

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Case No. 31

**REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE
COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE
AND INTERNATIONAL LAW**

WRITTEN STATEMENT OF BELIZE

16 JUNE 2023

TABLE OF CONTENTS

INTRODUCTION.....	1
CHAPTER 1: THE EXERCISE OF THE TRIBUNAL’S JURISDICTION TO RENDER THE ADVISORY OPINION.....	4
CHAPTER 2: THE THREAT OF CLIMATE CHANGE TO BELIZE’S MARINE AREAS AND BELIZE’S ACTION IN RESPONSE	5
I. Climate change poses grave threats to Belize’s marine areas.....	5
II. Belize has responded proactively and diligently to the threats which climate change poses to its marine areas	7
A. Belize has engaged in the processes of the UNFCCC.....	7
B. Specialised and regional initiatives to respond to climate change	10
C. Belize is a party to numerous international treaties which respond to the threat of climate change to marine areas	10
D. Domestic legislation and policies to tackle climate change	11
CHAPTER 3: LEGAL ARGUMENT.....	15
I. The Scope of the questions	15
II. Key definitions.....	16
A. “Pollution”.....	16
B. “Marine environment”.....	17
III. The “General Obligation” in Article 192.....	18
IV. Article 194	21
V. Articles 200 and 204–206	25
VI. Article 207	29
VII. Article 208	30
VIII. Conclusion and suggested responses to the questions posed in the Request.....	30
SUBMISSIONS	32

INTRODUCTION

1. Belize is a State with a marine environment of exceptional and indeed international importance. The Belize Barrier Reef Reserve System is the world's second largest system of reefs. It has been recognised as a UNESCO World Heritage Site.¹

2. As recorded by UNESCO:

“The coastal area of Belize is an outstanding natural system consisting of the largest barrier reef in the northern hemisphere, offshore atolls, several hundred sand cays, mangrove forests, coastal lagoons and estuaries. The system's seven sites illustrate the evolutionary history of reef development and are a significant habitat for threatened species, including marine turtles, manatees and the American marine crocodile.

The Belize Barrier Reef Reserve System (BBRRS), inscribed as a UNESCO World Heritage Site in 1996, is comprised of seven protected areas; Bacalar Chico National Park and Marine Reserve, Blue Hole Natural Monument, Half Moon Caye Natural Monument, South Water Caye Marine Reserve, Glover's Reef Marine Reserve, Laughing Bird Caye National Park and Sapodilla Cayes Marine Reserve. The largest reef complex in the Atlantic-Caribbean region, it represents the second largest reef system in the world.”²

3. As a result of the adverse impacts of anthropogenic climate change, including in particular ocean acidification, ocean warming and sea level rise, this system of coral reefs, mangrove forests, coastal lagoons and estuaries is confronted by an existential threat. The same applies to Belize's marine environment more broadly. In November 2021, at COP26, Belize's Prime Minister, the Hon. John Briceño, made a statement underscoring the threats which climate change poses to Belize's marine areas and in particular its fragile reef system.³ He stated:

“Belize is the proud custodian of the Belize Barrier Reef Reserve System, the second largest reef system in the world and a UNESCO World Heritage Site.

But here is the sad reality. The reef is under siege. Coral bleaching stress doubled from 1.7 in the period 1985–2014 to severe level 3 between 2014–2017. The reef is dying and may be beyond the point of full restoration. Its loss will be irreversible. For Belize, the Barrier Reef is more than a global beauty; it also underpins our culture and our tourism industry which contributes approximately 40 percent to our gross domestic product. Without the reefs, Belize's economy could crumble. Our people's lives will be forever changed.”⁴

¹ See UNESCO, The List – Belize Barrier Reef Reserve System, 2022, <https://whc.unesco.org/en/list/764/>.

² *Ibid.*

³ Statement of the Hon. John Briceño, Prime Minister of Belize, at COP26, 1 November 2021, available at https://unfccc.int/sites/default/files/resource/BELIZE_cop26cmp16cma3_HLS_EN.pdf.

⁴ *Ibid.*, pp. 1–2.

4. It follows that the current Request for an Advisory Opinion could not be more important for Belize.
5. Belize also considers that it has an important voice before this Tribunal. This is not just because of its exceptional and exceptionally vulnerable barrier reef system. The country of Belize acts as an important sink of greenhouse gas emissions, including due to the significant carbon storage in Belize’s extensive forested areas.⁵ Belize has been proactive on the international plane, including as a member of the Alliance of Small Island States (“AOSIS”), and Belize’s action within the domestic sphere demonstrate its deep commitment to addressing the threats posed by climate change. As explained at COP25, Belize has expanded its no-take zones from 4% to 11.6% of its seas and has legislated that its maritime economy will follow a green development pathway, through the banning of offshore oil exploration.⁶ Belize’s actions are consonant with its words.
6. **Figure 1** (opposite) shows the extent of Belize’s protected areas, including its marine reserves.⁷ Moreover, Belize has undertaken to increase its marine protected biodiversity zones to 30 per cent by 2026, four years ahead of target, and to place all remaining public lands in the Belize Barrier Reef Reserve System under protection.⁸
7. In the Chapters that follow, Belize sets out its position in relation to the Request.
8. In Chapter 1, Belize addresses very briefly the exercise of the Tribunal’s jurisdiction to answer the Request. That jurisdiction cannot be in doubt, and Belize assumes that no State will suggest otherwise.
9. In Chapter 2, Belize provides more detail on why the interests of Belize and its people are centrally engaged by this Request. It explains further the threat of climate change to Belize’s marine environment and the steps that Belize has taken, and is taking, in an attempt to address that threat.
10. In Chapter 3, Belize sets out its legal position in response to the question raised in the Request. The question is broad, and at this stage Belize seeks to do no more than state the essential elements of its position. At the hearing (and in any further written submissions), Belize will focus on the legal issues of most importance to it and/or those issues on which it considers that it will be able to provide the Tribunal with the most useful assistance.

⁵ Belize, Updated Nationally Determined Contribution, August 2021, available at <https://unfccc.int/sites/default/files/NDC/2022-06/Belize%20Updated%20NDC.pdf> (“Updated NDC”), p. 7.

⁶ Statement of the Hon. Omar Figueroa, Minister of Agriculture, Fisheries, Forestry, the Environment, Sustainable Development and Immigration of Belize, at COP25, December 2019, available at https://unfccc.int/sites/default/files/resource/BELIZE_cop25cmp15cma2_HLS_EN.pdf, p. 3.

⁷ It is noted that, notwithstanding the fact that Belize became independent in 1981 and succeeded to all parts of the territory of what was by that time the colony of Belize (and had previously been the colony of British Honduras) (as followed from multiple resolutions of the United Nations General Assembly and as has been almost universally recognised), parts of Belize’s territory are subject to claims by Guatemala and also Honduras. Those claims are in the process of determination in ongoing proceedings, and are irrelevant for present purposes.

⁸ Statement of the Hon. John Briceño, Prime Minister of Belize, at COP26, 1 November 2021, available at https://unfccc.int/sites/default/files/resource/BELIZE_cop26cmp16cma3_HLS_EN.pdf, pp. 3–4.

