THREE COURTS – ONE CRISIS: A READING OF THE ADVISORY OPINIONS ON CLIMATE CHANGE[1]

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On expository exercises and their probative value in international legal scholarship

My dear friend Humphrey Sipalla requested that I publish this table where I have (with helpful inputs from my colleague Hla Yadanar Win whose contribution I gratefully acknowledge) mapped the similarities and differences between the three Advisory Opinions on climate change that are set to now generate considerable momentum in scholarship and especially in the practice of international law in the coming years.

Expository work like this is nothing if not derivative. It exists possibly as a subset of empirical research, understood as the careful mapping, comparison, and clarification of existing materials, and occupies a distinctive and indispensable place in both the practice and the academic study of international law. I have frequently prepared such mapping tools but I have never thought them fit, in and of themselves, to publish. Rather I use them as my own homework sheets on the basis of which to then prepare work in scholarship. However, in the present instance, Humphrey prevailed in requesting that they may serve a purpose as they are. Perhaps Humphrey is right.

In the context of the three recent advisory opinions on climate change issued by the International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR), and the International Court of Justice (ICJ), such expository work serves as more than a descriptive exercise. It enables the articulation of the normative and doctrinal trajectories that bind and differentiate these tribunals, thereby informing advocacy, adjudication, and scholarship in ways that purely theoretical or empirical research cannot. The African Court of Human and Peoples' Rights is now tasked with a similar question, on the human rights obligations of African states in the context of climate change, put before it by the Pan African Lawyers Union (PALU), supported by civil society organisations including the African Climate Platform, Natural Justice, Resilient40, and the Environmental Lawyers Collective for Africa. In this exercise I therefore take the perspective of laying out what is already handed down to us in the three AOs thus far so as to prepare us better on what we may expect from the African Court in the coming months.

Hersch Lauterpacht, in *The function of law in the international community* (1933), famously underscored the interpretive labour required to transform the "raw material" of treaties, customs, and judgments into a coherent body of law. As Koskenniemi has written, Lauterpacht's modernity lies in *"his constant emphasis on interpretation over substance, process over rule…"* (in 'Lauterpacht: The Victorian tradition in international law,' Martti Koskenniemi, 2 *European Journal of International Law* 1997, 215-263). Expository research is the vehicle of that transformation. By juxtaposing the three climate advisory opinions, a researcher traces convergences, for instance, shared references to due diligence and

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precautionary principles, and divergences, such as the IACtHR's emphasis on intergenerational equity as a human rights obligation versus ITLOS's focus on the specificities of the marine environment. This comparative exposition does not merely catalogue differences; it systematises them into an intelligible map that practitioners can invoke when framing arguments before diverse forums and that academics can use to theorise the emergence of cross-cutting climate obligations.

Dame Rosalyn Higgins, in *Problems and process* (1994), argues that international law is *"a continuing process of authoritative decisions"* (p.2) rather than a static code. Expository research into advisory opinions directly engages that process: by clarifying the reasoning patterns of different tribunals, it illuminates how law is being authoritatively articulated and where normative gaps remain. For practitioners, such research provides a critical toolkit for forum selection and argument design, particularly in transnational issues like climate change that straddle multiple regimes. For academics increasingly interested in regime interaction / systemic integration, this allows for the careful historicisation of doctrinal shifts, offering a grounded basis for normative critique or support.

Martti Koskenniemi's landmark critical method text, *From apology to utopia* (1989) highlights the tension between the formal coherence and political contingency of international law. Expository work mediates that tension by showing how legal language is operationalised across institutional contexts. In comparing the climate opinions, for example, one can expose how ostensibly universal principles are inflected by institutional mandates, procedural postures, and regional priorities. This level of doctrinal exposition generates the granular understanding necessary for both critical theorising and effective lawyering.

Expository research thus cannot be relegated to the ancillary. It is the medium through which descriptive ordering becomes normative articulation, through which juridical fragments coalesce into intelligible structure. By rendering visible the intersections and fissures among the ITLOS, IACtHR, and ICJ climate opinions, such work provides the hermeneutic scaffolding upon which both praxis and theory are erected. Lauterpacht's interpretive labour, Higgins's processual account, and Koskenniemi's critical dialectic converge to affirm that expository research is not peripheral to international law's life, but constitutive of its very possibility. With broad caveats recalling Michael Reisman's warning on the assumption that the fundamental epistemic unit of legal science is the appellate opinion {W. Michael Reisman, 'International incidents: Introduction to a new genre in the study of international law,' 10 *Yale Journal of International Law* 1 (1984) (critiquing mainstream international legal scholarship for focusing on the fantasy world of "cases")}, here is the table:

ITLOS: https://itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf

IAtCHR: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf

ICJ: https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf

International Tribunal for the Law of the Sea (ITLOS)	**Inter-American Court of Human Rights (IACtHR)**	**International Court of Justice (ICJ)**
Advisory opinion on climate change and international law [Case No.31]	Advisory opinion on climate emergency and human rights [AO-32/25 of 29 May 2025]	Obligations of States in respect of climate change
Requested by the Commission of Small Island States in 2022	Requested by the Republic of Chile and the Republic of Colombia in 2023	Requested by the General Assembly with Resolution A/RES/77/276 in 2023
Delivered on 21 May 2024	Delivered on 29 May 2025 Issued on 3 July 2025	Delivered on 23 July 2025
Number of written statements: 31 States Parties and 7 intergovernmental organisations; 10 entities; and [3 more States and one intergovernmental organisation submitted after the expiry of deadlines] Number of oral pleadings: 33 States Parties and 4 intergovernmental organisations	Number of written statements: 263 written comments (9 States, 4 organs of the Organisation of American States, 14 international bodies, 10 State institutions, 62 communities, 178 non-governmental organisations, 70 non-governmental organisations together with members of civil society or academic institutions, 1 business enterprise, 134 academic institutions and 131 members of civil society, fora total of 613 participants.) Number of oral pleadings: 185 delegations	Number of written statements: 91 written statements Number of oral pleadings: 96 States and 11 international organisations
Total pages: 153	Total pages: 219	Total pages: 133

Key Questions	**Key Questions**	**Key Questions**
"What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea ('UNCLOS'), including under Part XII: (a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere? (b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?"	The Court phrased the questions submitted by the Requesting States into substantive rights, procedural rights, and the rights of vulnerable individuals and groups to address the climate emergency and human rights, based on the general obligations in the American Convention and the Protocol of San Salvador. "1. What is the scope of the obligations to respect and guarantee rights and to adopt the necessary measures to ensure their exercise in the case of substantive rights, such as the right to life and health, personal integrity, private and family life, property, freedom of movement and residence, housing, water, food, work and social security, culture, education and the enjoyment of a healthy environment, in relation to the impact or threats caused or exacerbated by the climate emergency? 2. What is the scope of the obligations to respect and guarantee rights and to adopt the necessary measures to ensure their exercise in the case of procedural rights, such as access to information, the right to participation and access to justice, in relation to the harm caused or exacerbated by the climate emergency? 3. What is the scope of the obligations to respect and guarantee rights and to adopt the necessary measures to ensure their exercise without discrimination in the case of children, environmental defenders, women, Indigenous Peoples, Afro-descendant and peasant farmer communities, as well as other vulnerable groups, in the context of the climate emergency?"	"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 recognised 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?"

Interpretation The Tribunal considers external rules which can be found in the UNFCCC, the Kyoto Protocol, the Paris Agreement, Annex VI to MARPOL, Annex 16 to the Chicago Convention, and the Montreal Protocol, including the Kigali Amendment, as appropriate for interpreting the specific obligations of States Parties under the Convention. [¶137 and ¶142] ***Lex specialis*** The Tribunal does not consider that the obligation to take necessary measures to prevent, reduce, and control marine pollution would be satisfied by complying with the obligations and commitments under the Paris Agreement. [¶223] The Tribunal views the UNCLOS and the Paris Agreement are separate agreements, and the Paris Agreement is not *lex specialis* to the UNCLOS. The Tribunal decides that the principle *lex specialis derogat legi generali* has no place in interpreting the UNCLOS in the present context. [¶¶223-224]	**Interpretation** The Court may consider other international treaties like the UNFCCC, Paris Agreement, the Convention on the Rights of the Child, and Escazú Agreement as supplementary sources for interpreting the content of the provisions of the American Convention and the Protocol of San Salvador. [¶38]	**Interpretation** The Court considers the UN Charter; climate change treaties (UNFCCC, Kyoto Protocol, and Paris Agreement), UNCLOS; environmental treaties (Ozone Layer Convention, Montreal Protocol, Kigali Amendment, Biodiversity Convention and Desertification Convention); customary international law (duty to prevent significant harm to the environment and duty to co-operate for the environment protection); international human rights treaties (ICCPR, ICESCR and human rights recognised under customary international law) as the applicable law in answering the question of obligations of States in respect of climate change. [¶¶113-145] The Court considers principle of sustainable development, principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), equity, intergenerational equity, precautionary approach or principle as guiding principles for the interpretation and application of the most directly relevant legal rules. [¶¶146-158] The Court does not consider "polluter pays" principle is part of the applicable for the purposes of this Advisory Opinion since the principle is not envisaged or reflected in any of the climate change treaties nor has it been accepted that this principle applies directly in the relations between States without having been specified in a treaty. This does not preclude the possibility that the forms of strict liability for hazardous acts and other kinds of acts that are not wrongful under international law are developing. [¶160] Other relevant rules of international law in the context of climate change may be found in international trade law, international investment law and international humanitarian law. [¶173]

