

INTERNATIONAL COURT OF JUSTICE

**OBLIGATIONS OF STATES IN RESPECT
OF CLIMATE CHANGE
(REQUEST FOR ADVISORY OPINION)**



Written Comments of the Republic of Mauritius

15 August 2024

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I. INTRODUCTION

1. The Republic of Mauritius (“**Mauritius**”) submits these Written Comments on the Written Statements filed by other participants in the matter of the request for an Advisory Opinion on the *Obligations of States in respect of Climate Change*, pursuant to the Order of the Court dated 30 May 2024.
2. The urgent and catastrophic risk posed by climate change is underscored by the unprecedented participation in these proceedings. Written Statements have been filed by 83 States and territories, representing approximately 6 billion people, about 75% of the world’s population. Written statements have also been filed by 12 international organisations whose membership encompasses all 193 UN Member States.
3. Mauritius notes that no participant has disputed the Court’s jurisdiction, and there is near-universal acceptance that there are no compelling reasons for the Court to decline to exercise its discretionary power to render the Advisory Opinion sought by the UN General Assembly (“**UNGA**”).
4. Mauritius further notes that on 21 May 2024 the International Tribunal for the Law of the Sea (“**ITLOS**” or “**the Tribunal**”) issued a unanimous Advisory Opinion on *Climate Change and International Law* (“**ITLOS Advisory Opinion**”).¹ The Tribunal addresses many of the issues before the Court in these proceedings, albeit specifically under the framework of the United Nations Convention on the Law of the Sea (“**UNCLOS**”). Mauritius

¹ *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)*, ITLOS, Advisory Opinion of 21 May 2024 (hereinafter “**ITLOS 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 10 August 2024).

considers that the ITLOS Advisory Opinion, and the manner in which the Tribunal reached its determinations, provides an “authoritative statement of international law on the questions with which it deal[t].”² Accordingly, having regard to the principle of comity between international courts and tribunals, Mauritius invites the Court to have due regard to the ITLOS Advisory Opinion and, as appropriate, to respect and build on ITLOS’ determinations (as addressed in more detail below).

5. The great majority of participants in these proceedings acknowledge that the obligations of States in respect of climate change are firmly rooted in climate science. The science informs the causes and consequences of climate change, as well as what is needed to avert the most catastrophic of these consequences. In seeking to assist the Court in its task of rendering an Advisory Opinion that is based on the best available climate science, Mauritius has obtained an independent expert report from Dr James E. Hansen, a leader in the scientific community on matters of climate change for more than four decades.³ Dr Hansen is an Adjunct Professor at Columbia University’s Earth Institute, from where he directs a program in Climate Science, Awareness and Solutions. Dr Hansen has been heavily involved in matters of climate science for more than four decades, advising many governments and the Intergovernmental Panel on Climate Change (“IPCC”).

² *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, ITLOS, Preliminary Objections, Judgment of 28 January 2021, para. 202.

³ Expert Report of Dr James E. Hansen in Support of the Republic of Mauritius (9 August 2024), (hereinafter “**Report of Dr James E. Hansen**”), Annex 1.

6. In these Written Comments, Mauritius will address the following nine issues with respect to the first question – the obligations of States under international law – in response to the Written Statements filed by other participants:
- a. the obligation to take into account the best available science;
 - b. the Paris Agreement, which emphasises the urgent need to close the gap between what is required and what has been achieved so far;
 - c. the obligation of due diligence, in particular having regard to:
 - i. the 1.5°C temperature goal;
 - ii. the requirement for the “highest possible ambition” and “progression” (Article 4(3) of the Paris Agreement);
 - iii. Nationally Determined Contributions (“**NDCs**”); and
 - iv. environmental impact assessment;
 - d. the obligation to make urgent and deep reductions in greenhouse gas (“**GHG**”) emissions, including the immediate need to transition away from fossil fuels;
 - e. the obligation to give effect to principles of equity and common but differentiated responsibility and respective capabilities (“**CBDRRRC**”);
 - f. the obligation to make available accessible, fair and transparent climate finance for developing countries;
 - g. the obligation to address adaptation, particularly for developing States and those most vulnerable to the impacts of climate change, including Small Island Developing States (“**SIDS**”);

- h. the obligations on States to protect human rights, based on the principle of systemic integration; and
 - i. the role of customary international law obligations to supplement (and not being superseded by) multilateral treaties in the field of climate protection, including the duties of:
 - i. prevention;
 - ii. cooperation; and
 - iii. precaution.
7. As to the second question – on legal consequences – Mauritius addresses the applicability of the general principles of State responsibility with respect to breaches of climate related obligations, in particular:
- a. the methodology by which to attribute climate change and its consequences to the emissions, acts and omissions of individual States;
 - b. the emissions, acts and omissions of States, both individual and collectively, that may give rise to breaches of international climate obligations;
 - c. the significant harm which has already been caused by climate change, and the impending risk of even more catastrophic damage;
 - d. historic emissions and the temporal aspects of State responsibility;
 - e. the applicable principles in relation to causation; and
 - f. the obligation to make reparation, including compensation for loss and damage resulting from GHG emissions.

8. Finally, Mauritius addresses the potential impact of sea level rise on maritime boundaries and entitlements, a matter which ITLOS did not address but which is of fundamental importance for so many States, particularly SIDS.

II. QUESTION A: THE OBLIGATIONS OF STATES

A. THE BEST AVAILABLE SCIENCE AND THE OBLIGATION TO TAKE IT INTO ACCOUNT

9. Virtually all States and organisations participating in these proceedings (including Mauritius) have emphasised the need to be guided by the science relating to climate change and, in particular, the scientific findings and recommendations of the IPCC. Mauritius agrees with the large number of participants who have emphasised the way in which international legal obligations are rooted in this science.
10. ITLOS relied extensively on the best available scientific knowledge as forming the bedrock of its legal determinations in its Advisory Opinion. ITLOS affirmed that “the science undoubtedly plays a crucial role” in determining what is required of States under UNCLOS.⁴ Throughout its Advisory Opinion, ITLOS took account of scientific evidence of a “high risk” that outcomes will be even worse if the 1.5°C target is not met.⁵ In the identification of the best available scientific knowledge, ITLOS relied primarily on the reports of the IPCC.⁶ The Tribunal observed that:

⁴ ITLOS Advisory Opinion, para. 212.

⁵ *Ibid.*, paras. 209, 241, 243, 399-400 & 441.

⁶ *Ibid.*, paras. 49-66. See also: Written Statement of the Republic of Mauritius submitted to the International Court of Justice in the request for an Advisory Opinion on the Obligations of States

“...most of the participants in the proceedings referred to reports of the IPCC, recognizing them as authoritative assessments of the scientific knowledge on climate change, and that none of the participants challenged the authoritative value of these reports.”⁷

11. Mauritius notes that the same is true of these proceedings, and invites the Court to so recognise.
12. One important implication of this nexus between climate science and the law is that the interpretation of relevant legal obligations must be considered in the light of the specific, measurable and timebound risks identified by climate science. In that way, the science also informs an understanding of what it means to breach those obligations, and what the legal consequences of such breaches may be. Such an approach gives full weight to the authoritative scientific knowledge of the IPCC.
13. Mauritius does not agree with the small number of participants who invite the Court to answer the UNGA’s questions in a legal vacuum, without regard to the science and effects of climate change. In fulfilling its judicial mandate, the Court must engage with the relevant facts. In these proceedings, those facts include, as a central element, the best available climate science, and in particular, the reports of the IPCC.⁸
14. Mauritius agrees with the great majority of participants who have underlined the importance of key principles of the 1994 UN Framework Convention on Climate Change (“UNFCCC”) and the Paris Agreement, including principles of equity and CDBRRC. The dynamic nature of the climate treaty regime is

in respect of Climate Change dated 22 March 2024 (hereinafter “**Mauritius Written Statement**”), paras. 45-53 & 104-105.

⁷ ITLOS Advisory Opinion, para. 51.

⁸ Mauritius Written Statement, paras. 15 & 39-85.

based on the need to ensure that those most responsible, and most able to do so, take the lead in reducing GHG emissions, and that those most vulnerable to the impacts of climate change, are enabled to increase their resilience and reduce vulnerability.

15. Like other participants, Mauritius has pointed to the need for urgent and immediate action to address climate change, as confirmed by the best available science presented by the IPCC.⁹ The following key elements are emphasised by many participants:

- a. In light of the scientific evidence that the impacts of climate change will be much lower at a temperature increase of 1.5°C, Parties have recognised **the need to limit the temperature increase to 1.5°C** (although it is widely recognised that damage will still be caused with a rise of 1.5°C).¹⁰ Therefore, the effective temperature goal under Article 2(1)(a) of the Paris Agreement, as informed by the best available science, is to limit the global average temperature rise to 1.5°C (as opposed to 2°C). This is the minimum goal necessary to prevent the most dangerous anthropogenic interference with the climate system pursuant to Article 2 of the UNFCCC which provides the overall objective for the international climate regime.¹¹

⁹ Mauritius Written Statement, paras. 83-85.

¹⁰ See *e.g.* the Sharm el-Sheikh Implementation Plan, adopted at the 27th UNFCCC Conference of the Parties on 20 November 2022 (hereinafter “**Sharm el-Sheik Implementation Plan**”), at para. 4, available at: <https://unfccc.int/documents/624444> (last accessed 10 August 2024). See further: Mauritius Written Statement, para. 101.

¹¹ Participants supporting 1.5°C as the minimum temperature goal in their Written Statements include: Bangladesh (paras. 135-139), Chile (para. 89), Colombia (para. 3.34), Grenada (para. 35), Kenya (para. 5.41), Liechtenstein (para. 73), Madagascar (paras 25 & 42), Mexico (para. 50), Micronesia (para. 35), Namibia (paras. 46 & 81), Seychelles (para. 91), Sierra Leone (para. 3.129), Singapore (para. 3.30), Spain (para. 7), St Lucia (para. 53), Timor-Leste (para. 100), Tonga (para.

- b. Importantly, many participants have highlighted the high risk of catastrophic irreversible harm if the 1.5°C temperature goal is exceeded. The scale of the difference between limiting the rise to 1.5°C as opposed to 2°C is starkly demonstrated by the IPCC. To take just one example of what is at stake:

“Limiting warming to 1.5°C, instead of 2°C, could result in around 420 million fewer people being frequently exposed to extreme heatwaves, and about 65 million fewer people exposed being to exceptional heatwaves, assuming constant vulnerability (*medium confidence*).”¹²

Parties to the UNFCCC and the Paris Agreement have expressed serious concerns about the very real risk of crossing tipping points.¹³ Many participating States and organisations have highlighted this risk, addressed below at paragraphs 16-22, 36, 105 and 129.¹⁴

- c. The ability to meet the temperature goal is constrained by the cumulative amount of GHG emissions in the atmosphere, generally referred to as the “carbon budget”. The IPCC and UNEP have indicated that the size of the available carbon budget is rapidly diminishing, and this has direct implications for the depth and scale of GHG reductions

141), Tuvalu (para. 111), Vanuatu (paras. 400-405), Vietnam (para. 19), the African Union (para. 101), the IUCN (paras. 34 & 111-113) and COSIS (paras. 106-114).

¹² 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 10 August 2024) (hereinafter “**SR1.5**”), Chapter 3, pp.177-178. As to the IPCC’s use of “confidence” and “probability” assessments, see: Mauritius Written Statement para. 51.

¹³ See *e.g.* Sharm el-Sheik Implementation Plan, para. 5.

¹⁴ See *e.g.* the Written Statements of: Bahamas (para. 71), Barbados (paras. 90-91), Kenya (para. 3.17), Pakistan (para. 5(c)), Solomon Islands (paras. 47-51), Micronesia (paras. 32-35), Vanuatu (para. 405), COSIS (para. 176) and the African Union (para. 97(a)).

(pathways) required in order to meet the temperature goal.¹⁵ At the 28th Conference of the Parties (“COP”), Parties expressed their concern that:

“...the carbon budget consistent with achieving the Paris Agreement temperature goal is now small and being rapidly depleted...”¹⁶

The IPCC has noted 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.”¹⁷

- d. Together with many other participants, Mauritius has highlighted the importance of the emissions gap and the production gap in showing how much more needs to be done in order to meet the international climate goals (see further paragraphs 49, 121(c-d), 124 & 127 below).¹⁸ These gaps are addressed annually in reports published by UNEP. The most recent Emissions Gap Report titled ‘*Broken Record*’ confirms that: “[t]he world is witnessing a disturbing acceleration in the number, speed and scale of broken climate records”, and that these are accompanied by devastating extreme events.¹⁹ The 2023 UNEP Production Gap Report (“**UNEP PGR**”) underscores that: “[c]ontinued

¹⁵ Mauritius Written Statement, paras. 74-76.

¹⁶ UNFCCC, First Global Stocktake (13 December 2023), para. 25, available at: https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf (last accessed 10 August 2024) (hereinafter “**First Global Stocktake**”).

¹⁷ IPCC, “Synthesis Report of the Sixth Assessment Report” (2023), Summary for Policymakers, B.6, available at: <https://www.ipcc.ch/report/sixth-assessment-report-cycle/> (last accessed 10 August 2024) (hereinafter “**AR6 SYR**”). See also: Mauritius Written Statement, para. 76.

¹⁸ Mauritius Written Statement, paras. 77-82.

¹⁹ UNEP, Emissions Gap Report (2023), “Broken Record”, p. 1, available at: <https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y> (last accessed 10 August 2024). See also: Mauritius Written Statement, para. 78.

production and use of coal, oil, and gas are not compatible with a safe and liveable future.”²⁰ UNEP’s analysis, which draws directly on the science presented by the IPCC, provides the clearest indication of the catastrophe facing life on this planet if current policies on fossil fuel production are maintained. As the IPCC confirmed in its Sixth Assessment Report (“**AR6**”), there is a rapidly closing window within which States can act on the basis of the science to prevent further catastrophic harm. This provides the context for identifying and interpreting the legal obligations to be considered by the Court.²¹

- e. Although much is known about the risks posed by differing levels of temperature rise, there remains uncertainty as to whether certain temperature rises could in turn trigger even higher temperature rises because of what are commonly referred to as “feedback loops”. The IPCC has noted that warming above 4°C could occur if climate sensitivity or carbon cycle feedbacks are higher than the best estimate (*high confidence*).²² In such circumstances, the precautionary principle, to which many participants have referred, is clearly relevant (see paragraphs 105-107 below).

²⁰ UNEP, Production Gap Report (2023), “Phasing down or phasing up?”, p. 8 (hereinafter “**UNEP PGR**”), available at:

https://productiongap.org/wp-content/uploads/2023/11/PGR2023_ExecSum_web.pdf (last accessed 10 August 2024). See also: Mauritius Written Statement, para. 81.

