

CR 2024/53

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2024

Public sitting

held on Friday 13 December 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

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

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le vendredi 13 décembre 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

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

COMPTE RENDU

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

Registrar Gautier

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

M. Gautier, greffier

The Commission of Small Island States on Climate Change and International Law is represented by:

HE Ms Eselealofa Apinelu, High Commissioner of Tuvalu to Fiji, Secretary General, Commission of Small Island States on Climate Change and International Law (COSIS),

Hon. Gaston Browne, Prime Minister of Antigua and Barbuda, Co-Chair of COSIS,

Mr J'Moul A. Francis, Legal Officer, Ministry of Foreign Affairs, Trade and Barbuda Affairs, Antigua and Barbuda,

Ms Nneka Nicholas, Crown Counsel II, Attorney General's Chambers, Ministry of Legal Affairs, Antigua and Barbuda,

Mr Zachary Phillips, Crown Counsel II, Attorney General's Chambers, Ministry of Legal Affairs, Antigua and Barbuda,

Ms Jeniece St. Romain, Crown Counsel II, Attorney General's Chambers, Ministry of Legal Affairs, Antigua and Barbuda,

Hon. Leo Ryan Pinder, KC, Attorney General and Minister of Legal Affairs, Commonwealth of the Bahamas,

HE Ms Cheryl E. Bazard, KC, Ambassador Extraordinary and Plenipotentiary of the Commonwealth of the Bahamas to the Kingdom of Belgium, Head of Mission to the European Union, Ministry of Foreign Affairs, Commonwealth of the Bahamas,

Ms Jewel G.L. Major, Assistant Director of Legal Affairs, Office of the Attorney General, Commonwealth of the Bahamas,

Ms Ronique Carey, Assistant Legal Counsel, Office of the Attorney General, Commonwealth of the Bahamas,

Ms Rhianna Neely-Murphy, Director, Department of Environmental Planning and Protection, Ministry of the Environment and Natural Resources, Commonwealth of the Bahamas,

Hon. Laingane Italeli Talia, Attorney General of Tuvalu, Co-Chair of COSIS,

HE Mr Odo Tevi, Permanent Representative and Ambassador of the Republic of Vanuatu to the United Nations, Ministry of Foreign Affairs, Republic of Vanuatu,

Mr Dreli Solomon, First Secretary, Mission of the Republic of Vanuatu to the European Union, the Kingdom of Belgium and the United Kingdom of Great Britain and Northern Ireland, Ministry of Foreign Affairs, Republic of Vanuatu,

Ms Lee-Anne Sackett, Director of International Legal Affairs, Vanuatu Climate Justice Program, Office of the Attorney General, Republic of Vanuatu,

La Commission des petits États insulaires sur le changement climatique et le droit international est représentée par :

- S. Exc. M^{me} Eselealofa Apinelu, haute-commissaire des Tuvalu auprès des Fidji, secrétaire générale de la Commission des petits États insulaires sur le changement climatique et le droit international (COSIS),
- S. Exc. M. Gaston Browne, premier ministre d'Antigua-et-Barbuda, coprésident de la COSIS,
- M. J'Moul A. Francis, juriste, ministère des affaires étrangères, du commerce et des affaires relatives à Barbuda, Antigua-et-Barbuda,
- M^{me} Nneka Nicholas, *Crown Counsel II*, cabinet de l'*Attorney General*, ministère des affaires juridiques, Antigua-et-Barbuda,
- M. Zachary Phillips, *Crown Counsel II*, cabinet de l'*Attorney General*, ministère des affaires juridiques, Antigua-et-Barbuda,
- M^{me} Jeniece St. Romain, *Crown Counsel II*, cabinet de l'*Attorney General*, ministère des affaires juridiques, Antigua-et-Barbuda,
- S. Exc. M. Leo Ryan Pinder, KC, sénateur, *Attorney General* et ministre des affaires juridiques du Commonwealth des Bahamas,
- S. Exc. M^{me} Cheryl E. Bazard, KC, ambassadrice extraordinaire et plénipotentiaire du Commonwealth des Bahamas auprès du Royaume de Belgique et cheffe de la mission auprès de l'Union européenne, ministère des affaires étrangères, Commonwealth des Bahamas,
- M^{me} Jewel G.L. Major, directrice adjointe des affaires juridiques, bureau de l'*Attorney General*, Commonwealth des Bahamas,
- M^{me} Ronique Carey, conseillère juridique adjointe, bureau de l'*Attorney General*, Commonwealth des Bahamas,
- M^{me} Rhianna Neely-Murphy, directrice, département de la planification et de la protection environnementales, ministère de l'environnement et des ressources naturelles, Commonwealth des Bahamas,
- S. Exc. M^{me} Laingane Italeli Talia, *Attorney General* des Tuvalu, coprésidente de la COSIS,
- S. Exc. M. Odo Tevi, représentant permanent et ambassadeur de la République de Vanuatu auprès de l'Organisation des Nations Unies, ministère des affaires étrangères, République de Vanuatu,
- M. Dreli Solomon, premier secrétaire, mission de la République de Vanuatu auprès de l'Union européenne, du Royaume de Belgique et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, ministère des affaires étrangères, République de Vanuatu,
- M^{me} Lee-Anne Sackett, directrice des affaires juridiques internationales, programme de Vanuatu relatif à la justice climatique, bureau de l'*Attorney General*, République de Vanuatu,

HE Mr Colin Murdoch, Ambassador and Permanent Observer of the Organization of Eastern Caribbean States to the United Nations Office and other international organizations in Geneva, Organization of Eastern Caribbean States,

Mr Payam Akhavan, LL.M. SJD (Harvard) OOnt FRSC, Professor of International Law, Chair in Human Rights, and Senior Fellow, Massey College, University of Toronto, member of the Permanent Court of Arbitration, associate member of the Institut de droit international, member of the Bar of the State of New York, member of the Law Society of Ontario, Co-Representative of COSIS,

Ms Catherine Amirfar, Debevoise & Plimpton LLP, member of the Bars of the Supreme Court of the United States of America and the State of New York, Co-Representative of COSIS,

Ms Phoebe Okowa, Professor of Public International Law, Queen Mary University, London, member of the International Law Commission, Advocate of the High Court of Kenya,

Ms Nilüfer Oral, Director, Centre for International Law, National University of Singapore, member of the International Law Commission, associate member of the Institut de droit international,

Mr Makane Moïse Mbengue, Professor of International Law, University of Geneva, member of the Curatorium of The Hague Academy of International Law, associate member of the Institut de droit international,

Mr Jean-Marc Thouvenin, Professor, University Paris Nanterre, Secretary-General, The Hague Academy of International Law, associate member of the Institut de droit international, member of the Paris Bar, Sygna Partners,

Ms Philippa Webb, Professor of Public International Law, Blavatnik School of Government, University of Oxford, member of the Bars of Belize, England and Wales, and the State of New York, Twenty Essex Street Chambers,

Ms Margaretha Wewerinke-Singh, Associate Professor of Sustainability Law, University of Amsterdam, Adjunct Professor of Law, University of Fiji, member of the Bar of Vanuatu, Blue Ocean Law, PC, Hagåtña, Guam,

Ms Rozemarijn Roland Holst, Lecturer in International Environmental Law, University of Edinburgh Law School,

Ms Charlotte Ruzzica de La Chaussée, member, COSIS Secretariat Working Group, member of the Bar of the State of New York,

Ms Beatrice A. Walton, Debevoise & Plimpton LLP, member of the Bar of the State of New York.

The Pacific Community is represented by:

Mr Stuart Minchin, Director-General,

Ms Coral Pasisi, Director of Climate Change and Environmental Sustainability,

Ms Lisa Kingsberry, Director of Strategic Communications,

Ms Johanna Gusman, Adviser, Human Rights,

Mr Ray Campbell, Digital Communicator,

- S. Exc. M. Colin Murdoch, ambassadeur et représentant permanent de l'Organisation des États des Caraïbes orientales auprès de l'Office des Nations Unies et autres organisations internationales (Genève), Organisation des États des Caraïbes orientales,
- M. Payam Akhavan, LL.M SJD (Harvard) OOnt FRSC, professeur de droit international, titulaire de la chaire des droits de l'homme, et collaborateur émérite, Massey College, Université de Toronto, membre de la Cour permanente d'arbitrage, membre associé de l'Institut de droit international, membre des barreaux de l'État de New York et de l'Ontario, coreprésentant de la COSIS,
- M^{me} Catherine Amirfar, cabinet Debevoise & Plimpton LLP, membre des barreaux de la Cour suprême des États-Unis d'Amérique et de l'État de New York, coreprésentante de la COSIS,
- M^{me} Phoebe Okowa, professeure de droit international public à l'Université Queen Mary de Londres, membre de la Commission du droit international, avocate, Haute Cour du Kenya,
- M^{me} Nilüfer Oral, directrice, Centre de droit international, Université de Singapour, membre de la Commission du droit international, membre associée de l'Institut de droit international,
- M. Makane Moïse Mbengue, professeur de droit international à l'Université de Genève, membre du Curatorium de l'Académie de droit international de La Haye, membre associé de l'Institut de droit international,
- M. Jean-Marc Thouvenin, professeur à l'Université Paris Nanterre, secrétaire général, Académie de droit international de La Haye, membre associé de l'Institut de droit international, membre du barreau de Paris, Sygna Partners,
- M^{me} Philippa Webb, professeure de droit international public, Blavatnik School of Government, Université d'Oxford, membre des barreaux du Belize, d'Angleterre et du pays de Galles, et de l'État de New York, Twenty Essex Street Chambers,
- M^{me} Margaretha Wewerinke-Singh, professeure associée de droit de la durabilité à l'Université d'Amsterdam, professeure adjointe de droit à l'Université des Fidji, membre du barreau de Vanuatu, cabinet Blue Ocean Law, PC (Hagåtña, Guam),
- M^{me} Rozemarijn Roland Holst, chargée d'enseignement en droit international de l'environnement, faculté de droit de l'Université d'Édimbourg,
- M^{me} Charlotte Ruzzica de La Chaussée, membre, groupe de travail du secrétariat de la COSIS, membre du barreau de l'État de New York,
- M^{me} Beatrice A. Walton, cabinet Debevoise & Plimpton LLP, membre du barreau de l'État de New York.

La Communauté du Pacifique est représentée par :

- M. Stuart Minchin, directeur général,
- M^{me} Coral Pasisi, directrice, changement climatique et durabilité environnementale,
- M^{me} Lisa Kingsberry, directrice de la communication stratégique,
- M^{me} Johanna Gusman, conseillère, droits de l'homme,
- M. Ray Campbell, chargé de communication numérique,

Mr Lorima Dalituicama, Digital Testimonial Support,

Ms Mereseini Rakuita, Principal Strategic Lead, Pacific Women and Girls,

Ms Sonia Schutz Russell, Senior Adviser to the Director-General,

Mr Miles Young, Director, Human Rights and Social Development Division,

Mr Vishal Prasad, Director, Pacific Island Students Fighting Climate Change.

The Pacific Islands Forum is represented by:

Mr Baron Waqa, Secretary General,

Mr Esala Nayasi, Deputy Secretary General, Strategic Policy and Programming,

Ms Desna Solofa, Deputy Secretary General, Governance,

HE Ms Mere Falemaka, Ambassador and Permanent Observer of the Pacific Islands Forum to the World Trade Organization and the United Nations Office in Geneva,

Mr Calvy Aonima, Acting International Legal Adviser,

Ms Mary Victoria Uni Faasau, Legal Consultant.

The Organisation of African, Caribbean and Pacific States is represented by:

Ms Cristelle Pratt, Assistant Secretary-General,

HE Ms Cheryl Eloise Bazard, KC, Chair of the Small Island Developing States Forum of the Organisation of African, Caribbean and Pacific States,

Mr Pierre-Marie Dupuy, Professor emeritus of International Law, University of Paris II, Panthéon-Assas, Graduate Institute of International and Development Studies, Geneva, Member of the Institute of International Law,

Ms Brenda Reson Sapuro, Youth Representative,

Mr Peter Wekesa, Expert, Environment and Natural Resource Governance,

Ms Cherryl Newman, Secretary,

Ms Ying-Shan Lee, Project Coordinator, Foundation for International Law for the Environment (FILE),

Mr Jason Gagame, PISFCC Social Media Chairperson.

M. Lorima Dalituicama, chargé d'appui numérique (témoignages),

M^{me} Mereseini Rakuïta, responsable stratégique principale, femmes et filles du Pacifique,

M^{me} Sonia Schutz Russell, conseillère principale du directeur général,

M. Miles Young, directeur du service droits de la personne et développement social,

M. Vishal Prasad, directeur du groupe Pacific Island Students Fighting Climate Change.

Le Forum des îles du Pacifique est représenté par :

M. Baron Waqa, secrétaire général,

M. Esala Nayasi, secrétaire général adjoint, politique stratégique et programmation,

M^{me} Desna Solofa, secrétaire générale adjointe, gouvernance,

S. Exc. M^{me} Mere Falemaka, observatrice permanente et ambassadrice du Forum des îles du Pacifique auprès de l'Organisation mondiale du commerce et de l'Office des Nations Unies (Genève),

M. Calvy Aonima, conseiller juridique international par intérim,

M^{me} Mary Victoria Uni Faasau, consultante juridique.

L'Organisation des États d'Afrique, des Caraïbes et du Pacifique est représentée par :

M^{me} Cristelle Pratt, sous-secrétaire générale,

S. Exc. M^{me} Cheryl Éloïse Bazard, KC, présidente du Forum des petits États insulaires en développement de l'Organisation des États d'Afrique, des Caraïbes et du Pacifique,

M. Pierre-Marie Dupuy, professeur émérite de droit international de l'Université Paris II, Panthéon-Assas, et de l'Institut de hautes études internationales et du développement (Genève), membre de l'Institut de droit international,

M^{me} Brenda Reson Sapuro, représentante de la jeunesse,

M. Peter Wekesa, expert, administration de l'environnement et des ressources naturelles,

M^{me} Cherryl Newman, secrétaire,

M^{me} Ying-Shan Lee, coordinatrice de projet, Foundation for International Law for the Environment (FILE),

M. Jason Gagame, responsable des réseaux sociaux, groupe du PISFCC.

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

For reasons duly made known to me, Judge Abraham is unable to join us for this morning's sitting.

The Court meets this morning to hear the Commission of Small Island States on Climate Change and International Law, the Pacific Community, the Pacific Islands Forum and the Organisation of African, Caribbean and Pacific States on the questions submitted by the United Nations General Assembly. Each of the delegations has been allocated 30 minutes for its presentation. The Court will observe a short break after the presentation of the Pacific Community.

I shall now give the floor to Her Excellency Ms Eselealofa Apinelu, speaking on behalf of the Commission of Small Island States on Climate Change and International Law. Madam, you have the floor.

Ms APINELU:

I. THE NEED FOR INTERNATIONAL LEGAL ACTION IN THE FACE OF CLIMATE CHANGE

1. Good morning, Mr President, honourable Members of the Court. I am honoured to appear before you this morning in my capacity as Secretary General of the Commission of Small Island States on Climate Change and International Law.

2. I will begin briefly by introducing the Commission — or “COSIS,” for short — and the catastrophic impacts our nine Members from the Pacific and the Caribbean face from climate change, before turning to the steps that COSIS has taken to clarify the obligations of States in response.

3. I will be followed by Ms Catherine Amirfar who will address the pivotal role of the best available science in determining the content of States' obligations. Professor Payam Akhavan will then conclude our pleadings by discussing the importance of harmonization in the Court's advisory opinion.

A. The impact of climate change on COSIS Member States

4. Mr President, COSIS is an intergovernmental organization with a mandate to clarify the rules and principles of international law concerning climate change. It emerged in the context of the profound frustration of small island developing States — or “SIDS” for short — at the failure of

major polluters over some 30 years since the adoption of the UNFCCC in 1992 *to do what is necessary* to avert catastrophic climate change.

5. Antigua and Barbuda and Tuvalu concluded the Agreement establishing COSIS on 31 October 2021¹, on the eve of COP26 in Glasgow², and continue to serve as co-chairs of the Commission. The other Members are, in order of accession, the Republic of Palau, Niue, the Republic of Vanuatu, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, and the Commonwealth of The Bahamas. Membership in COSIS is open to all members of the Alliance of Small Island States³.

6. While COSIS Members are scattered across the globe, we are united by our common experience with the devastating impacts of climate change. Significant harm has already occurred, and without decisive action, it will only get worse.

7. These impacts touch on every aspect of island life. Global warming has doubled the rate of sea-level rise, eroding our shorelines, increasing seasonal flooding and leaving us vulnerable to storm surges⁴. All COSIS Members expect to see some portion of their territories or islands uninhabited, while some of the Members, like Tuvalu, face the existential threat of complete submergence⁵. The human impact is devastating. The major polluters are destroying the future of our peoples.

¹ See Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law, United Nations, *Treaty Series (UNTS)*, Vol. 3447 (No. 56940), Edinburgh, 31 October 2021, (hereinafter the “COSIS Agreement”), Art. 1 (3); see also COSIS, 2022 Annual Report (31 October 2022), pp. 7-8.

² COSIS 2022 Annual Report, p. 4.

³ See COSIS Agreement, Article 3 (1); see also “COSIS Members”, *COSIS*, available at <https://www.cosis-ccil.org/organization/members>.

⁴ IPCC, “Summary for Policymakers”, Sixth Assessment Synthesis Report (2023), pp. 5, 13; IPCC, “Chapter 15: Small Islands”, *Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), pp. 2060-61; IPCC, “Summary for Policymakers”, *Sixth Assessment Report: The Physical Science Basis* (2021), pp. 8-10, 15; IPCC, “Chapter 4: Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities”, *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), p. 323; see also IPCC, “Summary for Policymakers”, *Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), pp. 9, 11; see generally B.D. Hamlington, et al., “The rate of global sea level rise doubled during the past three decades”, *Communications Earth & Environment*, Vol. 5 (17 Oct. 2024).

⁵ See Prime Minister of Tuvalu’s National Statement to the 77th Session of the United Nations General Assembly (23 September 2022), p. 4.

8. Climate change is also destroying our critically biodiverse habitats⁶. In 2024, the world experienced its fourth mass coral reef bleaching event⁷. In The Bahamas, sea temperatures soared to 38°C for consecutive days in July 2023, up from their monthly average of 30°C⁸. The negative consequences are many, including for fish stock, resulting in food insecurity and malnutrition in our countries⁹.

9. COSIS Member States also face more frequent and intense tropical storms that have destroyed our homes, schools, hospitals and industries¹⁰. In 2015, for instance, Cyclone Pam became one of the worst Pacific Ocean storms in history, displacing hundreds of thousands of people across the Republic of Kiribati, the Solomon Islands, Tuvalu, Vanuatu and Fiji¹¹. The economic cost to Vanuatu *alone* is estimated to be US\$449.4 million¹². Meanwhile, in the Caribbean, category four or five hurricanes are becoming all but routine, hitting 22 of the 29 small islands in 2017 alone¹³.

⁶ IPCC, “Chapter 15: Small Islands”, *Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), pp. 2056, 2074; see e.g. “Exclusive: Global coral bleaching event expands, now the largest on record”, *Reuters* (17 Oct. 2024), available at <https://www.reuters.com/business/environment/global-coral-bleaching-event-expands-now-largest-record-2024-10-17/>; “Reporting Coral Bleaching Data and Observations to NOAA Coral Reef Watch”, *National Oceanic & Atmospheric Administration* (20 Aug. 2024), available at https://coralreefwatch.noaa.gov/satellite/research/coral_bleaching_report.php; “NOAA confirms 4th global coral bleaching event”, *National Oceanic & Atmospheric Administration* (15 Apr. 2024), available at <https://www.noaa.gov/news-release/noaa-confirms-4th-global-coral-bleaching-event>; see also “Biodiversity — our strongest natural defense against climate change”, UN Climate Action, available at <https://www.un.org/en/climatechange/science/climate-issues/biodiversity>.

