INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

RESPONSES OF ANTIGUA AND BARBUDA TO QUESTIONS POSED BY JUDGES CLEVELAND, TLADI, AURESCU AND CHARLESWORTH

20 DECEMBER 2024

TABLE OF CONTENTS

I. QUESTION PUT BY JUDGE CLEVELAND

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

1. In this Question, Judge Cleveland refers to statements made by participants regarding "the production of fossil fuels in the context of climate change, including with respect to subsidies". Against this background, Judge Cleveland asks participants to specify the obligations under international law of States within whose jurisdiction fossil fuels are produced ("FFP States") "to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases".

2. To respond to this question, Antigua and Barbuda sets out the international law obligations of FFP States with regard to (i) the production of fossil fuels (Section A); and (ii) the subsidisation of fossil fuels (Section B).

3. In this response, Antigua and Barbuda will refer to "abated" and "unabated" fossil fuels. Antigua and Barbuda begins, therefore, by explaining this terminology. The term "abatement" is used by the IPCC to refer to "human interventions that reduce the amount of greenhouse gases that are released from fossil fuel infrastructure to the atmosphere"[1] – which typically rely on carbon capture and storage ("CCS") technologies. Conversely, the term "unabated fossil fuels" refers to "fossil fuels produced and used without interventions that substantially reduce the amount of GHG emitted throughout the life cycle; for example, capturing 90% or more CO2 from power plants, or 50–80% of fugitive methane emissions from energy supply."[2] Hence, in the case of "abated" fossil fuels, a substantial portion of emissions "throughout the life cycle" (including from the production and burning of fossil fuels) must be captured and stored.

[1] IPCC, Sixth Assessment Report, 2023, Synthesis Report (Working Groups I, II and III), Summary for Policymakers (available here), footnote 42.

[2] IPCC, Sixth Assessment Report, 2023, Synthesis Report (Working Groups I, II and III), Summary for Policymakers (available here), footnote 51.

A. Obligations of FFS States with regard to fossil fuel production

1. Scientific background: the need to phase out unabated fossil fuel production to limit global warming to 1.5°C

4. There is a scientific consensus that the production of fossil fuels has a significant adverse impact on climate change; indeed, close to 90% of global CO2 emissions stem from the burning of fossil fuels.[3] According to UNEP's 2023 Production Gap Report, States are currently planning to produce more than double the quantity of fossil fuels in 2030 than would be consistent with limiting global warming to 1.5°C (around 110%).[4]

5. As reproduced in Figure 1 below, in its Written Statement, Antigua and Barbuda visualised the total remaining carbon budget to limit global warming to 1.5°C, as estimated by the IPCC. The IPCC has found that "[p]rojected CO2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C (50%) *(high confidence)*";[5] and that "[t]he continued installation of unabated fossil fuel infrastructure will 'lock-in'GHG emissions (*high confidence*)" for the future.[6]

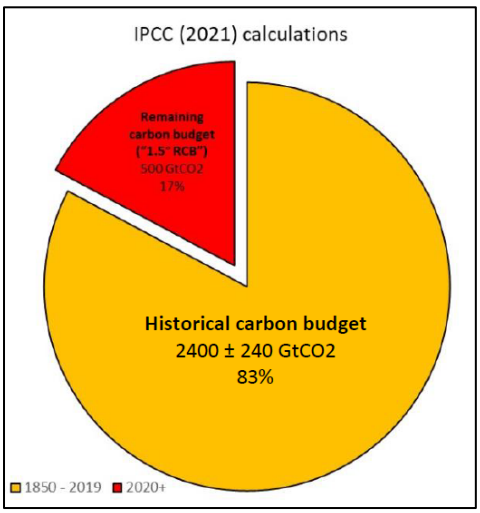
[3] SEI, Climate Analytics, E3G, IISD and UNEP, The Production Gap: Phasing down or phasing up?, 2023 (hereinafter "UNEP Production Gap Report") (available here), p. 12.

[4] UNEP 2023 Production Gap Report, p. 4.

[5] IPCC, Sixth Assessment Report, 2023, Synthesis Report (Working Groups I, II and III), Summary for Policymakers (available here), para. B.5; *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, ECtHR App. No. 53600/20, 9 May 2024 (hereinafter "*KlimaSeniorinnen v. Switzerland*"), paras. 116, and 569-572.

[6] IPCC, Sixth Assessment Report, 2023, Synthesis Report (Working Groups I, II and III), Summary for Policymakers (available here), para. C.4.

Figure 1: The total carbon budget to limit global warming to 1.5°C (Source: IPCC)[7]



6. In this figure, the entire red slice (that is, the remaining carbon budget to limit global warming to 1.5, or "1.5°C RCB") will be completely used up as a result of CO2 emissions resulting from existing fossil fuel infrastructure, absent abatement on a scale currently not technically possible. The IPCC, therefore, found that "in all scenarios [limiting global warming to 1.5°C], fossil fuel use is greatly reduced and unabated coal use is completely phased out by 2050."[8] In sum, the IPCC concludes that net-zero CO2 energy systems entail, at least, "[*i*] a substantial reduction in overall fossil fuel use, [*ii*] minimal use of unabated fossil fuels, [*iii*] use of carbon capture and storage in the remaining fossil fuel systems".[9]

7. Research by the IEA, in partnership with UNEP and the UNEP-convened Climate and Clean Air Coalition ("CCAC"), confirms the need to reduce significantly fossil fuel use; and to strengthen significantly abatement action. The research concludes that limiting global warming to 1.5°C requires (i) reducing fossil fuel use, such that "no new conventional long lead time oil and gas projects [that] are approved for development

[7] IPCC, Sixth Assessment Report, 2021, The Physical Science Basis (Working Group I), Summary for Policymakers (available here); Written Statement of Antigua and Barbuda, paras. 47, 48.