²¹ Mauritius notes that ITLOS has confirmed that assessments of the IPCC relating to climate-related risks and climate change mitigation deserve particular consideration (ITLOS Advisory Opinion, para. 208).

²² IPCC, Working Group III, “Mitigation of Climate Change”, Sixth Assessment Report (hereinafter “**AR6**”), Summary for Policymakers (hereinafter “**SPM**”), C.1.3, available at: https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf (last accessed 10 August 2024).

- f. Notwithstanding the consensus as to the science and almost universal adherence to the international climate goals, the world is not on track to prevent dangerous climate change. This central fact is an essential element for the interpretation of legal obligations. Concern as to this key issue has been expressed with increasing desperation by the international scientific community, as well as vulnerable States.
16. All of these indications from the best available science confirm the urgency of taking action if catastrophic climate change, entailing irreversible harm, is to be averted. Those who acknowledge the importance of the science but do not refer to these specific elements tend to argue for a more gradualist approach, one that does not take into account the situation of grave urgency. In light of the rapidly diminishing carbon budget, the existence of wide emissions and production gaps, and the risks posed by the crossing of tipping points and feedback loops, States' actions must, as a matter of international law, be informed by the quantified emission pathways and scenarios presented by the IPCC as those necessary to achieve the temperature goal.²³
17. A further key area of focus in the IPCC's AR6 is the fact that climate change impacts and risks are becoming increasingly complex and more difficult to manage. The IPCC has noted that:

“Multiple climate hazards will occur simultaneously, and multiple climatic and non-climatic risks will interact, resulting in compounding overall risk and risks cascading across sectors and

²³ See ITLOS Advisory Opinion para. 222: “...the temperature goal and the timeline for emission pathways set out in the Paris Agreement inform the content of necessary measures to be taken under article 194, paragraph 1, of the Convention.”

regions. Some responses to climate change result in new impacts and risks. (*high confidence*)”²⁴

18. The present and impending global consequences of climate change, as determined by the IPCC, are summarised by Dr Hansen as follows:

- “• Climate change has caused local species losses, increases in disease, mass mortality events of plants and animals, resulting in the first climate driven extinctions, ecosystem restructuring, increases in areas burned by wildfire, and declines in key ecosystem services.
- Widespread and severe loss and damage to human and natural systems are being driven by human-induced climate changes increasing the frequency and/or intensity and/or duration of extreme weather events, including droughts, wildfires, terrestrial and marine heatwaves, cyclones (*high confidence*), and flood (*low confidence*). Extremes are surpassing the resilience of some ecological and human systems.
- Extreme events and underlying vulnerabilities have intensified the societal impacts of droughts and floods and have negatively impacted agriculture, energy production and increased the incidence of water-borne diseases. Economic and societal impacts of water insecurity are more pronounced in low-income countries than in the middle- and high-income ones.
- Over 9 million climate-related deaths per year are projected by the end of the century, under a high emissions scenario and accounting for population growth, economic development, and adaptation.
- In many regions, the frequency and/or severity of floods, extreme storms, and droughts is projected to increase in coming decades, especially under high-emissions scenarios, raising future risk of displacement in the most exposed areas. Under all global warming levels, some regions that are presently densely populated will become unsafe or uninhabitable.

²⁴ IPCC, Working Group II, “Impacts, Adaptation and Vulnerability”, AR6, SPM, B.5, available at: <https://www.ipcc.ch/report/ar6/wg2/> (last accessed 10 August 2024).

- Approximately 3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change. A high proportion of species is vulnerable to climate change. Human and ecosystem vulnerability are interdependent.”²⁵

19. The continuous re-evaluation of relevant scientific, technical and economic considerations is recognised as necessary in the UNFCCC.²⁶ Such re-evaluation is relevant to:

- a. the recognition that the 1.5°C (minimum) temperature goal is consistent with the overall purpose of the climate regime and required to prevent dangerous climate change (Article 2 of the UNFCCC); and
- b. the urgency with which GHG emission reductions are required and the need to transition away from fossil fuels as rapidly as possible.

20. The science provides a clear basis for the level of urgency required, and the legal framework is designed to meet this challenge by requiring a level of progressive ambition on the part of States that corresponds to the scale of the risk posed by climate change.²⁷ In tacit recognition of this, those who seek to sidestep these obligations ignore the urgency and the scale of risk, as evidenced by the science (as can be seen in some of the Written Statements submitted in these proceedings).

21. Notwithstanding the consensus as to the importance of the science in addressing the legal questions put to the Court, there is a clear fault line

²⁵ Expert Report of Dr James E. Hansen, p. 2, Annex 1.

²⁶ UN Framework Convention on Climate Change (hereinafter “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”).

²⁷ Mauritius Written Statement, paras. 83-85.

running through the Written Statements. None of the participants in these proceedings have taken a position of climate denial, seeking to disavow the scientific evidence as to the *existence* of climate change. However, a small number of participants have sought to sidestep the *urgency* which is an integral feature of the scientific evidence presented by the IPCC. Against this, many participants readily acknowledge, not only the science establishing the existence of climate change and the key role played by GHG emissions, but also, and crucially, the urgency of closing the current gaps and the scale of potential harm if the 1.5°C temperature goal is not met.²⁸

22. Mauritius submits that a failure to engage with the urgent need to alter the *status quo* represents a failure to engage with the science, and it implies (erroneously) that deferring deeper emission cuts and a swifter transition away from fossil fuels is consistent with climate goals and obligations. However, this form of *climate deferral* puts those very goals at grave risk. As noted by Dr Hansen in his Expert Report

“The situation is urgent. More delay will elicit additional warming, amplified risk for natural and human systems, and increased likelihood of crossing tipping points in the global system.”²⁹

23. Climate deferral risks the overshooting of the temperature goal, the crossing of irreversible planetary tipping points and the escalation of catastrophic harm to a terrifying degree. According to the IPCC:

²⁸ See *e.g.* the Written Statements of: Bahamas (para. 70), Colombia (paras. 2.4-2.13), Grenada (para. 27), Kenya (paras. 3.14-3.17), Nauru (para. 11), New Zealand (para. 5), Peru (para. 63), Romania (para. 39), St Vincent and the Grenadines (para. 51), Tuvalu (paras. 22-24 & 62), Uruguay (paras. 24-25 & 33), Vanuatu (paras. 94-101) and the African Union (para. 7).

²⁹ Report of Dr James E. Hansen, p. 3 (Annex 1).

“Without a strengthening of policies beyond those that are implemented by the end of 2020, GHG emissions are projected to rise beyond 2025, leading to a median global warming of 3.2 [2.2 to 3.5] °C by 2100 (*medium confidence*).”³⁰

24. The world at 3.2°C is not one in which life as we know it today can be sustained. This is confirmed by the IPCC:

“At global warming of 3°C, additional risks in many sectors and regions reach high or very high levels, implying widespread systemic impacts, irreversible change and many additional adaptation limits... (*high confidence*)”³¹

25. Climate deferral flies in the face of the science, and therefore, as set out below, it is not permitted by international law.

B. PARIS AGREEMENT AS A STRENGTHENED RESPONSE

26. As Mauritius and many others have pointed out, the Paris Agreement is explicitly designed as a strengthened response to the threat of climate change, in circumstances where the international community recognised that it was not on track to avert that threat. Kenya has aptly described the Paris Agreement as signalling “‘a tectonic shift’ in the international regulation of climate change”.³² The fact that States, when adopting the Paris Agreement, emphasised the urgent need to close the gap between what was required to

³⁰ IPCC, Working Group III, “Mitigation of Climate Change”, AR6, SPM, C.1 (footnotes omitted), available at: https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf (last accessed 10 August 2024).

³¹ IPCC, AR6 SYR (Longer Report), p. 37, available at: https://report.ipcc.ch/ar6syrr/pdf/IPCC_AR6_SYR_LongerReport.pdf (last accessed 10 August 2024).

³² Written Statement of Kenya, para. 5.35.

prevent dangerous climate change, and what had been achieved thus far, is a critical context for the interpretation of its provisions.³³

27. As expressly stated in Article 2(1), the Paris Agreement is designed to provide a more effective and ambitious response to the urgent threat posed by dangerous climate change, while respecting and developing the core principles of the UNFCCC.³⁴ In this context, many participants have highlighted the explicit requirements for Parties to demonstrate the ambition and fairness of their NDCs as reflected in the decision by which the Paris Agreement was adopted, as well as in the express provision for transparency in Articles 4(13) and 13.³⁵
28. The Paris Agreement strengthened response includes the following key elements:
 - a. an express temperature goal (Article 2(1)(a));
 - b. a greater and explicit focus on adaptation and finance flows (Articles 2(1)(b) & (c), 7 and 9); and

³³ UNFCCC, 21st Conference of the Parties, Adoption of the Paris Agreement (12 December 2015), FCCC/CP/2015/L.9/Rev.1, (hereinafter “**COP21 Adoption of the Paris Agreement**”), Preamble, 9th Recital, available at: <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf> (last accessed 16 February 2024): “*Emphasizing* with serious concern the urgent need to address the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”.

³⁴ Paris Agreement, Article 2(1): “This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty...”. See also Articles 3 and 4(3) of the Paris Agreement.

³⁵ See *e.g.* the Written Statement of New Zealand, paras. 58-59.

- c. a timetable for securing the peaking of emissions and what is commonly referred to as “net zero” (Article 4(1), representing the deep cuts in emissions that are required in order to meet the Article 2 goals and those of the UNFCCC).
29. The momentum of this strengthened response is to be preserved through the mechanism of the Global Stocktake (“GST”), the outcome of which:
- “...shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of [the Paris] Agreement, as well as in enhancing international cooperation for climate action.”³⁶
30. Many participants have referred to the outcome of the GST, adopted in 2023 at COP28 in Dubai, in which the Parties recognised: “the need for deep, rapid and sustained reductions in [GHG] emissions in line with 1.5°C pathways.”³⁷ This requires, *inter alia*, transitioning 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.”³⁸ The Conference of the Parties has repeatedly referred to urgency and 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

³⁶ Paris Agreement, Article 14(3).

³⁷ UNFCCC, First Global Stocktake (13 December 2023), available at: https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf (last accessed 10 August 2024) (hereinafter “GST”). See *e.g.* the Written Statements of: Antigua and Barbuda (para. 284), Grenada (para. 31), Latvia (para. 18), Indonesia (paras. 58-59), the Netherlands (para. 3.13), the United Kingdom (para. 62) and the European Union (paras. 162-163).

³⁸ GST, para. 28(d).

within reach and to address the climate crisis in this critical decade”.³⁹

31. Mauritius agrees with the many participants who have pointed to the dynamic nature of the international climate regime and the elements which entail an accelerated effort to meet an urgent threat.⁴⁰ This dynamic element is indicated in the express provision for ambition and progression, and the requirement to act on the basis of the best available science (addressed in paragraphs 9-25 above).⁴¹

C. DUE DILIGENCE

32. A great majority of participants in these proceedings have referred to the obligation of due diligence in their submissions.⁴² The obligation of due diligence in relation to climate change arises under relevant treaty regimes, including the UNFCCC, the Paris Agreement and UNCLOS, as well as under customary international law, principally through the duty of prevention. Due

³⁹ *Ibid.*, para. 5.

⁴⁰ See *e.g.* the Written Statements of: Bahamas (para. 70), Colombia (paras. 2.4-2.13), Grenada (para. 27), Kenya (paras. 3.14-3.17), Nauru (para. 11), New Zealand (para. 5), Peru (para. 63), Romania (paras. 38-39), St Vincent and the Grenadines (para. 51), Tuvalu (paras. 22-24 & 62), Uruguay (paras. 24-25 & 33), Vanuatu (paras. 94-101) and the African Union (para. 7).

⁴¹ Paris Agreement, Articles 3, 4, 7(5) and 14(1).

⁴² See *e.g.* the Written Statements of: Albania (paras. 71-82), Antigua and Barbuda (paras. 305-337), Bangladesh (paras. 90-95), Belize (para. 35), Burkina Faso (para. 165), Cameroon (para. 13), Chile (para. 89), China (para. 131), Colombia (paras. 3.13-3.30), Democratic Republic of the Congo (paras. 134-165), Costa Rica (paras. 37-39), Denmark, Finland, Iceland, Norway & Sweden (paras. 73-76), Ecuador (para. 3.23), Egypt (paras. 97-111), Ghana (para. 26), Grenada (para. 41), Kenya (para. 5.9-5.13), Latvia (paras. 46 & 52-53), Marshall Islands (paras. 23 & 27), Mexico (paras. 42-48), Nauru (paras. 28-33), the Netherlands (para. 3.66), the Philippines (para. 62-63), Romania (paras 75 & 90-104), Sierra Leone (para. 3.13-3.34), Seychelles (paras. 96, 101 & 124), Singapore (para. 3.2-3.20), Solomon Islands (para. 153-160), South Africa (para. 77), Sri Lanka (paras. 94-96), St Vincent and the Grenadines (para. 108), Switzerland (para. 47), Tonga (paras. 146-154), Vanuatu (paras. 235 & 243), Vietnam (paras. 25 & 28), the African Union (paras. 55, 90, 95-96 & 101), the European Union (paras. 81-87), OACPS (para. 96), and IUCN (paras. 342-349).

diligence is central to the performance of specific obligations, including those relating to environmental impact assessment (“EIA”), strategic environmental assessment, and the scrutiny of decisions relating to finance flows and adaptation.

33. In its Advisory Opinion, ITLOS stressed that:

“The content of an obligation of due diligence should be determined objectively under the circumstances, taking into account relevant factors. In many instances, an obligation of due diligence can be highly demanding.”⁴³

34. Significantly, ITLOS rejected the argument of some States that due diligence obligations are only ever obligations of conduct. Rather, the Tribunal determined that due diligence obligations can be obligations of result where the relevant legal obligation requires States to achieve a particular result.⁴⁴ The Tribunal emphasised that due diligence is a “variable concept” which evolves over time and depends to a significant degree on “scientific and technological information, relevant international rules and standards, the risk of harm and the urgency involved”.⁴⁵ The work of the IPCC was relied upon to reach the conclusion that the standard is a “stringent” one in light of the urgency of achieving deep cuts to GHG emissions.⁴⁶ The stringency of the obligation in the context of transboundary pollution was found to be even higher.⁴⁷ ITLOS further stated that the implementation of the duty of due diligence depends on States’ capabilities and resources, and those with

⁴³ ITLOS Advisory Opinion, para. 257.

⁴⁴ *Ibid.*, para. 238.

⁴⁵ *Ibid.*, para. 239. See also: Mauritius Written Statement, paras. 83-85, 154(d) & 193-195.

⁴⁶ ITLOS Advisory Opinion, para. 241.

