**INTER-AMERICAN COURT OF HUMAN RIGHTS**

# ADVISORY OPINION OC-23/17
# OF NOVEMBER 15, 2017
# REQUESTED BY THE REPUBLIC OF COLOMBIA

## THE ENVIRONMENT AND HUMAN RIGHTS

## (STATE OBLIGATIONS IN RELATION TO THE ENVIRONMENT IN THE CONTEXT OF THE PROTECTION AND GUARANTEE OF THE RIGHTS TO LIFE AND TO PERSONAL INTEGRITY: INTERPRETATION AND SCOPE OF ARTICLES 4(1) AND 5(1) IN RELATION TO ARTICLES 1(1) AND 2 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:

Roberto F. Caldas, President
Eduardo Ferrer Mac-Gregor Poisot, Vice President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge, and
L. Patricio Pazmiño Freire, Judge

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Article 64(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 70 to 75 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), issues the following advisory opinion, structured as follows:

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# I
# PRESENTATION OF THE REQUEST

1. On March 14, 2016, the Republic of Colombia (hereinafter "Colombia" or "the requesting State") presented a request for an advisory opinion based on Article 64(1)[1] of the American Convention and Article 70(1) and 70(2)[2] of the Rules of Procedure concerning State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity (hereinafter "the request"). The Court was asked to determine "how the Pact of San José should be interpreted when there is a danger that the construction and operation of major new infrastructure projects may have severe effects on the marine environment in the Wider Caribbean Region and, consequently, on the human habitat that is essential for the full enjoyment and exercise of the rights of the inhabitants of the coasts and/or islands of a State Party to the Pact, in light of the environmental standards recognized in international customary law and the treaties applicable among the respective States." In addition, the requesting State asked the Court to determine "how the Pact of San José should be interpreted in relation to other treaties concerning the environment that seek to protect specific areas, such as the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region, in the context of the construction of major infrastructure projects in States that are party to such treaties, as well as the respective international obligations concerning prevention, precaution, mitigation of damage, and cooperation between the States potentially affected."[3]

2. Colombia explained the considerations that led to the request and indicated that:

> [According to Colombia, t]he situation that led to the presentation of this request for an advisory opinion relates to the severe degradation of the marine and human environment in the Wider Caribbean Region that may result from the acts and/or omissions of States that border the Caribbean Sea in the context of the construction of major new infrastructure projects.
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> In particular, this request for an advisory opinion is the result of the development of major new infrastructure projects in the Wider Caribbean Region that, owing to their dimensions and permanence, may cause significant harm to the marine environment and, consequently, to the inhabitants of the coastal areas and islands located in this region who depend on this environment for their subsistence and development. […]
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> [The requesting State indicated that] this problem is of interest not only to the States of the Wider Caribbean Region – whose coastal and island population may be directly affected by any environmental damage suffered by this region – but also to the international community. This is because, nowadays, major infrastructure projects are frequently constructed and operated in maritime areas that have effects which may go

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[1] Article 64 of the American Convention: "1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court. 2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments."

[2] The relevant parts of Article 70 of the Court's Rules of Procedure establish that: "1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought. 2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or the Delegates."

[3] The complete text of the request [in Spanish only] can be consulted on the Court's website at the following link: http://www.corteidh.or.cr/solicitudoc/solicitud_14_03_16_esp.pdf.

beyond state borders and ultimately have negative repercussions on the quality of life and personal integrity of those who depend on the marine environment for their subsistence and development. […]

The protection of the human rights of the inhabitants of the islands of the Wider Caribbean Region and, consequently, the prevention and mitigation of environmental damage in this area, is an issue of particular interest to Colombia, because part of its population lives on the islands that form part of the Archipelago of San Andrés, Providencia and Santa Catalina and they therefore depend on the marine environment for their survival, and economic, social and cultural development. […]

Owing to the ecological and oceanographic interconnectedness of the Wider Caribbean Region – a well-documented situation – it is vitally important that the problems of the marine environment be dealt with taking into consideration the effects on relevant areas and the ecosystem as a whole, with the cooperation of the other States that could be affected. […]

The construction, maintenance and operation of major infrastructure projects may have a severe impact on the environment and, therefore, on the populations that inhabit the areas that may be directly or indirectly affected as a result of such projects. […]

The increased levels of sediment in the Wider Caribbean Region, and specifically in the Caribbean Sea, could cause a wide range of irreparable harm to the marine ecosystem […]. In addition, the maritime traffic generated or increased by the development of major new infrastructure projects in the Caribbean would also increase the risk of pollution of the marine environment on which the habitat of the inhabitants of the Colombian islands and the populations of other coastal States depends. […]

The pollution of the marine environment of the Wider Caribbean Region that may result from […] the above-mentioned causes may have long-lasting and, at times, irreparable effects on the marine flora and fauna and, consequently, on the (already fragile) capacity of the ecosystem to provide an income from tourism and fishing for the inhabitants of the Region's coasts and islands. Furthermore, it should be underlined that this type of damage to the marine environment not only subsists over time, but tends to worsen, affecting both present and future generations. […]

Based on the foregoing, there can be no doubt that the construction and operation of major new infrastructure projects in the Wider Caribbean Region may have a negative and irreparable effect on a decent life, and also on the quality of life, of the inhabitants of the coasts and, particularly, of the islands located in this region, and also on their possibilities of economic, social and cultural development and on their physical, mental and moral integrity. These factual circumstances and, therefore, the need to implement appropriate and effective projects to prevent and mitigate environmental damage when developing major new infrastructure projects in the Wider Caribbean Region – with the cooperation of the States potentially affected – comprise the factual context that forms the basis for this request for an advisory opinion.

3. Accordingly, Colombia submitted the following specific questions to the Court:

I. Based on the provisions of Article 1(1) of the Pact of San José, should it be considered that a person, even if he or she is not in the territory of a State Party, is subject to the jurisdiction of that State in the specific case in which, the four conditions described below are met cumulatively?

1. that the person resides in, or is inside, an area delimited and protected by the environmental protection regime of a treaty to which that State is a party;
2. that the said treaty-based regime establishes an area of functional jurisdiction, such as the one established in the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region;

3. that, in this area of functional jurisdiction, the States parties have the obligation to prevent, reduce and control pollution as the result of a series of general and/or specific obligations, and
4. that, as a result of damage to the environment or the risk of environmental damage in the area protected by the respective convention that can be attributed to the State party – to that convention and to the Pact of San José – the human rights of the person in question have been violated or are threatened.

II. Are the measures and conducts that, owing to an act and/or omission of one of the States parties, have effects which may cause serious damage to the marine environment – which constitutes the living environment and an essential source of the livelihood of the inhabitants of the coast and/or islands of another State party – compatible with the obligations set out in Articles 4(1) and 5(1), read in relation to Article 1(1) of the Pact of San José? Or any other permanent provision?

III. Should we interpret, and to what extent, the provisions establishing the obligation to respect and to ensure the rights and freedoms set out in Articles 4(1) and 5(1) of the Pact, in the sense that these provisions give rise to the obligation of the States Parties to the Pact to respect the provisions of international environmental law which seek to prevent environmental damage that could limit the effective enjoyment of the rights to life and to personal integrity, or make this impossible, and that one of the ways to comply with this obligation is by making environmental impact assessments in areas protected by international law, and by cooperation among the States that are affected? If applicable, what general parameters should be considered when making environmental impact assessments in the Wider Caribbean Region, and what should their minimum content be?

4. Colombia appointed Ricardo Abello Galvis as its Agent.

## II
## PROCEEDING BEFORE THE COURT

5. In notes of May 18, 2016, the Secretariat of the Court (hereinafter "the Secretariat"), pursuant to the provisions of Article 73(1)[4] of the Rules of Procedure, forwarded the request to the other Member States of the Organization of American States (hereinafter "the OAS"), the OAS Secretary General, the President of the OAS Permanent Council, the President of the Inter-American Juridical Committee, and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"). In these notes, the Secretariat advised that the President of the Court, in consultation with the other judges, had established September 19, 2016, as the time limit for presenting written observations on the said request. Also, on the instructions of the President and as established in Article 73(3)[5] of the said Rules of Procedure, in notes of May 18, 2016, the Secretariat invited various civil society and international organizations as well as academic establishments in the region to forward their written opinion on the questions submitted to the Court within the aforementioned time frame. Lastly, an open invitation was issued on the Inter-American Court's website to all those interested in presenting their

[4] Article 73(1) of the Court's Rules of Procedure establishes that: "Upon receipt of a request for an advisory opinion, the Secretary shall transmit copies thereof to all of the Member States, the Commission, the Permanent Council through its Presidency, the Secretary General, and, if applicable, to the OAS organs whose sphere of competence is referred to in the request."

[5] Article 73(3) of the Court's Rules of Procedure stipulates that: "The Presidency may invite or authorize any interested party to submit a written opinion on the issues covered by the request. If the request is governed by Article 64(2) of the Convention, the Presidency may do so after prior consultation with the Agent."

written opinion on the questions submitted to the Court. The original time limit was extended until January 19, 2017; those interested had around eight months to forward their submissions.

6. At the expiry of the time frame, the Secretariat had received additional observations from the requesting State and also the following briefs with observations:[6]

*Written observations presented by OAS Member States:*

1. Argentine Republic (hereinafter "Argentina")
2. Plurinational State of Bolivia (hereinafter "Bolivia")
3. Republic of Honduras (hereinafter "Honduras")
4. Republic of Panama (hereinafter "Panama);

*Written observations presented by OAS organs:*

5. Inter-American Commission on Human Rights
6. The representative of the OAS General Secretariat and the World Commission on Environmental Law of the International Union for Conservation of Nature;[7]

*Written observations presented by international organizations:*

7. International Maritime Organization;

*Written observations presented by State agencies, national and international associations, non-governmental organizations and academic establishments:*

8. Interamerican Association for Environmental Defense
9. Center for International Environmental Law and Vermont Law School Center for Applied Human Rights
10. Human Rights Center of the Law School at the Universidad de Buenos Aires
11. Center for Human Rights Studies of the Universidad Autónoma de Yucatán
12. International Center for Comparative Environmental Law
13. Centro Mexicano de Derecho Ambiental A.C.
14. Human Rights Legal Clinic at the Pontificia Universidad Javeriana, Cali campus
15. Human Rights Commission of the Federal District of Mexico
16. National Human Rights Commission of Mexico
17. Conservation Clinic & Costa Rica Program on Sustainable Development, Law, Policy & Professional Practice at the University of Florida Levin College of Law
18. Environmental Law Alliance Worldwide
19. Law School at the Universidad EAFIT
20. Law School at the Universidad Sergio Arboleda, Colombia
21. European Center for Constitutional and Human Rights
22. Law School at the Universidad Católica del Uruguay
23. Biosphere Foundation
24. Public Action Group of the Jurisprudence Faculty at the Universidad del Rosario

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[6] The observations on the request for an advisory opinion presented by Colombia can be consulted on the Court's website at the following link: http://www.corteidh.or.cr/cf/jurisprudencia2/observaciones_oc.cfm?nId_oc=1650.

[7] The brief was presented on behalf of the World Commission on Environmental Law of the International Union for Conservation of Nature. During the public hearing, the representative of the OAS General Secretariat, Claudia S. De Windt, explained that the OAS General Secretariat made this presentation "jointly" with the World Commission on Environmental Law "of which the General Secretariat is a member, in addition to being on the Board of the World Commission on Environmental Law."

25. Group of students from the Escuela Libre de Derecho;
26. Environmental Law and Policy Research Group at the Universidad Nacional de Colombia
27. Public Interest and Litigation Group at the Universidad del Norte
28. Democracy and Human Rights Institute at the Pontificia Universidad Católica del Peru
29. Office for Raizal Ethnic Affairs of the Archipelago of San Andrés, Providencia and Santa Catalina
30. Rede Amazônica de Clínicas de Direitos Humanos
31. Universidad Centroamericana José Simeón Cañas

*Written observations presented by members of civil society:*

32. Ana María Mondragón Duque and Karina G. Carpintero
33. Alberto Madero Rincón, Sebastián Rubiano-Groot, Daniela María Rojas García, Nicolás Ramos Calderón and Nicolás Caballero Hernández
34. Alejandra Gonza, Adam Hayne and Michelle Sue
35. Alejandra Gutiérrez Vélez and Laura Castellanos
36. Alfredo Ortega Franco
37. Antonio José Rengifo Lozano
38. Belén Olmos Giupponi, Cristián Delpiano Lira and Christian Rojas Calderón
39. Benjamín Benítez Jerezano, Gina Larissa Reyes Vásquez, Luis Ovidio Chinchilla Fuentes and Nadia Stefania Mejía Amaya
40. Christoph Schwarte
41. Eduardo Biacchi Gomes, Danielle Anne Pamplona, Adrian Mohamed Nunes Amaral, Ane Elise Brandalise Gonçalves, Amanda Carolina Buttendorff, Aníbal Alejandro Rojas Hernandez, Bruna Werlang Paim, Juliane Tedesco Andretta, Mariana Kaipper de Azevedo, Lincoln Machado Domingues, Henrique Alef Burkinsky Pereira, Luis Alexandre Carta Winter, João Paulo Josbiak Dresch and Simone dos Reis Bieleski Marques
42. Hermilo de Jesús Lares Contreras
43. Jorge Alberto Pérez Tolentino
44. Jorge E. Viñuales
45. José Manuel Pérez Guerra
46. Judith Ponce Ruelas, José Benjamín González Mauricio and Rafael Ríos Nuño
47. Matías Nicolás Kuret, Rodrigo Carlos Méndez Martino, Nicolás Mariano Toum and María Agostina Biritos
48. Noemí Sanín Posada and Miguel Ceballos Arévalo
49. Pedro Gonsalves de Alcântara Formiga
50. Santiago Díaz-Cediel, Ignacio F. Grazioso and Simon C. Milnes
51. Silvana Insignares Cera, Meylin Ortiz Torres, Juan Miguel Cortés and Orlando De la Hoz Orozco.

7. Following the conclusion of the written procedure, and pursuant to Article 73(4) of the Rules of Procedure,[8] on February 10, 2017, the President of the Court issued an order calling for a public hearing,[9] and invited the OAS Member States, the OAS Secretary General, the President of the OAS Permanent Council, the President of the Inter-American

[8] Article 73(4) of the Court's Rules of Procedure: "[a]t the conclusion of the written proceedings, the Court shall decide whether oral proceedings should take place and shall establish the date for a hearing, unless it delegates the latter task to the Presidency. Prior consultation with the Agent is required in cases governed by Article 64(2) of the Convention."

[9] Available at: http://www.corteidh.or.cr/docs/asuntos/solicitud_10_02_17_esp.pdf.

Juridical Committee, the Inter-American Commission, and members of various organizations, civil society and academic establishments, as well as individuals who had submitted written observations, to present their oral comments on the request made to the Court.

8. The public hearing was held on March 22, 2017, during the fifty-seventh special session of the Inter-American Court of Human Rights held in Guatemala City, Guatemala.

9. The following persons appeared before the Court:[10]

1. For the Republic of Colombia: Ricardo Abello Galvis, Colombia's Agent before the Inter-American Court of Human Rights and Head of Delegation; Carlos Manuel Pulido Collazos, Ambassador of Colombia to Guatemala and Alternate Head of Delegation; Andrés Villegas Jaramillo, Adviser to the Colombian Ministry of Foreign Affairs; César Felipe González Hernández, Minister Plenipotentiary of the Colombian Embassy in Guatemala; Juan Manuel Morales Caicedo, Adviser to the Colombian Ministry of Foreign Affairs; Jenny Sharyne Bowie Wilches, Third Secretary of the Colombian Ministry of Foreign Affairs, and Juan-Marc Thouvenin, International consultant;

2. For the Republic of Guatemala: Wendy Cuellar Arrecis, Director, Unit to Monitor International Human Rights Cases; Andrés Uban, Nidia Juárez, Lesbia Contreras, Steffany Rebeca Vásquez and Francisca Marroquín, members of the Presidential Commission to Coordinate the Executive's Human Rights Policy (COPREDEH); Carlos Hugo Ávila, Director for Human Rights of the Ministry of Foreign Affairs;

3. For the Argentine Republic: Javier Salgado;

4. Por the Republic of Honduras: Ricardo Lara Watson, Assistant Attorney General of the Republic, Deputy Agent for the State of Honduras and Head of the Delegation; Olbín Mejía Cambar, Human Rights Office of the Office of the Attorney General, and Luis Ovidio Chinchilla Fuentes, Officer responsible for Human Rights Conventions and Monitoring of the Secretary of State for Human Rights, Justice, Governance and Decentralization;

5. For the Plurinational State of Bolivia: Ernesto Rosell Arteaga from the Office of the Attorney General;

6. For the Inter-American Commission on Human Rights: Jorge H. Meza Flores, consultant;

7. For the OAS General Secretariat: Claudia S. de Windt, and for the World Commission on Environmental Law of the International Union for Conservation of Nature: María L. Banda;

8. For the Law School of the Universidad Sergio Arboleda: Andrés Sarmiento;

9. For the Mexican Center for Environmental Law: Anaid Velasco;

10. Nadia Stefanía Mejía Amaya;

11. Silvana Insignares Cera;

12. Simon Milnes, Santiago Díaz-Cediel and Ignacio Grazioso;

13. For the Office for Raizal Ethnic Affairs of the Archipelago of San Andrés, Providencia and

[10] The video of the hearing and the interventions of participating delegations and individuals is available at: https://vimeo.com/album/4520997.

Santa Catalina: Walt Hayes Bryan, Endis Livingston Bernard and Ofelia Livingston de Barker;

14. For the Human Rights Legal Clinic at the Pontificia Universidad Javeriana, Cali campus: Raúl Fernando Núñez Marín, Santiago Botero Giraldo and Estuardo Rivera;

15. For the Public Interest and Litigation Group at the Universidad del Norte: Shirley Llain Arenilla;

16. Nicolás Eduardo Ramos Calderón;

17. For the group of students from the Escuela Libre de Derecho: Luis M. Díaz Mirón, Elí Rodríguez Martínez, Juan Pablo Vásquez Calvo, Manuel Mansilla Moya, Carmen Andrea Guerrero Rincón, Adriana Méndez Martínez, José Emiliano González Aranda and Agustín Roberto Guerrero Rodríguez;

18. For the Human Rights Research Center at the Universidad Autónoma de Yucatán: María de los Ángeles Cruz Rosel and Arturo Carballo Madrigal;

19. For the Mexican National Human Rights Commission: Jorge Ulises Carmona Tinoco and Edmundo Estefan Fuentes;

20. For the Rede Amazônica de Clínicas de Direitos Humanos: Sílvia Maria da Silveira Loureiro, Caio Henrique Faustino da Silva and Victoria Braga Brasil;

21. For the Interamerican Association for Environmental Defense (AIDA): Astrid Puentes Riaño;

22. For the Law School at the Universidad EAFIT: Catalina Becerra Trujillo, Ana Carolina Arias Arcila and José Alberto Toro Valencia;

23. For the Environmental Law and Policy Research Group at the Universidad Nacional de Colombia: Catalina Toro Pérez;

24. Alfredo Ortega Franco;

25. Alejandra Gonza and Adam Hayne, and

26. For the Biosphere Foundation: Jorge Casal and Horacio P. de Beláustegui.

10. Following the hearing, supplementary briefs were received from: (1) the Office for Raizal Ethnic Affairs of the Archipelago of San Andrés, Providencia and Santa Catalina, and (2) the Republic of Colombia.

11. When answering this request for an advisory opinion, the Court examined and took into account the fifty-two briefs and interventions by States, OAS organs, international organizations, State agencies, non-governmental organizations, academic establishments, and members of civil society (*supra* paras. 6 and 10). The Court expresses its appreciation for these valuable contributions that, when issuing this Advisory Opinion, provided it with insight on the different questions raised.

12. The Court began deliberation of this Advisory Opinion on November 14, 2017.

## III
## JURISDICTION AND ADMISSIBILITY

13. In this chapter, the Court will examine the scope of its competence to issue advisory opinions, as well as its jurisdiction, and the admissibility and validity of ruling on the request for an advisory opinion presented By Colombia.

### *A. The Court's advisory jurisdiction in relation to this request*

14. The request was submitted to the Court by Colombia on the basis of Article 64(1) of the American Convention. Colombia is a Member State of the OAS and, therefore, has the right to request the Inter-American Court to issue advisory opinions on the interpretation of this treaty or of other treaties concerning the protection of human rights in the American States.

15. In this regard, the Court considers that, as an organ with jurisdictional and advisory functions, it has the inherent authority to determine the scope of its own competence (*compétence de la compétence/Kompetenz-Kompetenz*) when exercising its advisory function pursuant to Article 64(1) of the Convention.[11] And this is so, in particular, because the mere fact of having recourse to the Court supposes that the State or States who present a request recognize the Court's right to determine the scope of its competence in that regard.

16. The Court's advisory function allows it to interpret any article of the American Convention, and no part or aspect of this instrument is excluded from such interpretation. Thus, it is evident that, since the Court is the "ultimate interpreter of the American Convention,"[12] it has full authority and competence to interpret all the provisions of the Convention, even those of a procedural nature.[13]

17. In addition, the Court has considered that, when referring to its authority to provide an opinion on "other treaties concerning the protection of human rights in the States of the Americas," Article 64(1) of the Convention is broad and non-restrictive. In general, the advisory jurisdiction of the Court can be exercised with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, whether it be bilateral or multilateral, whatever the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have the right to become parties thereto.[14] Consequently, when interpreting the Convention

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[11] *Cf. Case of the Constitutional Court v. Peru. Jurisdiction.* Judgment of September 24, 1999. Series C No. 55, para. 33; *Reports of the Inter-American Commission on Human Rights (Art. 51 American Convention on Human Rights)*. Advisory Opinion OC-15/97 of November 14, 1997. Series A No. 15, para. 5, and *Entitlement of Legal Entities to hold Rights under the Inter-American System of Human Rights (Interpretation and scope of Article 1(2), in relation to Articles 1(1), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46, and 62(3) of the American Convention on Human Rights, as well as Article 8(1) A and B of the Protocol of San Salvador)*. Advisory Opinion OC-22/16 of February 26, 2016. Series A No. 22, para. 14.

[12] *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 124; Advisory Opinion OC-22/16, *supra*, para. 16, and *Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of February 29, 2016. Series C No. 312, para. 242.

[13] *Cf. Article 55 of the American Convention on Human Rights.* Advisory Opinion OC-20/09 of September 29, 2009. Series A No. 20, para. 18; Advisory Opinion OC-22/16, *supra*, para. 16.

[14] *Cf. "Other Treaties" Subject to the Advisory Function of the Court* (Art. 64 American Convention on Human Rights). Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, first operative paragraph; Advisory Opinion OC-22/16, *supra*, para. 17.

within the framework of its advisory function and in the terms of Article 29(d) of the Convention, the Court may invoke the Convention or other treaties concerning the protection of human rights in the American States.[15]

### *B. Requirements for the admissibility of the request*

18. The Court must now determine whether the request for an advisory opinion presented by Colombia meets the formal and substantive requirements for admissibility, so that it may issue an opinion in this case.

19. First, the Court finds that the request presented by Colombia complies formally with the requirements described in Articles 70[16] and 71[17] of the Rules of Procedure, according to which, for the Court to consider a request, the questions must be formulated precisely, specifying the provisions to be interpreted, indicating the considerations that gave rise to the request, and providing the name and address of the agent.

20. Regarding the substantive requirements, the Court recalls that, on numerous occasions, it has indicated that compliance with the regulatory requirements to submit a request does not mean that the Court is obliged to respond to it.[18] To determine the validity of the request, the Court must bear in mind considerations that exceed matters of mere form and that relate to the characteristics it has recognized for the exercise of its advisory function.[19] It must go beyond the formalism that might prevent it from considering questions that have a legal interest for the protection and promotion of human rights.[20] Also, the Court's advisory jurisdiction should not, in principle, be used for abstract speculations with no foreseeable application to specific situations that would justify the issue of an advisory opinion.[21]

21. In its request, Colombia stated that "[t]he Court's opinion will have great relevance for effective compliance with international human rights obligations by the agents and organs of the States of the Wider Caribbean Region, as well as for reinforcing global awareness, by clarifying the scope of the environmental protection obligations under the Pact and, in particular, the importance that should be accorded to social and environmental

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15 *Cf. Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights.* Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, sole operative paragraph, and Advisory Opinion OC-22/16, *supra*, para. 18.

16 Article 70 of the Court's Rules of Procedure: "Interpretation of the Convention: 1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought. 2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or the Delegates. […]"

17 Article 71 of the Court's Rules of Procedure: "Interpretation of Other Treaties: 1. If, as provided for in Article 64(1) of the Convention, the interpretation requested refers to other treaties concerning the protection of human rights in the American States, the request shall indicate the name of the treaty and parties thereto, the specific questions on which the opinion of the Court is being sought, and the considerations giving rise to the request. […]"

18 *Cf.* Advisory Opinion OC-15/97, *supra*, para. 31, and Advisory Opinion OC-22/16, *supra*, para. 21.

19 *Cf.* Advisory Opinion OC-1/82, para. 31; Advisory Opinion OC-15/97, para. 31, and Advisory Opinion OC-20/09, *supra*, para. 14.

20 *Cf.* Advisory Opinion OC-1/82, para. 25, and *Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights* (Arts. 41 and 44 to 51 American Convention on Human Rights). Advisory Opinion OC-19/05 of November 28, 2005, Series A No. 19, para. 17.

21 *Cf. Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 16**,** and Advisory Opinion OC-22/16, para. 21.

impact assessments, projects to prevent and mitigate environmental harm, and cooperation between States that could be affected by damage to the environment – in the context of the construction and operation of mega-projects that, once initiated, may have an irreversible negative impact on the marine environment."

22. The OAS General Assembly has "underscore[d] the importance of studying the link that may exist between the environment and human rights, recognizing the need to promote environmental protection and the effective enjoyment of all human rights."[22] Also, the OAS Member States indicated in the Inter-American Democratic Charter that it was essential that "the States of the hemisphere implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations."[23] Furthermore, they have adopted the Inter-American Program for Sustainable Development 2016-2021, which recognizes the three dimensions of sustainable development: "the economic, social and environmental," which are "integrated and indivisible" "to support development, eradicate poverty, and promote equality, fairness and social inclusion."[24]

23. When recalling that the advisory function represents "a service that the Court is able to provide to all the members of the inter-American system in order to help them comply with their international commitments [concerning human rights],"[25] the Court considers that, based on the interpretation of the relevant provisions, its response to the request will be of real value for the countries of the region because it will identify, clearly and systematically, the State obligations in relation to the protection of the environment within the framework of their obligation to respect and to ensure the human rights of every persons subject to their jurisdiction. This will lead the Court to determine the principles and the specific obligations that States must comply with in relation to environmental protection in order to respect and to ensure the human rights of the persons subject to their jurisdiction, and so that they may take appropriate and pertinent measures.

24. The Court reiterates, as it has on other occasions,[26] that the task of interpretation it performs in the exercise of its advisory function not only clarifies the meaning, purpose and

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[22] OAS, General Assembly Resolution entitled: "*Human Rights and the Environment," adopted at the third plenary session held on June 5,* 2001, OEA/Ser.P AG/ RES. 1819 (XXXI-O/01), first operative paragraph. Also, in the Resolution entitled "*Human Rights and the Environment in the Americas*," the OAS General Assembly acknowledged "a growing awareness of the need to manage the environment in a sustainable manner to promote human dignity and well-being," and decided "[t]o continue to encourage institutional cooperation in the area of human rights and the environment in the framework of the Organization, in particular between the Inter-American Commission on Human Rights (IACHR) and the Unit for Sustainable Development and Environment." OAS, General Assembly Resolution entitled "*Human Rights and the Environment in the Americas*," adopted at the fourth plenary session held on June 10, 2003, AG/RES. 1926 (XXXIII-O/03), preamble and second operative paragraph.

[23] Inter-American Democratic Charter, adopted at the first plenary session of the OAS General Assembly held on September 11, 2001, during the twenty-eighth period of sessions, art. 15.

[24] The Inter-American Program for Sustainable Development 2016-2021 was adopted on June 14, 2016, and sets out strategic actions to ensure that the work of the OAS General Secretariat in the area of sustainable development is aligned with the implementation of Agenda 2030 for Sustainable Development (Resolution A/RES/70/1 of the United Nations General Assembly, October 21, 2015) and the Paris Agreement on Climate Change in the hemisphere, and that its objectives and results are guided by the new global Sustainable Development Goals (SDG) adopted by the Members States and that will contribute to achieving them. *Cf.* OAS, General Assembly Resolution entitled "Inter-American Program for Sustainable Development," AG/RES. 2882 (XLVI-O/16), June 14, 2016.

[25] *Cf.* Advisory Opinion OC-1/82, *supra*, para. 39, and Advisory Opinion OC-22/16, *supra*, para. 23.

[26] *Cf.* Advisory Opinion OC-1/82, *supra*, para. 25, and *Rights and Guarantees of Children in the Context of Migration and/or in need of International Protection Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para 29.*

reasons for international human rights norms, but also, above all, assists OAS Member States and organs to comply fully and effectively with their relevant international obligations, and to define and implement public policies to protect human rights. Thus, its interpretations help strengthen the system for the protection of human rights.

25. That said, the Court notes that, in its request for an advisory opinion, Colombia refers "to the construction, maintenance and expansions of canals for maritime traffic," among other activities that represent threats to the Wider Caribbean Region. In this regard, Guatemala, in its intervention during the public hearing, noted that "a comprehensive analysis of the context and specific situation [of the Wider Caribbean Region and the request for interpretation] also involves citing the case of Nicaragua versus Colombia before the International Court of Justice in The Hague, [although] the State of Colombia has not mentioned those proceedings, or even the State of Nicaragua in its request." According to Guatemala, it was necessary "to consider, within this request, the possible implication of the State of Nicaragua even though this is not expressly indicated in any part of the document," and also that "the interpretation provided in answer to the request should accord with what has been indicated in the course of these proceedings between Colombia and Nicaragua; always respecting the human rights and the sovereignty of the States that may be concerned." The Court also notes that the Inter-American Commission advised that it is currently examining petition 912/14 with regard to the State of Nicaragua at the admissibility stage, which "relates to alleged violations of the American Convention in the context of the project for the construction of the Grand Interoceanic Canal of Nicaragua."

26. The Court recalls, as it has in the context of other advisory procedures, that the mere fact that petitions exist before the Commission related to the subject matter of the request is not sufficient reason for the Court to abstain from responding to the questions submitted to it.[27] Moreover, it notes that the Commission has not yet admitted the petition mentioned. In addition, it reiterates that, given that the Court is an autonomous judicial organ, the exercise of its advisory function "cannot be restricted by contentious cases filed before the International Court of Justice."[28] The task of interpretation that the Court must perform in the exercise of its advisory function differs from its contentious competence because there is no litigation to be decided.[29] The central purpose of the advisory function is to obtain a judicial interpretation of one or several provisions of the Convention or of other treaties concerning the protection of human rights in the American States.[30]

27. Furthermore, the Court considers that it is not necessarily restricted to the literal terms of the requests submitted to it. The citing of examples in the request for an advisory opinion serves the purpose of referring to a specific context and illustrating the different situations that may arise in relation to the legal issue that is the purpose of the advisory opinion, without this meaning that the Court is issuing a legal ruling on the situations described in such examples.[31] In the following section, the Court will include the pertinent considerations with regard to the scope of this request and the terms of the questions (*infra* paras. 32 to 38).

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[27] *Cf. The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paras. 45 to 65, and *Juridical Status and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paras. 62 to 66.

[28] *Cf.* Advisory Opinion OC-16/99, *supra*, para. 61.

[29] *Cf.* Advisory Opinion OC-15/97, *supra*, paras. 25 and 26, and Advisory Opinion OC-22/16, *supra*, para. 26.

[30] *Cf. Restrictions to the Death Penalty (Arts. 4.2 and 4.4 American Convention on Human Rights).* Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 22, and Advisory Opinion OC-22/16, *supra*, para. 26.

[31] *Cf.* Advisory Opinion OC-16/99, *supra*, para. 49, and Advisory Opinion OC-18/03, *supra*, para. 65.

28. The Court also finds it necessary to recall that, under international law, when a State is a party to an international treaty, such as the American Convention, this treaty is binding for all its organs, including the Judiciary and the Legislature,[32] so that a violation by any of these organs gives rise to the international responsibility of the State.[33] Accordingly, the Court considers that the different organs of the State must carry out the corresponding control of conformity with the Convention to ensure the protection of all human rights.[34] This is also based on the Court's considerations in exercise of its non-contentious or advisory jurisdiction, which undeniably shares with its contentious jurisdiction the purpose of the inter-American human rights system, which is "the protection of the fundamental rights of the human being."[35]

29. In addition, the interpretation given to a provision of the Convention[36] through the issue of an advisory opinion provides all the organs of the OAS Member States, including those that are not parties to the Convention but have undertaken to respect human rights under the Charter of the OAS (Article 3(l)) and the Inter-American Democratic Charter (Articles 3, 7, 8 and 9), with a source that, by its very nature, also contributes, especially in a preventive manner, to achieving the effective respect and guarantee of human rights. In particular, it can provide guidance when deciding matters relating to the respect and guarantee of human rights in the context of the protection of the environment and thus avoid possible human rights violations.[37]

30. Given the broad scope of the Court's advisory function, which, as previously indicated, encompasses not only the States Parties to the American Convention, everything indicated in this Advisory Opinion also has legal relevance for all OAS Member States,[38] as well as for the OAS organs whose sphere of competence relates to the matter that is the subject of the request.

31. Based on the foregoing considerations, the Court finds that it has jurisdiction to rule on the questions raised by Colombia, even though they may be reformulated (*infra* para. 36). Moreover, the Court does not find in this request any reason to abstain from answering it; it therefore admits the request and proceeds to respond to it, notwithstanding the clarifications made below concerning the object and scope of the request.

## IV
## GENERAL CONSIDERATIONS

### *A. The purpose and scope of this Advisory Opinion and the terms of the*

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[32] *Cf. Case of Fontevecchia and D`Amico v. Argentina. Merits, reparations and costs.* Judgment of November 29, 2011. Series C No. 238, para. 93, and Advisory Opinion OC-21/14, *supra*, para. 31.

