Corrigé
Corrected

CR 2024/50

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Wednesday 11 December 2024, at 3 p.m., at the Peace Palace,

President Salam presiding,

***on the* Obligations of States in respect of Climate Change**
(Request for advisory opinion submitted by the General Assembly of the United Nations)

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le mercredi 11 décembre 2024, à 15 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

***sur les* Obligations des États en matière de changement climatique**
(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

COMPTE RENDU

Present:	President	Salam
	Vice-President	Sebutinde
	Judges	Tomka
		Abraham
		Yusuf
		Xue
		Bhandari
		Iwasawa
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
	Registrar	Gautier

Présents : M. Salam, président
M^me^ Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^me^ Xue
MM. Bhandari
Iwasawa
Nolte
M^me^ Charlesworth
MM. Brant
Gómez Robledo
M^me^ Cleveland
MM. Aurescu
Tladi, juges

M. Gautier, greffier

The Government of the Republic of Singapore is represented by:

Ms Rena Lee, Ambassador for International Law, Chief Executive, Intellectual Property Office of Singapore,

Ms Davinia Aziz, Minister-Counsellor, Embassy of the Republic of Singapore in the Kingdom of the Netherlands,

Mr Kenneth Wong, Senior Director, Senior State Counsel, Attorney-General's Chambers,

Ms Ai Lin Seow, Deputy Senior State Counsel, Attorney-General's Chambers,

Ms Ryce Lee, State Counsel, Attorney-General's Chambers,

Ms Vanessa Lam, State Counsel, Attorney-General's Chambers,

Mr Matthew Kwok, First Secretary (Administration), Embassy of the Republic of Singapore in the Kingdom of the Netherlands.

The Government of the Republic of Slovenia is represented by:

Mr Marko Rakovec, Director-General for International Law, Ministry of Foreign and European Affairs,

HE Mr Jožef Drofenik, Ambassador of the Republic of Slovenia to the Kingdom of the Netherlands,

Ms Vasilka Sancin, Professor of International Law, Faculty of Law, University of Ljubljana,

Mr Daniel Müller, Partner of FAR Avocats, member of the Paris Bar,

Mr Primož Koštrica, representative of the Ministry of Foreign and European Affairs,

Mr Helmut Hartman, Legal Adviser, Embassy of the Republic of Slovenia in the Kingdom of the Netherlands.

The Government of the Republic of the Sudan is represented by:

Ms Omaima Mahmoud Ahmed Alsharief, Chargé d'affaires a.i., Embassy of the Republic of the Sudan in the Kingdom of the Netherlands,

Mr Marwan Ahmed Mohamed Khier, Deputy Head of Mission, Legal Officer, Embassy of the Republic of the Sudan in the Kingdom of the Netherlands,

Mr Fabián O. Raimondo, Associate Professor of Public International Law, Maastricht University, member of the Bar of the City of La Plata (Argentina),

Mr Skander Galand, Assistant Professor of Public International Law, Maastricht University, member of the Bar of Quebec.

For the complete list of delegations of all participants, please refer to CR 2024/35.

Le Gouvernement de la République de Singapour est représenté par :

S. Exc. M^me^ Rena Lee, ambassadrice pour le droit international, directrice générale, Office de la propriété intellectuelle de Singapour,

M^me^ Davinia Aziz, ministre-conseillère, ambassade de la République de Singapour au Royaume des Pays-Bas,

M. Kenneth Wong, directeur principal, conseiller d'État principal, cabinet de l'*Attorney General*,

M^me^ Ai Lin Seow, conseillère d'État principale adjointe, cabinet de l'*Attorney General*,

M^me^ Ryce Lee, conseillère d'État, cabinet de l'*Attorney General*,

M^me^ Vanessa Lam, conseillère d'État, cabinet de l'*Attorney General*,

M. Matthew Kwok, premier secrétaire (administration), ambassade de la République de Singapour au Royaume des Pays-Bas.

Le Gouvernement de la République de Slovénie est représenté par :

M. Marko Rakovec, directeur général du droit international, ministère des affaires étrangères et européennes,

S. Exc. M. Jožef Drofenik, ambassadeur de la République de Slovénie auprès du Royaume des Pays-Bas,

M^me^ Vasilka Sancin, professeure de droit international, faculté de droit de l'Université de Ljubljana,

M. Daniel Müller, associé au cabinet FAR Avocats, membre du barreau de Paris,

M. Primož Koštrica, représentant du ministère des affaires étrangères et européennes,

M. Helmut Hartman, conseiller juridique, ambassade de la République de Slovénie au Royaume des Pays-Bas.

Le Gouvernement de la République du Soudan est représenté par :

M^me^ Omaima Mahmoud Ahmed Alsharief, chargée d'affaires par intérim, ambassade de la République du Soudan au Royaume des Pays-Bas,

M. Marwan Ahmed Mohamed Khier, chef de mission adjoint, juriste, ambassade de la République du Soudan au Royaume des Pays-Bas,

M. Fabián O. Raimondo, professeur associé de droit international public, Université de Maastricht, membre du barreau de La Plata (Argentine),

M. Skander Galand, professeur adjoint de droit international public, Université de Maastricht, membre du barreau du Québec.

Pour consulter la liste complète de toutes les délégations, prière de se reporter au CR 2024/35.

The Government of the Democratic Socialist Republic of Sri Lanka is represented by:

Hon. Parinda Ranasinghe Jnr, President's Counsel, Attorney General,

HE Ms Rekha Gunasekera, Ambassador of the Democratic Socialist Republic of Sri Lanka to the Kingdom of the Netherlands,

Ms Avanti Perera, Deputy Solicitor General,

Ms Sasireha Shanmugam, First Secretary, Embassy of the Democratic Socialist Republic of Sri Lanka in the Kingdom of the Netherlands.

The Government of the Swiss Confederation is represented by:

HE Mr Franz Perrez, Head of the Directorate of International Law, Federal Department of Foreign Affairs,

Mr Steeve Guillod, Lawyer,

Ms Nathalie Guillet, Lawyer,

HE Ms Corinne Cicéron Bühler, Ambassador of the Swiss Confederation to the Kingdom of the Netherlands,

Ms Sandra Caluori, Deputy Head of Mission, Multilateral Affairs, Embassy of the Swiss Confederation in the Kingdom of the Netherlands,

Mr Gian Heimann, trainee, Multilateral Affairs, Embassy of the Swiss Confederation in the Kingdom of the Netherlands.

The Government of the Republic of Serbia is represented by:

Mr Aleksandar Gajić, Chief Legal Adviser, Ministry of Foreign Affairs,

Mr Marko Jovanović, Principal Assistant to the Chief Legal Adviser,

Mr Dušan Vukić, Chargé d'affaires a.i., Embassy of the Republic of Serbia in the Kingdom of the Netherlands.

_____

Le Gouvernement de la République socialiste démocratique de Sri Lanka est représenté par :

S. Exc. M. Parinda Ranasinghe Jnr., conseiller du président, *Attorney General*,

S. Exc. M^me^ Rekha Gunasekera, ambassadrice de la République socialiste démocratique de Sri Lanka auprès du Royaume des Pays-Bas,

M^me^ Avanti Perera, *Solicitor General* adjointe,

M^me^ Sasireha Shanmugam, première secrétaire, ambassade de la République socialiste démocratique de Sri Lanka au Royaume des Pays-Bas.

Le Gouvernement de la Confédération suisse est représenté par :

S. Exc. M. Franz Perrez, directeur de la direction du droit international public au département fédéral des affaires étrangères,

M. Steeve Guillod, avocat,

M^me^ Nathalie Guillet, avocate,

S. Exc. M^me^ Corinne Cicéron Bühler, ambassadrice de la Confédération suisse auprès du Royaume des Pays-Bas,

M^me^ Sandra Caluori, cheffe de mission adjointe, activités multilatérales, ambassade de la Confédération suisse au Royaume des Pays-Bas,

M. Gian Heimann, stagiaire, activités multilatérales, ambassade de la Confédération suisse au Royaume des Pays-Bas.

Le Gouvernement de la République de Serbie est représenté par :

M. Aleksandar Gajić, conseiller juridique principal au ministère des affaires étrangères,

M. Marko Jovanović, assistant principal du conseiller juridique principal,

M. Dušan Vukić, chargé d'affaires par intérim de l'ambassade de la République de Serbie au Royaume des Pays-Bas.

_____

The PRESIDENT: Good afternoon. Please be seated. The sitting is now open.

The Court meets this afternoon to hear Singapore, Slovenia, Sudan, Sri Lanka, Switzerland and Serbia on the questions submitted by the United Nations General Assembly. Each of the delegations has been allocated 30 minutes for its presentation. The Court will observe a short break after the presentation of Sudan.

I shall now give the floor to the delegation of Singapore. I call Ms Rena Lee to the podium. You have the floor.

Ms LEE:

INTRODUCTION

1. Mr President, Madam Vice-President, distinguished Members of the Court, I am honoured to appear before you on behalf of the Republic of Singapore in these proceedings today.

2. The Participants before me have addressed the Court on the great significance that climate change has had on their States. Singapore is no different. We are a small island developing State with no natural resources. Our main island measures just 49 km from east to west and 28 km from north to south. To put this into perspective, it takes less than one hour to drive from one end of our island to the other, about the same time it would take to travel from the Peace Palace to Schiphol International Airport. Besides being a small island, Singapore is also a low-lying one, with one of the highest population densities globally. Thirty per cent of our land area is no higher than 5 m above mean sea level and more than half of our population lives within 3.5 km from the coast. Particularly with the threat of sea level rise, necessitating adaptation measures such as building sea walls and conducting land reclamation, these circumstances mean that climate change is a matter of existential importance to us.

3. Singapore is committed to doing our part in the global effort to tackle climate change. In 2022, we updated our nationally determined contribution ("NDC") for a second time with a more ambitious goal to reduce greenhouse gas emissions than we previously targeted in the first update. Yet, while we have taken ambitious early actions to reduce our greenhouse gas emissions, we are alternative-energy disadvantaged. Singapore is a small and highly urbanized city-state with low wind speeds, relatively flat land and lack of near-surface geothermal resources and major river systems.

As such, we have limited access to alternative clean energy options such as wind, tidal, hydroelectric or geothermal energy. There is also limited scope for Singapore's forests to be a significant carbon sink. Despite being commonly referred to as a "sunny island", we also face challenges in the use of solar energy. We have limited available land for the large-scale deployment of solar panels, and the high cloud cover and substantial urban shading across Singapore pose challenges such as intermittency. Nevertheless, we are vigorously pursuing solar energy production, aiming to deploy at least two gigawatt-peak of solar energy by 2030. But we expect this can meet only 3 per cent of our projected electricity demand in 2030. As such, our ability to achieve our decarbonization targets will depend on technological maturity and effective international co-operation, such as through collaboration with other countries on clean energy trade, regional power grids, and carbon capture and storage opportunities. We also seek the fulfilment by all States of their obligations in respect of climate change.

4. Singapore therefore looks to the Court for an advisory opinion to provide critical guidance on the current state of international law and to provide impetus for further climate action by all States.

5. Mr President, Madam Vice-President, Members of the Court, I will focus on four key issues raised by the question and other Participants in their pleadings.

6. *First*, the relationship between the United Nations Framework Convention on Climate Change (UNFCCC) and its Paris Agreement, on the one hand, and other sources of international law, on the other, in defining climate change obligations of States. *Second*, what the customary international law obligation to conduct environmental impact assessments (EIAs) requires a State to do with respect to greenhouse gas emissions of activities within their jurisdiction. *Third*, what the obligations of States to co-operate to address adverse impacts of greenhouse gas emissions on human rights and the environment entail. *Fourth*, the scope of the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, and, in particular, whether it covers historical responsibility for emissions.

I. THE UNFCCC AND ITS PARIS AGREEMENT ARE CENTRAL PILLARS, BUT NOT THE EXCLUSIVE SOURCES, OF THE CLIMATE CHANGE OBLIGATIONS OF STATES

7. Mr President, Madam Vice-President, Members of the Court, I turn first to the relationship between the United Nations climate treaties — namely, the UNFCCC and its Paris Agreement — and other sources of international law obligations in respect of climate change.

8. Part *(a)* of the question requests the Court to identify the obligations of States to ensure the protection of the climate system from anthropogenic emissions of greenhouse gases. Both the UNFCCC and the glossary of the Intergovernmental Panel on Climate Change ("IPCC") recognize the global nature of the climate system, which encompasses "the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions"[1]. This reflects the multi-faceted nature of climate change. Its causes and impacts are truly global. And so must be the international community's response to climate change — a global response.

9. The obligations under the UNFCCC and Paris Agreement are the primary obligations that States have agreed as a global response to the threat of climate change. These obligations are aimed at accelerating the reduction of global greenhouse gas emissions[2], including through not just the preparation, communication and maintenance of successive NDCs, but also, crucially, the pursuit of domestic mitigation measures to achieve those NDCs[3]. These obligations must be performed by every party in good faith for the Paris Agreement to truly achieve its aim of strengthening the global response to the threat of climate change[4].

10. However, the UNFCCC and Paris Agreement do not exclude the application of obligations outside these treaties to climate change and its adverse effects. Nothing in the UNFCCC or Paris Agreement suggests that they were intended to be exclusive or exclusionary in nature. The obligations of States to protect the climate system from greenhouse gas emissions can therefore also arise under customary international law and other treaties.

11. The non-exclusive character of the UNFCCC and Paris Agreement also accords with the global and multi-faceted nature of climate change. Successive IPCC reports have made it abundantly

---

[1] UNFCCC, Article 1 (3).

[2] Decision 1/CP.21, preamble, fifth paragraph.

[3] Paris Agreement, Article 4 (2).

[4] *Ibid.*, Article 2 (1).

clear that global greenhouse gas emissions cause harm to terrestrial and freshwater ecosystems. These emissions also cause harm to the marine environment, and to human health and well-being. That being the case, the international community's legal response must include the obligations of States to prevent significant transboundary harm to the environment under customary international law (which I will refer to as "the prevention principle"). This legal response must also include the obligations under UNCLOS to protect and preserve the marine environment. And our legal response must also include obligations which protect the enjoyment of fundamental human rights, including the right to life, the right to a standard of living adequate for health and well-being, rights of the child and the collective right to self-determination. In the context of a global crisis such as climate change, which has already caused and continues to cause serious harm to the environment and to human lives and livelihoods, it is simply untenable to exclude these obligations from applying to climate change.

12. This non-exclusionary approach to identifying climate change obligations is also consistent with the recent advisory opinion of the International Tribunal for the Law of the Sea ("ITLOS") in response to the request submitted by the Commission of Small Island States on Climate Change and International Law.

13. In that opinion, the ITLOS clarified that even though the UNFCCC and Paris Agreement are the primary legal instruments addressing the global problem of climate change, they are separate agreements from UNCLOS, with separate sets of obligations. The Paris Agreement complements, but does not supersede, the obligations of UNCLOS States parties to regulate marine pollution from greenhouse gas emissions[5].

14. In Singapore's view, these observations of ITLOS apply similarly to the prevention principle and human rights obligations. They too give rise to obligations separate from the UNFCCC and Paris Agreement, each applicable, and to be discharged, on their respective terms. We do not see anything in the text of the applicable treaties, their *travaux* or State practice contradicting this interpretation.

---

[5] *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, *ITLOS*, *Advisory Opinion*, 21 May 2024 ("*ITLOS Advisory Opinion*"), pp. 80-81, para. 223.

15. It follows that a State cannot rely solely on compliance with obligations under the UNFCCC and Paris Agreement to assert that it has discharged all applicable obligations in respect of climate change.

16. Having said that, Singapore agrees with the view of many Participants[6] that obligations bearing on the same issue or subject-matter should be interpreted harmoniously, to the extent possible, to give rise to a set of compatible obligations. This interpretive approach is reflected in Article 31, paragraph 3 *(c)*, of the Vienna Convention on the Law of Treaties, which requires treaty interpretation to take into account "any relevant rules of international law applicable in relations between the parties"[7]. This approach means that in the climate change context, the UNFCCC and Paris Agreement obligations are relevant in interpreting and applying obligations under customary international law and other treaties pertaining to climate change. A case in point is the customary international law obligation to undertake EIAs, which I turn to next.