⁴⁷ ITLOS Advisory Opinion, para. 256: (“With respect to transboundary pollution affecting the environment of other States, the standard of due diligence can be even more stringent”).

greater resources have a duty to do more than States with fewer resources.⁴⁸ The reduction of GHG emissions was found to be a measure which was necessary if States are to comply with their due diligence obligations.⁴⁹

35. Mauritius submits that what is true in relation to the due diligence required under UNCLOS is equally the case under UNFCCC and the Paris Agreement. The factors relevant to the conduct of due diligence under the Paris Agreement include:

- a. the long-term temperature goal;
- b. the express requirements for ambition and progression, which reflect the urgent need to close the emissions and production gaps; and
- c. the principle of equity.

36. These elements, in the light of the best available science, indicate that the required standard of due diligence under the Paris Agreement is stringent. Many States have recognised that the obligations of due diligence relevant to climate change are informed by the evolving science.⁵⁰ The science informs the conduct of due diligence obligations under all branches of international law relevant to climate change. The rate and scale of GHG emissions cuts required to remain within the carbon budget and avoid overshoot are clearly set out in the IPCC reports. Many participants have argued for an exacting standard of due diligence, to avoid the grave risks of overshoot of targets and

⁴⁸ *Ibid.*, para. 241. See also: Mauritius Written Statement, paras. 118-121.

⁴⁹ ITLOS Advisory Opinion, para. 243.

⁵⁰ See *e.g.* the Written Statements of: Albania (paras. 72-82), Ecuador (paras. 3.23-3.24), Sierra Leone (para. 3.14), Singapore (para. 3.8), Solomon Islands (para. 160), Switzerland (para. 42) and Thailand (para. 14).

tipping points.⁵¹ In the context of due diligence, good faith requires that investigations, assessments and actions must be informed by the best available science and in full recognition of the urgency and scale of the risks posed.

37. The principle of equity also informs the conduct of due diligence and requires that developing countries are provided with the necessary support to conduct effective due diligence. Equity and the principle of CBDRRRC are addressed in Mauritius' Written Statement, and at paragraphs 59-73 below.⁵²
38. As many participants have indicated, the due diligence obligation means that States are obliged by international law to regulate the conduct of private actors – including the goods they manufacture and the services they provide – who are subject to their jurisdiction and control, by putting in place laws, policies and regulations, and to enforce them with the necessary vigilance.⁵³ As noted by ITLOS: “[t]his obligation of due diligence is particularly relevant in a situation in which the activities in question are mostly carried out by private persons or entities.”⁵⁴

⁵¹ See *e.g.* the Written Statements of: Seychelles (para. 96, “high standard of due diligence”), Sierra Leone (para 3.41, by reference to the principle of “highest possible ambition”), IUCN (para. 39(i), “a significantly heightened level of due diligence”) and OACPS (para. 100, “stringent standard”).

⁵² Mauritius Written Statement, paras. 118-121.

⁵³ See *e.g.* the Written Statements of: Bahamas (paras. 191-197), Barbados (para. 163), Costa Rica (para. 39), Dominican Republic (paras. 4.59 & 5.1), Ecuador (paras. 3.64-3.65, in the context of the ‘polluter pays’ principle), Egypt (paras. 244-247), Kenya (para. 6.104), Namibia (paras. 132-134), Solomon Islands (para. 200), the African Union (para. 208), and IUCN (para. 554).

⁵⁴ ITLOS Advisory Opinion, para. 236.

39. Mauritius addressed the scope of this duty in its Written Statement,⁵⁵ and in the light of the submissions made by other participants, notes the following:

1. Temperature goal

40. As explained in paragraphs 15-28 above, in light of the best available science it is clear that the international temperature goal is pivotal to the delivery of all international climate goals, in particular the overall objective which is the prevention of dangerous anthropogenic interference with the climate system (Article 2 UNFCCC). As such, the 1.5°C temperature goal directly informs the duty of due diligence.⁵⁶ This has concrete and measurable implications for compliance with the duty of due diligence: what is ‘due’ is to be assessed in light of the science and the measurable steps required to meet the temperature goal.⁵⁷
41. Mauritius does not agree with those participants who have described the temperature goal as aspirational or hortatory. Bearing in mind the scale of additional and irreversible harm which will result if the 1.5°C goal is overshoot, and the measurable actions which have been identified as necessary to give the best chance of meeting it, the 1.5°C temperature goal clearly represents a viable and concrete standard framing the conduct of Parties to the Paris Agreement.
42. Mauritius agrees with those who submit that the goal of reducing the global average temperature as required by Article 2(1)(a) lies at the core of all obligations of the Paris Agreement, with consequences under general

⁵⁵ Mauritius Written Statement, paras. 189-199.

⁵⁶ See also: ITLOS Advisory Opinion, para. 222.

⁵⁷ As to the relationship between the 1.5°C goal and due diligence, see the Written Statements of the Democratic Republic of the Congo (para. 208-210) and the African Union (para. 101).

international law and other specific legal regimes. It sets a binding goal and quantifiable benchmark that all Member States are obliged to achieve jointly.⁵⁸ Mauritius submits that the temperature goal provides an objective standard for measuring compliance with the good faith performance of specific obligations under the Paris Agreement, including those contained in Articles 4 and 9. In relation to Article 4 of the Paris Agreement, it is notable that the very first words of sub-paragraph (1) refer directly to the long-term temperature goal which thus frames the subsequent requirements as to the peaking of emissions and the achievement of net zero, as well as the associated obligations and requirements which follow in the subsequent text of Article 4:

*“In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake 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 greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.”*⁵⁹

43. Article 4(5) of the Paris Agreement provides for support to be provided to developing countries, including financial support “for the implementation of this Article” which again ties such support to the purpose of achieving the long-term temperature goal. Finance related obligations in Article 9 are considered in paragraphs 74-79 below, but it is important also to view those obligations in the light of the long-term temperature goal and the need for

⁵⁸ See e.g. the Written Statements of: Germany (para. 43), Ecuador (para. 3.77), Kenya (para. 5.36), Madagascar (paras. 25 & 42), Romania (para. 74), and IUCN (paras. 108-123).

⁵⁹ Paris Agreement, Article 4(1) (emphasis added).

consistency with a low emissions pathway and climate resilient development (Article 2(1)(c) of the Paris Agreement).

2. Ambition and progression

44. The express language of relevant treaties frames the conduct of due diligence. Many participants have noted the references to ambition and progression in Article 4(3) of the Paris Agreement.⁶⁰ Mauritius considers that the language relating to progression and ambition falls to be interpreted by reference to the object and purpose of the Paris Agreement (Article 2), together with the factual and scientific context of the current urgent threat. The requirements of “highest possible ambition” and “progression” in Article 4(3) of the Paris Agreement represent specific expressions of the general duty of good faith reflected in Articles 26 and 31(1) of the Vienna Convention on the Law of Treaties (“VCLoT”). These requirements are directly relevant to the performance of specific obligations under the Paris Agreement, including the conduct of due diligence. As some have noted, the language of Article 4(3) of the Paris Agreement (“will”) is stronger than that used elsewhere (*e.g.* “should” in Article 4(4)).

⁶⁰ See *e.g.* the Written Statements of: Antigua and Barbuda (para. 358), Australia (para. 2.23), Barbados (para. 207), China (paras. 47, 49, 54 & 56), Colombia (para. 3.41), Ecuador (para. 3.81), Grenada (para. 31), Micronesia (para. 91), Marshall Islands (paras. 17 & 20), Samoa (para. 169), Seychelles (paras. 72-77 & 150), St Lucia (para. 54), Tonga (para. 153), Vanuatu (paras. 319, 411, 414, 435, 441, 511 & 579), the African Union (paras. 104, 113, 132 & 205), the European Union (paras. 144-154), and IUCN (paras. 37, 88, 93, 129, 132, 136-137, 140, 151, 303 & 370-376). Article 4(3) of the Paris Agreement provides that: “Each Party’s successive [NDC] will represent a progression beyond the Party’s then current [NDC] and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

45. As many participants have also noted, the reference to CDBRRC in Article 4(3) of the Paris Agreement is a recognition that States should bear a fair share of the mitigation burden, taking into account equitable considerations.

3. Nationally Determined Contributions (NDCs)

46. Most participants in these proceedings have considered the scope of States' obligations relating to NDCs under the Paris Agreement, in particular relating to mitigation of GHG emissions. Some have argued that elements of the requirements relating to NDCs are non-binding, albeit that they must be conducted in good faith.⁶¹ Mauritius submits that, while States enjoy a broad degree of discretion as to the precise framing and content of their NDCs, that discretion is not unlimited. Article 4(2) of the Paris Agreement mandates that:

“Each Party shall prepare, communicate and maintain successive [NDCs] that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.”⁶²

47. This necessarily entails a legal obligation to prepare, communicate and maintain NDCs and to do so in good faith with the aim of achieving the objectives therein. Good faith in this context is associated with acting on the basis of the highest possible ambition and in the light of the best available science, taking into account CDBRRC and obligations to provide support (Article 9).
48. The exercise of discretion is framed by the principles laid down in the UNFCCC and Paris Agreement, including precaution, prevention and CDBRRC, together with ambition and progression. Mauritius agrees with

⁶¹ See *e.g.* the Written Statement of New Zealand, para. 54.

⁶² Paris Agreement, Article 4(2).

Ecuador and others that States' NDCs must reflect their highest possible ambition and be consistent with achieving the long-term temperature goal in the light of the best available science.⁶³ This has concrete implications given that progress, or lack of it, towards achieving the temperature goal is measurable at the global level and is accounted for in the mitigation pathways identified by the IPCC.⁶⁴ Taking into account the obligation of developed States to take the lead in reducing emissions, and the principle of CBDRRC more broadly (as discussed at paragraphs 59-73 below), the temperature goal and global carbon budget have specific measurable implications for an assessment as to whether NDCs are consistent with these requirements.

49. Mauritius submits that any regression of NDCs – such as a reduction in the ambition of emission reduction targets – would breach the requirements of Article 4(3) of the Paris Agreement. Furthermore, existing emission and production gaps mean that regressive State action – for example to encourage new fossil fuel production – whether expressly reflected in the NDC or (as is more likely) simply left unaddressed, would undermine the achievement of the temperature goal and is therefore inconsistent with the requirements of Articles 3 and 4 of the Paris Agreement. Mauritius agrees with the many participants who affirm that NDCs are informed by principles of equity and CBDRRC, in relation to all obligations.⁶⁵

⁶³ Written Statement of Ecuador, para. 3.81.

⁶⁴ The IPCC has stated that: “A substantial ‘emissions gap’ exists between global GHG emissions in 2030 associated with the implementation of NDCs 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*)” (footnote omitted). See: IPCC, AR6 SYR, SPM, A.4.3, available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf (last accessed 10 August 2024).

⁶⁵ See *e.g.* the Written Statement of Antigua and Barbuda (para. 276).

4. Environmental Impact Assessment

50. Having regard to the transparency obligations laid down in the Paris Agreement,⁶⁶ and the nature of information required, due diligence requires States to assess all activities that may cause climate change, and to do so prior to the authorisation of the activity. This also means that all potential emissions, including those referred to as “scope 3 emissions”, must be quantified and assessed as part of the cumulative impacts of relevant projects.⁶⁷

51. In this regard, ITLOS has determined that the provision for EIA under UNCLOS (Article 206) encompasses:

“Any planned activity, either public or private, which may cause substantial pollution to the marine environment or significant and harmful changes thereto through anthropogenic GHG emissions, including cumulative effects.”⁶⁸

52. Mauritius submits that the requirement to assess cumulative effects applies equally to obligations to conduct EIAs under the UNFCCC and Paris Agreement and/or customary international law, particularly in light of the importance of cumulative effects in the context of climate change.

⁶⁶ Paris Agreement, Articles 4(8) & (13), 6(2), 7(5), 9(7), 11(1), 13 and 15(2).

⁶⁷ Written Statement of Mauritius, para. 195. See also: Written Statement of Belize, paras. 37-63. “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). See also the recent judgments of the UK and Norwegian Courts in relation to the need to include scope 3 emissions in EIA: *Greenpeace Nordic v The State of Norway* (represented by the Ministry of Petroleum and Energy), Case No 23-099330TVI-TOSL/05 and *R (Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20.

⁶⁸ ITLOS Advisory Opinion, para. 367.

D. PHASING OUT FOSSIL FUELS

53. As to the urgent need to make deep reductions in GHG emissions in order to meet the temperature goal, the science is clear: fossil fuels must be phased out and States are obliged as a matter of general international law to transition away from their use. In its *Net Zero by 2050* Report, the IEA underlined that:

“Beyond 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.”⁶⁹

54. As noted by Dr Hansen, fossil fuel emissions increased by 0.9% in 2022 and again by 1.1% in 2023.⁷⁰ The safe level of atmospheric CO₂ has already been exceeded.⁷¹ According to the UNEP, “the world’s governments, still, in aggregate, plan on increasing coal production out to 2030 and increasing oil and gas production out to at least 2050.”⁷² Dr Hansen concludes that: “[t]hese planned fossil fuel production increases are incompatible with an international commitment to prevent dangerous climate change.”⁷³

55. The urgent need to transition away from fossil fuels has been acknowledged with increasing clarity by Parties to the Paris Agreement, including in the GST.⁷⁴ In addition to “accelerating action in this critical decade, so as to

⁶⁹ 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 10 August 2024), p.13.

⁷⁰ Report of Dr James E. Hansen, p. 1, Annex 1.

⁷¹ *Ibid.*, p. 2.

⁷² UNEP PGR, p. vii.

⁷³ Report of Dr James E. Hansen, p. 3, Annex 1.

⁷⁴ GST, para 5: “*Expresses serious concern* that 2023 is set to be the warmest year on record and that impacts from climate change are rapidly accelerating and *emphasizes* the need for urgent action and support to keep the 1.5 °C goal within reach and to address the climate crisis in this critical decade.” See also paras. 15-17.

achieve net zero by 2050 in keeping with the science”, the GST also calls for “[a]ccelerating efforts towards the phase-down of unabated coal power” and the “[p]hasing out of inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible.”⁷⁵

56. The conclusions of the GST also note that “transitional fuels can play a role in facilitating the energy transition while ensuring energy security”.⁷⁶ Any transition must ensure that States remain within the existing global carbon budget. Effective implementation of the Paris Agreement in good faith means that the phasing out of fossil fuels cannot be deferred in such a way as to threaten achievement of the temperature goal and related goals. The obligation of good faith requires the application of treaties in a manner that does not frustrate their object and purpose.⁷⁷ In this context, as many participants have highlighted, States’ obligations to reduce GHG emissions under Article 4 of the Paris Agreement must contribute to the collective achievement of the temperature goal. Mauritius adds, however, that Parties must also ensure that other actions, including the channelling of finance flows, do not negate the efforts made by Parties in limiting their national GHG emissions.⁷⁸ Finance is addressed below at paragraphs 74-79.
57. In light of Articles 4(9) and 14(3) of the Paris Agreement, Parties are required to ensure that their NDCs are informed by the outcome of the GST. Furthermore, Parties have agreed that in their 2025 NDCs, they must provide information on how the GST outcome has informed the preparation of their

⁷⁵ GST, para. 28. See also Mauritius Written Statement, para. 127.