		Relationship between the UNFCCC, the Kyoto Protocol and the Paris Agreement The Court views that there is no incompatibility between the three climate change treaties. On the contrary, they are mutually supportive, with the Kyoto Protocol and Paris Agreement providing greater specification to the general obligations contained in the UNFCCC. Indeed, the UNFCCC being a "framework convention", and in view of the general character of the obligations contained therein, the subsequent decisions by the parties – including decisions adopting protocols and agreements under the UNFCCC – are intended to interpret or give substance to obligations in the UNFCCC. Notwithstanding these observations, should there appear to be conflicts between the treaties, the Court is of the view that these should be resolved by applying the rules of treaty interpretation. [¶195] ***Legal consequences arising for States that have breached any of the obligations identified in relation to question (a)*** The Court considers that the obligations to which question (b) applies are the obligations provided for under the various treaties, in particular the climate change treaties, and rules of customary international law considered under question (a). The rules on State responsibility under customary international law are also applicable to the determination of legal consequences for States that, by their actions or omissions, have breached those obligations.[¶407]

		Lex specialis For the *lex specialis* principle to apply, there must be some actual consistency between two provisions of the same subject matter. The Court cannot find any actual inconsistency between the provisions of the climate change treaties and other rules and principles of international law. The Court concludes that the climate change treaties do not constitute the only relevant applicable law, and *lex specialis* does not lead to general exclusion of other rules of international law. [¶¶167-171] ~~~~~~~~~~~~~~~~~~~~ **Separate opinion of Vice-President Sebutinde** Vice-President Sebutinde views that the Advisory Opinion falls short in fully interpreting the GA's questions and it lacks comprehensive and clear answers regarding the legal implications of climate change for present and future generations and for least developed and small island States. She also expresses her opinion that the Court took an overly cautious approach regarding the adverse effects of climate-related sea level rise and the right to self-determination. The principle of CBDR-RC, which aims to ensure fairness in how the burden of climate action is shared between developed and developing countries, should have been explored more comprehensively. **Separate opinion of Judge Yusuf**

		Judge Yusuf expresses the disappointment with the excessively formalistic approach of the Court in the Advisory Opinion's formulation. He views the questions deserved more concrete and tangible replies based on the climate change realities, the fundamental concerns and objectives underlying the request. The Court misinterpreted question (b) and avoided making the distinction between States that have significantly harmed the climate system and other States like small island developing States that are injured or impacted by the adverse effects of climate change. He believes the Court failed to rise to the occasion by not legally addressing the scientific disparities in States' GHG contributions and the injuries suffered by those most affected, thus failing to provide the international community with the legal tools necessary for combating climate change in an equitable manner for all States. Judge Yusuf also expresses surprise at the Court's inability to decide on the formulation of precautionary principle and using both "precautionary approach or principle", leaving the choice to the readers or general public. If the use of "principle" is uncomfortable, they could have used the formulation "precautionary approach" as in its previous judgment like in Pulp Mills judgement and ITLOS' Advisory Opinion. **Separate opinion of Judge Xue** Judge Xue regrets that the Court only gives principles set forth in Article 3 of the UNFCCC, in particular, the sustainable development and CBDR-RC principles, nominal effect without analysing how these principles guide the interpretation and application of the climate change treaties. She further looks into

		the principle of sustainable development and considers that this principle is fully embraced in the climate change treaty regime and should be pursued by the UN Sustainable Development Goals. She regrets that this key synergy is missing in the Advisory Opinion. She further makes observations on the Advisory Opinion concerning the CBDR principle. She considers that the analysis of developing states now contribute significantly to the GHG emissions and possess the capacity in meaningful mitigation and adaptation efforts is misleading and confusing and it distorts the foundational structure of the treaty regime on climate change. Judge Xue also does not agree with the Court's view that the additional phrase "in the light of different national circumstances" adds sufficient nuance to the CBDR principle in the Paris Agreement, by recognising the status of a State as developed or developing is not static. She considers that the distinction between developed and developing countries reflects the level of development of States. Judge Xue highlights that climate change is a contemporary issue of development in international law but has its roots in the past regarding climate justice. She considers that it would not be conformity with the principle of equity if the transfer of GHG emissions between developed and developing countries is not duly considered. Judge Xue states that achieving climate justice requires addressing the specific needs and circumstances of vulnerable groups of States in accordance with the CBDR principle, and regrets this is not sufficiently addressed in the Advisory Opinion, particularly in response to question (b).

		Judge Xue views that the Court fails to point out that ensuring a clean, healthy and sustainable climate for present and future generations depends on supportive and open international economic system that fosters sustainable development through cooperation between developed and developing States. She also states that any departure from the underlying principles set forth in the UNFCCC will undermine international co-operation in the global action against climate change. **Separate opinion of Judge Bhandari** Judge Bhandari expresses concern over the Court's cursory treatment on the "polluter pays" principle, arguing this undercuts a key mechanism of accountability in international environmental law. He views that its normative grounding, including the rationale for strict liability, should have featured more prominently. **Declaration of Judge Nolte** Judge Nolte views that the climate change treaties influence the content of general customary international rules. This is not *lex specialis*, rather expresses what States generally consider to be adequate to fulfil their less determinate customary obligations. He supports the Court's view that treaty compliance can presumptively indicate fulfilment of its customary duty to prevent significant harm to the environment and considers that this presumption is a qualified one and leaves room for nuance and complexity. **Separate Opinion of Judge Charlesworth**

		Judge Charlesworth notes that the Advisory Opinion does not fully explore the relationship between the precautionary principle and the principle of prevention. She explains the principles complement each other and the precautionary principle retains a distinct scope of application where there is a greater level of uncertainty about scientific facts. She views that the Opinion should have offered more guidance on these dynamics and on the practical consequences of applying the precautionary principle to the context of climate change. **Joint declaration of Judge Charlesworth, Brant, Cleveland and Aurescu** The Judges agree with the Court's decision to reject the climate change treaties as *lex specialis* and believe that the Court's findings on the relationship between the climate change treaties and other sources of international law should be interpreted in this light. They endorse the view that that the relevant obligations under customary international law and the climate change treaties retain a separate existence and maintain their own scope of application. In their views, the Opinion confirms that the treaties are not proxies for assessing compliance with the rules of customary international law. **Declaration of Judge Cleveland** Judge Cleveland addresses two other rules of international law – international humanitarian law and international investment law, as relevant to climate change. For international humanitarian law, she highlights the environmental damage from armed conflicts and other military activities with respect to GHG

		emissions and the destruction of carbon sinks, must be accounted for in climate obligations. States are obligated to assess, report on and mitigate harms to the climate system, including these impacts. The stringent customary international law obligations to prevent harm to the environment and to co-operate requires States to consider harms resulting from conflicts and military activities. For international investment law, she considers that the interpretation of investment instruments must be informed by States' obligations in respect of climate change under international law, particularly the stringent due diligence standard. **Declaration of Judge Tladi (strangely EXCLUDED from the summary of Separate Opinions and Declarations prepared by the Court – correct at the time of writing 30 July 2025 https://www.icj-cij.org/case/187)** Juge Tladi notes that the Court's reply to the questions is both unanimous and robust. The Court correctly dismisses the impression that the Paris Agreement is the "only game in town" and concludes that all three treaties remain in force and applicable to the respective States. The interpretation of the Paris Agreement as an empty shell has been supported through *en vogue* concepts and notions such as the distinctions between procedural obligations and substantive obligations, between obligation of conduct and obligation of result and between bottom-up and top-down approaches. He views that the fluidity of these concepts has been correctly described in this Opinion as

		not necessarily "impermeable". The Court makes two important, interrelated contributions to the interpretation of the Paris Agreement: first, on the collective temperature goal under Article 2(1)(a) of the Paris Agreement and second, on the content of the NDCs under Article 4(2). He is pleased that the Court has not fallen into the trap of the unfettered discretion and has instead given a robust interpretation to the obligation to prepare and maintain NDCs. Further, he said that the object and purpose of the treaty does not override the ordinary meaning of the words in Article 4(2) since Article 4(2) is drafted in a neutral way and leaves open the question of discretion.
Marine pollution The Tribunal concludes that anthropogenic GHG emissions into the atmosphere are "pollution of the marine environment" under Art. 1(1)(4) of the Convention since they met all three criteria of determining pollution: (1) gases are substances; (2) they are introduced by humans into the marine environment directly or indirectly; and (3) such introduction has resulted in deleterious effects of climate change and ocean acidification. [¶¶159-179]	**Climate emergency** The Court defines the climate emergency as "consistent with the best available science, this emergency results from the accelerated increase in global temperature caused by various anthropogenic activities, which incrementally affect and severely threaten humanity – particularly those in situations of heightened vulnerability." The Court considers three factors to define the climate emergency: the urgency of effective actions, the severity of the impacts, and the complexity of the required responses. [¶¶183-184] Under the urgency of effective actions, effective mitigation and adaptation actions are urgently required to prevent climate change risks from continuing to increase exponentially. [¶¶185-194] For the second factor, the Court considers the extreme severity of the climate impacts from each gigaton of GHG emissions and global temperature increase, including the number of people exposed to disease, displacement, cultural loss, hunger, water	**Scope and meaning of the questions** In framing the material, territorial and temporal scope of the question, the Court observes on the material scope that the two questions posed by the General Assembly are interrelated and require the Court to identify the obligations of States in respect of activities that adversely affect the climate system, as well as the legal consequences arising from the breach of these obligations. In this regard, the Court is further of the view that the relevant conduct for the purposes of these advisory proceedings is not limited to conduct that, itself, directly results in emissions of greenhouse gases, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions. [¶94] This material scope must encompass States' obligations concerning all actions or omissions of States and non-State actors within their jurisdiction or effective control. [¶95]

