

INTERNATIONAL COURT OF JUSTICE
OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
(REQUEST FOR ADVISORY OPINION)

Public hearings

11 December 2024 (afternoon)

Oral observations of the Republic of Slovenia

Introduction

Dr. Marko Rakovec, Director-General of the Directorate for International Law, Ministry of Foreign and European Affairs of the Republic of Slovenia (8 minutes)

Mister President, Madame Vice-President, Members of the Court,

1. It is an honour to appear before you, and to present, together with our counsel, the oral observations of the Republic of Slovenia.

2. In its Written Statement¹, the Republic of Slovenia emphasised the importance it attaches to these advisory proceedings and to the issues raised by the General Assembly in its request. Slovenia, together with the Member States of the European Union, fully supported and cosponsored the Assembly's Resolution 77/276². This is because, as set out in the first preambular paragraph of that resolution:

¹ Written Statement of the Republic of Slovenia, paras. 3-4.

² *Ibid.*, para. 3. See also UNGA Draft resolution, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, A/77/L.58, 1 March 2023. See also *Official Records of the General Assembly*, seventeen-seventh session, 64th plenary meeting, 29 March 2023, A/77/PV.64, p. 8 [Dossier No. 3].

“[C]limate change is an unprecedented challenge of civilizational proportions and ... the well-being of present and future generations of humankind depends on our immediate and urgent response to it”³.

As the principal judicial organ of the United Nations, the contribution of the Court by clarifying existing international law in respect of climate change will be, without doubt, of great importance and value. The outcome of these proceedings will constitute the framework within which the international community needs to “pursu[e] further ambitious and effective action, including through international negotiations, to tackle climate change”⁴ for the benefit of present and future generations of humankind.

3. Mr. President, the written proceedings and the oral observations that you have already listened to since last Monday make it clear: the questions submitted to your scrutiny by the General Assembly are of greatest concern to the international community as a whole; and they are complex and, as formulated, considerably large in their scope. In particular, the first question demands the Court to identify the obligations of States under international law to ensure the protection of the climate system and other parts of the environment, without any further limitation. It refers to certain international instruments establishing rules expressly recognized by and applicable in the relations of the State parties concerning climate change and its consequences. The General Assembly also indicated that you should have “particular regard” to these instruments⁵. But you have not been asked to opine on the obligations of the State parties to these conventions under the provisions of these instruments, only. The question to be answered is broader and concerns the obligations of States under international law *tout court*.

4. I am proud to say that Slovenia ratified or adhered to all the international treaties listed in the request⁶ and encourages all States that have not yet done so to become parties to them and to fully respect and implement the obligations contained therein. As the Prime Minister of

³ UNGA resolution 77/276, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, 29 March 2023, first preambular para. [Dossier No. 2].

⁴ *Official Records of the General Assembly*, seventeen-seventh session, 64th plenary meeting, 29 March 2023, A/77/PV.64, p. 7-8 [Dossier No. 3].

⁵ UNGA resolution 77/276, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, 29 March 2023 [Dossier No. 2].

⁶ Charter of the United Nations, see *UNTS*, vol. 1675, p. 223; International Covenant on Civil and Political Rights, see *ibid.*, vol. 1679, p. 497; International Covenant on Economic, Social and Cultural Rights, see *ibid.*, p. 496; United Nations Framework Convention on Climate Change, see *ibid.*, vol. 1899, p. 114; Paris Agreement, see *ibid.*, vol. 3164, p. 443; United Nations Convention on the Law of the Sea, see *ibid.*, vol. 1870, p. 505.

Slovenia, Mr. Robert Golob, reiterated before the General Assembly last September, tackling impacts of climate change as a “global challenge demands a global and collaborative response”⁷.

5. This being said, the Republic of Slovenia has chosen to limit its observations to one specific aspect: the right to a clean, healthy and sustainable environment as a fundamental human right.

