INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

REQUEST FOR ADVISORY OPINION

WRITTEN STATEMENT OF THE REPUBLIC OF SEYCHELLES

22 March 2024

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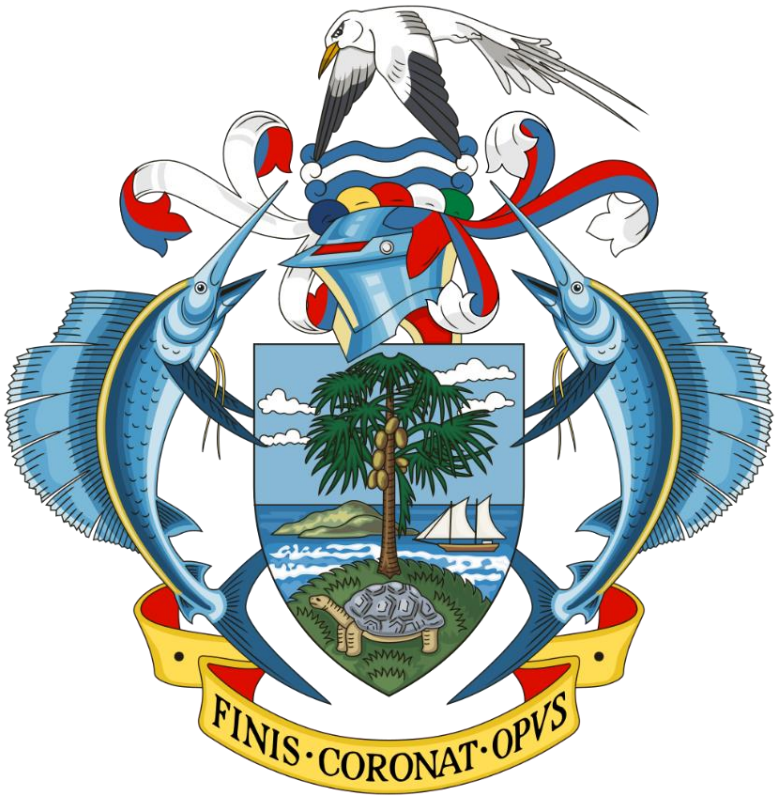

WRITTEN STATEMENT OF THE REPUBLIC OF SEYCHELLES

"We are serious because the islands feel the brunt of climate change. For us it is real. It is not a concept. It is not something that happens somewhere else. It is happening right at our doorstep…"

H.E. Wavel Ramkalawan
President of the Republic of Seychelles
14 December 2022

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Introduction

1. In its Resolution 77/276 of 29 March 2023, the General Assembly of the United Nations requested an advisory opinion of the International Court of Justice (hereinafter "the Court" or "ICJ") on the obligations of States in respect of climate change, in accordance with Article 96 of the Charter of the United Nations and pursuant to Article 65 of the Statute of the Court.[1] As developed below, in account of its special characteristics, notably as a Small Island Developing State (hereinafter "SIDS"), which makes it particularly vulnerable to climate change, the Republic of Seychelles (hereinafter "Seychelles") fully supported the seizing of the Court.

2. The questions submitted to the Court read as follows:

> Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,
>
> (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
>
> (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
>
> > (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
> >
> > (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

3. Before entering the substance of the matter, some brief initial remarks concerning the jurisdiction and discretion of the Court to address these questions are appropriate.

[1] UNGA, Resolution 77/276, 29 March 2023, UN Doc. A/RES/77/276.

4. It is well established in the Court's jurisprudence that whenever the Court is seized of a request for an advisory opinion, "it must first consider whether it has jurisdiction to give the opinion requested and if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request".[2]

5. Concerning its statutory powers, the Court has jurisdiction to render an advisory opinion as per the provisions in Article 65(1) of its Statute which provides that "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."[3]

6. For its part, the General Assembly is itself competent to request an advisory opinion by virtue of Article 96(1) of the United Nations Charter, which provides that "[t]he General Assembly [...] may request the International Court of Justice to give an advisory opinion on any legal question."[4]

7. As can be seen, Article 96 of the United Nations Charter and Article 65 of the Statute both require that the advisory opinion must be on a "legal question". Seychelles notes that both questions submitted to the Court have an eminent legal character to them. Question (A) asks the Court to assist in the identification of obligations, while question (B) enquires about the legal consequences derived from non-compliance with the said obligations.

8. Considering that both the General Assembly and the Court are acting within their functions and that the nature of the questions submitted in the request are within the material scope of an advisory opinion, Seychelles is of the view that the jurisdictional requirements are met for the Court to render an advisory opinion.

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[2] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019,* p. 111*,* para. 54; see also *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, *I.C.J. Reports 1996,* p. 233, para. 10; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004,* p. 144, para. 13; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010,* p. 412, para. 17.

[3] Statute of the International Court of Justice, Art. 65, para. 1.

[4] United Nations Charter, Art. 96, para. 1.

9. Having said this, the Court has stated that "[t]he fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it"[5] and that this "discretion whether or not to respond to a request for an advisory opinion exists so as to protect the integrity of the Court's judicial function as the principal judicial organ of the United Nations".[6]

10. Likewise, the Court has stressed that in principle, answering a request for an advisory opinion "should not be refused"[7] and that "only 'compelling reasons' may lead the Court to refuse its opinion in response to a request falling within its jurisdiction".[8]

11. It is Seychelles' view that there are no compelling reasons for the Court to decline in engaging in these advisory proceedings. In particular, concerning the complex legal and factual matrix that informs the climate change and environmental law regime as it currently stands, the international community would certainly benefit from the Court's guidance as to how it ought to be interpreted and ultimately implemented. Climate change is a challenge which must be addressed by all and the International Court of Justice's contributions on matters of such concern would further assist the United Nations General Assembly to advance in the performance of its functions under the United Nations Charter, particularly taking into account its active engagement on tackling climate change and related environmental concerns.

12. Moreover, the Court has noted that: "it is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs."[9] In this context, it is worth recalling that resolution 77/276

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[5] *Legal Consequences of the Separation of the Chagos Archipelago,* p. 113*,* para. 63; see also *Legal Consequences of the Construction of a Wall,* p. 156, para. 44; *Unilateral Declaration of Independence in Respect of Kosovo,* pp. 415-416, para. 29.

[6] *Legal Consequences of the Separation of the Chagos Archipelago,* p. 113*,* para. 64; *Legal Consequences of the Construction of a Wall,* pp. 156-157, paras. 44-45; *Unilateral Declaration of Independence in Respect of Kosovo,* pp. 415-416, para. 29.

[7] *Legal Consequences of the Separation of the Chagos Archipelago,* p. 113*,* para. 65; *Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950,* p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999,* pp. 78-79, para. 29; *Legal Consequences of the Construction of a Wall,* p. 156, para. 44.

[8] *Legal Consequences of the Separation of the Chagos Archipelago,* p. 113*,* para. 65; *Legal Consequences of the Construction of a Wall,* p. 156, para. 44; *Unilateral Declaration of Independence in Respect of Kosovo,* p. 416, para. 30.

[9] *Legal Consequences of the Separation of the Chagos Archipelago,* p. 115*,* para. 76; *Nuclear Weapons*, p. 237, para. 16.

by which the advisory opinion was requested to the Court was approved by consensus, i.e., without objection from anyone of the 193 United Nations Member States which compose the General Assembly.[10] This is evidence of the importance and usefulness of the request submitted for the performance of its functions.

13. Considering the aforesaid, it is Seychelles' view that the Court has jurisdiction to advise in the current proceedings and cannot, in the exercise of its discretion, decline to give the opinion requested by the General Assembly.

* * *

14. Having clarity on these preliminary matters, Seychelles' written statement will first detail the particular circumstances, vulnerabilities and actions of Seychelles concerning climate change, which explain its motivation to participate in the present advisory proceedings (**I**). Both questions submitted to the Court will then be addressed, relating to the obligations of States concerning climate change (**II**) and to the legal consequences for the breach of the said obligations (**III**).

[10] Voting record available online at https://digitallibrary.un.org/record/4008332?ln=en.

I. Seychelles' Characteristics, Vulnerabilities and Actions Regarding Climate Change Explaining its Motivation to Participate in the Present Advisory Proceedings

15. The Republic of Seychelles has long been at the forefront of international efforts to fight climate change. Exemplifying its unwavering resolve towards a sustainable future, Seychelles participates in numerous international and regional agreements dedicated to the mitigation of climate change impacts such as:

- The United Nations Framework Convention on Climate Change (hereinafter "UNFCCC"), signed on 10 June 1992 and ratified on 22 July 2002;
- The Kyoto Protocol to the UNFCCC, signed on 20 March 1998 and ratified on 22 July 2002;
- The Paris Agreement, signed on 25 April 2016 and ratified on 29 April 2016;
- The United Nations Convention on the Law of the Sea (hereinafter "UNCLOS"), signed on 10 December 1982 and ratified on 16 September 1991;
- The Vienna Convention for the Protection of the Ozone Layer, accession on 6 January 1993;
- The Montreal Protocol, accession on 6 January 1993.

16. Seychelles' active involvement in these treaties underscores the nation's commitment to the protection of the environment and is evidence of the urgent global imperative of addressing climate change.

17. As a SIDS, Seychelles presents special characteristics (**A**) that make it particularly vulnerable to climate change effects (**B**). This is why Seychelles has made, and continues to make, substantial efforts to cope with climate change (**C**) and has made, and continues to make, repeated calls to States to mitigate climate change (**D**).

A. Seychelles' Special, Geographical, Human, and Economic Conditions

18. Seychelles is an archipelagic State consisting of 115 islands located in the Indian Ocean.[11] All the islands composing the archipelago are low-lying, located averagely between 2 and 4 meters above sea level,[12] "and no single point of land is more than 5 [kilometres] from the sea."[13] With a total land area of approximately 455 square kilometres, Seychelles is the 15th smallest country in the world and the smallest country of Africa.[14]

19. Seychelles has a resident population of approximately 120,000 people, concentrated on the main islands of Mahé, where Victoria – the capital – is located, Praslin and La Digue.[15] Over 90% of the population and economic activities are located on the coastal plateaux.[16]

20. Seychelles' economy is very specialised, underscoring the country's dependence on a few sectors that account for a large share of Seychelles' GDP. Tourism and fisheries are the main contributors to Seychelles' economy, making up 55% and 20% of the country's GDP respectively.[17] At the same time, those sectors are also the primary sources of employment, with tourism providing formal employment for at least 26% and the fisheries sector for at least

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[11] Constitution of Seychelles, 1993, Art. 2 and Part. 1 of Schedule 1, [online] https://www.gov.sc/documents/Constitution%20of%20Seychelles%20.pdf, accessed on 1st March 2024.

[12] Government of Seychelles, "Seychelles Updated Nationally Determined Contribution, Submission under the Paris Agreement", July 2021, *United Nations Climate Change*, p. 26, [online] https://unfccc.int/sites/default/files/NDC/2022-06/Seychelles%20-%20NDC_Jul30th%202021%20_Final.pdf, accessed on 1st March 2024.

[13] J. Bijoux, "Marine and Coastal Areas under Protection: Seychelles", in: *Western Indian Ocean Marine Protected Areas Outlook: Towards achievement of the Global Biodiversity Framework Targets*, 2021, UNEP, WIOMSA, Nairobi, Kenya, p. 168 [online] https://www.nairobiconvention.org/clearinghouse/sites/default/files/MPA%20Outlook_Seychelles.pdf, accessed on 1st March 2024.

[14] "The smallest countries in the world as of 2020, by land area", *Statista,* [online] https://www.statista.com/statistics/1181994/the-worlds-smallest-countries/, accessed on 1st March 2024.

[15] Seychelles' National Bureau of Statistics, "End of year 2023 Population", *Bulletin*, Population 2024/1, [online] https://www.nbs.gov.sc/downloads/1547-end-of-year-2023-population/download, accessed on 1st March 2024.

[16] IMF, "Seychelles: Requests for an Extended Arrangement under the Extended Fund Facility and Arrangement under the Resilience and Sustainability Facility and Cancellation of the Current Arrangement Under the Extended Fund Facility – World Bank Assessment Letter for the Resilience and Sustainability Facility"*, IMF Country Report*, No. 23/235, 2023, p. 2, para. 2, [online] https://www.elibrary.imf.org/view/journals/002/2023/235/article-A002-en.xml, accessed on 1st March 2024.