⁷ See e.g. “NOAA confirms 4th global coral bleaching event”, *National Oceanic & Atmospheric Administration* (15 April 2024), available at <https://www.noaa.gov/news-release/noaa-confirms-4th-global-coral-bleaching-event>.

⁸ See e.g. “What This Year’s ‘Astonishing’ Ocean Heat Means for the Planet”, *The New York Times* (3 Aug. 2023), available at <https://www.nytimes.com/interactive/2023/08/03/climate/ocean-temperatures-heat-earth.html>; “Nassau average July sea temperature”, *Sea Temperature* (2024), available at <https://www.seatemperature.org/central-america/bahamas/nassau-july.htm>; “Stressful Summer for Coral Reefs”, *NASA*, available at <https://earthobservatory.nasa.gov/images/151945/stressful-summer-for-coral-reefs>.

⁹ IPCC, “Summary for Policymakers”, *Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), pp. 9, 19.

¹⁰ IPCC, “Summary for Policymakers”, *Sixth Assessment Report: The Physical Science Basis* (2021), pp. 8-10, 15; IPCC, “Summary for Policymakers”, *Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), pp. 9, 11.

¹¹ See e.g. “Cyclone Pam: One Year On”, *UNICEF* (March 2016); “Cyclone devastates South Pacific islands of Vanuatu”, *BBC* (14 March 2015), available at <https://www.bbc.com/news/world-asia-31883712>; *Vanuatu: Severe Tropical Cyclone Pam Situation Report No. 1*, UN Office for the Coordination of Humanitarian Affairs Regional Office for the Pacific (15 March 2015); see also T. Rey, et al., “An integrative approach to understand vulnerability and resilience post-disaster: The 2015 cyclone Pam in urban Vanuatu as case study”, *Disaster Prevention and Management*, Vol. 26 (3) (2017); A. Vachette, et al., *Bonding, bridging and linking social networks: A qualitative study of the emergency management of Cyclone Pam, Vanuatu, Asia Pacific Viewpoint* (2017).

¹² “Cyclone PAM causes devastating impact on employment and livelihoods”, *International Labour Organization* (23 April 2015), available at <https://www.ilo.org/resource/news/cyclone-pam-causes-devastating-impact-employment-and-livelihoods>.

¹³ IPCC, “Chapter 15: Small Islands”, *Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), p. 2071; see e.g. “From early recovery to long-term resilience in the Caribbean Hurricanes Irma and Maria: One year on”, United Nations Development Programme (UNDP) (September 2018), available at <https://www.undp.org/sites/g/files/zskgke326/files/migration/latinamerica/UNDP-Recovery-Programme-2-oct-WEB.pdf>.

10. And, through all of this, we face losing our land, our history, our culture and our heritage. As the waves wash away the graves of our ancestors, we sit and wait and wonder what our future will hold for our future generations.

B. The *COSIS* ITLOS Advisory Opinion and other initiatives

11. We, as COSIS Members, are united in the belief that international law is central in addressing the injustice of climate change.

12. This is why, in December 2022, COSIS turned to ITLOS to seek an advisory opinion to clarify States' obligations in relation to climate change and the marine environment under UNCLOS¹⁴.

13. On 21 May 2024, the 21 judges of ITLOS rendered a unanimous, resounding Advisory Opinion. The Tribunal decisively confirmed that anthropogenic greenhouse gas emissions constitute pollution of the marine environment, and that States parties have specific and stringent obligations to prevent, reduce, and control such pollution and to protect and preserve the marine environment from its deleterious effects¹⁵.

14. COSIS is thus a reflection of the global leadership of its Members on this issue of fundamental importance for the future of humankind. History will record that we refused to stay silent — no, we will not be silent — in the face of a situation that we are least responsible for.

C. Conclusion

15. Mr President, in the words of the United Nations Secretary-General when he attended the SIDS conference held in May of this year in Antigua and Barbuda, “[c]limate change is an existential crisis for the entire human family, but SIDS are on the front lines”¹⁶.

¹⁴ See ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No. 31, Request of 12 December 2022.

¹⁵ *Ibid.*, Advisory Opinion of 21 May 2024, paras. 179, 213, 227, 327.

¹⁶ United Nations, “Secretary-General’s remarks to opening of Fourth Small Island Developing States Conference”, 27 May 2024, available at <https://www.un.org/sg/en/content/sg/statement/2024-05-27/secretary-generals-remarks-opening-of-fourth-small-island-developing-states-conference-delivered>.

16. While my report from the front line is grim, I want to emphasize there is still time to avert the worst impacts — if only States can make the necessary cuts to their greenhouse gas emissions¹⁷. The Court can, and indeed must, provide specific and pivotal guidance on States’ obligations in this regard.

17. Mr President, honourable Members of the Court, thank you sincerely for your time and attention. I now yield the podium to Ms Amirfar.

The PRESIDENT: I thank Her Excellency Ms Eselealofa Apinelu. I now give the floor to Ms Catherine Amirfar. You have the floor.

Ms AMIRFAR:

II. THE CRITICAL ROLE OF THE BEST AVAILABLE SCIENCE

1. Mr President, honourable Members of the Court, it is my privilege to appear before you on behalf of COSIS.

2. My focus today is on how the best available science informs the legal obligations the Court has been asked to consider under part (a) of the Request.

3. As we near the end of the oral phase, there can be no doubt about the critical relevance of science to delineate the causes and effects of climate change, and the methods available for its mitigation and adaptation. In this respect, the vast majority of participants have expressly endorsed the IPCC’s Reports¹⁸, and none has challenged its findings.

¹⁷ See UNDP, *Emissions Gap Report 2024* (24 October 2024), pp. 26, 34; see also “There’s Still Time to Fix Climate—About 11 Years”, *Scientific American* (27 Oct. 2021), available at <https://www.scientificamerican.com/article/theres-still-time-to-fix-climate-about-11-years/>.

¹⁸ See Written Comment of COSIS, para. 12 & fn. 3; see also, e.g., Written Comments of the African Union, para. 32; Albania, paras. 23, 77-78; Antigua and Barbuda, para. 19; Australia, para. 2.31; The Bahamas, para. 6 (a); Bangladesh, para. 15; Belize, para. 18 & fns. 58-60; Chile, para. 8; Colombia, para. 3.18; Democratic Republic of the Congo, para. 24; Cook Islands, para. 66; COSIS, para. 4; Dominican Republic, para. 1.4; Ecuador, para. 5; Egypt, paras. 96-97, 99; European Union, para. 10 (b); France, para. 10; The Gambia, paras. 2.5-2.10; Grenada, paras. 23-30; IUCN, para. 56; Japan, para. 2; Kenya, para. 3.2; Kiribati, para. 4; Mauritius, para. 9; Mexico, para. 38; Melanesian Spearhead Group, para. 28; Namibia, para. 44; Kingdom of the Netherlands, para. 3.12; New Zealand, para. 5; OACPS, para. 104 & fn. 190; Pakistan, paras. 49-50; Philippines, para. 65; Saint Lucia, para. 17; Saint Vincent and the Grenadines, para. 12; Samoa, paras. 139, 143-144; Seychelles, paras. 5-8; Sierra Leone, para. 3.3 & fn. 15; Sri Lanka, paras. 69, 74, 76; Switzerland, para. 42; Uruguay, para. 39 & fn. 30; Vanuatu, para. 33; Viet Nam, para. 6; see also, e.g., CR 2024/35, p. 96, para. 4 (Vanuatu and Melanesian Spearhead Group); *ibid.*, pp. 117-118, paras. 2, 8 (South Africa); *ibid.*, p. 143, paras. 20-22 (Germany); CR 2024/36, p. 21, para. 23 (Antigua and Barbuda); *ibid.*, pp. 37-38, para. 8 (Australia); *ibid.*, p. 61, para. 14 (Bahamas); *ibid.*, p. 72, paras. 4-5 (Bangladesh); CR 2024/37, p. 18, para. 33 (Belize); CR 2024/38, p. 54, paras. 6-7 (Dominica); CR 2024/40, p. 8, para. 5 (United Arab Emirates); *ibid.*, p. 68, para. 3 (Fiji); CR 2024/41, p. 22, para. 12 (Sierra Leone); *ibid.*, p. 46, para. 9 (Grenada); CR 2024/42, pp. 10-11, para. 6 (Cook Islands); *ibid.*, pp. 24-25, para. 2 (Marshall Islands); *ibid.*, p. 48, para. 18 (India); *ibid.*, p. 62, para. 2 (Indonesia); CR 2024/43, p. 36, para. 23, p. 38,

4. Notwithstanding this unanimity, not much has been said as to *how* the best available science intersects with legal obligations. Some have curiously accused scientists of dictating the content of international law¹⁹. But the Court’s jurisprudence on the environment has routinely and rightly put science at the heart of its legal analysis, as I will explain.

5. The General Assembly’s Request is elucidated by the IPCC’s core conclusions in four main respects:

- (a) First, anthropogenic GHG emissions have caused, are causing, and will continue to cause harm to the climate system²⁰.
- (b) Second, the risk of harm to human and natural systems increases dramatically with each additional increment of warming, even below the 1.5°C global average threshold²¹.

para. 32 (Kenya); CR 2024/44, p. 8, para. 4 (Latvia); *ibid.*, p. 24, para. 6 (Liechtenstein); *ibid.*, pp. 64-65, para. 7 (African Union); CR 2024/45, p. 12, para. 4 (Mexico); CR 2024/48, p. 8, para. 2 (Portugal); CR 2024/49, p. 29, para. 31 (Samoa).

¹⁹ See, e.g., CR 2024/36, pp. 29-30, para. 10 (Saudi Arabia).

²⁰ General Assembly, resolution 77/276, Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change, document A/RES/77/276 (29 March 2023) (“Request”), p. 6; see Written Comments of COSIS, para. 14 & fn. 9; *ibid.*, para. 15 & fn. 13; *ibid.*, para. 16 & fn. 14; see also, e.g., CR 2024/35, p. 106, para. 1 (Vanuatu and Melanesian Spearhead Group); *ibid.*, pp. 117-118, paras. 2-9 (South Africa); *ibid.*, pp. 129-130, paras. 9-10 (Albania); *ibid.*, p. 140, para. 1 (Germany); CR 2024/36, pp. 14-15, paras. 3-11 (Antigua and Barbuda); *ibid.*, p. 26, para. 2 (Saudi Arabia); *ibid.*, p. 36, para. 2-3 (Australia); *ibid.*, pp. 55-56, paras. 11-16 (The Bahamas); *ibid.*, pp. 64-65, paras. 2-7 (Bangladesh); *ibid.*, p. 77-78, para. 3-12 (Barbados); CR 2024/37, p. 20, paras. 1-2 (Bolivia); *ibid.*, p. 33, paras. 9-11 (Brazil); *ibid.*, pp. 39-41, para. 2-8 (Burkina Faso); *ibid.*, pp. 62-64, paras. 1-15 (Philippines); CR 2024/38, p. 10, para. 4 (Canada); *ibid.*, p. 20, para. 4 (Chile); *ibid.*, pp. 39-40, paras. 3-10 (Colombia); *ibid.*, pp. 52-53, paras. 11-14 (Dominica); CR 2024/39, pp. 8-9, para. 4 (Costa Rica); *ibid.*, pp. 43-44, para. 4 (Denmark, Finland, Iceland, Norway, and Sweden); *ibid.*, p. 57, paras. 2-3, p. 62, para. 25 (Egypt); *ibid.*, p. 69, paras. 1-2 (El Salvador); CR 2024/40, pp. 8-9, paras. 4-5, 12-13 (United Arab Emirates); *ibid.*, p. 17, paras. 4-5 (Ecuador); *ibid.*, p. 31, para. 3 (Spain); *ibid.*, pp. 39-40, para. 2, 4 (United States of America); *ibid.*, pp. 65-66, paras. 3-12 (Fiji); CR 2024/41, pp. 8-9, paras. 2-3 (France); *ibid.*, p. 18, paras. 10-11 (Sierra Leone); *ibid.*, p. 41, paras. 16-20 (Ghana); *ibid.*, pp. 44-48, paras. 3-20 (Grenada); *ibid.*, pp. 54-55, paras. 4-6 (Guatemala); CR 2024/42, pp. 10-11, para. 6 (Cook Islands); *ibid.*, pp. 24-26, paras. 1-11 (Marshall Islands); *ibid.*, pp. 35-36, para. 10-18 (Solomon Islands); *ibid.*, p. 62, para. 2 (Indonesia); CR 2024/43, p. 10, para. 3 (Jamaica); *ibid.*, pp. 21-22, paras. 1-3 (Papua New Guinea); *ibid.*, p. 29, para. 5 (Kenya); *ibid.*, pp. 41-43, paras. 5-7 (Kiribati); *ibid.*, pp. 51-52, paras. 8-15 (Kuwait); CR 2024/44, pp. 23-24, paras. 2-6 (Liechtenstein); *ibid.*, pp. 34-35, paras. 4-12 (Malawi); *ibid.*, pp. 45-46, paras. 5-6 (Maldives); *ibid.*, p. 59, paras. 7-9 (African Union); CR 2024/45, p. 26, para. 29 (Federated States of Micronesia); *ibid.*, pp. 31-33, paras. 4-9 (Myanmar); *ibid.*, p. 37, para. 3 (Namibia); *ibid.*, pp. 49-50, paras. 2, 4; CR 2024/24, pp. 9-10, paras. 4-7 (Nauru); *ibid.*, pp. 20-22; paras. 3-11; *ibid.*, p. 30, para. 3 (New Zealand); *ibid.*, p. 41, para. 2 (Palestine); *ibid.*, p. 55, para. 2 (Pakistan); CR 2024/47, pp. 11-13, paras. 5-20 (Palau); *ibid.*, p. 19, para. 5 (Panama); *ibid.*, pp. 27-28, paras. 5-6 (Netherlands); *ibid.*, pp. 37-38, paras. 2-3 (Peru); CR 2024/48, p. 8, paras. 2-3 (Portugal); *ibid.*, p. 18, para. 5 (Dominican Republic); *ibid.*, p. 42, paras. 2-6 (United Kingdom); *ibid.*, p. 58, paras. 5-6 (Saint Lucia); CR 2024/49, pp. 11-12, para. 4 (Saint Vincent and the Grenadines); *ibid.*, p. 21, paras. 4-6 (Samoa); *ibid.*, pp. 43-44, paras. 4-6 (Seychelles); *ibid.*, pp. 57-58, paras. 3-7 (The Gambia); CR 2024/50, pp. 8-9, paras. 2-3 (Singapore); *ibid.*, p. 31, paras. 5-6 (Sudan); *ibid.*, pp. 41-46, paras. 2-9 (Sri Lanka); *ibid.*, pp. 60-61, para. 4 (Serbia); CR 2024/51, pp. 12-13, paras. 4-6 (Thailand); *ibid.*, p. 25, paras. 8 (Timor-Leste); *ibid.*, p. 37, para. 9 (Tonga); *ibid.*, pp. 47-51, paras. 4-18 (Tuvalu).

²¹ Request, p. 6; IPCC, “Summary for Policymakers”, *Sixth Assessment Synthesis Report* (2023), pp. 14-15; COP28, Outcome of the First Global Stocktake, decision -/CMA.5 (Advance Unedited Version), para. 15 (b); see also, e.g., Written Comments of COSIS, para. 15 & fn. 13; *ibid.*, para. 16 & fn. 14; *ibid.*, para. 21 & fn. 30; see also, e.g., Written Comments of Albania, para. 23; Antigua and Barbuda, paras. 20, 54; Belize, para. 26 & fn. 71; IUCN, Annex, para. 2; see also, e.g., CR 2024/35, pp. 96-98, paras. 1-8 (Vanuatu and Melanesian Spearhead Group); CR 2024/36, p. 36, para. 3 (Australia); CR 2024/38, pp. 10-11, paras. 4-7 (Canada); CR 2024/40, p. 8, paras. 4-5 (United Arab Emirates); *id.* at pp. 39-40, paras. 2-4 (United States); CR 2024/42, p. 45, para. 3, p. 52, paras. 35-36 (India); CR 2024/47, pp. 27-28, para. 6 (The Netherlands); CR 2024/48, p. 42, paras. 2-6 (United Kingdom).

- (c) Third, there has already been significant harm, and it is ongoing²². And the world is nearly out of time to prevent the worst effects²³. As UNEP warned this past October, a “quantum leap” in mitigation is needed to avert catastrophic consequences²⁴.
- (d) And fourth, the effects have been felt first and worst by small island States, as reflected in the two expert reports submitted by COSIS²⁵.

A. The best available science informs the meaning of “diligence”

6. So how is the science relevant to the law? I will begin with international environmental law and the law of the sea. UNCLOS Articles 192 and 194, which concern the obligations to protect and preserve the marine environment and to prevent, reduce, and control marine pollution²⁶, are customary rules²⁷, as numerous States have recognized in these proceedings²⁸. Article 194 (2) is

²² IPCC, “Summary for Policymakers”, *Sixth Assessment Synthesis Report* (2023), p. 5.

²³ IPCC, “Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedbacks”, *Sixth Assessment Report: The Physical Science Basis* (2021), p. 778; IPCC, “Summary for Policymakers”, *Sixth Assessment Synthesis Report* (2023), pp. 18-20, 24; see also, e.g., COSIS Written Statement, paras. 38-39; Written Comments of the African Union, paras. 76, 131 (i); Albania, paras. 4 (a), 16 (b); The Bahamas, para. 4; Colombia, para. 1.2; Gambia, para. 1.3; IUCN, para. 102; Kenya, para. 3.24; Melanesian Spearhead Group, para. 36; Mexico, para. 36; Namibia, para. 44; New Zealand, para. 8; Pakistan, para. 1; Seychelles, paras. 21, 34, 46; Sri Lanka, para. 69; Timor-Leste, para. 120; United Kingdom, para. 7; United States of America, paras. 1.2-1.3; Uruguay, para. 150; Vanuatu, para. 181; see also, e.g., CR 2024/36, p. 36, para. 5 (Australia); *ibid.*, p. 20, para. 18 (Antigua and Barbuda); *ibid.*, pp. 56-57, paras. 16-20 (The Bahamas); *ibid.*, p. 72, para. 4 (Bangladesh); CR 2024/37, p. 20, para. 1 (Bolivia); CR 2024/38, p. 61, para. 5 (Republic of Korea); CR 2024/40, p. 67, para. 21 (Fiji); *ibid.*, p. 31, para. 3 (Spain); *ibid.*, p. 40, para. 4 (United States); CR 2024/41, p. 19, para. 11 (Sierra Leone); *ibid.*, p. 50, paras. 2-4 (Grenada); CR 2024/42, p. 62, para. 2 (Indonesia); pp. 24, 26, paras. 2, 10-11 (Marshall Islands); CR 2024/43, pp. 30, para. 8 (Kenya); CR 2024/45, p. 49, para. 2 (Japan); CR 2024/46, p. 30, para. 4 (New Zealand); *ibid.*, at p. 50, para. 7 (Palestine); *ibid.*, p. 65, para. 39 (Pakistan); CR 2024/47, p. 13, para. 19-20 (Palau); *ibid.*, p. 32, para. 20 (The Netherlands); *ibid.*, p. 37, para. 2 (Peru); CR 2024/48, pp. 11-12, para. 25 (Portugal); *ibid.*, p. 30, paras. 4-6, p. 32, para. 21 (Romania); *ibid.*, p. 42, para. 7, p. 48, para. 27 (United Kingdom); *ibid.*, pp. 60-61, para. 1 (Saint Lucia); CR 2024/49, p. 54, paras. 7-8 (Seychelles); *ibid.*, p. 58, para. 10 (The Gambia); CR 2024/50, p. 22, para. 3 (Slovenia); *ibid.*, pp. 30-31, paras. 4-8 (Republic of Sudan).