6. Slovenia is particularly attached to this right. It has been recognised on Slovenia’s territory since 1974; and Article 72 of its 1991 Constitution explicitly provides that “[e]veryone has the right in accordance with the law to a healthy living environment”⁸. The Republic of Slovenia has also been at the forefront, together with Costa Rica, the Maldives, Morocco, and Switzerland⁹, of the recognition of the right to a clean, healthy and sustainable environment in General Assembly resolution 76/300¹⁰. Slovenia’s commitment to the right to a clean, healthy and sustainable environment is also evidenced by the recent President’s Forum providing for a nation-wide consultation on the implementation of this right, held under the auspices of H.E. Nataša Pirc Musar, President of the Republic of Slovenia, with the objective to discuss measures needed for its full implementation, including in the context of climate change. Promoting international cooperation is a key element of Slovenia’s commitment in addressing climate change, including the realisation of the right to a clean, healthy and sustainable environment, but also the promotion of the right of everyone to drinking water, recognised by its Constitution since 2016¹¹. Slovenia has been a leader in promoting international cooperation to ensure access to safe drinking water for all, for instance, by establishing the Global Alliance to Spare Water from Armed Conflicts together with States from all continents¹².

⁷ Statement by H. E. Mr Robert Golob, Prime Minister of the Republic of Slovenia, at the 79th Session of the United Nations General Assembly General Debate, available at <https://buildingtrust.si/statement/statement-at-the-79th-session-of-the-unga-general-assembly-general-debate/>.

⁸ Constitution of the Republic of Slovenia, Article 72, *Official Gazette of the Republic of Slovenia*, Nos. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a and 92/21 – UZ62a (available at <https://www.us-rs.si/media/constitution.pdf>).

⁹ *Official Records of the General Assembly*, seventy-sixth session, 97th plenary meeting, 28 July 2022, A/76/PV.97, p. 5 (Ms. Chan Valverde (Costa Rica)).

¹⁰ UNGA resolution 76/300, *The human right to a clean, healthy and sustainable environment*, 28 July 2022 [Dossier No. 260].

¹¹ Article 70a, Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia, *Official Gazette of the Republic of Slovenia*, No. 75/16.

¹² See <https://buildingtrust.si/newly-established-global-alliance-aspires-to-better-protect-water-in-armed-conflicts/>.

7. Mr. President, Members of the Court, the protection of the climate system and the environment of which it is part does not concern State to State relations only. It is a central issue for the enjoyment of fundamental rights by all individuals, if not the existence of humankind as such. Your Court already recognized that “the environment [and certainly the climate system, too] [are] not an abstraction but represent[] the living space, the quality of life and the very health of human beings, including generations unborn”¹³. It also attached “great significance ... to respect for the environment, not only for States but also for the whole of mankind”¹⁴. Last May, the Tribunal in Hamburg confirmed that “climate change represents an existential threat and raises human rights concerns”¹⁵ and that “climate change is recognized internationally as a common concern of humankind”¹⁶. The protection of the climate system and the environment at large, these are issues where States do not have only interests of their own; but they need to pursue, one and all, a common interest, namely, the protection of the living space and the very health and existence of human beings. Therefore, Mr. President, the legal obligations of States in respect of climate change and its effects must be seen, addressed, and maybe further developed with due regard to its human right dimension and its benefit for humankind everywhere, now and in particular in the future. To take the words of the United Nations Secretary-General, “[w]e must stand up for all rights — always”, including, as he specifically mentioned last Friday, the right to a clean, healthy and sustainable environment¹⁷.

Mr. President, Members of the Court, thank you for your kind attention. Mr. President, may I ask you to give now the floor to Professor Vasilka Sancin who will present Slovenia’s position concerning the right to a clean, healthy and sustainable environment as an inherent part of the existing legal framework addressing climate change.

¹³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 241-242, para. 29; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 41, para. 53; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*, p. 132, para. 72. See also *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion of 21 May 2024*, para. 166.

¹⁴ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 41, para. 53.

¹⁵ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion of 21 May 2024*, para. 66.

¹⁶ *Ibid.*, para. 122.