[17] United Nations Economic Commission for Africa, "Socio-Economic Assessment of the Blue Economy in Seychelles", *Preliminary Analytical Report*, 2021, p. 8, [online] https://www.uneca.org/sites/default/files/SROs/Preliminary%20Analytical%20Report%20-%20Seychelles.pdf, accessed on 1st March 2024.

17% of the population.[18] Additionally, Seychelles' fishery sector accounts for approximately 93% of national exports.[19] Consequently, it is evident how crucial a healthy marine environment is for the country's success.

21. The agricultural sector, secondary to tourism and fisheries, is also very important for Seychelles. Due to the country's vast forests and bush lands, less than 4% of Seychelles' land area is available for agricultural use.[20] Agricultural land is therefore very concentrated geographically, exposing the entire sector to risks of disappearance should the area be affected by climate change. The agricultural sector is also specialised, made up mainly of coconuts, vegetables, cinnamon, vanilla, and fruits.[21]

B. Seychelles is Particularly Vulnerable to the Effects of Climate Change

22. As underlined by the latest report of the Intergovernmental Panel on Climate Change (hereinafter "IPCC"), SIDS as Seychelles "have high vulnerability to climatic hazards".[22] Seychelles indeed stands as a prime illustration of the many climate change threats confronting small island States – tragically fated to be "the world's laboratories".[23] These threats include sea level rise, increased sea temperature, ocean acidification, coral bleaching, cyclones,

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[18] *Ibid*.

[19] *Ibid*.

[20] FAO, "Climate-Smart Agriculture in Seychelles", *Climate-Smart Agriculture Country Profiles for Africa Series*, International Centre for Tropical Agriculture (CIAT), International Crops Research Institute for the Semi-Arid Tropics (ICRISAT), FAO, Rome, Italy, 2019, p. 3, [online] https://www.fao.org/3/ca5407en/ca5407en.pdf, accessed on 1st March 2024.

[21] *Ibid*.

[22] IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 51. [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf, accessed on 1st March 2024.

[23] National Statement by Minister H. E. Didier Dogley, Minister of Environment, Energy and Climate Change, COP 21, 8 December 2015, France, [online] https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/cop21cmp11_hls_speech_seychelles.pdf, accessed on 1st March 2024.

tsunamis, storm surges, extreme rainfalls, floodings, landslides, and extended periods of drought.[24]

23. Changes in temperature due to global warming are well observed in Seychelles, where 14 of the 15 warmest years recorded between 1880 and 2015 occurred after 2000, as illustrated below.[25]

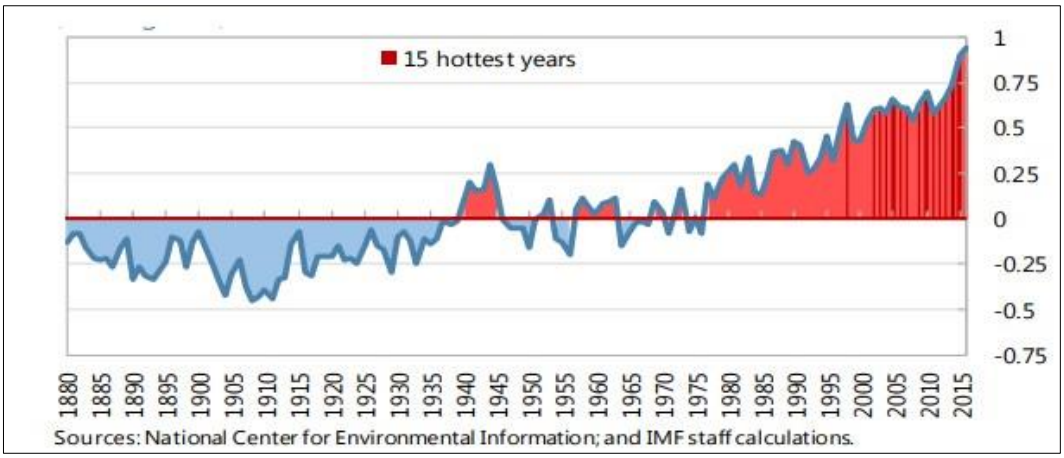

Fig. 1. Seychelles: Global Surface Temperature, Deviation from 20th – Century (Average °C)

24. Due to the Earth's warming causing ice caps and glaciers melt, global sea level increased by approximately 20 centimetres between 1901 and 2018.[26] In Seychelles, sea level is rising by

[24] IMF, "Enhancing Resilience to Climate and Natural Disasters in Seychelles", 2017, p. 4, para. 1, [online] https://www.elibrary.imf.org/downloadpdf/journals/002/2017/161/article-A001-en.pdf, accessed on 1st March 2024; IMF, "Seychelles: Requests for an Extended Arrangement under the Extended Fund Facility and Arrangement under the Resilience and Sustainability Facility and Cancellation of the Current Arrangement Under the Extended Fund Facility – World Bank Assessment Letter for the Resilience and Sustainability Facility", *IMF Country Report*, No. 23/235, 2023, p. 2, para. 2, [online] https://www.elibrary.imf.org/view/journals/002/2023/235/article-A002-en.xml, accessed on 1st March 2024.

[25] IMF, "Enhancing Resilience to Climate and Natural Disasters in Seychelles", 2017, p. 4, para. 1, [online] https://www.elibrary.imf.org/downloadpdf/journals/002/2017/161/article-A001-en.pdf, accessed on 1st March 2024.

[26] IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,* p. 5, para. A.2.1, [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, accessed on 1st March 2024.

approximately 2.3 millimetres each year,[27] which threatens the archipelago considering the low-lying nature of its islands.

25. For Seychelles, the consequences of sea level rise are diverse and interconnected: it causes for instance coastal erosion; flooding, such as in May 2007 "when very high tides resulted in flooding up to 50m inland causing damage to roads [and] public infrastructure";[28] ocean acidification, which would contaminate sources of fresh water and irrigated crops;[29] and increase in salination of soils and aquifers, which can affect food and water supply.[30]

26. These external negative impacts threaten communities, infrastructure, and livelihoods and pose a significant risk of human displacement due to the lack of viable alternatives for their survival. It must also be underscored that sea level rise threatens Seychelles' land territory itself and the effects derived therefrom.

27. According to the IPCC's latest report, global sea level rise is unavoidable and accelerating and "vulnerability will also rise rapidly in low-lying [SIDS such as Seychelles]".[31] In a high emission scenario, Seychelles' low-lying islands could face a 1-meter rise of the mean sea level by the end of the century,[32] and extreme sea level events which used to occur once a century would occur annually by 2050.[33] Eventually, as decried by Seychelles' President at the

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[27] IMF, "Enhancing Resilience to Climate and Natural Disasters in Seychelles", 2017, p. 6, para. 4, [online] https://www.elibrary.imf.org/downloadpdf/journals/002/2017/161/article-A001-en.pdf, accessed on 1st March 2024.

[28] IMF, "Seychelles: Climate Change Policy Assessment", *IMF Country Report*, No. 17/162, 2017, p. 12, [online] https://www.imf.org/en/Publications/CR/Issues/2017/06/20/Seychelles-Climate-Change-Policy-Assessment-44997, accessed on 1st March 2024.

[29] IMF, "Enhancing Resilience to Climate and Natural Disasters in Seychelles", 2017, p. 6, para. 4, [online] https://www.elibrary.imf.org/downloadpdf/journals/002/2017/161/article-A001-en.pdf, accessed on 1st March 2024.

[30] IMF, "Seychelles: Climate Change Policy Assessment", *IMF Country Report*, No. 17/162, 2017, p. 12, [online] https://www.imf.org/en/Publications/CR/Issues/2017/06/20/Seychelles-Climate-Change-Policy-Assessment-44997, accessed on 1st March 2024.

[31] IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report*, p. 98, [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf, accessed on 1st March 2024.

[32] See Figure 3.4, *ibid*., pp. 80-81.

[33] IPCC, 2019: *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* [H.-O. Pörtner, D.C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegría, M. Nicolai, A. Okem, J. Petzold, B. Rama, N.M. Weyer (eds.)]. In press, p. 56, [online] https://www.ipcc.ch/site/assets/uploads/sites/3/2019/12/SROCC_FullReport_FINAL.pdf, accessed on 1st March 2024.

17th Conference of the Parties to the UNFCCC (hereinafter "COP") in 2011, sea level rise may lead to Seychelles being "under water".[34]

28. Seychelles is also susceptible to extreme weather events such as cyclones, tsunamis, storms, and extreme rainfalls. According to the International Monetary Fund (hereinafter "IMF"), Seychelles was affected by five major disasters between 1997 and 2017 (the 1997 and 2015 floods, the 2002 and 2013 tropical cyclones, and the 2004 tsunami), which altogether affected more than 20,000 people, amounting to over 20% of the population.[35] Moreover, during the 2013 tropical cyclone, Seychelles faced "thunderstorms ravag[ing] the island, damage[ing] coastal areas, and caus[ing] evacuation",[36] and consequently had to declare the state of emergency.

29. As Seychelles' President noted at COP 28 held on December 2023 in Dubai, these events affect Seychelles both directly and indirectly. For example, not only has Seychelles been the direct victim of the category 5 cyclone *Fantala* which destroyed homes and the communication network in April 2016,[37] but the archipelago is also routinely affected by cyclones hitting neighbouring Madagascar or Mauritius[38] – the low-lying nature of Seychelles' islands making them especially vulnerable to these events.

30. These extreme events, which will increase as long as climate change is not addressed, have several negative consequences such as coastal erosion, floodings and landslides, which are already affecting Seychelles. Regarding coastal erosion, it must be underscored that "coastal

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[34] National Statement by Minister Bernard Shamlaye, Minister for Social, Sustainable Development and Culture, High Level Segment Durban, COP 17, 7 December 2011, South Africa, [online] https://unfccc.int/files/meetings/durban_nov_2011/statements/application/pdf/111208_cop17_hls_seychelles.pdf, accessed on 1st March 2024.

[35] See "Table 1. Seychelles Natural Disasters": IMF, "Enhancing Resilience to Climate and Natural Disasters in Seychelles", 2017, p. 6, [online] https://www.elibrary.imf.org/downloadpdf/journals/002/2017/161/article-A001-en.pdf, accessed on 1st March 2024.

[36] *Ibid.,* p. 6, para. 5.

[37] Government of Seychelles, Seychelles Post Disaster Needs Assessment – Tropical Cyclone Fantala, 2016, [online] https://www.gfdrr.org/sites/default/files/Seychelles-Fantala-PDNA.pdf, accessed on 1st March 2024.

[38] National Statement by Mr Wavel Ramkalawan, President of the Republic of Seychelles, COP 28, 1 December 2023, UAE, [online] https://www.statehouse.gov.sc/speeches/6014/cop28-national-statement-by-mr-wavel-ramkalawan-world-leaders-climate-change-summit, accessed on 1st March 2024.

areas are eroded every year by about 50 cm"[39] in Seychelles. In total, between 1960 and 1998, "about 20m of the coast had been eroded […] at North East Point, Au Cap, Baie Lazare and Anse Kerlan".[40]

31. Floodings are also affecting Seychelles, such as in 1997 and 2015. On this matter, it has been demonstrated that,

> [a] possible worse scenario can be assumed when a tropical cyclone/depression passes close by the islands and causes an extremely high tide and flooding simultaneously. Buildings or roads below 2.5m above the present mean sea level are expected to be inundated. […] The results show that 2,017 buildings (14%) in Mahe, 1,601 buildings (63%) in Praslin and 321 buildings (48%) in La Digue are expected to be inundated, including 11 hospitals, 15 schools, 21 restaurants and 69 hotels/guesthouses on the three islands. Also, the results show that 67km of roads in Mahe, 43km in Praslin and 7km in La Digue are expected to be inundated. In other words, 42% of the coastal main roads in Mahe, 72% in Praslin and 27% in La Digue are expected to be inundated.[41]

32. Extreme weather events, and particularly extreme rainfalls, also lead to landslides as observed in January 2013 in Pointe Au Sel, where 184 millimetres of rain were recorded in 24 hours, amounting for approximately half of the expected rain during January.[42]

33. The increase in frequency and intensity of these extreme weather events caused by climate change will result in significant social and economic damage for Seychelles. Coastal communities, meaning the vast majority of Seychellois, are particularly at risk, and the rebuilding process can strain the country's resources.