II. DISCHARGING EIA OBLIGATIONS IN THE CLIMATE CHANGE CONTEXT NECESSARILY ENTAILS TAKING STEPS TO ASSESS THE IMPACT OF GREENHOUSE GAS EMISSIONS OF PLANNED ACTIVITIES ON THE ACHIEVEMENT OF NATIONALLY DETERMINED CONTRIBUTIONS

17. Participants generally agree[8] that the prevention principle includes a procedural obligation to conduct an EIA of planned activities having potential significant adverse impact on the environment. Similarly, in its advisory opinion, the ITLOS concluded that under UNCLOS, an EIA must be conducted in relation to "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"[9].

18. Singapore agrees with this conclusion and invites the Court to elaborate on how this obligation is discharged in practical terms. This is because, in the climate change context, it would only be on rare occasions that a *single* planned activity, when measured against the sheer magnitude of cumulative impacts caused by anthropogenic greenhouse gas emissions *globally*, could itself

---

[6] See, for example, the positions of Antigua and Barbuda, Bolivia, Côte d'Ivoire and France.

[7] Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, Vol. 1155, p. 331), Article 31 (3) *(c)*.

[8] See, for example, the positions of Australia, Belize, Chile and Namibia.

[9] *ITLOS Advisory Opinion*, p. 123, para. 365, and p. 124, para. 367.

produce environmental effects significant enough to make a difference to overall greenhouse gas levels.

19. In the climate change context, the practical steps a State needs to take to discharge the EIA obligation must be informed by its Paris Agreement obligations. This is because it is this treaty which defines the part each party must play to keep global climate impacts within acceptable limits. Under the Paris Agreement, parties are required to prepare, communicate and maintain NDCs[10]. These NDCs would typically include emissions reductions or limitation targets. The Paris Agreement also requires parties to account for their NDCs. And, in accounting for anthropogenic emissions and removals corresponding to their NDCs, they are to do so in accordance with the guidance adopted by the Conference of the Parties[11]. In addition, parties must regularly provide their national greenhouse gas inventories as well as information necessary to track the progress made in implementing and achieving its NDC[12].

20. Discharging the EIA obligation harmoniously with these Paris Agreement obligations means that every party has to put in place and effectively implement a domestic régime capable of regulating activities within its jurisdiction that emit greenhouse gases. This domestic régime has to include steps to assess the greenhouse gas emissions of planned individual activities and their likely impact on the attainment of the party's NDC. In this way, the party can take the necessary measures, to ensure that it remains on track to achieve its NDC. These measures include determining whether to allow or prohibit, or otherwise regulate planned activities.

III. STATES HAVE OBLIGATIONS TO CO-OPERATE TO PROTECT HUMAN RIGHTS AND THE ENVIRONMENT FROM ADVERSE IMPACTS OF GREENHOUSE GAS EMISSIONS

21. Mr President, Madam Vice-President, Members of the Court, I turn next to the obligations of States to co-operate with respect to the adverse impacts of greenhouse gas emissions on human rights and the environment. As regards human rights, the scientific evidence clearly points to the profound risks that climate change poses to the enjoyment of human rights in all regions of the world. As Singapore has pointed out in our written statement, Articles 55 and 56 of the United Nations

[10] Paris Agreement, Article 4 (2).

[11] *Ibid.*, Article 4 (13).

[12] *Ibid.*, Article 13 (7).

Charter and applicable human rights treaties — including the virtually universal United Nations Convention on the Rights of the Child — impose obligations on States to co-operate in the upholding and realization of the human rights of individuals and peoples, whether within or outside their jurisdiction. This includes human rights affected by climate change.

22. As regards the environment, a State's duty to co-operate in the context of climate change also arises under the prevention principle. This duty requires consultation with other States to reach mutually acceptable solutions on the reduction of greenhouse gas emissions. States also have treaty obligations under UNCLOS to co-operate in preventing pollution of the marine environment from greenhouse gas emissions.

23. While customary international law and treaty provisions on co-operation may address particular objectives, there are nonetheless common obligations pertaining to how to pursue these objectives in each case, particularly in the climate change context. Co-operation must be continuous, meaningful and in good faith. Such co-operation may either be direct, or through participation in the relevant international co-operative processes that address the impacts of climate change, including the UNFCCC and Paris Agreement régime. This is the case whether under the prevention principle, under UNCLOS[13] or in the upholding and realization of human rights.

24. While the duty to co-operate is not an obligation of result, good faith lies at the heart of this duty. States must conduct themselves in good faith in relevant consultative and co-operative processes. For example, a State must give serious consideration to, and at least not impede, another State's capacity to access essential means to mitigate greenhouse gas emissions, or to take mitigation or adaptation measures to secure human rights against climate change risks. This may entail conduct such as giving serious consideration to requests for assistance in, or facilitation of, a transfer of technology needed to pursue mitigation efforts within available resources of concerned State(s).

[13] See *ITLOS Advisory Opinion*, p. 111, para. 321.

IV. THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES AND RESPECTIVE CAPABILITIES, IN THE LIGHT OF DIFFERENT NATIONAL CIRCUMSTANCES IN THE PARIS AGREEMENT INCLUDES THE NOTION OF HISTORICAL RESPONSIBILITY

25. Mr President, Madam Vice-President, Members of the Court, I now turn to the scope of the principle of common but differentiated responsibilities ("CBDR"), a core principle found in the UNFCCC and Paris Agreement.

26. There has been considerable divergence between Participants on what CBDR in the UNFCCC and Paris Agreement entails. Some Participants have argued[14] that historical responsibility was never the basis of CBDR. Others have argued[15] that with the addition to CBDR of the words "respective capabilities" and "in the light of different national circumstances"[16], the UNFCCC and Paris Agreement moved on from historical responsibility.

27. Singapore disagrees. In our view, historical responsibility was and remains an integral part of CBDR. The term "common but differentiated responsibilities" first crystallized in a normative instrument which was later adopted as the 1992 Rio Declaration on Environment and Development. Principle 7 of this Declaration clearly provides:

> "[i]n view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command."

28. There is therefore no doubt that CBDR in the Rio Declaration did cover the notion of historical responsibility. The question then is whether in the subsequent legal instruments which also use the term, it can be said that the parties to those instruments intended to exclude that notion.

29. They certainly did not when the term was used in the UNFCCC. To the contrary, the third preambular paragraph of the UNFCCC noted that "the largest share of historical and current global emissions of greenhouse gases has originated in developed countries". Further, when Article 3, paragraph 1, of the UNFCCC referred to CBDR as one of the principles by which its parties "shall be guided"[17], it explicitly stated "developed country Parties should take the lead in combatting

---

[14] See e.g. Written Comments of the United States of America, paras. 2.2-2.9.

[15] See e.g. Written Statement of Germany, paras. 56-61.

[16] See e.g. Paris Agreement, preamble, third paragraph, and Article 2 (2).

[17] UNFCCC, Article 3 (1).

climate change and the adverse effects thereof"[18]. The inclusion of the words "and respective capabilities" after the reference to CBDR in Article 3, paragraph 1, supplement the factors to be taken into account, rather than exclude or substitute consideration of historical responsibility.

30. Did anything change when CBDR was used again in the Paris Agreement? In our written statement, Singapore has already noted that the Paris Agreement was adopted under the auspices of the UNFCCC to enhance its implementation and strengthen the global response to climate change[19]. These two treaties are inextricably linked, and the third preambular paragraph of the Paris Agreement expressly carried over the UNFCCC's principles, including the CBDR principle, into the Paris Agreement as guiding principles. It follows that the understanding of CBDR and its incorporation of historical responsibility would likewise be carried over into the Paris Agreement.

31. Like the UNFCCC, the term "respective capabilities" appears after the reference to CBDR in the Paris Agreement. The introduction of the phrase "in the light of different national circumstances" after the reference to CBDR and "respective capabilities"[20] supplements but does not detract from historical responsibility as a core aspect of CBDR. This is not only the ordinary meaning given to the words "common but differentiated responsibilities *and* respective capabilities, in the light of different national circumstances". There is also nothing in the negotiating history of the UNFCCC or Paris Agreement that points to any intention to exclude the notion of historical responsibility from CBDR. Singapore had the privilege of our Minister for Foreign Affairs, Dr Vivian Balakrishnan, co-leading the Ministerial Informal Consultations on Differentiation at COP21 in December 2015. The mandate of these Informal Consultations, at which I was also present, was to resolve disagreements over how CBDR and differentiation were to be reflected in the Paris Agreement. In delivering his remarks at the adoption of the Paris Agreement on 12 December 2015, the Minister said:

> "The challenge has always been how to create a fair system — a fair system that recognises the inequalities of the past, the diversity of the present, and the uncertainties of the future. In particular, the developed countries with historical responsibilities have to be seen to be fulfilling their prior commitments and to continue to take the lead . . . Developed countries have argued that we need to be focused on the present and the

[18] UNFCCC, Article 3 (1).

[19] Written Statement of Singapore, para. 3.27.

[20] Paris Agreement, preamble, third paragraph, and Articles 2 (2), 4 (3) and 4 (19).

> future. We agree. But developing countries also point out that the present is a function of the past and that the future is not a given. I believe the current agreement strikes the right balance between the developed countries and the developing Parties"[21]

32. The inclusion of the additional terms "respective capabilities" and "in the light of different national circumstances" therefore cannot be interpreted as excluding historical responsibility. Instead, their inclusion makes it clear that considerations in addition to historical responsibility are also taken into account in defining the relevant obligations. For example, in applying CBDR to a party's obligation to prepare, communicate and maintain successive NDCs, a party needs to have regard to its current capabilities to meet the collective climate problem, and its national circumstances, such as size and access to alternative energy. It must also take into account its cumulative historical greenhouse gas emissions. These factors influence how a party reflects its highest possible ambition in its NDCs, and how it pursues mitigation measures to achieve the objectives of those NDCs.

CONCLUSION

33. Singapore is, and continues to be, a strong supporter of the multilateral framework of co-operation on climate change under the UNFCCC and its Paris Agreement. We are confident that the Court's advisory opinion will have a positive impact on the global effort to address climate change, including the ongoing processes within the UNFCCC framework.

34. Mr President, Madam Vice-President, distinguished Members of the Court, this concludes Singapore's oral statement, which I hope will be of assistance to this Court. I thank the interpreters and the Registry for ensuring the smooth management of these proceedings, and I thank the Court for your kind attention. Thank you.

The PRESIDENT: I thank the representative of Singapore for her presentation. I now invite the next participating delegation, Slovenia, to address the Court and I call upon Mr Marko Rakovec to take the floor.

---

[21] MFA Press Release: Remarks by Minister for Foreign Affairs Dr Vivian Balakrishnan at the Committee of Paris Session at COP-21, 12 December 2015, accessible at https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2015/12/MFA-Press-Release-Remarks-by-Minister-for-Foreign-Affairs-Dr-Vivian-Balakrishnan-at-the-Committee-of.

Mr RAKOVEC:

INTRODUCTION

1. Mr President, Madam Vice-President, Members of the Court, it is an honour to appear before you, and to present, together with our counsel, the oral observations of the Republic of Slovenia.

2. In its written statement[22], the Republic of Slovenia emphasized the importance it attaches to these advisory proceedings and to the issue raised by the General Assembly in its Request. Slovenia, together with the Member States of the European Union, fully supported and co-sponsored the Assembly's resolution 77/276[23]. This is because, as set out in the first preambular paragraph of that resolution: "[C]limate change is an unprecedented challenge of civilizational proportions and . . . the well-being of present and future generations of humankind depends on our immediate and urgent response to it"[24].

As the principal judicial organ of the United Nations, the contribution of the Court by clarifying existing international law in respect of climate change will be, without doubt, of great importance and value. The outcome of these proceedings will constitute a framework within which the international community needs to "pursue[e] further ambitious and effective action, including through international negotiations, to tackle climate change"[25] for the benefit of present and future generations of mankind.

3. Mr President, the written proceedings and the oral observations that you have already listened to, since last Monday, make it clear: the questions submitted to your scrutiny by the General Assembly are of greatest concern to the international community as a whole; and they are complex and, as formulated, considerably large in their scope. In particular, the first question demands the Court to identify the obligations of States under international law to ensure the protection of the

---

[22] Written Statement of the Republic of Slovenia, paras. 3-4.

[23] *Ibid.*, para. 3. See also UNGA draft resolution, "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change", Un doc. A/77/L.58, 1 March 2023. See also *Official Records of the General Assembly*, seventeen-seventh session, 64th plenary meeting, 29 March 2023, UN doc. A/77/PV.64, p. 8 [Dossier No. 3].

[24] UNGA res. 77/276, "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change", 29 March 2023, first preambular para. [Dossier No. 2].

[25] *Official Records of the General Assembly*, seventeen-seventh session, 64th plenary meeting, 29 March 2023, A/77/PV.64, pp. 7-8 [Dossier No. 3].

climate system and other parts of the environment, without any further limitation. It refers to certain international instruments establishing rules expressly recognized by and applicable in the relations of the State parties concerning climate change and its consequences. The General Assembly also indicated that you should have "particular regard" to these instruments[26]. But you have not been asked to opine on the obligations of State parties to these conventions under the provisions of these instruments only. The question to be answered is broader and concerns the obligations of States under international law *tout court*.

4. I am proud to say that Slovenia ratified or adhered to all the international treaties listed in the Request[27] and encourages all States that have not yet done so to become parties to them and to fully respect and implement the obligations contained therein. As the Prime Minister of Slovenia, Mr Robert Golob, reiterated before the General Assembly last September, tackling impacts of climate change as a "global challenge demands a global and collaborative response"[28].

5. This being said, the Republic of Slovenia has chosen to limit its observations to one specific aspect: the right to a clean, healthy and sustainable environment as a fundamental human right.

6. Slovenia is particularly attached to this right. It has been recognized constitutionally on Slovenia's territory since 1974; and Article 72 of its 1991 Constitution specifically provides that "[e]veryone has the right in accordance with the law to a healthy living environment"[29]. The Republic of Slovenia has also been at the forefront, together with Costa Rica, the Maldives, Morocco and Switzerland[30], of the recognition of the right to a clean, healthy and sustainable environment in

---

[26] UNGA res. 77/276, "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change", 29 March 2023 [Dossier No. 2].

[27] Charter of the United Nations, *UNTS*, Vol. 1675, p. 223; International Covenant on Civil and Political Rights, *UNTS*, Vol. 1679, p. 497; International Covenant on Economic, Social and Cultural Rights, *ibid.*, p. 496; United Nations Framework Convention on Climate Change, *UNTS*, Vol. 1899, p. 114; Paris Agreement, *UNTS*, Vol. 3164, p. 443; United Nations Convention on the Law of the Sea, *UNTS*, Vol. 1870, p. 505.

[28] Statement by HE Mr Robert Golob, Prime Minister of the Republic of Slovenia, at the 79th Session of the United Nations General Assembly General Debate, available at https://buildingtrust.si/statement/statement-at-the-79th-session-of-the-unga-general-assembly-general-debate/.

[29] Constitution of the Republic of Slovenia, Article 72, *Official Gazette of the Republic of Slovenia*, Nos. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a and 92/21 –UZ62a, available at https://www.us-rs.si/media/constitution.pdf.

[30] *Official Records of the General Assembly*, seventy-sixth session, 97th plenary meeting, 28 July 2022, A/76/PV.97, p. 5 (Ms Chan Valverde (Costa Rica)).

General Assembly resolution 76/300[31]. Slovenia's commitment to the right to a clean, healthy and sustainable environment is also evidenced by the recent President's Forum providing for a nationwide consultation on the implementation of this right, held under the auspices of HE Nataša Pirc Musar, President of the Republic of Slovenia, with the objective to discuss measures needed for its full implementation, including in the context of climate change. Promoting international co-operation is a key element of Slovenia's commitment in addressing climate change, including the realization of the right to a clean, healthy and sustainable environment, but also the promotion of the right of everyone to drinking water, recognized by its Constitution since 2016[32]. Slovenia has been a leader in promoting international co-operation to ensure access to safe drinking water for all, for instance, by establishing the Global Alliance to Spare Water from Armed Conflicts together with States from all continents[33].