	insecurity, unemployment, poverty, and an increase in inhumane living conditions. The intensity of these impacts, both individually and collectively, is largely determined by the vulnerability of those affected. [¶195] The Court considers the third factor to be the complexity of the climate emergency. To address it effectively, international action must be coherently aimed at resilience, based on the best available science, and framed around sustainable development to protect human rights and the environment. [¶204] **Heightened vulnerabilities** In describing the climate emergency, the Court draws special attention to its impacts on natural systems, individuals, and certain regions. In particular, it highlights the heightened vulnerabilities of some groups. It notes that "these threats do not affect all human beings equally," and that "global hotspots of high human vulnerability have been observed in regions with low emissions such as West, Central and East Africa, South Asia, Central and South America, Small Island Developing States, and the Arctic." [¶98] It points to the IPCC report, which found that these vulnerabilities are "a reflection of structural asymmetries in access to infrastructure, climate financing, and adaptation capabilities." [¶98] It notes that it is the poorest and most unequal regions of the world that are the most susceptible to experiencing the most severe consequences of climate change; precisely because their means of subsistence are more climate sensitive, they have fewer resources and capabilities to address those consequences, they have limited access to basic services and resources, they usually face greater	Turning to the territorial scope of the request, it follows from the Court's conclusions on the material scope of the questions put to it that the General Assembly did not intend to impose any territorial limits to the Court's inquiry. The references in the preamble to the request to the protection of the global climate lead it to conclude that it is requested by the General Assembly to formulate its reply not in respect of any particular territory or regions, but in global terms, especially since GHG emissions are unequivocally caused by human activities, which are not territorially limited. [¶96] With regard to the temporal scope of the request, the Court observes that while these temporal issues may be particularly relevant for an *in concreto* assessment of the responsibility of States for breaches of obligations pertaining to the protection of the climate system, the present Opinion is not concerned with the invocation and determination of the responsibility of individual States or groups of States. Rather, the present Opinion considers the legal obligations of all States under question (a) and identifies the relevant legal regime applicable to legal consequences arising under those legal obligations in reply to question (b). [¶97] With regard to question (a), the Court notes that the unqualified reference to obligations "under international law" indicates the intention of the General Assembly to seek the Court's opinion on the obligations incumbent upon States under the entire corpus of international law, and not to limit the Court's reply to any particular source or area of international law. [¶98]

	governance challenges, and they are more likely to experience violent conflicts. These circumstances explain why more than 91% of deaths caused by disasters relating to climate change over the last 50 years have affected the people of the poorest countries." [¶100] The Court further noted the climate impacts in territories with special vulnerability in the Americas. It stressed that insular territories and Caribbean States are particularly vulnerable to these consequences. It found that "these effects are disproportionate in view of the minimal contribution of Caribbean States to global GHG emissions." [¶117] Moreover, "States in Latin America and the Caribbean are particularly vulnerable, not only because of their geographical position, but also because of their direct dependence on natural resources to ensure the subsistence of broad sectors of their population and their commodity-based economies. Such risks are further exacerbated by conditions of development and marginalisation within the different States." [¶118] **International responses** The Court also outlined international responses to the climate emergency, setting-out the international legal frameworks, relevant international norms, and relevant regional norms. It also highlighted how a number of international institutions have engaged with the issue, including treaty bodies and special human rights procedures, the International Labour Organisation, trade and investment bodies, the OAS, judicial bodies dealing with climate litigation, and those engaged with international climate finance. In	With regard to the scope of question (b), the Court considers that it has been requested to address legal consequences in a general manner, and that it is not called upon to identify the legal responsibility of any particular State or group of States. The determination of such responsibility requires an *in concreto* assessment that must be undertaken on a case-by-case basis. In relation to question (b), the Court finds that it is only called upon, first, to establish the applicable legal framework of State responsibility in respect of States that have breached their obligations to protect the climate system, and, second, to outline in general terms the legal consequences flowing therefrom. [¶106] **Specially affected States** For legal consequences with respect to certain categories of States that are "specially affected" or are "particularly vulnerable", the Court notes that the application of the rules on State responsibility under customary international law does not differ depending on the category or status of an injured State. Thus, "specially affected" States or States that are "particularly vulnerable" are in principle entitled to the same remedies as other injured States. [¶109] The Court recognises, however, that certain States, in particular small island developing States, have faced and are likely to face greater levels of climate change-related harm owing to their geographical circumstances and level of development. A unique situation faced by small island States and low-lying coastal

	the context of international investment law, "the Court notes that the Expert Mechanism on the Right to Development of the UN Human Rights Council "has observed that international investment treaties are frequently misaligned with the environmental and climate-related obligations undertaken by States." The Mechanism stresses on "the importance of achieving an appropriate balance in investor-State dispute settlement systems – one that enables States to adapt and amend their legal frameworks in response to the climate crisis and ecological transitions." [¶163] It also sets out the climate finance initiatives adopted by international financial institutions such as the International Monetary Fund, the World Bank, the Asian, African, Islamic and Inter-American Development Banks, the European Investment Bank, and the Development Bank of Latin America and the Caribbean. [¶¶165-171]	States was addressed by many participants that raised concerns over issues of sea level rise. However, in the Court's view, these matters do not fall within the scope of question (b). Rather, they are governed by the relevant primary rules of international law, in particular rules concerning maritime zones and entitlements and statehood. Accordingly, these matters will be addressed in the Court's consideration of the relevant obligations of States under question (a). [¶110] **Right of individuals to invoke legal responsibility of states** The Court observes that the second part of question (b) enquires about the legal consequences with respect to peoples and individuals of the present and future generations affected by the adverse effects of climate change. The Court considers that whether or not individuals have any entitlement to invoke the legal responsibility of States, or to make a claim in a particular circumstance involving injury or harm arising from climate change, is dependent on the relevant primary obligations of States. [¶111]

Best available science The best available science for climate change and ocean acidification can be found in the works of the IPCC. [¶208] The Tribunal considers that other relevant factors should be considered and weighed together with the best available science to determine necessary measures. [¶212] "In the absence of scientific certainty, States must apply the precautionary approach in regulating marine pollution from anthropogenic GHGs."[¶213]	**Best available science** The Court provides how to determine what constitutes the best available science, "States must consider, among other criteria, whether the knowledge at their disposal: (i) is the most up-to-date; (ii) is based on peer-reviewed methodologies, practices and internationally recognised scientific standards, where such standards exist; (iii) is disseminated through rigorous review processes by high-quality peers or equivalent organisations; (iv) clearly communicates the uncertainties and assumptions in the scientific basis of its conclusions; (v) is verifiable and reproducible through the publication of the non-confidential data and models used to reach its conclusions; (vi) accurately presents its sources of information, based on relevant, empirically tested, and up-to-date scientific literature, without omitting, altering or misrepresenting relevant data and literature, and (vii) accurately derives its conclusions from the available data, without omitting, altering or misrepresenting relevant results." [¶486]	**Best available science** The Court relies primarily on the IPCC reports, which participants to the Advisory proceedings agree constitute the best available science on the causes, nature and consequences of climate change. It further observes that the adverse effects of climate change on the climate system have been acknowledged by the United Nations, including UNEP, and other specialised agencies, such as the WMO, WHO and the IMO. [¶74]
	Right to a healthy environment The Court recognises the right to a healthy environment as a fundamental right to humanity's existence and an autonomous right. [¶¶272-274] Protection of Nature as a subject of rights: The Court further emphasises that recognising Nature and its components as subjects of rights reinforces long-term ecosystem protection, offers effective legal tools to address the crisis and to prevent existential damage from becoming irreversible harm and represents the	**Right to a clean, healthy and sustainable environment** The Court is of the view that a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. The Court considers that the human right to a clean, healthy and sustainable

	principles of interdependence between human rights and the environment and aligns with the growing international trend to strengthen the protection of ecosystems against present and future threats. [¶¶279-282] *Jus cogens* nature of the obligation not to cause irreversible damage to the climate and the environment: The Court determines that "the principle of effectiveness, combined with considerations of dependence, necessity, the universality of underlying values and compatibility with existing law, provides the legal basis for the recognition of the peremptory prohibition against causing massive and irreversible damage to the environment and contributes to compliance with obligations already recognised under international law." All States must cooperate in ending actions that violate the prohibitions from peremptory norms that protect a healthy environment. [¶294] **Protection of the global climate system:** The Court also considers that the global climate system is part of the environment, and harm to such a system is a specific form of environmental damage. [¶¶295-297] **Right to a healthy climate:** The Court recognises the human right to a healthy climate as a substantive element of the right to a healthy environment, both rights have individual and collective dimensions. Individually, protecting the possibility to live in a climate system free from dangerous anthropogenic interference and collectively, protecting the present and future generations.	environment is essential for the enjoyment of other human rights under international law. [¶393] ~~~~~~~~~~~~~~~~~~~~ **Separate opinion of Judge Bhandari** Judge Bhandari views that the Advisory Opinion fails to clarify the status of the right to a clean, healthy and sustainable environment under customary international law or its normative content. **Separate opinion of Judge Charlesworth** Judge Charlesworth notes that the Opinion does not discuss the content of the right to a clean and healthy environment and emphasises that the right has both substantive and procedural dimensions. **Separate opinion of Judge Aurescu** Although Judge Aurescu agrees with the Court findings on the right to a clean, healthy and sustainable environment, he finds them incomplete. He contends that this right has become a norm of customary international law as confirmed by State practice and the existence of *opinio juris.* **Declaration of Judge Tladi** The relationship between human rights and the environment has traditionally been conceptualised in three ways. First, the recognition of a self-standing right to a clean and healthy environment. Second, the protection of the environment through