¹⁷ United Nations, Secretary General, “Human Rights Are about Building the Future — Right Now” Says Secretary-General, Marking International Day, Press Release, SG/SM/22488, 6 December 2024, available at <https://press.un.org/en/2024/sgsm22488.doc.htm>.

I. The existence of the right to a clean, healthy and sustainable environment

Prof. Vasilka Sancin (11 minutes)

Mister President, Madam Vice-President, distinguished Members of the Court,

1. It is an honour and a privilege to appear before you on behalf of the Republic of Slovenia.

2. Within the limits chosen by Slovenia for today's oral presentation, to focus on the right to a clean, healthy and sustainable environment as a fundamental human right, I wish to observe at the outset that the vast majority of participants in these proceedings agree on the applicability of the international human rights law as a relevant legal framework to respond to the questions posed to the Court. In the limited time available I cannot go over the grounds covered by many States explaining the need for a systemic approach in which international human rights law plays an important part. Regardless of any potential divergence of views concerning the effects of primacy of the climate change legal regime among participating States, the inapplicability of human rights obligations to address the questions posed had not been convincingly substantiated. And, Mr. President, it cannot be substantiated given that the Preamble of the landmark Paris Agreement expressly provides that State parties:

“should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, persons with disabilities, and people in vulnerable situations”¹⁸.

This does not only imply that State parties need to ensure that their actions are consistent with their human rights obligations, but also that respect for and enhancement of human rights require appropriate actions concerning the protection of the climate system and the environment more largely.

¹⁸ Paris Agreement, Paris, 12 December 2015, United Nations, *Treaty Series*, vol. 3156, p. 79.

3. Mr. President, in addressing climate change, the re-establishment of business as usual is simply not possible. As the United Nations Secretary-General António Guterres stated “[t]he climate crisis has passed the point of no return”¹⁹. We are responding to circumstances of irreversible harm to our planet and consequently humankind, which is not limited by duration, meaning that the legal notion of “state of emergency”, treating climate change as a one-off event with extraordinary legal solutions, cannot properly address the climate crisis. It is essential to tackle the changing climate within the generally applicable legal order and in a sustainable manner, rather than searching for *ad hoc* solutions each time climate change creates new realities. Slovenia is, like other countries, not immune to extreme weather events, and had to recently face unprecedented wildfires and floodings affecting the entire country. Nevertheless, Slovenia did not consider declaring a state of emergency, but rather treated the events as symptoms of the climate change crisis requiring urgent actions. It is therefore inappropriate to use the notion of climate emergency, alluding to possible human rights derogations, in any legal discourse. The recognition of the climate crisis as a human rights crisis urgently requires a holistic human rights-based approach when addressing the protection of the environment and the climate system.

4. Turning now to the central argument in this part of Slovenia’s contribution, *i.e.*, the right to a healthy, clean and sustainable environment as an inherent element of existing human rights legal framework.

5. Mr. President, Members of the Court, today, more than 4/5 of the United Nations Member States recognized this right in their domestic law, at national or regional level. The right to a healthy, clean and sustainable environment or elements thereof are expressly recognized in regional human rights instruments across continents²⁰. Other international

¹⁹ United Nations, Press Release, Climate Crisis Past Point of No Return, Secretary-General Says, Listing Global Threats at General Assembly Consultation on ‘Our Common Agenda’ Report, March 2022, available at <https://press.un.org/en/2022/sgsm21173.doc.htm>.

²⁰ Article 24, African Charter on Human and Peoples’ Rights, Nairobi, 27 June 1981, United Nations, *Treaty Series*, vol. 1520, p. 217; Article 11, Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights (Protocol of San Salvador), San Salvador, 17 November 1988, Organization of American States, *Treaty Series*, No. 69; Article 38. For an English translation of the Arab Charter on Human Rights, *see* UN doc. CHR/NONE/2004/40/Rev.1; ASEAN Human Rights Declaration, 19 November 2012, para. 28 (available at <https://asean.org/asean-human-rights-declaration/>).

agreements also specifically refer to it, for example, the Aarhus Convention²¹, and the Escazú Agreement²².

