INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

Written Statement of the Republic of Mauritius

22 March 2024

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I. INTRODUCTION

1. The Republic of Mauritius ("**Mauritius**") submits this Written Statement in the matter of the request for an advisory opinion transmitted to the Court pursuant to UN General Assembly resolution 77/276 of 29 March 2023 ("**the Request**") in accordance with the Orders of the Court dated 20 April, 4 August and 15 December 2023.

2. The Request puts the following questions before the Court:

> "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. Mauritius is acutely conscious of – and gravely concerned about – the potentially catastrophic adverse effects of climate change, particularly for small island developing States ("**SIDS**"). Those adverse effects, including *inter alia* sea level rise, extreme weather events, water scarcity, food insecurity, loss of species and displacement, are already being felt around the world, and will become worse, with some impacts likely irreversible. The scientific evidence as to the threat to the climate system and other parts of the environment posed by climate change, as well as the steps required to address that threat, is clearly established. Persistent and increasing use of fossil fuels – coal, oil and gas – is by far the largest contributor to climate change, accounting for about two thirds of global greenhouse gas ("**GHG**") emissions.[1]

4. Mauritius participates in these proceedings recognising the valuable contribution the Court can make by way of its Advisory Opinion, providing authoritative guidance to the UN General Assembly ("**UNGA**") and assisting States in understanding their obligations to protect the climate system and other parts of the environment, in particular by making deep, rapid and sustained reductions of GHG emissions.

5. Mauritius is also participating in the *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* before the International Tribunal for the Law of the Sea ("**ITLOS**").[2] Mauritius looks forward to the Advisory Opinion that may be

[1] UNEP, Emissions Gap Report (2023), Executive Summary, p.iv, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/43923/EGR2023_ESEN.pdf?sequence=10 (last accessed 19 March 2024).

[2] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for an Advisory Opinion submitted to the Tribunal)*, available at: https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-

handed down by ITLOS, and reserves the right to amend its submissions in these proceedings in the light of that Advisory Opinion.

6. For the purpose of assisting the Court to render its Advisory Opinion in response to this Request, Mauritius' Written Statement is in six parts (in addition to this Introduction):

   a. **Section II** addresses the Court's jurisdiction and its discretionary power with respect to advisory opinions. Mauritius considers that the Court unquestionably has jurisdiction to render the Advisory Opinion sought by the UNGA and that there is no reason for the Court to decline to exercise its discretionary power to do so, let alone a compelling one.

   b. **Section III** describes the interest of Mauritius in the subject matter of the Request, in particular the impacts – present and future – of climate change on Mauritius. Mauritius also briefly describes the steps it has taken, and will take, to reduce its own GHG emissions.

   c. **Section IV** sets out the factual context applicable to the Request, in particular the best available climate science, principally emanating from the Intergovernmental Panel on Climate Change ("**IPCC**").

   d. **Section V** addresses the first question: the obligations of States to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions for present and future generations. Mauritius does so by reference to:

submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/ (last accessed 17 March 2024).

i. the international legal framework on climate change: the 1994 UN Framework Convention on Climate Change ("**UNFCCC**") and the subsequent strengthened response to the threat of climate change, principally the 2015 Paris Agreement;

ii. obligations flowing from the UN Charter, including in the context of evidence of a link between climate change and conflict, and the recent practice of the UN Security Council ("**UNSC**");

iii. obligations to protect the marine environment, in particular those contained in the 1982 UN Convention on the Law of the Sea ("**UNCLOS**");

iv. human rights treaties and instruments; and

v. customary international law and general principles of international law.

e. **Section VI**, by reference to the rules and principles of State responsibility, responds to the second question on the legal consequences for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment.

f. **Section VII** concludes this Written Statement by summarising the response of Mauritius to the questions put to the Court, in regard to (a) the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions for States and for present and future generations, and (b) the legal consequences under these obligations. In

particular, all States have the obligation under general international law and the specific treaties to which they are party:

i. to give effect to the general obligation "to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control…";[3]

ii. to take into account and act at all times on the basis of the best available science, including that provided by the IPCC;

iii. to assess the potential adverse impacts of activities and projects (existing and proposed) likely to result in significant harm to the climate system and other parts of the environment, as well as the impacts of mitigation and adaptation measures;

iv. to effect deep, rapid and sustained reductions of GHG emissions, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty, including by urgently reducing and phasing out the use of fossil fuels, with a view to meeting the agreed 1.5°C target;

v. to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change, informed by principles of sustainable development, common but differentiated responsibilities and respective capabilities, prevention, cooperation and equity;

vi. to ensure that finance flows are consistent with, and sufficient to enable, a low emissions pathway and climate resilient development,

[3] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, pp.241-242, para. 29.

including by providing increased financial assistance to Developing Country Parties to UNFCCC and the Paris Agreement, in particular the least developed countries and SIDS, in the context of their national climate strategies and plans;

vii. to ensure that all actions to address climate change shall respect fundamental human rights;

viii. to cooperate in taking measures to enhance public awareness, public participation and public access to information, and give effect to obligations of transparency and reporting flowing from the Paris Agreement;

ix. to provide every assistance to the United Nations and its specialised agencies on matters of climate change, and to give effect to decisions of the UNSC, which is required to address and respond to the risks posed by climate change;

x. to take all measures necessary to protect and preserve the marine environment from the grave and urgent threat posed by climate change, including by preventing, reducing and controlling pollution of the marine environment from GHG emissions; and

xi. to respect the rules of State responsibility in relation to loss and damage caused by the adverse impacts of climate change and to give effect to obligations to make full reparation, by way of restitution, compensation and/or satisfaction, where relevant obligations have been breached.

II. JURISDICTION AND DISCRETION

7. The Court's advisory jurisdiction is based on Article 65(1) of its Statute, which provides that:

> "The 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."[4]

8. When 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 question."[5]

A. JURISDICTION

9. In its application of Article 65(1) of its Statute, the Court has explained that:

> "It is … a precondition of the Court's competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ."[6]

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[4] Statute of the International Court of Justice, Article 65(1).

[5] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p.95, para. 54. See also: *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p.232, para. 10; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p.144, para. 13; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010, p.412, para. 17.

[6] *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*, Advisory Opinion, ICJ Reports 1982, p.325, para. 21. See also: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports

10. It follows that two conditions must be satisfied for the Court to exercise its advisory jurisdiction:

    a. the request must be made by a duly authorised organ; and

    b. the questions put to the Court must be of a legal character.

11. Both conditions are plainly met in this case. First, Article 96(1) of the UN Charter states that the UNGA "may request the International Court of Justice to give an advisory opinion on *any legal question*."[7] When the UNGA requests an advisory opinion in accordance with its own rules, the presumption is that it has exercised its power to do so validly.[8]

12. Resolution 77/267 was adopted by the UNGA at its 64th plenary session on 29 March 2023 by consensus, pursuant to its established rules. Unlike other organs of the United Nations and specialised agencies, whose power to request advisory opinions is restricted to legal questions "arising within the scope of their activities",[9] the UNGA's power is not so restricted. In any event, the UNGA has – for more than 35 years – regularly addressed the

2004, p.144, para. 14; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo,* Advisory Opinion, ICJ Reports 2010, p.413, para. 19.

[7] UN Charter, Article 96(1) (emphasis added).

[8] The Court has recognised that "[a] resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ's rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted" (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa),* Advisory Opinion, ICJ Reports 1971, p.16, para. 20). See also: *Legality of the Use by a State of Nuclear Weapons in Armed Conflict,* Advisory Opinion, ICJ Reports 1996, p.82, para. 29.

[9] UN Charter, Article 96(2).

subject matter of the Request in the exercise of its powers and functions under Chapter IV of the UN Charter.[10]

13. Second, the Court has noted that questions "framed in terms of law and rais[ing] problems of international law... are by their very nature susceptible of a reply based on law" and "appear... to be questions of a legal character."[11] A question "which expressly asks whether or not a particular action is compatible with international law certainly appears to be a legal question".[12]

14. The two questions before the Court in this case are of an inherently legal character. They are framed in legal terms, raise issues of international law, and ask the Court to perform a quintessentially judicial task. The Request is

[10] See *e.g.* UN General Assembly resolution (hereinafter "**UNGA res.**") 77/165 (14 December 2022); UNGA res. 76/205 (17 December 2021); UNGA res. 75/217 (21 December 2020); UNGA res. 74/219 (19 December 2019); UNGA res. 73/232 (20 December 2018); UNGA res. 72/219 (20 December 2017); UNGA res. 71/228 (21 December 2016); UNGA res. 70/205 (22 December 2015); UNGA res. 69/220 (19 December 2014); UNGA res. 68/212 (20 December 2013); UNGA res. 67/210 (21 December 2012); UNGA res. 66/200 (22 December 2011); UNGA res. 65/159 (20 December 2010); UNGA res. 64/73 (7 December 2009); UNGA res. 63/32 (26 November 2008); UNGA res. 62/86 (10 December 2007); UNGA res. 61/201 (20 December 2006); UNGA res. 60/197 (22 December 2005); UNGA res. 59/234 (22 December 2004); UNGA res. 58/243 (23 December 2003); UNGA res. 57/257 (20 December 2002); UNGA res. 56/199 (21 December 2001); UNGA res. 54/222 (22 December 1999); UNGA res. 52/199 (18 December 1997); UNGA res. 51/184 (16 December 1996); UNGA res. 50/115 (20 December 1995); UNGA res. 49/120 (19 December 1994); UNGA res. 47/195 (22 December 1992); UNGA res. 46/169 (19 December 1991); UNGA res. 45/212 (21 December 1990); UNGA res. 44/207 (22 December 1989); and UNGA res. 43/53 (6 December 1988).

[11] *Western Sahara*, Advisory Opinion, ICJ Reports 1975, p.12, para. 15. See also: *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo,* Advisory Opinion, ICJ Reports 2010, pp.414-415, para. 25; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p.226, para. 13.

[12] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo,* Advisory Opinion, ICJ Reports 2010, pp.414-415, para. 25.

firmly rooted in law and the questions are "scarcely susceptible of a reply otherwise than on the basis of law."[13]

15. In the exercise of its judicial function, the Court will need to engage with the relevant facts. The reference to "any legal question" in Article 96(1) of the UN Charter "cannot be interpreted as opposing legal to factual issues", because "to enable a court to pronounce on legal questions, it must also be acquainted with, take into account and, if necessary, make findings as to the relevant factual issues."[14] In this case, the applicable facts comprise, in particular, the best available climate science (see **Section IV** below).

16. Nor is the legal character of the questions undermined by the fact that they may touch upon issues of a political nature.[15] The Court has affirmed that "the political nature of the motives which may be said to have inspired the request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion."[16]

17. It follows that the Court plainly has jurisdiction to render the Advisory Opinion requested by the UNGA in resolution 77/267.

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[13] *Western Sahara*, Advisory Opinion, ICJ Reports 1975, p.12, para. 15. See also: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p.153, para. 37.

[14] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, Advisory Opinion, ICJ Reports 1971, p.27, para. 40.

[15] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010, p.415, para. 27.

[16] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p.226, para. 13. See also: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p.155, para. 41; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010, p.415, para. 27; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, ICJ Reports 1980, p.87, para. 33.

B. DISCRETION

18. Notwithstanding the discretionary character of its advisory jurisdiction, "the present Court has never, in the exercise of this discretionary power, declined to respond to a request for an advisory opinion."[17] In the *Chagos* Advisory Opinion, the Court was "mindful of the fact that its answer to a request for an advisory opinion 'represents its participation in the activities of the Organization, and, in principle, should not be refused'".[18]

19. Mauritius considers that there are no compelling reasons for the Court to refuse to render an Advisory Opinion in this case. To the contrary, the Court's legal guidance on a matter which is among the UNGA's highest priorities will undoubtedly provide material assistance to the UNGA in the exercise of its functions, and would reinforce "the integrity of the Court's judicial function as the principal judicial organ of the United Nations".[19]

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[17] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p.156, para. 44. In *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, the Court declined to render an advisory opinion on the basis that the subject matter of the request submitted by the WHO did not relate to a question arising within the scope of the WHO's activities (ICJ Reports 1996, p.77, para. 23). However, this limitation is of no relevance in this case because Article 96(1) of the UN Charter confers on the UNGA competence to request an advisory opinion on any legal question.

[18] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Report 2019, p.113, para. 65 (citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion, ICJ Reports 1950, p.71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Reports 1999, pp.78-79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p.156, para. 44).

[19] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Report 2019, p.113, para. 64 (citing *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004 (I), pp.156-157, paras. 44-45; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010 (II), pp.415-416, para. 29).

III. INTEREST OF AND IMPACTS ON MAURITIUS

20. Mauritius' net GHG emissions represent less than 0.01% of the global total.[20] However, as one of 37 SIDS recognised by the United Nations, Mauritius is highly vulnerable to the adverse impacts of climate change. These impacts – which represent an existential threat for large parts of Mauritius and other SIDS – are already underway, severe, and predicted to become much worse.

A. IMPACTS ON MAURITIUS

21. Mauritius is made up of a group of islands in the south-west and central Indian Ocean. The main Island of Mauritius is located approximately 870 km east of Madagascar.[21] It is fringed by coral reefs that provide shelter for an abundance of marine life. The total land area of Mauritius is approximately 2,000 km^2. Mauritius has a total population of approximately 1.26 million, of which around 116,055 reside in the capital city of Port Louis.[22]

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[20] Submission of the Republic of Mauritius to the United Nations Framework Convention on Climate Change, *Update of the Nationally Determined Contribution of the Republic of Mauritius*, 1 October 2021 (hereinafter "**Mauritius' NDC**"), available at: https://unfccc.int/NDCREG (last accessed 11 February 2024). See also Mauritius' National Inventory Report to UNFCCC, December 2021, available at: https://unfccc.int/documents/419700 (last accessed 11 February 2024).

[21] The territory of Mauritius, in addition to the Island of Mauritius, includes: (i) the islands of Cargados Carajos (the St Brandon Group of 16 islands and islets), 400 km north; (ii) Rodrigues Island, 580 km north-east; (iii) Agalega, 1,050 km north; (iv) Tromelin, 555 km north-west; and (v) the Chagos Archipelago, including Diego Garcia, 2,080 km north-east. See: Constitution of Mauritius, Article 111, available at: https://mauritiusassembly.govmu.org/mauritiusassembly/index.php/the-constitution/ (last accessed 9 February 2024).

[22] Republic of Mauritius, Population and Vital Statistics, January-June 2023, available at: https://statsmauritius.govmu.org/Pages/Statistics/ESI/Population/Pop_Vital_Jan-Jun23.aspx (last accessed 11 February 2024). The population of Rodrigues Island is approximately 44,783, and about 274 people live in Agalega and St Brandon Islands (Republic of Mauritius, Digest of Demographic Statistics 2022, available at: https://statsmauritius.govmu.org/Documents/Statistics/Digests/Demography/Digest_Demo_Yr22_201023.xlsx (last accessed 11 February 2024)). While there are currently no Mauritian citizens

22. Human communities in close connection with coastal environments are particularly exposed to the impacts of climate change, in particular sea level rise, shrinking cryosphere, temperature rise and extreme weather events. Vulnerability assessments relating to the main Island of Mauritius and Rodrigues amply demonstrate that these areas are highly susceptible to changes in precipitation and climate change induced weather events. Mauritius faces numerous challenges, including extreme weather events, water and food security, sea level rise, coastal degradation and coral bleaching. It is one of the most exposed nations to natural hazards due to its geographical location in an active tropical cyclone basin.

23. Mauritius has not yet been able to carry out such an assessment with respect to the Chagos Archipelago, which remains under the unlawful occupation of the United Kingdom.[23] The Chagos Archipelago is extremely susceptible to

residing the Chagos Archipelago, Mauritius is firmly committed to implementing a resettlement programme for its nationals, especially those of Chagossian origin, who suffered historic injustice by being forcibly removed from their birthplace by the United Kingdom in the 1960s and 1970s. Following the Court's *Chagos* Advisory Opinion delivered on 25 February 2019, Mauritius and the United Kingdom have started negotiations on the exercise of sovereignty over the Chagos Archipelago, on the basis of international law. It is hoped that these talks will lead to the completion of the decolonisation process of Mauritius and enable Mauritius implement its resettlement programme. See: Statement of the Hon. Pravind Kumar Jugnauth, Prime Minister of Mauritius, at the 78th Session of the UN General Assembly (22 September 2023), available at: https://pmo.govmu.org/Documents/Speeches/GA78%20-%20Mauritius%20Statement.pdf (last accessed 21 February 2024).

[23] The Chagos Archipelago is recognised under international law as forming an integral part of the sovereign territory of Mauritius. On 25 February 2019, the ICJ rendered an Advisory Opinion determining that the entirety of the Chagos Archipelago is an integral part of the territory of Mauritius (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019). On 28 January 2021, a Special Chamber of the International Tribunal for the Law of the Sea confirmed that Mauritius is "the coastal State in respect of the Chagos Archipelago for the purpose of the delimitation of a maritime boundary even before the process of decolonization of Mauritius is completed" (*Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean*, Preliminary Objections, Judgment of 28 January 2021).

the effects of climate change.[24] The terrain is flat and low lying, only 1-2 metres above mean sea level on average.

24. The climate change impacts on Mauritius are described in its First Biennial Update Report and its Updated Nationally Determined Contribution submitted to the UNFCCC Secretariat.[25] The dominant impacts of climate change on Mauritius are summarised in below.

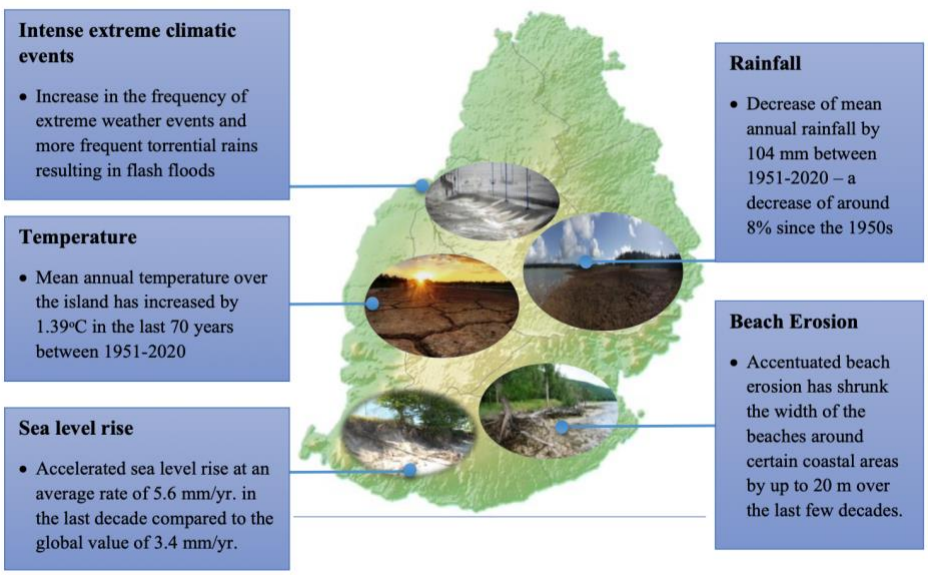

Figure 1: Climate Change Impacts in Key Areas

[24] The Chagos Archipelago is composed of more than 60 islands, banks and reefs lying between 4°44'S and 7°39'S, and 70°50'E and 72°47'E. Many of these features are clustered together in ring-shaped coral atolls, which include Diego Garcia Island, the Great Chagos Bank (encompassing Danger Island, Eagle Islands, Three Brothers and Nelson's Island), Egmont Islands, Salomon Islands Atoll and Peros Banhos Atoll. There are approximately 56 high tide features, totalling 52.07 km^2, with a coastline of 293.28 km.

