

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

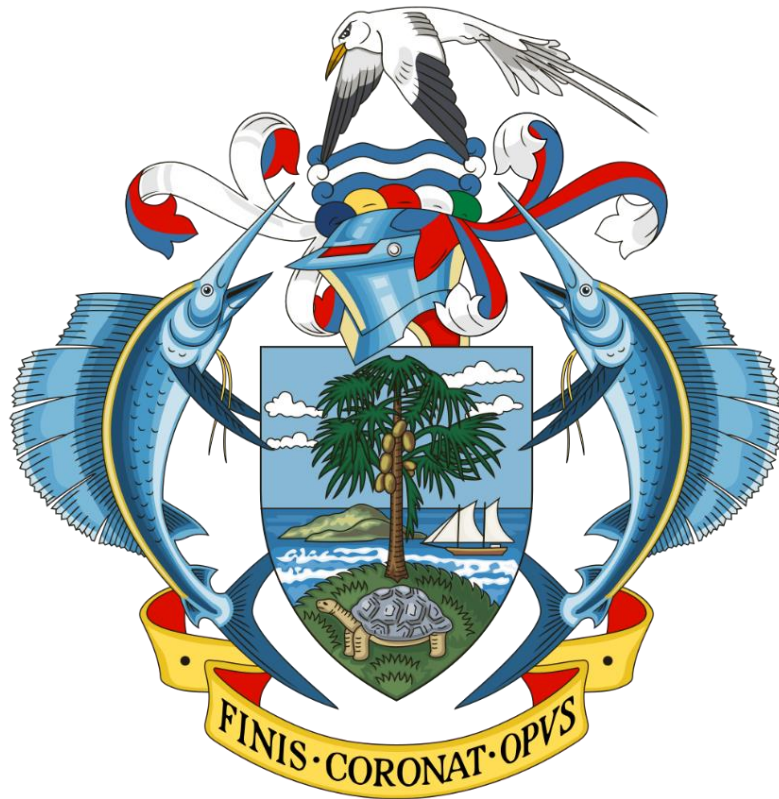
REQUEST FOR ADVISORY OPINION

WRITTEN COMMENTS OF THE REPUBLIC OF SEYCHELLES

15 August 2024

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

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Introduction

1. In accordance with Article 66, paragraph 4, of the Statute of the International Court of Justice (hereinafter “the Court” or “the ICJ”), and the Court’s Order dated 30 May 2024, the Republic of Seychelles (hereinafter “Seychelles”) hereby submits its written comments on the written statements transmitted by States, groups of States and international organisations to the Court on 22 March 2024, in the advisory proceedings regarding the *Obligations of States in respect of climate change*.

2. The questions submitted to the Court pursuant to Resolution 77/276 of 29 March 2023 adopted by the General Assembly of the United Nations 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?¹

3. As a Small Island Developing State (hereinafter “SIDS”) composed of low-lying islands, Seychelles has been, is, and will be particularly affected by the negative effects of climate change, such as sea level rise, increased sea temperature, ocean acidification, coral bleaching, cyclones, tsunamis, storm surges, extreme rainfall, flooding, landslides, and

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

extended periods of drought.² These events significantly threaten not only Seychelles' land territory and infrastructure but also Seychellois people and their livelihoods, and they pose a high risk of human displacement due to the lack of viable alternatives for their survival.³

4. Small Islands' vulnerabilities have again been underscored during the Fourth International Conference on SIDS ("SIDS 4") held in Antigua and Barbuda in May 2024 and entitled *Charting the Course Toward Resilient Prosperity*, which noted that:

[...] SIDS are facing the unrelenting and compounding impacts of climate change, biodiversity loss, pollution, disasters and natural hazards, health and other social related challenges and economic vulnerabilities, as well as the progressive deterioration in their ability to withstand external shocks and enhance their resilience.

Small island developing States are inherently and uniquely vulnerable to exogenous shocks owing to, inter alia, their small size, geographical remoteness, highly dispersed populations, the limited scale and undiversified nature of their economies, high dependence on external markets, and extreme exposure to disasters and natural hazards and the effects of climate change [...].⁴

5. According to the latest report of the Intergovernmental Panel on Climate Change (hereinafter "IPCC"), global sea level rise is unavoidable and accelerating and "vulnerability will [] rise rapidly in low-lying [SIDS such as Seychelles]".⁵ In a high emission scenario, Seychelles' low-lying islands will inevitably face a 1-meter rise of the mean sea level by the end of the century.⁶

² 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 22 July 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 22 July 2024.

³ For further developments on Seychelles' situation facing climate change, see Seychelles' Written Statement, "I. Seychelles' Characteristics, Vulnerabilities and Actions Regarding Climate Change Explaining its Motivation to Participate in the Present Advisory Proceedings", pp. 7-20.

⁴ Fourth International Conference on Small Island Developing States, The Antigua and Barbuda Agenda for SIDS (ABAS) – a Renewed Declaration for Resilient Prosperity, pp. 1-2, paras. 4-5 [online] <https://sdgs.un.org/sites/default/files/2024-04/SIDS4%20-%20Co-Chairs%20FINAL.pdf>, accessed on 22 July 2024.

⁵ IPCC, 2023: *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. 98, [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf, accessed on 22 July 2024.

⁶ See Figure 3.4, *ibid.*, pp. 80-81.

6. On a global scale, the IPCC's 2023 report highlighted the risks for the climate system and the environment caused by greenhouse gases (hereinafter "GHG") emissions and, therefore, by global warming. It indicated 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 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*).⁷

7. According to the IPCC:

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*).⁸

8. To restraint the negative effects of climate change, the IPCC repeatedly affirmed the necessity to limit global warming to, *at most, 1.5°C above pre-industrial levels*. It stated that:

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*).⁹

9. However, the Copernicus Institute recently found that June 2024 was the *warmest June on record since 1940* with a global average temperature of 0.67°C above the 1991–2020 period.¹⁰ The Institute added that June 2024 was "the 13th month in a row that was the

⁷ 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 22 July 2024.

⁸ *Ibid.*, p. 14, para. B.2.

⁹ 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 22 July 2024.

¹⁰ Copernicus Institute, "June 2024 marks 12th month of global temperatures at 1.5°C above pre-industrial levels", [online] <https://climate.copernicus.eu/june-2024-marks-12th-month-global-temperatures-15degc-above-pre-industrial-levels>, accessed on 22 July 2024.

warmest”¹¹ and that “[t]he ongoing monthly temperature records are reflected in the global-average temperature for the past 12 months, which is also the highest on record, at *0.76°C above the 1991–2020 average and 1.64°C above the 1850–1900 pre-industrial average.*”¹²

10. The data demonstrates that global warming is evolving rapidly and that until now, States’ actions are inconsistent with the 1.5°C threshold. In the 2023 report on *Emissions Gap*, the United Nations Environment Programme indeed indicated that States’ nationally determined contributions (hereinafter “NDC”) are “still insufficient to narrow the emissions gap”.¹³ It had already indicated in 2018 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”.¹⁴

11. As seen below, for several years, various international, regional, and domestic jurisdictions have dealt with the obligations of States regarding climate change and the insufficiency of their actions:

— On 21 May 2024, the International Tribunal for the Law of the Sea (hereinafter “ITLOS”) delivered the advisory opinion on States’ obligations under the United Nations Convention on the Law of the Sea (hereinafter “UNCLOS”) regarding climate change effects on the sea. The Tribunal firstly recognised that the anthropogenic emissions of GHG constitute pollution of the marine environment within the meaning of UNCLOS, which consequently means that States Parties must take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions; and secondly indicated that States Parties must protect and preserve the marine environment from climate change impacts and ocean acidification.¹⁵

¹¹ *Ibid.*

¹² *Ibid.*

¹³ 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 22 July 2024.