6. As stated by Dr. Rakovec, Slovenia was a strong promotor of the Human Rights Council resolution 48/13²³ and the General Assembly resolution 76/300²⁴, that specifically emphasized not only the existence of the right to a clean, healthy and sustainable environment, but also its close relationship with other fundamental rights of the human person. Allow me to quote the relevant part: “the right to a clean, healthy and sustainable environment is related to other rights and existing international law”²⁵.

7. Moreover, the 2023 Meeting of the State Parties to the Paris Agreement, counting 195 States, also explicitly reaffirmed the existence of a right to a clean, healthy and sustainable environment in its decision, adopted by consensus²⁶. The large consensus between States, within the General Assembly and within the Conference of Parties to the United Nations Framework Convention on Climate Change and the Paris Agreement, together with the widespread recognition of the right in the domestic laws of a great number of States, as well as regional or international conventions and instruments, confirms that, in the opinion of States and the international community, this right, as a human right, is an essential element of the existing international legal framework.

8. Several United Nations human rights treaty bodies have taken a similar view when interpreting human rights treaties and their provisions stressing the interoperability between international environmental law and international human rights law, recognizing that the latter needs to be assessed and interpreted also in the light of the former. Other participants in these proceedings have already brought to the Court’s attention relevant references to interlinkages between the human rights treaties and the protection of the environment, such as those

²¹ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998, United Nations, *Treaty Series*, vol. 2161, p. 447.

²² Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin American and the Caribbean, Escazú, 4 March 2018, United Nations, *Treaty Series*, vol. 3397.

²³ United Nations, Human Rights Council, Resolution 48/13, The human right to a clean, healthy and sustainable environment, 8 October 2021.

²⁴ United Nations, General Assembly, resolution 76/300, The human right to a clean, healthy and sustainable environment, 28 July 2022.

²⁵ *Ibid.*, para. 2.

²⁶ Decision [4]/CMA.5, Outcome of the first global stocktake, in United Nations Framework Convention on Climate Change, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fifth session, held in Dubai from 30 November to 12 December 2023, Addendum, 13 December 2023, FCCC/PA/CMA/2023/L.17.

appearing in the General Comment No. 36²⁷ of the Human Rights Committee or the General Comment No. 26 of the Committee on the Rights of the Child²⁸, the Joint Statement on “Human Rights and Climate Change” by five committees²⁹, in addition to the relevant decisions in specific cases³⁰. As already recognized by this Court, the interpretation of human rights instruments by their respective treaty bodies specifically created to supervise their application should be ascribed great weight in order to achieve the necessary clarity and the essential consistency of international law³¹.

9. The common feature of the aforementioned decisions is that a clean and healthy environment is an implied precondition for the full enjoyment of relevant human rights. The right to a clean, healthy and sustainable environment forms part of general international law and produces at least two sets of legal effects: first, it calls for systemic consideration of this right when interpreting and applying States’ obligations under international law relating to climate change; and, second, it entails compliance with its inherent due diligence requirement in relation to obligations of States, which include preventing, controlling and addressing environmental harm, not only when the harm threatens the territory of other States, but importantly, when it threatens the individuals within their jurisdiction.

10. The systemic interpretation promotes coherence across international law, as the right to a clean, healthy and sustainable environment connects various areas of international law and requires from States to give weight to this right as a guiding principle. The right’s inherent due diligence requirement concerns existing obligations, which include, but are not limited to ensuring that populations, particularly those in most vulnerable situations – all Helens of Saint Lucia’s across the World – are being shielded from climate-related harms, such as

²⁷ Human Rights Committee, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 1999, para. 62.

²⁸ Committee on the Rights of the Child General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023.

²⁹ Joint Statement by the the Committee on the Elimination of Discrimination Against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child and Committee on the Rights of Persons with Disabilities, United Nations, International Human Rights Instruments, [HRI/2019/1](#), 14 May 2020.