	[¶302] The obligations arising from the right to a healthy climate must be interpreted and implemented with the guarantee of intra- and intergenerational equity. [¶313] This right also extends to the protection of nature, which is conceived as the physical and biological foundation of life. [¶315] In highlighting the role of equity and the protection of present and future humanity, the Court also noted that the principles appear in the Constitutions and domestic laws of several States of the Americas, and that "considerations on the concept of intergenerational equity have been taken into account for the protection of Indigenous Peoples. In several cases, the Court has noted that "the relationship with the land is not merely a matter of possession and production, but rather a substantive and spiritual element which they should enjoy fully, including to preserve their cultural legacy and transmit this to future generations." Thus, case law has supported the transmission of collective cultural heritage, and this encompasses both the land and the resources traditionally used by Indigenous Peoples and that are necessary for their physical and cultural survival and for the development and continuity of their world view." [¶306] With regards to the climate emergency, the principle of "intergenerational equity is reinforced by the principles of intragenerational equity and common but differentiated responsibilities." [¶309] It held that States ought to "ensure an equitable distribution of the burden of climate action and climate impacts, taking into account their contribution to the causes of climate change and their respective capabilities." [¶310] "The Court underscores that the purpose of the obligations arising from the right to a healthy climate is to protect the global climate	other substantive rights, including the right to life and so on. Third, the pursuit of environmental goals through procedural rights. In those parts of the Opinion where the right to a clean and healthy environment is referred to, the Court does so in a way that could be seen as conflating the first and second approaches to the relationship between the protection of the environment and international human rights law. Judge Tladi is of the view that the GA resolution on the human right to a clean and healthy environment serves as an important indication of *opinio juris*.

	system for the benefit of humanity as a whole, and both present and future generations are part of this. The Court notes that, even though international human rights law recognises that everyone is a possessor of non-derogable rights, the ethical and legislative grounds for this transcend those who inhabit the planet today, extending also to humanity as a legal and moral community that endures over time." [¶311]	
States obligations		
Obligation to take necessary measures ***Obligations to prevent, reduce and control pollution of the marine environment*** Article 194: States must take all necessary measures to reduce and control existing marine pollution from GHG emissions and prevent such pollution from occurring at all. The obligation does not require an immediate cessation of marine pollution from anthropogenic GHG emissions. [¶199] All measures shall be taken individually or jointly as appropriate. [¶201] Necessary measures include those essential to prevent, reduce, and control marine pollution, and also other measures that enable the achievement of that objective. [¶203] "Necessary measures should be determined objectively." [¶207] The Tribunal views that States should consider the best available science, international rules and standards on climate change, such as the UNFCC, the Paris Agreement, Annex VI to MARPOL,	**General human rights obligations** ***Obligation to respect rights*** "States must refrain from any conduct that results in a setback or delay or that limits the results of measures required to protect human rights from the impacts of climate change." This includes measures obstructing or impeding access to reliable, truthful, and complete information, adopting retrogressive measures, and restricting or harming effective access to the enjoyment of human rights of individuals affected by the climate emergency in equal conditions. [¶¶219-223] The Court notes that "any setback in climate or environmental policies that harm human rights must be exceptional, duly justified based on objective criteria, and comply with the standards of necessity and proportionality." [¶222] ***Obligation to guarantee rights*** States must adopt measures to guarantee the rights of individuals or groups who are at risk and "effective" measures to prevent	**Obligations under customary international law** ***Duty to prevent significant harm to the environment*** The Court considers that the diffuse and multifaceted nature of various forms of conduct which contribute to anthropogenic climate change does not preclude the application of the duty to prevent significant harm to the climate system and other parts of the environment. [¶¶272-279] ***Obligations of States under other environmental treaties*** The Court considers the relevant obligations in the Ozone Layer Convention, the Montreal Protocol, the Biodiversity Convention and the Desertification Convention. It is of the view that the obligations in question contribute to the protection of the climate system and other parts of the environment. The Court considers that environmental treaties, climate change treaties and relevant obligations under customary international law inform each other. [¶¶316-335]

Annex 16 to the Chicago Convention, and the Montreal Protocol, including the Kigali Amendment, and other factors such as States' available means and capabilities such as scientific, technical, economic and financial capabilities, in making an objective assessment of necessary measures to prevent, reduce, and control marine pollution from anthropogenic GHG emissions. [¶207, ¶214 and ¶225]

Obligation to protect and preserve the marine environment

Articles 192 and 194(5): States have the general obligation to protect the marine environment, including the duty to prevent or mitigate environmental harm and preserve the marine environment, including maintaining ecosystem health and the natural balance of the marine environment. This obligation applies to all marine areas and to combat any form of marine environment degradation, including the impacts of climate change – ocean warming, sea level rise, and ocean acidification. States' obligations may require restoring marine habitats and ecosystems when the marine environment has already been degraded. The obligation requires stringent due diligence. [¶385 and ¶400]

States have specific obligations to take measures "necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life" from climate change impacts and ocean acidification. [¶402] The obligation may include specific measures such as enacting and enforcing laws and regulations or monitoring and assessment. These measures call for objectively reasonable approaches to be taken based severe or irreversible environmental damage. [¶226 and ¶229] States must take all necessary measures to reduce the risks from the degradation of the global climate system and from exposure and vulnerability to the effects of this degradation. [¶227]

Obligation to adopt measures to ensure the progressive development of the ESCE

States must allocate the maximum available resources to protect persons and groups in vulnerable situations from the severe impacts of climate change, as part of their general obligation to ensure progressive development of economic, social, cultural, and environmental rights. [¶¶238-243]

Obligation to adopt domestic legislative provisions

States need to adapt the law to address the climate emergency. Laws and regulations adopted should guide both the States and their individuals on effectively and comprehensively addressing the causes and impacts of climate change, ensuring the adequate evolution of such norms based on the best available science and are coherently applied in line with international commitments. [¶246]

Obligations of States under the law of the sea and related issues

The Court is of the view that anthropogenic GHG emissions may be characterised as pollution of the marine environment within the meaning of UNCLOS. It therefore considers that Part XII of UNCLOS on the protection of the marine environment is applicable in the context of anthropogenic GHG emissions and is thus relevant to answering question (a) before the Court in the present advisory proceedings. On this basis, the Court considers the most relevant obligations of States under UNCLOS to ensure the protection of the climate system. [¶¶336-354]

The Court considers that the provisions of UNCLOS do not require States parties, in the context of physical changes resulting from climate-change related sea level rise, to update their charts or lists of geographical co-ordinates that show the baselines and outer limit lines of their maritime zones once they have been duly established in conformity with the Convention. For this reason, States parties to UNCLOS are under no obligation to update such charts or lists of geographical co-ordinates. The Court also notes that several participants argued that sea level rise also poses a significant threat to the territorial integrity and thus to the very statehood of small island States. In the view of the Court, once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood. [¶¶355-365]

Obligations of States under international human rights law

The Court views that States have obligations under the principle of non-refoulement where there are substantial grounds for

on the best available science. Their implementation depends on the relevant domestic legal system and discretion, but States do not have absolute discretion. [¶405] ***Obligation to conserve living marine resources*** Articles 61 and 119: States Parties must take measures necessary to conserve living marine resources threatened by climate change impacts and ocean acidification by ensuring the maintenance of the living resources in the exclusive economic zone, high seas are not endangered by overexploitation. The best available science must inform conservation and management measures. States Parties must consider relevant environmental and economic factors and apply the precautionary and ecosystem approach. [¶418] ***Obligation to harmonise policies*** States must make every effort to harmonise their policies in taking necessary measures, but are not required to achieve such harmonisation. [¶230]		believing that there is a real risk of irreparable harm to the right to life in breach of Article 6 of the ICCPR if individuals are returned to their country of origin. [¶378] States are responsible for promoting environmental conditions that ensure the enjoyment of the right to health. [¶379] The Court considers that a State's failure to implement timely and adequate measures to address adverse impacts of climate change may violate the right to privacy, family and home. [¶381] The Court considers that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment. In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, inter alia, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities of private actors. Under international human rights law, States are required to take necessary measures in this regard. The Court is of the view that international human rights law, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other. States must therefore take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other relevant environmental treaties and under customary

		international law into account when implementing their human rights obligations. [¶¶403-404] ~~~~~~~~~~~~~~~~~~~~ **Declaration of Judge Tomka** Judge Tomka raises concern over the Court's approach to identification and confirmation of customary international law, particularly regarding the continuity of statehood in the context of sea-level rise. He critiques the disappearance of a State's territory would not necessarily mean the end of its statehood stand in tensions with the customary criteria of statehood, which traditionally requires a defined territory. He cautions that these developments (continued statehood in such circumstances) do not amount to a settled rule of customary international law yet. He further states the Court's responsibility to shape the law as it exists and not to shape it prematurely. Since the GA did not explicitly ask the Court to provide opinion on statehood issue, the Court should have refrained from addressing it. **Separate opinion of Judge Aurescu** Judge Aurescu views that the reasoning of the Court on which the finding of not requiring States to update their geographical co-ordinates or charts in the context of physical changes to baselines and outer limits of maritime zones by sea-level rise, based could have been more comprehensive, including the principle of legal stability, security, certainty and predictability, which applies to all aspects related to sea-level rise, including fixed baselines, continuity of statehood and non-applicability of