²⁴ United Nations Environment Programme, *Emissions Gap Report 2024* (24 October 2024), p. xii.

²⁵ Written Statement of COSIS, Expert Report of Sarah R. Cooley, Ph.D., on Impacts of Anthropogenic Greenhouse Gas Emissions on the Marine Environment and Affected Communities (22 March 2024) (Annex 1); *ibid.*, Expert Report of Shobha Maharaj, D.Phil. (Oxon.), on Impacts of Climate Change on Small Island States (22 March 2024) (Annex 2); see also Request, p. 6.

²⁶ UNCLOS, Arts. 192 and 194.

²⁷ See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2022 (I), p. 311, para. 95.

²⁸ Written Comments of COSIS, para. 58 and fns. 126, 127; see also, e.g., CR 2024/36, p. 68, para. 6 (Bangladesh); *ibid.*, p. 72, para. 5 (Bangladesh); CR 2024/37, p. 23, para. 18 (Bolivia); CR 2024/38, p. 64, para. 14 (Republic of Korea); CR 2024/40, p. 20 para. 17 (Ecuador); CR 2024/44, pp. 15, 18, paras. 16, 21 (Latvia); CR 2024/48, pp. 63-64, para. 12 (Saint Lucia); CR 2024/49, p. 33, para. 14 (Senegal); CR 2024/51, p. 67, para. 17 (Comoros).

furthermore a codification of the transboundary harm rule as applied to the marine environment, as ITLOS has recognized²⁹.

7. My core point today is that the best available science determines the *content* of these customary obligations in two fundamental ways.

8. *First*, the best available science determines the degree of due diligence necessary to meet these obligations by providing an objective basis for both the level of risk of harm, including the degree of urgency, and the severity, or the magnitude, of the threat of harm³⁰. In *Costa Rica v. Nicaragua*³¹, and *Pulp Mills*³², the Court emphasized the role of properly assessing environmental risks, focusing on the importance of science in the exercise of due diligence. Likewise, in *Gabčíkovo-Nagymaros*, the Court explained that “proper weight” must be given to “new scientific insights”, as well as “current standards” when assessing risks and determining appropriate measures³³. The Court noted that due diligence “impose[s] a continuing — and thus necessarily evolving — obligation”³⁴. Importantly, for this context, the Court reasoned that “in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and the limitations inherent in the very mechanism of reparation of this type of damage”³⁵.

9. Many tales have been told in these proceedings about the nature of due diligence in the context of GHG emissions and associated harms. One is reminded of the parable of the blind men, who upon first encountering different parts of an elephant come to vastly different — and

²⁹ ITLOS, *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 ITLOS)*, Case No. 31, *Advisory Opinion*, ITLOS Reports 2024 (“COSIS Advisory Opinion”), paras. 246, 258; see also, e.g., Written Statements of COSIS, para. 58 and fn. 127; see e.g., CR 2024/36, p. 68, para. 6 (Bangladesh); CR 2024/37, p. 23, para. 18 (Bolivia); CR 2024/38, p. 64, para. 14 (Republic of Korea); CR 2024/44, pp. 15, 18, paras. 16, para. 21 (Latvia); CR 2024/45, p. 27, para. 32 (Micronesia); CR 2024/49, p. 66, para. 16 (The Gambia).

³⁰ Written Statement of COSIS, paras. 91-92, 94-95; Written Comments of COSIS, paras. 60, 79-80; see also *COSIS Advisory Opinion*, paras. 239, 241.

³¹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Judgment*, I.C.J. Reports 2015 (II), pp. 706-707, para. 104.

³² *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, I.C.J. Reports 2010 (I), pp. 82-83, para. 204.

³³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment*, I.C.J. Reports 1997 (“*Gabčíkovo-Nagymaros*”), pp. 77-78, para. 140.

³⁴ *Ibid.*; see also *ibid.*, pp. 67-68, para. 112.

³⁵ *Ibid.*, pp. 77-78, para. 140.

erroneous — conclusions about what it looks like. Likewise, a blinkered vantage point on due diligence obscures the reality of what it must look like in the context of climate change.

10. Contrary to the assertions of some Participants³⁶, the obligation of due diligence is by no means just procedural, requiring only a box-ticking exercise³⁷. Nor is due diligence merely a subjective assessment, dependent on the eye of the beholder³⁸.

11. In its *COSIS* advisory opinion, ITLOS steered clear of such untenable assertions. Consistent with the Court’s jurisprudence on transboundary harm, ITLOS placed the best available science, reflected in IPCC Reports, at the core of its legal analysis³⁹. It determined that the standard of due diligence under UNCLOS Part XII is “stringent”⁴⁰, requiring States “to deploy adequate means, to exercise best possible efforts, *to do the utmost*”⁴¹.

12. Mr President, honourable Members of the Court, the *only* logical conclusion to be reached is that the standard of due diligence in respect of climate change is exceedingly stringent. We are dealing today not with a low risk of small harm; we are dealing with a *near-certain* risk of *catastrophic* harm posed by each additional increment of warming, as the IPCC, and in turn, ITLOS, have observed⁴².

13. Further, the science is clear as to the causal link between GHG emissions and the significant harm to the environment⁴³. This is a complete answer to the argument of some Participants that the prevention obligation does not apply to GHG emissions⁴⁴. And the science is also clear that

³⁶ See, e.g., CR 2024/40, pp. 9-11, paras. 14-20 (United Arab Emirates); CR 2024/40, pp. 45-46, paras. 26-29 (United States of America).

³⁷ Written Statement of COSIS, paras. 87-96; Written Comments of COSIS, paras. 59-60, 79-81.

³⁸ Written Statement of COSIS, para. 89; Written Comments of COSIS, para. 60.

³⁹ *COSIS* Advisory Opinion, para. 212.

⁴⁰ *Ibid.*, para. 241 (emphasis added).

⁴¹ *Ibid.*, para. 233 (emphasis added); see also Responsibilities and Obligations of States with Respect to Activities in the Area (Request for an Advisory Opinion Submitted to the Seabed Disputes Chamber), *Advisory Opinion of 1 February 2011*, ITLOS Reports 2011, p. 41, para. 110; Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, Case No. 21, *Advisory Opinion*, ITLOS Reports 2015, p. 41, paras. 131-32.

⁴² *COSIS* Advisory Opinion, paras. 208-209, 241; IPCC, “Summary for Policymakers”, *Sixth Assessment Synthesis Report* (2023), pp. 14-15.

⁴³ IPCC, “Chapter 5; Global Carbon and Other Biogeochemical Cycles and Feedbacks”, *Sixth Assessment Synthesis Report: The Physical Science Basis* (2021), p. 687; see also Written Statement of COSIS, Annex 1 (Expert Report of Sarah R. Cooley, Ph.D., on Impacts of Anthropogenic Greenhouse Gas Emissions on the Marine Environment and Affected Communities), par. II.A; Written Comments of COSIS, paras. 14, 26.

⁴⁴ See, e.g., CR 2024/36, pp. 42-44, paras. 8-14 (Australia); CR 2024/38, pp. 13-14, para. 19 (Canada); CR 2024/40, pp. 44-46, paras. 23-29 (United States of America); CR 2024/48, pp. 52-54; paras. 46-55 (United Kingdom).

the NDC commitments of States are clearly inadequate to prevent environmental harm⁴⁵, such that, again contrary to what some have suggested⁴⁶, the Paris Agreement simply cannot be the exclusive embodiment of the prevention principle.

**B. The best available science informs the specific measures
necessary to prevent harm**

14. This takes me to the *second* point, that the best available science also provides the specific content of the relevant obligations.

15. The Court, like other jurisdictions⁴⁷, has looked to the science when assessing the necessity of “measures”, taking the objective science as key to measures ranging from conservation and management of natural and ecological resources⁴⁸, to preventing irreversible environmental damage⁴⁹. Likewise, as ITLOS affirmed, “necessary measures” with respect to GHG emissions in UNCLOS Part XII include those “which are indispensable to prevent, reduce and control marine pollution” as well as “other measures which make it possible to achieve that objective”⁵⁰. Again, this is an objective assessment⁵¹, and the science is determinative.

16. To make the role of science concrete in this context, let us consider what the world looks like beyond 1.5°C. The IPCC has assessed that warming beyond that threshold increases from moderate to high the risk of *catastrophic* harm to terrestrial, freshwater, coastal and marine

⁴⁵ IPCC, “Summary for Policymakers”, *Sixth Assessment Synthesis Report* (2023), pp. 10-11, 22.

⁴⁶ See, e.g., CR 2024/36, pp. 31-33, paras. 6-12 (Saudi Arabia); CR 2024/38, pp. 13-14, para. 19 (Canada); CR 2024/40, pp. 9-11, pp. 10-20 (United Arab Emirates); CR 2024/43, pp. 57-59, paras. 20-23 (Kuwait); CR 2024/48, p. 54, paras. 56-58 (United Kingdom).

⁴⁷ See, e.g., *Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan)*, Award on Jurisdiction and Admissibility, XXIII RIAA 1 (Aug. 4. 2000), pp. 31-32, para. 41 (*e*); *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Judgment (Merits and Just Satisfaction) ECtHR App. No. 53600/20, 9 April 2024 (*KlimaSeniorinnen v. Switzerland*), paras. 545-546.

⁴⁸ See *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 1998, p. 461, paras. 69-70; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2022 (I), p. 298, para. 58; *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 31, para. 72; *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, Merits, Judgment, I.C.J. Reports. 1974, p. 200, para. 64.

⁴⁹ *Gabčíkovo-Nagymaros*, pp. 77-78, para. 140.

⁵⁰ COSIS Advisory Opinion, para. 203.

⁵¹ *Ibid.*, paras. 206, 207; see also *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2023 (I), p. 93, para. 106.

ecosystems⁵². This would result in significant harm to human populations including for example, food insecurity due to marine impacts for nearly *one fifth* of the world's population, and *half of SIDS' populations*⁵³, and the displacement of potentially hundreds of millions of people⁵⁴.

17. Measures that fail to provide a means of avoiding these outcomes simply cannot be considered to fulfil obligations to take “necessary” action.

18. COSIS thus submits that diligent measures to prevent negative climate change impacts must necessarily include mitigation in line with the IPCC's specific emissions pathway. According to the IPCC, to have even a 50 per cent chance of staying within the 1.5°C threshold, States must reduce GHG emissions, as measured against 2019 levels, by at least 43 per cent by 2030, 60 per cent by 2035, 69 per cent by 2040 and 84 per cent by 2050⁵⁵. According to UNEP, unless States rapidly and deeply reduce their emissions, “it will become *impossible* to get on a pathway that limits global warming to 1.5°C with no or limited overshoot”⁵⁶. There can be no doubt then that at a minimum, “transitioning away” from fossil fuels, as States recognized at COP28⁵⁷, is required.

19. To put it bluntly, when the best available science tells us that drastically cutting GHG emissions is an imperative — then what is “diligent” and “necessary” speaks for itself.

20. Mr President, honourable Members of the Court, COSIS invites the Court to follow the settled jurisprudence and affirm that in the face of the objective facts and science, State obligations to exercise due diligence must be robust and specific.

21. Thank you very much for your kind attention. I kindly request that the Court call Professor Akhavan to the podium.

⁵² IPCC, “Summary for Policymakers”, *Special Report: Global Warming of 1.5°C* (2018), pp. 8-9, 15; IPCC., “Chapter 3: Impacts of 1.5°C of Global Warming on Natural and Human Systems”, *Special Report: Global Warming of 1.5°C* (2018), p. 254, figure 3.21.

⁵³ IPCC, “Chapter 3: Oceans and Coastal Ecosystems and Their Services”, *Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), p. 456; IPCC, “Technical Summary”, *Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), p. 48; IPCC, “Chapter 15: Small Islands”, *Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), p. 2065; Written Statement of COSIS, Expert Report of Shobha Maharaj, D.Phil. (Oxon.), on Impacts of Climate Change on Small Island States (22 March 2024) (Annex 2), para. 114; Request, para. 6.

⁵⁴ IPCC, “Chapter 7: Health, Wellbeing and the Changing Structure of Communities,” *Climate Change: Impacts, Adaptation and Vulnerability* (2022), p. 1099.

⁵⁵ IPCC, “Summary for Policymakers”, *Sixth Assessment Synthesis Report* (2023), p. 21 (Table SPM.1).

⁵⁶ United Nations Environment Programme, *Emissions Gap Report 2024* (24 October 2024), p. 1 (emphasis added).

⁵⁷ COP28, Outcome of the First Global Stocktake, decision -/CMA.5 (Advance Unedited Version) (13 December 2023), paras. 4-5, 28; IPCC, “Chapter 2: Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development”, *Special Report: Global Warming of 1.5°C* (2018), p. 129 (Table 2.5); IPCC, “Chapter 3: Long-Term Climate and Development Futures”, *Sixth Assessment Synthesis Report* (2023), p. 86.

The PRESIDENT: I thank Ms Amirfar. I now give the floor to Professor Payam Akhavan.

Mr AKHAVAN:

III. THE COURT'S ROLE IN ENSURING THE HARMONIZATION OF INTERNATIONAL LAW

1. Mr President, distinguished Members of the Court, it is a privilege to appear on behalf of the nine Member States of COSIS.

2. My remarks will focus on your unique role, as the principal judicial organ of the United Nations, in the harmonization of international law.

3. You have now heard from numerous participants. There is widespread consensus on the importance of harmonization⁵⁸. A handful of high-emitting States, however, have attempted to rehabilitate the defunct *lex specialis* theory⁵⁹. Others have promoted fragmentation under the guise of systemic integration⁶⁰. I shall briefly address four of the most salient points.

4. *First*, the argument that the UN climate change régime limits application of international law finds no support in legal logic or reasoning. There have been multiple variations on this theme. Yet not a single State can point to an actual normative conflict between the procedural obligations under the Paris Agreement and the substantive obligations under the principles of transboundary harm and human rights. As noted by the former President of the Court, Gilbert Guillaume, in 2016: “*si les États, lors de la COP 21, se sont fixé des objectifs communs, il reste à transcrire la volonté ainsi affichée en règles de droit*”⁶¹.

5. In the *COSIS* Advisory Opinion, ITLOS emphasized the importance of “coordination and harmonization between the Convention and external rules”⁶². It concluded that the Paris Agreement

⁵⁸ See e.g. CR 2024/36, pp. 17-19, paras. 6-12 (Antigua and Barbuda); *ibid.*, pp. 68-70, paras. 8-12 (Bangladesh); CR 2024/37, pp. 22-23, paras. 13-17 (Bolivia); CR 2024/40, pp. 18-20, paras. 8-15 (Ecuador); CR 2024/42, p. 28, para. 4 (Marshall Islands); CR 2024/43, pp. 31-32, paras. 3-5 (Kenya); CR 2024/44, p. 37, paras. 21-22 (Malawi).

⁵⁹ See e.g. CR 2024/36, pp. 28-30, paras. 5-11 (Saudi Arabia); CR 2024/38, pp. 29-30, paras. 8-9 (China); CR 2024/42, pp. 46-47, para. 11 (India); CR 2024/43, pp. 54-59, paras. 2-23 (Kuwait).

⁶⁰ See e.g. CR 2024/35, pp. 147-149, paras. 2-15 (Germany); CR 2024/36, pp. 40-42, paras. 2-6 (Australia); CR 2024/39, pp. 49-50, paras. 24-33 (Denmark, Finland, Iceland, Norway and Sweden); *ibid.*, p. 22, para. 3 (Côte d’Ivoire); CR 2024/40, p. 40, paras. 7-8 (United States).

⁶¹ Gilbert Guillaume, “Le droit et la vie internationale : Séance du lundi 14 novembre 2016”, Académie des sciences morales et politiques, available at <https://academiesciencesmoralesetpolitiques.fr/2017/11/14/la-vie-internationale-et-le-droit/>.

⁶² ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024 (“*COSIS* Advisory Opinion”), para. 130.

does not “modif[y] or limit[] the obligation[s] under the Convention”⁶³. It held further that “the Paris Agreement is not *lex specialis* to the Convention” and that even if it was, it should “be applied in such a way as not to frustrate the very goal of the Convention”⁶⁴. Yet that is exactly what some States have attempted to do in these proceedings; to frustrate the very goal of protecting the environment and human rights.

6. Not a single State has explained how self-judging NDCs under the Paris Agreement that have already resulted in significant harm could possibly be reconciled with due diligence obligations.

7. As Ms Amirfar noted, the UNCLOS Part XII obligations to protect the marine environment are largely customary international law. There is no reason why the Court should adopt a lower standard in respect of the environment as a whole⁶⁵.

8. *Second*, the argument that State responsibility does not apply to climate change because it is too abstract or diffuse is wholly without merit⁶⁶. This is not even a *lex specialis* argument; it is a *non liquet* argument. It would result in a dystopian world, with a “sacrifice zone” for the climate vulnerable States, and a zone of impunity for the major polluters. That cannot be right.

9. The Court has noted in advisory proceedings that “a rule of international law . . . does not operate in a vacuum”⁶⁷. The scientific evidence must inform this opinion, and it leaves *no doubt* as to the question of causation. At the same time, the Court need only make general — and not detailed — findings on attribution. This is not a contentious proceeding.

10. The COSIS request to ITLOS was focused on primary rather than secondary obligations. Nonetheless, the Tribunal drew the obvious conclusion that if a State fails “to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions”, then

⁶³ *Ibid.*, para. 224.

⁶⁴ *Ibid.*

⁶⁵ Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, *YILC*, 2006, Vol. II, Part Two, UN doc. A/61/10 (2006), p. 408, Conclusion 4; see also Draft guidelines on the protection of the atmosphere, *YILC*, 2021, Vol. II, Part Two, UN doc. A/76/10 (2021), p. 12, Guideline 9.

⁶⁶ See e.g. CR 2024/35, p. 150, para. 19 (Germany); CR 2024/40, pp. 49-50, paras. 42-47 (United States).

⁶⁷ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 76, para. 10.

“international responsibility would be engaged for that State”⁶⁸. Since part (b) of the question in this proceeding expressly refers to legal consequences, the Court should go further than ITLOS.

11. There is, obviously, the obligation of compensation for injury already caused, whether through measures such as debt relief or the Loss and Damage Fund. But the Court should also consider the obligations of cessation and non-repetition. In this regard, the 2023 IPCC report concluded with high confidence that “[e]stimates of future CO₂ emissions from *existing* fossil fuel infrastructures without additional abatement already *exceed the remaining carbon budget for limiting warming to 1.5°C*”⁶⁹. In this light, several COSIS members have endorsed the Fossil Fuel Non-Proliferation Treaty Initiative⁷⁰.

12. In 2023, at COP28 in Dubai, State parties agreed at a minimum on “[t]ransitioning away from fossil fuels in energy systems”⁷¹. Building on this consensus, the Court could provide valuable guidance by clarifying that the obligations of cessation and non-repetition *necessarily* require a deep, rapid and sustained transition away from fossil fuels. This must be consistent, furthermore, with the emissions pathways discussed by Ms Amirfar. Given the imminent risk of catastrophic harm, the temporal dimension is crucial.