7. Mr President, Members of the Court, the protection of the climate system and the environment of which it is part does not concern State to State relations only. It is a central issue for the enjoyment of fundamental rights by all individuals, if not the existence of humankind as such. Your Court already recognized that "the environment [and certainly the climate system, too, are] not an abstraction but represent[] the living space, the quality of life and the very health of human beings, including generations unborn"[34]. It also attached "great significance . . . to respect for the environment, not only for States but also for the whole of mankind"[35]. Last May, the Tribunal in Hamburg confirmed that "climate change represents an existential threat and raises human rights concerns"[36] and that "climate change is recognized internationally as a common concern of

---

[31] UNGA res. 76/300, "The human right to a clean, healthy and sustainable environment", 28 July 2022 [Dossier No. 260].

[32] Article 70 (*a)*, Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia, *Official Gazette of the Republic of Slovenia*, No. 75/16.

[33] See https://buildingtrust.si/newly-established-global-alliance-aspires-to-better-protect-water-in-armed-conflicts/.

[34] *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 241-242, para. 29; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment*, *I.C.J. Reports 1997*, p. 41, para. 53; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*, p. 132, para. 72. See also ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, para. 166.

[35] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 41, para. 53.

[36] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, para. 66.

humankind"[37]. The protection of the climate system and the environment at large, these are issues where States do not have only interests of their own; but they need to pursue, one and all, a common interest, namely the protection of the living space and the very health and existence of human beings. Therefore, Mr President, the legal obligations of States in respect of climate change and its effects must be seen, addressed, and maybe further developed with due regard to its human right dimension and its benefit for humankind everywhere, now and in particular in the future. To take the words of the United Nations Secretary-General, "[w]e must stand up for all rights — always", including, as he specifically mentioned, last Friday, the right to a clean, healthy and sustainable environment[38].

Mr President, Members of the Court, thank you for your kind attention. Mr President, may I ask you give now the floor to Professor Vasilka Sancin who will present Slovenia's position concerning the right to a clean, healthy and sustainable environment as an inherent part of the existing legal framework addressing climate change.

The PRESIDENT: I thank Mr Marko Rakovec. I now give the floor to Professor Vasilka Sancin. You have the floor, Madam.

Ms SANCIN:

I. THE EXISTENCE OF THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour and a privilege to appear before you on behalf of the Republic of Slovenia.

2. Within the limits chosen by Slovenia for today's oral presentation — to focus on the right to a clean, healthy and sustainable environment as a fundamental human right — I wish to observe at the outset that the vast majority of Participants in these proceedings agree on the applicability of the international human rights law as a relevant legal framework to respond to the questions posed to the Court. In the limited time available I cannot go over the grounds covered by many States explaining the need for a systemic approach in which international human rights law plays an

---

[37] *Ibid.*, para. 122.

[38] United Nations, Secretary-General, "Human Rights Are about Building the Future — Right Now" Says Secretary-General, Marking International Day, Press Release, SG/SM/22488, 6 December 2024, available at https://press.un.org/en/2024/sgsm22488.doc.htm.

important part. Regardless of any potential divergence of views concerning the effects of primacy of the climate change legal régime among participating States, the inapplicability of human rights obligations to address the questions posed had not been convincingly substantiated. And, Mr President, it cannot be substantiated given that the preamble of the landmark Paris Agreement expressly provides that State parties "should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, persons with disabilities, and people in vulnerable situations"[39]. This does not only imply that States parties need to ensure that their actions are consistent with their human rights obligations, but also that respect for and enhancement of human rights require appropriate actions concerning the protection of the climate system and the environment more largely.

3. Mr President, in addressing climate change, the re-establishment of business as usual is simply not possible. As the United Nations Secretary-General António Guterres stated: "[t]he climate crisis has passed the point of no return"[40]. We are responding to circumstances of irreversible harm to our planet and consequently humankind, which is not limited by duration, meaning that the legal notion of "state of emergency", treating climate change as a one-off event with extraordinary legal solutions, cannot properly address the climate crisis. It is essential to tackle the changing climate within the generally applicable legal order and in a sustainable manner, rather than searching for *ad hoc* solutions each time climate change creates new realities. Slovenia is, like other countries, not immune to extreme weather events, and had to recently face unprecedented forest fires and floodings affecting the entire country. Nevertheless, Slovenia did not consider declaring a state of emergency, but rather treated the events as symptoms of the climate change crisis requiring urgent actions. It is therefore inappropriate to use the notion of climate emergency, alluding to possible human rights derogations, in any legal discourse. The recognition of the climate crisis as a human rights crisis urgently requires a holistic human rights-based approach when addressing the protection of the environment and the climate system.

---

[39] Paris Agreement, Paris, 12 December 2015, *UNTS*, Vol. 3156, p. 79.

[40] United Nations, Press Release, Climate Crisis Past Point of No Return, Secretary-General Says, Listing Global Threats at General Assembly Consultation on 'Our Common Agenda' Report, March 2022, available at https://press.un.org/en/2022/sgsm21173.doc.htm.

4. Turning now to the central argument in this part of Slovenia's contribution, that is, the right to a healthy, clean and sustainable environment as an inherent element of existing human rights legal framework.

5. Mr President, Members of the Court, today, more than four fifths of the United Nations Member States recognized this right in their domestic law, at national or regional level. The right to a healthy, clean and sustainable environment or elements thereof are expressly recognized in regional human rights instruments across continents[41]. Other international agreements also specifically refer to it, for example, the Aarhus Convention[42] and the Escazú Agreement[43].

6. As stated by Dr Rakovec, Slovenia was a strong promoter of the Human Rights Council resolution 48/13[44] and the General Assembly resolution 76/300[45], that specifically emphasized not only the existence of the right to a clean, healthy and sustainable environment, but also its close relationship with other fundamental rights of the human person. Allow me to quote the relevant part: "the right to a clean, healthy and sustainable environment is related to other rights and existing international law"[46].

7. Moreover, the 2023 meeting of the States parties to the Paris Agreement, counting 195 States, also explicitly reaffirmed the existence of a right to a clean, healthy and sustainable environment in its decision, adopted by consensus[47]. The large consensus between States, within the General Assembly and within the Conference of Parties to the UNFCCC and the Paris Agreement,

---

[41] Article 24, African Charter on Human and Peoples' Rights, Nairobi, 27 June 1981, United Nations, *Treaty Series*, vol. 1520, p. 217; Article 11, Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights (Protocol of San Salvador), San Salvador, 17 November 1988, Organization of American States, *Treaty Series*, No. 69; Article 38. For an English translation of the Arab Charter on Human Rights, see UN doc. CHR/NONE/2004/40/Rev.1; ASEAN Human Rights Declaration, 19 November 2012, para. 28 (available at https://asean.org/asean-human-rights-declaration/).

[42] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998, United Nations, *Treaty Series*, vol. 2161, p. 447.

[43] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin American and the Caribbean, Escazú, 4 March 2018, United Nations, *Treaty Series*, vol. 3397.

[44] United Nations, Human Rights Council, resolution 48/13, The human right to a clean, healthy and sustainable environment, 8 October 2021.

[45] United Nations, General Assembly, resolution 76/300, The human right to a clean, healthy and sustainable environment, 28 July 2022.

[46] *Ibid.*, para. 2.

[47] Decision [4]/CMA.5, Outcome of the first global stocktake, in United Nations Framework Convention on Climate Change, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fifth session, held in Dubai from 30 November to 12 December 2023, Addendum, 13 December 2023, FCCC/PA/CMA/2023/L.17.

together with the widespread recognition of the right in the domestic laws of a great number of States, as well as regional or international conventions and instruments, confirms that, in the opinion of States and the international community, this right, as a human right, is an essential element of the existing international legal framework.

8. Several United Nations human rights treaty bodies have taken a similar view when interpreting human rights treaties and their provisions stressing the interoperability between international environmental law and human rights law, recognizing that the latter needs to be assessed and interpreted also in the light of the former. Other Participants in these proceedings have already brought to the Court's attention relevant references to interlinkages between the human rights treaties and the protection of the environment, such as those appearing in the General Comment No. 36[48] of the Human Rights Committee or the General Comment No. 26 of the Committee on the Rights of the Child[49], the joint statement on "Human Rights and Climate Change" by five committees[50], in addition to the relevant decisions in specific cases[51]. As already recognized by this Court, the interpretation of human rights instruments by their respective treaty bodies specifically created to supervise their application should be ascribed great weight in order to achieve the necessary clarity and the essential consistency of international law[52].

9. The common feature of the aforementioned decisions is that a clean and healthy environment is an implied precondition for the full enjoyment of relevant human rights. The right to a clean, healthy and sustainable environment forms part of general international law and produces at least two sets of legal effects: first, it calls for systemic consideration of this right when interpreting

---

[48] Human Rights Committee, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 1999, para. 62.

[49] Committee on the Rights of the Child General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023.

[50] Joint Statement by the Committee on the Elimination of Discrimination Against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child and Committee on the Rights of Persons with Disabilities, United Nations, International Human Rights Instruments, HRI/2019/1, 14 May 2020.

[51] *Portillo Cáceres* v. *Paraguay* (CCPR/C/126/D/2751/2016); *Benito Oliveira et al.* v. *Paraguay* (CCPR/C/132/D/2552/2015); *Ioane Teitiota* v. *New Zealand* (CCPR/C/127/D/2728/2016); *Billy et al.* v. *Australia* (CCPR/C/135/D/3624/2019); Inter-American Court of Human Rights, *State Obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: Interpretation and scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2*, Advisory Opinion, OC-23/17, 15 November 2017; *KlimaSeniorinnen* v. *Switzerland*, App No. 53600/20, ECtHR, 9 April 2024.

[52] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, para. 66.

and applying States' obligations under international law relating to climate change; and, second, it entails compliance with its inherent due diligence requirement in relation to obligations of States, which include preventing, controlling and addressing environmental harm, not only when the harm threatens the territory of other States, but importantly, when it threatens the individuals within their jurisdiction.

10. The systemic interpretation *promotes coherence across international law*, as the right to a clean, healthy and sustainable environment connects various areas of international law and requires from States to give weight to this right as a guiding principle. The right's inherent due diligence requirement concerns existing obligations, which include, but are not limited to ensuring that populations, particularly those in most vulnerable situations — all Helens of Saint Lucia's across the world — are being shielded from climate-related harms, such as disappearance of land territories due to sea-level rise, air pollution, water scarcity or extreme heat. This required due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if States do not engage in robust national and international efforts to prevent adverse impacts of climate change, subject to the States' common but differentiated responsibilities and their respective capabilities. This obligation is of crucial importance to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with their international obligations are entitled.

11. Slovenia is fully convinced that the right to a clean, healthy and sustainable environment, as well as other fundamental human rights, for which the realization of the former is a necessary prerequisite, are the relevant benchmark for States to duly and diligently implement their respective obligations under the relevant legal framework to adequately address adverse impacts of climate change.

12. Members of the Court, thank you for your time and attention. I now respectfully ask you, Mr President, to give the floor to Dr Daniel Müller who will clarify Slovenia's position *sur le droit à un environnement propre, sain et durable*.

The PRESIDENT: I thank Professor Vasilka Sancin. Je passe maintenant la parole à M. Daniel Müller.

M. MÜLLER : Merci beaucoup, Monsieur le président.

II. LE DROIT À UN ENVIRONNEMENT PROPRE, SAIN ET DURABLE ET LES OBLIGATIONS DES ÉTATS

1. Monsieur le président, Mesdames et Messieurs de la Cour, c'est un grand privilège de me présenter devant vous et de le faire pour assister la République de Slovénie. Lors de la procédure écrite, certains ont soutenu que le droit à un environnement propre, sain et durable n'était non seulement pas inscrit dans les conventions relatives aux droits fondamentaux, mais, de surcroît, qu'il manquait d'un contenu normatif défini et certain. Aucun de ces deux arguments ne peut remettre en question l'existence même d'un tel droit comme partie intégrante du droit international positif.

2. Il paraît évident que le droit à un environnement propre, sain et durable est, par nature, pour ne pas dire par nécessité, évolutif. Il faut à peine rappeler que ce qui est considéré aujourd'hui comme un environnement propre, sain et durable diffère sensiblement de ce que l'on pouvait imaginer il y a 50 ans. À la lumière des progrès de la science, des connaissances et des technologies, nos standards ont changé et avec eux le contenu même du droit à un environnement propre, sain et durable. Ce caractère évolutif ne relègue pas ce droit fondamental au rang de non-droit. En effet, ce droit partage cette particularité avec d'autres droits fondamentaux établis et inscrits dans les principaux instruments internationaux. Il en va ainsi, par exemple, du droit à la santé, voire même du droit à la vie.

3. Dans cette optique, la Cour de Strasbourg a souligné dans l'affaire *Verein KlimaSeniorinnen* que les mesures conçues pour lutter contre le changement climatique et ses effets néfastes nécessitaient une action commune dont les contours concrets dépendent nécessairement d'un processus décisionnel démocratique[53].

4. Dans le cadre interétatique, ce consensus se traduit notamment par le régime conventionnel relatif au changement climatique et à l'environnement. Et l'Assemblée générale des Nations Unies a justement souligné que « la promotion du droit à un environnement propre, sain et durable passe par l'application pleine et entière des accords multilatéraux relatifs à l'environnement, conformément

[53] Cour européenne des droits de l'homme, Grande Chambre, *Verein KlimaSeniorinnen Schweiz et autres c. Suisse*, n° 53600/20, 9 avril 2024, par. 411-412.

aux principes du droit international de l'environnement »[54]. À cette fin, elle a appelé les États « à adopter des politiques, à améliorer la coopération internationale, à renforcer les capacités et à continuer de mettre en commun les bonnes pratiques afin d'intensifier les efforts visant à garantir un environnement propre, sain et durable pour tous »[55]. Là encore, Monsieur le président, il s'agit d'un processus éminemment évolutif et non pas d'une entreprise de codification gravant dans le marbre une fois pour toutes ce qui est nécessaire et attendu.

5. Sans qu'il soit possible, utile ou souhaitable d'énumérer l'ensemble des conséquences et obligations qui découlent du droit à un environnement propre, sain et durable, il n'en reste pas moins que ce droit impose aux États certaines obligations générales et génériques qui sont inhérentes à sa nature même.

6. D'abord, et comme la professeure Sancin l'a déjà expliqué, le droit à un environnement propre, sain et durable découle et est inhérent aux autres droits fondamentaux. Ce point a également été concédé lors de ces audiences publiques par ceux qui, pourtant, nient l'existence même de ce droit. Mais, encore une fois, on ne saurait remettre en question ni l'utilité ni le caractère juridique du droit à un environnement propre, sain et durable pour la simple raison qu'il constitue un droit indispensable, inhérent — un préalable nécessaire à la réalisation de l'ensemble des droits fondamentaux ou, pour reprendre les termes du Conseil des droits de l'homme, « a human right that is important for the enjoyment of human rights »[56]. L'interdépendance des droits de l'homme a par essence pour résultat que les obligations imposées aux États au titre d'un droit fondamental ou un autre puissent être — et bien souvent sont — identiques et visent ensemble à la réalisation et la jouissance effectives de tous les droits fondamentaux.

7. En tant que droit de l'homme et eu égard à sa nature, son objet et à son but, le droit à un environnement propre, sain et durable comporte des obligations qui sont, par définition, l'affaire de

---

[54] Nations Unies, Assemblée générale, résolution 76/300 adoptée le 28 juillet 2022, intitulée « Droit à un environnement propre, sain et durable », par. 3 [dossier nº 260]. Voir aussi Nations Unies, Conseil des droits de l'homme, résolution 48/13 adoptée le 8 octobre 2021, intitulée « Droit à un environnement propre, sain et durable », par. 3 [dossier nº 279].

[55] Nations Unies, Assemblée générale, résolution 76/300 adoptée le 28 juillet 2022, intitulée « Droit à un environnement propre, sain et durable », par. 3 [dossier nº 260]. Voir aussi Nations Unies, Conseil des droits de l'homme, résolution 48/13 adoptée le 8 octobre 2021, intitulée « Droit à un environnement propre, sain et durable », par. 3 [dossier nº 279].

