affects developing nations, solidarity requires the cooperation of States to the extent that the SDGs are achievable for all States. While all States have an obligation to care for Earth’s climate and interconnected systems, State responsibilities are differentiated: a heavier burden to cooperate is imposed on States with large

**While all States have an obligation to Earth’s climate and interconnected systems, State responsibilities are differentiated: a heavier burden to cooperate is imposed on States with large anthropogenic emissions of greenhouse gases and is essential to achieve SDGs and objectives of many international environmental treaties.**

anthropogenic emissions of greenhouse gases and is essential to achieve SDGs and objectives of many international environmental treaties.

35. Multilateral Environmental Agreements pursue State action by all to actualize ambitious results, developed nations are directed to implement policy and “take the lead” based on the individual state capacity.<sup>49</sup> Article 4(2) of the Paris Agreement, for example, is binding language and directs that each State “shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with

<sup>46</sup> See Paris Agreement to the United Nations Framework Convention on Climate Change, art. 13, ¶13, Dec. 12, 2015, T.I.A.S. No. 16-1104, detailing a transparency mechanism and duty owed to least developed countries and small island developing States.

<sup>47</sup> United Nations Convention to Combat Desertification, arts. 3(b), 4(b), annex I, Oct. 14, 1994, 1954 U.N.T.S. 3.

<sup>48</sup> World Youth for Climate Justice and Pacific Islands Students Fighting Climate Change, *Legal Memorandum, youth Climate Justice Handbook*, 44, (May 2023), [https://static1.squarespace.com/static/5f063a0c8f53b604aed84729/t/6451028c46350d670c523691/1683030671041/Handbook\\_Legal\\_Memorandum-EN.pdf](https://static1.squarespace.com/static/5f063a0c8f53b604aed84729/t/6451028c46350d670c523691/1683030671041/Handbook_Legal_Memorandum-EN.pdf).

<sup>49</sup> Eckard Rehbinder, *Ambition as a Legal Concept in the Paris Agreement and Climate Litigation: Some Reflections*, 52 *Env’t Pol’y & L.* 337, 338 (2022).

the aim of achieving the objectives of such contributions.”<sup>50</sup> Essentially, State behavior is confined—for developing nations—and required—for developed nations—by capacity. The Paris Agreement created the mechanism of nationally determined contributions (NDCs) to hold States accountable to viable levels of contribution resulting in a natural illustration of the duty of solidarity.<sup>51</sup> Developed States fairly contribute more to achieving the goal of the agreement. Solidarity is a concrete state obligation supported by the duty to cooperate, through explicit agreements and mechanisms like NDCs.

**“...solidarity is necessary to obtain environmental justice, as it yields space in international cooperation for the voices of smaller, climate-impacted, developing nations and puts equivalent weight on all States’ access to the resources of a global community.”**

36. Another important set of norms is contained in Article 4(3), which determines that each party's NDC will represent a progression beyond the previous NDC and reflect that party's “highest possible ambition”, though in a differentiated manner reflecting common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. “Article 4(3) can be understood as establishing the double expectation that each party will (i) increase (‘progress’) its ambition level of climate action each time it prepares and communicates a successive NDC, and that (ii) when doing so, it reflects its highest possible ambition. Article 4(3) applies specifically to the mitigation ambition in the NDC.”<sup>52</sup>

37. The 2022 IPCC Report observed that “[w]hile what represents a Party's highest possible ambition and progression is not prescribed by the Agreement or elaborated in the Paris Rulebook ..., these obligations could be read to imply a due diligence standard,”<sup>53</sup> a principle to be addressed in part III below.

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<sup>50</sup> *Id.* at 379, citing to Paris Agreement to the United Nations Framework Convention on Climate Change, art. 4, ¶ 2, Dec. 12, 2015, T.I.A.S. No. 16-1104.

<sup>51</sup> *What are NDCs and how do they drive climate action?*, U.N.D.P. News, May 31, 2023, <https://climatepromise.undp.org/news-and-stories/NDCs-nationally-determined-contributions-climate-change-what-you-need-to-know#:~:text=Nationally%20Determined%20Contributions%2C%20or%20NDCs,finance%20to%20support%20the%20efforts>.

<sup>52</sup> Voigt, C. The power of the Paris Agreement in international climate litigation. *RECIEL*. 2023; 32(2): 240. doi:[10.1111/reel.12514](https://doi.org/10.1111/reel.12514).

<sup>53</sup> See IPCC Working Group III chapter on international cooperation: Patt et al, ‘International Cooperation’ in PR Shukla et al (eds), *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) 1451, 1466, cited by Voigt, C. The power of the Paris Agreement in international climate litigation. *RECIEL*. 2023; 32(2): 241. doi:[10.1111/reel.12514](https://doi.org/10.1111/reel.12514).



38. The IPCC also has examined and evaluated the ways in which agreements and instruments for international cooperation to address global climate change have been and can be organized and implemented.<sup>54</sup>

39. Additionally, solidarity is necessary to obtain environmental justice, as it yields space in international cooperation for the voices of smaller, climate-impacted, developing nations and puts equivalent weight on all States' access to the resources of a global community. Furthermore, solidarity is an avenue for compensation to developing nations affected by transboundary harm.

40. The duty to cooperate also relates to the duty to act in good faith in all stages of State collaboration. The duty of good faith is not exclusively related to principles of cooperation and solidarity though. Good faith is implicit throughout all the supporting principles. For example, customary law requires that States conduct and report an EIA in good faith and exercise good faith to prevent transboundary harm. Commonly, however, the duty to act in good faith is discussed in relation to State negotiation and cooperation. In the 1974 *Nuclear Tests (Australia v. France)*, the ICJ held that “[o]ne of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, particularly in an age when this co-operation in many fields is becoming increasingly essential.”<sup>55</sup>

41. This bonding of good faith to cooperation—and subsequently, to other duties—is essential to any effective solution or negotiation and ensures a globally unifying goal. Good faith requires that States conduct themselves honestly to the collaborative goal; all other State goals or desires must yield to the purpose of the negotiation.<sup>56</sup>

42. The general principle of good faith has been codified, for instance, in the Vienna Convention on the Law of Treaties (e.g., arts. 26 and 31). Further, the preamble to the Convention notes that “the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized”.

43. Consequently, States have a duty to cooperate in good faith to ensure protection of the climate system and the shared biosphere, and protection against environmental damage. The duty to cooperate is an obligation between States, including specific duties that are required of States in relation to environmental matters in order to comply with this obligation: (i) the duty

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<sup>54</sup> See [International Cooperation: Agreements and Instruments — IPCC](#).

<sup>55</sup> *Nuclear Tests (Austl. v. Fr.)*, 1974 I.C.J. 268, ¶ 46 (Dec. 20).

<sup>56</sup> *Id.*

to notify, and (ii) the duty to consult and negotiate with potentially affected States.<sup>57</sup>

## **II. Prevention of Significant Transboundary Harm**

44. A second principle that is essential for State obligations with respect to climate change is the prevention of significant transboundary harm. This principle obligates States to prevent any harm to areas beyond their sovereignty.<sup>58</sup> The UN International Law Commission describes transboundary harm as any harm done to one country by the actions of another country regardless of whether the nations share a border.<sup>59</sup> Therefore, a State can be found in violation of this international custom and principle if a development practice causes environmental harm to another State beyond its boundaries.

45. In addition to the adoption of the duty to prevent significant transboundary harm by the International Law Commission and the Court, many soft law documents echo this customary law. This principle is found in the 1972 Stockholm Declaration (Principle 21), the 1992 Rio Declaration (Principle 2), the 2012 Future We Want, and many more instruments. Principle 24 of the 1972 Stockholm Declaration also requires States to “effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.”<sup>60</sup>

46. The principle is also prolific in multilateral agreements such as Principle 3 and 14 of the 1992 CBD, which prohibits transboundary harm and sets up EIA procedures to prevent such harm from occurring and in much newer agreements like the Agreement under the UN Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (adopted on 19 June 2023),<sup>61</sup> also known as the BBNJ Agreement. For its part UNCLOS requires under Article 194:

“1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best

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<sup>57</sup> The procedures provided by EIA are available to implement these two obligations. See the discussion in paragraphs below concerning due diligence and EIA.

<sup>58</sup> *Nuclear Tests* (Austl. v. Fr.), 1974 I.C.J. 268, ¶ 39 (Dec. 20).

<sup>59</sup> *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities 2001*, art. 2(c), [2001] II Y.B. Int'l L. Comm'n, U.N.Doc. A/56/10.

<sup>60</sup> U.N. Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment (Stockholm Declaration)*, ¶ 24, U.N.Doc. A/Conf.48/14/Rev.1 (June 16, 1972).

<sup>61</sup> Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (aka BBNJ), June 19, 2023, U.N. Doc. A/CONF.232/2023/4.

practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection. 2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention. 3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent: (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping ...”

47. This principle exists in the UNFCCC which stipulates in Article 3 that parties should take precautionary measures to prevent climate change and mitigate its negative effects. The Paris Agreement stresses the obligation to mitigate greenhouse gas emissions to facilitate global “sustainable development and environmental integrity.”<sup>62</sup>

**Compensation for environmental damages done by transboundary harm disturbing the biosphere, the climate system, and other parts of the environment is essential to an equitable advisory opinion.**

48. The Court has embraced this principle beginning as early as 1949 in the *Corfu Channel Case (United Kingdom v. Albania)* where it held that one State’s nonconsensual actions causing damages in another State’s sovereignty was not permissible, even for reasons of self-protection and intervention.<sup>63</sup> Essentially, transboundary harm to another State is not permitted, no matter the self-interest of the breaching State.

49. The ICJ in its 1996 advisory opinion in *Nuclear Weapons* and in *Gabcikovo-Nagymaros* confirmed the “general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment”.<sup>64</sup>

50. To be sure, the duty to prevent transboundary harm is well established. In the 1938/41 *Trail Smelter Arbitration (United States v. Canada)*, the Special Arbitral Tribunal required the

<sup>62</sup> [Paris Agreement to the United Nations Framework Convention on Climate Change](#), art. 6, ¶ 1, Dec. 12, 2015, T.I.A.S. No. 16-1104.

<sup>63</sup> [The Corfu Channel](#) (U.K. & N. Ir. v. Alb.), Judgment, 1949 I.C.J. 244 (Mar. 25).

<sup>64</sup> Voigt, C. The power of the Paris Agreement in international climate litigation. *RECIEL*. 2023; 32(2): 245. doi:[10.1111/reel.12514](#).

breaching party to discontinue the damaged caused by transboundary fumes and ruled that damages were recoverable for such harm.<sup>65</sup> The ICJ has required the States in dispute to *cooperate* and agree to a fixed indemnity for damages. In *Costa Rica v. Nicaragua*, the ICJ required damages be paid to the injured State for environmental transboundary harm.<sup>66</sup> The significance of the *Trail Smelter Arbitration* and *Costa Rica v. Nicaragua* is that they implicate multiple principles of international law like cooperation, good faith, the duty to prevent transboundary harm, and procedural due diligence as interwoven in an environmental context.

51. The Court's holdings that failing to prevent transboundary harm entitles the injured party to recover bears important implications for the second question in Resolution 77/276.<sup>67</sup> Offending States are required to prevent and compensate the injured State for an action that negatively impacts another, and this duty extends to the shared biosphere and interconnected systems. The extent to which compensation is required will also need to be considered, as the ICJ previously instructed States to reach a "settlement" on their own. Compensation for environmental damage done by transboundary harm disturbing the biosphere, the climate system, and other parts of the environment is essential to a complete advisory opinion on the second question. UNCLOS Part XII, for instance, has relevant applicable norms on responsibility and liability.

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<sup>65</sup> UN REPORTS OF INTERNATIONAL ARBITRAL AWARDS, *Trail Smelter case (USA v. Canada)*, 16. April 1938 and 11. March 1941, Volume III pp. 1905-1982 at [Trail smelter case \(USA, Canada\) \(un.org\)](#).

<sup>66</sup> [Certain Activities Carried Out by Nicaragua in the Boarder Area, Compensation Owed by the Republic of Nicaragua to the Republic of Costa Rica](#) (Costa Rica v. Nicar.), Judgment, 2015 I.C.J. 665 (Feb. 2); See also [Construction of a Road in Costa Rica along the San Juan River](#) (Nicar. v. Costa Rica), Judgment, 2015 I.C.J. 665 (Dec. 16), [Summary 2015/3](#).

<sup>67</sup> UN General Assembly Res. 77/276, at 3 (April 4, 2023).

52. Regional treaties and State practice also reflect this principle in documents such as the *Agreement on cooperation in the area of environmental protection among the member states of the Commonwealth of Independent States or the Revised Treaty of Chaguaramas Establishing the Caribbean Community* including the CARICOM Single Market and Economy. This is an illustration of the well-established application of this principle as it relates to international environmental law.

**Framing each principle of international law as a building block both dependent upon, and expanding the prior principle, strengthens each and provides States the ability to advocate for a duty to care for the climate system, the biosphere and other parts of the environment firmly founded on an interconnected—not siloed—foundation.**

53. While the principle of prevention of transboundary harm is well represented in international law as a stand-alone state obligation, the principle naturally implicates the application of other principles such as the obligation to exercise due diligence and the obligation to conduct EIAs. Framing each principle of international law as a building block both dependent upon, and expanding the prior principle, strengthens each and provides States the ability to advocate for a duty to care for the biosphere, climate system, and other parts of the environment firmly founded on an interconnected—not siloed—foundation.

54. In sum, “[i]n determining the duty to prevent transboundary harm, account needs to be taken of international obligations of cooperation, notification, and consultation. This understanding is in line with principles of good faith and good neighborliness in international law.”<sup>68</sup>

### III. Procedural Due Diligence

55. The third principle of international law central to the advisory opinion is the duty of due diligence. Fulfilling the obligation of due diligence is determined in the context of the relevant factual setting. With reference to the advisory opinion, the specific obligations for exercising due diligence will be, therefore, determined by State action in relationship to the biosphere and the climate system. Due diligence is typically framed in terms of a State taking all possible measures or to the best of their ability to meet their obligations under international law.