¹⁴ 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 22 July 2024.

¹⁵ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024*, pp. 147-148 and 151.

- On 9 April 2024, the European Court of Human Rights (hereinafter “ECHR”) found that Switzerland failed to protect the human rights of its citizens because of its non-appropriate measures concerning climate change.¹⁶
- In July 2021, in the case *Commune de Grande-Synthe*, the French Council of State ordered France to take all necessary measures to reach its GHG emissions reduction target.¹⁷ Then, in October 2021, in the case *Notre affaire à tous*, the French Administrative Court of Paris ordered France to take actions to comply with its GHG emissions reduction objective.¹⁸
- In March 2021, the German Federal Constitutional Court found in the *Neubauer* case that Germany must take measures to reduce its GHG emissions.¹⁹
- In November 2017, the Inter-American Court of Human Rights (hereinafter “IACHR”) rendered an advisory opinion indicating that States have extraterritorial obligations to protect human rights from transboundary environmental harm.²⁰
- In June 2015, confirmed in 2019 by the Supreme Court, the Hague District Court considered in the *Urgenda v. Government of the Netherlands* case that the Netherlands had to reduce its GHG emissions.²¹

12. The advisory proceedings currently before the Court thus constitute the natural legal progression and the logical next step in the clarification and consolidation of an effective regime of binding obligations to protect the environment and the climate system. It is also a historical step: since the Court is the highest legal authority in the world, its advisory opinion is expected to be the guidance needed by present and future generations.

¹⁶ ECHR, Grand Chamber, *Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, (Application No. 53600/20), Judgment, 9 April 2024.

¹⁷ French Council of State, *Commune de Grande-Synthe*, Decision of 1 July 2021, No. 427301.

¹⁸ Administrative Court of Paris, *Association Oxfam France, Association Notre Affaire à Tous, Fondation pour la nature et l’homme, Association Greenpeace France*, Decision of 14 October 2021, No. 1904967, 1904968, 1904972, 1904976/4-1.

¹⁹ German Federal Constitutional Court, *Neubauer*, 24 March 2021, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20.

²⁰ 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 No. OC-23/17, 2017.

²¹ The Hague District Court, *Stichting Urgenda v. Government of the Netherlands (Ministry of Infrastructure and the Environment)*, 24 June 2015, C/09/456689/HA ZA 13-1396.

13. It is helpful to highlight the recent advisory opinion rendered by ITLOS as it brings clarification concerning the obligations of States regarding anthropogenic GHG emissions, which, as the Tribunal recognised, are a source of pollution of the marine environment. The Tribunal’s opinion is of particular relevance in the context of the present advisory proceedings, both because it addresses obligations to protect the environment from anthropogenic action generating climate change and its damaging consequences, and because it deals with an aspect of the first question submitted to the Court insofar as it relates to the law of the sea obligations. Seychelles notes that the Tribunal has comprehensively answered to this aspect of the question only to the extent of the treaty obligations contained in UNCLOS. However, it is Seychelles’ position that the Tribunal’s findings should be seen as being not only the proper interpretation of UNCLOS provisions, but also as stating the content of customary international law. Indeed, it is Seychelles’ view that the key provisions of UNCLOS interpreted by ITLOS in its advisory opinion, in particular Articles 192 and 194, duly reflect customary international law obligations.

14. As to its key findings, first, the Tribunal recognised that the global temperature goal to achieve according to the Paris Agreement was limited to 1.5°C rather than 2°C above pre-industrial levels. Article 2 (a) of the Paris Agreement is subject to interpretation in stating that this treaty

aims 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 [...].

15. The Tribunal thus clarified that:

[t]he dual temperature goal stipulated in [Article 2] has been further *strengthened* by the successive decisions of the Parties to the Paris Agreement. In 2022, for example, the COP adopted the Sharm el-Sheikh Implementation Plan, in which it “[r]eiterates 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 further efforts to limit the temperature increase to 1.5 °C” (Decision 1/CP.27 of 20 November 2022, para. 7; see also Decision FCCC/PA/CMA/2023/L.17 of 13 December 2023, para. 4).²²

16. Consequently, when referring to the Paris Agreement, the Tribunal retained “the global temperature goal of *limiting the temperature increase to 1.5°C* above pre-industrial levels”,²³ thus excluding any mention of the 2°C threshold.

²² *Request for an Advisory Opinion submitted by COSIS*, p. 78, para. 216 (emphasis added).

²³ *Ibid.*, p. 87, para. 243 (emphasis added).

17. Secondly, the Tribunal clarified what are the necessary measures to be adopted by States regarding their anthropogenic emissions of GHG in order to observe their obligation to prevent, reduce and control marine pollution under Article 194, paragraphs 1 and 2 of UNCLOS, and to protect and preserve the marine environment under Article 192 of the same Convention. The Tribunal noted that these necessary measures are not subject to the discretionary policy decided by each State, but are determined objectively, considering factors such as scientific data, and particularly IPCC's reports which reflect "the best available science";²⁴ international rules and standards concerning climate change, such as the UNFCCC and the Paris Agreement, and "in particular the global temperature goal of limiting the temperature increase to 1.5°C above pre-industrial levels";²⁵ and States' means and capabilities.

18. Thirdly, the Tribunal opined that the obligations of States Parties regarding marine pollution and the preservation and protection of the marine environment (Article 194 and Article 192 of UNCLOS) are "due diligence" obligations that require a specific conduct of States rather than a result but specified that such obligations should not be construed as a vague "best efforts" commitment subject to political will. Referring to its findings in 2011 in the advisory opinion on the *Responsibilities and obligations of States with respect to activities in the Area* (concerning other provisions of UNCLOS), the Tribunal reiterated that "due diligence is a variable concept"²⁶ according to different factors such as the risks involved, and clarified crucial elements to be taken into consideration, namely "scientific and technological information, relevant rules and standards [...] and the urgency involved".²⁷ Substantially, the Tribunal considered, as it did in 2011, that the standard of due diligence "has to be more severe for the riskier activities".²⁸ In the context of anthropogenic GHG emissions, it specified that the standard of due diligence to be exercised by States is "*stringent*" in the context of the preservation and protection of the marine environment (Article 192)²⁹ and of the prevention, reduction and control of marine pollution (Article 194, paragraph 1),³⁰ and "can be *even more*

²⁴ *Ibid.*, p. 75, para. 208.

²⁵ *Ibid.*, p. 87, para. 243.

²⁶ *Ibid.*, p. 86, para. 239; *Responsibilities and Obligations of States with respect to Activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 43, para. 117.

²⁷ *Responsibilities and Obligations of States with respect to Activities in the Area*, p. 43, para. 117.

²⁸ *Request for an Advisory Opinion submitted by COSIS*, p. 86, para. 239; *Area*, p. 43, para. 117.

²⁹ *Ibid.*, p. 133, para. 398 (emphasis added).

³⁰ *Ibid.*, p. 87, para. 241.

stringent” regarding transboundary pollution (Article 194, paragraph 2),³¹ considering the risks involved.

19. Finally, the Tribunal confirmed the importance of taking into consideration the principle of Common but Differentiated Responsibilities and Respective Capabilities (hereinafter “CBDR-RC”) enshrined in the climate change regime in the context of the protection and preservation of the environment (Part XII of UNCLOS), even though it is not directly referred to. Considering the obligations of States under Article 194, paragraph 1 of UNCLOS, the Tribunal noted that while it does not specifically refer to the said principle, some elements are common to both. According to the Tribunal, “those measures to reduce anthropogenic GHG emissions causing marine pollution [] may differ between developed States and developing States. At the same time, it is not only for developed States to take action, even if they should ‘continue taking the lead’”.³² Considering the obligation of technical assistance contained in Article 202 and Article 203 of UNCLOS, the Tribunal also indicated that “the obligation of assistance to developing States under these articles has some elements underlying th[e] principle [of CBDR-RC] in that States with lesser capabilities need assistance from States that are better placed in order to meet their environmental responsibilities”.³³

20. In light of the above, it is Seychelles’ position that the clarification brought by ITLOS’ advisory opinion allows to determine whether a State respects its obligation of conduct under UNCLOS and customary international law regarding its anthropogenic emissions of GHG.