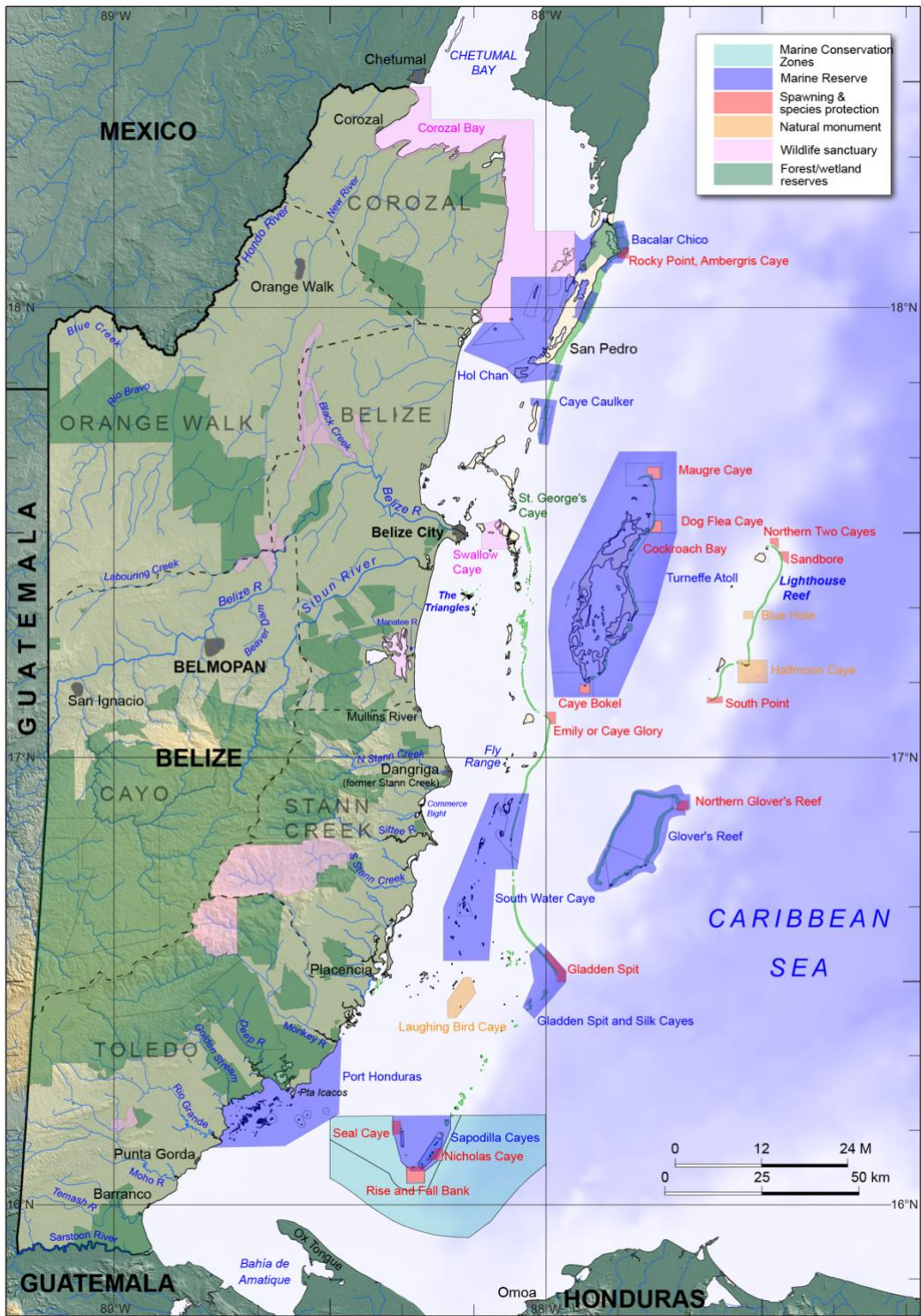


Figure 1: Belize's Protected Environmental Areas

CHAPTER 1: THE EXERCISE OF THE TRIBUNAL'S JURISDICTION TO RENDER THE ADVISORY OPINION

11. The Tribunal's general jurisdiction to answer requests for advisory opinions was considered and determined in *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*.
12. The questions raised are undoubtedly of a legal nature and the criterion of Article 21 of the Statute is met, in that there is an agreement which confers jurisdiction on the Tribunal (see Article 2(2) of the Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law).
13. As to the exercise of its jurisdiction, the Tribunal should — and indeed must — answer the question asked, which could scarcely be of greater importance to all States and not just the Member States of Commission of Small Island States on Climate Change and International Law (“COSIS”). The questions falls well within the scope of the Tribunal's judicial functions and, as follows from its prior jurisprudence, the consent of States outside COSIS is not required.⁹
14. Belize notes that the questions posed in the Request for an Advisory Opinion are not limited to the obligations under Part XII of the United Nations Convention on the Law of the Sea (“UNCLOS” or “the Convention”): they concern the obligations of States Parties to UNCLOS “including under Part XII”¹⁰ of the Convention. While no doubt the principal focus of statements to the Tribunal and of the Advisory Opinion itself may be the obligations under Part XII, Belize considers that the Tribunal should exercise its discretion so as to ensure consideration is given to obligations outside Part XII. In this respect, Articles 2(3) and 56(2) may be of particular importance. This is a matter to which Belize returns in Chapter 3 below.

⁹ *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4 at p. 26, para. 76.

¹⁰ Emphasis added.

CHAPTER 2: THE THREAT OF CLIMATE CHANGE TO BELIZE’S MARINE AREAS AND BELIZE’S ACTION IN RESPONSE

I. Climate change poses grave threats to Belize’s marine areas

15. Belize’s vulnerability to climate change was aptly summarised by its Prime Minister in a debate of the United Nations General Assembly in 2021:

“Belize, like other [small island and low-lying coastal States], is on the frontline of a climate crisis for which we are not responsible.”¹¹

16. This address followed a statement made by Belize on behalf of AOSIS at COP25, in December 2019, at which it “represent[ed] the collective voice of 44 low lying island and coastal countries whose existence is on the line”.¹² As Belize’s representative stated at that time:

“Steady, unrelenting rise of greenhouse gases in the atmosphere, with no end in sight, conscribe us to an unrecognizable and insecure future. ...

Rising seas, apocalyptic storms, prolonged droughts, scorching temperatures, rampant wildfires, disappearing biodiversity on land and in oceans — sadly I can go on. These are impacts that no one, no country can escape. These threaten global security and stability and jeopardize the prosperity of all peoples.

Where I come from, that threat is not distant, it is our reality.”¹³

17. A particularly acute issue for Belize is the protection and preservation of its system of coral reefs, as highlighted in Prime Minister Briceño’s statement at COP26 quoted above in the Introduction.¹⁴
18. As recorded in Belize’s Updated Nationally Determined Contribution (“Updated NDC”), published in August 2021, Belize’s reef species are “especially vulnerable to global warming”.¹⁵
19. In December 2021, Belize published its National Climate Change Policy, Strategy and Master Plan, published in December 2021 (“the Climate Change Master Plan”).¹⁶ This

¹¹ Statement of the Hon. John Briceño, Prime Minister of Belize, to United Nations General Assembly, 24 September 2021, available at https://estatemnts.unmeetings.org/estatemnts/10.0010/20210924/ajen3uMeQSDH/nu5mhB5LlnlY_en.pdf.

¹² Statement on behalf of the Alliance of Small Island States of the Hon. Omar Figueroa, Minister of Agriculture, Fisheries, Forestry, the Environment, Sustainable Development and Immigration of Belize, at COP25, December 2019, available at https://unfccc.int/sites/default/files/resource/BELIZE_AOSIS_cop25cmp15cma2_HLS_EN.pdf, p. 2.

¹³ *Ibid.*

¹⁴ See para. 3.

¹⁵ Updated NDC, p. 6. The Updated NDC superseded the Nationally Determined Contribution first communicated in 2016.

¹⁶ National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021. The Climate Change Master Plan superseded the National Climate Change Policy, Strategy and Action Plan, published in 2015 and intended to cover the period from 2015–2020.

document carried out a detailed analysis of climate change modelling and projections, enabling conclusions to be reached about the likely impacts on Belize. It highlighted particular risks for Belize’s marine areas and resources as follows:

- (a) Increased atmospheric carbon dioxide concentrates and the gradual increase in sea surface temperature will lead to acidification of the world’s oceans, resulting in a projected decrease in average pH by 0.036 within Belizean waters over the next century.¹⁷ Ocean acidification will accelerate coral bleaching and mortality, as well as undermining coral reefs’ structural integrity rendering them more vulnerable to damage during storms, as well as diminishing the stock of crustaceans who will be less able to develop their exoskeletons.¹⁸ The loss of coral habitat will: (i) jeopardise the health and biodiversity of marine ecosystems; (ii) reduce the size of Belize’s commercial fish stock;¹⁹ and (iii) diminish the tourism potential of Belize’s coastal attractions.²⁰
- (b) Sea surface temperatures along the coast of Belize are projected to rise by an average of 2°C within the coming century.²¹ Such a rise in temperature will trigger widespread coral bleaching and mortality, resulting in habitat loss for ecologically important fish species and the other consequences referred to above.²² Sea temperature rise will also lead to dissolved oxygen levels, affecting the health of marine species.²³
- (c) Climate change is projected to lead to sea level rise in Belize of between 35–100 cm over the next 100 years, leading to adverse effects across all sectors.²⁴ Among other harms, the anticipated rise in sea levels (as well as ocean acidification) will threaten mangrove cover — ecosystems which provide numerous mitigation and adaptation benefits to climate change.²⁵

20. The threats which climate change poses to Belize have been confirmed by reputable and independent third parties. For example:

- (a) In a systematic diagnostic published in 2016, the World Bank stated that “the impacts of climate change can be severe to Belize’s natural resources”, on which Belize’s economy relies heavily, and that “Belize’s vulnerability to

¹⁷ National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021, p. 122.

¹⁸ *Ibid.*, pp. 54, 122–123. On the risks posed by ocean acidification for Belize’s coral reefs, mangroves and seagrass beds, and marine organisms, see also Integrated Vulnerability and Adaptation Assessment, 20 January 2020, pp. 19–20, 112, 116–117, 153–155.

¹⁹ See also Updated NDC, p. 6. Belize’s fisheries sector is under extreme threat as a result of warmer sea surface temperatures, ocean acidification, sea-level rise and extreme weather events. A decline in this industry would affect not only Belize’s GDP but also its food security.

²⁰ National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021, p. 123.

²¹ *Ibid.*, p. 123.

²² *Ibid.*, pp. 54, 123–124.

²³ *Ibid.*, p. 124. On the risks to Belize’s marine life posed by rising sea temperatures, see also Integrated Vulnerability and Adaptation Assessment, 20 January 2020, pp. 20–21.

²⁴ National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021, p. 124.