56. The Court has specifically reaffirmed the fundamental duty of the State of origin is to exercise due diligence in preventing significant transboundary environmental harm and that due diligence calls for notification or consultation to be evaluated in light of particular

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<sup>68</sup> Voigt, C. The power of the Paris Agreement in international climate litigation. *RECIEL*. 2023; 32(2): 246. doi:[10.1111/reel.12514](https://doi.org/10.1111/reel.12514).

circumstances.<sup>69</sup> This conduct-regulating principle encompasses the State's requirement to put forth a good faith effort in preventing and mitigating resulting harm from their activities and is a procedural requirement at all phases of a project including the planning, EIA, implementation, and post-implementation monitoring.<sup>70</sup> A failure to conduct an EIA can give rise to a finding that a State has breached its obligations under customary international law without any showing of material harm to the territory of the affected State.<sup>71</sup>

57. The customary duty of due diligence is supported in treaties that address environmental harm to other States. The duty of due diligence is incorporated into and reliant on the other customary principles of international environmental law, as well. The *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, for example, highlighted the duty to exercise due diligence in preventing significant transboundary harm.<sup>72</sup> As the ICJ affirmed, a due diligence obligation “entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators.”<sup>73</sup>

58. The importance of due diligence as it relates to other principles was emphasized in a separate opinion authored by the current president of the ICJ, Judge Donoghue.<sup>74</sup> In this concurring opinion, Judge Donoghue states, “...account must be taken of State practice and *opinio juris*. Absent consideration of such information, the Court is not in a position to articulate specific rules, and the rights and obligations of parties should be assessed with reference to the underlying due diligence obligation.<sup>75</sup> However, Judge Donoghue indicates that the due diligence obligation must be considered on its own merits and is not just a toothless concept.

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and private operators.”**

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<sup>69</sup> Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Judgment, 2015 I.C.J. 665, ¶ 104 (Dec. 16); See also Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. 20, 782 (April 20) (Separate Opinion of Judge Donoghue).

<sup>70</sup> Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. 665, 785, ¶ 10 (April 20) (Separate Opinion of Judge Donoghue).

<sup>71</sup> *Id.*

<sup>72</sup> Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. 665 (April 20).

<sup>73</sup> *Id.* at 14, ¶ 19.

<sup>74</sup> Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. 665, 785, ¶ 9 (April 20) (Separate Opinion of Judge Donoghue).

<sup>75</sup> *Id.* at 785, ¶10.

59. Due diligence is central to multilateral agreements such as the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context, which states in Article 2(1) that parties should “take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.”<sup>76</sup> Many regional, environmental treaties are also reliant on due diligence, as it binds parties to actually put in good faith efforts to prevent environmental degradation. If a party to a treaty does not make a good faith effort, they do not exercise due diligence. The duty of due diligence is clearly spelled out in UNCLOS, Part XII, as noted above in paragraph 46.

60. The Paris Agreement contains normative elements that establish due diligence requirements for States. “This applies in particular to the level of ambition contained in the NDC, which is expected to align with the global temperature goal, to progress in ambition every time a successive NDC is being communicated, and to reflect each party's highest possible ambition. It also applies to the conduct required of a State when pursuing domestic measures with the aim of achieving its NDC.”<sup>77</sup>

61. Notably, the Paris Agreement sets a minimum standard for action on reducing greenhouse gas emissions required by States, which is relevant in determining the content of obligations, especially of the standard of due diligence. The standard to be applied in framing and implementing their NDCs in light of the goals of the Paris Agreement and the normative standards of “progression” and “highest possible ambition”,<sup>78</sup> were discussed above in paragraphs 35 and 36.

62. Moreover, the “Paris Agreement might be relevant in the interpretation of obligations contained in other international treaties or customary law. Especially the standard of conduct contained in Article 2(1) in combination with Article 4(3) of the Paris Agreement might exert powerful legal influence in the interpretation of due diligence norms and standards of conduct applied to legal obligations contained in human rights treaties, the law of the sea and others.”<sup>79</sup> When the ICJ assesses “what the obligations of States are under international law to ensure the protection of the climate system, it may want to consider these standards of conduct contained in the Paris Agreement. They may not be sufficient to determine specific, quantified emission

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<sup>76</sup> See generally 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context, Feb, 25, 1991, 1989 UNTS 309, art. 2(1).

<sup>77</sup> Voigt, C. The power of the Paris Agreement in international climate litigation. *RECIEL*. 2023; 32(2): 242. doi:[10.1111/reel.12514](https://doi.org/10.1111/reel.12514)

<sup>78</sup> *Id.*, 249.

<sup>79</sup> *Id.*, 249.

reduction targets and the exact level of ambition to be taken by a given State, but they can guide the assessment of whether States have acted with the care required of them.”<sup>80</sup>

#### **IV. Environmental Impact Assessment (EIA)**

63. Environmental impact assessments are vital tools to prevent significant transboundary harm. The assessments inform policy makers, project proponents and financing institutions of the potential harmful impacts, alternatives and mitigation options, and encourages cooperation.<sup>81</sup> Furthermore, customary international law not only requires an EIA, but the notification to potentially affected parties of the transboundary harm.<sup>82</sup>

64. The EIA process begins by screening to determine any possible environmental impacts, identifying the scope of potential environmental harm, and then, conducting the EIA for the purpose of mitigating any damage, followed by public notification and consultation.

**International EIA implies both an affirmative and negative duty—the duty to conduct an EIA, including alternatives analyses, and the duty to cease State activity that is causing transboundary harm.**

65. The essential components of EIA are (i) identifying an action that may have a significant impact on the environment, (ii) giving notice of the potential impacts to all interested parties, (iii) consulting in good faith with all parties on the scope of the studies about the potential impacts, and (iv) publishing an EIA, (v) consulting on the means to avoid or mitigate any adverse impacts identified in the assessment; (vi) modifying the proposed action to reflect the assessment report. In the context of climate change, the use of EIA is recognized in article 4 of the UNFCCC.<sup>83</sup> States have not yet sufficiently implemented EIA for mitigation or adaptation to climate change.<sup>84</sup>

66. One of the most significant cases in the realm of EIA jurisprudence is the *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*<sup>85</sup> in which the Court held for the first time that EIAs have gained such international acceptance that it is appropriate to consider its requirement when

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<sup>80</sup> *Id.*, 242.

<sup>81</sup> *Id.* at art 3.

<sup>82</sup> *Id.*

<sup>83</sup> United Nations Framework Convention on Climate Change, art. 4, Mar. 21, 1994, 1771 UNTS 107.

<sup>84</sup> See generally the IAIA 17 <https://conferences.iaia.org/2017/index.php> (last visited Aug. 13, 2023); UNEP has issued summaries on how to conduct EIAs. See U.N. Env. Programme, Report, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, 2004.

<sup>85</sup> Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. 14 (April 20).



industrial risk may have transboundary impact especially when concerning a shared resource,<sup>86</sup> and that EIAs should be conducted prior to the implementation of the project.<sup>87</sup>

67. This obligation to conduct and report EIAs for activities that may cause transboundary environmental harm in international law is supported by international case law, multilateral agreements, regional agreements, and national implementation. As the ICJ held in the 2015 case, *Costa Rica v. Nicaragua*, “If the environmental impact assessment confirms that there is a risk of significant transboundary harm, the State planning to undertake the activity is required, in conformity with its due diligence obligation, to notify and consult in good faith with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk.”<sup>88</sup>

68. There are a number of multilateral agreements relevant to environmental impact assessment more broadly, including the Vienna Convention for the Protection of the Ozone Layer (1985), The Convention on Environmental Impact Assessments or Espoo Convention (1991), Convention on the Protection and Use of Transboundary Watercourses and International lakes (1992), and the Protocol on Strategic Environmental Assessments to the Convention on Environmental Impact Assessment in Transboundary Context (SEA Protocol, adopted in Kiev, May 2003). UNCLOS requires EIA in Part XII, articles 204-206.

69. International EIA implies both an affirmative and negative duty—the duty to conduct an EIA, including alternatives analyses, and the duty to cease State activity that is causing transboundary harm. The duty to conduct EIAs conjunctively exercised with the duty to prevent transboundary harm and procedural due diligence act as an enforcement mechanism prohibiting initiation of potentially breaching actions and requiring all breaching actions to cease.<sup>89 90</sup>

70. EIAs must be thorough, efficient, and broadly conducted, ensuring compliance with all international law principles. Looking to robust EIA frameworks identifies the global consensus on

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<sup>86</sup> *Id.* at ¶ 204.

<sup>87</sup> *Id.* at ¶ 205.

<sup>88</sup> Certain Activities Carried Out by Nicaragua in the Boarder Area (*Costa Rica v. Nicar.*), Judgment, 2015 I.C.J. 665, ¶ 104 (Dec. 16).

<sup>89</sup> For example, the IPCC has produced data proving the correlation of fossil fuel consumption to climate change. Therefore, a State should refrain from continued investment in, and subsidization of, fossil fuels, and has the positive duty to invest in renewable and green energy. IPCC Sixth Assessment Report, 2022: Summary for Policymakers, *Climate Change 2022: Impacts, Adaptation, and Vulnerability* (2022).

<sup>90</sup> State EIA codification explicitly includes behavior modification mechanisms. Brazil, Uganda, and Kiribati, for example, all have adopted EIA legislation resulting in continued monitoring for all State development projects. LAL KURUKULASURIYA, NICHOLAS A. ROBINSON, TRAINING MANUAL ON INTERNATIONAL ENVIRONMENTAL LAW, 297-99, ¶ 18 (UNEP 2006).

the extent of the duty to conduct EIAs, such as Section IV of the BBNJ Agreement which details EIA threshold factors and process.<sup>91</sup>

71. Interwoven with the other principles of international environmental law, the duty to conduct EIAs becomes a vital tool in preventing transboundary harm and ceasing harmful impact on the biosphere and the climate system. Conducting and reporting on EIA results is an obligation of States that must stringently observe, particularly with regards to climate change impact, mitigation and adaptation.

### V. Human Rights

72. Climate change is a human rights crisis because the impairment of Earth's interconnected systems threatens the quality of life and health of all humans, present and future. In particular, the immediate threat rests disproportionately on particular groups like children, women, Indigenous peoples, the poor, those residing in island states and other areas severely threatened by climate impacts.<sup>92</sup> Tellingly, climate change infringes on every identified human right. Human rights are both a duty of the State to protect, but they also function as inalienable protections granted to all humans on Earth.<sup>93</sup> Furthermore, States are prohibited from violating individual rights by positive action or omission.<sup>94</sup>

**...damaging the environment necessarily “impairs and undermines all human rights in the Universal Declaration and other human rights instruments.”**

73. As principles of international environmental law have evolved, so has the duty to advance and protect human rights. Consequently, human rights must be “understood, interpreted, and integrated within the evolving legal context recognizing humanity's relationships with the natural world, and the best available science.”<sup>95</sup> Furthermore, damaging the environment necessarily

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<sup>91</sup> Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, part IV, June 19, 2023, U.N. Doc. A/CONF.232/2023/4.

<sup>92</sup> See generally Maastricht Principles on the Human Rights of Future Generations (2023), <https://www.rightsoffuturegenerations.org/the-principles>.

<sup>93</sup> For a comprehensive list of identified human rights supporting State obligation to the environment, see World Youth for Climate Justice and Pacific Islands Students Fighting Climate Change, *Legal Memorandum, youth Climate Justice Handbook*, 30, (May 2023), [https://static1.squarespace.com/static/5f063a0c8f53b604aed84729/t/6451028c46350d670c523691/1683030671041/Handbook\\_Legal\\_Memorandum-EN.pdf](https://static1.squarespace.com/static/5f063a0c8f53b604aed84729/t/6451028c46350d670c523691/1683030671041/Handbook_Legal_Memorandum-EN.pdf).

<sup>94</sup> Maastricht Principles on the Human Rights of Future Generations, 8, ¶ XIV, Rights of Future Generations, (2023), <https://www.rightsoffuturegenerations.org/the-principles>.

<sup>95</sup> *Id.* at 3, ¶ XIV.

“impairs and undermines all human rights in the Universal Declaration and other human rights instruments.”<sup>96</sup>

74. On July 28th, 2022, the UN General Assembly recognized the interconnected nature of human rights and the environment by adopting the historic Resolution 76/300 which affirmed the human right to a clean, healthy, and sustainable environment. This Resolution was preceded by the Human Rights Council Resolution 48/13.<sup>97</sup>

75. The right to a “balanced and healthful ecology” is an ancient right. It has been described by Justice Hilario Davide Jr. of the Supreme Court of the Republic of the Philippines in *Oposa et al v. Fulgencio S. Factoran, Jr. et al*, as follows: “Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.”<sup>98</sup>

**“Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation (...) the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.”<sup>1</sup>**

76. This right to the environment was first posited in the 1972 Stockholm Declaration in the first principle stating that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations...”<sup>99</sup> Since the right was first recognized, it has been incorporated in over 160 Constitutional provisions around the globe and has become an international law principle, which the General Assembly formalized with its adoption.

77. Additionally, the first principle of the 1992 Rio Declaration proclaims that humans are at the center of development concerns and are entitled to exercise their human rights “in harmony with nature.”<sup>100</sup> Multilateral and regional agreements also reflect this right to a healthy

<sup>96</sup> United Nations Environment Programme, *Compendium of Summaries of Judicial Decisions in Environment-Related Cases* 232 (2005).

<sup>97</sup> U.N. H.R.C. Res. 48/13, at 1 (October 8, 2021).

<sup>98</sup> *Oposa et al v. Fulgencio S. Factoran, Jr. et al*, July 30, 1993, G.R. No. 101083, 224 S.C.R.A. 792.

<sup>99</sup> U.N. Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment (Stockholm Declaration)*, U.N.Doc. A/Conf.48/14/Rev.1, at 4, principle 1 (June 16, 1972).

