Question put by Judge Cleveland

"During these proceedings, a number of participants have referred to the production of fossil fuels in the context of climate change, including with respect to subsidies. In your view, what are the specific obligations under international law of States within whose jurisdiction fossil fuels are produced to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, if any?"

1. Climate change obligations[1] are not activity or greenhouse gas specific. What matters is that the obligations under both customary international law (the no-harm obligation) and treaty obligations (under UNCLOS, the climate change treaties, human rights treaties, environmental law treaties) are complied with, including in relation to the production of fossil fuels.

2. Indeed, for example, a *bona fide* implementation of the obligation to prevent, reduce and control the pollution of the marine environment through the emission of greenhouse gases must necessarily include concrete action to reduce, with a view to prevent, production of fossil fuels (meaning extraction of oil and gas from the soil), the main end usage of which is its burning, releasing tons of CO2 and other GHGs into the atmosphere. As another illustration of how the production of fossil fuels harm the environment, it is sufficient to mention its release in the marine environment as a result of an oil spill accident, as witnessed recently in the Black Sea.[2]

3. Of course, extraction and selling of oil and gas does not immediately generate the greenhouse gases attached to their combustion. Thus, some might argue that the effect on the climate system and the environment is "indirect", because only the end use of the oil and gas extracted will create this effect. However, there is no basis for ignoring the indirect but automatic effects of extraction on oil and gas on the climate system and the environment. This is evidenced for example by the definition of pollution of the marine environment under Article 1(1)(4) UNCLOS, which refers to "the introduction by man, directly or indirectly, of substances or energy into the marine environment". Since, as

[1] CR2024/49, Seychelles, p. 44, para. 8 (Joubert), pp. 45-48, paras. 1-15 (Thouvenin) and p. 53, para. 3 (Derjacques). Obligations include that of taking urgent action to limit global warming to 1.5°C above pre-industrial levels; that every State has an individual obligation to take all measures objectively necessary to prevent further significant harm to the climate system and other parts of the environment by, at the very least, implementing their nationally determined contributions; procedural obligations under the Paris Agreement; due diligence obligations under UNCLOS or under the Paris Agreement; customary no-harm obligations; human rights obligations, etc.

[2] Reuters, "Black Sea oil spill worsens as third Russian tanker sends distress call", 18 Dec. 2024. [Online]

recognized by the International Tribunal for the Law of the Sea (ITLOS) and by the best available science, the emission of GHGs is polluting the marine environment, extraction of oil and gas, which, in burning, will emit GHGs in the atmosphere, and therefore pollute the marine environment, it follows that the extraction of oil and gas falls under the definition of pollution of the marine environment through its inevitable indirect effect.

4. This obligation is broken down into, first, an obligation to conduct an environmental impact assessment (hereinafter "EIA"), second, if such conclusion arises from the EIA, to adopt necessary measures to ensure that the climate system and the environment are not substantially damaged.

5. The obligation to carry out an EIA when planned activities are at risk of generating transboundary damages has already been considered part of customary international law by the International Court of Justice. It is a "crucial" obligation within the no harm/due diligence obligation, according to ITLOS in relation to the marine environment, at paragraph 354 of its 2024 Advisory Opinion. It plainly applies for any planned activity of extraction of oil and gas, since this activity will inevitably contribute to damaging the climate system and the environment.

6. This obligation to ensure that a proper EIA is carried out before any planned risky activity is entertained lies primarily upon the State under which jurisdiction or control the territory from which oil and gas is extracted. But in so far as the obligation at stake is an obligation of due diligence, which includes an obligation to ensure that private persons under the jurisdiction or control of a State adopt a conduct consistent with the international law obligation, the State exercising personal jurisdiction on such private persons is also under the said obligation. In particular, the State of nationality of companies is under such an obligation, to the extent that it does exercise personal jurisdiction or control over such companies.

7. In addition, although the exact content of an EIA is up to each State, it must be carried out "having regard to the nature and magnitude of the proposed development and its likely adverse impact on the environment as well as to the need to exercise due diligence in conducting such an assessment.[3]

[3] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010,* p. 14, at p. 83, para. 205.