[25] First Biennial Update Report of the Republic of Mauritius to UNFCCC (31 December 2021), available at: https://unfccc.int/documents/419699 (last accessed 11 February 2024); Update of the Nationally Determined Contribution of the Republic of Mauritius (1 October 2021), available at: https://unfccc.int/sites/default/files/NDC/2022-06/Final%20Updated%20NDC%20for%20the%20Republic%20of%20Mauritius%2001%20October%202021.docx (last accessed 11 February 2024) (hereinafter "**Mauritius' Updated NDC**").

1. Sea level rise and coastal erosion

25. In the decade 1998-2007, Mauritius experienced sea level rise of 5.6 mm per year, almost twice the global average. For Rodrigues Island, mean sea level increased by 6.4 mm per year for the same period.[26]

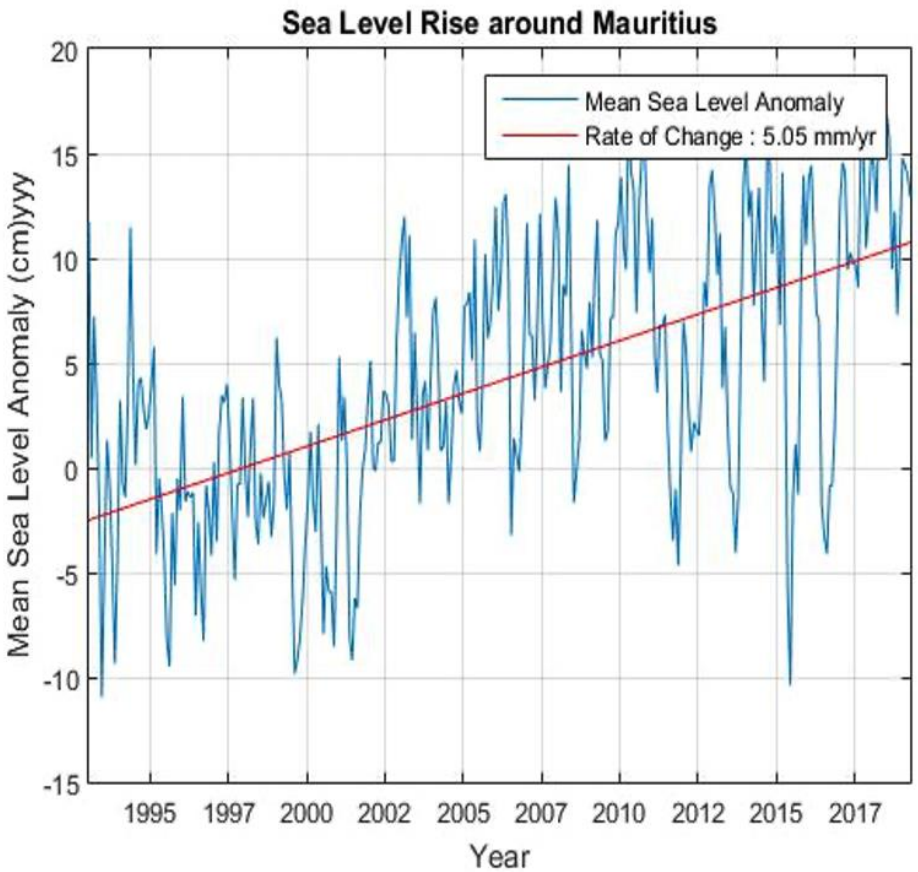

Figure 2: Sea Level Rise around Mauritius

[26] Mauritius' Updated NDC, p.21. See also: Statement of the Hon. Pravind Kumar Jugnauth, Prime Minister of Mauritius, at the 78th Session of the UN General Assembly (22 September 2023), p.4, available at: https://pmo.govmu.org/Documents/Speeches/GA78%20-%20Mauritius%20Statement.pdf (last accessed 21 February 2024). On-site observations carried out by Mauritius Meteorological Services at Port Louis (on the main Island of Mauritius) reveal long-term sea level rise of 4.7mm per year between 1987 and 2020.

26. As shown in Figure 2 (above) satellite data demonstrates that from 1993 to 2019, the rate of sea level rise has been approximately 5.05 mm per year around the Island of Mauritius. Similarly, for Rodrigues and Agalega, the rate of sea level rise is 4.84 mm per year and 3.40 mm per year respectively, which is considerably higher than the average rate of sea level rise in the Indian Ocean (2.81 mm per year).

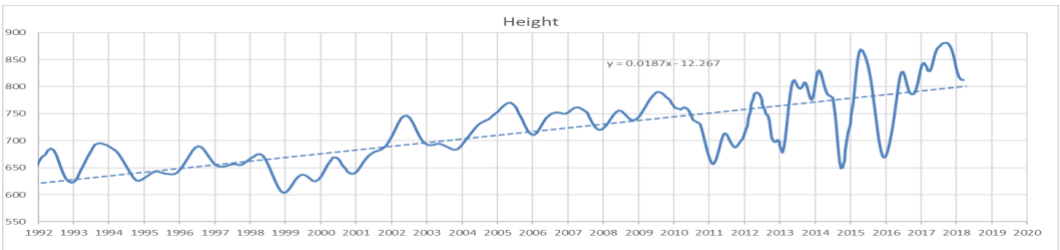

Figure 3: Sea Surface Height around Mauritius 1992-2018

27. Figure 3 (above) depicts data of sea surface height obtained by the Mauritian Department for Continental Shelf, Maritime Zones Administration & Exploration ("**CSMZAE**") over the period 1992-2018.[27] From 2014 to 2018, sea surface height increased by an average of 6.8mm per year.

28. The impact of sea level rise has already been observed in Mauritius, with increased erosion at 23% of beaches on the Island of Mauritius.[28] Between 1967 and 2012, 17% of Mauritius' coastline was eroded.[29] It is estimated that half of Mauritius' beaches are at risk of disappearing over the next 50 years.[30]

[27] Datasets used: GLORYS2 (1992-2009); PSY3 (2011-2018).

[28] Beeharry *et. al.*, "Impacts of sea-level rise on coastal zones of Mauritius: insights following calculation of a coastal vulnerability index", *Natural Hazards* vol. 114 (2022), p.41, available at: https://link.springer.com/article/10.1007/s11069-022-05378-9 (last accessed 11 February 2024).

[29] First Biennial Update Report of the Republic of Mauritius to the UNFCCC (31 December 2021), p.11, available at: https://unfccc.int/documents/419699 (last accessed 11 February 2024).

[30] Bank of Mauritius, "How Mauritius is mobilising climate finance", *SPI Journal*, Autumn 2023, available at: https://www.bom.mu/media/speeches/how-mauritius-mobilising-climate-

29. The coastal zone of Mauritius is a valuable national asset. However, coastal areas are shrinking dramatically due to rising sea levels and accelerated beach erosion. Accentuated beach erosion has shrunk the width of the beaches around certain coastal areas by up to 20 metres leading to loss of beach space and damage to infrastructure.

2. Temperature rise, coral bleaching and extreme weather events

30. The mean temperature of the Island of Mauritius has already warmed 1.39°C over the last 70 years, between 1951 and 2020 (compared to 1961-1990 climatological data). In light of current global trends, the Mauritius Meteorological Service anticipates a temperature increase of up to 3.14-3.64°C by 2100 (adopting SSP5-8.5: see paragraph 52 below).[31]

31. CSMZAE analysis shows that episodes of peak sea surface temperature above 29°C were non-existent before 2003. By 2015, sea surface temperature in Mauritius peaked at 30°C, putting Mauritius above the global average for sea surface temperature rise. This has resulted in significant coral bleaching events in Mauritius, notably in 2018/2019 when 60% of the coral barrier around the Island of Mauritius was subjected to bleaching, leading to a decrease in its protective function against the forces of high waves and its sand regeneration capacity. Increased sea surface temperatures also result in algal blooms and nutrient rich seepage into lagoons, resulting in mass morality of fish and corals.

32. Due to its location in the south-western Indian Ocean, Mauritius is regularly impacted by cyclones and associated hazards, such as torrential rains and

finance#:~:text=Mauritius%20has%20experienced%20beach%20erosion,make%20up%20the%20blue%20lagoon (last accessed 11 February 2024).

[31] Mauritius' Updated NDC, p.21.

flash floods, which result in widespread disruption, including evacuations and power outages, damage to infrastructure, substantial economic loss, and loss of life. Data from the Mauritius Meteorological Service shows that in each decade between 1960 and 2009, the average number of cyclones each year has doubled, and these have intensified. The mean number of cyclones with gusts in excess of 165 km/h has increased from 3.9 per year in the period 1981-2020 to 4.7 in the period 1991-2020.[32]

33. In the fisheries sector, climate change in Mauritius is already causing erratic and lowered productivity due to increased surface sea temperature and sea level rise. Mauritius' coastal zones are highly vulnerable to hazard events associated with cyclones, flooding, storm surges and heavy swells that are predicted to become more frequent over time. Mauritius is expected to experience around $91 million USD in direct losses annually from winds, flooding, and storm surges associated with tropical cyclones.[33]

34. At the same time, climate change causes increased frequency of dry spells and droughts. The Mauritius Meteorological Service has observed a drop in mean annual rainfall of 104 mm per annum over the last 70 years. There was a 7.7% decrease in rainfall during the last decade, resulting in reduced agricultural productivity and terrestrial biodiversity.[34] It is expected that

[32] *Ibid*., p.22.

[33] South Indian Ocean Risk Assessment and Financing Initiative, *Disaster Risk Profile: Mauritius*, available at: https://www.gfdrr.org/sites/default/files/mauritius.pdf (last accessed 11 February 2024).

[34] Mauritius' Updated NDC, p.24.

Mauritius may become water-scarce by 2030, with a 13% decrease in utilisable water resources by 2050.[35]

B. MAURITIUS' MITIGATION AND ADAPTATION MEASURES

35. Mauritius is currently spending about 2% of its gross domestic product on environment and climate-change related policies.[36] It has implemented, and is implementing, ambitious adaptation and mitigation measures aimed at reducing its GHG emissions by 40% by 2030.[37]

36. On 27 November 2020, Mauritius adopted the Climate Change Act, which serves as the cornerstone of its commitment to fulfilling its obligations under UNFCCC, the Paris Agreement and other related instruments on climate change.[38]

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[35] Boojhawon & Surroop, "Impact of climate change on vulnerability of freshwater resources: a case study of Mauritius", *Environmental Development and Sustainability*, vol. 23 (2021), pp.195-223, available at: https://doi.org/10.1007/s10668-019-00574-3 (last accessed 11 February 2024).

[36] Statement of the Hon. Pravind Kumar Jugnauth, Prime Minister of Mauritius, at the 78th Session of the UN General Assembly (22 September 2023), p.4, available at: https://pmo.govmu.org/Documents/Speeches/GA78%20-%20Mauritius%20Statement.pdf (last accessed 21 February 2024).

[37] Mauritius' Updated NDC, pp.3-4; Statement of the Hon. Pravind Kumar Jugnauth, Prime Minister of Mauritius, at the 78th Session of the UN General Assembly (22 September 2023), p.5, available at: https://pmo.govmu.org/Documents/Speeches/GA78%20-%20Mauritius%20Statement.pdf (last accessed 21 February 2024).

[38] Legal Supplement to the Government Gazette of Mauritius, No. 145 of 28 November 2020, Climate Change Act 2020 (hereinafter "**CCA**"), available at: https://faolex.fao.org/docs/pdf/mat204415.pdf (last accessed 11 February 2024). The CCA establishes an Inter-Ministerial Council on Climate Change to set national objectives, goals and targets for purpose of making Mauritius a climate change-resilient and low emission country. The CCA also establishes a Department of Climate Change to *inter alia*: promote adaptation and mitigation measures; develop and coordinate policies, projects, strategies, programmes and action plans to address the adverse effects of climate change; formulate and update guidelines for the conduct of vulnerability and risk assessments; establish procedures and issue guidelines to reduce GHG emissions; establish reporting mechanisms and a climate change database system; compile, analyse and disseminate information on climate change; and provide technical support and facilitate research and studies.

37. Mauritius recognises that economy-wide emissions reductions are required, in particular in the energy, transport, waste, and industrial processes and product use ("**IPPU**") sectors. To that end, Mauritius has committed to phasing out the use of coal, and producing 60% of its energy needs from green sources by 2030.[39] With regard to the transport sector, Mauritius recently completed the first two phases (85%) of a light railway project spanning 30 km from Port Louis to Réduit, the Metro Express. Ridership currently stands at approximately 55,000 per day, resulting in a material reduction in motor vehicle traffic.[40] Mauritius has also committed to divert 70% of waste away from landfills by 2030, including through composting plants, sorting units and waste-energy plants. In the IPPU sector, Mauritius is banning non-inverter air-conditioning. Further strategies and measures – including with respect of agriculture, livestock, fisheries, biodiversity, water, infrastructure and tourism – are outlined in Mauritius' Updated National Climate Change Adaptation Policy Framework.[41]

38. At the United Nations Ocean Conference on 1 July 2022, Mauritius presented its plans for a multi-purpose Marine Protected Area ("**MPA**") around the Chagos Archipelago, consistent with Mauritius' obligations under UNCLOS and the right of return of Mauritian nationals of Chagossian origin.[42] The Chagos Archipelago is a treasure of ocean diversity; it contains 25-50% of

[39] Mauritius' Updated NDC, pp.3-4.

[40] PMO, *Prime Minister effects inaugural trip on Metro Express marking the launch of the Rose Hill-Réduit line*, 23 January 2023, available at: https://pmo.govmu.org/News/SitePages/Prime-Minister-effects-inaugural-trip-on-Metro-Express-marking-the-launch-of-the-Rose-Hill-Réduit-line.aspx (last accessed 11 February 2024).

[41] Mauritius' Updated NDC, p.6.

[42] The 'MPA' purportedly established by the United Kingdom in 2010 was held by an UNCLOS Annex VII arbitral tribunal (unanimously) to have been established in breach of the United Kingdom's obligations under Articles 2(3), 56(2) and 194(4) of UNCLOS. See: *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*, Award of 18 March 2015.

Indian Ocean coral reefs which are still in excellent condition and 18 breeding bird species. Coral reef fish are six times more abundant in the Chagos Archipelago than any other reefs surveyed elsewhere in the Indian Ocean, with nesting areas for green turtles and hawksbill turtles which are the largest in the south-western Indian Ocean. Mauritius' proposed MPA aims at protecting this pristine marine environment and rich biodiversity.[43]

IV. APPLICABLE FACTS: BEST AVAILABLE CLIMATE SCIENCE

39. The Court's core function when exercising its advisory jurisdiction is to provide an authoritative statement on the interpretation and application of the law to assist the requesting organ or agency to properly exercise its functions.[44] In order to do so, the Court must apply the law to the pertinent facts. In this case, the pertinent facts include the well-established body of scientific evidence, much of which has been widely known for decades. The Court must engage with, and affirm the centrality of, the science and the associated social and economic impacts.

40. The Court has, on previous occasions, carried out a similar exercise. In *Pulp Mills*, the Court considered "a vast amount of factual and scientific material" as well as expert evidence to determine whether there had been a breach of

[43] United Nations Ocean Conference 2022, Side Event: *Protecting the Chagos Archipelago: Towards SDG-14 – Sustainability and Self-Determination Through a New Marine Protected Area*, available at: https://sdgs.un.org/sites/default/files/2022-07/IBZ_Protecting%20the%20Chagos%20Archipelago-Towards%20SDG-14%2C%20Sustainability%20and%20Self-Determination%20Through%20a%20New%20Marine%20Protected%20Area.pdf (last accessed 11 February 2024).

[44] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p.136, para. 50.

treaty obligations.[45] The Court emphasised the need to "weigh and evaluate" the underlying data itself, rather than the parties' conflicting interpretations of that data.[46] Similarly, in *Whaling in the Antarctic*, the Court carefully examined a considerable body of scientific evidence, including live expert evidence.[47]

41. Mauritius invites the Court to adopt the same approach in this case: to carefully consider the scientific evidence presented by participating States and organisations, including those contained in Part III of the Dossier prepared by the UN Secretariat.[48]

* * *

42. The international legal framework concerning climate change is now principally contained in UNFCCC and the Paris Agreement. These agreements – addressed in **Section V.A** below – are rooted in climate science and represent "the primary international, intergovernmental forums for negotiating the global response to climate change".[49] Mauritius was among

[45] *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment, ICJ Reports 2010, p.14, para. 229.

[46] *Ibid*., para. 236.

[47] *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)*, Judgment, ICJ Reports 2014, p.226.

[48] See: https://www.icj-cij.org/sites/default/files/case-related/187/187-20230630-req-05-01-en.pdf and https://www.icj-cij.org/sites/default/files/case-related/187/187-20230630-req-05-02-en.pdf (last accessed 16 February 2024).

[49] UNGA res. 77/165 (14 December 2022), Preamble.

the first to ratify UNFCCC on 4 September 1992,[50] and the Paris Agreement on 22 April 2016.[51]

43. The Preamble to UNFCCC recognises that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations, and continually re-evaluated in the light of new findings in these areas.[52] UNFCCC refers to scientific evidence as the basis for action across a range of areas.[53] The Paris Agreement expressly mandates Parties to take individual and collective action in relation to mitigation and adaptation on the basis of the "best available science".[54]

44. As described in **Section IV.B** below, the best available scientific evidence on threats to the climate system and other parts of the environment from anthropogenic GHG emissions, and the steps required to address those threats, is clearly and irrefutably established. Mauritius invites the Court to so state in its Advisory Opinion.

[50] UN Treaty Collection, Chapter XXVII (Environment) (7), UNFCCC, available at: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en (last accessed 19 March 2024).

[51] UN Treaty Collection, Chapter XXVII (Environment) (7d), Paris Agreement, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en (last accessed 19 March 2024).

[52] UN Framework Convention on Climate Change 1992 (hereinafter "**UNFCCC**"), Preamble, para. 16.

[53] See *e.g.* UNFCCC, Articles 3(3), 4(1) & (2), 5(b), 6(a)(iv), 7(2)(b), 9 and 10(2)(a).

[54] Paris Agreement, Articles 4(1), 7(5) and 14(1).

A. THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC)

45. The IPCC was established in 1988 by the World Meteorological Organization (WMO) and the United Nations Environment Program (UNEP).[55] The IPCC currently has 195 Member Countries, including Mauritius. The role of the IPCC is:

> "… to assess on a comprehensive, objective, open and transparent basis the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation."[56]

46. The IPCC does so by conducting regular 6-to-7-year assessment cycles, whereby thousands of scientific papers are assessed in order to provide a comprehensive summary of what is known about the drivers of climate change, its impacts and future risks, and the steps required to address those risks. During each assessment cycle, the IPCC publishes a new round of reports reflecting the latest climate science. The reports and findings of the IPCC are regarded by the international community as authoritative statements of climate science, including by the UNGA.[57]

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[55] UNGA res. 43/53 (6 December 1988), para. 5 ("*Endorses* the action of the World Meteorological Organization and the United Nations Environment Programme in jointly establishing an Intergovernmental Panel on Climate Change to provide internationally co-ordinated scientific assessments of the magnitude, timing and potential environmental and socio-economic impact of climate change and realistic response strategies, and expresses appreciation for the work already initiated by the Panel [IPCC]").

[56] Principles Governing IPCC Work, Approved at the 14th Session (1 October 1998), para. 2, available at: https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles.pdf (last accessed 19 March 2024).