21. In this context, Seychelles reiterates the urgency for each State to domestically address climate change in adopting the necessary conduct regarding its GHG emissions. The increase of the Earth’s temperature will be limited to, at most, 1.5°C above pre-industrial levels by each and every individual State’s action. Seychelles emphasises that while States must act jointly, in a coordinated manner at the international level, only the adoption of all necessary measures by each and every State will allow the temperature objective agreed by the international community to be reached. In this regard, Seychelles welcomes that 90 other States, groups of States and international organisations decided to participate in the present advisory proceedings, thus recognising the serious threat posed by climate change and the need for an advisory opinion of the Court on this matter.

³¹ *Ibid.*, p. 92, para. 256 (emphasis added).

³² *Ibid.*, p. 82, para. 229.

³³ *Ibid.*, p. 113, para. 326.

* * *

22. Seychelles restates the position taken in its written statement of 22 March 2024 and underscores that both the following written comments and the written statement constitute Seychelles' position regarding the questions put to the Court.

23. After making a few remarks on jurisdiction and the scope of the questions submitted to the Court **(I)** the written comments will concentrate on debated elements concerning the obligations of States regarding climate change **(II)** and the legal consequences arising when they breach such obligations **(III)**.

I. The Court has Jurisdiction and the Scope of the Questions Submitted Should not be Restricted

24. Seychelles notes that almost all participants to the present advisory proceedings that have submitted written statements rightfully acknowledged the Court's jurisdiction to render the requested advisory opinion and the irrelevance of exercising its discretionary power not to render it.

25. As only one State argued otherwise,³⁴ it suffices to note the two following points. First, the questions submitted to the Court are, as requested by Article 96 of the United Nations Charter and Article 65 of the Statute of the Court, of a legal nature, as they concern both obligations and consequences for a breach of these obligations. Second, the United Nations General Assembly acted within the framework of its functions when requesting the advisory opinion of the Court and considered it necessary to exercise its mission.

26. For these reasons, Seychelles reiterates that the Court has jurisdiction to entertain the request for an advisory opinion and that there exists no reason not to render it.

27. It has also been argued by some States and one international organisation that the scope of the questions submitted to the Court had to be limited to the climate change regime composed of the United Nations Framework Convention on Climate Change (hereinafter "UNFCCC"), (the Kyoto Protocol) and the Paris Agreement, which altogether would constitute a *lex specialis* that would exclude other rules.³⁵

28. As submitted in its written statement, Seychelles recalls that the obligations for States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of GHG cannot be constrained to these treaties, as the said obligations concern not only the climate system but also the *environment as a whole*, and thus necessitates the consideration of the climate change regime, customary international law, and more

³⁴ See the Written Statement of Iran according to which: "[t]he Court should consider compelling reasons not to render the advisory opinion requested, or alternatively reformulate the question to limit its scope *to lex lata* and existing treaty frameworks governing the climate change regime", p. 45, para. 171.

³⁵ See, for instance, the Written Statements of: Japan, p. 6, para. 14; Korea, p. 18, para. 51; Kuwait, p. 32, paras. 61-64; Russia, p. 20; Saudi Arabia, p. 29, para. 4.2; South Africa, p. 7, paras. 14-17; Timor-Leste, p. 29, para. 88; OPEC, p. 4, para. 9.

particularly the obligation to prevent significant harm to the environment, and environmental conventions ratified by States.³⁶

29. Furthermore, for a *lex specialis* to apply, a conflict between two rules or regimes would have to exist. In the case of climate change, while the UNFCCC and the Paris Agreement constitute the core of the climate change regime, other international law regimes complement it, such as international environmental law and international human rights law. The Paris Agreement itself, in its preamble, “[n]ot[es] the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity” and “[a]cknowledg[es] that climate change is a common concern of humankind [and that] Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights [...]”.

30. Similarly, ITLOS considered in the advisory opinion of May 2024 that the Paris Agreement was not *lex specialis* to UNCLOS as there is no conflict between them. The Tribunal affirmed that “the UNFCCC and the Paris Agreement, as the primary legal instruments addressing the global problem of climate change, are relevant in interpreting and applying the Convention with respect to marine pollution from anthropogenic GHG emissions”.³⁷ Therefore, when it comes to the protection of the climate system and other parts of the environment from GHG emissions, environmental conventions, such as UNCLOS, are necessarily relevant and do not contradict, modify, or limit the obligations stemming from the Paris Agreement, but rather complement them.

31. Seychelles thus reiterates that the questions submitted to the Court imply obligations stemming from at least three international law regimes, namely, international climate change law, international environmental law and international human rights law, which are all interconnected and thus relevant to answer the first question submitted to the Court.

³⁶ See for instance: Convention on Long-Range Transboundary Air Pollution, 1979; United Nations Convention on the Law of the Sea, 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.

³⁷ *Request for an Advisory Opinion submitted by COSIS*, p. 80, para. 222.

II. Obligations of States in Respect of Climate Change (Question A)

32. In view of the written statements submitted to the Court, Seychelles' written comments will emphasise that States must *collectively* limit the global temperature increase to, at most, 1.5°C above pre-industrial levels (A) and must *individually* use all the means at their disposal to limit to a minimum their contribution to global warming (B). States also have the obligation to ensure the full enjoyment of human rights to people located within and outside their territory from high GHG emissions activities carried out under their jurisdiction or control (C).

A. States Must Collectively Limit Temperature Increase to, at most, 1.5°C above Pre-industrial Levels according to the Paris Agreement

33. According to Article 2, the Paris Agreement

aims to strengthen the global response to the threat of climate change [...] including by: (a) Holding 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, recognizing that this would significantly reduce the risks and impacts of climate change.

34. For the past years, the 1.5°C increase threshold has been widely accepted by the international community, considering the urgency of global warming underscored by scientific knowledge. In the 2018 *Special Report on the impacts of global warming of 1.5°C above pre-industrial levels*, reiterated in 2023,³⁸ the IPCC noted that there would be “robust differences in regional climate characteristics between present-day and global warming of 1.5°C, and between 1.5°C and 2°C”.³⁹ According to the Panel, while “[s]ome future changes are unavoidable and/or irreversible[, they] can be limited by *deep, rapid, and sustained global greenhouse gas emissions reduction*.”⁴⁰

³⁸ 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 22 July 2024.

³⁹ IPCC, 2018: Summary for Policymakers. 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, p. 7, para. B.1, [online] https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf, accessed on 22 July 2024.

⁴⁰ 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. 18, para. B.3 (emphasis added), [online] https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, accessed on 22 July 2024.

35. In 2021 in Glasgow, States Parties to the UNFCCC endorsed this view by

[r]ecogniz[ing] that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C [...] [and] 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.⁴¹

36. A year later in Sharm el-Sheikh, States Parties

not[ed] that keeping the global average temperature rise to below 1.5 °C will be essential to limiting future loss and damage and express[ed] alarm that the contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, in line with other best available science, concluded that the gravity, scope and frequency of loss and damage will continue to increase with every additional fraction of a degree of temperature increase.⁴²

37. In the same way, as seen *supra*, when analysing the temperature goal of the Paris Agreement in the context of UNCLOS' obligations regarding anthropogenic GHG emissions, ITLOS recently considered "the global temperature goal of limiting the temperature increase to [be] 1.5°C above pre-industrial levels" according to the climate change regime.⁴³ The Tribunal took into consideration both the IPCC's findings, and notably its above-mentioned report of 2023 and special report of 2018, and the fact that "[t]he dual temperature goal stipulated in the Paris Agreement has been further strengthened by the successive decisions of the Parties to the Paris Agreement",⁴⁴ notably referring to the meeting in Sharm el-Sheikh in 2022.