[8] IPCC, Chapter 3: Mitigation Pathways Compatible with Long-term Goals in Climate Change 2022 – Mitigation of Climate Change, (available here), p. 333.

[9] IPCC, Sixth Assessment Report, 2023, Synthesis Report (Working Groups I, II and III), Summary for Policymakers (available here), para. C.3.2. *See also* Keynote remarks by IPCC Chair Jim Skea at the MENA Climate Week (October 2023) (available here), summarizing the findings of the IPCC's Sixth Assessment report.

after 2023, and […] no new coal mines or coal mine lifetime extensions";[10] combined with (ii) significant abatement actions for existing fossil fuel projects, in particular "targeted action to reduce methane emissions from fossil fuel operations", deploying "all available methane deployment activities […] by 2030 across all fossil fuel production, processing and transport facilities."[11] The Report explains that "[m]ore than 75% of methane emissions from oil and gas operations and half of emissions from coal today can be abated with existing technology, often at low cost."[12]

8. Given the significant impact of fossil fuel production on climate change, the first Global Stocktake Statement, in 2023, confirmed the need to phase out unabated fossil fuel production.[13] Among the "key findings", the technical dialogue explained that:

> [A]chieving net zero CO2 and GHG emissions requires systems transformations across all sectors and contexts, including scaling up renewable energy while *phasing out all unabated fossil fuels*, ending deforestation, reducing non-CO2 emissions and implementing both supply- and demand-side measures. […]
>
> Scaling up renewable energy and phasing out all unabated fossil fuels are *indispensable elements* of just energy transitions to net zero emissions. Electrification, energy efficiency and demand-side management, as well as energy storage, are also important elements in net zero energy systems.[14]

[10] IEA, "The Imperative of Cutting Methane from Fossil Fuels An assessment of the benefits for the climate and health" (2023) (available here) (hereinafter "IEA Report"), p. 3. Other research confirmed that there is "a large consensus across multiple modelled climate and energy pathways, [that] developing any new oil and gas fields is incompatible with limiting warming to 1.5°C", *See* International Institute for Sustainable Development, "Financing a 1.5˚C-Aligned Transition, Insights from energy scenarios for financial institutions" (2023) (available here).

[11] The Report explains that "[m]ethane is a powerful climate pollutant", which is "responsible for around 30% of the rise in global temperatures since the Industrial Revolution and is the second largest contributor to global warming after CO2". IEA Report, pp. 4, 6.

[12] IEA Report, p. 3.

[13] At COP26, in November 2021, Parties to the Paris Agreement had agreed "to accelerate the development, deployment and dissemination of technologies, and the adoption of policies, to transition towards low-emission energy systems, including by rapidly scaling up the deployment of clean power generation and energy efficiency measures, including accelerating efforts towards the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies, while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition." Glasgow Climate Pact (available here).

[14] Technical Dialogue of the first Global Stocktake, Synthesis Report, (available here), paras. 17, 19. (emphasis supplied).

9. The Global Stocktake Decision provided detail on *how* and *when* to transition away from fossil fuels: "Transitioning away from fossil fuels in energy systems, in *a just, orderly and equitable manner, accelerating action in this critical decade*, so as to achieve *net zero by 2050* in keeping with *the science*".[15]

2. The international law obligations regarding fossil fuel production

10. Antigua and Barbuda focuses on the obligations of FFP States regarding fossil fuel production under customary international law, in particular under the prevention obligation.[16]

11. As explained in Antigua and Barbuda's previous statements, under the prevention obligation, States are under a due diligence obligation to make rapid, deep and sustained emissions reductions, sufficient to prevent significant environmental harm, consistent with fairness, equity and CBDR-RC.[17] Given the particularly significant adverse impact of fossil fuels on climate change, the prevention obligation has important repercussions for FFP States.

a. Fossil fuel production triggers the prevention obligation

12. For a producing State, the prevention obligation is triggered by, and a function of, (i) the harmful transboundary impact of anthropogenic emissions resulting from the *production* of fossil fuels *within* the State's own jurisdiction; and (ii) the harmful transboundary impact of anthropogenic emissions resulting from the *burning* of these fossil fuels, irrespective of where the fuels are burned.

13. These two points are inextricably linked: the production of fossil fuels leads almost inevitably to their burning. Indeed, as the UK Supreme Court recently ruled:

> The whole purpose of extracting fossil fuels is to make hydrocarbons available for combustion. It can therefore be said with *virtual certainty*

[15] UNFCCC COP, Decision 1/CMA.5, Outcome of the first global stocktake, UN Doc FCCC/PA/CMA/2023/16/Add.1 (15 March 2024) (available here), para. 28(d). (emphasis supplied).

[16] This is without prejudice to obligations on fossil fuel production stemming from other sources of international law, including the climate change regime, UNCLOS, and human rights law. *See also*, Written Statement of Tuvalu, paras. 61 – 68; Written Statement of COSIS, para. 62; Written Statement of Mauritius, paras. 77 – 82. 113; Written Statement of Belize, para. 45; Written Statement of Albania, para. 133; Written Statement of Vanuatu, paras. 144 – 146, 256, 273, 320; Written Statement of Costa Rica, para. 103.

[17] Written Statement of Antigua and Barbuda, paras. 12, 308 – 314, 338 – 342 ; Written Comments of Antigua and Barbuda, para. 6; Oral Statement of Antigua and Barbuda, CR 2024/36, 2 December 2024, p. 21, para. 22 (Mr. Zachary Philips).