34. In this regard, one of Seychelles' most important resources are its coral reefs, which, along with other habitats they support, "are intricately linked with the Seychellois people and

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[39] IMF, "Enhancing Resilience to Climate and Natural Disasters in Seychelles", 2017, p. 6, para. 5, [online] https://www.elibrary.imf.org/downloadpdf/journals/002/2017/161/article-A001-en.pdf, accessed on 1st March 2024.

[40] Japan International Cooperation Agency (JICA), Central Consultant Inc. CTI Engineering International Co., Ltd., "The Study for Coastal Erosion and Flood Control Management in the Republic of Seychelles", Final Report Summary, 2014, p. 2.5, [online] https://openjicareport.jica.go.jp/pdf/12262820.pdf, accessed on 1st March 2024.

[41] *Ibid*., p. 2.25.

[42] IMF, "Seychelles: Climate Change Policy Assessment", *IMF Country Report*, No. 17/162, 2017, p. 12, [online] https://www.imf.org/en/Publications/CR/Issues/2017/06/20/Seychelles-Climate-Change-Policy-Assessment-44997, accessed on 1st March 2024.

have high recreational, spiritual and cultural values."[43] In fact, "coral reefs and their associated mangrove and seagrass habitats are the most diverse and biologically important shallow marine ecosystems in the Seychelles".[44] However, they currently "are under immense stress",[45] notably due to coral bleaching, a process in which corals expel symbiotic algae, rendering them susceptible to disease and death.[46] Indeed, coral bleaching, in part caused by ocean warming, is considered as one of "the greatest threats to coral reefs in Seychelles, causing widespread loss of live coral cover".[47]

35. The rise in sea temperature already caused significant coral bleaching in 1998 and another one ongoing since 2014-2016.[48] Altogether, these events are said to have "eradicated an estimated *90 percent* of the live coral cover around the three main islands".[49] The current coral bleaching is moreover "the longest, most widespread, and most damaging on record".[50]

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[43] Government of Seychelles, Seychelles National Policy and Strategic Action Plan on Coral Reef Conservation and Management, Ministry of Agriculture, Climate Change and Environment, Victoria, Seychelles, 2022, p. 39 [Ministry of Agriculture, Climate Change and Environment, unpublished, available upon request].

[44] *Ibid.*

[45] *Ibid*.

[46] R. Payet, W. Agricole, "Climate Change in the Seychelles: Implications for Water and Coral Reefs", *AMBIO: A Journal of the Human Environment*, Vol. 35, No. 4, 2006, [available on JSTOR] https://www.jstor.org/stable/4315717, accessed on 1st March 2024.

[47] IMF, "Enhancing Resilience to Climate and Natural Disasters in Seychelles", 2017, p. 4, para. 2, [online] https://www.elibrary.imf.org/downloadpdf/journals/002/2017/161/article-A001-en.pdf, accessed on 1st March 2024.

[48] Government of Seychelles, Seychelles National Policy and Strategic Action Plan on Coral Reef Conservation and Management, Ministry of Agriculture, Climate Change and Environment, Victoria, Seychelles, 2022, p. 51, [Ministry of Agriculture, Climate Change and Environment, unpublished, available upon request available upon request]; IMF, "Seychelles: Requests for an Extended Arrangement under the Extended Fund Facility and Arrangement under the Resilience and Sustainability Facility and Cancellation of the Current Arrangement Under the Extended Fund Facility – World Bank Assessment Letter for the Resilience and Sustainability Facility"*, IMF Country Report*, No. 23/235, 2023, p. 2, para. 2, [online] https://www.elibrary.imf.org/view/journals/002/2023/235/article-A002-en.xml, accessed on 1st March 2024.

[49] IMF, *ibid*. (emphasis added).

[50] IMF, "Enhancing Resilience to Climate and Natural Disasters in Seychelles", 2017, p. 4, para. 2, [online] https://www.elibrary.imf.org/downloadpdf/journals/002/2017/161/article-A001-en.pdf, accessed on 1st March 2024.

36. Coral bleaching has devastating consequences for Seychelles, as corals serve as habitats for various marine species and as coastal protection.[51] According to the IMF,

> [c]oral bleaching has led to deleterious impacts on economic and social development through various channels, including (i) reduction of *fisheries* output upon which the economy is highly dependent (ii) impairment of the coral reefs' defensive capacity against *land erosion* and *rising sea levels* and (iii) intensification of the magnitude of storm events induced by higher stronger tides and leading to severe *erosion of coastline* upon which tourism activity highly depends.[52]

37. Finally, Seychelles' agricultural productivity is particularly at risk since temperature rise, changes in rainfall patterns and extreme weather events caused by climate change threaten crop yields and food security.[53] The Food and Agriculture Organisation of the United Nations (hereinafter "FAO") has recognised Seychelles' vulnerability for that "climate change has had a negative impact on the food security and livelihoods of [its] farmers."[54] Indeed, a recent Seychellois governmental scientific study underscored that a "majority of farmers indicated that winter temperatures (70.8%), strong winds (64.3%) and frequency of drought episodes (56.4%) have increased during the last 10 to 20 years, including severe damage on crops and farmlands caused by pest and soil erosion (61.4%)".[55]

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[51] IMF, "Seychelles: Requests for an Extended Arrangement under the Extended Fund Facility and Arrangement under the Resilience and Sustainability Facility and Cancellation of the Current Arrangement Under the Extended Fund Facility – World Bank Assessment Letter for the Resilience and Sustainability Facility"*, IMF Country Report*, No. 23/235, 2023, p. 2, para. 2, [online] https://www.elibrary.imf.org/view/journals/002/2023/235/article-A002-en.xml, accessed on 1st March 2024.

[52] IMF, "Enhancing Resilience to Climate and Natural Disasters in Seychelles", 2017, p. 4, para. 3 (emphasises added), [online] https://www.elibrary.imf.org/downloadpdf/journals/002/2017/161/article-A001-en.pdf, accessed on 1st March 2024; see also Government of Seychelles, Seychelles National Policy and Strategic Action Plan on Coral Reef Conservation and Management, Ministry of Agriculture, Climate Change and Environment, Victoria, Seychelles, 2022, p. 39 [Ministry of Agriculture, Climate Change and Environment, unpublished, available upon request].

[53] The World Bank in Seychelles, *World Bank website*, [online] https://www.worldbank.org/en/country/seychelles/overview, accessed on 1st March 2024.

[54] FAO, "Climate-Smart Agriculture in Seychelles", *Climate-Smart Agriculture Country Profiles for Africa Series*, International Centre for Tropical Agriculture (CIAT), International Crops Research Institute for the Semi-Arid Tropics (ICRISAT), FAO, Rome, Italy, 2019, p. 7, [online] https://www.fao.org/3/ca5407en/ca5407en.pdf, accessed on 1st March 2024.

[55] D. Etongo, A. Bandara, A. Murugaiyan, U. Bristol, K. Nancy, B. Petrousse, S. Sinon, "Risk perceptions, vulnerability and adaptation to climate change at farm level across four agricultural zones in Seychelles", *World Development Sustainability*, Vol. 1, 2022, [online] https://www.sciencedirect.com/science/article/pii/S2772655X22000258, accessed on 1st March 2024.

38. Seychelles already imports around 70% of what it consumes, and climate change induced events forces the country to increase its imports, further adding to its trade imbalance.[56] The issue of food insecurity has the potential of becoming frighteningly real for Seychelles. As recalled in Seychelles' national statement at COP 19 in 2013, "there can be no security for humankind – no food security, no water security, no energy security, and no human security – without climate security."[57]

C. Seychelles has Made and Continues to Make Substantial Efforts to Cope with Climate Change

39. Seychelles' greenhouse gases emissions practically amount to 0.00% of the world's total emissions,[58] meaning that the archipelago makes a negligible contribution to global warming – if any. Yet, the country has been, and is, actively involved in international efforts to address climate change.

40. In its Updated Nationally Determined Contribution (hereinafter "NDC") from 2021, Seychelles committed to "improv[e] upon its conditional commitments towards increasing the reduction of greenhouse gas emissions from 188 ktCO2e, stated in NDC 2015, to 293,8 ktCO2e by 2030."[59] The archipelago is also actively working at the domestic level implementing adaptation and mitigation strategies to address climate change impacts, including sustainable land use planning and coastal protection measures.[60]

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[56] Seychelles National Agricultural Investment Plan (SNAIP) 2015-2020, Implementing the CAADP Framework to transform Seychelles' Agricultural Sector and enhance its performance in supporting the country to attain its goals on food sovereignty, food and nutrition security, 2015, p. 9, [online] https://faolex.fao.org/docs/pdf/sey175682.pdf, accessed on 1st March 2024.

[57] National Statement by Ambassador Ronald Jumeau, Permanent Representative of Seychelles to the United Nations, COP 19, 21 November 2013, Poland, [online] https://unfccc.int/files/meetings/warsaw_nov_2013/statements/application/pdf/cop19_hls_seychelles.pdf, accessed on 1st March 2024.

[58] See "Emissions by country": EDGAR - Emissions Database for Global Atmospheric Research, GHG emissions of all world countries, *2023 Report*, [online] https://edgar.jrc.ec.europa.eu/report_2023#data_download, accessed on 1st March 2024.

[59] Government of Seychelles, "Seychelles Updated Nationally Determined Contribution, Submission under the Paris Agreement", July 2021, *United Nations Climate Change*, p. 8, [online] https://unfccc.int/sites/default/files/NDC/2022-06/Seychelles%20-%20NDC_Jul30th%202021%20_Final.pdf, accessed on 1st March 2024.

[60] *Ibid*., p. 4 and following.

41. Significantly, Seychelles spends more than 4% of its budget on environment and climate change[61] (when in comparison, the European Union member States spent on average 0.8% of their budget on these matter in 2022).[62] The archipelago is also strategically integrating climate change adaptation into its policy framework with the Seychelles' National Climate Policy as a guidance document,[63] which overall vision is to achieve a sustainable, climate resilient, and low-carbon Seychelles. For example, Seychelles is "engaged in decarbonizing [its] energy sector […] [and] remains committed to safeguard its terrestrial and marine ecosystems".[64] Regarding the latter, as the President noted at COP 28, Seychelles is "not just on track, but ahead of schedule" in terms of marine protection, which has led to gratifying results such as "recent sightings of blue whales in [Seychelles'] waters after more than 60 years absence".[65]

42. Furthermore, the country has implemented numerous environmental adaptation strategies, including the development of early warning systems, coastal protection measures, sustainable resource management practices, and financing, such as the following:

— In 2014, Seychelles was the first African country to partner with the World Bank through a Development Policy Financing with a Catastrophe Deferred Drawdown Option (Cat DDO), to strengthen its climate adaptation;[66]

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[61] African Development Bank Group, "Seychelles Economic Outlook", (2023 updated) [online] https://www.afdb.org/en/countries/east-africa-seychelles/seychelles-economic-outlook, accessed on 1st March 2024.

[62] Eurostat, General government total expenditure on environmental protection in 2022 (% of GDP), 2023, [online] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:General_government_total_expenditure_on_environmental_protection,_2022_%25_of_GDP.png, accessed on 1st March 2024.

[63] IMF, "Seychelles: Requests for an Extended Arrangement under the Extended Fund Facility and Arrangement under the Resilience and Sustainability Facility and Cancellation of the Current Arrangement Under the Extended Fund Facility – World Bank Assessment Letter for the Resilience and Sustainability Facility", *IMF Country Report*, No. 23/235, 2023, p. 2, para. 2, [online] https://www.elibrary.imf.org/view/journals/002/2023/235/article-A002-en.xml, accessed on 1st March 2024.

[64] National Statement by Mr Wavel Ramkalawan, President of the Republic of Seychelles, World Leader's Climate Change Summit, COP 28, 1 December 2023, UAE, [online] https://www.statehouse.gov.sc/speeches/6014/cop28-national-statement-by-mr-wavel-ramkalawan-world-leaders-climate-change-summit, accessed on 1st March 2024.

[65] *Ibid*.

[66] The World Bank, "Seychelles: World Bank funding to help improve emergency and economic resilience", *Press release*, 2014, [online] https://www.worldbank.org/en/news/press-release/2014/09/26/seychelles-world-bank-funding-to-help-improve-emergency-and-economic-resilience, accessed on 1st March 2024.