⁴¹ 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, paras. 21-22 (emphasis added) [online] https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf, accessed on 22 July 2024. See also: 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, accessed on 22 July 2024; 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, accessed on 22 July 2024.

⁴² 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 (emphasis added) [online] https://unfccc.int/sites/default/files/resource/cp2022_10a01_E.pdf, accessed on 22 July 2024.

⁴³ *Request for an Advisory Opinion submitted by COSIS*, p. 87, para. 243 and p. 148, para. 441.

⁴⁴ *Ibid.*, p. 78, para. 216.

38. Therefore, Seychelles considers, as other participants to the advisory proceedings have argued,⁴⁵ that the global temperature rise must be limited to, at most, 1.5°C above pre-industrial levels, according to Article 2 of the Paris Agreement as interpreted considering scientific knowledge, and particularly the IPCC’s reports, decisions of States Parties to the UNFCCC, and ITLOS’ advisory opinion regarding climate change effects on the sea. This global objective necessarily implies that States, individually, take measures to reach this objective.

B. Each State Must Individually Use all the Means at its Disposal to Limit to a Minimum its Contribution to Temperature Increase under the Obligation to Prevent Harm to the Environment and the Climate System

39. While a minority of participants suggested that the customary obligation for each State to prevent significant harm (or damage) to the environment is not relevant in the context of the climate change and GHG emissions,⁴⁶ most of them, including Seychelles, rightly argued in favour of its applicability.⁴⁷

40. Under this obligation, each State must “ensure that activities within [its] jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.⁴⁸ In the context of climate change, this obligation must apply to prevent

⁴⁵ See, for instance, the Written Statements of: Bangladesh, pp. 92-95, paras. 131-139; Kenya, pp. 53-57, paras. 5.34-5.41; Mexico, p. 8, para. 27; Namibia, p. 22, para. 46; Sierra Leone, pp. 17, 47, 79, 93, paras. 3.8, 3.65, 3.129, 4.8; Vanuatu, pp. 197-214, paras. 400-441; COSIS, pp. 46-49, paras. 106-114; IUCN, pp. 36-39, paras. 108-123.

⁴⁶ See, for instance, the Written Statements of: China, pp. 50-51, para. 128; India, p. 6, para. 17; Kuwait, p. 38, para. 76; Saudi Arabia, p. 58, para. 4.90; OPEC, p. 36, para. 87.

⁴⁷ See, for instance, the Written Statements of: Albania, p. 19, para. 65; Antigua and Barbuda, pp. 48-53, paras. 125-142; Bahamas, pp. 46-52, paras. 92-104; Bangladesh, pp. 59-65, paras. 88-95; Barbados, pp. 70-86, paras. 133-150; Belize, pp. 13-15, paras. 30-36; Chile, pp. 9-10, paras. 35-39; Colombia, pp. 44-47, para. 3.16-3.25; Cook Islands, pp. 66-67, paras. 166-170; Costa Rica, pp. 15-16, paras. 45-49; Dominican Republic, p. 36, para. 4.31; Ecuador, pp. 26-31, paras. 3.18-3.31; Egypt, pp. 24-33, paras. 83-139; El Salvador, pp. 7-8, paras. 32-35; Ghana, p. 9, para. 26; Kiribati, pp. 39-40, paras. 110-114; Korea, pp. 12-13, paras. 33-37; Marshall Islands, pp. 11-12, paras. 23-24; Mauritius, pp. 93-94, paras. 189-192; Mexico, pp. 11-14, paras. 40-53; Micronesia, pp. 19-21, paras. 53-62; Namibia, pp. 23-29, paras. 49-60; New Zealand, pp. 31-36, paras. 96-107; Pakistan, pp. 18-23, paras. 29-39; Palau, pp. 9-13, paras. 12-19; Philippines, pp. 20-24, paras. 55-70; Romania, p. 24, para. 98; Saint Lucia, pp. 34-36, paras. 66-68; Samoa, p. 27, para. 87; Singapore, pp. 11-19, paras. 3.1-3.20; Solomon Islands, pp. 51-56, paras. 146-160; Sri Lanka, pp. 40-41, paras. 95-96; Switzerland, pp. 5-10, paras. 14-17; Thailand, pp. 5-7, paras. 8-14; Uruguay, pp. 25-29, paras. 89-102; Vanuatu, pp. 121-130, paras. 261-278; Viet Nam, p. 9, para. 25; OACPS, pp. 52-54, paras. 101-104; COSIS, pp. 36-42, paras. 80-96; IUCN, pp. 78-80, paras. 307-318; PNAO, pp. 10-11, paras. 40-46.

⁴⁸ Principle 21 of the Stockholm Declaration, 1972; Principle 2 of the Rio Declaration, 1992. See also: *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 242, para. 29; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, 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 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 18 February 2013*,

transboundary harm as well as the harm done to the climate system and the environment as a whole, both considered as global commons.

41. As agreed by many participants to the advisory proceedings,⁴⁹ this obligation implies a specific conduct of each State, which must act with due diligence, meaning that “[it is] thus obliged to use *all the means* at [its] disposal in order to avoid activities which take place in [its] territory, or in any area under [its] jurisdiction, causing significant damage to the environment of another State [or global areas]”.⁵⁰ Important is to note that the obligation to prevent significant harm to the environment also implies “to *minimize the risk* thereof”,⁵¹ which consequently means that the obligation to prevent is a continuous duty for a State.

42. Under the due diligence obligation to prevent significant harm, each State “shall take all appropriate measures to prevent significant transboundary harm”,⁵² which, as developed by ITLOS,

requires a State to put in place a *national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective*.⁵³

43. When analysing the obligations of States under Article 194, paragraph 2, of UNCLOS, the recent advisory opinion rendered by ITLOS concerning climate change also contributed to some developments regarding the obligation to prevent transboundary harm. The said article reads as follows:

States shall take *all measures necessary* to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their

pp. 169-170, paras. 448-450 and *Final award of 20 December 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. Concerning the obligation of prevention in relation with global commons, see Institute of International Law, Harm Prevention Rules Applicable to the Global Commons, Interim Report, 6 February 2023 [online], <https://www.iiil.org/app/uploads/2023/06/Troisi%C3%A8me-Commission-97-120-.pdf>, accessed on 22 July 2024.

⁴⁹ See, for instance, the Written Statements of: Bahamas, p. 46, para. 94; Bangladesh, p. 61, para. 90; Belize, p. 14, para. 35; Chile, p. 10, para. 39; Colombia, p. 45, para. 3.19; Ecuador, p. 28, para. 3.23; Egypt, pp. 27-33, paras. 97-139; Mexico, pp. 11-12, paras. 42-44; Micronesia, p. 20, para. 57; New Zealand, p. 32, para. 98; Pakistan, pp. 22-23, para. 39; Philippines, pp. 22-23, paras. 62-63; Saint Lucia, pp. 33-34, para. 66; Singapore, pp. 13-19, paras. 3.4-3.20; Sri Lanka, p. 41, para. 96; Switzerland, pp. 9-10, paras. 37-47; Thailand, pp. 6-7, paras. 11-14; Uruguay, p. 25, para. 91; Vanuatu, p. 126, para. 269; COSIS, pp. 39-42, paras. 87-96.

⁵⁰ *Pulp Mills*, pp. 55-56, para. 101 (emphasis added); *Certain Activities/Construction of a Road*, p. 706, para. 104.

⁵¹ ILC, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Art. 3, p. 154 (emphasis added).