> that, once oil has been extracted from the ground, the carbon contained within it will sooner or later be released into the atmosphere as carbon dioxide and so will contribute to global warming.[18]

14. It, therefore, seemed "plain" to the UK Supreme Court that the effects on the climate system of a proposed project to develop fossil fuel production include the GHG emissions resulting from burning the fossil fuels that will be produced during the project's lifetime. These GHG emissions must, therefore, be included in the project's environmental impact assessment ("EIA").[19]

15. The inclusion in this way of GHG emissions from burning fossil fuels is also consistent with the Greenhouse Gas Protocol ("GHG Protocol"), the world's most widely used GHG accounting standard. Under the GHG Protocol, the emissions of companies that produce fossil fuels include emissions resulting from the use of fossil fuels sold.[20]

16. This reasoning is pertinent for the application of the prevention obligation, which applies not only when significant harm has occurred, but also when there is a *risk* thereof.[21] In the case of fossil fuel production, it is "virtually certain" that extracted fossil fuels will be burned, resulting in significant harm to the environment.

17. In consequence, the FFP State's obligations under the prevention obligation must account for the totality of the emissions resulting from the production and burning of the fossil fuels to be produced, irrespective of where the fuels may be burned.

b. The obligations on fossil fuel producing States resulting from the prevention obligation

18. The standard of diligence applicable to States in the context of climate change is, in the words of the ITLOS, "stringent".[22] Specifically, as Antigua and Barbuda explained, to act with diligence, a State must do its utmost to make rapid, deep and sustained cuts to national

---

[18] *R (on the application of Finch on behalf of the Weald action Group) v. Surrey County Council and ors*, UK Supreme Court, [2024] UKSC 20, (hereinafter "*R. v Surrey County Council*") (available here), para. 2 (emphasis supplied).

[19] *R. v. Surrey County Council*, para. 7.

[20] These emissions are to be accounted for within Category 11 of Scope 3 ("use of goods sold"). *See* Technical Guidance for Calculating Scope 3 Emissions, Supplement to the Corporate Value Chain (Scope 3) Accounting and Reporting Standards, Greenhouse Gas Protocol (available here), Chapter 11.

[21] Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (hereinafter "Pulp Mills") para. 101. *See also* Written Statement of Antigua and Barbuda, para. 132.

[22] Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, (hereinafter "ITLOS Climate Advisory Opinion"), para. 241.

greenhouse gas emissions in light of the remaining carbon budget to limit global warming to 1.5 ("1.5°C RCB").[23] States must do so in accordance with the best available science, taking into account the evolving level of risk; and, their respective capabilities and responsibilities.

19. The implications of this obligation for the production of fossil fuels are clear.

20. *First*, for any fossil fuel project, States must conduct an EIA, including to assess whether effective and significant lifecycle abatement actions are (or will be) undertaken.

21. States must conduct an EIA whenever there is a risk that a proposed industrial activity within its jurisdiction – like a fossil fuel project – may have a significant adverse transboundary impact, in particular, on a shared resource – like the climate system.[24] As all States are affected by the increased GHG emissions resulting from fossil fuel production, the obligations to notify, consult, and coordinate must involve all States. FFP States could meet these obligations by using existing multilateral mechanisms, such as those under the climate change regime. For developing FFP States, the possibility to adopt appropriate abatement action may depend on financial support, and technology transfers, including from developed States.

22. *Second*, the uncontested science shows that, to limit global warming to 1.5°C, States must phase out unabated fossil fuels, taking into account their respective capabilities and responsibilities. This obligation applies to FFP States where the production of fossil fuels takes place. As explained above, the level of their required diligence must reflect the emissions resulting both from the production and the burning of fossil fuels, irrespective of where the fuels may be burned.

[23] Written Statement of Antigua and Barbuda, paras. 12, 308 – 314, 338 – 342; Written Comments of Antigua and Barbuda, para. 6; Oral Statement of Antigua and Barbuda, CR 2024/36, 2 December 2024, p. 21, para. 22 (Mr. Zachary Philips)

[24] Pulp Mills, para. 204.

23. Specifically, "in keeping with the science", FFP States must "*accelerat[e]* action [to transition away from fossil fuels] in this critical decade, so as to achieve net zero by 2050"; and do so "in a just, orderly and equitable manner".[25]

24. To recall, uncontested science shows that emissions from existing fossil fuel infrastructure, without appropriate abatement, will already exceed the 1.5°C RCB.[26] Staying within 1.5°C RCB requires a significant reduction in fossil fuel use; combined with a significant increase in effective abatement action.[27] Hence, in keeping with the science, a diligent developed FFP States must, in order to comply with its obligation of prevention:

    (a) Not approve new fossil fuel projects, or to provide an extension for, or expansion of, existing fossil fuel projects; and,

    (b) Urgently implement effective abatement actions with regard to existing fossil fuel projects, including "targeted actions to tackle methane emissions from fossil fuel production and use".[28]

25. The due diligence obligations on developing FFP States are less demanding. This is inherent in the notion of a due diligence obligation, is consistent with CBDR-RC,[29] and confirmed by the recent Global Stocktake, which calls for transitioning away from fossil fuels in energy systems, in "a just, orderly and equitable manner".[30] The obligations are differentiated, including as between developing FFP States, based on relevant factors, including:

    (a) Capabilities, such as:

        a. Financial means and financial support from developed States for a transition away from fossil fuels;

---

[25] UNFCCC COP, Decision 1/CMA.5, Outcome of the first global stocktake, UN Doc FCCC/PA/CMA/2023/16/Add.1 (15 March 2024) (available here), para 28(d).