— In 2018, Seychelles launched the world's first sovereign blue bond, a pioneering financial instrument designed to support sustainable marine and fisheries projects;[67]

— In 2019, the Government of Seychelles developed the first national Coastal Management Plan 2019 - 2024 (CMP) to address coastal flooding, erosion, and ecosystem degradation at several sites around the country;[68]

— Since 2023, Seychelles is the second African country, after Rwanda, to access the IMF's Resilience and Sustainability Facility (RSF), a funding aimed at helping countries with limited room in their budget to address long-term challenges, such as climate change and pandemic preparedness.[69]

D. Seychelles has Made and Continues to Make Repeated Calls to States to Mitigate Climate Change

43. On 20th September 2022, Seychelles' President, H.E. Wavel Ramkalawan stated before the United Nations General Assembly that: "[w]e are at the cusp of an ecological collapse".[70] At COP 28, the President admitted that he was "disheartened to state that most of [the financial] commitments [made by developed States at COP 27 were] yet to be fulfilled despite the urgency required to address the climate crisis".[71] Already at COP 17 in 2011 had Seychelles called for a "firm commitment from all major emitters […] to raise the ambition of their action to reduce

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[67] World Bank, "Seychelles launches World's First Sovereign Blue Bond", *Press release*, 2018, [online] https://www.worldbank.org/en/news/press-release/2018/10/29/seychelles-launches-worlds-first-sovereign-blue-bond, accessed on 1st March 2024.

[68] World Bank and Ministry of Environment, Energy and Climate Change of Seychelles, 2019, Seychelles Coastal Management Plan: 2019–2024, Washington, DC: World Bank; Victoria, Seychelles: Ministry of Environment, Energy and Climate Change of Seychelles, [online] https://faolex.fao.org/docs/pdf/sey191488.pdf, accessed on 1st March 2024.

[69] IMF, "Seychelles Pioneers Novel Financing Instruments and Taps IMF Climate Facility", 2023, [online] https://www.imf.org/en/News/Articles/2023/07/05/cf-seychelles-pioneers-novel-financing-instruments-and-taps-imf-climate-facility, accessed on 1st March 2024.

[70] Statement by H.E. Mr. Wavel Ramkalawan, President of the Republic of Seychelles, General Debate of the Seventy-Eighth Session of United Nations General Assembly, "Rebuilding trust and reigniting global solidarity: accelerating action on the 2030 agenda and its sustainable goals towards peace, prosperity and progress and sustainability for all", 20 September 2023, [online] https://gadebate.un.org/sites/default/files/gastatements/78/sc_en_0.pdf, accessed on 1st March 2024.

[71] National Statement by Mr Wavel Ramkalawan, President of the Republic of Seychelles, World Leader's Climate Change Summit, COP 28, 1 December 2023, UAE, [online] https://www.statehouse.gov.sc/speeches/6014/cop28-national-statement-by-mr-wavel-ramkalawan-world-leaders-climate-change-summit, accessed on 1st March 2024.

emissions to a level that is consistent with the goal[s set]".[72] Indeed, Seychelles has demanded that the "[Organisation for Economic Cooperation and Development (OECD)] and G20 countries, as major emitters, […] take decisive actions to lead in combating climate change".[73]

44. Seychelles also call out the discrepancy and injustice between the main emitters and those countries bearing the main consequences. In 2023, at COP 28, the President observed that "despite contributing very little to global emissions, SIDS like Seychelles bear the brunt of the climate crisis".[74] He insisted that they "are on the frontline of climate change" and required vital financial and other support by the developed world, tailored to the SIDS's specificities.[75] In the face of developed States' inaction, the President also pointed out that SIDS "lose from the damage [industrialised nations] cause, yet [SIDS] clean up [their] emissions and help mop up those of industrialised nations".[76] In the September 2023 general debate of the United Nations General Assembly, Seychelles' President declared that "success [in combatting climate change] hinges on global solidarity".[77]

45. In the past, Seychelles had already pleaded to confront the blatant injustice of asking citizens of States least responsible for the climate catastrophe to pay for the loss and damage caused by others. For example, in 2010 during COP 16, the Permanent Representative of Seychelles to the United Nations underscored the vulnerability of the Member States of the Alliance of the Small Islands States (AOSIS) facing climate change, adding that, although they

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[72] National Statement by Minister Bernard Shamlaye, Minister for Social, Sustainable Development and Culture, High Level Segment Durban, COP 17, 7 December 2011, South Africa, [online] https://unfccc.int/files/meetings/durban_nov_2011/statements/application/pdf/111208_cop17_hls_seychelles.pdf, accessed on 1st March 2024.

[73] Statement by H.E. Mr. Wavel Ramkalawan, President of the Republic of Seychelles, General Debate of the Seventy-Eighth Session of United Nations General Assembly, "Rebuilding trust and reigniting global solidarity: accelerating action on the 2030 agenda and its sustainable goals towards peace, prosperity and progress and sustainability for all", 20 September 2023, [online] https://gadebate.un.org/sites/default/files/gastatements/78/sc_en_0.pdf, accessed on 1st March 2024.

[74] National Statement by Mr Wavel Ramkalawan, President of the Republic of Seychelles, World Leader's Climate Change Summit, COP 28, 1 December 2023, UAE, [online] https://www.statehouse.gov.sc/speeches/6014/cop28-national-statement-by-mr-wavel-ramkalawan-world-leaders-climate-change-summit, accessed on 1st March 2024.

[75] *Ibid*.

[76] *Ibid*.

[77] Statement by H.E. Mr. Wavel Ramkalawan, President of the Republic of Seychelles, General Debate of the Seventy-Eighth Session of United Nations General Assembly, "Rebuilding trust and reigniting global solidarity: accelerating action on the 2030 agenda and its sustainable goals towards peace, prosperity and progress and sustainability for all", 20 September 2023, [online] https://gadebate.un.org/sites/default/files/gastatements/78/sc_en_0.pdf, accessed on 1st March 2024.

contribute the least to global warming, they are the ones leading, for example by launching renewable energy initiatives.[78] At COP 26 in 2021, the President called upon industrialised countries to take the lead "in stepping up and displaying the leadership they claim to stake to the level that the science tells us is required to keep 1.5° [rise in temperature target] alive".[79] He added that "[c]linging to coal and failing to help us all accelerate the clean energy transition while parading as climate champions is nothing but bad faith".[80] Consequently, until today, Seychelles has demonstrated that it "is a committed partner that […] believes in what [it] preach[es] and […] walk[s] the talk]" but that it "cannot do it alone".[81]

II. Seychelles' Position on the Obligations of States Concerning Climate Change (Question A)

46. The first question submitted to the Court reads as follows:

> Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,
>
> (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
>
> (b) (…)

[78] National Statement by Ambassador Ronald Jumeau, Permanent Representative of Seychelles to the United Nations, High Level Segment Cancun, COP 16, 9 December 2010, Mexico, p. 1, [online] https://unfccc.int/files/meetings/cop_16/statements/application/pdf/101209_cop16_hls_seychelles.pdf, accessed on 1st March 2024.

[79] National Statement by Mr. Wavel Ramkalawan, President of the Republic of Seychelles, World Leaders' Climate Change Summit, COP 26, 1-2 November 2021, Scotland, [online] https://unfccc.int/sites/default/files/resource/SEYCHELLES_cop26cmp16cma3_HLS_EN.pdf, accessed on 1st March 2024.

[80] *Ibid*.

[81] National Statement by Mr Wavel Ramkalawan, President of the Republic of Seychelles, World Leader's Climate Change Summit, COP 28, 1 December 2023, UAE, [online] https://www.statehouse.gov.sc/speeches/6014/cop28-national-statement-by-mr-wavel-ramkalawan-world-leaders-climate-change-summit, accessed on 1st March 2024.

47. After having defined the meaning and scope of the first question submitted to the Court (**A**), Seychelles' written statement will present the obligations for States relating to climate change, which stem from climate change law (**B**), international environmental law (**C**) and human rights law (**D**).

A. The Meaning and Scope of the Question Submitted to the Court

48. To identify the international law regimes from which stem the relevant obligations in the context of the present advisory proceedings (**2**), first must be defined the terms of the question submitted to the Court (**1**).

1. Definitions of the Terms of the Question Submitted to the Court

49. In the context of the present advisory proceedings, the obligations to be identified are those relating to the "protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases (hereinafter "GHG") for States and for present and future generations", as indicated by the question submitted to the Court. The following four elements are of particular importance and must thus be defined: "the obligations"; "the protection of the climate system and other parts of the environment", which implies to define both the "climate system" and the "the environment"; the "anthropogenic emissions of greenhouse gases"; and "for States and for present and future generations".

50. First, an obligation can be defined as the "legal link by which an international law subject must adopt or retain from adopting a determined behaviour towards one or several others international law subjects".[82] In other words, under international law, the obligation is *binding* upon States.

51. Second, the obligations of States to which the question submitted to the Court refers must "ensure the protection of the climate system and other parts of the environment". According to the IPCC,

> [t]he climate system consists of five major components: the atmosphere, the hydrosphere, the cryosphere, the lithosphere and the biosphere and the interactions

[82] J. Salmon, *Dictionnaire de droit international public*, Bruylant, Brussels, 2001: "*Lien juridique par lequel un sujet de droit international est tenu envers un ou plusieurs autres, d'adopter un comportement déterminé ou de s'en abstenir*" (translated freely).

between them. The climate system evolves in time under the influence of its own internal dynamics and because of external forcings such as volcanic eruptions, solar variations and anthropogenic forcings such as the changing composition of the atmosphere and land-use change.[83]

52. More specifically, the atmosphere can be defined as the "gaseous envelop surrounding the earth",[84] the hydrosphere as the "liquid water in oceans, rivers, lakes and underground",[85] the cryosphere as the "water […] in solid form",[86] the lithosphere as "the land surfaces such as soil and rocks, and human-made surfaces such as roads and buildings"[87] and the biosphere as "ecosystems and living organisms, in the atmosphere, on land (terrestrial biosphere), or in the oceans (marine biosphere)".[88]

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[83] IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 545-546, [online] https://www.ipcc.ch/sr15/chapter/glossary/, accessed on 1st March 2024.

[84] *Ibid*.

[85] New South Wales Government, "The global climate system", [online] https://www.climatechange.environment.nsw.gov.au/basics-climate-change/global-climate-system, accessed on 1st March 2024.

[86] IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate* Change, Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, p. 1762, [online] https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-AnnexII_FINAL.pdf, accessed on 1st March 2024.

[87] New South Wales Government, "The global climate system", [online] https://www.climatechange.environment.nsw.gov.au/basics-climate-change/global-climate-system, accessed on 1st March 2024.

[88] IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, p. 1759, [online] https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-AnnexII_FINAL.pdf, accessed on 1st March 2024.

53. It must be underscored that "the climate system is an *interactive system*",[89] which means that all its five main elements function together, and consequently that a negative impact on one of them will inexorably affect the others.

54. For its part, the environment can be defined "broadly […] as including air, water, land, flora and fauna, natural ecosystems and sites, human health and safety, and climate".[90] Among these elements, air, water, land, flora and fauna are also part of the climate system (respectively constituent of the atmosphere, hydrosphere and cryosphere, lithosphere, and biosphere), which thus clearly demonstrates the interconnection between the environment and the climate system, the former encompassing the latter. This assertion is also supported by the General Assembly of the United Nations, which considered, in the first question it has submitted to the Court, "the climate system *and other parts* of the environment".

55. Moreover, in its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court noted that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn".[91] This means that negative impacts caused to the environment *necessarily* affect human population (as demonstrated above regarding Seychelles).[92]

56. Third, GHG are defined by the IPCC as:

> gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and emit radiation at specific wavelengths within the spectrum of terrestrial radiation emitted by the Earth's surface, the atmosphere itself and by clouds. This property causes the greenhouse effect. Water vapour (H2O), carbon dioxide (CO2), nitrous oxide (N2O), methane (CH4) and ozone (O3) are the primary GHGs in the Earth's atmosphere.[93]

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[89] IPCC, 2001: *Climate Change 2001: The Scientific Basis. Contribution of Working Group I to the Third Assessment Report of the Intergovernmental Panel on Climate Change* [Houghton, J.T., Y. Ding, D.J. Griggs, M. Noguer, P.J. van der Linden, X. Dai, K. Maskell, and C.A. Johnson (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, p. 87 (emphasis added), [online] https://www.ipcc.ch/site/assets/uploads/2018/03/WGI_TAR_full_report.pdf, accessed on 1st March 2024.

