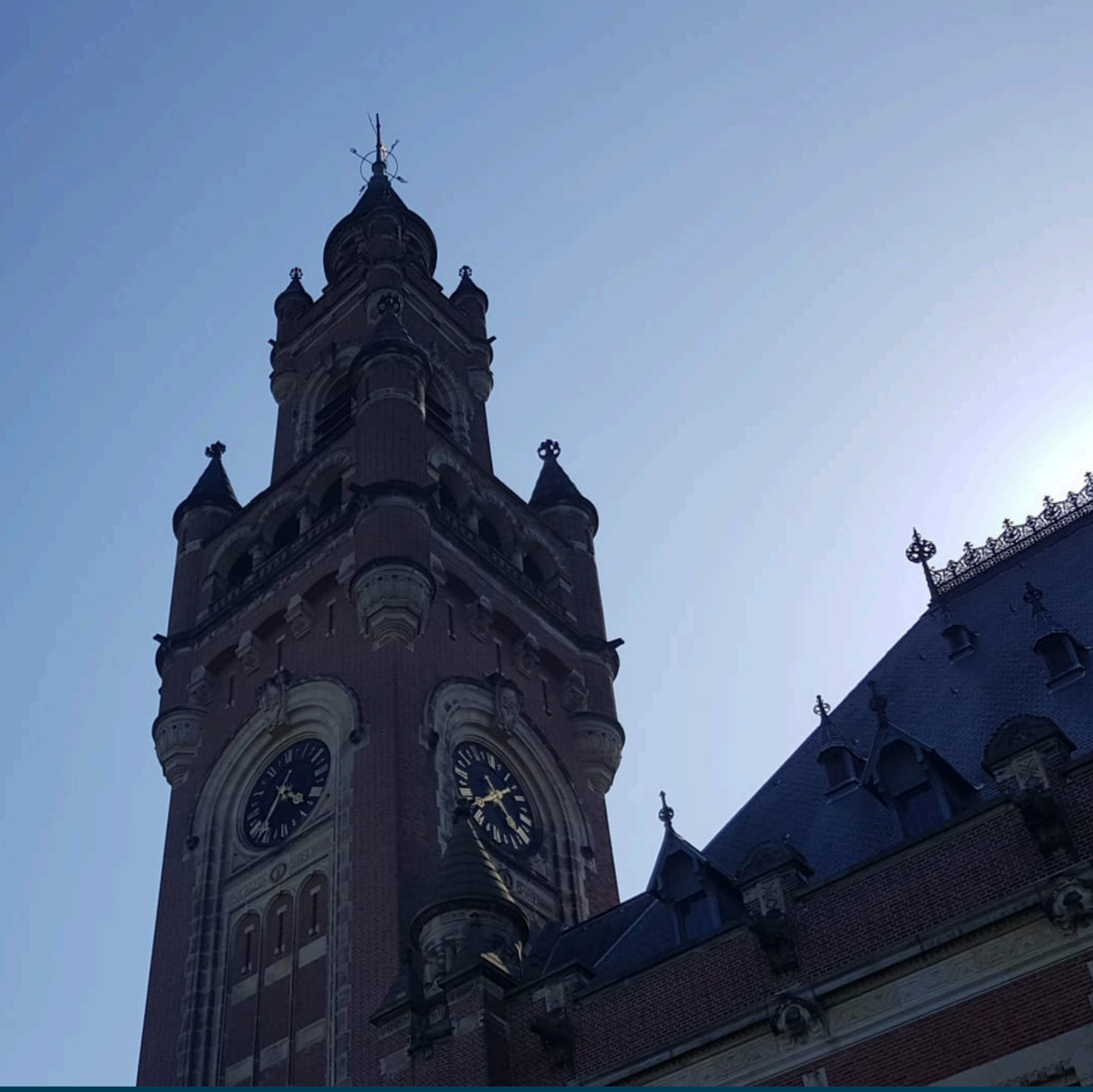


HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 11th, 2024

These debriefs will be sent daily from December 02 to December 13, 2024. All daily debriefs can be accessed here. It's provided by the World's Youth for Climate Justice, the Center for International Environmental Law, the Pacific Islands Students Fighting Climate Change and the AO Alliance and supported by a group of volunteers.

In a Nutshell

Today...

- ...marked a powerful defense of the human right to a clean, healthy, and sustainable environment, championed by **Senegal**, **Seychelles**, **Samoa**, **The Gambia**, **Slovenia**, and **Sri Lanka**. **Seychelles** and **The Gambia** highlighted that these rights and corresponding obligations extend beyond borders, providing a basis to hold polluting States accountable globally.
- **Seychelles**, **Samoa**, **The Gambia**, and **Saint Vincent and the Grenadines** stressed that climate science is key to justice, providing clear evidence to link emissions to harm and support full reparations under international law.
- In Week 2, Question 2: **Saint Vincent and the Grenadines**, **Samoa**, **Seychelles**, and **The Gambia** asserted the right to reparations, with **Seychelles** backing the African Union on debt cancellation. On debt, Portugal, yesterday, showcased debt-to-climate investment. Meanwhile, **Saint Vincent and the Grenadines** elucidated the link between global financial imperialism, climate harm, and reparations as **Switzerland**, **Serbia**, and **Slovenia** problematically sought to avoid the Court's inquiry on legal responsibility.
- **Switzerland**'s submissions were a veiled attack on the European Court of Human Rights's Klimaseniorinnen judgement, advancing their own interests rather than those of climate justice.

Today's Reactions

Quotes can be used by journalists for their reporting. For questions or follow up, please reach out to Quint van Velthoven at quint@wy4cj.org

We are witnessing the devastating impacts of climate change every day. In 2024, Category 4 Hurricane Beryl impacted Saint Vincent and the Grenadines, causing great destruction and death. We are in a race for survival. Today, Saint Vincent and the Grenadines spoke for its people and emphasised how climate change undermines fundamental rights enshrined in international law, including the right to self-determination and the permanent sovereignty of peoples over their natural resources. While multilateralism is required, those contributing most to this crisis must be held accountable.

JESHUA BARDOO, SAINT VINCENT AND THE GRENADINES, FOUNDER, PRESIDENT, AND EXECUTIVE OFFICER OF EQUAL RIGHTS, ACCESS AND OPPORTUNITIES SVG INC.

Switzerland prides itself on its human rights tradition, however on the eve of assuming the presidency of the UN Human Rights Council, its intervention did not even mention the landmark decision in the KlimaSeniorinnen case which clearly highlights the country's climate responsibility. Switzerland needs to go beyond merely acknowledging the complementarity of the climate regime with other international laws, and recognise States' long-standing international obligations to prevent transboundary environmental harm and human rights violations, including in the context of climate change.

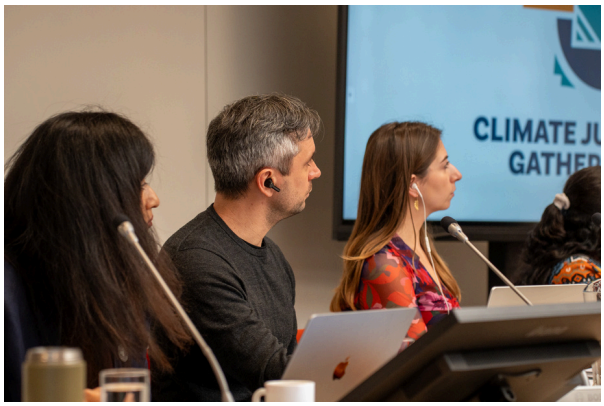
OLIVIANNE WOHLHAUSER (28) SWITZERLAND, CAMPAIGNER, WORLD'S YOUTH FOR CLIMATE JUSTICE

Outside the Court

Today, we published the People's Petition, the outcome document of last week's People's Assembly where over 50 people, including youth, Indigenous Peoples, and experts across various fields gathered to share how their lives have been heavily impacted by climate change. The document will be presented to the judges of the ICJ via oral statements on Friday, 13 December.

Samira Ben Ali, WYCJ Outreach and Engagement Coordinator and one of the drafters of the People's Petition said: "People are already having their human rights violated because of the climate crisis, so we need to course correct immediately if we do not want things to become worse. States have obligations when it comes to the impacts that they are causing to the climate system and these obligations come with legal consequences."

Read the full People's Petition here.



Pacific Islands Students Fighting Climate Change

Witness stand

The Witness Stand was established to make sure that the ongoing **ICJ advisory opinion proceedings on climate change are more inclusive and representative of those most affected**. Using this, anyone can send their message to the World's Highest Court as it rules on climate change for the first time.

Watch the other testimonies

Next day

Tomorrow, Wednesday, 11 December, we will report back on the oral submissions delivered by the following States: Thailand, Timor-Leste, Tonga, Tuvalu, Union of Comoros, Uruguay, Viet Nam, Zambia, Pacific Islands Forum Fisheries and Alliance of Small Island States.

If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

Report on Each Intervention

Saint Vincent and the Grenadines

In their opening, Saint Vincent and the Grenadines highlighted that this was their first appearance before the International Court of Justice (ICJ). They showed a video entitled “The Race: Survival versus Death and Debt” to illustrate the extreme devastation climate change is wreaking on their nation, including the impacts of category 4 hurricane Beryl, which left some of their islands unrecognisable and thousands of families homeless. Their delegation recalled the exile of their Garifuna ancestors in the 1700s, resulting in cultural and traditional losses, and described climate change as “colonisation on repeat,” demanding close attention to who bears historical responsibility. Saint Vincent and the Grenadines reinforced the principles of equity, justice, and human rights, and affirmed the right to reparations for climate harm. The delegation expressed solidarity with the other nine sister Caribbean islands that presented oral arguments before the Court, voicing confidence that their collective depiction of the impacts of climate change in the Caribbean region will not fall on deaf ears.

On applicable law, Saint Vincent and the Grenadines argued that climate obligations should not be limited to the UN Framework Convention on Climate Change (UNFCCC) and Paris Agreement, as the relevant conduct long predates these treaties and so, too, do States’ duties under general principles and customary international law, including the no-harm rule. Their counsel highlighted the need to interpret State obligations in light of best available science and emphasised how fundamental rights–like self-determination and permanent sovereignty of peoples over their natural resources–apply in the climate context, especially given sea level rise and climate-induced displacement. St. Vincent and the Grenadines underscored that statehood persists despite the loss of territory, and sovereignty must be meaningfully preserved, to enable the full enjoyment of human rights. Their counsel further stressed the importance of adapting the international legal framework to adequately address climate refugees. Saint Vincent and the Grenadines also mounted a powerful defence of the no-harm rule, urging the Court not to give big polluters a “free pass” to continue climate destruction by holding that the rule does not apply to greenhouse gas (GHG) emissions. The oral arguments were clear–States have an unequivocal obligation to act responsibly in addressing this crisis to protect present and future generations, recognising their historical contributions to the problem and their capacity to mitigate its impacts. Saint Vincent and the Grenadines reinforced the importance of providing reparations and urgently needed financial support, including fulfillment of ambitious pledges for the Loss and Damage Fund, technology transfer, and capacity-building to address adaptation. Their counsel called out the failure of “the fossil fuel giants” most responsible for the climate emergency to provide support to vulnerable nations as a violation of international law.

Saint Vincent and the Grenadines, in their powerful oral intervention, put a spotlight on the role of colonial legacies and pervasive inequities in driving the climate crisis. Linking debt and climate disasters, their counsel described how, despite the increased severity and frequency of climate-related disasters, international financial institutions remain inadequately aligned to address the financial needs of the world’s most-climate vulnerable nations and clearly retain remnants of imperialistic inequities, with borrowing costs markedly and unjustly higher for the Global South. Their delegation also called out the trend of empty pledges at climate negotiations, making clear that climate ambition needs to be rooted in existing legal obligations rather than annual talk shops.

Saint Vincent and the Grenadines' closing legal argument was anchored in our shared humanity, urging the Court to find that the atmosphere is a common concern of humankind and States have an obligation to collectively act as trustees for the atmosphere, with Counsel characterising the principle of trusteeship of the Earth's resources as the first principle of modern environmental law.

 Samoa

In its opening, Samoa explained how the environment is intrinsically connected to the culture and ways of life of its people, and how the increase in cyclones over the past years has impacted the State and the population. For Samoa, climate change is a health, food, security, economic, social, cultural, human rights, and security concern in addition to an environmental concern. It stressed that even at 1.5ºC, the consequences for Small Island Developing States (SIDS) will already be extreme and that climate change is the foreseeable result of actions taken and not taken by those who have long known the consequences of their conduct. It also maintained that human rights are at the core of these proceedings, and that the peremptory norm (*jus cogens)* of the right of self-determination is being violated as a result of climate change, thus calling for the immediate cessation of activities that continue to damage the climate system and worsen the current situation.

On applicable law, Samoa called out States that seek to limit the scope of obligations to the three climate treaties, either by stating that they are *lex specialis* or that they have a primary role, submitting that the entire corpus of international law (and especially the instruments cited in the UN General Assembly resolution that requested the advisory opinion) is relevant. Samoa even argued that the Paris Agreement and the UNFCCC are not the primary treaties regulating the relevant conduct, which Samoa defined as the individual and cumulative releases of GHG emissions over an extended period of time from activities under the jurisdiction or control of particular States that result in significant harm to the environment. This is because the earliest climate treaty, the UNFCCC, only entered into force in 1994, while harmful emissions have already been taking place many decades prior, and States had knowledge of the risks of GHG emissions since the 1960s, decades before the UNFCCC.

Samoa also submitted that climate change is affecting a myriad of human rights, including the right to self-determination, life, health, food, development, family life, and culture, as well as the rights of future generations. Samoa further argued that polluting States are violating their obligations under the Convention on Biological Diversity, which recognises the vital role of Indigenous cultures in conservation and enshrines the prevention principle. To trigger legal consequences, Samoa submitted that causation is not as big a challenge as some States make it out to be, as the science can now identify with precision the contributions of particular States to the climate crisis. Additionally, the fact that multiple States contributed to the harmful conduct is not a bar to individual State responsibility as international law makes clear. Finally, Samoa highlighted the importance of reparation and especially cessation for the breach of climate-relevant legal obligations.

Samoa's intervention was one of the most sophisticated and astute thus far. Its rebuttal not only of the lex specialis argument, but also of the legal primary of UNFCCC and the Paris Agreement was legally sound and convincingly argued that the customary norms of no harm, prevention, and due diligence should be the ones guiding the Court in clarifying the obligations of States. Similarly, its focus on human rights helped ground the conversation to its roots, when the original question that the Pacific students wanted the Court to answer was on the obligations of States vis-à-vis current

and future generations. Samoa's stressing of cessation as the main remedy for breaches of obligations related to the climate system was also particularly compelling to prevent future harm from taking place.

Senegal

Senegal focused on two key aspects: the identification of States' legal obligations regarding climate change and the legal consequences for breaches of those obligations. Senegal asserted that States' obligations arise from general international law, environmental treaties, and international human rights law. It emphasised the no-harm rule applies directly to climate change, obliging States to ensure their activities do not harm the climate system. Senegal called on the ICJ to emphasise the precautionary principle as a legal obligation, stressing that it entails an obligation for States to not delay the adoption of measures to prevent serious and irreversible environmental damage in the context of relative scientific uncertainty. Its counsel asserted its legal status based on its inclusion in various treaties such as the UNFCCC and the Cartagena Protocol on Biosafety, as well as its evolution in international jurisprudence. It also submitted that these obligations must be viewed through a transgenerational lens, protecting the rights of present and future generations.

Senegal argued that climate change threatens fundamental human rights, including life, health, housing, food, and water, as protected by the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR). It urged the ICJ to affirm that States' human rights obligations extend to transboundary GHG emissions, referencing the Inter-American Court's interpretation. Senegal cited the European Court of Human Rights's *Klimaseniorinnen v. Switzerland* decision on States' positive obligations to reduce GHG emissions and the African Commission on Human and Peoples' Rights's *SERAC v. Nigeria* decision linking environmental harm to human rights violations, including the right to a healthy environment. It called for protecting future generations, emphasising the critical role of climate stability and biodiversity for human survival. Senegal also urged the Court to acknowledge broad legal standing for States to address climate harms, emphasising global solidarity and shared responsibility for climate obligations. It argued that breaches trigger State responsibility under international law and called for cessation of harm, guarantees of non-recurrence, and reparations, especially compensation for vulnerable nations like SIDS and African States. Senegal highlighted the principle of common but differentiated responsibilities, asserting major emitters must bear greater reparative duties.

By urging the Court to clarify and enforce prevention of transboundary environmental harm and protection of human rights, Senegal argued for global climate justice. Senegal's approach to both the precautionary principle and human rights obligations requiring specific, positive measures effectively counters arguments by big polluters who shamelessly argue obligations under climate treaties are enough to protect people and the climate system. Senegal relied heavily on case law of regional human rights mechanisms, and the 2024 International Tribunal for the Law of the Sea (ITLOS) Advisory Opinion, highlighting the need to incorporate regional approaches to protecting the environment and human rights in the context of climate change. Importantly, Senegal's claim on broad standing for climate cases is a bold argument that could provide the international community with a crucial tool against harm to the climate system.

Seychelles

Seychelles centred its intervention on the legal obligations of States under long-standing international law and the climate change treaty regime. Seychelles's counsel highlighted the applicability of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) in the context of the Paris Agreement and the breach of broader obligations under international law. Its counsel rebutted the common arguments of major polluters before the Court. First, Seychelles rejected the exclusive applicability of the climate change treaties, arguing they neither exclude broader legal principles nor provide mechanisms for liability or reparation. Second, its counsel, drawing from the ITLOS advisory opinion, asserted that compliance with climate treaties alone is insufficient to prevent harm to the climate system; States must also meet their obligations under general international law, including the "no harm" rule, due diligence, and the precautionary principle. Seychelles underscored that since the climate obligations are owed to everyone (*erga omnes*), all States have a shared legal interest in ensuring their compliance. Counsel emphasised that States are also obligated to prevent significant harm to the climate system through positive measures, which includes having to actually implement Nationally Determined Contributions (NDCs), not just submit them. Moreover, merely implementing NDCs does not fulfil due diligence obligations, as NDCs are often insufficiently ambitious.

On human rights, Seychelles highlighted that, in the context of climate change, human rights obligations extend beyond a State's territory. In this regard, it invited the Court to consider the approach on this issue by the Inter-American Court of Human Rights (IACtHR) and the Committee on the Rights of the Child, which recognise that the obligation of States to respect human rights extends to the harmful effects of GHGs beyond a State's territory if emitted under their control. On the issue of reparations, Seychelles argued that ARSIWA applies to climate-related harm, emphatically rejecting claims that the Paris Agreement and UNFCCC exclude the need for reparation. Seychelles underscored the critical role of the "best available science," including IPCC reports, in addressing challenges of attribution and causation by linking specific emissions to measurable harm. Its counsel argued that breaches of obligations necessitate "full reparations under international law," which include cessation of harmful acts, guarantees of non-repetition, restitution where possible, and compensation, particularly where restitution is materially impossible. Seychelles aligned with the African Union and supported "innovative reparative mechanisms like debt relief and cancellation," especially for vulnerable Small Island States disproportionately affected by climate change.

Seychelles championed climate justice by asserting that long-standing principles of international law must be addressed alongside climate treaties like the Paris Agreement to ensure comprehensive accountability. On human rights, Seychelles, aligned with other climate-vulnerable countries, asserting that the obligation of States to respect human rights extends beyond a State's territory if harmful GHG emissions are emitted under their control. Rejecting the notion that specialised climate treaties are the only primary source of obligations, Seychelles highlighted the applicability of general legal obligations, such as the no-harm rule, due diligence, and erga omnes responsibilities, while emphasising that compliance with climate treaties alone is insufficient. By advancing the role of the best available science to address causation and attribution, Seychelles strengthened the argument for State responsibility and reparations. Notably, its exploration of innovative reparative mechanisms, including debt relief and cancellation, reflects a forward-thinking approach to achieving equity and justice for Small Island Developing States disproportionately impacted by climate change.

The Gambia

The Gambia emphasised the critical importance of these advisory proceedings as the country suffers from rising sea levels and natural disasters that have devastating effects on the right to food and the economic security of its population. It stressed that the stakes are too high for these proceedings to limit States' obligations to "timid statements that simply echo the bare minimum." Focusing on three main points, The Gambia first discussed arguments on applicable law and the interplay of different norms. It then focused on the prevention principle and ended with the relevance of international human rights law. The Gambia strongly disagreed with the restrictive approach advanced by some limiting State obligations to climate treaties alone. It explained that this approach would lead to the fragmentation of international law and contradict the principle of systemic integration of international human rights and environmental law, well-established in the African legal system, undermining the value of the Advisory Opinion.

In relation to the prevention principle, The Gambia refuted arguments alleging that GHG emissions differ from conventional cases of transboundary harm, asserting that the duty of prevention is owed not just to neighbouring States, but to all States, and constitutes a rule of general application. Echoing the International Law Commission, The Gambia argued that there is no predetermined list of what qualifies as transboundary harm and thus, the harm resulting from GHG emissions must be prevented. The Gambia rejected claims that this duty is fulfilled by a State's compliance with its obligations under the UNFCCC and the Paris Agreement. In this way, its counsel argued that due diligence in preventing environmental harm goes beyond climate treaties and encompasses other measures under international law, such as Environmental Impact Assessments (EIA). Excluding such requirements from the scope of State obligations would undermine the protection of the climate system. Its counsel argued that due diligence must be informed by the latest available science and requires States to do the utmost to minimise GHG emissions, taking into account the common but differentiated responsibilities (CBDR) principle and the temperature limits of the Paris Agreement as thresholds that cannot be crossed.

On human rights, The Gambia also rejected the argument that human rights obligations are automatically fulfilled by complying with climate treaties. On the contrary, its counsel asserted that human rights obligations go beyond those under specific climate change treaties, which do not displace the former. The Banjul Charter more broadly treats individual and collective rights and civil, political, economic, social, and cultural rights as integrated and recognised the right to a generally satisfactory environment. Reiterating relevant regional case law and the Human Rights Committee's decision in *Portillo Cáceres v. Paraguay*, The Gambia argued that compliance with environmental treaties does not discharge States from their concurrent obligations under human rights law related to environmental harm. On the question of legal consequences, The Gambia argued that States must swiftly bring to an end any breach of the duty of due diligence. Its counsel concluded by urging the Court to recognise, as ITLOS did in its Advisory Opinion, that due diligence requires States to regulate the activities of both public and private actors. Reinforcing this duty, The Gambia argued, would help thaw the regulatory chill resulting from investment arbitration claims threatened or brought by the fossil fuel industry challenging climate action.

The Gambia provided a clear answer to the Court: climate justice demands a harmonious interpretation of all relevant State obligations in the context of climate change. Drawing from regional human rights law and the law of the sea, The Gambia provided a great example of how principles of international law and human rights law inform States' obligations to protect the climate system. The Gambia also added that the temperature limits provided by the best

available science are thresholds that cannot be crossed. It highlighted the need to overcome a critical obstacle to State adoption of ambitious mitigation measures: the fossil fuel industry's use of Investor-State Dispute Settlement. The Court Cclarifying States' duty to regulate would help counteract the threat of investors suing States for climate action.

Singapore

Singapore described the particular difficulties it faces as a result of its specific circumstance as a Small Island Developing State, such as its lack of natural resources and limited availability of clean energy. The intervention focused on the relationship between climate treaties and international law, the obligations to conduct EIAs and to cooperate, and the common but differentiated responsibilities and respective capabilities (CBDR-RC) principle.

Its counsel argued that, while climate treaties are the primary source of relevant obligations, they complement rather than override other applicable obligations under international law, such as customary international law and human rights law. Specifically, Singapore argued that preventing transboundary environmental harm in the context of climate change goes beyond communicating NDCs, and requires domestic mitigation measures. Therefore, Singapore argued that customary international law requires States to conduct EIAs for activities contributing to GHG emissions. This applies to any planned activity within a State's jurisdiction that may cause significant harm, and in assessing whether such activities amount to significant harm, the activities can be assessed cumulatively. To fulfill this obligation, States must align their actions with the Paris Agreement, which set acceptable global temperature limits. Discharging the EIA obligation in harmony with the Paris Agreement means establishing a domestic framework to regulate activities emitting GHGs including, assessing their suitability to achieve a State's NDCs.

Additionally, Singapore's counsel stressed that States have a duty to cooperate under different sources of law, such as the UN Convention on the Law of the Sea (UNCLOS) and human rights law, whereby cooperation must be continuous, meaningful, and in good faith. Such cooperation may either be direct or through participation in the relevant international cooperative processes that address the impacts of climate change, including the UNFCCC and the Paris Agreement. Furthermore, Singapore highlighted that under the CBDR-RC principle historical responsibility must be considered when defining the relevant obligations and consequences for breaching them.

Singapore emphasised the principle of systemic integration, positively affirming that climate treaties do not override other sources of law, including human rights law. It is also commendable that Singapore joined The Gambia in establishing that prevention in the climate context requires EIAs for GHG-emitting activities. At the same time, for Singapore, EIAs should only be measured against a State's NDCs. This could both ensure their compliance but also stymie greater climate ambition beyond each States' discretion. Singapore's intervention fell short by focusing narrowly on cooperation to fulfill human rights, overlooking the State's duty to adopt positive measures to protect human rights from climate impacts. The absence of any mention of reparations further underscores Singapore's balanced but limited approach to addressing climate responsibilities.

Slovenia

Slovenia opened its statement expressing its strong support for the advisory opinion, emphasising that the outcome of these proceedings will constitute a framework for more ambitious and effective climate action. After stressing that the Court should look to all sources of international law in clarifying States' obligations to protect the climate system, Slovenia focused almost exclusively on the right to a clean, healthy, and sustainable environment as a fundamental human right. Its counsel defended the right as a precondition to the enjoyment of other human rights that should inform the systemic interpretation and application of obligations to prevent environmental harm, including climate change. It detailed the obligations States owe to the international community as a whole, to respect and protect the right to a healthy environment, by refraining from causing climate harm and providing assistance to climate-vulnerable nations including through climate finance, technology transfer, and capacity building.

As Slovenia pointed out, a majority of States agree that international human rights law is relevant to the questions before the Court, and the recognition of States' human rights obligations in the preamble to the Paris Agreement refutes the primacy of the climate regime. Slovenia called for a holistic human rights-based approach to protection of the environment and the climate system, detailing why the right to a healthy environment is an inherent element of the existing human rights framework, recognised in regional human rights instruments and other treaties, including the Aarhus Convention and the Escazú Agreement, as well as the domestic laws of the vast majority of States. Its counsel cited UN human rights treaty bodies' recognition of the interlinkages between human rights and environmental protections, explaining the two-fold implications: i) the right must be considered when systemically interpreting State obligations related to climate change; and, ii) due diligence obligations and the duty of vigilance and prevention require States to prevent and control environmental harm that threatens not only the territories of other States, but individuals within their jurisdiction. The dynamic, evolving character of the right to a healthy environment, Slovenia argued, does not relegate it to the ranks of a non-right. Slovenia recognised that efforts to prevent the adverse impacts of climate change should reflect States' common but differentiated responsibilities, yet maintained that "existing obligations with respect to climate change do not distinguish between one polluting State and the others." Slovenia concluded its remarks alleging that the question before the Court does not concern legal responsibility for, or the lawfulness of, past conduct.

Slovenia presented itself as a champion of the right to a clean, healthy, and sustainable environment in the hearings today. It gave a detailed and compelling argument as to why this right is central to the questions before the Court and a core component of the protection of the climate system. Its counsel strongly refuted attempts by some big polluters, including the United States, Saudi Arabia, Canada, Germany, and Russia, to dismiss the right to a healthy environment and undermine its normative weight. However, Slovenia appears to have overlooked a fundamental principle of human rights law—the right to a remedy—thereby failing to present its argument in the coherent and constructive manner that would have been most beneficial to this Court. Its concluding remarks dismissing the second question on legal consequences and denying the basis for attributing responsibility for the climate crisis to individual States tarnished an otherwise powerful intervention in support of a human rights-based approach to climate action and climate justice.

Sri Lanka

Sri Lanka spent considerable time describing the country's disproportionate and extreme vulnerability to climate change and its catastrophic effects. Its counsel urged that no country or people deserve to suffer from preventable man-made tragedy. It rejected claims by the major GHG emitters that the Court should only concern itself with UNFCCC and the Paris Agreement, citing long-established principles of responsibility for wrongful international conduct by States that cause harm to other States, peoples, and future generations. It asked the Court to uphold the obligations of international human rights, the principles of prevention of harm, the transboundary obligation, and the duty of due diligence, and to hold that States are accountable for their actions and omissions.

Sri Lanka asked the Court to affirm States' responsibility to stop any acts in breach of their obligations, which could require, amongst others, phasing out fossil fuels and regulating GHG emissions. Sri Lanka highlighted that geoengineering technology cannot be considered an acceptable mitigating practice. Its counsel also argued that States must make restitution, such as the continued recognition of the preserved sovereignty of a State that is being submerged by sea level rise or the liability of responsible States to extend financial support to affected States to improve their adaptive capacity. States must also make full reparation for injuries.

Sri Lanka argued that under treaty and customary international law, States must protect the climate system to ensure the right to health. Its counsel emphasised that a stable climate system, that provides clean air, safe water, and adequate food, is essential for fulfilling this right, and this obligation is supported by the UN's recognition of the right to a clean, healthy, and sustainable environment. Its counsel also emphasised the principles of intergenerational equity and trusteeship. Sri Lanka submitted that States, as guardians of the natural world we live in, have a fiduciary capacity and obligation to protect the natural world for generations to come.

Sri Lanka's intervention powerfully highlighted its extreme vulnerability to climate change while rejecting attempts to limit the Court's focus to the UNFCCC and the Paris Agreement. Its counsel invoked established principles of State responsibility for harm caused to other States, peoples, and future generations, urging accountability for breaches of obligations, including phasing out fossil fuels and regulating GHG emissions. Sri Lanka emphasised restitution, such as preserving submerged States' sovereignty and providing financial support for adaptation, alongside full reparation for climate injuries. Grounded in international law and intergenerational equity, Sri Lanka affirmed that protecting the climate system is essential to ensuring human rights, including the right to health. They called for States to fulfill their fiduciary duty to safeguard the environment for future generations. As major polluter States have failed to meet their emission reduction targets and follow through on their financial promises, Sri Lanka compellingly argued that the ICJ has become the only recourse to ensure accountability and for justice to truly prevail.

Sudan

Sudan opened its submission by highlighting the impacts of climate change on the Nile region, the Darfur drought crisis, and other climate-impacted regions of the country. Its counsel argued that the advisory opinion must rely on a broad range of international legal instruments, including the UN Charter, UNFCCC, Paris Agreement, ICCPR, ICESCR, and customary international law, including the no-harm rule, due diligence, and precautionary principle. Sudan urged the Court to consider these principles holistically, ensuring that its decision is grounded in the entirety of

public international law. Its counsel explicitly rejected the argument that climate treaties like the Paris Agreement supersede or conflict with general international law. Instead, these treaties complement customary obligations, requiring States to fulfill both treaty-based commitments and broader responsibilities such as protecting the environment and preventing significant transboundary harm.

Sudan highlighted CBDR-RC as a cornerstone of international environmental law, first established in the Rio Declaration and the UNFCCC, and reaffirmed in the Paris Agreement. This principle recognises the shared responsibility of all States to address climate change while emphasising the differentiated obligations of developed and developing countries based on historical emissions, technological capacity, and financial resources. Sudan underscored that developed nations must lead in combating climate change by fulfilling their commitments to provide financial resources, technology transfer, and capacity-building under the Paris Agreement. It argued that any assessment of State obligations and compliance must account for disparities in resources and circumstances. Thus, Sudan called on the Court to affirm CBDR-RC as fundamental to the equitable implementation of obligations under the climate regime and to emphasise the responsibility of developed nations to support vulnerable States in addressing the impacts of climate change.

Sudan's submission strongly emphasised the applicability of all relevant provisions of international law relevant to climate change and as enshrined in the UNGA resolution. Sudan aligned itself with other climate-vulnerable countries and rejected arguments of industrialised and high-emitting States, that the specialised climate regime is the only source of obligations to regulate GHG emissions. Importantly, Sudan highlighted the centrality of CBDR-RC in laying out State obligations and legal consequences for their breach. Although Sudan aligned itself with the African Union and other African countries, it missed the mark on putting forth holistic arguments on reparations and State responsibility.

Switzerland

Switzerland emphasised the constituent elements of the customary obligation of due diligence, which include jurisdictional control over activities, significant transboundary environmental harm, a causal nexus between the activity and harm, and foreseeability of the risk. Its counsel underscored that this obligation focuses on preventing harm in the present and future, rather than addressing past emissions. Switzerland clarified that foreseeability does not require full scientific certainty, citing Principle 15 of the Rio Declaration. Instead, it suffices that risks could be reasonably anticipated. Its counsel highlighted that robust scientific consensus on the link between anthropogenic emissions and environmental harm emerged only around 1990, and thus that the customary obligation of due diligence to prevent significant harm has applied to climate change only from that time. It stressed that higher emissions correlate with greater responsibility, advocating for a stringent standard of due diligence for major emitters. However, its counsel insisted on the impossibility of determining objectively how much each country should reduce its emissions. Its counsel further argued that the customary obligation of due diligence is distinct from treaty obligations under the Paris Agreement and UNFCCC. These frameworks were characterised as complementary and mutually reinforcing, with Switzerland cautioning that compliance with treaty obligations does not necessarily fulfill the broader customary obligation.