[57] See *e.g.* UNGA res. 77/165 (14 December 2022); UNGA res. 76/205 (17 December 2021); UNGA res. 75/217 (21 December 2020); UNGA res. 74/219 (19 December 2019); UNGA res. 73/232 (20 December 2018); UNGA res. 68/212 (20 December 2013); UNGA res. 65/159 (20

47. The IPCC is made up of three working groups and a task force on National GHG Inventories.[58] The IPCC does not produce original research; it examines relevant scientific literature, relying on thousands of scientists and other experts as peer reviewers.

48. Assessment Reports undergo extensive multi-layered review by experts and governments before being accepted or adopted by the relevant Working Group or IPCC plenary session. The review process is based on three governing principles:

> "First, the best possible scientific and technical advice should be included so that the IPCC Reports represent the latest scientific, technical and socio-economic findings and are as comprehensive as possible. Secondly, a wide circulation process, ensuring representation of independent experts (*i.e.* experts not involved in the preparation of that particular chapter) from developing and developed countries and countries with economies in transition should aim to involve as many experts as possible in the IPCC process. Thirdly, the review process should be objective, open and transparent."[59]

49. IPCC reports are summarised in the form of a 'Summary for Policymakers', which is subject to line-by-line review by representatives of the IPCC's Member Countries at plenary sessions.

December 2010); UNGA res. 64/73 (7 December 2009); UNGA res. 63/32 (26 November 2008); and UNGA res. 62/86 (10 December 2007).

[58] Working Group I deals with the Physical Science Basis of Climate Change; Working Group II deals with Climate Change Impacts, Adaptation and Vulnerability; Working Group III deals with Mitigation of Climate Change. The main objective of the Task Force is to develop and refine a methodology for the calculation and reporting of national greenhouse gas emissions and removals.

[59] Appendix A to the Principles Governing IPCC Work, p.6, available at: https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf (last accessed 19 March 2024).

B. BEST AVAILABLE CLIMATE SCIENCE

50. The IPCC's latest assessment cycle began in 2015 and concluded in March 2023 with the Sixth Assessment Report ("**AR6**").[60] At its 43rd session in April 2016 in Nairobi, the IPCC also decided to produce three special reports ("**Special Reports**") during the sixth assessment cycle:

    a. the Special Report on Global Warming of 1.5°C above pre-industrial levels and related global GHG emission pathways ("**SR1.5**");[61]

    b. the Special Report on Climate Change and Land;[62] and

    c. the Special Report on the Ocean and Cryosphere in a Changing Climate ("**SROCC**").[63]

51. IPCC reports include "confidence" and "probability" assessments based on the latest and most authoritative scientific literature.[64]

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[60] See: https://www.ipcc.ch/assessment-report/ar6/#:~:text=During%20the%20sixth%20assessment%20cycle,to%20its%20latest%20Methodology%20Report (last accessed 16 February 2024).

[61] IPCC, "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" (2018), available at: https://www.ipcc.ch/sr15/ (last accessed 19 March 2024) (hereinafter "**SR1.5**").

[62] IPCC, "Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems" (2019), available at: https://www.ipcc.ch/srccl/ (last accessed 17 February 2024).

[63] IPCC, "IPCC Special Report on the Ocean and Cryosphere in a Changing Climate" (2019), available at: https://www.ipcc.ch/srocc/ (last accessed 17 February 2024) (hereinafter "**SROCC**").

[64] IPCC, "Guidance Note for Lead Authors of the IPCC Fifth Assessment Report on Consistent Treatment of Uncertainties" (2010), available at: https://www.ipcc.ch/site/assets/uploads/2017/08/AR5_Uncertainty_Guidance_Note.pdf (last accessed 16 February 2024).

a. **Confidence**: a qualitative assessment of a finding based on the type, amount, quality and consistency (*i.e.* robustness) of evidence available and the degree of agreement. Confidence increases as robustness and scientific consensus increase. Five qualifiers are used to describe confidence levels: *very low*, *low*, *medium*, *high* and *very high*.

b. **Probability**: a quantitative descriptor used to express the probabilistic estimate of an occurrence or outcome: *virtual certainty* (99-100%); *very likely* (90-100%); *likely* (66-100%); *more likely than not* (>50-100%); *about as likely as not* (33-66%); *unlikely* (0-33%); *very unlikely* (0-10%); and *exceptionally unlikely* (0-1%).

52. The IPCC assesses future adverse impacts by reference to five illustrative shared socio-economic pathways ("**SSP**"). SSP1-1.9 and SSP1-2.6 anticipate very low and low (respectively) GHG and CO_2 emissions declining to net zero around or after 2050, followed by varying levels of net negative CO_2 emissions.[65] SSP2-4.5 anticipates CO_2 emissions remaining at around current levels until the middle of the century. SSP3-7.0 and SSP5-8.5 anticipate high and very high (respectively) GHG and CO_2 emissions that roughly double from current levels by 2100 and 2050 (respectively).

53. The AR6 Synthesis Report ("**AR6 SYR**") summarises the current state of knowledge of climate change, and integrates the findings of AR6 with those of the Special Reports. This scientific evidence is relevant to:

[65] The illustrative scenarios are referred to as SSPx-y, where 'x' refers to the shared socio-economic pathway describing the socio-economic trends underlying the scenario, and 'y' refers to the approximate level of radiative forcing in watts per square metre ($W\ m^{-2}$).

a. the assessment of the impacts of climate change on the climate system and other parts of the environment from anthropogenic GHG emissions; and

b. the action required to address the threat of climate change, in particular through the reduction of GHG emissions.

1. Anthropogenic emissions of GHGs have resulted in global warming

54. GHGs are responsible for causing global warming by absorbing radiation and trapping heat in the atmosphere.[66] As the concentration of GHGs in the atmosphere increases, so too does the amount of heat energy trapped in the atmosphere and reflected back to the Earth, resulting in climate change.[67] The most common GHGs are carbon dioxide (CO_2), methane (CH_4) and nitrous oxide (N_2O). Less common (but more powerful) GHGs include hydrofluorocarbons, perfluorocarbons, chlorofluorocarbons and sulphur hexafluoride.[68]

55. There is overwhelming scientific evidence and consensus that human influence has warmed the atmosphere, ocean and land. In the period 2011-

[66] IPCC Working Group I, "Climate Change 2021: The Physical Science Basis", Annex VII (Glossary), p.2232 ("Greenhouse Effect: The infrared radiative effect of all infrared-absorbing constituents in the atmosphere. Greenhouse gases (GHGs), clouds, and some aerosols absorb terrestrial radiation emitted by the Earth's surface and elsewhere in the atmosphere.") Available at: https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_AnnexVII.pdf (last accessed 17 February 2024) (hereinafter "**WGI Glossary**").

[67] *Ibid*., ("[a]n increase in the concentration of GHGs increases the magnitude of this effect; the difference is sometimes called the enhanced greenhouse effect. The change in a GHG concentration because of anthropogenic emissions contributes to an instantaneous radiative forcing. Earth's surface temperature and troposphere warm in response to this forcing, gradually restoring the radiative balance at the top of the atmosphere.")

[68] IPCC, "Synthesis Report of the Sixth Assessment Report" (2023), Annex I (Glossary), available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf (last accessed 17 February 2024).

2020, global surface temperature was 1.09°C higher than in 1850-1900. Much of this increase (0.99°C) was observed in the first two decades of the 21st century (*high confidence*). The vast majority of the global surface temperature rise from 1850-1900 to 2010-2019 (1.07°C) resulted from human activity (*likely*).[69]

56. Observed increases in well-mixed GHG concentrations since around 1750 are unequivocally caused by GHG emissions from human activities (*high confidence*).[70] Global net anthropogenic GHG emissions were 54% higher in 2019 than in 2010, with the largest share and growth occurring in CO_2 from fossil fuel combustion and industrial process, followed by methane (*high confidence*). However, "[h]istorical contributions of CO_2 emissions vary substantially across regions in terms of global magnitude".[71] Whereas the 10% of households with the highest per capital emissions contribute to 34-45% of global consumption-based GHG emissions, the bottom 50% contribute to only 13-15% (*high confidence*).[72] Combined, the G20 has accounted for 76% of global emissions, whereas least developed countries accounted for just 3.8% of emissions, and SIDS contributed less than 1%.[73]

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[69] IPCC, "Synthesis Report of the Sixth Assessment Report" (2023), Summary for Policymakers, A.1.1, available at: https://www.ipcc.ch/report/sixth-assessment-report-cycle/ (last accessed 19 March 2024) (hereinafter "**AR6 SYR**").

[70] *Ibid*., A.1.3. The term "well-mixed GHG" is defined as a GHG "that has an atmospheric lifetime long enough (greater than several years) to be homogeneously mixed in the troposphere, and as such the global average mixing ratio can be determined from a network of surface observations. For many well-mixed [GHGs], measurements made in remote regions differ from the global mean by <15%." See: WGI Glossary, p.2254.

[71] AR6 SYR, A.1.5.

[72] *Ibid*.

[73] UNEP, Emissions Gap Report (2023), "Broken Record", p.6, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y (last accessed 19 March 2024).

2. Widespread and significant adverse impacts on the atmosphere, ocean, cryosphere and biosphere

57. Climate change resulting from anthropogenic GHG emissions has caused widespread and significant adverse impacts on the atmosphere, ocean, cryosphere and biosphere, including "substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems (*high confidence*)."[74]

58. Between 1901 and 2018, global mean sea level increased by 0.2 metres. The average rate of sea level rise was 1.3 mm per year between 1901 and 1971. This increased to 1.9 mm per year in the period 1971-2006, and increased again to 3.7 mm per year between 2006 and 2018 (*high confidence*).[75] "Human influence was *very likely* the main driver of these increases since at least 1971."[76] The IPCC notes that "[e]vidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts and tropical cyclones, and in particular, their attribution to human influence" had "further strengthened" since its fifth assessment cycle (*high confidence*).[77]

59. The adverse impacts of climate change have, and will continue to, disproportionately and significantly impact least developed States and SIDS:

> "Approximately 3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change. Human and ecosystem vulnerability are interdependent. Regions and people with considerable development constraints have high vulnerability to climatic hazards. Increasing weather and climate extreme events have exposed millions of people to acute food insecurity and

[74] AR6 SYR, A.2.3.

[75] *Ibid*., A.2.1.

[76] *Ibid*.

[77] *Ibid*.

> reduced water security, with the largest adverse impacts observed in many locations and/or communities in Africa, Asia, Central and South America, [Least Developed Countries], Small Islands and the Arctic, and globally for Indigenous Peoples, small-scale food producers and low-income households. Between 2010 and 2020, human mortality from floods, droughts and storms was 15 times higher in highly vulnerable regions, compared to regions with very low vulnerability (*high confidence*)".[78]

60. The IPCC has expressed *high confidence* in the finding that "[c]limate change has reduced food security and affected water security".[79] In particular, ocean warming and acidification have adversely affected food production from fisheries and shellfish aquaculture (*high confidence*).[80]

61. Climate and weather extremes are increasingly driving human displacement, with SIDS disproportionately affected relative to their small population size (*high confidence*).[81]

3. Future impacts and risk

62. As to future impacts and risks, the IPCC concludes that:

> "Global warming will continue to increase in the near term (2021–2040) mainly due to increased cumulative CO_2 emissions in nearly all considered scenarios and modelled pathways. In the near term, global warming *is more likely than not* to reach 1.5°C even under the very low GHG emission scenario (SSP1-1.9) and *likely* or *very likely* to exceed 1.5°C under higher emissions scenarios."[82]

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[78] *Ibid*., A.2.2 (footnote omitted).

[79] *Ibid*., A.2.4.

[80] *Ibid*.

[81] *Ibid*., A.2.5.

[82] *Ibid*., B.1.1 (footnote omitted).

63. The best estimate of global warming in 2081-2100 spans a range from 1.4°C for a very low GHG emissions scenario (SSP1-1.9) to 4.4°C for a very high GHG emissions scenario (SSP5-8.5).[83]

64. In SR1.5, the IPCC recognised that there is a high risk of very significantly worse outcomes if temperature increases exceed 1.5°C and that even a global temperature increase of 1.5°C will cause extreme harms.[84]

65. Continued GHG emissions will lead to increasing global warming, which will intensify multiple and concurrent hazards, including intensification of the global water cycle, its variability (very wet and very dry weather) as well as climate events and seasons (*high confidence*).[85] As a result of sea level rise, "1-in-100 year extreme sea level events are projected to occur at least annually in more than half of all tide gauge locations by 2100 under all considered scenarios" (*high confidence*).[86] Other projected regional changes include the intensification of tropical cyclones (which as described in paragraph 32 above, Mauritius is already experiencing).[87]

66. As to climate hazards, AR6 SYR concludes that:

> "In 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 an increase in heat-related human mortality and morbidity (*high confidence*),

[83] *Ibid*., B.1.3.

[84] SR1.5, Summary for Policymakers, B.1-6.3, available at: https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf (last accessed 19 March 2024).

[85] AR6 SYR, B.1 and B.1.3.

[86] *Ibid*., B.1.4.

[87] *Ibid*.

> food-borne, water-borne, and vector-borne diseases (*high confidence*), and mental health challenges (*very high confidence*), 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*)."[88]

67. There is *high confidence* that sea level rise is already "unavoidable for centuries to millennia due to continuing deep ocean warming and ice sheet melt, and sea levels will remain elevated for thousands of years".[89] It is predicted with *medium confidence* that under the SSP1-1.9 emissions scenario, the *likely* global mean sea level rise will be 0.15-0.23 metres by 2050 and 0.28-0.55 metres by 2100 (relative to 1995-2014). Under the SSP5-8.5 emissions scenario, global mean sea level rise will be 0.2-0.29 metres by 2050 and 0.63-1.01 metres by 2100.[90] Sea level rise of this magnitude poses an existential threat to vast swathes of Mauritius, as well as many other SIDS.

4. Mitigation and adaptation

68. The IPCC defines mitigation of climate change as a "human intervention to reduce emissions or enhance the sinks of greenhouse gases."[91]

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[88] *Ibid*., B.2.1 (footnote omitted).

[89] *Ibid*. B.3.1.

[90] *Ibid*.

[91] WGI Glossary, p.2239.

69. The IPCC considers that "[d]eep, rapid and sustained reductions in [GHG] emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years" (*high confidence*).[92]

70. The IPCC has cautiously considered the scope for drawing down CO_2 from the atmosphere (*i.e.* CO_2 removal) and indicated that this remains "subject to multiple feasibility and sustainability constraints" (*high confidence*) and "[m]ost current and potential [CO_2 removal] measures could have significant impacts on land, energy, water or nutrients if deployed at large scale" (*high confidence*).[93]

71. The IPCC defines adaptation as follows:

> "In human systems, the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities. In natural systems, the process of adjustment to actual climate and its effects; human intervention may facilitate adjustment to expected climate and its effects."[94]

72. While there has been progress in adaptation planning and implementation, adaptation responses are "fragmented, incremental, sector-specific and unequally distributed across regions" (*high confidence*).[95] There is also increased evidence of maladaptation in various sectors and regions, which especially adversely affect marginalised and vulnerable groups.[96] There are

[92] AR6 SYR, B.1.

[93] SR1.5, Summary for Policy Makers, C.3 and C.3.4, available at: https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf (last accessed 19 March 2024).

[94] WGI Glossary, p.2216.

[95] AR6 SYR, A.3.1 and A.3.3.

[96] *Ibid*., A.3.4.

widening disparities between estimated costs of adaptation and the finance actually allocated to adaptation (*high confidence*).[97] While climate finance has increased, current global finance flows for adaptation are "insufficient and constrain implementation of adaptation options, especially in developing countries" (*high confidence*).[98] The IPCC has noted the potential vicious cycle with regard to the current adaptation gap:

> "Adverse climate impacts can reduce the availability of financial resources by incurring losses and damages and through impeding national economic growth, thereby further increasing financial constraints for adaptation, particularly for developing and least developed countries (*medium confidence*)."[99]

73. The IPCC considers, with *very high confidence*, that "[d]eep, rapid, and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce future losses and damages related to climate change for humans and ecosystems."[100] The IPCC also recognises that "[i]ndividuals with high socio-economic status contribute disproportionately to emissions, and have the highest potential for emissions reductions" (*high confidence*).[101] However, adaptation options which are feasible and effective today will become constrained and less effective as GHG emissions continue to increase. There is *high confidence* that above 1.5°C global warming:

> "ecosystems such as some warm-water coral reefs, coastal wetlands, rainforests, and polar and mountain ecosystems will have reached or surpassed hard adaptation limits and as a

[97] *Ibid*., A.3.6.

[98] *Ibid*.

[99] *Ibid*.

[100] *Ibid*., C.2.1. In SR1.5, the IPCC confirmed that limiting global warming to 1.5°C above pre-industrial levels will require deep emissions reductions and rapid, far-reaching and unprecedented changes to all sectors (SR1.5, Summary for Policymakers, C.2).

[101] AR6 SYR, C.5.4.

consequence, some Ecosystem-based Adaptation measures will also lose their effectiveness".[102]

5. Rapidly depleting carbon budget

74. The level of GHG emission reductions required to meet the internationally agreed temperature goal (see paragraphs 97-103 below) is calculated by way of a global carbon budget. For every 1000 gigatonnes of CO_2 ($GtCO_2$) emitted by human activity, global surface temperature rises by 0.45°C (the *likely* range is 0.27°C to 0.63°C). The IPCC's best estimate of the remaining global carbon budget from the beginning of 2020 for a 50% likelihood of limiting warming to 1.5°C is 500 $GtCO_2$.[103] For a 67% likelihood of limiting warming to 2°C, the remaining global carbon budget is 1,150 $GtCO_2$.[104]

75. As to the projected depletion of the global carbon budget, the IPCC has determined that:

> "If the annual CO_2 emissions between 2020-2030 stayed, on average, at the same level as 2019, the resulting cumulative emissions would almost exhaust the remaining carbon budget for 1.5°C (50%), and deplete more than a third of the remaining carbon budget for 2°C (67%). Estimates of future CO_2 emissions from existing fossil fuel infrastructures without additional abatement already exceed the remaining carbon budget for limiting warming to 1.5°C (50%) (*high confidence*). Projected cumulative future CO_2 emissions over the lifetime of existing and planned fossil fuel infrastructure, if historical operating patterns are maintained and without additional abatement, are

[102] *Ibid*., B.4.2.

[103] To achieve a 66% chance of not exceeding 1.5°C, the remaining carbon budget is only 420 $GtCO_2$. See: SR1.5, Summary for Policymakers, C.1.3.

[104] AR6 SYR, B.5.2.

> approximately equal to the remaining carbon budget for limiting warming to 2°C with a likelihood of 83%[44] (*high confidence*)."[105]

76. It follows that *all* global modelled pathways to limit warming to 1.5°C, or even 2°C, require "rapid and deep, and in most cases, immediate [GHG] emissions reductions in all sectors this decade."[106]

6. Emissions gap and production gap

77. The IPCC has recognised that:

> "A substantial 'emissions gap' exists between global GHG emissions in 2030 associated with the implementation of [Nationally Determined Contributions] announced prior to COP26 and those associated with modelled mitigation pathways that limit warming to 1.5°C (>50%) with no or limited overshoot or limit warming to 2°C (>67%) assuming immediate action (*high confidence*). This would make it *likely* that warming will exceed 1.5°C during the 21st century (*high confidence*). Global modelled mitigation pathways that limit warming to 1.5°C (>50%) with no or limited overshoot or limit warming to 2°C (>67%) assuming immediate action imply deep global GHG emissions reductions this decade (*high confidence*). […]
>
> Policies implemented by the end of 2020 are projected to result in higher global GHG emissions in 2030 than emissions implied by [Nationally Determined Contributions], indicating an 'implementation gap' (*high confidence*). Without a strengthening of policies, global warming of 3.2°C [2.2 to 3.5] is projected by 2100 (*medium confidence*)."[107]

[105] *Ibid*., B.5.3 (footnotes omitted).