[90] *Iron Rhine Arbitration (Belgium/Netherlands)*, *PCA Case No. 2003-02, Award of 24 May 2005*, p. 28. para. 58 (emphasis added).

[91] *Nuclear Weapons,* pp. 241-242, para. 29.

[92] See I. B, paras. 22-38.

[93] IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission*

57. Anthropogenic emissions of GHG are those "caused by human activities[, which] include the burning of fossil fuels, deforestation, land use and land-use changes, livestock production, fertilisation, waste management and industrial processes."[94] Those activities can be either attributable to States when they are directly involved, or to private persons carrying out industrial or other kinds of activities.

58. The rise of anthropogenic emissions of GHG since the beginning of industrial era, their accumulation in the atmosphere and, as a consequence, global warming, negatively impact the climate system and the environment. Notably, they cause changes in rainfall patterns leading to storm surges, floodings, landslides, and extended periods of drought, increased sea level and temperature, ocean acidification and damage to marine ecosystems.

59. Fourth, the phrasing "for States and for present and future generations" means that both States and people are directly affected by climate change. Concerning States, while all are impacted by climate change, some suffer more, due for instance to their developing economy or their geographic circumstances (e.g. SIDS as Seychelles).

60. For their part, human beings are the ones who ultimately suffer the tangible negative consequences of climate change (e.g. loss of livelihood, food and water security alteration, disease, displacement and even death). As recognised by the question submitted to the Court, future generations must also be considered in the climate change context. Since its appearance in the 1987 Report of the World Commission on Environment and Development entitled "Our Common Future",[95] the notion of "future generations" is regularly found when it comes to environmental matters.[96] The Court itself took it into account indicating, as mentioned above,

pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, pp. 550-551, [online] https://www.ipcc.ch/sr15/chapter/glossary/, accessed on 1st March 2024.

[94] *Ibid*, p. 543.

[95] G. H. Brundtland, *Report of the World Commission on Environment and Development: Our Common Future*, Oslo, 20 March 1987, see for instance paras. 25-27, [online] https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf, accessed on 1st March 2024.

[96] See for instance: Convention for the Protection of the World Cultural and Natural Heritage; United Nations Framework Convention on Climate Change; Convention on Biological Diversity; Rio Declaration on Environment and Development; Vienna Declaration and Programme of Action.

that the "environment […] represents the living space, the quality of life and the very health of human beings *including future generations.*"[97]

61. To conclude, considering the interdependence between the climate system and the environment, the rising presence in the atmosphere of anthropogenic emissions of GHG and their negative impact on the climate system and the environment, it is Seychelles' view that the obligations of States to be identified by the Court should be those referring to the mitigation of GHG directly, or indirectly through the prevention of harm to the climate system and the environment, and the corresponding obligations vis-à-vis human beings.

2. International Law Regimes Relating to Climate Change Obligations

62. The sources of international law that are suggested as relevant in the question put by the United Nations General Assembly embrace a broad range of conventions and principles usually seen as belonging to different categories, namely:

— the Charter of the United Nations, which has been sometimes assimilated to a "Constitution" of the international community;

— the UNCLOS, which has been described as the "Constitution of the Oceans";

— the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the rights recognised in the Universal Declaration of Human Rights, which provide for the universal protection of human rights;

— the UNFCCC, the Paris Agreement, and the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment, as sources of the law on climate change and of the key obligation of prevention of significant harm to the environment, including the marine environment; and

— the duty of due diligence, as a key concept providing the very content of certain obligations of prevention, protection, and preservation of the environment.

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[97] *Nuclear Weapons,* p. 226 (emphasis added).

63. At this stage, Seychelles believes that it is not appropriate to discuss the specific relevant obligations provided for in the UNCLOS, which are currently under consideration by the International Tribunal for the Law of the Sea (hereinafter "ITLOS") in the context of a pending advisory proceedings.[98] However, beyond the specific obligations it contains, the UNCLOS can be seen as reflecting and codifying customary international law principles related to the preservation and protection of the environment.

64. When it comes to climate change specifically, the core obligations arise from three sets of sources: instruments coping specifically with climate change, instruments and principles pertaining to international environmental law, and instruments and principles aiming at protecting and promoting the respect of human rights.

65. Regarding climate change law, in the context of the question submitted to the Court, the main relevant provisions are found in the Paris Agreement. The UNFCCC, although pertinent for the wider understanding of the climate change regime, is a framework convention that lays the groundwork for treaties with specific obligations to be implemented, such as the now expired Kyoto Protocol or the Paris Agreement. Thus, the Convention does not provide *per se* for concrete and self-sufficient obligations that can be implemented by States, which explains why Seychelles will not expand on it in its written statement.

66. Concerning international environmental law, the main obligations related to climate change are the customary obligation to prevent significant harm to the environment and the obligations stemming from various treaties dealing with environmental matters.

67. Finally, human rights treaties are no doubt relevant instruments since the obligations they place on States to protect and promote the human rights of the persons they have under their jurisdiction include an obligation to protect the enjoyment of human rights, directly or through prevention or mitigation of the harm to their rights that climate change can cause.

[98] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, 12 December 2022.

B. States Must Adopt Measures to Mitigate Climate Change according to the Paris Agreement

68. The Paris Agreement was adopted on 12th December 2015 and entered into force on 4th November 2016. 195 entities are Parties to the treaty, comprising almost all the United Nations Member States (out of 198 Parties to the UNFCCC, for its part ratified by all the United Nations Members States), which demonstrates the quasi-universal character of the international law on climate change.

69. In its Article 2, the Paris Agreement states its objective, namely,

> to strengthen the global response to the threat of climate change […] including by [h]olding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels.

70. To achieve this goal, Article 4.2, known as the key provision of the treaty, states that:

> [e]ach Party *shall* prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties *shall* pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions (emphasises added).

71. This article is thus composed of two sentences, which, by using the term "shall", introduce "two distinct obligations":[99] the first one establishes the procedural obligation to adopt NDCs; the second one provides for the substantial obligation to implement national measures aiming at achieving the objectives set in the said NDCs.[100]

72. Regarding the obligation to adopt NDCs, Article 4.3 adds that:

> [e]ach Party's successive nationally determined contribution will represent a *progression* beyond the Party's then current nationally determined contribution and *reflect its highest possible ambition*, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. (emphasis added)

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[99] B. Mayer, *International Law Obligations on Climate Change Mitigation*, Oxford, Oxford University Press, 2022, p. 52.

[100] *Ibid*, p. 53.

73. Two requirements are thus set by Article 4.3: on one hand, each new NDC must contain objectives going beyond those established in a State's previous NDC; on the other, each NDC must reflect the State's "highest possible ambition". This provision "exercise[s] considerable normative pull on parties"[101] and "import[s] *substantive and qualitative elements* into what on the face of it appears to be a purely procedural obligation",[102] namely, the mere adoption of an NDC.

74. The IPCC has recognised that "[w]hile what represents a Party's highest possible ambition and progression is not prescribed by the Agreement or elaborated in the Paris Rulebook, […] these obligations could be read to imply a *due diligence standard*",[103] an assertion confirmed by scholars.[104]

75. It must furthermore be underscored that "progression" and "highest possible ambition" function together. Indeed,

> [p]rogression not only sets a 'floor' for the next NDC from which no regression is allowed, but also requires each party to raise ambition as much as possible when going above and beyond the previous NDC. *It is the combination of both parameters that determines the standard of care when setting the objectives in NDCs*.[105]

76. With regard to the implementation of domestic mitigation measures, although Article 4.2, second sentence, does not *per se* establish the obligation to achieve the objectives contained in the NDCs, it does provide for the obligation for each Party to undertake national measures

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[101] L. Rajamani "Due Diligence in International Climate Change Law", in H. Krieger, A. Peters, L. Kreuzer*, Due Diligence in the International Legal Order*, Oxford, Oxford University Press, 2020, p. 169.

[102] *Ibid*. (emphasis added).

[103] IPCC, 2022: *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [P.R. Shukla, J. Skea, R. Slade, A. Al Khourdajie, R. van Diemen, D. McCollum, M. Pathak, S. Some, P. Vyas, R. Fradera, M. Belkacemi, A. Hasija, G. Lisboa, S. Luz, J. Malley, (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA. doi:10.1017/9781009157926, p. 1466, (emphasis added), [online] https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf, accessed on 1st March 2024.

[104] See, for instance: C. Voigt, "The power of the Paris Agreement in international climate litigation", *Review of European, Comparative European and International Environmental Law,* 2023, p. 241; B. Mayer, *International Law Obligations on Climate Change Mitigation*, p. 55; L. Rajamani, "Due Diligence in International Climate Change Law", p. 169.

[105] C. Voigt, *ibid*. (emphasis added).

"with the aim of achieving the objectives".[106] Thus, the second sentence of Article 4.2 sets a specific conduct expected from each State, which must make its "best efforts"[107] and undertake "the necessary measures"[108] to achieve the aims established in its NDC.

77. Consequently, each part of Article 4.2 establishes a specific conduct for States: they must adopt NDCs reflecting their "highest possible ambition", and then adopt domestic measures to aim at achieving them. Under international law, this standard of conduct is regularly associated with a due diligence standard,[109] defined as a "standard of care"[110] requiring "the degree of care […] expected of a good Government"[111] or what is "reasonably appropriate".[112]

78. This due diligence standard is not a fixed concept but rather evolves in time and in function of the risks involved. In its advisory opinion on *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, the ITLOS indicated that:

> "due diligence" is a variable concept [that] 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 technological knowledge*. It may also change in relation to the risks involved in the activity. […] The standard of due diligence has to be *more severe for the riskier activities*.[113]

79. Similarly, in its work relating to Prevention of Transboundary Harm from Hazardous Activities, the International Law Commission ("hereinafter ILC") noted that:

> [w]hat would be considered a reasonable standard of care or due diligence may change with time; what might be considered an appropriate and reasonable procedure, standard

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[106] B. Mayer, *International Law Obligations on Climate Change Mitigation*, pp. 57-58.

[107] L. Rajamani, "Due Diligence in International Climate Change Law", p. 171.

[108] B. Mayer, *International Law Obligations on Climate Change Mitigation*, p. 59.

[109] See for instance: *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 41, para. 111; ILA Study Group on Due Diligence in International Law, Second Report, July 2016, Tim Stephens (Rapporteur) and Duncan French (Chair), pp. 2, 7, 30.

[110] ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, Art. 3, p. 153.

[111] *Ibid*., p. 155.

[112] *Responsibilities and obligations of States with respect to activities in the Area*, pp. 73-78, para. 242.

[113] *Ibid.,* p. 43, para. 117 (emphasises added).

> or rule at one point in time may not be considered as such at some point in the future. Hence, due diligence in ensuring safety requires a State to keep abreast of technological changes and *scientific developments*.[114]

80. The Paris Agreement itself "recogni[ses] the need for an effective and progressive response to the urgent threat of climate change *on the basis of the best available scientific knowledge*".[115] In view of the fact that States parties to the Paris Agreement regularly confirm their confidence in IPCC's reports,[116] the Panel's work is thus undoubtedly considered as part of the "best available scientific knowledge".

81. On this matter, the IPCC's reports particularly well underline the risks for the climate system and the environment caused by GHG emissions and, as a consequence, by global warming. In its latest report, the IPCC indicated that:

> many climate-related risks are higher than assessed in [the previous report of 2014], and projected long-term impacts are up to multiple times higher than currently observed (*high confidence*). […] Climatic and non-climatic risks will increasingly interact, creating compound and cascading risks that are more complex and difficult to manage (*high confidence*).[117]

82. More specifically, the IPCC stated for instance that:

> [i]n the near term, every region in the world is projected to face further increases in climate hazards (*medium to high confidence, depending on region and hazard*), increasing multiple risks to ecosystems and humans (*very high confidence*). Hazards and associated risks expected in the near term include […] flooding in coastal and other low-lying cities and regions (*high confidence*), biodiversity loss in land, freshwater and ocean ecosystems (*medium to very high confidence, depending on ecosystem*), and a decrease in food production in some regions (*high confidence*). Cryosphere-related

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[114] ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Art. 3, p. 154.

[115] Paris Agreement, Preamble (emphasis added).