[26] *See* paras. 4 – 7 above.

[27] *See* paras. 5- 7 above.

[28] IEA Report, p. 3. *See* para. 7 above.

[29] Written Statement of Antigua and Barbuda, paras. 328-337, 342; Oral Statement of Antigua and Barbuda, CR 2024/36, 2 December 2024, p. 21, para. 19 (Mr. Zachary Philips)

[30] UNFCCC COP, Decision 1/CMA.5, Outcome of the first global stocktake, UN Doc FCCC/PA/CMA/2023/16/Add.1 (15 March 2024) (available here), para 28(d).

b. Availability of technology, including through technology transfers, to support a "a just, orderly and equitable" transition from fossil fuels to renewable energy and to implement effective abatement;

c. National circumstances related, for instance, to general levels of economic and human development; economic dependence on fossil fuels; and the capacity of the State to transition away from fossil fuels (*e.g.*, grid transformation);

(b) Responsibilities, such as:

a. Historical and current emission levels, including from fossil fuel production;

b. Emissions resulting from other sources, in light of a State's fair share of the 1.5°C RCB.

B. Fossil fuel subsidies

26. In this Section, Antigua and Barbuda discusses the international law obligations on FFP States with regard to subsidies to support the production of fossil fuels ("FF subsidies"). Antigua and Barbuda first explains the scientific background on the need to phase out FF subsidies to limit global warming to 1.5°C; and, then, turns to the international law obligations, in particular flowing from the prevention obligation, relevant for addressing FF subsidies.

1. Scientific background: the need to phase out fossil fuel subsidies to limit global warming to 1.5°C

27. As explained above, given the significantly negative impact of fossil fuel production on climate change, States must urgently transition away from fossil fuels towards renewables to limit global warming to 1.5°C.[31]

28. FF subsidies undermine that process in several respects. *First*, FF subsidies stimulate the production and burning of fossil fuels, resulting in increased GHG emissions. *Second*, FF subsidies undermine the deployment of competing renewables, with significantly lower lifecycle GHG emissions.

[31] *See* Section A.1, above.

29. As a result, FF subsidies do the *exact opposite* of what the science indicates is required: they *aggravate* – instead of *internalizing* – the strongly negative climate externalities of fossil fuels (i.e., the uncosted significant negative impact of fossil fuels on the climate system and the environment more generally).

30. Despite these perverse impacts of FF subsidies on climate change, States continue to grant them in vast amounts. The global value of subsidies for FF production and consumption is estimated at around US$ 1.4 trillion in 2022;[32] and around US$ 7 trillion if the related environmental and social costs are included.[33]

31. Unsurprisingly, the scientific evidence from the IPCC finds that removing FF subsidies would reduce GHG emissions and generate other environmental benefits:

> Removing fossil fuel subsidies would reduce emissions, improve public revenue and macroeconomic performance, and yield other environmental and sustainable development benefits; subsidy removal may have adverse distributional impacts especially on the most economically vulnerable groups which, in some cases can be mitigated by measures such as redistributing revenue saved, all of which depend on national circumstances (*high confidence*); fossil fuel subsidy removal is projected by various studies to reduce global CO2 emissions by 1–4%, and GHG emissions by up to 10% by 2030, varying across regions (*medium confidence*).[34]

32. According to IMF research, removing explicit FF subsidies, and imposing corrective fiscal measures (to internalise the negative externality of fossil fuels), would reduce CO2 emissions by 43 percent below 'business as usual' levels in 2030 (34 percent below 2019 levels).[35] Doing so would be consistent with holding global warming to "well below 2°C" and "pursuing efforts to limit the temperature increase to 1.5°C".[36]

33. In response to the harmful impact of FF subsidies on climate change, States have acknowledged the need to phase out so-called "inefficient" FF subsidies – leaving

[32] OECD, 'OECD Inventory of Support Measures for Fossil Fuels 2023' (available here), p. 3.

[33] Simon Black et al, 'IMF Fossil Fuel Subsidies Data: 2023 Update' (2023) (available here), p. 5.

[34] IPCC, Sixth Assessment Report, 2023, Synthesis Report (Working Groups I, II and III), Summary for Policymakers (available here), para. E. 4.2.

[35] Explicit subsidies are defined as undercharging for the supply costs of fossil fuels; while implicit subsidies refer to undercharging for environmental costs and forgone consumption tax revenues. Simon Black et al, 'IMF Fossil Fuel Subsidies Data: 2023 Update' (2023) (available here).

[36] Simon Black et al, 'IMF Fossil Fuel Subsidies Data: 2023 Update' (2023) (available here), p. 4.

undefined the term "inefficient",[37] whilst acknowledging the need for a just transition and targeted support. Specifically, in November 2021, in the Glasgow Climate Pact, the UNFCCC COP called on parties to accelerate efforts "*to phase out inefficient fossil fuel subsidies*, while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition".[38] Earlier in 2024, the UNFCCC COP reiterated a similar call, agreeing that this action needs to happen "*as soon as possible*".[39]

2. The international law obligations regarding fossil fuel subsidies

34. In this Section, Antigua and Barbuda explains the international law obligations on FFP States with regard to FF subsidies, focusing on obligations stemming from the prevention obligation.[40]

35. Before doing so, Antigua and Barbuda notes that WTO rules, in particular the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), include disciplines on subsidies, including on fossil fuel subsidies. However, the WTO rules focus exclusively on the potential economic distortions of subsidies, without addressing at all the environmentally harmful impacts of subsidies.[41] As a result, WTO rules are insufficient to address the significant adverse environmental impact of granting FF

[37] Given the effects of FF subsidies described above, Antigua and Barbuda considers that FF subsidies are always inefficient from an environmental perspective.