⁷⁶ GST, para. 29.

⁷⁷ See the Written Statement of New Zealand, para. 51.

⁷⁸ Article 2(1)(c) of the Paris Agreement.

updated NDCs.⁷⁹ In 2025, all Parties must communicate an NDC that contains a country-specific breakdown of the global efforts on renewable energy, transitioning away from fossil fuels, protecting nature, oceans and biodiversity, and more. It follows that the conclusions of the GST relating to fossil fuels must be taken into account by Parties.

58. Most participants in these proceedings have acknowledged the need to transition away from fossil fuels.⁸⁰ This general and explicit acknowledgment must be reflected in the analysis of relevant legal obligations, taking fully into account the scale and urgency of the threat posed by continued GHG emissions to international climate goals. As explained in Mauritius' Written Statement, the following obligations are directly relevant to the phasing out of fossil fuels:
- a. the need to phase out fossil fuels on the basis of the science presented by the IPCC and UNEP as regards the scale of reductions required and the timescale for implementing those reductions, having regard to the rapidly diminishing carbon budget;
 - b. the obligation to ensure that finance flows are consistent with low emission pathways, recognising that, as indicated by UNEP and the

⁷⁹ UNFCCC, Decision 4/CMA.1, "Further guidance in relation to the mitigation section of decision 1/CP.21" (19 March 2019), UN Doc FCCC/PA/CMA/2018/3/Add.1, Annex I, para 4(c), available at: https://unfccc.int/sites/default/files/resource/4-CMA.1_English.pdf (last accessed 10 August 2024).

⁸⁰ See *e.g.* the Written Statements of: Albania (para. 78), Antigua and Barbuda (paras. 117 & 481-482), Australia (para. 2.53), Bahamas (para. 184), Bangladesh (para. 10), Colombia (paras. 2.38 & 4.10), Costa Rica (paras. 102 & 110), Democratic Republic of the Congo (paras. 211-212), Dominican Republic (para. 4.62), Egypt (para. 137), Kenya (paras. 6.120-6.124), Ecuador (para. 3.30), Solomon Islands (para. 18), St Vincent and the Grenadines (para. 51), Tuvalu (paras. 7, 68 & 105), United Arab Emirates (para. 61), United States of America (para. 3.39), Vanuatu (para. 511), European Union (para. 162), Melanesian Spearhead Group (para. 315), the African Union (paras. 107-108), COSIS (paras. 56-62), OACPS (para. 119) and IUCN (Appendix II, paras. 17-18).

IEA, investment in new fossil fuel production is inconsistent with meeting the Paris temperature goal; and

- c. taking the above obligations into account, States, in particular developed States and major emitters, should refrain from issuing new licences for fossil fuel production.

E. CDDRRC AND EQUITY

- 59. Many participants have pointed out that unequal contributions to GHG emissions and climate change, as well as unequal and unsustainable patterns of consumption, are an important part of the context for considering legal obligations, both under the Paris Agreement itself and under customary international law.⁸¹
- 60. The principle of CDDRRC reflects an acceptance, in accordance with the principle of equity, that the States which have historically benefited from fossil fuel based development have a responsibility to support other States in making a rapid transition away from fossil fuels. As explained in Mauritius' Written Statement, the carbon budget is finite, diminishing and must be shared equitably.⁸² As Thailand states, the best possible efforts of a developing State and a developed State are not the same and this means that the standard of due diligence should exhibit a degree of flexibility for States

⁸¹ See *e.g.* the Written Statements of: Brazil (para. 81), Ecuador (para. 1.9), New Zealand (para. 28(a)), Solomon Islands (para. 66) and Vanuatu (paras. 169-170). Some States have referred to luxury emissions as compared to survival emissions to reflect this inequality, see *e.g.* the Written Statements of China (paras. 30 & 60) and India (para. 37).

⁸² Mauritius Written Statement, paras. 74-82 & 118-121.

to use the “best practicable means at their disposal and in accordance with their capabilities”.⁸³

61. The IPCC has stated that: “[e]quity remains a central element in the UN climate regime, notwithstanding shifts in differentiation between States over time and challenges in assessing fair shares.”⁸⁴ As many participants have highlighted, the inclusion of the text “in the light of national circumstances” in the Paris Agreement introduces a dynamic element as to the requirements imposed on Parties.⁸⁵ However, it is important to note that this language does not undercut the provisions of the UNFCCC and Paris Agreement that impose specific obligations on developed States.
62. The Paris Agreement recognises “the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty”.⁸⁶ The Agreement expressly refers to sustainable development and the need to eradicate poverty as the context for its goals and obligations.⁸⁷ The IPCC has confirmed that exceeding the temperature goal will increase the number of people living in

⁸³ Written Statement of Thailand, para. 20 (by reference to Article 194 of UNCLOS).

⁸⁴ IPCC, AR6 SYR, SPM, C.5.1, available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf (last accessed 11 August 2024).

⁸⁵ See *e.g.* the Written Statements of: China (para. 64), the Netherlands (para. 3.6), New Zealand (para. 47), the European Union (paras. 68, 83, 144, 146, 166, 198-210 & 362) and IUCN (para. 133). Article 4(3) of the Paris Agreement provides that: “Each Party’s successive nationally determined contribution will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

⁸⁶ Paris Agreement, Preamble, 8th recital.

⁸⁷ *Ibid.*, Articles 2(1), 4(1) & 6(8).

poverty and undermine achievement of the Sustainable Development Goals.⁸⁸ Preventing dangerous climate change and achieving sustainable development are therefore not competing goals, as some have argued. In fact, the opposite is the case. The IPCC has concluded with *high confidence* that:

“Accelerated and equitable action in mitigating and adapting to climate change impacts is critical to sustainable development. Mitigation and adaptation actions have more synergies than trade-offs with Sustainable Development Goals...”⁸⁹

63. It follows that climate goals and development goals are necessarily mutually supportive and interdependent.

64. In 2018, the IPCC stated that:

“At approximately 1.5°C of global warming (2030), climate change is expected to be a poverty multiplier that makes poor people poorer and increases the poverty head count [...]. Poor people might be heavily affected by climate change even when impacts on the rest of population are limited.”⁹⁰

65. The eradication of poverty will be jeopardised if the 1.5°C temperature goal is exceeded. That is why the Paris Agreement meshes the eradication of

⁸⁸ 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) (hereinafter “**SR1.5**”), chapter 5, “Sustainable Development, Poverty Eradication and Reducing Inequalities”, available at: <https://www.ipcc.ch/sr15/> (last accessed 11 August 2024).

⁸⁹ IPCC, AR6 SYR, SPM, C.4.

⁹⁰ IPCC, SR 1.5, chapter 3, “Impacts of 1.5°C global warming on natural and human systems”, 3.4.10.1, p. 244, available at: https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Chapter_3_LR.pdf (last accessed 11 August 2024).

poverty and sustainable development with the science-based climate goals. As the IPCC has also confirmed with *high confidence* that:

“Adaptation and mitigation actions that prioritise equity, social justice, climate justice, rights-based approaches, and inclusivity, lead to more sustainable outcomes, reduce trade-offs, support transformative change and advance climate resilient development.”⁹¹

66. The CBDRRC principle requires that, in pursuit of their common aims under Article 2 of the UNFCCC and Paris Agreement, States cooperate and contribute to the shared effort in accordance with their differentiated responsibility and respective capabilities. In complying with their obligations under the Paris Agreement, States are under a duty to allocate the burden of GHG reductions equitably while ensuring that the carbon budget is not exceeded. This has implications for the allocation of support, compensation, technology transfer and potentially for other areas including contributions to the Loss and Damage Fund, debt relief and the terms of trade.⁹²

67. Mauritius notes that in the context of NDCs, Article 4(5) of the Paris Agreement provides that:

“Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.”⁹³

⁹¹ IPCC, AR6 SYR, SPM, C.5.2.

⁹² See: African Leaders Nairobi Declaration on Climate Change and Call to Action (2023), para. 52, available at: https://www.afdb.org/sites/default/files/2023/09/08/the_african_leaders_nairobi_declaration_on_climate_change-rev-eng.pdf (last accessed 11 August 2024). See also the Written Statements of Barbados (paras. 295 & 322) and Kenya (para. 6.123).

⁹³ Paris Agreement, Article 4(5).

68. An assessment of a State's implementation of its obligations must take into account its resources and the extent to which it has received financial and technical support, whilst also recognising that each State has an obligation to act on the basis of its highest possible ambition.
69. Mauritius notes ITLOS' finding that, under UNCLOS, States with greater capabilities and sufficient resources are required to do more than States "not so well placed".⁹⁴ Nonetheless, even the latter are required to do whatever they can in accordance with their capabilities and available resources to prevent, reduce and control marine pollution from anthropogenic GHG emissions.⁹⁵
70. Some argue that the Paris Agreement aims to secure for developing country Parties an equitable share of the "remaining carbon budget".⁹⁶ Mauritius notes that, while science dictates the size of the remaining carbon budget, the principles of equity and CDBRRC cannot expand that budget. Equity and CDBRRC operate to address the iniquities that arise from historic disparities in the share of the budget taken up by States. These principles require developed States to take the lead in cutting emissions, while also providing support for developing States, in particular the most vulnerable, to ensure a just transition and climate resilience. Some States have pointed to a "fair shares" approach under which those States which have already used their "fair share" of emissions space should also discharge their "fair share" of the

⁹⁴ ITLOS Advisory Opinion, para. 241.

⁹⁵ *Ibid.*

⁹⁶ See *e.g.* the Written Statement of United Arab Emirates, para. 149.

effort to address climate change by taking radical and swift action to curb emissions.⁹⁷

71. Mauritius submits that equity, as an integral part of the legal framework, requires a fair allocation of effort within the timeframes and scale of action indicated by the science.⁹⁸ The principle of equity requires that States urgently review the extent to which rising emissions reinforce or perpetuate inequality and unsustainable consumption patterns.
72. The principles of equity and CBDRRC are not merely aspirational. They have real world measurable implications for the implementation of the international climate regime, including in the context of customary international law and other treaty regimes. These two principles inform the following obligations:
 - a. The obligation of developed States to take the lead in mitigation (Article 4(4) of the Paris Agreement): both the UNFCCC and Paris Agreement recognise that enhanced support for developing country Parties will allow for higher ambition in their actions (Article 4(5) of the Paris Agreement). Further, Article 4(7) of the UNFCCC provides that:

“The extent to which developing country Parties will effectively implement their commitments under the

⁹⁷ See *e.g.* the Written Statements of: Egypt (para. 64), Solomon Islands (paras. 98 & 244) and Vanuatu (paras. 415, 440-441 & 520).

⁹⁸ In the context of the continuing increase in global GHG emissions over 2010-2019, the IPCC's AR6 refers to: “unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and between individuals...”. See: IPCC, AR6 SYR, Longer Report, at 2.1, p.6, available at: https://report.ipcc.ch/ar6syrr/pdf/IPCC_AR6_SYR_LongerReport.pdf (last accessed 11 August 2024).

Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.”⁹⁹

- b. The obligation of developed States to provide financial and technical assistance to developing States, in particular the most vulnerable and SIDS, in order to meet their development goals whilst also contributing to their shared goal of preventing dangerous climate change (Articles 9, 10 and 11 of the Paris Agreement).
- c. The obligation of developed States to support developing States in increasing their resilience and reducing vulnerability in the context of adaptation, particularly given that they include the States most vulnerable to the impacts of climate change even though they have contributed the least to the problem (Articles 7(6) and 9(1) of the Paris Agreement).

73. Closely associated with the implications of the principles of equity and CBDRRC are the obligations relating to finance flows (see below).

F. FINANCE

74. Mauritius joins the participants, including Mexico and many others, who stress the importance of accessible, fair, and transparent climate finance for developing countries.¹⁰⁰

⁹⁹ UNFCCC, Article 4(7).

¹⁰⁰ See *e.g.* the Written Statements of: Antigua and Barbuda (para. 505), China (para. 54, 66 & 73), Egypt (paras. 148, 165, 169-189 & 212-227), Mexico (para. 35), Micronesia (paras. 67-68),

75. Parties to the Paris Agreement recognised the importance of redirecting finance flows by including this as one of the three key goals enshrined in Article 2(1). Article 2(1)(c) of the Paris Agreement reflects the need to redirect finance flows away from high emitting energy sources and into renewables.
76. Mauritius recalls that Parties have agreed that they should phase out “inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible.”¹⁰¹ Mauritius agrees with the many participants who have identified this as a key obligation in light of the evidence as to the extent to which finance continues to be directed into fossil fuels in such a way as to undermine progress towards the 1.5°C temperature goal. Mauritius notes that the UNEP PGR indicates that, of the 20 countries profiled: 17 continue to promote, subsidise, support, and plan on the expansion of fossil fuel production.¹⁰² This conduct is not consistent with achievement of the goal laid down in Article 2(1)(c) of the Paris Agreement.¹⁰³
77. Notwithstanding Articles 2(1)(c) and 9 of the Paris Agreement, and repeated pledges of financial support, including at the adoption of the Agreement itself, there remains a significant and longstanding finance gap, as many participants have emphasised. In the 2023 Nairobi Declaration on Climate Change and Call to Action, African Heads of State and Government called

New Zealand (para. 63), Solomon Islands (paras. 65 & 109-113), St Lucia (para. 59), Timor-Leste (paras. 168-175), Tonga (paras. 199 & 204-206), Uruguay (paras. 125-132) and the African Union (paras. 142-163).

¹⁰¹ GST, para 28(d).

¹⁰² UNEP PGR, available at: https://productiongap.org/wp-content/uploads/2023/11/PGR2023_web_rev.pdf (last accessed 11 August 2024).