[33] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 164, and Advisory Opinion OC-21/14, para. 31.

[34] *Cf. Case of Almonacid Arellano et al. v. Chile*, para. 124, and OC-21/14, para. 31.

[35] *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights.* Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 29, and Advisory Opinion OC-21/14, para. 31.

[36] *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary* objection, merits, reparations and costs. Judgment of November 26, 2010. Series C No. 220, para.79; *Case of Gelman v. Uruguay. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of March 20, 2013, *consideranda* 65 to 90, and Advisory Opinion OC-21/14, para. 31.

[37] *Cf.* Advisory Opinion OC-21/14, para. 31.

[38] *Cf.* Advisory Opinion OC-18/03*, supra,* para. 60**,** and OC-22/16, para. 25.

***questions raised by the requesting State***

32. The Court notes that, in its request for an advisory opinion, Colombia referred to the "marine environment in the Wider Caribbean Region," and asked the Court to interpret "how the Pact of San José should be interpreted in relation to other environmental treaties that seek to protect specific areas, as is the case of the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region" (hereinafter "the Cartagena Convention")[39] (*supra* para. 1). Thus, the first question posed by Colombia was worded as follows:

> I. Based on the provisions of Article 1(1) of the Pact of San José, should it be considered that a person, even if he or she is not in the territory of a State Party, is subject to the jurisdiction of that State in the specific case in which, the four conditions described below are met cumulatively?
>
> 1. that the person resides in, or is inside, an area delimited and protected by the environmental protection regime of a treaty to which that State is a party;
> 2. that the said treaty-based regime establishes an area of functional jurisdiction, such as the one established in the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region;
> 3. that, in this area of functional jurisdiction, the States parties have the obligation to prevent, reduce and control pollution as the result of a series of general and/or specific obligations, and
> 4. that, as a result of damage to the environment or the risk of environmental damage in the area protected by the respective convention that can be attributed to the State party – to the convention and to the Pact of San José – the human rights of the person in question have been violated or are threatened.

33. Accordingly, the requesting State's first question was subject to four conditions that, it asserted, could be present in a specific geographical region owing to a specific treaty. This was reaffirmed by Colombia when, in answer to a request for clarification of this first question made by Judge Eduardo Ferrer Mac-Gregor Poisot during the hearing, it indicated that "[t]he Republic of Colombia circumscribes the object of its request for an advisory opinion to the "functional jurisdiction" created by the Cartagena Convention, owing to the particular human, environmental and legal characteristics of the Wider Caribbean Region."

34. In this regard, the Court reiterates that it is not limited by the literal wording of the questions posed when exercising its advisory function (*supra* para. 27). Thus, it understands that the purpose of the first question raised by the requesting State is for the Court to interpret the scope of Article 1(1) of the American Convention in relation to the area of application of the Cartagena Convention.[40] Currently, there are 25 States parties to that convention;[41] 22 of these are members of the OAS and 10 are parties to the American Convention.

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[39] *Cf.* Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Cartagena Convention), entered into force on October 11, 1986.

[40] The text of this treaty can be consulted at the following link: http://www.cep.unep.org/cartagena-convention/text-of-the-cartagena-convention.

[41] (1) Antigua and Barbuda, (2) Bahamas, (3) Barbados, (4) Belize, (5) Colombia, (6) Costa Rica, (7) Cuba, (8) Dominica, (9) Dominican Republic, (10) France, (11) Grenada, (12) Guatemala, (13) Guyana, (14) Jamaica, (15) Mexico, (16) Nicaragua, (17) The Netherlands on behalf of the Netherlands Antilles and Aruba, (18) Panama, (19) Saint Kitts and Nevis, (20) Saint Vincent and the Grenadines, (21) Saint Lucia, (22) Trinidad and Tobago, (23) United Kingdom of Great Britain and Northern Ireland, (24) United States of America and (25) Venezuela.

35. This Court has indicated that, owing to the general interest of its advisory opinions, their scope should not be restricted to specific States.[42] The questions raised in the request go beyond the interests of the States parties to the Cartagena Convention and are important for all the States of the planet. Therefore, the Court considers that it should not limit is response to the scope of application of the Cartagena Convention. Also, taking into account the relevance of the environment as a whole for the protection of human rights, it does not find it pertinent to restrict its response to the marine environment. In this Opinion, the Court will rule on the State obligations with regard to the environment that are most closely related to the protection of human rights, which is the main function of this Court. Consequently, it will refer to the environmental obligations arising from the obligations to respect and to ensure human rights.

36. The Court has established that, in exercise of its powers inherent in the jurisdiction granted by Article 64 of the Convention, it is able to define or clarify and, in certain cases, reformulate the questions posed to it; particularly, when, as in this case, the Court's opinion is sought on a matter that, it considers, falls within its competence.[43] Based on the considerations in the preceding paragraph, the Court does not find it necessary or pertinent to examine the four conditions that Colombia has included in its first question in order to respond to the question posed by Colombia on the exercise of jurisdiction by a State outside its territory. Therefore, the Court decides to reformulate the first question posed by Colombia as follows:

> Based on the provisions of Article 1(1) of the Pact of San José, should it be considered that a person, even if he or she is not in the territory of a State Party, may be subject to the jurisdiction of that State in the context of compliance with obligations relating to the environment?

37. In addition, regarding the second and third questions, the Court understands that they both refer, concurrently, to the State obligations concerning the duty to respect and to ensure the rights to life and to personal integrity in relation to damage to the environment. In the second question, Colombia is asking whether State "measures and conducts" that could cause "serious damage to the […] environment [are] compatible with the obligations [of the States arising from] Articles 4(1) and 5(1)" of the Convention (*supra* para. 3). While, in the third question, Colombia is asking the Court to define the obligations derived from "the obligations to respect and to ensure the rights and freedoms set out in Articles 4(1) and 5(1)" of the Convention, in relation to "the provisions of international environmental law which seek to prevent environmental damage that could limit the effective enjoyment of the rights to life and to personal integrity" (*supra* para. 3). In this regard, Colombia indicated that it sought definition of "the scope of the obligations under the Pact, particularly those contained in Articles 4(1) and 5(1), in relation to the protection of the environment," as well as clarification of "international obligations concerning prevention, precaution, mitigation of damage, and cooperation between the States that could be affected."

38. Therefore, the Court understands that, with its second and third questions, Colombia is consulting the Court about the obligations of the States Parties to the Convention in relation to environmental protection in order to respect and to ensure the rights to life and to personal integrity in the case of damage that occurs within their territory and also in the

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[42] Similarly, see, Advisory Opinion OC-16/99, *supra*, para. 41.

[43] *Cf. Enforceability of the Right of Reply or Rectification (Arts. 14.1, 1.1 and 2 American Convention on Human Rights).* Advisory Opinion OC-7/86 of August 29, 1986. Series A No. 7, para. 12, and Advisory Opinion OC-16/99, *supra*, para. 42.

case of damage that goes beyond their borders. Consequently, the Court decides to combine its considerations on these questions in order to define, jointly, the State obligations derived from the obligations to respect and to ensure the rights to life and to personal integrity in relation to damage to the environment. It should be understood that the environmental obligations that the Court notes in Chapter VIII in response to both questions are applicable to both internal and international environmental protection. The Court will structure its Opinion based on these considerations as described below.

### *B. The structure of this Advisory Opinion*

39. Based on the above, to provide an appropriate response to the questions raised, the Court has decided to structure this Opinion as follows: (1) Chapter V will set out the interpretation criteria to be used by the Court to issue this Opinion; (2) Chapter VI will contain introductory considerations on the interrelationship between human rights and the environment, and the human rights that are affected by environmental degradation, in order to offer a general legal framework for the State obligations established in this Opinion in response to the requesting State's questions; (3) Chapter VII responds to Colombia's first question, interpreting the scope of the term "jurisdiction" in Article 1(1) of the American Convention, particularly in relation to environmental obligations, and (4) Chapter VIII responds to the second and third questions posed by Colombia, interpreting and establishing the environmental obligations of States with regard to prevention, precaution, cooperation and procedure derived from the obligations to respect and to ensure the rights to life and to personal integrity under the American Convention.

## V
## INTERPRETATION CRITERIA

40. To issue its opinion on the interpretation of the legal provisions cited in the request, the Court will have recourse to the Vienna Convention on the Law of Treaties, which contains the general and customary rules for the interpretation of international treaties.[44] This involves the simultaneous and joint application of the criteria of good faith, and the analysis of the ordinary meaning to be given to the terms of the treaty in question "in their context and in the light of its object and purpose." Accordingly, the Court will use the methods set out in Articles 31[45] and 32[46] of the Vienna Convention to make this

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[44] *Cf.* Advisory Opinion OC-21/14, para. 52, and Advisory Opinion OC-22/16, para. 35. See also, International Court of Justice (hereinafter ÏCJ"), *Case concerning the sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*, Judgment of December 17, 2002, para. 37, and ICJ, *Avena and Other Mexican Nationals (Mexico v. the United States of America)*, Judgment of March 31, 2004, para. 83.

[45] *Cf.* Article 31 (General rule of interpretation) of the Vienna Convention on the Law of Treaties stipulates that: "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended." Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), 1155 U.N.T.S. 331, signed at Vienna on May 23, 1969, entered into force January 27, 1980.

[46] Article 32 (Supplementary means of interpretation) of the Vienna Convention on the Law of Treaties establishes that: "Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application

interpretation.

41. In the specific case of the American Convention, the object and purpose of this treaty is "the protection of the fundamental rights of the human being"[47] and, to this end, it was designed to protect the human rights of individuals, regardless of their nationality, before their own State or any other State.[48] In this regard, it is essential to recall the specificity of human rights treaties which create a legal system under which States assume obligations towards the persons subject to their jurisdiction,[49] and complaints may be filed for the violation of such treaties by those persons and by all the States Parties to the Convention by the lodging of a petition before the Commission,[50] and even before the Court,[51] all of which signifies that the provisions must also be interpreted using a model based on the values that the inter-American system seeks to safeguard, from the "best perspective" for the protection of the individual.[52]

42. Hence, the American Convention expressly contains specific interpretation standards in its Article 29,[53] including the *pro persona* principle, which means that no provision of the Convention shall be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party, or excluding or limiting the effects that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

43. In addition, the Court has repeatedly indicated that human rights treaties are living instruments, the interpretation of which must evolve with the times and contemporary conditions.[54] This evolutive interpretation is consequent with the general rules of interpretation set out in Article 29 of the American Convention, as well as those established by the Vienna Convention on the Law of Treaties.[55]

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of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."

47 Advisory Opinion OC-2/82, *supra*, para. 29, and Advisory Opinion OC-21/14, *supra*, para. 53.

48 *Cf.* Advisory Opinion OC-2/82, *supra*, para. 33, and Advisory Opinion OC-21/14, *supra*, para. 53.

49 *Cf.* Advisory Opinion OC-2/82, *supra*, para. 29, and Advisory Opinion OC-21/14, *supra*, para. 53.

50 *Cf.* Articles 43 and 44 of the American Convention.

51 *Cf.* Article 61 of the American Convention

52 *Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 33, and Advisory Opinion OC-21/14, *supra*, para. 53.

53 Article 29 of the American Convention establishes that: "Restrictions regarding Interpretation: No provision of this Convention shall be interpreted as: (a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention o to restrict them to a greater extent than is provided for herein; (b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; (c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or (d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."

54 See, *inter alia*, C*ase of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 193; Advisory Opinion OC-16/99, *supra*, para. 114; *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2012. Series C No. 257, para. 245; Advisory Opinion OC-22/16, *supra*, para. 49, and *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016. Series C No. 318, para. 245.

55 *Cf.* Advisory Opinion OC-16/99*, supra*, para. 114, and Advisory Opinion OC-22/16, *supra*, para. 49.

44. Furthermore, it is necessary to consider that the purpose of this advisory opinion is to interpret the effect of the obligations derived from environmental law on the obligations to respect and to ensure the human rights established in the American Convention. An extensive *corpus iuris* of environmental law exists. According to the systematic interpretation established in the Vienna Convention on the Law of Treaties, "the provisions must be interpreted as part of a whole, the significance and scope of which must be established based on the legal system to which it belongs."[56] The Court finds that, in application of these rules, it must take international law on environmental protection into consideration when defining the meaning and scope of the obligations assumed by the States under the American Convention, in particular, when specifying the measures that the States must take.[57] In this Advisory Opinion, the Court wishes to underline that, although it is not for the Court to issue a direct interpretation of the different instruments on environmental law, it is evident that the principles, rights and obligations contained therein make a decisive contribution to establishing the scope of the American Convention. Owing to the matter submitted to its consideration, the Court will take into account, as additional sources of international law, other relevant conventions in order to make a harmonious interpretation of the international obligations in the terms of the provision cited. Also, the Court will consider the applicable obligations and the relevant jurisprudence and decisions, as well as the resolutions, rulings and declarations on the issue that have been adopted at the international level.

45. In short, when responding to the present request, the Court acts as a human rights court, guided by the norms that regulate its advisory jurisdiction, and proceeds to make a strictly legal analysis of the questions raised, pursuant to international human rights law, taking into account the relevant sources of international law.[58] In this regard, it should be clarified that the *corpus juris* of international human rights law consists of a series of rules expressly established in international treaties, or to be found in international customary law as evidence of a practice generally accepted as law, as well as of the general principles of law and a series of norms of a general nature or soft law, which provide guidance on the interpretation of the former, because they give greater precision to the basic content established in the treaties.[59] The Court will also base its opinion on its own jurisprudence.

## VI
## ENVIRONMENTAL PROTECTION AND THE HUMAN RIGHTS RECOGNIZED IN THE AMERICAN CONVENTION

46. This Opinion constitutes one of the first opportunities that the Court has had to refer extensively to the State obligations arising from the need to protect the environment under the American Convention (*supra* para. 23). Even though the object of the request made by Colombia, as previously defined (*supra* paras. 32 to 38), refers specifically to the State obligations derived from the rights to life and to personal integrity, the Court finds it

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[56] *Case of González et al. ("Cotton Field") v. Mexico*, para. 43, and Advisory Opinion OC-22/16, *supra*, para. 56.

[57] In this regard, in the *Kaliña and Lokono Peoples case*, the Court had already referred to the Rio Declaration and Convention on Biological Diversity when ruling on the compatibility of the rights of indigenous peoples with the protection of the environment. *Cf. Case of the Kaliña and Lokono Peoples v. Suriname. Merits, reparations and costs*. Judgment of November 25, 2015. Series C No. 309, paras. 177 to 179.

[58] *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14**,** para. 60**,** and Advisory Opinion OC-22/16, para. 29.

[59] *Cf.* Advisory Opinion OC-14/94, *supra*, para. 60**,** and Advisory Opinion OC-22/16, *supra*, para. 29.

pertinent to include some initial and introductory considerations on: (A) the interrelationship between human rights and the environment, and (b) the human rights affected by environmental degradation, including the right to a healthy environment. The purpose of the considerations in this chapter is to provide a context and a general background to the answers to the specific questions posed by Colombia that follow.

### *A. The interrelationship between human rights and the environment*

47. This Court has recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights.[60] In addition, the preamble to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter "Protocol of San Salvador"), emphasizes the close relationship between the exercise of economic, social and cultural rights – which include the right to a healthy environment – and of civil and political rights, and indicates that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human being. They therefore require permanent promotion and protection in order to ensure their full applicability; moreover, the violation of some rights in order to ensure the exercise of others can never be justified.[61]

48. Specifically, in cases concerning the territorial rights of indigenous and tribal peoples, the Court has referred to the relationship between a healthy environment and the protection of human rights, considering that these peoples' right to collective ownership is linked to the protection of, and access to, the resources to be found in their territories, because those natural resources are necessary for the very survival, development and continuity of their way of life.[62] The Court has also recognized the close links that exist between the right to a dignified life and the protection of ancestral territory and natural resources. In this regard, the Court has determined that, because indigenous and tribal peoples are in a situation of special vulnerability, States must take positive measures to ensure that the members of these peoples have access to a dignified life – which includes the protection of their close relationship with the land – and to their life project, in both its individual and collective dimension.[63] The Court has also emphasized that the lack of access to the corresponding territories and natural resources may expose indigenous communities to precarious and subhuman living conditions and increased vulnerability to disease and epidemics, and subject them to situations of extreme neglect that may result in various violations of their human rights in addition to causing them suffering and undermining the preservation of

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[60] *Cf. Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196. para. 148.

[61] *Cf.* Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), entered into force November 16, 1999, Preamble. The following OAS Member States have ratified the Protocol of San Salvador to date: (1) Argentina, (2) Bolivia, (3) Brazil, (4) Colombia, (5) Costa Rica, (6) Ecuador, (7) El Salvador, (8) Guatemala, (9) Honduras, (10) Mexico, (11) Nicaragua, (12) Panama, (13) Paraguay, (14) Peru, (15) Suriname and (16) Uruguay.

[62] See, *inter alia, Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 137; *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 118; *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2007. Series C No. 172, paras. 121 and 122, and *Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 173.

[63] *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay*, *supra*, para. 163, and *Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 181.

their way of life, customs and language.[64]

49. Meanwhile, the Inter-American Commission has stressed that "several fundamental rights require, as a necessary precondition for their enjoyment, a minimum environmental quality, and are profoundly affected by the degradation of natural resources."[65] Likewise, the OAS General Assembly has recognized the close relationship between the protection of the environment and human rights (*supra* para. 22) and emphasized that "the adverse effects of climate change have a negative impact on the enjoyment of human rights."[66]

50. In the European sphere, the European Court of Human Rights has recognized that severe environmental degradation may affect the well-being of the individual and, consequently, give rise to violations of human rights, such as the rights to life,[67] to respect for private and family life,[68] and to property.[69] Similarly, the African Commission on Human and Peoples' Rights has indicated that the right to "satisfactory living conditions and development" is "closely linked to economic and social rights insofar as the environment affects the quality of life and the safety of the individual."[70]

51. Furthermore, the United Nations Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (now Special Rapporteur[71]) has stated that "[h]uman rights and environmental protection are

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[64] *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay*, *supra*, para. 164; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits, reparations and costs.* Judgment of June 27, 2012. Series C No. 245, para. 147 and *Case of the Afrodescendant Communities displaced from the Rio Cacarica Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2013. Series C No. 270, para. 354.

[65] *Cf.* IACHR, Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources – Norms and jurisprudence of the inter-American human rights system, December 30, 2009, OEA/Ser.L/V/II. Doc. 56/09, para. 190.

[66] *Cf.* OAS General Assembly, Resolution entitled "*Human Rights and Climate Change in the Americas,"* adopted at the fourth plenary session held on June 3*,* 2008, AG/RES. 2429 (XXXVIIIO/08).

[67] See, *inter alia*, ECHR, *Case of Öneryildiz v. Turkey* [GS], No. 48939/99. Judgment of November 30, 2004, paras. 71, 89, 90 and 118; ECHR, *Case of Budayeva and Others v. Russia*, No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. Judgment of March 20, 2008, paras. 128 to 130, 133 and 159, and ECHR, *Case of M. Özel and Others v. Turkey*, No. 14350/05, 15245/05 and 16051/05. Judgment of November 17, 2015, paras. 170, 171 and 200.

[68] See, *inter alia*, ECHR, *Case of López Ostra v. Spain*, No. 16798/90. Judgment of December 6, 1994, paras. 51, 55 and 58; ECHR, *Case of Guerra and Others v. Italy* [GS]*,* No. 14967/89. Judgment of February 19, 1998, paras. 57, 58 and 60; ECHR, *Case of Hatton and Others v. The United Kingdom* [GS], No. 36022/97. Judgment of July 8, 2003, paras. 96, 98, 104, 118 and 129; ECHR, *Case of Taşkin and Others v. Turkey*, No. 46117/99. Judgment of November 10, 2004, paras. 113, 116, 117, 119 and 126; ECHR, *Case of Fadeyeva v. Russia*, No. 55723/00. Judgment of June 9, 2005, paras. 68 to 70. 89, 92 and 134; ECHR, *Case of Roche v. The United Kingdom* [GS], No. 32555/96. Judgment of October 19, 2005, paras. 159, 160 and 169; ECHR, *Case of Giacomelli v. Italy*, No. 59909/00. Judgment of November 2, 2006, paras. 76 to 82, 97 and 98; ECHR, *Case of Tătar v. Romania*, No. 67021/01. Judgment of January 27, 2009, paras. 85 to 88, 97, 107, 113 and 125, and ECHR, *Case of Di Sarno and Others v. Italy*, No. 30765/08. Judgment of January 10, 2012, paras. 104 to 110 and 113.

[69] See, *inter alia*, ECHR, *Case of Papastavrou and Others v. Greece*, No. 46372/99. Judgment of April 10, 2003, paras. 33 and 36 to 39; ECHR, *Case of Öneryildiz v. Turkey* [GS], No. 48939/99. Judgment of November 30, 2004, paras. 124 to 129, 134 to 136 and 138, and ECHR, *Case of Turgut and Others v. Turkey*, No. 1411/03. Judgment of July 8, 2008, paras. 86 and 90 to 93.

[70] *Cf.* African Commission on Human and Peoples' Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*. Communication 155/96. Decision of October 27, 2001, para. 51.

[71] In March 2012, the Human Rights Council appointed an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment to a three-year term. His mandate was extended in 2015 for another three years as a Special Rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. *Cf.* Human Rights Council,

inherently interdependent," because:

> Human rights are grounded in respect for fundamental human attributes such as dignity, equality and liberty. The realization of these attributes depends on an environment that allows them to flourish. At the same time, effective environmental protection often depends on the exercise of human rights that are vital to informed, transparent and responsive policymaking.[72]

52. In addition, there is extensive recognition of the interdependent relationship between protection of the environment, sustainable development, and human rights in international law. This interrelationship has been asserted since the Stockholm Declaration on the Human Environment (hereinafter "Stockholm Declaration") which established that "[e]conomic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life,"[73] and asserting the need to balance development with protection of the human environment.[74] Subsequently, in the Rio Declaration on Environment and Development (hereinafter "the Rio Declaration"), the States recognized that "[h]uman beings are at the centre of concerns for sustainable development, "and also underlined that "[i]n order to achieve sustainable development, environmental protection shall constitute an integral part of the development process."[75] Following this, the Johannesburg Declaration on Sustainable Development established three pillars of sustainable development: economic development, social development and environmental protection.[76] Also, in the corresponding Plan of Implementation of the World Summit on Sustainable Development, the States "acknowledge[d] the consideration being given to the possible relationship between environment and human rights, including the right to development."[77]

53. In addition, when adopting the Agenda 2030 for Sustainable Development, the General Assembly of the United Nations recognized that the scope of the human rights of everyone depends on achieving the three dimensions of sustainable development: the economic, the social and the environmental.[78] Similarly, several inter-American instruments have referred to the protection of the environment and sustainable development, including

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Resolution 19/10 entitled "Human rights and the environment," adopted on March 22, 2012. UN Doc. A/HRC/RES/19/10, and Human Rights Council, Resolution 28/11 entitled "Human rights and the environment," adopted on March 26, 2015. UN Doc. A/HRC/RES/28/11.

[72] Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, December 24, 2012, UN Doc. A/HRC/22/43, para. 10. Similarly, some instruments that regulate the protection of the environment refer to human rights law. See: the Rio Declaration on Environment and Development. United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14, 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), and Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1.

[73] Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1, Principle 8.

[74] *Cf.* Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1, Principle 13.

[75] Rio Declaration on Environment and Development. United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14, 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principles 1 and 4.

[76] *Cf.* Johannesburg Declaration on Sustainable Development adopted at the United Nations World Summit on Sustainable Development, Johannesburg, September 4, 2002, UN Doc. A/CONF. 199/20, para. 5.

[77] *Cf.* Plan of Implementation of the World Summit on Sustainable Development, adopted at the World Summit on Sustainable Development, Johannesburg, September 4, 2002, UN Doc. A/CONF.199/20, para. 5.

[78] *Cf.* United Nations General Assembly, Resolution 70/1 entitled "*Transforming our world: the 2030 Agenda for Sustainable Development,"* September 25, 2015, UN Doc. A/RES/70/1, preamble and paras. 3, 8, 9, 10, 33, 35 and 67.

the Inter-American Democratic Charter which stipulates that "[t]he exercise of democracy promotes the preservation and good stewardship of the environment. It is essential that the States of the hemisphere implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations."[79]

54. Numerous points of interconnection arise from this relationship of interdependence and indivisibility between human rights, the environment, and sustainable development owing to which, as indicated by the Independent Expert, "all human rights are vulnerable to environmental degradation, in that the full enjoyment of all human rights depends on a supportive environment."[80] In this regard, the Human Rights Council has identified environmental threats that may affect, directly or indirectly, the effective enjoyment of specific human rights, affirming that: (i) illicit traffic in, and improper management and disposal of, hazardous substances and wastes constitute a serious threat to a range of rights, including the rights to life and health;[81] (ii) climate change has a wide range of implications for the effective enjoyment of human rights, including the rights to life, health, food, water, housing and self-determination,[82] and (iii) "environmental degradation, desertification and global climate change are exacerbating destitution and desperation, causing a negative impact on the realization of the right to food, in particular in developing countries."[83]

55. Owing to the close connection between environmental protection, sustainable development and human rights (*supra* paras. 47 to 55), currently (i) numerous human

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[79] Inter-American Democratic Charter, adopted at the first plenary session of the OAS General Assembly on September 11, 2001, during the twenty-eighth period of sessions, Art. 15.

[80] Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, December 24, 2012, UN Doc. A/HRC/22/43, para. 19. Similarly, the International Court of Justice has emphasized that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn." *Cf.* ICJ, *Legality of the threat or use of nuclear weapons*. Advisory Opinion of July 8, 1996, para. 29, and ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*. Judgment of September 25, 1997, para. 112.

[81] *Cf.* Commission on Human Rights, Resolution 2005/15, entitled "Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights," adopted on April 14, 2005, UN Doc. E/CN.4/RES/2005/15; Human Rights Council, Resolution 9/1 "Mandate of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights," September 24, 2008, UN Doc. A/HRC/RES/9/1; Human Rights Council, Resolution 18/11 "Mandate of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and wastes," adopted on September 27, 2011, A/HRC/18/L.6. See also, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on June 25, 1993, para. 11.

[82] *Cf.* Human Rights Council, Resolution 35, entitled "Human rights and climate change," adopted on June 19, 2017, UN Doc. A/HRC/35/L.32; Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, February 1, 2016, UN Doc. A/HRC/31/52, paras. 9 and 23; Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A/HRC/10/61, paras. 18 and 24, and Human Rights Council, Analytical study of the relationship between human rights and the environment, Report of the United Nations High Commissioner for Human Rights Report of the United Nations High Commissioner for Human Rights, December 16, 2001, UN Doc. A/HRC/19/34, para. 7.

[83] *Cf.* Human Rights Council, Resolution 7/14, "The right to food", adopted on March 27, 2008, A/HRC/7/L.6; Human Rights Council, Resolution 10/12, entitled "The right to food", adopted on March 26, 2009, A/HRC/RES/10/12, and Human Rights Council, Resolution 13/4, entitled "The right to food", adopted on March 24, 2010, A/HRC/RES/13/4. Human Rights Council, Analytical study of the relationship between human rights and the environment, Report of the United Nations High Commissioner for Human Rights, adopted on December 16, 2001, UN Doc. A/HRC/19/34, para. 49.

rights protection systems recognize the right to a healthy environment as a right in itself, particularly the Inter-American human rights system, while it is evident that (ii) numerous other human rights are vulnerable to environmental degradation, all of which results in a series of environmental obligations for States to comply with their duty to respect and to ensure those rights. Specifically, another consequence of the interdependence and indivisibility of human rights and environmental protection is that, when determining these State obligations, the Court may avail itself of the principles, rights and obligations of international environmental law, which, as part of the international *corpus iuris* make a decisive contribution to establishing the scope of the obligations under the American Convention in this regard (*supra* paras. 43 to 45).

### *B. Human rights affected by environmental degradation, including the right to a healthy environment*

56. Under the inter-American human rights system, the right to a healthy environment is established expressly in Article 11 of the Protocol of San Salvador:

> 1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
>
> 2. The States Parties shall promote the protection, preservation, and improvement of the environment.

57. It should also be considered that this right is included among the economic, social and cultural rights protected by Article 26[84] of the American Convention, because this norm protects the rights derived from the economic, social, educational, scientific and cultural provisions of the OAS Charter,[85] the American Declaration of the Rights and Duties of Man (to the extent that the latter "contains and defines the essential human rights referred to in the Charter") and those resulting from an interpretation of the Convention that accords with the criteria established in its Article 29[86] (*supra* para. 42). The Court reiterates the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights, because they should be understood integrally and comprehensively as human rights, with no order of precedence, that are enforceable in all cases before the competent authorities. [87]

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[84] This article establishes that: "The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."

[85] In this regard, Articles 30, 31, 33 and 34 of the Charter establish an obligation for the States to achieve the "integral development" of their peoples. "Integral development" has been defined by the OAS Executive Secretariat for Integral Development (SEDI) as "the general name given to a series of policies that work together to promote sustainable development." As mentioned previously, one of the dimensions of sustainable development is the environmental sphere (*supra* paras. 52 and 53). *Cf.* Charter of the Organization of American States entered into force on December 13, 1951, Arts. 30, 31, 33 and 34.

[86] In the *Case of Lagos del Campo v. Peru*, the Court established that, as in the case of the other rights established in the American Convention, Article 26 is subject to the general obligations contained in Articles 1(1) and 2 of Chapter I (General Obligations) of the Convention, as are Articles 3 to 25 included in Chapter II (Civil and Political Rights), and protects the rights derived from the OAS Charter, the American Declaration of the Rights and Duties of Man and those resulting from "other international instruments of the same nature," based on Article 29(d) of the Convention. *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, paras. 142 to 144. See also, *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2009. Series C No. 198, para. 100.

[87] *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v.*

58. The Court underscores that the right to a healthy environment is recognized explicitly in the domestic laws of several States of the region,[88] as well as in some provisions of the international *corpus iuris*, in addition to the aforementioned Protocol of San Salvador (*supra* para. 56), such as the American Declaration on the Rights of Indigenous Peoples;[89] the African Charter on Human and Peoples' Rights;[90] the ASEAN Human Rights Declaration,[91] and the Arab Charter on Human Rights.[92]

59. The human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.

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*Peru, supra*, para. 101, and *Case of Lagos del Campo v. Peru, supra*, para. 141.

[88] The Constitutions of the following States establish the right to a healthy environment: (1) Constitution of the Argentine Nation, art. 41; (2) Constitution of the State of Bolivia, art. 33; (3) Constitution of the Federative Republic of Brazil, art. 225; (4) Constitution of the Republic of Chile, art. 19; (5) Constitution of Colombia, art. 79; (6) Constitution of Costa Rica, art. 50; (7) Constitution of the Republic of Ecuador, art. 14; (8) Constitution of the Republic of El Salvador, art. 117; (9) Constitution of the Republic of Guatemala, art. 97; (10) Constitution of the United Mexican States, art. 4; (11) Constitution of Nicaragua, art. 60; (12) Constitution of the Republic of Panama, arts. 118 and 119; (13) Constitution of the Republic of Paraguay, art. 7; (14) Constitution of Peru, art. 2; (15) Constitution of the Dominican Republic, arts. 66 and 67, and (16) Constitution of the Bolivarian Republic of Venezuela, art. 127.

[89] Article 19 of this Declaration provides for the protection of a healthy environment establishing that indigenous peoples "have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the right to life, to their spirituality, worldview and to collective well-being." American Declaration on the Rights of Indigenous Peoples, adopted at the third plenary session of the OAS General Assembly held on June 15, 2016, AG/RES. 2888 (XLVI-O/16). Also, the preamble to the Social Charter of the Americas "recognize[s] that a safe environment is essential to integral development." Also, the relevant part of its article 18 establishes that: "[…] Member states affirm their commitment to promote healthy lifestyles and to strengthen their capacity to prevent, detect, and respond to chronic non-communicable diseases, current and emerging infectious diseases, and environmental health concerns." Article 22 establishes that: "Natural and man-made disasters affect populations, economies, and the environment. Reducing the vulnerabilities of countries to these disasters, with particular attention to the most vulnerable regions and communities, including the poorest segments of society, is essential to ensuring nations' progress and the pursuit of a better quality of life. Member states commit to improving regional cooperation and to strengthening their national, technical, and institutional capacity for disaster prevention, preparedness and response, rehabilitation, resilience, risk reduction, impact mitigation, and evaluation. Member states also commit to face the impact of climate variability, including the *El Niño* and *La Niña* phenomena, and the adverse effects of climate change that represent a risk increase in all countries of the Hemisphere, particularly for developing countries." Social Charter of the Americas, adopted by the OAS General Assembly on June 4, 2012, OAS Doc. AG/doc.5242/12 rev. 2, preamble and arts. 17 and 22.

[90] Article 24 of the Charter establishes that "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development." African Charter on Human and Peoples' Rights, entered into force on October 21, 1986, OAU Doc. O/LEG/67/3 rev.

[91] Article 28(f) of this Declaration establishes that: "Every person has the right to an adequate standard of living for himself or herself and his or her family including: [...] f. The right to a safe, clean and sustainable environment." *Cf.* ASEAN Human Rights Declaration, adopted on November 18, 2012.

[92] Article 38 of this Charter stipulates that: "Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights." *Cf.* Arab Charter of Human Rights, League of Arab States, entered into force on March 15, 2008.