[56] Nations Unies, Conseil des droits de l'homme, résolution 48/13 adoptée le 8 octobre 2021, intitulée « Droit à un environnement propre, sain et durable », par. 3 [dossier nº 279].

tous les États[57]. Dans la promotion de ce droit fondamental qui a pour finalité de sauvegarder l'existence même de groupes humains ou l'humanité tout entière, les États ne poursuivent pas d'intérêts propres. Ils ont, tous et chacun, l'intérêt commun de la réalisation des bases essentielles pour « l'idéal de l'être humain libre, jouissant des libertés civiles et politiques et libéré de la crainte et de la misère », pour reprendre — vous l'aurez compris — les termes du préambule des pactes de 1966[58]. Ainsi, tous les États ont individuellement et collectivement l'obligation de respecter, de garantir et de promouvoir le droit à un environnement propre, sain et durable, d'une part, et chaque État a un intérêt juridique à ce qu'il soit réalisé par tous les autres États, quels qu'ils soient, d'autre part.

8. Ces obligations dues par les États à la communauté internationale dans son ensemble ont deux volets connexes :

a) *Premièrement*, le respect du droit à un environnement propre, sain et durable impose des obligations négatives aux États. Ces obligations impliquent que les autorités étatiques s'abstiennent d'intervenir de manière injustifiée dans l'environnement ou le système climatique d'une façon qui compromettrait le droit à un environnement propre, sain et durable en lui-même ou en tant que condition préalable à la réalisation d'autres droits fondamentaux, comme le droit à la vie, le droit au meilleur état de santé possible, à un logement convenable, le droit à la sécurité alimentaire ou à l'eau potable salubre et propre.

b) *En deuxième lieu*, la réalisation de ce droit requiert que les États définissent et prennent des mesures actives pour le sauvegarder et le promouvoir activement. Ces obligations positives visent en particulier l'atténuation du changement climatique, l'adaptation au changement climatique, l'assistance et le soutien à ceux qui sont les plus vulnérables et à d'autres pour qu'ils ne deviennent pas vulnérables dans un avenir proche, et ce, par le biais d'une assistance financière,

---

[57] *Barcelona Traction, Light and Power Company, Limited (nouvelle requête : 1962) (Belgique c. Espagne), deuxième phase, arrêt, C.I.J. Recueil 1970*, p. 32, par. 33. Voir aussi *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), arrêt, C.I.J. Recueil 2012 (II)*, p. 449, par. 68 ; *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), exceptions préliminaires, arrêt, C.I.J. Recueil 2022 (II)*, p. 516, par. 107.

[58] Pacte international relatif aux droits civils et politiques, New York, 16 décembre 1966, Nations Unies, *Recueil des traités*, vol. 999, p. 188 ; Pacte international relatif aux droits économiques, sociaux et culturels, New York, 16 décembre 1966, *ibid.*, vol. 993, p. 14.

d'un transfert de technologie ou d'un renforcement des capacités, pour ne citer que quelques exemples.

9. Tous les États doivent assumer les obligations négatives et positives pour la réalisation de l'objectif commun, même s'ils ne sont pas nécessairement dans la même position et dans les mêmes conditions pour mettre en place les mesures nécessaires. Cet objectif ne saurait être réalisé que par une coopération internationale efficace, des efforts nationaux et internationaux vigoureux et ambitieux tenant dûment compte des responsabilités communes mais différenciées des États, leurs capacités respectives et leur situation sociale et économique eu égard aux différentes situations nationales. Les États ont déjà commencé à mettre en place une telle coopération dans le cadre des conventions internationales concernant la protection de l'environnement et le changement climatique. Ils ont l'obligation de poursuivre le développement de ce régime et de l'adapter si et quand c'est nécessaire afin d'assurer la réalisation du droit fondamental à un environnement propre, sain et durable, et celles des droits de l'homme tout court. L'échec n'est pas une option.

10. Avant de clore l'exposé de la République de Slovénie, il me reste à faire un dernier point, Monsieur le président, au sujet de la seconde question posée par l'Assemblée générale. Un certain nombre de participants à la présente procédure y voit une invitation à la Cour de se prononcer sur la légalité de certains comportements étatiques — passés — et la responsabilité en cas de violation de leurs obligations. Pourtant, comme nous l'avons expliqué dans nos observations écrites[59], l'Assemblée générale ne vous a pas investi de la tâche ardue de vous aventurer sur le terrain de la responsabilité, ni d'une façon abstraite, ni d'une façon particulière visant la situation spécifique d'un ou de plusieurs États — ce qui, dans les circonstances, dépasserait largement les limites inhérentes à la fonction judiciaire de la Cour dans une procédure consultative. La seconde question concerne purement et simplement les « conséquences juridiques pour les États qui … ont causé des dommages significatifs au système climatique » et ce, « au regard de ces obligations » — « under these obligations » —, à savoir « les obligations qui incombent aux États en ce qui concerne la protection du système climatique ». Cela est donc une question qui relève des obligations primaires et de leur contenu, et non pas celle des conséquences d'une violation de ces obligations.

[59] Observations écrites de la République de Slovénie, par. 12-15.

11. Les obligations existantes en matière de changement climatique ne distinguent pas entre un État pollueur et les autres. Ces obligations incombent à tous les États, selon leurs capacités respectives. Car, Mesdames et Messieurs de la Cour, l'objectif premier de la riposte efficace à la menace des changements climatiques n'est pas de sanctionner des comportements passés, mais d'assurer — et d'assurer ensemble — la protection de l'humanité tout entière contre les effets des changements climatiques.

12. Monsieur le président, Mesdames et Messieurs de la Cour, ces remarques marquent la fin de l'exposé oral de la République de Slovénie. Au nom de toute notre délégation, je vous remercie pour votre bienveillante attention.

The PRESIDENT: I thank the representatives of Slovenia for their presentation. I now invite the delegation of Sudan to address the Court and I give the floor to Mr Marwan Khier.

Mr KHIER:

I. INTRODUCTION

1. Mr President, distinguished Members of the Court, it is both an honour and a privilege to address the International Court of Justice on behalf of the Republic of the Sudan.

2. Sudan places great importance on the issue of climate change and recognizes that the advisory opinion requested by the United Nations General Assembly aims to safeguard the rights of States, individuals, peoples and future generations from the devastating effects of global warming.

3. My country co-sponsored General Assembly resolution 77/276 and supported the Request for the advisory opinion that led to these proceedings. We believe that the Court's opinion could significantly contribute to the legal perspective on addressing the global issue of climate change. As the principal judicial organ of the United Nations, the Court holds a unique position to provide legal guidance on the questions presented in the Request for an advisory opinion, grounded in the legal framework governing the climate system.

4. Sudan is convinced that the Court's opinion could clarify the scope of States' obligations and efforts to combat the climate crisis and could also significantly contribute to reinforcing the

commitment of States to address this urgent problem. The legal and moral value of such an opinion could accelerate and amplify global actions in response to climate change.

5. Sudan is among the nations most severely affected by the adverse consequences of climate change. It has experienced several natural disasters, including unprecedented floods and torrential rains that have caused immense damage to livelihoods, infrastructure and loss of life. For example, in Sudan's Northern State, date crops — vital for local subsistence — have been destroyed. Additionally, infrastructure in the River Nile, Red Sea and Kassala states has been devastated by unusual flooding, turning parts of these regions into disaster zones with significant loss of lives and livelihoods.

6. Furthermore, rising temperatures, droughts, land degradation and water scarcity have worsened food shortages and forced widespread displacement.

7. The Darfur crisis in Sudan, which began in 2003, is closely linked to climate change. Prolonged droughts and reduced rainfall have made access to water and arable land increasingly scarce, leading to conflicts among communities competing for limited resources. The resulting food and income shortages have aggravated tensions, exacerbating the conflict. Many people have been forced to leave their homes and endure challenging conditions in camps. Climate change has further worsened the situation by intensifying the scarcity of essential resources.

8. Reports from the Intergovernmental Panel on Climate Change consistently warn of escalating risks as global temperatures rise. Despite the efforts under the Paris Agreement, the world remains far from reaching the target of limiting the temperature increase to 1.5°C above pre-industrial levels.

9. Sudan holds great hope in the success of the Paris Agreement, despite the significant challenges it faces. We have called for the necessary financial support to implement national climate-related projects. Moreover, Sudan has urged developed nations to fulfil their financial commitments and transfer technologies to enhance international co-operation in addressing climate change, particularly for the most vulnerable countries.

10. Aligning with the voices of the African continent and the Least Developed Countries, Sudan calls for the urgent and effective implementation of the Paris Agreement. However, ongoing economic and political sanctions, which restrict access to bilateral climate finance — a critical source

of funding for climate action in developing nations — have left Sudan increasingly vulnerable to the impacts of climate change. Despite these challenges, Sudan remains actively engaged in global, regional and national efforts to fight climate change.

11. Mr President, at this point, I respectfully invite you to grant the floor to Professor Raimondo, who will address one of the issues that, from the Sudan's perspective, remains a point of contention among the Participants in these proceedings: the role of the principle of common but differentiated responsibilities in the United Nations climate change régime. We will aim to keep our oral statement as concise as possible, while ensuring that the Sudan's position is adequately presented to the Court.

12. Thank you, Mr President, thank you distinguished Members of the Court.

The PRESIDENT: I thank Mr Marwan Khier. I now give the floor to Mr Fabián Raimondo.

Mr RAIMONDO:

II. COMMON BUT DIFFERENTIATED RESPONSIBILITIES

1. Mr President, distinguished Members of the Court, it is both an honour and a privilege to once again stand before the International Court of Justice.

2. The advisory opinion requested by the General Assembly concerns the international obligations of States to protect the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases. This protection is crucial for both present and future generations. The Court is also asked to consider the legal consequences for States that, through their actions or omissions, have caused significant harm to the climate system and the environment.

3. The request calls upon the Court to consider a range of legal instruments, including the Charter of the United Nations, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, as well as the duty of due diligence, the principle of prevention of significant environmental harm, and the duty to protect and preserve the environment.

4. Sudan wishes to make two preliminary observations:

(i) To fully address the General Assembly's Request, the Court must interpret and apply all relevant principles and rules of international law. This approach ensures that the advisory opinion is grounded in the entire body of public international law[60].

(ii) The *lex specialis* rule does not apply to the relationship between the obligations set out in the climate change treaties. This is because the rule is designed to resolve conflicts between legal norms, whereas the obligations in these treaties are complementary and harmonious, not conflicting.

5. One reason Sudan supported the request for an advisory opinion, as formulated in resolution 77/276 adopted by the General Assembly on 29 March 2023, is its reference to the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

6. Although the General Assembly did not specifically include this principle among those for the Court's consideration, Sudan believes that the Court should interpret all relevant international obligations on climate change in light of this principle. Firmly embedded in the Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement, it has become a cornerstone of the global climate régime.

7. The principle of common but differentiated responsibilities was first introduced in Principle 7 of the 1992 Rio Declaration on Environment and Development. It emphasizes that all States must work together in a spirit of global partnership to conserve, protect and restore the Earth's ecosystem. However, it recognizes that not all States have contributed equally to environmental degradation. Developed countries, in particular, bear a greater responsibility due to their larger historical contributions to global environmental harm and their greater access to technology and financial resources, which place them in a stronger position to lead efforts toward sustainable development.

8. This principle was reaffirmed in the 2030 Agenda for Sustainable Development, which serves as the international community's guiding framework for sustainable development.

[60] Statute of the International Court of Justice, Articles 38 and 68.

Paragraph 12 of the Agenda endorses all the principles of the Rio Declaration, including the principle of common but differentiated responsibilities[61].

9. In treaty law, the principle was first enshrined in the Framework Convention on Climate Change as the principle of common but differentiated responsibilities and respective capabilities[62].

10. Under the Framework Convention, this principle comprises two key elements: the shared responsibility of all States to protect the environment and the need to consider each State's specific circumstances, particularly their contributions to environmental degradation and their capacity to react to the adverse effects of climate change.

11. The preamble of the Framework Convention acknowledges that the largest share of historical greenhouse gas emissions originated from developed nations and recognizes the particular needs and circumstances of developing countries[63].

12. Developed countries, having industrialized earlier, have significantly contributed to climate change, while developing countries, which have yet to fully benefit from industrialization, are now facing the most severe impacts with limited financial resources to address them. Consequently, the responses of developing nations must be tailored to their individual capacities, while developed countries are expected to take a leading role in supporting them, ensuring a truly global response to this challenge. In line with this, the Framework Convention places the responsibility on developed nations to lead efforts in combating climate change and its adverse effects[64].

13. The differentiation of obligations between developed and developing countries is thus logical. For instance, while all States parties must fulfil the commitments set out in Article 4, paragraph 1, only developed States parties, and those listed in Annex I of the Convention, are bound by the commitments in Article 4, paragraph 2.

14. Furthermore, the Framework Convention emphasizes the importance to consider the specific needs and circumstances of developing countries, particularly those most vulnerable to the

---

[61] UNGA res. 70/1, "Transforming our world: the 2030 Agenda for Sustainable Development", UN doc. A/RES/70/1.

[62] United Nations Framework Convention on Climate Change, sixth preambular paragraph and Article 3 (1).

[63] Framework Convention on Climate Change, third preambular paragraph.

[64] *Ibid.*, Article 3 (1).

adverse effects of climate change, or those that would bear a disproportionate burden under the Framework Convention[65].

15. Article 4, paragraph 7, of the Framework Convention stipulates that the implementation of commitments by developing countries depends on the effective fulfilment of commitments by developed countries, particularly regarding financial resources and technology transfer. The failure to meet these commitments remains a significant challenge for developing countries, such as Sudan, in achieving their climate ambitions.

16. The Paris Agreement also recognizes "common but differentiated responsibilities and respective capabilities", with the addition of the phrase "in light of different national circumstances", as a guiding principle in the pursuit of the objective of the Convention[66].

17. Accordingly, the Paris Agreement is to be implemented in a manner that reflects this principle, ensuring equity in the distribution of responsibilities[67].

18. The principle is reflected in specific provisions of the Paris Agreement. For instance, Articles 9, 10 and 11 impose additional obligations on developed States parties, including the provision of financial resources, technology transfer and capacity-building to support developing countries.

19. While the Paris Agreement adopts a more nuanced approach to distinguishing between developed and developing countries, the essential distinction remains. Sudan believes that the categorization agreed upon in the Framework Convention and the Paris Agreement should be respected and that any attempt to introduce new categories without international consensus should be avoided.

20. Mr President, distinguished Members of the Court, in light of the foregoing, Sudan respectfully submits that the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, must be regarded as a fundamental guiding principle in the interpretation and application of the United Nations climate change régime. Any assessment of whether a State has breached its international obligations under this régime must

---

[65] *Ibid.*, Article 3 (2).

[66] Paris Agreement, third preambular paragraph.

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

take into account the respective capabilities and circumstances of the State in question, as well as the failure of developed States to provide adequate means of implementation.

21. In conclusion, I turn to the words of Kahlil Gibran: “Forget not that the earth delights to feel your bare feet and the wind long to play with your hair.”

22. Mr President, Members of the Court, may this remind us all of our duty to protect the environment, ensuring that future generations may continue to enjoy its beauty and bounty. Thank you, Mr President. Thank you, Members of the Court.

The PRESIDENT: I thank the representatives of Sudan for their presentation. Before I invite the next delegation to take the floor, the Court will observe a break of 15 minutes. The hearing is suspended.

The Court adjourned from 4.25 p.m. to 4.45 p.m.

The PRESIDENT: Please be seated. The sitting is resumed and I invite now the next participating delegation, Sri Lanka, to address the Court and I call Mr Parinda Ranasinghe Jnr to the podium.

Mr RANASINGHE:

BEYOND UNFCCC: LEGAL OBLIGATIONS AND CONSEQUENCES

I. Introduction

1. Mr President, and other honourable judges of the International Court of Justice, on behalf of the Republic of Sri Lanka, I am privileged to address these proceedings which beg answers to two important questions of law. They relate not only to an existential crisis, but a legal crisis. Without answers to clarify the legal obligations and legal consequences for acts and omissions in respect of protecting the climate system, States are in grave danger of undermining all that this esteemed judicial body stands for, including peaceful coexistence between States, and above all, coexistence between humankind and the natural environment.