13. *Third*, there is a pressing need for the Court, as the principle judicial organ of the United Nations, to harmonize the emerging jurisprudence on climate change. Beyond ITLOS, this includes regional human rights courts, as well as UN human rights expert treaty bodies. This would ensure the unification and coherence of international law.

14. A good illustration is the 2021 Decision of the Committee on the Rights of Child in *Saachi v. Argentina*. It found, based on the 2017 Inter-American Court of Human Rights Advisory Opinion on the Environment and Human Rights⁷², that “when transboundary harm occurs, children

⁶⁸ ITLOS, *COSIS* Advisory Opinion, para. 223.

⁶⁹ IPCC, “Summary for Policymakers”, *Sixth Assessment Synthesis Report* (2023), p. 20 (emphasis added).

⁷⁰ The Fossil Fuel Non-Proliferation Treaty Initiative, “Who has Joined the call for a Fossil Fuel Non-Proliferation Treaty?”, available at <https://fossilfuel treaty.org/endorsements/#governments>.

⁷¹ COP28, Outcome of the First Global Stocktake, decision -/CMA.5 (Advance Unedited Version) (13 December 2023), para. 28 (d).

⁷² Inter-American Court of Human Rights, State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity, Case No. OC-23/17, 15 Nov. 2017, paras. 95-104.

are under the jurisdiction of the State on whose territory the emissions originated”⁷³. There is no reason for this Court to adopt a contrary view.

15. As noted in *Bosnia v. Serbia*, “the Court attaches the utmost importance to the factual and legal findings” made by other jurisdictions “within the[ir] specific purview”⁷⁴, referring in that case to the ICTY. The findings of both ITLOS in respect of UNCLOS, and the regional human rights courts and UN treaty bodies in respect of relevant human rights instruments, are unquestionably within their specific purview. They must be accorded significant weight.

16. *Fourth*, and finally, the Court should also harmonize the sources of international law. While much has been said about conventional and customary international law, general principles recognized by nations should also be considered. Several small island States in the Pacific and other national legal systems apply indigenous customary law, as some statements have noted⁷⁵. The normative insights of these traditions are worthy of the Court’s attention in the spirit of a pluralistic international law⁷⁶.

17. Indigenous law is a reminder for *all* peoples that, whether we invoke ancient wisdom or modern science, we have no choice but to conform to the greater laws of the natural world.

18. Mr President, this is not a radical interpretation of international law; it is common sense. States have consented, as they must, to science-based conclusions to protect the environment. Presumably, States have *not* consented to mass extinction and the collapse of civilization. This is not climate alarmism. It is the stark reality of a temperature increase of 3°C by the year 2100. That is where the current NDCs will take us. The small island States are the canary in the coal mine of climate catastrophe. The major polluters should heed their warning before it is too late, because they too will pay a heavy price.

⁷³ United Nations Committee on the Rights of the Child, Decision Adopted in Respect of Communication No. 104/2019, *Sacchi, et al. v. Argentina*, UN doc. CRC/C/88/D/104/2019 (22 Sept. 2021), para. 10.7.

⁷⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 209, para. 403.

⁷⁵ See e.g., Written Statement of Barbados, paras. 154-158; CR 2024/45, p. 23, para. 16 (Micronesia); CR 2024/51, pp. 52-53, para. 5 (Tuvalu); see also CR 2024/41, p. 38, para. 29 (Ghana).

⁷⁶ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, separate opinion of Judge Weeramantry, pp. 107-109; see also Report of the International Law Commission on the work of its seventy-second session (2021), document A/CN.4/746 (28 February 2022), p. 12, para. 65.

19. Mr President, distinguished Members of the Court, the questions before you are of exceptional significance. Some thirty years ago, the Court issued the *Nuclear Weapons Advisory Opinion*⁷⁷. It too was on a question of exceptional gravity. But to put matters in perspective, because of unabated GHG emissions, today the oceans absorb the energy equivalent of seven Hiroshima bombs every second⁷⁸.

20. You heard on the opening day the words of youth leader Cynthia Houniuhi from the Solomon Islands. “Land is our mother”, she reminded us, “a living, timeless plane where generations past, present and future converge, interconnected and sustained in an unbroken cycle of life”⁷⁹.

21. How will future generations look back at these proceedings? This is a crucial moment for the very idea of international law. Narrow State-centric conceptions must give way to the reality of an inextricably interdependent planetary civilization. The climate system does not recognize the artificial boundaries that we have created in our political imagination. There is one earth, one humankind, and one supreme law that none can escape, which is to live in harmony with nature, or to perish.

22. Mr President, distinguished Members of the Court, I thank you for your kind attention. This concludes the pleadings of COSIS.

The PRESIDENT: I thank the representatives of the Commission of Small Island States on Climate Change and International Law for their presentation. I now invite the delegation of the Pacific Community to address the Court and I call Mr Stuart Minchin to the podium.

⁷⁷ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 243-244, para. 35.

⁷⁸ “We Study Ocean Temperatures. The Earth Just Broke a Heat Increase Record”, *The Guardian* (11 January 2022), available at <https://www.theguardian.com/commentisfree/2022/jan/11/ocean-temperatures-earth-heat-increase-record>; see also “Global Ocean Heat and Salt Content: Seasonal, Yearly, and Pentadal Fields”, *National Centers for Environmental Information*, available at <https://www.ncei.noaa.gov/access/global-ocean-heat-content/>.

⁷⁹ CR 2024/35, p. 115, para. 3 (Vanuatu and Melanesian Spearhead Group).

Mr MINCHIN:

I. THE CLEAR SCIENCE

1. Honourable President, Madam Vice-President and Members of the Court, my name is Dr Stuart Minchin and I am privileged to serve as the Director-General of the Pacific Community or SPC as we are known.

2. SPC is the principal scientific and technical organization of the Pacific region. It is also the oldest and largest of the region's intergovernmental organizations, representing the collective scientific and technical capacity of 22 Pacific Island countries and territories since it was established in the Pacific by multilateral treaty in 1947 — it is about the same age as the United Nations⁸⁰.

3. SPC's membership, and our diverse, inclusive and Pacific-anchored ways of understanding our region through core technical and scientific capabilities, provide a solid foundation to inform the questions before the Court. SPC's role as an accredited entity to the largest climate financing mechanism of the UNFCCC and Paris Agreement also provides valuable experience in understanding the realities of the failed promises of climate finance, as obligated by States under these frameworks, and its subsequent impact on the Pacific communities.

4. Pacific leaders aptly describe our region as the "Blue Pacific Continent". It is 98 per cent ocean; it contains 30 per cent of the world's exclusive economic zones (EEZ) and over 60 per cent of the world's tuna stocks⁸¹. Half of the Pacific population lives within 5 km of the coastline, which highlights the consequence of extreme sea-level events to the security of the region.

5. Mr President, I am a scientist, and I deal primarily in facts and evidence. The science is clear: climate change is already causing existential impacts to the peoples and communities of our vast Pacific region and meaningful action is required to reduce its impacts as a matter of urgency.

⁸⁰ Agreement establishing the South Pacific Commission signed at Canberra, on 6 February 1947, Article IV, paras. 6-10, *UNTS*, Vol. 97, pp. 231-232.

⁸¹ Forum Fisheries Agency, *Tuna Fisheries Are Vital to Our Blue Continent*, available at <https://forumsec.org/publications/tuna-fisheries-are-vital-our-blue-continent> (accessed 5 Dec. 2024); see also The Pacific Community, Fisheries, Aquaculture and Marine Ecosystems, *Pacific Island Countries and Territories adapting to Climate Change in Tuna Fisheries*, available at <https://www.spc.int/updates/blog/2019/06/pacific-island-countries-and-territories-adapting-to-climate-change-in-tuna> (accessed 4 Dec. 2024).

6. The IPCC and the latest global stocktake outcomes confirm that the collective ambitions of States remain woefully inadequate to keep global warming below 1.5°C, which is a non-negotiable line for planetary health and Pacific habitability.

7. *Instead*, we are on a pathway to 3°C by the end of this century. Despite the clear science, finance flows to fossil fuels *continue* to outstrip the transition and scale-up of renewables in *every region* of the world⁸². The IPCC and SPC's science and knowledge from our Blue Pacific could not have been more clear: what we do within this decade will have consequences for thousands of years.

8. Given this, our oral submission will be presented by three speakers and will focus on *four key elements*:

- (a) the first is the unique impacts of climate change in the Pacific which demonstrate the reality that the rest of our planet will face if the action does not meet the urgency required;
- (b) the second issue will be examples of loss and damage, both economic and non-economic;
- (c) the third issue will be the implications of slow and onerous climate finance flows not meeting the necessary demand; and
- (d) the fourth will be focus on human rights and intergenerational equity.

9. For the unique impacts of climate change in the Pacific, I will expand on two critical examples: ocean warming on the region's blue economy with a particular focus on fish stocks and sea-level rise and its impacts on habitability.

10. Climate change threatens to permanently degrade and destabilize coral reefs, ocean ecosystems and the key species that we are dependent upon. Given the time, I will focus only on the tuna fishery and its projected displacement because of global warming:

- (a) The Western and Central Pacific Ocean is home to over 60 per cent of the world's tuna stocks, that continue to be sustainably managed by Pacific countries and it supplies one half of the global tuna supply.

⁸² International Energy Agency (IEA), *Net Zero by 2050 — A Roadmap for the Global Energy Sector* (2021), available at https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf.

- (b) Nine Pacific SIDS derive an average of between 10-84 per cent of all government revenue from tuna-specific licensing fees. It employs about 6-8 per cent of the labour force, and an increasing percentage of women⁸³.
- (c) The science of Pacific tuna and the projected climate impacts are predicted to alter the migratory patterns of tuna, moving them eastward into the high-seas areas.
- (d) The latest modelling and economic analysis indicate that 20 per cent of the combined tuna catch currently harvested in Pacific EEZ waters will shift to the high seas by 2050 if emissions continue to rise. This represents US\$90 million per annum in lost access revenue for all Pacific SIDS combined by 2050, and losses of up to 10-15 per cent of total government revenue for a number of countries.
- (e) It also undermines the health of what is today the *only* sustainably managed global tuna stock and places pressure on the food security of our Pacific communities.

11. The second example I wish to highlight is the observed and projected impacts of sea-level rise on habitability and the resulting forced migration and displacement, particularly for the most vulnerable communities and peoples of the Pacific.

12. Mr President, honourable Members of the Court, you have seen and heard from the Republic of the Marshall Islands and Tuvalu on the impact that sea-level rise is *already* having on their communities in our region and projections of future impact on intensity and frequency of disastrous sea-level rise events. This science and work have been co-led by SPC but, for the purpose of brevity, I will not further emphasize this science.

13. However, I would like to refer you to the reference by the Republic of the Marshall Islands to the vulnerability of the Runit Dome as seen on the screen. This nuclear-waste site is part of the region's nuclear legacy. Climate change and resulting coastal erosion could undermine the integrity of this sealed waste site, which threatens to impact not only the Marshall Islands but also our Blue Pacific Ocean.

14. Through SPC's Digital Earth Pacific Tool, we can measure the changes in every coastline in the Pacific over time from satellite, and as you can see from this diagram, coastal erosion around

⁸³ See "The Pacific Community, Fisheries, Aquaculture and Marine Ecosystems", *Women in Fisheries No. 40*, available at <https://fame.spc.int/publications/bulletins/womeninfisheries/40>.

the Runit Dome has progressed by over 12.4 m over the past two decades. This leaves only 10 m of erosion to go before Pacific Ocean waters will hit the very edge of this nuclear-waste site at every high tide. At current rates, this is expected to occur within 20 years if urgent action is not taken.

15. This is just one example among thousands where small changes in sea level will have profound implications for infrastructure, risks and important community and cultural assets throughout the Pacific. This challenge is particularly acute for the lowest-lying atolls, where their entire population live within a kilometre of the ocean and the average elevation above sea level of the islands is usually just 1.5 m. Honourable Members of the Court, this height above seal level is *less than the height* of the bench that you sit on today.

16. As scientists, we have had to learn to be systems thinkers. We know the world does not work in independent, component parts, but as an interconnected system. We have learned over the last centuries not to ignore the interconnected nature of the ecosystems we study, or we make mistakes that can be catastrophic. However, it seems that in some cases the law does not currently operate like this. Rather, the law appears to adopt a reductionist approach to the natural environment, having separate legal frameworks covering different components of the natural ecosystem, and this leaves open the prospect of big issues falling through the cracks. For example, you will note that both of our examples of critical climate change impact are based around the centrality of the climate-ocean nexus and yet, despite years of trying — because of the current legal constructs — oceans are still effectively excluded from the UNFCCC framework.

17. Standing here as a scientist in a courtroom full of lawyers, from one honourable profession to another, the legal community *needs* to address climate change realities. The natural ecosystem does not have arbitrary boundaries and in the twenty-first century, the legal ecosystem of international law needs to reflect this. There must be an alignment between the interconnected science and harmonized international law that does not allow countries and people to fall through the legal cracks. This case is a wonderful opportunity to show the way.

18. Honourable Members of the Court, the science is clear: projected emissions from *existing fossil fuel infrastructure alone will exceed the remaining carbon budget* to limit warming to 1.5°C⁸⁴.

⁸⁴ Intergovernmental Panel on Climate Change (IPCC), *IPCC AR6 Synthesis Report —Summary for Policymakers*, Chap. B.5.

The science must inform our action, including in the law. We have the solutions, but we are not moving fast enough and that is where the outcomes of this case matter most. In answering the question before you, I want to keep this last point very simple. *Under no scientific scenarios* can we continue to pursue a future underpinned by fossil fuels and still expect to meet the goals of the Paris Agreement⁸⁵. We need to act *now* to ensure the livelihoods and self-determination of Pacific cultures and peoples are protected for future generations.

19. Mr President, thank you and I kindly ask you to call, Ms Coral Pasisi our Director of Climate Change at SPC. She is also a scientist, and as a daughter of the Pacific has inherited the traditional knowledge and practice of her forefathers and mothers that informs her understanding of how climate change is affecting our countries and communities.

The PRESIDENT: I thank Mr Stuart Minchin. I now give the floor to Ms Coral Pasisi. Madam, you have the floor.

Ms PASISI:

II. ECONOMIC AND NON-ECONOMIC LOSS AND DAMAGE AND CLIMATE FINANCE INJUSTICE

1. Thank you, Mr President, Madam Vice-President and honourable Members of the Court. It is a great honour to speak to you today on this critically important question.

2. My statement will focus on two key elements: firstly what loss and damage already looks like in our region, and secondly, the allusivity of promised climate finance for the most vulnerable.

3. *The loss and damage already experienced, together with the associated impacts on culture, traditional practice and knowledge have both extreme economic and non-economic implications.* Let me share with you a personal experience based on a category five cyclone (Cyclone Heta), which occurred in 2004 and left a trail of destruction in five islands across the Pacific. I will focus on the experience of Niue, the only Pacific SIDS who was unable to present at these oral proceedings and which I am a proud indigenous daughter of.

⁸⁵ *Ibid.*

4. Niue is a large, raised coral atoll, with cliffs and terraces standing 20, 38 and 68 m above sea level. In this video, you will see wave height at close to 10 m hitting our only port, six hours before the height of the storm, which at its peak reached about 40 m on the western side of the island. For context, that would be roughly over twice the height of this courtroom.

5. What you are seeing, in this second video, is the aftermath of that wave inundation on what was one of the most populated stretches of critical infrastructure and homes in Niue's capital of Alofi. It is also where our main tourism accommodation, our only hospital, justice department and courthouse — and national museum — stood just 12 hours prior. It is also where both my brothers' homes were washed away and countless other families' — and where tragic loss of life occurred.

6. The economic damages sustained by Cyclone Heta in Niue alone equated to five times the GDP of our country. This was equivalent to 200 years' worth of exports at that time. This underscores both the magnitude of economic loss and damage and also the limited ability of small island States like Niue to respond and recover.

7. It also washed away our only museum, Huanaki, and over 90 per cent of all our cultural artifacts along with it. This is an unimaginable and irreparable and irreplaceable non-economic loss. One that cannot be remedied or restored. One that has robbed our children of their future inherent rights to traditional knowledge and cultural identity, and which has left scars of trauma that run as deeply as the scours left on the bare cliffs of Niue some 20 years later. This will *permeate for many generations to come* and is indicative of the trail of loss and damage that is left in the wake of global inaction. Inaction in mitigation — and inaction in providing the necessary finances for the most vulnerable and least able to cope.

8. And as a segue into my second point, let me share with you Niue's experience in seeking some remedial support to address the loss and damage and rebuild from the ruins of this Cyclone. On seeking assistance from the funding mechanisms of the Convention and Paris Agreement to rebuild critical infrastructure, such as the museum and hospital, to higher grounds, they were advised that such costs could not be covered by climate finance as these actions were considered response, recovery or loss and damage, which does not fall within the remit of adaptation.

9. Which brings me firmly to the second issue I will highlight which is *the injustice faced by SIDS in access to adequate and timely climate finance* as the most vulnerable and least capacitated to respond. Who, as we have heard repeatedly, are also the least contributing to GHG emissions.

10. A key first distinction to make is that as a continuation of the responsibility under Article 4 of the UNFCCC, Article 9 is the most relevant article of the Paris Agreement, obligating developed countries to provide the required finance to developing countries to address climate change. Article 2.1 (c) speaks to climate consistent finance flows, but this is distinctly different and should not be conflated.

11. Whilst both Articles are clearly complimentary, climate-compatible finance flows under Article 2.1 (c) should not be considered a substitute for what is an obligation of developed countries under Article 9. This is to provide new and additional finance for the new and additional costs as a result of climate change, particularly for the most vulnerable.

12. In practice, however, Article 2.1 (c) has been used to muddle and often double count traditional finance flows, including aid, with States having delivered their obligations under Article 9. There are very few developed countries who clearly distinguish between their pledges and commitments of climate finance under Article 9 and Article 2.1 (c). In practical terms, instead of climate finance pledges being new and additional resources to cope with climate change challenges, a significant portion of these resources and pledges are actually just relabelled traditional aid.

13. This has caused considerable frustration and unmet expectations for all developing countries and particularly SIDS in our region. SIDS have spent considerable capacity to ready themselves for promised increased climate finance under Article 9, only to see the failed realization of these promises in real terms. As the Prime Minister of Tonga spoke to at COP29:

“Without this promised climate finance, as Leaders, we find ourselves having to make the impossible decision between using what [little] resources we have to either fortify our existing critical infrastructure or continuing to develop our countries. We do not have the finance [for] both.”

14. Furthermore, Articles 9.4 and 9.9 are supposed to guarantee that the discharge of promised climate finance prioritizes the particularly vulnerable and capacity constrained, being small island developing States and LDCs.

15. In reality, neither of these obligations have been met. The achievement of the 16-year-old global promise of US\$100 billion per annum by 2020 is still debated. Creative accounting has essentially conflated compatible finance flows related to Article 2.1 (c) with commitments under Article 9. Furthermore, the special vulnerabilities and capacities of small and vulnerable States, such as our SIDS, have not been operationalized sufficiently. This is clearly evidenced in the miniscule access to climate finance for SIDS to date, in total receiving just 3 per cent of that US\$100 billion promise, and only 0.22 per cent — not even 1 per cent — for Pacific SIDS.