²⁵ *Ibid.*, pp. 54–55, 125. On the risks to Belize’s mangrove ecosystems as a result of rising sea levels, see also Integrated Vulnerability and Adaptation Assessment, 20 January 2020, p. 157.

natural disasters is exacerbated by the effects of climate change, as natural hazards are expected to intensify both in terms of frequency and severity”.²⁶

(b) Likewise, the International Monetary Fund identifies Belize as being at “high” risk as a result of climate change, including as a result of damage to coastal ecosystems, harm to the tourism industry and an escalation of poverty.²⁷

21. Climate change is also considered an important contributing factor to an influx of sargassum into Belize’s maritime areas.²⁸ This is because climate change leads to nutrient-rich water as well as increased surface water temperatures. Sargassum can significantly undermine biodiversity in the marine areas in which it proliferates.

II. Belize has responded proactively and diligently to the threats which climate change poses to its marine areas

22. At COP25, Belize’s representative, speaking on behalf of AOSIS, told the Conference that small island and coastal developing States, including Belize, “have been and will remain the vanguard of climate action and the benchmark of ambition”.²⁹ This remains the case. Belize has fully engaged at the international plane while, at the domestic plane, it has put in place an ambitious program of measures to mitigate and adapt to climate change.

A. Belize has engaged in the processes of the UNFCCC

23. Belize has consistently participated in UNFCCC meetings and has stressed before the States Parties the grave impact that climate change is already having on Belize, as well as calling for robust action to address climate change.³⁰

24. As stated above, Belize published its Updated NDC in August 2021. This communication was prepared by Belize with a number of international partners

²⁶ World Bank Group, Systematic Country Diagnostic: Belize, Report No. 102973-BZ, 29 January 2016, available at <https://openknowledge.worldbank.org/server/api/core/bitstreams/2d9005e1-9728-56db-a820-8da395cb417e/content>, pp. 66, 68.

²⁷ International Monetary Fund, Policy Paper: Small States’ Resilience to Natural Disasters and Climate Change — Role for the IMF, December 2016, available at <https://www.imf.org/external/np/pp/eng/2016/110416.pdf>, pp. 17–18.

²⁸ Updated NDC, p. 6.

²⁹ Statement on behalf of the Alliance of Small Island States of the Hon. Omar Figueroa, Minister of Agriculture, Fisheries, Forestry, the Environment, Sustainable Development and Immigration of Belize, at COP25, December 2019, available at https://unfccc.int/sites/default/files/resource/BELIZE_AOSIS_cop25cmp15cma2_HLS_EN.pdf, p. 4.

³⁰ See paras. 3, 16–18 above. See also Statement of the Hon. Orlando Habet, Minister of Sustainable Development, Climate Change and Disaster Risk Management of Belize, at COP 27, 15 November 2022, available at https://unfccc.int/sites/default/files/resource/BELIZE_cop27cmp17cma4_HLS_ENG.pdf.

providing technical assistance.³¹ Its development involved broad stakeholder engagement, including with vulnerable populations.³²

25. As indicated in the Updated NDC,³³ Belize is a member of the “High Ambition Coalition”, as a result of which, in late 2019, it committed to increasing emissions reduction ambition by the first quarter of 2020, and developing a long-term strategy aligned with achieving net zero global emissions by 2050.³⁴
26. In the Updated NDC, Belize set out a suite of mitigation targets and actions which spanned land use change and forestry; agriculture; energy; and waste management.³⁵ The targets and actions which related to Belize’s marine areas and/or resources included the following:
 - (a) In relation to land use change and forestry, a target of reducing greenhouse gas emissions and increase greenhouse gas removals related to land use change totalling 2,053 KtCO₂ cumulative over the period from 2021–2030. The actions to achieve this target include management of mangroves as natural carbon sinks;³⁶ and
 - (b) A further target to enhance the capacity of the country’s mangrove and seagrass ecosystems to act as a carbon sink by 2030, through increased protection of mangroves and by removing a cumulative total of 381 KtCO₂ between 2021 and 2030 through mangrove restoration.³⁷
27. Belize also set out a diverse range of adaptation targets and actions in its Updated NDC, relating to Belize’s coastal zone and marine resources; agriculture; fisheries and aquaculture; human health; tourism; forestry and biodiversity; land use, human settlements and infrastructure; and water resources.³⁸ The targets which related specifically to Belize’s marine areas and resources included the following:
 - (a) A target to increase resilience for coastal communities and habitats by managing further development of the coastline to reverse net coastal habitat and land loss by 2025. Actions in support of this target included: (i) conducting a study of the impact of ocean acidification on Belize’s coastal habitats and marine resources by 2025 and establishing a monitoring program for ocean acidification and

³¹ These included the Commonwealth Secretariat, International Renewable Energy Agency, NDC Partnership Support Unit, Rocky Mountain Institute, Climate Technology Collaboration Network, Fundación Bariloche, UNFCCC Regional Collaboration Center in Grenada (with the Caribbean Climate Change MRV Hub). Additional assistance was received from the United Nations Development Programme, World Wildlife Fund, Pew Charitable Trusts, Initiative for Climate Action Transparency, and Coalition for Rainforest Nations: *ibid.*, p. 11.

³² Updated NDC, p. 12.

³³ *Ibid.*, p. 1.

³⁴ “15 world leaders commit to delivering new Paris targets by early 2020 and to achieving net zero global emissions by 2050 on eve of UN Summit”, Press release issued by the Office of the President of the Republic of the Marshall Islands, 22 September 2019, available at <https://www.docdroid.net/gavIB6o/190922-rmi-unsg-summit-release-leaders-statement-final-combined-pdf>.

³⁵ Updated NDC, pp. 14–22.

³⁶ *Ibid.*, pp. 14–15.

³⁷ *Ibid.*, p. 16.

³⁸ *Ibid.*, pp. 23–31.

water quality in Belize; (ii) assessing coral reef restoration potential, including opportunities for enhancing habitat functionality to improve the resilience of coastal and marine habitats in addition to the 20 per cent of territorial waters in marine protected areas and 10 per cent of waters in marine replenishment zones; (iii) developing an early warning system to monitor and detect unhealthy areas of the coral reef; (iv) developing and implementing a national seagrass management policy including an updated seagrass map and identification of priority seagrass areas for further protection to enhance conservation; (v) building on the mitigation target of expanding the current 12,827 hectares of mangroves under protection by at least a further 6,000 hectares of mangroves by 2025; and (vi) strengthening resilience of local coastal communities and enhancing the ecosystem services provided by mangroves through the restoration of at least 2,000 hectares of mangroves including within local communities by 2025, with an additional 2,000 hectares by 2030;³⁹ and

- (b) A target to build capacity in fisheries and aquaculture sector through research, diversification and retraining to support livelihoods while protecting coastal ecosystems. Actions to achieve this target included: (i) developing and implementing mangrove and fisheries conservation and management plans including the 20 per cent of territorial waters included in Marine Protected Areas and strive to include 10 per cent of territorial waters in marine replenishment zones; (ii) encouraging the development of the sector through value adding and diversification in fish species through research partnerships, private sector engagement, pilot programmes and extension support services; (iii) implementing and enforcing the Fisheries Act 2020 and the Forests (Protection of Mangroves) Regulations 2018; (iv) exploring the development of alternative livelihood plans for fishers and their households.⁴⁰

28. Belize has also submitted regular national communications and other reports to the UNFCCC.⁴¹ In its most recent (fourth) national communication, dated 2022, it summarised the adaptation and mitigation measures which it intended to put in place, including through its Low Emission Development Strategy (addressed further below).⁴² It also communicated the constraints and gaps, and related financial, technical and

³⁹ *Ibid.*, pp. 23–25.

⁴⁰ *Ibid.*, p. 27.

⁴¹ Belize, First National Communication to the Conference of the Parties of the United Nations Framework Convention on Climate Change, July 2002, available at <https://unfccc.int/sites/default/files/resource/Belize%20INC.pdf>; Belize, Second National Communication to the Conference of the Parties of the United Nations Framework Convention on Climate Change, 2011, available at <https://unfccc.int/sites/default/files/resource/blznc2.pdf>; Belize, Third National Communication to the Conference of the Parties of the United Nations Framework Convention on Climate Change, 2016, available at <https://unfccc.int/sites/default/files/resource/blznc3rev.pdf>; National Climate Change Office, Ministry of Forestry, Fisheries, the Environment and Sustainable Development, Belize's First Biennial Update Report to the United Nations Framework Convention on Climate Change, 2020, available at <https://unfccc.int/sites/default/files/resource/BELIZE%20BUR%202020.pdf>; Belize, Fourth National Communication to the Conference of the Parties of the United Nations Framework Convention on Climate Change, 2022, available at <https://unfccc.int/sites/default/files/resource/Belize%20National%20Communication.pdf>.