[106] *Ibid*., B.6.

[107] *Ibid*., A.4.3-4.4.

78. In November 2023, UNEP published its 14th Emissions Gap Report ("**EGR**").[108] UNEP's annual EGRs provide an overview of the difference between predicted GHG emissions and what these should be in order to avert the worst impacts of climate change. The 2023 EGR, entitled "Broken Record" opened with the following:

> "The world is witnessing a disturbing acceleration in the number, speed and scale of broken climate records. At the time of writing, 86 days have been recorded with temperatures exceeding 1.5°C above pre-industrial levels this year [2023]. Not only was September the hottest month ever, it also exceeded the previous record by an unprecedented 0.5°C, with global average temperatures at 1.8°C above pre-industrial levels. These records were accompanied by devastating extreme events, which the [IPCC] has warned us are merely a meek beginning. While the records do not imply that the world has exceeded the 1.5°C temperature limit specified in the Paris Agreement, which refers to global warming levels based on multi-decadal averages, they signal that we are getting closer."[109]

79. Mauritius notes that since the 2023 EGR was published, it has been reported that over the course of the 12-month period from February 2023 to January 2024, the average global temperature was 1.52°C above the 1850-1900 pre-industrial period.[110]

80. The 2023 EGR records that global GHG emissions increased 1.2% from 2021 to 2022, reaching a new record of 57.4 $GtCO_2$ equivalent. CO_2 emissions

[108] UNEP, Emissions Gap Report (2023), Executive Summary, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/43923/EGR2023_ESEN.pdf?sequence=10 (last accessed 17 February 2024) (hereinafter "**EGR**").

[109] EGR, p.iv.

[110] See *e.g.* "Climate Graph of the Week: Critical 1.5°C threshold breached over 12-month period for the first time", *Financial Times* (8 February 2024), available at: https://www.ft.com/content/8927424e-2828-4414-86b7-f3a991214288 (last accessed 19 February 2024).

from fossil fuel combustion and industrial processes were the main contributors to the overall increase, accounting for about two thirds of current GHG emissions. Emissions of methane, nitrous oxide and fluorinated gases, which have higher global warming potentials and account for about one quarter of current GHG emissions, are increasing rapidly.[111] The 2023 EGR notes that even in the most optimistic scenario, whereby all conditional Nationally Determined Contributions and net-zero pledges are fully achieved, global warming is projected to rise to 2°C by the end of this century (66% chance).[112]

81. In November 2023, UNEP published its 4th Production Gap Report ("**PGR**").[113] The production gap is the difference between States' planned fossil fuel production and global production levels consistent with limiting global warming to 1.5°C or 2°C. The 2023 PGR notes that "[g]overnments, in aggregate, still plan to produce more than double the amount of fossil fuels in 2030 than would be consistent with limiting warming to 1.5°C."[114] The 2023 PGR further records that "[t]aken together, government plans and projections would lead to an increase in global coal production until 2030, and in global oil and gas production until at least 2050. This conflicts with government commitments under the Paris Agreement".[115] Limiting warming

[111] EGR, p.iv. Emissions of fluorinated gasses grew by 5.5% from 2021 to 2022.

[112] EGR, p.iv. However, UNEP notes that "net-zero pledges remain highly uncertain".

[113] UNEP, Production Gap Report (2023), Executive Summary, available at: https://productiongap.org/wp-content/uploads/2023/11/PGR2023_ExecSum_web.pdf (last accessed 17 February 2024) (hereinafter "**PGR**").

[114] PGR, p.2.

[115] *Ibid.*

to 1.5°C requires global coal, oil and gas supply and demand to "decline rapidly and substantially between now and mid-century."[116] It notes that:

> "Continued production and use of coal, oil, and gas are not compatible with a safe and liveable future. Achieving net-zero CO_2 emissions by 2050 requires governments to commit to, plan for, and implement global reductions in the production of all fossil fuels alongside other climate mitigation actions, beginning now."[117]

82. In May 2021, the International Energy Agency (IEA) published *Net Zero by 2050 – A Roadmap for the Global Energy Sector*, setting out a global pathway to net-zero emissions by 2050 that, in the light of the emissions gap, requires "all governments to significantly strengthen and then successfully implement their energy and climate policies."[118] The IEA's report states that: "[b]eyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required."[119]

7. Need for immediate and urgent action

83. The language of AR6 repeatedly indicates the growing urgency of the need to address climate change. Evidence of observed impacts, loss and damage, and projected risks, vulnerability and adaptation limits "demonstrate that worldwide climate resilient development action is more urgent than previously assessed in AR5" (*very high confidence*).[120] There is a "rapidly

[116] *Ibid*., p.4.

[117] PGR, Main Report, p.8.

[118] IEA, "Net Zero by 2050: A Road map for the Global Energy Sector" (2021), available at: https://www.iea.org/reports/net-zero-by-2050 (last accessed 17 February 2024), p.13.

[119] *Ibid*., pp.21, 23 and 51.

[120] AR6 SYR, C.1.1.

closing window of opportunity to secure a liveable and sustainable future for all" (*very high confidence*).[121] The IPCC concludes that:

> "Without urgent, effective, and equitable mitigation and adaptation actions, climate change increasingly threatens ecosystems, biodiversity, and the livelihoods, health and well-being of current and future generations (*high confidence*). […]
>
> Without rapid, deep and sustained mitigation and accelerated adaptation actions, losses and damages will continue to increase, including projected adverse impacts in Africa, [Least Developed Countries], SIDS, Central and South America, Asia and the Arctic, and will disproportionately affect the most vulnerable populations *(high confidence*)".[122]

84. As clearly indicated by the IPCC, UNEP and others, there are a number of factors that underscore the need for the most urgent action on climate change. These include:

a. The vast scale of the impact on human and non-human life, taking into account the stark differences between 1.5°C and 2°C of warming in this regard, as made clear in SR1.5.[123]

b. The increasing risk of compound extreme events, whereby multiple risks interact, generating new sources of vulnerability to climate hazards, and compounding overall risk (*high confidence*). These include increases in the frequency of concurrent heatwaves and droughts (*high confidence*), fire weather in some regions (*medium*

[121] *Ibid.*, C.1.

[122] *Ibid*., C.1.3 and C.2.2 (footnote omitted).

[123] SR1.5, Summary for Policymakers, B.1-6.3, available at: https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf (last accessed 19 March 2024).

confidence), and compound flooding in some locations (*medium confidence*).[124]

c. The likelihood that multiple climatic and non-climatic risks will interact, resulting in compounding and cascading risks across sectors and regions. Sea level rise, as well as other irreversible changes, will continue for thousands of years, at rates depending on future emissions. (*high confidence*).[125]

d. The fact that even small temperature rises can result in extreme changes as some impacts and hazards do not scale linearly with emissions, including temperature extremes (*high confidence*), precipitation extremes (*high confidence*), tropical cyclones (*medium confidence*), and the worsening of droughts in some regions (*medium confidence*).[126]

e. The risk of abrupt and irreversible harm if climate tipping points are crossed.[127] A tipping point is defined by the IPCC as a "critical threshold beyond which a system reorganizes, often abruptly and/or irreversibly."[128]

85. Given all the above factors, the scale of likely harm, the persistence of the emissions and production gaps, and the clear risks posed by overshooting the

[124] AR6 SYR, A.2.1, B.1.4, B.2 and B.2.3.

[125] *Ibid*., B.3.1.

[126] IPCC, AR6, WGI, Chapter 11 (Weather and Climate Extreme Events in a Changing Climate), available at: https://www.ipcc.ch/report/ar6/wg1/chapter/chapter-11/ (last accessed 19 March 2024).

[127] AR6 SYR, B.3.2.

[128] WGI Glossary, p.2251.

temperature goal,[129] it is clear that: (a) the world is not on track to meet international climate goals; but (b) is on track towards massive loss, damage and disruption caused by climate change.

V. QUESTION (A): THE OBLIGATIONS OF STATES

86. The obligations of States to protect the environment from anthropogenic GHG emissions are to be found in customary international law and general principles, and in a range of treaties, including UNFCCC, the Paris Agreement, the UN Charter, UNCLOS and human rights treaties and instruments.

A. INTERNATIONAL LEGAL FRAMEWORK FOR CLIMATE CHANGE

1. The Court's approach to environmental issues

87. The Court is well placed – and has long been called upon – to address environmental issues. In the *Nuclear Weapons* Advisory Opinion, the Court recognised 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. The 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."[130]

[129] AR6 SYR notes (at B.7) that: "[o]vershoot entails adverse impacts, some irreversible, and additional risks for human and natural systems, all growing with the magnitude and duration of overshoot" (*high confidence*). See also: AR6 SYR, Figure SPM.5 (p.22).

[130] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, pp.241-242, para. 29.

88. In *Gabčíkovo-Nagymaros*, the Court held that "new developments in the state of environmental knowledge and of environmental law" could not be said "to have been completely unforeseen" and that certain provisions of the treaty in question were "designed to accommodate change" and thus "made it possible for the parties to take account of such developments and to apply them when implementing those treaty provisions."[131]

89. The Court's growing environmental jurisprudence, outlined below, confirms "the great significance it attaches to respect for the environment, not only for States but also for the whole of mankind."[132]

2. UNFCCC and the Paris Agreement

90. UNFCCC was adopted in New York on 9 May 1992 and entered into force on 21 March 1994. It has near universal membership: 198 Parties, including all UN Member States and the European Union. UNFCCC recognises that the largest share of both historical and current emissions of GHGs has originated in developed countries.[133]

91. Article 7 of UNFCCC establishes a Conference of the Parties ("**COP**").[134] The COP also serves as the meeting of the Parties to the Paris Agreement.[135] Since the adoption of UNFCCC, there have been 28 COPs, the most recent of which was held in Dubai from 30 November to 12 December 2023 (COP28).

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[131] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, ICJ Reports 1997, pp.64-65, para. 104.

[132] *Ibid.*, para. 53.

[133] UNFCCC, Preamble, para. 3.

[134] UNFCCC, Article 7(2).

[135] Paris Agreement, Article 16(1).

92. The Paris Agreement was adopted at COP21 in Paris on 12 December 2015 and entered into force on 4 November 2016. It also has near-universal membership: 194 States Parties and the European Union.

93. In adopting the Paris Agreement as a strengthened global response to the urgent threat of climate change, Parties emphasised with "serious concern" the urgent need to address the significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual GHG emissions by 2020 and aggregate emission pathways consistent with achieving the Paris Agreement temperature goal (see paragraphs 97-103 below). Parties also recognised that "deep reductions" in global emissions are required in order to achieve the ultimate objective of UNFCCC and the Paris Agreement,[136] which is as follows:

> "The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."[137]

94. Taken together, UNFCCC and the Paris Agreement set out minimum steps that Parties must take to achieve this objective. UNFCCC imposes an obligation on Parties to:

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[136] UNFCCC Conference of the Parties, 21st Session, Adoption of the Paris Agreement, Preamble, paras. 6 and 9 (12 December 2015), FCCC/CP/2015/L.9/Rev.1 (hereinafter "**COP21 Adoption of the Paris Agreement**") , available at: https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf (last accessed 16 February 2024).

[137] UNFCCC, Article 2.

> "…protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."[138]

95. The term "climate system" is broadly defined, encompassing "the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions".[139]

3. Specific obligations under UNFCCC and the Paris Agreement

96. The core obligations flowing from UNFCCC and the Paris Agreement are as follows:

(a) Obligation to meet the agreed temperature goal

97. The Paris Agreement is expressly framed as a strengthened response to the urgent threat of climate change.[140] In adopting the Paris Agreement States, recognised that:

> "…climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions, […]
>
> …deep reductions in global emissions will be required in order to achieve the ultimate objective of [UNFCCC] and emphasizing the need for urgency in addressing climate change".[141]

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[138] UNFCCC, Article 3(1).

[139] UNFCCC, Article 1(3).

[140] Paris Agreement, Article 2.

[141] COP21 Adoption of the Paris Agreement, Preamble, paras. 5 and 6.

98. The Paris Agreement expressly recognises the need for an "effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge."[142]

99. Parties also affirmed that the Paris Agreement was adopted:

> "*In pursuit* of the objective of [UNFCCC], and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances".[143]

100. Article 2(1) of the Paris Agreement sets a temperature goal of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and "pursuing efforts" to limit the increase to 1.5°C on the basis that achievement of this goal would significantly reduce the risks and impacts of climate change.[144] This temperature goal constitutes a specific expression of the UNFCCC objective of preventing dangerous climate change.[145] Parties' actions must, therefore, be informed by the specific pathways and scenarios presented by the IPCC as necessary to achieve the temperature goal, having regard to the global carbon budget. To exceed that budget risks irreversible harm to the climate system and other parts of the environment.[146] A failure to have regard to this goal, and give effect to it, is incompatible with the Paris Agreement, and would expose a Party to the risk of responsibility and liability.

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[142] Paris Agreement, Preamble, para. 4.

[143] Paris Agreement, Preamble, para. 3.

[144] Paris Agreement, Article 2(1)(a).

[145] UNFCCC, Article 2.

[146] See: AR6 SYR, B.3.2: "[t]he likelihood and impacts of abrupt and/or irreversible changes in the climate system, including changes triggered when tipping points are reached, increase with further global warming (*high confidence*)".

101. The best available science confirms the need to limit the rise in global temperature to 1.5°C to prevent dangerous climate change.[147] In SR1.5, the IPCC confirmed that:

> "Climate-related risks for natural and human systems are higher for global warming of 1.5°C than at present, but lower than at 2°C (*high confidence*)."[148]

> "The avoided climate change impacts on sustainable development, eradication of poverty and reducing inequalities would be greater if global warming were limited to 1.5°C rather than 2°C, if mitigation and adaptation synergies are maximized while trade-offs are minimized (*high confidence*)".[149]

102. To achieve the temperature goal, the Paris Agreement provides for Nationally Determined Contributions ("**NDCs**"). Parties are required to "prepare, communicate and maintain" successive NDCs that they intend to achieve, and to pursue domestic mitigation measures for the period up to and including 2030, with the aim of achieving the objectives of such contributions.[150]

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[147] In SROCC (at B.6), the IPCC underscored the risks associated with high emissions scenarios: "Risks of severe impacts on biodiversity, structure and function of coastal ecosystems are projected to be higher for elevated temperatures under high compared to low emissions scenarios in the 21st century and beyond. […] Warm-water corals are at high risk already and are projected to transition to very high risk even if global warming is limited to 1.5ºC (*very high confidence*)."

[148] SR1.5, A.3.

[149] SR1.5, D.2.

[150] Paris Agreement, Article 4(2). NDCs must reflect Parties' "highest possible ambition" to *inter alia*: "aim to reach global peaking of [GHGs] as soon as possible" to achieve the temperature goal in Article 2(1)(a) – recognising that "peaking will take longer for developing country Parties – and "to undertake rapid reductions thereafter in accordance with the best available science" (Article 4(1)); "pursue domestic mitigation measures" with the aim of achieving NDCs (Article 4(2)); adopt adaptation measures; (Article 7); provide financial assistance developing country Parties (Article 9); and enhance capacity and ability building of Developing Country Parties and SIDS, including via technology development and access to climate finance (Article 11).

103. Mauritius' presented its NDC to the UNFCCC Secretariat on 6 June 2023. This includes the polices and measures described in paragraphs 35-37 above (amongst others).

(b) Obligation to act on the basis of the best available science

104. UNFCCC recognises that "human activities have been substantially increasing atmospheric concentrations of [GHGs]", enhancing the natural greenhouse effect, resulting in warming and adverse impacts on natural ecosystems and humankind.[151] As described in **Section IV.B** above, the best available science in 2024 confirms this conclusion. The science is clear. Human activities have contributed to climate change, such climate change is now underway, and it will cause great harms to humans and the environment.

105. As explained in paragraphs 43-44 above, UNFCCC and the Paris Agreement expressly recognise that science is central to informing States' obligations to protect the climate system and other parts of the environment from anthropogenic GHG emissions. Parties to UNFCCC and the Paris Agreement have committed to addressing the causes and impacts of climate change on the basis of the "best available scientific knowledge".[152] The Paris Agreement also obliges Parties to cooperate with regard to "[s]trengthening scientific

[151] UNFCCC, Preamble, para. 2.

[152] Paris Agreement, Preamble, para. 4 ("*Recognizing* the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge"). See also: Paris Agreement, Article 4(1) and Article 7(5); UNFCCC, Preamble, para. 16 ("*Recognizing* that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas"). See further: UNFCCC, Article 4(2)(c) ("Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of subparagraph (b) above should take into account the best available scientific knowledge"). UNFCCC emphasises that a lack of "full scientific certainty" should not be used as a reason for postponing precautionary measures in the face of "serious or irreversible damage" (UNFCCC, Article 3(3)).

knowledge on climate, including research, systematic observation of the climate and early warning systems, in a manner that informs climate services and supports decision-making."[153]

(c) Obligation to reduce emissions

106. It is in the context of the urgent need to address the emissions gap (described in paragraphs 77-80 above) and achieve the temperature goal in Article 2(1)(a), that the mitigation timetable is set out in Article 4(1) of the Paris Agreement. This includes reaching:

> "…global peaking of [GHG] emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and undertak[ing] rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of [GHGs] in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty."[154]

107. Measures included within NDCs must support and enable the deep reductions required to achieve the peaking of GHG emissions and reaching net zero. This is reinforced by the specific requirements for increased ambition and urgency under the Paris Agreement, given the current emissions and production gaps, and the dire consequences of missing the temperature goal for the protection of the climate system and other parts of the environment, with catastrophic associated impacts on human society. Parties have expressly agreed that each successive NDC will represent a progression beyond the Party's then current NDC, and reflect its highest possible ambition, reflecting its common but

[153] Paris Agreement, Article 7(7)(c).

[154] Paris Agreement, Article 4(1).

differentiated responsibilities and respective capabilities, in the light of different national circumstances.[155]

(d) Obligation to assess impacts of proposed activities on the climate system

108. UNFCCC and the Paris Agreement impose obligations on Parties to assess the adverse impacts on the climate system of proposed activities, as well as the potential impacts of mitigation and adaptation measures. Parties are required to *inter alia* "[t]ake climate change considerations into account, to the extent feasible", for example by way of "impact assessments, formulated and determined nationally, with a view to minimizing the adverse effects … of projects or measures undertaken by them to mitigate or adapt to climate change".[156]

109. Parties must also carry out "adaptation planning processes" as appropriate, including "[t]he assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems".[157]

(e) Obligation in respect of adaptation

110. The Paris Agreement establishes the global goal on adaptation which refers to strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development.[158] Specific reference is made to the "urgent and immediate needs of those developing country

[155] Paris Agreement, Article 4(3).

[156] UNFCCC, Article 4(1)(f).

[157] Paris Agreement, Article 7(9)(c).

[158] Paris Agreement, Article 7(1).

Parties… particularly vulnerable to the adverse effects of climate change."[159] There is express provision in both UNFCCC and the Paris Agreement for developing States and vulnerable States to receive support.[160] As explained in **Section III.A** above, Mauritius is among those countries that are particularly vulnerable to climate change, not least because of sea level rise, coastal erosion, extreme weather events and water scarcity.