8. In this regard, the ITLOS has expressed the view that:

> "[A]ny 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, shall be subjected to an environmental impact assessment. Such assessment shall be conducted by the State Party under whose jurisdiction or control the planned activity will be undertaken with a view to mitigating and adapting to the adverse effects of those emissions on the marine environment."[4]

9. In relation to the extraction of oil and gas, the "cumulative effects" must indeed be assessed, meaning its contribution to the global climate change which of course includes assessing the so-called "Scope 3 emissions" related to a planned extracting activity. As a consequence, all EIA, including but not limited to EIA under UNCLOS obligations, of any planned extracting activity, must assess the impact in taking into account not only of Scope 1 and 2 emissions, but also of Scope 3 emissions.

10. The *Finch* judgment of the United Kingdom's Supreme Court[5] goes in the same direction, although not on the basis of international law. Therein, the UK Supreme Court held that where an EIA is required for a proposed project for the extraction of petroleum and natural gas for commercial purposes, UK law requires the EIA to include Scope 3 emissions. This position is plainly consistent with a bona fide implementation of the due diligence obligation under international law.

11. The EIA, once properly carried out and achieved, must of course be followed by proper action from the State concerned to prevent any assessed substantial damage to the climate system and the environment, including the marine environment.

[4] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law,* p. 124, para. 367.
[5] The Supreme Court of the United Kingdom, *R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents), 20 June 2024* [online].

Question put by Judge Tladi

"In their written and oral pleadings, participants have generally engaged in an interpretation of the various paragraphs of Article 4 of the Paris Agreement. Many participants have, on the basis of this interpretation, come to the conclusion that, to the extent that Article 4 imposes any obligations in respect of Nationally Determined Contributions, these are procedural obligations. Participants coming to this conclusion have, in general, relied on the ordinary meaning of the words, context and sometimes some elements in Article 31(3) of the Vienna Convention on the Law of Treaties. I would like to know from the participants whether, according to them, 'the object and purpose' of the Paris Agreement, and the object and purpose of the climate change treaty framework in general, has any effect on this interpretation and if so, what effect does it have?"

1. Seychelles is of the view that the object and purpose of the Paris Agreement and of the climate change treaty framework in general indeed have an effect on the interpretation of Article 4. Considering the importance of the objectives of the Paris Agreement and climate change treaty framework, we are of the view that Article 4 should be interpreted as establishing *both* procedural and substantial obligations of conduct on States.

2. In accordance with Article 31(3) of the Vienna Convention on the Law of Treaties, any good faith interpretation of the Paris Agreement in accordance with the ordinary meaning to be given to the terms of the treaty and in its context, must also take into account its object and purpose. As per Article 2(1) therein, the Agreement "aims to strengthen the global response to the threat of climate change". This is well aligned with the object and purpose of the United Nations Framework Convention on Climate Change (UNFCCC) which ultimately seeks to achieve the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system" and that "[s]uch a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."[6]

3. These support the view that the obligations in Article 4 goes beyond procedural obligations. Article 4, paragraph 2, is of course the key provision concerning NDCs – which are established by each State. It suffices to read it to conclude that it does contain substantial obligations of conduct. In fact, suggesting that Article 4, paragraph 2, is only about procedural obligations, confuses obligation of conduct and a procedural obligation. These two sorts of

[6] United Nations Framework Convention on Climate Change (UNFCCC), Art. 2.

obligations are obviously of different nature, and a correct reading of article 4, paragraph 2, shows indeed that it contains a procedural obligation, namely the obligation to "communicate" successive NDC, but also an obligation of conduct, namely to "pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions."[7] This is plainly consistent with the object and purpose of the Paris Agreement to consider that States have substantial obligation of conduct with a view to "strengthen the global response to the threat of climate change".[8]

4. In addition, Article 4 should be read in conjunction with Article 3 of the Paris Agreement which itself establishes an obligation of conduct the content of which is assessed according to the standard of due diligence.[9] Moreover, NDCs – which are one of the backbones of the Paris Agreement – represent the commitments made by countries to achieve the objectives outlined in Article 2.

Question put by Judge Aurescu

"Some participants have argued, during the written and/or oral stages of the proceedings, that there exists the right to a clean, healthy and sustainable environment in international law. Could you please develop what is, in your view, the legal content of this right and its relation with the other human rights which you consider relevant for this advisory opinion?"