[116] See for instance: UNFCCC, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session, Glasgow, 2021, Addendum Part two: Action taken by the Conference of the Parties, UN Doc., FCCC/PA/CMA/2021/10/Add.1, p. 2, para. 2, [online] https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf; UNFCCC, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fourth session, Sharm el-Sheikh, 2022, Addendum Part two: Action taken by the Conference of the Parties, UN Doc., FCCC/PA/CMA/2022/10/Add.1, p. 3, para. 4, [online] https://unfccc.int/sites/default/files/resource/cp2022_10a01_E.pdf.

[117] IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, p. 14, para. B.2 (emphasis added), [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, accessed on 1st March 2024.

> changes in floods, landslides, and water availability have the potential to lead to severe consequences for people, infrastructure and the economy in most mountain regions (*high confidence*). The projected increase in frequency and intensity of heavy precipitation (*high confidence*) will increase rain-generated local flooding (*medium confidence*).[118]

83. Without ambitious mitigation measures, climate change will also cause irreversible effects. Indeed, according to the IPCC,

> [a]s warming levels increase, so do the risks of species extinction or irreversible loss of biodiversity in ecosystems including forests (*medium confidence*), coral reefs (*very high confidence*) and in Arctic regions (*high confidence*). At sustained warming levels between 2°C and 3°C, the Greenland and West Antarctic ice sheets will be lost almost completely and irreversibly over multiple millennia, causing several metres of sea level rise (*limited evidence*).[119]

84. Apart from these future risks induced by global warming, climate change negative effects are already observed. For instance,

> [it] has caused substantial damages […] in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems (*high confidence*). Hundreds of local losses of species have been driven by increases in the magnitude of heat extremes (*high confidence*) with mass mortality events recorded on land and in the ocean (*very high confidence*).[120]

85. Other negative impacts of climate change are unavoidable and will last for decades if not centuries. For instance, "[d]ue to unavoidable sea level rise […], risks for coastal ecosystems, people and infrastructure will continue to increase beyond 2100 (*high confidence*)".[121] In these conditions, SIDS as Seychelles are particularly at risk.

86. Thus, in view of the already existing negative consequences of climate change and of the high risks for the future if global warming is not mitigated, the standard of care expected from States under Article 4.2 of the Paris Agreement must necessarily be high. As noted by the IPCC, "[s]ome future changes are unavoidable and/or irreversible but can be limited by *deep, rapid, and sustained global greenhouse gas emissions reduction*."[122] States must thus act

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[118] *Ibid.,* p. 15, para. B.2.1.

[119] *Ibid.*, p. 18, para. B.3.2.

[120] *Ibid.*, p. 5, para. A.2.3.

[121] *Ibid.*, p. 15, para. B.2.2.

[122] *Ibid.*, p. 18, para. B.3 (emphasis added).

considering the "rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*)".[123]

87. However, in its 2023 report on *Emissions Gap*, the United Nations Environment Programme indicated that States' NDCs are "still insufficient to narrow the emissions gap".[124] In 2018, it had already indicated that "pathways reflecting current NDCs imply global warming of about 3°C by 2100, with warming continuing afterwards [and that i]f the emissions gap is not closed by 2030, it is very plausible that the goal of a well-below 2°C temperature increase is also out of reach".[125]

88. This means that at present, States' actions are not sufficient, by far, to effectively combat global warming, and consequently that States are not meeting their commitments under the Paris Agreement. This insufficiency in reducing GHG emissions has begun to be identified by domestic courts, which for instance have considered it to be a violation of a duty of care.[126]

89. Furthermore, and significantly, risks increase as temperature rises. Indeed, according to the IPCC,

> risks and projected adverse impacts and related losses and damages from climate change *will escalate with every increment of global warming* (*very high confidence*). They are higher for global warming of 1.5°C than at present, and even higher at 2°C (*high confidence*).[127]

90. In its 2018 *Special Report on the impacts of global warming of 1.5°C above pre-industrial levels*, the IPCC had already noted that there would be "robust differences in regional

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[123] *Ibid.*, p. 24, para. C.1.

[124] UNEP, *Emissions Gap Report 2023: Broken Record – Temperatures hit new highs, yet world fails to cut emissions (again)*, 2023, Nairobi, p. XVIII, [online] https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y, accessed on 1st March 2024.

[125] UNEP, *Emissions Gap Report 2018*, 2018, Nairobi, p. XIV, [online] https://wedocs.unep.org/bitstream/handle/20.500.11822/26895/EGR2018_FullReport_EN.pdf?sequence=1&isAllowed=y, accessed on 1st March 2024.

[126] District Court of the Hague, *Urgenda Foundation v. The Netherlands*, 24 June 2015, HAZA C/09/00456689, confirmed by The Hague Court of Appeal on 9 October 2018 and by the Supreme Court on 20 December 2019.

[127] IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, p. 15, para. B.2.2 (emphasis added), [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, accessed on 1st March 2024.

climate characteristics between present-day and global warming of 1.5°C, and between 1.5°C and 2°C".[128]

91. States themselves have recognised the climate change urgency and reaffirmed the importance of the objective of 1.5 °C. In 2021 in Glasgow, reiterated in 2022 in Sharm el-Sheikh, the Conference of the Parties serving as the Meeting of the Parties (hereinafter "CMA") stated "that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C and *resolves* to pursue efforts to limit the temperature increase to 1.5 °C".[129]

92. Furthermore, in 2021, the CMA

> [r]ecognize[d] that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around midcentury as well as deep reductions in other greenhouse gases.[130]

93. The year after, the CMA "[e]mphasize[d] the urgent need for immediate, deep, rapid and sustained reductions in global greenhouse gas emissions by Parties across all applicable sectors".[131]

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[128] *Ibid.,* p. 7, para. B.1.

[129] UNFCCC, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session, Glasgow, 2021, Addendum Part two: Action taken by the Conference of the Parties, UN Doc., FCCC/PA/CMA/2021/10/Add.1, para. 21, [online] https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf; UNFCCC, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fourth session, Sharm el-Sheikh, 2022, Addendum Part two: Action taken by the Conference of the Parties, UN Doc., FCCC/PA/CMA/2022/10/Add.1, para. 7, [online] https://unfccc.int/sites/default/files/resource/cp2022_10a01_E.pdf.

[130] UNFCCC, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session, Glasgow, 2021, Addendum Part two: Action taken by the Conference of the Parties, UN Doc., FCCC/PA/CMA/2021/10/Add.1, para. 22, [online] https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf.

[131] UNFCCC, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fourth session, Sharm el-Sheikh, 2022, Addendum Part two: Action taken by the Conference of the Parties, UN Doc., FCCC/PA/CMA/2022/10/Add.1, para. 11, [online] https://unfccc.int/sites/default/files/resource/cp2022_10a01_E.pdf.

94. The decisions of the CMA do not contradict the specific provisions of the Paris Agreement, but rather they denote the rapid evolutionary nature of the climate crisis. In this sense, it has been stated that:

> [a]lthough a decision by the CMA cannot replace or overwrite provisions of the Paris Agreement, it can be argued that the subsequent agreement as expressed in the consensus-based CMA decisions has normative bearing on the relative weighing of the temperature goals in Articles 2(1)(a) of the Paris Agreement. Interpreting these provisions in light of consensus expressed in subsequent CMA decisions, and informed by best available science, allows for the understanding that parties are […] putting a *stronger normative weight on the efforts to limit the temperature increase to 1.5C compared with 'well below 2C'*.[132]

95. It results from these various elements that requirements expected of States in the context of climate change are *not static* but rather evolve with time, notably depending on the scientific knowledge and on the identified risks.

96. In light of the aforesaid, States must act with a high standard of due diligence when implementing Article 4 of the Paris Agreement. This amounts to the adoption of ambitious NDCs and rapid domestic measures aimed at limiting the temperature increase to, at most, 1.5°C above the pre-industrial levels. These are concrete obligations, not merely platonic ones, which are consistent with the climate change risks, especially towards vulnerable States such as SIDS like Seychelles.

C. States Must Prevent Harm to the Environment by Mitigating Climate Change according to International Environmental Law

97. International environmental law can be defined "as the corpus of international law norms pertaining to environmental matters which guides all actors in international environmental governance".[133] It thus encompasses various obligations, either stemming from sectorial treaties protecting specific areas or framing particular human activities to protect the

[132] C. Voigt, "The power of the Paris Agreement in international climate litigation", p. 240 (emphasis added).

[133] U. Beyerlin, J. Grote Stoutenbur, "Environment, International Protection", in *Max Planck Encyclopaedia of Public International Law*, para. 2 [available on Peace Palace Library].

environment,[134] or from customary international law, such as the obligation to prevent harm to the environment.

98. In the context of the present advisory proceedings, Seychelles will mainly focus on the latter. The reason is two-fold: first, customary international law is applicable to all States and thus allows uniform implementation; and second, the prevention obligation is common to environmental law treaties as it constitutes one of its fundamental objectives, namely, to protect the environment.

99. The obligation to prevent harm to the environment results from an evolution in international law that helps understanding its rationale (**1**). Several conditions are required to trigger the obligation (**2**), which content is determined by the due diligence standard (**3**).

1. Origins and Rationale of the Obligation to Prevent Harm to the Environment

100. Presented as the "cornerstone"[135] of international environmental law, the obligation to prevent significant harm to the environment (also known as the "prevention principle", "no harm rule" or "obligation to prevent significant damage") is the result of an evolutive process. Despite variations in terminology, the obligation of prevention and the no harm rule seem to refer to the same substance under international law. In the context of the present written statement, they will thus be considered interchangeable.

101. The obligation to prevent "has its origin in the due diligence that is required of a State in its territory".[136] More specifically, according to Max Huber's award on the *Island of Palmas,* "[t]erritorial sovereignty […] has as corollary a duty: the obligation to protect within the

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[134] See for instance: Convention on Long-Range Transboundary Air Pollution, 1979; UNCLOS, 1982; Vienna Convention for the Protection of the Ozone Layer, 1985; Montreal Protocol on Substances That Deplete the Ozone Layer, 1987; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989; Convention on Environmental Impact Assessment in a Transboundary Context, 1991; Protocol on Environmental Protection to the Antarctic Treaty, 1991; Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992; Convention on Biological Diversity, 1992; Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, 1994; United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995; Convention on the Law of the Non-navigational Uses of International Watercourses, 1997; Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 2000.

[135] B. Mayer, "The relevance of the no-harm principle to climate change law and politics", *Asia Pacific Journal of Environmental Law*, Vol. 19, 2016, pp. 79-104.

[136] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, pp. 55-56, para. 101.

territory the rights of other States".[137] The Court reiterated this solution in its *Corfu Channel* case, noting that it is indeed "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States".[138] Thus, initially, the obligation related to not to cause harm to other States.

102. This obligation was subsequently expanded in relation with transboundary pollution in the 1941 *Train Smelter* award, according to which, "under the principles of international law […] no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another".[139] For the first time, the obligation not to cause harm to other States was linked to an environmental matter.

103. In 1972, Principle 21 of the Stockholm Declaration, then reiterated in the Principle 2 of the 1992 Rio Declaration, fully incorporated the obligation not to cause harm in the wider context of the protection of the environment, stating that: "States have […] the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

104. In 1996, the ICJ confirmed in its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* that "[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment".[140]

105. In 2010, the Court formally recognised the obligation to prevent significant damage to the environment as part of customary international law, and reiterated the existence of this rule since then, along with the ITLOS and arbitral tribunals.[141]

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[137] *Island of Palmas (United States v Netherlands), Award, 4 April 1948, PCA Case No. 1925-01*, p. 839.

[138] *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22.

[139] *Trail Smelter Arbitration* (United States and Canada), Decision, 11 March 1941, 3 R.I.A.A. 1905 (1941), p. 1965.

[140] *Nuclear Weapons*, p. 242, para. 29.

[141] *Pulp Mills,* pp. 55-56, para. 101; *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, I.C.J. Reports 2015*, p. 706, para. 104. See also: *Delimitation of the Maritime Boundary in the Atlantic*

106. With time, various multilateral environmental treaties incorporated obligations of prevention, such as the United Nations Convention on the Law of the Sea, the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks, the Convention on Biological Diversity, the Convention on the Law of Non-Navigational Uses of International Watercourses, the Vienna Convention for the Protection of the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Protocol on Environmental Protection to the Antarctic Treaty, the Convention on the Protection of the Alps, or the Helsinki Convention on the Transboundary Effects of Industrial Accidents.