³⁰ *Portillo Cáceres v. Paraguay* (CCPR/C/126/D/2751/2016); *Benito Oliveira et al. v. Paraguay* (CCPR/C/132/D/2552/2015); *Ioane Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016); *Billy et al v. Australia* (CCPR/C/135/D/3624/2019); Inter-American Court of Human Rights, *State Obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: Interpretation and scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2*, Advisory Opinion, OC-23/17, 15 November 2017; *KlimaSeniorinnen v. Switzerland*, App No. 53600/20, ECtHR, 9 April 2024.

³¹ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, *I.C.J. Reports 2010*, p. 639, para. 66.

disappearance of land territories due to sea-level rise, air pollution, water scarcity, or extreme heat. This required due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if States do not engage in robust national and international efforts to prevent adverse impacts of climate change, subject to the States' common but differentiated responsibilities and their respective capabilities. This obligation is of crucial importance to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with their international legal obligations are entitled.

11. Slovenia is fully convinced that the right to a clean, healthy and sustainable environment, as well as other fundamental human rights, for which the realization of the former is a necessary prerequisite, are the relevant benchmark for States to duly and diligently implement their respective obligations under the relevant legal framework to adequately address adverse impacts of climate change.

Members of the Court, thank you for your time and attention. I now respectfully ask you, Mr. President, to give the floor to Dr. Daniel Müller who will clarify Slovenia's position *sur le droit à un environnement propre, sain et durable*.

II. Le droit à un environnement propre, sain et durable et les obligations des États

M. Daniel Müller, docteur en droit,
avocat à la Cour, associé, FAR Avocats (11 minutes)

Monsieur le président, Mesdames et Messieurs de la Cour,

C'est un grand privilège de me présenter devant vous et de le faire pour assister la République de Slovénie.

1. Lors de la procédure écrite, certains ont soutenu que le droit à un environnement propre, sain et durable n'était non seulement pas inscrit dans les conventions relatives aux droits

fondamentaux, mais, de surcroît, qu'il manquait d'un contenu normatif défini et certain. Aucun de ces deux arguments ne peut remettre en question l'existence même d'un tel droit comme partie intégrante du droit international positif.

2. Il paraît évident que le droit à un environnement propre, sain et durable est par nature, pour ne pas dire par nécessité, évolutif. Il faut à peine rappeler que ce qui est considéré aujourd'hui comme un environnement propre, sain et durable diffère sensiblement de ce que l'on pouvait imaginer il y a 50 ans. À la lumière des progrès de la science, des connaissances et des technologies, nos standards ont changé et avec eux le contenu même du droit à un environnement propre, sain et durable. Ce caractère évolutif ne relègue pas ce droit fondamental au rang de non-droit. En effet, ce droit partage cette particularité avec d'autres droits fondamentaux établis et inscrits dans des principaux instruments internationaux. Il en va ainsi, par exemple, du droit à la santé, voire même du droit à la vie.

3. Dans cette optique, la Cour de Strasbourg a souligné dans l'affaire *Verein KlimaSeniorinnen* que les mesures conçues pour lutter contre le changement climatique et ses effets néfastes nécessitent une action commune dont les contours concrets dépendent nécessairement d'un processus décisionnel démocratique³².

4. Dans le cadre interétatique, ce consensus se traduit notamment par le régime conventionnel relatif au changement climatique et à l'environnement. L'Assemblée générale des Nations Unies a justement souligné que « la promotion du droit à un environnement propre, sain et durable passe par l'application pleine et entière des accords multilatéraux relatifs à l'environnement, conformément aux principes du droit international de l'environnement »³³. À cette fin, elle a appelé les États « à adopter des politiques, à améliorer la coopération internationale, à renforcer les capacités et à continuer de mettre en commun les bonnes pratiques afin d'intensifier les efforts visant à garantir un environnement propre, sain et durable pour tous »³⁴. Là encore, Monsieur le président, il s'agit d'un processus éminemment évolutif et non

³² Cour européenne des droits de l'homme, Grande Chambre, *Verein KlimaSeniorinnen Schweiz et autres c. Suisse*, n° 53600/20, 9 avril 2024, par. 411-412.