		rebus sic stantibus to existing maritime delimitations. He regrets that the Court failed to recognise that "fixed baselines" in the context of sea-level rise has become part of the customary international law. He regrets that the Court did not acknowledge that the obligation of non-refoulement under international human rights law includes positive obligations to take proactive measures to prevent refoulement and to ensure that other rights are respected during individuals' stay in the State's territory. **Separate opinion of Judge Charlesworth** Judge Charlesworth states that it is important to acknowledge that the adverse effects of climate change are not evenly distributed. Certain sectors of the population face greater risks and burdens than others and are sometimes referred to as "climate vulnerable groups".
Obligation of developed States to lead the measures to reduce GHG emissions States with greater means and capabilities must do more to reduce such emissions than States with less means and capabilities. [¶227] While developed States "continue taking the lead regarding the necessary measures to reduce anthropogenic GHG emissions causing marine pollution, all States must make mitigation efforts." [¶229] ***Monitoring and environmental assessment***	**Obligation arising from the right to a healthy environment in the context of the climate emergency** ***Regulation of climate mitigation*** Obligation to define a mitigation target: The mitigating target should be established based on the principles of progressivity and CBDRs [¶324], best available science, the current and historical GHG emissions of each State, the capabilities of each State, and the circumstances of each States, such as States' population, income, distribution inequality, and unsatisfied basic necessities [¶¶327-330]. The mitigation target should be as ambitious as possible, be established in a binding legal instrument, specify clear compliance time frames, and be increased gradually. [¶331]	**Mitigation and adaptation obligations under UNFCCC, Kyoto Protocol and Paris Agreement** The main obligations under the Framework Convention concerning mitigation are to be found in Article 4. The Court observes that certain obligations under Article 4(1), such as those to develop, update, publish and make available national inventories of anthropogenic GHG emissions and removals by sinks, and to formulate and publish national programmes, and the obligation to communicate information to the COP, are obligations of result. [¶¶201-203] Other obligations under Article 4(1), are obligations of conduct because they do not require parties to bring about a particular

States have specific obligations to monitor the risks or effects of pollution, publish reports obtained from monitoring, and conduct environmental impact assessments to address marine pollution from anthropogenic GHG emissions. [¶¶340-367]	Obligation to define a human rights-based strategy: States should define their own strategy. Both the definition and implementation of this strategy must adhere to the standard of enhanced due diligence. [¶335] States must establish realistic measures considering the sectors with the highest GHG emissions, costs for reducing them, and the benefits for preserving the global climate system. These measures should reflect the maximum available resource use, set measurable objectives and specific deadlines for fulfillment, and regulate how public and private stakeholders should carry out the reduction process. Additionally, States must base these measures on the best available scientific knowledge. [¶336] Determination of climate impact: States must conduct environmental/climate impact assessments, especially for projects or activities that pose a risk of generating significant GHG emissions, given that the harm to climate systems constitutes environmental damage that States are obligated to prevent. [¶359] ***Protection of nature and its components:*** States must protect nature and its components from climate change impacts under the right to a healthy environment. [¶364] States have a positive obligation to adopt measures for ecosystem protection, restoration, and regeneration. These measures must be based on the best available science, recognised traditional, local, and Indigenous knowledge, uphold the principle of non-retrogressivity, and ensure the full exercise of procedural rights. [¶ 283] ***Gradual progress towards sustainable development:*** To effectively address the climate emergency, States have the	result but rather require parties to use their best efforts to achieve certain results relating to mitigation. The obligation to co-operate in the development and diffusion of technologies and practices that control, reduce or prevent anthropogenic emissions of greenhouse gases is an example of such an obligation. In the Court's view, the legal obligations under Article 4(1), are interconnected obligations of conduct and result. [¶¶203-204] The Court observes that Article 4(2) provides that each Annex I party "shall adopt" national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic GHG emissions and protecting and enhancing its GHG sinks and reservoirs. They are obliged to periodically communicate detailed information on such policies and measures, as well as on their resulting projected anthropogenic emissions by sources and removals by sinks of GHGs with the aim of returning to their 1990 levels. They are also obligated to co-ordinate as appropriate with other such parties, relevant economic and administrative instruments developed to achieve the objective of the Convention. Finally, they are obliged to identify and periodically review their own policies and practices which lead to greater levels of anthropogenic GHG emissions. [¶206] The Court observes that adapting to the adverse effects of climate change is, along with mitigation, a major area of action for parties under the Framework Convention. Several provisions of the Framework Convention refer to obligations relating to adaptation. These provisions are legally binding in nature. The same is true of the obligation incumbent upon all parties to formulate, implement, publish and regularly update national and,

	obligation to promote measures that address the structural circumstances that led to it and the main obligation to ensure the progressive realisation of human rights threatened or violated by climate change, which is to promote a transition towards sustainable development. [¶369]	where appropriate, regional programmes containing measures to facilitate adequate adaptation to climate change (Article 4(1)(b)). [¶¶209-210] Article 4(4) of the UNFCCC also provides that developed country parties and other parties included in Annex II, which comprise a subset of parties contained in Annex I, "shall" assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation to those adverse effects. This is a legally binding obligation on all parties that are listed in Annex II. The Court further observes that funding, insurance and the transfer of technology are three adaptation measures identified in Article 4(8). Article 4(9) further requires that "Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology". The Court considers that the phrases used in these provisions have the effect of giving parties some discretion in the implementation of their commitments under Article 4. However, this discretion does not detract from their character as legally binding obligations. [¶¶211-213] The Court then considers the Kyoto Protocol to the UNFCCC. It notes that the absence of a new commitment period does not deprive that instrument of its legal effect and that its provisions may still serve as, inter alia, (i) interpretative aids for the identification of obligations under the climate change treaty framework and (ii) substantive provisions to assess the compliance of Annex I parties listed in Annex B of the Protocol with applicable emission reduction targets during the relevant commitment period. Thus, non-compliance with emission

		reduction commitments by a State may constitute an internationally wrongful act. [¶¶219-221] The Court recalls that mitigation involves human intervention to reduce emissions or enhance carbon sinks. It notes that the mitigation obligations of States parties under the Paris Agreement are set out in Article 4. The Court concludes that, rather than being entirely discretionary, NDCs must satisfy certain standards under the Paris Agreement. All NDCs prepared, communicated and maintained by parties under the Paris Agreement must, when taken together, be capable of realising the objectives of the Agreement which are set out in Article 2. [¶¶230-249] Obligations of conduct to implement NDCs and to take domestic mitigation measures requires parties to act with stringent due diligence. [¶¶250-254] The Court finds that specific obligations pertaining to adaptation are contained in Article 7(9) of the Paris Agreement, which provides that "[e]ach Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions". The Court considers that the fulfilment of adaptation obligations of parties is to be assessed against a standard of due diligence. It is therefore incumbent upon parties to enact appropriate measures (examples of which are provided in Article 7(9)) that are capable of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change. In this connection, parties must use their best efforts, in line with the best available science, with a view to achieving the aforementioned objectives. Finally, the

		Court observes that the adaptation obligations under the Paris Agreement complement the mitigation obligations in preventing and reducing the harmful consequences of climate change. [¶¶256-259]
Obligations applicable to specific sources of pollution The Tribunal finds that the most relevant types of pollution in the present proceedings are confined to marine pollution caused by anthropogenic GHG emissions into the atmosphere from land-based sources, vessels, and aircraft. [¶264] States have the obligation to adopt national legislation, take necessary measures, and establish international rules and standards, practices, and procedures to prevent, control, and reduce marine pollution from land-based sources [¶267] and pollution from or through the atmosphere [¶275]. States also have similar obligations of enforcement with respect to the pollution from such sources. [¶¶281] States are obligated to adopt laws and regulations to prevent, reduce, and control marine pollution from vessels flying their flag or of their registry. "States may adopt more stringent laws and regulations than generally accepted international rules and standards." [¶279]	**Other rights affected by climate impacts** The Court also addressed the other substantive rights threatened or affected by climate impacts, such as life, personal integrity, health, private and family life, property and housing, freedom of residence and movement, water, food, work, social security, culture, and education. To protect these rights, States have the obligation to define and update their national adaptation plans, which are of immediate enforceability. Such plans include all measures needed to prevent and mitigate the impacts on human rights caused by climate-related effects to the greatest extent possible, based on an enhanced due diligence standard, best available science, and designed in a way that minimises the negative side effects of adaptation measures. [¶¶384-388] In describing the effective enjoyment of the rights to personal integrity and health, States have specific duties to protect these rights in the context of climate emergency. [¶400] The obligations in this regard are mentioned in paras 401 and 402. In describing the right to private and family life, States obligations are mentioned in paras 404-405. In describing the right to private and family life, States obligations are mentioned in paras 411-413.	**Adverse effects of climate change on the enjoyment of human rights** The Court views that the adverse effects of climate change, including, inter alia, the impact on the health and livelihoods of individuals through events such as sea level rise, drought, desertification and natural disasters, may impair the enjoyment of certain human rights, in particular, the right to life, the right to health, the right to an adequate standard of living, which encompasses access to food, water and housing, the right to privacy, family and home, and the rights of women, children and Indigenous Peoples. [¶¶372-386]

	In describing the right to freedoms of residence and movement, the Court has also recognised that, given the complexity of the phenomenon of internal displacement and the wide range of human rights that are affected or put at risk, along with the circumstances of particular vulnerability and defenselessness in which displaced persons generally find themselves, their situation can be understood as a *de facto* condition of lack of protection. This heightened vulnerability is reinforced by their rural origins and particularly affects female heads of household. [¶420] States are obligated to adopt measures to prevent, in line with the standard of enhanced due diligence, migration and forced displacement resulting directly and indirectly from disasters and other impacts of climate change. [¶422] States obligations with respect to the right to freedoms of residence and movement are mentioned in paras 424-434. The Court considers that States must establish an appropriate regulatory framework that provides effective legal and/or administrative mechanisms at the domestic level to guarantee the legal and humanitarian protection of persons displaced across international borders due to the impacts of climate change. States must implement effective mechanisms to ensure humanitarian protection for these persons by establishing appropriate migration categories such as humanitarian visas, temporary residence permits, and/or protection under refugee status or similar status, which can provide them with protection against *refoulement*. [¶433] In describing the rights to water and food, States obligations are mentioned in paras 439-440. In describing the right to work, States obligations are mentioned in paras 445-447.	