¹⁰³ *Ibid.*, p. 5.

on States to honour the commitment to provide \$100 billion in annual climate finance, as promised at the 2009 Copenhagen Conference.¹⁰⁴

78. Express provision is made to address the situation of SIDS and other vulnerable States, including in Article 4(9) of the UNFCCC and Article 9(4) of the Paris Agreement.¹⁰⁵

79. In addition to specific treaty-based obligations, the general duty of cooperation is also relevant in this context, as Barbados and others have argued:

“...States responsible for the acceleration of climate change have a duty to finance adaption and mitigation efforts of small island States. The obligation to cooperate, in context, also implies an obligation to finance adaption and mitigation efforts of small island States.”¹⁰⁶

G. ADAPTATION

80. Many participants, including Mauritius, have included detailed analysis of the way in which climate change will adversely impact their people, environments, and cultural and economic lives. The Paris Agreement called for urgent measures of adaptation, particularly for developing States and those most vulnerable to the impacts of climate change. A key aspect of the strengthened response was the adoption of a new global goal on adaptation in Article 2(1)(b) and specific provision in Article 7. Recurrent themes in the Written Statements include the dire implications for fragile ecosystems,

¹⁰⁴ Nairobi Declaration on Climate Change and Call to Action (2023), available at: https://www.afdb.org/sites/default/files/2023/09/08/the_african_leaders_nairobi_declaration_on_climate_change-rev-eng.pdf (last accessed 11 August 2024).

¹⁰⁵ See: Mauritius Written Statement, para. 112.

¹⁰⁶ Written Statement of Barbados, para. 216.

including coral reefs, the undermining of food security, the erosion of coastal territory, the threat posed to communities and workers by extreme events, and the displacement of people. All of these impacts are evidenced in the reports of the IPCC and the Court has before it a detailed and deeply disturbing picture of the current and future situation presented by affected States themselves.¹⁰⁷

81. The obligations relating to finance (addressed in paragraphs 74-79 above) are of critical importance in relation to the current adaptation gap as indicated in the title of UNEP's 2023 Adaptation Gap Report: "Underfinanced. Underprepared. Inadequate investment and planning on climate adaptation" ("**UNEP AGR**").¹⁰⁸ The Foreword to the UNEP AGR refers to a new finance gap which:

"...results from growing needs coupled with adaptation finance flows to developing countries declining 15 per cent in 2021 to around US\$21 billion. Considering that the finance needed to implement domestic adaptation plans in developing countries is currently estimated at US\$387 billion per year until 2030 – most of which will require international support to deliver – this is a hugely worrying deceleration."¹⁰⁹

¹⁰⁷ To take just one example: "Given the sensitivity of corals to heat stress, even short periods of overshoot (*i.e.*, decades) are expected to be extremely damaging to coral reefs. Losing 70-90% of today's coral reefs, however, will remove resources and increase poverty levels across the world's tropical coastlines, highlighting the key issue of equity for the millions of people that depend on these valuable ecosystems". See: IPCC, SR 1.5, chapter 3, "Impacts of 1.5°C global warming on natural and human systems", p. 230, available at: https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Chapter_3_LR.pdf (last accessed 11 August 2024).

¹⁰⁸ UNEP, "The Adaptation Gap Report 2023: Underfinanced. Underprepared. Inadequate investment and planning on climate adaptation", available at: <https://www.unep.org/resources/adaptation-gap-report-2023> (last accessed 11 August 2024). The adaptation finance gap is defined as the difference between the estimated costs of meeting a given adaptation target and the amount of finance available for adaptation (see pp. xv & 31).

¹⁰⁹ *Ibid.*, p. xi.

82. The UNEP AGR identifies the implementation of Article 2(1)(c) of the Paris Agreement as one of the ways of addressing the finance gap: “[a]lthough a global goal, its implementation offers developing countries the potential to help to close the adaptation gap...”.¹¹⁰
83. Parties to the Paris Agreement have recognised the importance of support for, and international cooperation on, adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change (Article 7(6)). It also provides for: “[c]ontinuous and enhanced international support” to be provided to developing country Parties for the implementation of Articles 7(7), (9)-(10) and (11).¹¹¹ It is abundantly clear, however, that current levels of support are not adequate to support those States most vulnerable to climate change and that developed States are not meeting their obligations of cooperation and support.

H. HUMAN RIGHTS

84. Most participants (including Mauritius) have recognised that human rights obligations inform and strengthen States’ obligation to protect the climate

¹¹⁰ *Ibid.*, p. 57.

¹¹¹ Paris Agreement, Article 7(13).

system, including the right to self-determination,¹¹² the right to life,¹¹³ the right to health,¹¹⁴ the rights to food and water,¹¹⁵ the right to a clean, healthy

¹¹² See *e.g.* the Written Statements of: Albania (para. 96), Antigua and Barbuda (para. 195), Bahamas (paras. 154-156), Bangladesh (paras. 120-122), Burkina Faso (paras. 201 & 208-210), Cook Islands (paras. 342-354), Costa Rica (para. 72), Dominican Republic (paras. 4.43 & 5.1), Kenya (paras. 5.66-5.68), Liechtenstein (paras. 27-31), Madagascar (paras. 59-60), Micronesia (para. 82), Nauru (para. 40), Philippines (para. 106), Sierra Leone (paras. 3.88-3.92), Singapore (para. 3.81), Solomon Islands (para. 172), St Vincent and the Grenadines (para. 109), Timor-Leste (paras. 333-345), Tuvalu (paras. 75-96), Vanuatu (para. 302), the European Union (paras. 237-238), COSIS (paras. 74-78), OACPS (paras. 64-67), Melanesian Spearhead Group (paras. 233-237) and the African Union (para. 198).

¹¹³ See *e.g.* the Written Statements of: Albania (para. 96), Antigua and Barbuda (para. 190), Australia (para. 3.61), Bahamas (paras. 145-146), Bangladesh (para. 108), Burkina Faso (paras. 195-219), Democratic Republic of the Congo (paras. 145-157), Denmark, Finland, Iceland, Norway and Sweden (paras. 78-79), Egypt (para. 211), Kenya (para. 5.54), Ecuador (para. 3.109), Indonesia (para. 36), Liechtenstein (para. 36), Marshall Islands (paras. 47-48), Namibia (paras. 111-112), the Netherlands (paras. 3.75 & 4.24), Philippines (para. 106), Portugal (para. 74), Sierra Leone (para. 3.62), Singapore (para. 3.77), Seychelles (para. 145), Solomon Islands (para. 165), Sri Lanka (para. 89), Switzerland (para. 59), Uruguay (para. 113), Vanuatu (para. 346), the European Union (para. 233), Melanesian Spearhead Group (para. 265), IUCN (para. 499) and the African Union (para. 188).

¹¹⁴ See *e.g.* the Written Statements of: Antigua and Barbuda (para. 193), Australia (para. 3.61), Bangladesh (para. 109), Burkina Faso (paras. 195-219), Republic of Korea (para. 29), Madagascar (para. 61), Namibia (para. 107), Philippines (para. 196), Portugal (para. 75), Sierra Leone (para. 3.69), Seychelles (para. 145), Solomon Islands (para. 198), Switzerland (para. 59), Vanuatu (para. 375), European Union (para. 234), and the African Union (paras. 210-211).

¹¹⁵ See *e.g.* the Written Statements of: Albania (para. 96), Antigua and Barbuda (paras. 191-194), Bahamas (paras. 150-153), Barbados (para. 201), Bangladesh (para. 108), Egypt (para. 227), Kenya (paras. 5.58 & 5.62), Liechtenstein (para. 42), Namibia (para. 89), Philippines (para. 106), Portugal (para. 75), Seychelles (para. 145), Sierra Leone (para. 3.80), Singapore (paras. 3.78-3.79), Switzerland (para. 59), Tonga (para. 262), Vanuatu (paras. 367-369) and the African Union (para. 188).

and sustainable environment,¹¹⁶ and the overarching principles of equality and non-discrimination.¹¹⁷

85. Participants (including Mauritius) have further recognised that insofar as the climate science forms the bedrock of the 1.5°C temperature goal, this target also has a bearing on the content of all climate related obligations, including international human rights obligations. The scientific evidence demonstrates that a failure to reach the agreed target will have severe effects on human rights.¹¹⁸
86. In accordance with the approach adopted by the majority of participants, Mauritius invites the Court to confirm that international human rights obligations must be integrated into climate change obligations.¹¹⁹ The link with human rights obligations has been recognised by Parties to the Paris Agreement and UNFCCC,¹²⁰ the UN Secretary General,¹²¹ and the UN

¹¹⁶ See *e.g.* the Written Statements of: Albania (para. 96), Antigua and Barbuda (paras. 182-185), Argentina (para. 38), Bangladesh (para. 110), Barbados (paras. 160-162), Bolivia (para. 17), Colombia (paras. 2.60-2.66), Democratic Republic of the Congo (paras. 145-157), Dominican Republic (paras. 4.43 & 5.1), Costa Rica (paras. 82-83), Ecuador (paras. 3.106-3.108), El Salvador (para. 42), India (para. 79), Iran (para. 139), Kenya (para. 5.73), Liechtenstein (para. 45), Madagascar (para. 61), Marshall Islands (paras. 85-86), Mexico (paras. 95-103), Micronesia (para. 78), Namibia (para. 121), the Netherlands (paras. 3.33-3.34), Seychelles (paras. 143-44), Slovenia (para. 17), Solomon Islands (paras. 174-179), Spain (para. 15), Switzerland (para. 60), Tuvalu (para. 100), Vanuatu (para. 389), the European Union (para. 258), Melanesian Spearhead Group (para. 283) and the African Union (para. 192).

¹¹⁷ See *e.g.* the Written Statements of: Albania (para. 106), Chile (para. 68), Colombia (paras. 2.58-2.59), Egypt (paras. 229-243), Germany (paras. 114-116), Micronesia (paras. 81-87), Nepal (para. 33), Thailand (paras. 27-28) and OACPS (para. 84).

¹¹⁸ Mauritius Written Statement, paras. 54-85. See also: Report of Dr James E. Hansen, Annex 1.

¹¹⁹ Mauritius Written Statement, paras. 155-165.

¹²⁰ Paris Agreement, Preamble, 7th recital; UNFCCC, Report of the Conference of the Parties on its 16th session, held in Cancun from 29 November to 10 December 2010, Decision 1/CP.16, p. 4, available at: <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> (last accessed 11 August 2024).

¹²¹ UN 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:

Human Rights Council.¹²² In light of the potential devastating consequences, a failure to comply with the temperature goal and related obligations contained in the UNFCCC and Paris Agreement may also entail a breach of States' international human rights obligations.

87. In its Advisory Opinion, ITLOS unambiguously placed the principle of systemic integration at the heart of its analysis, determining that “UNFCCC and the Paris Agreement, as the primary legal instruments addressing the global problem of climate change, are relevant in interpreting and applying the Convention...”.¹²³ The Tribunal added that: “subject to article 293 of [UNCLOS], the provisions of the Convention and external rules should, to the extent possible be interpreted consistently.”¹²⁴ Accordingly, ITLOS proceeded to interpret States' obligations under UNCLOS by reference to several other treaties.

88. The Tribunal's application of the principle of systemic integration has solid foundations in international law.¹²⁵ The principle of systemic integration has long formed an important part of the rules concerning the interpretation of treaties, encapsulated in Article 31(3)(c) of the VCLoT. As noted in

https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/2020_sg_call_to_action_for_hr_the_highest_aspiration.pdf (last accessed 11 August 2024).

¹²² 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 11 August 2024).

¹²³ ITLOS Advisory Opinion, para. 222. See also: Mauritius Written Statement, para. 42.

¹²⁴ ITLOS Advisory Opinion, para. 136.

¹²⁵ Mauritius Written Statement, paras. 144-147.

Mauritius’ Written Statement, the International Law Commission (“ILC”) has also endorsed the principle of systemic integration.¹²⁶

89. ITLOS also stressed that the “coordination and harmonization” of different international obligations touching on the same issue is vital in establishing a unified and coherent approach to the obligations of States in relation to climate change.¹²⁷ Any other approach risks creating a situation whereby the ultimate policy aims of multilateral treaties (such as the UNFCCC and Paris Agreement) are undermined due to uncertainty as to which treaty or obligation takes precedence.
90. Accordingly, Mauritius considers that obligations contained in the UNFCCC and Paris Agreement, as informed by the best available science, guide the identification and application of international human rights obligations. By the same token, international human rights law informs the legal content of the climate change regime as well as the legal consequences that flow from a failure to meet climate change obligations.

I. CUSTOMARY INTERNATIONAL LAW

91. Mauritius agrees with Switzerland, Belize and others, that customary international law is supplemented – but not superseded – by international treaties enacted in the field of climate protection and, to a certain extent, human rights.¹²⁸ Mauritius agrees with Switzerland that participation in the UNFCCC and Paris Agreement is not necessarily sufficient to ensure

¹²⁶ Fragmentation of International Law, Report of the Study Group of the ILC, 2006, p. 8; Guideline 9 of the 2021 ILC Guidelines on the Protection of the Atmosphere. See also: Mauritius Written Statement, paras. 147 & 163.

¹²⁷ ITLOS Advisory Opinion, para. 130.

¹²⁸ Written Statement of Switzerland, para. 13; Written Statement of Belize, para. 36.

compliance with customary law obligations and that a case-by-case assessment is required of the measures taken in response to risks in order to ascertain compliance with customary obligations.¹²⁹

92. Some participants seek to persuade the Court that treaty obligations under the international climate regime exhaust the obligations placed on States in relation to climate change, effectively superseding the customary international duty of prevention.¹³⁰ Mauritius does not share this view. This is for the following reasons:

- a. There is no indication in the language of the UNFCCC or the Paris Agreement that these treaties are intended to displace other relevant international obligations, whether under treaties such as UNCLOS or under customary international law.
- b. In the context of an urgent and existential threat to the lives of many millions of people, to the very existence of a number of States, as well as to entire ecosystems and species, it is difficult to see a basis for any treaty to displace the existence of a general obligation under international law on each and every State to prevent such catastrophic harm.

93. If implementation of the UNFCCC and Paris Agreement serve to avert the threat posed by climate change, the customary duty of prevention may not need to be invoked. But if it does not, then the need for reliance on customary international law becomes evident. In circumstances where the current treaty

¹²⁹ Written Statement of Switzerland, para. 70.

¹³⁰ See *e.g.* the Written Statements of: New Zealand (para. 105), the Russian Federation (pp. 8-9, arguing the principle of prevention is subsidiary to the climate treaty regime), the United States of America (generally) and the United Arab Emirates (in relation to prevention).

regime has not yet succeeded in putting the world on track to protect the climate system from GHG emissions, and the window for doing so is rapidly closing, the customary duty of prevention remains relevant and applicable.