[38] UNFCCC, 'Decision 1/CP.26, Glasgow Climate Pact', UN Doc FCCC/CP/2021/12/Add.1, 8 March 2022, (available here), para 20. (emphasis supplied). Previously, in 2009, the G20 leaders at the Pittsburgh Summit committed to "[r]ationalize and phase out over the medium term inefficient fossil fuel subsidies that encourage wasteful consumption" (G20 Leaders Statement: The Pittsburgh Summit, 24-25 September 2009). The UN Sustainable Development Goals (SDG 12.c) calls on countries to "rationalize inefficient fossil fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts, taking fully into account the specific needs and conditions of developing countries and minimizing the possible adverse impacts on their development in a manner that protects the poor and the affected communities". In 2022, Parties to the Convention on Biological Diversity ("CBD") agreed to "[i]dentify by 2025, and eliminate, phase out or reform incentives, including subsidies, harmful for biodiversity, in a proportionate, just, fair, effective and equitable way, while substantially and progressively reducing them by at least $500 billion per year by 2030, starting with the most harmful incentives, and scale up positive incentives for the conservation and sustainable use of biodiversity" (Target 18 of the Kunming-Montreal Global Biodiversity Framework (CBD/COP/DEC/15/4, 19 December 2022)).

[39] UNFCCC COP, Decision 1/CMA.5, Outcome of the first global stocktake, UN Doc FCCC/PA/CMA/2023/16/Add.1 (15 March 2024) (available here), para 28(h).

[40] This is without prejudice to obligations on FF subsidies under other sources of international law.

[41] *See, e.g.,* International Law Association, Lisbon Conference 2022, Sustainable Development and the Green Economy in International Trade Law (available here), paras. 34-36, 60-64.

subsidies. Instead, other sources of international law, including the prevention obligation, complement WTO rules by addressing the harmful environmental impact of such subsidies.

36. As explained in the previous section, to limit global warming to 1.5°C, FFP States must phase out unabated fossil fuels in a timely manner. As FF subsidies *stimulate*, instead of contributing to *phasing out*, fossil fuels, a diligent developed FFP State must, in order to comply with its obligation of prevention, not provide subsidies for the production of fossil fuels. This means that a developed FFP State must phase out existing FF subsidies in a timely manner, and not provide any new subsidies for fossil fuel production.

37. To ensure fairness, equity, and consistency with CBDR-RC, a diligent developing FFP State may take longer to phase out FF subsidies for fossil fuels. The level of differentiation is a function of each FFP State's capabilities and responsibilities, including its historic and current level of fossil fuel production.

II. QUESTION PUT BY JUDGE TLADI

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

38. The obligations in Article 4 of the Paris Agreement to prepare, communicate and maintain a "nationally determined contribution" ("NDC") are not merely procedural. By "merely procedural", Antigua and Barbuda refers to a position whereby Article 4 could be satisfied through a mere box-ticking exercise of notifying *any* NDC, even one that is manifestly inadequate in light of that State's capabilities, and in light of the remaining carbon budget; and/or one that the State does not seek to achieve through the pursuit of good faith efforts.

39. Many participants reject this position, agreeing that a State cannot comply with Article 4 by adopting and pursuing an NDC that is nothing but an empty vessel. This position – i.e., the view that there are substantive elements to the obligation in Article 4 – is based on a straightforward application of the rules of treaty interpretation, including (as raised by Judge Tladi's Question), the object and purpose of the Paris Agreement. Below, Antigua and Barbuda sets out its views on how each of the relevant interpretive elements – including object and purpose – support its position.

40. Antigua and Barbuda submits that Article 4 imposes substantive obligations on parties to prepare, communicate and maintain an NDC (progressively updated) in order to achieve rapid, deep and sustained GHG emission reductions, sufficient to prevent significant environmental harm, doing their utmost and using all means at their disposal, in a manner consistent with the principle of fairness, equity and common but differentiated responsibilities and respective capabilities, in light of different national circumstances ("CBDR-RC").[42]

41. This conclusion flows from the terms of Article 4, read in context, and is further supported by the object and purpose of the Paris Agreement and the UNFCCC. Antigua and Barbuda set out its arguments, in detail, in its Written Statement,[43] and summarises them below.

42. The term "nationally determined contribution" ("NDC") lies at the heart of the obligations in Article 4. That term, and the word "contribution" in particular, can only be understood in light of the Paris temperature goal and, more generally, the objective of the UNFCCC – that is, the object and purpose of these instruments. The term "NDC" in Article 4 refers to the mitigation action of each State (i.e., its "contribution") towards meeting the Paris temperature goal and achieving the UNFCCC objective of preventing dangerous anthropogenic interference with the climate system. In that respect, an NDC reflects each State's national share of the collective efforts to reduce emissions in line with the Paris temperature goal and the UNFCCC's objective.

[42] Written Statement of Antigua and Barbuda, paras. 328-337, 342; Oral Statement of Antigua and Barbuda, CR 2024/36, 2 December 2024, p. 21, para. 19 (Mr. Zachary Philips).

[43] *See* Written Statement of Antigua and Barbuda, paras. 231-297.

43. To that end, Article 4.2 establishes three distinct and cumulative obligations: States must (i) *prepare* an NDC; (i) *communicate* an NDC; and (iii) *maintain* their successive NDCs.