³³ Nations Unies, Assemblée Générale, résolution 76/300, Droit à un environnement propre, sain et durable, 28 juillet 2022, par. 3 [Dossier n° 260]. V. aussi Nations Unies, Conseil des Droits de l'homme, résolution 48/13, Droit à un environnement propre, sain et durable, 8 octobre 2021, par. 3 [Dossier n° 279].

³⁴ Nations Unies, Assemblée Générale, résolution 76/300, Droit à un environnement propre, sain et durable, 28 juillet 2022, par. 4 [Dossier n° 260]. V. aussi Nations Unies, Conseil des Droits de l'homme, résolution 48/13, Droit à un environnement propre, sain et durable, 8 octobre 2021, par. 4 [Dossier n° 279].

pas d'une entreprise de codification gravant dans le marbre une fois pour toute ce qui est nécessaire et attendu.

5. Sans qu'il soit possible, utile ou souhaitable d'énumérer l'ensemble des conséquences et obligations qui découlent du droit à un environnement propre, sain et durable, il n'en reste pas moins que ce droit impose aux États certaines obligations générales et génériques qui sont inhérentes à sa nature même.

6. D'abord, et comme la professeure Sancin l'a déjà expliqué, le droit à un environnement propre, sain et durable découle et est inhérent aux autres droits fondamentaux. Ce point a également été concédé lors de ces audiences publiques par ceux qui, pourtant, nient l'existence même de ce droit. Mais, encore une fois, on ne saurait remettre en question ni l'utilité ni le caractère juridique du droit à un environnement propre, sain et durable pour la simple raison qu'il constitue un droit indispensable, inhérent – un préalable nécessaire à la réalisation de l'ensemble des droits fondamentaux ou, pour reprendre les termes du Conseil des Droits de l'homme, « *a human right that is important for the enjoyment of human rights* »³⁵. L'interdépendance des droits de l'homme a par essence pour résultat que les obligations imposées aux États au titre d'un droit fondamental ou un autre puissent être — et bien souvent sont — identiques et visent ensemble à la réalisation et la jouissance effectives de l'ensemble des droits fondamentaux.

7. En tant que droit de l'homme et eu égard à sa nature, son objet et à son but, le droit à un environnement propre, sain et durable comporte des obligations qui sont, par définition, l'affaire de tous les États³⁶. Dans la promotion de ce droit fondamental qui a pour finalité de sauvegarder l'existence même de groupes humains et l'humanité toute entière, les États ne poursuivent pas d'intérêts propres. Ils ont, tous et chacun, l'intérêt commun de la réalisation des bases essentielles pour « l'idéal de l'être humain libre, jouissant des libertés civiles et politiques et libéré de la crainte et de la misère », pour reprendre les termes du préambule des

³⁵ Nations Unies, Conseil des Droits de l'homme, résolution 48/13, Droit à un environnement propre, sain et durable, 8 octobre 2021, par. 1 [Dossier n° 279].

³⁶ *Barcelona Traction, Light and Power Company, Limited (Nouvelle requête : 1962) (Belgique c. Espagne)*, deuxième phase, arrêt, C.I.J. Recueil 1970, p. 32, par. 33. V. aussi *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal)*, arrêt, C.I.J. Recueil 2012, p. 449, par. 68 ; *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar)*, objections préliminaires, arrêt, C.I.J. Recueil 2022, p. 516, par. 107.

Pactes de 1966³⁷. Ainsi, tous les États ont individuellement et collectivement l'obligation de respecter, de garantir et de promouvoir le droit à un environnement propre, sain et durable, d'une part, et chaque État a un intérêt juridique à ce qu'il soit réalisé par tous les autres États, quels qu'ils soient, d'autre part.