1. As noted by Seychelles in its Written Statement,[10] and as reproduced here, the right to a healthy environment has been clearly incorporated in some international law instruments such as the African Charter on Human and Peoples' Rights, the Arab Charter on Human Rights, the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration, or the American Declaration on the Rights of Indigenous Peoples. In 2022, the United Nations General Assembly also admitted the right to a healthy environment,[11]

[7] Paris Agreement, Art. 4(2).

[8] Paris Agreement, Art. 2(1).

[9] CR2024/49, p. 47, para. 13 (Thouvenin).
[10] Written Statement of Seychelles, pp. 46-48, paras. 143-145.
[11] UNGA, Resolution 76/300, 28 July 2022, UN Doc. A/RES/76/300.

following the Human Rights Council's resolution recognising its existence.[12] In total, 156 States have recognised the right to a healthy environment at regional and national levels.[13]

2. Seychelles similarly enshrines this right within its Constitution. Specifically, in Part II, entitled "Fundamental Duties," Article 40, Paragraph (e) imposes the duty on every citizen of Seychelles "to protect, preserve, and improve the environment." It is noteworthy that, since its adoption in 1993, Seychelles' Constitution has addressed this critical issue, long before it became a focal point of international legal discourse.

3. According to the Human Rights Council, the right to a healthy environment includes procedural and substantive elements: the first ones imply access to information, public participation, access to justice and public remedies, whereas the second ones include "clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystem".[14]

4. Beyond the right to a healthy environment as such,[15] international jurisdictions or quasi-jurisdictional bodies dealt with various environment related cases linked to other human rights. In its 2017 advisory opinion, the Inter-American Court of Human Rights, noted that these international jurisdictions and quasi-jurisdictions indeed recognised that environmental degradation could lead to a violation of the rights to life,[16] to personal

[12] HRC, Res. 48/13, "The human right to a clean, healthy and sustainable environment", 18 October 2021, UN Doc. A/HRC/RES/48/13).
[13] OHCR, UNEP, UNDP, "What is the Right to a Healthy Environment?", *Information note*, 2023. [Online]
[14] HRC, Res. 43/53, Right to a healthy environment: good practices. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 30 December 2019, UN Doc. A/HRC/43/53.
[15] IACHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, *Merits, reparations and costs*, 6 February 2020.
[16] ECHR, *Case of Öneryildiz v. Turkey* [GS], No. 48939/99, Judgment of November 30, 2004, paras. 71, 89, 90 and 118; ECHR, *Case of Budayeva and Others v. Russia*, No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, Judgment of March 20, 2008, paras. 128 to 130, 133 and 159; ECHR, *Case of M. Özel and Others v. Turkey,* No. 14350/05, 15245/05 and 16051/05, Judgment of November 17, 2015, paras. 170, 171 and 200.

integrity,[17] to private life,[18] to health,[19] to water,[20] to food,[21] to housing,[22] to participation in cultural life,[23] to property,[24] and the right not to be forcibly displaced.[25] In 2019, the Human Rights Committee's case *Teitiota v. New Zealand* furthermore recognised that in the context of climate change, displaced persons have the right not to be returned to a country where they would be exposed to irreparable harm to their life.[26]

5. In conclusion, the Seychelles aligns with the majority of participants in these proceedings in asserting that the right to a healthy environment and its content is firmly established within international law, and that claims denying its recognition or scope are unfounded and merit no consideration.