<sup>100</sup> Rio Declaration on Environment and Development, June 13, 1992, 31 I.L.M. 874, U.N. Doc. A/CONF.151/26/Rev.1, principle 1.

environment. The 1992 UNFCCC, for example, insists that the protection of Earth's climate systems was for the benefit of all mankind, present and future generations.<sup>101</sup>

78. Human rights obligations are well defined and utilized in all areas of international law and are the framework upon which the SDGs are built. In fact, the 2030 Sustainable Development Agenda was built upon the understanding that the human right to the clean, healthy and sustainable environment was “integrated and indivisible” with the notion of sustainable development and included the commitment to protect planet from degradation and overconsumption.<sup>102</sup> Furthermore, all seventeen SDGs necessarily encompass a form of environmental stewardship to be achieved establishing a global consensus that a healthy environment is essential for the success of human development. The principle of sustainable development implies that “the right to development is to be balanced with and constrained by the right to a clean, safe, healthy and sustainable environment.”<sup>103</sup> UN Member States working towards the realization of the 2030 Sustainable Development Agenda apply this principle.

79. To protect the biosphere, the climate system, and other parts of the environment requires identifying and drawing the connections between each human right and the obligations under international law to protect the climate system. First, cooperation between States is warranted to halt the destruction of the Earth's biosphere is a global issue impacting human rights. Second, the duty to prevent transboundary harm is not only an issue of sovereignty but a real-life issue affecting human beings and their various established rights. Transboundary harm also infringes on the States' ability to protect their people's human rights. Third, under the duties of due diligence and the principle of solidarity, States must make every effort to ensure that their actions do not interfere with human rights. Fourth, conducting an EIA is also an essential tool in determining whether a proposed State action will impact human rights. EIAs are also vital for establishing the impacts of existing projects on human communities. These five principles advance human rights because they form a mechanism to protect life and its interconnected

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<sup>101</sup> United Nations Framework Convention on Climate Change, arts 3, 4, Mar. 21, 1994, 1771 UNTS 107.

<sup>102</sup> United Nations, The 2030 Agenda for Sustainable Development at 3, <https://sdgs.un.org/sites/default/files/publications/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

<sup>103</sup> ICEL, Note on the Secretary-General's Report, “Gaps in international environmental law and environment-related instruments: towards a global pact for the environment,” 15 (2018), <https://law.pace.edu/sites/default/files/Alumni/NOTE%20UN.pdf>. As stated by ICEL member Ben Boer in *Environmental principles and the right to a quality environment* in Ludwig Krämer and Emanuela Orlando (eds.), *Principles of Environmental Law*, Elgar Encyclopedia of Environmental Law, Vol. VI, 52, 57 (2018).

systems generally. The degradation of Earth’s shared biosphere and climate system necessarily degrade the State ability to ensure human rights.

80. There are many examples today of climate disasters that strip individuals of their human right to the environment.<sup>104</sup> There is no international repository of reports on climate disasters around the world. The reports of the IPCC provide the most extensive analysis of recent climate disasters. These reports are ample evidence of the shortcomings with respect to the implementation of the obligation of States under international law to protect the climate system.

**The right to a clean, healthy, and sustainable environment can be breached in two ways: it infringes on State sovereignty to protect its people and it denies the protection of individual rights from State action.**

81. The human right to a clean and healthy environment is necessarily married to the duty to care for the biosphere, climate systems, and other parts of the environment. Without any duty to care for or preserve the biosphere, the climate system, and other parts of the environment, the exercise of all human rights, including the right to enjoy the environment, would deplete Earth’s biosystems. Furthermore, the depletion of the environment would breach the human right to a clean healthy and sustainable environment.

82. The right to a clean, healthy, and sustainable environment can be breached in two ways: it infringes on State sovereignty to protect its people and it denies the protection of individual rights from State action. Just as transboundary harm infringes on State sovereignty to regulate the environment within a State’s borders, breaching human rights infringes on State sovereignty. Because it is the duty of the State to protect the human rights of their people, when another State infringes on the human right to a clean, healthy, and sustainable environment through transboundary harm, the State infringes on their sovereignty. The infringement of one State’s human rights takes away the States tools to protect their people’s rights. Secondly, regardless of the State actor, human rights include the protection of those rights by any state actor without due process.<sup>105</sup> In 2010, the ICJ held that the violation of individuals human rights were protected

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<sup>104</sup> For example, approximately 200,000 Ugandans have been affected by extreme weather systems, drought, and food insecurity. In 2021, the World Bank estimated that 11% of the nation’s population will migrate within the country because of climate factors with the potential to create a new generation of climate refugees within the country as the population is projected to triple by 2050. The negative impact of climate change has created a large subsection of the Ugandan population in which the government cannot protect their human rights, and the people’s individual rights to a healthy environment, private and family life, health, and to effective remedies for the breach of human rights obligations has been obliterated; See Rigaud, Kanta Kumari; de Sherbinin, Alex; Jones, Bryan; Casals Fernandez, Anna Taeko; Adamo, Susan. 2021. *Groundswell Africa: A Deep Dive into Internal Climate Migration in Uganda*.

<sup>105</sup> *Ahmadou Sadio Diallo (Guinea v. Dem. Rep. Congo)*, Merits, Judgment, 2010 I.C.J. 639 (Nov. 30).

from state action beyond just the rights of a people when it required the DRC to compensate Guinea for violating a Guinean diplomat's individual human rights.<sup>106</sup>

83. The Interamerican Court of Human Rights has concluded that States have the obligation *erga omnes* to respect and guarantee protection standards and to ensure the effectiveness of human rights and specific obligations to respect and to ensure the rights to life and to personal integrity in relation to the negative impact of environmental damage. Therefore States must refrain from: (i) any practice or activity that denies or restricts access, in equal conditions, to the requisites of a dignified life, such as adequate food and water, and (ii) unlawfully polluting the environment in a way that has a negative impact on the conditions that permit a dignified life for the individual; for example, by dumping waste from State-owned facilities in ways that affect access to or the quality of potable water and/or sources of food.<sup>107</sup>

84. The second obligation, the obligation to ensure rights, means that States must take all appropriate steps to protect and preserve the rights to life and to integrity. In this regard, the obligation to ensure rights is projected beyond the relationship between State agents and the persons subject to the State's jurisdiction and encompasses the duty to prevent third parties from violating the protected rights in the private sphere. This duty of prevention includes all those measures of a legal, political, administrative and cultural nature that promote the safeguard of human rights and ensure that eventual violations of those rights are examined and dealt with as wrongful acts that, as such, are susceptible to result in punishment for those who commit them, together with the obligation to compensate the victims for the negative consequences.<sup>108</sup> Furthermore, it is plain that the obligation to prevent is an obligation of means or behavior and non-compliance is not proved by the mere fact that a right has been violated.

85. In the context of environmental protection, the State's international responsibility derived from the conduct of third parties may result from a failure to regulate, supervise or monitor the activities of those third parties that caused environmental damage.

86. In addition, the obligation to ensure rights also means that States must take positive measures to permit as well as to help private individuals exercise their rights. Thus, States must take steps to disseminate information on the use and protection of water and sources of

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<sup>106</sup> *Id.* at ¶ 161.

<sup>107</sup> The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. C) No. 341 (Nov. 15, 2017); U.N. ESCR. Comm., General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), Jan. 20, 2003, UN Doc. E/C.12/2002/11, ¶ 17, 19; U.N. ESCR Comm., General Comment No. 14: The right to the highest attainable standard of health (art. 12 of the International Covenant on Economic, Social and Cultural Rights), Aug. 11, 2000, UN Doc. E/C.12/2000/4, ¶ 34.

<sup>108</sup> All states have adopted an extensive framework of national environmental law to protect the environment and public health. The cooperative effort is supported by the Montevideo Environment Law Programme.

adequate food.<sup>109</sup> Also, in specific cases of individuals or groups of individuals who are unable to access water and adequate food by themselves for reasons beyond their control, States must guarantee the essential minimum of food and water.<sup>110</sup> If a State does not have the resources to comply with this obligation, it must “demonstrate that every effort has been made to use all resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.”<sup>111</sup>

87. In the context of the Paris Agreement, “[t]he argument put forward here, however, is that interpreting States' positive human rights obligations should be done in a way that is informed by, complementary to, and consistent with the Paris Agreement. ... For reasons of legal coherence in the international legal system, those standards should also inform the standard of care to be applied by States in discharging their human rights obligations in the context of climate change.”<sup>112</sup>

88. Thus, the right to a clean, healthy, and sustainable environment is indispensable for the right to life and the realization of other human rights. Consistent in human rights case law, to ensure the free and full exercise of human rights, States must take all appropriate measures to protect and preserve the right to life (positive obligation) and conditions to enable it. Accordingly, States are obliged to ensure the creation of the necessary conditions for the full enjoyment and exercise of all human rights in light of their obligations to protect the biosphere, the climate system and other parts of the environment.

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<sup>109</sup> U.N. ESCR Comm., General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), Jan. 20, 2003, UN Doc. E/C.12/2002/11, ¶ 25; U.N. ESCR Comm., General Comment No. 12: The right to adequate food (art. 11 of the International Covenant on Economic, Social and Cultural Rights), May 12, 1999, UN Doc. E/C.12/1999/5, ¶ 6.

<sup>110</sup> General Comment No. 12: The right to adequate food, May 12, 1999, UN Doc. E/C.12/1999/5, ¶ 17.

<sup>111</sup> *Id.*

<sup>112</sup> Voigt, C. The power of the Paris Agreement in international climate litigation. *RECIEL*. 2023; 32(2): 244. doi:[10.1111/reel.12514](https://doi.org/10.1111/reel.12514)

### Commentary on Regional, National, and Subnational State Action

89. The implementation of these rights and principles of international law into an environmental context is not a lineal process resulting from one or two major agreements such as the 1979 Stockholm Declaration or Paris Agreement, but rather, it is an integration and strengthening of a consensus that already exists throughout international environmental law.

90. Multilateral, regional, and national action reflects the global consensus and implementation of these principles. There are many regional examples of the duties of States to the shared biosphere, climate system, and Earth's other interconnected systems will simply support already codified law for many nations; while these principles are traditionally thought of as customary, they bear real obligation on many States. The examples of climate disasters will lead courts to more equitable solutions. The individual experiences of States and their environmental disasters illustrate the urgency of climate change more than mere statistics.

**The implementation of these rights and principles of international law into an environmental context is not a lineal process resulting from one or two major agreements such as the 1979 Stockholm Declaration or, but rather, it is a proliferation and strengthening of a consensus that already exists.**



## The Progressive Development of International Law

91. The analytical process of the Court and the varied authority it gives to sources of international environmental law will be advanced by the advisory opinion. In 2019, in his statement to before the Sixth Committee of the General Assembly, then President of the ICJ, H.E. Mr. Abdulqawi Ahmed Yusuf identified the sources of international law that guided the Court.<sup>113</sup> The Court's approach has evolved.<sup>114</sup> In fact, one of the biggest contributors to the ICJ's shift is the "process of codification and progressive development of international law through multilateral conventions..."<sup>115</sup> Much of this is illustrated by the development of international environmental law itself.

92. In 1969, the ICJ examined the sources of law in the *North Sea Continental Shelf Case*.<sup>116</sup> Here, the Court created a two part test for determining the rule of law: first, the State action must "amount to settled practice," and second, the principle must be carried out in such a way, "as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it."<sup>117</sup> The Court now considers *opinio juris*, State's recognition of a legal duty.

**...the Court created a two part test for determining the rule of law: first, the State action must "amount to settled practice," and second, the principle must be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it." The Court now considers *opinio juris*, State's recognition of a legal duty.**

93. The second element the court consider is the rule established in multilateral conventions.<sup>118</sup> While customary law is reflected in soft law documents like the 1972 Stockholm Declaration, and in State practice through multilateral environmental agreement. A State may choose to dishonor a treaty, but it cannot choose to ignore customary law because custom binds the international community together.<sup>119</sup> Historically, the Court has treated many provisions of the UN Convention on the Law of the Sea as customary law, thus, binding all nations to the provisions, even those not a party to UNCLOS.<sup>120</sup> The five core principles discussed above provide the basis for an expanded understanding of the customary international law for the climate. For example,

<sup>113</sup> H.E. Mr. Abdulqawi Ahmed Yusuf, *The International Court of Justice and unwritten sources of international law*, Nov. 1, 2019, <https://www.icj-cij.org/public/files/press-releases/0/000-20191101-STA-01-00-EN.pdf>.

<sup>114</sup> *Id.* at 2, ¶ 7.

<sup>115</sup> *Id.*

<sup>116</sup> *North Sea Continental Shelf, (Ger./Neth.)*, Advisory Opinion, 1969 I.C.J. 3, 44, ¶ 77 (Feb. 20).

<sup>117</sup> *The International Court of Justice and unwritten sources of international law* at 1, ¶ 13.

<sup>118</sup> *Id.* at 3, ¶ 16.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 4, ¶ 17; See also *Territorial and Maritime Dispute (Nicar. v. Colom.)*, Judgment, 2012 I.C.J. 624, 666, ¶ 114 (Nov. 19).

the 1991 Espoo Convention on Environmental Impact Assessment in Transboundary Context is pivotal in international law in establishing EIA as customary routine in any State activity planning.

