



*The Permanent Mission of Portugal
to the United Nations*

ONU/2024/001

The Permanent Mission of Portugal to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and, pursuant to the request of the International Law Commission on the subject of sea-level rise in relation to statehood and protection of persons affected by sea-level rise, has the honour to transmit herewith the Portuguese Government's written submission on the said topic.

The Permanent Mission of Portugal to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

New York, 4 January 2024

Submission by Portugal pursuant to the request of the International Law Commission on the subject of sea-level rise in relation to statehood and protection of persons affected by sea-level rise

At the international level, the Portuguese Government has stressed the importance of the security implications of ocean changes, including rising sea levels. Accordingly, the Portuguese Republic is involved in several initiatives of a different nature in various capacities, including (i) political and diplomatic participation; and (ii) participation in advisory proceedings before international courts.

Political and diplomatic participation

The Portuguese Republic has participated and has been involved in several international initiatives focused on climate change-related matters. It has (i) participated in the UNOC side event organized by the “Pacific Group of Small Island Developing States (P-SIDS)” entitled *Leveraging SIDS partnerships Framework through innovative approaches to achieve action for SDG 14*, which focused on sea-level rise and extreme weather events; (ii) co-chaired with Samoa the Steering Committee for SIDS Partnerships; (iii) supported the operationalization of the first edition of the *Partnership Awards for the SIDS*; (iv) Lisbon hosted the launch of the *Declaration for the Enhancement of Marine Scientific Knowledge, Research Capacity and Transfer of Marine Technology to Small Island Developing States (SIDS)*.

Participation in advisory proceedings before international courts

On 16 June 2023, the Portuguese Republic submitted its written statement to the International Tribunal for the Law of the Sea in Case No. 31, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*. In its submission, the Portuguese Republic supported the idea that core provisions of Part XII of the United Nations Convention on the Law of the Sea must be read together with the obligations arising from the Paris Agreement. Accordingly, the Paris Agreement contributed to the clarification of the normative scope of such core provisions of Part XII of UNCLOS, including Articles 192, 194, 207 and 212. It is currently less controversial the threshold with which State parties must comply to discharge their obligation to (i) protect and preserve the marine environment; and (ii) prevent, reduce and control pollution in the marine environment in view of the deleterious effects of climate change caused by anthropogenic GHG emissions.

By Resolution A/RES/77/276 of 29 March 2023, the United Nations General Assembly decided to request an advisory opinion from the International Court of Justice on the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions for States and for present and future generations. Portugal was part of the core group of States that supported the resolution and the urgency of comprehensive action by the international community to ensure a livable future (especially for the states and populations most affected by climate change) and emphasized the resolution as an important incentive for cooperation on climate action and the clarification of applicable international law. On this occasion, Portugal will participate for the first time in an advisory opinion procedure of the International Court of Justice. The Portuguese Government is currently preparing a written statement to be submitted to the International Court of Justice by

early March 2024. It will focus on procedural and substantive issues—covering topics such as the law of the sea, international human rights and the rise in average sea level, as well as the international responsibility of States—and will include contributions from the governmental sectors of environment and justice.

At the domestic level, authorities have enacted several measures and policies aimed at tackling climate-change related effects. Among other measures and policies, the Portuguese Parliament has approved Law No. 98/2021, of 31 December 2021 (hereinafter referred to as “Climate Framework Law”). The Climate Framework Law provides for a wider framework that goes beyond the phenomenon of sea-level rise. There is no explicit reference to such a phenomenon. Public climate policy aims to achieve an ecological balance by combating climate change. The Climate Framework Law consolidates the objectives, principles and obligations for the different levels of governance for climate action through public policies and establishes new provisions related to climate policy. In particular, the Climate Framework Law:

1. Establishes rights and obligations in climate matters and strengthens the right to citizen participation;
2. Defines the governance framework for climate policy and creates new structures and requirements, including the Climate Policy Council, municipal and regional climate action plans and carbon budgets - which, in line with the other existing instruments, establish the need for national targets for shorter sub-periods, in this case every 5 years;
3. Creates new requirements and sets timelines for climate policy planning and evaluation tools, including the development of five-year sectoral plans for mitigation and adaptation and a green industrial strategy to support the industrial sector in the transition to climate action;
4. Defines new principles and standards for economic and financial instruments, with a particular focus on the government budget process, green taxation and sustainable finance, that promote a just transition to a carbon-neutral economy;
5. Defines principles and standards for sectoral climate policy instruments, in particular in the areas of energy, transport, materials and consumption, agri-food chain and carbon sequestration.

The Climate Framework Law includes provisions that explicitly focus on the protection of people affected by climate change—a category that includes people affected by rising sea levels. There are provisions that create obligations aimed at, among other things, (i) ensuring climate justice, the protection of communities most affected by the climate crisis, respect for human rights, equality and collective rights to common goods;¹ (ii) promoting climate security;² and (iii) promoting prosperity, green growth and social justice, tackle inequalities and create more wealth and jobs.³ Furthermore, the Portuguese government is pursuing a global and integrated vision in the pursuit of climate objectives, respecting the limits of the sustainable use of the planet’s natural resources and the development paths of individual states, and actively defending foreign policy in the context of climate diplomacy. To this end, the Portuguese Government has imposed on itself the obligations to (i) work towards a definition of the term and status of “climate

¹ See, Article 3(b) of the Climate Framework Law.

² See, Article 3(h) of the Climate Framework Law.

³ See, Article 3(k) of the Climate Framework Law.

refugee;”⁴ (ii) work internationally with the States of the Global South to support the implementation of the measures set out in the *Sendai Framework for Disaster Risk Reduction 2015-2030*;⁵ (iii) work towards the international recognition of a stable climate as part of the common heritage of humankind;⁶ and (iv) co-operate and participate in aid mechanisms for countries and citizens affected by extreme weather events and their consequences within the framework of international relations.⁷ Finally, under the Climate Framework Law, the Portuguese Government has the responsibility to promote climate security—a concept that includes energy security, health security and food and nutrition security. Pursuant to this obligation, the government has the obligations to identify risks and take measures to prevent and mitigate the consequences of climate change on public order, safety and tranquillity, the integrity of persons and property and the regular exercise of their rights, freedoms and guarantees.⁸

⁴ See, Article 15(1)(d) of the Climate Framework Law.

⁵ See, Article 15(1)(e) of the Climate Framework Law.

⁶ See, Article 15(1)(f) of the Climate Framework Law.

⁷ See, Article 15(5) of the Climate Framework Law.

⁸ See, Article 17(1) of the Climate Framework Law.