44. Thus, a State must first *prepare* an NDC which – based on the ordinary meaning of that term[44] – is *fit for the purpose* of contributing to the collective efforts to meet the Paris temperature goal and to prevent dangerous anthropogenic interference with the climate system.[45] The State must then *communicate* the NDC it has prepared, consistently with the requirements of COP Decision 4/CMA.1 ("the COP Decision"), which forms an important part of the relevant context for understanding Article 4; [46] and it must *maintain* each successive NDC it has prepared and communicated.

45. In *preparing* an NDC, States have some level of discretion as to the level of emission reductions they set as a target and how they will achieve that target. However, the discretion is not unfettered; it is limited by the terms of Article 4, when read together with the COP Decision.

46. For one, Article 4.3 provides that the NDC "will … reflect [States'] highest possible ambition", and "will represent a progression". The meaning of the word "will", as used in this provision, is straightforward: it is an auxiliary verb connoting a "command, promise, or determination".[47] Thus, Article 4.3 obliges States to prepare an NDC which sets emissions reductions at the highest possible level of ambition.

---

[44] The ordinary meaning of the verb "prepare" is to make ready for some purpose. *See* Oxford English Dictionary, "prepare, v." (available here).

[45] *See* Written Statement of Antigua and Barbuda, para. 241.

[46] UNFCCC COP, Decision 4/CMA.1, "Further guidance in relation to the mitigation section of decision 1/CP.21" (2018) (available here), hereinafter "COP Decision 4/CMA.1". COP Decisions can be considered subsequent agreements under Article 31.3(a) of the VCLT. The ICJ has clarified that resolutions like COP Decisions have interpretive relevance "where they are adopted by consensus or by a unanimous vote (*see, Whaling in the Antarctic (Australia v Japan: New Zealand intervening*), *Judgement, I.C.J Reports 2014*, p. 248, para. 46). Equally, the ILC has explained that the "legal effect of a decision adopted within the framework of a Conference of States Parties … may embody, explicitly or implicitly, a subsequent agreement under article 31, paragraph 3 *(a)*" (*see* ILC, "Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties", 2018, UN Doc. A/73/10, Conclusion 11.2 and *see* commentary para. 35 thereto as regards Article 31.3 and other subsequent practice for the purpose of Article 32).

[47] *See* Antigua and Barbuda's Written Statement, paras. 254-255, citing to Oxford English Dictionary, "will n." (available here).

47. In its Written Statement, Antigua and Barbuda has addressed the factors to be considered in preparing an NDC, including the remaining carbon budget ("RCB").[48] In that respect, some participants seem to argue that, absent "political" consensus among States on a methodology to determine precisely how to share the RCB, States can disregard the RCB in setting an NDC.[49] Antigua and Barbuda must respectfully disagree.

48. As explained in the Written Statement, the RCB represents the total amount of emissions that States can, collectively, still emit to keep global warming to 1.5°C. According to the IPCC, the RCB and the Paris temperature are logically inseparable – the RCB is a set of numerical inputs that, when summed with existing greenhouse gas emissions in the atmosphere, lead to a 1.5°C temperature rise. As a matter of logic, for an NDC to be consistent with – even rationally related to – the Paris temperature goal, a State must take the RCB into account in setting its NDC. To ignore the RCB in setting an NDC is to ignore the basic science on which the Paris temperature goal is built. Indeed, recognising the "importance of carbon budgets" to the IPCC, the European Court of Human Rights found that an "effective" emissions reduction policy cannot be put in place "in the absence of any domestic measure attempting to quantify [a State's] remaining carbon budget".[50]

49. Antigua and Barbuda, therefore, submits that each State must determine its NDC, among others, by allocating to itself an equitable share of the RCB – consistent with the need for an NDC to reflect the principle of fairness, equity and CBDR-RC.[51] The duty of States to take no more than an equitable share of the RCB is not premised a political consensus among States on a precise allocation key. A duty to act equitably (for example in the use of shared resources) does not depend on a pre-agreed political consensus on the details and modalities of what constitutes equitable conduct.

50. A State must also *communicate* the NDC it has prepared. The COP Decision, as part of the interpretive context, layers on complementary detail with respect to the obligation

[48] *See* Antigua and Barbuda's Written Statement, paras. 248-284.

[49] *See, e,g.,* Oral Statement of Switzerland, CR 2024/50, 11 December 2024, p. 57, para. 41 (M. Franz Perrez); Written Comments of the EU, paras. 40-47.

[50] KlimaSeniorinnen v. Switzerland, paras. 116, and 569-572.

[51] Written Statement of Antigua and Barbuda, para. 275.

to *communicate* an NDC. In particular, the COP decision requires States to explain, in writing, *how* each successive NDC has been prepared in a manner that is fit for purpose as regards (among others) the level of emissions reduction targets proposed, including how the NDC reflects the State's "highest possible ambition", and a "progression", under Article 4.3.[52]

51. These procedural obligations regarding a State's *communication* of its NDC confirm the existence of substantive obligations attached to how the State *prepares* its NDC in the first place. The need for a State to explain the points covered by the COP Decision shows that the NDC must be *prepared* in manner that demonstrably meets these explanatory requirements. Indeed, the alternative position is simply not logical – to illustrate, a State would be bound by a procedural obligation to communicate how an NDC has been prepared to reflect its highest possible ambition; but *not* bound by any substantive obligation to prepare an NDC that does, in fact, reflect its highest possible ambition. This would be absurd.

52. Finally, States must "maintain" each successive NDC they have prepared and communicated, i.e., they must "support or uphold [the NDC] in action", "keep up, preserve, cause to continue in being … to keep vigorous, effective, or unimpaired".[53] Necessarily, therefore, to maintain the NDC, a State *must* do its utmost to achieve the emissions reductions targets it has prepared and communicated. Other provisions of the Paris Agreement confirm the existence of a due diligence obligation to achieve their NDC, taking into account fairness, equity and the principle of CBDR-RC.[54] Not least, in the unmistakable language of obligation, Article 4.3 provides that States "shall pursue" measures to achieve the objective of their NDC, a manifest confirmation that Article 4 goes beyond mere procedural obligations.

53. Indeed, if it were otherwise, an NDC would quickly cease to provide a good faith statement of the State's emissions reduction target. As Antigua and Barbuda and others

[52] COP Decision 4/CMA.1, para. 7 and Annex I. Specifically, para. 7 provides that "Parties shall provide the information necessary for clarity, transparency and understanding contained in Annex I". Annex I refers to information relating to, among others, "[h]ow the Party considers that its nationally determined contribution is fair and ambitious in the light of its national circumstances", including "how the Party has addressed Article 4, paragraph 3, of the Paris Agreement".

[53] Oxford English Dictionary, "maintain v." (available here) (emphasis supplied).

[54] *See, e.g.,* Articles 3, 4.1 and 4.2.

have repeatedly emphasised, the NDC would become a misleading, empty vessel. In this way, the climate treaties are consistent with the customary obligation of prevention.

54. The object and purpose of the UNFCCC and the Paris Agreement support the interpretation of Article 4 set out above.[55] To recall, Article 2 of the UNFCCC includes the following:

> The ultimate objective of this Convention and any related legal instruments that the conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, the stabilization of greenhouse gas emissions in the atmosphere at a level that would prevent dangerous interference with the climate system.

55. Article 2 of the Paris Agreement confirms that the objective of that Agreement is to "enhance the implementation of the [UNFCCC], including its objective", by "aim[ing] to strengthen the global response to the threat of climate change", including through achieving the Paris temperature goal. The object and purpose of the Paris Agreement is, therefore, in sum: to prevent dangerous anthropogenic interference with the climate system through the achievement of the Paris temperature goal.

56. If States were under no obligation to prepare their NDC at a level representing its highest possible ambition, taking into account the remaining carbon budget, the object and purpose of the Paris Agreement would be wholly defeated. The same would be the case if States were under no obligation to take diligent action to achieve their intended NDC and, hence, to make no contribution to preventing dangerous anthropogenic interference with the climate system.

57. Put differently, the object and purpose of the UNFCCC and the Paris Agreement point very clearly to the imposition of substantive obligations. Box-ticking procedural obligations will not contribute meaningfully to preventing dangerous anthropogenic interference with the climate system or to holding global warming to 1.5°C.

58. In closing, Antigua and Barbuda notes that this response focuses on the substantive obligation to prepare, communicate and maintain an NDC which *reflects the highest possible level of ambition and a progression*. This is in the interests of brevity, and is

[55] *See* Written Statement of Antigua and Barbuda, para. 295.

without prejudice to the other substantive aspects of the obligation to prepare (and subsequently communicate and maintain) an NDC, which include the need to consider the best available scientific evidence; to reflect fairness, equity and the principle of CBDR-RC; to reflect special dispensation for least developed and small island developing States; and to be informed by the COP Global Stocktake Decision. Indeed, per the COP Decision, all these elements must be explained in the communication of the State's NDC. Antigua and Barbuda refers the Court to the relevant portions of its Written Statement on these points.[56]

III. QUESTION PUT BY JUDGE AURESCU

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

59. In Antigua and Barbuda's view, the legal content of the right to a clean, healthy, and sustainable environment**,** as recognised by the Human Rights Council (Resolution 48/13, 2021) and the UN General Assembly (2022), has been progressively clarified through decisions of national tribunals and regional human rights courts.[57] As clarified through these instruments and judicial decisions: (i) the customary right has individual and collective dimensions, and is owed to the present and future generations; (ii) complying with the right requires adherence to the norm of prevention, i.e., acting with due diligence to avoid transboundary harm; (iii) compliance with the right is essential to secure compliance with other human rights obligations.

60. In particular, in the 2001 Ogoni case, the African Commission on Human and Peoples' Rights considered the content of the right enshrined in Article 24 of the African Charter on Human and Peoples' Rights,[58] and found that it "requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural

[56] *See* Written Statement of Antigua and Barbuda, paras. 267-285.

[57] *See* Written Statement of Antigua and Barbuda, para. 182.

[58] African Charter on Human and Peoples' Right, Article 24: "All peoples shall have the rigt to a general satisfactory environment favourable to their development."

resources".[59] In other words, to comply with this right, States need to comply with the environmental norm of prevention, which requires each State to act with **due diligence** to avoid transboundary harm.[60]

61. Moreover, in its 2017 Advisory Opinion, the Inter-American Court of Human Rights clarified that the right to a clean, healthy and sustainable environment presents both individual and collective connotations and that, "[i]n its **collective** dimension", it "constitutes a universal value that is owed to both present and future generations".[61]

62. Hence, the recognition of the right to a clean, healthy and sustainable environment highlights the critical connection between a healthy environment and the enjoyment of human rights. The UN General Assembly Resolution underscores the common understanding of the interdependence inherent within the pillars of sustainable development of environmental protection and the promotion of human well-being, ensuring the full realization of all human rights for both present and future generations.[62] In doing so, the right to a clean, healthy and sustainable environment plays an important role in linking international law relating to the environment and human rights, as entwined elements of sustainable development.