	In describing the right to culture, the Court notes that "the right to culture protects the distinctive features that characterise a social group, without denying its historical, dynamic, and evolutionary nature." It recognises that some regions remain particularly vulnerable to this impact of climate change, observing that, in small island States, tangible cultural heritage, such as archaeological sites, buildings, historic sites, and ancestral tombs (as in Monkey River Village, Belize), are often located in coastal areas and are therefore vulnerable to the effects of sea level rise and extreme weather events." [¶449] It held that the effects of this may be particularly adverse for Indigenous and local communities "because of their close relationship with the land and water." [¶450] States obligation with regard to the right to culture are mentioned in paras 451-452. In describing the right to education, States obligations are mentioned in paras 456-457.	
Obligation of cooperation States must cooperate "directly or through competent international organisations, continuously, meaningfully, and in good faith to prevent, reduce, and control marine pollution from anthropogenic GHG emissions" by: - "formulating and elaborating rules, standards, and recommended practices and procedures, consistent with the Convention and based on available scientific knowledge, to counter marine pollution from such emissions"; - "promot[ing] studies, undertak[ing] scientific research, and encourag[ing] the exchange of information and data on marine pollution from	**Obligation of cooperation** States have the obligation to cooperate in good faith to protect against environmental harm. [¶257] This obligation must be interpreted considering the principles of equity and common but differentiated responsibilities, and States must cooperate effectively and also receive cooperation. [¶¶258-259] The obligation of cooperation includes "(i) financial and economic aid to the least developed countries to contribute to a just transition; (ii) technical and scientific cooperation involving communication and common enjoyment of the benefits of progress; (iii) implementation of mitigation, adaptation and reparation actions that can benefit other States; and (iv) establishment of international forums and formulation of collaborative international policies."	**Obligations of cooperation and assistance under the UNFCCC, and Paris Agreement** The Court considers that international cooperation is indispensable in the field of climate change, and that the customary duty to cooperate for the protection of the environment is reflected in several provisions of the climate change treaties, including the UNFCCC.[¶215] The duty to cooperate is an obligation of conduct, the fulfilment of which is assessed against a standard of due diligence. A case-by-case determination of the adequacy of current financial and technology transfer commitments is to be made by the application of the principle of good faith, which governs the duty of cooperation. [¶218]

anthropogenic GHG emissions, its pathways, risks and remedies, including mitigation and adaptation measures"; and - "establish[ing] appropriate scientific criteria on the basis of which rules, standards, and recommended practices and procedures are to be formulated and elaborated to counter marine pollution from such emissions." [¶321] Articles 63, 64, and 118: States must cooperate in implementing conservation and management measures concerning straddling and highly migratory species and other living resources of the high seas, directly or through appropriate international organisations. This obligation requires good faith in States' consultation to adopt effective measures necessary to coordinate and ensure the conservation and development of shared stocks, considering the impacts of climate change and ocean acidification on living marine life resources. [¶428] ***Technical assistance*** States have specific obligations to assist developing States, particularly those vulnerable to climate change, in their efforts to address marine pollution from anthropogenic GHG emissions. States must provide assistance in international research and capacity-building, scientific knowledge, and technology transfer, directly or through international organisations, and States must grant them preferential treatment in the allocation of funding, technical	The Court also notes that "cooperation includes the transfer of resources, technical cooperation and assistance, policy assessment, exchange and diffusion of information on experiences, specialised knowledge and practices, and the establishment of networks and the development of technologies." [¶264]	The Court notes that States are free to select the means of co-operating, as long as such means are consistent with the obligations of good faith and due diligence. Under the Paris Agreement, the Court considers that developed States have obligations of cooperation, including financial assistance, technology development and transfer and capacity-building, to developing States. [¶¶260-267] ***Duty to cooperate for the protection of the environment under customary international law*** Specific character of climate change requires States to take individual measures in cooperation with other States. States required to make good faith efforts to arrive at appropriate forms of collective action. The duty takes on a special importance in the context of need to reach a collective temperature goal. Duty to cooperate applies to all States. The Court recognises that the duty to cooperate leaves States some discretion in determining the means for regulating their GHG emissions. However, this discretion cannot serve as an excuse for States to refrain from cooperating with the required level of due diligence or to present their effort as an entirely voluntary contribution which cannot be subjected to scrutiny. [¶¶304-306] The Court considers that a non-party State cooperating with a community of States parties to the three climate change treaties in a way equivalent to cooperation of a State party may be considered to fulfil customary obligations through practice that comports with the required conduct of States under the climate

assistance, and the use of specialised services from international organisations. [¶¶322- 339]		change treaties. However, if a non-party State does not cooperate in such a way, it has the full burden of demonstrating that its policies and practices are in conformity with its customary obligations. [¶315]
Obligation to exercise stringent due diligence States must act with *stringent due diligence* in taking necessary measures to prevent, reduce, and control marine pollution from anthropogenic GHG emissions. [¶234 and ¶241] "The obligation of due diligence requires a State to put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective." [¶235]	**Obligation to exercise enhanced due diligence** States are required to act with *enhanced due diligence* in taking necessary measures to protect the threatened rights in the context of climate emergency, which requires among other relevant aspects: "(i) identification and thorough, detailed and in-depth assessment of the risks; (ii) adoption of proactive and ambitious preventive measures to avoid the worst climate scenarios; (iii) utilisation of the best available science in the design and implementation of climate actions; (iv) integration of the human rights perspective in the formulation, implementation and monitoring of all policies and measures related to climate change to ensure that these do not create new vulnerabilities or exacerbate existing ones; (v) permanent and adequate monitoring of the effects and impacts of the adopted measures; (vi) strict compliance with the obligations arising from procedural rights, in particular access to information, participation, and access to justice; (vii) transparency and accountability regarding State climate action; (viii) appropriate regulation and supervision of corporate due diligence; and (xi) enhanced international cooperation, particularly regarding technology transfer, finance, and capacity-building." [¶236]	**Stringent due diligence as the required standard of conduct** The Court reaffirms that States must fulfil their duty to prevent significant harm to the environment by acting with due diligence. In paras 138, 246, 254 – The Court affirms that the standard of due diligence to be applied (to prevent significant harm to the environment, in preparing NDCs, in the obligation to pursue domestic mitigation measures respectively) ought to be *stringent due diligence.* In paras 343, 347, 349 – The Court affirms that the standard of due diligence to be applied (to protect and preserve the marine environment, to prevent, reduce and control marine pollution, the obligation not to cause damage to the other States and their environment respectively) out to be *stringent due diligence.* The following elements are particularly relevant when it comes to determining what due diligence requires from a State in a particular situation, including in the context of climate change: (i) appropriate rules and measures, which include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system; (ii) the availability of scientific and

		technological information and the need to acquire and analyse such information; (iii) relevant international rules and standards; (iv) the principle of common but differentiated responsibilities and respective capabilities of States; (v) scientific information regarding the probability and the seriousness of possible harm, it being understood that States should also not refrain from or delay taking actions of prevention in the face of scientific uncertainty; (vi) risk assessment and environmental impact assessment; and (vii) States' notification of and consultation in good faith with other States where planned activities within their jurisdiction or control create a risk of significant harm or significantly affect collective efforts to address harm to the climate system, such as the implementation of policy changes in relation to the exploitation of resources linked to GHG emissions. [¶¶280-300].
	Obligation Arising from Procedural Rights ***Democracy and procedural rights in the context of the climate emergency*** Climate impacts and extreme weather events present a major challenge to democracy. [¶461] The Court emphasises the importance of ensuring decisions in the context of the climate emergency are made in a participatory, open, and inclusive manner. Full enforcement of procedural rights must also be ensured under enhanced due diligence. [¶468] ***Rights to science and recognition of local, traditional, and indigenous knowledge***	***Determination of State responsibility in the climate change context*** ***Attribution:*** The Court emphasises at the outset that attribution is to be based on criteria determined by international law. In the Court's view, the well-established rule of international law that the conduct of any organ of a State must be regarded as an act of that State is applicable in the context of climate change. Failure of a State to take appropriate action to protect the climate system from GHG emissions, including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies, may constitute an internationally wrongful act which is attributable to that State. A State may be responsible where, for example, it has failed to

	The Court recognises "the right to science includes every person´s access to the benefits of scientific and technological progress, as well as opportunities for them to contribute to scientific activity, without discrimination." This right extends to the intellectual and practical developments of Indigenous Peoples, Afro descendant communities, and local communities. [¶473 and ¶483] States must ensure and adopt measures to protect and respect these rights. It held that States "should ensure respect for different epistemological frameworks and equitable, symmetrical exchange aimed at promoting mutual learning." [¶480] The role of indigenous women in preserving and transmitting this traditional knowledge should also be recognised. ***Right to access information in the context of the climate emergency*** States are obligated to publish the causes and effects of climate change, the measures implemented by the State to mitigate its emissions and adapt to its impacts, environmental impact studies, including climate impact assessments, as well as the mechanisms in place for accessing information, public participation, and climate-related justice. [¶507] Such information shall be disclosed with maximum disclosure. [¶519] States must adopt measures against climate-related disinformation and refrain from distributing information not supported by the best available science or relevant local, traditional or indigenous knowledge. [¶527 and ¶525] ***Right to public participation***	exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction [¶¶427-428] The Court considers that each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment. And where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act. [¶431] ***Causation:*** The Court concludes that while the causal link between the wrongful actions or omissions of a State and the harm arising from climate change is more tenuous than in the case of local sources of pollution, this does not mean that the identification of a causal link is impossible in the climate change context; it merely means that the causal link must be established in each case through an *in concreto* assessment while taking into account the aforementioned elements outlined by the Court. [¶438] **Erga omnes** ***character of the underlying obligations:*** States' obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, in particular the obligation to prevent significant transboundary harm under customary international law, are obligations *erga omnes*. The Court considers that the obligations of States under the UNFCCC and Paris Agreement are