⁵² *Ibid* (emphasis added).

⁵³ *Request for an Advisory Opinion submitted by COSIS*, p. 84, para. 235 (emphasis added). See also: *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 79, para. 197.

environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights under th[e] Convention (emphasis added).

44. The Tribunal recognised that “[t]h[is] obligation [...] bears a close resemblance to the well-established principle of harm prevention”.⁵⁴ As seen above, according to the Tribunal, “necessary measures include not only measures which are indispensable to [achieve the objective of the provision] but also other measures which make it possible to achieve that objective”.⁵⁵

45. The content of the measures to be adopted by States may vary with time, considering several factors such as “scientific and technological information, relevant international rules and standards, the risk of harm and the *urgency* involved”.⁵⁶ In other words, the riskier the activities, the higher the standard of due diligence.⁵⁷ ITLOS specified that “the notion of risk in this regard should be appreciated in terms of both the probability or foreseeability of the occurrence of harm and its severity or magnitude”.⁵⁸

46. When it comes to GHG emissions, the IPCC’s reports have constantly demonstrated the urgency to tackle climate change as GHG emissions pose severe risks to the environment and, thus, the climate system. In the specific context of the marine environment, this assertion has been recognised by ITLOS, which noted that “[b]est available science informs that anthropogenic GHG emissions pose a high risk in terms of foreseeability and severity of harm to the marine environment”.⁵⁹

47. Therefore, as some participants to the proceedings, including Seychelles, clearly argued, the due diligence standard must be high,⁶⁰ a position also followed by ITLOS in its recent advisory opinion. As above-mentioned, the Tribunal indicated that in the context of marine pollution caused by anthropogenic GHG emissions, the due diligence standard “*needs to be*

⁵⁴ *Request for an Advisory Opinion submitted by COSIS*, p. 88, para. 246.

⁵⁵ *Ibid.*, p. 74, para. 203.

⁵⁶ *Ibid.*, p. 86, para. 239 (emphasis added). See also: *Responsibilities and obligations of States with respect to activities in the Area*, p. 43, para. 117.

⁵⁷ *Responsibilities and obligations of States with respect to activities in the Area*, p. 43, para. 117.

⁵⁸ *Request for an Advisory Opinion submitted by COSIS*, p. 86, para. 239.

⁵⁹ *Ibid.*, p. 86, para. 241.

⁶⁰ See, for instance, the Written Statements of: Vanuatu, p. 126, para. 269; COSIS, p. 42, para. 95.

stringent”,⁶¹ and “can be *even more stringent*”⁶² regarding transboundary pollution affecting other States’ environment.

48. The Tribunal also specified that:

an obligation of due diligence should not be understood as an obligation which depends largely on the discretion of a State or necessarily requires a lesser degree of effort to achieve the intended result. [...] *In many instances, an obligation of due diligence can be highly demanding.*⁶³

49. Like some other States indicated in their written statements,⁶⁴ Seychelles is of the view that the obligation to prevent significant harm to the climate system and the environment must be informed by the provisions of the Paris Agreement, notably Article 4, paragraph 2, providing for the individual obligation for each State Party to “prepare, communicate and maintain successive nationally determined contributions that it intends to achieve [...]”, in order to reach the global temperature objective of 1.5°C.

50. The rationale of the NDC is for each State to submit every five years to the secretariat of the UNFCCC⁶⁵ a document in which it indicates its ambition concerning the reduction of GHG emissions at the national level, along with the measures it intends to implement to achieve this ambition.⁶⁶

51. Regarding the content of each NDC, Article 4, paragraph 3, of the Paris Agreement specifies 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. (emphases added)

52. The IPCC 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, [...]”

⁶¹ *Request for an Advisory Opinion submitted by COSIS*, p. 86, para. 241 (emphasis added).

⁶² *Ibid.*, p. 92, para. 256 (emphasis added).

⁶³ *Ibid.*, p. 92, para. 257 (emphasis added).

⁶⁴ See, for instance, the Written Statements of: Colombia, p. 45, para. 3.20; Egypt, pp. 30-33, paras. 118-138; IUCN, p. 77, para. 305.

⁶⁵ Paris Agreement, Articles 9 and 12.

⁶⁶ Nationally Determined Contributions (NDCs), The Paris Agreement and NDCs, *UNFCCC website*, [online] <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs#Communications-received-from-Parties-in-relation-to-other-Parties-NDCs>, accessed on 22 July 2024.

these obligations could be read to imply a due diligence standard”,⁶⁷ an assertion confirmed by scholars.⁶⁸

53. NDCs thus display the measures a State considers as *necessary* and *feasible*, according to its resources and capabilities, to contribute its best to the global limit of the temperature increase to, at most, 1.5°C above pre-industrial levels. In this context, Seychelles is of the view that an NDC provides for a minimum standard, a yardstick, upon which can be evaluated the compliance of a State with its due diligence obligation to prevent significant harm to the environment and the climate system. In other words, according to Seychelles, the measures to be adopted by a State under this obligation must, *at the very least*, correspond to those the said State has *itself* indicated within its NDC, thus identifying them as necessary and feasible to reduce its GHG emissions.

54. Consequently, **a State which did not implement the measures it *itself* identified as *necessary* and *feasible* within its NDC cannot be considered as having observed its obligation to prevent significant harm to the environment and the climate system since it did not exercise a stringent standard of due diligence.**

55. To be clear, this standard should be considered as a *minimum*, meaning that while a State which did not give effect to the measures it itself presented in its NDC necessarily breached its obligation of prevention by not adopting the conduct required from it under its due diligence obligation, the fact that it implemented them is by no way *per se* sufficient to conclude that it has observed the said obligation. This rationale has recently been endorsed by the President of ITLOS in the context of the prevention, reduction and control of the marine pollution under UNCLOS, who clarified that:

the Tribunal did not [...] consider that the obligation under article 194, paragraph 1, of the Convention would be satisfied simply by complying with the obligations and

⁶⁷ 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, p. 1466, [online] https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf, accessed on 22 July 2024.

⁶⁸ 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.

commitments under the Paris Agreement, as the Convention and the Paris Agreement are separate agreements, with separate sets of obligations [...].⁶⁹

56. Considering all the above, Seychelles emphasises that the rationale of the obligation of prevention in the context of climate change is for each State to individually contribute to the reduction of its GHG emissions, and thus, to the global temperature increase.

C. Human Rights Treaties Apply Extraterritorially in the Context of GHG Emissions

57. As Seychelles did in its written statement, a large majority of participants to the advisory proceedings acknowledged the interconnection between climate change and human rights and the relevance of human rights treaties for the purpose of the present advisory proceedings.⁷⁰

58. The Office of the High Commissioner for Human Rights (hereinafter “OHCHR”) indicated on this matter 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.⁷¹

59. In their Joint statement, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the

⁶⁹ ITLOS, President Heidar gives an overview of the climate change advisory opinion at the meeting of States Parties to the Convention, underlining the Tribunal’s ability to handle intricate disputes and legal questions, *Press Release*, 10 June 2024, Doc., ITLOS/Press 353 [online] https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_353_EN.pdf, accessed on 22 July 2024.