⁴² Belize, Fourth National Communication to the Conference of the Parties of the United Nations Framework Convention on Climate Change, 2022, available at <https://unfccc.int/sites/default/files/resource/Belize%20National%20Communication.pdf>, sections 3–4.

capacity needs, with a view to identifying areas where international assistance was required in order to allow Belize to meet UNFCCC requirements.⁴³

B. Specialised and regional initiatives to respond to climate change

29. Belize is an active member of AOSIS, which represents the interests of the 39 small island and low-lying coastal developing States in relation to (among other issues) climate change. In 2019–2020, Belize held the Chair of AOSIS, during which period it represented AOSIS at COP25, as noted above.⁴⁴ AOSIS continues to provide a unique voice for highly climate-vulnerable developing States. In its most recent report to COP27 of November 2022, AOSIS set out its work on four key goals — namely: (i) the establishment of a loss and damage fund; (ii) the launch of a robust global stocktake; (iii) the raising of ambition (including in mitigation, adaptation and finance) to limit global warming to 1.5°C above pre-industrial levels; and (iv) the provision of support to small island developing States to cope with the ongoing harms caused by climate change.⁴⁵
30. Belize is also a member of the International Coral Reef Initiative (“the ICRI”), having served as the Secretariat (jointly with Australia) in 2012–2014 and hosted the organisation’s General Meeting in October 2013.⁴⁶ In its most recent Plan of Action (for 2021–2024), the ICRI identified target outcomes including supporting the conservation and recovery of coral reefs in the face of the climate crisis.⁴⁷
31. Belize joined the Liliendaal Declaration on Climate Change and Development of 6 July 2009 in which Heads of State and Government of the Caribbean Community urged “an increased sense of urgency and purpose” in developing international climate change agreements, as well as calling for adaptation and capacity building to be prioritised. It has also been involved in Caricom’s development of the Revised Regional Framework for Achieving Development Resilient to Climate Change for 2022–2023.

C. Belize is a party to numerous international treaties which respond to the threat of climate change to marine areas

32. Belize is a party to numerous multilateral conventions which concern mitigation of and/or adaptation to climate change, including treaties with implications for the protection and preservation of the marine environment. In addition to UNCLOS, these include, non-exhaustively: (i) the treaties which constitute the UNFCCC framework;⁴⁸ (ii) the International Convention for the Prevention of Pollution from Ships (“MARPOL”); (iii) the Cartagena Convention for the Protection and Development of

⁴³ *Ibid.*, section 5.

⁴⁴ See para. 16.

⁴⁵ Alliance of Small Island States, COP27: Summary Report, 6–18 November 2022.

⁴⁶ International Coral Reef Initiative, 28th ICRI General Meeting, 14–17 October 2013, available at <https://icriforum.org/events/28th-icri-general-meeting/>.

⁴⁷ International Coral Reef Initiative, Turning the Tide for Coral Reefs: Plan of Action 2021–2024, available at <https://icriforum.org/wp-content/uploads/2022/05/ICRI-PLAN-OF-ACTION-21-24-web-16pp.pdf>.

⁴⁸ The United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement.

the Marine Environment of the Wider Caribbean Region; and (iv) the Convention on Biological Diversity.

D. Domestic legislation and policies to tackle climate change

33. Belize has implemented numerous legislative and policy measures to address the risks posed by climate change, including specifically with regard to its marine areas and resources.

1. *National policies and strategies focused on sustainable development and environmental conservation, including in response to climate change*

34. Belize has made responding effectively to climate change a central pillar of its national strategy.

35. Belize's Climate Change Master Plan sets out in detail the policy, institutional and legislative framework which Belize has implemented in response to climate change,⁴⁹ significant aspects of which were highlighted in its Updated NDC (as set out above). Other key policy and planning documents include the following:

- (a) The Low Emission Development Strategy and Action Plan (published in 2021), which provides a framework for Belize to shift its development pathway towards that of a green-growth, low-emission economy over the period from 2020–2050.⁵⁰ Reforesting, and avoiding the future extraction, of mangrove and seagrass meadows are important aspects of this strategy.⁵¹
- (b) The Technology Action Plan for Climate Change Adaptation and Mitigation (published in 2018), which includes a technology and action plan for the coastal and marine ecosystem sector.
- (c) Horizon 2030 — Long Term National Development Framework for Belize (published in 2011), one of the main pillars of which is responsible environmental stewardship, and which presents proposals for converting long-term vision, goals and objectives into medium-term strategies incorporating environmental sustainability into development planning.
- (d) The National Fisheries Policy, Strategy and Action Plan for the period 2020–2024 (published in 2019), which sets out fisheries management approaches that address the impact of climate change.
- (e) The National Biodiversity Strategy and Action Plan (published in 2016), which includes goals for the development of sustainable management plans for (among others) Belize's marine environments.

⁴⁹ National Climate Change Office of Belize, Draft National Climate Change Policy, Strategy, and Master Plan, 15 December 2021, Section 4.

⁵⁰ Low Emissions Development Strategy and Action Plan: Belize, 2021, available at <https://unfccc.int/sites/default/files/resource/Belize%20LEDS.pdf>.

⁵¹ *Ibid.*, pp. 31–32.

2. *The robust legislative and regulatory structure for protection of Belize’s marine areas, including in particular its coral reef ecosystems*
36. Belize has enacted the National Protected Areas System Act 2015, the objectives of which include promoting long-term conservation, management and sustainable use of Belize’s protected areas, as designated under the Act.⁵² The duties assigned under the Act are to be performed having regard to, among others, the United Nations Climate Change Convention.⁵³
37. Of particular significance in the present context, marine reserves may be designated under s. 14(1) of the Fisheries Resources Act 2018.⁵⁴ Within a marine reserve, restrictions may be placed on fishing and other rights of access to the area, and it is an offence (among others) to fish contrary to prescribed regulations, to take or destroy flora or fauna or to disturb, alter or destroy the natural environment.⁵⁵
38. The seven protected areas within the Belize Barrier Reef Reserve System and other protected areas are shown in **Figure 1** at page 3 above.
39. Reflecting its deep commitment to protection of the marine environment, Belize has also established a Ministry of Blue Economy and Civil Aviation which, in 2022, published the Belize Blue Economy Development Policy, Strategy and Implementation Plan for 2022–2027 (“**the Blue Economy Development Plan**”).⁵⁶ The Blue Economy Development Plan is designed to facilitate the sustainable management and development of Belize’s marine ecosystems, both in its coastal zones and throughout its exclusive economic zone, with a focus on mangrove, seagrass and coral reef ecosystems.⁵⁷ Among other policy priorities, the Plan envisages the creation of incentive packages for sustainable economic activities in the ‘blue space’, such as in relation to mangrove conservation and restoration and decarbonising shipping.⁵⁸ It also proposes further research into the carbon sequestration potential of Belize’s mangrove and seagrass beds.⁵⁹

3. *Climate finance*

40. It is estimated that the total cost of implementation of the Updated NDC is US\$ 1.906 billion for the period until 2030, while the currently unfinanced NDC implementation cost is US\$ 1.663 billion.⁶⁰ Unlocking adequate climate finance is essential.
41. Belize’s National Committee on Climate Change has established the Climate Finance Working Group to provide guidance on efforts to access, manage and effectively use

⁵² National Protected Areas System Act 2015 (as amended to 2015), Chapter 215, Substantive Laws of Belize, Revised Edition 2020, s. 5.

⁵³ *Ibid.*, s. 7(f)(i).

⁵⁴ Fisheries Resources Act 2018, Chapter 210, Substantive Laws of Belize, Revised Edition 2020, s. 14(1)(b).

⁵⁵ *Ibid.*, ss. 14(4), 15(1).

⁵⁶ Ministry of Blue Economy and Civil Aviation of Belize, Belize Blue Economy Development Policy, Strategy and Implementation Plan, 2022–2027.

⁵⁷ *Ibid.*, p. 1.

⁵⁸ *Ibid.*, p. 17.

⁵⁹ *Ibid.*, p. 22.

⁶⁰ National Climate Finance Strategy of Belize, 2021–2026, pp. 8, 13.

climate finance. Belize has accessed climate finance from all climate funds under the UNFCCC finance mechanism.⁶¹ Belize has established a Protected Areas Conservation Trust, which initially served as a fund to finance protected areas management and community conservation (funded through an exit tax for all visitors to Belize), and since has expanded to serve as Belize’s National Implementing Entity for the UNFCCC’s Adaptation Fund, and which is the first national accredited entity for the UNFCCC’s Green Climate Fund.⁶²

42. Since 2010 Belize has implemented about 30 climate change projects using climate finance with a combined value of over USD 135 million (both grants and loans), in addition to another 10 regional climate change projects using climate finance of over USD 100 million.⁶³
43. In 2021, Belize published a National Climate Finance Strategy for 2021–2026.⁶⁴ This document showed that Belize had, between 2015 and 2019, accessed climate finance to the value of approximately US\$ 227.4 million from multilateral development banks, bilateral donors, climate funds and private investments (among others), in the form of both grants and loans.⁶⁵ It also set out strategic directions, coupled with short- and medium-term goals, for Belize to mobilise climate finance to achieve its NDC targets. It drew specific attention to the priority to be given to accessing climate finance to support adaptation measures in the fisheries and aquaculture sector, as well as the need to explore blue bond financing.⁶⁶
44. In November 2021, Belize entered a USD 360 million debt-for-marine conservation transaction — the largest blue bond transaction ever executed.⁶⁷ The Blue Bonds Loan Agreement and the Conservation Funding Agreement are contingent on Belize’s fulfilment of eight primary conservation commitments, including (among others) Belize’s expansion of its biodiversity protection zones and its designation of public lands within the Belize Barrier Reef Reserve System as mangrove reserves.⁶⁸

4. Regulations and policies to protect carbon-storing marine ecosystems

Belize recognises the importance of protecting coastal ecosystems, and in particular mangrove and seagrass ecosystems, which sequester and store significant amounts of carbon, offset sea-level rise and coastal erosion and expand the habitat available for biodiverse resources. The Coastal Zone Management Act 2011 of Belize established the Coastal Zone Management Authority, the functions of which include advising on the development and utilisation of the resources of Belize’s coastal zone in a sustainable fashion.⁶⁹ The Government of Belize endorsed the first Integrated Coastal Zone

⁶¹ This includes the Global Environment Facility, the Adaptation Fund, the Special Climate Change Fund and the Green Climate Fund: Updated NDC, p. 10.