2. Sri Lanka has already submitted its written statement and comments, addressing in detail the important issues which this Court is confronted with: jurisdiction, admissibility, climate change

and its impact in Sri Lanka, merits of the legal questions, relevant conduct, applicable law and legal consequences. My submission today focuses on a few of these aspects.

3. I will first draw on jurisprudence to illustrate the extent of States' responsibility for the relevant conduct. The UN General Assembly resolution 77/276 itself has already identified the relevant conduct as anthropogenic emissions of greenhouse gases by States, over time, and as a cumulative and composite act. Secondly, this submission will demonstrate the manner in which significant harm has been caused to Sri Lanka due to such conduct. Particularly, how my country is affected by, and vulnerable to, adverse effects of climate change, impacting its people and future generations. Finally, I will touch upon some important legal consequences which ought to follow where States have caused significant harm in breach of their obligations.

4. The *chapeau* to the two questions already underscores the fact that answers must be gathered from different sources of international law[68]. Although specific legal instruments and general principles of international law are expressly referred to, it is not an exhaustive list. This Court is respectfully urged to have regard to them, but not limit only to them. In fact, the preamble of the UN General Assembly resolution upon which this Request for advisory opinion rests, makes reference to numerous sources of international law including the Convention on the Rights of the Child, the Vienna Convention for the Protection of the Ozone Layer and the Convention on Biodiversity. Significantly, it also refers to relevant principles and obligations of customary international law.

5. Therefore, whereas the United Nations Framework Convention on Climate Change and the Paris Agreement may *ex facie* seem to be the only instruments which give express recognition to States' obligations in respect of the climate system, they do not constitute a *lex specialis* régime on the subject, to the exclusion of other sources of international law. Sri Lanka has already addressed this matter with reasons in its written comments[69].

6. Climate change and anthropogenic emissions of GHGs and its impact began well before either of these two instruments came into existence, while many human rights and general principles

---

[68] Charter of the United Nations, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, United Nations Framework Convention on Climate Change, Paris Agreement, United Nations Convention on the Law of the Sea, Universal Declaration of Human Rights, the duty of due diligence, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment.

[69] Written Comments of Sri Lanka, paras. 8-15.

of international law and customary international law were already accepted at the time the offending acts or omissions were taking place.

7. This Court has on numerous occasions rejected a narrow application of international law and has instead been guided by rules of interpretation such as systemic integration[70]. In the present instance, too, it is urged that this Court apply the same rules of interpretation so that, on the one hand, relevant provisions of the other sources of international law are considered in the interpretation of the UNFCCC and Paris Agreement. On the other hand, the climate-specific provisions of these two instruments should serve to expand the interpretation of legal obligations and consequences found in other sources of international law. Most recently, State responsibility for GHG emissions was brought under relevant conduct governed by the UNCLOS[71].

II. Obligations of States

8. Sri Lanka has already placed before this Court a description of the several climate-specific and climate-related obligations which States are bound to fulfil under all sources of public international law[72]. Many of these obligations lie outside the UNFCCC and the Paris Agreement and my submission today will refer to a select few from among that plethora of obligations. Each of them serves as an example of an obligation under a different source of public international law and is particularly resonant to Sri Lanka. This is because, at the national level, Sri Lanka owes an obligation to its citizens to protect, preserve and improve the environment for the benefit of the community, as part of the Directive Principles of State Policy under the Constitution of Sri Lanka[73]. It is, however, prevented from fulfilling this obligation to the fullest, due to a breach of climate-related obligations owed to Sri Lanka by other States at the international level.

9. I begin with an obligation derived from international conventions. That is, the obligation of the State to guarantee the right to health. The enjoyment of the highest attainable standard of health as one of the fundamental rights of every human was originally recognized by the World Health

---

[70] *Ibid.*, paras. 15-58.

[71] *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case 31, Advisory opinion of 21 May 2024, paras. 223-224.

[72] Written Statement of Sri Lanka, paras. 93-101.

[73] Article 27 (2) *(c)*.

Organization (WHO) in 1946[74] and is now entrenched in several international treaties including the International Covenant on Economic, Social and Cultural Rights (ICESCR)[75]. Since clean air, safe and adequate water and nutrients and adequate food are underlying determinants of health, a climate system in which these determinants are present is essential to realize the right to health. Therefore, it is a *sine qua non* that States have an obligation under treaty law other than the UNFCCC to protect the climate system and other parts of the environment, in order to guarantee the right to health.

10. Connected to the international treaty-based right to health is the right to a clean, healthy, sustainable environment. Although it is a more recently articulated right and may seem at first glance to be derived from the treaty-based right to health, it is a right that has evolved within customary international law. The 1948 Universal Declaration of Human Rights recognized the right to standards of living adequate for the health and well-being of himself and of his family[76]. Consequently, the 1972 Stockholm Declaration stated that "[m]an has the fundamental right to freedom, equality and adequate conditions of life, including an environment of a quality that permits a life of dignity and well-being"[77]. Half a century later, the right to a clean, healthy and sustainable environment was recognized by the UN Human Rights Committee[78] and, thereafter, by the UN General Assembly[79]. Significantly, the text of UN General Assembly resolution 77/276 draws a nexus between this right and climate change not only by recalling States' obligations and commitments under multilateral environmental instruments and agreements, but also by recognizing that the impact of climate change interferes with the enjoyment of a safe, clean, healthy and sustainable environment. It is one of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life. Therefore, Mr President and honourable Members of this Court, even within customary international law, States have an obligation to protect the climate system.

---

[74] WHO Constitution, preamble.

[75] Article 12; Committee on Economic, Social and Cultural Rights, General Comment No. 14.

[76] Article 25.

[77] Principle 1.

[78] UNHRC resolution 48/13 of 8 October 2021.

[79] UNGA resolution 76/300 of 28 July 2022.

11. Another space in which climate-related obligations of States can be found is the general principles of international law. Sri Lanka has previously adverted to them in its written statement[80]. One of the earliest principles to have emerged and applied by this Court in its first ever decision, *Corfu Channel*, is that "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States"[81]. The beginnings of this transboundary obligation lie in an independent general principle of international law: the duty of due diligence. As far back as the first half of the twentieth century, the Permanent Court of Arbitration held in *Trail Smelter* that

> "no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence"[82].

This duty of due diligence is precautionary in nature, for it is aimed at preventing harm to others. As observed in *Pulp Mills*, "the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory"[83].

12. I now respectfully invite this Court to consider an obligation which has been developed in the realm of judicial decisions. That is, the duty to refrain from depriving a people of their subsistence. This obligation is found in international treaty law which recognizes that "in no case may a people be deprived of its own means of subsistence"[84]. It is, however, through judicial dicta that the obligation has been given meaning. This Court has stressed the importance of "the vital needs of the population"[85], the need to avoid an outcome that would have "catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned"[86] and the importance of the welfare of the people[87]. The dictum of this Court in *Legality of the Threat or Use*

---

[80] Written statement of Sri Lanka, paras. 94-101.

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

[82] *Trail Smelter case (USA, Canada), 16 April 1938 and 11 March 1941,* United Nations, *Reports of International Arbitral Awards (UNRIAA)*, Vol. III, p. 1965.

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

[84] Common Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

[85] *Fisheries (United Kingdom* v. *Norway), Judgment, I.C.J. Reports 1951*, p. 142.

[86] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 342, para. 237; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)*, *I.C.J. Reports 2009*, p. 126, para. 198; *Territorial and Maritime Dispute (Nicaragua* v. *Columbia)*, *I.C.J. Reports 2012 (II)*, p. 706, para. 223.

[87] *Gabčikovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, pp. 89-90.

of Nuclear Weapons recognizing that the environment "represents the living space, the quality of life and the very health of human beings, including generations unborn" was echoed by ITLOS[88]. Therefore, what is subsistence, after all? It is provision for adequate standards of living, provision for life itself. In a world where there is famine caused by increased droughts, where there is loss of fishermen's livelihood due to frequent cyclones and where outdoor labour is impossible in rising temperatures, a community is deprived of its subsistence. In this sense, the duty to protect the climate system and other parts of the environment goes to the heart of humankind's subsistence.

13. Two common threads run through the climate-related obligations whether one applies treaty law, customary law, general principles or judicial decisions under international law; these obligations extend beyond national territories and beyond the present generation. More importantly, they illustrate the point that several obligations of States with regard to the climate are found beyond the UNFCCC and Paris Agreement. Thus, the claim to restrict the opinion of this Court to the four corners of these two instruments is erroneous.

14. I now seek the leave of this Court to call upon my colleague, Dr Avanti Perera, Deputy Solicitor General, to make a brief presentation of the climate change impact within our island nation.

The PRESIDENT: I thank Mr Parinda Ranasinghe Jnr. I now give the floor to Ms Avanti Perera.

Ms PERERA:

CLIMATE CHANGE IMPACT IN SRI LANKA

1. Mr President, Madam Vice-President and honourable judges of this Court, allow me to provide some factual context to our legal submissions.

I. Introduction

2. Sri Lanka is an island nation which is filled with natural beauty, from golden beaches to misty mountains and from luscious rainforests to majestic wildlife. A nation which has fought back colonialism, terrorism and dictatorial oppression; a nation which found strength and resilience after

[88] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 241, para. 29, and *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case 31, Advisory opinion of 21 May 2024, para. 166.

a devastating tsunami exactly 20 years ago. However, this small but great nation is fighting a losing battle. The battle against climate disasters.

II. Facts

3. According to the available data:

— 96 per cent of disasters in Sri Lanka are caused by climate, such as flooding, landslides, extreme winds and drought[89].

— Climate-induced disasters have emerged as a major threat to economic development, incurring significant economic losses on a regular basis in the last decades. Sri Lanka has been ranked second in the Global Climate Risk Index 2019 with annual losses of US$3,129 million due to climate-induced disasters in 2018. Economic losses and damages due to flood events in May 2016 alone have been estimated at SL Rs99.8 billion that amounted to 0.89 per cent of the GDP[90].

— Due to a combination of political, geographic and social factors, Sri Lanka is recognized as vulnerable to climate change impacts, ranked 103 out of 181 countries in the 2020 ND-GAIN Index[91].

III. Statistics

4. The gravity of climate disasters in Sri Lanka is displayed by alarming statistics[92]:

— 19 million Sri Lankans live in locations set to become moderate or severe climate hotspots by 2050;

— 6 in 10 Sri Lankans are multidimensionally vulnerable;

— 750,000 Sri Lankans on average were affected by natural disasters per year, between 2011 and 2020;

---

[89] UNICEF Sri Lanka, available at https://www.unicef.org/srilanka/press-releases/sri-lanka-needs-stronger-disaster-preparedness-and-response-combat-climate-change.

[90] *Third National Communication on Climate Change in Sri Lanka*, October 2022, Written Statement of Sri Lanka, Annex X.

[91] Climate Risk Country Profile: Sri Lanka, World Bank Group and Asian Development Bank, available at https://www.adb.org/sites/default/files/publication/653586/climate-risk-country-profile-sri-lanka.pdf.

[92] Fact Sheet: Climate Impact in Sri Lanka, United Nations in Sri Lanka, available at https://srilanka.un.org/en/254230-fact-sheet-climate-impact-sri-lanka.

— US$313 million is the average annual disaster losses related to housing, infrastructure, agriculture and relief;

— 81.2 per cent of population lack adaptive capacity to disasters.

IV. Forecast

5. Compounding these hard facts and dire statistics are the climate forecasts for Sri Lanka. They paint a bleak picture for the future of an island nation known as the Pearl of the Indian Ocean and the Wonder of Asia:

— Sri Lanka faces significant threat from extreme heat, with the number of days surpassing 35°C, potentially rising from a baseline of 20 days to more than 100 days by the 2090s.

— Extreme heat threatens human health and living standards, particularly for outdoor labourers in urban areas without adequate cooling systems.

— Temperature rise is likely to put downward pressure on agricultural yields, including key staples such as rice. This may impact negatively on national and household food security.

— Projected changes are expected to impact on Sri Lanka's poorest and most marginalized communities most strongly, exacerbating poverty and inequality[93].

V. Experiences

6. Regrettably, past and present real-life experiences do not give reason to doubt the negative climate forecast for Sri Lanka. Allow me to share some narratives from experts and ordinary people:

> "From 2005 onwards, it is hard to identify a year where Sri Lanka's weather pattern of two monsoons and two inter-monsoons have arrived at normal times, and with normal volumes. Droughts, flood and landslide incidents in quick succession, within a few months of each other, and alternating within the same districts, affect vulnerable communities and their capacity to cope."[94]

> "Climate change has impacted us thoroughly. Currently, a heat warning in Sri Lanka exacerbates fatigue, which is felt even more heavily in the marginalized communities outside of Colombo. We're experiencing more intense and unpredictable weather patterns due to shifting monsoons, manifesting in frequent natural hazards like droughts, floods, landslides, cyclones, and coastal erosion."[95]

---

[93] *Ibid.*

[94] IOM Sri Lanka, available at https://srilanka.iom.int/disaster-risk-reduction-and-climate-resilience.

[95] Excerpt from an interview conducted by Climate Champions, 5 Jun, 2024, available at https://climatechampions.unfccc.int/a-communitys-fight-for-resilience-saving-sri-lankas-vulnerable-marine-ecosystems/.

> "A farmer slices through yellowed paddy stems dried out by a drought that has destroyed over 95% of his crop and is threatening crisis-hit Sri Lanka's summer rice harvest. 'I've been a farmer for forty years but I've never experienced a harder time than this', he said, standing in the middle of a dusty field near Anamaduwa, a town in north western Sri Lanka, clutching a fistful of straw-like paddy stems with hollow rice kernels."[96]

VI. Headlines

7. The climate disasters which were described through lived experiences have sadly become all-too frequent and all-too common news headlines in Sri Lanka. These headlines are from the period 2023/2024 alone:

— "Floods in Sri Lanka kill 15 people and force four million children out of classrooms"[97];

— "Inside an oven: Extreme heat in Sri Lanka"[98];

— "Small tanks in Thirukkovil dried up due to the drought" — and this is a video of it.

[On screen: video recording.]

Transcript of video recording

[Transcript provided by Sri Lanka.]

The ongoing drought conditions continue to affect several areas of the country, disrupting livelihoods of many people. In Thirukkovil in the Ampara District, small tanks have dried up while only a very small amount of water remains in the Mankulama Lake. Due to the drought, grasslands in the Sagama area have dried up causing concern on how cattle and other livestock will be fed. Similarly, the ongoing drought condition affected milk production in the North Western Province. The island's North Western Province provides over 18 per cent of the total annual milk production which exceeds 1,250 million litres. According to dairy farmers, milk production in the North Western Province could be subjected to a 50 per cent decrease if the prevailing severe drought conditions will continue into the coming weeks. In the North Western Province where 35,000 cowsheds maintain nearly 225,000 cows, the dry conditions have led to concerns over how the cattle will be fed and

---

[96] Reuters, available at https://www.reuters.com/world/asia-pacific/drought-dents-sri-lankas-economic-hopes-farmers-livelihood-2023-08-29/.

[97] Save the Children, 3 June 2024, available at https://www.savethechildren.net/news/floods-sri-lanka-kill-15-people-and-force-four-million-children-out-classrooms.

[98] Zulfick Farzan, News 1st, Sirasa News, 5 May 2024, available at https://www.newsfirst.lk/2024/05/05/inside-an-oven-extreme-heat-hits-sri-lanka.

maintained to satisfy the demand for daily products. Meanwhile, pepper plantations of nearly 1,000 acres in areas including Embilipitiya and Mulandiyawala are gradually drying up due to the severe drought conditions. Tea and cinnamon plantations in Ambewila, Godakawela, Opanayake and other areas in the Ratnapura district were also dried up due to the lack of water. In Anuradhapura, the water level of the Huruluwewa is gradually decreasing due to the ongoing drought. Against this backdrop, farmers in the region raised concerns regarding the potential impact on the soybean plantations stretched across an area of 5,000 acres dependent on the Huruluwewa for its water supply. Meanwhile, the water released from the Chandrika tank in the Embilipitiya under the protection of the police and the STF [Special Task Force] reached the Gurunnehegeara area in Angunukolapelessa this afternoon. The area was supplied with water after 45 days.

Ms PERERA:

What was just witnessed was a long spell of drought conditions in 2023 and here is the other extreme, just two weeks ago: "Many parts of Sri Lanka Battered by Heavy Showers"[99].