107. The rationale of the obligation of prevention lies on the idea that "vigilance and prevention are required on account of the often irreversible character of damage to the environment."[142] The ILC further indicated that "[p]revention should be a preferred policy because compensation in case of harm often cannot restore the situation prevailing prior to the event or accident."[143]

108. Consequently, and to sum up, States must observe the customary obligation of prevention, defined as the obligation for States to ensure that activities within their jurisdiction and control do not cause harm (or damage) to the environment of other States or of areas beyond national control.

2. The Scope of the Obligation to Prevent Harm to the Environment

109. In practice, the prevention obligation requires both *ratione materiae* (**a**) and *ratione loci* (**b**) conditions to be triggered.

Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 160, para. 71; *Iron Rhine Arbitration*, 2005, p. 90, para. 222; *Kishanganga River Hydroelectric Power Plant Arbitration (Pakistan v. India), Partial award of February 18, 2013*, pp. 169-170, paras. 448-450 and *Final award of December 20, 2013,* p. 39, para. 112; *South China Sea Arbitration (Philippines v. China)*, *PCA Case No. 2013-19, Award of 12 July 2016*, p. 373, para. 941.

[142] *Gabçíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 77. para. 140.

[143] ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, General commentary, p. 148.

*(a) Type of Harm to be Prevented (***Ratione Materiae** *Scope)*

110. *Ratione materiae*, the obligation to prevent significant harm to the environment arises when two criteria are met: there must exist a risk, which must relate to a significant damage.

111. With regard to the *risk*, international law recognises that the obligation of prevention does not protect the causing of damage as such but merely the risk to cause damage.[144] In the framework of its work on the topic of Prevention of Transboundary Damage from Hazardous Activities, the ILC indicated that the risk "includes risks taking the form of a high probability of causing significant transboundary harm and a low probability of causing disastrous transboundary harm."[145] The Commission also noted that the evaluation of the said risk depends on the particular facts of each activity, "the specific context and the manner of operation".[146]

112. In the context of climate change, anthropogenic emissions of GHG do not merely create a risk of significant harm but *in fact cause significant harm* to the environment. Indeed, as the latest IPCC's report demonstrated, climate change caused by anthropogenic emissions of GHG is responsible for global warming, which already have "caused *substantial damages* […] in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems (*high confidence*).[147]

113. More specifically,

> [h]undreds of local losses of species have been driven by increases in the magnitude of heat extremes (*high confidence*) and mass mortality events on land and in the ocean (*very high confidence*). Impacts on some ecosystems are approaching irreversibility such as the impacts of hydrological changes resulting from the retreat of glaciers, or the changes in some mountain (*medium confidence*) and Arctic ecosystems driven by permafrost thaw (*high confidence*). […] Climate change has contributed to desertification and exacerbated land degradation, particularly in low lying coastal areas, river deltas, drylands and in permafrost areas (*high confidence*). Nearly 50% of coastal wetlands have been lost over the last 100 years, as a result of the combined effects of

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[144] See for instance: *Certain Activities/Construction of a Road,* p. 720, para. 155; *Ibid*., Art. 1, p. 149.

[145] *Ibid*., Art. 2(a), pp. 151-152.

[146] *Ibid*., p. 150.

[147] IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, p. 5, para. A.2.3 (emphasis added), [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, accessed on 1st March 2024.

localised human pressures, sea level rise, warming and extreme climate events (*high confidence*).[148]

114. It is consequently Seychelles' view that the present situation is not one of prospected damage, but rather one in which damage has already occurred. This damage will only aggravate if States do not take serious measures immediately.

115. With regard to the *significant* character of the damage, while Stockholm and Rio declarations remained silent on the required degree of damage, it has since been recognised that it must reach a certain threshold of significance.[149]

116. The Court considered that the significant character must be evaluated according to the specific circumstances of each case, such as the nature and size of the considered project, along with its context.[150] For its part, the ILC indicated that "a determination has to be made in each specific case. It involves more factual considerations than legal determination".[151]

117. According to the Commission, the significant character means "something more than 'detectable' but need not be at the level of 'serious' or 'substantial'. The harm must lead to a real detrimental effect on matters such as, for example, human health, industry, property, environment or agriculture in other States".[152] Furthermore, in the Sixth report on International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law, the Special Rapporteur indicated that the significant character is "greater than the mere nuisance or insignificant harm which is normally tolerated."[153] Consequently, as a result of those elements, the threshold of significance triggering the obligation of prevention is not very high.

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[148] IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, p. 46, para. 2.1.2. [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf, accessed on 1st March 2024.

[149] *Pulp Mills*, pp. 55-56, para. 101; *Certain Activities/Construction of a Road,* p. 706, para. 104. See also: *Kishanganga River*, *Partial award*, p. 170, para. 451 and *Final award*, p. 39, para. 112.

[150] *Certain Activities/Construction of a Road,* p. 720, para. 155.

[151] ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Art. 2, Commentary, p. 152.

[152] *Ibid*.

[153] ILC, Sixth report on International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law, by Mr. Julio Barboza, Special Rapporteur, *Yearbook of the International Law Commission*, 1990, vol. II (1), UN Doc. A/CN.4/428 and Corr.1-4 and Add.1, p. 105.

118. In the context of climate change, negative effects of anthropogenic emissions of GHG on the climate system and the environment evidently pass the threshold of "more than detectable", "detrimental effect" or "greater than the mere nuisance". As mentioned above, the consequences of climate change will lead to numerous substantial and even irreversible damage on the environment and the climate system and, consequently, on human beings.[154]

*(b) Sphere of application of the obligation (***ratione loci** *scope)*

119. The required *ratione loci* criterion of the obligation to prevent harm is two-fold: on one hand, activities causing a risk for a significant damage must be identified within the jurisdiction or control of a State; and on the other, the significant damage must concern other States' territory or areas beyond national jurisdiction.

120. First, according to the obligation of prevention, activities risking causing significant damage must be identified within a State's jurisdiction or control. In the context of climate change, the relevant activities are those that produce GHG, including "the burning of fossil fuels, deforestation, land use and land-use changes, livestock production, fertilisation, waste management and industrial processes."[155] Evidently, these activities are necessarily located in a State's territory.

121. Second, the risk of significant harm must be directed "to other States" or "areas beyond the limits of national jurisdiction". The phrasing "to other States" seems to relate to "transboundary harm", defined by the ILC as an "harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, *whether or not the States concerned share a common border*."[156]

122. This is well applicable to climate change, where emissions of GHG causing global warming are not constrained by boundaries but rather are a diffuse phenomenon that have

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[154] See II. B. paras. 81-83.

[155] IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, pp. 550-551, [online] https://www.ipcc.ch/sr15/chapter/glossary/, accessed on 1st March 2024.

[156] ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Art. 2, p. 152 (emphasis added).

transboundary consequences. Accordingly, vulnerable States, such as SIDS like Seychelles, suffer the transboundary consequences of emitting activities outside of their jurisdiction and are thus threatened by significant harm caused to their environment and their people.

123. Also, as a diffuse phenomenon, anthropogenic emissions of GHG necessarily cause a risk of significant damage "to areas beyond the limits of national jurisdiction", meaning, to global commons, traditionally identified as the high seas, the deep-sea bed, the atmosphere, Antarctica and the Outer Space.

124. Anthropogenic emissions of GHG thus cause a risk of significant damage to the environment of other States and to global commons. Consequently, States of origin of the said emissions must prevent harm to the environment. In practice, to observe this obligation States are expected to follow a specific conduct determined by due diligence.

3. The Required Conduct of States under the Obligation to Prevent Harm to the Environment

125. The Court stated in 2010 in its *Pulp Mills* case that the prevention principle is an obligation of conduct that "has its origin in the due diligence that is required of a State in its territory".[157] The interconnection between the obligation of prevention and due diligence has since been reiterated, for instance by the Inter-American Court of Human Rights (hereinafter "IACHR") in its advisory opinion on *The Environment and Human Rights*, which indicated that the obligation to prevent significant harm to the environment "is linked to the international obligation to exercise due diligence so as not to cause or permit damage to other States".[158] In the same way, Article 3 of the ILC's Draft Articles on Prevention of Transboundary Harm from Hazardous Activities indicated that: "[t]he obligation of the State of origin to take preventive

[157] *Pulp Mills,* pp. 55-56, para. 101.

[158] IACHR, *The environment and human rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: interpretation and scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*, Advisory opinion OC-23/17, 2017, requested by Colombia, p. 52, para. 128.

or minimization measures is one of due diligence. It is the conduct of the State of origin that will determine whether the State has complied with its obligation under the present articles".[159]

126. According to the Court, the fact that the prevention obligation finds its origin in due diligence means that "State[s are] thus obliged to use *all the means* at [their] disposal in order to avoid activities which take place in [their] territory, or in any area under [their] jurisdiction, causing significant damage to the environment of another State [or global areas]".[160]

127. The Court clarified that:

> [i]t is an obligation which entails not only the adoption of *appropriate rules and measures*, but also a certain level of *vigilance* in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators.[161]

128. The same way, the ITLOS specified that the "'due diligence' obligation requires the […] State to *take measures within its legal system*[, which] must consist of laws and regulations and administrative measures".[162] Furthermore, Article 3 of ILC's Draft Articles on Prevention of Transboundary Harm from Hazardous Activities noted that the State in which the activities risking to cause transboundary damage originate "shall take *all appropriate measures* to prevent significant transboundary harm or at any event *to minimize the risk thereof*".[163]

129. More specifically and as previously mentioned, the conduct expected from States when undertaking these measures may vary with time, considering factors such as scientific knowledge and risks induced by the activities involved, meaning that the riskier the activities, the higher the threshold of conduct expected.[164] As already demonstrated throughout Seychelles' written statement, the high risks induced by global warming necessarily amount to

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[159] ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Art. 3, p. 154.

[160] *Pulp Mills*, pp. 55-56, para. 101; *Certain Activities/Construction of a Road*, p. 706, para. 104 (emphasis added).

[161] *Pulp Mills*, pp. 79-80, para. 197 (emphasis added); see also *Responsibilities and obligations of States with respect to activities in the Area*, p. 42, para. 115; *SRFC Advisory Opinion*, p. 41, para. 131; *South China Sea*, pp. 375-376, para. 944 (emphasises added).

[162] *Responsibilities and obligations of States with respect to activities in the Area*, p. 74, (emphasis added).

[163] ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Art. 3, p. 154 (emphasises added).

[164] *Responsibilities and obligations of States with respect to activities in the Area*, p. 43, para. 117 (emphasis added); See II. B. paras. 78-79.

a corresponding high standard of due diligence required from States when addressing climate change.

130. Amongst the measures to be adopted by States is the customary[165] obligation to undertake environmental impact assessments. The Court indicated in this regard that:

> [t]o fulfil its obligation to exercise due diligence in preventing significant transboundary environmental harm, a State must, before embarking on an activity having the potential adversely to affect the environment of another State, ascertain if there is a risk of significant transboundary harm, which would trigger the requirement to carry out an environmental impact assessment.[166]

131. The Court specified that the content of environmental impact assessments should depend on "the specific circumstances of each case",[167] considering "the nature and magnitude of the proposed development and its likely adverse impact on the environment".[168] In any case, when a risk of significant transboundary damage is identified, the State concerned must "notify and consult in good faith with the potentially affected State".[169]

132. In the context of climate change, the obligation to undertake environmental impact assessments is of particular relevance when States engage in activities susceptible to negatively affect the climate system and the environment through emissions of GHG, such as "burning of fossil fuels, deforestation, land use and land-use changes, livestock production, fertilisation, waste management and industrial processes."[170]

133. To conclude, under the customary prevention obligation, States must employ *all the means* at their disposal to prevent and minimise significant harm to the environment caused by activities producing GHG emissions. To that end, they must adopt and implement *rapid* and

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[165] Read together: *Certain Activities/Construction of a Road*, p. 733, para. 204 and *Responsibilities and obligations of States with respect to activities in the Area*, p. 50, para. 145.

[166] *Certain Activities/Construction of a Road*, p. 706, para. 104.

[167] *Ibid*.

[168] *Pulp Mills*, p. 83, para. 205; *Certain Activities/Construction of a Road*, p. 706, para. 104.

[169] *Certain Activities/Construction of a Road*, p. 706, para. 104.

[170] IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, p. 543, [online] https://www.ipcc.ch/sr15/chapter/glossary/, accessed on 1st March 2024.

substantial domestic measures to mitigate climate change by limiting the temperature increase to, at most, 1.5 °C above the pre-industrial level. These measures are evidently necessary in view of the numerous considerable risks it engenders on the climate system, the environment, and ultimately on the human beings.