⁶² *Ibid.*, p. 10.

⁶³ *Ibid.*, p. 10.

⁶⁴ National Climate Finance Strategy of Belize, 2021–2026.

⁶⁵ *Ibid.*, pp. 14–15.

⁶⁶ *Ibid.*, p. 45.

⁶⁷ Statement of the Hon. John Briceño, Prime Minister of Belize, at COP26, 1 November 2021, available at https://unfccc.int/sites/default/files/resource/BELIZE_cop26cmp16cma3_HLS_EN.pdf, p. 3.

⁶⁸ Belize, Blue Bond and Finance Permanent Unit, Annual Report, 2022–2023, p. 3.

⁶⁹ Coastal Zone Management Act 2011 (as amended to 2015), Chapter 329, Substantive Laws of Belize, Revised Edition 2020, ss. 3, 5.

Management Plan in 2016, which facilitates the improved management of coastal and marine ecosystems so as to maintain their integrity, with adapting to climate change one of the key themes of the strategic action steps outlined.⁷⁰ It has also promulgated the Forests (Protection of Mangroves) Regulations 2018, establishing a system that safeguard mangroves from deforestation and degradation.⁷¹ Crucially, recognising that “mangroves ... form an important and cherished component of the natural vegetation of the country, and among other things, provide habitat, and have aesthetic, ecological and environmentally protective functions”,⁷² regulation 3 of these Regulations prohibits any alteration of mangroves without a permit, with the system for the grant of permits subject to strict regulation. Pursuant to regulation 15, no permit shall be granted in relation to mangroves within existing national parks, nature reserves, wildlife sanctuaries, natural monuments or other protected areas, or where the mangroves are known to be in active nesting sites or resting or breeding sites for bird species.

⁷⁰ Belize, Integrated Coastal Zone Management Plan, 2016, pp. 55–57.

⁷¹ Forests (Protection of Mangroves) Regulations 2018. See also Updated NDC, p. 9.

⁷² Forests (Protection of Mangroves) Regulations 2018, recitals.

CHAPTER 3: LEGAL ARGUMENT

45. As indicated in the Introduction above, in this Chapter, Belize sets out the essential elements of its legal position in response to the question raised in the Request for an Advisory Opinion. At the hearing (and in any further written submissions), Belize will focus on the legal issues of most importance to it and/or those issues on which it considers that it will be able to provide the Tribunal with the most useful assistance.

I. The Scope of the questions

46. As noted in Chapter 1, the questions posed in the Request concern the obligations of States Parties to UNCLOS “including under Part XII” of the Convention. Since the questions are not limited to the obligations under Part XII, they therefore also require consideration of other relevant provisions of the Convention which establish relevant rights and obligations of States Parties. These include:

- (a) Under Article 2(3), the obligation of the coastal State to exercise its sovereignty over the territorial sea “subject to this Convention [including Part XII] and other rules of international law”. With respect to the latter, the Annex VII tribunal in the *Chagos Marine Protected Area Arbitration* held that “the obligation in Article 2(3) is limited to exercising sovereignty subject to the general rules of international law”.⁷³

- (i) Such general rules of international law include the duty to cooperate. The Tribunal has held:

“[T]he duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law.”⁷⁴

The duty to cooperate under general international law is broader than the specific obligation to cooperate identified in Part XII of the Convention (including under Articles 197 and 205) and informs the interpretation and application of other provisions, including those in Part XII.

- (ii) Further relevant rules in this context include the obligations of respect for the environment, precaution and the obligation to conduct an environmental assessment (as referred to in the context of Article 192 below).

⁷³ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 516.

⁷⁴ *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95 at p. 110, para. 82; *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)*, Order of 8 October 2003, ITLOS Reports 2003, p. 10 at p. 25, para. 92; *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4 at p. 43, para. 140; *Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 146 at p. 160, para. 73.

- (b) Under Article 56(2), the obligation of the coastal State, in exercising its rights and performing its duties under the Convention in the EEZ, to “have due regard to the rights and duties of other States” and to “act in a manner compatible with the provisions of this Convention”, including Article 2(3) and Part XII. The requirement to “have due regard to” is highly context-specific,⁷⁵ whilst the requirement to act compatibly with Article 2(3) means that the duty to cooperate is also engaged.
- (c) Specific obligations of conservation and/or protection of the marine environment outside Part XII may be applicable, one example being Article 145.

II. Key definitions

A. “Pollution”

- 47. The first question posed in the Request for an Advisory Opinion focuses on States Parties’ obligations to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change. In providing an opinion on this question, the Tribunal will need to address the meaning of the term “pollution”.
- 48. This term is defined very broadly in Article 1(1)(4) of the Convention as meaning “the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities”.
- 49. The breadth of this definition, and its extension to atmospheric pollution, is confirmed by Articles 194(3)(a) and 212(1) of the Convention.
 - (a) Pursuant to Article 194(3)(a), “the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources [or] from or through the atmosphere” is a form of pollution which States Parties must take measures “designed to minimize to the fullest possible extent”.
 - (b) Article 212 is devoted solely to pollution “from or through the atmosphere”. While pursuant to Article 212(1) States Parties must “adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty”, the obligation is extended further under Article 212(2), which provides:

⁷⁵ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 519 (“the extent of the regard required by the Convention will depend upon the nature of the rights held ..., their importance, the extent of the anticipated impairment, the nature and importance of the activities contemplated ..., and the availability of alternative approaches. In the majority of cases, this assessment will necessarily involve at least some consultation with the rights-holding State”).

“States shall take other measures as may be necessary to prevent, reduce and control such pollution.”⁷⁶

50. As correctly identified in the Proelss Commentary on UNCLOS, greenhouse gas emissions are an example of “pollution ... from ... the atmosphere”.⁷⁷
51. Further, the States Parties no doubt intended for the generic terms “substances” and “energy” to have an evolving meaning, reflecting the development over time of scientific and technological advances and understanding.⁷⁸
52. In light of the above, it is plain that the introduction through the atmosphere of anthropogenic greenhouse gas emissions, that results or is likely to result in deleterious effects to the marine environment, such as ocean acidification, is a form of “pollution” within the meaning of Article 1(1)(4) of the Convention.

B. “Marine environment”

53. Both questions posed in the Request for an Advisory Opinion refer to obligations concerning “the marine environment”. The ordinary meaning of the term “marine environment”, which is not expressly defined in Article 1(1)(4) of the Convention, encompasses all marine zones and areas, including the territorial sea, the EEZ, the high seas and the Area. It is also clear from the definition of “pollution” of the marine environment that “estuaries” and “living resources and marine life” are included. Further, it follows from Article 194(5) that — as is in any event a matter of ordinary meaning — ecosystems and habitats (such as coral reefs, salt water mangrove swamps and areas of sea grass) are included. The “marine environment” also includes the atmosphere above the surface of the sea which is breathed by marine life, such as marine mammals and ocean-dwelling seabirds.⁷⁹ Belize agrees with the following definition which was proposed by the Malta Working Group within the Sea-Bed Committee:

⁷⁶ See also Article 222 (“States shall enforce, within the air space under their sovereignty or with regard to vessels flying their flag or vessels or aircraft of their registry, their laws and regulations adopted in accordance with article 212, paragraph 1, and with other provisions of this Convention and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards concerning the safety of air navigation”), Article 235(2) (“States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction”).

⁷⁷ Alexander Proelss, *The United Nations Convention on the Law of the Sea: A Commentary* (2017), p. 1447, para. 7.

⁷⁸ See *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2009, p. 213 at p. 243, para 66 (“where the parties have used generic terms in a treaty, the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is ‘of continuing duration’, the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning”).

⁷⁹ See Myron H. Nordquist, Satya Nandan and Shabtai Rosenne, *United Nations Convention on the Law of the Sea (“Virginia Commentary”)*, Vol IV (1990), pp. 42–43 (the term ‘marine environment’ will include the atmosphere where relevant”).

“The marine environment comprises the surface of the sea, the air space above, the water column and the sea-bed beyond the high tide mark including the biosystems therein or dependent thereon.”⁸⁰

54. For present purposes, it does not appear necessary to consider the specific height of the air space above the surface of the sea that would fall within the marine environment.

III. The “General Obligation” in Article 192

55. Pursuant to the “general obligation” in Article 192:

“States have the obligation to protect and preserve the marine environment.”

56. Article 192 contains an important, overarching legal obligation to protect *and* preserve the marine environment, which naturally serves as the starting point for the Tribunal’s answer to the questions posed by the Request for an Advisory Opinion.