8. Cyclone Fengal wreaked havoc causing landslides and floods in Sri Lanka, before moving into Southern India. Another bout of heavy showers is expected in the south-western parts of Sri Lanka today, even as we speak. And yet, the monsoon period of that area was supposed to be over in September.

9. These are but mere snapshots of recent impacts of historical failures on the part of major emitter States, the very States who are making submissions which advance a narrow interpretation of the subject-matter before this Court. Unless States fulfil their legal obligations towards the climate system and are held accountable through legal consequences, the facts, statistics, forecasts, experiences and news headlines from Sri Lanka can only become worse. My beautiful island nation does not deserve to suffer from climate disasters caused by unregulated and unaccountable anthropogenic greenhouse gas emissions. No country or peoples deserve to suffer from this preventable, man-made tragedy. That is why we are standing here today looking for answers from the world's highest court, in order to find justice for the man who is unable to earn his living from

[99] Newsfirst English, Sirasa News, 27 November 2024, https://www.youtube.com/watch?v=w5DEvEcfGc4.

cultivation due to frequent flooding or continuous drought; for the woman whose maternal health suffers as a result of a heatwave; for the student who is unable to walk to school because of a cyclone, and for the yet unborn child whose right to life would have diminished in a world which has become uninhabitable, by the time of his or her birth.

VII. Conclusion

10. We must **C**hange our behaviours; we must **L**earn from our mistakes; we must recognize **I**ntergenerational rights; we must **M**itigate the harm we cause to the climate system; we must insist on **A**ccountability; we must keep to our **T**argets for emission reduction; and we must find **E**quity in the midst of inevitable inequality amongst States. The starting point is here and *now*.

11. Thank you for giving me this opportunity and I now seek permission of Court to hand back the floor to the Honourable Attorney General of Sri Lanka, to conclude his submissions.

The PRESIDENT: I thank Ms Perera. I give the floor back to Mr Ranasinghe Jnr. You have the floor.

Mr RANASINGHE:

LEGAL OBLIGATIONS AND CONSEQUENCES

1. Thank you. Mr President and honourable Members of this Court, with that, I turn to the final part of Sri Lanka's submission today: The legal consequences where States have caused significant harm to the climate system and other parts of the environment.

I. Legal consequences

2. On this matter, I reiterate the position taken up by Sri Lanka in its Written Statement and Comments[100], and submit that it is our firm contention that the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) apply to the matter at hand. Hence, three main consequences should ensue in the event of a breach of the obligations of a State, namely cessation, restitution and reparation.

[100] Written Statement of Sri Lanka, paras 102-113; Written Comments of Sri Lanka, paras. 59-88.

3. In brief, where cessation is concerned, a State responsible for an internationally wrongful act is under obligation to cease that act, if it is continuing[101]. A responsible State should either immediately desist from the act which is causing the breach or take active measures to stop that breach. Cessation can come in many forms such as discontinuation of practices which can cause GHG emissions, cutting down fossil fuel subsidies, rolling back fossil fuel production and introducing regulation of GHG emissions under the jurisdiction of the responsible State. In this regard, Sri Lanka agrees with the position of the IPCC that geoengineering technology is not an acceptable mitigatory measure as it is highly speculative and counterproductive[102].

4. The ARSIWA also stipulates that a State responsible for an internationally wrongful act is "under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed", provided to the extent that restitution is neither materially impossible nor wholly disproportionate to the benefit[103]. Therefore, an effective legal consequence that should be recognized is the liability of responsible States to extend financial support to affected States to improve their adaptive capacity. Another consequence which is particularly relevant for island States such as Sri Lanka would be to recognize the preservation of sovereignty in its territory, including maritime zones, irrespective of sea-level rise from climate change.

5. Neither cessation nor restitution, however, will be sufficient relief in some instances. In such cases, the only legal consequence may be reparation. As recognized under ARSIWA, the State responsible for an internationally wrongful act should be under obligation to make full reparation for the injury, whether material or moral, caused by the said wrongful act[104]. Therefore, Sri Lanka urges this Court to recognize reparation as a legal consequence when States breach their climate-related obligations, provided that the causal nexus is established between the breach and the injury. Reparation in the form of compensation has been previously awarded by this Court[105]. However,

---

[101] Article 30.

[102] 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, Full Report (2018), pp. 34 and 96; IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the IPCC*, Summary for Policymakers (2022), statement B.5.4, SPM-19.

[103] ARSIWA, Article 35.

[104] *Ibid.*, Article 31.

[105] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, pp. 15-42.

compensatory reparation should not absolve States from having to fulfil their other financing obligations under climate treaties or their pledges to make voluntary contributions to loss and damage funds.

II. Conclusion

6. In closing, I quote Judge Weeramantry of this august Court, where he recalled a sermon on Buddhism which converted one of Sri Lanka's ancient kings:

> "O great King, the birds of the air and the beasts have as equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou art only the guardian of it."[106]

7. According to Judge Weeramantry, this sermon contained the first principle of modern environmental law — the principle of trusteeship of earth resources. He noted that the traditional legal system's protection of fauna and flora, based on Buddhist teaching, extended well into the eighteenth century and that even birds and beasts have a right to freedom from fear. He noted that the notion of not causing harm to others which was central to Buddhism translated well into environmental attitudes and would be extended to future generations as well.

8. These words communicate a very strong and clear message; a message that drives the two legal questions which we have placed before this Court. States are the guardians of the natural world we live in, and in that fiduciary capacity, States have an obligation to protect the natural world for generations to come. When this Court has already recognized the concept of intergenerational equity, no State should be allowed to undermine that position in these proceedings.

9. Mr President. honourable Members of this Court, all that we ask is that, in fairness to every State, big or small, a major polluter or not, this Court be pleased to clearly define the legal obligations that States have to protect the climate system and other parts of the environment, as well as the legal consequences when those obligations are breached. They are questions intended to reinforce a simple legal principle central to the rule of law: accountability and accountability only. Not attribution, as misinterpreted by some States. Attribution will arise only when affected States submits a climate obligation related dispute to this Court. As major polluter States fail to meet their emission-reduction

---

[106] *Gabčikovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, separate opinion of Vice-President Weeramantry, pp. 101-102.

targets and fail to follow through with the financial pledges they have made elsewhere, this Court has become our only recourse to ensure accountability. It is only where accountability is guaranteed will justice truly prevail. So far, all the evidence before us points to a crying need for climate justice. Sri Lanka is hopeful that this Court will deliver justice.

10. On behalf of the people of Sri Lanka, I thank this Court for a patient hearing. Thank you.

The PRESIDENT: I thank the representatives of Sri Lanka for their presentation. J'invite à présent la délégation du participant suivant, la Suisse, à prendre la parole et appelle M. Franz Perrez à la barre.

M. PERREZ:

A. INTRODUCTION

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un honneur de me présenter devant vous au nom de la Confédération suisse.

2. Les changements climatiques sont une menace existentielle pour l'humanité tout entière. La Suisse, responsable de moins d'un pour mille des émissions de gaz à effet de serre actuelles dans l'atmosphère, est malgré ses capacités un pays alpin fragile, particulièrement touché par les changements climatiques. En effet, le réchauffement climatique y augmente deux fois plus vite que dans la moyenne mondiale[107]. Cela étant, de nombreux États dont les capacités sont inférieures à celles de la Suisse sont encore plus menacés que la Suisse. Pour ces États en particulier, la prévention des changements climatiques est existentielle.

3. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, aujourd'hui, le monde se tourne vers vous et vous témoigne sa haute confiance, par sa participation record à cette procédure d'avis consultatif. Il est attendu que votre avis consultatif soutienne la communauté internationale dans sa résolution du défi du changement climatique.

4. Mon exposé oral se concentrera sur trois éléments.

---

[107] Office fédéral de l'environnement, « Changements climatiques en Suisse », 2020, p. 30, accessible à l'adresse suivante : https://www.bafu.admin.ch/bafu/fr/home/themes/climat/publications-etudes/publications/changements-climatiques-suisse.html.

5. La première partie abordera l'obligation coutumière de diligence requise des États de prévenir les dommages significatifs à l'environnement hors de leur juridiction.

6. La deuxième partie de mon exposé oral développera l'argument selon lequel le droit international, dans son état actuel, ne *prévoit* ni ne se *prête* à l'allocation d'un budget d'émissions de gaz à effet de serre par État.

7. Finalement, dans la troisième et dernière partie de mon exposé oral, j'analyserai la responsabilité internationale des États en général ainsi que le principe pollueur-payeur.

8. Pour le surplus, je me réfère au contenu des soumissions écrites de la Suisse du 18 mars et du 7 août 2024[108].

B. L'OBLIGATION COUTUMIÈRE DE DILIGENCE REQUISE DES ÉTATS DE PRÉVENIR LES DOMMAGES SIGNIFICATIFS À L'ENVIRONNEMENT HORS DE LEUR JURIDICTION : DÉBUT, CONTENU ET RELATION

9. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, comme premier sujet, j'aborde l'obligation coutumière de diligence requise des États de prévenir les dommages significatifs à l'environnement hors de leur juridiction. J'aimerais approfondir trois aspects spécifiques de cette obligation :

— *premièrement*, le début de l'obligation de diligence requise ;

— *deuxièmement*, les destinataires et le standard de cette obligation ; et

— *troisièmement*, la relation entre cette obligation et le régime conventionnel des changements climatiques.

En guise d'introduction, permettez-moi de rappeler tout d'abord les éléments constitutifs de l'obligation coutumière de diligence requise, à savoir : i) une activité sous la juridiction d'un État ; ii) un dommage significatif à l'environnement hors de cette juridiction ; iii) la causalité entre l'activité et ce dommage ; et, enfin, iv) la connaissance ou prévisibilité du risque. L'obligation de diligence requise de prévenir des dommages significatifs ne s'applique que lorsque ces quatre éléments sont satisfaits. Comme souligné dans les observations écrites de la Suisse[109], cette

[108] CIJ, requête pour avis consultatif, *Obligation des États en matière de changement climatique*, exposé écrit de la Confédération suisse, 18 mars 2024 ; et observations écrites de la Confédération suisse, 7 août 2024 (ci-après, « observations écrites de la Suisse »).

[109] Observations écrites de la Suisse, par. 47 et suiv.

obligation de diligence requise vise à éviter la survenance d'un dommage. Elle concerne donc, à un certain moment, nécessairement toujours les émissions présentes et futures, et non pas les émissions passées.

10. Cette obligation de diligence requise nécessite la connaissance ou la prévisibilité d'un risque de dommage significatif potentiel, de sa gravité et de la causalité entre l'activité et le dommage. Ce n'est que lorsqu'un État est en mesure de connaître ou prévoir ces éléments, et donc les effets des activités conduites sous sa juridiction, qu'il *peut* et *doit* agir avec la diligence requise pour prévenir la réalisation du dommage.

11. Ainsi, dans le contexte des changements climatiques, l'obligation coutumière de diligence requise nécessite que les États puissent raisonnablement prévoir les conséquences de leurs émissions de gaz à effet de serre. Cette prévisibilité est nécessaire pour lier un État à l'obligation de diligence requise.

12. La prévisibilité ou la connaissance du risque de dommage, de son ampleur et du lien de causalité permet donc de délimiter le champ d'application temporel de l'obligation de diligence requise en rapport avec les changements climatiques. Dans ce contexte, la prévisibilité du risque de dommage significatif ne présuppose pas, pour me référer au principe 15 de la déclaration de Rio, « de certitude scientifique absolue »[110], quant aux causes et aux conséquences des changements climatiques. Il suffit que le résultat ait pu être raisonnablement anticipé.

13. Ainsi, si certains scientifiques ont commencé à soupçonner que les émissions de gaz à effet de serre pourraient entraîner une augmentation de la température à la surface de la Terre à la fin du XIX^{e} siècle, c'est uniquement à partir de 1990 qu'un avis scientifique, suffisamment robuste, a commencé d'émerger au sujet du lien de causalité entre les émissions anthropiques et le risque de dommages significatifs à l'environnement[111]. En effet, initialement, plusieurs chercheurs avaient même estimé qu'une augmentation de la température du climat ne serait pas négative ou même positive pour l'humanité[112].

---

[110] Déclaration de Rio sur l'environnement et le développement, principe 15, 1992, A/RES/2996 (XXVII), (1).

[111] GIEC, « Changement climatique 2021 : Les bases scientifiques physiques, Contribution du Groupe de travail I au sixième Rapport d'évaluation », p. 44.

[112] Svante Arrhenius, *Worlds in the making: The evolution of the universe*, traduction par H. Borns, Harper & Brothers, 1908, p. 63, accessible à l'adresse suivante : https://perma.cc/NC2Z-S8P5.

14. Dans la deuxième moitié du XX^e siècle, les indications sur les effets négatifs des changements climatiques se sont renforcées. En 1988, l'Assemblée générale des Nations Unies a adopté une résolution affirmant que le réchauffement climatique, causé par les émissions de gaz à effet de serre, « *pourrait* » s'avérer « désastreux pour l'humanité »[113]. L'utilisation du terme « pourrait » montre que, en 1988, l'Assemblée générale n'était pas encore certaine des causes et conséquences des changements climatiques, mais qu'elle prenait les indications y relatives au sérieux. De ce fait, la même année, le Groupe d'experts intergouvernemental sur l'évolution du climat, le GIEC, a été créé afin d'obtenir des connaissances et recommandations plus robustes sur les changements climatiques.

15. Le GIEC a publié son premier rapport d'évaluation en 1990. Ce rapport constata que les émissions anthropiques « *pourraient* entraîner des changements climatiques irréversibles »[114]. Alors que, en 1990, le premier rapport d'évaluation soulignait l'existence « de nombreuses incertitudes »[115] concernant les changements climatiques, le GIEC ne concluait qu'en 2014 qu'il était « extrêmement probable »[116] que les émissions anthropiques de gaz à effet de serre constituent la cause principale du réchauffement climatique. En 2023, dans son sixième et plus récent cycle d'évaluation, le GIEC est arrivé à la conclusion que l'influence humaine sur les changements climatiques est sans équivoque[117].

16. Bien que l'effet de serre ait fait l'objet de recherches scientifiques avant 1990, ces premières indications ne suffisaient pas pour établir une obligation de diligence raisonnable. En 1990, il n'existait d'ailleurs pas de clarté sur l'ampleur des risques des changements climatiques. Le consensus scientifique et l'urgence de la situation se sont rapidement cristallisés par la suite. La Suisse estime néanmoins que le premier rapport du GIEC de 1990 a créé une base suffisamment robuste pour pouvoir raisonnablement anticiper les risques de dommage significatif. Il marque ainsi

---

[113] Nations Unies, Assemblée générale, résolution 43/53 adoptée le 6 décembre 1988, intitulée « Protection du climat mondial pour les générations présentes et futures », doc. A/RES/43/53.

[114] GIEC, « Changement climatique : Les évaluations du GIEC de 1990 et 1992 », p. 87, accessible à l'adresse suivante : https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_90_92_assessments_far_full_report_fr.pdf.

[115] *Ibid.*, p. 63.

[116] GIEC, « Changements climatiques 2014 : Rapport de synthèse », p. 4, accessible à l'adresse suivante : https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full_fr.pdf.

[117] GIEC, « Changement climatique 2023 : Rapport de synthèse afférent au sixième Rapport d'évaluation, Résumé à l'intention des décideurs », p. 4, accessible à l'adresse suivante : https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

le début du champ d'application temporel de l'obligation de diligence requise aux émissions de gaz à effet de serre.

17. Compte tenu de ces éléments, la Suisse invite la Cour à confirmer que l'obligation coutumière de diligence requise de prévenir les dommages significatifs trouve application dans le domaine de la protection du climat depuis les années 1990.

18. Monsieur le président, Mesdames et Messieurs les juges, permettez-moi maintenant de traiter du deuxième élément concernant l'obligation de diligence requise, notamment ses destinataires et son standard.