94. Mauritius considers that this issue cannot be resolved through recourse to the rule on *lex specialis*. In this context, ITLOS confirmed that UNCLOS and the Paris Agreement are separate agreements with separate sets of obligations and that the Paris Agreement is not *lex specialis* to UNCLOS.¹³¹
95. No State would become party to a climate treaty, the full performance of which would nevertheless fail to prevent its own disappearance and, at the same time, abandon the protection of customary international law. Rather, the correct approach is one of systemic integration through which the various treaty obligations and customary rules are interpreted in a harmonious and mutually reinforcing manner (see paragraph 88 above).
96. This is particularly the case when the principal treaty in question, the Paris Agreement, is stated to be a strengthened response to the threat of climate change. The Paris Agreement must thus be interpreted and applied in a manner that is strictly consistent with respect for international obligations in other branches of international law. It cannot be interpreted as diminishing or excluding those obligations. The real issue dividing States, in Mauritius' view, is the *degree* to which the Paris Agreement imposes obligations which are capable of preventing the harm threatened by climate change (as opposed to whether such obligations are imposed at all).

¹³¹ ITLOS Advisory Opinion, para. 224.

1. Prevention

97. A small minority of participants argue that the customary duty of prevention does not apply to climate change. Mauritius agrees with the majority of participants, who take the view that the well-established customary obligation of prevention, which requires States to take measures to avoid harming the environment of other States and the environment beyond national jurisdiction, applies to harm caused to the global climate system.¹³²
98. Mauritius also agrees with those who argue that the principle of prevention requires, as a minimum, that States adopt and effectively implement all the necessary measures at their disposal to reduce GHG emissions. This obligation applies to all sectors of the economy, but particularly those contributing the most to GHG emission. What is “necessary” is informed by the best available science, including as to the scale and timing of emission reductions needed to align with the temperature goal.
99. This approach is consistent with that adopted by ITLOS in its Advisory Opinion. The Tribunal determined that “necessary measures” taken under Article 194(1) of UNCLOS must be determined objectively, noting that many participants in the ITLOS proceedings had emphasised the importance of objectively determining such measures, indicating that “the science is

¹³² See *e.g.* the Written Statements of: Albania (para. 65), Antigua and Barbuda (paras. 300-304), Bahamas (para. 92), Bangladesh (para. 88), Belize (para. 31), Brazil (para. 70), Burkina Faso (para. 175), Costa Rica (para. 44), Dominican Republic (paras. 4.31 & 5.1), Ecuador (para. 3.25), Egypt (para. 88), Ghana (para. 23), Grenada (para. 38), Indonesia (para. 60), Kenya (para. 5.8), Republic of Korea (paras. 33-37), Latvia (paras. 58-60), Madagascar (para. 34), Marshall Islands (paras. 22-27), Mexico (paras. 40-47), Micronesia (para. 62), Nauru (para. 26), Nepal (para. 26), the Netherlands (para. 3.65), Palau (para. 14), Pakistan (para. 29), Philippines (para. 55), Romania (para. 98), Samoa (paras. 100-130), Seychelles (para. 100), Sierra Leone (para. 3.10), Singapore (para. 3.1), Solomon Islands (paras. 146-152), South Africa (para. 74), St Lucia (paras. 66-68), Sri Lanka (para. 95), Switzerland (para. 36), Thailand (para. 9), Uruguay (para. 88), Vanuatu (para. 265), OACPS (para. 101), IUCN (para. 307), the European Union (para. 317).

particularly relevant in this regard”, together with relevant international rules, standards and factors such as available means and capabilities of the State concerned.¹³³

100. Further, Mauritius agrees that an objective approach to the determination of what is necessary or effective is also relevant to interpreting obligations under the Paris Agreement. What is required to meet obligations under the Paris Agreement must be based on the best available science, taking into account the precise nature, scale and urgency of the threat posed by climate change. This is also the approach adopted by ITLOS:

“...in the determination of necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions, the science undoubtedly plays a crucial role, as it is key to understanding the causes, effects and dynamics of such pollution and thus to providing the effective response. However, this does not mean that the science alone should determine the content of necessary measures. In the Tribunal’s view, as indicated above, there are other relevant factors that should be considered and weighed together with the best available science.”¹³⁴

101. In the context of legal obligations relating to climate change more broadly, the science is unequivocal that GHG emissions have caused, and will continue to cause, significant harm to the environment and that this will have devastating associated social and economic impacts. In its Advisory Opinion, ITLOS confirmed that anthropogenic GHG emissions into the atmosphere constitute pollution of the marine environment within the meaning of article 1(1)(4) of UNCLOS.¹³⁵ This authoritatively confirms that GHG emissions are

¹³³ ITLOS Advisory Opinion, paras. 206-207.

¹³⁴ *Ibid.*, para. 212.

¹³⁵ *Ibid.*, para. 179.

pollutants and thus fall within the general rules on transboundary pollution. The Court is invited to confirm this conclusion.

102. The fact that climate change results from cumulative and collective emissions does not mean that the duty of prevention does not apply to the climate system.¹³⁶ Each State has a duty to prevent harm to the climate system. The greater the threat of transboundary harm to the natural environment of another State or areas beyond national jurisdiction, the greater the degree to which States are required to anticipate, prevent, and/or mitigate that harm. This is relevant to individual obligations of prevention as well as to cooperation (see paragraph 104 below).

103. Both the causes of climate change, and the actions required to address it, are well understood and are now subject to greater specificity through the international climate regime. However, the harmful impact of GHG emissions on the climate system was understood and acknowledged at a governmental level from at least the 1960s, at a time when the duty of prevention was also clearly established under international law.¹³⁷ The temporal implications for State responsibility are addressed at paragraphs 135-138 below.

2. Cooperation

104. Most participants have acknowledged that the duty to cooperate is a legal duty under customary international law but also that any failure of States to agree cooperative measures does not limit the application of other relevant

¹³⁶ *c.f.* Written Statement of New Zealand, para. 102.

¹³⁷ Mauritius Written Statement, para. 189.

obligations.¹³⁸ As Micronesia points out, a State cannot be excused under international law from taking all appropriate measures to prevent harm merely because that State is unable to agree on a cooperative approach to that matter with one or more other relevant States.¹³⁹ The duty to cooperate cannot be used as justification for taking inadequate measures that represent the least common denominator. In its Advisory Opinion, ITLOS affirmed that the duty of cooperation under UNCLOS must be conducted “meaningfully and in good faith”.¹⁴⁰ Mauritius considers that this is equally true of the duty of cooperation under the international climate regime and customary international law.

3. Precaution

105. Many States acknowledge the relevance of precaution to climate change, both under the UNFCCC and the Paris Agreement, and under customary international law.¹⁴¹ Mauritius agrees with India that precaution requires States to constantly and continuously monitor their own activities, as well as

¹³⁸ See *e.g.* the Written Statements of: Albania (para. 83), Argentina (para. 45), Bahamas (para. 109), Bangladesh (para. 127), Barbados (paras. 208-226), Brazil (para. 36), Burkina Faso (paras. 236-240), Colombia (para. 3.63-3.65), Democratic Republic of the Congo (paras. 136-144), Ecuador (para. 3.53), Grenada (para. 43), Indonesia (para. 64), Kenya (para. 5.21), Republic of Korea (para. 38), Latvia (para. 22), Marshall Islands (para. 31), Micronesia (para. 65), Mexico (para. 74), the Netherlands (para. 3.13), Philippines (para. 71), Portugal (para. 128), Romania (para. 38), Sierra Leone (para. 3.26), Singapore (para. 3.2), Solomon Islands (paras. 116-120), South Africa (para. 95), Sri Lanka (para. 91), St Lucia (paras. 75-78), Timor-Leste (para. 179), Tuvalu (para. 103), Uruguay (para. 122), Vanuatu (para. 313), Vietnam (paras. 33-35), IUCN, paras. 439 & 446), COSIS (paras. 117-121), OACPS, paras. 91-95), and the African Union (paras. 125-129).

¹³⁹ Written Statement of Micronesia, para. 66.

¹⁴⁰ ITLOS Advisory Opinion, para. 321.

¹⁴¹ See *e.g.* the Written Statements of: Bangladesh (para. 94), Ecuador (paras. 3.43-3.49), Egypt (paras. 109-110), Grenada (para. 42), India (paras. 12 & 21), Micronesia (para. 64), Mexico (paras. 54-73), Namibia (paras. 62-73), Philippines (paras. 88 & 90), Sierra Leone (paras. 3.10-3.25), Solomon Islands (paras. 139-145), St Vincent and the Grenadines (paras. 104-107), Uruguay (paras. 103-109) and the African Union (paras. 97(c) & 121).

activities of non-State actors in their territory.¹⁴² Like Mexico and other participants, Mauritius considers that:

- a. the application of the precautionary principle is binding as a matter of international law, and requires scientific evidence to be relied on where it provides plausible indicators of risk, and
- b. that it operates to shift the burden of proof to those claiming no or limited environmental impact where there is scientific uncertainty.¹⁴³

106. Precaution is relevant *inter alia* to the risk posed by the crossing of tipping points and the impact of feedback loops, in so far as there remains any uncertainty as to the scale of these risks.

107. Precaution is also relevant to the conduct of due diligence in relation to the use of technologies aimed at capturing carbon emissions or otherwise addressing their impact. So too is the precautionary principle relevant to proposed geoengineering technologies which may pose risks to the environment and undermine efforts to reduce emissions.¹⁴⁴ Mauritius notes that ITLOS, in its Advisory Opinion, determined that marine geoengineering would be contrary to article 195 of UNCLOS if it had the consequence of transforming one type of pollution into another, and referred to discussion of the topic in other fora.¹⁴⁵

¹⁴² Written Statement of India, para. 12.

¹⁴³ Written Statement of Mexico, paras. 54-73.

¹⁴⁴ As to the relevance of precaution in the context of the protection of the marine environment, see: ITLOS Advisory Opinion, para. 213.

¹⁴⁵ ITLOS Advisory Opinion paras. 231 & 242.

III. QUESTION B: LEGAL CONSEQUENCES

A. RESPONSIBILITY AND DAMAGE

108. Mauritius agrees with the many participants who refer to the ILC draft Articles on Responsibility of States for Internationally Wrongful Acts (“**ARSIWA**”) as setting out the framework for State responsibility for the consequences of breach of climate related obligations.

109. Article 1 of ARSIWA provides that: “[e]very internationally wrongful act of a State entails the international responsibility of that State.” This reflects a rule of customary international law, one that Mauritius considers to be fully applicable to each and every internationally wrongful act or omission that relates to climate change. Notwithstanding specific aspects of climate change as a global phenomenon resulting from the actions and omissions of more than one State, the vast majority of participants agree that the general rules of State responsibility apply to climate change.¹⁴⁶ The fact that all States have contributed to climate change in varying amounts does not detract from the fact that some States have contributed more than others.

¹⁴⁶ See *e.g.* the Written Statements of: Albania (para. 129), Antigua and Barbuda (paras. 532-533), Bangladesh (para. 145), Brazil (para. 80), Burkina Faso (paras. 346-401), Chile (para. 104), Colombia (para. 4.4), Democratic Republic of the Congo (paras. 255-271), Denmark, Finland, Iceland, Norway and Sweden (para. 102), Dominican Republic (para. 4.57), Ecuador (para. 4.6), Egypt (para. 288), El Salvador (para. 50), Grenada (para. 74), Kenya (paras. 2.13 & 6.88-6.89), Republic of Korea (para. 45), India (para. 82), Latvia (para. 74), Marshall Islands (paras. 56-58), Micronesia (paras. 121-128), Namibia (para. 131), the Netherlands (para. 5.4), Philippines (para. 115), Portugal (para. 115), Sierra Leone (para. 3.134), Singapore (para. 4.1), Solomon Islands (paras. 234), Sri Lanka (para. 104), St Lucia (para. 86), St Vincent and the Grenadines (para. 128), Timor-Leste (para. 355), Tonga (paras. 288-296), Tuvalu (paras. 121-124), Uruguay (paras. 155-165), Vanuatu (para. 559), Vietnam (para. 44), OACPS (para. 143), Melanesian Spearhead Group (para. 292), IUCN (para. 534) and the African Union (para. 253).

110. A small number of participants have referred to Article 55 of ARSIWA which provides that its rules are not applicable “where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.”¹⁴⁷ However, Mauritius agrees with the many other participants who point out that, in this context, there are no such special rules.¹⁴⁸ The provisions of the Paris Agreement (Articles 8 and 15) cited by those who argue that Article 55 disappplies the general rules under ARSIWA do not constitute special rules on State responsibility. This is because:

- a. Article 8 of the Paris Agreement establishes a mechanism for addressing *loss and damage* but does not address *State responsibility* for significant harm. Mauritius concurs with those participants who take the view that paragraph 52 of decision 1/CP/21 (on the adoption of the Paris Agreement) does not prejudice existing rights and responsibilities under international law.¹⁴⁹ Many participants have stressed that paragraph 52 does not exclude the application of liability arising from other provisions of the Paris Agreement, nor does it constitute renunciation of rights under the rules of State responsibility

¹⁴⁷ See *e.g.* the Written Statements of: Sri Lanka (para. 105) and the European Union (paras. 350-351).

¹⁴⁸ See *e.g.* the Written Statements of: Chile (para. 105), Egypt (para. 288), Singapore (para. 4.1) and IUCN (para. 598).

¹⁴⁹ See *e.g.* the Written Statement of Chile (para. 109). See also: Mauritius Written Statement, para. 123; COP21 Adoption of the Paris Agreement, para. 52 (“*Decides* that, in the implementation of the Agreement, financial resources provided to developing country Parties should enhance the implementation of their policies, strategies, regulations and action plans and their climate change actions with respect to both mitigation and adaptation to contribute to the achievement of the purpose of the Agreement as defined in its Article 2”).

for loss and damage associated with the adverse effects of climate change.¹⁵⁰

- b. As to Article 15, that provision establishes a procedure: “to facilitate implementation of and promote compliance with” the Paris Agreement, but does not set out rules relating to responsibility for internationally wrongful acts. Moreover, the dispute settlement provisions under both Article 14 of the UNFCCC and Article 24 of the Paris Agreement are similar to dispute settlement provisions under many multilateral environmental treaties, none of which have been said to disapply the rules under ARSIWA.

111. Further, the general rules on State responsibility are not displaced, as some States appear to suggest, by provisions of the international climate regime relating to adaptation, loss and damage and financial support. In the first place, the mechanisms for support have largely not yet been met.¹⁵¹ Further, these provisions and mechanisms, vitally important as they are, do not address the particular responsibility of those States whose actions and omissions may have undermined international goals and exacerbated the problem of climate change. They simply do not concern the issue of actions which may have imposed greater burdens on other States, both in terms of the extra emission reductions that must be made, and in terms of the catastrophic implications of overshooting the temperature goal, particularly for the most vulnerable States.

¹⁵⁰ See *e.g.* the Written Statements of: Barbados (para. 265), Kenya (para. 6.98) and the Netherlands (para. 5.22).

¹⁵¹ Mauritius Written Statement, paras. 115-116.