- (a) It is plain from the use of the term “obligation” in the text of the provision (as well as its heading) that it establishes a legal obligation, as opposed to a mere political principle or aspirational statement.⁸¹
- (b) This is consistent with the identification in the Convention’s Preamble of the “protection and preservation of the marine environment” as a key object and purpose of the Convention. As recognised in the *South China Sea Arbitration*, “[t]he protection and preservation of the marine environment form a prominent component of the legal regime of the Convention”.⁸²
- (c) In the *South China Sea Arbitration*, referring to the jurisprudence of the Tribunal, the tribunal held that, “[a]lthough phrased in general terms, the Tribunal considers it well established that Article 192 does impose a duty on States Parties”.⁸³ In its orders on provisional measures in *M/V “Louisa”* and in *Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D’Ivoire in the Atlantic Ocean*, the Tribunal held that “article 192 of the Convention imposes an obligation on States to protect and preserve the marine environment”.⁸⁴

⁸⁰ Sea-Bed Committee, Malta: Draft Articles on the Preservation of the Marine Environment (including, *inter alia*, the prevention of pollution), UN Doc. A/AC.138/SC.III/L.33 (16 March 1972).

⁸¹ The phrase “States have the obligation” in Article 192 has the same ordinary meaning as the term “shall” in other provisions. There is also no substantive difference between the meaning to be given to the term “obligation” in Article 192 and the term “duty” in Article 193: Virginia Commentary, Vol IV (1990), p. 49.

⁸² See *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 939.

⁸³ *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 941. See also *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4 at p. 38, para. 124 (“It follows from article 57, paragraph 3, and article 62, paragraph 4, as well as from article 192, of the Convention that flag States are *obliged* to take the necessary measures to ensure that their nationals and vessels flying their flag are not engaged in IUU fishing activities”) (emphasis added).

⁸⁴ *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008–2010, p. 58 at p. 70, para. 76; *Dispute Concerning Delimitation*

57. Article 192 has to be read in the context of Article 193. Article 193 recognises the sovereign rights of States Parties to exploit their natural resources pursuant to their environmental policies but requires that this right be exercised “in accordance with their duty to protect and preserve the marine environment” under Article 192. In the event of inconsistency between a State’s exercise of its sovereign rights to exploit its natural resources in the territorial sea or the EEZ and the general obligation to protect and preserve the marine environment, the latter is not overridden.
58. Article 193 thus seeks to strike a balance⁸⁵ between a State’s exercise of its sovereign rights of exploitation of their natural resources (to the extent that these exist pursuant to the Convention, i.e. dependent on the maritime zone at issue) with the obligation to “protect and preserve the marine environment”. Belize considers that one of the important issues for the Tribunal in responding to the Request for an Advisory Opinion will be to provide greater clarity on how that balance has been struck.
59. As to the content of the “general obligation” in Article 192:
- (a) The “general obligation” requires both the “protection” and “preservation” of the marine environment. The tribunal in the *South China Sea Arbitration* explained:

“This ‘general obligation’ extends both to ‘protection’ of the marine environment from future damage and ‘preservation’ in the sense of maintaining or improving its present condition. Article 192 thus entails the positive obligation to take active measures to protect and preserve the marine environment, and by logical implication, entails the negative obligation not to degrade the marine environment.”⁸⁶
 - (b) The tribunal in the *South China Sea Arbitration* held that this obligation is “informed by the other provisions of Article XII and other applicable rules of international law”.⁸⁷ The more specific provisions in Part XII must be read alongside this general obligation but they neither subsume the general obligation nor represent its limits.⁸⁸
 - (c) The “general obligation” “includes” (but is not limited to) due diligence obligations.⁸⁹ As clarified in the *South China Sea Arbitration*, such due diligence obligations entail “a duty to adopt rules and measures to prevent [the

of the Maritime Boundary Between Ghana and Côte D’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 146 at p. 160, para. 69.

⁸⁵ See, e.g., Alexander Proelss, *The United Nations Convention on the Law of the Sea: A Commentary* (2017), pp. 1288–1289, paras. 1–2.

⁸⁶ *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 941.

⁸⁷ *Ibid.*

⁸⁸ See further, with respect to the *travaux préparatoires*, Alexander Proelss, *The United Nations Convention on the Law of the Sea: A Commentary* (2017), pp. 1282–1283, paras. 14–15 (explaining that the qualifying phrase “in accordance with these articles” was removed from the draft text).

⁸⁹ *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, paras. 956, 959, 961.

relevant harmful] acts and to maintain a level of vigilance in enforcing those rules and measures”.⁹⁰

60. The “other applicable rules of international law” (i.e. extrinsic to UNCLOS) that inform the content of the general obligation in Article 192 include, for example⁹¹:
- (a) The duty to cooperate (see para. 46(a)(i) above);
 - (b) The general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States and of areas beyond national control;⁹²
 - (c) The customary international law obligation to conduct an environmental impact assessment (“EIA”), which was recognised in the *Activities in the Area* Advisory Opinion;⁹³ and
 - (d) The precautionary principle.⁹⁴
61. As follows from the meaning of the term “marine environment”, and as has been accepted by the Tribunal and Annex VII tribunals:
- (a) The general obligation in Article 192 applies to all marine zones and areas, both within a State Party’s national jurisdiction and beyond (in contrast to the more

⁹⁰ *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, paras. 961, 974. See also *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4 at p. 37, para. 120 (“As article 129 applies to all maritime areas, including those encompassed by exclusive economic zones, the flag State is under an obligation to ensure compliance by vessels flying its flag with the relevant conservation measures concerning living resources enacted by the coastal State for its exclusive economic zone because, as concluded by the Tribunal, they constitute an integral element in the protection and preservation of the marine environment”).

⁹¹ In addition, see, e.g., Convention Concerning the Protection of the World Cultural and Natural Heritage, Article 6(3).

⁹² *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226 at pp. 241–242, para. 29; *Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 146 at p. 160, para. 71.

⁹³ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 50, para. 145 (“It should be stressed that the obligation to conduct an environmental impact assessment is a direct obligation under the Convention and a general obligation under customary international law”). See also *Pulp Mills on the River Uruguay*, Judgment, ICJ Reports 2010, p. 14 at pp. 82–83, para. 204 (“the obligation to protect and preserve [the aquatic environment], under Article 41 (a) of the Statute, has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource”); affirmed in *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, ICJ Reports 2015, p. 655 at pp. 706–707, para. 104.

⁹⁴ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 47, para. 135.

limited extent of the exercise of sovereign rights of exploitation under Article 193),⁹⁵

- (b) The protection and preservation of the marine environment includes the protection and preservation of living resources and marine life, including (but not limited to) their conservation.⁹⁶

IV. Article 194

62. Article 194 provides:

- “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.
- ...
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” (emphasis added).

⁹⁵ *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 940; *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4 at p. 37, para. 120.

⁹⁶ *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4 at p. 61, para. 216; *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p. 280 at p. 295, para. 70; *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 956.

63. Although the various subparagraphs of Article 194 must be read together, there are some important differences between the specific obligations, as reflected in the different language used.⁹⁷
64. Article 194(1) requires States Parties to take “all measures ... necessary to prevent, reduce and control pollution ... using ... the best practicable means at their disposal and in accordance with their capabilities”.
- (a) Consistent with the general obligation to both protect and preserve the marine environment under Article 192, States Parties are under the obligation to use the best practicable means at their disposal to prevent future pollution (including through the activities of third parties), and to “reduce and control” pollution which already exists in the marine environment.
 - (b) Article 194(3) states that such measures “shall include, *inter alia*, those designed to minimize to the fullest extent possible: (a) the release of toxic, harmful or noxious substances, especially those which are persistent, ... from or through the atmosphere”.
 - (c) The extent of the obligation contained in Article 194(1) is subject to the qualification that States Parties must take measures “in accordance with their capabilities”. Unlike Article 194(2), however, it is not limited to measures concerning pollution of the marine environment through activities that are under the State’s jurisdiction or control.
 - (d) Article 194(1) also contains a less demanding obligation “to endeavour” (as opposed to “take ... all necessary measures”) to harmonise policies in this connection.
65. Article 194(2) requires States Parties to “take all measures necessary to ensure” that: (i) “activities under their jurisdiction or control” do not cause damage by pollution; and (ii) such pollution does not spread beyond areas where they exercise sovereign rights in accordance with the Convention. By contrast to the language of Article 194(1), this obligation is not limited to measures taken by States Parties “in accordance with their capabilities” and it is not merely an obligation “to endeavour” to take certain measures.
66. Pursuant to Article 194(5) of the Convention, the measures taken in accordance with Part XII 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”. As regards the scope of this provision:
- (a) As the tribunal in *Chagos Marine Protected Area Arbitration* found, such measures concern the protection and preservation of this element of the marine

⁹⁷ The Virginia Commentary notes that all the negotiations on Article 194 occurred in informal meetings and there are thus scant records and little guidance for interpretation: see Virginia Commentary, Vol IV (1990), p. 64.

environment generally, as opposed to being limited to measures concerning marine pollution.⁹⁸

- (b) The term “ecosystems” is to be interpreted by reference to internationally accepted definitions, including that in Article 2 of the Convention on Biological Diversity, which reads “a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functioning unit”.⁹⁹
- (c) The term “depleted, threatened or endangered species” is to be understood by reference to international standards, including not only those listed in Appendix I and Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora but also those identified as “vulnerable” and “critically endangered” on the International Union for Conservation of Nature Red List.¹⁰⁰

67. As the tribunal in the *Chagos Marine Protected Area Arbitration* found, Article 194(5) shows that Article 194 as a whole is “not limited to measures aimed strictly at controlling pollution and extends to measures focussed primarily on conservation and the preservation of ecosystems”.¹⁰¹ Although Article 194(1) and Article 194(2) refer expressly to “pollution”, they also encompass other forms of harm to the marine environment. In any event, the general obligation to protect and preserve the marine environment in Article 192 (which is a key object and purpose of the Convention, as reflected in the Convention’s Preamble¹⁰²) requires that States Parties take all measures necessary to ensure that activities under their jurisdiction or control are conducted so as not to cause harm to the marine environment, and that harm arising from incidents and activities under their jurisdiction or control does not spread beyond the areas where they exercise their sovereign rights in accordance with the Convention.