19. Comme point de départ, il doit être rappelé que cette obligation coutumière lie tous les États. Toutefois, son standard dépend des quatre facteurs suivants : *en premier lieu*, de la connaissance du niveau de risque et de l'importance du dommage ; *en deuxième lieu*, des moyens d'action disponibles ; *en troisième lieu*, des contributions actuelles et futures au dommage ; et *en dernier lieu*, des capacités d'un État. Ainsi, le standard de l'obligation de diligence requise dépend pour chaque État de sa situation spécifique.

20. De ce fait, comme aussi souligné ce matin par la Gambie, le niveau de diligence considéré comme raisonnable évolue au fil du temps, en fonction de l'augmentation des connaissances scientifiques et des possibilités technologiques disponibles. Des mesures réputées suffisamment diligentes à un moment donné peuvent donc ne plus l'être à un autre moment[118].

21. En l'espèce, au cours des années qui ont suivi le premier rapport d'évaluation du GIEC, les compréhensions scientifiques sur le lien entre les émissions anthropiques de gaz à effet de serre et les changements climatiques ont augmenté. Plus les preuves scientifiques concernant le niveau de risque des dommages imminents s'accroissent, plus le standard de diligence requise devient rigoureux.

22. Au même titre, plus les technologies à disposition permettant de réduire les émissions de gaz à effet de serre se développent, plus le niveau de diligence augmente. Aujourd'hui, la prospérité économique n'est plus réalisée avec une technologie fossile du XIX^{e} siècle. Le GIEC a clairement

---

[118] *Responsabilités et obligations des États dans le cadre d'activités menées dans la Zone*, avis consultatif, *TIDM Recueil 2011*, p. 41, par. 110.

démontré que les technologies renouvelables sont disponibles et même moins coûteuses dans la plupart des cas, dans la plupart du monde, que les technologies fossiles.

23. Monsieur le président, Mesdames et Messieurs les juges, le risque et l'importance des dommages causés par les émissions anthropiques de gaz à effet de serre dépendent surtout de la quantité des émissions produites. Ainsi, plus les émissions sont importantes, plus la responsabilité est grande. La quantité constitue en effet le facteur pertinent dans la détermination du standard de l'obligation de diligence requise. Ce standard est de ce fait plus rigoureux pour les plus grands émetteurs de gaz à effet de serre.

24. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, si l'objectif de l'obligation de diligence requise est de prévenir les dommages significatifs causés par les changements climatiques, elle doit viser les grands et surtout les plus grands émetteurs.

25. Enfin, le niveau de diligence requise dépend également de la capacité d'un État. Les changements climatiques sont un défi collectif pour l'ensemble de la communauté internationale. Comme c'est un défi commun, un État disposant de plus de capacités a également une obligation de diligence plus rigoureuse. Dans ce contexte, il faut souligner qu'un État qui lance des fusées dans l'espace ou qui produit des armes nucléaires a également une grande capacité pour réduire ses émissions de gaz à effet de serre. De plus, c'est la capacité actuelle et non l'absence de capacité à la fin du dernier millénaire qui est pertinente pour déterminer le niveau de diligence requise actuel de chaque État.

26. De ce fait, la Suisse invite la Cour à confirmer que l'obligation de diligence requise de prévenir les dommages significatifs lie tous les États pour leurs émissions de gaz à effet de serre actuelles et futures. La Cour est également invitée à confirmer que le niveau du standard de diligence requise s'accroît depuis 1990, en fonction des connaissances scientifiques et des technologies à disposition, et que les exigences sont plus élevées pour les États qui contribuent le plus aux émissions mondiales actuelles et futures et pour ceux qui disposent de capacités nationales importantes. Quoi qu'il en soit, aucun État ne peut se soustraire à ses obligations en invoquant la responsabilité d'autrui.

27. Enfin, je souhaite aborder le troisième élément concernant la diligence requise, c'est-à-dire la relation entre l'obligation coutumière de diligence requise et le régime des changements climatiques.

28. À ce sujet, la Suisse soutient, comme les Seychelles et la Gambie ce matin, et Singapour, le Soudan et Sri Lanka cet après-midi, que l'obligation coutumière est distincte des obligations découlant du régime des changements climatiques. Tout en visant le même objectif, elles se concentrent sur des aspects distincts de celui-ci mais coexistent, se soutiennent et se complètent mutuellement. Il n'y a pas de conflit entre l'obligation coutumière et les obligations de l'accord de Paris ou la convention-cadre des Nations Unies sur les changements climatiques. Par conséquent, le droit international coutumier est complété, mais pas supplanté, par les traités internationaux portant sur la protection du climat.

29. Ces obligations se renforcent mutuellement, sans s'affaiblir, et doivent être comprises à la lumière de leurs objectifs communs de lutte contre les changements climatiques.

30. Les engagements pris dans le cadre de l'accord de Paris et du protocole de Kyoto sont des éléments clés du régime du changement climatique. Mais si un État respecte l'accord de Paris, en communiquant des contributions déterminées au niveau national, son comportement ne satisfait pas forcément de manière simultanée aux exigences découlant de l'obligation coutumière de prévenir les dommages significatifs. Pour déterminer le respect de l'obligation de prévention, une évaluation des mesures prises par les États, au cas par cas, à la lumière des risques, des responsabilités présentes et futures, des options et technologies disponibles ainsi que des capacités, reste nécessaire.

31. Monsieur le président, Mesdames et Messieurs les juges, la Suisse vous invite à confirmer que le seul fait pour un État de respecter les obligations découlant des traités relatifs aux changements climatiques ne signifie pas qu'il respecte automatiquement et simultanément l'obligation coutumière de la diligence requise de prévenir les dommages significatifs. Les deux catégories d'obligations coexistent et imposent parallèlement aux États de prendre des mesures qui reflètent leurs efforts les plus élevés.

C. AUCUNE CLÉ DE RÉPARTITION DU BUDGET D'ÉMISSIONS RESTANT DE GAZ À EFFET DE SERRE N'EST PRÉVUE PAR LE DROIT INTERNATIONAL

32. J'en viens maintenant à la question de savoir s'il est possible, sur la base du droit international existant, de fixer des budgets spécifiques aux États pour les émissions de gaz à effet de serre. La Suisse soutient qu'il n'existe actuellement aucune base légale, ni en droit international

coutumier ni en droit conventionnel, pour fixer des objectifs spécifiques de réduction d'émissions ou des budgets d'émissions spécifiques pour les États individuels.

33. Lors des négociations de l'accord de Paris, aucun consensus n'a été atteint sur les critères d'une éventuelle répartition du budget d'émissions qui resterait à disposition des États.

34. Le droit coutumier n'offre pas non plus de clé pour déterminer la quantité d'émissions revenant encore à chaque pays. Selon la manière dont les critères de responsabilité et de capacité sont définis et évalués, les résultats sont fondamentalement différents. La détermination et l'évaluation de ces critères sont en fin de compte politiques et non juridiques. Ainsi, même si le principe est que les pays qui émettent le plus et ceux qui ont une plus grande capacité doivent faire plus, il n'est pas possible de déterminer objectivement dans quelle mesure chaque pays doit réduire ses émissions.

35. Partant, la Suisse invite la Cour à confirmer qu'il n'est pas possible, sur la base du droit international existant, de déterminer des objectifs de réduction ou des budgets individuels d'émissions de gaz à effet de serre contraignants pour chaque État, en l'absence d'un accord politique sur les critères de répartition.

D. CONSÉQUENCES JURIDIQUES

36. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, je souhaiterais maintenant traiter de la deuxième question posée à la Cour qui concerne les conséquences juridiques pour les États qui, par leurs actions ou omissions, ont causé des dommages significatifs à l'environnement hors de leur juridiction, en violation de l'obligation de prévention.

i) La responsabilité des États

37. La première conséquence juridique d'un fait internationalement illicite est l'obligation de cessation et non-répétition[119]. Ainsi, tous les États doivent réduire leurs émissions et coopérer pour réduire les émissions globales.

38. Toutefois, la question de la réparation des dommages causés par une violation du droit international, dans le contexte des changements climatiques, est plus complexe. La Suisse soutient

[119] Projet d'articles sur la responsabilité de l'État pour fait internationalement illicite, art. 30.

que, dans le domaine des changements climatiques, l'approche du droit international traditionnel ne peut pas être transposée aisément aux violations de l'obligation de prévention pour les quatre raisons suivantes.

39. *Premièrement*, la difficulté ressort du fait qu'aujourd'hui, tous les États sont simultanément responsables et lésés, à des niveaux différents, par les effets néfastes des changements climatiques.

40. *Deuxièmement*, les dommages résultant des changements climatiques sont issus d'actes à la fois internationalement licites et illicites, c'est-à-dire qu'ils sont causés par une combinaison d'émissions qui sont encore permises et d'émissions qui doivent être évitées sous l'obligation de diligence requise.

41. *Troisièmement*, comme il n'existe actuellement aucun consensus international sur une clé de répartition du budget carbone restant, il n'est pas possible de déterminer individuellement pour chaque État à partir de quel seuil d'émission ses émissions deviennent illicites. Si la diligence requise exige en principe un standard plus élevé pour les États grands émetteurs et les États avec de grandes capacités, des critères agréés n'existent pas pour permettre de déterminer objectivement pour chaque État à partir de quel seuil ses émissions constituent une violation de la diligence requise.

42. Enfin, *quatrièmement*, les politiques nationales des États lésés contribuent également régulièrement et parfois de manière significative aux dommages engendrés par les changements climatiques. Par exemple, des dommages causés par des inondations ou des coulées de boue sont souvent imputables non seulement au changement climatique, mais aussi à des actes ou des omissions, intentionnels ou par négligence, de la part des autorités de l'État lésé, tels qu'une mauvaise planification, l'absence de mesures de protection ou la destruction de mesures existantes telles que les forêts de protection.

43. Pour ces raisons, dans le domaine du changement climatique, il est impossible de déterminer, *in abstracto*, à quelle hauteur un État spécifique a contribué, en violation du droit international, au dommage, quels États sont responsables et quels États sont en droit d'être indemnisés.

44. Par conséquent, la Suisse invite la Cour à confirmer que, si les règles internationales concernant la responsabilité des États imposent une obligation générale de cessation et de

non-répétition, il n'est pas possible, sur la base du droit international dans son état actuel, d'attribuer une obligation d'indemnisation quantifiable et spécifique par État.

ii) Le principe « pollueur-payeur »

45. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, permettez-moi d'aborder le dernier point de mon exposé, le principe « pollueur-payeur ».

46. Si la Cour souhaite se prononcer sur l'attribution de dommages, une telle analyse devrait être guidée par le principe « pollueur-payeur ». Bien que ce principe trouve son origine dans les systèmes juridiques nationaux, il peut guider les négociations entre États et les réflexions de la Cour concernant l'attribution des dommages. En particulier, le principe du pollueur-payeur permettra de responsabiliser les principaux responsables.

47. Ainsi, la Suisse vous invite, Monsieur le président, Mesdames et Messieurs les Membres de la Cour, à confirmer que le principe du pollueur-payeur devrait guider les considérations de responsabilité, inter- et intraétatiques, ainsi que les négociations futures des États afin de résoudre les défis du changement climatique.

E. CONCLUSION

48. Monsieur le président, Mesdames et Messieurs les juges, je souhaite conclure mon exposé oral en soulignant que, pour appliquer les règles du droit international, il est important de bien garder à l'esprit les faits. Comme le GIEC l'a démontré, les États occidentaux industrialisés sont responsables de seulement 43 % des gaz à effet de serre émis entre 1850 et 2019[120]. De plus, si en 1990, les États dits « développés » étaient responsables de 41 % des émissions globales, en 2019, ces pays étaient responsables de seulement 23 % des émissions globales[121] ; en 2023 seulement 3

[120] GIEC, « Changement climatique 2022 : Atténuation du changement climatique, Contribution du Groupe de travail III au sixième Rapport d'évaluation, Résumé à l'intention des décideurs », fig. SPM.2, p. 10, émissions régionales de GES et proportion régionale des émissions totales cumulées de CO_2 liées à la production de 1850 à 2019.

[121] GIEC, « Changement climatique 2022 : Atténuation du changement climatique, Contribution du Groupe de travail III au sixième Rapport d'évaluation », fig. 2.9., p. 234, pour les régions d'Amérique du Nord, d'Europe, du Japon, de la Nouvelle-Zélande et d'Australie, en 2019.

des 10 plus grands émetteurs étaient des États occidentaux industrialisés, et 10 des 10 plus grands émetteurs *per capita* étaient des États qui s'auto-désignent comme des pays en développement[122].

49. Le droit international doit contribuer à répondre au défi mondial des changements climatiques, mais il ne peut le faire que s'il prend appui sur les faits que je viens d'évoquer. Diviser les États sur la base de critères du dernier millénaire en deux catégories fixes entre des pays développés et des pays en développement n'est pas seulement loin de la réalité actuelle et artificielle, cela ne promeut, surtout, pas une solution effective. Tous les responsables, et pas seulement certains, doivent être mis face à leurs responsabilités.

50. Mr President, honourable Members of the Court, let me briefly respond to the arguments from Singapore on CBDR. Switzerland has taken a different view in its written submissions of 18 March 2024, paragraphs 50 to 55, and of 7 August 2024, paragraphs 51 to 64. If today's responsibility would be derived primarily from past emissions, countries like Switzerland and Singapore, with minimal historic emissions but significant capacity today, would be "de-responsibilized". CBDR, as a helpful concept to effectively address climate change, must not be seen as a static concept that "de-responsibilizes" countries which belong today to the biggest emitters from absolute and per capita perspectives; nor countries which benefit today from significant capacities. On the contrary, CBDR must be understood as a concept to "responsibilize" not only past but foremost, also present and future emissions and those that have the capacity to do more to prevent climate change. CBDR has to be a dynamic concept reflecting today's reality.

51. Ainsi, j'invite la Cour à confirmer que l'obligation coutumière de diligence requise lie tous les États, en parallèle du système conventionnel des changements climatiques, depuis les années 1990. Le droit international s'impose de la même manière à tous avec comme seule différenciation les responsabilités et capacités effectives, actuelles et futures de chacun d'eux.

52. De plus, la Suisse invite la Cour à confirmer que, sur la base du droit international actuel, il n'est pas possible de fixer des objectifs contraignants de réduction pour les émissions de chaque État.

---

[122] EDGAR (Emissions Database for Global Atmospheric Research) Community GHG Database, a collaboration between the European Commission, Joint Research Centre (JRC), the International Energy Agency (IEA), and comprising IEA-EDGAR CO2, EDGAR CH4, EDGAR N2O, EDGAR F-GASES version EDGAR_2024_GHG (2024) European Commission, JRC (Datasets).

53. Enfin, la Suisse maintient qu'il est impossible d'attribuer une obligation de réparation quantifiable et spécifique à chaque État. Cela étant, le principe « pollueur-payeur » devrait guider les négociations politiques et les réflexions de la Cour pour déterminer les responsabilités des États.

54. Finalement, vu la complexité et la nature collective du défi des changements climatiques, seule une réponse collective fondée sur la coopération est capable de résoudre le problème.

55. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, ceci conclut l'exposé oral de la Suisse. Je vous remercie de votre attention.

Le PRÉSIDENT : Je remercie le représentant de la Suisse pour sa présentation. I shall now give the floor to the delegation of Serbia. I call Professor Aleksandar Gajić to the podium.

Mr GAJIĆ:

1. Mr President, Members of the Court, I have the honour to appear today before the Court in the case of *Obligation of States in respect of Climate Change* on behalf of the Republic of Serbia.

INTRODUCTION

2. The Republic of Serbia was one of the co-sponsors of the General Assembly resolution requesting an advisory opinion and is particularly interested in the outcome of these proceedings. This is not only because the Republic of Serbia is a party to all international treaties enumerated in the Request for advisory opinion, but also the Republic of Serbia is significantly affected by climate change.

3. Regrettably, the Republic of Serbia did not participate in the written phase of the proceedings. We are using this limited opportunity to present at least some of the arguments that might be helpful in providing advisory opinion on the issue that was identified by the Pact for the Future as "one of the greatest challenges of our time".

4. The Republic of Serbia is a land-locked country heavily affected by the climate change. The data shows that the rate at which the average temperatures increase in the Republic of Serbia is higher and it rises faster than the global average. More specifically, the middle value of increase is 1.8°C, while it goes up to 2.6°C during summer season. The total minimal material damage caused by

extreme climate and weather episodes (mainly droughts and floods) for the period of 2000 to 2020 amounts to €6.8 billion.