⁷⁰ See, for instance, the Written Statements of: Albania, pp. 31-41, paras. 94-111; Antigua and Barbuda, pp. 64-69, paras. 186-197; Argentina, pp. 12-13, para. 38; Australia, pp. 68-74, paras. 3.54-3.67; Bahamas, pp. 66-84, paras. 141-175; Bangladesh, pp. 69-83, paras. 103-123; Bolivia, pp. 4-5, paras. 13-20; Canada, pp. 11-12, paras. 24-27; Chile, pp. 16-18, paras. 64-70; Colombia, pp. 59-62, paras. 3.66-3.72; Democratic Republic of the Congo, pp. 74-82, paras. 145-157; Denmark, Finland, Iceland, Norway and Sweden, pp. 26-27, paras. 77-79; Dominican Republic, pp. 44-47, paras. 4.43-4.48; Ecuador, pp. 54-62, paras. 3.97-3.118; Egypt, pp. 43-55, paras. 198-257; El Salvador, p. 10, paras. 42-43; Grenada, pp. 9-10, paras. 23-24; India, pp. 29-30, paras. 77-79; Kenya, pp. 62-75, paras. 5.51-5.80; Kiribati, pp. 54-59, paras. 155-171; Korea, pp. 10-11, paras. 28-31; Latvia, pp. 28-32, paras. 62-71; Liechtenstein, pp. 16-33, paras. 34-71; Madagascar, pp. 17-18 paras. 58-64; Mauritius, pp. 82-93, paras. 161-187; Micronesia, pp. 27-31, paras. 78-88; Namibia, pp. 37-54, paras. 78-125; Netherlands, pp. 15-22, paras. 3.23-3.44; New Zealand, pp. 37-44, paras. 110-122; Portugal, pp. 18-26, paras. 69-93; Samoa, pp. 55-57, paras. 180-186; Sierra Leone, pp. 41-74, paras. 3.43-3.118; Singapore, pp. 48-62, paras. 3.73-3.95; Thailand, pp. 10-11, paras. 26-28; Timor-Leste, pp. 90-105, paras. 296-352; Tonga, pp. 77-90, paras. 240-282; Uruguay, pp. 31-32, paras. 110-113; Vanuatu, pp. 114-121, 153-196, paras. 249-260, 329-396; African Union, pp. 72-85, paras. 188-221; IUCN, pp. 114-128, paras. 471-528.

⁷¹ OHCHR, “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 22 July 2024.

Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child, and the Committee on the Rights of Persons with Disabilities “urge all States to take into consideration their human rights obligations as they review their climate commitments”.⁷²

60. For their part, international jurisdictions and quasi-jurisdictions have recognised that environmental degradation could lead to a violation of the rights to a healthy environment,⁷³ to life,⁷⁴ to personal integrity,⁷⁵ to private life,⁷⁶ to health,⁷⁷ to water,⁷⁸ to food,⁷⁹ to housing,⁸⁰

⁷² Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, “Statement on human rights and climate change”, 14 May 2020, HRI/2019/1 [online] <https://digitallibrary.un.org/record/3871313?v=pdf>, accessed on 22 July 2024.

⁷³ IACHR, *People from La Oroya v. Peru*, Preliminary Objections, Merits, Reparations and costs, 22 March 2024; IACHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Merits, Reparations and costs, 6 February 2020.

⁷⁴ ECHR, *Case of Öneriyildiz v. Turkey* [GS], No. 48939/99, Judgment of 30 November 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 20 March 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 17 November 2015, paras. 170, 171 and 200.

⁷⁵ 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.

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

⁷⁷ ESCR Committee, General Comment No. 14: The right to the highest attainable standard of health (article 12 of the ICESCR), 11 August 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 27 October 2001, paras. 51-52.

⁷⁸ 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.

⁷⁹ ESCR Committee, Concluding observations: Russian Federation, 20 May 1997, UN Doc. E/C.12/Add.13, paras. 24, 38.

⁸⁰ 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.

to participation in cultural life,⁸¹ to property,⁸² and the right not to be forcibly displaced.⁸³

61. Furthermore, several participants,⁸⁴ which Seychelles joins through its written comments, rightfully encouraged the recognition of the extraterritorial application, or potential extraterritorial application, of human rights treaties in relation to GHG emissions. The relevant human rights treaties to consider include those on the basis of which international jurisdictions and quasi-jurisdictions have recognised violations in relation with the environment. These treaties include: the International Covenant on Civil and Political Rights (hereinafter “ICCPR”), the International Covenant on Economic, Social and Cultural Rights (hereinafter “ICESCR”), the European Convention on Human Rights, the American Convention on Human Rights, the African Charter on Human and Peoples’ Rights and the Convention on the Rights of the Child.

62. As provided for by several human rights treaties, States Parties must protect the human rights of people located under their “jurisdiction”, and sometimes cumulatively, on their territory:

- Article 2, paragraph 1, of the ICCPR provides that: “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant [...]” (emphasis added);
- Article 1 of the European Convention on Human Rights provides that: “[t]he High Contracting Parties shall secure to everyone within their *jurisdiction* the rights and freedoms defined in Section I of th[e] Convention.” (emphasis added);

⁸¹ 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.

⁸² 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, 25 November 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 27 October 2001, paras. 54-55.

⁸³ 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.

⁸⁴ See, for instance, the Written Statements of: Bahamas, pp. 80-84, paras. 170-175; Cook Islands, pp. 69-82, paras. 181-234; Costa Rica, p. 25, para. 84; Democratic Republic of the Congo, p. 74, para. 145; Kenya, pp. 62-63, paras. 5.51-5.52; Kiribati, pp. 54-55, paras. 157-162; Melanesian Spearhead Group, pp. 53-55, paras. 258-263; Vanuatu, pp. 117-118, 157, 189-190, paras. 253-254, 336, 383.

- Article 1, paragraph 1, of the American Convention on Human Rights provides that: “[t]he States Parties [...] undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their *jurisdiction* the free and full exercise of those rights and freedoms, [...]” (emphasis added);
- Article 2, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that: “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its *jurisdiction*” (emphasis added);
- Article 2, paragraph 1, of the Convention on the Rights of the Child provides that: “States Parties shall respect and ensure the rights set forth in the [...] Convention to each child within their *jurisdiction* without discrimination of any kind [...]” (emphasis added);
- Article 2, paragraph 2, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that: “[f]or the purposes of the present Convention: (d) The term ‘worker on an offshore installation’ refers to a migrant worker employed on an offshore installation that is under the *jurisdiction* of a State of which he or she is not a national;” (emphasis added);
- Article 9, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance provides that: “[e]ach State Party shall take the necessary measures to establish its competence to exercise *jurisdiction* over the offence of enforced disappearance [...]” (emphasis added).

63. By contrast, other human rights treaties do not contain general provision regarding the scope of their application, such as the ICESCR, the African Charter on Human and Peoples’ Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities.

64. It should be noted that “[j]urisdiction’ is a key term in the discussion of the extraterritorial scope of [international human rights law] treaties”⁸⁵ and has traditionally been interpreted as meaning “located on a State’s territory”. However, international courts and organs have recognised on several occasions that States’ “jurisdiction” could in certain situations

⁸⁵ Y. Shany, “The extraterritorial application of international human rights law”, *The Hague Academy of International Law*, Vol. 409, 2020.

extend to situations located outside their territory. As noted by Yuval Shany, “[s]ignificantly, all regional and global human rights bodies that have addressed the question of jurisdiction *ratione loci* have endorsed the extraterritorial applicability of their constitutive treaties, regardless of whether or not they have a specific provision to that effect”.⁸⁶ For instance:

- The ICJ, in the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination*, indicated that when a treaty does not provide for territorial restrictions either globally or within the articles invoked, it will “generally appear to apply [...] to the actions of a State party when it acts beyond its territory”.⁸⁷
- The ECHR recognised the extraterritoriality of the European Convention on Human Rights when a State party exercises effective control over an area or persons located outside its territory,⁸⁸ or in cases of the exercise of public powers following the request or the acceptance of another State.⁸⁹
- The Inter-American Commission on Human Rights considered extraterritorial actions of States in cases of control of an area located within the territory of another State through military interventions,⁹⁰ military operations,⁹¹ and military facilities.⁹²
- The African Commission on Human and Peoples’ Rights stated, in relation to the right to life, that a State “shall respect [it] outside its territory”, depending “on the extent that the State has jurisdiction or otherwise exercises effective authority, power, or control over either

⁸⁶ *Ibid.*, p. 100.