112. Many States, including Mauritius, have pointed out that ARSIWA is drawn broadly and capable of addressing potential responsibility for State acts or omissions relevant to climate change. Mauritius considers that the best available science, together with analysis as to the contribution of historic GHG emissions, provides a basis for the application of the rules on State responsibility in respect of climate change. As Dr Hansen explains:

“Mauritius emphasizes that the responsibility of States to take the lead in combatting dangerous climate change is proportionate to their contribution to the problem over time. That proposition finds support in relevant science. In particular, CO₂, CH₄, N₂O, O₃ and assorted CFCs do not condense and precipitate out, but rather, once injected, remain in the atmosphere for decades or centuries. Emissions from long ago have continuing effects. Accordingly, the radiative forcing contribution of any State is roughly proportional to the cumulative GHG emissions it has enabled...”.¹⁵²

113. The Court is not called upon in these proceedings to decide the liability of any particular State. It can and should, however, provide clear advice on the application of ARSIWA, so that States can be advised on their potential responsibilities, including in relation to a failure to be guided by the science.

114. Some participants, while acknowledging the potential relevance of ARSIWA, have urged caution, arguing that the issue of State responsibility for climate change under ARSIWA needs to be addressed in a different and constructive way. Some argue that climate change raises novel issues of attribution and causation.¹⁵³ However, in light of the widespread support for the application of the principles laid down in ARSIWA, and the lack of any legal obstacle to

¹⁵² Expert Report of Dr James E. Hansen, p. 3 & Figure 1b, Annex 1 (footnotes omitted).

¹⁵³ See *e.g.* the Written Statements of: Australia (para. 4.10), Indonesia (para. 74), the United Kingdom (para. 126) and OPEC (para. 93).

their application, Mauritius invites the Court to confirm that ratification of the Paris Agreement is without prejudice to, and does not constitute renunciation of, a State's rights with regard to the law of State responsibility.

1. Attribution

115. Some States argue that there is currently no single or agreed scientific methodology with which to attribute climate change to the emissions of individual States or to attribute extreme events caused by climate change to the GHG emissions of any particular State.

116. Mauritius submits that this is not correct, as demonstrated by expert evidence submitted to the Court and supported by the submissions of many other participating States.¹⁵⁴ As stated in the expert report of Corinne LeQuéré, submitted by Vanuatu, such attribution is possible:

“The warming that occurred so far can be attributed to countries based on their historical emissions of GHG. Using the emissions of different GHG by country that are available annually since 1850, it is possible to estimate the contribution of each country to observed global warming by considering the different lifetime of specific GHG (CO₂, methane and N₂O), and accounting for the influence of each of these GHG on global temperatures...”¹⁵⁵

117. The report identifies the top 10 contributors to global warming from historical emissions of GHG in the period between 1851 and 2022, as well as other States whose contribution to climate change has been significant.¹⁵⁶ Such

¹⁵⁴ See *e.g.* the Written Statements of Bangladesh (paras. 23-26) and Chile (paras. 96-98). See also the Expert Report of Dr James E. Hansen, p. 3 & figure 1b, Annex 1.

¹⁵⁵ Written Statement of Vanuatu, Expert Report of Corinne Le Quéré, para. 24 (p. 14).

¹⁵⁶ *Ibid.*, para. 25 (p. 15).

contributions have continuing effects, as Dr Hanson makes clear.¹⁵⁷ It sets out the principles and limits to country attribution as well as the methods and data used.¹⁵⁸ In this way, the science provides a basis for the attribution of State responsibility with respect to significant harm to the climate system.

2. Breach

118. Future cases may well clarify the specific application of the rules on State responsibility to individual State acts/omissions, but it is evident that the issue of attribution does not, in principle, present an obstacle to establishing climate related State responsibility under ARSIWA. Further, as Chile has pointed out, while it is not possible to attribute specific climate change-induced events to particular emissions, reasonable inferences can be accomplished by quantifying States' individual contributions to climate change.¹⁵⁹
119. No participant has sought to argue that there are no international rules on climate change in answer to Question (a). Mauritius considers that where there are legal obligations, there is potential State responsibility for internationally wrongful acts, unless a clear basis exists for disapplying the general rules reflected in ARSIWA.
120. By way of example, the following obligations on States have broad support among participants in these proceedings:

¹⁵⁷ Expert Report of Dr James E. Hansen, p. 3, Annex 1.

¹⁵⁸ *Ibid.*, paras. 27-28 (pp. 16-17).

¹⁵⁹ Written Statement of Chile, paras. 97-98.

- a. the obligation of due diligence under both the climate regime, customary international law and other areas, including the law of the sea and human rights law;
- b. the duty of cooperation;
- c. obligations relating to transparency under the Paris Agreement and customary international law;
- d. obligations relating to finance flows;
- e. obligations relating to the principles of prevention and precaution, as well as the need to protect present and future generations; and
- f. obligations on developed States to take the lead in cutting emissions and to provide support to developing countries to address climate change.

121. In relation to those and other obligations on which there is broad agreement, and in the context of ever-increasing urgency in light of the rapidly diminishing carbon budget, a number of elements are critical to establishing whether or not, in a particular case, a breach of a relevant obligation has occurred. These include:

- a. Whether a State has met its obligation to base its actions on the best available science in taking relevant decisions, including decisions as to: (i) the licensing of fossil fuel production activities; (ii) the provision of financial support for fossil fuel exploration; and (iii) production and the

regulation of the conduct of private entities engaged in those activities (see paragraphs 9-25 above).¹⁶⁰

- a. Whether a State has in good faith/objectively sought to achieve the 1.5°C temperature goal which has become an international standard by which to measure States' actions and omissions. Mauritius notes that ITLOS confirmed that the long term temperature goal under the Paris Agreement "is consistent with the objective of the obligation under article 194(1) of UNCLOS on the prevention, reduction and control of marine pollution."¹⁶¹ This is relevant, *inter alia*, to the preparation and delivery of NDCs under the Paris Agreement (see paragraphs 46-49 above).
- b. Whether, in the context of the urgent need to address the emissions gap, a State has met its obligation to reduce GHG emissions, taking into account the obligation on developed countries to take the lead,¹⁶² and the recognised need to urgently transition away from fossil fuels in energy systems and phase out inefficient fossil fuel subsidies (see paragraphs 53-58 above).
- c. Whether, in relation to adaptation, a State has respected the principle of CBDRRC in the context of the provision of support to the most vulnerable States, taking into account relevant human rights obligations (see paragraph 59-73 above).¹⁶³

¹⁶⁰ Written Statement of Mauritius, paras. 104-105.

¹⁶¹ ITLOS Advisory Opinion, para. 200.

¹⁶² See Article 3(1) of the UNFCCC and Article 4(4) of the Paris Agreement. See further: Mauritius Written Statement, paras. 106-107.

¹⁶³ These include Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, which provides that: "Each State Party to the present Covenant undertakes to take steps,

- d. Whether a State has made good faith efforts at cooperation, taking into account that States which do not comply with their obligations to reduce GHG emissions thereby impose a greater burden on all other States to make even deeper GHG emissions cuts if dangerous climate change is to be averted. In this regard, Mauritius agrees that a breach of the duty of prevention can also be characterised as breach of duty of cooperation (see paragraph 104 above).¹⁶⁴
- e. Whether a State has sought to undermine the global effort to prevent climate change by deliberately misrepresenting the science or, in specific cases, promoting disinformation as to the risks posed by specific activities. States which do not regulate the conduct of private entities in this regard may also be responsible for breaches of their obligations, including those relating to transparency and reporting.
- f. Whether a State has complied with its climate related obligations under UNCLOS, having regard, *inter alia*, to harm caused to fragile marine ecosystems, fisheries and coastlines by GHG emissions.
- g. In relation to all of the above considerations, whether a State has respected its obligations under international human rights law, including the protection of the right to life, the right to health and the right to a clean and healthy environment, as well as respect for the right to self-determination (see paragraphs 84-90 above).

individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

¹⁶⁴ See: Written Statement of the Netherlands, para. 3.72.

122. Decision-making in relation to financial support for activities likely to result in high levels of GHG emissions may be attributed to the State. As some participants have pointed out by reference to Article 6 of ARSIWA, when the entity granting the subsidy in question is an organ of the State, the provision of the subsidy is attributable to the State, irrespective of whether the conduct is in the exercise of public authority or is of a commercial nature.
123. The question as to whether acts and omissions of States, individually and collectively, are in breach of the standard of due diligence attached to obligations in the Paris Agreement must be considered in light of the relevant context for assessing the risk from any breach. Such context includes the following:
- a. The current rate of global GHG emissions far exceeds the rate at which global average temperature increase could be limited to 1.5°C; and
 - b. States' commitments to reduce GHG emissions in the near term, including as expressed in NDCs submitted under the Paris Agreement, are insufficient to limit warming to 1.5 °C.¹⁶⁵
124. In this context, and taking into account the production gap identified in UNEP reports, Mauritius considers that there is a *prima facie* case of such a breach, taking into account the state of knowledge as to the risks posed by climate change since at least the 1960s (see paragraph 135-138 below).
125. In relation to any State collusion in the misrepresentation of the science, or as to the scale of risk posed by climate change, this would constitute, *inter alia*, a breach of the obligation of good faith in that it would frustrate the

¹⁶⁵ See *e.g.* the Written Statement of Bangladesh (paras. 26-43) and the Expert Report of Dr James E. Hansen, Annex 1.

achievement of the object and purpose of the UNFCCC and Paris Agreement by serving to delay action on emissions in the context of the diminishing global carbon budget. Such action also runs counter to the principles of transparency enshrined in the Paris Agreement and other treaties.¹⁶⁶

126. Mauritius considers that the issue of whether an internationally wrongful act has occurred must be appraised in the light of the specific facts and against the framework of climate obligations considered under Question (a). If there are obligations relating to GHG emissions, as the great majority, if not all, participants accept, it follows that States could potentially breach, or will breach, those obligations. All the more so in the context of the current emissions and production gaps and the deep concern as to the risk of overshooting the temperature goal. As Kenya and others have pointed out:

“Although the UNFCCC and the Paris Agreement represent significant legal developments in the fight against climate change, they have failed to protect the climate system from the harmful effects of GHG emissions.”¹⁶⁷

127. The implications of the production gap are addressed in the UNEP PGR, as noted by the African Union:

“This disconnect between governments’ fossil fuel production plans and their climate promises shows that, in the ongoing process of responding globally to the climate emergency, a State’s unilateral action may impermissibly defeat the cooperative conduct to reduce GHG emissions, contributing instead to increase the level of interference with the climate system.”¹⁶⁸

¹⁶⁶ Paris Agreement, Articles 4(8) & (13), 6(2), 7(5), 9(7), 11(1), 13 and 15(2).

¹⁶⁷ Written Statement of Kenya, para 5.40 (footnote omitted).

¹⁶⁸ Written Statement of the African Union, para. 129.

128. Mauritius notes that many participants consider that climate related obligations constitute *erga omnes* obligations, including, but not limited to, the impacts of climate change on the right to self-determination.¹⁶⁹

3. Significant harm

129. As explained above, and in Mauritius' Written Statement, there is no question as to the significant harm already caused by climate change and the risk of even more catastrophic damage if there is overshoot of the temperature goal.¹⁷⁰ The scale of harm is addressed in the reports of the IPCC and includes the risk of a temperature rise to 3°C or 4°C, at which point life on large parts of this planet may not be sustainable.

130. As Sierra Leone points out, nearly 70% of the deaths caused by climate-related disasters over the last five decades have been experienced in less developed countries.¹⁷¹ Many participants have referred to impacts on food security and health, as well as livelihoods and ecosystems, together with increasing risks of largescale displacement of people. Mauritius shares the view that, as it will not be possible for many SIDS to adapt to the consequences of crossing tipping points, including in the near-term, it is imperative to achieve the 1.5°C goal.

131. Some have argued that acting inconsistently with the 1.5°C temperature goal is determinative of breach,¹⁷² while others have pointed out that significant

¹⁶⁹ See *e.g.* the Written Statements of: Albania (para. 96), Bangladesh (para. 121), Barbados (para. 201), Kenya (para. 5.66), Liechtenstein (para. 28), Madagascar (para. 59), Sierra Leone (para. 3.99), Solomon Islands (para. 171), Timor-Leste (para. 335), Vanuatu (para. 289), OACPS (para. 66), Melanesian Spearhead Group (para. 234) and the European Union (para. 235).

¹⁷⁰ Mauritius Written Statement, paras. 54-85.

¹⁷¹ Written Statement of Sierra Leone, para. 3.38.

¹⁷² See *e.g.* the Written Statement of IUCN, paras. 530-562.

harm can occur below 1.5°C, as indicated by the IPCC.¹⁷³ This is a factual issue to be determined by the scientific evidence, including as to cumulative impacts of emissions.

132. The African Union and others have referred to the judgment in *Certain Activities (Costa Rica v Nicaragua)*, where the Court held that:

“...it is consistent with the principles of international law governing the consequences of internationally wrongful acts [...] to hold that compensation is due for damage caused to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage.”¹⁷⁴

133. In relation to responsibility towards States, including, in particular SIDS, “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”, the science as to the harm that is already being suffered by those States is unequivocal.¹⁷⁵ The evidence submitted by participants is further indication of the impacts being experienced in many States and by many peoples. These impacts clearly meet the threshold of significant harm on any reasonable view.

134. Question (b)(ii) addresses the legal consequences with regard to “peoples and individuals of the present and future generations affected by the adverse

¹⁷³ See: Sharm el-Sheik Implementation Plan, para. 4, available at: <https://unfccc.int/documents/624444> (last accessed 12 August 2024); IPCC, SR 1.5, chapter 3, “Impacts of 1.5°C global warming on natural and human systems”, available at: https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Chapter_3_LR.pdf (last accessed 12 August 2024); Mauritius Written Statement, para. 101.

¹⁷⁴ *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua)*, Compensation, Judgment, ICJ Reports 2018, p. 15, para. 41. See e.g. the Written Statements of Barbados (para. 259), Chile (para. 114), Kenya (para. 2.10), Sierra Leone (para. 3.142), Switzerland (para. 75) and the African Union (para. 290).

¹⁷⁵ UN General Assembly resolution 77/276 of 29 March 2023, Question (b)(i).

effects of climate change”.¹⁷⁶ Human rights obligations in respect of those affected by, or at risk from, climate change have been addressed at paragraphs 155-187 of Mauritius’ Written Statement and above at paragraphs 84-90. As many participants have highlighted, the protection of future generations is an established principle under international law, informing climate related obligations.¹⁷⁷ Mauritius submits that the interest of those expressly referred to in Question (b) is also relevant to claims for State responsibility, including where climate impacts deprive populations of the basic conditions for life and/or where entire territories may disappear due to sea level rise, thus injuring the future generations deprived of their primary territorial rights.