111. Adaptation includes building resilience to climate-related disasters. In this regard, the Sendai Framework for Disaster Risk Reduction (2015-2030) – endorsed by the UNGA[161] – recognises that many disasters "are exacerbated by climate change" and "are increasing in frequency and intensity".[162] One of the guiding principles of the Sendai Framework is that "[e]ach State has the primary responsibility to prevent and reduce disaster risk".[163] It calls for "[e]nhanced work to reduce exposure and vulnerability" and more dedicated action to "tackle underlying disaster risk drivers", including climate change.[164]

(f) Obligations in relation to finance flows and technology

112. A central element in the Paris Agreement is the recognition of the importance of finance flows in addressing climate change.[165] Parties must ensure that

[159] Paris Agreement, Article 7(2).

[160] Paris Agreement, Article 7(2), (3), (6), (7), (13) and Article 9.

[161] UNGA res. 69/283 (23 June 2015).

[162] Sendai Framework for Disaster Risk Reduction (2015-2030), para. 4, (hereinafter "**Sendai Framework**"), available at: https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf (last accessed 26 February 2024).

[163] Sendai Framework, para. 19(a).

[164] Sendai Framework, para. 6.

[165] Paris Agreement, Article 2(1)(c).

finance flows are consistent with a low emissions pathway and climate resilient development.[166] Developed Country Parties "shall provide financial resources to assist Developing Country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the UNFCCC".[167] Scaled-up financial resources should "aim to achieve a balance between adaptation and mitigation" taking into account *inter alia* the needs of Developing Party Countries particularly vulnerable to the adverse effects of climate change, including SIDS.[168] To that end, Developed Party Countries are required to communicate biennially "indicative quantitative and qualitative information" as to financial resources to be provided to Developing Party Countries.[169] The IPCC has made clear that "[i]f climate goals are to be achieved, both adaptation and mitigation financing would need to increase many-fold".[170]

113. Finance flows which are inconsistent with a low emissions pathway and climate resilient development are likely to increase the risk of catastrophic harm to the climate system and other parts of the environment by prolonging fossil fuel production and locking in future GHG emissions.

114. The Paris Agreement lays down both positive and negative obligations in relation to financing as indicated by the Standing Committee on Finance which stated in 2018 that it is:

> "…important to ensure the consistency of finance flows as a whole (and of capital stock) pursuant to Article 2, paragraph 1(c),

[166] Paris Agreement, Article 2(1)(c) and (9).

[167] *Ibid*.

[168] Paris Agreement, Article 9(4).

[169] Paris Agreement, Article 9(5).

[170] AR6 SYR, C.7.

> of the Paris Agreement. This does not mean that all finance flows have to achieve explicitly beneficial climate outcomes, but that they must reduce the likelihood of negative climate outcomes."[171]

115. Parties to the Paris Agreement have recognised the "growing gap between the needs of developing country Parties" and noted that "such needs are currently estimated at USD 5.8-5.9 trillion for the pre-2030 period."[172] Parties have acknowledged that "the adaptation finance needs of developing countries are estimated at USD 215-387 billion annually up until 2030, and that about USD 4.3 trillion per year needs to be invested in clean energy up until 2030, increasing thereafter to USD 5 trillion per year up until 2050, to be able to reach net zero emissions by 2050."[173] However, as of 2021, climate finance from Developed Country Parties stood at only USD 89.6 billion.[174] Developed Country Parties have been urged to "fully deliver, with urgency, on the USD 100 billion per year goal through 2023, in the context of meaningful mitigation actions and transparency on implantation".[175] Parties have also recognised the urgent need to support and accelerate implementation of developing States' NDCs in the form of a new collective qualified goal on climate finance ("**NCQG**").[176]

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[171] UNFCCC, Summary and recommendations by the Standing Committee on Finance on the 2018 Biennial Assessment and Overview of Climate Finance Flows, para. 49, available at: https://unfccc.int/sites/default/files/resource/51904%20-%20UNFCCC%20BA%202018%20-%20Summary%20Final.pdf (last accessed 17 March 2024).

[172] UNFCCC, First Global Stocktake (13 December 2023), para. 67, available at: https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf (last accessed 19 February 2024) (hereinafter "**First Global Stocktake**")

[173] First Global Stocktake, para. 68.

[174] First Global Stocktake, para. 76.

[175] First Global Stocktake, para. 85.

[176] First Global Stocktake, para. 94.

116. The significant shortfall in climate finance represents a hindrance for SIDS and other vulnerable States in the implementation of meaningful and effective mitigation and adaptation measures. For example, Mauritius requires USD 6.5 billion to fully implement its NDCs, representing more than 40% of its total gross domestic product.[177] Mauritius has been able to commit USD 2.5 billion, but will need to secure USD 4 billion more.[178] All other SIDS and vulnerable developing countries face similar challenges. The promise of USD 100 billion – made at COP15 in Copenhagen in 2009 – has still not been met. However, that figure is no longer sufficient to address the threat of climate change and there is an urgent need to make the scale of climate finance commensurate with that threat through the NCQG.

(g) Obligation to protect and develop sinks

117. The Paris Agreement provides that Parties must take action to conserve and enhance, as appropriate, sinks and reservoirs of GHGs, including those referred to in Article 4(1)(d) of UNFCCC, which includes biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems.[179] This

[177] As of February 2024, the International Monetary Fund calculated Mauritius' GDP to be USD 16.11 billion. See: https://www.imf.org/external/datamapper/profile/MUS/WEO (last accessed 21 February 2024). It should be noted that Mauritius does not consider that GDP per capita is the sole measure of a country's development, and it has called on international financial institutions and development partners to use the Multidimensional Vulnerability Index (MVI) developed by the UN as a tool in further integrating SIDS' vulnerability into their decision making. See: Statement of the Hon. Pravind Kumar Jugnauth, Prime Minister of Mauritius, at the 78th Session of the UN General Assembly (22 September 2023), p.5, available at: https://pmo.govmu.org/Documents/Speeches/GA78%20-%20Mauritius%20Statement.pdf (last accessed 21 February 2024).

[178] Statement of the Hon. Pravind Kumar Jugnauth, Prime Minister of Mauritius, at the 78th Session of the UN General Assembly (22 September 2023), p.5, available at: https://pmo.govmu.org/Documents/Speeches/GA78%20-%20Mauritius%20Statement.pdf (last accessed 21 February 2024).

[179] A "sink" is defined in Article 1 of UNFCCC as "any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere."

is considered further in the context of corresponding obligations under UNCLOS in paragraphs 145 and 152.e) below.

(h) Common but differentiated responsibilities and respective capabilities

118. Article 2(2) of the Paris Agreement provides that it will be implemented to "reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."[180]

119. UNFCCC and the Paris Agreement expressly recognise that SIDS and developing countries are particularly vulnerable to the adverse effects of climate change, and face special difficulties in taking action to limit GHGs.[181] UNFCCC requires "full consideration" to be given to the "specific needs and special circumstances" of developing countries, especially those that are particularly vulnerable and that "would have to bear a disproportionate or abnormal burden".[182]

120. Under the Paris Agreement, all Parties are required to take the steps set out in Article 4(1), but there remain differentiations in the obligations placed on developed and developing countries including in relation to the peaking of emissions (Article 4(1)), the adoption of emission reduction targets (Article 4(4)) and finance (Article 9(1)). Under UNFCCC, developed countries are required to take additional steps and provide financial resources to enable

[180] Paris Agreement, Article 2(2).

[181] Paris Agreement, Preamble, para. 5. See also: Article 4(6) ("The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.") See further: UNFCCC, Preamble, para. 19.

[182] UNFCCC, Article 3(2).

developing countries to undertake GHG emissions reductions and to help them adapt to the adverse effects of climate change.[183]

121. Consistent with the framework and principles laid down in Article 3(1) of UNFCCC,[184] Developed Country Parties to the Paris Agreement are required to "continue taking the lead by undertaking economy-wide absolute emission reductions targets."[185] Developing Country Parties are required to "continue enhancing their mitigation efforts" and are "encouraged to move over time towards economy-wide emission reduction or limitation targets in light of different national circumstances."[186]

(i) Obligation to address loss and damage

122. It is evident from IPCC reports that climate change is already resulting in extensive loss and damage. Parties to the Paris Agreement recognise in Article 8 the importance of averting, minimising and addressing loss and damage associated with the adverse effects of climate change and the role of sustainable development in reducing the risk of loss and damage.[187]

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[183] Under the UNFCCC, Annex I States Parties include industrialised countries that were members of the Organisation for Economic Co-operation and Development in 1992 (OECD), plus States with economies in transition (hereinafter "**EIT**"), including the Russian Federation, Baltic States, and several Central and Eastern European States. Annex II States Parties consist of the OECD members in Annex I, excluding the EIT Parties. See further: https://unfccc.int/parties-observers# (last accessed 19 February 2024).

[184] UNFCCC, Article 3(1): "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the Developed Country Parties should take the lead in combating climate change and the adverse effects thereof."

[185] Paris Agreement, Article 4(4).

[186] *Ibid.*

[187] Paris Agreement, Article 8(1). Action is being taken under the Warsaw Mechanism to address issues including emergency preparedness and the resilience of communities. In addition, the Sharm el-Sheikh Implementation Plan was adopted at the 27th UNFCCC Conference of the Parties in 2022.

123. In adopting the Paris Agreement, Parties agreed that Article 8 "does not involve or provide a basis for any liability or compensation".[188] It should be noted, however, that a number of Parties to the Paris Agreement have made declarations that ratification of the Paris Agreement does not indicate renunciation of rights under international law. In particular, Sates, including SIDS, have declared that ratification of the Paris Agreement does not constitute renunciation of rights under the rules concerning State responsibility for loss and damage associated with the adverse effects of climate change.[189]

124. Mauritius considers that the rules on State responsibility are fully applicable to the loss and damage associated with the adverse effects of climate change, as set in **Section VI** below. In particular, Mauritius invites the Court to confirm that ratification of the Paris Agreement is without prejudice to, and does not constitute renunciation of, its rights with regard to the law of State responsibility.

4. COP28: First Global Stocktake

125. Article 14 of the Paris Agreement requires a "global stock take" to be undertaken by the COP every five years, starting in 2023. The first global stock take, undertaken at COP28 ("**Global Stocktake**"), repeatedly recognises "the urgency of responding to the climate crisis" and that "despite overall progress on mitigation, adaptation and means of implementation and

[188] COP21 Adoption of the Paris Agreement, para. 52.

[189] See, for example, the declarations of the Cook Islands, Micronesia, Nauru, Niue, the Philippines, the Solomon Islands and Tuvalu, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en#1 (last accessed 17 March 2024).

support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long term goals."[190] Parties expressed:

> "…*serious concern* that 2023 is set to be the warmest year on record and that impacts from climate change are rapidly accelerating, and *emphasize[d]* the need for urgent action and support to keep the 1.5°C goal within reach…".[191]

126. Parties noted "with alarm and serious concern" the findings of the IPCC that "human activities, principally through emissions of [GHGs], have unequivocally caused global warming of about 1.1°C".[192] Parties committed to "accelerate action in this critical decade on the basis of the best available science".[193] They noted with concern that if current NDCs were implemented, this would reduce emissions by only 2% on average compared with 2019, and that "significantly greater emission reductions are required" to align with the Paris Agreement temperature goal.[194] The Global Stocktake also calls for "urgent, incremental, transformational and country-driven adaptation action based on different national circumstances".[195]

127. Recognising the need for "deep, rapid and sustained" GHG reductions, Parties were called upon – in a nationally determined manner taking into account different national circumstances – to *inter alia*:

[190] First Global Stocktake, paras. 1 and 2.

[191] *Ibid*., para. 5

[192] *Ibid*., paras. 14-15.

[193] *Ibid*., paras. 6.

[194] *Ibid*., para. 22.

[195] *Ibid*., para. 51.

a. transition away from fossil fuels in energy systems "in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science";

b. accelerate efforts towards the phase-down of unabated coal power;

c. phasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible; and

d. triple renewable energy globally.[196]

B. UN CHARTER AND RECENT PRACTICE OF THE UNSC

128. States' specific obligations under UNFCCC, the Paris Agreement and related instruments fall to be interpreted and applied in the context of their obligations under the UN Charter. It is recognised in the Preamble to UNFCCC that Parties have "in accordance with the Charter of the United Nations and principles of international law … the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction".[197]

129. UN Member States are required, pursuant to Article 2(2) of the UN Charter to "give the United Nations every assistance in any action it takes" in accordance with the Charter.[198] Article 55 mandates the UN to promote *inter alia* "solutions of international economic, social, health and related

[196] *Ibid*., para. 28(d).

[197] UNFCCC, Preamble.

[198] UN Charter, Article 2(2).

problems".[199] By virtue of Article 56, all UN Member States "pledge themselves to take joint and separate action" in co-operation with the UN to achieve this purpose.

130. As explained in paragraph 12 above, the UNGA has been actively seized of climate change since at least 1988, and has adopted resolutions on the "protection of global climate for present and future generations of humankind" almost every year since.

131. Mauritius considers that the adverse effects of climate change – both present and future – evidenced by the best available science, encompass "economic, social, health and related problems" within the meaning of Article 55 of the UN Charter. The obligations on UN Member States to protect the climate system and other parts of the environment therefore include taking joint and separate action pursuant to Article 56 of the UN Charter, and providing the UN every assistance under Article 2(2).

132. The growing evidence of a link between climate change and conflict is recognised by the IPCC in AR6:

> "Climate hazards are a growing driver of involuntary migration and displacement (*high confidence*) and are a contributing factor to violent conflict (*high confidence*)."[200]
>
> "There is increasing evidence linking increased temperatures and drought to conflict risk in Africa (*high confidence*)."[201]

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[199] UN Charter, Article 55(b).

[200] AR6, Chapter 7, p.1044 available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter07.pdf (last accessed 19 February 2024).

[201] AR6, Chapter 9, p.1292, available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter09.pdf (last accessed 19 February 2024).

> "Though not the only cause […] climate change undermines human livelihoods and security, because it increases the populations vulnerabilities, grievances and political tensions through an array of indirect—at times nonlinear—pathways, thereby increasing human insecurity and the risk of violent conflict".[202]

133. At the same time, the IPCC has expressed *high confidence* that conflict – and the effects of conflict, including poverty, displacement, poor governance and limited resources – result in more vulnerability to climate change.[203] The IPCC has concluded with *medium confidence* that "risks to peace will increase with warming, with the largest impacts expected in weather-sensitive communities with low resilience to climate extremes and high prevalence of underlying risk factors".[204]

134. On 7 December 2022, the UNGA adopted resolution 77/104 welcoming the Principles on Protection of the Environment in relation to Armed Conflicts of the International Law Commission ("**ILC**"), which recognise that armed

[202] AR6, Chapter 18, p.2673, available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter18.pdf (last accessed 19 February 2024).

[203] AR6 SYR (Full Volume), p.51, available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf (last accessed 17 February 2024). See also: AR6, Chapter 8, p.1183, available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter08.pdf (last accessed 20 February 2024) ("Populations of concern, who are extremely vulnerable to climate change impacts with limited capacity to adapt, are those displaced and resettled in the course of conflict or disaster, either internally or across borders (Burrows and Kinney, 2016)").

[204] AR6, Chapter 16, p.2465, available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter16.pdf (last accessed 20 February 2024). See also: AR6 SYR, B.1.7 ("While non-climatic factors are the dominant drivers of existing intrastate violent conflicts, in some assessed regions extreme weather and climate events have had a small, adverse impact on their length, severity or frequency, but the statistical association is weak (*medium confidence*).)"

conflict may have severe environmental consequences, including climate change.[205]

135. The UNSC has adopted resolutions recognising a clear link between international peace security and climate change. In 2017, the UNSC adopted resolution 2349, which:

> "*Recognises* the adverse effects of climate change and ecological changes among other factors on the stability of the [Lake Chad Basin] Region, including through water scarcity, drought, desertification, land degradation, and food insecurity, and *emphasises* the need for adequate risk assessments and risk management strategies by governments and the United Nations relating to these factors".[206]

136. The UN Secretary-General submitted a report to the UNGA on 11 September 2009, which recognised the interdependence between human vulnerability and security.[207]

137. The Secretary-General's report identifies five channels through which climate change could affect security:

> "(a) **Vulnerability**: climate change threatens food security and human health, and increases human exposure to extreme events;
>
> (b) **Development**: if climate change results in slowing down or reversing the development process, this will exacerbate

[205] UNGA res. 77/104 (7 December 2022).

[206] UN Security Council resolution (hereinafter "**UNSC res.**") 2349 (31 March 2017). See also UNSC res. 2625 (15 March 2022) ("*Recognizing* the adverse effects of climate change, ecological changes, and natural disasters, among other factors, on the humanitarian situation and stability in South Sudan, *emphasizing* the need for comprehensive risk assessments and risk management strategies by the [Government of South Sudan] and the United Nations to inform programs relating to these factors, and acknowledging the United Nations Framework Convention on Climate Change and the Paris Agreement").

[207] UNGA res. 63/281 (11 June 2009), p.2.

vulnerability and could undermine the capacity of States to maintain stability;

(c) **Coping and security**: migration, competition over natural resources and other coping responses of households and communities faced with climate-related threats could increase the risk of domestic conflict as well as have international repercussions;

(d) **Statelessness**: there are implications for rights, security, and sovereignty of the loss of statehood because of the disappearance of territory;

(e) **International conflict**: there may be implications for international cooperation from climate change's impact on shared or undemarcated international resources."[208]

138. In particular, the Secretary-General's report notes that rising sea levels could "make entire areas uninhabitable" and that "over one third of the world's population lives in coastal zones within 100 km of the shore".[209] The report notes that:

> "In the case of some small island developing States, sea-level rise presents perhaps the ultimate security threat, jeopardizing the very existence of small low-lying countries such as the Maldives, where 80 per cent of land is less than one metre above sea level and could therefore disappear over the next 30 years."[210]

139. As noted in paragraph 23 above, large parts of Mauritius, including the whole of Chagos Archipelago, are very similar to the geographic conditions prevalent in Maldives. The same is true of many other SIDS. This very real risk is reflected, for example, in an amendment made by Tuvalu to its

[208] UNGA, "Climate change and its possible security implications", Report of the Secretary-General, A/64/350 (11 September 2009), available at: https://digitallibrary.un.org/record/667264?ln=en (last accessed 13 February 2024).

[209] *Ibid*., p.12.

[210] *Ibid*., para. 71 (footnote omitted).

Constitution in September 2023, seeking to preserve its statehood in the event of total territorial loss:

> "The State of Tuvalu within its historical, cultural, and legal framework shall remain in perpetuity in the future, notwithstanding the impacts of climate change or other causes resulting in loss to the physical territory of Tuvalu."[211]

140. As of the end of 2023, the UNSC has adopted at least 45 resolutions addressing various aspects of climate-related peace and security implications.[212]

141. Mauritius considers that the nexus between climate change and conflict is clearly established. The adverse effects of climate change make conflict more likely, and conflict results in increased vulnerability to the effects of climate change. The UNSC is required, under Article 24 of the UN Charter, to address and respond to the risks posed by climate change in the context of its primary responsibility for international peace and security. By virtue of Article 25 of

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[211] Constitution of Tuvalu 2023, Article 2(1), available at: https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0001/ConstitutionofTuvalu_2.pdf (last accessed 19 February 2024).