⁸⁷ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, *Provisional Measures, Order of 15 October 2008*, *I.C.J. Reports 2008*, p. 386, para. 109.

⁸⁸ ECHR, *Case of Loizidou v. Turkey* (Preliminary objections), No. 15318/89, Judgment, 23 March 1995, para. 62; ECHR, *Case of Al-Skeini and Others v. The United Kingdom* [GS], No. 55721/07, Judgment, 7 July 2011, para. 138; ECHR, *Case of Catan and Others v. Moldova and Russia* [GS], Nos. 43370/04, 8252/05 and 18454/06, Judgment, 19 October 2012, para. 311.

⁸⁹ ECHR, *Case of Chiragov and Others v. Armenia* [GS], No. 13216/05, Judgment, 16 June 2015, para. 168; ECHR, *Case of Banković and Others v. Belgium* [GS], No. 52207/99, Decision on admissibility, 12 December 2001, para. 71.

⁹⁰ IACHR, *Case of Salas et al. v. United States*, Admissibility Report No. 31/93, 14 October 1993, paras. 14, 15 and 17; IACHR, *Case of Coard et al. v. United States*, Merits Report No. 109/99, 29 September 1999, para. 37.

⁹¹ IACHR, *Case of Armando Alejandro Jr. et al. v. Cuba*, Merits Report No. 86/99, 29 September 1999, para. 23; IACHR, *Franklin Guillermo Aisalla Molina (Ecuador v. Colombia)*, Admissibility Report No. 112/10, 21 October 2010, para. 98.

⁹² IACHR, *Djamel Ameziane v. United States*, Admissibility Report No. 17/12, 20 March 2012, para. 35.

the perpetrator or the victim (or the victim’s rights), or exercises effective control over the territory on which the victim’s rights are affected”.⁹³

— The United Nations Human Rights Committee recognised the extraterritoriality of the ICCPR in cases of effective control.⁹⁴

65. As noted by the IACHR in the 2017 Advisory Opinion on *The Environment and Human Rights*, situations in which international courts and organs have recognised extraterritorial application of human rights treaties imply “military actions or actions by State security forces that indicate ‘control’, ‘power’ or ‘authority’ in the execution of the extraterritorial conduct”.⁹⁵

66. However, more recently, national courts and organs have also recognised the extraterritorial application of human rights treaties in cases regarding environmental matters. When analysing the obligations of States under the Inter-American Convention on Human Rights in relation to environmental transboundary harm, the IACHR indicated that:

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

[...]

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

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

[...]

⁹³ African Commission on Human and Peoples’ Rights, General comment No. 3 on the African Charter on Human and Peoples’ Rights: the right to life (Article 4), para 14.

⁹⁴ HRC, Communication No. 56/1979, *Lilian Celiberti de Casariego v. Uruguay*, CCPR/C/13/D/56/1979, 29 July 1981, para. 10.3; HRC, Communication No. 106/1981, *Mabel Pereira Montero v. Uruguay*, CCPR/C/18/D/106/1981, 31 March 1983, para. 5.

⁹⁵ 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, p. 35, para. 80.

When transboundary harm or damage occurs, a person is under the jurisdiction of the State of origin if there is a causal link between the action that occurred within its territory and the negative impact on the human rights of persons outside its territory. *The exercise of jurisdiction arises when the State of origin exercises effective control over the activities that caused the damage and the consequent human rights violation.*⁹⁶

67. In 2021, the Committee on the Rights of the Child followed the Inter-American Court of Human Rights and stated that:

*when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated [...] if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question.*⁹⁷

68. The Committee then added that:

it is generally accepted and corroborated by scientific evidence that the carbon emissions originating in the State party contribute to the worsening of climate change, and that climate change has an adverse effect on the enjoyment of rights by individuals both within and beyond the territory of the State party. The Committee considers that, *given its ability to regulate activities that are the source of these emissions and to enforce such regulations, the State party has effective control over the emissions.*⁹⁸

In accordance with the principle of common but differentiated responsibilities, as reflected in the Paris Agreement, the Committee finds that the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location.

69. Moreover, already in 2011, the Human Rights Committee noted that:

[t]he extraterritorial dimension of the human rights and the environment linkage is evident in the area of transboundary environmental harm. Such harm arises where environmental degradation results in the impairment of rights of people outside of the territory of the State where the damaging activity occurs. One country's pollution can become another country's environmental and human rights problem, particularly where the polluting media, like air and water, are capable of easily crossing boundaries.

The extraterritorial problem raised by transboundary environmental harm also extends to global pollution issues, such as the concentration of greenhouse gases in the atmosphere leading to dangerous climate change and marine dumping, which may affect areas beyond national jurisdiction such as the high seas.

⁹⁶ *Ibid.*, p. 44, para. 104 (emphases added).

⁹⁷ CRC, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019, 11 November 2021, Doc. CRC/C/88/D/104/2019, p. 11, para. 10.7 (emphasis added).

⁹⁸ *Ibid.*, p. 11, para. 10.9 (emphasis added).

Additionally, extraterritorial concerns may arise where States fail to adequately regulate transnational corporations and other business entities, incorporated or otherwise, having substantial business operations in their territories which cause environmental harm in the countries where they operate.⁹⁹

70. In this context, Seychelles is of the view that relevant human rights treaties, and particularly the ICCPR, the ICSECR, the European and American conventions on human rights, the African Charter on Human and People's Rights, and the Convention on the Rights of the Child apply extraterritorially regarding the harm caused by anthropogenic emissions of GHG generating climate change and its consecutive effects. This is because **States must be considered as exercising effective control on the highly emitting GHG activities located within their territory, which through global warming and its devastating effect have transboundary harming effects on people abroad, who are thus placed, insofar as these effects are concerned, under the jurisdiction of the said States within the meaning of human rights treaties.**

71. It means that, considering the different human rights conventions applying to States depending on their location as well as the universal ones, States have the obligation to limit their contribution to global warming in order to prevent harm to the environment and the climate system that will affect the enjoyment of human rights of people located outside their territories.

⁹⁹ HRC, Analytical study on the relationship between human rights and the environment Report of the United Nations High Commissioner for Human Rights, 16 December 2011, A/HRC/19/34, p. 14, paras. 65-67.

III. Legal Consequences for States that Have Breached their Obligations (Question B)

72. A large number of participants to the advisory proceedings underlined that the breach of States' obligations in respect of climate change entails their international responsibility, and thus the obligation to cease and repair the damages done to the environment of other States.¹⁰⁰

73. By not using all the means at its disposal to reduce its GHG emissions, and specifically by not implementing, at the minimum, its NDC under the Paris Agreement, a State engages its international responsibility as clarified by Article 1 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Act (hereinafter "ARSIWA"), according to which "[e]very internationally wrongful act of a State entails the international responsibility of that State". Some further guidance on individual responsibility for the same wrongful act can also be found in Article 47 of the ARSIWA, which reads as follows: "[w]here several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act".

74. As a consequence, according to Article 30 of the ARSIWA, high-emitting States must cease their unlawful behaviour and implement individual measures to reduce their GHG emissions in order to limit the temperature increase to, at most, 1.5°C above pre-industrial levels.