16. *The rate of climate finance flows is also pitifully slow, fragmented and requires excessive specialized capacity to access.* For Pacific SIDS, our experience in SPC as an accredited entity to the climate change Financing Mechanisms shows that it takes an average of four years and up to six years from project concept to project approval; and an additional two years just for the disbursement of those funds before implementation can even start. In simple terms, this means that from the time a community or a country requests assistance to the time they see actual outcomes, we are hitting the eight-year mark. By then the need has changed or it has significantly exacerbated.

17. For context, based on current climate projections, the Pacific can expect to see sea levels rise 40 mm and experience 32 severe cyclones of category three or above in that same time period.

18. This is a blatant failure, a failure to deliver on clear finance related obligations under the Convention and Agreement. It is a significant injustice for the most vulnerable which remains largely without meaningful remedial measures. For example, there are still no special windows of access in the Green Climate Fund for small island developing States, and it has taken 14 years since the establishment to finally have a SIDS dedicated officer under recruitment. And whilst we celebrated the establishment and operationalization of the Loss and Damage Fund at COP29 last month, let us remember that this has taken 30 years to come to fruition under the current climate change régime. And it is yet to be capitalized appropriately.

19. Let me wrap up by being absolutely clear. Under no circumstances can we continue at this volume and rate of access to climate finance for small island developing States and LDCs and expect that they will be able to cope with the magnitude of impacts and loss and damage they are already experiencing, let alone what they are predicted to experience with increasing intensity and frequency of climate change-induced disasters into the future.

20. This presents a blatant injustice to the rights of the most vulnerable and certainly for future generations, and on this note let me thank you for your time and hand over to the voice of a representative of these future generations.

21. One of the critical responsibilities SPC is mandated to lead on is to empower Pacific youth in their aspirations for human rights and sustainable development. And for this reason SPC is very proud to provide the rest of our time to the Pacific Island Students Fighting Climate Change, whose conviction for self-determination and survival in the face of climate change birthed the call for this critical advisory opinion.

22. Mr President, I kindly ask you to call their Director, Mr Vishal Prasad, so that you can hear directly from the youth that dreamed up this case. I thank you.

The PRESIDENT: I thank Ms Pasisi. I now give the floor to Mr Vishal Prasad.

Mr PRASAD:

III. TAKING THE WORLD'S BIGGEST PROBLEM TO THE WORLD'S HIGHEST COURT

1. Mr President, Madam Vice-President, honourable Members of the Court. In the Pacific, we have always looked to the stars. Our ancestors navigated the vastness of the ocean and travelled immense distances. They trusted in the stars and wisdom of those who came before them.

2. This practice, wayfinding, is more than just a method of navigation. It is a relationship. It connects those who came before with those who will follow. Every decision mattered, not only for the journey in that moment, but for the future that it shaped.

3. Today the world needs wayfinders — those who can guide us towards a path that protects our homes, upholds our rights and preserves our dignity. I speak to you today as part of a global campaign led by young people and frontline communities, the Pacific Island Students Fighting Climate Change, who believe that international law must serve as a compass for justice and accountability. Yet, ambiguities in its interpretation and application are hindering responses to the climate crisis, obstructing collective action and threatening efforts to secure a just and equitable future.

4. Our campaign for an ICJ advisory opinion was born out of a frustration with the inability of the COP processes to deliver *urgent* climate action. Recognizing that current efforts fall woefully short of what the world desperately needs. Despite repeated warnings and overwhelming scientific evidence, even the most basic progress remains elusive.

5. The Paris Agreement and the UNFCCC do not exist in isolation. Rather, they exist alongside a wide range of treaty and customary international law obligations. Obligations that have been, and remain, relevant to addressing the climate crisis — including the duty to prevent significant transboundary harm, the right to self-determination and the human rights of present and future generations.

6. Unfortunately, arguments have been brought before this Court where some choose to hide behind their good-faith obligations, shamefully content with pouring billions into a dying fossil fuel industry. An industry that continues to pump out planet-killing emissions causing significant harm. All while trying to evade accountability. Mr President, I submit that this conduct that is driving the climate crisis is unlawful.

7. The pursuit for climate justice requires determining the obligations of States but is incomplete without the requisite legal consequences. For young people, the demand for reparations is crucial for justice — we have inherited a planet in decline and face the grim prospect of passing on an even more degraded world to future generations. Equally clear is the demand for immediate cessation: if greenhouse gas emissions are not stopped, we are not just risking our future — we are welcoming its demise.

8. Mr President and Madam Vice-President, honourable Members of the Court, in referencing future generations, *the argument has been made that international law need not protect abstract persons from abstract risk*. This is a reasoning of convenience, and it is wrong. There is nothing abstract about human rights and the crisis caused by climate change.

9. It is not abstract that climate change violates our fundamental human right to life. Lilly Teafa from Tuvalu recounts a harrowing experience of graves being unearthed by coastal erosion:

“Nine years ago, during Cyclone Pam on the island of Nui, I saw my 16-year-old cousin cuddling towards her mother’s bones. I saw a mother cry out to the moana [ocean] searching for the corpse of her son.”⁸⁶

10. It is not abstract that climate change violates our right to a clean, healthy and sustainable environment. Isabella Teuea from Kiribati poignantly describes her reality:

“The ocean, once a nurturing mother, has become a vengeful giant, swallowing the land it once cradled. It no longer only gives life — it now takes it, inch by inch. Where it once offered sustenance, it now brings destruction, its rising tides a cold and unrelenting force that pulls homes, cultures, and futures into its depths.”⁸⁷

11. These are just a few examples of testimonies tied to the human rights impacted by climate change. Countless efforts, too numerous to list here, are detailed in the People’s Petition. This was an outcome of the People’s Assembly that we organized for frontline community representatives from around the world to speak of their reality, of the harms they have already suffered and continue to suffer, because of the climate crisis.

12. As you deliberate, you must hold these voices in mind. These testimonies recall great sadness, loss and pain but they should not be taken as a call for pity or favour — instead they are a united call for fairness and justice.

13. As my colleague and friend, Cynthia Houniuihi, said on the first day of these proceedings, it is not too late to course-correct. This is why we turn to you, distinguished Members of the Court. Through this advisory opinion, you have the opportunity to help us course-correct by holding those responsible for the climate crisis accountable, by reinforcing the importance of existing frameworks for liability and reparations, by ending emissions impunity and protecting human rights, ensuring that the legacy we leave behind is a legacy of resolve.

14. Mr President, Madam Vice-President, honourable Members of the Court, five years ago, in a classroom in Emalus, Vanuatu, where this campaign began, young people dared to take on the impossible — taking climate change to the world’s highest court. Today, we have completed that task. We have laid before this Court our stories, our realities, the injustices and the loss, with the hope that this Court understands all that is at risk.

⁸⁶ See The People’s Petition, *The Collective Climate Justice Call for the ICJ*, December 2024, available in the judges’ folder, at 37; see further, The Witness Stand for Climate Justice, available at <https://witnessstand.live/> (accessed 12 December 2024).

⁸⁷ *Ibid.*, at 44.

15. Just as the way finders of the Pacific held the wisdom to guide us through the vast ocean to safe harbour, you hold the knowledge and the responsibility to guide the international community to ensure the protection of our collective future. And you can do this simply by applying international law to the conduct responsible for climate change.

Vinaka vakalevu, dhanyawaad and thank you.

The PRESIDENT: I thank the representatives of the Pacific Community for their presentation. Before I invite the next delegation to take the floor, the Court will observe a break of 10 minutes. The hearing is suspended.

The Court adjourned from 11.05 a.m. to 11.20 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the delegation of the Pacific Islands Forum to make its oral statement and I call upon Mr Esala Nayasi. You have the floor, Sir.

Mr NAYASI:

INTRODUCTION

1. Thank you, Mr President. Mr President and distinguished Members of the Court, good morning to you, and warm greetings again from the Pacific. It is an honour for me to appear before you in these proceedings, and it is indeed a special privilege to present the oral pleadings of the Pacific Islands Forum Secretariat (“PIFS” or “the Forum Secretariat”).

2. At the outset, let me express our sincere gratitude to the Court for its authorization of the Pacific Islands Forum Secretariat to participate in these historic advisory proceedings today. This oral submission does not constitute a statement of individual Pacific Islands Forum (PIF) members, either individually or jointly, and is made without prejudice to their rights to make oral submissions to the Court. In saying this, I also acknowledge our members in our sister Pacific regional organizations that have spoken before me and thank them for their efforts and contributions. I also acknowledge and commend the efforts and leadership of the Republic of Vanuatu that has led to these advisory proceedings. It would also be remiss of me not to recognize the efforts and commitment of

our Pacific youth. We have been part of this campaign, and I am glad they have the opportunity to address you this morning.

3. For the purposes of these oral proceedings today, and like our earlier written statement and comments, I will be highlighting agreed regional collective positions of the Pacific Islands Forum, comprising factual and legal elements that inform and respond to the legal question before the Court and which pertain particularly to the issue of climate-related sea-level rise, which will otherwise be referred to as sea-level rise.

4. Mr President, now that we have heard the signs and our lived realities of the Pacific community, our submission will be in three parts. First, I will provide the factual elements on how Pacific Islands Forum leaders have addressed the adverse impacts of climate change in the Pacific region. Second, I will provide the legal elements on the Pacific Islands Forum's positions, particularly and specifically, with respect to maritime zones, statehood and the protection of persons, with an emphasis on the duty to co-operate. And third, I will conclude with some final remarks, alongside key propositions we seek from the Court.

FACTUAL ELEMENTS

5. Mr President, I will now turn to the first part of our submission on the factual elements.

6. You have heard: "As large oceanic countries and territories, we are the custodians of nearly 20 percent of the earth's surface, and we place great cultural and spiritual value on our ocean and land, as our common heritage"⁸⁸, of course.

7. As custodians of the Pacific Continent, the ocean is a significant part of our Blue Pacific identity and way of life. Our people depend on the ocean for their survival, livelihood and national development aspirations.

8. Our past, present and future development are based on rights and entitlements guaranteed under the 1982 United Nations Convention on the Law of the Sea ("UNCLOS"). For example, fisheries make a huge contribution to our economies: offshore tuna is worth billions of dollars and

⁸⁸ Pacific Islands Forum, *2050 Strategy for the Blue Pacific Continent* (Suva, Fiji: Pacific Islands Forum Secretariat, 2022). p. 8, available at <https://forumsec.org/sites/default/files/2023-11/PIFS-2050-Strategy-Blue-Pacific-Continent-WEB-5Aug2022-1.pdf> (accessed 28 November 2024).

provides thousands of jobs to Pacific economies as you have heard from the Forum Fisheries Agency which addressed you yesterday and also the Pacific community this morning.

9. Despite the inextricable link between the people and the ocean⁸⁹, Pacific nations are amongst the most vulnerable and susceptible to the adverse impacts of climate change⁹⁰. Our leaders continue to reaffirm climate change, including sea-level rise caused by anthropogenic emissions of greenhouse gases, as the single greatest threat to the livelihoods, security and well-being of our people⁹¹.

10. The Pacific has been sounding the alarm on sea-level rise for many decades. In 1988, in Tonga, Pacific Islands Forum leaders highlighted the economic and social impacts of a changing environment. And in July of 1989, in Kiribati, we saw an elevation of emphasis of climate change, in particular on sea-level rise, to draw the world's attention to the possible effects of rising sea levels on island countries. In recent years, our leaders "declared that the Pacific is facing a Climate Emergency that threatens the livelihoods, security and wellbeing of [our] people and ecosystems, backed by the latest science and the daily lived realities in Pacific communities"⁹².

11. Our leaders underlined "that coastal States, particularly Small Island Developing States [SIDS] and low-lying States, are disproportionately impacted and specially affected by sea-level rise and climate change"⁹³.

12. Our leaders recognize the threat of sea-level rise as the "defining issue that imperils the livelihoods and wellbeing of our peoples and undermines the realization of a peaceful, secure and sustainable future for our region"⁹⁴.

⁸⁹ Statement of the Pacific Islands Forum Chair, Cook Islands PM Mark Brown on the ITLOS Advisory Opinion delivered on May 21, 2024, on specific legal obligations of State Parties to the UNCLOS, available at RELEASE: Statement of the Forum Chair, Cook Islands PM Mark Brown on the ITLOS Advisory Opinion delivered on May 21, 2024, on specific legal obligations of State Parties to the UNCLOS (accessed 29 November 2024).

⁹⁰ Pacific Islands Forum, Kainaki II Declaration for Urgent Climate Action Now, (Funafuti, 2020), available at <https://forumsec.org/publications/kainaki-ii-declaration-urgent-climate-action-now> (accessed 28 November 2024).

⁹¹ Pacific Islands Forum, Boe Declaration on Regional Security (Boe, 2018), available at <https://forumsec.org/publications/boe-declaration-regional-security> (accessed 28 November 2024).

⁹² Fifty-first Pacific Islands Forum, Suva, Fiji, 14 July 2022, Forum Communiqué, para. 33, available at 2022-Forum-Communique-Suva-Fiji-11-12 July.pdf.

⁹³ 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the face of Climate Change Related Sea-Level Rise, preamble, para. 4.

⁹⁴ 2021 Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise, preamble, para. 9.

13. “Given our shared stewardship of the Blue Pacific Continent, we have a deep concern for and commitment to the need for urgent, immediate and appropriate action to combat the threat and impacts of climate change.”⁹⁵

14. It is against this backdrop, that our leaders noted that “securing the future of the Pacific cannot be left to chance, but requires a long-term vision, strategy and commitment”⁹⁶.

15. In 2022, therefore, Pacific Islands Forum “Leaders welcomed and endorsed the 2050 Strategy for the Blue Pacific Continent (‘2050 Strategy’) as the overarching blueprint to advance Pacific regionalism for the next three decades, articulating the region’s long-term vision, values, and key thematic areas and strategic pathways”⁹⁷.

16. One of the key regional collective actions under the implementation plan of the strategy is Pacific leadership on global responses to climate change, including amongst others, these current advisory proceedings⁹⁸.

17. We recognize that climate change is a global phenomenon, which, therefore, requires responses at every level. And to this end, our leaders strongly encouraged the participation of all PIF members in these advisory proceedings⁹⁹.

18. Mr President, and distinguished Members of this Court, at these advisory proceedings we look to you to provide the much-needed clarification(s) that we hope will aid in guiding our efforts to accelerate global action on climate change¹⁰⁰.

⁹⁵ Pacific Islands Forum, *2050 Strategy for the Blue Pacific Continent* (Suva, Fiji, 2022), p. 6, available at <https://forumsec.org/sites/default/files/2023-11/PIFS-2050-Strategy-Blue-Pacific-Continent-WEB-5Aug2022-1.pdf> (accessed 28 November 2024).

⁹⁶ Fiftieth Pacific Islands Forum, Funafuti, Tuvalu, 13-16 August 2019, Forum Communiqué, para. 5, available at 2019-Forum Communiqué-Funafuti-Tuvalu-13-16 Aug.pdf.

⁹⁷ Fifty-first Pacific Islands Forum, Suva, Fiji, 14 July 2022, Forum Communiqué, para. 23, available at 2022-Forum-Communiqué-Suva-Fiji-11-12 July.pdf.

⁹⁸ Pacific Islands Forum, *2050 Strategy Implementation Plan 2023-2030* (Suva, Fiji, 2023). Climate Change and Disasters, Regional Collective Action 7, p. 27, available at https://forumsec.org/sites/default/files/2024-03/2050-Strategy-Implementation-Plan_2023-2030.pdf (accessed 28 November 2024).

⁹⁹ Fifty-second Pacific Islands Forum, Rarotonga, Cook Islands, 9 November 2023, Forum Communiqué, para. 27, available at <https://forumsec.org/sites/default/files/2024-03/52nd%20Pacific%20Islands%20Forum%20Communique%2020231109.pdf>; See also: Fifty-third Pacific Islands Forum, Nuku’alofa, Tonga, 26-30 August 2024, Forum Communiqué, para. 71, available at https://forumsec.org/sites/default/files/2024-08/53rd%20Pacific%20Islands%20Forum%20Communique_FINAL.pdf.

¹⁰⁰ Fifty-first Pacific Islands Forum, Suva, Fiji, 14 July 2022, Forum Communiqué, para. 44, available at 2022-Forum-Communiqué-Suva-Fiji-11-12 July.pdf.

LEGAL ELEMENTS

Preserving maritime zones

19. Having heard the factual elements, I will now turn to the second part of my submission which is on the legal elements. Under legal elements, my submission will only focus on three key issues: (1) the issue of preserving maritime zones; (2) the issue of statehood; and (3) the issue on protection of persons affected by sea-level rise, *in tandem*, with the “duty to co-operate”. I will now commence with the issue of preserving maritime zones.

20. Mr President, the UNCLOS is the “constitution” of the ocean and the legal framework within which all activities in the oceans and seas must be carried out, including the establishment and maintenance of maritime zones and the rights and entitlements flowing from them.

21. The issue, however, is that the relationship between sea-level rise and maritime zones was not contemplated by the drafters of UNCLOS at the time of its negotiation¹⁰¹. The UNCLOS was premised on the basis that, in the determination of maritime zones, coastlines and maritime features were generally considered to be stable¹⁰².

22. And given this predicament, Pacific Islands Forum “Leaders *noted* with concern the threat posed by sea level rise to securing the Blue Pacific [Continent]”¹⁰³, and “*reaffirmed* the importance of preserving Members’ existing rights stemming from maritime zones, in the face of sea level rise”¹⁰⁴.

23. In 2019, our leaders recalled their long-standing concern in the Pacific region for preserving maritime zones in the face of sea-level rise and made the commitment for urgent, collective action to secure maritime zones for our members¹⁰⁵.

¹⁰¹ 2021 Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise, preamble, para. 6.

¹⁰² *Ibid.*

¹⁰³ Fiftieth Pacific Islands Forum, Funafuti, Tuvalu, 13-16 August 2019, Forum Communiqué, para. 24, available at 2019-Forum Communiqué-Funafuti-Tuvalu-13-16 Aug.pdf.

¹⁰⁴ *Ibid.*, para. 25.

¹⁰⁵ 2021 Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise, preamble, para. 6.

2021 Pacific Islands Forum Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise, 6 August 2021

24. Accordingly, in 2021, PIF leaders endorsed the Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-level rise, or the “2021 PIF Maritime Zones Declaration”.

25. The Declaration is firmly based and grounded on the primacy of UNCLOS. It clarifies our members’ interpretation of UNCLOS, and represents the agreed collective view of the PIF on how UNCLOS rules on maritime zones apply in the situation of sea-level rise.

26. In 2021, the Maritime Zones Declaration affirmed that the “UNCLOS imposes no affirmative obligation to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations”¹⁰⁶.

27. This view is supported by the UNCLOS and its underpinning legal principles, including those of legal stability, security, certainty, predictability¹⁰⁷, as well as the legal principles of equity, fairness and justice¹⁰⁸.

28. Additionally, I would also wish to highlight

“the explicit obligation in Article 300 of the [UNCLOS] that States Parties shall fulfil in good faith the obligations assumed under the Convention and shall exercise the rights, jurisdiction and freedoms recognized in the Convention in a manner which would not constitute an abuse of right”¹⁰⁹.

29. The 2021 Maritime Zones Declaration, therefore, is a considered, moderate and targeted solution to the issue of sea-level rise and its relationship to maritime zones through a good-faith interpretation of UNCLOS.

30. Indeed, there is wide and strong support for the agreed PIF collective position on preserving maritime zones, and the rights and entitlements that flow from them, in the face of sea-level rise¹¹⁰. There were written statements and comments that expressed endorsement or strong

¹⁰⁶ *Ibid.*, operative para. 4.