	States must guarantee the participation of persons in decision-making and policymaking on the mitigation target and strategy, the adaptation and risk management plans and strategies, climate financing, international cooperation, and the reparation of damage in the context of the climate, without discrimination. [¶¶535-536] ***Right to access to justice*** In the context of a climate emergency, States are obligated to ensure key aspects of access to justice, such as the provision of sufficient resources for the administration of justice, the application of the *pro action* principle, the guarantee of promptness and reasonable time in judicial proceedings, and adequate provisions regarding legal standing, evidence, and reparations and the application of Inter-American standards in deciding litigations and legal issues arising from climate emergency. [¶¶541-560] States must provide effective judicial and administrative mechanisms to enable victims to access comprehensive redress. [¶557] ***Right to defend human rights and protection of environmental defenders*** The Court recognises that respecting and ensuring the rights of environmental human rights defenders is important as they perform a "fundamental for strengthening democracy and the rule of law." [¶563] States have special duties to protect them, which include recognising promoting and guaranteeing the rights of defenders, guaranteeing a safe and favorable environment for defenders to conduct their activities and work freely, without threats, restrictions or risks to their life and investigating and	obligations *erga omnes partes*. [¶440] The Court adds that responsibility for breaches of obligations *erga omnes*, such as climate change mitigation obligations, may be invoked by any State when such obligations arise under customary international law. When such obligations arise under the climate change treaties, all parties to the treaty may invoke such responsibility, since every party is deemed to have a legal interest in the protection of these obligations. [¶442] **Legal consequences arising from wrongful acts** A breach by a State of any obligations identified in response to question (a) constitutes an internationally wrongful act entailing the responsibility of that State. The responsible State is under a continuing duty to perform the obligation breached. The legal consequences resulting from the commission of an internationally wrongful act may include the obligations of: (a) cessation of the wrongful actions or omissions, if they are continuing; (b) providing assurances and guarantees of non-repetition of wrongful actions or omissions, if circumstances so require; and (c) full reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met, including that a sufficiently direct and certain causal nexus can be shown between the wrongful act and injury. States have an obligation to compensate if restitution should prove to be materially impossible. What form that satisfaction, where possible form include expressions of regret, formal apologies, public acknowledgments or statements, or education of the

	punishing any attacks, threats or intimidation against defenders while carrying out their task and, providing the redress for the harm that may have been caused. [¶565] The Court also recognises additional risks experienced by women defenders, journalists, members of rural communities, Afro-descendants, and Indigenous Peoples. It should include specific strategies to guarantee the life, safety and reputation of environmental defenders. [¶576]	society about climate change, could take will depend on the nature and circumstances of the breach. [¶¶444-455] ~~~~~~~~~~~~~~~~~~~~ **Separate opinion of Vice-President Sebutinde** Matters concerning the determination of state responsibility, such as attribution and causation, in the context of climate change are relevant only in contentious proceeding and outside the scope of the GA's request. **Separate opinion of Judge Yusuf** Judge Yusuf regrets that the Court missed a historic opportunity to clarify for all States, particularly for most suffered States from climate change effects, in a clear and tangible manner, the legal consequences of the failure of gross GHG-emitting States to take appropriate action to protect the climate system from such emissions. The Court should have considered whether small island developing States and least developed countries could invoke Article 42 of ARSIWA for breach by gross GHG-emitting State for failing their obligations to regulate fossil fuel production, consumption and granting of subsidies or exploration licenses. The Court should have considered the international liability regime for injuries with States responsibility in the climate context and should have recognised the insufficiency of the regime of the State responsibility for internationally wrongful acts. **Separate opinion of Judge Bhandari**

		Judge Bhandari observes that the treatment of legal consequences by the Court could have been approached with greater specificity, arguing that the Court could have identified concrete examples of cessation and restitution such as fossil fuel-intensive practices, damaged ecosystems restoration and recognition of States' maritime entitlements affected by sea-level rise. He further advocates for equitable remedies, including compensation guided by fairness and a dedicated UN fund to address climate harms. Judge Bhandari suggests that more tangible forms of satisfaction should be addressed. **Joint declaration of Judge Bhandari and Cleveland** The judges agree with the Court's observations however, they feel that the Court could have been more forceful in addressing the fossil fuels in the fight against anthropogenic emissions and elaborate further on the obligations of States to protect the climate system and other parts of the environment in respect of the production and licensing of fossil fuels and subsidies, including the obligations of environmental risk assessment, the preparation and implementation of NDCs, obligation to take substantive and procedural measures, as well as obligations of States with greater resources and technologies, in light of CBDR-RC principle, to transition away from the fossil fuel production and dependency with deeper and faster targets than developing States with lesser capabilities. State have full responsibility in this regard. **Declaration of Judge Nolte**

		Judge Nolte, in addressing legal consequences, views that the Court should have acknowledged that international law, unlike several domestic legal systems, does not currently contain a general customary rule establishing strict liability for certain lawful acts. Judge Nolte considers that the Court should have addressed questions of intertemporal law that the obligation to prevent environmental harm only apply to GHG emissions until the emergence of a general understanding and recognition of the risks with such emissions were in the second half of the 1980s. This limits the amount of emissions that could be the consequences of wrongful acts. He expresses his hope that the Advisory Opinion will reinforce the commitment of States to tackling climate change through legally framed forms of political and administrative co-operation, with respect to which litigation should play only a complementary role. **Declaration of Judge Cleveland** Judge Cleveland notes that States with greater capabilities and those that are major contributors have a responsibility to assist States with less resources, including in the preservation of carbon sinks and reservoirs. She agrees with the Court's conclusions on the breaches of obligations regarding carbon sinks and reservation would give rise to legal consequences under the law of State responsibility, including the duty of cessation. **Declaration of Judge Tladi**

		The Court's conclusion regarding certain obligations under customary international law and the climate change treaties as having *erga omnes* and *erga omnes partes* character because they relate to common spaces or global common goods is correct and incontrovertible. He also fears that a certain incoherence in the Court's jurisprudence. He refers back to the *2024 Advisory Opinion on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, and states that if we take this Opinion at face value, then all breaches of *erga omnes* obligations, whether those obligations flow from *jus cogens* norms or not, should attract the consequences of the duty of non-recognition, non-assistance and co-operation would also be identified here as legal consequences arising from the breach. But the Court does not do so. The Court offers no reason whatsoever as to why these consequences do not attach to the breaches (of obligations *erga omnes*) in this case.
Obligation of States in transboundary pollution States have the specific obligation to take all measures necessary to ensure that anthropogenic GHG emissions under their jurisdiction or control do not cause damage by pollution to other States and their environment, and pollution from such emissions under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights. The standard of due diligence under this obligation is more stringent. [¶258] **Obligation regarding non-indigenous species**	**Obligations regarding the rights of vulnerable groups** The Court notes that climate change poses extraordinary and increasingly serious risks to the human rights of vulnerable groups, which is increased by "the confluence of intersectional and structural factors of discrimination." [¶545] The Court also imposes obligations on States regarding the rights of vulnerable individuals and groups such as children, indigenous and trial peoples, Afro-descendent communities, peasant farmers and fishermen, and others, including women, persons with disabilities, and older people, in the context of the climate	~~~~~~~~~~~~~~~~~~~~ **Separate Opinion of Judge Charlesworth** Judge Charlesworth views States have a particular obligation to protect the human rights of vulnerable groups, such as Indigenous peoples, women, children and people with disability, through the application of the principles of equality and non-discrimination.

States Parties must take appropriate measures to prevent, reduce, and control pollution from introducing non-indigenous species due to climate change impacts and ocean acidification, which may cause significant and harmful changes to the marine environment. This obligation requires a precautionary approach. [¶¶429-436]	emergency. [¶¶595-629] States must include the differentiated measures in their actions to ensure absolute equality in the enjoyment of rights. [¶¶595-596] Such measures shall be based on the principle of equality and non-discrimination [¶¶589-594]. The Court also stresses that recognising new forms of vulnerability is essential for protecting human rights in the climate emergency. That States must adopt specific, reasonable, and differentiated measures that aim at preventing and reducing climate risks, mitigating their effects, and facilitating sustainable adaptation processes. [¶629] The Court held that the principles of equality and non-discrimination are *jus cogens norms.* "The concept of equality … springs directly from the oneness of the human species and is inseparable from the essential dignity of the individual so that it is incompatible with any notion that a given group has the right to privileged treatment because of its perceived superiority or, inversely, that considering it inferior, a group is treated with hostility or otherwise subjected to discrimination in the enjoyment of rights which are accorded to others not so categorised." [¶589] It noted that a number of statements concerned the differentiated impacts of climate change on vulnerable individuals [¶592]. Among the factors creating particular vulnerabilities are poverty and inequality: Indeed, the poorest and most unequal regions in the world are the most vulnerable to experiencing the harshest consequences of climate change, precisely because they have the fewest resources and the least capacity to address those consequences, face greater governance challenges, have only limited access to basic goods and services, are experiencing violent	