60. The Working Group on the Protocol of San Salvador[93] indicated that the right to a healthy environment, as established in this instrument, involved the following five State obligations: (a) guaranteeing everyone, without any discrimination, a healthy environment in which to live; (b) guaranteeing everyone, without any discrimination, basic public services; (c) promoting environmental protection; (d) promoting environmental conservation, and (e) promoting improvement of the environment.[94] It also established that the exercise of the right to a healthy environment must be governed by the criteria of availability, accessibility, sustainability, acceptability and adaptability,[95] as in the case of other economic, social and cultural rights.[96] In order to examine the State reports under the Protocol of San Salvador, in 2014, the OAS General Assembly adopted specific progress indicators to evaluate the status of the environment based on: (a) atmospheric conditions; (b) quality and sufficiency of water sources; (c) air quality; (d) soil quality; (e) biodiversity; (f) production of pollutant waste and its management; (g) energy resources, and (h) status of forestry resources.[97]

61. In this regard, the African Commission on Human and Peoples' Rights underscored that the right to a healthy environment imposed on States the obligation to take reasonable measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources, as well as to monitor projects that could affect the environment.[98]

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93 The Working Group to examine the periodic reports of the States Parties established in the Protocol of San Salvador (hereinafter "the Working Group" or "the "GTPSS") was installed in May 2010 to examine the reports presented by the States Parties and to forward its recommendations and comments on the situation in the States as regards compliance with the provisions of the Protocol of San Salvador. On June 8, 2010, the OAS General Assembly, in Resolution AG/RES. 2582 (XL-O/10) entrusted the Working Group with preparing progress indicators on the rights included in the Protocol of San Salvador; (previously, the Inter-American Commission, also at the request of the OAS General Assembly, had prepared a first document on "Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights," CP/doc.4250 corr. 1). To this end, the Working Group divided the rights established in the Protocol of San Salvador into two groups, and the right to a healthy environment was included in the second group. The progress indicators for this second group were finalized in November 2013 and adopted by the OAS General Assembly in June 2014. *Cf.* OAS General Assembly, Resolution AG/RES. 2823 (XLIV-O/14) "Adoption of the monitoring mechanism for implementation of the Protocol of San Salvador," adopted on June 4, 2014, and GTPSS, "Progress Indicators: Second Group of Rights," November 5, 2013, OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13

94 *Cf.* GTPSS, "Progress Indicators: Second Group of Rights," November 5, 2013, OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13, para. 26.

95 Regarding this specific characteristic, the Working Group emphasized that, the right to a healthy environment refers to the quality of the environment, "because the qualifier 'healthy' requires that the constituent elements of the environment (such as water, air or soil) have technical conditions of quality that make them acceptable, in line with international standards. This means that the quality of the elements of the environment must not become an obstacle to persons to live their lives in their vital spaces." GTPSS, "Progress Indicators: Second Group of Rights," November 5, 2013, OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13, para. 33.

96 *Cf.* GTPSS, "Progress Indicators: Second Group of Rights," November 5, 2013, OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13, para. 29. See, similarly, but in relation to other rights, *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 298, para. 235, and *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 164.

97 *Cf.* GTPSS, "Progress Indicators: Second Group of Rights," November 5, 2013, OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13, para. 38. In its resolution approving this document, the OAS General Assembly indicated that these progress indicators "were standards and criteria for the States Parties, which will be able to adapt them to their available sources of information to comply with the provisions of the Protocol [of San Salvador]." OAS General Assembly, Resolution AG/RES. 2823 (XLIV-O/14) "Monitoring Mechanism for implementation of the Protocol of San Salvador," adopted on June 4, 2014.

98 *Cf.* African Commission on Human and Peoples' Rights, *Case of the Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR*) *v. Nigeria*. Communication 155/96. Decision of October 27, 2001, paras. 52 and 53.

62. The Court considers it important to stress that, as an autonomous right, the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.[99] In this regard, the Court notes a tendency, not only in court judgments,[100] but also in Constitutions[101], to recognize legal personality and, consequently, rights to nature.

63. Thus, the right to a healthy environment as an autonomous right differs from the environmental content that arises from the protection of other rights, such as the right to life or the right to personal integrity.

64. That said and as previously mentioned, in addition to the right to a healthy environment, damage to the environment may affect all human rights, in the sense that the full enjoyment of all human rights depends on a suitable environment. Nevertheless, some human rights are more susceptible than others to certain types of environmental damage[102] (*supra* paras. 47 to 55). The rights especially linked to the environment have been classified into two groups: (i) rights whose enjoyment is particularly vulnerable to environmental degradation, also identified as substantive rights (for example, the rights to life, personal integrity, health or property), and (ii) rights whose exercise supports better environmental policymaking, also identified as procedural rights (such as the rights to freedom of expression and association, to information, to participation in decision-making, and to an effective remedy).[103]

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[99] In this regard, see, *inter alia*, International Union for Conservation of Nature (IUCN), the World Declaration on the Environmental Rule of Law of the International Union for Conservation of Nature adopted at the IUCN World Environmental Law Congress, held in Rio de Janeiro from April 26 to 29, 2016, Principles 1 and 2.

[100] See, for example, Constitutional Court of Colombia, Judgment T-622-16 of November 10, 2016, paras. 9.27 to 9.31; Constitutional Court of Ecuador, Judgment No. 218-15-SEP-CC of July 9, 2015, pp. 9 and 10, and High Court of Uttarakhand At Naintal of India, Decision of March 30, 2017. Petition (PIL) No. 140 of 2015, pp. 61 to 63.

[101] The preamble to the Constitution of the State of Bolivia stipulates that: "In ancient times, mountains arose, rivers were displaced, and lakes were formed. Our Amazon, our Chaco, our highlands and our lowlands and valleys were covered in greenery and flowers. We populated the sacred earth with a variety of faces, and since then we have understood the plurality that exist in all things and our diversity as human beings and cultures." Article 33 of the Constitution establishes that: "People have a right to a healthy, protected and balanced environment. The exercise of this right should allow individuals and collectivities of present and future generations, and also other living beings, to develop normally and permanently." In addition, article 71 of the Constitution of the Republic of Ecuador establishes that: "Nature or *Pacha Mama*, in which life is reproduced and realized, has the right to comprehensive respect for its existence, and the continuity and regeneration of its vital cycles, structure, functions and evolutionary processes. Every person, community, people or nationality may require public authorities to respect the rights of nature. The relevant principles established in the Constitution shall be observed to apply and interpret these rights. The State shall encourage natural and legal persons, and collectivities, to protect nature and shall promote respect for all the elements that form an ecosystem."

[102] *Cf.* Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, December 24, 2012, UN Doc. A/HRC/22/43, para. 19, and Human Rights Council, Mapping report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, of December 30, 2013, UN Doc. A/HRC/25/53, para. 17.

[103] *Cf.* Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, December 24, 2012, UN Doc. A/HRC/22/43, para. 17. Regarding the substantive rights, this Court has referred to both the right to life, in particular with regard to the definition of a decent life, and also to the rights to personal integrity, property, and health. See*, inter alia*, *Case of the Yakye Axa Indigenous Community v. Paraguay*, *supra*, para. 163; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, paras. 145, 232 and 249; *Case of*

65. Several human rights bodies have examined issues relating to the environment with regard to various particularly vulnerable rights. For example, the European Court of Human Rights has introduced environmental protection through the guarantee of other rights,[104] such as the rights to life, to respect for private and family life, and to property (*supra* para. 50). Thus, for example, the European Court has indicated that States have the obligation to evaluate the risks associated with activities that involve danger to the environment, such as mining, and to take adequate measures to protect the right to respect for private and family life, and to allow the enjoyment of a healthy and protected environment.[105]

66. The Court considers that the rights that are particularly vulnerable to environmental impact include the rights to life,[106] personal integrity,[107] private life,[108] health,[109] water,[110] food,[111] housing,[112] participation in cultural life,[113] property,[114] and the right to not be

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*the Kuna Indigenous People of Madungandí and Emberá Indigenous People of Bayano and their members v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 284, para. 111, and *Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 172. The Court has also ruled on procedural rights in relation to the environmental impact of a forestry industrialization project, referring both to access to information and to public participation. *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 86.

[104] The European human rights system does not establish the right to a healthy environment as an autonomous right in the European Convention on Human Rights and its Protocols. Under the European Union system, article 37 of the Charter of Fundamental Rights of the European Union establishes that "[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development." Charter of Fundamental Rights of the European Union proclaimed on December 7, 2000, amended by the Treaty of Lisbon of December 1, 2009, 2012/C 326/02

[105] *Cf.* ECHR, *Case of Tătar v. Romania*, No. 67021/01. Judgment of January 27, 2009, para. 107. Also, regarding the economic well-being of a State, it has underlined that it is necessary "to strike a fair balance between the interest of the State or a town's economic well-being and the effective enjoyment by individuals of their right to respect for their home and their private and family life." *Cf.* ECHR, *Case of Hatton and Others v. The United Kingdom* [GS], No. 36022/97. Judgment of July 8, 2003, paras. 121 to 123, 126 and 129, and ECHR, *Case of López Ostra v.* Spain, No. 16798/90. Judgment of December 9, 1994, para. 58.

[106] *Cf.* ECHR, *Case of Öneryldiz v. Turkey* [GS], No. 48939/99. Judgment of November 30, 2004, paras. 89 and 90.

[107] See, for example, African Commission on Human and Peoples' Rights, Resolution 153 on climate change and human rights and the need to study its impact in Africa. November 25, 2009.

[108] See, for example, ECHR, *Case of Moreno Gomez v. Spain*, No. 4143/02. Judgment of November 16, 2004, paras. 53 to 55; ECHR, *Case of Borysiewicz v. Poland*, No. 71146/01. Judgment of July 1, 2008, para. 48; ECHR, *Case of Giacomelli v. Italy*, No. 59909/00. Judgment of November 2, 2006, para. 76; ECHR, *Case of Hatton and Others v. The United Kingdom* [GS], No. 360022/97. Judgment of July 8. 2003, para. 96; ECHR, *Case of Lopez Ostra v. Spain,* No. 16798/90. Judgment of December 9, 1994, para. 51, and ECHR, *Case of Taşkin and Others v. Turkey*, No. 46117/99. Judgment of November 10, 2004, para. 113.

[109] On this point, the Committee on Economic, Social and Cultural Rights has indicated that the obligation to respect the right to health means that "States should […] refrain from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities, from using or testing nuclear, biological or chemical weapons if such testing results in the release of substances harmful to human health." Committee on Economic, Social and Cultural Rights (hereinafter "ESCR Committee"), General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/2000/4, August 11, 2000, para. 34. See, also, African Commission on Human and Peoples' Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*. Communication 155/96. Decision of October 27, 2001, paras. 51 and 52.

[110] See, for example, ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, paras. 8 and 10.

[111] See, for example, ESCR Committee, Concluding observations: Russian Federation, May 20, 1997, UN Doc. E/C.12/Add.13, paras. 24 and 38.

[112] See, for example, ESCR Committee, General Comment No. 4: The right to adequate housing (article 11(1)

forcibly displaced.[115] Without prejudice to the foregoing, according to Article 29 of the Convention,[116] other rights are also vulnerable and their violation may affect the rights to life, liberty and security of the individual,[117] and infringe on the obligation of all persons to conduct themselves fraternally,[118] such as the right to peace, because displacements caused by environmental deterioration frequently unleash violent conflicts between the displaced population and the population settled on the territory to which it is displaced. Some of these conflicts are massive and thus extremely grave.

67. The Court also bears in mind that the effects on these rights may be felt with greater intensity by certain groups in vulnerable situations. It has been recognized that environmental damage "will be experienced with greater force in the sectors of the population that are already in a vulnerable situation";[119] hence, based on "international human rights law, States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination."[120] Various human rights bodies have recognized that indigenous peoples,[121] children,[122] people living in extreme poverty,

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of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/1992/23, December 13, 1991, para. 8.f.

113 See, for example, ESCR Committee, Concluding observations: Madagascar, December 16, 2009, UN Doc. E/C.12/MDG/CO/2, para. 33, and ESCR Committee, General Comment No. 21: Right of everyone to take part in cultural life (article 15(1)(a), of the International Covenant on Economic, Social and Cultural Rights) May 17, 2010, UN Doc. E/C.12/GC/21/Rev.1, para. 36.

114 See, for example, Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples, UN Doc. A/HRC/24/41, July 1, 2013, para. 16; African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya.* Communication No. 276/03, November 25, 2009, para. 186, and African Commission on Human and Peoples' Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*. Communication 155/96. Decision of October 27, 2001, paras. 54 and 55.

115 See, for example, Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, Principle 6. UN Doc. E/CN.4/1998/53/Add.2, February 11, 1998, and with regard to climate change, Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A/HRC/10/61, para. 56.

116 See Article 29(b), (c) and (d) of the American Convention, which establish that: "No provision of this Convention shall be interpreted as: […] (b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; (c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government, or (d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."

117 In this regard, Article I of the American Declaration of the Rights and Duties of Man stipulates that: "Every human being has the right to life, liberty and the security of his person."

118 In this regard, see the Preamble to the American Declaration of the Rights and Duties of Man, which indicates that: "All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another."

119 Human Rights Council, Resolution 16/11, "Human rights and the environment," 12 April 2011, UN Doc. A/HRC/RES/16/11, preamble, and Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, February 1, 2016, UN Doc. A/HRC/31/52, para. 81.

120 Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A/HRC/10/61, para. 42, and Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, February 1, 2016, UN Doc. A/HRC/31/52, para. 81.

121 Indigenous peoples are particularly vulnerable to environmental degradation, not only due to their special spiritual and cultural relationship with their ancestral territories, but also due to their economic dependence on environmental resources and because they "often live in marginal lands and fragile ecosystems which are

minorities, and people with disabilities, among others,[123] are groups that are especially vulnerable to environmental damage, and have also recognized the differentiated impact that it has on women.[124] In addition, the groups that are especially vulnerable to environmental degradation include communities that, essentially, depend economically or for their survival on environmental resources from the marine environment, forested areas and river basins,[125] or run a special risk of being affected owing to their geographical location, such as coastal and small island communities.[126] In many cases, the special

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particularly sensitive to alterations in the physical environment." Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A/HRC/10/61, para. 51. See also: Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, December 24, 2012, UN Doc. A/HRC/22/43, para. 45, and Human Rights Council, Mapping report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, of December 30, 2013, UN Doc. A/HRC/25/53, paras. 76 to 78.

[122] Environmental degradation exacerbates health risks and undermines support structures that protect children from harm. This is particularly evident in the case of children in the developing world. "For example, extreme weather events and increased water stress already constitute leading causes of malnutrition and infant and child mortality and morbidity. Likewise, increased stress on livelihoods will make it more difficult for children to attend school. Girls will be particularly affected as traditional household chores, such as collecting firewood and water, require more time and energy when supplies are scarce. Moreover, like women, children have a higher mortality rate as a result of weather-related disasters." Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A/HRC/10/61, para. 48. See also: Human Rights Council, Mapping report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, of December 30, 2013, UN Doc. A/HRC/25/53, paras. 73 to 75.

[123] *Cf.* Human Rights Council, Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, December 24, 2012, UN Doc. A/HRC/22/43, para. 44; Human Rights Council, Mapping report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, of December 30, 2013, UN Doc. A/HRC/25/53, paras. 69 to 78. See also, Report of the Independent Expert on the question of human rights and extreme poverty, UN Doc. A/65/259, August 9, 2010, paras. 17 and 37 to 42; Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A/HRC/10/61, paras. 42 to 45, and Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, February 9, 2009, UN Doc. A/HRC/10/13, para. 22.

[124] According to the United Nations High Commissioner for Human Rights, "[w]omen are especially exposed to climate change-related risks due to existing gender discrimination, inequality and inhibiting gender roles. It is established that women, particularly elderly women and girls, are affected more severely and are more at risk during all phases of weather-related disasters […]. The death rate of women is markedly higher than that of men during natural disasters (often linked to reasons such as: women are more likely to be looking after children, to be wearing clothes which inhibit movement and are less likely to be able to swim). […] Vulnerability is exacerbated by factors such as unequal rights to property, exclusion from decision-making and difficulties in accessing information and financial services." Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A/HRC/10/61, para. 45. See also: Human Rights Council, Mapping report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, of December 30, 2013, UN Doc. A/HRC/25/53, paras. 70 to 72.

[125] See, *inter alia,* United Nations General Assembly, Resolution 66/288, "The future we want," July 27, 2012, UN Doc. A/RES/66/288, para. 30; United Nations General Assembly, Resolution 64/255, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, August 6, 2009, UN Doc. A/64/255, paras. 26, 27 and 30 to 34, and Convention on Biological Diversity, entered into force on December 29, 1993, preamble.

[126] In particular, the effects of climate change may result in saltwater flooding, desertification, hurricanes, erosion and landslides, leading to scarcity of water supplies and affecting food production from agriculture and fishing, as well as destroying land and housing. See*, inter alia*, United Nations General Assembly, Development and International Cooperation: Environment, Report of the World Commission on Environment and Development, August 4, 1987, UN Doc. A/42/427, p. 47, 148 and 204; United Nations General Assembly, Resolution 44/206, "Possible adverse effects of sea-level rise on islands and coastal areas, particularly low-lying coastal areas," December 22, 1989, UN Doc. A/RES/44/206; United Nations General Assembly, Resolution 64/255, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the

vulnerability of these groups has led to their relocation or internal displacement.[127]

68. The Court will rule below on the specific environmental obligations in relation to indigenous communities (*infra* paras. 113, 138, 152, 156, 164, 166 and 169). However, in general, the Court stresses the permanent need for States to evaluate and execute the obligations described in Chapter VIII of this Opinion taking into account the differentiated impact that such obligations could have on certain sectors of the population in order to respect and to ensure the enjoyment and exercise of the rights established in the Convention without any discrimination.

69. In Chapter VIII of this Advisory Opinion, the Court will rule on the substantive and procedural obligations of States with regard to environmental protection that are derived from the obligations to respect and to ensure the rights to life and to personal integrity, since these are the rights regarding which Colombia consulted the Court. However, as can be inferred from the foregoing considerations, many other rights may be affected by failure to comply with these obligations, including the economic, social, cultural and environmental rights protected by the Protocol of San Salvador, the American Convention, and other treaties and instruments; specifically, the right to a healthy environment.

70. Following this introductory framework, the Court will now respond to the questions raised by Colombia in its request for an advisory opinion.

## VII
## THE WORD "JURISDICTION" IN ARTICLE 1(1) OF THE AMERICAN CONVENTION IN ORDER TO DETERMINE STATE OBLIGATIONS IN RELATION TO ENVIRONMENTAL PROTECTION

71. In this chapter, the Court will respond to the first question raised by Colombia in its request for an advisory opinion. To this end, it will rule on (A) the scope of the word "jurisdiction" in the American Convention; (B) State obligations within the framework of special environmental protection regimes, and (C) State obligations in the face of transboundary damage.

### *A. Scope of the word "jurisdiction" in Article 1(1) of the American Convention in order to determine State obligations*

72. Article 1(1) of the America Convention establishes that the States Parties "undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms." Thus, violations of

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right to non-discrimination in this context, August 6, 2009, UN Doc. A/64/255, paras. 30 to 34; United Nations General Assembly, Resolution 66/288, "The future we want," July 27, 2012, UN Doc. A/RES/66/288, paras. 158, 165, 166, 175, 178 and 190, and United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, preamble and art. 4.8.

[127] The Representative of the Secretary-General on the human rights of internally displaced persons underlined five situations related to climate change and environmental degradation that triggered displacement: (a) increased hydro-meteorological disasters such as hurricanes, flooding or mudslides; (b) gradual environmental degradation and slow onset disasters, such as desertification, sinking of coastal zones, or increased salinization of groundwater and soil; (c) the "sinking" of small island States; (d) forced relocation of people from high-risk zones; and (e) violence and armed conflict triggered by the increasing scarcity of necessary resources such as water or inhabitable land. *Cf.* Human Rights Council, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, February 9, 2009, UN Doc. A/HRC/10/13, para. 22, and Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A/HRC/10/61, paras. 51 and 56.

the human rights recognized in the American Convention may entail the responsibility of the State, provided that the person concerned is subject to their jurisdiction. Therefore, the exercise of this jurisdiction is a necessary precondition for a State to incur responsibility for any conduct that may be attributed to it that allegedly violates any of the rights under the Convention.[128] In other words, for the State to be considered responsible for a violation of the American Convention, it is first necessary to establish that it was exercising its "jurisdiction" in relation to the person or persons who allege that they have been victims of the State's conduct.

73. In this regard, the Inter-American Court has indicated that the use of the word "jurisdiction" in Article 1(1) of the American Convention signifies that the State obligation to respect and to ensure human rights applies to every person who is within the State's territory or who is in any way subject to its authority, responsibility or control.[129]

74. The Court recalls that the fact that a person in subject to the jurisdiction of a State does not mean that he or she is in its territory.[130] According to the rules for the interpretation of treaties, as well as the specific rules of the American Convention (*supra* paras. 40 to 42), the ordinary meaning of the word "jurisdiction," interpreted in good faith and taking into account the context, object and purpose of the American Convention, signifies that it is not limited to the concept of national territory, but covers a broader concept that includes certain ways of exercising jurisdiction beyond the territory of the State in question.

75. This interpretation coincides with the sense that the Inter-American Commission has given to the word "jurisdiction in Article 1(1) of the Convention in its decisions.[131] In this regard, the Commission has stated that:

> In international law, the bases of jurisdiction are not exclusively territorial, but may be exercised on several other bases as well. In this sense, […] "under certain circumstances, the exercise of its jurisdiction over acts with an extraterritorial locus will not only be consistent with but required by the norms which pertain." Thus, although jurisdiction usually refers to authority over persons who are within the territory of a State, human rights are inherent in all human beings and are not based on their citizenship or location. Under inter-American human rights law, each American State is obligated therefore to respect the rights of all persons within its territory and of those present in the territory of another State but subject to the control of its agents.[132]

76. In keeping with the rule of interpretation under Article 31 of the Vienna Convention, unless the parties have had the intention of giving it a special meaning, the word

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128 Similarly, see, *inter alia*, ECHR, *Ilaşcu and Others v. Moldavia and Russia* [GS], No. 48787/99. Judgment of July 8, 2004, para. 311; ECHR, *Al-Skeini and Others v. The United Kingdom* [GS], No. 55721/07. Judgment of July 7, 2011, para. 130, and ECHR, *Chiragov and Others v. Armenia* [GS], No. 13216/05, Judgment of June 16, 2015, para. 168.

129 *Cf.* Advisory Opinion OC-21/14, *supra*, para. 61.

130 *Cf.* Advisory Opinion OC-21/14, *supra*, para. 219.

131 *Cf.* IACHR, *Franklin Guillermo Aisalla Molina (Ecuador v. Colombia),* Admissibility Report No. 112/10 of October 21 2011, para. 91; IACHR, *Saldaño v. Argentina*, Inadmissibility Report No. 38/99 of May 11, 1999, paras. 15 to 20; IACHR, *Case of Armando Alejandre Jr. et al. v. Cuba,* Merits Report No. 86/99 of September 29, 1999, paras. 23 to 25, and IACHR, *Case of Coard et al. v. United States*, Merits Report No. 109/99 of September 29, 1999, para. 37.

132 IACHR, *Franklin Guillermo Aisalla Molina (Ecuador v. Colombia),* Admissibility Report No. 112/10 of October 21, 2011, para. 91, and IACHR, *Case of Coard et al. v. United States*, Merits Report No. 109/99 of September 29, 1999, para. 37.

"jurisdiction" should be given its ordinary meaning, interpreted in good faith and taking into account the context, object and purpose of the American Convention.

77. The Court notes that the *travaux préparatoires* of the American Convention reveal that the initial text of Article 1(1) established that: "[t]he States Parties undertake to respect the rights and freedoms recognized in this Convention and to ensure their free and full exercise to all persons who are in their territory and subject to their jurisdiction"[133] (underlining added). When adopting the American Convention, the Inter-American Specialized Conference on Human Rights eliminated the reference to "territory" and established the obligation of the States Parties to the Convention, embodied in Article 1(1) of this treaty, to respect and to ensure the rights recognized therein "to all persons subject to their jurisdiction" (*supra* para. 72). Accordingly, the margin of protection for the rights recognized in the American Convention was expanded insofar as the States Parties' obligations are not restricted to the geographical space corresponding to their territory, but encompass those situations where, even outside a State's territory, a person is subject to its jurisdiction. In other words, States may not only be found internationally responsible for acts or omissions attributed to them within their territory, but also for those acts or omissions committed outside their territory, but under their jurisdiction.[134]

78. Therefore, the "jurisdiction" referred to in Article 1(1) of the American Convention is not limited to the national territory of a State but contemplates circumstances in which the extraterritorial conduct of a State constitutes an exercise of its jurisdiction.

79. International human rights law has recognized different situations in which the extraterritorial conduct of a State entails the exercise of its jurisdiction. The European Court of Human Rights has indicated that, under the European Convention on Human Rights, the exercise of jurisdiction outside the territory of a State requires that a State Party to that Convention exercise effective control over an area outside its territory, or over persons who are either lawfully or unlawfully in the territory of another State,[135] or that, based on the consent, invitation or acquiescence of the Government of the other territory, it exercises all or some of the public powers that it would normally exercise.[136] Thus, the European Court has recognized situations of effective control and, consequently, of extraterritorial exercise of jurisdiction in cases of military occupation or military interventions,[137] based on the

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133 Draft Inter-American Convention for the Protection of Human Rights, adopted by the Council of the Organization of American States in the session held on October 2, 1968, in *Actas y Documentos* of the Inter-American Specialized Conference on Human Rights, 1966, OAS, Washington D.C., p. 14.

134 *Cf.* Minutes of the first session of Committee I on November 10, 1969, in *Actas y Documentos* of the Inter-American Specialized Conference on Human Rights, 1966, OAS, Washington D.C., pp. 145 and 147, and Minutes of the second session of Committee I on November 10, 1969, in *Actas y Documentos* of the Inter-American Specialized Conference on Human Rights, 1966, OAS, Washington D.C., pp. 156 and 157. The Inter-American Commission on Human Rights has also consistently given this interpretation to the *travaux préparatoires* of the Convention as regards the use of the word "jurisdiction" in the American Convention.

135 *Cf.* ECHR, *Case of Loizidou v. Turkey* (Preliminary objections), No. 15318/89. Judgment of March 23, 1995, para. 62; ECHR, *Case of Al-Skeini and Others v. The United Kingdom* [GS], No. 55721/07. Judgment of July 7, 2011, para. 138, and ECHR, *Case of Catan and Others v. Moldova and Russia* [GS], Nos. 43370/04, 8252/05 and 18454/06. Judgment of October 19, 2012, para. 311.

136 See, for example, ECHR, *Case of Chiragov and Others v. Armenia* [GS], No. 13216/05. Judgment of June 16, 2015, para. 168, and ECHR, *Case of Banković and Others v. Belgium* [GS], No. 52207/99. Decision on admissibility of December 12, 2001, para. 71.

137 See, for example, ECHR, *Case of Loizidou v. Turkey* (Preliminary objections), No. 15318/89. Judgment of March 23, 1995, para. 62; ECHR, *Case of Cyprus v. Turkey* [GS], No. 25781/94. Judgment of May 10, 2001, para. 77; ECHR, *Case of Manitaras and Others v. Turkey*, No. 54591/00. Decision of June 3, 2008, paras. 25 to 29, and ECHR, *Case of Pisari v. Republic of Moldova and Russia*, No. 42139/12. Judgment of April 21, 2015, paras. 33 to 36.

actions abroad of a State's security forces,[138] or military, political and economic influence.[139] Similarly, the United Nations Human Rights Committee has recognized the existence of extraterritorial conducts of States that entail the exercise of their jurisdiction over another territory or over persons outside their territory.[140] Meanwhile, the Inter-American Commission has indicated that, in certain instances, the exercise of jurisdiction may refer to extraterritorial actions, "when the person is present in the territory of a State but is subject to the control of another State, generally through the actions of that State's agents abroad,"[141] and has therefore recognized the exercise of extraterritorial jurisdiction, also, in cases relating to military interventions,[142] military operations in international air space[143] and in the territory of another State,[144] as well as in military facilities outside a State's territory.[145]

80. Most of these situations involve military actions or actions by State security forces that indicate "control", "power" or "authority" in the execution of the extraterritorial conduct. However, these are not the situations described by the requesting State and do not correspond to the specific context of environmental obligations referred to in this request for an advisory opinion.

81. The Court notes that the situations in which the extraterritorial conduct of a State constitutes the exercise of its jurisdiction are exceptional and, as such, should be interpreted restrictively.[146] To examine the possibility of extraterritorial exercise of jurisdiction in the context of compliance with environmental obligations, the obligations derived from the American Convention must be analyzed in light of the State obligations in that regard. In addition, the possible grounds for jurisdiction that arise from this systematic

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138 See, for example, ECHR, *Case of Öcalan v. Turkey* [GS], No. 46221/99. Judgment of May 12, 2005, para. 91.

139 See, for example, ECHR, *Case of Ilaşcu and Others v. Republic of Moldova and Russia*, No. 48787/99. Judgment of July 8, 2004, paras. 314 to 316; ECHR, *Case of Ivanţoc and Others v. Republic of Moldova and Russia*, No. 23687/05. Judgment of November 15, 2011, paras. 105 and 106; ECHR, *Case of Catan and Others v. Republic of Moldova and Russia* [GS], Nos. 43370/04, 8252/05 and 18454/06. Judgment of October 19, 2012, paras. 103 to 106, and ECHR, *Case of Mozer v. Republic of Moldova and Russia* [GS], No. 11138/10. Judgment of February 23, 2016, paras. 97 and 98.

140 *Cf.* Human Rights Committee, Communication No. 56/1979, *Lilian Celiberti de Casariego v. Uruguay*, CCPR/C/13/D/56/1979, 29 July 1981, para. 10.3, and Human Rights Committee, Communication No. 106/1981, *Mabel Pereira Montero v. Uruguay,* CCPR/C/18/D/106/1981, March 31, 1983, para. 5.

141 IACHR, *Case of Armando Alejandre Jr. et al. v. Cuba*. Merits Report No. 86/99 of September 29, 1999, para. 23.

142 *Cf.* IACHR, *Case of Salas et al. v. United States.* Admissibility Report No. 31/93 of October 14, 1993, paras. 14, 15 and 17, and IACHR, *Case of Coard et al. v. United States*. Merits Report No. 109/99 of September 29, 1999, para. 37.

143 *Cf.* IACHR, *Case of Armando Alejandre Jr. et al. v. Cuba*. Merits Report No. 86/99 of September 29, 1999, para. 23.

144 *Cf.* IACHR, *Franklin Guillermo Aisalla Molina (Ecuador v. Colombia)*, Admissibility Report No. 112/10 of October 21, 2010, para. 98.

145 *Cf.* IACHR, *Djamel Ameziane v. United States*. Admissibility Report No. 17/12 of March 20, 2012, para. 35.

146 In this regard, the European Court of Human Rights has interpreted that, although a State's jurisdiction is above all territorial, there are "a number of exceptional circumstances that may give rise to the exercise of jurisdiction by a contracting State outside its own territorial limits." See, *inter alia,* ECHR, *Case of Al-Skeini and Others v. The United Kingdom* [GS], No. 55721/07. Judgment of July 7, 2011, paras. 131 and 133 to 139; ECHR, *Case of Ilaşcu and Others v. Republic of Moldova and Russia* [GS], No. 48787/99. Judgment of July 8, 2004, paras. 311 to 319; ECHR, *Case of Catan and Others v. Republic of Moldova and Russia* [GS], Nos. 43370/04, 8252/05 and 18454/06. Judgment of October 19, 2012, para. 105; ECHR, *Case of Chiragov and Others v. Armenia*, [GS], No. 13216/05. Judgment of June 16, 2015, para. 168, and ECHR, *Case of Banković and Others v. Belgium* [GS], Decision on admissibility of December 12, 2001, para. 66.

interpretation must be justified based on the particular circumstances of the specific case.[147] The Inter-American Court finds that a person is subject to the "jurisdiction" of a State in relation to an act committed outside the territory of that State (extraterritorial action) or with effects beyond this territory, when the said State is exercising authority over that person or when that person is under its effective control, either within or outside its territory.[148]

82. Having established that the exercise of jurisdiction by a State under Article 1(1) of the Convention may encompass extraterritorial conduct and that such circumstances must be examined in each specific case in order to verify the existence of an effective control over the persons concerned, the Court must now examine the situations of extraterritorial conduct that have been presented to it in the context of this advisory proceeding in order to determine whether they could entail the exercise of jurisdiction by a State. On this basis, the Court will now examine: (1) whether compliance by the States with extraterritorial obligations, in the context of special environmental protection regimes, could constitute an exercise of jurisdiction under the American Convention, and (2) whether State obligations in the case of transboundary damage may entail the exercise of a State's jurisdiction beyond its territory.

### *B. State obligations under special environmental protection regimes*

83. In 1974, the United Nations Environmental Programme (hereinafter "UNEP") launched the Regional Seas Programme in order to tackle the accelerated degradation of the world's oceans and coastal areas using a shared seas approach and, in particular, involving neighboring countries in the adoption of specific comprehensive measures to protect their common marine environment.[149] At the present time, the program covers 18 regions of the world and involves more than 143 States,[150] through regional seas conventions and action plans for the management and sustainable use of the marine and coastal environment.[151]

84. In the context of this program, and in relation to the Caribbean Sea, the States of the region adopted the Cartagena Convention referred to by Colombia in its request for an advisory opinion, the purpose of which is to cover all the different aspects of environmental degradation and to meet the special needs of the region (*supra* paras. 32 to 34). To this end, the Cartagena Convention establishes that:

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147 The European Court of Human Rights has ruled similarly. See, for example, ECHR, *Case of Banković and Others v. Belgium* [GS], No. 52207/99. Decision on admissibility of December 12, 2001, para. 61; ECHR, *Case of Al-Skeini and Others v. The United Kingdom* [GS], No. 55721/07. Judgment of July 7, 2011, paras. 133 to 139, and ECHR, *Case of Chiragov and Others v. Armenia*, [GS], No. 13216/05. Judgment of June 16, 2015, para. 168.

148 Regarding the principle of non-refoulement, see Advisory Opinion OC-21/14, *supra*, para. 219.

149 The information on the Regional Seas Programme of the United Nations Environmental Programme can be found at the following link: https://www.unenvironment.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/why-does-working-regional-seas-matter.