¹⁰⁷ *Ibid.*, preamble, para. 3.

¹⁰⁸ *Ibid.*, preamble, para. 4.

¹⁰⁹ *Ibid.*, preamble, para. 5.

¹¹⁰ Written Statements of: Alliance of Small Island States (AOSIS), Nauru and Tonga.

support of the entire Declaration¹¹¹, as well as strong support of its key tenets¹¹². Debates at the Sixth Committee of the United Nations General Assembly have also and generally supported these points. Clearly, there is wide acceptance of the PIF collective position to preserve maritime zones, and the rights and entitlements that flow from them, in the face of sea-level rise. And as highlighted by the Kingdom of Tonga yesterday, in referencing the submission by El Salvador, the Pacific Islands Forum 2021 Maritime Zones Declaration has caused a chain reaction.

31. To further support this, the recently endorsed Apia Commonwealth Ocean Declaration adopted by the 56 leaders of the Commonwealth on 26 October 2024 in Samoa also affirms the position of maintaining maritime zones.

32. It is on this basis that we respectfully submit that the Court's answers to the question put to it should affirm the view that the maritime zones of States, as established and notified to the Secretary-General of the United Nations in accordance with the UNCLOS, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to sea-level rise.

Statehood and the protection of persons

33. Mr President, I will now draw your attention to the issue of statehood.

34. In 2022, PIF leaders directed the region to consider the issues of statehood and the protection of persons affected by sea-level rise, guided and informed by applicable principles and norms of international law and relevant international frameworks and standards¹¹³.

¹¹¹ See Written Statements of: AOSIS, Australia, Bahamas, Commission of Small Islands States on Climate Change and International Law (COSIS), Dominican Republic, Federated States of Micronesia (FSM), Nauru, New Zealand, Organisation of African, Caribbean and Pacific States (OACPS), Pacific Islands Forum Fisheries Agency (FFA), Parties to the Nauru Agreement (PNAO), Republic of Marshall Islands (RMI), Tonga, Tuvalu and Vanuatu. See also: Written Comments of: Bahamas, Cook Islands, Mauritius and St Vincent and the Grenadines.

¹¹² Written Statements of: AOSIS, Bahamas, COSIS and Nauru.

¹¹³ Fifty-first Pacific Islands Forum, Suva, Fiji, 14 July 2022, Forum Communiqué, paras. 39-42, available at 2022-Forum-Communique-Suva-Fiji-11-12 July.pdf.

**2023 Pacific Islands Forum Declaration on the Continuity of Statehood
and the Protection of Persons in the Face of Climate Change-Related
Sea-Level Rise, 9 November 2023**

35. In 2023, the Pacific Islands Forum leaders therefore endorsed the Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise, or the “2023 PIF Statehood Declaration” in short.

36. This Declaration reaffirms our 2021 Maritime Zones Declaration¹¹⁴ as both Declarations are mutually supportive and reinforcing, including in the way they protect the rights and entitlements of Pacific Islands Forum members.

Statehood

37. The 2023 Statehood Declaration again

“*[r]ecognis[ed]* that under international law there is a general presumption that a State, once established, will continue to exist and endure, and maintain its status and effectiveness, and that international law does not contemplate the demise of statehood in the context of [. . .] sea-level rise”¹¹⁵.

38. A core element of the 2023 Statehood Declaration is PIF members’ pronouncement that their statehood and sovereignty will continue, and their rights and duties inherent thereto will be maintained, notwithstanding the impact of sea-level rise¹¹⁶.

39. The 2023 Statehood Declaration

“*[f]urther recognise[d]* that the continuity of statehood in the face of [. . .] sea-level rise is consistent with important principles and rights of international law, including the right of peoples to self-determination, the right to a nationality, the protection of territorial integrity and political independence, principles of equity and fairness, the maintenance of international peace and security which in turn requires stability in international relations, the right of a state to provide for its preservation, the duty of cooperation, the sovereign equality of states, and permanent sovereignty over natural resources”¹¹⁷.

¹¹⁴ *Ibid.*, preamble, para. 7.

¹¹⁵ *Ibid.*, preamble, para. 8, *ibid.*

¹¹⁶ *Ibid.*, preamble, para. 13, *ibid.*

¹¹⁷ *Ibid.*, preamble, para. 9, *ibid.*

40. There is also support for the agreed PIF collective position regarding the continuity of statehood as articulated in the 2023 Statehood Declaration. There were written statements and comments that expressed endorsement or support of its entire or key tenets¹¹⁸.

41. Additionally, the recently endorsed AOSIS Declaration on Sea-Level Rise and Statehood adopted by the 39 leaders of the AOSIS on 23 September 2024 in New York also broadly supported the PIF position.

42. It is also on this basis that we respectfully submit that the Court should affirm that under international law there is a presumption of continuity of statehood and international law does not contemplate a State's demise in the context of sea-level rise. As a necessary corollary, the Court should further affirm that the statehood and sovereignty of States will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of sea-level rise.

Protection of persons

43. Mr President, I will now turn to the issue of protection of persons affected by sea-level rise. The 2023 Statehood Declaration also expresses a commitment by PIF members, both individually and collectively, to protecting persons affected by sea-level rise including with respect to human rights duties, political status, culture, cultural heritage, identity and dignity, and meeting essential needs¹¹⁹.

44. In this context, the 2023 Statehood Declaration therefore sets out a non-exhaustive description of what protection of persons involves. Pacific Islands Forum leaders

“[a]cknowledg[ed] that protecting persons and communities affected by climate change-related sea level rise involves protecting, promoting, and fulfilling their human rights, including civil, political, economic, social and cultural rights, and also protecting their culture, cultural heritage, identity and dignity, and meeting their essential needs, including through international cooperation”¹²⁰.

¹¹⁸ See Written Statements of: AOSIS, Dominican Republic, Solomon Islands, Latvia, Tonga, El Salvador, Kiribati, Liechtenstein, Melanesian Spearhead Group (MSG), RMI and Vanuatu. See also: Written Comments of: Cook Islands, Sri Lanka, PNAO, Sierra Leone, Bahamas and St Vincent and the Grenadines.

¹¹⁹ 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the face of Climate Change Related Sea-Level Rise, preambular para. 14.

¹²⁰ *Ibid.*, preambular para. 10.

45. The 2023 Statehood Declaration then links the protection of persons to statehood by referring to States' important duty in ensuring protection of their people, and that continuity of statehood is necessary and fundamental for that protection to be implemented and to endure¹²¹.

Co-operation and a call upon the international community

46. Mr President, the final two paragraphs of the 2023 Statehood Declaration focus on co-operation to achieve its purpose, reflecting the fact that co-operation is a founding purpose of the Pacific Islands Forum¹²², as well as an important principle of international law¹²³. The 2023 Statehood Declaration highlights that such co-operation is to occur between Pacific Islands Forum members and also calls upon the international community to support it and co-operate in achieving its purposes consistent with the duty to co-operate and principles of equity and fairness¹²⁴, including regionally and sub-regionally¹²⁵.

FINAL REMARKS

47. Mr President, I will now move to the third part of my presentation on final remarks and the key propositions of the Court. Our oral pleadings cited agreed regional collective positions of the Pacific Islands Forum, comprising factual and legal elements. It builds on the earlier written statement and comment, as well as complements the written submissions of our members.

48. As I stand here today, we are at a familiar crossroads. In 1977, our Forum leaders recognized that the continued absence of a comprehensive international convention on the law of the sea presents urgent challenges to our ocean and resources, particularly in view of the action taken by a larger number of countries including distant fishing countries exploiting the available highly migratory fish species in the region. This prompted our leaders then to commit to move quickly to establish fishing and exclusive economic zones, which contributed to the incorporation of the concept of the exclusive economic zones into the UNCLOS which is now treaty law. These commitments from our leaders' Declaration of 1976 and 1977 predated and influenced the finalization of UNCLOS.

¹²¹ *Ibid.*, preamble, para. 11.

¹²² *Ibid.*, preamble, para. 15.

¹²³ *Ibid.*, preamble, para. 9.

¹²⁴ *Ibid.*, preamble, para. 16.

¹²⁵ *Ibid.*, preamble, para. 15.

They represent the strong leadership in history of our region in the pursuit of international co-operation and international law to address global effects. Today, we are faced here with a similar predicament. Sea-level rise was not within contemplation of UNCLOS. Our leaders have yet again taken proactive action by adopting the 2021 Maritime Zones Declaration and the 2023 Stakeholder Declaration to clarify certain elements of international law in this regard. Just as we influenced the Law of the Sea Convention years ago, it is our plea that the 2021 and 2023 Declarations will inform the Court on the development of international law to address the unprecedented issue of climate change-related sea-level rise. Based on this analogy, we will respectfully submit that the Court's answers to the question put to it should affirm the view that the maritime zones of States, as established and notified to the Secretary-General of the United Nations in accordance with UNCLOS, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to sea-level rise.

49. We further submit that the Court should affirm that under international law there is a presumption of continuity of statehood and international law does not contemplate a State's demise in the context of sea-level rise. As a necessary corollary, the Court should further affirm that the statehood and sovereignty of States will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of sea-level rise.

50. The Court should also emphasize the duty to co-operate in ensuring the protection of persons affected by sea-level rise. Indeed, Pacific Islands Forum members have expressed a commitment to protecting persons affected by sea-level rise including through international co-operation. We have also called on the international community to co-operate in achieving the purposes of the 2023 Statehood Declaration consistent with the duty to co-operate and principles of equity and fairness¹²⁶.

51. As I conclude my presentation today, Mr President, distinguished Members of the Court, the Pacific Islands Forum Secretariat expresses its deep appreciation once again for the opportunity afforded to all United Nations Members and international organizations to contribute to these important proceedings currently before the Court. We look to you to provide the much needed

¹²⁶ *Ibid.*, preamble, para. 16.

clarifications of international law that is aligned to our leaders' declarations and their vision in the 2050 strategy for a resilient Pacific region of peace, harmony, security, social inclusion and prosperity that ensures all Pacific people can lead free, healthy and productive lives.

52. Mr President, distinguished Members of the Court, I thank you for your kind attention.

The PRESIDENT: I thank the representative of the Pacific Islands Forum for his presentation. I now invite the next participating delegation, the Organisation of African, Caribbean and Pacific States, to address the Court and I give the floor to Ms Cristelle Pratt.

Ms PRATT:

I. AREAS OF CONVERGENCE

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is a distinct honour to appear before you today on behalf of the Organisation of African, Caribbean and Pacific States (OACPS). I bring to you the collective voice of 79 member States, united not only by shared vulnerabilities but also by their collective determination to seek justice in the face of the climate crisis.

2. Our member States, though diverse in cultures and geographies, share a legacy marked by colonialism and its lasting impacts. This historical context is crucial in understanding the current challenges we face. Today, our hard-fought self-determination, yet again, is compromised by the conduct of a handful of States, including colonial powers, whose emissions of greenhouse gases for over a century are responsible for climate change.

3. The Court has heard extensive arguments from an unprecedented number of States and international organizations. My intervention is an effort to extract from these arguments some key conclusions on which the views of many developing countries converge.

4. First, no State or international organization has questioned the jurisdiction of the Court, the urgent need for it to give its advisory opinion or the important role that befalls the Court as the principal judicial body of the United Nations and the only court with a general competence¹²⁷.

¹²⁷ See e.g. CR 2024/35, p. 146, para. 8 (Albania); CR 2024/36, p. 37, para. 8 (Australia); CR 2024/37, p. 21, para. 9 (Bolivia); CR 2024/37, p. 34, para. 1 (Brazil); CR 2024/37, p. 42, para. 9 (Burkina Faso); CR 2024/37, p. 53, para. 3 (Cameroon); CR 2024/38, p. 25, para. 5 (China); CR 2024/38, p. 54, para. 4 (Commonwealth of Dominica); CR 2024/38, p. 61, para. 6 (Republic of Korea); CR 2024/39, p. 58, paras. 6-8 (Egypt); CR 2024/39, p. 21, para. 1 (Côte d'Ivoire);

5. Second, the historical emissions by a small number of easily identifiable States are the cause of climate change as well as of its adverse effects, both globally and specifically on our member States. The acts and omissions resulting in such emissions, including the promotion of fossil fuels and the failure to regulate emissions are unlawful¹²⁸ and they are also discriminatory, perpetuating the inequities rooted in our colonial past¹²⁹.

6. Third, except for a limited number of polluting States who have taken the self-serving position that the UNFCCC and the Paris Agreement apply in isolation¹³⁰, the vast majority of Participants agree that the conduct responsible for climate change is governed by a much wider body of rules¹³¹. These include, in particular, those expressly mentioned in the operative part and the

CR 2024/39, p. 70, para. 7 (El Salvador); CR 2024/41, pp. 55-56, paras. 10-12 (Guatemala); CR 2024/41, pp. 9-10, para. 7 (France); CR 2024/42, p. 46, para. 8 (India); CR 2024/44, p. 33, para. 34. (Liechtenstein); CR 2024/45, p. 8, paras. 3-4 (Mexico); CR 2024/46, p. 32, para. 9 (New Zealand); CR 2024/48, p. 9, para. 5 (Portugal); CR 2024/50, pp. 36-37, para. 2 (Sri Lanka); CR 2024/50, p. 61, para. 7 (Serbia); see also Written Comments Vanuatu, para. 12, fig. 1.

¹²⁸ See e.g. CR 2024/35, p. 110, para. 11 (Vanuatu and MSG); CR 2024/36, p. 20, para. 17 (Antigua and Barbuda); CR 2024/36, p. 56, paras. 16-17, (Bahamas); CR 2024/36, p. 87, para. 6 (Barbados); CR 2024/37, pp. 46-47, para. 12 (Burkina Faso); CR 2024/37, p. 55, para. 15 (Cameroon); CR 2024/37, p. 66, para. 1 (Philippines); CR 2024/38, p. 27, paras. 14-15 (Chile); CR 2024/38, p. 40, para. 16, p. 47, para. 28 (Colombia); CR 2024/38, p. 59, para. 31 (Dominica); CR 2024/39, p. 16, para. 20 (Costa Rica); CR 2024/39, p. 62, paras. 24-25 (Egypt); CR 2024/40, pp. 28-9, paras. 5-10 (Ecuador); CR 2024/40, p. 66, para. 17, p. 67, para. 21 (Fiji); CR 2024/41, p. 28, para. 34 (Sierra Leone); CR 2024/41, p. 30, para. 5, p. 36, para. 19 (Ghana); CR 2024/41, p. 49, para. 23 (Grenada); CR 2024/42, p. 11, paras. 6-7 (Cook Islands); CR 2024/42, p. 24, para. 9, pp. 29-30, paras. 8-9 (Marshall Islands); CR 2024/42, p. 65, para. 21 (Indonesia); CR 2024/43, p. 15, para. 1 (Jamaica); CR 2024/43, p. 25, para. 12 (Papa New Guinea); CR 2024/43, p. 37, para. 29 (Kenya); CR 2024/43, p. 47, para. 21 (Kiribati); CR 2024/44, p. 32, para. 30 (Liechtenstein); CR 2024/44, p. 49, para. 11 (Maldives); CR 2024/44, p. 70, para. 27 (African Union); CR 2024/45, p. 15, para. 16 (Mexico); CR 2024/45, p. 26, para. 29 (Federated States of Micronesia); CR 2024/45, p. 39, para. 7, p. 40, para. 4 (Namibia); CR 2024/46, p. 11, para. 11 (Nauru); CR 2024/46, pp. 27-28, para. 3; CR 2024/46, p. 46, para. 6 (Palestine); CR 2024/46, p. 64, para. 35 (Pakistan); CR 2024/47, p. 14, para. 1 (Palau); CR 2024/47, pp. 19-20, paras. 7-8 (Panama); CR 2024/47, p. 49, para. 12 (Democratic Republic of Congo); CR 2024/49, p. 14, para. 13 (Saint Vincent and the Grenadines); CR 2024/49, p. 22, paras. 10-11, p. 24, para. 7 (Samoa); CR 2024/49, p. 53, para. 2 (Seychelles); CR 2024/49, pp. 44-45, para. 64 (Senegal); CR 2024/50, p. 37, para. 3 (Sri Lanka); CR 2024/51, p. 27, para. 3 (Timor Leste); CR 2024/51, p. 71, para. 15 (Comoros); see also Written Comments Vanuatu, para. 149.

¹²⁹ See e.g. CR 2024/35, p. 102, para. 5-7 (Vanuatu and Melanesian Spearhead Group); CR 2024/37, p. 20, para. 2 (Bolivia); CR 2024/39, p. 61, para. 21 (Egypt); CR 2024/42, pp. 11-2, paras. 9-14 (Cook Islands); CR 2024/42, p. 23, para. 5 (Marshall Islands); CR 2024/43, p. 30, para. 7, p. 34, para. 17 (Kenya); CR 2024/44, p. 58, para. 6 (African Union); CR 2024/45, p. 29, para. 42 (Federated States of Micronesia); CR 2024/45, p. 39, para. 10; CR 2024/46, p. 43, para. 7; CR 2024/47, pp. 10-11, paras. 2-4 (Palau); CR 2024/48, p. 23, para. 11 (Dominican Republic); CR 2024/48, p. 57, para. 1 (Saint Lucia); CR 2024/49, p. 11, para. 2, p. 15, para. 19 (Saint Vincent and the Grenadines); CR 2024/50, pp. 41-42, para. 2 (Sri Lanka); CR 2024/51, p. 24, para. 2, p. 25, paras. 10-13, p. 26, para. 20 (Timor Leste); see also Written Comments MSG, paras. 5-6, 31-35, 95, 127, 164-168, 208, 243; Written Statement OACPS, paras. 49-53, 81-90; Appendix B: Racial Equality and Racial Non-Discrimination Obligations of States in Respect of Climate Change, Expert Report of Professor E. Tendayi Achiume, March 2024, paras. 6, 10.

¹³⁰ See e.g. CR 2024/35, p. 120, para. 5 (South Africa); CR 2024/35, p. 142, para. 10 (Germany); CR 2024/36, p. 27, para. 7 (Saudi Arabia); CR 2024/36, p. 36, para. 5, p. 42, para. 6; CR 2024/38, p. 11, para. 10, p. 13, para. 18 (Canada); CR 2024/38, pp. 29-30, paras. 8-9 (China); CR 2024/38, p. 63, para. 10; CR 2024/39, p. 44, para. 11 (Nordic States); CR 2024/40, p. 10, para. 17 (United Arab Emirates); CR 2024/40, p. 40, para. 7 (USA); CR 2024/40, pp. 52-53, paras. 8-9 (Russia); CR 2024/41, p. 9, para. 6 (France); CR 2024/42, pp. 46-47, para. 11 (India); CR 2024/42, p. 54, para. 5 (Iran); CR 2024/43, p. 54, para. 2 (Kuwait); CR 2024/45, p. 50, para. 6 (Japan); CR 2024/46, pp. 33-34, para. 14, p. 36, para. 21 (New Zealand); CR 2024/48, p. 51, para. 45, p. 56, para. 62 (United Kingdom); see also Written Comments Vanuatu, para. 78.

¹³¹ See e.g. CR 2024/35, p. 98, para. 5 (Vanuatu and the Melanesian Spearhead Group); CR 2024/35, p. 132, paras. 20-23; p. 134, para. 2 (Albania); CR 2024/36, p. 17-18, paras. 7, 10-11 (Antigua and Barbuda); CR 2024/36, p. 60, para. 11, pp. 63-64, para. 27-29 (Bahamas); CR 2024/36, p. 67, paras. 3-4, p. 70, para. 13 (Bangladesh); CR 2024/35, p. 82,

preambular clauses of resolution 77/276. The relevant conduct violates numerous of those rules, many of which were applicable to the conduct for decades.