8. Ces obligations dues par les États à la communauté internationale dans son ensemble ont deux volets connexes :

- (a) *Premièrement*, le respect du droit à un environnement propre, sain et durable impose des obligations négatives aux États. Ces obligations impliquent que les autorités étatiques s'abstiennent d'intervenir de manière injustifiée dans l'environnement ou le système climatique d'une façon qui compromettrait le droit à un environnement propre, sain et durable en lui-même et en tant que condition préalable à la réalisation d'autres droits fondamentaux, comme le droit à la vie, au meilleur état de santé possible, à un logement convenable, à la sécurité alimentaire, à l'eau potable salubre et propre etc.
- (b) *En deuxième lieu*, la réalisation de ce droit requiert que les États définissent et prennent des mesures actives pour le sauvegarder et le promouvoir activement. Ces obligations positives visent en particulier l'atténuation du changement climatique, l'adaptation au changement climatique, l'assistance et le soutien à ceux qui sont les plus vulnérables et à d'autres pour qu'ils ne deviennent vulnérables dans un avenir proche, et ce par le biais d'une assistance financière, d'un transfert de technologie et d'un renforcement des capacités, par exemple.

9. Tous les États doivent assumer les obligations négatives et positives pour la réalisation de l'objectif commun, même s'ils ne sont pas nécessairement dans la même position et dans les mêmes conditions pour mettre en place les mesures nécessaires. Cet objectif ne saurait être réalisé que par une coopération internationale efficace, des efforts nationaux et internationaux vigoureux et ambitieux tenant dument compte des responsabilités communes mais différenciées des États, leurs capacités respectives et leur situation sociale et économique eu égard aux différentes situations nationales. Les États ont déjà commencé à mettre en place une telle coopération dans le cadre de conventions internationales concernant la protection de

³⁷ Pacte international relatif aux droits civils et politiques, New York, 16 décembre 1966, Nations Unies, *Recueil des Traités*, vol. 999, p. 188 ; Pacte international relatif aux droits économiques, sociaux et culturels, New York, 16 décembre 1966, *ibid.*, vol. 993, p. 14.

l'environnement et le changement climatique. Ils ont l'obligation de poursuivre le développement de ce régime et de l'adapter si et quand c'est nécessaire afin d'assurer la réalisation du droit fondamental à un environnement sain et celles des droits de l'homme tout court. L'échec n'est pas une option.

10. Avant de clore l'exposé de la République de Slovénie, il me reste à faire un dernier point, Monsieur le président, au sujet de la seconde question posée par l'Assemblée générale. Un certain nombre de participants à la présente procédure y voit une invitation à la Cour de se prononcer sur la légalité de certains comportements – passés – d'États et la responsabilité en cas de violation de leurs obligations. Pourtant, comme nous l'avons expliqué dans nos observations écrites³⁸, l'Assemblée générale ne vous a pas investi de la tâche ardue de vous aventurer sur le terrain de la responsabilité, ni d'une façon abstraite, ni d'une façon particulière visant la situation spécifique d'un ou de plusieurs États – ce qui, dans les circonstances, dépasserait largement les limites inhérentes à la fonction judiciaire de la Cour dans une procédure consultative. La seconde question concerne purement et simplement les « conséquences juridiques pour les États qui ... ont causé des dommages significatifs au système climatique » et ce « au regard de ces obligations » — « *under these obligations* » —, à savoir « les obligations qui incombent aux États en ce qui concerne la protection du système climatique ... ». Cela est donc une question qui relève des obligations primaires et de leur contenu, et non pas celle des conséquences d'une violation de ces obligations.

11. Les obligations existantes en matière de changement climatique ne distinguent pas entre un État pollueur et les autres. Ces obligations incombent à tous les États, selon leurs capacités respectives. Car, Mesdames et Messieurs de la Cour, l'objectif premier de la riposte efficace à la menace des changements climatiques n'est pas de sanctionner des comportements passés, mais d'assurer – ensemble – la protection de l'humanité tout entière contre les effets des changements climatiques.

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³⁸ Observations écrites de la République de Slovénie, pars. 12-15.

Monsieur le président, Mesdames et Messieurs de la Cour, ces remarques marquent la fin de l'exposé oral de la République de Slovénie. Au nom de toute notre délégation, je vous remercie pour votre bienveillante attention.