[17] African Commission on Human and Peoples' Rights, Resolution 153 on climate change and human rights and the need to study its impact in Africa, 25 November 2009.
[18] ECHR, *Case of Moreno Gomez v. Spain*, No. 4143/02, Judgment of November 16, 2004, paras. 53-55; ECHR, *Case of Borysiewicz v. Poland*, No. 71146/01, Judgment of July 1, 2008, para. 48; ECHR, *Case of Giacomelli v. Italy*, No. 59909/00, Judgment of November 2, 2006, para. 76; ECHR, *Case of Hatton and Others v. The United Kingdom [GS],* No. 360022/97, Judgment of July 8, 2003, para. 96; ECHR, *Case of Lopez Ostra v. Spain*, No. 16798/90, Judgment of December 9, 1994, para. 51; ECHR, *Case of Taşkin and Others v. Turkey*, No. 46117/99, Judgment of November 10, 2004, para. 113.
[19] ESCR Committee, General Comment No. 14: The right to the highest attainable standard of health (article 12 of the ICESCR), August 11, 2000, UN Doc. E/C.12/2000/4, para. 34. See, also: African Commission on Human and Peoples' Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication 155/96, Decision of October 27, 2001, paras. 51-52.
[20] ESCR Committee, General Comment No. 15: The right to water (articles 11 and 12 of the ICESCR), 20 January 2023, UN Doc. E/C.12/2002/11, paras. 8, 10.
[21] ESCR Committee, Concluding observations: Russian Federation, 20 May 1997, UN Doc. E/C.12/Add.13, paras. 24, 38.
[22] ESCR Committee, General Comment No. 4: The right to adequate housing (article 11(1) of the ICESCR), 13 December 1991, UN Doc. E/1992/23, para. 8.f.
[23] ESCR Committee, Concluding observations: Madagascar, 16 December 2009, UN Doc. E/C.12/MDG/CO/2, para. 33; ESCR Committee, General Comment No. 21: Right of everyone to take part in cultural life (article 15(1)(a), of the ICESCR) 17 May 2010, UN Doc. E/C.12/GC/21/Rev.1, para. 36.
[24] HRC, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples, 1 July 2013, UN Doc. A/HRC/24/41, para. 16; African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, Communication No. 276/03, November 25, 2009, para. 186; African Commission on Human and Peoples' Rights, *Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication 155/96, Decision of October 27, 2001, paras. 54, 55.
[25] Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum: Guiding Principles on Internal Displacement, Principle 6, 11 February 1998, UN Doc. E/CN.4/1998/53/Add.2; and with regard to climate change, HRC, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, 15 January 2009, UN Doc. A/HRC/10/61, para. 56.
[26] HRC, *Ioane Teitiota v. New Zealand*, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, 24 October 2019, Doc. CCPR/C/127/D/2728/2016.

Question put by Judge Charlesworth

"In your understanding, what is the significance of the declarations made by some States on becoming parties to the UNFCCC and the Paris Agreement to the effect that no provision in these agreements may be interpreted as derogating from principles of general international law or any claims or rights concerning compensation or liability due to the adverse effects of climate change?"

1. As stated during the oral proceedings by Seychelles,[27] the declarations made by some States on becoming parties to the UNFCCC and the Paris Agreement confirm the fact that the UNFCCC[28] or the Paris Agreement[29] never sought to create any special regime or specific treaty provisions that would derogate the general rules on State responsibility – which includes reparations. These views were shared by numerous States and organizations.[30]

2. Moreover, in relation to these declarations, some additional points raised by other States and organizations, the views of whom Seychelles coincides with, are worth highlighting as follows:

- The declarations were never contested by any State,[31]which suggests a broad consensus regarding their validity.
- The declarations are evidence of there being no intent from derogating from *both* primary and secondary rules of international law,[32] namely those related to State responsibility.
- These declarations, explicit in their terms, ought to be respected and honored in good faith by all States,[33] ensuring consistency with international obligations.

3. Lastly, States must provide full reparation for any breach in accordance with the rules of general international law, including in accordance with ARISWA.

* * *

[27] CR2024/49, Seychelles, pp. 50-51, paras. 5-9 (Villegas Jaramillo).
[28] See declarations from: Kiribati, Nauru, Papua New Guinea, and Tuvalu. [Online]
[29] See declarations from: Cook Islands, Federated States of Micronesia, Nauru, Niue, Philippines, Solomon Islands, Tuvalu. [Online]
[30] See *e.g.* Written Comments from: Albania, pp. 49-50, para. 129; People's Republic of Bangladesh, pp. 19-20, para. 30; Pakistan, pp. 8-9, para. 20 (b); Belize, p. 19, para. 37 (c) (iii); Nauru, pp. 10-11, paras. 30-31; Vanuatu, pp.76-77, para. 156; Tuvalu, p. 15, para. 40; Sri Lanka, p. 24-25, paras. 63-64; Cook Islands, pp. 42, para. 56 (c); Commonwealth of the Bahamas, pp. 11-12, para. 20; Antigua & Barbuda, p. 31, para. 95; Melanesian Spearhead Group, p. 88, para. 188.
[31] Written Comments from: DRC, pp. 18-19, paras. 42-44; and, Pakistan, pp. 8-9, para. 20 (b).
[32] Written Comments from the Commonwealth of the Bahamas, pp. 11-12, para. 20.
[33] Written Comments from the Cook Islands, pp. 42, para. 56 (c).