5. The Republic of Serbia has an adequate legal framework which ensures the enforcement of the so-called international climate treaties, namely Framework Convention, Kyoto Protocol and Paris Agreement.

6. For the purpose of fulfilling the commitments, the Republic of Serbia, *inter alia*, enacted the law on climate change in 2021, a very ambitious programme for adaptation to change climate circumstances for the period 2023 to 2030 and the action plan for implementing this programme. As a candidate for membership to the European Union, the Republic of Serbia elaborated this programme in full compliance with the European Union strategy of adaptation to climate change of 2021, as well as with the guidelines on Member States' adaptation strategies and plans. The Republic of Serbia adopted a number of strategic plans and documents in different sectors that ensure compliance with the commitments connected with adaptation to climate change. As a candidate for the membership to the European Union, the Republic of Serbia is progressively harmonizing its regulatory framework in the field of environmental protection and climate change with the very demanding European Union *acquis*.

JURISDICTION AND PROPRIETY

7. Honourable judges, it seems evident that the Court has jurisdiction and that there is no reason to decline to exercise it at its discretion. All elements of propriety for exercising jurisdiction in the present case are clearly satisfied and it appears that the Court's participation in the United Nations activities regarding climate change would enhance the integrity of its judicial function and its role as the principal judicial organ of the United Nations.

PRELIMINARY REMARKS

8. By requesting advisory opinion, the General Assembly asks the Court to identify, as an independent judicial authority, to pronounce itself on the facts and law concerning climate change.

9. The Court, in its advisory opinion, is obliged to provide a factual basis — namely, to identify facts, scientific evidence and reliable expert opinions on relevant issues concerning climate change. Without such an elaboration, purely legal arguments would be without merit. Addressing climate

change and its adverse effects requires not only legal but also clear, understandable and reliable factual, scientific and political considerations. All of these aspects need to be appropriately addressed in the advisory opinion.

10. A thorough factual analysis is necessary, including the evaluation of expert opinions which the Court might accept in respect to their comprehensiveness and reliability. The Court is expected to act as a court of law, even when providing an advisory opinion, and consequently the complex factual basis must be elaborated in a judicial manner.

11. It is expected from the Court to pronounce itself on the issues that are part of the contemporary international law, that are *lex lata*. However, many questions are raised from various submissions to the Court and the Court is also in the position to provide a clear and unequivocal opinion on what issues are and what are not part of contemporary international law. The Court is not empowered with legislative authority. The policy creates the law through the law-making process. It must also be emphasized that the law does not always provide solutions for every problem. Solution of certain problems needs to be achieved in the political process at both national and international level.

12. There is a generally clear division of tasks among a variety of principal and subsidiary organs of the United Nations. I would like to emphasize that while the International Court of Justice is the principal judicial organ of the United Nations, the International Law Commission is the principal United Nations institution for the codification and progressive development of international law.

POWER OF THE COURT TO CLARIFY THE QUESTION POSED

13. Mr President, Members of the Court, the first question put by the General Assembly reads as follows: what are the obligations of States under international law *to ensure* the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?

14. The Court must be mindful of the consequences of its advisory opinion, and it has the power to clarify the question posed. It is well established in the jurisprudence of the Court that it can depart "from the language of the question put to it where the question was not adequately

formulated". The question in this case is broad and, in some respects, it has certain prejudicial effect. Namely, the question must be formulated in accordance with the nature of the obligation of States in respect to climate change. Framework Convention in the preambular part states, *inter alia*, that the parties to the convention are "*determined* to protect the climate system for present and future generations".

15. The question shall be clarified, to avoid any misunderstandings, and shall read rather as follows: what are the obligations of States under international law concerning their determination to protect the climate system from anthropogenic emissions of greenhouse gases for States and for present and future generations? Such formulation would be in line with, *inter alia*, the wording of Article 2 of the Paris Agreement, stating that it "aims to strengthen the global response to the threat of climate change". In other words, the word "ensure" must be avoided, because it does not correspond to the nature of the obligations and commitments of States with respect to the climate system and climate change.

LEGAL FRAMEWORK AND OBLIGATIONS OF STATES

16. Honourable judges, obligations of States in respect to climate change are contained in the so-called international climate treaties, namely the United Nations Framework Convention on Climate Change[123], Kyoto Protocol[124] and Paris Agreement[125]. Those international treaties are concluded in accordance with the Vienna Convention on the Law of Treaties and create a legal framework for the achievement of the aims of the international community with respect to climate change.

17. They contain an appropriate legal framework and are the main source of obligation for States.

18. Those treaties are without prejudice to the obligations and responsibilities of States under international environmental treaties. They are the basis of autonomous obligations of States calibrated to be a proper response to climate change and achievement of the set goals.

---

[123] Signed in 1992, entered into force in 1994.

[124] Signed in 1997, entered into force in 2005.

[125] Signed in 2016, entered into force in 2016.

19. The primary legal obligation of every State party to these international treaties is to transpose commitments contained in those treaties into its national legal and political system and to co-operate in goodwill within the institutional framework that is formed by those treaties or serves as a support for their implementation.

PREMISES OF THE TREATY-BASED RÉGIME

20. At the outset, the question must be resolved as to what definition of climate change the Court needs to adopt. The common understanding of climate change is that it "refers to long-term shifts in temperatures and weather patterns". Such shifts might be caused naturally (volcano eruptions or the sun's activities, for example) or produced by human activity. Both are relevant for legal consideration. Even when caused by natural forces, States need to take measures for adaptation to climate change. However, the legal definition provided in the Framework Convention focuses on human activity as a cause of climate change, and climate change from natural sources is qualified as "natural climate variability". It seems that the Court needs to use the definition of climate change contained in the Framework Convention for the purposes of issuing this advisory opinion.

21. Climate treaties and the regulation they contain are based on the two premises on which the whole regulation concerning climate change is based. The first one, that climate change and its adverse effects are a *common concern of humankind* and the second one, the principle of *common but differentiated responsibilities and respective capabilities, in the light of different national circumstances*. Those premises are the very basis concretized through numerous provisions of the international climate treaties. In other words, the underlying principles inspire and shape the content of the specific provisions contained in those treaties.

22. Based on the two premises, the Framework Convention, Kyoto Protocol and Paris Agreement contain a comprehensive legal and institutional framework. Those premises are of particular importance since they underline the nature of the commitments of States and might also serve in the process of interpretation and application of international climate treaties.

23. It goes without saying that this system might be criticized and that certain authors, or even certain States, will try to formulate a legal framework on climate change in a different manner. However, the States, under the United Nations umbrella, created a treaty-based régime in accordance

with their own interests and understanding of the needs of the international community with respect to climate change.

COMMON CONCERN OF HUMANKIND

24. Honourable judges, climate change and its adverse effects are a common concern of humankind and, as such, have a legal status under international law. In 1988, the General Assembly declared in a resolution on the protection of global climate for present and future generations of mankind[126] that climate change was a "common concern of humankind". Since then, a number of resolutions of the General Assembly as well as international climate treaties contain identical qualification.

25. The legal content of the concept of common concern of humankind is that States can no longer claim that climate change and its adverse effects are within the reserved domain of domestic jurisdiction because the issues now legitimately fall under "matters of international concern"[127]. However, as observed by the International Law Commission, this does not mean that without creation of appropriate rules of international law a State has a legal interest or standing in the enforcement of rules concerning climate change, or that creates, by itself, rights of individuals[128]. It is understood that the expression identifies a problem that requires co-operation from the entire international community, while at the same time its inclusion does not create, as such, rights and obligations, and, in particular, it does not entail judiciable *erga omnes* obligations.

26. Common concern of humankind is a policy issue, with a certain legal status, obliging the States, when facing the climate change, to protect peoples and individuals of the present and future generations. This expression is a consequence of the understanding "that climate change is an unprecedented challenge of civilizational proportions and that well-being of present and future generations of humankind depends on our immediate and urgent response to it"[129].

---

[126] UNGA resolution 43/53 of 6 December 1988.

[127] Compare with: First report on the protection of the atmosphere, by Mr Shinya Murase, Special Rapporteur, UN doc. A/CN.4/667, para. 89.

[128] ILC 2021.

[129] UNGA resolution 77/267 of 29 March 2023.

THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES AND RESPECTIVE CAPABILITIES, IN THE LIGHT OF DIFFERENT NATIONAL CIRCUMSTANCES

27. The principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, is a principle underlying the commitments or obligations of States in respect to climate change. It is a natural consequence of the qualification of climate change as a common concern of humankind, and also considering different national circumstances, to create a régime of differentiated responsibilities of States that depends on their respective capabilities. It is not a principle or rule of customary international law, but its normative status is closely tied with the Framework Convention and Paris Agreement, serving as a basic premise of the regulation that those treaties contain.

THE NATURE OF OBLIGATIONS OF STATES

28. Mr President, Members of the Court, the primary legal obligation of every State party to international climate treaties is to transpose commitments into its national legal system and to co-operate in good faith within the institutional framework that is formed by those treaties or serve as a support for its implementation.

29. Based on the two principles, international climate treaties contain a number of commitments of States, as well as policy positions that drive collective and individual activities in response to climate change and its adverse effects.

30. Regulations contained in those treaties underline the dynamic nature of the State obligations and that reflects particularly through their nationally determined contributions in order to achieve the goals of the said treaties. A number of provisions of the Framework Convention and Paris Agreement set parameters for determination of the nationally determined contributions. Obligation to adopt nationally determined contributions is enforced, *inter alia*, by obligation of States to communicate it to the Conference of the Parties at least every five years, and also Article 4 (3) of the Paris Agreement obliges States that each subsequent nationally determined contribution will represent a progression beyond the previous one.

31. There is a clear and unequivocal obligation of States to co-operate in accordance with the relevant provisions of climate treaties, and to respect authorities of the bodies created by those treaties

or in connection with those treaties. We are mindful of the fact that the participation of States in those institutions, bodies and forums is almost universal.

32. The implementation of the commitments, and its dynamic nature, presuppose obligations of States to adopt certain rules and regulations in their internal legal order, and to provide administrative capacities to enforce those rules and to conduct appropriate control of activities that relate to climate change.

33. Since climate change is a common concern of humankind, and not only a matter that is reserved for States' own discretion, States have created mechanisms that control and facilitate implementation of commitments. In that respect, of particular importance are the regular conferences of State parties, as well as the mandate of certain bodies such as the Paris Agreement Implementation and Compliance Committee which facilitates implementation of the Agreement and promotes compliance with a broad spectrum of powers concerning review of nationally determined contributions.

34. It appears to be evident that obligations of States in respect to climate change which are based on the international climate treaties are obligations of conduct, not of result.

35. One of the international law principles specifically mentioned in the Request for the advisory opinion, along with climate treaties and human rights treaties, is the rule of *due diligence*. *Due diligence* is not an autonomous concept, but relates to commitments of States in respect to climate change. It requires from States to put in their best efforts, in accordance with their national capabilities, taking into account, *inter alia*, evolving circumstances, scientific evidence and level of technology. Based on the understanding of the International Law Commission, it should be underlined that even where significant adverse effects materialize, that does not necessarily constitute a failure of *due diligence*. Such failure is limited to the State's negligence to meet its obligations to take all appropriate measures to prevent, reduce or control human activities where those activities have or are likely to have significant adverse effects. The States' obligation "to ensure" does not require the achievement of a certain result but only requires the best available good-faith efforts so as not to cause significant adverse effects[130].

[130] Draft guidelines on the protection of the atmosphere, 2021, Guideline 3, commentary, para. 6.

36. It might look as a digression, but it seems to me that the work of the International Law Commission and the Sixth Committee of the General Assembly that resulted in the draft guidelines on the protection of the atmosphere (2021) deserves endorsement.

37. Honourable judges, the question put by the General Assembly, naturally, concerns obligations and responsibility of States, not of individuals and companies that might have or have some impact on climate change. Private companies, which have significant economic power and the ability to act and endanger environment, whose acts cannot be attributed to States, need also to be considered. It is an obligation of States to act as responsible subjects of international law providing enforceable legal framework in the context of regulation of activities of individuals, private enterprises and non-State entities operating on their territory.

38. Obligation of States is to regulate and control the implementation of measures taken in response to climate change. It would be desirable that the Court, in its advisory opinion, notes that the obligation of non-State actors is to strictly obey the rules and regulations adopted by States in respect to climate change and environmental protection. In addition, the States should be under obligation to make non-State actors responsible for their actions or omissions that might have negative effects on climate change. Climate change is a common concern of humankind, and consequently all actors must behave in accordance with the goals commonly shared by the international community. If the non-State actors disrespect the rules and regulations concerning climate change, the State should have the right to take appropriate measures and to hold them accountable. Conversely, no compensation can be claimed from the State in the case where there is necessity for the State and international community to limit operation of individuals or private companies or other entities on their territory.

HUMAN RIGHTS AND CLIMATE CHANGE

39. Honourable judges, the Court has been requested by the General Assembly to provide an opinion on the obligations of States regarding climate change, with particular reference to, *inter alia,* the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the rights recognized in the Universal Declaration of Human Rights.

40. This reference seems to underpin the understanding that climate change and its adverse effects, as well as the measures taken to address it, might significantly impact the exercise of human rights guaranteed under the aforementioned international treaties. It is crucial to emphasize that, while implementing measures to combat climate change or protect the environment, States must respect human rights as enshrined in the International Covenants, along with rights protected under regional human rights systems, as well as to endeavour to preserve and to improve environment for full respect of human rights.

41. Taking measures to prevent and adapt to climate change must respect human rights guaranteed by international human rights treaties, while derogations are permissible only in cases of emergency, when circumstances such as natural disasters threaten the life of a nation. In other words, a climate event or situation may lead to the taking of appropriate measures that temporarily deviate from the human rights régime only in accordance with Article 4 of the Covenant on Civil and Political Rights.

42. The current approach to addressing climate change focuses on the need to reduce greenhouse gas emissions to create a sustainable environment conducive to human well-being, food security and livelihood protection. It serves to protect almost the same values as human rights instruments. However, international climate treaties do not contain any judiciable right of individuals nor deviate from the previously established system of human rights.

43. It shall be noted that the right to a clean, healthy, and sustainable environment was explicitly recognized in the national legislation of many States. At the same time, no equivalent judiciable individual right so far has been enshrined in any universally accepted human rights treaty and we share the view that it is currently not a part of international customary law. However, in the Republic of Serbia, the right to a healthy environment is a constitutional right provided by Article 74 of the Constitution, and on the basis of that right “everyone is entitled to comprehensive and timely information regarding the conditions of the environment”. In the context of that right, “everyone, and in particular the Republic of Serbia, is responsible for the protection of the environment”.

STATE RESPONSIBILITY

44. Mr President, Members of the Court, the second question posted by the General Assembly concerns responsibility of States, or legal consequences of the breach of obligations of States that caused significant harm to the climate system, and with respect to States and particularly small island developing countries.

45. Our position is that the responsibility for a significant harm to the climate system, as well as to other parts of the environment, is governed by customary international law, which has been codified in the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts. So far, no specific rules have emerged that deviate from the general régime of State responsibility with regard to climate change.

46. In respect to certain categories of States, I would like to emphasize that Article 4, paragraphs 8 to 10, of the Framework Convention outlines the specific needs of certain countries, including small island States, landlocked countries and low-lying coastal areas. The Paris Agreement further addresses the concerns of those countries in Articles 4, 9, 11, and 13. For example, Article 4, paragraph 8, of the Framework Convention obliges States to give full consideration to the necessary actions under the Convention, including funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing countries arising from the adverse effects of climate change.

47. It is important to note that the regulation concerning climate change is oriented to measures aimed at preventing significant harm to the climate system, and responsibility of States need to be considered also in that context. In those considerations, one must be mindful of the fact that the Framework Convention and Paris Agreement contain a mechanism to correct deviations from mandatory requirements.

48. Mr President, honourable Members of the Court, this concludes the statement of the Republic of Serbia. I thank you for your attention.

The PRESIDENT: I thank the representative of Serbia for his presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow at 10 a.m., in order for Thailand, Timor-Leste, Tonga, Tuvalu and the Comoros to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 6.15 p.m.

_____