4. Temporal aspects

135. Mauritius notes the differing views expressed by participants as to the temporal point from which States were under a legal obligation, under customary international law, to prevent significant harm from climate change, the breach of which could result in liability. Some States have argued that, taking into account the development of the science and governmental acknowledgment of the risks, such duties first arose in the 1980s,¹⁷⁸ and a few others have suggested the 1990s.¹⁷⁹ Others, including Vanuatu, argue that the

¹⁷⁶ *Ibid.*, Question (b)(ii).

¹⁷⁷ See *e.g.* the Written Statements of: Bahamas (paras. 177-180), Bangladesh (para. 124), Burkina Faso (paras. 82-83), Cameroon (paras. 19-27), Costa Rica (para. 56), Ecuador (paras. 3.56-3.57), Kenya (para. 5.26), Republic of Korea (paras. 41-46), Peru (para. 83), Nepal (para. 36), Philippines (paras. 83-84), Sierra Leone (para. 3.44), St Vincent and the Grenadines (paras. 123-126), Timor-Leste (paras. 199-210), Vanuatu (paras. 480-482), Vietnam (para. 22), IUCN (paras. 388-389), the European Union (paras. 177 & 184) and the African Union (para. 166). Mauritius further notes that the 11th recital of the Paris Agreement’s Preamble refers to intergenerational equity as a matter which Parties should consider when taking action to address climate change.

¹⁷⁸ See *e.g.* the Written Statements of the Netherlands (para. 5.6), Switzerland (para. 35) and the United States of America (paras. 2.3-2.4, 2.11, 2.19 & 6.2).

¹⁷⁹ See *e.g.* the Written Statements of: Germany (para. 40) and the Russian Federation (p. 16).

relevant responsibility dates back to the 1950s or 1960s on the basis that a number of governments were aware of the risks posed by GHGs to the climate system.¹⁸⁰ As Professor Oreskes states in her expert report submitted by Vanuatu:

“...at least from the 1960s, the United States and other States with high cumulative emissions of greenhouse gases (GHGs), including France and the UK, were aware that (i) the release of [GHGs] into the Earth’s atmosphere had the potential to alter the climate system, and (ii) that such interference, if unmitigated, could have catastrophic effects for humans and the environment”.¹⁸¹

136. A number of participants argue that historic emissions predate any legal obligations. This, however, is not reconcilable with the established facts, including, as recognised by Dr Hansen, that long ago emission have continuing effects today.¹⁸² Notwithstanding the evolution of the science following the establishment of the IPCC, and the adoption of the UNFCCC in 1992, evidence that the risks were understood decades earlier is clear. Furthermore, the legal duty of prevention was clearly in existence by the 1960s.¹⁸³ In any event, these are matters of evidence to be tested on the facts, taking into account the state of knowledge as to the risk and the availability of pursuing renewable alternatives sources of energy.

137. Article 13 of ARSIWA provides that: “[a]n act of a State does not constitute a breach of an international obligation unless the State is bound by the

¹⁸⁰ See *e.g.* the Written Statements of: Egypt (paras. 304-306), Kiribati (paras. 184-186), Vanuatu (paras. 73 & 177-192), OACPS (paras. 22-23) and the Melanesia Spearhead Group (para. 298).

¹⁸¹ Written Statement of Vanuatu, Expert Report of Professor Oreskes, para. 39.

¹⁸² Expert Report of Dr James E. Hansen, p. 3, Annex 1.

¹⁸³ Mauritius Written Statement, para 189.

obligation in question at the time the act occurs.” In Mauritius’ submission, the obligation to prevent harm caused by GHG emissions exists:

- a. from the time at which States were aware that these emissions posed a risk to the climate system which needed to be addressed; or
- b. in relation to the continuing effects of GHG emissions after such time, even if the emissions originally occurred when they were lawful.¹⁸⁴

138. Mauritius notes that Article 14(2) of ARSIWA provides that the breach of an international obligation by an act of State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation. Article 15(1) of ARSIWA provides that a breach occurring through a series of actions or omissions defined in the aggregate as wrongful occurs when the act or omission which taken with the other acts or omissions, is sufficient to constitute the wrongful act. Article 15(2) of ARSIWA provides that in such a case the breach extends over the entire period starting with the first of the actions or omissions of the series.¹⁸⁵

5. Causation

139. Mauritius agrees with those who have stated that the fact that no one State is responsible for the total extent of global climate change does not call into question the basic causality between GHG emissions and climate change, as

¹⁸⁴ The principle of continuing effect is well-established in international law, see *e.g. Cyprus v Turkey*, ECHR Application No. 25781/94, Judgment of 10 May 2001; *Velásquez Rodríguez v Honduras*, IACHR Judgment of 29 July 1988. See also the Written Statements of Egypt (para. 323, in the context of prevention) and India (para. 88).

¹⁸⁵ Mauritius Written Statement, para. 210(b).

established by the science.¹⁸⁶ Article 47(1) of ARSIWA confirms that where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act. Risks are foreseeable risks when they take the form of a “high probability of causing significant transboundary harm”.¹⁸⁷ In this case, the evidence before the Court shows that science established the risks posed by GHGs from the early 1960s, with specific understanding evolving in the 1980s and following the establishment of the IPCC in 1988.

140. As to the responsibility of individual States, Mauritius agrees with those who point to the historic and disproportionate contribution from developed States and major emitters.¹⁸⁸ The related issue of breach is determined according to whether a specific obligation has in fact been breached.

141. Mauritius also agrees with those who take the view that causation is established if a State was aware of the risk of harm posed by GHG emissions and did not take preventive measures with the due diligence required. This is not a situation where the ‘but for’ test for causation is appropriate because individual contributions to global harm are measurable. In accordance with the principle of CBDRRC, a State with higher levels of responsibility for climate (and/or higher capabilities with respect to mitigation) has a heightened level of due diligence compared to a State with less responsibility and/or fewer capabilities, particularly SIDS. As Ecuador has stated: “each

¹⁸⁶ See *e.g.* the Written Statements of: Chile (para. 99) and Switzerland (paras. 77-78).

¹⁸⁷ ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (2001), Article 2(a), available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf (last accessed 11 August 2024).

¹⁸⁸ See *e.g.* the Written Statements of: Brazil (para. 81), Ecuador (para. 1.9), New Zealand (para. 28(a)), Solomon Islands (para. 66) and Vanuatu (paras. 169-170).

State is independently responsible, even if the wrongful act is the result of the combined acts or omissions of more than one State.”¹⁸⁹

6. Compensation

142. Mauritius agrees with Kenya and others who have pointed out that compensation for loss and damage resulting from GHG emissions is a critical component of reparations in respect of internationally wrongful acts relating to climate change.¹⁹⁰ This is because the impacts of climate change make it largely impossible to return to the *status quo ante*.

143. Barbados and others take the position that States must pay compensation for loss and damage on a strict liability basis:

“...both when their acts that caused damage are not otherwise wrongful under international law and also when those acts are otherwise wrongful under international law”.¹⁹¹

144. Mauritius submits that in the case of catastrophic harm, State acts which increase the risk of such harm should be subject to strict liability, taking into account the best available science.

145. In considering arguments in support of the application of the rules on State responsibility for climate change, it is important to also consider the alternative. In circumstances where there is, and has been, a failure to reduce GHG emissions and transition away from fossil fuels within a timescale which is likely to meet the 1.5°C temperature goal, it is unthinkable that no

¹⁸⁹ Written Statement of Ecuador, para. 4.20 (footnote omitted).

¹⁹⁰ Written Statement of Kenya, paras. 6.99-6.101.

¹⁹¹ Written Statement of Barbados, para. 228.

State can be held responsible for even the most abject failure to comply with its obligations, including the failure to regulate private entities.

146. In fact, there is nothing in the rules on State responsibility which precludes States injured by climate change, in particular SIDS and other vulnerable States, from seeking reparations from States responsible for causing serious harm to the climate system, including compensation for damage to the environment itself. Such claims fall to be determined by reference to the evidence as to individual State conduct in each case.

B. MARITIME BOUNDARIES AND ENTITLEMENTS

147. Many participants have stressed the importance of preserving States' maritime entitlements and ensuring that these are not adversely impacted by sea level rise caused by climate change.¹⁹² This is a matter of particular significance to Mauritius, and many other SIDS and low-lying States.
148. In its Written Statement, Mauritius provided evidence of the sea level rise it has already experienced, and the extreme vulnerability of large parts of Mauritius to projected sea level rise in the future.¹⁹³ The IPCC has found that global mean sea level increased by 0.2 metres between 1901 and 2018, and that the rate of sea level rise is increasing rapidly. The IPCC estimates that

¹⁹² See *e.g.* the Written Statements of: Bahamas (paras. 217-226), Burkina Faso (para. 345), Costa Rica (paras. 125 & 127), Dominican Republic (para. 4.40), El Salvador (paras. 55-58), Kenya (para. 5.68), Kiribati (paras. 188-191, 198 & 206(3)(f)), Liechtenstein (paras. 76-78), Marshall Islands (paras. 101-105), Micronesia (paras. 114-117), Nauru (paras. 12 & 44), the Netherlands (para. 5.38, in the context of population displacement), New Zealand (para. 13), Korea (para. 8), Sierra Leone (para. 3.91), Solomon Islands (paras. 208-213), Tonga (paras. 90, 92 & 149), Tuvalu (para. 1.13), Vanuatu (paras. 8, 487, 558, 643 & 644), Melanesian Spearhead Group (para. 326), Parties to the Nauru Agreement Office (para. 22), Pacific Islands Forum (paras. 14-16), Forum Fisheries Agency (paras. 38-40), AOSIS (para. 7), the African Union (para. 162), OACPS (para. 194) and COSIS (paras. 71-72 & 196).

¹⁹³ Mauritius Written Statement, paras. 25-29.

global sea level rise could be as much as 0.29 metres by 2050 and 1.01 metres by 2100.¹⁹⁴ Sea level rise of this magnitude poses an existential threat to vast swathes of Mauritius, as well as other SIDS and low-lying States.

149. It is inevitable that sea level rise will affect maritime features, the location of basepoints, the drawing of baselines, the delimitation of maritime boundaries, and entitlements up to and beyond 200 nautical miles. This can arise in at least three contexts.

- a. The first is where a maritime boundary has already been delimited. The Arbitral Tribunal in the *Bay of Bengal Maritime Boundary Arbitration* resisted the suggestion that its equidistance line could be affected by climate change.¹⁹⁵ Mauritius considers that the same reasoning applies with equal force to maritime boundaries established by agreement. An overwhelming majority of affected States have expressed support for the position that their baselines and maritime entitlements must not be affected by rising sea-levels.¹⁹⁶ The ILC and the International Law

¹⁹⁴ AR6 SYR, B.3.1.

¹⁹⁵ *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award, 7 July 2014, paras. 217 & 213-220.

¹⁹⁶ See *e.g.* the Taputapuātea Declaration on Climate Change signed by the leaders of French Polynesia, Niue, Cook Islands, Samoa, Tokelau, Tonga and Tuvalu, available at: <https://www.samoagovt.ws/wp-content/uploads/2015/07/The-Polynesian-P.A.C.T.pdf> (last accessed 10 August 2024); The Delap Commitment on Securing Our Common Wealth of Oceans, available at: https://www.pnatuna.com/sites/default/files/Delap%20Commitment_2nd%20PNA%20Leaders%20Summit.pdf (last accessed 10 August 2024); Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, available at: <https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise/> (last accessed 10 August 2024); Launch Of The Alliance Of Small Island States Leaders' Declaration, available at: <https://www.aosis.org/launch-of-the-alliance-of-small-island-states-leaders-declaration/> (last accessed 10 August 2024).

Association have rejected the notion of ambulatory baselines in the context of sea level rise.¹⁹⁷

- b. The second is where a State has deposited with the UN Secretary-General material to describe the outer limits of its continental shelf up to 200 nautical miles. Mauritius considers that such descriptions apply “permanently” in accordance with Article 76(9) of UNCLOS, and will not be affected by sea level rise.
- c. The third is where a State has submitted material in support of a continental shelf entitlement beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf (“CLCS”), pursuant to Article 76(8) of UNCLOS. Mauritius considers that this provision is clear in providing that the limits of the shelf established pursuant to that process shall be final and binding, but it does not expressly address the possible effects of sea level rise which may intervene in the potentially lengthy period between material being submitted and a CLCS recommendation being made.

150. The principle of stability and certitude lies at the heart of the international legal order, and operates as a golden thread which runs through the practice and decisions of international courts and tribunal. In the *Temple of Preah Vihear* case, the Court confirmed that the requirements of stability and

¹⁹⁷ International Law Commission, “Sea Level Rise in Relation to International Law: First Issues Paper”, UN Doc A/CN.4/740 (28 February 2020), paras. 78 & 82-104; Report of the International Law Association, “Committee on International Law and Sea Level Rise, Sydney Conference” (2018), pp. 16-19, available at: https://www.ila-hq.org/en_GB/documents/conference-report-sydney-2018cteeverversion (last accessed 10 August 2024); ILA Resolution 5/2018, available at: https://www.ila-hq.org/en_GB/documents/conference-resolution-sydney-2018-english-2 (last accessed 10 August 2024).

finality would be undermined if settled boundaries could become subject to continuous change.¹⁹⁸

151. Mauritius invites the Court to authoritatively affirm that maritime boundaries and entitlements – in all three contexts outlined in paragraph 149 above – remain immune from the impacts of sea level rise caused by climate change.

IV. CONCLUSIONS

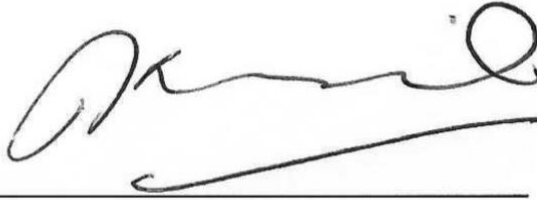
152. As long ago as 1996, in another Advisory Opinion, the Court stated that it:

“...recognizes 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.”¹⁹⁹

153. Mauritius invites the Court to do no more than take this significant statement and apply it to the issue of climate change, an environmental issue that is not an abstraction.
154. Mauritius reiterates the conclusions set out at paragraphs 218-222 of its Written Statement of 22 March 2024, in the light of its further Written Comments herein.

¹⁹⁸ *Case Concerning the Temple of Preah Vihear (Cambodia v Thailand)*, Merits, Judgment, ICJ Reports 1962 p. 6, para. 34.

¹⁹⁹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 22, para. 29.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a long horizontal stroke at the bottom.

H.E. Jagdish Dharamchand Koonjul, G.C.S.K., G.O.S.K.

*Ambassador and Permanent Representative of the Republic of Mauritius to the
United Nations*

15 August 2024