75. Several participants to the proceedings furthermore emphasised the necessity to consider SIDS' and States of the Global South's particularities,¹⁰¹ or referred directly to the

¹⁰⁰ See, for instance, the Written Statements of: Albania, pp. 51-52, paras. 132-135; Antigua and Barbuda, pp. 154-157, paras. 529-533, 538; Bahamas, pp. 109-111, paras. 233, 238-239; Bangladesh, pp. 100-101, paras. 145-147; Barbados, pp. 187-190, paras. 253-257; Brazil, pp. 25-27, paras. 78-79, 86-95; Chile, pp. 27-29, paras. 110-121; Colombia, pp. 63-65, paras. 4.1, 4.6-4.10; Costa Rica, pp. 28, 36, paras. 95, 123; Democratic Republic of the Congo, pp. 148-149, paras. 131, 314; Dominican Republic, pp. 53-54, paras. 4.64-4.65; Ecuador, p. 66-67, paras. 4.6, 4.12-4.13; Egypt, pp. 75-78, paras. 351, 355-174; El Salvador, p. 12, paras. 50-51; Grenada, pp. 32-33, para. 74; Kenya, pp. 77, 79-80, paras. 6.85, 6.91-6.95; Kiribati, pp. 61-62, paras. 178-181; Latvia, pp. 33-35, paras. 74-76; Marshall Islands, p. 21, para. 55; Mauritius, pp. 101-102, para. 210; Namibia, pp. 56-58, paras. 130-135; Palau, pp. 14-15, paras. 19-23; Peru, p. 17, paras. 92-93; Philippines, pp. 38, 40, paras. 115, 122; Saint Lucia, pp. 43-45, paras. 86, 91-92; Saint Vincent, pp. 55-56, para. 128; Singapore, pp. 63-65, 67-68, paras. 4.1, 4.5, 4.11; Solomon Islands, pp. 80-83, paras. 230, 234-236; Switzerland, pp. 15-16, paras. 72-74; Thailand, pp. 11-12, paras. 29, 31; Timor-Leste, pp. 105, paras. 354-355; Tonga, pp. 91-93, paras. 288, 295-298; Tuvalu, pp. 37, 40-41, paras. 112-113, 126-128; Uruguay, p. 45, paras. 155-158; Vanuatu, pp. 274, 277, paras. 555, 563-566; Viet Nam, p. 14, para. 42; OACPS, pp. 84-87, paras. 162-168; African Union, pp. 99, 102, paras. 254, 263-265, 269; COSIS, pp. 58, 65-68, paras. 146, 173-174, 178; IUCN, pp. 140-142, paras. 579-580, 586; Melanesian Spearhead Group, p. 61, para. 292.

¹⁰¹ See, for instance, the Written Statements of: Saint Lucia, pp. 45-46, para. 93; Saint Vincent, p. 56, para. 131; Singapore, pp. 73-74, para. 4.20; Solomon Islands, pp. 85-86, paras. 246-248; Timor-Leste, p. 107, para. 361; Tonga, pp. 95-97, paras. 304-312; African Union, pp. 90-91, para. 233; Melanesian Spearhead Group, pp. 63-64, para. 302.

principle of CBDR-RC stemming from the climate change regime when studying the responsibility of States regarding climate change.¹⁰² While the CBDR-RC principle has generated disagreements between States since for some differentiation should be based on States' historical responsibilities regarding the contribution to GHG emissions and for others on States' capabilities to fight climate change,¹⁰³ it must be highlighted that in the middle of both views lie SIDS as Seychelles that were and are low-emitting States, but are suffering the most of the consequences of climate change.

76. Consequently, Seychelles reiterates the necessity to take into consideration the specific circumstances of SIDS considering both their obligations and responsibilities regarding climate change, as well as their rights to be protected, and obtain reparation for damages and loss.

77. Concerning reparation, participants to the advisory proceedings argued that restitution¹⁰⁴ and/or compensation¹⁰⁵ and/or satisfaction¹⁰⁶ would be relevant in the context of climate change. Considering the irreparable harm already done to the environment and the climate system, Seychelles is of the view that the best form of reparation in the context of climate change is compensation, which "shall cover any financially assessable damage including loss of profits insofar as it is established", according to Article 36 of the ARSIWA.

78. Finally, to sum up, objective criteria on the performance of each State's climate change obligations will be required to properly gauge its responsibility for the harm that is already done and that will be done to the environment and the climate system. For these purposes, as noted above, NDCs can serve as one of the tools to assess non-compliance with the due diligence

¹⁰² See, for instance, the Written Statements of: Brazil, pp. 24, 28, paras. 71, 96; Costa Rica, p. 34, para. 116; Solomon Islands, p. 85, paras. 244-245; Timor-Leste, pp. 108-109, paras. 365-368; Tonga, pp. 95-97, para. 303; Viet Nam, p. 15, paras. 45-46.

¹⁰³ D. Bodansky, J. Brunnée, L. Rajamani, *International Climate Change Law*, Oxford, Oxford University Press, 2017, pp. 26-27.

¹⁰⁴ See, for instance, the Written Statements of: Colombia, pp. 64-65, para. 4.12; Ecuador, p. 68, paras. 4.14-4.16; Vanuatu, pp. 289-294, paras. 580-588; COSIS, pp. 68-69, paras. 180-182; Melanesian Spearhead Group, p. 67, paras. 318-319.

¹⁰⁵ See, for instance, the Written Statements of: Albania, pp. 53-54, paras. 137-139; Bahamas, pp. 112-113, paras. 243-244; Bangladesh, pp. 101-102, para. 147; Barbados, p. 190, para. 259; Colombia, p. 66, paras. 4.13-4.14; Ecuador, p. 68, paras. 4.14-4.16; Egypt, pp. 79-80, paras. 380-387; Grenada, p. 33, paras. 75-76; Kenya, pp. 80-83, paras. 6.95-6.101; Marshall Islands, pp. 21-22, para. 58; Namibia, pp. 58-61, paras. 137-145; Palau, p. 15, para. 24; Philippines, pp. 38, 40, paras. 115, 122; Saint Lucia, pp. 45, paras. 86, 91-92; Saint Lucia, pp. 45-47, paras. 93-94; Singapore, pp. 69-71, paras. 4.13-4.14; Tuvalu, pp. 44-45, paras. 141-146; Vanuatu, pp. 294-297, paras. 589-597; COSIS, pp. 69-71, paras. 183-190; IUCN, pp. 142-143, paras. 588-589; Melanesian Spearhead Group, pp. 67-68, paras. 320-321.

¹⁰⁶ See, for instance, the Written Statements of: Bahamas, p. 113, para. 245; Bangladesh, p. 102, para. 147; Saint Lucia, p. 46, para. 95; Tuvalu, p. 46, para. 147; Vanuatu, pp. 297-298, paras. 598-600; COSIS, pp. 71-72, paras. 191-192.

obligation to prevent significant harm to the environment and the climate system. This, coupled with the extraterritorial application of treaties, particularly in the field of human rights, will allow for compensatory mechanisms for States, such as Seychelles and its people, who will bear the brunt of the climate crisis unless rapid and resolute action is taken.

Conclusions

79. For the reasons outlined in the present written comments, Seychelles states that:

(1) Concerning the jurisdiction of the Court and the scope of the submitted questions:

- (i) The Court has jurisdiction to entertain the requested advisory opinion;
- (ii) The scope of the questions submitted to the Court are broader than the climate change regime that does not constitute a *lex specialis*.

(2) Regarding the obligations of States in respect of climate change (Question A):

- (i) States must collectively limit the temperature increase to, at most, 1.5°C above pre-industrial levels;
- (ii) States must individually use all the means at their disposal to implement domestic measures to reduce their contribution to global warming. At the very least, these measures must correspond to those identified within a State's NDC;
- (iii) States must ensure the full enjoyment of human rights to people located within and outside their territory from their activities with high GHG emissions.

(3) Concerning the legal consequences for a breach of the said obligations (Question B):

- (i) States that have caused significant transboundary harm to the climate system and the environment must cease their unlawful conduct by adopting individual measures to limit their contribution to the temperature increase;
- (ii) States that have caused significant transboundary harm to the climate system and the environment must repair the harm caused by compensating affected States;
- (iii) States' international responsibility for transboundary harm to the climate system and the environment must be assessed through the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC).