ORAL STATEMENT OF THE REPUBLIC OF SINGAPORE

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 kilometres from east to west and 28 kilometres 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 five metres above mean sea level and more than half of our population lives within 3.5 kilometres 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 urbanised 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 three per cent of our projected electricity demand in

2030. As such, our ability to achieve our decarbonisation targets will depend on technological maturity and effective international cooperation, 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

cooperate 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 UN 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**") recognise the global nature of the climate system, which encompasses "the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions"[1].

[1] UNFCCC, Article 1(3).

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

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

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

[4] Paris Agreement, Article 2(1).

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 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 ("**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

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[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***"), at pp.80-81, para. 223.

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.

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

[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).

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

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[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.

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 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

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

[11] Paris Agreement, Article 4(13).

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 regime capable of regulating activities within its jurisdiction that emit greenhouse gases. This domestic regime 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 cooperate 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 cooperate 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

[12] Paris Agreement, Article 13(7).

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 UN Charter and applicable human rights treaties—including the virtually universal UN Convention on the Rights of the Child—impose obligations on States to cooperate in the upholding and realisation 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 cooperate 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 cooperate in preventing pollution of the marine environment from greenhouse gas emissions.

23. While customary international law and treaty provisions on cooperation 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. 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 Paris Agreement regime. This is the case whether under the prevention principle, under UNCLOS[13], or in the upholding and realisation of human rights.

24. While the duty to cooperate 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 cooperative 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).

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[13] See *ITLOS Advisory Opinion*, at 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 crystallised in a normative instrument which was later

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

[15] See, *eg*, Written Statement of Germany, paras. 56-61.

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

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 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.

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[17] UNFCCC, Article 3(1).

[18] UNFCCC, Article 3(1).

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

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:

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

> "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 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

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[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

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 cooperation 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.

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11 December 2024