150 Specifically, it covers the following regions: (1) the Antarctic Ocean; (2) the Arctic Ocean; (3) the Baltic Sea; (4) the Black Sea; (5) the Caspian Sea; (6) East Africa; (7) the East Asian Seas; (8) the Mediterranean; (9) the North-East Atlantic; (10) the North-East Pacific; (11) the North-West Pacific; (12) the Pacific West; (13) the Red Sea and the Gulf of Aden; (14) the Regional Organization for the Protection of the Marine Environment (ROPME) Sea Area (Bahrein, Iran, Irak, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates); (15) the South Asian Seas; (16) the South-East Pacific; (17) West, Central and South Africa, and (18) the Wider Caribbean. *Cf.* UNEP, *Realizing Integrated Regional Oceans Governance – Summary of case studies on regional cross-sectoral institutional cooperation and policy coherence, Regional Seas Reports and Studies No. 199,* 2017, p. 8.

151 The program is implemented by conventions and action plans aimed at protecting a specific marine area in which several States converge. *Cf.* United Nations Environmental Programme, *Why does working regional seas matter?* Available at: https://www.unenvironment.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/why-does-working-regional-seas-matter.

> Article 4 General Obligations:
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> 1. The Contracting Parties shall, individually or jointly, take all appropriate measures in conformity with international law and in accordance with this Convention and those of its protocols in force to which they are parties to prevent, reduce and control pollution of the Convention area[152] and to ensure sound environmental management, using for this purpose the best practicable means at their disposal and in accordance with their capabilities.
>
> 2. The Contracting Parties shall, in taking the measures referred to in paragraph 1, ensure that the implementation of those measures does not cause pollution of the marine environment outside the Convention area.
>
> 3. The Contracting Parties shall co-operate in the formulation and adoption of protocols or other agreements to facilitate the effective implementation of this Convention.
>
> 4. The Contracting Parties shall take appropriate measures, in conformity with international law, for the effective discharge of the obligations prescribed in this Convention and its protocols and shall endeavour to harmonize their policies in this regard.
>
> 5. The Contracting Parties shall co-operate with the competent international, regional and subregional organizations for the effective implementation of this Convention and its protocols. They shall assist each other in fulfilling their obligations under this Convention and its protocols.[153] (Underlining added)

85. Based on these and other obligations, particularly those established in article 4(1) of the Cartagena Convention, Colombia proposed that "an area of functional jurisdiction be established [in the Convention area], located outside the borders of the States parties, within which they are obliged to comply with certain obligations to protect the marine environment of the whole region."

86. That said, the Court notes that this type of provision can also be found in other treaties, particularly those that form part of the Regional Seas Programme mentioned above (para. 83), such as: (i) the Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (Nairobi Convention);[154] (ii) the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention);[155] (iii) the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention);[156] (iv) the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention);[157] (v) the Convention on the Protection of the Black Sea against Pollution;[158]

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[152] The Convention area is "the marine environment of the Gulf of Mexico, the Caribbean Sea and the areas of the Atlantic Ocean adjacent thereto, south of 300 north latitude and within 200 nautical miles of the Atlantic coasts of the States referred to in article 25 of the Convention." Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Cartagena Convention), entered into force on October 11, 1986, art. 2.1.

[153] Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Cartagena Convention), entered into force on October 11, 1986, art. 4.

[154] *Cf.* Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (Nairobi Convention, entered into force on May 30, 1996, art. 4(1).

[155] *Cf.* Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention), entered into force on February 12, 1978, art. 4(1).

[156] *Cf.* Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention), entered into force on August 5, 1984, art. 4.

[157] *Cf.* Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), entered into force on August 12, 2006, art. 4.a.

(vi) the Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific (Lima Convention;[159] (vii) the Convention for the Protection of Natural Resources and Environment of the South Pacific Region (Noumea Convention);[160] (viii) the Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (Jeddah Convention);[161] (ix) the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution;[162] (x) the Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention),[163] and (xi) the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR).[164]

87. All these treaties establish special regimes to prevent, reduce and control pollution in each treaty's area of application (*supra* paras. 84 and 86). Consequently, they ascribe particular functions and attributes to their States parties in specific geographical spaces. As in the case of other jurisdictions under the law of the sea, these regimes depend on the specific functions for which they were designed and agreed.[165] The areas of application of these environmental protection treaties cover jurisdictional areas of the States, including their exclusive economic zones where the bordering States exercise jurisdiction, rights and obligations in accordance with their "economic" purpose and taking into account the corresponding rights and obligations of the other States in the same area.[166]

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158 *Cf.* Convention on the Protection of the Black Sea against Pollution entered into force on January 15, 1994, art. V.2.

159 *Cf.* Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific (Lima Convention), entered into force on May 19, 1986, art. 3.1. The Permanent Commission for the South Pacific (CPPS), an inter-governmental body created in 1952, in Santiago de Chile, by the Governments of Chile, Ecuador and Peru, acts as the Executive Secretariat for this Convention and its Protocols, and for the Action Plan for the Protection of the Marine Environment and the Coastal Areas of the South-East Pacific. *Cf.* History and work of the Permanent Commission for the South Pacific. Available at: http://cpps-int.org/index.php/home/cpps-historia

160 *Cf.* Convention for the Protection of Natural Resources and Environment of the South Pacific Region (Noumea Convention), entered into force on August 22, 1990, art. 5(1).

161 *Cf.* Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (Jeddah Convention), entered into force on August 19, 1985, art. III.1

162 *Cf.* Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, entered into force on June 30, 1979, art. III.a.

163 *Cf.* Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), entered into force on January 17, 2000, art. 3(1).

164 *Cf.* Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), entered into force on March 25, 1998, art. 2.1(a).

165 Functional jurisdiction is the expression used in the law of the sea to refer to the limited jurisdiction of coastal States over the activities in "their" maritime zones (the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf). See, for example, the different regimes in the United Nations Convention on the Law of the Sea. The jurisdiction is functional because it is exercised based on the purpose of the activity. For example, in an exclusive economic zone, the jurisdiction, rights and obligations attributed to both the coastal States and to the other States is exercised in keeping with its "economic" objective and taking into account the corresponding rights and obligations of the other States in the same zone. *Cf.* United Nations Convention on the Law of the Sea (hereinafter "UNCLOS"), entered into force on November 16, 1994, arts. 55 to 75.

166 In this regard, Articles 55 and 56 of the Convention on the Law of the Sea establish that: "Article 55: Specific legal regime of the exclusive economic zone. The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. Article 56. Rights, jurisdiction and duties of the coastal State in the exclusive zone. 1. In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of

88. The request presented by Colombia suggests the possibility of equating the environmental obligations imposed under these regimes to human rights obligations so that the State's conduct in the area of application of these regimes is considered an exercise of the State's jurisdiction under the American Convention. However, first, the Court notes that the exercise of jurisdiction by a State under the American Convention does not depend on the State's conduct taking place in a specific geographical area. As previously established, the exercise of jurisdiction by a State under the American Convention depends on a State exercising authority over a person or when a person is subject to the effective control of that State (*supra* para. 81). Second, the Court underlines that the geographical areas that constitute the areas of application of this type of treaty were delimited with the specific purpose of compliance with the obligations established in those treaties to prevent, reduce and control pollution. Even though compliance with environmental obligations may contribute to the protection of human rights, this does not equate to the establishment of a special jurisdiction common to the States parties to those treaties in which it is understood that any action of a State in compliance with the treaty obligations constitutes an exercise of the jurisdiction of that State under the American Convention.

89. In addition, the Court understands that Colombia's request also suggests the possibility that these treaties extend the jurisdiction of a State beyond the borders of its territory. The Court notes that a State's jurisdiction can certainly extend over the territorial limits of another State when the latter expresses, through an agreement, its consent to restrict its own sovereignty.[167] The issue that must be decided by this Court, in relation to the question posed by Colombia, is whether these treaty-based regimes designed to protect the environment may involve this relinquishment of sovereignty.

90. In this regard, the Court notes that compliance with human rights or environmental obligations does not justify failing to comply with other norms of international law, including the principle of non-intervention. The American Convention must be interpreted in keeping with other principles of international law,[168] because the obligations to respect and to ensure human rights does not authorize States to act in violation of the Charter of the United Nations or international law in general. While international law does not exclude a State's exercise of jurisdiction extraterritorially, the suggested bases for such jurisdiction are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States.[169] Consequently, territorial sovereignty imposes limits on the scope of the States' obligation to contribute to the global realization of human rights.[170] In the same manner,

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the marine environment; (c) other rights and duties provided for in this Convention. 2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention. 3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI." *Cf.* UNCLOS, arts. 55 and 56.

167 *Cf.* European Commission on Human Rights. *Case of X.Y. v. Switzerland.* Nos. 7289/75 and 7349/76. Decision of July 14, 1977, pp. 71 to 73.

168 Similarly, see, ECHR, *Al-Adsani v. The United Kingdom* [GS], No. 35763/97, Judgment of November 21, 2001, paras. 60 to 67, and ECHR, *Case of Banković and Others v. Belgium* [GS], No. 52207/99. Decision on admissibility of December 12, 2001, para. 57

169 *Cf.* ECHR, *Case of Banković and Others v. Belgium* [GS], No. 52207/99. Decision on admissibility of December 12, 2001, para. 59, and *Case of Markovic and Others v. Italy*, [GS], No. 1398/03. Judgment of December 14, 2006, para. 49.

170 Similarly, the European Court of Human Rights has indicated that "a State's competence to exercise its jurisdiction over its own nationals abroad is subordinate to that State's and other States' territorial competence." ECHR, *Case of Banković and Others v. Belgium* [GS], No. 52207/99. Decision on admissibility of December 12, 2001, para. 60.

States' rights and duties in relation to maritime areas must always be executed with due respect for the rights and duties of the other States concerned.[171]

91. In this regard, the Court emphasizes that the Cartagena Convention itself limits the scope of the provisions of this instrument, so that they should not be interpreted in a sense that "prejudice[s] the present or future claims or the legal views of any Contracting Party concerning the nature and extent of maritime jurisdiction."[172] This type of limitation can also be found in similar treaties such as: (i) the Nairobi Convention;[173] (ii) the Barcelona Convention;[174] (iii) the Abidjan Convention;[175] (iv) the Tehran Convention;[176] (v) the Convention on the Protection of the Black Sea against Pollution;[177] (vi) the Lima Convention;[178] (vii) the Noumea Convention;[179] (viii) the Jeddah Convention;[180] (ix) the Kuwait Regional Convention for Cooperation on the Protection of the Marine against Pollution,[181] and (x) the Helsinki Convention.[182]

92. Consequently, it cannot be concluded that special environmental protection regimes, such as the one established in the Cartagena Convention, extend by themselves the jurisdiction of the States Parties for the purposes of their obligations under the American Convention.

93. The Court reiterates that, to determine whether a person is subject to the jurisdiction of a State under the American Convention, it is not sufficient that this person be located in a specific geographical area, such as the area of application of an environmental protection treaty. A determination must be made, based on the factual and legal circumstances of each specific case, that exceptional circumstances exist which reveal a situation of effective control or that a person was subject to the authority of a State (*supra* para. 81). In each case, it will be necessary to determine whether, owing to a State's extraterritorial conduct,

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171 *See, for example,* UNCLOS, arts. 56.2 (Rights, jurisdiction and duties of the coastal State in the exclusive economic zone), and 78 (Legal status of the superjacent waters and air space and the rights and freedoms of other States). *See also,* International Tribunal for the Law of the Sea (ITLOS), *Request for an advisory opinion submitted by the Subregional Fisheries Commission (SRFC).* Advisory Opinion of April 2, 2015, para. 216.

172 Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Cartagena Convention), entered into force on October 11, 1986, art. 3.3.

173 *Cf.* Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (Nairobi Convention), entered into force on May 30, 1996, art. 3.3.

174 *Cf.* Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention), entered into force on February 12, 1978, art. 3.

175 *Cf.* Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention), entered into force on August 5, 1984, art. 3.

176 *Cf.* Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), entered into force on August 12, 2006, art. 37.

177 *Cf.* Convention on the Protection of the Black Sea against Pollution, entered into force on January 15, 1994, art. V. 1

178 *Cf.* Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific (Lima Convention), entered into force on May 19, 1986, art. 3.4.

179 *Cf.* Convention for the Protection of Natural Resources and Environment of the South Pacific Region (Noumea Convention), entered into force on August 22, 1990, art. 4.4.

180 *Cf.* Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (Jeddah Convention), entered into force on August 19, 1985, art. XV.

181 *Cf.* Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution entered into force on June 30, 1979, art. XV.

182 *Cf.* Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), entered into force on January 17, 2000, art. 4.

a person can be considered under its jurisdiction for the purposes of the American Convention.

94. Notwithstanding the above, the Court recalls that the *pacta sunt servanda* principle requires the parties to a treaty to apply it "in a reasonable way and in such a manner that its purpose can be realized."[183] Consequently, the States Parties to the American Convention should not act in a way that hinders other States Parties from complying with their obligations under this treaty. This is important not only with regard to acts and omissions outside its territory, but also with regard to those acts and omissions within its territory that could have effects on the territory or inhabitants of another State, as will be examined below.

### *C. Obligations regarding transboundary damage*

95. As previously established, the jurisdiction of a State is not limited to its territorial space (para. 74). The word "jurisdiction," for the purposes of the human rights obligations under the American Convention as well as extraterritorial conducts may encompass a State's activities that cause effects outside its territory[184] (*supra* para 81).

96. Many environmental problems involve transboundary damage or harm. "One country's pollution can become another country's human and environmental rights problem, particularly where the polluting media, like air and water, are capable of easily crossing boundaries."[185] The prevention and regulation of transboundary environmental pollution has resulted in much of international environmental law, through bilateral, regional or multilateral agreements that deal with global environmental problems such as ozone depletion and climate change.[186]

97. International law requires States to meet a series of obligations relating to the possibility of environmental damage crossing the borders of a specific State. The International Court of Justice has repeatedly established that States have the obligation not

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183 ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary c. Slovakia).* Judgment of September 25, 1997, para. 142.

184 The European Court has established that a State's responsibility may be generated by acts of its authorities that produce effects outside its territory. In this regard, it has indicated that "acts of the Contracting Parties performed or producing effects outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1, only in exceptional cases." *Cf.* ECHR. *Case of Al-Skeini and Others* v. *The United Kingdom,* judgment of July 7, 2011, para. 131; *Case of Banković and Others v. Belgium* [GS], No. 52207/99, Decision on admissibility of December 12, 2001, para. 67; *Case of Drozd and Janousek vs. France and Spain*, Judgment of June 26, 1992, para. 91; *Case of Soering v. The United Kingdom*, No. 14038/88, Judgment of July 7, 1989, para. 86 to 88; *Case of Issa and Others v. Turkey,* No. 31821/96. Judgment of November 16, 2004, paras. 68 and 71. *See also*, IACHR, *Franklin Guillermo Aisalla Molina (Ecuador v. Colombia)*, Admissibility Report No. 112/10 of October 21, 2010, para. 98.

185 *Cf.* Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, December 24, 2012, UN Doc. A/HRC/22/43, para. 47 and 48, and ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, para. 31, and Human Rights Council, Analytical study of the relationship between human rights and the environment, Report of the United Nations High Commissioner for Human Rights, adopted on December 16, 2011, UN Doc. A/HRC/19/34, paras. 65, 70 and 72.

186 *Cf.* Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, December 24, 2012, UN Doc. A/HRC/22/43, para. 47 and 48, and Commission on Human Rights, Analytical study of the relationship between human rights and the environment, Report of the United Nations High Commissioner for Human Rights, adopted on December 16, 2001, UN Doc. A/HRC/19/34, paras. 65, 70 and 72.

to allow their territory to be used for acts contrary to the rights of other States.[187] In application of this principle, that court has also indicated that States must ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of their jurisdiction,[188] and that States are obliged to use all available means to avoid activities in their territory, or in any area under their jurisdiction, causing significant damage to the environment of another State.[189]

98. This obligation was included in the Stockholm Declaration,[190] and in the Rio Declaration. The latter establishes that:

> States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.[191] (Underlining added.)

99. In addition, it was codified in the United Nations Convention on the Law of the Sea, which establishes that:

> States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.[192]

100. Most treaties, agreements or other international instruments on environmental law refer to transboundary environmental damage and require or demand international cooperation to deal with this matter.[193]

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187 *Cf.* ICJ, *Corfu Channel case (The United Kingdom v. Albania).* Judgment of April 9, 1949, p. 22. *See also, Trail Smelter Case* in which that Court indicated that, "under the principles of international law, no State has the right to use or permit the use of its territory in such a manner as to cause injury in or to the territory of another State." *Cf.* Court of Arbitration, *Trail Smelter Case (United States v. Canada)*. Decision of April 16, 1938, and March 11, 1941, p. 1965.

188 *Cf.* ICJ, *Legality of the threat or use of nuclear weapons.* Advisory Opinion of July 8, 1996, para. 29.

189 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, paras. 101 and 204; also, ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, paras. 104 and 118.

190 *Cf.* Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A /CONF.48/14/Rev.1, Principle 21. This Principle establishes that: "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

191 Rio Declaration on Environment and Development. United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14, 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 2. This principle was also recognized in the preamble to the United Nations Framework Convention on Climate Change: "Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." United Nations Framework Convention on Climate Change, entered into force on March 21, 1994

192 UNCLOS, art. 194.2.

193 *Cf.* Office of the United Nations High Commissioner for Human Rights, Compilation report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable

101. The obligations to respect and to ensure human rights require that States abstain from preventing or hindering other States Parties from complying with the obligations derived from the Convention[194] (*supra* para. 94). Activities undertaken within the jurisdiction of a State Party should not deprive another State of the ability to ensure that the persons within its jurisdiction may enjoy and exercise their rights under the Convention. The Court considers that States have the obligation to avoid transboundary environmental damage that can affect the human rights of individuals outside their territory. For the purposes of the American Convention, when transboundary damage occurs that effects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin,[195] if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory.

102. In cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory. The potential victims of the negative consequences of such activities are under the jurisdiction of the State of origin for the purposes of the possible responsibility of that State for failing to comply with its obligation to prevent transboundary damage. That said, not every negative impact gives rise to this responsibility. The limits and characteristics of this obligation are explained in greater detail in Chapter VIII of this Opinion.

103. Accordingly, it can be concluded that the obligation to prevent transboundary environmental damage or harm is an obligation recognized by international environmental law, under which States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority. It is important to stress that this obligation does not depend on the lawful or unlawful nature of the conduct that generates the damage, because States must provide prompt, adequate and effective redress to the persons and States that are victims of transboundary harm resulting from activities carried out in their territory or under their jurisdiction, even if the action which caused this damage is not prohibited by international law.[196] That said, there must always be a causal link between the damage caused and the act or omission of the State of origin in relation to activities in its territory or under its jurisdiction or control.[197] Chapter VIII of this Opinion will describe the content,

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environment, John H. Knox, of December 2013. Individual report No. 9 on global and regional environmental agreements. December 2013, paras. 147 and 149.

194 See, similarly, regarding economic, social and cultural rights: ESCR Committee, General Comment No. 15: The right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, para. 31. The ESCR Committee has also indicated that: "[t]o comply with their international obligations […], States parties have to respect the enjoyment of the [economic, social and cultural rights] in other countries." ESCR Committee, General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/2000/4, August 11, 2000, para. 39.

195 For the purposes of this Advisory Opinion "State of origin" refers to the State under whose jurisdiction or control the activity that caused environmental damage originated, could originate, or was implemented.

196 *Cf. Articles on Prevention of transboundary harm from hazardous activities*, adopted by the International Law Commission in 2001 and annexed to UN General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68.

197 Similarly, see: International Tribunal for the Law of the Sea (ITLS), *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the area.* Advisory Opinion of February 1, 2011, paras. 181 to 184, and IACHR, *Franklin Guillermo Aisalla Molina (Ecuador v. Colombia)*, Admissibility Report No. 112/10 of

scope, terms and characteristics of these obligations (*infra* paras. 123 to 242).

### *D. Conclusion*

104. Based on the above considerations, in conformity with paragraphs 72 to 103, and in response to the requesting State's first question, the Court is of the opinion that:

a. The States Parties to the American Convention have the obligations to respect and to ensure the rights recognized in this instrument to all persons subject to their jurisdiction.

b. A State's exercise of jurisdiction entails its responsibility for the actions that may be attributed to it and that are alleged to violate the rights recognized in the American Convention.

c. The jurisdiction of the States, in relation to the protection of human rights under the American Convention, is not limited to their territorial space. The word "jurisdiction" in the American Convention is more extensive than the territory of a State and includes situations beyond its territorial limits. States are obliged to respect and to ensure the human rights of all persons subject to their jurisdiction, even though such persons are not within their territory.

d. The exercise of jurisdiction under Article 1(1) of the American Convention outside the territory of a State is an exceptional situation that must be examined in each specific case and restrictively.

e. The concept of jurisdiction under Article 1(1) of the American Convention encompasses any situation in which a State exercises effective control or authority over a person or persons, either within or outside its territory.

f. States must ensure that their territory is not used in such a way as to cause significant damage to the environment of other States or of areas beyond the limits of their territory. Consequently, States have the obligation to avoid causing transboundary damage or harm.

g. States are obliged to take all necessary measures to avoid activities implemented in their territory or under their control affecting the rights of persons within or outside their territory.

h. When transboundary harm or damage occurs, a person is under the jurisdiction of the State of origin if there is a causal link between the action that occurred within its territory and the negative impact on the human rights of persons outside its territory. The exercise of jurisdiction arises when the State of origin exercises effective control over the activities that caused the damage and the consequent human rights violation.

## VIII
## DUTIES DERIVED FROM THE OBLIGATIONS TO RESPECT AND TO ENSURE THE RIGHTS TO LIFE AND TO PERSONAL INTEGRITY IN THE CONTEXT OF ENVIRONMENTAL PROTECTION

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October 21, 2011, para. 99.

105. As explained previously, the purpose of Colombia's second and third questions is for the Court to determine State duties related to the obligations to respect and to ensure the rights to life and to personal integrity in relation to environmental damage (*supra* paras. 37 and 38). To answer these questions, the Court will rule, first, on the rights to life and to personal integrity and the relationship of these rights to environmental protection. It will then define the specific duties of the State that arise in this context.

106. The Court notes that, in its request, Colombia consulted the Court specifically with regard to the environmental obligations of prevention, precaution, mitigation of the damage, and cooperation (*supra* paras. 1 and 37). It also notes that, to ensure compliance with these obligations, international human rights law imposes certain procedural obligations on States in relation to environmental protection,[198] such as access to information, public participation, and access to justice. To define the environmental obligations derived from the obligations to respect and to ensure the rights to life and to personal integrity in response to the questions raised by Colombia, the Court will examine and rule on all these State obligations and duties.

107. Accordingly, the Court's response to the issues raised by Colombia in its second and third questions will be structured as follows: in section A, the Court will rule on the meaning and scope of the rights to life and to personal integrity, and the corresponding obligations to respect and to ensure these rights in the face of potential environmental damage, and in section B, the Court will rule on the specific environmental obligations of prevention, precaution, cooperation and procedure derived from the general obligations to respect and to ensure the rights to life and to personal integrity under the American Convention.

### *A. The rights to life and to personal integrity in relation to environmental protection*

#### A.1 Meaning and scope of the rights to life and to personal integrity in the face of potential environmental damage

108. The Court has affirmed repeatedly that the right to life in the American Convention is essential because the realization of the other rights depends on its protection.[199] Accordingly, States are obliged to ensure the creation of the necessary conditions for the full enjoyment and exercise of this right.[200] In its consistent case law, the Court has indicated that compliance with the obligations imposed by Article 4 of the American Convention, related to Article 1(1) of this instrument, not only presupposes that no person may be deprived of his or her life arbitrarily (negative obligation) but also, in light of the obligation to ensure the free and full exercise of human rights, it requires States to take all appropriate measures to protect and preserve the right to life (positive obligation)[201] of all

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198 See, *inter alia*, Human Rights Council, Mapping report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, of December 30, 2013, UN Doc. A/HRC/25/53, para. 29, and Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, February 1, 2016, UN Doc. A/HRC/31/52, para. 50.

199 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 144, *and Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs*. Judgment of August 22, 2017. Series C No. 338, para. 100.

200 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 144, and *Case of Chinchilla Sandoval et al. v. Guatemala, supra,* para. 166.

201 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 144, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 100

persons subject to their jurisdiction.[202]

109. In addition, States must take the necessary measures to create an appropriate legal framework to deter any threat to the right to life; establish an effective system of justice capable of investigating, punishing and providing redress for any deprivation of life by State agents or private individuals,[203] and safeguard the right of access to the conditions that ensure a decent life,[204] which includes adopting positive measure to prevent the violation of this right.[205] Based on the foregoing, exceptional circumstances have arisen that allowed the Court to establish and examine the violation of Article 4 of the Convention in relation to individuals who did not die as a result of the actions that violated this instrument.[206] Among the conditions required for a decent life, the Court has referred to access to, and the quality of, water, food and health, and the content has been defined in the Court's case law,[207] indicating that these conditions have a significant impact on the right to a decent existence and the basic conditions for the exercise of other human rights.[208] The Court has also included environmental protection as a condition for a decent life.[209]

110. Among these conditions, it should be underlined that health requires certain essential elements to ensure a healthy life;[210] hence, it is directly related to access to food and

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202 *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 110, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 100.

203 *Cf. Case of the Pueblo Bello Massacre.* Judgment of January 31, 2006. Series C No. 140, para. 120, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of April 17, 2015. Series C No. 292, para. 260.

204 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 144, and *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, supra*, para. 172.

205 *Cf. Case of the Sawhoyamaxa Indigenous Community v. Paraguay, supra*, para. 153, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 110.

206 Thus, for example, in the *case of the Yakye Axa Indigenous Community v. Paraguay,* the Court declared that the State was responsible for violating the right to life considering that, by failing to ensure the right to communal property, the State had deprived the victims of the possibility of acceding to their traditional means of subsistence, as well as of the use and enjoyment of the natural resources needed to obtain clean water and for the practice of traditional medicine to prevent and cure illnesses, in addition to failing to take the necessary positive measures to guarantee them living conditions compatible with their dignity. *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay, supra*, para. 158(d) and 158(e). *See also, Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 176; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, paras. 124, 125, 127 and 128; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 244, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 191. Likewise, it is worth mentioning that the European Court of Human Rights has declared the violation of the right to life with regard to individuals who did not die as a result of the acts that violated the respective convention. In this regard, see, ECHR, *Case of Acar and Others v. Turkey*, Nos. 36088/97 and 38417/97. Judgment of May 24, 2005, paras. 77 and 110, and ECHR, *Case of Makaratzis v. Greece* [GS], No. 50385/99. Judgment of December 20, 2004, paras. 51 and 55.

207 *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay, supra,* para. 167, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay, supra*, paras. 156 to 178, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment August 24, 2010. Series C No. 214, paras. 195 to 213.

208 *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay, supra,* para. 163, and *Case of Chinchilla Sandoval et al. v. Guatemala, supra*, para. 168.

209 *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay, supra,* para. 163, *Case of the Xákmok Kásek Indigenous Community v. Paraguay, supra*, para. 187, and *Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 172.

210 These essentials include food and nutrition, housing, access to clean potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. *Cf.* ESCR Committee, General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/2000/4, August 11, 2000, para. 4. See also, European Committee of Social

water.[211] In this regard, the Court has indicated that health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.[212] Thus, environmental pollution may affect an individual's health.[213]

111. In addition, access to food and water may be affected if pollution limits their availability in sufficient amounts or affects their quality.[214] It should be stressed that access to water includes access "for personal and domestic use," and this includes "consumption, sanitation, laundry, food preparation, and personal and domestic hygiene," and for some individuals and groups it will also include "additional water resources based on health, climate and working conditions."[215] Access to water, food and health are obligations to be realized progressively; however, States have immediate obligations, such as ensuring these rights without discrimination and taking measures to achieve their full realization.[216]

112. Regarding the right to personal integrity, the Court reiterate that the violation of an individual's right to physical and mental integrity has various connotations of degree and ranges from torture to other types of ill-treatment or cruel, inhuman or degrading treatment, the physical and mental effects of which vary in intensity according to endogenous and exogenous factors (such as duration of the treatment, age, sex, health, context and vulnerability) that must be examined in each specific situation.[217]

113. Furthermore, in the specific case of indigenous and tribal communities, the Court has ruled on the obligation to protect their ancestral territories owing to the relationship that such lands have with their cultural identity, a fundamental human right of a collective nature that must be respected in a multicultural, pluralist and democratic society.[218]

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Rights, *Collective complaint No. 30/2005, Marangopoulos Foundation for Human Rights v. Greece* (Merits). Decision of December 6, 2006, para. 195.

211 *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay, supra*, para. 167, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay, supra*, paras. 156 to 178, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay, supra*, paras. 195 to 213.

212 *Cf. Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, supra*, para. 148, citing the Constitution of the World Health Organization, adopted by the International Health Conference held in New York from June 19 to July 22, 1946, signed on July 22, 1946 by the representatives of 61 States and entered into force on April 7, 1948.

213 In this regard, for example, the ESCR Committee has indicated that the obligation to respect the right to health means that States should "refrain from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities, from using or testing nuclear, biological or chemical weapons if such testing results in the release of substances harmful to human health." ESCR Committee, General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/2000/4, August 11, 2000, para. 34.

214 *Cf. Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs, supra*, para. 126; *Case of the Xákmok Kásek Indigenous Community v. Paraguay, supra*, paras. 195 and 198; ESCR Committee, General Comment No. 12: The right to adequate food (art. 11 of the International Covenant on Economic, Social and Cultural Rights), May 12, 1999, UN Doc. E/C.12/1999/5, paras. 7 and 8, and ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, paras. 10 and 12.

215 ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, para. 12. See also, *Case of the Xákmok Kásek Indigenous Community v. Paraguay, supra*, para. 195.

216 *Cf.* ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, para. 21.

217 *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, paras. 57 and 58, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 102.

218 *Mutatis mutandi, Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 217, and *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 160.

114. The Court notes that although each right contained in the Convention has its own sphere, meaning and scope,[219] there is a close relationship between the right to life and the right to personal integrity. Thus, there are times when the lack of access to conditions that ensure a dignified life may also constitute a violation of the right to personal integrity;[220] for example, in cases involving human health.[221] Moreover, the Court has recognized that certain projects and interventions in the environment in which people live can constitute a risk to their life and personal integrity.[222] Therefore, the Court considers it pertinent to examine jointly the State obligations in relation to the rights to life and to personal integrity that may be affected by environmental damage. Consequently, the Court will now establish and reaffirm the meaning and scope of the general obligations to respect and to ensure the rights to life and to personal integrity (*infra* paras. 115 to 121) and will then establish the specific environmental obligations derived from this general obligation (*infra* paras. 123 to 242), as solicited by Colombia in its request for an advisory opinion.

### A.2. Obligations to respect and to ensure the rights to life and to personal integrity in the face of potential environmental damage

115. This Court has maintained that, in application of Article 1(1) of the American Convention, States have the obligation *erga omnes* to respect and guarantee protection standards and to ensure the effectiveness of human rights.[223] In this regard, the Court recalls that the general obligations to respect and to ensure rights established in Article 1(1) of the Convention give rise to special duties that can be determined based on the particular needs for protection of the subject of law, due to either their personal conditions or specific situation.[224]

116. The Court will now set out the general meaning and scope of the obligations to respect and to ensure the rights to life and to personal integrity in relation to the negative impact of environmental damage. These obligations must be interpreted taking into account the environmental obligations and principles set out in section B below (*infra* paras. 123 to 242).

117. The Court has asserted that the first obligation assumed by States Parties under Article 1(1) of the Convention is to "respect the rights and freedoms" recognized in this treaty. Thus, when protecting human rights, this obligation of respect necessarily includes the notion of a restriction on the exercise of the State's powers.[225] Therefore States must

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219 *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 171, and *Case of Mohamed v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 23, 2012. Series C No. 255, para. 119.

220 *Mutatis mutandi, Case of the "Juvenile Re-education Institute" v. Paraguay, supra*, para. 170, and *Case of Chinchilla Sandoval v. Guatemala, supra*, paras. 168 and 169.

221 *Cf. Case of Albán Cornejo et al. v. Ecuador. Merits, reparations and costs.* Judgment of November 22, 2007. Series C No. 171, para. 117, and *Case of Chinchilla Sandoval v. Guatemala, supra*, para. 170.

222 *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 249, and *Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 222.

223 *Cf. Case of the "Mapiripán Massacre" v. Colombia.* Judgment of September 15, 2005. Series C No. 134, para. 111, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 168.

224 *Cf. Case of the Pueblo Bello Massacre v. Colombia, supra,* para. 111, and *Case of I.V. v. Bolivia, supra*, para. 206

225 *Cf. The Word "Laws" in Article 30 of the American Convention on Human Rights,* Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21, and *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252, para. 143.

refrain from: (i) any practice or activity that denies or restricts access, in equal conditions, to the requisites of a dignified life, such as adequate food and water, and (ii) unlawfully polluting the environment in a way that has a negative impact on the conditions that permit a dignified life for the individual; for example, by dumping waste from State-owned facilities in ways that affect access to or the quality of potable water and/or sources of food.[226]

118. The second obligation, the obligation to ensure rights, means that States must take all appropriate steps to protect and preserve the rights to life and to integrity.[227] In this regard, the obligation to ensure rights is projected beyond the relationship between State agents and the persons subject to the State's jurisdiction, and encompasses the duty to prevent third parties from violating the protected rights in the private sphere.[228] This duty of prevention includes all those measures of a legal, political, administrative and cultural nature that promote the safeguard of human rights and ensure that eventual violations of those rights are examined and dealt with as wrongful acts that, as such, are susceptible to result in punishment for those who commit them, together with the obligation to compensate the victims for the negative consequences.[229] Furthermore, it is plain that the obligation to prevent is an obligation of means or behavior and non-compliance is not proved by the mere fact that a right has been violated.[230]

119. The Court has indicated that a State cannot be held responsible for every human rights violation committed by individuals within its jurisdiction. The *erga omnes* nature of the treaty-based obligation for States to ensure rights does not entail unlimited State responsibility in the case of every act or deed of a private individual because, even though an act, omission or deed of a private individual has the legal consequence of violating certain human rights of another private individual, this cannot automatically be attributed to the State; rather, the particular circumstances of the case must be examined and whether the obligation to ensure those rights has been met.[231] In the context of environmental protection, the State's international responsibility derived from the conduct of third parties may result from a failure to regulate, supervise or monitor the activities of those third parties that caused environmental damage. These obligations are explained in detail in the following section (*infra* paras. 146 to 170).

120. In addition, bearing in mind the difficulties involved in the planning and adoption of public policies, and the operational choices that must be made based on priorities and resources, the State's positive obligations must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. For this positive

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[226] *Cf.* ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, paras. 17 to 19, and ESCR Committee, General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/2000/4, August 11, 2000, para. 34.

[227] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 144, and *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 118.

[228] *Cf. Case of the "Mapiripán Massacre" v. Colombia, supra*, para. 111, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 170.

[229] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 175; *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 252, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, paras. 221 and 222.

[230] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 166, and *Case of I.V. v. Bolivia, supra*, para. 208.

[231] *Cf. Case of the "Mapiripán Massacre" v. Colombia, supra*, para. 123, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 170.

obligation to arise, it must be established that: (i) at the time of the facts the authorities knew or should have known of the existence of a situation of real and imminent danger for the life of a specific individual or group of individuals and failed to take the necessary measures within their area of responsibility that could reasonably be expected to prevent or to avoid that danger, and (ii) that there was a causal link between the impact on life and integrity and the significant damage caused to the environment.

121. In addition, the obligation to ensure rights also means that States must take positive measures to permit as well as to help private individuals exercise their rights. Thus, States must take steps to disseminate information on the use and protection of water and sources of adequate food (*infra* paras. 213 to 225).[232] Also, in specific cases of individuals or groups of individuals who are unable to access water and adequate food by themselves for reasons beyond their control, States must guarantee the essential minimum of food and water.[233] If a State does not have the resources to comply with this obligation, it must "demonstrate that every effort has been made to use all resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations."[234]

122. Having established the meaning and scope of the rights to life and to personal integrity in relation to environmental protection, the Court will now examine and determine the specific environmental obligations of States derived from the general obligations to respect and to ensure those rights.

### *B. State obligations in the face of potential environmental damage in order to respect and to ensure the rights to life and to personal integrity*

123. States are bound to comply with their obligations under the American Convention with due diligence. The general concept of due diligence in international law is typically associated with the possible responsibility of a State in relation to obligations with respect to its conduct or behavior, as opposed to obligations requiring results that entail the achievement of a specific objective.[235] The duty of a State to act with due diligence is a concept whose meaning has been determined by international law and has been used in diverse fields, including international humanitarian law,[236] the law of the sea,[237] and international environmental law.[238] In international human rights law, the duty to act with

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[232] *Cf.* ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, para. 25, and ESCR Committee, General Comment No. 12: The right to adequate food (art. 11 of the International Covenant on Economic, Social and Cultural Rights), May 12, 1999, UN Doc. E/C.12/1999/5, para. 6.

[233] *Cf.* ESCR Committee, General Comment No. 12: The right to adequate food (art. 11 of the International Covenant on Economic, Social and Cultural Rights), May 12, 1999, UN Doc. E/C.12/1999/5, para. 17.

[234] ESCR Committee, General Comment No. 12: The right to adequate food (art. 11 of the International Covenant on Economic, Social and Cultural Rights), May 12, 1999, UN Doc. E/C.12/1999/5, para. 17.

[235] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 197. *See also*, International Law Commission, *Commentaries on the draft Articles on prevention of transboundary harm from hazardous activities*, Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 3, para. 8.

[236] *Cf.* Article 1 common to the 1949 Geneva Conventions, and ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of February 26, 2007, para. 430.

[237] *Cf.* ITLOS, *Request for an advisory opinion submitted by the Subregional Fisheries Commission (SRFC).* Advisory Opinion of April 22015, paras. 128 and 129, and ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.* Advisory Opinion of February 1, 2011, paras. 110 to 120.

[238] See*, inter alia*, Stockholm Declaration, adopted on June 16, 1972, Principle 7; ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the*

due diligence has been examined in relation to economic, social and cultural rights, regarding which States commit to take "all appropriate measures" to achieve, progressively, the full effectiveness of the corresponding rights.[239] In addition, as this Court has emphasized, the duty to act with due diligence also corresponds, in general, to the State obligation to ensure the free and full exercise of the rights recognized in the American Convention to all persons subject to their jurisdiction, according to which States must take all appropriate measures to protect and preserve the rights recognized in the Convention, and to organize all the structures through which public authority is exercised so that they are able to ensure, legally, the free and full exercise of human rights[240] (*supra* para. 118).

124. Most environmental obligations are based on this duty of due diligence. The Court reiterates that an adequate protection of the environment is essential for human well-being, and also for the enjoyment of numerous human rights, particularly the rights to life, personal integrity and health, as well as the right to a healthy environment itself (*supra* paras. 47 to 69).

125. To comply with the obligations to respect and ensure the rights to life and personal integrity, in the context of environmental protection, States must fulfill a series of obligations with regard to both damage that has occurred within their territory and transboundary damage. In this section, the Court will examine: (1) the obligation of prevention; (2) the precautionary principle; (3) the obligation of cooperation, and (4) the procedural obligations relating to environmental protection in order to establish and determine the State obligations derived from the systematic interpretation of these provisions together with the obligations to respect and to ensure the rights to life and personal integrity established in the American Convention. The purpose of this analysis is to respond to Colombia's second and third questions concerning the specific environmental obligations that arise from respecting and ensuring the rights to life and to personal integrity under the American Convention. Even though compliance with these obligations may also be necessary to ensure other rights in cases of the possible negative impact of environmental harm, in this section the Court will refer, in particular, to these obligations in relation to protection of the rights to life and to personal integrity, since these are the rights that Colombia indicated in its request for an advisory opinion (*supra* paras. 37, 38 and 64 to 69).

126. The Court notes that international environmental law contains numerous specific obligations, for example, those that refer to the type of damage, such as conventions, agreements and protocols on oil spills, on the management of toxic substances, on climate change, and on greenhouse gases;[241] on the activity being regulated, such as conventions and agreements on inland waterway and maritime transportation;[242] or on the aspect or

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*San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 104. *See also*, ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. Judgment of April 20, 2010, para. 101.

239 *Cf.* ESCR Committee, General Comment No. 3: The nature of States Parties' obligations (art. 2, para. 1, of the Covenant) UN Doc. E/1991/23, December 14, 1990, paras. 2 and 3, and ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, paras. 40 to 44.

240 See*, inter alia*, *Case of Velásquez Rodríguez v. Honduras*. *Merits, supra,* para. 166; *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 168, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, paras. 100 and 101.

241 See, *inter alia*, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, entered into force on May 5, 1992, article 4; International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties, entered into force on May 6, 1975, article 1; United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, article 3, and Vienna Convention for Protection of the Ozone Layer, entered into force on September 22, 1988, article 2.

242 See, *inter alia*, International Convention for the Prevention of Pollution from Ships (MARPOL), entered into

element of the environment being protected, such as treaties and conventions on maritime law, biodiversity, and the protection of ecosystems or conservation of certain species.[243] There are also treaties that seek to ensure a reinforced protection in specific geographical areas,[244] such as the Cartagena Convention referred to by Colombia in its request, owing to which the obligations established in this Opinion must be complied with more rigorously. However, it is not the intention of this Advisory Opinion to describe exhaustively or in great detail all the specific obligations that States have under said provisions. The Court will now describe the general environmental obligations that States must fulfill in order to respect and ensure human rights under the American Convention. These are general obligations because States must comply with them whatever the activity, geographical area or component of the environment that is affected. Nevertheless, nothing in this Opinion should be understood to prejudice the more specific obligations that States may have assumed for the protection of the environment.

### B.1 Obligation of prevention

127. The obligation to ensure the rights recognized in the American Convention entails the duty of States to prevent violations of these rights (*supra* para. 118). As previously mentioned, this obligation of prevention encompasses all the diverse measures that promote the safeguard of human rights and ensure that eventual violations of these rights are taken into account and may result in sanctions as well as compensation for their negative consequences (*supra* para. 118).

128. Under environmental law, the principle of prevention has meant that States have the "responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."[245] This principle was explicitly established in the Stockholm and Rio Declarations on the environment and is linked to the international obligation to exercise due diligence so as not to cause or permit damage to other States[246] (*supra* paras. 95 to 103).

129. The principle of prevention of environmental damage forms part of international customary law.[247] This protection encompasses not only the land, water and atmosphere,

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force on October 2, 1983, article 1.

[243] See, *inter alia*, UNCLOS, article 194; Convention on Biodiversity, entered into force on December 29, 1993, article 1; Convention on Wetlands of International Importance especially as Waterfowl Habitat (RAMSAR Convention), entered into force on December 21, 1975, article 3; Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, entered into force on December 11, 2001, article 2.

[244] See, *inter alia*, Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Cartagena Convention), entered into force on October 11, 1986, art. 4, and Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention), entered into force on February 12, 1978, article 4.

[245] Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 2, and Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1, Principle 21.

[246] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 101. *See also*, Court of Arbitration, *Trail Smelter Case (United States v. Canada)*. Decision of April 16, 1938, and March 11, 1941, p. 1965, and ICJ, *Corfu Channel case (The United Kingdom v. Albania).* Judgment of April 9, 1949, p. 22.

[247] The customary nature of the principle of prevention has been recognized by the International Court of Justice. *Cf.* ICJ, *Legality of the threat or use of nuclear weapons, Advisory opinion*, July 8, 1996, para. 29; ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*. Judgment of September 25, 1997, para.

but also includes flora and fauna.[248] Specifically, in relation to State obligations with regard to the sea, the United Nations Convention on the Law of the Sea establishes that "States have the obligation to protect and preserve the marine environment,"[249] and imposes a specific obligation "to prevent, reduce and control pollution of the marine environment."[250] The Cartagena Convention that Colombia mentions in its request also establishes this obligation.[251]

130. Bearing in mind that, frequently, it is not possible to restore the situation that existed before environmental damage occurred, prevention should be the main policy as

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140; ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay),* Judgment of April 20, 2010, para. 101; and ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 104. The International Tribunal for the Law of the Sea (ITLOS) and the Permanent Court of Arbitration (PCA) have also indicated this. *Cf.* ITLOS, *Dispute concerning delimitation of the maritime boundary between Ghana and Cote d'Ivoire in the Atlantic Ocean (Ghana v. Cote d'Ivoire).* Case No. 23, Order for provisional measures of April 25, 2015, para. 71; PCA, *Iron Rhine Arbitration (Belgium v. The Netherlands).* Award of May 24, 2005, para. 222; PCA, *Kishanganga River Hydroelectric Power Plant Arbitration (Pakistan v. India).* Partial award of February 18, 2013, paras. 448 to 450 and Final award of December 20, 2013, para. 112, and PCA, *South China Sea Arbitration) (Philippines v. China).* Award of July 12, 2016, para. 941.

[248] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 262.

[249] UNCLOS, art. 192. The following OAS Member States have ratified the United Nations Convention on the Law of the Sea: Ecuador (September 24, 2012), Dominican Republic (July 10, 2009), Canada (November 7, 2003), Nicaragua (May 3, 2000), Suriname (July 9, 1998), Chile (August 25, 1997), Guatemala (February 11, 1997), Haiti (July 31, 1996), Panama (July 1, 1996), Argentina (December 1, 1995), Bolivia (April 28, 1995), Guyana (November 16, 1993), Barbados (October 12, 1993), Honduras (October 5, 1993), Saint Vincent and the Grenadines (October 1, 1993), Saint Kitts and Nevis (January 7, 1993), Uruguay (December 10, 1992), Costa Rica (September 21, 1992), Dominica (October 24, 1991), Grenada (April 25, 1991), Antigua and Barbuda (February 2, 1989), Brazil (December 22, 1988), Paraguay (September 26, 1986), Trinidad and Tobago (April 25, 1986), Saint Lucia (March 27, 1985), Cuba (August 15, 1984), Belize (August 25, 1983), Bahamas (July 29, 1983), Jamaica (March 21, 1983) and Mexico (March 18, 1983). The following OAS Member States have not ratified the United Nations Convention on the Law of the Sea: Colombia, El Salvador, Peru, United States of America and Venezuela.

[250] In particular, article 194 of the Convention establishes that: "1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection. 2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention. 3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, *inter alia*, those designed to minimize to the fullest possible extent: (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping; (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels; (c) pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices; (d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices. 4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention. 5. The measures taken in accordance with this Part shall include those 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." UNCLOS, art. 194.

[251] *Cf.* Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Cartagena Convention), entered into force on October 11, 1986, arts. 4 to 9.

regards environmental protection.[252] The Court will now examine: (1) the sphere of application of the principle of prevention; (2) the type of damage that must be prevented, and (3) the measures States must take to comply with this obligation.

*B.1.a Sphere of application of the obligation of prevention*

131. Under environmental law, the principle of prevention is applicable with regard to activities which take place in a State's territory, or in any area under its jurisdiction, that cause damage to the environment of another State,[253] or in relation to damage that may occur in areas that are not part of the territory of any specific State,[254] such as on the high seas.[255]

132. Regarding maritime waters, the United Nations Convention on the Law of the Sea establishes a general obligation "to protect and preserve the marine environment," without limiting its sphere of application.[256] In this regard, the Permanent Court of Arbitration has indicated that this provision should be interpreted as a duty to protect and preserve the marine environment applicable both within and outside national jurisdictions.[257]

133. The American Convention obliges States to take actions to prevent eventual human rights violations (*supra* para. 118). In this regard, although the principle of prevention in relation to the environment was established within the framework of inter-State relations, the obligations that it imposes are similar to the general duty to prevent human rights violations. Therefore, the Court reiterates that the obligation of prevention applies to damage that may occur within or outside the territory of the State of origin (*supra* para. 103).

*B.1.b Type of damage to be prevented*

134. The wording of the obligation of prevention established in the Stockholm and Rio Declarations does not describe the type of environmental damage that should be prevented. However, many treaties that include an obligation to prevent environmental damage do condition this obligation to a certain degree of severity of the harm that could be caused. Thus, for example, the Convention on the Law of the Non-Navigational Uses of International Watercourses,[258] the Vienna Convention for Protection of the Ozone Layer,[259] the United

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[252] *Cf.* ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*. Judgment of September 25, 1997, para. 140, and International Law Commission, *Commentaries on the draft Articles on prevention of transboundary harm from hazardous activities,* Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), General Commentaries, paras. 1 to 5.

[253] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 101.

[254] *Cf.* ICJ, *Legality of the threat or use of nuclear weapons*. Advisory Opinion of July 8, 1996, para. 29.

[255] *Cf.* UNCLOS, arts. 116 to 118 and 192.

[256] *Cf.* UNCLOS, art. 192.

[257] *Cf.* PCA, *South China Sea Arbitration (Philippines v. China)*, Award of July 12, 2016, para. 940.

[258] *Cf.* Convention on the Law of the Non-Navigational Uses of International Watercourses entered into force on August 17, 2014, art. 7.

[259] This Convention refers to the obligation to prevent "adverse effects." In this regard, it indicates that "'adverse effects' means changes in the physical environment or biota, including changes in climate, which have significant deleterious effects on human health or on the composition, resilience and productivity of nature and managed ecosystems, or on material useful to mankind. Vienna Convention for Protection of the Ozone Layer entered into force on September 22, 1988, arts. 1.2 and 2 (underlining added).

Nations Framework Convention on Climate Change,[260] and the Protocol to the Antarctic Treaty on Environmental Protection[261] establish the obligation to prevent significant damage. Similarly, the Convention on Biological Diversity indicates an obligation to prevent "significant adverse effects on biological diversity."[262] In Europe, the Convention on Environmental Impact Assessment in a Transboundary Context establishes as a standard the prevention of "significant adverse transboundary environmental impact,"[263] and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes establishes the obligation to prevent "any significant adverse effect."[264]

135. The International Court of Justice has indicated that the obligation of prevention arises when there is risk of "significant damage."[265] According to this Court, the significant nature of a risk may be determined based on the nature and size of the project and the context in which it is implemented.[266]

136. Similarly, the International Law Commission's draft articles on prevention of transboundary harm from hazardous activities only refer to those activities that may involve significant transboundary harm.[267] Thus, the ILC indicated that "the term 'significant' was not without ambiguity and a determination ha[d] to be made in each specific case. […] It [should] be understood that '*significant' is something more than 'detectable' but need not be at the level of 'serious' or 'substantial*.' The harm must lead to a real detrimental effect on matters such as, for example, human health, industry, property, environment or agriculture in other States. Such detrimental effects must be susceptible of being measured by factual and objective standards" [italics in original].[268] In addition, the International Law Commission indicated that a State of origin is not responsible for preventing risks that are not foreseeable. However, it also noted that States have the continuing obligation to identify activities which involve significant risk.[269]

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[260] This Convention establishes the obligation "to anticipate, prevent or minimize the causes of climate change and to mitigate its adverse effects." To this end, it defines "adverse effects" as "changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare. United Nations Framework Convention on Climate Change entered into force on March 21, 1994, arts. 1 and 3 (underlining added)

[261] *Cf.* Protocol to the Antarctic Treaty on Environmental Protection (Madrid Protocol), entered into force on January 14, 1998, art. 3.2.b.

[262] Convention on Biological Diversity entered into force on December 29, 1993, art. 14(1)(a).

[263] Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), entered into force on September 10, 1997, art. 2.1.

[264] Convention on the Protection and Use of Transboundary Watercourses and International Lakes of the Economic Commission for Europe (ECE), entered into force on October 6, 1996, arts. 1.2 and 2.1.

[265] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 101, and ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 153. *See also,* PCA, *Kishanganga River Hydroelectric Power Plant Arbitration (Pakistan v. India).* Partial award of February 18, 2013, para. 451 and Final award of December 20, 2013, para. 112.

[266] *Cf.* ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 155.

[267] *Cf. Articles on prevention of transboundary harm from hazardous activities*, prepared by the International Law Commission and annexed to United Nations General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68, art. 1.

[268] *Cf.* International Law Commission, *Commentaries on the draft articles on prevention of transboundary harm from hazardous activities,* Yearbook of the International Law Commission 2001, vol. II, Part II (A/56/10), art. 2, para. 4.

[269] *Cf.* International Law Commission, *Commentaries on the draft articles on prevention of transboundary harm*

137. Accordingly, there is consensus in international environmental provisions that the obligation of prevention requires that the harm or damage attain a certain level.

138. At the same time, in the context of human rights, the Inter-American Court has indicated that the American Convention cannot be interpreted in a way that prevents a State from issuing any type of concession for the exploration for natural resources or their extraction.[270] In this regard, it has indicated that the acceptable level of impact, revealed by environmental impact assessments, that would allow a State to grant a concession in indigenous territory may differ in each case, without it ever being permissible to negate the ability of members of indigenous and tribal peoples to ensure their own survival.[271]

139. The European Court of Human Rights, when examining cases of alleged interference in private life caused by pollution, has indicated that the European Convention is not violated every time that environmental degradation occurs, insofar as the European Convention does not include a right to a healthy environment[272] (*supra* para. 65). Consequently, the adverse effects of the environmental pollution must attain a certain minimum level if they are to be considered a violation of the European Convention.[273] "The assessment of that minimum level is relative and depends on the circumstances of the case, such as the intensity and duration of the nuisance and its physical and mental effects. The general context of the environment must also be taken into account." In other words, "if the detriment complained of was negligible in comparison to the environmental hazards inherent to life in every modern city," the effects would be insignificant.[274] Thus, the European Court has examined the impact of the environmental harm on the individual, rather than the risk that exists for the environment or the level of environmental degradation.

140. Based on the above, the Court concludes that States must take measures to prevent significant harm or damage to the environment, within or outside their territory. In the Court's opinion, any harm to the environment that may involve a violation of the rights to life and to personal integrity, in accordance with the meaning and scope of those rights as previously defined (*supra* paras. 108 to 114) must be considered significant harm. The existence of significant harm in these terms is something that must be determined in each specific case, based on the particular circumstances.

*B.1.c Measures States must take to comply with the obligation of prevention*

141. The Court has indicated that there are certain activities that involve significant risks

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*from hazardous activities*, Yearbook of the International Law Commission 2001, vol. II, Part II (A/56/10), art. 3, para. 5.

270 *Cf. Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs, supra*, para. 126

271 *Cf. Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 185, para. 42, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 214.

272 *Cf.* ECHR, *Case of Fadeyeva v. Russia,* No. 55723/00. Judgment of June 9, 2005, para. 68, and ECHR, *Case of Dubetska and Others v. Ukraine*, No. 30499/03. Judgment of February 10, 2011, para. 105.

273 *Cf.* ECHR, *Case of Fadeyeva v. Russia,* No. 55723/00. Judgment of June 9, 2005, para. 69; ECHR, *Case of Leon and Agnieszka Kania v. Poland,* No. 12605/03. Judgment of July 21, 2009, para. 100, and, *mutatis mutandi*, ECHR, *Case of Hatton and Others v. The United Kingdom*, No. 36022/97. Judgment of July 8, 2003, para. 118.

274 *Cf.* ECHR, *Case of Fadeyeva v. Russia,* No. 55723/00. Judgment of June 9, 2005, para. 69, and ECHR, *Case of Dubetska and Others v. Ukraine*, No. 30499/03. Judgment of February 10, 2011, para. 105.

to the health of the individual and, therefore, States have the specific obligation to regulate them, including the introduction of monitoring and oversight mechanisms.[275] The African Commission has indicated this also in relation to threats to the environment.[276]

142. Likewise, based on the obligation of prevention in environmental law, States are bound to use all the means at their disposal to avoid activities under their jurisdiction causing significant harm to the environment[277] (*supra* paras. 127 to 140). This obligation must be fulfilled in keeping with the standard of due diligence, which must be appropriate and proportionate to the level of risk of environmental harm.[278] In this way, the measures that a State must take to conserve fragile ecosystems will be greater and different from those it must take to deal with the risk of environmental damage to other components of the environment.[279] Moreover, the measures to meet this standard may change over time, for example, in light of new scientific or technological knowledge.[280] However, the existence of this obligation does not depend on the level of development; in other words, the obligation of prevention applies equally to both developed and developing States.[281]

143. The Court has stressed that the general obligation to prevent human rights violations is an obligation of means or behavior rather than of results, so that non-compliance is not proved by the mere fact that a right may have been violated (*supra* paras. 118 to 121). Similarly, the obligation of prevention established in environmental law is an obligation of means and not of results.[282]

144. It is not possible to enumerate all the measures that could be adopted to comply with the obligation of prevention, because they will vary according to the right in question and according to conditions in each State party.[283] However, certain minimum measures can be defined that States must take within their general obligation to take appropriate measures to prevent human rights violations as a result of damage to the environment.

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[275] See, *inter alia*, *Case of Ximenes Lopes v. Brazil*. *Merits, reparations and costs.* Judgment of July 4, 2006. Series C No. 149, paras. 89 and 90; *Case of Gonzales Lluy et al. v. Ecuador, supra*, paras. 178 and 183, and *Case of I.V. v. Bolivia, supra*, paras. 154 and 208.

[276] *Cf.* African Commission on Human and Peoples' Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*. Communication 155/96. Decision of October 27, 2001, para. 53.

[277] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 101

[278] *Cf.* ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.* Advisory Opinion of February 1, 2011, para. 117, and International Law Commission, *Commentaries on the draft articles on prevention of transboundary harm from hazardous activities*, Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 3, para. 11.

[279] Fragile ecosystems are important systems, with unique features and resources that generally extend beyond national borders. They include deserts, semi-arid lands, mountains, wetlands, small islands and certain coastal areas. *Cf.* Chapters 12 and 13 of Agenda 21 on managing fragile ecosystems: combating desertification and drought, and sustainable mountain development. Agenda 21 adopted at the United Nations Conference on Environment and Development, Río de Janeiro, June 14, 1992, UN Doc. A/Conf.151/26 (Vol. II), para. 12.1.

[280] *Cf.* ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.* Advisory Opinion of February 1, 2011, para. 117.

[281] *Cf.* ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.* Advisory Opinion of February 1, 2011, para. 158.

[282] *Cf.* ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.* Advisory Opinion of February 1, 2011, para. 110, and ITLOS, *Request for an advisory opinion submitted by the Subregional Fisheries Commission (SRFC).* Advisory Opinion of April 2, 2015, para. 129.

[283] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits, supra,* para. 175, and *Case of the "Five Pensioners" v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 126

145. The specific measures States must take include the obligations to: (i) regulate; (ii) supervise and monitor; (iii) require and approve environmental impact assessments; (iv) establish contingency plans, and (v) mitigate, when environmental damage has occurred.

*i) Duty to regulate*

146. Article 2 of the American Convention obliges States Parties to adopt, in accordance with their constitutional processes and the provisions of this instrument, such legislative or other measures as may be necessary to give effect to the rights or freedoms protected therein.[284] In this regard, the State obligation to adapt domestic laws to the provisions of the Convention is not limited to the constitutional or legislative text, but must extend to all legal provisions of a regulatory nature and result in effective practical implementation.[285]

147. Given the relationship between protection of the environment and human rights (*supra* paras. 47 to 55), all States must regulate this matter and take other similar measures to prevent significant damage to the environment. This obligation has been expressly included in international instruments on environmental protection, without making a distinction between damage caused within or outside the territory of the State of origin.[286] The Convention on the Law of the Sea establishes the obligation to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources,[287] from seabed activities subject to national jurisdiction,[288] from dumping[289] and from or through the atmosphere,[290] among other matters.[291] Likewise, the Cartagena Convention, referred to by Colombia in its request, establishes that "the Contracting Parties undertake to develop technical and other guidelines to assist in the planning of their major development projects in such a way as to prevent or minimize harmful impacts on the Convention area."[292] Other treaties of this nature contain similar provisions.[293]

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[284] *Cf. Case of Albán Cornejo et al. v. Ecuador, supra*, para. 118, and *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 29, 2016. Series C No. 327, para. 118.

[285] *Cf. Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 286, and Advisory Opinion OC-21/14, *supra*, para. 65

[286] In this regard, Principle 11 of the Rio Declaration on Environment and Development establishes that: "States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries." Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 11. *See also,* Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1, paras. 5 and 7 of the preamble and Principle 23.

[287] *Cf.* UNCLOS, art. 207.

[288] *Cf.* UNCLOS, art. 208.

[289] *Cf.* UNCLOS, art. 210.

[290] *Cf.* UNCLOS, art. 212.

[291] *Cf.* UNCLOS, art. 209 (Pollution from activities in the Area), and art. 211 (Pollution from vessels).

[292] Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Cartagena Convention), entered into force on October 11, 1986, art. 12.1.

[293] See, *inter alia,* Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (Nairobi Convention, entered into force on May 30, 1996, art. 14(1); Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention), entered into force on August 5, 1984, art. 4; Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), entered into force on August 12, 2006, arts. 15, 18 and 19.4; Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area (ACCOBAMS), entered into force on June 1, 2001, art. II.3;

148. The European Court of Human Rights has indicated that States must regulate dangerous activities taking into account "the level of the potential risk to human lives."[294] In this regard, States "must govern the licensing, setting up, operation, security and supervision of the activity in question, and must make it obligatory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks."[295] Furthermore, "the relevant regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels."[296]

149. Therefore, this Court considers that States, taking into account the existing level of risk, must regulate activities that could cause significant environmental damage in a way that reduces any threat to the rights to life and to personal integrity.

150. Specifically, with regard to environmental impact assessments, which will be examined in greater detail below (paras. 156 to 170), this regulation must be clear, at least as regards: (i) the proposed activities and the impact that must be assessed (areas and aspects to be covered); (ii) the process for making an environmental impact assessment (requirements and procedures); (iii) the responsibilities and duties of project proponents, competent authorities and decision-making bodies (responsibilities and duties); (iv) how the environmental impact assessment process will be used in approval of the proposed actions (relationship to decision-making), and (v) the steps and measures that are to be taken in the event that due procedure is not followed in carrying out the environmental impact assessment or implementing the terms and conditions of approval (compliance and implementation).[297]

151. In addition, in the case of companies registered in one State that develop activities outside that State's territory, the Court notes that a tendency exists towards the regulation of such activities by the State where such companies are registered. Thus, the Committee on Economic, Social and Cultural Rights has indicated that "the States Parties must […] prevent third parties from violating [economic, social and cultural rights] in other countries, provided they can influence such third parties by legal or political means, pursuant to the Charter of the United Nations and the applicable international law."[298] Also, the Committee

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Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), entered into force on January 17, 2000, arts. 3.1, 6.2 and 16.1.a, and Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), entered into force on March 25, 1998, art. 22(a).

294 *Cf.* ECHR, *Case of Öneryildiz v. Turkey* [GS], No. 48939/99. Judgment of November 30, 2004, para. 90.

295 *Cf.* ECHR, *Case of Öneryildiz v. Turkey* [GS], No. 48939/99. Judgment of November 30, 2004, para. 90, and ECHR, *Case of Budayeva and Others v. Russia,* Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. Judgment of March 20, 2008, para. 132.

296 *Cf.* ECHR, *Case of Öneryildiz v. Turkey* [GS], No. 48939/99. Judgment of November 30, 2004, para. 90, and ECHR, *Case of Budayeva and Others v. Russia,* Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. Judgment of March 20, 2008, para. 132.

297 *Cf.* UNEP, *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach,* 2004, p. 18. Available at: https://unep.ch/etu/publications/textONUBr.pdf. *See also*, UNEP, Resolution 14/25 of June 17, 1987, adopting the Goals and Principles of Environmental Impact Assessment, UN Doc. UNEP/WG.152/4 Annex, Principle 2. Regarding these principles, the International Court of Justice has indicated that although they are not binding, States should take them into account as guidelines issued by an international organ. ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 205.

298 ESCR Committee, General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/2000/4, August 11, 2000, para. 39. See also, similarly, ESCR Committee, General Comment No. 15: The right to water (articles 11 and

on the Elimination of Racial Discrimination has encouraged States to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in a State which negatively impact the human rights of individuals outside its territory.[299] The Court takes note of these developments, and considers them to be a positive trend that would allow States to ensure the human rights of persons outside their territory.

*ii) Duty to supervise and monitor*

152. The Court has indicated that, at times, States have the duty to establish appropriate mechanisms to supervise and monitor certain activities in order to guarantee human rights, protecting them from the actions of public entities and private individuals.[300] Also, specifically in relation to the environment, in the *case of the Kaliña and Lokono Peoples*, the Court indicated that the obligation to protect the nature reserve areas and the territories of the indigenous communities entailed a duty of monitoring and oversight.[301]

153. Furthermore, in the context of inter-State relations, the International Court of Justice has indicated that, as part of the obligation of prevention, States must ensure compliance and implementation of their environmental protection laws and regulations, as well as exercise some form of administrative control over public and private agents, for example, by monitoring their activities.[302] That Court has also indicated that the control that a State must exercise does not end with the environmental impact assessment; rather, States must continuously monitor the environmental impact of a project or activity.[303]

154. In this regard, the Inter-American Court considers that States have an obligation to supervise and monitor activities within their jurisdiction that may cause significant damage to the environment. Accordingly, States must develop and implement adequate independent monitoring and accountability mechanisms.[304] These mechanisms must not only include preventive measures, but also appropriate measures to investigate, punish and redress possible abuse through effective policies, regulations and adjudication.[305] The level of

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12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2002/11, January 20, 2003, para. 33.

299 *Cf.* Committee on the Elimination of Racial Discrimination. Concluding observations of the Committee with regard to the United States of America, CERD/C/USA/CO/6, May 8, 2008, para. 30.

300 See, *inter alia, Case of Ximenes Lopes v. Brazil, supra*, paras. 89 and 90; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 167; *Case of I.V. v. Bolivia, supra*, paras. 154 and 208.

301 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, paras. 221 and 222.

302 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 197. *See also*, UNCLOS, arts. 204 and 213

303 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 205, and ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 161.

304 *Cf.* UN, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/17/31, March 21, 2011, Principle 5. The United Nations Human Rights Council adopted these principles and set up a working group to promote their dissemination and effective application, among other matters. *Cf.* Human Rights Council, Resolution 17/4, UN Doc. A/HRC/RES/17/4, July 6, 2011. Similarly, the OAS General Assembly resolved to promote the application of the said principles among OAS Member States. *Cf.* OAS General Assembly, Resolution AG/RES. 2840 (XLIV-O/14), "Promotion and protection of human rights in business," adopted at the second plenary session held on June 4, 2014.

305 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 224, citing, UN, Guiding Principles on

monitoring and oversight necessary will depend on the level of risk that the activities or conduct involves.

155. Notwithstanding the State obligation to supervise and monitor activities that could cause significant harm to the environment, the Court takes note that, according to the "Guiding Principles on Business and Human Rights," business enterprises should respect and protect human rights, and prevent, mitigate and assume responsibility for the adverse human rights impacts of their activities.[306]

*iii) Duty to require and approve environmental impact assessments*

156. To date, the Inter-American Court has only ruled on the obligation to carry out environmental impact assessments in relation to activities implemented in the territory of indigenous communities. In this regard, it has established that an environmental impact assessment constitutes a safeguard to ensure that the restrictions imposed on indigenous or tribal peoples in relation to the right to ownership of their lands, owing to the issue of concessions within their territory, does not entail a denial of their survival as a people.[307] The purpose of such assessments is not merely to have an objective measurement of the possible impact on the land and peoples, but also to ensure that the members of these peoples are aware of the possible risks, including the environmental and health risks, so that they can evaluate, in full knowledge and voluntarily, whether or not to accept the proposed development or investment plan.[308]

157. However, the Court notes that the obligation to make an environmental impact assessment also exists in relation to any activity that may cause significant environmental damage. In this regard, the Rio Declaration established that "[e]nvironmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority."[309] This obligation has also been recognized by the laws

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Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/17/31, March 21, 2011, Principle 1.

306 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 224, citing, UN, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/17/31, March 21, 2011, Principles 11 to 15, 17, 18, 22 and 25.

307 See*, inter alia, Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*, *supra*, para. 129; *Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections, merits, reparations and costs*, *supra*, paras. 31 to 39; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 205; *Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras. Merits, reparations and costs.* Judgment of October 8, 2015. Series C No. 305, para. 156, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, paras. 214 and 215.

308 *Cf. Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections. Merits, reparations and costs, supra*, para. 40, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 214.

309 Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 17. Similarly, see, *inter alia*, UNCLOS, art. 204; Convention on Biodiversity entered into force on December 29, 1993, art. 14; United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, art. 4(1)(f); Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Cartagena Convention), entered into force on October 11, 1986, art. 12.2; Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (Nairobi Convention), entered into force on May 30, 1996, art. 14.2; Protocol to the Antarctic Treaty on Environmental Protection[309] (Madrid Protocol), entered into force on January 14, 1998, art. 8; Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region

of numerous OAS Member States, including, Antigua and Barbuda,[310] Argentina,[311] Belize,[312] Bolivia,[313] Brazil,[314] Canada,[315] Chile,[316] Colombia,[317] Costa Rica,[318] Cuba,[319] Ecuador,[320] United States of America,[321] El Salvador,[322] Guatemala,[323] Guyana,[324] Honduras,[325] Jamaica,[326] Mexico,[327] Panama,[328] Paraguay,[329] Peru,[330] Dominican Republic,[331] Trinidad and Tobago,[332] Uruguay[333] and Venezuela.[334]

158. Similarly, the International Court of Justice has indicated that the obligation of due

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(Abidjan Convention), entered into force on August 5, 1984, art. 13.2; Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), entered into force on January 17, 2000, art. 7, and Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), entered into force on August 12, 2006, art. 17.

310 *Cf.* Environmental Protection and Management Act of Antigua and Barbuda, September 24, 2015, Part VI, section 38.

311 *Cf.* General Environment Act of Argentina, Law No. 25,675 of November 27, 2002, art. 11.

312 *Cf.* Environmental Protection Act of Belize, December 31, 2000, Chapter 328, Part V, section 20.1.

313 *Cf.* Constitution of the State of Bolivia, art. 345.2, and Environment Act of Bolivia, Law No. 1333 of April 27, 1992, art. 25.

314 *Cf.* Federal Constitution of Brazil, art. 225(1) (IV).

315 *Cf.* Canadian Environmental Assessment Act, S.C. 1999, c. 33, September 24, 1999, with subsequent amendments, art. 13.

316 *Cf.* General Environmental Standards Act of Chile, No. 19,300 of March 1, 1994, art. 10.

317 *Cf.* Law No. 1753 of Colombia, National Development Plan 2014-2018 "All together for a new country," of June 9, 2015, art. 178, and Law No. 99 of Colombia, creating the Ministry of the Environment among other matters, of December 22, 1993, art. 57.

318 *Cf.* General Environment Law of Costa Rica, Law No. 7554 of September 28, 1995, art. 17.

319 *Cf.* Environment Act of Cuba, Law No. 81 of July 11, 1997, art. 28.

320 *Cf.* General Environmental Code of Ecuador of April 12, 2017, art. 179.

321 *Cf.* 1969 National Environmental Policy Act (NEPA) of the United States of America, Sec. 102 [42 USC § 4332].

322 *Cf.* Environment Act of El Salvador of May 4, 1998, with amendments at 2012, art. 19

323 *Cf.* Environmental Protection and Improvement Act of Guatemala, Decree No. 68-86 of November 28, 1986, art. 8.

324 *Cf.* Environmental Protection Act of Guyana of June 5, 1996, Part IV, sections 11 to 15.

325 *Cf.* General Environment Act of Honduras, Decree No. 104-93 of June 8, 1993, arts. 5 and 78

326 *Cf.* The Natural Resources Conservation Authority Act of Jamaica of July 5, 1991, section 10.

327 *Cf.* General Law on Ecological Balance and Environmental Protection of the United Mexican States of January 28, 1988, art. 28.

328 *Cf.* General Environment Act of the Republic of Panama, Law No. 41 of July 1, 1998, art. 21, and Executive Decree No. 59 of March 16, 2000, adopting the Regulations for the Environmental Impact Assessment Procedure, art. 3.

329 *Cf.* Environmental Impact Assessment Act of Paraguay, Law No. 294/93 of December 31, 1993, art. 1.

330 *Cf.* Law on the Environmental Impact Assessment System of Peru, Law No. 27,446 of April 20, 2001, and its amendments under Legislative Decree No. 1078, arts. 2 and 3.

331 *Cf.* General Environmental and Natural Resources Act of the Dominican Republic, Law No. 64-00 of August 18, 2000, art. 38.

332 *Cf.* Environmental Management Act of Trinidad and Tobago of March 13, 2000, Part V, sections 35 to 40.

333 *Cf.* Environment Act of Uruguay, Law No. 16,466 of January 19, 1994, arts. 6 and 7, and Decree No 349/2005 of September 21, 2005, adopting the Regulations for Environmental Impact Assessment and Environmental Authorizations, art. 25.

334 *Cf.* Constitution of the Bolivarian Republic of Venezuela, art. 129.

diligence involves making an environmental impact assessment when there is a risk that a proposed activity may have a significant adverse transboundary impact and, particularly, when it involves shared resources.[335] This obligation rests with the State that plans to implement the activity or under whose jurisdiction it will be implemented.[336] Thus, the International Court of Justice has explained that, before initiating any activity with the potential to affect the environment, States must determine whether there is a risk of significant transboundary harm and, if so, make an environmental impact assessment.[337]

159. The European Court of Human Rights has indicated that when States must determine complex issues of environmental and economic policy, the decision-making process must firstly involve appropriate investigations and studies in order to allow them to predict and evaluate in advance the effects of those activities which might damage the environment and infringe individuals' rights and to enable the rights of private individuals and allow them to strike a fair balance between the various conflicting interests at stake.[338] However, specifically with regard to environmental impact assessments, the European Court has only analyzed their obligatory nature and requirements when such assessments are established in the domestic law of a defendant State.[339]

160. Without prejudice to other obligations arising under international law,[340] this Court considers that, when it is determined that an activity involves a risk of significant damage, an environmental impact assessment must be carried out. The initial determination may be made by an initial environmental impact assessment,[341] for example, or because domestic law or any other regulation defines activities for which it is compulsory to require an environmental impact assessment.[342] In any case, the obligation to carry out an

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335 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 204, and ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 104. Similarly, ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.* Advisory Opinion of February 1, 2011, para. 145.

336 *Cf.* ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 153.

337 *Cf.* ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 104.

338 *Cf.* ECHR, *Case of Hatton and Others v. The United Kingdom* [GS], No. 36022/97. Judgment of July 8, 2003, para. 128, and ECHR, *Case of Taşkin and Others v. Turkey*, No. 46117/99. Judgment of November 10, 2004, para. 119.

339 *See, for example,* ECHR, *Case of Giacomelli v. Italy*, No. 59909/00. Judgment of November 2, 2006, paras. 86 to 96.

340 In this regard, see, for example, the obligation to make an environmental impact assessment for activities on territories of indigenous peoples or communities, which do not depend on the existence of a risk of significant damage (*supra* para. 156).

341 The Protocol to the Antarctic Treaty on Environmental Protection establishes the obligation to prepare an "Initial Environmental Evaluation," to determine whether a proposed activity may have more than a minor or transitory impact, in which case a "Comprehensive Environmental Evaluation" should be prepared. *Cf.* Annex 1 to the Protocol to the Antarctic Treaty on Environmental Protection[341] (Madrid Protocol), entered into force on January 14, 1998, arts. 2 and 3.

342 This type of regulation exists, for example, in Brazil, Chile, Cuba, Dominican Republic, El Salvador, Mexico, Panama, Paraguay and Uruguay. *Cf.* (Brazil) Resolution 001/86 of the Environmental Council (CONAMA) of January 23, 1986, establishing the basic criteria and general guidelines for environmental impact assessments, art. 2; (Chile) General Environmental Standards Act, No. 19,300 of March 1, 1994, art. 10; (Cuba) Environment Act, Law No. 81 of July 11, 1997, art. 28; (El Salvador) Environment Act, of May 4, 1998, with amendments at 2012, art. 21; (Mexico) General Law on Ecological Balance and Environmental Protection of January 28, 1988, art. 29; (Paraguay) Environmental Impact Assessment Act, Law No. 294/93 of December 31, 1993, art. 7; (Panama)

environmental impact assessment when there is a risk of significant harm is independent of whether a project is being implemented directly by the State or by private individuals.

161. The Court has already indicated that environmental impact assessments must be made pursuant to the relevant international standards and best practice and has indicated certain conditions that environmental impact assessments must meet.[343] Despite that the foregoing related to activities implemented in territories of indigenous communities, the Court considers that such conditions are also applicable to any environmental impact assessment; they are as follows:

a. The assessment must be made before the activity is carried out

162. The environmental impact assessment must be concluded before the activity is carried out or before the permits required for its implementation have been granted.[344] The State must ensure that no activity related to project execution is undertaken until the environmental impact assessment has been approved by the competent State authority.[345] Making the environmental impact assessment during the initial stages of project discussion allows alternatives to the proposal to be explored and that such alternatives can be taken into account.[346] Preferably, environmental impact assessments should be made before the project location and design have been decided in order to avoid financial losses should changes be required.[347] When the concession, license or authorization to execute an activity has been granted without an environmental impact assessment, this should be made before the project is executed.[348]

b. It must be carried out by independent entities under the State's supervision

163. The Court considers that the environmental impact assessment must be carried out by an independent entity with the relevant technical capacity, under the State's supervision.[349] Environmental impact assessments can be carried out by the State itself or

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Executive Decree No. 59 of March 16, 2000, adopting the Regulations for the Environmental Impact Assessment Procedure, art. 3; (Dominican Republic) General Environmental and Natural Resources Act, Law No. 64-00 of August 18, 2000, art. 41, and (Uruguay) Decree No 349/2005 of September 21, 2005, adopting the Regulations for Environmental Impact Assessment and Environmental Authorizations, art. 2.

343 *Cf. Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections, merits, reparations and costs*, *supra*, para. 41; *Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras*, *supra*, para. 180, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 216.

344 *Cf. Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 41, and *Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras, supra*, para. 180. In this regard, the ESCR Committee has indicated that comprehensive environmental impact assessments should be carried out prior to the execution of projects or to the granting of licenses to companies. *Cf.* ESCR Committee, Concluding observations: Peru, UN Doc. E/C.12/PER/CO/2-4, May 30, 2012, para. 22.

345 *Cf. Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*, *supra*, para. 129, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 201.

346 *Cf.* UNEP, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, 2004, p. 40. Available at: https://unep.ch/etu/publications/textONUBr.pdf.

347 *Cf.* UNEP, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, 2004, p. 41. Available at: https://unep.ch/etu/publications/textONUBr.pdf.

348 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, paras. 207 and 215.

349 *Cf. Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 41, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 201.

by a private entity. However, in both cases, it is the State, in the context of its monitoring and oversight duty, that must ensure that the assessment is carried out correctly.[350] If assessments are made by private entities, the State must take steps to ensure their independence.[351]

164. During the process for approval of an environmental impact assessment, the State must analyze whether execution of the project is compatible with its international obligations. In this regard, it must take into account the impact that the project may have on its human rights obligations. In cases involving indigenous communities, the Court has indicated that the environmental impact assessment should include an evaluation of the potential social impact of the project.[352] The Court notes that if the environmental impact assessment does not include a social analysis,[353] the State must make this analysis while supervising the assessment.

c. It must include the cumulative impact

165. The Court has indicated that the environmental impact assessment must examine the cumulative impact of existing projects and proposed projects.[354] In this regard, if a proposed project is linked to another project, as in the case of the construction of an access road, for example, the environmental impact assessment should take into account the impact of both the main project and the associated projects.[355] In addition, the impact of other existing projects should be taken into account.[356] This analysis will allow a more accurate conclusion to be reached on whether the individual and cumulative effects of existing and future activities involve a risk of significant harm.[357]

d. Participation of interested parties

166. The Court has not ruled on the participation in environmental impact assessments of interested parties when this is not related to the protection of the rights of indigenous communities. In the case of projects that may affect indigenous and tribal territories, the Court has indicated that the community should be allowed to take part in the environmental

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350 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, paras. 216 and 221. *See also,* Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 17.

351 *Mutatis mutandi, Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 207, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 216.

352 *Cf. Case of the Saramaka People. v. Suriname. Preliminary objections, merits, reparations and costs, supra*, para. 129, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, paras. 213 to 226.

353 In this regard, the ESCR Committee has indicated that, in addition to the environmental impact, States should also assess the impact on human rights of the projects or activities submitted for their approval. *Cf.* ESCR Committee, Statement in the context of the Rio+20 Conference on "the green economy in the context of sustainable development and poverty eradication," June 4, 2012, UN Doc. E/C.12/2012/1, para. 7. See also, *Cf.* UNEP, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, 2004, p. 52. Available at: https://unep.ch/etu/publications/textONUBr.pdf.

354 *Cf. Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 41, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 206.

355 *Cf.* UNEP, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, 2004, p. 52. Available at: https://unep.ch/etu/publications/textONUBr.pdf.

356 *Cf.* UNEP, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, 2004, p. 52. Available at: https://unep.ch/etu/publications/textONUBr.pdf.

357 *Cf. Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 41.

impact assessment process through consultation.[358] The right to participate in matters that could affect the environment is dealt with, in general, in the section on procedural obligations below (paras. 226 to 232).

167. However, regarding the participation of interested parties in environmental impact assessments, the Court notes that in 1987, the United Nations Environmental Programme adopted the Goals and Principles of Environmental Impact Assessments, which established that States should permit experts and interested groups to comment on environmental impact assessments.[359] Even though the principles are not binding, they are recommendations by an international technical body that States should take into account.[360] The Court also notes that the domestic laws of Argentina,[361] Belize,[362] Brazil,[363] Canada,[364] Chile,[365] Colombia,[366] Ecuador,[367] El Salvador,[368] Guatemala,[369] Peru,[370] Dominican Republic,[371] Trinidad and Tobago[372] and Venezuela[373] include provisions that establish public participation in environmental impact assessments while, in general, Bolivia,[374] Costa Rica,[375] Cuba,[376] Honduras[377] and Mexico[378] promote public participation in decisions relating to the environment.

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[358] See*, inter alia, Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs, supra*, para. 129 and 130; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 206, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 215.

[359] *Cf.* UNEP, Resolution 14/25 of June 17 1987, adopting the Goals and Principles of Environmental Impact Assessment. UN Doc. UNEP/WG.152/4 Annex, Principles 7 and 8.

[360] Regarding these Principles, see *supra* footnote 297 and ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 205.

[361] *Cf.* General Environment Act of Argentina, Law No. 25,675 of November 27, 2002, art. 21.

[362] *Cf.* Environmental Protection Act of Belize, December 31, 2000, Chapter 328, Part V, section 20.5

[363] *Cf.* Resolution 001/86 of the Environmental Council (CONAMA) of January 23, 1986, establishing the basic criteria and general guidelines for environmental impact assessments, art. 11.2.

[364] *Cf.* Canadian Environmental Assessment Act, S.C. 1999, c. 33, September 24, 1999, with subsequent amendments, art. 19.1,

[365] *Cf.* General Environmental Standards Act of Chile, No. 19,300 of March 1, 1994, art. 10. art. 30 (bis)

[366] *Cf.* Constitutional Court of Colombia, Judgment T-348/12, of May 15, 2012, section. 2.3.2.3.

[367] *Cf.* General Environmental Code of Ecuador of April 12, 2017, art. 179, and Regulations for implementation of the social participation mechanisms established in the Environmental Management Act of Ecuador, Decree No. 1040 of April 22, 2008, art. 6.

[368] *Cf.* Environment Act of El Salvador of May 4, 1998, with amendments to 2012, arts. 24 and 25.

[369] *Cf.* Regulation of Environmental Assessment, Control and Monitoring of Guatemala, Decision No. 137-2016 of July 11, 2016, art. 43.d.

[370] *Cf.* Law on the Environmental Impact Assessment System of Peru, Law No. 27,446 of April 20, 2001, and its amendments under Legislative Decree No. 1078, art. 14.c.

[371] *Cf.* General Environmental and Natural Resources Act of the Dominican Republic, Law No. 64-00 of August 18, 2000, art. 43.

[372] *Cf.* Environmental Management Act of Trinidad and Tobago of March 13, 2000, Part V, section 35.5.

[373] *Cf.* General Environment Law of Venezuela of December 22, 2006, arts. 39 and 40, and 90, and Rules for environmental assessment of activities susceptible of degrading the environment, Decree No. 1257 of March 13, 1996, art. 26.

[374] *Cf.* Constitution of the State of Bolivia, art. 352.

[375] *Cf.* General Environment Law of Costa Rica, Law No. 7554 of September 28, 1995, art. 6.

[376] *Cf.* Environment Act of Cuba, Law No. 81 of July 11, 1997, art. 4(i) and 4(m).

[377] *Cf.* General Environment Act of Honduras, Decree No. 104-93 of June 8, 1993, art. 9.e.

[378] *Cf.* General Law on Ecological Balance and Environmental Protection of the United Mexican States of January 28, 1988, art. 9, paragraph C.V.

168. The Court considers that, in general, the participation of the interested public allows a more complete assessment of the possible impact of a project or activity and whether it will affect human rights. Thus, it is recommendable that States allow those who could be affected or, in general, any interested person, to have the opportunity to present their opinions or comments on a project or activity before it is approved, while it is being implemented, and after the environmental impact assessment has been issued.

e. Respect for the traditions and culture of indigenous peoples

169. In the case of projects that may affect the territory of indigenous communities, social and environmental impact assessments must respect the traditions and culture of the indigenous peoples.[379] In this regard, the intrinsic connection between indigenous and tribal peoples and their territory must be taken into account. The connection between the territory and the natural resources that have been used traditionally and that are necessary for the physical and cultural survival of these peoples and for the development and continuity of their world view must be protected to ensure that they can continue their traditional way of life and that their cultural identity, social structure, economic system, and distinctive customs, beliefs and traditions are respected, guaranteed and protected by States.[380]

f. Content of environmental impact assessments

170. The content of the environmental impact assessment will depend on the specific circumstances of each case and the level of risk of the proposed activity.[381] Both the International Court of Justice and the International Law Commission have indicated that each State should determine in its laws the content of the environmental impact assessment required in each case.[382] The Inter-American Court finds that States should determine and define, by law or by the project authorization process, the specific content required of an environmental impact assessment, taking into account the nature and size of the project and its potential impact on the environment.

*iv) Duty to prepare a contingency plan*

171. The United Nations Convention on the Law of the Sea establishes that States shall together prepare and promote emergency plans to deal with incidents of pollution of the marine environment.[383] The same obligation is included in the Convention on the Law of the

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379 *Cf. Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 41, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 164.

380 See*, inter alia, Case of the Yakye Axa Indigenous Community v. Paraguay, supra,* paras. 124, 135 and 137; *Case of the Kuna Indigenous Peoples of Madungandí and the Emberá Indigenous Peoples of Bayano and their members v. Panama, supra*, para. 112; *Case of the Punta Piedra Garifuna Community and its members v. Honduras. Preliminary objections, merits, reparations and costs.* Judgment of October 8, 2015. Series C No. 304, para. 167, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 164.

381 *Cf.* UNEP, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, 2004, p. 44. Available at: https://unep.ch/etu/publications/textONUBr.pdf, and UNEP, Resolution 14/25 of June 17 1987, adopting the Goals and Principles of environmental impact assessment. UN Doc. UNEP/WG.152/4 Annex, Principle 5.

382 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 205; ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 104, and International Law Commission, *Commentaries on the draft articles on prevention of transboundary harm from hazardous activities*. UN Doc. A/RES/56/82, art. 7 para. 9.

383 *Cf.* UNCLOS, art. 199.

Non-Navigational Uses of International Watercourses.[384] In this regard, the Court considers that the State of origin should have a contingency plan to respond to environmental emergencies or disasters[385] that includes safety measures and procedures to minimize the consequences of such disasters. Even though the State of origin is the main entity responsible for the contingency plan, when appropriate, the plan should be implemented in cooperation with other States that are potentially affected, and also competent international organizations[386] (*infra* para. 189).

*v) Duty to mitigate if environmental damage occurs*

172. The State must mitigate significant environmental damage if it occurs.[387] Even if the incident occurs despite all the required preventive measures having been taken, the State of origin must ensure that appropriate measures are adopted to mitigate the damage and, to this end, should rely upon the best available scientific data and technology.[388] Such measures should be taken immediately, even if the origin of the pollution is unknown.[389] Some of the measures that States should take are: (i) clean-up and restoration within the jurisdiction of the State of origin; (ii) containment of the geographical range of the damage to prevent it from affecting other States; (iii) collection of all necessary information about the incident and the existing risk of damage;[390] (iv) in cases of emergency in relation to an activity that could produce significant damage to the environment of another State, the State of origin should, immediately and as rapidly as possible, notify the States that are likely to be affected by the damage[391] (*infra* para. 190); (v) once notified, the affected or

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[384] *Cf.* Convention on the Law of the Non-Navigational Uses of International Watercourses entered into force on August 17, 2014, art. 28.

[385] *Cf. Articles on prevention of transboundary harm from hazardous activities*, adopted by the International Law Commission in 2001 and annexed to United Nations General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68, art. 16, and International Law Commission, *Commentaries on the draft articles on prevention of transboundary harm from hazardous activities.* Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 16, paras. 1 to 3.

[386] *Cf.* International Law Commission*, Commentaries on the draft Articles on prevention of transboundary harm from hazardous activities,* Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 16, para. 2.

[387] *Cf.* PCA, *Iron Rhine Arbitration (Belgium v. The Netherlands).* Award of May 24, 2005, para. 59; PCA, *Kishanganga River Hydroelectric Power Plant Arbitration (Pakistan v. India).* Partial award of February 18, 2013, para. 451 and Final Award of December 20, 2013, para. 112.

[388] *Cf.* International Law Commission, *Draft Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities*, Yearbook of the International Law Commission 2006, vol. II, Part Two (A/61/10), Principle 5.b.

[389] *Cf.* International Law Commission, *Commentaries on the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities*, Yearbook of the International Law Commission 2006, vol. II, Part Two (A/61/10), Principle 5, para. 6.

[390] *Cf.* International Law Commission, *Commentaries on the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities*, Yearbook of the International Law Commission 2006, vol. II, Part Two (A/61/10), Principle 5, paras. 1, 2 and 5.

[391] *Cf.* UNCLOS, art. 198; Convention on Biodiversity entered into force on December 29, 1993, art. 14(1).d); Convention on the Law of the Non-Navigational Uses of International Watercourses entered into force on August 17, 2014, art. 28.2; Convention on Early Notification of a Nuclear Accident, entered into force on October 27, 1986, art. 2; Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 18, and *Articles on Prevention of transboundary harm from hazardous activities*, adopted by the International Law Commission in 2001 and annexed to UN General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68, art. 17. This notification should be made, even if the incident occurs despite all preventive measures having been taken. *Cf.* International Law Commission, *Commentaries on the Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities*, Yearbook of the International Law Commission 2006, vol. II, Part Two (A/61/10), preamble and Principle 1, para. 7.

potentially affected States should take all possible steps to mitigate and, if possible, eliminate the consequences of the damage,[392] and (vi) in case of emergency, any persons who could be affected should also be informed.[393]

173. In addition, as explained below, the State of origin and the States potentially affected have the obligation to cooperate in order to take all possible measures to mitigate the effects of the damage[394] (*infra* paras. 181 to 210).

*B.1.d Conclusion regarding the obligation of prevention*

174. In order to ensure the rights to life and integrity, States have the obligation to prevent significant environmental damage within and outside their territory, as established in paragraphs 127 to 173 of this Opinion. In order to comply with this obligation, States must: (i) regulate activities that could cause significant harm to the environment in order to reduce the risk to human rights, as indicated in paragraphs 146 to 151 of this Opinion; (ii) supervise and monitor activities under their jurisdiction that could produce significant environmental damage and, to this end, implement adequate and independent monitoring and accountability mechanisms that include measures of prevention and also of sanction and redress, as indicated in paragraphs 152 to 155 of this Opinion; (iii) require an environmental impact assessment when there is a risk of significant environmental harm, regardless of whether the activity or project will be carried out by a State or by private persons. These assessments must be made by independent entities with State oversight prior to implementation of the activity or project, include the cumulative impact, respect the traditions and culture of any indigenous peoples who could be affected, and the content of such assessments must be determined and defined by law or within the framework of the project authorization process, taking into account the nature and size of the project and its potential impact on the environment, as indicated in paragraphs 156 to 170 of this Opinion; (iv) institute a contingency plan in order to establish safety measures and procedures to minimize the possibility of major environmental accidents in keeping with paragraph 171 of this Opinion, and (v) mitigate significant environmental damage, even when it has occurred despite the State's preventive actions, using the best scientific knowledge and technology available, in accordance with paragraph 172 of this Opinion.

### B.2 The precautionary principle

175. In environmental matters, the precautionary principle refers to the measures that must be taken in cases where there is no scientific certainty about the impact that an activity could have on the environment.[395] In this regard, the Rio Declaration establishes that:

> In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible

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[392] *Cf.* International Law Commission, *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities*, Yearbook of the International Law Commission 2006, vol. II, Part Two (A/61/10), Principle 5.d.

[393] *Cf.* ECHR, *Case of Budayeva and Others v. Russia*, No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. Judgment of March 20, 2008, para. 131.

[394] *Cf.* International Law Commission, *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities*, Yearbook of the International Law Commission 2006, vol. II, Part Two (A/61/10), Principle 5.c and 5.d.

[395] The Court notes that some of these instruments refer to the "precautionary principle" and others to the precautionary "approach" or "criterion". The Court will use the terms in keeping with the source cited.

> damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.[396]

176. In addition, the precautionary principle or approach has been included in various international treaties on environmental protection in different spheres.[397] Among these, the following should be underscored: the United Nations Framework Convention on Climate Change, which has been ratified by all OAS Member States,[398] the Stockholm Convention on Persistent Organic Pollutants ratified by 32 OAS Member States,[399] and the Biological Diversity Convention ratified by 45 OAS Member States.[400] It has also been included in regional treaties or instruments of Europe,[401] Africa,[402] the North East Atlantic Ocean,[403] the Baltic Sea,[404] the Caspian Sea,[405] the North Sea,[406] the Mediterranean Sea,[407] the River Danube,[408] and the Rhine.[409]

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396 Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 15.

397 *Cf.* United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, art. 3.3; Stockholm Convention on Persistent Organic Pollutants, amended in 2009, entered into force on May 17, 2004, art. 1; Convention on Biodiversity entered into force on December 29, 1993, preamble; Protocol to the Convention on the Prevention of Marine Pollution from Dumping of Wastes and Other Matter (with its 2006 amendments), entered into force on March 24, 2006, preamble and art. 3.1; International Convention on Control of Harmful Anti-fouling Systems on Ships, entered into force on September 17, 2008, preamble; Cartagena Protocol on Biosafety to the Convention on Biodiversity entered into force on September 11, 2003, preamble and arts. 1, 10.6 and 11.8; Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, entered into force on December 11, 2001, art. 6, and Vienna Convention for Protection of the Ozone Layer, entered into force on September 22, 1988, preamble.

398 Ratified by Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, United States of America, Uruguay and Venezuela.

399 Ratified by Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

400 Ratified by Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

401 *Cf.* Convention on the Protection and Use of Transboundary Watercourses and International Lakes of the Economic Commission for Europe (ECE), entered into force on October 6, 1996, article 2.5.a), and Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, entered into force on May 1, 1999, article 174.2. *See also,* ECHR, *Tătar v. Romania*, No. 6702/01. Judgment of January 27, 2009, paras. 109 and 120.

402 *Cf*. Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, entered into force on April 22, 1998, art. 4.3.f.

403 *Cf.* Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), entered into force on March 25, 1998, art. 2.2.a)

404 *Cf.* Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), entered into force on January 17, 2000, art. 3.2.

405 *Cf.* Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), entered into force on August 12, 2006, art. 5.

406 *Cf.* Ministerial Declaration of the International Conference on the Protection of the North Sea, November 1, 1984, conclusion A.7.

407 *Cf.* Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources entered into force on June 17, 1983, preamble.

408 *Cf.* Convention on Cooperation for the Protection and Sustainable Use of the Danube River (Danube River Protection Convention), entered into force on October 22, 1998, art. 2.4.

177. In the *Case of Pulp Mills on the River Uruguay*, the International Court of Justice indicated that "a precautionary approach may be relevant in the interpretation and application of the provisions of the Statute" being interpreted in that case.[410] However, the International Court of Justice did not refer expressly to the application of the precautionary principle beyond indicating that it would not reverse the burden of proof. Meanwhile, the International Court on the Law of Sea has indicated that a trend has been initiated towards making the precautionary approach part of customary international law.[411] It has also indicated that the precautionary approach is an integral part of the general obligation of due diligence which obliges States of origin to take all appropriate measures to prevent any damage that might result from their activities. "This obligation applies in situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient, but where there are plausible indications of potential risks."[412]

178. The precautionary principle has been incorporated into the domestic law and the case law of the highest courts of several OAS Member States. Thus, it has been explicitly incorporated into the laws of States such as Antigua and Barbuda,[413] Argentina,[414] Canada,[415] Colombia,[416] Cuba,[417] Ecuador,[418] Mexico,[419] Peru,[420] Dominican Republic[421] and Uruguay.[422] Likewise, the high courts of Chile[423] and Panama[424] have recognized the applicability and obligatory nature of the precautionary principle.

179. The Court notes that several international treaties contain the precautionary principle in relation to different matters (*supra* para. 176). Also, some States of this region have included the precautionary principle in their laws or it has been recognized in case law

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409 *Cf.* Convention on the Protection of the Rhine, entered into force on January 1, 2003, art. 4.a.

410 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. Judgment of April 20, 2010, para. 164.

411 *Cf.* ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.* Advisory Opinion of February 1, 2011, para. 135. *See also,* ITLOS, *Southern Bluefin Tuna cases (New Zealand v. Japan; Australia v. Japan)*. Order on provisional measures of August 27, 1999, paras. 73 to 80.

412 *Cf.* ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.* Advisory Opinion of February 1, 2011, para. 131.

413 *Cf.* Environmental Protection and Management Act of Antigua and Barbuda, September 24, 2015, Part II, section 7.5.b.

414 *Cf.* General Environment Act of Argentina, Law No. 25,675 of November 27, 2002, art. 4.

415 *Cf.* Canadian Environmental Assessment Act, S.C. 1999, c. 33, September 24, 1999, with subsequent amendments, art. 2.1.a.

416 *Cf.* Act No. 1523 of Colombia, adopting the national policy for disaster risk management, establishing the national system of disaster risk management, and ordering other provisions, of April 24, 2012, art. 3.8

417 *Cf.* Environment Act of Cuba, Law No. 81 of July 11, 1997, art. 4.b.

418 *Cf.* Constitution of the Republic of Ecuador, art. 73, 313, 396 and 397.5.

419 *Cf.* General Law on Climate Change of the United Mexican States of June 6, 2012, art. 26.III.

420 *Cf.* Framework Law of the National Environmental Management System of Peru, Law No. 28245 of June 10, 2004, art. 5.k.

421 *Cf.* General Environmental and Natural Resources Act of the Dominican Republic, Law No. 64-00 of August 18, 2000, arts. 8 and 12.

422 *Cf.* Environmental Protection Act of Uruguay, Law No. 17,283 of December 12, 2000, art. 6.b.

423 *Cf.* Supreme Court of Chile, Third Chamber, Case No. 14.209-2013. Judgment of June 2, 2014, *considerandum* 10.

424 *Cf.* Supreme Court of Justice of Panama, Plenary. File 910-08. Judgment of February 24, 2010.

(*supra* para. 178). The content of the precautionary principle varies depending on the instrument that establishes it.

180. Notwithstanding the above, the general obligation to ensure the rights to life and to personal integrity means that States must act diligently to prevent harm to these rights (*supra* para. 118). Also, when interpreting the Convention, as requested in this case, the Court must always seek the "best perspective" for the protection of the individual (*supra* para. 41). Therefore, the Court understands that States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty. Consequently, States must act with due caution to prevent possible damage. Thus, in the context of the protection of the rights to life and to personal integrity, the Court considers that States must act in keeping with the precautionary principle. Therefore, even in the absence of scientific certainty, they must take "effective"[425] measures to prevent severe or irreversible damage.[426]

### B.3 Obligation of cooperation

181. Article 26 of the American Convention establishes the obligation of international cooperation with a view to the development and protection of economic, social and cultural rights.[427] Several articles of the Protocol of San Salvador also refer to cooperation between States.[428]

182. In the specific case of activities, projects or incidents that could cause significant transboundary environmental harm, the potentially affected State or States require the cooperation of the State of origin and *vice versa* in order to take the measures of prevention and mitigation needed to ensure the human rights of the persons subject to their jurisdiction (*supra* paras. 127 to 174). In addition, compliance by the State of origin with its duty to cooperate is an important element in the evaluation of its obligation to respect and to ensure the human rights of the persons outside its territory who may be affected by activities executed within its territory (*supra* paras. 95 to 103).

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[425] According to the most usual wording in the most relevant international instruments and the domestic laws of the region, the precautionary approach usually makes the necessary measures dependent on being "cost-effective," so that the level of measures required may be stricter for developed countries or depend on the technical and scientific capabilities available in the State. *Cf.* ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.* Advisory Opinion of February 1, 2011, para. 128. See also, United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, article 3.3, and Peruvian legislation (*supra* para. 178).

[426] The content of the precautionary principle varies depending on the source. However, according to the most usual wording in the most relevant international instruments and the domestic laws of the region, the precautionary principle is applicable when there is a danger of severe or irreversible damage, but where no absolute scientific certainty exists. Thus, it requires a higher level of damage than the standard applicable to the obligation of prevention, which requires a risk of significant damage (*supra* paras. 134 to 140). *Cf.* Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 15, and United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, article 3.3. *See also,* the laws of Antigua and Barbuda, Canada, Colombia, Ecuador, Mexico and Peru (*supra* para. 178).

[427] The relevant part of Article 26 of the Convention stipulates that: "The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively […] the full realization of [economic, social and cultural] rights" (underlining added).

[428] See, the preamble to the Protocol of San Salvador, and Articles 1, 12 and 14 of this treaty.

183. Under international environmental law, the duty to cooperate has been reflected in the Declaration of Stockholm,[429] and the Declaration of Rio which establishes that "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem,"[430] as well as in numerous international treaties.[431]

184. This duty to cooperate in environmental matters and its customary nature have been recognized by arbitral tribunals,[432] the International Tribunal for the Law of the Sea and the International Court of Justice. According to the latter, the duty to cooperate is derived from the principle of good faith in international relations,[433] is essential for protection of the environment,[434] and allows States jointly to manage and prevent risks of environmental damage that could result from projects undertaken by one of the parties.[435] Meanwhile, the International Tribunal for the Law of the Sea has determined that "the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under […] general international law."[436]

185. Consequently, this Court considers that States have a duty to cooperate in good faith to ensure protection against environmental damage. This duty to cooperate is especially important in the case of shared resources, the development and use of which should be carried out in an equitable and reasonable manner in keeping with the rights of the other States that have jurisdiction over such resources.[437]

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[429] Principle 24 of the Stockholm Declaration stipulates that "[i]nternational matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States." Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A /CONF.48/14/Rev.1.

[430] Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Río de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principles 7 and 19.

[431] See, *inter alia*, United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, preamble and arts. 3.3 and 5, 4(1).c) a i), 5.c) and 6.b); International Plant Protection Convention, revised text, entered into force on October 2, 2005, art. VIII; Framework Convention for the Protection of the Environment of the Caspian Sea, entered into force on August 12, 2006, articles 4.d) and 6, and Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD), entered into force on October 5, 1978, art. V.1. In Europe, the duty of cooperation is established in Article 8 of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), entered into force on September 10, 1997.

[432] *Cf.* Arbitral Tribunal, *Lake Lanoux Arbitration (France v. Spain).* Decision of November 16, 1957, p. 308.

[433] *Cf.* ICJ, *Nuclear Tests cases (Australia v. France) (New Zealand v. France).* Judgments of December 20, 1974, paras. 46 and 49 respectively*; Legality of the threat or use of nuclear weapons.* Advisory Opinion of July 8, 1996, para. 102, and *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 145.

[434] *Cf.* ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*. Judgment of September 25, 1997, paras. 17 and 140.

[435] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay* (Argentina v. Uruguay). Judgment of April 20, 2010, para. 77.

[436] *Cf.* ITLOS, *The MOX Plant case (Ireland v. The United Kingdom)*. Order on provisional measures of December 3, 2001, para. 82.

[437] Regarding shared resources, the Charter of Economic Rights and Duties of States establishes that: "[i]n the exploitation of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others." Charter of Economic Rights and Duties of States adopted by the United Nations General Assembly on December 12, 1974, in Resolution 3281 (XXIX), UN Doc. A/RES/29/3281, art. 3. See also*,* Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, arts. 5 and 8, and Draft articles on the law of transboundary aquifers, article 7, prepared by

186. Contrary to the environmental obligations described to date, the duty to cooperate is an obligation between States. International law has defined the following specific duties that are required of States in relation to environmental matters in order to comply with this obligation: (1) the duty to notify, and (2) the duty to consult and negotiate with potentially affected States. The Court will now examine these duties, as well as (3) the possibility of sharing information established in numerous international environmental instruments.

*B.3.a Duty to notify*

187. The duty of notification involves the obligation to notify States that may potentially be affected by possible significant environmental damage as a result of activities carried out within a State's jurisdiction. This duty requires official and public knowledge to be provided "relating to work to be carried out by States within their national jurisdiction, with a view to avoiding significant harm that may occur in the environment of the adjacent area."[438] The duty of notification was established in the Rio Declaration as follows:

> States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.[439]

188. This obligation has been reflected in numerous multilateral[440] and bilateral[441] treaties and has been recognized in international jurisprudence as an obligation of customary international law in cases involving the joint use and protection of international waters.[442]

189. This Court understands that the duty of notifying States potentially affected by

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the International Law Commission and annexed to United Nations General Assembly Resolution 68/118 of December 19, 2013, UN Doc. A/RES/68/118.

438 *Cf.* United Nations General Assembly Resolution 2995 (XXVII) on Cooperation between States in the Field of Environment, December 15, 1972, See also, Report of the World Commission on Environment and Development "Our Common Future" (Brundtland Report), adopted in Nairobi on June 16, 1987, Annex to UN Doc. A/42/427, Principle 16.

439 Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), Principle 19

440 See, for example, UNCLOS, arts. 197 and 200; Convention on Biodiversity entered into force on December 29, 1993, arts. 14(1).c and 17; Convention on Wetlands of International Importance especially as Waterfowl Habitat (RAMSAR Convention), entered into force on December 21, 1975, arts. 3.2 and 5; Convention for the Prevention of Marine Pollution from Land-based Sources, entered into force on 6 May 1978, arts. 9 and 10; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, entered into force on May 5, 1992, arts. 6 and 13; Vienna Convention for Protection of the Ozone Layer, entered into force on September 22, 1988, art. 4; Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, preamble and articles 8, 9, 11 and 12 to 18, and Protocol to the Antarctic Treaty on Environmental Protection, entered into force on January 14, 1998, art. 6.

441 See, for example, Act of Santiago concerning Hydrologic Basins, signed on June 26, 1971, by Argentina and Chile, art. 5; Statute of the River Uruguay, signed on February 26, 1975, by Argentina and Uruguay, arts. 7 to 12; Treaty between Uruguay and Argentina concerning the Rio de la Plata and the Corresponding Maritime Boundary, signed on November 19, 1973, by Argentina and Uruguay, art. 17, and Treaty between the United States and Great Britain relating to Boundary Waters, and Questions arising between the United States and Canada, signed on May 5, 1910, arts. III and IV.

442 ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 104. See also, *inter alia*, Tribunal Arbitral, *Case of Lac Lanoux (France v. Spain).* Decision of November 16, 1957; ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*. Judgment of September 25, 1997; *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. Judgment of April 20, 2010, and *Corfu Channel case (The United Kingdom v. Albania).* Judgment of April 9, 1949, p. 22.

activities implemented within the jurisdiction of another State is a duty that extends to every case in which there is a possibility of significant transboundary environmental harm (*supra* paras. 95 to 103), as a result of activities planned by a State or by private individuals with State authorization.[443] In such cases, notification is usually the first step towards facilitating cooperation and also permits compliance with the duty of prevention.[444]

190. Additionally, the duty of notification exists in the case of environmental emergencies, also known as natural disasters.[445] Environmental emergencies are those situations which produce or entail a sudden and imminent risk of negative or adverse environmental effects,[446] due either to natural causes or human conduct.[447] In cases of environmental emergencies, notification must be given promptly,[448] which means that the State of origin must notify potentially affected States as soon as it becomes aware of the situation.[449]

*i) Moment of notification*

191. The purpose of the duty to notify is to create the conditions for successful cooperation between the parties, which is necessary to avoid the potential harm that a project may cause and, thus, comply with the duty of prevention.[450] Consequently, it is

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[443] *Cf.* International Law Commission, *Commentaries on the draft Articles on prevention of transboundary harm from hazardous activities,* Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 8, para. 2.

[444] *Cf.* ICJ, *Corfu Channel case (The United Kingdom v. Albania).* Judgment of April 9, 1949, p. 22, and *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. Judgment of April 20, 2010, para. 102.

[445] *Cf.* Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), Principle 18.

[446] See, for example, Cartagena Protocol on Biosafety to the Convention on Biodiversity entered into force on September 11, 2003, art. 17; Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), Principle 18; Convention on the Protection and Use of Transboundary Watercourses and International Lakes of the Economic Commission for Europe (ECE), entered into force on October 6, 1996, arts. 1 and 14, and Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), entered into force on August 12, 2006, art. 1.

[447] See, for example, International Law Commission, *Commentaries on the draft articles on prevention of transboundary harm from hazardous activities,* Yearbook of the International Law Commission 2001, vol. II, Part Two, (A/56/10), art. 17, para. 3; Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 28.1, and Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), entered into force on August 12, 2006, arts. 1 and 13.1

[448] See, for example, Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 28.1; Convention on the Protection and Use of Transboundary Watercourses and International Lakes of the Economic Commission for Europe (ECE), entered into force on October 6, 1996, art. 14, and *Articles on prevention of transboundary harm from hazardous activities,* adopted by the International Law Commission in 2001 and annexed to the United Nations General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68, art. 17. Some international treaties use the term "immediately" or "forthwith" when referring the moment of notification. The Court understands this within the broader term of "promptly" or "as rapidly as possible" mentioned above. See, for example, UNCLOS, art. 198; Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), Principle 18; Protocol concerning Cooperation in Combatting Oil Spills in the Wider Caribbean Region, entered into force on 11 October 1986, art. 5, and Convention on the Early Notification of a Nuclear Accident, entered into force on October 27, 1986, art. 2.

[449] *Cf.* Cartagena Protocol on Biosafety to the Convention on Biodiversity entered into force on September 11, 2003, art. 17, and International Law Commission, *Commentaries on the draft Articles on prevention of transboundary harm from hazardous activities,* Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 17, para. 2.

[450] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, paras. 102 and 113.

understood that States must provide "prior and timely notification."[451]

192. The proper moment arises when the State of origin becomes aware or determines that an activity implemented within its jurisdiction entails or could entail a potential risk of significant transboundary environmental harm. In this regard, the International Court of Justice has emphasized that the State within whose jurisdiction the activities are planned must notify the other State "as soon as it is in possession of a plan which is sufficiently developed to […] make the preliminary assessment […] of whether the proposed works might cause significant damage to the other party."[452] This preliminary evaluation could be made before the environmental impact assessment has been completed, because this would allow potentially affected States to take part in the environmental impact assessment process or to make their own assessment.[453] In any case, the duty of notification clearly arises as soon as an environmental impact assessment concludes or indicates that there is a risk of significant transboundary harm,[454] and must be complied with before the State of origin takes a decision on the environmental viability of the project,[455] and prior to execution of the planned activities.[456]

193. Consequently, this Court considers that a State must notify States potentially affected by possible significant transboundary environmental harm as soon as it becomes aware of the possibility of that risk. In some cases, this will be before an environmental impact assessment has been made; for example, as the result of a preliminary study or owing to the type of activity (*supra* para. 160) and, in other cases, it will only occur following a determination made by an environmental impact assessment.

*ii) Content of the notification*

194. Numerous international instruments require the notification to be accompanied by "pertinent information."[457] Although this frequently refers to technical data,[458] the Court

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[451] *Cf.* Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), Principle 19.

[452] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 105.

[453] See, in this regard, Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), entered into force on September 10, 1997, art. 3; Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), entered into force on August 12, 2006, art. 13.2, and Protocol on Integrated Coastal Management in the Mediterranean, entered into force on March 24, 2011, art. 29.1.

[454] *Cf.* ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 104. Similarly, see also, PCA, *South China Sea Arbitration (Philippines v. China).* Award of July 12, 2016, para. 988. *Articles on prevention of transboundary harm from hazardous activities,* adopted by the International Law Commission in 2001 and annexed to the United Nations General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68, art. 8, and UNEP, Resolution 14/25 of June 17 1987, adopting the Goals and Principles of environmental impact assessment. UN Doc. UNEP/WG.152/4 Annex, Principle 12; International Law Commission, *Commentaries on the draft articles on the law of transboundary aquifers*, Yearbook of the International Law Commission, 2008, vol. II, Part Two (A/63/10), art. 15.2, para. 5.

[455] *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 120.

[456] See, for example, Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 12, and *Draft articles on the law of transboundary aquifers*, article 15.2, prepared by the International Law Commission and annexed to United Nations General Assembly Resolution 68/118 of December 19, 2013, UN Doc. A/RES/68/118.

[457] See, for example, United Nations General Assembly Resolution 2995 (XXVII) on Cooperation between States in the field of the environment, December 15, 1972, UN Doc. A/RES/2995(XXVII); Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 12; *Draft articles on the law of transboundary aquifers*, article 15.2, prepared by the International Law Commission and annexed to

understands that it refers to sufficient and adequate information for the potentially affected States to study and evaluate the possible effect of the planned activities; thus, the purpose of the notification is met. In other words, the notification should be accompanied by elements that facilitate an informed determination of the effects of the planned activities.

195. This does not signify that there is an obligation to attach the documentation relating to the environmental impact assessment in cases of notification prior to the assessment (*supra* paras. 191 to 193). In this regard, the International Court of Justice has indicated that, prior to the environmental impact assessment, the information provided with the notification "will not necessarily consist of a full assessment of the environmental impact of the project, which will often require further time and resources."[459] Nevertheless, in different international instruments, there is a growing practice of expressly incorporating the requirement to include the environmental impact assessment as one of the elements of the notification.[460] However, it should be stressed that the foregoing should not be understood to undermine the obligation to make an environmental impact assessment in cases where there is a significant risk of transboundary harm (*supra* paras. 156 to 170) and to inform potentially affected States of the results.[461]

*iii) Conclusion with regard to the duty of notification*

196. Consequently, the Court concludes that States have the obligation to notify other potentially affected States when they become aware that an activity planned within their jurisdiction could result in a risk of significant transboundary harm. This notice must be timely, before the planned activity is carried out, and must include all relevant information. This duty arises when the State of origin becomes aware of the potential risk, either before or as a result of the environmental impact assessment. Carrying out environmental impact assessments requires time and resources, so in order to ensure that potentially affected

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the United Nations General Assembly Resolution 68/118 of December 19, 2013, UN Doc. A/RES/68/118. In the European sphere, see, Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), entered into force on September 10, 1997, article 2.4 and Appendix III. In 2014, this Convention was opened to accession by all United Nations Member States; however, under the treaty rules, 13 more ratifications are required in order for the Meeting of the Parties to consider or approve the accession of a State that is not part of the Economic Commission for Europe.

458 In this regard, the International Law Commission has indicated that, in general, the technical data and other relevant information is revealed during the environmental impact assessment and that this information "includes not only what might be called raw data, namely fact sheets, statistics, etc., but also the analysis of the information which was used by the State of origin itself to make the determination regarding the risk of transboundary harm." *Cf.* International Law Commission, *Commentaries on the draft articles on prevention of transboundary harm from hazardous activities,* Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 8, para. 6.

459 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 105.

460 See, for example, Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 12; Charter of Waters of the Senegal River, signed on May 28, 2002, by the Republic of Mali, the Islamic Republic of Mauritania, and he Republic of Senegal, art. 24; Articles on prevention of transboundary harm from hazardous activities, adopted by the International Law Commission in 2001 and annexed to the United Nations General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68, art. 8; UNEP, Resolution 14/25 of June 17 1987, adopting the Goals and Principles of environmental impact assessment. UN Doc. UNEP/WG.152/4 Annex, Principle 12, and International Law Commission, *Commentaries on the draft articles on the law of transboundary aquifers*, Yearbook of the International Law Commission, 2008, vol. II, Part Two (A/63/10), art. 15.2, para. 5.

461 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, paras. 204 and 119, and ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).* Judgment of December 16, 2015, para. 104. See also, Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), entered into force on September 10, 1997, arts. 3.2, 3.5 and 4.2.

States are able to take the appropriate steps, States of origin are required to give this notification as soon as possible, without prejudice to the information transmitted being completed with the results of the environmental impact assessment when this has been concluded. In addition, there is a duty of notification in cases of environmental emergencies, in which case States must notify potentially affected States, without delay, of the environmental disasters originated within their jurisdiction.

*B.3.b Duty to consult and negotiate with potentially affected States*

197. The duty to consult and negotiate with potentially affected States is a form of cooperation to prevent or to mitigate transboundary harm. Various international instruments and treaties establish that the duty of notification incorporates the duty to consult and, when appropriate, to negotiate with States potentially affected by activities that could entail significant transboundary harm.[462] In this regard, the International Court of Justice has emphasized that the obligation to notify is an essential part of the process leading the parties to consult and negotiate possible changes in the project to eliminate or minimize the risks.[463] This inter-State duty to consult and negotiate with potentially affected States differs from the State duty to consult indigenous and tribal communities during environmental impact assessment processes (*supra* para. 166).

*i) Moment and form of the consultation*

198. The consultation of the potentially affected State or States should be carried out in a timely manner and in good faith. In this regard, the Rio Declaration establishes that "States […] shall consult with [potentially affected] States at an early stage and in good faith."[464]

199. Regarding the meaning of good faith consultations, in the *Case of Lake Lanoux*, the Arbitral Tribunal determined that this meant that the consultation mechanism could not "be confined to purely formal requirements, such as taking note of complaints, protests or representations" made by the potentially affected State. According to the Arbitral Tribunal, in this case the rules of good faith obliged the State of origin "to take into consideration the various interests involved, to seek to give them every satisfaction compatible with the pursuit of its own interests, and to show that in this regard it is genuinely concerned to reconcile the interests of the other […] States with its own."[465] Similarly, the International

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462 *See, for example,* Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, arts. 11 and 17; Convention on the Transboundary Effects of Industrial Accidents, entered into force on April 19, 2000, art. 4.2; Convention on the Physical Protection of Nuclear Material, entered into force on February 8, 1987, art. 5.3; Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD), entered into force on October 5, 1978, art. III.2, and *Commentaries on the draft articles on the law of transboundary aquifers*, article 15.3, prepared by the International Law Commission and annexed to United Nations General Assembly Resolution 68/118 of December 19, 2013, UN Doc. A/RES/68/118.

463 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 115.

464 Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), Principle 19. *See also,* Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 17.2. Regarding shared resources, the Charter of Economic Rights and Duties of States establishes that: "In the exploitation of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others.". *Cf.* Charter of Economic Rights and Duties of States, art. 3, adopted by the United Nations General Assembly on December 12, 1974 in Resolution 3281 (XXIX), UN Doc. A/RES/29/3281.

465 *Cf.* Arbitral Tribunal, *Lake Lanoux Arbitration (France v. Spain).* Decision of November 16, 1957, p. 32. Similarly, see Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into

Court of Justice has indicated that the consultation and negotiation process calls for the mutual willingness of the States to discuss in good faith actual and potential environmental risks.[466] It has also stressed that States are under the obligation to conduct meaningful negotiations, which will not be the case when either party insists upon its own position without contemplating any modification of this.[467]

200. The International Court of Justice has also indicated that States must find an agreed solution that takes into account the norms of international environmental law, as well as other provisions, in a joint and integrated way.[468] Similarly, the Articles on prevention of transboundary harm from hazardous activities establish that States must "enter into consultations with a view to achieving acceptable solutions regarding measures to be adopted to prevent significant transboundary harm or, at any event, to minimize the risk thereof."[469]

*ii) Duty to consult and negotiate in good faith*

201. That said, the fact that the consultation must be carried out in good faith does not mean that this process "enable[s] each State to delay or impede the programmes and projects of exploration, exploitation and development of the natural resources of the States in whose territories such programmes and projects are carried out."[470] However, the principle of good faith in consultations and negotiations does establish restrictions regarding the implementation of such activities. In particular, it is understood that States must not authorize or execute the activities in question while the parties are in the process of consultation and negotiation.[471]

202. The International Court of Justice recognized this duty in the *Case of Pulp Mills on the River Uruguay*, when it indicated that "as long as the procedural mechanism for cooperation between the parties to prevent significant damage to one of them is taking its course, the State initiating the planned activity is obliged not to authorize such work and, *a fortiori*, not to carry it out"; to the contrary, "there would be no point in the cooperation mechanism [… and] the negotiations between the parties would no longer have any purpose."[472]

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force on August 17, 2014, art. 17.2.

466 *Cf.* ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*. Judgment of September 25, 1997, para. 112.

467 *Cf.* ICJ, *Case of the North Sea Continental Shelf (Germany v. Denmark).* Judgment of February 20, 1969, para. 85, and *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*. Judgment of September 25, 1997, para. 141.

468 *Cf.* ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*. Judgment of September 25, 1997, para. 141.

469 These Articles also establish that these consultations shall be carried out "on a reasonable time frame" agreed by the States concerned. *Cf.* Articles on prevention of transboundary harm from hazardous activities, adopted by the International Law Commission in 2001 and annexed to the United Nations General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68, art. 9.

470 United Nations General Assembly Resolution 2995 (XXVII) on Cooperation between States in the Field of Environment, December 15, 1972, UN Doc. A/RES/2995(XXVII), para. 3. *See also,* Convention on Biodiversity entered into force on December 29, 1993, art. 3.

471 *See, for example,* Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 14; Articles on prevention of transboundary harm from hazardous activities, adopted by the International Law Commission in 2001 and annexed to the United Nations General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68, art. 8.2, and Statute of the River Uruguay, signed by Argentina and Uruguay on February 26, 1975, art. 9.

472 *Cf.* ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, paras.

203. Nevertheless, the Court notes that this prohibition does not mean that the activities can only be implemented with the prior consent of the potentially affected States.[473] In the *Case of Lake Lanoux*, the Arbitral Tribunal determined that the prior consent of the potentially affected States could not be "established as a custom, even less as a general principle of law"; rather it could only be understood as a requirement that could be claimed if it were established in a treaty.[474] The International Court of Justice, also, has underscored that the obligation to negotiate does not entail the obligation to reach an agreement and, once the negotiating period has ended, the State can go forward with the construction at its own risk.[475] Therefore, this Court considers that, although States have a duty to conduct consultation and negotiation procedures as forms of cooperation in the face of possible transboundary harm, they do not necessarily have to reach an agreement, nor is the prior consent of the potentially affected States required in order to initiate the execution of a project, unless this obligation is explicitly established in a treaty applicable to the matter in question.

204. When States fail to reach an agreement on the activities in question through consultation and negotiation, several treaties establish that the parties may have recourse to diplomatic dispute settlement mechanisms such as negotiation, or judicial mechanisms such as submitting the dispute to the consideration of the International Court of Justice or an arbitral tribunal.[476] Under the American Convention, they would also be able to submit the dispute to the inter-American human rights system if a State Party alleges that another State Party has violated the rights established in the Convention,[477] bearing in mind, among other matters, the standards and obligations established in this Opinion. In this context, it should be recalled that the Rio Declaration stipulates that "States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations."[478]

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144 and 147

473 See, for example, Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 16.

474 *Cf.* Arbitral Tribunal, *Lake Lanoux Arbitration (France v. Spain).* Decision of November 16, 1957, para. 13.

475 *Cf.* ICJ, *Case of Pulp Mill on the River Uruguay (Argentina v. Uruguay)*. Judgment of April 20, 2010, paras. 150 and 154. It should be mentioned that this decision referred to the interpretation of a specific treaty in force between the parties – in particular article 7 of the 1975 Statute of the River Uruguay cited above – without establishing whether the said obligations already formed part of customary international law.

476 See, for example, Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, arts. 33.2 and 33.10; Statute of the River Uruguay, signed on February 26, 1975, by Argentina and Uruguay, art. 60; Treaty between Uruguay and Argentina concerning the Rio de la Plata and the Corresponding Maritime Boundary, signed on November 19, 1973, by Argentina and Uruguay, art. 87; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, entered into force on May 5, 1992, art. 20.2; Convention on Cooperation for the Protection and Sustainable Use of the Danube River (Danube River Protection Convention), entered into force on October 22, 1998, art. 24.2.a; Vienna Convention for Protection of the Ozone Layer, entered into force on September 22, 1988, art. 11.1 to 11.3, and Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), entered into force on September 10, 1997, art. 15.

477 Article 45(1) of the American Convention establishes: "Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention."

478 Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), Principle 26. *See also*, Agenda 21, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), para. 39.10.

*iii) Conclusion regarding the duty to consult and negotiate*

205. Accordingly, this Court concludes that States have the duty to consult and negotiate with States potentially affected by significant transboundary damage. Such consultations must be conducted in a timely manner and in good faith. Consequently, this is not merely a formal procedure, but involves the mutual willingness of the States concerned to enter into a genuine discussion on actual and potential environmental risks, because the purpose of such consultations is the prevention or mitigation of transboundary harm. Also, by virtue of the principle of good faith, during the consultation and negotiation process, States must refrain from authorizing or executing the activities in question. However, this does not mean that the activities require the prior consent of other potentially affected States, unless this has been established in a specific treaty between the parties concerned. The obligation to negotiate does not entail the obligation to reach an agreement. If the parties fail to reach agreement, they should resort to peaceful diplomatic or judicial dispute settlement mechanisms.

*B.3.c. Exchange of information*

206. In addition to the duties of notification, consultation and negotiation in relation to projects that could entail the risk of transboundary damage, the Court notes that, as part of the duty of cooperation, several international instruments contain provisions aimed at "facilitating," "promoting" or ensuring the exchange of information between States[479] concerning "scientific and technological knowledge,"[480] among other matters. In this way, numerous international instruments have established an inter-State exchange of information that differs from the information that should be provided as part of the duty of notification (*supra* paras. 187 to 196).

207. The exchange of information could be of particular importance in situations of potential significant transboundary harm in order to comply with the obligation of prevention. In this regard, the International Tribunal for the Law of the Sea has indicated that prudence and caution require cooperation in exchanging information concerning risks or effects of industrial projects.[481]

208. The Court notes, however, that the incorporation of this type of cooperation into some international instruments does not constitute sufficient evidence of a customary obligation in this regard that would go beyond the specific treaties and instruments establishing it. Nevertheless, the Court considers that it constitutes a positive trend and a

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[479] See, for example, United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, art. 4(1).h); Convention on Biodiversity entered into force on December 29, 1993, art. 17.1; Convention on the Physical Protection of Nuclear Material, entered into force on February 8, 1987, art. 5.2.b), and Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 11.

[480] In this regard, the Rio Declaration establishes that "States should co-operate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies." Also, the Stockholm Declaration stipulates that "the free flow of up-to-date scientific information and transfer of experience must be supported and assisted to facilitate the solution of environmental problems." *Cf.* Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), Principle 9, and Stockholm Declaration on the Human Environment, adopted at the United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A /CONF.48/14/Rev.1, Principle 20

[481] *Cf.* ITLOS, *The MOX Plant case (Ireland v. The United Kingdom)*. Case No. 10. Order on provisional measures of December 3, 2001, paras. 84 and 89.

concrete form of achieving compliance with the duty of cooperation (*supra* para. 185).

*B.3.d. Conclusion with regard to the obligation of cooperation*

209. The obligation of cooperation involves a series of inter-State duties. Although these are duties between States, as mentioned previously, the obligations to respect and to ensure human rights require that States abstain from impeding or obstructing other States from complying with the obligations derived from the Convention (*supra* para. 94). The object and purpose of the Convention requires ensuring that States are in the best position to comply with these obligations, in particular when compliance depends, *inter alia,* on the cooperation of other States.

210. Consequently, in order to ensure the rights to life and to personal integrity, States have the obligation to cooperate in good faith to ensure protection against environmental damage, as established in paragraphs 181 to 205 of this Opinion. In order to comply with this obligation, States must: (i) notify the other potentially affected States in a timely and prior manner when they become aware that a planned activity within their jurisdiction could result in a risk of significant transboundary harm, accompanied by the relevant information as indicated in paragraphs 187 to 196 of this Opinion and, in cases of environmental emergencies, as indicated in paragraphs 190 and 196 of this Opinion, and (ii) consult and negotiate with States potentially affected by significant transboundary harm, in a timely manner and in good faith, as indicated in paragraphs 197 to 205 of this Opinion. These specific duties are established without detriment to others that may be agreed between the parties or that arise from obligations that the States have previously assumed.

**B.4 Procedural obligations to ensure the rights to life and to personal integrity in the context of environmental protection**

211. As mentioned previously, a series of procedural obligations exist with regard to environmental matters; so-called because they support the elaboration of improved environmental policies (*supra* para. 64). In this regard, inter-American jurisprudence has recognized the instrumental nature of certain rights established in the American Convention, such as the right of access to information, insofar as they allow for the realization of other treaty-based rights, including the rights to health, life and personal integrity.[482] The Court will now describe the State obligations of an instrumental or procedural nature that arise from certain rights under the American Convention in order to ensure the rights to life and to personal integrity in the context of possible environmental damage, as part of the response to Colombia's second and third questions concerning the environmental obbligatos derived from those rights.

212. In particular, the Court will refer to obligations related to: (1) access to information; (2) public participation, and (3) access to justice, all in relation to the States' environmental protection obligations.

*B.4.a Access to information*

213. This Court has indicated that Article 13 of the Convention, which expressly stipulates the right to seek and receive information, protects the right of the individual to request access to information held by the State, with the exceptions permitted under the

[482] *Cf. Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 294, and *Case of I.V. v. Bolivia, supra*, paras. 156 and 163.

Convention's regime of restrictions.[483] State's actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to the State's jurisdiction to exercise the democratic control of those actions, and question, investigate and consider whether public functions are being performed adequately.[484] Access to State-held information of public interest can permit participation in public administration by means of the social control that can be exercised through such access.[485] It also fosters transparency in the State's activities and promotes the accountability of its officials in the performance of their duties.[486]

214. Regarding activities that could affect the environment, the Court has emphasized that access to information on activities and projects that could have an impact on the environment is a matter of evident public interest. The Court has considered that information on activities relating to exploration and exploitation of natural resources in the territory of indigenous communities,[487] and implementation of a forestry industrialization project[488] is of public interest.

215. Furthermore, the European Court of Human Rights has indicated that authorities who engage in hazardous activities that could involve consequences to the health of the individual have the positive obligation to establish an effective and accessible procedure so that members of the public can access all relevant and appropriate information and are enabled to assess the danger to which they are exposed.[489] The African Commission on Human and Peoples' Rights has also recognized the obligation to provide access to information on activities that are hazardous to health and the environment, in the understanding that this gives communities exposed to a specific risk the opportunity to take part in the decision-making that affects them.[490]

216. Under international environmental law, the specific obligation to provide access to information on matters relating to the environment is established in Principle 10 of the Rio

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483 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 77; *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 261, and *Case of I.V. v. Bolivia, supra*, para. 156.

484 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 86.

485 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 86.

486 *Cf. Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 83, and *Case of Claude Reyes et al. v. Chile, supra*, para. 87.

487 *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 230.

488 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 73.

489 *Cf.* ECHR, *Case of Guerra and Others v. Italy* [GS], No. 14967/89. Judgment of February 19, 1998, para. 60; ECHR, *Case of McGinley and Egan v. The United Kingdom*, No. 21825/93 and 23414/94. Judgment of July 9, 1998, para. 101; ECHR, *Case of Taşkin and Others v. Turkey*, No. 46117/99. Judgment of November 10, 2004, para. 119, and ECHR, *Case of Roche v. The United Kingdom*, No. 32555/96. Judgment of October 19, 2005, para. 162. In addition, applying the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters), the European Court has established that States must ensure that "in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or to mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected." *Cf.* ECHR, *Case of Di Sarno and Others v. Italy*, No. 30765/08. Judgment of January 10, 2012, para. 107, and Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), entered into force on October 30, 2001, art. 5.

490 *Cf.* African Commission on Human and Peoples' Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*. Communication 155/96. Decision of October 27, 2001, para. 53 and operative paragraphs.

Declaration.[491] In addition, numerous universal[492] and regional[493] treaties exist that include the obligation to provide access to information on environmental matters.

217. In addition, the Court observes that access to information also forms the basis for the exercise of other rights. In particular, access to information has an intrinsic relationship to public participation with regard to sustainable development and environmental protection. The right of access to information has been incorporated into numerous sustainable development projects and agendas, such as Agenda 21 adopted by the United Nations Conference on Environment and Development.[494] In the inter-American sphere, it has been incorporated into the 2000 Inter-American Strategy for the Promotion of Public Participation in Decision-making on Sustainable Development,[495] and the Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development adopted during the 2012 United Nations Conference on Sustainable Development,[496] and its Plan of

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[491] In this regard, the Rio Declaration established that "[a]t the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes." Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 10. *See also,* International Law Commission, *Commentaries on the draft Articles on prevention of transboundary harm from hazardous activities,* Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 13, para. 3 to 5.

[492] See*, inter alia*, United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, art. 6.a.ii; Convention on Biodiversity entered into force on December 29, 1993, art. 14(1).a; Kyoto Protocol to the United Nations Framework Convention on Climate Change, entered into force on February 16, 2005, art. 10.e; United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, entered into force on December 26, 1996, arts. 16.f and 19.3.b; Convention on Nuclear Safety, entered into force on 24 October 1996, art. 16.2; Minamata Convention on Mercury, entered into force on August 16, 2017, art. 18.1, and Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, entered into force on February 24 2004, art. 15.2.

[493] See*, inter alia*, North American Agreement on Environmental Cooperation, adopted on September 14, 1993, by the Governments of Canada, the United Mexican States and the United States of America, entered into force on January 1, 1994, art. 4; Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), entered into force on September 10, 1997, arts. 2.6 and 4.2; Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, entered into force on July 11, 2010, art. 8; Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), entered into force on August 12, 2006, art. 21.2; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) of the Economic Commission for Europe, entered into force on October 30, 2001, art. 1; Convention on the Protection and Use of Transboundary Watercourses and International Lakes of the Economic Commission for Europe (ECE), entered into force on October 6, 1996, art. 16, and African Convention on the Conservation of Nature and Natural Resources (revised in 1968), entered into force in July 2016, art. XVI.

[494] *Cf.* Agenda 21, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), para. 23.2. See also, for example, Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines) adopted in Bali on February 26, 2010, by the UNEP Governing Council, Decision SS.XI/5, part A, Guideline 10, and Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), entered into force on March 25, 1998, art. 9.2.

[495] *Cf.* Inter-American Strategy for the Promotion of Public Participation in Decision-making on Sustainable Development, adopted in Washington in April 2000 by the Inter-American Committee on Sustainable Development, OEA/Ser.W/II.5, CIDI/doc. 25/00 (April 20, 2000), pp. 19, 20, 24 and 25.

[496] *Cf.* Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development, submitted in annex to the *note verbale* dated June 27, 2012, from the Permanent Mission of Chile to the United Nations addressed to the Secretary-General of the United Nations Conference on Sustainable Development, UN Doc. A/CONF.216/13. This Declaration was issued with the support of the Economic Commission for Latin America and the Caribbean (ECLAC) as Technical Secretariat. Currently it has been signed by 23 countries and is open to accession by all the countries of Latin America and the Caribbean, information available at: http://negociacionp10.cepal.org/6/es/antecedentes.

Action to 2014.[497]

218. The Court takes note that, within the framework of these plans and declarations, the States of Latin America and the Caribbean have commenced a process towards the adoption of a regional instrument on access to information, public participation, and access to justice in environmental matters.[498] According to information publicly available, this process is currently at the stage of negotiation and review.[499] The Court welcomes this initiative as a positive measure to ensure the right of access to information in this matter.