7. Fourth, of particular note are: the duty of due diligence¹³²; the obligation to prevent significant environmental harm¹³³; the duty to protect and preserve the marine environment¹³⁴; and

para. 4 (Barbados); CR 2024/37, p. 9-12, paras. 18 (Belize); CR 2024/37, p. 21-22, paras. 12-14 (Bolivia); CR 2024/37, pp. 43-44, paras. 2-4 (Burkina Faso); CR 2024/37 p. 53-54, para. 5 (Cameroon); CR 2024/37, pp. 65-66, paras. 9-17 (Philippines); CR 2024/38, pp. 22-23, paras. 15-19 (Chile); CR 2024/38, p. 42, para. 5 (Columbia); CR 2024/38, p. 55, paras. 11-12 (Dominica); CR 2024/39, p. 12, paras. 5-8 (Costa Rica); CR 2024/39, p. 58, para. 9 (Egypt); CR 2024/39, p. 66, para. 3 (El Salvador); CR 2024/40, p. 18, para. 8 (Ecuador); CR 2024/40, p. 32, para. 7 (Spain); CR 2024/40, pp. 68-69, paras. 7-11 (Fiji); CR 2024/41, pp. 20-21, paras. 5-7 (Sierra Leone); CR 2024/41, p. 33, para. 3 (Ghana); CR 2024/41, p. 51, para. 9 (Grenada); CR 2024/41, p. 58, paras. 23-24 (Guatemala); CR 2024/42, p. 14-15, para. 19 (Cook Islands); CR 2024/42, p. 28, para. 4 (Marshall Islands); CR 2024/42, p. 38, para. 6 (Solomon Islands); CR 2024/43, p. 14, para. 11 (Jamaica); CR 2024/43, p. 23, para. 2 (Papua New Guinea); CR 2024/43, p. 31, para. 2 (Kenya); CR 2024/43, p. 44, para. 4 (Kiribati); CR 2024/44, p. 9, para. 8, p. 14, para. 11, p. 16, para. 18 (Latvia); CR 2024/44, pp. 24-25, para. 7, p. 27, para. 17 (Liechtenstein); CR 2024/44, p. 37, para. 21 (Malawi); CR 2024/44, p. 47, para. 3 (Maldives); CR 2024/44, p. 67, para. 17 (African Union); CR 2024/45, p. 10, para. 6 (Mexico); CR 2024/45, p. 20, para. 8 (Federated States of Micronesia); CR 2024/45, p. 39, paras. 8-9; CR 2024/46, p. 8, para. 2 (Nauru); CR 2024/46, p. 24, para. 2 (Nepal); CR 2024/46, pp. 41-42, paras. 2-4 (Palestine); CR 2024/46, pp. 59-60, para. 17 (Pakistan); CR 2024/47, p. 14, para. 3 (Palau); CR 2024/47, p. 20, para. 9 (Panama); CR 2024/47, pp. 31-32, paras. 19-21 (Netherlands); CR 2024/47, p. 40, paras. 13-15, p. 42, paras. 26-27 (Peru); CR 2024/47, pp. 46-47, paras. 2-4 (Democratic Republic of the Congo); CR 2024/48, p. 11, para. 24, p. 15, para. 45 (Portugal); CR 2024/48, p. 24, para. 13 (Dominican Republic); CR 2024/48, p. 35, para. 41 (Romania); CR 2024/48, pp. 61-62, paras. 2-7 (Saint Lucia); CR 2024/49, p. 12, paras. 5-6 (Saint Vincent and the Grenadines); CR 2024/49, p. 25, para. 9 (Samoa); CR 2024/49, pp. 60-61, paras. 7-9 (Gambia); CR 2024/49, p. 32, paras. 5-6; CR 2024/49, p. 46, paras. 5-7 (Senegal); CR 2024/50, p. 10, para. 10 (Singapore); CR 2024/50, pp. 19-20, para. 3, p. 25, para. 10 (Slovenia); CR 2024/50, pp. 32-33, paras. 3-4 (Sudan); CR 2024/50, p. 37, para. 4, p. 38, para. 8 (Sri Lanka); CR 2024/50, p. 63, paras. 16-18 (Serbia); CR 2024/50, p. 55, paras. 28-29 (Switzerland); CR 2024/51, pp. 14-15, paras. 14-15, para. 17 (Thailand); CR 2024/51, p. 41, para. 4 (Tonga); CR 2024/51, p. 64, para. 2 (Comoros); see also Written Comments Vanuatu, para. 78.

¹³² CR 2024/35, p. 107, para. 2 (Vanuatu and Melanesian Spearhead Group); CR 2024/36, p. 20, para. 18 (Antigua and Barbuda); CR 2024/36, p. 61, para. 14 (Bahamas); CR 2024/36, p. 73, para. 7 (Bangladesh); CR 2024/37, p. 10, para. 4 (Belize); CR 2024/37, p. 23, paras. 18-19 (Bolivia); CR 2024/38, pp. 21-22, para. 12 (Chile); CR 2024/38, pp. 42-3, paras. 8-9 (Colombia); CR 2024/39, p. 13, para. 11 (Costa Rica); CR 2024/40, p. 20, para. 15 (Ecuador); CR 2024/41, p. 45, para. 15 (Ghana); CR 2024, p. 28, para. 5 (Marshall Islands); CR 2024/43, p. 47, para. 20 (Kiribati); CR 2024/45, p. 21, para. 12 (Federated States of Micronesia); CR 2024/46, p. 11-12, para. 13 (Nauru); CR 2024/46, p. 25, para. 4 (Nepal); CR 2024/44, p. 38, para. 4 (Malawi); CR 2024/49, p. 64, paras. 7-9 (Gambia); CR 2024/48 p.63, para. 10 (St Lucia); CR 2024/41, p. 21, para. 7 (Sierra Leone); CR 2024/47, p. 48, para. 7 (Democratic Republic of Congo); CR 2024/50, p. 40, para. 11 (Sri Lanka); CR 2024/51, p. 15, para. 18 (Thailand).

¹³³ CR 2024/35, p. 107, paras. 2-3 (Vanuatu and Melanesian Spearhead Group); CR 2024/35, p. 132, para. 23, p. 134, para. 3 (Albania); CR 2024/36, p. 19, para. 15 (Antigua and Barbuda); CR 2024/36, p. 59 paras. 7-9 (Bahamas); CR 2024/36, p. 73, para. 7 (Bangladesh); CR 2024/36, p. 84, para. 13 (Barbados); CR 2024/37, p. 10, para. 3 (Belize); CR 2024/37, p. 23, para. 20 (Bolivia); CR 2024/37, p. 35, para. 8 (Brazil); CR 2024/38, p. 21, paras. 10-11 (Chile); CR 2024/38, p. 42, para. 7 (Colombia); CR 2024/38, p. 55 paras. 13-14 (Dominica); CR 2024/38, p. 65, para. 19 (South Korea); CR 2024/39, p. 13, paras. 9-12 (Costa Rica); CR 2024/40, p.19, para.14 (Ecuador); CR 2024/40, p. 70-71, paras. 13-17 (Fiji); CR 2024/41, p. 35, paras 14-16 (Ghana); CR 2024/42, p. 28, para. 5 (Marshall Islands); CR 2024/43, p. 45, paras. 11, 14 (Kiribati); CR 2024/45, p. 13, para. 12 (Mexico); CR 2024/45, p. 21, para. 12 (Federated States of Micronesia); CR 2024/46, p. 14, paras. 1-4 (Nauru); CR 2024/46, p. 25, paras. 4-5 (Nepal); CR 2024/46, p. 49, para. 3-4 (Palestine); CR 2024/46, p. 61, paras. 23-24 (Pakistan); CR 2024/47, pp. 14-17, paras. 2-14 (Palau); CR 2024/37, p. 66, para. 3 (Philippines); CR 2024/44, pp. 39-40, paras 6-10 (Malawi); CR 2024/48, p. 23, para. 13 (Dominican Republic); CR 2024/44, p. 68, para. 20 (African Union); CR 2024/49, pp. 15-16, paras 3-7 (Saint Vincent and Grenadine); CR 2024/49, p. 26, para. 15 (Samoa); CR 2024/49, p. 32, paras. 7-9 (Senegal); CR 2024/49, p. 63, para. 1-5 (Gambia); CR 2024/48 p. 62-63, para. 9 (St Lucia); CR 2024/41, p. 21 paras. 8-9 (Sierra Leone); CR 2024/47, p. 48, para. 7 (Democratic Republic of Congo); CR 2024/50, p. 11, para. 11, p. 14, para. 22 (Singapore); CR 2024/50, p. 40, para. 11 (Sri Lanka).

¹³⁴ See e.g. CR 2024/35, p. 107, para. 3 (Vanuatu and Melanesian Spearhead Group); CR 2024/39, p. 17, para. 21(a)(6) (Costa Rica); CR 2024/40, p. 19, para. 14 (Ecuador); CR 2024/41, p. 33, para. 7 (Ghana); CR 2024/42, p. 28, para. 5 (Marshall Islands); CR 2024/42, p. 62, para. 6 (Indonesia); CR 2024/36, p. 47, para. 20(b) (Australia); CR 2024/36, p. 75, para. 13 (Bangladesh); CR 2024/37, p. 44, para. 4 (Burkina Faso); CR 2024/37, pp. 53-54, para. 5 (Cameroon); CR 2024/38, p. 57, para. 21 (Dominica); CR 2024/38, p. 63, para. 12 (Korea); CR 2024/39, p. 59, para. 12 (Egypt); CR 2024/39, pp. 16-17, para. 21 (Costa Rica); CR 2024/40, p. 19, para. 14, p. 20, paras. 17-18 (Ecuador); CR 2024/41,

the obligations arising under the right to self-determination¹³⁵ — a peremptory norm of international law¹³⁶. Many also provided evidence of human rights violations that have materialized around the world as a result of the relevant conduct¹³⁷. The attempts of a few responsible States to turn certain treaties’ jurisdiction clauses into a “carte blanche” for violating rights worldwide¹³⁸ are deeply flawed — legally and morally. The same is true for arguments denying rights to future generations¹³⁹. The OACPS calls on the Court to reject these arguments and, in doing so, affirm that human rights are indeed universal.

p. 25, para. 25 (Sierra Leone); CR 2024/41, pp. 31-32, para. 3 (Ghana); CR 2024/41, p. 60, paras. 33-34 (Guatemala); CR 2024/42, p. 28, para. 5 (Marshall Islands); CR 2024/42, p. 62, para. 6, p. 63, para. 9 (Indonesia); CR 2024/44, pp. 15-16, para. 14-17 (Latvia); CR 2024/44, p. 40, para. 11 (Malawi); CR 2024/45, p. 21, para. 10, p. 22, para. 15, p. 27, para. 32 (Federated States of Micronesia); CR 2024/45, p. 34, para. 14 (Myanmar); CR 2024/48, p. 28, para. 6 (Dominican Republic); CR 2024/48, pp. 63-64, paras. 12-13 (Saint Lucia); CR 2024/49, pp. 66-67, para. 16 (Gambia); CR 2024/49, p. 33, para. 14 (Senegal); CR 2024/50, p. 11, para. 11, p. 14, para. 22 (Singapore); CR 2024/51, p. 66, para. 15 (Comoros).

¹³⁵ CR 2024/35, p. 102, paras. 5, 7 and p. 103, paras 1-2 (Vanuatu and Melanesian Spearhead Group); CR 2024/36, p. 73, para. 7 (Bangladesh); CR 2024/37, p. 57, para. 23 (Cameroon); CR 2024/38, p. 57, para. 20 (Dominica); CR 2024/39, p. 13, para. 15 (Costa Rica); CR 2024/40, p. 71-72 para. 18-20 (Fiji); CR 2024/40, p. 36, para. 19 (Ghana); CR 2024/42, p. 20, para. 12 (Cook Islands); CR 2024/43, p. 35, para. 10-12, 13; CR 2024/43, p. 47, para. 24 (Kiribati); CR 2024/45, pp. 24, 26, paras. 21 and 27 (Federated States of Micronesia); CR 2024/45, p. 45, para. 38 (Namibia); CR 2024/46, p. 12, paras. 14-16 (Nauru); CR 2024/47, p. 23, para. 27 (Panama); CR 2024/44, pp. 24, 25, paras. 7, 8 (Liechtenstein); CR 2024/48, p. 23, para. 13 (Dominican Republic); CR 2024/49, p. 13, para. 7 (Saint Vincent and Grenadine); CR 2024/49, p. 26, para. 15 (Samoa); CR 2024/41, p. 24, para. 19 (Sierra Leone); CR 2024/50, p. 11, para. 11, p. 14, para. 22 (Singapore); CR 2024/51, pp. 52-56, paras. 2-21 (Tuvalu); CR 2024/51, pp. 45-46, para. 20 (Tonga); CR 2024/51, pp. 69-70, para. 7 (Comoros).

¹³⁶ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 233; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, separate opinion of Judge Sebutinde, pp. 283-292, paras. 25-45; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, separate opinion of Judge Gómez Robledo, paras. 18-22; *ibid.*, declaration of Judge Tladi, paras. 14-16; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, separate opinion of Judge Robinson, p. 317, para. 71 (a); Dire Tladi, Fourth Report of the Special Rapporteur on Peremptory Norms of General International Law (Jus Cogens), 31 January 2019, UN doc. A/CN.4/727, p. 48-52, paras. 108-115; Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries, *YILC*, 2022, Vol. II, Part Two, conclusion 23 and Annex, letter (h).

¹³⁷ See e.g. CR 2024/35, p. 101, para. 4 (Vanuatu and Melanesian Spearhead Group); CR 2024/35, p. 137, para. 13 (Albania); CR 2024/37, p. 9, paras. 4-5 (Belize); CR 2024/40, pp. 65-66, paras. 6-10 (Fiji); CR 2024/41, p. 42, paras. 1-6 (Grenada); CR 2024/42, p. 13-14, paras. 1-9 (Cook Islands); CR 2024/42, pp. 24-27, paras. 1-18 (Marshall Islands); CR 2024/43, p. 42-43, paras. 1-3, p. 43, paras. 8-10 (Kiribati); CR 2024/47, pp. 11-13, paras. 5-21 (Palau); CR 2049/49, p. 10, para. 4 (Saint Vincent and the Grenadines); CR 2024/50, pp. 43-46, paras. 6-9 (Sri Lanka); CR 2024/51, pp. 38-39, para. 12; CR 2024/51, pp. 47-48, paras. 3-7; pp. 49-51, paras. 11-15 (Tuvalu); see also Written Statement of the Melanesian Spearhead Group, Exhibits 5-36; Written Statement Vanuatu, Exhibits F-U; Written Statement Solomon Islands, paras. 29.1-29.9; Written Statement Kiribati, Annex 2; Written Statement Tonga, Annex 2; Written Statement Cook Islands, Annex Nos. 4-17; Written Statement Grenada, Annex 3.

¹³⁸ CR 2024/35, p. 151, paras. 26-27 (Germany).

¹³⁹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 241-244, para. 29 and paras. 35-36; see Written Statement of Vanuatu, paras. 479-483; CR 2024/37, p. 54-5, paras. 9-12 (Cameroon); CR 2024/40, p. 73, para. 25 (Fiji); CR 2024/41, p. 52, para. 9-10, 14-18 (Grenada); CR 2024/38, p. 43, para. 10 (Colombia); CR 2024/42, p. 31, para. 10 (Republic of the Marshall Islands); CR 2024/45, p. 23, para. 16 (Federated States of Micronesia); CR 2024/45, p. 47, para. 46 (Namibia). See also Maastricht Principles on the Human Rights of Future Generations. <https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>.

8. Mr President, honourable Members of the Court, the OACPS submits that your advisory opinion must set the record straight for the future. The conduct responsible for climate change must be called out, once and for all. Only a handful of States account for most of the interference with the climate system. These large emitters are hiding in plain sight, behind artificially crafted ambiguities, overstated complexities and protracted negotiation processes. But the truth is simple: this conduct is unlawful under international law and it carries legal consequences.

9. Mr President, honourable Members of the Court, I will be followed today by three submissions. First, Ambassador Cheryl Bazard, KC; second, Professor Pierre-Marie Dupuy; and third, Ms Brenda Reson Sapuro, a representative of our youth.

10. May I kindly request, Mr President, that you call Her Excellency Ms Cheryl Bazard, KC.

The PRESIDENT: I thank Ms Cristelle Pratt. I now give the floor to Her Excellency Ms Cheryl Bazard.

Ms BAZARD:

II. FIVE FLAWED AND MISLEADING ARGUMENTS MADE BY SOME LARGE POLLUTERS

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is a distinct privilege to address you today on behalf of the OACPS. Rather than developing points already articulated in our written submissions — which are reaffirmed in full — my purpose is to return to five arguments that have been made by major polluter States in the past two weeks to show why each of them is both flawed and misleading.

2. The first argument concerns the scope of the obligation of prevention. Large polluters have argued that it does not apply to climate change because it is limited to narrow situations of transboundary pollution. This argument is both legally and scientifically flawed. In its Advisory Opinion on the legality of nuclear weapons, the Court expressly confirmed the operation of this obligation with respect to “the environment of other States *or of areas beyond national control*”¹⁴⁰.

¹⁴⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 242, para. 29.

This is clearly confirmed by the express reference to the prevention principle in preambular paragraph 8 of the UNFCCC.

3. The operation of the principle in relation to other dimensions of the global commons is also well established. The ITLOS has confirmed that the obligation of prevention is the source of the obligation codified in Article 192 of the UNCLOS to protect and preserve the marine environment¹⁴¹. Preambular paragraph 2 of the 1985 Vienna Convention on the Protection of the Ozone Layer expressly recalls the prevention principle¹⁴², as formulated in Principle 21 of the 1972 Stockholm Declaration¹⁴³. Thus, the operation of the prevention obligation is confirmed in relation to the marine environment, the ozone layer and the climate system. *Hardly a narrow transboundary context.*

4. But even if the Court were to take at face value the flawed argument of major polluters, it would still be scientifically inaccurate. The climate system, as defined in the IPCC Glossary¹⁴⁴ and in Article 1 (3) of the UNFCCC¹⁴⁵, encompasses “the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions”. It thus encompasses areas which are both part of the environment of States and beyond national control. Siding with major polluters on this point would therefore be legally and scientifically flawed.

5. The second argument seeks to diminish the relevance of legal obligations pre-dating the entry into force of the UNFCCC, the Kyoto Protocol and the Paris Agreement. Although this contention has already been refuted in several written submissions¹⁴⁶, it bears repeating here. The treaties portrayed as the exclusively relevant law only entered into force on 21 March 1994, for the UNFCCC, 16 February 2005, for the Kyoto Protocol, and 4 November 2016, for the Paris Agreement. Yet, the massive risks posed by anthropogenic emissions of greenhouse gases were firmly established well before these dates — at least since the 1960s, as the submissions of Vanuatu,

¹⁴¹ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Case No. 31, Advisory Opinion of 21 May 2024, para. 186.

¹⁴² Vienna Convention for the Protection of the Ozone Layer, 22 March 1985, *UNTS*, Vol. 1513, p. 325, preamble, para. 2.

¹⁴³ Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (Stockholm Declaration), principle 21, UN doc. A/CONF.48/14/Rev.1.

¹⁴⁴ Intergovernmental Panel on Climate Change (IPCC) Glossary. <https://apps.ipcc.ch/glossary/>.