[212] UNSC res. 2717 (19 December 2023); UNSC res. 2709 (15 November 2023); UNSC res. 2705 (31 October 2023); UNSC res. 2702 (30 October 2023); UNSC res. 2692 (14 July 2023); UNSC res. 2687 (27 June 2023); UNSC res. 2682 (30 May 2023); UNSC res. 2674 (30 January 2023); UNSC res. 2666 (20 December 2022); UNSC res. 2659 (14 November 2022); UNSC res. 2657 (31 October 2022); UNSC res. 2646 (28 July 2022); UNSC res. 2640 (29 June 2022); UNSC res. 2631 (26 May 2022); UNSC res. 2628 (31 March 2022); UNSC res. 2625 (15 March 2022); UNSC res. 2618 (27 January 2022); UNSC res. 2612 (20 December 2021); UNSC res. 2592 (30 August 2021); UNSC res. 2587 (29 July 2021); UNSC res. 2584 (29 June 2021); UNSC res. 2579 (3 June 2021); UNSC res. 2576 (27 May 2021); UNSC res. 2568 (12 March 2021); UNSC res. 2567 (12 March 2021); UNSC res. 2561 (29 January 2021); UNSC res. 2556 (18 December 2020); UNSC res. 2552 (12 November 2020); UNSC res. 2540 (28 August 2020); UNSC res. 2531 (29 June 2020); UNSC res. 2524 (3 June 2020); UNSC res. 2520 (29 May 2020); UNSC res. 2502 (19 December 2019); UNSC res. 2499 (15 November 2019); UNSC res. 2480 (28 June 2019); UNSC res. 2472 (31 May 2019); UNSC res. 2461 (27 March 2019); UNSC res. 2457 (27 February 2019); UNSC res. 2448 (13 December 2018); UNSC res. 2431 (30 July 2018); UNSC res. 2429 (13 July 2018); UNSC res. 2423 (28 June 2018); UNSC res. 2408 (27 March 2018); UNSC res. 2349 (31 March 2017); UNSC res. 2242 (13 October 2015).

the UN Charter, all UN Member States are required to accept and give effect to decisions of the UNSC.

C. UN CONVENTION ON THE LAW OF THE SEA

142. Mauritius is mindful that ITLOS is currently seized of a request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law concerning the obligation of UNCLOS Parties in connection with the deleterious effects of anthropogenic GHG emissions, and the protection and preservation of the marine environment in relation to climate change impacts.[213]

143. However, Mauritius is also conscious that the Request made to the Court by the UNGA specifically refers to UNCLOS (as well as other instruments and legal principles).[214] The protection of the marine environment from climate change and its consequences is a matter of common concern as between UNFCCC, the Paris Agreement and UNCLOS.

1. Systemic integration and harmonised interpretation

144. Mauritius notes that the principles set out below are also relevant in the context of the relationship between all the branches of international law as identified in the Request. As explained below, UNCLOS contains specific obligations to ensure the protection of the marine environment, including

[213] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for an Advisory Opinion)*, available at: https://www.itlos.org/en/main/cases/list-of-cases/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/ (last accessed 20 February 2024).

[214] Mauritius reiterates that it may be necessary to amend its submissions in this case in light of ITLOS' Advisory Opinion (*ibid*).

from GHG emissions, which plainly fall within the definition of pollution under Article 1(1)(4) of UNCLOS.[215]

145. UNFCCC and the Paris Agreement, in addressing the general threat posed by climate change to "natural ecosystems and humankind" are also directly concerned with the protection of the marine environment.[216] The Preamble to the Paris Agreement confirms the importance of ensuring the integrity of all ecosystems, including oceans. Article 5(1) of the Paris Agreement provides that Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of GHGs (as referred to in Article 4(1)(d) of UNFCCC) which include oceans as well as coastal and marine ecosystems.[217]

146. Part XII of UNCLOS specifically addresses the protection and preservation of the marine environment. Article 237 of UNCLOS states that Part XII is without prejudice to agreements which "may be concluded in furtherance of the general principles set forth in the Convention".[218] Furthermore,

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[215] In the light of the best available scientific evidence as to the harmful impact of GHG on the climate, including on the marine environment, GHG emissions clearly fall within the definition of pollution under Article 1(1)(4) of UNCLOS. Reference to the introduction by man, directly or indirectly, of "substances or energy into the marine environment which results or is likely to result in such deleterious effects as harm to living resources and marine life…" covers the impacts of climate change, including ocean acidification, coral bleaching and deoxygenation. The references in Article 1(1)(4) of the Convention to "hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities" also cover climate change impacts on fish stocks, coastal inundation, sea level rise and increases in extreme events such as cyclones. Article 194(1) of UNCLOS requires Parties to take all measures necessary to prevent, reduce and control pollution of the marine environment "from any source". It is also to be noted that Part XII covers pollution from land-based sources (Article 207), pollution from vessels (Article 211), or from or through the atmosphere (Article 212). These and other provisions of Part XII are directly relevant to GHG emissions (See *e.g.* UNCLOS, Articles 213 and 222).

[216] UNFCCC, Preamble.

[217] This was recently reaffirmed in the COP28 Global Stocktake which "*[i]nvites* Parties to preserve and restore oceans and coastal ecosystems and scale up, as appropriate, ocean-based mitigation action" (Global Stocktake, para. 35).

[218] UNCLOS, Article 237(1).

"[s]pecific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of [UNCLOS]."[219] These provisions indicate that in the context of a subsequent regime with shared objectives and which is of direct relevance to the protection of the marine environment – as is the case with UNFCCC and the Paris Agreement – the starting point is an integrated approach which maximises the effectiveness and coherence of both regimes.

147. For the purposes of the Request in this case, where the two regimes (UNFCCC/Paris Agreement and UNCLOS) have objects and rules which overlap, an approach of systemic integration is necessary.[220] Although the two regimes do not have the same subject matter, there is overlapping concern with the protection of the marine environment from climate change.[221] This supports a relationship based on systemic integration and harmonised

[219] UNCLOS, Article 237(2). It should also be noted that Article 311(2) of UNCLOS provides that the Convention shall not alter the rights and obligations of Parties which arise from other compatible agreements which do not affect the enjoyment by other Parties of their rights or the performance of their obligations under UNCLOS.

[220] International Law Commission, "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International law (18 July 2006), paras. 17 & 18, available at: https://legal.un.org/ilc/documentation/english/a_cn4_l702.pdf (last accessed 24 February 2024) (hereinafter "**ILC Report on Fragmentation of International Law**"). The rule of *lex posteriori* under Article 30 of the Vienna Convention on the Law of Treaties 1969 raises the issue of whether the treaties in question are "successive" within the meaning of the rule, since UNCLOS is accepted to be constitutional in nature and the UNFCCC is a framework Convention, developed and strengthened by the Paris Agreement.

[221] UNCLOS and the UNFCCC/Paris Agreement both bear upon the protection of the marine environment from climate change. In so far as the *lexi specialis* rule is applied, UNCLOS should be considered the *lex specialis* for the protection of the marine environment, whereas the UNFCCC/Paris Agreement is the *lex specialis* for preventing dangerous climate change. The rule of *lex posteriori* under Article 30 of the Vienna Convention on the Law of Treaties raises the issue of whether the treaties in question are "successive" within the meaning of the rule, since UNCLOS is accepted to be constitutional in nature and the UNFCCC is a framework Convention, developed and strengthened by the Paris Agreement. In addition, although the two regimes do not have the same subject matter, there is overlapping concern with the protection of the marine environment from climate change.

interpretation, ensuring that the protection of the climate system is addressed by the Court in a coherent and effective way.

2. Specific obligations under UNCLOS

148. The obligation to protect and preserve the marine environment is a fundamental principle of UNCLOS, as enshrined in Articles 192 and 193, and referred to in the fourth paragraph of its Preamble.[222]

a. Article 192 of UNCLOS imposes an obligation to "protect and preserve the marine environment."

b. Article 193 provides that: "States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment."

c. Article 194 requires States to take, individually or jointly, all measures necessary to "prevent, reduce and control pollution of the marine environment from any source" and to "ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment".[223]

149. Parties to UNCLOS must take appropriate positive steps to protect and preserve the marine environment in light of the global adaptation goal set under the Paris Agreement, including through the reduction of non-climate stressors such as over-fishing and coastal runoff, as well as coastal zone

[222] ITLOS has confirmed that living resources and marine life are part of the marine environment. See: *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission,* Advisory Opinion, 5 April 2015, para. 216.

[223] UNCLOS, Article 194(1) and (2).

management and defence. This includes taking impacts of climate change into account in the designation of MPAs (this is of particular relevance to Mauritius bearing in mind the MPA which it proposes to establish around the Chagos Archipelago: see paragraph 38 above.).

150. In common with UNFCCC and the Paris Agreement, UNCLOS Parties are also under an obligation to take account of, and give effect to, the best available scientific evidence, in particular that provided by the IPCC, as well as the clear scientific evidence of potentially catastrophic climate change impacts on the marine environment. UNCLOS refers to scientific evidence as informing the interpretation of its object and obligations.[224]

151. It follows that the assessment of what is "necessary" within the meaning of Article 194(1), (2) and (5) of UNCLOS must be based on the best available science as to the precise nature, scale and urgency of the threat posed by climate change. This also applies to meeting the general obligations laid down in Articles 192 and 193 of UNCLOS, as well as those provided for in Articles 196 and 207-212. Also relevant to the interpretation of what measures are "necessary" under Part XII of UNCLOS are the requirements for ambition and progression contained in Articles 3 and 4 of the Paris Agreement, particularly in the light of the emission and production gaps (and the overall implementation gap) referred to in paragraphs 77-82 above.

152. It follows that the interpretation and application of UNCLOS – and Part XII in particular – must be informed by the obligations set forth in UNFCCC and Paris Agreement, including in relation to:

[224] See *e.g.* UNCLOS Articles 61, 119, 200-201, 204 and 234.

a. the temperature goal;[225]

b. the mitigation timetable;[226]

c. adaptation;[227]

d. finance flows;[228]

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[225] See **Section V.A.2(a)** above. Having regard to Articles 192 and 194 of UNCLOS in particular, all measures taken under Part XII of UNCLOS must be informed by the specific pathways and scenarios presented by the IPCC as necessary to achieve that goal, bearing in mind the global carbon budget.

[226] See **Section V.A.2(c)** above. The mitigation timetable is applicable to the implementation of Part XII of UNCLOS. In relation to NDCs, the measures included must be based in part on an assessment of the contribution to protecting the marine environment, having regard to the urgent need to address risks posed to fragile marine ecosystems.

[227] See **Section V.A.2(e)** above. The adaptation framework established under the Paris Agreement is relevant to obligations under Part XII of UNCLOS to protect and preserve the marine environment, including rare and fragile ecosystems. The Arbitral Tribunal in the 2015 UNCLOS arbitration regarding the United Kingdom's unlawful 'MPA' around the Chagos Archipelago held that the phrasing of Article 194(5) of UNCLOS confirms that Part XII is not limited to measures aimed strictly at controlling marine pollution but extends to measures focussed primarily on conservation and the preservation of ecosystems (*Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*, Award of 18 March 2015, paras. 320 and 538). This approach supports an interpretation of Part XII which includes the protection of fragile marine ecosystems in the context of adaptation to climate change. The need to strengthen resilience and reduce vulnerability to the impacts of climate change should inform measures taken by Parties, whether individually or collectively, under Part XII of UNCLOS.

[228] See **Section V.A.2(f)** above. UNCLOS Parties are under a duty to refrain from directing finance flows toward any policy or action which is inconsistent with a low emissions pathway and/or climate resilient development (Articles 194(2), 207 and 212). Finance flows have direct implications for the obligations laid down in Part XII of UNCLOS. The IPCC has noted that "[f]inancial, technological, institutional and other barriers exist for implementing responses to current and projected negative impacts of climate-related changes in the ocean and cryosphere, impeding resilience building and risk reduction measures" (SROCC, C.1.4 (*high confidence*)). This is relevant both to the positive obligation under Part XII of UNCLOS to take steps to preserve and protect the marine environment as well as the negative obligation to refrain from taking harmful measures. This duty to address the risk posed by such finance flows is implicit in Part XII of UNCLOS through the references to "all measures necessary" in Article 194(2) and other necessary measures including those referred to in Articles 207 and 212. UNCLOS Parties must implement their climate related obligations under Part XII having regard to the finance provisions of the Paris Agreement. This reflects the positive and negative obligations under Article 192 identified by the Arbitral Tribunal in the *South China Sea Arbitration* (*South China Sea Arbitration (Philippines v China)*, Award of 12 July 2016, para. 941). In both cases, the

e. sinks;[229] and

f. loss and damage.[230]

153. These obligations inform UNCLOS Parties in their implementation of Part XII since it has direct implications for the protection of the marine environment.

154. Further, under an integrated approach to the climate-related duties arising under Part XII, Mauritius considers that UNCLOS Parties are subject to the following specific obligations concerning the protection of the climate system and other parts of the environment, in particular the marine environment:

a. **Preventing, reducing and controlling pollution**: the obligations in Part XII apply to all States irrespective of where the alleged harmful activities take place,[231] and to all maritime zones and beyond.[232] UNCLOS Parties are required to take all measures necessary to prevent, reduce and control pollution of the marine environment from any GHG emissions (Article 194(1)), including land-based sources (Article 207)

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responsibility of developed countries to assist developing States, and in particular climate vulnerable States, is paramount.

[229] See **Section V.A.2(g)** above. The express recognition in Article 4(1)(d) of UNFCCC of the importance of the oceans and marine environment as a sink reinforces the necessity of adopting measures under Article 194 and Part XII of UNCLOS more generally.

[230] See **Section V.A.2(i)** above. Article 235(1) of UNCLOS provides that: "States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law." Article 235(1) is not limited to obligations contained in UNCLOS ("their international obligations"). Mauritius considers such obligations to include those under the Paris Agreement and UNFCCC, insofar as these are not incompatible with UNCLOS (Article 293 of UNCLOS).

[231] *South China Sea Arbitration* (*South China Sea Arbitration (Philippines v. China)*, Award of 12 July 2016, para. 927.

[232] *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission,* Advisory Opinion, 5 April 2015, para. 120.

and from vessels (Article 211).[233] This obligation includes measures to reduce GHG emissions (*i.e.* "pollution" within the meaning of Article 1(1)(4) of UNCLOS) in line with the goals, timeframes and emission pathways indicated by the Paris Agreement and the science presented by the IPCC, taking into account the current emissions and production gaps.[234]

b. **Due regard**: UNCLOS Parties should have due regard to the rights and duties of other Parties, in particular in relation to any act(s) or omission(s) which directly undermine the protection of the marine environment from the impacts of climate change.[235]

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[233] UNCLOS Parties should have regard to the specific threats posed to fragile and endangered marine ecosystems by GHG emissions. These include the risk that tipping points will be crossed unless urgent action is taken to make deep reductions, and that there will be overshoot of the temperature goal laid down in Article 2(1)(a) of the Paris Agreement. Both these eventualities pose specific and catastrophic risks to the marine environment (see SR1.5, Summary for Policy Markers, 3.6.1)

[234] In relation to pollution from land-based sources, Article 207(5) of UNCLOS provides that the laws, regulations, measures, rules, standards and recommended practices and procedures include those designed to minimise, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment. This strict threshold is reinforced in the context of GHG emissions from land-based sources, as these are persistent and must be subject to deep reductions if catastrophic harm to the marine environment is to be avoided. Further, pursuant to Article 212 of UNCLOS, Parties are required to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry, taking into account internationally agreed rules, standards and recommended practices. The necessity of specific measures must be assessed having regard to the emissions gap and to any gaps in the current system of regulation in place.

[235] In the *SFRC Advisory Opinion*, ITLOS concluded that, in exercising their rights and performing their duties in their respective exclusive economic zones, UNCLOS Parties must have due regard to the rights and duties of one another (*Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission,* Advisory Opinion, 5 April 2015, para. 216) This flows from Articles 56(2) and 58(3) of UNCLOS, in conjunction with Articles 192 and 193. In the context of climate change, this obligation is relevant to any act or omission which directly undermines the protection of the marine environment from the impacts of climate change since this will necessarily impact on the rights and duties of others across all maritime zones. This obligation has a particular relevance to making deep reductions in GHG emissions since a global collective effort is required to meet international climate goals and a failure to make the needed

c. **Cooperation**: under Article 197 of UNCLOS, Parties are required to cooperate in formulating and elaborating international rules, standards and recommended practices and procedures with the aim of closing the emissions and production gaps which, in undermining the achievement of the UNFCCC/Paris Agreement goals, directly threaten the marine environment.[236]

d. **Due diligence**: UNCLOS Parties must "deploy adequate means, to exercise best possible efforts, to do the utmost" to obtain the result of compliance with obligations.[237] This includes "[a]n obligation to adopt regulatory or administrative measures . . . and to enforce them".[238] In the context of climate change, this entails assessing decisions and policies against the temperature goal and mitigation timetable established under the Paris Agreement. Doing "the utmost" in this context means ensuring that States act with the necessary urgency and ambition to make the deep reductions in GHG emissions which are required to close the current emissions and production gaps.

e. **Impact assessment**: UNCLOS Parties are required to carry out impact assessments with regard to any policy, practice or decision that will lead to substantial pollution of the marine environment from GHG

reductions places a greater burden on other States to keep GHG emissions within the remaining global carbon budget.

[236] The IPCC has noted that: "[k]ey enablers for implementing effective responses to climate-related changes in the ocean and cryosphere include intensifying cooperation and coordination among governing authorities across spatial scales and planning horizons", see: SROCC, C.4.

[237] *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, ITLOS Advisory Opinion, 1 February 2011, para. 110.

[238] *Ibid*., para. 111.

emissions (Articles 205 and 206).[239] In its *Advisory Opinion on Activities in the Area*, the Seabed Disputes Chamber drew directly on the customary obligation to conduct impact assessments as informing the interpretation of the obligation under UNCLOS.[240]

f. **Responsibility and liability**: Article 235(2) of UNCLOS requires Parties to ensure the availability of "prompt and adequate compensation or other relief" in circumstances of "damage caused by pollution of the marine environment" in their jurisdiction.[241] A failure to comply with these obligations under UNCLOS – as informed by UNFCCC and the Paris Agreement, including the requirement to have regard to the science on climate change and the urgent need to close the emissions gap – will give rise to a State's responsibility and liability for contributing to the impacts of climate change, including on the marine environment and in relation to States most vulnerable to those impacts.[242]

D. HUMAN RIGHTS

155. The inextricable nexus between the environment and human rights is well established. More than five decades ago, on 16 June 1972, UN Member States adopted the Stockholm Declaration, Principle 1 of which recognises "the

[239] The use of "or" in Article 206 means that the obligation is engaged whenever States have reasonable grounds to conclude either, that relevant activities "may cause substantial pollution of [the marine environment]" or that the relevant activities may cause "significant and harmful changes to the marine environment".

[240] *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, ITLOS Advisory Opinion, 1 February 2011, para 149.

[241] UNCLOS, Article 235(2).

[242] UNCLOS, Article 235(1): "States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law."

fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being" and the "solemn responsibility to protect and improve the environment for present and future generations."[243] This reflects "a general recognition of the interdependence and interrelatedness of human rights and the environment."[244]

156. On 14 November 2007, SIDS (including Mauritius) adopted the Malé Declaration, which was the first intergovernmental statement to expressly recognise that "climate change has clear and immediate implications for the full enjoyment of human rights" including *inter alia* the right to life, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health.

157. On 28 March 2008, the UN Human Rights Council adopted its first resolution on climate change and human rights, expressing concern that climate change "has implications for the full enjoyment of human rights."[245] This was followed by a detailed report of the Office of the UN High Commissioner for

[243] Report of the UN Conference on the Human Environment, Declaration of the United Nations Conference on the Human Environment, Stockholm 5-16 June 1972, (hereinafter "**Stockholm Declaration**"), available at: https://www.un.org/en/conferences/environment/stockholm1972 (last accessed 26 February 2024).

[244] UN Human Rights Council, 10th Session, Report of the Office of the UN High Commissioner for Human Rights on the relationship between climate change and human rights (15 January 2009), para. 17, (hereinafter "**OHCHR report on the relationship between climate change and human rights**"), available at: https://documents.un.org/doc/undoc/gen/g09/103/44/pdf/g0910344.pdf?token=DNR5e8uLXeZqPjhpr6&fe=true (last accessed 26 February 2024).