*i) Meaning and scope of this obligation in relation to the environment*

219. This Court has indicated that, under this obligation, information must be handed over without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.[500]

220. Regarding the characteristics of this obligation, the Bali Guidelines[501] and other international instruments[502] establish that access to environmental information should be affordable, effective and timely.

221. In addition, as the Court has recognized, the right of the individual to obtain

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[497] *Cf.* Plan of Action to 2014 for the implementation of the declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean and its road map, adopted in Guadalajara (Mexico) on April 17, 2013, by the Economic Commission for Latin America and the Caribbean (ECLAC).

[498] *Cf.* Lima Vision for a regional instrument on access rights relating to the environment, adopted in Lima on October 31, 2013, by ECLAC during the Third Meeting of the Focal Points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 in Latin America and the Caribbean, and Training Workshop on application of Principle 10, LC/L.3780, Available at: http://repositorio.cepal.org/bitstream/handle/ 11362/38733/1/S2013913_es.pdf; San José content for the regional instrument, adopted in Santiago on November 6, 2014, by ECLAC, during the Fourth Meeting of the Focal Points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, LC/L.3970, available at: http://repositorio.cepal.org/bitstream/handle/11362/38988/S1500157_es.pdf?sequence=1&isAllowed=y, and Santiago decision, adopted in Santiago on November 6, 2014, by ECLAC, during the Fourth Meeting of the Focal Points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, available at: http://repositorio.cepal.org/bitstream/handle/11362/37213/S1420708_es.pdf? sequence=1&isAllowed=y.

[499] Between 2012 and 2017, Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean held eight meetings to negotiate and revise the text of the regional instrument on access to information, public participation and justice in environmental matters. The seventh version of the text compiled by the committee includes the text proposed by the countries for the preliminary document of the regional agreement on access to information, public participation and access to justice in environmental matters in Latin America and the Caribbean, published on September 6, 2017, LC/L.4059/Rev.6, available at: http://repositorio.cepal.org/bitstream/handle/11362/39050/S1700797_es.pdf?sequence=34&isAllowed=y.

[500] *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 77, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 261.

[501] *Cf.* Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines) adopted in Bali on February 26, 2010, by the UNEP Governing Council, Decision SS.XI/5, part A, Guideline 1.

[502] See, for example, Convention on the Protection and Use of Transboundary Watercourses and International Lakes of the Economic Commission for Europe (ECE), entered into force on October 6, 1996, art. 16.2; Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), entered into force on January 17, 2000, art. 17.2, and Inter-American Strategy for the Promotion of Public Participation in Decision-making on Sustainable Development, adopted in Washington in April 2000 by the Inter-American Committee on Sustainable Development, OEA/Ser.W/II.5, CIDI/doc. 25/00 (April 20, 2000), pp. 19 and 20, Available at: https://www.oas.org/dsd/PDF_files/ispspanish.pdf.

information is complemented by a correlative positive obligation of the State to provide the information requested, so that the individual may have access to it in order to examine and assess it.[503] In this regard, the State obligation to provide information, *ex officio*, the so-called "obligation of active transparency," imposes on States the obligation to provide the necessary information for individuals to be able to exercise other rights, and this is particularly relevant in relation to the rights to life, personal integrity and health.[504] Moreover, this Court has indicated that the obligation of active transparency imposes on States the obligation to provide the public with as much information as possible on an informal basis.[505] This information should be complete, understandable, in an accessible language, and current, and be provided in a way that is helpful to the different sectors of the population.[506]

222. In the specific sphere of environmental law, numerous international instruments establish the duty of the State to prepare and disseminate, distribute or publish,[507] in some cases periodically, updated information on the situation of the environment in general or on the specific area covered by the instrument in question.

223. The Court understands that in the case of activities that could affect other rights (*supra* para. 221), the obligation of active transparency encompasses the duty of States to publish, *ex officio*, relevant and necessary information on the environment in order to ensure the human rights under the Convention. This includes information on environmental quality, environmental impact on health and the factors that influence this, and also information on legislation and policies, as well as assistance on how to obtain such information. The Court also notes that this obligation is particularly important in cases of environmental emergencies that require relevant and necessary information to be disseminated immediately and without delay to comply with the duty of prevention.

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503 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 77, and *Case of I.V. v. Bolivia, supra*, para. 156.

504 *Cf. Case of Furlan and family members v. Argentina, supra*, para. 294, and *Case of I.V. v. Bolivia, supra*, paras. 156 and 163.

505 *Cf. Case of Furlan and family members v. Argentina, supra*, para. 294. In compliance with this obligation, States must act in good faith so that their actions ensure the satisfaction of the general interest and do not betray the individual's confidence in the State's administration. Therefore, it should deliver information that is clear, complete, timely, true and up-to-date.

506 *Cf. Case of Furlan and family members v. Argentina, supra*, para. 294. Also, the scope of this obligation has been defined in the resolution of the Inter-American Juridical Committee on the "Principles on the Right of Access to Information," which establish that "[p]ublic bodies should disseminate information about their functions and activities – including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts – on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable." Inter-American Juridical Committee, *Principles on the Right of Access to Information*, 73rd regular session, August 7, 2008, OEA/Ser.Q CJI/RES.147 (LXXIII-O/08), fourth operative paragraph

507 *See, for example*, UNCLOS, art. 244(1); Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines) adopted in Bali on February 26, 2010, by the UNEP Governing Council, Decision SS.XI/5, part A, Guideline 5; Inter-American Strategy for the Promotion of Public Participation in Decision-making on Sustainable Development, adopted in Washington in April 2000 by the Inter-American Committee on Sustainable Development, OEA/Ser.W/II.5, CIDI/doc. 25/00 (April 20, 2000), pp. 19 and 20; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), entered into force on October 30, 2001, art. 5; Convention for the strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), entered into force on August 27, 2010, art. XVI.1.a); North American Agreement on Environmental Cooperation, entered into force on January 1, 1994, art. 4, and Articles on prevention of transboundary harm from hazardous activities, adopted by the International Law Commission in 2001 and annexed to the United Nations General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68Doc. A/RES/62/68, art. 13.

*ii) Restrictions to access to information*

224. The Court reiterates that the right of access to information held by the State admits restrictions, provided these have been established previously by law, respond to a purpose permitted by the American Convention ("respect for the rights or reputation of others" or "the protection of national security, public order, or public health or morals"), and are necessary and proportionate in a democratic society, which will depend on whether such restrictions are designed to meet an essential public interest.[508] Consequently, the principle of maximum disclosure is applicable, based on the presumption that all information is accessible, subject to a limited system of exceptions.[509] Accordingly, the burden of proof to justify any denial of access to information must be borne by the entity from whom the information was requested.[510] If it is necessary to refuse to provide the requested information, the State must justify this refusal in a way that allows the reasons and rules on which it has based the decision not to deliver the information to be known.[511] In the absence of a reasoned response from the State, the decision is arbitrary.[512]

*iii) Conclusion regarding access to information*

225. Consequently, this Court considers that States have the obligation to respect and ensure access to information concerning possible environmental impacts. This obligation must be ensured to every person subject to their jurisdiction, in an accessible, effective and timely manner, without the person requesting the information having to prove a specific interest. Furthermore, in the context of environmental protection, this obligation involves both providing mechanisms and procedures for individuals to request information, and also the active compilation and dissemination of information by the State. This right is not absolute, and therefore admits restrictions, provided these have been established previously by law, respond to a purpose permitted by the American Convention, and are necessary and proportionate to respond to objectives of general interest in a democratic society.

*B.4.b Public participation*

226. Public participation is one of the fundamental pillars of instrumental or procedural rights, because it is through participation that the individual exercises democratic control of the State's activities and is able to question, investigate and assess compliance with public functions. In this regard, public participation allows the individual to become part of the decision-making process and have his or her opinion heard. In particular, public participation enables communities to require accountability from public authorities when

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508 *Cf. Case of Claude Reyes et al. v. Chile, supra*, paras. 88 to 91, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, paras. 261 and 262. In relation to international environmental law, it has frequently been understood that the protection of the rights of others includes the rights to privacy and to intellectual property, the protection of business confidentiality and of criminal investigations, among other matters. See, *inter alia*, Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), entered into force on January 17, 2000, arts. 17 and 18; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), entered into force on October 30, 2001, art. 4, and International Law Commission, *Commentaries on the draft Articles on prevention of transboundary harm from hazardous activities*, Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 14, para. 1 to 3.

509 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 92.

510 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 262.

511 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 77, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 262

512 *Cf. Case of Claude Reyes et al. v. Chile, supra*, paras. 98 and 120, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 262.

taking decisions and, also, improves the efficiency and credibility of government processes. As mentioned on previous occasions, public participation requires implementation of the principles of disclosure and transparency and, above all, should be supported by access to information that permits social control through effective and responsible participation.[513]

227. The right of the public to take part in the management of public affairs is established in Article 23(1)(a) of the American Convention.[514] In the context of indigenous communities, this Court has determined that the State must ensure the rights to consultation and to participation at all stages of the planning and implementation of a project or measure that could have an impact on the territory of an indigenous or tribal community, or on other rights that are essential for their survival as a people[515] in keeping with their customs and traditions.[516] This means that, in addition to receiving and providing information, the State must make sure that members of the community are aware of the possible risks, including health and environmental risks, so that they can provide a voluntary and informed opinion about any project that could have an impact on their territory within the consultation process.[517] The State must, therefore, create sustained, effective and trustworthy channels for dialogue with the indigenous peoples, through their representative institutions, in the consultation and participation procedures.[518]

228. In the case of environmental matters, participation is a mechanism for integrating public concerns and knowledge into public policy decisions affecting the environment.[519] Moreover, participation in decision-making makes Governments better able to respond promptly to public concerns and demands, build consensus, and secure increased acceptance of and compliance with environmental decisions.[520]

229. The European Court of Human Rights has underlined the importance of public participation in environmental decision-making as a procedural guarantee of the right to private and family life.[521] It has also stressed that an essential element of this procedural guarantee is the ability of individuals to challenge official acts or omissions that affect their

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513 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 86. *See also*, Inter-American Strategy for the Promotion of Public Participation in Decision-making on Sustainable Development, adopted in Washington in April 2000 by the Inter-American Committee on Sustainable Development, OEA/Ser.W/II.5, CIDI/doc. 25/00 (April 20, 2000), p. 19.

514 Article 23(1)(a) of the American Convention establishes that "[e]very citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives."

515 *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 167, and *Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras, supra*, para. 215.

516 *Cf. Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs, supra*, para. 133, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 214.

517 *Cf. Case of the Saramaka People v. Suriname. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 40, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 214.

518 *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 166, and *Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras, supra*, para. 159.

519 *Cf.* Economic Commission for Latin America and the Caribbean (ECLAC), *Access to information, participation and justice in environmental matters in Latin America and the Caribbean: towards achievement of the 2030 Agenda for Sustainable Development* (LC/TS.2017/83), Santiago de Chile, October 2018, p.13, Available at: https://repositorio.cepal.org/bitstream/handle/11362/43302/1/S1701020_en.pdf.

520 *Cf.* Economic Commission for Latin America and the Caribbean (ECLAC), *Access to information, participation and justice in environmental matters in Latin America and the Caribbean: towards achievement of the 2030 Agenda for Sustainable Development* (LC/TS.2017/83), Santiago de Chile, October 2018, p.13, Available at: https://repositorio.cepal.org/bitstream/handle/11362/43302/1/S1701020_en.pdf.

521 *Cf.* ECHR, *Case of Grimkovskaya v. Ukraine*, No. 38182/03. Judgment of July 21, 2011, para. 69.

rights before an independent authority,[522] and to play an active role in the planning procedures for activities and projects by expressing their opinions.[523]

230. The right of public participation is also reflected in various regional and international instruments relating to the environment and sustainable development,[524] the Declarations of Stockholm[525] and Rio,[526] and the World Charter for Nature which establishes:

> All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.[527]

231. Therefore, this Court considers that the State obligation to ensure the participation of persons subject to their jurisdiction in decision-making and policies that could affect the environment, without discrimination and in a fair, significant and transparent manner, is derived from the right to participate in public affairs and, to this end, States must have previously ensured access to the necessary information.[528]

232. As regards the moment of the public participation, the State must ensure that there are opportunities for effective participation from the initial stages of the decision-making process, and inform the public about these opportunities for participation.[529] Lastly, different

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[522] *Cf.* ECHR, *Case of Dubetska and Others v. Ukraine*, No. 30499/03. Judgment of February 10, 2011, para. 143; ECHR, *Case of Grimkovskaya v. Ukraine*, No. 38182/03. Judgment of July 21, 2011, para. 69, and ECHR, *Case of Taşkin and Others v. Turkey*, No. 46117/99. Judgment of November 10, 2004, para. 119.

[523] *Cf.* ECHR, *Case of Eckenbrecht v. Germany*, No. 25330/10. Decision of June 10, 2014, para. 42.

[524] See, for example, United Nations Framework Convention on Climate Change, entered into force on March 21, 1994, art. 6.a.iii; Inter-American Strategy for the Promotion of Public Participation in Decision-making on Sustainable Development, adopted in Washington in April 2000 by the Inter-American Committee on Sustainable Development, OEA/Ser.W/II.5, CIDI/doc. 25/00 (April 20, 2000), pp. 46 and 47; Report of the World Commission on Environment and Development "Our Common Future" (Brundtland Report), adopted in Nairobi on June 16, 1987, Annex to UN Doc. A/42/427, Principle 20, and Agenda 21, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), paras. 8.3.c, 8.4.f, 8.21.f and 23.2.

[525] *Cf.* Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1, preamble.

[526] *Cf.* Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 10, and Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines) adopted in Bali on February 26, 2010, by the UNEP Governing Council, Decision SS.XI/5, part A.

[527] World Charter for Nature, adopted by the General Assembly of the United Nations in Resolution 37/7 of October 28, 1982, UN Doc. A/RES/37/7, para. 23.

[528] See, for example, in the European sphere, article 1 of the Aarhus Convention explicitly establishes "the rights of access to information, public participation in decision-making, and access to justice in environmental matters." Regarding public participation, article 7 establishes: "[e]ach Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment within a transparent and fair framework, having provided the necessary information to the public." *Cf.* Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), entered into force on October 30, 2001, arts. 1 and 7.

[529] *See, for example,* Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines) adopted in Bali on February 26, 2010, by the UNEP Governing Council, Decision SS.XI/5, Part A, Guideline 8; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), entered into force on October 30, 2001, art. 6, and International Law Commission, *Commentaries on the draft Articles on prevention of transboundary harm from hazardous activities,* Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 13, paras. 1 and 3.

mechanisms exist for public participation in environmental matters including public hearings, notification and consultations, as well as participation in the elaboration and enforcement of laws; there are also mechanisms for judicial review.[530]

*B.4.c Access to justice*

233. The Court has indicated that access to justice is a peremptory norm of international law.[531] In general, the Court has maintained that States Parties to the American Convention are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all within the general obligation of these States to ensure the free and full exercise of the rights recognized in the Convention to all persons subject to their jurisdiction (Article 1(1)).[532]

234. In the context of environmental protection, access to justice permits the individual to ensure that environmental standards are enforced and provides a means of redressing any human rights violations that may result from failure to comply with environmental standards, and includes remedies and reparation. This also implies that access to justice guarantees the full realization of the rights to public participation and access to information, through the corresponding judicial mechanisms.

235. The European Court of Human Rights has also referred to protection of the rights of access to information and public participation through access to justice. In particular, as previously mentioned, the European Court has emphasized the positive obligation to establish an effective and accessible procedure for individuals to have access to all relevant and appropriate information to evaluate the risks from hazardous activities (*supra* para. 215). Also, with regard to public participation, it has stressed that "the individuals concerned must be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process."[533]

236. Under international environmental law, several international instruments expressly establish the obligation to guarantee access to justice in environmental contexts, even in the case of transboundary harm.[534] Principle 10 of the Rio Declaration stipulates that

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[530] Several such mechanisms have been established in the domestic legal systems of various OAS Member States. See, for example: (Argentina) General Environment Act of Argentina, Law No. 25,675 of November 27, 2002, arts. 19 and 20); (Bolivia) Constitution of the State of Bolivia, art. 343; (Ecuador) General Environmental Code of Ecuador of April 12, 2017, art. 184; (Guatemala) Regulations on Environmental Assessment, Control and Monitoring of Guatemala, Decision No. 137-2016 of July 11, 2016, art. 43; (Mexico) General Law on Ecological Balance and Environmental Protection of the United Mexican States of January 28, 1988, art. 20 bis 5, and (Uruguay) Environmental Protection Act No. 17,283 of December 12, 2000, arts. 6 and 7 and Environment Act No. 16.466 of January 19, 1994, arts. 14.

[531] *Cf. Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 11, 2006. Series C No. 153, para. 131, and *Case of La Cantuta v. Peru. Merits, reparations and costs.* Judgment of November 29, 2006. Series C No. 162, para. 160

[532] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of February 16, 2017. Series C No. 333, para. 174.

[533] *Cf.* ECHR, *Case of Taşkin and Others v. Turkey*, No. 46117/99. Judgment of November 10, 2004, para. 119.

[534] *See, for example,* Report of the World Commission on Environment and Development "Our Common Future" (Brundtland Report), adopted in Nairobi on June 16, 1987, Annex to UN Doc. A/42/427, Principle 20, and Agenda 21, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), para. 20*;* Code of Conduct on Accidental Pollution of Transboundary Inland Waters, adopted in 1990 by the Economic Commission for Europe, arts. VI.1, VI.4 and VII.3; Convention on the

"access to judicial and administrative proceedings, including redress and remedy, shall be provided."[535] Also, legal redress to obtain compensation for environmental damage is established in article 23 of the World Charter for Nature[536] and in Agenda 21.[537]

237. Based on the above, the Court establishes that States have the obligation to guarantee access to justice in relation to the State environmental protection obligations described in this Opinion. Accordingly, States must guarantee that the public have access to remedies conducted in accordance with due process of law to contest any provision, decision, act or omission of the public authorities that violates or could violate obligations under environmental law; to ensure the full realization of the other procedural rights (that is, the right of access to information and to public participation), and to redress any violation of their rights as a result of failure to comply with obligations under environmental law.

*i) Access to justice in cases of transboundary harm*

238. The Court has established that, in the case of transboundary harm, it is understood that a person is under the jurisdiction of the State of origin when there is a causal link between the project or activity that has been or will be executed in its territory and the effects on the human rights of persons outside its territory (*supra* paras. 95 to 103). Therefore, States have the obligation to guarantee access to justice to anyone potentially affected by transboundary harm originated in their territory.

239. Additionally, owing to the general obligation of non-discrimination, States must ensure access to justice to persons affected by transboundary harm originated in their territory without any discrimination on the basis of nationality or residence or place where the harm occurred. In this regard, several international treaties and instruments establish the non-discriminatory application of access to judicial and administrative procedures for persons potentially affected who are not in the territory of the State of origin.[538]

240. Consequently, the Court clarifies that States must ensure access to justice, without discrimination, to persons affected by environmental damage originating in their territory, even when such persons live or are outside this territory.

*B.4.d. Conclusion regarding procedural obligations*

241. Based on all the above, the Court concludes that in order to ensure the rights to life

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Transboundary Effects of Industrial Accidents, entered into force on April 19, 2000, art. 9.3, and Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), entered into force on October 30, 2001.

535 *Cf.* Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 10

536 *Cf.* World Charter for Nature, adopted by the General Assembly of the United Nations in Resolution 37/7 of October 28, 1982, UN Doc. A/RES/37/7, para. 23.

537 *Cf.* Agenda 21, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), para. 8.18.

538 *See, for example,* Convention on the Law of the Non-Navigational Uses of International Watercourses, entered into force on August 17, 2014, art. 32; Convention on the Transboundary Effects of Industrial Accidents, entered into force on April 19, 2000, art. 9.3, and Report of the World Commission on Environment and Development "Our Common Future" (Brundtland Report), adopted in Nairobi on June 16, 1987, Annex to UN Doc. A/42/427, Principles 6, 13 and 20. *See also,* Human Rights Council, Mapping report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, of December 30, 2013, UN Doc. A/HRC/25/53, paras. 69 and 81.

and to personal integrity, as well as any other right affected, States have the obligation to guarantee: (i) the right of access to information related to potential environmental harm, established in Article 13 of the American Convention, in accordance with paragraphs 213 to 225 of this Opinion; (ii) the right to public participation of the persons subject to their jurisdiction, established in Article 23(1)(a) of the American Convention, in policies and decision-making that may affect the environment, in accordance with paragraphs 226 to 232 of this Opinion, and (iii) access to justice, established in Articles 8 and 25 of the American Convention, in relation to the State obligations with regard to protection of the environment described previously, in accordance with paragraphs 233 to 240 of this Opinion.

### B.5 Conclusions with regard to State obligations

242. Based on the above, in response to the second and third questions of the requesting State, it is the Court's opinion that, in order to respect and to ensure the rights to life and to personal integrity:

a. States have the obligation to prevent significant environmental damage within or outside their territory, in accordance with paragraphs 127 to 174 of this Opinion.

b. To comply with the obligation of prevention, States must regulate, supervise and monitor the activities within their jurisdiction that could produce significant environmental damage; conduct environmental impact assessments when there is a risk of significant environmental damage; prepare a contingency plan to establish safety measures and procedures to minimize the possibility of major environmental accidents, and mitigate any significant environmental damage that may have occurred, even when it has happened despite the State's preventive actions, in accordance with paragraph 141 to 174 of this Opinion.

c. States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in the case of potential serious or irreversible damage to the environment, even in the absence of scientific certainty, in accordance with paragraph 180 of this Opinion.

d. States have the obligation to cooperate, in good faith, to protect against environmental damage, in accordance with paragraphs 181 to 210 of this Opinion.

e. To comply with the obligation of cooperation, States must notify other potentially affected States when they become aware that an activity planned under their jurisdiction could result in a risk of significant transboundary harm and also in cases of environmental emergencies, and consult and negotiate in good faith with States potentially affected by significant transboundary harm, in accordance with paragraphs 187 to 210 of this Opinion.

f. States have the obligation to ensure the right of access to information, established in Article 13 of the American Convention, concerning potential environmental impacts, in accordance with paragraphs 213 to 225 of this Opinion;

g. States have the obligation to ensure the right to public participation of the persons subject to their jurisdiction established in Article 23(1)(a) of the American Convention, in policies and decision-making that could affect the environment, in accordance with paragraphs 226 to 232 of this Opinion, and

h. States have the obligation to ensure access to justice in relation to the State obligations with regard to protection of the environment set out in this Opinion, in accordance with paragraphs 233 to 240 of this Opinion.

243. The obligations described above have been developed in relation to the general obligations to respect and to ensure the rights to life and to personal integrity, because these were the rights that the State referred to in its request (*supra* paras. 37, 38, 46 and 69). However, this does not mean that the said obligations do not exist with regard to the other rights mentioned in this Opinion as being particularly vulnerable in the case of environmental degradation (*supra* paras. 56 to 69).

## IX
## OPINION

244. For the above reasons, in interpretation of Articles 1(1), 2, 4 and 5 of the American Convention on Human Rights,

**THE COURT**

**DECIDES**

unanimously, that:

1. It is competent to issue this Advisory Opinion.

**AND IS OF THE OPINION,**

unanimously that:

2. The concept of jurisdiction under Article 1(1) of the American Convention encompasses any situation in which a State exercises authority or effective control over an individual, either within or outside its territory, in accordance with paragraphs 72 to 81 of this Opinion.

3. To determine the circumstances that reveal a State's exercise of jurisdiction, the specific factual and legal circumstances of each particular case must be examined, and it is not sufficient that a person be located in a specific geographical area, such as the area of application of an environmental protection treaty, in accordance with paragraphs 83 to 94 of this Opinion.

4. For the purposes of Article 1(1) of the American Convention, it is understood that individuals whose rights under the Convention have been violated owing to transboundary harm are subject to the jurisdiction of the State of origin of the harm, because that State exercises effective control over the activities carried out in its territory or under its jurisdiction, in accordance with paragraphs 95 to 103 of this Opinion.

5. To respect and to ensure the rights to life and to personal integrity of the persons subject to their jurisdiction, States have the obligation to prevent significant environmental damage within or outside their territory and, to this end, must regulate, supervise and monitor activities within their jurisdiction that could produce significant environmental damage; conduct environmental impact assessments when there is a risk of significant environmental damage; prepare a contingency plan to establish safety measures and

procedures to minimize the possibility of major environmental accidents, and mitigate any significant environmental damage that may have occurred, in accordance with paragraphs 127 and 174 of this Opinion.

6. States must act in accordance with the precautionary principle to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in serious or irreversible environmental damage, even in the absence of scientific certainty, in accordance with paragraph 180 of this Opinion.

7. To respect and to ensure the rights to life and to integrity of the persons subject to their jurisdiction, States have the obligation to cooperate, in good faith, to ensure protection against significant transboundary harm to the environment. To comply with this obligation, States must notify other potentially affected States when they become aware that an activity planned under their jurisdiction could cause significant transboundary harm and also in cases of environmental emergencies, and must consult and negotiate in good faith with States potentially affected by significant transboundary harm, in accordance with paragraphs 181 to 210 of this Opinion.

8. To ensure the rights to life and to integrity of the persons subject to their jurisdiction in relation to environmental protection, States have the obligation to ensure the right of access to information concerning potential environmental damage, the right to public participation of persons subject to their jurisdiction in policies and decision-making that could affect the environment, and also the right of access to justice in relation to the State environmental obligations set out in this Opinion, in accordance with paragraphs 211 to 241 of this Opinion.

Done at San José, Costa Rica, in the Spanish language, on November 15, 2017.

Judges Eduardo Vio Grossi and Humberto Antonio Sierra Porto informed the Court of their concurring opinions, which are attached to this Advisory Opinion.

Inter-American Court of Human Rights. Advisory Opinion OC-23/17 of November 15, 2017. Requested by the Republic of Colombia.

Roberto F. Caldas
President

Eduardo Ferrer Mac-Gregor Poisot

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Secretary

So ordered,

Roberto F. Caldas
President

Pablo Saavedra Alessandri
Secretary

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI**
**INTER-AMERICAN COURT OF HUMAN RIGHTS**
**ADVISORY OPINION OC-23/17**
**OF NOVEMBER 15, 2017**
**REQUESTED BY THE REPUBLIC OF COLOMBIA**

**THE ENVIRONMENT AND HUMAN RIGHTS**

**(STATE OBLIGATIONS IN RELATION TO THE ENVIRONMENT IN THE CONTEXT OF THE PROTECTION AND GUARANTEE OF THE RIGHTS TO LIFE AND TO PERSONAL INTEGRITY: INTERPRETATION AND SCOPE OF ARTICLES 4(1) AND 5(1) IN RELATION TO ARTICLES 1(1) AND 2 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)**

## INTRODUCTION

1. This separate opinion is issued with regard to the reference made by the Inter-American Court of Human Rights[1] in the above Advisory Opinion[2] to Article 26 of the American Convention on Human Rights.[3]

2. And it is a concurring opinion,[4] because the undersigned does not dissent from what was decided in the Advisory Opinion, but merely disagrees with the said reference as one of the grounds cited for the decisions, which he considers is not essential for this purpose.

## DISCREPANCY

Paragraph 57 of the Advisory Opinion[5] alludes to Article 26 of the Convention[6] because it refers to the economic, social and cultural rights as if they were protected by the latter

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1 Hereinafter, "the Court."

2 Hereinafter, "the Advisory Opinion."

3 Hereinafter, "the Convention."

4 Art. 24(3) of the Court's Statute: "The decisions, judgments and opinions of the Court shall be delivered in public session, and the parties shall be given written notification thereof. In addition, the decisions, judgments and opinions shall be published, along with judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate."

Art. 75(3) of the Rules of Procedure of the Inter-American Court of Human Rights*: "*Any judge who has taken part in the delivery of an advisory opinion is entitled to append a separate reasoned opinion, concurring or dissenting, to that of the Court. These opinions shall be submitted within a time limit to be fixed by the Presidency, so that the other Judges can take cognizance thereof before the advisory opinion is served. Advisory opinions shall be published in accordance with Article 32(1)(a) of these Rules*."*

5 Paragraph 57 indicates that: "It should also be considered that this right is included among the economic, social and cultural rights protected by Article 26 of the American Convention, because this norm protects the rights derived from the economic, social, educational, scientific and cultural provisions of the OAS Charter, the American Declaration of the Rights and Duties of Man (to the extent that the latter "contains and defines the essential human rights referred to in the Charter") and those resulting from an interpretation of the Convention that accords with the criteria established in its Article 29 (*supra* para. 42). The Court reiterates the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights, because they should be understood integrally and comprehensively as human rights, with no order of precedence, that are enforceable in all cases before the competent authorities."

6 Art. 26 of the American Convention establishes: "Progressive Development. The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical

and, consequently, susceptible to adjudication by the Court. Accordingly, and bearing in mind that, in the *case of Lagos del Campo v. Peru*, the undersigned issued a separate opinion on the matter,[7] which he reiterated in another opinion in relation to the judgment in the *case of the Dismissed Employees of Petroperu et al. v. Peru,*[8] it should be considered that these opinions are reproduced in this document.

3. Among other considerations, these separate opinions assert that the only rights susceptible of being subject to the system of protection established in the Convention are those "*recognized*" in it; that Article 26 of the Convention does not refer to such rights, but to the *rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States*"; that what the said Article 26 establishes is the obligation of States to adopt measures with a view to achieving progressively the full realization of such rights, and to do this taking into account available resources and, finally, and in consequence, that although these rights exist, they cannot be adjudicated before the Court unless this is established in a treaty as, for example, in the case of the Protocol of San Salvador, but only with regard to the right to organize and join unions, and the right to education.

4. Incidentally, to all this it should be added that, on the one hand, the rights in question may be adjudicated before the domestic courts of the States Parties to the Convention if this is established in their respective domestic laws and, on the other, when interpreting the Convention an effort should be made not to leave any margin for the possible perception that the principle that no State can be taken before an international court without its consent would be altered.

**CONCLUSION**

5. Therefore, the undersigned reiterates that, based on the reasons set out in the above-mentioned separate opinions and, in particular, that the rights mentioned are not included or contained in the Convention and, consequently, cannot be the object of the protection system that it establishes, he is unable to agree with paragraph 57 of the Advisory Opinion.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

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nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."

[7] *Partially dissenting opinion of Judge Eduardo Vio Grossi. Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340.

[8] *Separate opinion of Judge Eduardo Vio Grossi. Case of the Dismissed Employees of Petroperu et al. v. Peru*. *Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344.

**CONCURRING OPINION OF**
**JUDGE HUMBERTO ANTONIO SIERRA PORTO**

**INTER-AMERICAN COURT OF HUMAN RIGHTS**
**ADVISORY OPINION OC-23/17**
**OF NOVEMBER 15, 2017**
**REQUESTED BY THE REPUBLIC OF COLOMBIA**

# THE ENVIRONMENT AND HUMAN RIGHTS

1. With my usual respect for the decisions of the Court, I present the following concurring opinion to the Advisory Opinion in reference.

2. The purpose of this concurring opinion is to set out the arguments based on which, even though in general I agree with the majority decision in the said Advisory Opinion, I differ with regard to certain considerations included in the text by the majority, particularly with regard to the justiciability before the Inter-American Court of the right to a healthy environment based on Article 26 of the American Convention.

3. First, this Advisory Opinion was not the occasion to issue a ruling on the possibility of claiming eventual violations of economic, social and cultural rights directly under Article 26 of the American Convention.

4. In the Advisory Opinion that is the subject of this opinion, when referring to the legal provisions that protect the right to a healthy environment under the inter-American system, the majority indicated that:

> […] this right is included among the economic, social and cultural rights protected by Article 26 of the American Convention, because this norm protects the rights derived from the economic, social, educational, scientific and cultural provisions of the OAS Charter, the American Declaration of the Rights and Duties of Man (to the extent that the latter "contains and defines the essential human rights referred to in the Charter") and those resulting from an interpretation of the Convention that accords with the criteria established in its Article 29 (*supra* para. 42). The Court reiterates the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights, because they should be understood integrally and comprehensively as human rights, with no order of precedence, that are enforceable in all cases before the competent authorities.[1]

[1] Advisory Opinion No. 23, para. 57.

5. Thus, it can be seen that, in the paragraph cited, the majority seek to conclude that the right to a healthy environment, autonomously, is directly justiciable in contentious cases before the organs of the inter-American human rights system under Article 26 of the Convention.

6. Despite this, the questions raised by the State of Colombia were limited to the interpretation of the provisions concerning the State obligations to respect and to ensure the rights to life (Article 4) and to personal integrity (Article 5) of the American Convention, in environmental matters.

7. By incorporating considerations on the direct justiciability of the right to a healthy environment, in particular, and of economic, social and cultural rights, in general, the majority exceed the purpose of the Advisory Opinion, without granting those intervening in the processing of the Advisory Opinion any opportunity to present arguments for or against this position.

8. Consequently, I dissent from the above-mentioned position on the direct justiciability before the inter-American system of the right to a healthy environment because it exceeds the Court's competence in this specific case.

9. I also wish to reiterate my arguments on the non-existence of the direct justiciability of the economic, social and cultural rights under Article 26 of the American Convention.

10. The considerations included in the said paragraph of the Advisory Opinion were based on the considerations in paragraphs 141 to 144 of the judgment in the *case of Lagos del Campo v. Peru*, where the Court understood as incorporated within Article 26 of the Convention, and therefore directly justiciable, those rights derived from the OAS Charter, the American Declaration of the Rights and Duties of Man, and "other international acts of the same nature" based on Article 29(d) of the American Convention.

11. In this regard, I reiterate all aspects of the considerations set out in my concurring opinion in the *case of Gonzales Lluy et al. v. Ecuador* and in my partially dissenting opinion in the *case of Lagos del Campo v. Peru*, in which I gave the reasons why I consider that the very broad interpretation given to Article 26 of the American Convention exceeds the scope of this article. Added to this, I insist on the shortcomings in the arguments, which I identified in my opinion in the *case of Lagos del Campo*, because on subsequent occasions when the Court has ruled on or referred to Article 26 of the Convention, it has done so reiterating the groundless precedent of the above case.

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Secretary