68. The obligations imposed by Article 194(1)–(3) and (5) include, but are not limited to, due diligence obligations (consistent with the content of Article 192). In *Activities in the Area*, the Tribunal explained:

“The content of ‘due diligence’ obligations may not easily be described in precise terms. Among the factors that make such a description difficult is the fact that ‘due diligence’ is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or

⁹⁸ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, paras. 320, 538.

⁹⁹ *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 945 quoting the Convention on Biological Diversity, Article 2.

¹⁰⁰ See e.g. Belize Forest Department – Wildlife Programme, National IUCN Red List for Threatened Avian Species – Belize, 2020.

¹⁰¹ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 538. See also *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 945.

¹⁰² The fourth paragraph of the Convention’s Preamble states: “Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment” (emphasis added).

technological knowledge. It may also change in relation to the risks involved in the activity. As regards activities in the Area, it seems reasonable to state that prospecting is, generally speaking, less risky than exploration activities which, in turn, entail less risk than exploitation. Moreover, activities in the Area concerning different kinds of minerals, for example, polymetallic nodules on the one hand and polymetallic sulphides or cobalt rich ferromanganese crusts on the other, may require different standards of diligence. The standard of due diligence has to be more severe for the riskier activities.”¹⁰³

69. Applying this reasoning in the context of the question posed to the Tribunal, Article 194(1)–(3) and (5) all impose due diligence obligations, albeit of a precisely worded and elevated form.
- (a) This follows both from the specific language used (in particular the words “all necessary measures”, “best practicable means” and “to the fullest extent possible”), as well as from the fact that it is now accepted science that anthropogenic greenhouse gas emissions pose an extreme risk to the marine environment. The standard of due diligence has to be more stringent for such activities, consistent with the wording of Article 194 and with the reasoning in the *Activities in the Area* Advisory Opinion.
 - (b) Although different Convention provisions using the words “to ensure” and “responsibility to ensure” have been interpreted by the Tribunal as referring to an obligation to exercise due diligence, the reasoning of those decisions was of course focussed on the provisions at issue (namely, Article 139(1) and Annex III, Article 4(4) in *Activities in the Area*, and Articles 58(3) and 68(4) in *SFRC*).¹⁰⁴ None of those decisions entailed detailed consideration of the extent of the obligations imposed by Articles 194(1) or 194(2),¹⁰⁵ which are materially different to the provisions previously addressed, including because they impose an obligation to take “all necessary measures”.
70. The question of what measures are “necessary” for the purposes of Article 194 — including to prevent, reduce or control pollution of the marine environment, and protect and preserve rare or fragile ecosystems and certain habitats — is an objective one.
71. The question of what measures are necessary to prevent, reduce and control pollution / damage by pollution to the marine environment caused by anthropogenic greenhouse gas emissions released into the atmosphere could be determined by reference to scientific criteria established by regulations adopted pursuant to Article 201 of the

¹⁰³ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 43, para. 117.

¹⁰⁴ *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4 at pp. 38–40, paras. 126–129; *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 41, paras. 110–112.

¹⁰⁵ Cf *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at pp. 41–42, paras. 112–113, merely noting that Article 194(2) is an example of a provision which uses the words “to ensure”.

Convention. In the absence of such regulations, the necessary measures would be assessed by multiple factors, including with reference to:

- (a) Application of the precautionary principle alongside identification and application of the best scientific means available;
- (b) The need for measures to be effective;
- (c) Reports such as those of the Intergovernmental Panel on Climate Change (“IPCC”);
- (d) Other obligations of the relevant State, including within the framework of the UNFCCC; and
- (e) As applicable, the results of relevant monitoring and environmental assessment.¹⁰⁶

V. Articles 200 and 204–206

72. Section 4 of Part XII of the Convention contains important obligations concerning monitoring and environmental assessment, which are highly relevant to the questions posed in the Request for an Advisory Opinion. Section 4 also includes reporting obligations, which are to be seen in the context of the provisions requiring global and regional cooperation in Section 2 of Part XII, including Article 200 which provides:

“States shall cooperate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies” (emphasis added).

73. Article 204 of the Convention states:

- “1. States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to observe, measure, evaluate or analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment.
2. In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to

¹⁰⁶ See, by analogy, *Pulp Mills on the River Uruguay*, Judgment, ICJ Reports 2010, p. 14 at pp. 82–83, para. 204 (“It is the opinion of the Court that in order for the Parties properly to comply with their obligations under Article 41 (a) and (b) of the 1975 Statute, they must, for the purposes of protecting and preserving the aquatic environment with respect to activities which may be liable to cause transboundary harm, carry out an environmental impact assessment”).

determine whether these activities are likely to pollute the marine environment.”

74. Article 205 of the Convention states:

“States shall publish reports of the results obtained pursuant to Article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.”

75. Article 206 of the Convention states:

“When States have reasonable ground for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.”

76. The monitoring and assessment obligations in Articles 204 and 206 are very important tools for achieving compliance with the general obligation in Article 192 to protect and preserve the marine environment (see paras. 55–61 above) and the more specific obligation on States Parties in Article 194(2) to “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” (see paras. 62–71 above). The publication and/or communication of environmental assessments, as required by Article 205, is linked to obligations of cooperation, including as set out in Article 200.

77. Although Article 206 (and Article 204) refer expressly to “pollution”, the obligation to conduct an environmental assessment applies equally with respect to other forms of harm to the marine environment. This is clear from the text of Article 206 itself, which refers to activities which may cause “substantial pollution of or significant and harmful changes to the marine environment” (emphasis added). It also follows from the overarching general obligation to protect and preserve the marine environment in Article 192 (which is a key object and purpose of the Convention: see paras. 56(b), 67 above), as well as from the customary international law requirement to conduct an EIA.¹⁰⁷ As the tribunal in the *Chagos Marine Protected Area Arbitration* observed, procedural rules such as Article 206 “may, indeed, be of equal or even greater importance than the substantive standards existing in international law”.¹⁰⁸

78. Pursuant to the ordinary meaning of the words in Article 206, the obligation to conduct an environmental assessment applies whenever there are reasonable grounds for believing that the planned activities may cause substantial pollution or significant and

¹⁰⁷ See, e.g., *Pulp Mills on the River Uruguay*, Judgment, ICJ Reports 2010, p. 14 at pp. 82–83, para. 204.

¹⁰⁸ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 322.

harmful changes to the marine environment. This is not limited to activities at sea but also includes land-based activities.¹⁰⁹

79. While the tribunal in the *South China Sea Arbitration* suggested that the terms “reasonable” and “as far as practicable” “contain an element of discretion for the State concerned”,¹¹⁰ Article 206 is far from being a self-judging provision. Article 206 is to be interpreted in the context of other relevant provisions of the Convention, including Part XII, particularly Articles 192 and 194(2), and taking into account other relevant rules of general international law applicable between States Parties, including the duty to cooperate, the customary international law obligation to conduct an EIA, and the precautionary principle. This is particularly significant when it comes to:
- (a) Identifying when the obligation to conduct an environmental assessment will be triggered, including the meaning of the words “reasonable grounds”, “believing”, “planned activities”, “under their jurisdiction or control”, “may cause” and “substantial pollution of or significant and harmful changes”; and
 - (b) Considering the required content of the environmental assessment.
80. As to when the obligation under Article 206 to conduct an environmental assessment will be triggered:
- (a) The requirement to base the State’s belief on “reasonable grounds” implies that the obligation cannot be circumvented through reliance on an unreasonable belief as to the absence of risk.¹¹¹ An example of unreasonableness would be the failure to apply the precautionary principle.
 - (b) Given their ordinary meaning, the words “may cause” refer to a possibility, as opposed to a likelihood, of substantial pollution or of significant and harmful changes to the marine environment. This is confirmed by the fact that, during drafting of the Convention, the word “believing” replaced the word “expecting”, which would have implied a belief in a likelihood, as opposed to a possibility.¹¹² Any attempt to attribute a higher degree of probability to the word “may” would run counter to Article 192, Article 194 and the duty to cooperate under general international law.
 - (c) The obligation covers all “planned activities under their [i.e., the State’s] jurisdiction or control”. It is not limited to the State’s planned activities only. This also follows from the “general obligation” in Article 192, as well as the specific obligation under Article 194(1) to take all necessary measures to “prevent, reduce and control pollution of the marine environment from any

¹⁰⁹ See also, e.g., *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95 at p. 110, para. 82, p. 111, dispositif para. 1(c).