D. States Must Ensure the Protection of Human Rights by Mitigating Climate Change

134. Article 55(c) of the United Nations Charter establishes the obligation to promote "universal respect for, and observance of, human rights". However, the negative effects of anthropogenic emissions of GHG have affected and continue to threaten the enjoyment of various human rights whose protection must be ensured under several international law instruments, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights, or the European Convention on Human Rights.

135. After having stressed the interconnection between environment and human rights (**1**), Seychelles' written statement will focus on identifying the human rights negatively affected by climate change (**2**).

1. The Interdependence between Environment and Human Rights

136. The protection of the climate system and the environment is directly linked with the protection and enjoyment of human rights. Human beings are indeed the direct beneficiaries of a healthy environment since, as mentioned above, "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings […]".[171]

137. Multilateral instruments related to climate change and international jurisdictions had acknowledged the relationship between both. For example, the Stockholm Declaration indicated that "[t]he protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world";[172]

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[171] *Nuclear Weapons,* pp. 241-242, para. 29.

[172] Stockholm Declaration, Preamble, point 2.

the Rio Declaration stated that "[h]uman beings are at the centre of concerns for sustainable development";[173] and the 2015 Paris Agreement added that:

> [a]cknowledging that climate change is a *common concern of humankind*, 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, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.[174]

138. With regard to international jurisdictions, the IACHR reminded in its recent advisory opinion on *The Environment and Human Rights* that diverse regional systems of human rights protection have recognised the linkage between human rights and environment.[175] Indeed, the African Commission on Human and Peoples' Rights (hereinafter "ACHPR") stated that the right to "satisfactory living conditions and development" is "closely linked to economic and social rights insofar as the environment affects the quality of life and the safety of the individual";[176] the European Court of Human Rights (hereinafter "ECHR") acknowledged "that severe environmental degradation may affect the well-being of the individual […]"; and, finally, the IACHR "recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights".[177]

139. Furthermore, the United Nations Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has stated that "[h]uman rights and environmental protection are inherently interdependent"[178] for that:

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[173] Rio Declaration, Principle 1.

[174] Paris Agreement, Preamble (emphasis added).

[175] IACHR, *The environment and human rights,* point. VI, p. 20 and following.

[176] ACHPR, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication 155/96, Decision of October 27, 2001, para. 51.

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

[178] HRC, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Preliminary Report, A/HRC/22/43, para. 10.

> [h]uman rights are grounded in respect for fundamental human attributes such as dignity, equality and liberty. The realization of these attributes depends on an environment that allows them to flourish. At the same time, effective environmental protection often depends on the exercise of human rights that are vital to informed, transparent and responsive policymaking.[179]

140. However, as the IPCC's latest report underscored, climate change poses significant risks for human beings. It indeed noted that "[h]azards and associated risks expected in the near term include an increase in heat-related human mortality and morbidity (*high confidence*), food-borne, water-borne, and vector-borne diseases (*high confidence*), and mental health challenges (*very high confidence*)".[180]

141. For its part, the Office of the High Commissioner for Human Rights (hereinafter "OHCHR") indicated that:

> [t]he increasing frequency of extreme weather events and natural disasters, rising sea levels, floods, heat waves, droughts, desertification, water shortages, and the spread of tropical and vector-borne diseases […] directly and indirectly threaten the full and effective enjoyment of a range of human rights by people throughout the world, including the rights to life, safe drinking water and sanitation, food, health, housing, self-determination, culture, work and development.[181]

142. Consequently, the protection of human rights and the protection of the environment are undoubtfully intertwined, and the deterioration of the latter necessarily impacts the enjoyment of the former.

2. The Human Rights Negatively Affected by Climate Change

143. As such, the right to a healthy environment has been clearly incorporated in some international law instruments such as the African Charter on Human and Peoples' Rights, the Arab Charter on Human Rights, the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration, or the American Declaration on the Rights of Indigenous Peoples. In 2022,

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[179] *Ibid*.

[180] IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,* p. 15, para. B.2.1, [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, accessed on 1st March 2024.

[181] OHCR, "The impacts of climate change on the effective enjoyment of human rights", [online] https://www.ohchr.org/en/climate-change/impacts-climate-change-effective-enjoyment-human-rights, accessed on 1st March 2024.

the United Nations General Assembly also admitted the right to a healthy environment,[182] following the Human Rights Council's resolution recognising its existence.[183] In total, 156 States have recognised the right to a healthy environment at regional and national levels.[184]

144. According to the Human Rights Council (hereinafter "HRC"), the right to a healthy environment includes procedural and substantive elements: the first ones imply access to information, public participation, access to justice and public remedies, whereas the second ones include "clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystem".[185]

145. Beyond the right to a healthy environment as such,[186] international jurisdictions or quasi-jurisdictional bodies dealt with various environment related cases linked to other human rights. In its 2017 advisory opinion, the IACHR noted that these international jurisdictions and quasi-jurisdictions indeed recognised that environmental degradation could lead to a violation

[182] UNGA, Resolution 76/300, 28 July 2022, UN Doc. A/RES/76/300.

[183] HRC, Res. 48/13, "The human right to a clean, healthy and sustainable environment", 18 October 2021, UN Doc. A/HRC/RES/48/13).

[184] OHCR, UNEP, UNDP, "What is the Right to a Healthy Environment?", *Information note*, 2023 [online], https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf, accessed on 1st March 2024.

[185] HRC, Res. 43/53, Right to a healthy environment: good practices. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 30 December 2019, UN Doc. A/HRC/43/53.

[186] IACHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, *Merits, reparations and costs*, 6 February 2020.

of the rights to life,[187] to personal integrity,[188] to private life,[189] to health,[190] to water,[191] to food,[192] to housing,[193] to participation in cultural life,[194] to property,[195] and the right not to be forcibly displaced.[196] In 2019, the Human Rights Committee's case *Teitiota v. New Zealand* furthermore recognised that in the context of climate change, displaced persons have the right not to be returned to a country where they would be exposed to irreparable harm to their life.[197]

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

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

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

[190] ESCR Committee, General Comment No. 14: The right to the highest attainable standard of health (article 12 of the ICESCR), August 11, 2000, UN Doc. E/C.12/2000/4, para. 34. See, also: African Commission on Human and Peoples' Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication 155/96, Decision of October 27, 2001, paras. 51-52.

[191] ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the ICESCR), 20 January 2023, UN Doc. E/C.12/2002/11, paras. 8, 10.

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

[193] ESCR Committee, General Comment No. 4: The right to adequate housing (article 11(1) of the ICESCR), 13 December 1991, UN Doc. E/1992/23, para. 8.f.

[194] ESCR Committee, Concluding observations: Madagascar, 16 December 2009, UN Doc. E/C.12/MDG/CO/2, para. 33; ESCR Committee, General Comment No. 21: Right of everyone to take part in cultural life (article 15(1)(a), of the ICESCR) 17 May 2010, UN Doc. E/C.12/GC/21/Rev.1, para. 36.

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

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

[197] HRC, *Ioane Teitiota v. New Zealand*, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, 24 October 2019, Doc. CCPR/C/127/D/2728/2016.

146. In view of these elements, by causing harm to the climate system and the environment due to anthropogenic emissions of GHG, States' negligence also negatively affects the human rights they must protect under international law.

III. Seychelles' Position on the Legal Consequences Arising for States when Breaching these Obligations (Question B)

147. After having explained the meaning and scope of the second question submitted to the Court (**A**), Seychelles will tackle the legal consequences arising from a breach of the obligations above identified (**B**).

A. The Meaning and Scope of the Question Submitted to the Court

148. The second question submitted to the Court reads as follows:

> (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
>
> > (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
> >
> > (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

149. For the sake of clarification, it must first be noted that the terminology "legal consequences" is twofold in the Court's jurisprudence.[198] Indeed, not only does it refer to the international responsibility of a State in breach with its obligations, but it also encompasses the consequences of a State's international responsibility, namely, cessation and non-repetition, and reparation.[199]

150. Second, in the context of the present advisory proceedings, the legal consequences determined below refer to the violation of obligations relating to climate change identified by

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[198] *Legal Consequences of the Separation of the Chagos Archipelago,* p. 139*,* para. 178; *Legal Consequences of the Construction of a Wall,* p. 197, para. 151.

[199] ILC, Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, vol. II (Part Two), Art. 30 et 31.

Seychelles' written statement, namely, the obligation to mitigate climate change by adopting NDCs reflecting States' highest possible ambition along with domestic measures to implement them; the due diligence obligation to prevent significant harm to the environment by mitigating climate change; and the obligation to ensure the protection of human rights by protecting the climate system and the environment.

151. Third, it must be underscored that climate change law is informed by the principle of Common but Differentiated Responsibilities and Respective Capabilities (hereinafter "CBDR-RC"), as introduced by the 1992 Rio Declaration and reiterated in the UNFCCC and the Paris Agreement. The rationale of this principle lies on the fact that while all States emit GHG and are responsible for climate change, some contribute more than others. Thus, States that contribute the most bear the greatest responsibility. On the contrary, States that pollute less, such as SIDS as Seychelles,[200] bear a lesser responsibility.

B. The Legal Consequences Arising of a Breach of the Identified Obligations

152. Article 1 of the ILC's Articles on Responsibility of States for Internationally Wrongful Acts posits the fundamental principle that a State's international wrongful act entails its responsibility under international law. According to Article 2, two criteria are to be met for an internationally wrongful act to be constituted: first, the conduct must be attributable to the State and second, the said conduct must breach an international obligation.

153. International law provides for a distinction between obligations of result and obligations of conduct (or of means). While the former "require[s] the realization of a specified outcome[, the latter] require[s] an endeavour towards a goal or an outcome",[201] which content is determined by due diligence. As previously demonstrated, both the obligation to implement NDCs and the obligation to prevent significant harm to the environment are obligations of

[200] "Least Developed Countries (LDCs) and Small Island Developing States (SIDS) have much lower per capita emissions (1.7 tCO2-eq and 4.6 tCO2-eq, respectively) than the global average (6.9 tCO2-eq)": IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report*, p. 44. [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf, accessed on 1st March 2024.

[201] B. Mayer, "Obligations of conduct in the international law on climate change: A defence", *Review of European, Comparative European and International Environmental Law,* 2018, Vol. 27, Issue 2.

conduct that require a high due diligence threshold consistent with climate change related risks and damage.

154. Attribution can be one of the most complex aspects concerning the legal consequences for a breach of climate change related obligations. However, the CBDR-RC principle could assist to address this question.

155. Having underscored the obligations of States related to climate change and the breach of these obligations, it follows that States' conducts with regard to the climate system and the environment constitute an internationally wrongful act entailing their responsibility.[202] Consequently, States must cease their internationally wrongful conduct by undertaking measures to comply urgently with their climate change related obligations under international law.

156. It will then be for the United Nations General Assembly to determine what measures States must adopt to comply with their climate change related obligations under international law, in accordance with the Courts' previous advisory proceedings indicating that it is not for the Court to "determine what steps the General Assembly may wish to take after receiving the Court's opinion or what effect that opinion may have in relation to those steps".[203]

[202] *Corfu Channel*, p. 23; *Gabčíkovo-Nagymaros,* p. 38, para. 47.

[203] *Unilateral Declaration of Independence in Respect of Kosovo*, p. 421, para. 44.

Conclusions

157. For the reasons outlined in the present written statement, Seychelles respectfully states that:

(1) The Court has jurisdiction to entertain the requested advisory opinion and there exists no reason to use its discretionary power not to render it;

(2) Concerning the first question submitted to the Court, the obligations of States in respect of climate change are the following:

(i) The obligation to adopt Nationally Determined Contributions and domestic measures aimed at limiting the temperature increase to, at most, 1.5°C above the pre-industrial levels;

(ii) The obligation to use all the means at their disposal to prevent significant harm to the environment of other States or of areas beyond the limits of national jurisdiction caused by activities located within their jurisdiction or control that produce emissions of greenhouse gases;

(iii) The obligation to ensure the protection of human rights by mitigating climate change.

(3) Regarding the second question submitted to the Court, a breach of the said obligations constitutes an internationally wrongful act of a State, which entails its international responsibility, and requires as a first measure the cessation of such act. States' international responsibility in the context of climate change should be assessed through the principle of Common but Differentiated Responsibilities and Respective Capabilities.