[245] UN Human Rights Council, resolution 7/23 (28 March 2008), available at: https://ap.ohchr.org/documents/e/hrc/resolutions/a_hrc_res_7_23.pdf (last accessed 26 February 2024).

Human Rights on the relationship between climate change and human rights.[246]

158. UNFCCC Parties formally recognised the link between climate change and human rights at COP16, where it was emphasised that "Parties should, in all climate change-related actions, fully respect human rights."[247]

159. Parties to the Paris Agreement recognise that they "should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights".[248] These rights include:

> "…the right to a clean, healthy and sustainable environment, 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".[249]

160. In 2020, the UN Secretary-General made the following call to action:

> "The climate crisis is the biggest threat to our survival as a species and is already threatening human rights around the world.
>
> This global emergency highlights how the rights of succeeding generations must figure prominently in decision-making today.

[246] OHCHR report on the relationship between climate change and human rights.

[247] UNFCCC, Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, Addendum, Part Two: Action taken by the Conference of the Parties at its sixteenth session, the Cancun Agreements, Decision 1/CP.16, p.4, available at: https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf (last accessed 26 February 2024).

[248] Paris Agreement, Preamble, para. 7.

[249] First Global Stocktake, Preamble, para. 8.

> It threatens the very survival of some Member States, especially small island developing countries."[250]

1. Human rights inform and strengthen States' obligations to protect the climate system

161. The UN Human Rights Council has called upon States "to consider, among other aspects, human rights with the framework of [UNFCCC]" and stressed that:

> "…human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change, thereby promoting policy coherence, legitimacy and sustainable outcomes."[251]

162. Customary rules on treaty interpretation – as reflected in Article 31 of the Vienna Convention on the Law of Treaties ("**VCLT**") – requires treaties to be "interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." As the Court acknowledged in the *Pulp Mills* case, "[t]hat interpretation will also take into account, together with the context, 'any relevant rules of international law applicable in the relations between the parties'" (Article 31(3)(c) of VCLT).[252]

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[250] Secretary-General, "The highest aspiration: a call to action for human rights", remarks made to the Human Rights Council on 24 February 2020, available at: https://www.un.org/sg/en/content/sg/statement/2020-02-24/secretary-generals-remarks-the-un-human-rights-council-"the-highest-aspiration-call-action-for-human-rights-delivered-scroll-down-for-all-english (last accessed 24 February 2024).

[251] UN Human Rights Council, resolution 53/6 (19 July 2023), available at: https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session53/res-dec-stat (last accessed 26 February 2024).

[252] *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment, ICJ Reports 2010, p.46, para. 65. See also: Article 31(3)(c) of VCLT.

163. While UNFCCC and the Paris Agreement clearly establish relevant rules, some relevant rules also apply as customary international law. In its 2006 Report on the Fragmentation of International Law, the ILC Study Group concluded that Article 31(3)(c) of VCLT reflects the reality that international law is a dynamic legal system and that "[r]ules of international law subsequent to the treaty to be interpreted may be taken into account especially where the concepts used in the treaty are open or evolving."[253] The ILC Study Group took the view that this was particularly the case where the concept:

> "(a) is one which implies taking into account subsequent technical, economic or legal developments; (b) sets up an obligation for further progressive development for the parties; or (c) has a very general nature or is expressed in such general terms that it must take into account changing circumstances."

164. These elements are present in UNFCCC, the Paris Agreement as well as the UN Charter, UNCLOS and the human rights treaties and instruments addressed below. The need to assess risks to the environment on a continuous basis in interpreting treaty provisions has also been recognised by the Court in the *Gabcikovo-Nagymaros* case.[254]

165. In that sense, human rights obligations, standards and principles inform and strengthen States' obligations to protect the climate system and other parts of the environment from anthropogenic GHG emissions. As such, human rights norms must be taken into account in the interpretation and application of the relevant provisions of UNFCCC, the Paris Agreement and UNCLOS.[255]

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[253] ILC Report on Fragmentation of International Law, available at: https://legal.un.org/ilc/documentation/english/a_cn4_l702.pdf (last accessed 25 February 2024).

[254] *Gabčíkovo-Nagymaros Project (Hungary v Slovakia*), ICJ Reports 1997, p.68, para. 112.

[255] In *M/V Saiga (No.2) (Saint Vincent and the Grenadines v Guinea)*, Judgment, ITLOS Reports 1999, p.62, at para. 155, ITLOS held that "[c]onsiderations of humanity must apply in the law of

2. Substantive obligations

166. For the purpose of this Request, Mauritius considers that the following human rights obligations, standards and principles are particularly relevant to States' obligations to protect the climate system and other parts of the environment from anthropogenic GHG emissions.

(a) Self-determination

167. The Court has recognised the right to self-determination as an obligation *erga omnes*.[256] The right is affirmed in Article 1 of the UN Charter, and common Article 1 to the International Covenant on Civil and Political Rights ("**ICCPR**") and the International Covenant on Economic, Social and Cultural Rights ("**ICESCR**"), and in Article 3 of the UN Declaration on the Rights of Indigenous Peoples.[257] This entails the right of peoples to "freely determine their political status and freely pursue their economic, social and cultural development".[258] It also encompasses the right of peoples not to be "deprived of its own means of subsistence."[259]

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the sea, as they do in other areas of international law." Likewise, the UNCLOS Annex VII Tribunal in *The Arctic Sunrise Arbitration (Netherlands v Russia)*, PCA Case No. 2014-02, Award, Merits, 14 August 2015, p.46, at para. 197 held that it "may have regard to general international law in relation to human rights … to interpret the relevant Convention provisions by reference to the relevant context."

[256] *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p.139, para. 180; *East Timor (Portugal v Australia)*, Judgment, ICJ Reports 1995, p.102, para. 29; *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v Spain*), Second Phase, Judgment, ICJ Reports 1970, p.32, para. 33.

[257] UNGA res. 61/295 (13 September 2007).

[258] International Covenant on Civil and Political Rights (hereinafter "**ICCPR**"), Article 1(1); International Covenant on Economic, Social and Cultural Rights (hereinafter "**ICESCR**"), Article 1(1).

[259] ICCPR, Article 1(2); ICESCR Article 1(2).

168. The best available science underscores the urgent and existential threat posed by climate change to the survival of entire peoples:

> "Sea level rise and extreme weather events related to climate change are threatening the habitability and, in the longer term, the territorial existence of a number of low-lying island States. Equally, changes in the climate threaten to deprive indigenous peoples of their traditional territories and sources of livelihood. Either of these impacts would have implications for the right to self-determination."[260]

169. The greater the temperature rise – driven by anthropogenic GHG emissions – the more quickly and drastically those living in SIDS will be faced with challenges to their ability to continue to live on their traditional territory, resulting in significant impediments to their ability to enjoy and exercise their right to self-determination.[261]

(b) The right to life

170. The First Principle of the Stockholm Declaration recognises that "[b]oth aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself."[262]

[260] OHCHR report on the relationship between climate change and human rights, para. 40.

[261] OHCHR, "The Effects of Climate Change on the Full Enjoyment of Human Rights", 30 April 2015, para. 40, available at: https://unfccc.int/files/science/workstreams/the_2013-2015_review/application/pdf/cvf_submission_annex_1_humanrights.pdf (last accessed 26 February 2024).

[262] Stockholm Declaration, Principle 1.

171. Article 6(1) of ICCPR provides that "[e]very human being has the inherent right to life," which is non-derogable.[263] The Human Rights Committee's General Comment No. 36 affirms that:

> "Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, *inter alia*, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors."[264]

172. States are thus not only required to take effective measures against foreseeable and preventable loss of life but also to take positive measures to address climate change and enable people to enjoy a life with dignity.[265]

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[263] ICCPR, Articles 4(2) and 6(1). See also Article 3 of the Universal Declaration of Human Rights, UNGA res. 217A (10 December 1948).

[264] Human Rights Committee, General Comment No. 36, "Article 6: right to life" (3 September 2019), para. 62 (footnotes omitted), available at: https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life (last accessed 26 February 2024).

[265] Submission of the OHCHR to the 21st Conference of the Parties to UNFCCC, "Understanding Human Rights and Climate Change" (2015), p.13, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf (last accessed 26 February 2024); Annual Report of the OHCHR at the 32nd session of the Human Rights Council, "Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (6 May 2016), paras. 34 and 48, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/23 (last accessed 26 February 2024).

(c) The right to health

173. Article 12(2)(b) of ICESCR directs Parties to adopt measures as may be necessary for the "improvement of all aspects of environmental and industrial hygiene" in order to fully realise the right to physical and mental health.[266] General Comment No. 14 of the Committee on Economic, Social and Cultural Rights ("**CESCR**") states that this obligation entails preventing and reducing "detrimental environmental conditions that directly or indirectly impact upon human health."[267] This right is also articulated in *inter alia* Article 25(1) of the Universal Declaration of Human Rights, Article 24 of the 1989 Convention on the Rights of the Child and in the Global Stocktake.[268]

174. As described in paragraph 83 above, the IPCC has expressed, with *high confidence* that without urgent effective and equitable mitigation and adaptation actions, climate change increasingly threatens *inter alia* the health and well-being of current and future generations.[269] Climate change has already caused widespread loss and damage, including adverse impacts on human health (*high confidence*).[270]

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[266] International Covenant on Economic, Social and Cultural Rights (1966) (hereinafter "**ICESCR**"), Article 12(2)(b).

[267] Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (11 August 2000), para. 15, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf (last accessed 26 February 2024).

[268] First Global Stocktake, Preamble, para. 7, Universal Declaration of Human Rights, UNGA res. 217A (10 December 1948), Article 25(1): "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

[269] AR6 SYR, C.1.3.

[270] *Ibid.*, A.2.6.

175. The World Health Organization has conservatively estimated that climate change will cause some 250,000 additional deaths per year by the 2030s. The main health risks posed by climate change are:

> "…more intense heatwaves and fires; increased prevalence of food-, water- and vector-borne diseases; increased likelihood of undernutrition resulting from diminished food production in poor regions; and lost work capacity in vulnerable populations."[271]

176. The World Health Organization has stressed that:

> "Poorer populations and children are disproportionately at risk, with different impacts on women and men. Overall, climate change is expected to widen existing health inequalities, both between and within populations."[272]

(d) The rights to food and to water

177. Article 2 of UNFCCC states that its ultimate objective is to "prevent dangerous anthropogenic interference with the atmosphere" as necessary to "allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."[273] Article 2(1)(b) of the Paris Agreement provides that adaptation measures must be carried out "in a manner that does not threaten food production".[274] Parties to the Paris Agreement recognise the need to "accelerate swift action at scale and at all levels" to "significantly

[271] WHO submission to the OHCHR on climate change and right to health, p.3, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Impact/WHO.pdf (last accessed 26 February 2024).

[272] *Ibid*.

[273] UNFCCC, Article 2.

[274] Paris Agreement, Article 2(1)(b).

reduce climate-induced water scarcity" and attaining climate-resilient water supplies and food production.[275]

178. Article 11 of ICESCR sets out the right to adequate food, and requires Parties to take individual and collective measures needed "to ensure an equitable distribution of world food supplies in relation to need."[276] The right to adequate food is also recognised in Article 25(1) of the Universal Declaration of Human Rights.[277]

179. The CESCR, in its General Comment No. 12, has explained that "adequacy" in this context is "to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions". [278] The right is one of "every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food produced and consumed sustainably, preserving access to food for future generations."[279]

180. In its General Comment No. 15, the CESCR has stated that "the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible

[275] First Global Stocktake, para. 63.

[276] ICESCR, Article 11(2).

[277] Universal Declaration of Human Rights, UNGA res. 217A (10 December 1948), Article 25(1).

[278] Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food (11 May 1999), para. 7, available at: https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec1219995-general-comment-no-12-right-adequate-food (last accessed 26 February 2024).

[279] OHCHR, "Frequently Asked Questions on Human Rights and Climate Change", Fact Sheet No. 38 (2021), p.10, available at: https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf (last accessed 26 February 2024).

and affordable water for personal and domestic uses."[280] This entails an "adequate amount of safe water" to "provide for consumption, cooking, personal and domestic hygienic requirements."[281] The UNGA has also recognised "the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights".[282] Whereas ICESCR does not expressly use the word "water", General Comment No. 15 explains that:

> "The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival."[283]

181. To that end, "States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations", including "assessing the impacts of actions that may impinge upon water availability and natural ecosystems, such as climate change".[284]

182. As described in paragraphs 59-60 and 66 above, the IPCC has concluded with *high confidence* that increasing weather and climate extremes – driven by GHG emissions – "have exposed millions of people to acute food insecurity

[280] Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (20 January 2003), para. 2, available at: https://digitallibrary.un.org/record/486454?ln=en (last accessed 26 February 2024).

[281] *Ibid*.

[282] UNGA res. 64/292 (3 August 2010).

[283] Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (20 January 2003), para. 3, available at: https://digitallibrary.un.org/record/486454?ln=en (last accessed 26 February 2024).

[284] *Ibid*., para. 28.

and reduced water security", disproportionately impacting on less developed countries and SIDS.[285] The UNGA has expressed concern that:

> "the adverse impacts of climate change and natural disasters are harming agricultural productivity, food production and cropping patterns, thus contributing to food availability shortfalls, and that such impacts are expected to increase with future climate change".[286]

183. The Special Rapporteur on the right to food has stated that climate change "poses unique and distinct threats to all aspects of food security", with 600 million additional people potentially vulnerable to malnutrition by 2080.[287] The World Bank has estimated that an increase in temperature of 2°C may result in 1 to 2 billion people no longer having access to enough water.[288]

(e) The right to a clean, healthy and sustainable environment

184. On 28 July 2022, the UNGA adopted resolution 76/300, with 116 votes in favour, 8 abstentions, and no votes against. This recognised "the right to a clean, healthy and sustainable environment as a human right" which is "related to other rights and existing international law".[289] This right is reflected in the national legal systems of more than 80% of UN Member

[285] AR6 SYR, A.2.2 and A.2.4.

[286] UNGA res. 77/217 (5 January 2023).

[287] UNGA, "Interim Report of the Special Rapporteur on the right to food submitted in accordance with UNGA res. 69/177 (5 August 2015), para. 82, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Food/A-70-287.pdf (last accessed 26 February 2024).

[288] World Bank, Development and Climate Change (2010), p.5, available at: https://documents1.worldbank.org/curated/en/201001468159913657/pdf/530770WDR02010101Official0Use0Only1.pdf (last accessed 26 February 2024).

[289] UNGA res. 76/300 (28 July 2022).

States (156 out of 193).[290] This right also finds expression in Article 24(2)(c) of the 1989 Convention on the Rights of the Child, which requires Parties to take appropriate measures to combat disease and malnutrition "taking into consideration the dangers of risks of environmental pollution".[291]

185. The UNGA has affirmed that the promotion of the right to a clean, healthy and sustainable environment "requires the full implementation of the multilateral agreements under the principles of international environmental law".[292]

(f) Overarching principles of equality and non-discrimination

186. All of the rights, obligations, standards and principles described above fall to be exercised and implemented in light of the overarching principles of equality and non-discrimination. Article 3(5) of UNFCCC provides that measures to combat climate change "should not constitute a means of arbitrary or unjustifiable discrimination".[293] As described in paragraph 159 above, Parties to the Paris Agreement expressly acknowledge the need to respect, promote and consider gender equality and intergenerational equity.

187. Mauritius also notes that ICESCR requires that rights "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[294] The ICCPR prohibits "any discrimination" and guarantees "to all

[290] UNGA 77th Session, Note by the UN Secretary-General, "Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment" (10 August 2022), para. 26, available at: https://digitallibrary.un.org/record/3988295 (last accessed 25 February 2024).

[291] Convention on the Rights of the Child 1989, Article 24(2)(c).

[292] UNGA res. 76/300 (1 August 2022), para. 3.

[293] UNFCCC, Article 3(5).

[294] ICESCR, Article 2(2).

persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[295]

E. CUSTOMARY INTERNATIONAL LAW AND GENERAL PRINCIPLES

188. In addition to the obligations flowing from the treaties and instruments described above, States are bound by the following relevant rules of customary international law and general principles.

1. Prevention

189. The principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory. It is "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States".[296] This principle is well established. In 1941, the Tribunal in the *Trail Smelter* arbitration held that:

> "…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 or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."[297]

190. As noted in paragraph 87 above, the Court, in the *Nuclear Weapons* Advisory Opinion, affirmed the "existence of the general obligation of States to ensure

[295] ICCPR, Article 26.

[296] *Corfu Channel (United Kingdom v Albania)*, Merits, Judgment, ICJ Reports 1949, p.4, at p.22.

[297] *Trail Smelter Case (United States v Canada)*, 16 April 1938 and 11 March 1941, Report of International Arbitral Awards, Vol. III, pp.1905-1982, at p.1965.

that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control".[298]

191. This obligation is reflected in UNFCCC, wherein Parties acknowledge "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".[299] It also finds voice in Principle 21 of the Stockholm Declaration.[300]

192. As to the extent of the obligation, the Court in *Pulp Mills* held that a State is "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."[301] Mauritius considers that "all means at its disposal" necessarily implies those informed by the best available science, taking into account the obligation to take effective action based on scientific evidence as set out in UNFCCC and the Paris Agreement.

2. Due diligence

193. States are under a duty to act with due diligence to prevent significant damage to the climate system and other parts of the environment from GHG emissions, including by assessing decisions and policies against the

[298] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, pp.241-242, para. 29.

[299] UNFCCC, Preamble, para. 8.

[300] Stockholm Declaration, Principle 21: "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and 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."

[301] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* ICJ Reports 2010, pp.55-56, para. 101.

temperature goal and mitigation timetable established under the Paris Agreement. This underlying principle applies generally to proposed activities which may have a significant adverse impact in a transboundary context. In *Certain Activities and Construction of a Road*, the Court held that:

> "…a State's obligation to exercise due diligence in preventing significant transboundary harm requires that State to ascertain whether there is a risk of significant transboundary harm prior to undertaking an activity having the potential adversely to affect the environment of another State. If that is the case, the State concerned must conduct an environmental impact assessment."[302]

194. The ILC's 2001 Draft Articles on Transboundary Harm from Hazardous Activities provide that the standard for due diligence should be "appropriate and proportional to the degree of risk of the transboundary harm".[303]

195. In light of the scientific evidence as to the catastrophic risks posed to the climate system and other parts of the environment by climate change, the standard of due diligence under UNFCCC and the Paris Agreement is an exacting one. The duty to exercise due diligence to prevent significant environmental harm from GHG emissions therefore includes conducting effective environmental impact assessments ("**EIA**") which assess cumulative GHG emissions from all projects, programmes and investments, and include quantified assessments of all emissions, including scope 3 emissions, in particular those concerned with fossil fuel production and

[302] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)*, Judgment, ICJ Reports 2015, p.665, para. 153.

[303] ILC, Draft Articles on Transboundary Harm from Hazardous Activities (2001), Article 3(13), available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf (last accessed 27 February 2024).

use.[304] This is required to estimate the full climate related impact of such projects.

3. Precaution

196. To the extent that there remains any scientific uncertainty as to the impacts of climate change – including in relation to confidence and probability – the precautionary principle requires States to take action to prevent serious harm to the climate system and other parts of the environment.[305] If the potential harm is devastating in scale and severity, action may be required even if the confidence level or probability of occurrence is relatively low.