¹¹⁰ *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 948.

¹¹¹ In this regard see also Article 300 of the Convention: “States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.”

¹¹² Third United Nations Conference on the Law of the Sea, Revised Single Negotiating Text (Part III), UN Doc. A/CONF.62/WP.8/REV.1/PART III (1976), available at https://legal.un.org/diplomaticconferences/1973_los/docs/english/vol_5/a_conf62_wp8_rev1_part3.pdf, p. 175 (Article 16).

source” and the obligation under Article 194(2) to “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 do not spread beyond the areas where they exercise sovereign rights.¹¹³

- (d) Planned activities will be “under [a State’s] jurisdiction or control” when they are to take place on territory over which the State exercises sovereign rights (i.e., the territorial sea and the EEZ), as well as in any territory over which the State in fact exercises jurisdiction or control (such as occupied territory), and/or when the State exercises jurisdiction or control over the actor who it is planned will engage in the relevant activities even if they are to occur outside the territory over which the State has jurisdiction or control (such as where a State sponsors a company to engage in mining exploration and/or exploitation activities in the Area).
- (e) Pursuant to its ordinary meaning, the broad and unqualified term “planned activities” captures both specific new activities which are planned by a developer or contractor (regardless of whether those activities or that developer/contractor are connected to the State), as well as any policy decision by a State as to whether to allow certain forms of activity on territory over which it exercises jurisdiction or control (such as the exploration, exploitation and/or use of a specific type of fossil fuel) or by persons over which it exercises jurisdiction or control. It follows that Article 206 encompasses an obligation, as appropriate, to conduct a strategic environmental assessment (“SEA”), i.e. an evaluation of the environmental implications of a proposed policy, plan or programme such that the State has the means for looking at cumulative effects and addressing them at the earliest stage of decision making, as well as an environmental assessment.¹¹⁴
- (f) The words “substantial” and “significant” in Article 206, neither of which are defined, do not imply a particularly high threshold. In light of the general obligation to preserve and protect the marine environment in Article 192 and the specific obligation in Article 194(2) (which is broadly drafted to encompass all “damage”), as well as the duty to cooperate under general international law, Article 206 is to be interpreted as applying with respect to any harm to the marine environment that is more than minor or transitory.

81. Pausing here, if the marine environment of the world’s seas and oceans is to be protected from the severe harms caused by pollution and other adverse impacts of climate change, it appears essential that environmental assessments (including EIAs and SEAs) with respect to those impacts becomes a form of reflex for planned activities, with the reports of such environmental assessments being shared consistent with Article 205, such that not only the State concerned but also the public are fully informed as to

¹¹³ See *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 944 (“Articles 192 and 194 set forth obligations not only in relation to activities directly taken by States and their organs, but also in relation to ensuring activities within their jurisdiction and control do not harm the marine environment”).

¹¹⁴ Such an obligation is set out expressly in Draft Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, Article 41 *ter*.

potential impacts. Environmental assessment and also public scrutiny are considered by Belize to be critical tools in the protection and preservation of the marine environment.

82. The required content of an environmental assessment will depend on the specific circumstances of each case.¹¹⁵ As a minimum, the assessment would have to meet the criteria established in the domestic law of the relevant State (as established as a matter of customary international law¹¹⁶). However, it does not follow that this would be sufficient. Most obviously the domestic law at issue might not establish criteria sufficient to meet the elevated standards of due diligence reflected in Articles 192 and 194 which provide the relevant context in which Article 206 must be interpreted and applied (such as if the domestic law took no account of the precautionary principle or best available scientific means).
83. Articles 192, 194 and 206 impose obligations of an *erga omnes partes* character, meaning that any State Party is entitled to invoke the responsibility of another State Party for breach of its obligations.¹¹⁷

VI. Article 207

84. Article 207 imposes on States obligations in respect of pollution from land-based sources, including as follows:
- “1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.
 2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
 - ...
 5. Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1, 2 and 4 shall include those designed to minimize, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment.”
85. According to the Proelss Commentary on the Convention, Article 207(1) — addressing the adoption of “laws and regulations” — “preserve[s] a certain degree of ... freedom of action in order to balance environmental protection measures against [States Parties’]

¹¹⁵ *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, ICJ Reports 2015, p. 655 at pp. 706–707, para. 104.

¹¹⁶ *Pulp Mills on the River Uruguay*, Judgment, ICJ Reports 2010, p. 14 at pp. 83–84, para. 205.

¹¹⁷ See *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 at p. 59, para. 180 (“Each State Party may also be entitled to claim compensation in light of the *erga omnes* character of the obligations relating to the preservation of the environment of the high seas and in the Area”).

economic needs”,¹¹⁸ as it allows States Parties simply to have regard to “internationally agreed rules, standards and recommended practices and procedures” in determining what laws and regulations to adopt. In contrast, Article 207(2) — regarding “other measures” — does not embody the same flexibility; it requires States to take other measures as may be necessary to prevent, reduce and control pollution from land-based sources. Article 207(5) make clear that such measures include those design to minimise pollution “to the fullest extent possible”. Significantly, a State must take measures which *may be* necessary for combatting pollution, even if it is not ascertainable that they *are* necessary for that purpose.¹¹⁹

VII. Article 208

86. Article 208(1) requires coastal States to “adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction”. Article 208(2) provides that “States shall take other measures as may be necessary to prevent, reduce and control such pollution” — repeating the “may be necessary” formulation in Article 207(2) analysed above.¹²⁰
87. Article 208(3) states that such laws, regulations and measures “shall be no less effective than international rules, standards and recommended practices and procedures”. This imposes on States a minimum standard for their own laws, regulations and measures, and is thus a more demanding stipulation than that in Article 207(1) which requires merely that a State take account of international rules, standards, practices and procedures in determining what laws and regulations they adopt.¹²¹

VIII. Conclusion and suggested responses to the questions posed in the Request

88. While Belize intends to develop its position on the response to the questions at the hearing and in any further written submissions, it considers that, in brief terms, the specific obligations of the State Parties to UNCLOS under Part XII are as follows.
89. As to sub-question (a), i.e. the obligations “to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere”:
- (a) The obligations which are of particular importance (for the reasons outlined above) are those contained in Articles 194(1)–(3) and (5), 197, 200, 201, 204–208, 212 and 222.
 - (b) As follows from the terms used in these provisions and the existential risks posed to the marine environment by anthropogenic greenhouse gas emissions,

¹¹⁸ Alexander Proelss, *The United Nations Convention on the Law of the Sea: A Commentary* (2017), p. 1381, para. 3.

¹¹⁹ *Ibid.*, p. 1386, para. 11.

¹²⁰ See para. 29 above.

¹²¹ Alexander Proelss, *The United Nations Convention on the Law of the Sea: A Commentary* (2017), pp. 1396–1397, para. 12.

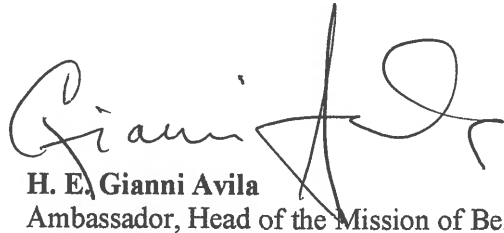
States must *inter alia* exercise an enhanced and elevated due diligence in the performance of the obligations set out in the said provisions.

- (c) In the absence of regulations adopted pursuant to Article 201, the necessary measures to be taken under Articles 194(1)–(3) and (5) and 212(2) should be assessed by reference to multiple factors, in particular by reference to:
 - (i) Application of the precautionary principle alongside identification and application of the best scientific means available;
 - (ii) The need for measures to be effective;
 - (iii) Reports such as those of the IPCC;
 - (iv) Other obligations of States, including within the framework of the UNFCCC; and
 - (v) As applicable, the results of relevant monitoring and environmental assessment.
 - (d) In the performance of the obligations referred to above, monitoring, reporting and environmental assessment (including in the form of EIAs and SEAs) play a particularly important role.
90. As to sub-question (b), i.e. the obligations “to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification”:
- (a) The same considerations apply through application of Article 192, which underpins obligations as further detailed in the provisions noted above, but also establishes independent and freestanding obligations to both protect and preserve the marine environment.
 - (b) In the performance of these obligations, monitoring, reporting and environmental assessment (including in the form of SEAs) play a particularly important role.
91. Further, the States Parties are subject to obligations arising under customary international law, including those that may be applicable dependent on the maritime zone at issue, including by virtue of Articles 2(3) and 56(2) of the Convention.

SUBMISSIONS

For the reasons set out in this Written Statement, Belize makes the following submissions:

- (a) The Tribunal has jurisdiction to give the Advisory Opinion requested and should exercise its discretion to answer the questions posed.
- (b) Anthropogenic greenhouse gas emissions constitute a form of pollution of the marine environment, within the meaning of Article 1(1)(4) of the Convention.
- (c) The obligations of States Parties to the Convention include those stated in paras. 89–91 above.



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16 June 2023