¹⁴⁵ United Nations Framework Convention on Climate Change (UNFCCC), 9 May 1992, *UNTS*, Vol. 1771, p. 169, Art. 1 (3).

¹⁴⁶ See e.g. Written Statement of Vanuatu, para. 228; Written Comments of Vanuatu, paras. 90-92; Written Comment of Egypt, para. 57.

the Melanesian Spearhead Group, and Barbados have demonstrated in detail¹⁴⁷. But even if one were to focus exclusively on the narrow period between 1990 and 1994, prior to the UNFCCC's entry into force, the Court would still need to either acknowledge that the prevention principle and other relevant obligations governed States' conduct during this period, or affirm that the conduct was entirely unregulated, an untenable *non-liquet*. Such a *non-liquet* would go against the overwhelming evidence that firmly anchors States' obligations in well-established legal rules and principles, including the express reference to prevention in the UNFCCC's preamble.

6. The third argument concerns causality. If, as we respectfully suggest it should, the Court recognizes that the obligation of prevention protects both the environment of other States and that beyond national control, then the issue of causality, as presented by major polluter States, is fundamentally misleading.

7. Let us examine the question posed to the Court carefully. The General Assembly asks about the legal consequences arising for States which "have caused significant harm to the climate system and other parts of the environment". The question is not about establishing whether a State has caused significant harm to another State, which in any event is also established¹⁴⁸. It is about the legal consequences of conduct that significantly contributed to the problem, that is, harm to the climate system, as a component of the environment. Whether this component is deemed to be located in another State or beyond national jurisdiction or, still, in both locations, the interference with the climate system is grounded in a scientific and governmental consensus reflected in the reports of the IPCC¹⁴⁹. The only way in which the Court could reject the existence of causality is if it considers that anthropogenic emissions of greenhouse gases are not the cause of climate change. We urge the Court not to join inadvertently the ranks of climate deniers.

8. The fourth argument concerns the calls for harmonization. In the presentations of the main polluters this is a euphemism to push the Court to accept that by respecting a single obligation a State would be *ipso facto* respecting all other relevant obligations, killing dozens of birds with one stone,

¹⁴⁷ Written Statement of Vanuatu, paras. 177-192, Expert Report of Naomi Oreskes (Exhibit D to Written Statement of Vanuatu); Written Statement of the Melanesian Spearhead Group, para. 46; CR 2024/35, p. 97 (Vanuatu and Melanesian Spearhead Group); Written Comments of Barbados, para. 14; CR 2024/36, pp. 88-89, paras. 12-13 (Barbados).

¹⁴⁸ CR 2024/37, p. 10, para. 4 (Belize).

¹⁴⁹ IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*. Summary for Policymakers (2023), statement A.1.

so to speak. Specifically, large polluters are asking the Court to recognize the existence, as one delegation put it, of a “polluter safe-harbour, and a trap for everyone else”¹⁵⁰.

9. Of course, courts around the world¹⁵¹ have expressly or implicitly rejected this disingenuous argument, including most recently the ITLOS, at paragraph 223 of its Advisory Opinion on climate change¹⁵². The argument of large polluters is even more misleading if one considers that they try to hide behind the Paris Agreement but, at the same time, they emphasize that under the Paris Agreement they have unfettered discretion in setting their nationally determined contributions, and no obligations to provide any finance for loss and damage. Thus, their purported harmonization argument is nothing more than an attempt to escape all their other obligations by turning the Paris Agreement into a safe-harbour for polluters, against its very spirit.

10. In any event, even if the Court was inadvertently misled by this fallacious argument, the purported safe-harbour would only operate — *ratione temporis* — starting on 4 November 2016, when the Paris Agreement entered into force. The conduct displayed before that date could not be covered by the polluters’ artificial safe-harbour.

11. The fifth and final argument concerns various attempts by large polluters to imply that the UNFCCC régime is exclusively “forward-looking”, another euphemism used to escape responsibility. But the opposite is true. As expressly recalled in the preamble, the very system of the UNFCCC is premised on the recognition by developed States that “the largest share of historical and current global emissions of greenhouse gases has originated in developed countries”¹⁵³. This, without a shadow of a doubt, confirms their historical responsibility.

¹⁵⁰ CR 2024/35, p. 116, para. 8 (Vanuatu and Melanesian Spearhead Group).

¹⁵¹ *Verein Klimasenioren Schweiz and others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 442-443; ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, paras. 223 and 286; see also UN Human Rights Committee, Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No 3624/2019, 21 July 2022, UN.doc CCPR/C/135/D/3624/2019, paras. 9-11; *Neubauer and Others v. Germany* [2021] 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (German Federal Constitutional Court); *Advocate Padam Bahadur Shrestha v. Prime Minister and Office of Council of Ministers and Others* [2018] Order No 074-WO-0283 (2075/09/10 BS) (Supreme Court of Nepal), paras. 13-14; *Salamanca Mancera and others v. Presidencia de la Republica de Colombia and others*, 29 January 2018 (Tribunal Superior de Bogotá), paras. 5.2-5.6; *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda* [2019] ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands), paras. 5.7.5-5.7.9; *Re Constitutionality of Article 42 (1)1 of the Framework Act on Low Carbon, Green Growth* (Case No. 2020HunMa289; Case No. 2021HunMa1264; Case No. 2022HunMa854; Case No. 2023HunMa846), 29 August 2024 (Constitutional Court of Korea).

¹⁵² ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, para. 223, see para. 286.

¹⁵³ UNFCCC, preamble, third recital. See also CR 2024/44, p. 70, para. 27 (African Union).

12. Mr President, Members of the Court, when closely examined, the arguments made by major polluter States are profoundly flawed and misleading. They effectively seek to prevent the Court from discharging its mandate in these proceedings.

13. The OACPS urges the Court not to be misled.

14. I thank you for your attention. Mr President, may I kindly request that you now call Professor Pierre-Marie Dupuy?

The PRESIDENT: I thank Her Excellency Ms Cheryl Bazard. J'appelle à présent à la barre, le professeur Pierre-Marie Dupuy.

M. DUPUY :

III. LA TÂCHE DE LA COUR

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les juges, j'ai le grand honneur de parler devant la Cour aujourd'hui pour l'Organisation des États africains, des Caraïbes et du Pacifique dans le cadre d'une procédure consultative à tous égards exceptionnelle, par son objet et par ses enjeux.

2. La procédure lancée par la résolution 77/276 est sans précédent. Les catégories traditionnelles du droit international public sont ici partiellement remises en cause. Le temps est celui des générations futures autant qu'actuelles¹⁵⁴. L'espace concerne toute la planète, puisque c'est de son climat qu'il s'agit, lequel se joue des compartimentages frontaliers et des clivages étroitement nationaux ; ils demeurent ici à la fois incontournables et pourtant en partie dérisoires : nous sommes tous dans le même bateau et ce bateau est menacé de sombrer !

3. Cependant, si tous les États à bord sont concernés, certains sont beaucoup plus proches du naufrage redouté. Ce sont des États issus de la décolonisation, en phase de développement et dont la vulnérabilité est de plus renforcée par leur situation géographique : il s'agit des petits États insulaires. Ils sont tous membres de l'Organisation des États d'Afrique, des Caraïbes et du Pacifique. Pour autant, ils n'ont participé que dans une proportion dérisoire à l'émission de gaz à effet de serre. Et

¹⁵⁴ Written Comments OACPS, paras. 52-62.

d'emblée, et c'était un *leit motiv* de cette procédure, un problème majeur de justice climatique se trouve ainsi posé.

4. Monsieur le président, Mesdames et Messieurs les juges, ma brève intervention s'articule en six propositions.

1. La dimension du droit applicable

5. Confrontés à une situation de plus en plus urgente, tous les États vous ont priés, par consensus, de *clarifier*. Clarifier la gestion des règles et obligations applicables pour contenir d'urgence le changement climatique, dont les conséquences sont variées, mais la cause principale évidente : l'émission anthropique de gaz à effet de serre.

6. De fait aussi bien qu'en droit, toutes les obligations que nous vous demandons d'identifier sont rattachables à la Charte des Nations Unies, notamment à son article 1, paragraphe 3, relatif à l'obligation de coopérer.

7. Il en va de même de toutes les grandes conventions citées en exergue des questions posées à la Cour par la résolution ou de celles qui sont plus particulièrement mentionnées dans le mémoire de l'OEACP¹⁵⁵. Or, par excellence, l'organe judiciaire principal des Nations Unies est celui qui, doté d'une compétence générale sans équivalent, est le gardien privilégié de cette Charte. C'est donc, à partir de là, l'*ensemble* du droit international, général et conventionnel, qui peut être invoqué par la Cour au sens défini par l'article 36 de son Statut. L'idée, défendue par une petite minorité d'États, selon laquelle la Cour devrait s'en tenir à l'application d'une *lex specialis*, au demeurant seulement en vigueur à partir de mars 1994, paraît ici totalement réductrice.

8. Au demeurant, dans la suite de la convention de Rio sur les changements climatiques, l'accord de Paris précité se situe lui-même dans son préambule par référence aux droits de l'homme comme à ceux des peuples autochtones et des personnes en situation vulnérable. Comme toutes les autres conventions citées dans la résolution, cet accord ne peut, du reste, s'interpréter qu'en application du principe d'interprétation intégrative posé à l'article 31, paragraphe 3, alinéa c), de la convention de Vienne sur le droit des traités. Soyons clairs : pour l'OEACP comme dans la doctrine

¹⁵⁵ Written Statement OACPS, pp. 33-74.

qu'elle soutient¹⁵⁶, *il n'y a pas de fragmentation du droit international ni d'autonomie fantasmée de quelque « self contained » régime, comme enfermé dans une bulle*¹⁵⁷. Le travail de clarification demandé à la Cour consiste à rétablir toute la richesse de la *grille de lecture* appropriée des obligations ici pertinentes ; et ceci à partir de l'ensemble des normes, coutumières et conventionnelles, qu'il appartiendra librement à la Cour de choisir et d'utiliser.

2. L'applicabilité des règles du droit commun de la responsabilité

9. La Cour est priée de déterminer les « conséquences juridiques » pour les États qui « par leurs actions ou leurs omissions, ont causé des dommages significatifs » au système climatique. Toutes ces conséquences gravitent autour de l'obligation de réparation, donc, de restauration, du moins lorsque cela est encore possible ou, à défaut, de compensation. C'est pourtant ce que quelques États ont contesté, en tentant d'argumenter qu'en matière de dommage à l'environnement, un tel devoir n'existerait pas vraiment¹⁵⁸ ! En effet, les défenseurs de cette thèse voudraient la maintenir sous le prétexte que la pollution de l'atmosphère par l'émission de gaz à effet de serre est diffuse, et que tout le monde y aurait contribué, ce dont on sait pourtant bien que cela ne peut concerner ni la très large majorité des États ACP et, en particulier, les petits États insulaires¹⁵⁹ !

10. En réalité, il y a bien un droit international de la responsabilité et un seul ! Moyennant, certes, certains aménagements, ce corps de droit, y compris dans sa dimension coutumière, s'applique aux dommages ici concernés, tels que causés par les émissions précitées¹⁶⁰. Ces dommages sont issus de « faits illicites composites » au sens de l'article 15 du projet de la Commission du droit international sur la responsabilité. Et les conditions juridiques sont réunies pour que la responsabilité de ces États soit ainsi engagée¹⁶¹. Certes, les modalités techniques de la réalisation de la réparation pourraient bien entendu, au cas par cas, faire l'objet d'aménagements négociés mais ce n'est pas la tâche de la Cour de l'indiquer à ce stade.

¹⁵⁶ Pierre-Marie Dupuy, « L'unité de l'ordre juridique international », cours général de droit international public, Académie de droit international de La Haye, vol. 297 (2002).

¹⁵⁷ *Ibid.*, p. 31.

¹⁵⁸ Written Comments OACPS, para. 69.

¹⁵⁹ *Ibid.*, paras. 103-104.

¹⁶⁰ Written Statement OACPS, paras. 143-157; Written Comment OACPS, paras. 71-84.

¹⁶¹ Written Comment OACPS, paras. 85-98.

3. Imputabilité des faits illicites et des dommages consécutifs

11. Quant à l'imputabilité des faits illicites et des dommages consécutifs, on sait très bien comment y procéder¹⁶².

12. Cette identification a, en effet, été rendue possible depuis près d'une centaine d'années, concentrée, synthétisée et accentuée encore depuis 1988, sous l'égide des Nations Unies par le GIEC ou IPCC ; ses résultats concordants étaient bien connus des décideurs politiques. Or, les recherches incessantes de centaines d'experts n'ont jamais cessé, depuis, de se préciser. On connaît ainsi les proportions dans lesquelles les principaux États pollueurs ont, chacun, contribué à l'émission des gaz ayant ainsi mis la planète sous cloche. La Cour a été mise au courant de ces conclusions notamment par les écrits de Vanuatu¹⁶³ et de la Barbade¹⁶⁴. Le rapport de la professeure Corinne Le Quéré, experte particulièrement reconnue, datant du 8 décembre 2023 — donc tout récent —, désigne nommément les États ayant le plus activement contribué aux émissions de gaz à effet de serre et selon quelle proportion¹⁶⁵.

4. Irrecevabilité des arguments *ratione temporis*

13. Quant aux arguments *ratione temporis* selon lesquels les obligations invoquées n'auraient pas été en vigueur pendant la période récente¹⁶⁶, doit-on rappeler que l'obligation générale de diligence pour prévenir les dommages à l'environnement comme la prohibition des préjudices à partir du territoire d'un État donné, les droits de l'homme et des peuples ont tous des dates de naissance s'étalant entre la fin du XIX^e siècle et aujourd'hui. « Nous n'avons qu'une seule Terre », nous disait déjà la déclaration de Stockholm dès 1972 dont le principe d'utilisation non dommageable du territoire était repris de votre jurisprudence dans son premier arrêt datant de 1949, l'arrêt dans l'affaire du *Détroit de Corfou* !

¹⁶² *Ibid.*, para. 104.

¹⁶³ Written Statement Vanuatu, paras. 177-192; Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change, 29 January 2024 (Written Statement Vanuatu, Exhibit D).

¹⁶⁴ Written Statement Barbados, paras. 38-82; CR 2024/36, pp. 87-89 (Barbade, Sharma).

¹⁶⁵ Written Comments OACPS at footnote 173: *Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country*, du 8 décembre 2023, spécialement aux paragraphes 25 et 26 (Written Statement Vanuatu, Exhibit D).

¹⁶⁶ Written Comments OACPS, paras. 90-93.

5. Précision de la tâche de la Cour

14. Précisons la tâche de la Cour. Il ne s'agit pas ici de se tromper de procès. On ne se trouve pas dans une procédure contentieuse mais consultative. Or, la Cour a encore récemment rappelé, à propos d'une demande d'avis, qu'elle n'avait pas « à formuler des conclusions factuelles concernant des incidents précis qui seraient contraires au droit international »¹⁶⁷. De même, dans la présente procédure, elle aussi consultative, en s'en tenant au droit, la Cour pourrait répondre aux questions posées en identifiant les différentes obligations concernées et les conséquences juridiques à tirer de leur violation sans pour autant s'engager dans l'établissement strict d'un régime de responsabilité incluant le détail des modalités concrètes de chaque réparation. Contrairement à ce qui se passe dans le cas d'une procédure contentieuse, la Cour, s'appuyant sur les résultats concordants des travaux du GIEC, pourra constater le lien évident entre le phénomène des émissions anthropiques et la violation des obligations dont elle aura relevé antérieurement la violation.

6. Étendue de la responsabilité

15. Ceci posé, et c'est mon sixième et dernier point, quant à l'étendue de la responsabilité, l'Organisation des États ACP comme la majorité des États s'étant exprimés devant vous attendent que la Cour s'attache à toutes les conséquences de l'engagement de responsabilité¹⁶⁸, y compris le devoir de cessation et celui de non-répétition des faits illicites en cause et celui de non-reconnaissance des situations qu'ils ont engendrées. Là encore, l'OEACP a donné dans ses écritures certaines indications complémentaires¹⁶⁹ concernant, par exemple, le fait que la géo-ingénierie n'est pas la solution miracle puisqu'elle déplace la plupart du temps le problème et présente elle-même de grandes dangers.

16. En tout état de cause, on doit clairement distinguer entre la responsabilité, qui concerne la réparation des dommages *passés*, et le recours à des fonds pour financer la transition énergétique qui concerne *l'avenir*.

¹⁶⁷ Written Statement OACPS, para. 97.

¹⁶⁸ *Ibid.*, paras. 99-106.

¹⁶⁹ *Ibid.*, paras. 190-194.

Conclusion

17. En conclusion, Monsieur le président, Mesdames et Messieurs de la Cour, il se fait tard, très tard. Il ne nous reste que peu de temps pour atténuer les conséquences catastrophiques des changements climatiques, pourtant annoncés de longue date par des expertises concordantes.

18. Cependant, les États ACP voient un espoir dans les conditions mêmes où vous avez été saisis. En des temps assaillis de périls multiples, les États ont su dépasser, du moins pour un moment, leurs divisions pour venir vous trouver, sans même avoir besoin de voter pour le décider. Il faut voir dans ce recours unanime un élan de solidarité pour tenter d'enrayer l'évolution vers des catastrophes écologiques aux conséquences planétaires. La Cour internationale de Justice est, plus que jamais, désignée comme la gardienne de la paix et de la solidarité de l'humanité, éclairée par le droit qui nous est commun.

19. Monsieur le président, je vous prie maintenant de donner la parole à M^{me} Reson Sapuro, représentante de la jeunesse, pour de brèves remarques conclusives clôturant la présentation de l'OEACP.

The PRESIDENT: Je remercie le professeur Pierre-Marie Dupuy. I now give the floor to Ms Brenda Reson Sapuro.

Ms RESON SAPURO:

IV. YOUTH'S PERSPECTIVE

1. Mr President and distinguished Members of the Court, I am deeply humbled to stand before you today representing the World's Youth for Climate Justice and the young peoples of the OACPS — resilient, determined young people advocating for meaningful climate action. Our generation is acutely aware of the stakes involved and we are committed to driving change.

2. The principle of intergenerational equity compels us to act decisively and responsibly *today* to safeguard the planet for present and future generations. We are custodians of Earth's resources, whose current trajectory, if not corrected, will leave a legacy of scarcity and hardship.

3. Climate change threatens the fundamental right of peoples to self-determination. Indigenous communities, like my own, the Maasai people, face existential challenges due to extreme weather

events. These events severely disrupt our way of life. States must uphold their obligations to support like communities in maintaining their cultural heritage and sovereignty.

4. This reality is not a mere “abstract risk”¹⁷⁰; it is a lived experience that required and requires urgent action.

5. Mr President, distinguished Members of the Court, the young peoples of the OACPS have brought this case to this Court because we trust in you to set a strong precedent that will enshrine intergenerational equity.

6. In conclusion, the OACPS urges this Court to affirm in clear, direct and unequivocal terms that States which have displayed the conduct responsible for climate change *have violated* their international obligations and they must face the consequences of their wrongful actions.

7. On behalf of the 1.3 billion peoples of the OACPS, I thank you for your kind attention. This concludes the OACPS oral submissions.

The PRESIDENT: I thank the representatives of the Organisation of African, Caribbean and Pacific States for their presentation. This concludes this morning’s sitting. The oral proceedings will resume this afternoon, at 3 p.m., in order for the World Health Organization, the European Union and the International Union for Conservation of Nature to be heard on the questions submitted to the Court.

The sitting is closed.

The Court rose at 12.20 p.m.

¹⁷⁰ CR 2024/35, p. 151, paras. 26-27 (Germany).