	conflicts, and their means of subsistence are more susceptible to the climate." [¶594] With regards to the particular vulnerabilities of children to the adverse impacts of climate change, the Court held that "Added to this is the intersection of vulnerabilities such as those present in children who are migrants, indigenous, living in extreme poverty, or on the street, or in precarious housing. Gender is also a relevant factor in perception of the impact, and girls are more vulnerable to climate impacts, which usually intensify existing inequalities." [¶598] Similarly, in discussing the particular effects on indigenous, tribunal, afro-descendant, peasant farming and fishermen communities, the Court re-iterated that in the case of large-scale development or investment plans that would have a major impact in the territories of indigenous or tribal peoples, States not only have the obligation to consult, but also the duty to obtain the free, prior and informed consent of the communities concerned, in keeping with their customs and traditions." [¶608] "In the context of the climate emergency, natural disasters, both sudden and slow-onset events, environmental degradation, and forced displacement may have differentiated impacts on women, older persons, and persons with disabilities." [¶614] Finally, the Court explored the responsibilities of States to combat poverty in the Context of the climate emergency. It held that "Poverty constitutes a structural factor of vulnerability that increases the exposure to human rights violations and significantly limits access to effective mechanisms of justice and adequate	

	measures of reparation." [¶619] It recognised that Latin America and the Caribbean are regions significantly affected by this, and that "these conditions result in persistent gaps in access to basic services, education and decent work, which represent a structural obstacle to sustainable development and the effective guarantee of human rights." [¶622]. Conversely, it also held that climate change "exacerbates multidimensional poverty and inequality" [¶623], and that "the intersection of diverse vulnerability factors increases the disadvantages faced, significantly limiting the capacity to adapt to the effects of climate change. In this way, the climate-related vulnerability that affects certain groups, such as women, children, and persons with disabilities, is exacerbated when these people are living in multidimensional poverty, and this heightens their exposure to risks and even further their possibilities of overcoming the adverse consequences of climate change." [¶625]	
	Cross-referencing ¶148: The Court refers to the ITLOS's Advisory Opinion regarding the obligation to adopt all necessary measures to prevent such pollution, both domestically and in the transboundary context encompasses GHG emissions insofar as they constitute a form of marine environmental pollution. ¶180: The Court notes that in addition to the present Advisory Opinion, the ITLOS issued its advisory opinion on climate change on 21 May 2024. ¶232: The Court concurs with the ITLOS in that due diligence is a variable concept that depends on the specific circumstances,	**Cross-referencing** ***ITLOS:*** ¶123: The Court notes the ITLOS rendered an advisory opinion on climate change and international law, which addresses the relationship between UNCLOS and climate change and held that many provisions of UNCLOS constitute obligations of State in respect of climate change. ¶138: The Court recognises that the standard of due diligence for preventing significant harm to the climate system is stringent *(see Climate Change, Advisory Opinion,* ITLOS Reports 2024, pp. 91-92, para. 241, pp. 92-93, para. 243, p. 94, para. 248, pp. 137-138, paras. 398-400, and pp. 152-158, para. 441*).*

	available scientific and technological information, relevant international rules and standards, the risk of harm, and the urgency involved.	¶140: The Court considers that the duty of States to co-operate for the protection of the environment is a rule whose customary character has been established *(see Climate Change, Advisory Opinion,* ITLOS Reports 2024, p. 110, para. 296*).* ¶252: The Court refer to the ITLOS that the Tribunal observed, the "obligation of due diligence is particularly relevant in a situation in which the activities in question are mostly carried out by private persons or entities" *(Climate Change, Advisory Opinion,* ITLOS Reports 2024, p. 90, para. 236*).* ¶275: The Court refers ITLOS regarding the determination of an activity constitutes a risk of significant harm. *(Climate Change, Advisory Opinion,* ITLOS Reports 2024, p. 91, para. 239, and p. 137, para. 397*).* ¶276: The Court refers to the ITLOS regarding a risk of significant harm to the environment is caused by the cumulative effect of different acts undertaken by various States and by private actors subject to their respective jurisdiction or control *(Climate Change, Advisory Opinion,* ITLOS Reports 2024, p. 128, para. 365*).* ¶281: The Court refers to the ITLOS regarding appropriate measures as relevant element for determining due diligence *(Climate Change, Advisory Opinion,* ITLOS Reports 2024, p. 89, para. 235*).*

		¶287: The Court refers to the ITLOS regarding relevant international rules and standards as relevant element for determining due diligence *(see Climate Change, Advisory Opinion,* ITLOS Reports 2024, p. 107, para. 285*).* ¶291: In the context of UNCLOS, ITLOS has recognised that the implementation of the obligation to prevent harm to the marine environment "requires a State with greater capabilities and sufficient resources to do more than a State not so well placed" *(Climate Change, Advisory Opinion,* ITLOS Reports 2024, p. 92, para. 241*).* ¶302: In its advisory opinion on climate change, ITLOS characterised co-operation as "a fundamental principle in the prevention of pollution of the marine environment" by the emission of GHGs *(Climate Change, Advisory Opinion,* ITLOS Reports 2024, p. 110, para. 296; see also paragraphs 350-351 below*).* ¶304: The Court refers to the ITLOS regarding the duty to co-operate requires sustained and continuous forms of co-operation, of which treaties and their coordinated forms of implementation are a principal expression. *(see Climate Change, Advisory Opinion,* ITLOS Reports 2024, pp. 85-86, para. 223; see also paragraph 314 below*).* ¶313: Regarding the relationship between obligations arising from treaties and from customary international law relating to climate change *(see, with regard to the duty to co-operate,*

		Climate Change, Advisory Opinion, ITLOS Reports 2024, pp. 110-111, paras. 297-299*)*. ¶314: The Court refers to the ITLOS regarding the general customary duties to prevent significant environmental harm and to co-operate. *(see Climate Change*, Advisory Opinion, ITLOS Reports 2024, pp. 85-86, para. 223*)*. ¶337-338: ITLOS rendered its advisory opinion regarding the obligations of States parties to UNCLOS. Although the questions put to the Court in the present request for an advisory opinion are broader than those put to ITLOS, the Court considers that there are issues common to the two requests. The Court observes in this regard that, since its establishment, ITLOS has developed a considerable body of jurisprudence on UNCLOS, both in contentious and advisory proceedings. Although the Court is not obliged, in the exercise of its judicial functions, to model its own interpretation of UNCLOS on that of ITLOS, it considers that, in so far as it is called upon to interpret the Convention, it should ascribe great weight to the interpretation adopted by the Tribunal. ¶340: The Court refers to the ITLOS that anthropogenic GHG emissions may be characterised as pollution of the marine environment within the meaning of UNCLOS *(see Climate Change*, Advisory Opinion, ITLOS Reports 2024, pp. 65-71, paras. 161-179*)*. ¶342: The Court refers to the ITLOS regarding the obligation to protect and preserve the marine environment. *(see Climate*

		Change, *Advisory Opinion*, ITLOS Reports 2024, p. 133, para. 385, and pp. 133-134, para. 387*)*. ¶343: As ITLOS has recognised, the standard of due diligence has to be "more severe for the riskier activities" *(Climate Change*, Advisory Opinion, ITLOS Reports 2024, p. 91, para. 239*)*. The Court agrees that Article 192 therefore requires States parties to take measures "as far-reaching and efficacious as possible" to protect and preserve the marine environment and "to prevent or reduce the deleterious effects of climate change and ocean acidification on the marine environment" *(Climate Change*, *Advisory Opinion*, ITLOS Reports 2024, p. 138, para. 399*)*. Such measures must be adopted in accordance with the obligations incumbent upon States under the UNFCCC and the Paris Agreement, in so far as the States concerned are parties to those instruments *(Climate Change*, *Advisory Opinion*, p. 134, para. 388*)*. ¶344. The Court refers to the ITLOS regarding the sovereign right of States parties under Article 193 of UNCLOS "to exploit their natural resources pursuant to their environmental policies" is subject to "their duty to protect and preserve the marine environment" *(Climate Change*, Advisory Opinion, ITLOS Reports 2024, pp. 72-73, para. 187, and p. 132, para. 380*)*. ¶346: States parties are under an obligation to take all necessary measures to reduce and control marine pollution caused by anthropogenic GHG emissions (see *Climate Change*, Advisory Opinion, ITLOS Reports 2024, p. 77, para. 199).

		¶347. The Court refers to the ITLOS regarding the required stringent due diligence of States in implementing all measures necessary to prevent, reduce and control marine pollution *(see Climate Change*, Advisory Opinion, ITLOS Reports 2024, p. 89, para. 235*)* and regarding what constitutes a "necessary measure" and its assessment *(see Climate Change, Advisory Opinion*, pp. 79-80, paras. 206-207, and pp. 91-92, para. 241*).* ¶351: The Court refers to the ITLOS regarding the obligation to co-operate under Article 197 *(see Climate Change, Advisory Opinion,* ITLOS Reports 2024, pp. 113-114, para. 311*)*. Moreover, the Court agrees with ITLOS that Article 197 does not exhaust the obligation to co-operate under Section 2 of Part XII of UNCLOS. In the view of the Court, States are also required to co-operate under Articles 200 and 201 of the Convention to promote studies, undertake research programmes, encourage the exchange of information and data, and to establish appropriate scientific criteria for regulations *(Climate Change, Advisory Opinion, para. 312).* ***IACtHR:*** ¶385: The Court notes that the application of international human rights law in relation to the adverse effects of climate change has been addressed in decisions of regional human rights courts *(see, inter alia, Inter-American Court of Human Rights, Advisory Opinion* OC-32/25 of 29 May 2025, Series A No. 32*).*