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Observations: Request for an Advisory Opinion on the Climate Emergency and Human Rights

I am a Professor of International Law in New Zealand and a graduate of the Andres Bello Academia Diplomática de Chile (1993). I am submitting these observations in my individual and academic capacity.

This submission makes only one observation in respect of the Request for an Advisory Opinion on the Climate Emergency and Human Rights. The observation is that duties of prevention entail due regard for future generations as well as present generations. This is a general point and not exclusively a matter of children's rights. Future generations will be adults, too.

The obligation for States to have due regard for future generations' in the context of preventing significant harm from climate change is ultimately grounded in the underlying principle applying to all sovereigns "*sic utere tuo ut alienum non laedas*" (use your own so as not to harm that of others).¹

Duties of prevention of environmental harm evolved out of this no-harm principle.² These duties of prevention of environmental harm have been recognised in the International Court of Justice's *Nuclear Weapons Advisory Opinion*, and on many occasions since.³ As the Inter-American Court of Human Rights has observed, duties of prevention of environmental harm apply to all States in all national circumstances and at all levels of development.⁴ States' permanent sovereignty over their natural resources is coupled with the responsibility and obligation not to cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.⁵

Due regard for future generations as an aspect of duties of prevention is consistent with the principle of inter-generational equity, integral to sustainable development.⁶ The Paris Agreement includes both a preambular reference to intergenerational equity, and many references to sustainable development.⁷ The United Nations Framework Convention on Climate Change clearly recognises future generations' international legal interests in the prevention of anthropogenic climate change.⁸

In sum, due diligence requires due regard for future generations, for whom the adverse impacts of climate change will be manifestly excessive.

This brief urges the Court to make clear that due regard for future generations is required as a core dimension within duties of prevention, which come to bear directly in the human rights sphere.

¹ *Corfu Channel (UK v Albania)*, Judgment on the Merits, 9 April 1949, [1949] ICJ Rep 4, 22.

² *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment of 20 April 2010 [2010] ICJ Rep 14, *Pulp Mills* para 101.

³ *Advisory Opinion on the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, [1996] ICJ Rep 226, para 29. Most recently, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)* Judgment of 16 December 2015 [2015] ICJ Rep 665, para 118.

⁴ *Advisory Opinion Oc-23/17 of November 15, 2017, The Environment and Human Rights*, para 142.

⁵ Charter of Economic Rights and Duties of States, GA Res 3281 (XXIX) 1974, Article 30.

⁶ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (The UN University; Transnational Publishers Inc. 1989). Also Separate Opinion of Judge Cancado Trindade, *Whaling in the Antarctic (Australia v Japan; New Zealand intervening)*, Judgment of 31 March 2014 [2014] ICJ Rep 226, para 47.

⁷ See also Declaration of the UN Conference on Environment and Development UN Doc A/CONF/151/26/Rev1 (Rio Declaration). This is viewed as a relationship of responsibility in the Earth Charter of 2000 and The Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship in 2018, both launched by civil society.

⁸ United Nations Framework Convention on Climate Change, Article 3(1): "The Parties should protect the climate system for the benefit of *present and future generations* of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.