197. This principle is reflected in Article 3(3) of UNFCCC:

> "The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost."[306]

198. The precautionary principle requires States to "act with prudence and caution".[307] ITLOS has described the precautionary principle as "an integral part of the general obligation of due diligence" which applies where

[304] Scope 3 emissions encompass those not produced by the State/actor/project itself, but for which the State/actor/project is indirectly responsible for in its wider value chain (including suppliers and customers).

[305] *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p.46, paras. 131-132.

[306] UNFCCC, Article 3(3).

[307] *Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan*), Order of 27 August 1999, ITLOS Reports 1999, p.296, para. 77.

"scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks."[308] Disregarding such risks would amount to "a failure to comply with the precautionary approach."[309]

199. The Court has also affirmed that the precautionary principle may be relevant in the interpretation and application of treaty obligations.[310]

4. Taking account of the best available science

200. The obligations of prevention, precaution and due diligence necessarily encompass the corollary obligation to take account of the best available science. In its Advisory Opinion on *Responsibilities and obligations of States with respect to activities in the area*, the ITLOS Seabed Disputes Chamber stated that:

> "The content of 'due diligence' obligations may not easily be described in precise terms. Among the factors that make such a description difficult is the fact that 'due diligence' is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge. It may also change in relation to the risks involved in the activity."[311]

[308] *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p.46, para. 131.

[309] *Ibid.*

[310] *Pulp Mills on the River Uruguay (Argentina v Uruguay)* ICJ Reports 2010, p.71, para. 164.

[311] *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p.43, para. 117. See also: *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission,* Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p.41, para. 132.

201. It follows that in order to fulfil their treaty obligations described above and also to comply with the customary international law requirements of prevention, precaution and due diligence, States are required to take account of – and be guided by – the best available science, set out in **Section IV** above.

5. Environmental impact assessment

202. In *Pulp Mills*, the Court stated that it may be considered a requirement under general international law to undertake an EIA where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.[312]

203. In *Certain Activities and Construction of a Road*, the Court affirmed that although the Court's statement in *Pulp Mills* refers to industrial activities, "the underlying principle applies generally to proposed activities which may have a significant adverse impact in a transboundary context."[313] The "[d]etermination of the content of the environmental impact assessment should be made in light of the specific circumstances of each case."[314]

204. In the event that the EIA confirms "a risk of significant transboundary harm", the State planning to undertake the activity/project in question "is required, in conformity with its due diligence obligation, to notify and consult in good

[312] *Pulp Mills on the River Uruguay (Argentina v Uruguay)* ICJ Reports 2010, p.83, para. 204.

[313] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)*, Judgment, ICJ Reports 2015, pp.706-707, para. 104.

[314] *Ibid.*, p.707, para. 153.

faith with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk."[315]

205. Specifically with respect to GHG emissions, the requirement to carry out EIAs is enshrined in UNFCCC and the Paris Agreement.[316] Article 13 of the Paris Agreement underscores the need for transparency as to the assessment of GHG emissions arising from existing and proposed policies and decisions. Parties are required to ensure that EIAs are effective in the context of assessing the climate impact of GHG emissions. This requires further development of existing practice where this is inadequate, for example through the development of a metric to compare GHG emissions that includes their effect on climate change and the inclusion of a quantified assessment of scope 3 GHG emissions, particularly where these form the greater part of the emissions from a project/activity.

6. Cooperation

206. The duty of States to cooperate is essential to the protection of the climate system and other parts of the environment from climate change caused by anthropogenic GHG emissions. To that end, UNFCCC and the Paris Agreement require Parties to cooperate directly or through competent international organisations to address the causes and impacts of climate change, and in particular to address the urgent need to make deep reductions in greenhouse gas emissions.[317]

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[315] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)*, Judgment, ICJ Reports 2015, p.707, para. 104; see also: p.724, para. 168.

[316] See *e.g.* UNFCCC, Article 4(1)(f); Paris Agreement, Article 7(9)(c).

[317] See *e.g.* UNFCCC Articles 3(3), 3(5), 4(1), 5(c) and 6(b); Paris Agreement, Articles 6(1), 6(2), 7(6), 7(7), 8(3), 8(4), 10(2), 10(6), 11(3), 12 and 14(3).

207. This fundamental principle of general international law has implications in the context of climate change in two ways: [318]

a. First, UNFCCC and the Paris Agreement establish relevant international rules, standards and recommended practices, for example in relation to the temperature goal and mitigation framework, as well as in areas such as transparency in reporting GHG emissions.

b. Second, there is a further duty of cooperation to ensure that States' actions under other regimes and in other sectors are consistent with relevant rules and standards under UNFCCC and the Paris Agreement. The duty of cooperation must be fulfilled with the aim of closing the emissions and production gaps which, in undermining the achievement of UNFCCC and Paris Agreement goals, directly threaten the climate system and other parts of the environment.

VI. QUESTION (B): LEGAL CONSEQUENCES

208. Question (B) concerns the legal consequences for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, including with respect to:

[318] *MOX Plant (Ireland v United Kingdom*) Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, para. 82. See also: *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission,* Advisory Opinion, 5 April 2015, para. 140; Stockholm Declaration, Principle 24: "International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big and small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States."

a. States, and in particular SIDS, which are injured or specially affected by, or particularly vulnerable to, the adverse effects of climate change; and

b. Peoples and individuals of the present and future generations affected by the adverse effects of climate change.

209. The failure to comply with the obligations set out above may give rise to State responsibility under general international law.

210. Mauritius invites the Court to consider the legal consequences by reference to the ILC's Articles on Responsibility of States for Internationally Wrongful Acts, as it has on previous occasions.[319] These provide that:

a. An internationally wrongful act entails international responsibility (Article 1). In the context of climate change, this includes acts by omission (Article 2), resulting in a failure to protect the climate system and other parts of the environment from significant harm resulting from anthropogenic GHG emissions.

b. A breach can occur "through a series of actions or omissions defined in aggregate as wrongful" where these "taken with other actions or omissions, is sufficient to constitute the wrongful act" (Article 15(1)). Such composite acts/omissions result in a breach which "extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated

[319] Responsibility of States for Internationally Wrongful Acts (2001), *Yearbook of the International Law Commission 2001*, vol. II (Part Two). See also: *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p.139, para. 177; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, ICJ Report 1997, p.38, para. 47; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p.195, para. 140.

and remain not in conformity with the international obligation" (Article 15(2)).

c. The legal consequences flowing from international responsibility include: the obligation of immediate cessation, offering appropriate assurances and a guarantee of non-repetition (Article 30);[320] the obligation to make full reparation for the injury caused (Article 31) in the form of restitution, compensation and satisfaction, whether singly or in combination (Articles 34, 35, 36 and 37).[321] Compensation – insofar as damage is not made good by restitution – "shall cover any financially assessable damage including loss of profits, insofar as it is established" (Article 36).

d. An injured State is entitled to invoke the responsibility of another State if the obligation is owed to that State individually (Article 42(a)), or to a group of States including that State, or the international community as a whole, and the breach of the obligation specifically affects that State, or is of such a character as to radically change the position of all other States to which the obligation is owed (Article 42(b)). Mauritius notes that in the context of climate change – and as recognised in the

[320] Where a State is in continuing breach of an international legal obligation, cessation must occur immediately: *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, Advisory Opinion, ICJ Reports 1971, p.58, para. 133; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p.197, para. 151; *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)*, Judgment, ICJ Reports 1980, p.44, para. 95; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)*, Merits, Judgment, ICJ Reports 1986, p.149, para. 292; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Judgment, ICJ Reports 2012, p.461, para. 121.

[321] Restitution entails "re-establish[ing] the situation which existed before the wrongful act was committed, provided and to the extent that restitution: (a) is not materially impossible; (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation" (Article 35).

terms of the Request – SIDS are more likely to be specially affected by breaches resulting in significant harm to the climate system.

e. Where several States are injured by the same internationally wrongful act, each may separately invoke the responsibility of the State in breach of the obligation (Article 46).

f. Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act (Article 47).

211. Taking these principles into account, States are required to address loss and damage by reference to *inter alia*:

a. the existential threat to SIDS and other vulnerable States with low-lying coastal areas (including Mauritius), having regard to the fact that these States have contributed the least to global emissions but face some of the most severe impacts as a result of such emissions;

b. the need to establish early warning systems and address other matters set out in Article 8 of the Paris Agreement, having regard to the right to life and the need for a mutually informed approach as between human rights obligations and those arising under the international climate regime (see paragraph 165 above); and

c. the social and economic impacts associated with the environmental impacts of climate change that cannot be avoided through mitigation or adaptation, taking into account the specific vulnerabilities of developing States in coping with the direct threats to life, health and livelihood posed by climate change.

212. The failure of a State to have regard to the best available science on climate change, and in particular to ignore the urgent need to close the emissions and production gaps, will have consequences for its responsibility for contributing to the adverse impacts of climate change, in particular on those States most vulnerable to those impacts.

213. Mauritius recalls that Parties to UNFCCC and the Paris Agreement have recognised that "climate change has already caused and will increasingly cause losses and damages and that, as temperatures rise, the impacts of climate and weather extremes, as well as slow onset events, will pose an ever-greater social, social, economic and environmental threat".[322] It has also been recognised that there remain "significant gaps, including finance" to respond to the "increased scale and frequency of loss and damage, and the associated economic and non-economic losses".[323] Whereas developed States have pledged approximately USD $700 million,[324] this represents less than 0.18% of the estimated USD $400 billion in economic and non-economic losses which are currently caused by climate change every year, and which will inevitably increase.[325]

214. Mauritius further notes that Parties to UNFCCC and the Paris Agreement have referenced the concept of "climate justice". Initially, in 2022, Parties to

[322] First Global Stocktake, para. 126.

[323] *Ibid*., para. 128.

[324] See: https://unfccc.int/process-and-meetings/bodies/funds-and-financial-entities/loss-and-damage-fund-joint-interim-secretariat/pledges-to-the-loss-and-damage-fund (last accessed 27 February 2024).

[325] Richards, Schalatek, Achampong & White, "The Loss and Damage Finance Landscape" (2023), available at: https://assets-global.website-files.com/605869242b205050a0579e87/6462710b127e29f1b1e74ee7_The_Loss_and_Damage_Finance_Landscape_HBF_L%26DC_15052023.pdf (last accessed 27 February 2024).

UNFCCC and the Paris Agreement noted "the importance for some of the concept of 'climate justice", when taking action to address climate change".[326] A year later, they noted "the importance of 'climate justice', when taking actions to address climate change".[327]

215. Climate justice is relevant to the application of the principles of State responsibility, having regard to the requirement to apply best available science and principles of equity. In this regard, Mauritius submits that in relation to responsibility and liability it is necessary to take into account:

    a. historic contributions to global GHG emissions, having regard to the benefits obtained from historic emissions and the costs being borne by the most vulnerable States, including SIDS;

    b. the state of knowledge of countries with historic responsibility for GHG emissions on potential impacts, having regard to the obligation to prevent transboundary harm; and

    c. the ability of those responsible for historic emissions to support the most vulnerable countries, including SIDS, from catastrophic impacts of climate change.

216. The UN Special Rapporteur on the Promotion and Protection of Human Rights in the context of Climate Change has called on countries to include in national climate change legislation:

> "Provisions for compensation, liability and reparations to ensure that major greenhouse gas polluters – countries and corporations

[326] Decision 1/CMA.3, Glasgow Climate Pact, Preamble, 8 March 2022.

[327] First Global Stocktake, Preamble.

> alike – pay for the harm they are causing. This should include domestic and transnational liability".[328]

217. Accordingly, Mauritius invites the Court to confirm that the principles of State responsibility are applicable to current and historic emissions of GHGs, having regard to best available science, historic emissions of GHGs, and principles of equity and prevention reflected in general international law as well as UNFCCC and the Paris Agreement.

VII. SUMMARY OF CONCLUSIONS

218. In conclusion, and for the reasons set out in **Section II**, Mauritius submits that the Court has jurisdiction to render the Advisory Opinion requested, and that there are no compelling reasons to decline to do so.

219. As to the exercise of its judicial function, Mauritius invites the Court to render an Advisory Opinion that offers full support to the interpretation and application of UNFCCC and the Paris Agreement so as to ensure the effective delivery of international climate goals. The interpretation and application of UNFCCC and the Paris Agreement must be informed by the other obligations addressed above which are inextricably connected with the adverse impacts of climate change. The international climate regime reflects customary international law, including the principles of prevention, precaution, due diligence and cooperation, which are in turn relevant to the implementation of UNFCCC and the Paris Agreement.

[328] Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, "Exploring approaches to enhance climate change legislation, supporting climate change litigation and advancing the principle of intergenerational justice", A/78/255, 28 July 2023, p.23.

220. It follows that UNFCCC and the Paris Agreement must be interpreted and applied in such a way as to:

a. ensure coherence and synergy as between the international climate regime and the other treaty regimes referred to in the Request and customary international law;

b. promote a relationship based on systemic integration and a harmonised approach to ensure that the protection of the environment including the climate system is considered in a coherent and effective way, in light of the international goal of preventing dangerous anthropogenic interference with the climate system;[329]

c. adopt an approach of mutual accommodation and respect of rights; [330] and

d. interpret and apply obligations bearing on the same issue, to the maximum extent possible, so as to give rise to a single set of compatible obligations.[331]

221. On the basis of the foregoing, Mauritius considers that the principal obligations on States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions are as follows:

[329] UNFCCC, Article 2; Paris Agreement, Article 2.

[330] ILC, "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law" (18 July 2006), p.28, available at: https://legal.un.org/ilc/documentation/english/a_cn4_l702.pdf (last accessed 27 February 2024).

[331] *Ibid.*, para. 8.

a. **Overarching duty to act on the basis of the best available science**: States are under an obligation to take account of, and give effect to, the best available scientific evidence, including in particular that provided by the IPCC, as to the potentially catastrophic climate change impacts on the climate system and other parts of the environment and the urgent measures indicated to address the threat posed by climate change. The interpretation and application of UNFCCC and the Paris Agreement – and the other relevant obligations outlined above – is to be undertaken on the basis of scientific evidence, and in light of the evolving understanding of the grave and urgent threat posed by climate change to the climate system and other parts of the environment.

b. **In the light of the scientific evidence, and in order to meet the internationally agreed temperature goal, to effect deep, rapid and sustained reductions of GHG emissions, including urgently reducing and phasing out the use of fossil fuels**: States are required to cut GHG emissions in line with the internationally agreed temperature goal (1.5°C) as rapidly as possible in accordance with the principles of common but differentiated responsibilities and respective capabilities, prevention, precaution, due diligence, cooperation and equity. The escalating climate emergency, including the rapidly diminishing carbon budget, degradation of carbon sinks and the grave impacts of crossing planetary tipping points underscores the urgency of the threat posed (especially for Mauritius and other SIDS).[332] The Paris Agreement temperature goal can only be achieved by urgently addressing the emissions gap within the "rapidly

[332] See the Global Stocktake which notes that improved understanding of how to avoid and respond to the risk of low-likelihood or high-impact events or outcomes, such as abrupt changes and potential tipping points, as well as more knowledge, support, policy and action are needed to comprehensively manage risks of and respond to loss and damage associated with climate change impacts (para 127).

closing window of opportunity to secure a liveable and sustainable future for all".[333] This will only be possible if States implement ambitious measures within NDCs resulting in deep reductions of fossil fuels (which account for more than two thirds of current GHGs) to achieve net zero as soon as possible.

c. **Adaptation**: States must strengthen resilience and reduce vulnerability to climate change to meet the global goal on adaptation set out in Article 7 of the Paris Agreement, informed by the principles of sustainable development, cooperation and equity. The requirements of adaptation are particularly urgent and acute for States vulnerable to the adverse effects of climate change, including SIDS. This includes building resilience to climate-related disasters in accordance with the Sendai Framework.

d. **Finance flows**: States must ensure that finance flows are consistent with – and sufficient to enable – a low emissions pathway and climate resilient development in so far as this relates to the climate system and other parts of the environment. By way of the NCQG, developed country Parties to the Paris Agreement are required to urgently provide increased financial resources to assist developing country Parties with mitigation and adaptation.[334] The current shortfall in climate finance represents a significant hindrance for SIDS and other vulnerable developing States in the implementation of effective mitigation and adaptation measures.

e. **Human rights**: human rights obligations, standards and principles inform and strengthen States' obligations to protect the climate system and other parts of the environment from anthropogenic GHG emissions. Mitigation

[333] AR6 SYR, C.1.

[334] Paris Agreement, Article 2(1)(c) and (9).

and adaptation measures (and climate financing made available to developing States and SIDS) must be consistent with – and sufficient to ensure – full enjoyment of fundamental human rights, including the right to: self-determination, life, health, food and water, and the overarching principles of equality and non-discrimination, as well as the right to a clean, healthy and sustainable environment.

f. **Environmental impact assessment**: States are required to assess the adverse impacts of policies, practices and decisions (existing and proposed) likely to result in significant harm to the climate system and other parts of the environment. States should also assess the impacts of mitigation and adaptation measures. This obligation stems from the international climate treaty regime, and customary international law.[335]

g. **Transparency and reporting**: Within the context of the enhanced transparency framework under Article 13 of the Paris Agreement, Parties are required to regularly provide information including: a national inventory of anthropogenic GHG emissions, sufficient data to properly track progress made in the implementation of NDCs, and data on climate change impacts (Article 13(7)-(8)). Developed country Parties should additionally provide information on financial technology transfers and capacity-building support needed and received (Article 13(10)).

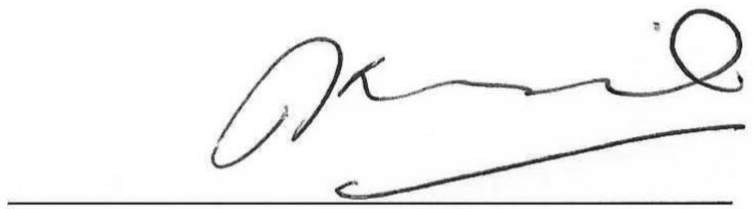
h. **Action within a UN context**: all UN Member States are required, pursuant to Articles 2(2) and 56 of the UN Charter to give every assistance to the UN, including by joint and separate action. This includes action taken pursuant to Article 55, encompassing the adverse effects of climate change

[335] UNFCCC, Article 4(1)(f); Paris Agreement, Articles 7(9)(c); 8(1), (3) and (4)(e).

– both present and future – evidenced by the best available science. The UNSC is required, pursuant to Article 24 of the UN Charter, to address and respond to the risks posed by climate change in the context of its primary responsibility for international peace and security.

i. **Protection of the marine environment**: UNCLOS Parties are required to take all measures necessary to protect and preserve the marine environment (Articles 192 and 193), including by preventing, reducing and controlling pollution from any GHG emissions (Article 194(1)) from both land-based sources (Article 207) and from vessels (Article 211). This obligation encompasses measures to reduce GHG emissions (*i.e.*, "pollution" within the meaning of Article 1(1)(4) of UNCLOS) in line with the goals, timeframes and emission pathways indicated by the Paris Agreement and the science presented by the IPCC, taking into account the current emissions and production gaps.

222. Finally, as to the legal consequences for failing to comply with these obligations, resulting in significant harm to the climate system and other parts of the environment: States incur international responsibility in accordance with well-established rules of State responsibility. Composite acts – which taken together, in aggregate, result in significant harm – can amount to breach of the obligations associated with protection of the climate system and other parts of the environment. States in breach of such obligations are subject to the requirement of immediate cessation, and the obligation to make full reparation, by way of restitution, compensation and/or satisfaction, whether singly or in combination. States injured by significant harm to the climate system and other parts of the environment caused by anthropogenic GHG emissions, in particular SIDS and other vulnerable states, can invoke the responsibility of other State(s), individually or collectively.



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22 March 2024