94. With the advancement of technology and the growth of the international community leading to more frequent forums to develop international law, customary law is established more rapidly and should thusly be given equal consideration.<sup>121</sup> This is significant in international environmental law because many of the norms have emerged because of the scientific community's ability to monitor environmental degradation and draw causal connections between state action and the destruction of the Earth's biosphere and interconnected systems. Consequently, the recognition of the precautionary principle which establishes a duty to do no harm, even if science is controversial, is equally weighted *opinio juris*; states must now err on the side of caution. The right of future generations is another example of a "newer" principle. Many multilateral agreements have included the right to the environment for future generations, and some national cases have created environmental protection based on the rights of future generations. In *Oposa et al v. Fulgencio S. Factoran, Jr. et al*, the Filipino government cancelled timber licenses to stop chronic deforestation based on the newly minted right of future generations.<sup>122</sup>

95. The Court has explained that *opinio juris* may, with all due caution, be deduced from, inter alia, the attitude of the parties and the attitude of States towards certain General Assembly resolutions.<sup>123</sup> The effect of consent to the text of such resolutions may be understood as acceptance of the validity of the rule or set of rules declared by the resolution. Consequently, even if General Assembly resolutions are not formally binding, they can, in certain circumstances, provide important evidence of the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. The General Assembly has adopted many resolutions on the duty to protect the environment, including the World Charter for Nature.<sup>124</sup>

### Conclusion

96. To fulfill the U.N. General Assembly's request for an advisory opinion, it will be necessary to explain how States should observe the five core principles of international law described above. The advisory opinion will be expected to define the legal basis for the survival of humankind. It shall be indispensable for the progressive development of international law and

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<sup>121</sup> The International Court of Justice and unwritten sources of international law at 4, ¶ 18.

<sup>122</sup> *Oposa et al v. Fulgencio S. Factoran, Jr. et al*, July 30, 1993, G.R. No. 101083, 224 S.C.R.A. 792.

<sup>123</sup> The International Court of Justice and unwritten sources of international law at 5, ¶ 23.

<sup>124</sup> *G.A. Res. 37/7, World Charter for Nature* (Oct. 28, 1982).

for providing significance to the human right to a clean, healthy, and sustainable environment for present and future generations.

97. To safeguard the climate system, a holistic interpretation of all rights and frameworks for the stewardship of Earth’s shared biosphere and the climate system is essential. This entails recognizing the interconnected nature of each. For example, the duty to exercise due diligence may require States to conduct an EIA or cease a particular state action as it would create transboundary harm. While it is helpful to identify each individual principle and right that supports a state duty to protect Earth’s shared biosphere and climate systems, it is vital to recognize that these principles as supportive of one another.

98. Customary international law and binding instruments require robust State action to protect the climate system. As the Court recently recalled, in the *Nicaragua v. Colombia* decision rendered on July 13, 2023, “the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States”, and that “multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in developing them.”<sup>125</sup> States have acknowledged their legal duty to protect the biosphere and climate system. This advisory opinion will elaborate on the measures necessary to fulfill these duties.

**The growing sense of urgency to protect Earth’s shared biosphere and interconnected systems, prolific, internationally binding law, and judicial precedents articulate a robust State duty to protect the biosphere and climate system that support humankind—present and future generations—with clear and direct legal consequences.**

99. These customary rules and principles are a centrifugal force for the progressive development of international law. The growing sense of urgency to protect Earth’s shared biosphere and interconnected systems, prolific, internationally binding law, and judicial precedents articulate a robust State duty to protect the biosphere and climate system that support humankind—present and future generations—with clear and direct legal consequences.

100. The advisory opinion will be expected to address the obligations of States, and the legal consequences under these obligations, providing practical and effective measures that constitute cooperation, solidarity, and due diligence under human rights and environmental rights for the

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<sup>125</sup> Question Of The Delimitation Of The Continental Shelf Between Nicaragua And Colombia Beyond 200 Nautical Miles From The Nicaraguan Coast (Nicar. v. Colom.), Judgment, 2023 I.C.J. 22, ¶ 46 (July 13), citing to: Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, 1985 I.C.J. 29-30, ¶ 27 (June 3); see also North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. 42, ¶ 73 (Feb. 20).

care of the biosphere and the climate system. In the context provided in this NOTE, what are the obligations of States under the international law on cooperation, prevention of significant transboundary harm, due diligence, EIA and human rights to ensure the protection of the biosphere and climate system? These are the questions for which guidance is needed, should States:

- (i) identify the source of all its greenhouse gas emissions?
- (ii) identify all opportunities to sequester carbon and other greenhouse gas emissions?
- (iii) protect biodiversity while sequestering greenhouse gas emissions, such as in preserving forests and preserving and protecting wetlands and soils?
- (iv) undertake measures to protect vulnerable individuals including indigenous peoples?
- (v) take measures of solidarity to protect small island States, coastal communities, and other areas subject to sea level rise?
- (vi) take measures to protect areas prone to desertification and drought?
- (vii) take measures to protect communities in mountainous regions?
- (viii) undertake cooperation to build the capacity of all States to cope with the impacts of climate change?
- (ix) and, more broadly, accelerate their observance of internationally agreed obligations under international environmental law to safeguard the biosphere and climate system?

and

- (x) what are the international environmental law due diligence standards that should also inform the standard of care to be applied by States in discharging their human rights obligations in the context of climate change?

101. Practical and effective measures to address these questions are found in the many recommendations of the U.N. Environment Assembly,<sup>126</sup> the UN Environment Programme, UN

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<sup>126</sup> U.N. Env. Programme, U.N. Env. Assembly, <https://www.unep.org/environmentassembly/> (last visited Aug. 13, 2023).

specialized agencies, other international organizations, as well as regional and national organizations with expertise.

102. No State is immune from the potentially disastrous consequences of neglecting to care for the biosphere and the climate. The five core principles discussed here are sufficient to guide UN Member States, international organizations, civil society, and all stakeholders to do so, while attaining the UN sustainable development goals and observing each person's human right to a clean, healthy, and sustainable environment for present and future generations.

## ICEL Charts on States Obligations Under International Environmental Law

ICEL has prepared these charts to provide a comprehensive survey of the proliferation of the key principles of international law used in the above Note. These charts draw from international environmental law soft law, international tribunals, multilateral agreements, and regional agreements.

### I. Cooperation, Solidarity, and Good Faith

Soft Law Instruments	
1972 Stockholm Declaration	Principles: 22, 24
1987 Montreal Protocol	Article: 9.1
1992 Rio Declaration	Principles: 5, 7, 9, 10, 14, 23, 27
1994 United Nations Framework on Climate Change	Preamble
2002 Johannesburg Declaration	Articles: 5, 24, 34, 35
2012 Rio Declaration on the 'Future We Want'	Articles: 6, 11, 34, 35, 114, 253, 277
2015 The 2030 Agenda for Sustainable Development	Goal: 9.1, 17.6
International Tribunals	
Nuclear Tests (Australia v. France)	1974 I.C.J. 268, ¶ 46
Legality of the threat or use of Nuclear Weapons Advisory Opinion of the ICJ	1996 I.C.J. 264, ¶ 99
Fisheries Jurisdiction Case (U.K. v. Iceland)	1973 I.C.J. 3
Lake Lanoux Arbitration (France v. Spain)	7 R.I.A.A. 283, 308
Pulp Mills on the River Uruguay (Argentina v. Uruguay)	2010 I.C.J. 14, ¶ 145
Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)	1997 I.C.J. 7, ¶ 17, ¶ 140
MOX Plant Case (Ireland v. U.K.)	ITLOS 95, ¶ 82
Multilateral Environmental Agreements	
1978 Convention on the Prohibition of Military and any other hostile uses of environmental modification techniques	Article 3, 5
1979 Geneva Convention on Long-Range Transboundary Air Pollution	Preamble and Article 7
1979 Convention on the Conservation of Migratory Species of Wild Animals	Article 2.3 (a)
1980 Convention on Antarctic Marine Living Resources	Article 11
1982 United Nations Convention on the Law of the Sea	Articles: 118, 143, 144

1985 Vienna Convention for the Protection of the Ozone Layer	Article 3
1998 Montreal Protocol on Substances that Deplete the Ozone Layer	Article 9
1992 Convention on Biological Diversity	Article 13 (b)
1992 United Nations Framework Convention on Climate Change	Articles: 4 (g)(i)
1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes	Articles: 5, 9
1994 United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification	Articles: 1(g)(k), 3, 4, 6, 11, 12
1997 UN Convention on Non-Navigational Uses of International Watercourses	Articles: 8, 23
1997 Kyoto Protocol	Articles: 2, 10
1998 Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Preamble Articles: 1, 16
1999 Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes	Article 11 (a)(b)
2001 Convention on Persistent Organic Pollutants	Articles: 11(1), 12(1)(5)
2008 Draft articles on the Law of Transboundary Aquifers	Article 7
2014 Convention on the Law of the non-navigational Uses of International Watercourses	Articles 5, 8
2015 Paris Agreement	Article 4, 13
2023 Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction	Preamble, Article 8
<b>Regional Agreements<sup>127</sup></b>	

<sup>127</sup> There are many regional agreements and laws of the European Union, which may be accessed at <https://eur-lex.europa.eu/homepage.html> . There are also many agreement by North American states, which may be accessed for Canada at <https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-organizations/participation-international-environmental-agreements.html> , and for the United States of America at <https://www.epa.gov/international-cooperation/selected-multilateral-environmental-instruments-force-us> .

<b>African Union States</b>
<ul style="list-style-type: none"> <li>• 1993, Revised ECOWAS Treaty</li> <li>• 1999 Treaty Establishing the East African Community (EAC)</li> <li>• 2000 Constructive Act of the African Union</li> <li>• 2001 Convention of the African Energy Commission</li> <li>• 2003 Revised African Convention on the Conservation of Nature and Natural Resources</li> <li>• 2014 African Union Convention on Cross-Border Cooperation (Niamey Convention)</li> <li>• 2016 Statute of the African Minerals Development Centre</li> </ul>
<b>South Asia Cooperative Environment Program (SACEP)</b>
<ul style="list-style-type: none"> <li>• Colombo Declaration on South Asia Cooperative Environment Programme of 1981</li> <li>• Declaration of the Year of Trees for South Asia of 1983</li> <li>• 1995 South Asians Seas Action Plan</li> <li>• Male Declaration on Control Prevention of Air Pollution and its Transboundary Effects for South Asia of 1997.</li> <li>• Kathmandu Declaration of 2007</li> <li>• Jaipur Declaration on South Asia Initiative for Combating Illegal Trade in Wildlife of 2008</li> <li>• Resolution on South Asia Biodiversity Beyond 2010</li> <li>• Resolution on Cleaner Fuel and Vehicles of 2010</li> </ul>
<b>The Caribbean Community (CARICOM)</b>
<ul style="list-style-type: none"> <li>• Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy</li> <li>• Caribbean Community Environment and Natural Resources Policy Framework (draft, July 28, 2017): 4.7 Management, Conservation and Sustainable Use of Biodiversity</li> <li>• Caribbean Community Environment and Natural Resources Policy Framework (draft, July 28, 2017): 2 Vision and Guiding Principles</li> </ul>
<b>Commonwealth of Independent States (CIS)</b>
<ul style="list-style-type: none"> <li>• Agreement establishing the Commonwealth of Independent States</li> <li>• 1993 Charter of the Commonwealth of Independent States</li> <li>• 2013 Agreement on Cooperation in the area of environmental protection among the member states of the Commonwealth of Independent States</li> <li>• Agreement on cooperation in the area of environmental monitoring</li> <li>• Agreement on cooperation of the member states of the Commonwealth of Independent States in the area of prevention and liquidation of emergency situations</li> <li>• Agreement on exchange of information on emergency situations of natural and technogenic nature, on information interaction in case of liquidation of their consequences and assistance to affected population.</li> </ul>



- Agreement on basic principles of interaction in the area of rational use and protection of transboundary water bodies
- Agreement on information cooperation in the area of ecology and environmental protection
- Agreement on the control of transboundary movements of hazardous and other wastes
- Model law on Environmental Safety
- Convention on access to information, public participation in decision-making and access to justice in environmental matters

#### **Association of Southeast Asian Nations**

- ASEAN Agreement on the Conservation of Nature and Natural Resources
- Agreement on the Establishment of the ASEAN Centre for Biodiversity
- Agreement on Transboundary Haze Pollution

#### **League of Arab States**

- Memorandum of Understanding between the UN Environment Program (UNEP) and the League of Arab States of November 9, 2014
- Arab Declaration to the World Summit on Sustainable Development 2001

#### **Pacific Islands Forum**

- Agreement Establishing the South Pacific Regional Environment Programme
- Convention for the Protection of the Natural Resources and Environment of the South Pacific Region
- Cartagena Protocol on Biosafety on the Convention on Biological Diversity
- Samoa Pathway
- Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interests
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal Adopted by the Conference of the Plenipotentiaries on 22 March 1989
- South Pacific Forum Fisheries Agency Convention
- Agreement Establishing the South Pacific Applied Geoscience Commission
- Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, Waigani, Papua New Guinea

#### **South Asian Association for Regional Cooperation (SAARC)**

- SAARC Environmental Action Plan
- Colombo Declaration on Common Environment Programme
- Thimphu Statement on Climate Change
- Dhaka Declaration and SAARC Plan on Climate Change
- SAARC Declaration on Climate Change

<ul style="list-style-type: none"> <li>• SAARC Convention on Cooperation on Environment</li> <li>• SAARC Agreement on Rapid Response on to Natural Disasters</li> <li>• SAARC Ministerial Statement on Cooperation on Environment</li> </ul>
<b>Organization of American States (OAS)</b>
<ul style="list-style-type: none"> <li>• Declaration of Santo Domingo for the Sustainable Development of the Americas</li> <li>• Declaration of Santa Cruz de la Sierra</li> <li>• Climate Emergency: Scope of Inter-American Human Rights Obligations Resolution 2/2023</li> <li>• Inter-American Program for Sustainable Development (PIDS)</li> <li>• Declaration Climate Change, Food Security and Migration on the Americas</li> <li>• Declaration on Institutional Strengthening for Sustainable Development</li> <li>• Plan of Action for the Sustainable Development of the Americas</li> <li>• Climate Change in the Framework of Sustainable Development in the Hemisphere</li> </ul>
<b>Other</b>
<ul style="list-style-type: none"> <li>• Framework Convention for the Protection of the Environment of the Caspian Sea (Tehran Convention)</li> </ul>

## II. Prevention of Significant Transboundary Harm

Soft Law Instruments	
1972 Stockholm Declaration	Principle 7, 24, 22, 42
1992 Rio Declaration	Principle 13, 14
United Nations Convention on Climate Change	Article 3
International Tribunals	
The Corfu Channel Case (U.K. & Northern Ireland v. Albania)	1949 I.C.J. 9
Trail Smelter Arbitration (U.S. v. Canada)	3 R.I.A.A 1905
The M/T “San Padre Pio” Case (Switzerland v. Nigeria)	2018-2019 ITLOS 375.
Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua); Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)	2015 I.C.J. 665
Multilateral Environmental Agreements	
1979 Geneva Convention on Long-Range Transboundary Air Pollution	Article 7, 8,
1982 United Nations Convention on the Law of the Sea	Part XII, Articles 192 et seq
1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context	Preamble, Article 2(1)
1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes	Articles 2, 3

1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes	Article 2(1), 2(2)(a)(c), 3, 5, 9, 16,
1994 United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification	Article 11
1997 Espoo Convention on Environmental Impact Assessment in a Transboundary Context	Article 5
1999 Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes	Article 1, 2, 5, 13,
2000 Cartagena Protocol on Biosafety	Article 27
2001 Draft Articles on Prevention of Transboundary Harm from Hazardous Activities	Article 2 (c)
2023 Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction	Annex I, Articles 2, 3
<b>Regional Agreements<sup>128</sup></b>	
<b>African Union States</b>	
<ul style="list-style-type: none"> <li>• Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (1991)</li> <li>• Revised African Convention on the Conservation of Nature and Natural Resources, 2003</li> </ul>	
<b>South Asia Cooperative Environment Program (SACEP)</b>	
<ul style="list-style-type: none"> <li>• Male Declaration on Control and Prevention of Air Pollution and its Transboundary Effects for South Asia of 1997</li> <li>• South Asian Seas Action Plan(1995)</li> <li>• Jaipur Declaration on South Asia Initiative for Combating Illegal Trade in Wildlife of 2008</li> <li>• Declaration of the Year of Trees for South Asia of 1983</li> </ul>	
<b>The Caribbean Community (CARICOM)</b>	
<ul style="list-style-type: none"> <li>• Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy</li> </ul>	

<sup>128</sup> There are many regional agreements and laws of the European Union, which may be accessed at <https://eur-lex.europa.eu/homepage.html> . There are also many agreement by North American states, which may be accessed for Canada at <https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-organizations/participation-international-environmental-agreements.html> , and for the United States of America at <https://www.epa.gov/international-cooperation/selected-multilateral-environmental-instruments-force-us> .

<ul style="list-style-type: none"> <li>Caribbean Community Environment and Natural Resources Policy Framework (draft, July 28, 2017): 2 Vision and Guiding Principles</li> </ul>
<b>Commonwealth of Independent States (CIS)</b>
<ul style="list-style-type: none"> <li>Model Law on Environmental Safety 2003</li> <li>Agreement on Cooperation in the Area of Environmental Protection Among the Member States of the Commonwealth of Independent States 2013</li> </ul>
<b>Association of Southeast Asian Nations</b>
<ul style="list-style-type: none"> <li>ASEAN Agreement on Transboundary Haze Pollution</li> </ul>
<b>League of Arab States</b>
<ul style="list-style-type: none"> <li>The Arab Ministerial Declaration on Climate Change of December 6, 2007 (Cairo)</li> <li>Abu Dhabi Declaration on the Future of Environmental Action in the Arab World, 2001</li> </ul>
<b>Pacific Islands Forum</b>
<ul style="list-style-type: none"> <li>Regional Treaty of the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, Waigani, Papua New Guinea (the Waigani Convention),</li> <li>Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal Adopted by the Conference of the Plenipotentiaries on 22 March 1989</li> <li>Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest</li> <li>Convention for the Protection of the Natural Resources and Environment of the South Pacific Region</li> <li>Protocol for the Prevention of Pollution of the South Pacific Region by Dumping</li> <li>Agreement Establishing the South Pacific Regional Environment Programme</li> </ul>
<b>South Asian Association for Regional Cooperation (SAARC)</b>
<ul style="list-style-type: none"> <li>SAARC Environmental Action Plan</li> <li>Colombo Declaration on Common Environment Programme</li> <li>Thimphu Statement on Climate Change</li> <li>Disaster Management in South Asia: a Comprehensive Regional Framework for Action 2006-2015</li> </ul>
<b>Organization of American States (OAS)</b>
<ul style="list-style-type: none"> <li>Declaration of Santo Domingo for the Sustainable Development of the Americas</li> <li>Declaration of Santa Cruz+10</li> <li>Declaration of Santa Cruz de la Sierra-Specialized Summit on Sustainable Development</li> </ul>

### III. Procedural Due Diligence

#### Soft Law Instruments

1972 Stockholm Declaration	Principles: 7, 24
1987 Montreal Protocol	Article: 9
1992 Rio Declaration	Principles: 14
2002 Johannesburg Declaration	Annex: 7
2012 Rio Declaration on the 'Future We Want'	Articles: 164, 219
<b>International Court of Justice Decisions</b>	
The M/T "San Padre Pio" Case ( <i>Switzerland v. Nigeria</i> )	International Tribunal for the Law of the Sea Reports 2018-2019, p. 375.
Pulp Mills on the River Uruguay ( <i>Argentina v. Uruguay</i> )	2010 I.C.J.665, 785, ¶19
Certain Activities Carried Out by Nicaragua in the Border Area ( <i>Costa Rica v. Nicaragua</i> )	2018 I.C.J. 15
<b>Multilateral Environmental Agreements</b>	
1982 United Nations Convention on the Law of the Sea	Part XII, Articles 192 et seq
1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context	Preamble, Article 2(1)
1992 Convention on Biological Diversity	Articles: 3, 14
1992 United Nations Framework Convention on Climate Change	Articles: 3
1997 UN Convention on Non-Navigational Uses of International Watercourses	Articles: 21
1997 Kyoto Protocol	Articles: 2, 10
<b>Regional Agreements<sup>129</sup></b>	
<b>African Union States</b>	
<ul style="list-style-type: none"> <li>• 1991 Bamako Convention on the Ban of the Import into African and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa</li> <li>• 2003 Revised African Convention on the Conservation of Nature and Natural Resources</li> </ul>	
<b>South Asia Cooperative Environment Program (SACEP)</b>	
<ul style="list-style-type: none"> <li>• 1995 South Asian Seas Action Plan</li> <li>• 1997 Male Declaration on Control and Prevention of Air Pollution and its Transboundary Effects for South Asia</li> <li>• 2007 Kathmandu Declaration of 2007</li> </ul>	

<sup>129</sup> There are many regional agreements and laws of the European Union, which may be accessed at <https://eur-lex.europa.eu/homepage.html> . There are also many agreement by North American states, which may be accessed for Canada at <https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-organizations/participation-international-environmental-agreements.html> , and for the United States of America at <https://www.epa.gov/international-cooperation/selected-multilateral-environmental-instruments-force-us> .

<b>The Caribbean Community (CARICOM)</b>
<ul style="list-style-type: none"> <li>• N/A</li> </ul>
<b>Commonwealth of Independent States (CIS)</b>
<ul style="list-style-type: none"> <li>• 2013 Agreement on Cooperation in the Area of Environmental Protection among the Member States of the Commonwealth of Independent State</li> <li>• Agreement about joint and coordinated efforts of the Commonwealth Member States for minimizing and overcoming the consequences of the Chernobyl disaster</li> </ul>
<b>Association of Southeast Asian Nations (ASEAN)</b>
<ul style="list-style-type: none"> <li>• ASEAN Agreement on the Conservation of Nature and Natural Resources</li> <li>• ASEAN Agreement on Transboundary Haze Pollution</li> </ul>
<b>League of Arab States</b>
<ul style="list-style-type: none"> <li>• 2001 Arab Declaration to the World Summit on Sustainable Development</li> <li>• 2004 Arab Charter on Human Rights</li> </ul>
<b>Pacific Islands Forum</b>
<ul style="list-style-type: none"> <li>• Convention for the Protection of the Natural Resources and Environment of the South Pacific Region</li> <li>• Protocol for the Prevention of Pollution of the South Pacific Region by Dumping</li> <li>• Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, Waigani, Papua New Guinea (The Waigani Convention)</li> </ul>
<b>South Asian Association for Regional Cooperation (SAARC)</b>
<ul style="list-style-type: none"> <li>• SAARC Convention on Cooperation on Environment</li> </ul>
<b>Organization of American States (OAS)</b>
<ul style="list-style-type: none"> <li>• Climate Emergency: Scope of Inter-American Human Rights Obligations Resolution 2/2023</li> <li>• Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere</li> <li>• Model Law on Access to Information</li> <li>• Declaration of Santa Cruz de la Sierra-Specialized Summit on Sustainable Development</li> <li>• Inter-American Program for Sustainable Development (PIDS)</li> <li>• Declaration of Santa Cruz +10</li> <li>• Declaration of Santo Domingo for the Sustainable Development of the Americas</li> </ul>

#### IV. Environmental Impact Assessment

Soft Law Instruments	
1992 Rio Declaration	Principle 14, 17
1972 UN Declaration on the Human Environment	
International Court of Justice Decisions	

Pulp Mills on the River Uruguay (Argentina v. Uruguay)	210 I.C.J. 14
Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua); Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)	2015 I.C.J. 665
Case Concerning The Gabčíkovo-Nagymaros Project (Hungary/Slovakia)	1997 I.C.J. 7
Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D'ivoire in the Atlantic Ocean (Ghana v. Côte D'ivoire)	2017 International Tribunal for the Law of the Sea 34
<b>Multilateral Environmental Agreements</b>	
1982 United Nations Convention on the Law of the Sea	Part XII, Articles 204-206
1985 Vienna Convention for the Protection of the Ozone Layer	Article 3
1991 Convention on Environmental Impact Assessments- Espoo Convention	See all, especially Preamble and Article 2(1), 9
1992 Convention on Biological Diversity	Article 14.1 (a)(b)
1992 United Nations Framework Convention on Climate Change	Article 4(f)
1992 Convention of the Protection and Use of Transboundary Watercourses and International Lakes	Article 5, 16
1997 Espoo Convention on Environmental Impact Assessment in a Transboundary Context	See all, especially Article 5, 9
2003 Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in Transboundary Context (SEA Protocol)	See All
2023 Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,	Part IV Articles 27-39
<b>Regional Agreements<sup>130</sup></b>	
<b>African Union States</b>	
<ul style="list-style-type: none"> <li>Revised African Convention on the Conservation of Nature and Natural Resources 2003</li> </ul>	

<sup>130</sup> There are many regional agreements and laws of the European Union, which may be accessed at <https://eur-lex.europa.eu/homepage.html> . There are also many agreement by North American states, which may be accessed for Canada at <https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-organizations/participation-international-environmental-agreements.html> , and for the United States of America at <https://www.epa.gov/international-cooperation/selected-multilateral-environmental-instruments-force-us> .

<ul style="list-style-type: none"> <li>• Treaty Establishing the African Economic Community 1991</li> <li>• Treaty Establishing the East Africa Community (EAC) 1999</li> </ul>
<b>South Asia Cooperative Environment Program (SACEP)</b>
<ul style="list-style-type: none"> <li>• 1995 South Asians Seas Action Plan</li> <li>• Male Declaration on Control Prevention of Air Pollution and its Transboundary Effects for South Asia of 1997.</li> <li>• Kathmandu Declaration of 2007</li> </ul>
<b>The Caribbean Community (CARICOM)</b>
<ul style="list-style-type: none"> <li>• Caribbean Community Environment and Natural Resources Policy Framework (draft, July 28, 2017): 4.7 Management, Conservation and Sustainable Use of Biodiversity</li> <li>• Caribbean Community Environment and Natural Resources Policy Framework (draft, July 28, 2017): 2 Vision and Guiding Principles</li> </ul>
<b>Commonwealth of Independent States (CIS)</b>
<ul style="list-style-type: none"> <li>• 2013 Agreement on Cooperation in the area of environmental protection among the member states of the Commonwealth of Independent States</li> <li>• Agreement on information cooperation in the area of ecology and environmental protection</li> <li>• Agreement on the control of transboundary movements of hazardous and other wastes</li> <li>• Model law on Environmental Safety</li> </ul>
<b>Association of Southeast Asian Nations (ASEAN)</b>
<ul style="list-style-type: none"> <li>• ASEAN Agreement on the Conservation of Nature and Natural Resources</li> </ul>
<b>League of Arab States</b>
<ul style="list-style-type: none"> <li>• Arab Ministerial Declaration on Climate Change of December 6, 2007</li> <li>• Abu Dhabi Declaration on the Future of the Environmental Action in the Arab World, 2001</li> </ul>
<b>Pacific Islands Forum</b>
<ul style="list-style-type: none"> <li>• Convention for the Protection of the Natural Resources and Environment of the South Pacific Region</li> <li>• Cartagena Protocol on Biosafety on the Convention on Biological Diversity</li> <li>• Convention on Wetlands of International Importance especially as Waterfowl Habitat</li> </ul>
<b>South Asian Association for Regional Cooperation (SAARC)</b>
<ul style="list-style-type: none"> <li>• SAARC Environmental Action Plan</li> <li>• Disaster Management in South Asia: A Comprehensive Regional Framework for Action 2006-2015</li> </ul>
<b>Organization of American States (OAS)</b>
<ul style="list-style-type: none"> <li>• Climate Emergency: Scope of Inter-American Human Rights Obligations Resolution 2/2023</li> <li>• The Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development.</li> </ul>



- Plan of Action for the Sustainable Development of the Americas
- Declaration of Santa Cruz de la Sierra-Specialized Summit on Sustainable Development
- Declaration of Santa Cruz +10

## V. Right to a Healthy Environment

Soft Law Instruments	
1972 Stockholm Declaration	Principles: 1
1992 Rio Declaration	Principles: 1
2012 Rio Declaration on the 'Future We Want'	Articles: 6, 11, 34, 35, 114, 253, 277
2015, The 2030 Agenda for Sustainable Development	Preamble, Declaration 9, SDG Goal 1, 6, 7, 10, 11, 12, 13, 14, 15
International Court of Justice Decisions	
Pulp Mills on the River Uruguay (Argentina v. Uruguay)	210 I.C.J. 14
Certain Activities Carried Out by Nicaragua in the Border Area) <i>Costa Rica v. Nicaragua</i> ); Construction of a Road in Costa Rica along the San Juan River ( <i>Nicaragua v. Costa Rica</i> )	2015 I.C.J. 665
Case Concerning The Gabčíkovo-Nagymaros Project (Hungary/Slovakia)	1997 I.C.J. 7
North Sea Continental Shelf (Germany/Netherlands)	1969 I.C.J. 44, ¶ 77
Ahmadou Sadio Diallo (Guinea v. Democratic Republic of Congo)	2010 I.C.J. 639
Territorial and Maritime Dispute (Nicaragua v. Colombia)	2012 I.C.J. 624
<i>Oposa et al v. Fulgencio S. Factoran, Jr. et al</i>	224 S.C.R.A 792
Multilateral Environmental Agreements	
1982 United Nations Convention on the Law of the Sea	Articles: 61, 117, 145
1985 Vienna Convention for the Protection of the Ozone Layer	Article 3
1992 Convention on Biological Diversity	Article 3
1992 United Nations Framework Convention on Climate Change	Articles: 3, 4
1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes	Articles: 2.2(b)(c)(d)
1997 UN Convention on Non-Navigational Uses of International Watercourses	Articles: 23
1997 Kyoto Protocol	Articles: 3

1998 Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Articles: 1, 16
1997 Espoo Convention on Environmental Impact Assessment in a Transboundary Context	Preamble
<b>Regional Agreements<sup>131</sup></b>	
<b>African Union States</b>	
<ul style="list-style-type: none"> <li>• 1981 African Charter on Human and People's Rights</li> <li>• 1999 Treaty Establishing the East African Community (EAC)</li> <li>• 2003 Protocol on the Rights of Women in Africa</li> <li>• 2003 Revised African Convention on the Conservation of Nature and Natural Resources</li> </ul>	
<b>South Asia Cooperative Environment Program (SACEP)</b>	
<ul style="list-style-type: none"> <li>• Male Declaration on Control Prevention of Air Pollution and its Transboundary Effects for South Asia of 1997.</li> <li>• Kathmandu Declaration of 2007</li> <li>• Resolution on South Asia Biodiversity Beyond 2010</li> </ul>	
<b>The Caribbean Community (CARICOM)</b>	
<ul style="list-style-type: none"> <li>• Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy</li> <li>• Caribbean Community Environment and Natural Resources Policy Framework (draft, July 28, 2017): Vision and Guiding Principles</li> </ul>	
<b>Commonwealth of Independent States (CIS)</b>	
<ul style="list-style-type: none"> <li>• 1991 Agreement establishing the Commonwealth of Independent States</li> <li>• 1993 Charter of the Commonwealth of Independent States</li> <li>• 2013 Agreement on Cooperation in the area of environmental protection among the member states of the Commonwealth of Independent States</li> <li>• 1998 Agreement on information cooperation in the area of ecology and environmental protection</li> <li>• 2003 Model law on Environmental Safety</li> <li>• Convention on access to information, public participation in decision-making and access to justice in environmental matters</li> </ul>	
<b>Association of Southeast Asian Nations</b>	

<sup>131</sup> There are many regional agreements and laws of the European Union, which may be accessed at <https://eur-lex.europa.eu/homepage.html> . There are also many agreement by North American states, which may be accessed for Canada at <https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-organizations/participation-international-environmental-agreements.html> , and for the United States of America at <https://www.epa.gov/international-cooperation/selected-multilateral-environmental-instruments-force-us> .

<ul style="list-style-type: none"> <li>• ASEAN Agreement on the Conservation of Nature and Natural Resources</li> <li>• Agreement on Transboundary Haze Pollution</li> </ul>
<b>League of Arab States</b>
<ul style="list-style-type: none"> <li>• Arab Charter in Human Rights 2004</li> </ul>
<b>Pacific Islands Forum</b>
<ul style="list-style-type: none"> <li>• Agreement Establishing the South Pacific Regional Environment Programme</li> <li>• Convention for the Protection of the Natural Resources and Environment of the South Pacific Region</li> <li>• Regional Treaty of the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, Waigaini, Papua New Guinea</li> </ul>
<b>South Asian Association for Regional Cooperation (SAARC)</b>
<ul style="list-style-type: none"> <li>• SAARC Environmental Action Plan</li> <li>• Thimphu Statement on Climate Change</li> <li>• SAARC Declaration on Climate Change</li> <li>• SAARC Ministerial Statement on Cooperation on Environment</li> </ul>
<b>Organization of American States (OAS)</b>
<ul style="list-style-type: none"> <li>• Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights “Protocol San Salvador”</li> <li>• Human Rights and the Environment in the Americas: AG/RES. 1819 (XXXII-O/02) and AG/RES. 1926 (XXXII-O/03)</li> <li>• Declaration of Santa Cruz de la Sierra-Specialized Summit on Sustainable Development</li> </ul>

**ICJ DOSSIER**<sup>132</sup>

**MATERIALS COMPILED PURSUANT TO ARTICLE 65, PARAGRAPH 2 OF THE STATUTE OF THE  
INTERNATIONAL COURT OF JUSTICE**<sup>133</sup>

**(Request for an advisory opinion by the International Court of Justice pursuant to General  
Assembly Resolution 77/276)**

**Introductory**

**Note 30 June 2023**

**The Request**

1. Under agenda item 70 of the seventy-seventh session of the General Assembly entitled “Report of the International Court of Justice”, the representative of Vanuatu, on behalf of Algeria, Andorra, Angola, Antigua and Barbuda, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belgium, Belize, Bulgaria, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Djibouti, Dominican Republic, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea-Bissau, Guyana, Hungary, Iceland, Ireland, Italy, Jamaica, Kiribati, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, North Macedonia, Norway, Palau, Panama, Papua New Guinea, Portugal, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Vanuatu, Viet Nam and State of Palestine, submitted a draft resolution entitled “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”, issued on 1 March 2023 as document A/77/L.58. Subsequently, the following countries joined in sponsoring the draft resolution: Afghanistan, Armenia, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Burundi, Dominica, Ecuador, El Salvador, Equatorial Guinea, Ghana, Haiti, Indonesia, Israel, Japan, Kyrgyzstan, Malaysia, Mali, Mongolia, Niger, Peru, the Philippines, Poland, the Republic of Korea, San Marino, Tajikistan, Thailand, Timor-Leste and Uruguay.

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<sup>132</sup> [Obligations of States in respect of Climate Change](#) (icj-cij.org)

<sup>133</sup> [Introductory note](#) (icj-cij.org)

2. On 29 March 2023, at the sixty-fourth plenary meeting, the General Assembly adopted resolution 77/276 by consensus. The question contained in the resolution, upon which the International Court of Justice (“the Court”) is requested to render an advisory opinion, reads as follows:

*The General Assembly, ...*

*Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:*

“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are 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 greenhouse gases for States and for present and future generations;

(b) What are 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:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”

3. The certified true copies of the resolution, in English and French, were transmitted to the Court under cover of a letter dated 12 April 2023 from the Secretary-General of the United Nations to the President of the Court. In his letter, the Secretary-General informed the President of the Court that, pursuant to Article 65, paragraph 2, of the Statute of the Court, the United Nations Secretariat would prepare a dossier containing a collection of all documents that are likely to throw light upon these questions, to be transmitted to the Court in due course.

## **Framework of the Dossier**

4. Given the broad nature of the subject of climate change and the large amount of documentation available from the relevant intergovernmental processes of the United Nations that refer to or touch upon climate-related matters, the selection of documents included in this dossier was based on the documents, instruments and principles referenced in General Assembly resolution 77/276, including its preamble and the question put to the Court.

5. The Dossier is divided into eight parts, as follows: (I) request by the General Assembly for an advisory opinion of the Court, (II) multilateral treaties, (III) scientific reports, (IV) development of international law, (V) protection of the climate system and other parts of the environment, (VI) outcomes of United Nations conferences and follow-up processes and related documents, (VII) law of the sea and (VIII) human rights and climate change. The approach taken in each part is set out in more detail below.

6. As a general matter, the approach taken in selecting the documents is as follows. In instances where the information is reproduced in more than one document, only the most recent or comprehensive document has been included in the Dossier. Where the relevant information is contained in a longer document, only the extract of the relevant section has been included in the Dossier. Documents that set out individual Member or Observer State positions have not been included. In general, documents relating to procedural matters have also not been included.

### **Part I: Request by the General Assembly for an Advisory Opinion of the Court**

7. This section contains documents on the procedural steps taken with respect to the adoption of General Assembly resolution 77/276, including the verbatim record of the meeting of the General Assembly at which resolution 77/276 was adopted.

### **Part II: Multilateral treaties**

8. This part contains multilateral treaties referred to in General Assembly resolution 77/276. In addition, it also includes multilateral treaties referenced in the resolutions of the General Assembly and Human Rights Council that are referred to in General Assembly resolution 77/276. The multilateral treaties, including any amendments, annexes or protocols thereto, are set out according to the following subject matters:

(A) Climate change

- (B) Desertification
- (C) Biological diversity
- (D) Protection of the ozone layer
- (E) Law of the sea
- (F) Human rights

9. Relevant information relating to the date of adoption and entry into force of the treaties and corrections or rectifications of the texts of the treaties, where applicable, is also indicated.

### **Part III: Scientific reports**

10. Section A contains reports of the Intergovernmental Panel on Climate Change (“IPCC”), as referenced in General Assembly resolution 77/276, comprising summaries of select reports of Working Groups I, II and III, IPCC special reports and the Synthesis Report of the IPCC Sixth Assessment Report. This section includes reports referred to in the Sharm el-Sheikh Implementation Plan adopted at the most recent United Nations Climate Change Conference held in November 2022.

11. Section B contains the adaptation gap and emissions gap reports of the United Nations Environment Programme (“UNEP”), and the global report of the World Meteorological Organization (“WMO”) on the state of the climate referred to in the Sharm el-Sheikh Implementation Plan adopted at the most recent United Nations Climate Change Conference held in November 2022.

### **Part IV: Development of international law**

12. This part contains relevant materials from the completed and ongoing programme of work of the International Law Commission (“ILC”), on the following topics:

- (A) Responsibility of States for internationally wrongful acts
- (B) Protection of the atmosphere
- (C) Protection of persons in the event of disasters
- (D) Protection of the environment in relation to armed conflict
- (E) Transboundary harm from hazardous activities
- (F) Sea-level rise in relation to international law

13. The material in this part includes reports of Special Rapporteurs, papers and reports of the ILC, General Assembly resolutions regarding reports of the ILC and one volume of the United

Nations Legislative Series, where available and relevant to the question. Some of the documents in this part are extracts from longer documents.

## **Part V: Protection of the climate system and other parts of the environment**

14. Section A contains General Assembly resolution 77/165 of 14 December 2022 and all other resolutions of the General Assembly relating to the protection of the global climate for present and future generations of humankind, as referenced in General Assembly resolution 77/276.

15. Section B contains documents related to the United Nations Framework Convention on Climate Change (“Framework Convention”), the Convention on Biological Diversity (“CBD”) and the 5 United Nations Convention to Combat Desertification (“UNCCD”), (collectively, the “Rio conventions”) and referenced in General Assembly resolution 77/276.

16. Subsection B (1) contains selected outcome documents from United Nations conferences on questions of the environment prior to the entry into force of the Rio conventions. The subsequent sub-sections contain documents relating to the respective Rio conventions.

17. Sub-section B (2) contains documents relating to the Framework Convention and the Paris Agreement. This sub-section includes (i) select documents from the negotiation processes leading up to the adoption of the Framework Convention and the Paris Agreement, (ii) select decisions of the Conference of the Parties to the Framework Convention on Climate Change (“COP”), (iii) select decisions of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (“CMA”) and (iv) reports submitted to the COP and CMA by the UNFCCC secretariat.

18. Not every decision of the COP and CMA has been included in the Dossier. The Dossier includes those decisions of the COP or CMA that set out policies and substantive recommendations pursuant to the Framework Convention or the Paris Agreement, with a focus on the most relevant or most recent decisions.

19. The first global stocktake of the implementation of the Paris Agreement which began at the CMA3 in November 2022 is scheduled to conclude at CMA6 at the end of 2023. As the global stocktake process is still ongoing, documents submitted or prepared for this process so far have not been included in the Dossier.

20. Sub-section B (3) contains decisions adopted by the Conference of the Parties to the CBD related to climate change.



21. Sub-section B (4) contains documents relating to the UNCCD and interlinkages with climate change, as well as the relationship between UNCCD and other relevant conventions.
22. Sub-section B (5) contains documents relating to the implementation of the Rio conventions. It includes the most recent Note of the Secretary-General to the General Assembly, as well as select General Assembly resolutions on the implementation of the Framework Convention, the Paris Agreement, CBD and UNCCD and other related subject matters.
23. Section C contains documents relating to climate change and the environment from other bodies. This section includes documents from (1) the General Assembly, (2) the United Nations Environment Assembly, (3) the Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services and (4) outcomes related to the United Nations Forum on Forests.

#### **Part VI: Outcomes of United Nations conferences and follow-up processes and related documents**

24. Section A contains documents relating to the Millennium Summit and sustainable development conferences. Sub-section A (1) contains documents related to the Millennium Summit and the Millennium Development Goals. Sub-section A (2) contains documents related to the UN conferences and processes on sustainable development, including the high-level political forum. It comprises documents related to the post-2015 development agenda, including General Assembly resolution 70/1 on “Transforming our world: the 2030 Agenda for Sustainable Development”, which is referred to in resolution 77/276. Sub-section A (3) contains documents from UN conferences and follow-up processes relating to Small Island Developing States; sub-section A (4) contains the outcome document of the Fifth UN Conference on the Least Developed Countries and the follow-up to the Conference; sub-section A (5) contains the outcome document of the second UN Conference on Landlocked Developing Countries and the follow-up to the Conference; and sub-section A (6) contains documents related to disaster risk reduction.
25. Section B contains documents relating to the outcomes and follow-up of other relevant United Nations conferences and processes. This section includes selected outcome documents from the conferences referenced in the General Assembly and Human Rights Council resolutions referred to in General Assembly resolution 77/276.
26. In each case, the final outcome document or the General Assembly resolution endorsing and annexing the outcome has been included. Documents issued in the lead-up to the adoption of the final outcome document have not been included.

## **Part VII: Law of the sea**

27. Section A contains relevant General Assembly resolutions on oceans and the law of the sea. The General Assembly adopts an annual resolution on oceans and the law of the sea. Since the adoption of resolution 61/222 on 20 December 2006, these have included language on the adverse effects of climate change. The General Assembly also adopts an annual resolution on sustainable fisheries. In this Section, only the most recent General Assembly resolutions on these two subjects have been included.

28. Section B contains reports submitted to the General Assembly that provide information on the impact of climate change on the oceans. It includes reports of the Secretary-General submitted to facilitate the discussion during the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea on ocean acidification, effects of climate change on oceans and sea-level rise. It also includes summaries of the first and second World Ocean Assessment prepared by the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects, submitted to the General Assembly.

## **Part VIII: Human rights and climate change**

29. This part contains United Nations documents on human rights and climate change more broadly. It does not include documents relating to country-specific situations.

30. Section A contains relevant General Assembly resolutions, including the Universal Declaration of Human Rights, which was adopted by the General Assembly in 1948. It also includes General Assembly resolution 76/300 on the human right to a clean, healthy and sustainable environment, which is referred to in General Assembly resolution 77/276, as well as other relevant General Assembly resolutions that relate to climate change and the right to development, the right to food, the situation of women and girls and policies and programmes involving youth.

31. Section B contains relevant Human Rights Council resolutions. Sub-section B (1) contains all resolutions of the Human Rights Council on human rights and climate change, as referred to in General Assembly 77/276. Sub-section B (2) contains other relevant Human Rights Council resolutions, including those that link human rights with climate change, the environment and sustainable development, including in disaster settings.

32. Section C contains reports submitted to the Human Rights Council by the Secretary-General and the United Nations High Commissioner for Human Rights. The reports relate to the

relationship between climate change and human rights and to human rights protection gaps in the context of adverse effects of climate change.

33. Section D contains documents of the United Nations human rights treaty bodies. This section includes general comments, recommendations and statements that relate to climate change and its impacts adopted by the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Human Rights Committee, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the Committee on the Rights of Persons with Disabilities. It does not include decisions and opinions of these Committees concerning individual complaints, petitions or communications addressed to them through the complaint mechanisms.

34. Section E contains reports and statements prepared by the special procedures and mandate holders of the Human Rights Council. In this section, the reports and statements relating to the enjoyment of human rights in relation to climate change have been included. Select reports prepared by the following mandate holders have been included:

- (1) Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;
- (2) Special Rapporteur on the promotion and protection of human rights in the context of climate change;
- (3) Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- (4) Special Rapporteur on the right to food;
- (5) Special Rapporteur on extreme poverty and human rights;
- (6) Special Rapporteur in the field of cultural rights;
- (7) Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context;
- (8) Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
- (9) Special Rapporteur on the human rights of internally displaced persons;
- (10) Special Rapporteur on the human rights of migrants;
- (11) Special Rapporteur on the right to development;
- (12) Special Rapporteur on trafficking in persons, especially women and children;
- (13) Special Rapporteur on violence against women and girls, its causes, and consequences;
- (14) Special Rapporteur on the rights of Indigenous Peoples; and
- (15) Independent Expert on human rights and international solidarity.

**THE TEXT OF THE DRAFT CONCLUSIONS ON GENERAL PRINCIPLES OF LAW ADOPTED BY THE  
INTERNATIONAL LAW COMMISSION ON FIRST READING (2023)**

The text of the draft conclusions on General Principles of Law adopted by the International Law Commission on first reading at its seventy-fourth session is reproduced below:<sup>134</sup>

**Conclusion 1**

**Scope**

The present draft conclusions concern general principles of law as a source of international law.

**Conclusion 2**

**Recognition**

For a general principle of law to exist, it must be recognized by the community of nations.

**Conclusion 3**

**Categories of general principles of law**

General principles of law comprise those:

- (a) that are derived from national legal systems;
- (b) that may be formed within the international legal system

**Conclusion 4**

**Identification of general principles of law derived from national legal systems**

To determine the existence and content of a general principle of law derived from national legal systems, it is necessary to ascertain:

- (a) the existence of a principle common to the various legal systems of the world; and
- (b) its transposition to the international legal system

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<sup>134</sup> Report on the work of the seventy-fourth session (2023) — International Law Commission (un.org).

## **Conclusion 5**

### **Determination of the existence of a principle common to the various legal systems of the world**

1. To determine the existence of a principle common to the various legal systems of the world, a comparative analysis of national legal systems is required.
2. The comparative analysis must be wide and representative, including the different regions of the world.
3. The comparative analysis includes an assessment of national laws and decisions of national courts, and other relevant materials

## **Conclusion 6**

### **Determination of transposition to the international legal system**

A principle common to the various legal systems of the world may be transposed to the international legal system insofar as it is compatible with that system

## **Conclusion 7**

### **Identification of general principles of law formed within the international legal system**

1. To determine the existence and content of a general principle of law that may be formed within the international legal system, it is necessary to ascertain that the community of nations has recognized the principle as intrinsic to the international legal system.
2. Paragraph 1 is without prejudice to the question of the possible existence of other general principles of law formed within the international legal system

## **Conclusion 8**

### **Decisions of courts and tribunals**

1. Decisions of international courts and tribunals, in particular of the International Court of Justice, concerning the existence and content of general principles of law are a subsidiary means for the determination of such principles.
2. Regard may be had, as appropriate, to decisions of national courts concerning the existence and content of general principles of law, as a subsidiary means for the determination of such principles

## **Conclusion 9**

### **Teachings**

Teachings of the most highly qualified publicists of the various nations may serve as a subsidiary means for the determination of general principles of law.

## **Conclusion 10**

### **Functions of general principles of law**

1. General principles of law are mainly resorted to when other rules of international law do not resolve a particular issue in whole or in part.
2. General principles of law contribute to the coherence of the international legal system. They may serve, inter alia:
  - (a) to interpret and complement other rules of international law;
  - (b) as a basis for primary rights and obligations, as well as a basis for secondary and procedural rules.

## **Conclusion 11**

### **Relationship between general principles of law and treaties and customary international law**

1. General principles of law, as a source of international law, are not in a hierarchical relationship with treaties and customary international law.
2. A general principle of law may exist in parallel with a rule of the same or similar content in a treaty or customary international law.
3. Any conflict between a general principle of law and a rule in a treaty or customary international law is to be resolved by applying the generally accepted techniques of interpretation and conflict resolution in international law.

## **ANNEX I**

### **The importance of Indigenous voices**

1. The duty of solidarity, as well as the other normative rules of international law discussed in this Note, demands the inclusion of the voices of Indigenous peoples living in the actual submissions to the Court, or appended to them. To be sure, the inclusion of Indigenous peoples' traditional knowledge and stewardship methodologies of Earth's shared biosphere and interconnected systems, and their views and experience on environmental impacts of climate change would enrich the advisory proceedings.
2. To seek a substantive and inclusive advisory opinion, brief must consider wide-ranging and regionally specific narratives of the ways that climate change has already violated the enjoyment of rights or that such a violation is imminent.<sup>135</sup> However, these environmental issues touch the lives of Indigenous peoples in unique and magnified ways as these communities enjoy an intimate and dependent relationship with the natural world.
3. Furthermore, the impacts of climate change disproportionately affect Indigenous peoples, as many of them tend to live geographically remote and natural locations.<sup>136</sup>
4. The duties of cooperation, solidarity, good faith, prevention of significant transboundary harm, conducting EIAs, and protecting human rights must be applied to States' relationships with Indigenous populations residing within their borders. The duty of cooperation extends to include conversation and collaboration with Indigenous populations in global forums. Though traditionally excluded from significant global conversations, various UN bodies have intentionally sought to gain insight from Indigenous wisdom in areas such as sustainable development.
5. Article 2 of the 1989 Indigenous and Tribal Peoples Convention calls for States to develop, "with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity."<sup>137</sup>
6. The adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the General Assembly on 13 September 2007, following more than two decades of negotiations between governments and indigenous peoples' representatives, can be

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<sup>135</sup> Torres Strait Islanders Petition (Daniel Billy and others v. Austl.), Judgment, 5, ¶ 4.2, CCPR/C/135/D/3624/2019 (U.N.H.R. Comm. 2022).

<sup>136</sup> See UN DESA, Indigenous Peoples, Climate Change, <https://www.un.org/development/desa/indigenouspeoples/climate-change.html> (last visited on Aug. 7, 2023) for other examples on the direct effects of climate change on indigenous peoples.

<sup>137</sup> Int'l Labour Org., Indigenous and Tribal Peoples Convention (No. 169), art. 2, 1989.

heralded as milestone, for justice and human dignity, but needs implementation and full inclusion in international law.<sup>138</sup>

7. The UNDRIP is the most comprehensive instrument detailing the rights of Indigenous peoples in international law and policy, containing minimum standards for the recognition, protection and promotion of these rights for the survival, dignity, wellbeing and rights of the Earth's indigenous peoples. According to the UN High Commissioner on Human Rights Office, UNDRIP “addresses both individual and collective rights; cultural rights and identity; rights to education, health, employment, language, and others. It outlaws discrimination against Indigenous peoples and promotes their full and effective participation in all matters that concern them. It also ensures their right to remain distinct and to pursue their own priorities in economic, social and cultural development. The Declaration explicitly encourages harmonious and cooperative relations between States and indigenous peoples.”<sup>139</sup> Thus, UNDRIP is another essential framework to advance the issue of ensuring the protection of the shared biosphere and the climate system.

8. Moreover, the right to self-determination, secured in the International Covenant on Civil and Political Rights (ICCPR), could be potentially violated due to the negative consequences of climate disruption to anthropogenic intervention. The right to self-determination is also recognized under UNDRIP in article 3, which states: “by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. The declaration also states that “free, prior and informed consent” must be granted before any action is taken that will adversely affect Indigenous peoples.

9. In 2000, the U.N. Economic and Social Council established the Permanent Forum on Indigenous Issues in Resolution 2000/22.<sup>140</sup> Since the Forum’s creation, the UN has continually called upon Indigenous voices to help shape UN cooperation and progressive development of international law.

10. In 2020, for example, the United Nations System Chief Executives Board for Coordination called for the revitalization of the System-Wide Action Plan on the Rights of Indigenous Peoples and to “strengthen collective and coherent UN system efforts through a call to action on building an inclusive, sustainable and resilient future with indigenous peoples.”<sup>141</sup>

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<sup>138</sup> See [UNDRIP \(ohchr.org\)](https://www.ohchr.org/).

<sup>139</sup> See [UN Declaration on the Rights of Indigenous Peoples | OHCHR](#).

<sup>140</sup> Economic and Social Council [Res. 2000/22](#) (July 28, 2000).

<sup>141</sup> U.N. System Chief Executives Board for Coordination (CEB), [Building an Inclusive, Sustainable and Resilient Future with Indigenous Peoples: A Call to Action](#), 1 (Nov. 2020).



11. Indigenous cooperation is often explicitly linked to issues of climate change. The seventh session of the U.N. Permanent Forum on Indigenous Issues was themed “*Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges,*” which resulted in the recommendation of including Indigenous wisdom in “crafting the path towards developing low-carbon release and sustainable communities.”<sup>142</sup> Furthermore, the Forum recommended holistic approaches to climate change mitigation and adaptation to include issues of human rights and environmental justice.<sup>143</sup>

12. The principle of solidarity was thematically emphasized by stakeholders and States in the 2023 ECOSOC High Level Political Forum on Sustainable Development Goals as vital to the success of the SDGs.<sup>144</sup> Solidarity with indigenous groups ensures the survival of people and cultures, but the inclusion of marginalized communities is also essential to protecting Earth’s shared biosphere and climate systems. These communities contribute generational wisdom concerning environmental stewardship, as well as a means of SDG localization. Solidarity also implicates the specific duty of States to advocate for Indigenous communities living within their borders.

13. Because many Indigenous communities occupy specifically designated land, such as reservations in the United States or the marine parks in Australia,<sup>145</sup> State action or non-action that interferes with the right to a healthy environment within Indigenous land could constitute transboundary harm. Consequently, the U.N.H.R. Committee has held that States have a duty to protect the Indigenous right to the environment within their sovereignty.

14. In the *Torres Strait Case*, the U.N.H.R. Committee considered the complaint of an individual against their State for the violation of their human rights contending that the “mitigating” steps the State purported to take were insufficient to protect the islander’s rights forcing them to migrate from the submerged islands. The Committee agreed that Australia’s omission resulted in the violation of the right to enjoy culture and be free from arbitrary interferences with their private life, family and home.<sup>146</sup>

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<sup>142</sup> U.N. DESA, Permanent forum on Indigenous Issues, *Report on the seventh session, 2*, ch.1, U.N.Doc. E/C.19/2008/13 (Apr. 21-May 2, 2008).

<sup>143</sup> *Id.*

<sup>144</sup> U.N. DESA, High Level Political Forum on Sustainable Development, Multi-stakeholder Partnerships: Moving together towards the achievement of the SDGs, July 18, 2023.

<sup>145</sup> Ryan O’Connell, National Geographic, Australia hands control of its newest national parks to Indigenous peoples, Oct. 6, 2022, <https://www.nationalgeographic.com/travel/article/australia-hands-control-newest-national-parks-to-indigenous-peoples>.

<sup>146</sup> *Torres Strait Islanders Petition (Daniel Billy and others v. Austl.)*, Judgment, art. 17, CCPR/C/135/D/3624/2019 (U.N.H.R. Comm. 2022).

15. Unfortunately, the destruction of Indigenous homeland increasingly results in displacement as the only means of survival. With the rise of arctic temperatures, for example the mobility of Arctic Indigenous communities is becoming more limited and dictated by changes in the climate.<sup>147</sup> From the Inuit, dependent on the ice, to the Saami, dependent on forests, tundra, and coasts, these communities have been forced to rapidly adapt to the changing natural rhythms, leave heritage lands, or fail,<sup>148</sup> consequently, creating a new wave of climate refugees.

16. The U.N.H.R. Committee has been explicit that not all environmental disasters constitute a violation of human rights as expressed by the Refugee Convention.<sup>149</sup> However, if environmental degradation interferes with the right to life in a way that is “(a) not prescribed by law; (b) not proportional to the ends sought; and (c) not necessary in the particular circumstances of the case,” the polluting State can be liable for human rights violations.<sup>150</sup> Therefore, it is important to phrase environmental degradation in legal language that articulates the ways that climate change has violated or already violated the enjoyment of rights or that such a violation is imminent<sup>151</sup> and that the violation of rights was not prescribed by law, not proportional to the ends sought, and not necessary in the particular circumstances.<sup>152</sup>

17. In sum, articulating the views of Indigenous communities with regional and intergenerational wisdom will provide the Court with more robust material to reach a comprehensive and inclusive advisory opinion on State duties to ensure the protection of the biosphere and the climate system.

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<sup>147</sup> ELIZABETH FERRIS, A COMPLEX CONSTELLATION: DISPLACEMENT, CLIMATE CHANGE AND ARCTIC PEOPLES, Brookings, at 13 (Jan 30, 2013).

<sup>148</sup> *Id.*

<sup>149</sup> Ioane Teitiota v. New Zealand (advance unedited version), Judgment, 4, ¶ 2.9, CCPR/C/127/D/2728/2016, (U.N.H.R. Comm. 2020).

<sup>150</sup> *Id.* at ¶ 2.9, citing to Manfred Nowak, *The U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kiehl, NP Engel, 2005), p. 128-29.

<sup>151</sup> Torres Strait Islanders Petition (Daniel Billy and others v. Austl.), Judgment, 5, ¶ 4.2, CCPR/C/135/D/3624/2019 (U.N.H.R. Comm. 2022); See also Ioane Teitiota v. New Zealand (advance unedited version), Judgment, 4, ¶ 2.9, CCPR/C/127/D/2728/2016, (U.N.H.R. Comm. 2020).

<sup>152</sup> Ioane Teitiota v. New Zealand (advance unedited version), Judgment, 4, ¶ 2.9, CCPR/C/127/D/2728/2016, (U.N.H.R. Comm. 2020).

## ANNEX II

### Importance of Mountain State Participation

1. Mountain ecosystems play a vital role health of Earth's shared biosphere and interconnected systems and are essential generators of water, energy, forest health, and biodiversity as they cover 25% of the Earth's land surface.<sup>153</sup>
2. The International Centre for Integrated Mountain Development (ICIMOD) considers mountains, and more specifically, the Hindu Kush Himalaya as the "pulse of the planet."<sup>154</sup> Similarly, the Kogi and Arhuaco Indigenous groups that resides in the Sierra Nevada de Santa Marta mountains in northern Colombia, the highest coastal range in the tropics, and one of the highest coastal ranges in the world, regarded it "the heart of the world," a concept that travels from region to region, continent to continent.
3. Mountains are essential providers of water and sustainable energy for downstream communities.<sup>155</sup> Additionally, mountain forests are hotspots for biodiversity.<sup>156</sup> Unfortunately, mountain ecosystems are among some of the most fragile and susceptible to climate change.
4. Mountain State ecosystems (i) play a vital role in the biosphere and other interconnected systems, (ii) are highly susceptible to the impacts of climate change, and (iii) are central to the survival of rural and Indigenous peoples living in more remote, mountainous regions. Because mountains are environmental fulcrums, it is essential to advocate for their health and to voice the unique challenges these regions face.
5. The IPCC reported with high confidence<sup>157</sup> that mountain ecosystems are already approaching hard adaption limits and with medium confidence that the changes in some

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<sup>153</sup> Mountain Partnership, Why Mountains Matter for Forests and Biodiversity, A call for action on the sustainable development goals (SDGs), at 1, [https://sustainabledevelopment.un.org/content/documents/1915SDGs%20and%20mountains\\_forests%20and%20biodiversity\\_en.pdf](https://sustainabledevelopment.un.org/content/documents/1915SDGs%20and%20mountains_forests%20and%20biodiversity_en.pdf).

<sup>154</sup> The International Centre for Integrated Mountain Development (ICIMOD) is an intergovernmental learning institution for the Hindu Kush Himalayan region. ICIMOD, The Pulse of the Planet, <https://www.icimod.org/who-we-are/the-pulse-of-the-planet/>, last accessed on 8/9/2023.

<sup>155</sup> Mountain Partnership, Why Mountains Matter for Energy, a call for action on the sustainable development goals (SDGs), at 2, [https://sustainabledevelopment.un.org/content/documents/1918sdgs\\_and\\_mountains\\_energy\\_en.pdf](https://sustainabledevelopment.un.org/content/documents/1918sdgs_and_mountains_energy_en.pdf).

<sup>156</sup> Why Mountains Matter for Forests and Biodiversity, at 2.

<sup>157</sup> See Guidance Note for Lead Authors of the IPCC Fifth Assessment Report on Consistent Treatment of Uncertainties for an overview of the significance of IPCC reported confidence.

mountains are approaching irreversibility (medium confidence).<sup>158</sup> Additionally, in some high mountain regions, “negative impacts of cryosphere change have been especially felt among Indigenous peoples (high confidence).”<sup>159</sup>

6. Historically, the mountain ecosystems have played a subsidiary role in international environmental conversations. SDG 15.1, for example, is the only SDG explicitly mentioning mountains, while other ecosystems appear at a higher frequency.<sup>160</sup>

7. The first explicit international instrument contemplating then management of sustainable mountain development was chapter 13 of *Agenda 21* in 1992.<sup>161</sup> Following *Agenda 21*, the U.N. General Assembly declared 2002 as the International Year of Mountains and has since instituted a recurring International Mountain Day.<sup>162</sup> Additionally, mountains were featured in paragraphs 210-212 of the *Future We Want* and were recognized as essential for sustainable development and significant to indigenous and local communities.<sup>163</sup>

8. Regional collaboration has also expanded on the ecological significance of mountains such as the *Carpathian Convention* which draws on principles of cooperation, solidarity, and the duty to prevent transboundary harm to acknowledge that “efforts to protect, maintain and sustainably manage the natural resources of the Carpathians cannot be achieved by one country alone and require regional cooperation, and of the added value of transboundary cooperation in achieving ecological coherence.”<sup>164</sup>

9. Other regional agreements such as the *Declaration on Environment and Sustainable Development in the Carpathian and Danube Region*,<sup>165</sup> the *Alpine Framework Convention*,<sup>166</sup> and

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<sup>158</sup> *Id.* at 15.

<sup>159</sup> *Id.* at 17.

<sup>160</sup> United Nations, The 2030 Agenda for Sustainable Development at 27, <https://sdgs.un.org/sites/default/files/publications/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

<sup>161</sup> U.N. Sustainable Development, Conference on Environment and Development, *Agenda 21* (1992).

<sup>162</sup> Celebrated annually on Dec. 11. See <https://www.un.org/en/observances/mountain-day> for more information.

<sup>163</sup> *The Future We Want*, Outcome document of the United Nations Conference on Sustainable Development, 55, ¶210-212 (2012).

<sup>164</sup> *Carpathian Convention*, Preamble, May 2003.

<sup>165</sup> See generally the *Declaration on Environment and Sustainable Development in the Carpathian and Danube Region*, April 30, 2001.

<sup>166</sup> See generally the *Alpine Framework Convention*, Nov. 1991.

the Consortium for Sustainable Development of the Andean Ecoregion are committed to the preservation of mountains' unique biosphere and ecological systems.<sup>167</sup>

10. Mountain regions face the understated threats of irreversible damage to their ecosystem and of the survival of their inhabitants and threaten all people dependent on their services. Because consideration of mountainous regions has not enjoyed the same proliferation in international environmental instruments as others, it is vital that briefs reflect climate impacts on mountainous regions and promote visibility of efforts of regional cooperation.

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<sup>167</sup> See generally the Consortium for Sustainable Development of the Andean Region, <https://condesan.org>, last accessed Aug. 8, 2023.

### ANNEX III

#### Importance of Landlocked States Participation

1. Of the land locked States, thirty-two States are denoted as developing (LLDC) of which seventeen are “least developed countries” (LDC).<sup>168</sup>
2. These LLDCs face unique challenges as they tend to be isolated from global markets and are thusly dependent on climate sensitive sectors such as agriculture and forestry.<sup>169</sup> Because of their dependence on the natural sectors, LLDCs are in a precarious position. LLDCs have greater risk of failing to achieve the sustainable development goals and ultimately being left behind.
3. For landlocked States, the destruction of Earth’s shared biosphere and interconnected systems poses direct economic risks and correlative social and environmental impacts.<sup>170</sup> The duty of solidarity and duty to prevent transboundary harm require the consideration of landlocked States in the advisory proceeding.
4. While LLDCs emit the least, climate disasters, such as drought, heatwaves, wildfires, floods, and landslides disproportionately impact landlocked States.<sup>171</sup> Further, some LLDCs contain multiple high-risk ecosystems, such as mountain regions. Dependence on cooperation for economic survival and access, dependence on natural sectors, and high-risk ecosystems call for augmented State cooperation.
5. Furthermore, the impacts of climate change are not isolated from physical and economic impact. Rather, a strong correlation exists in LLDCs between environmental health and socioeconomic development. Low rainfalls in Uganda, for example, led to a 5% decrease in school enrollment and non-labor migration for females.<sup>172</sup> Social protection programs can mitigate some of the proxy effects of climate change, but ultimately, State’s must address the root of problem: the degradation of Earth’s biosphere and interconnected ecosystems.<sup>173</sup>

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<sup>168</sup> For a list of landlocked developing countries, see <https://unctad.org/topic/landlocked-developing-countries/list-of-LLDCs>.

<sup>169</sup> U.N. Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, *Strengthening Climate Action in landlocked developing countries: Experiences on adaptation and mitigation*, Nov. 9, 2022. See [Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States |](#).

<sup>170</sup> IPCC Sixth Assessment Report, *Chapter 9: Africa, Executive Summary*, 1386, Mar. 20, 2023.

<sup>171</sup> U.N. Climate Change Conference COP27, *Summary Report of the High-Level Side Event on “Strengthening Climate Action in landlocked developing countries: experiences on adaptation and mitigation,”* 1, Nov. 9, 2022; see also IPCC Sixth Assessment Report, *Chapter 9: Africa, Executive Summary*, Mar. 20, 2023.

<sup>172</sup> IPCC Sixth Assessment Report at 1387, ¶ 9.11.1; *Id.* at 1392, table 9.8.1.

<sup>173</sup> *Id.* at 1389, ¶9.11.4.

6. Landlocked States are traditionally dependent on international cooperation, solidarity, and other general principles of international environmental law for their survival. The parties to the *Statement of mountainous landlocked developing countries* advocate for a broader application of the “ecosystem approach” which “establishes favorable conditions to tackle uncertainties in running realistic forecasts of climate change implications and provides synergies with other global and regional environmental conventions.”<sup>174</sup> Additionally, the Statement argues that the concept of common but differentiated responsibility as an extension of the duty of solidarity obligates States to support LLDCs.<sup>175</sup>

7. Several regional treaties contemplate the disadvantaged position of landlocked States and the dependence on principles of international law like cooperation and solidarity for their survival and access to the global market. The U.N. Convention on the Law of the Sea, for example, contends that landlocked State access to the sea is dependent on previously granted access.<sup>176</sup>

8. The UN General Assembly in 2007 adopted the Ulaanbaatar (Mongolia) declaration and in 2008 passed a Resolution welcoming “the proposal to set up an international think tank in Ulaanbaatar to enhance the analytical capability of landlocked developing countries needed to coordinated efforts for the effective implementations of the international agreed provisions”.

9. In July 2009 the UN *Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries* was officially launched in Ulaanbaatar by H.E. Ban Ki-moon, UN Secretary-General, and later that year the General Assembly adopted Resolution 64/214, welcoming the establishment of the International Think Tank for the Landlocked Developing Countries in Ulaanbaatar. The Agreement entered into force on 6 October 2017.<sup>177</sup>

10. One of the primary objectives of the Agreement “is to foster “convergent view and approaches among landlocked developing countries with respect to global economic interest...such as...climate change and food security.”<sup>178</sup>

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<sup>174</sup> UNFCCC, *Statement of the mountainous landlocked developing countries* (Armenia, Afghanistan Kyrgyzstan, and Tajikistan), May 3, 2013.

<sup>175</sup> *Id.*

<sup>176</sup> U.N. Convention on *Law of the Sea*, 31, ¶ 4 (a), U.N. Doc. A/CONF.62 7121 (Oct. 27, 1982).

<sup>177</sup> Currently, the Agreement has 14 ratification/acceptance/approval: Mongolia, Lao PDR, Armenia, Afghanistan, Kazakhstan, Paraguay, Burkina Faso, Kyrgyz, Tajikistan, Nepal, Ethiopia, Bhutan, Niger and Azerbaijan; and has 7 signatories: Afghanistan, Armenia, Ethiopia, Lao PDR, Mongolia, Niger, and Paraguay. See [land-locked.org](http://land-locked.org).

<sup>178</sup> *Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries*, 4, art. II (e), Oct. 6, 2017, 3208 U.N.T.S.

11. Landlocked States and landlocked developing States rank among the most impacted by environmental transboundary harm and climate change effects. Because of the precarious economic and ecological position of landlocked States there is an increased necessity of an affirmative State duty to ensure the protection of the climate system and other parts of the environment starting with cooperation and solidarity for their survival.