Addressing the consequences of breaching the obligation of prevention, Switzerland recalled the principle that cessation and non-repetition are primary obligations for wrongful acts, urging all States to cooperate in reducing emissions globally. However, its counsel lamented the difficulty of applying traditional international law approaches to climate-related violations. Switzerland invited the Court to confirm that, under current international law, no quantifiable and specific obligation of reparation can be attributed to individual States without a political agreement on carbon budget allocation criteria. Its counsel introduced the polluter-pays principle as a potential guide for damage assessment, emphasising that historical emissions alone should not determine responsibility, as this could let nations like Switzerland with minimal historical emissions, but significant current capacity, off the hook. Switzerland stressed that only cooperative global action can effectively address the collective challenge of climate change. Its counsel urged the Court to recognise the impossibility of binding State-specific emission targets, or specific greenhouse gas emissions budgets for individual States, advocating for a balanced and collaborative approach in the absence of agreed criteria.

Switzerland distinguished itself by diminishing the relevance of the UNFCCC, relying instead on customary international legal norms—a move that revealed its tactical motives. While other major polluters sought to shield themselves from accountability by alleging a primacy of the UN climate agreements over other norms of international law, Switzerland pursued the same objective through a different approach: sidestepping the principle of historic responsibility by acknowledging the relevance of the duty to prevent transboundary harm, but maintaining that it did not apply to emissions predating the climate regime. Invoking the polluter-pays principle offered a glimmer of alignment with justice, but it was wielded as a shield to reject claims of responsibility for historical emissions, not as a sword to demand accountability. Switzerland's stance on the role of the Court was equally troubling: it invited the affirmation of legal obligations yet cautioned against translating these principles into actionable standards. Such a position undermines the very value of judicial intervention in the face of climate urgency. Switzerland's primary objective seemed clear—to undermine the European Court of Human Rights' findings in the Klimaseniorinnen case, explicitly urging the Court to reject key principles like the relevance of national carbon budgets. Instead of advancing climate justice, Switzerland appeared to be forum-shopping, seeking leniency rather than accountability.

 Serbia

Serbia emphasised its commitment to addressing climate change, highlighting its status as a landlocked country experiencing temperature increases above the global average and significant material losses from climate-related disasters. Serbia expressed support for the General Assembly's request for an advisory opinion, but called on the Court to reformulate the advisory opinion's question to better reflect the nature of States' obligations under existing climate treaties, especially the Paris Agreement. Serbia's legal arguments centred on the treaty-based obligations established by international climate agreements and the customary principles of international law, including due diligence, prevention, and the principle of CBDR-RC. Serbia urged the Court to provide an opinion grounded in scientific evidence and a thorough factual basis–namely, to identify facts, scientific evidence, and reliable expert opinions on relevant climate issues–to clarify the scope of State obligations under international law concerning climate change.

Serbia highlighted the international communities' acknowledgement that climate change and its adverse effects are concerns of humankind as the legal basis for international cooperation while acknowledging the need for differentiated responsibilities based on national circumstances. Its counsel argued that States' obligations under climate treaties are obligations of conduct, and not result, requiring best-effort actions informed by scientific evidence and evolving capabilities. Such actions include regulating private actors to ensure their compliance with climate obligations and holding them accountable for activities that harm the climate system. Regarding human rights protection from climate change impacts, Serbia argued that international climate treaties do not create judicially enforceable individual rights but acknowledged that many States, including itself, domestically recognise the right to a healthy environment which is nevertheless not recognised under international law. Citing Article 4 of the ICCPR (providing grounds for derogation from Convention obligations), Serbia argued that States may deviate from their human rights obligations during national emergencies, including extreme climate events, provided such measures comply with the Covenant's strict criteria.

Serbia's position was narrowly focused, relying heavily on the existing treaty framework without exploring the broader implications of States' failures to meet their obligations under wider international law, including the right to reparations. Its proposal to reformulate the questions put forth by the General Assembly reflects an overly narrow focus that avoids addressing reparations for harm caused by climate impacts. Moreover, its rejection of judicially enforceable human rights claims related to climate change distorts the current state of human rights law, with specific climate change-related obligations that are already developed by national and regional human rights mechanisms. Most concerningly, Serbia's argument on derogations from human rights protections during climate emergencies risks setting a dangerous precedent. Such measures could undermine fundamental rights, especially for vulnerable populations, under the guise of temporary necessity.

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