63. Antigua and Barbuda also wishes to highlight the importance of other human rights as part of the international legal regime regarding climate change. It is widely accepted that the adverse effects of climate change have an impact on the effective enjoyment of a wide range of other human rights (including but not limited to the right to life, the right to adequate food, the right to water, the right to health, the right to adequate housing, and the right to self-determination)[63] and in order to comply with these rights, States are required to take proactive measures to prevent, minimise, mitigate, and

---

[59] ACHPR, Communication 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria (2001) (hereinafter "Ogoni"), para. 52.

[60] *See* Written Statement of Antigua and Barbuda, para. 183.

[61] Inter-American Commission on Human Rights, The Environment and 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 – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights), Advisory Opinion OC-23/17, IACHR Series A No 23, 15 November 2017 (hereinafter "IACHR Advisory Opinion), para. 59; See Written Statement of Antigua and Barbuda, para. 184.

[62] *See* Written Statement of Colombia, para. 3.67.

[63] *See* Written Statement of Antigua and Barbuda, paras. 189-195.

address the harmful effects of anthropogenic greenhouse gas emissions on the climate system.

64. Antigua and Barbuda draws attention to two further specific points. First, the specific (collective) nature of the adverse effects of climate change can lead to the recognition of a **collective dimension of other human rights** impaired by the climate crisis. This is for instance the case of the *right to respect for private and family life* (Article 8 of the ECHR), as interpreted by the European Court of Human Rights in *Klimaseniorinnen v. Switzerland*. In that judgment, the Court granted the applicant association standing to bring claims under Articles 2 and 8 of the ECHR, recognizing that the causes and adverse effects of climate change "are not the concern of any one particular individual, or group of individuals, but are rather 'a common concern of mankind'"; and that "collective action" "may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard", which would include future generations.[64]

65. Second, an essential link exists **between the duty of due diligence and the respect, protection and fulfilment of many human rights**.[65] In its 2017 Advisory Opinion, the Inter-American Court of Human Rights clarified that to ensure and respect the *right to life* and the *right to personal integrity*, for instance, States "have the obligation to prevent significant environmental damage within or outside their territory" which means that "States must regulate, supervise and monitor the activities within their jurisdiction that could produce significant environmental damage; conduct environmental impact assessments when there is a risk of significant environmental damage; prepare a contingency plan to establish safety measures and procedures to minimize the possibility of major environmental accidents; and mitigate any significant environmental damage that may have occurred".[66]

66. Similarly, the Human Rights Committee in its General Comment No. 36 stated that the obligation to respect and ensure the *right to life* includes the obligation for Sates to

[64] *KlimaSeniorinnen v. Switzerland*, para. 489.

[65] *See also* Written Statement of the Democratic Republic of the Congo, paras. 146, 148 and 154.

[66] Inter-American Commission on Human Rights, The Environment and 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 – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights), Advisory Opinion OC-23/17, IACHR Series A No 23, 15 November 2017, para. 242.

"ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment…".[67]

67. Along the same lines, in *Klimaseniorinnen v. Switzerland*, the European Court of Human Rights defined the content on the State's positive obligations under Article 8 of the ECHR (*Right to respect of private and family life*) as implying a primary duty "to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights, notably the right to private and family life and home under Article 8 of the Convention."[68] Moreover, the Court explicitly underlined the need for the competent domestic authorities, to "keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence."[69]

IV. QUESTION PUT BY JUDGE CHARLESWORTH

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

68. As many States have argued in these proceedings, the climate change treaties do not displace customary international law rules, either primary rules such as the obligation of prevention ("principles of general international law") and other treaty-based obligations, such as those under the United Nations Convention on the Law of the Sea ("UNCLOS") and human rights treaties; or, secondary rules on State responsibility ("claims or rights concerning compensation or liability").[70]

---

[67] Human Rights Committee, General Comment No. 36, *Article 6: Right to Life* (3 September 2019), para. 62. *See also* Written Statement of the Democratic Republic of the Congo, para. 155; Written Statement of Portugal, para. 74; Written Statement of Colombia, para. 3.68.

[68] KlimaSeniorinnen v. Switzerland, para. 546.

[69] KlimaSeniorinnen v. Switzerland, para. 550.

[70] *See* Written Comments of Antigua and Barbuda, paras. 92 – 101.

69. As Antigua and Barbuda has explained in some detail, this conclusion flows from an interpretation of the climate treaties themselves, from which it is not possible to discern an intention amongst the parties to displace any customary international law rules, either primary or secondary. In order for a treaty regime to displace any customary international law rules, there must be, at minimum, evidence of common intention amongst the parties to the treaty to do so; and the treaty must be clear and unambiguous in its expression of such an intent. This is absent in the three climate change treaties.

70. Indeed, not only is there no evidence of such a common intention, there are express statements rejecting the position that the climate change rules displace either primary or secondary rules of customary international law. These declarations were made at the conclusion of the UNFCCC, as well as each subsequent climate treaty, i.e., the Kyoto Protocol and the Paris Agreement. For instance, while ratifying the Paris Agreement, Marshall Islands declared that doing so "*shall in no way constitute a renunciation of any rights under any other laws, including international law*". In total, fifteen States made such declarations, many doing so repeatedly. Notably, most of these States are SIDS, i.e., those which – per the accepted premise of the question put to the Court – are "specially affected". The declarations are set out in full below.

71. These declarations must be taken into account as part of the Court's interpretive exercise, specifically under Article 31(2)(b) of the *Vienna Convention*. Such declarations are made at the time of signature or ratification; they are circulated to all other treaty parties by the United Nations Secretary General ("UNSG");[71] and the declarations have not been rejected or objected to by any other parties to the relevant treaties.[72] They have, accordingly, been accepted by the parties. Consequently, these declarations constitute "instrument[s] … made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty", under Article 31(2)(b). In any event, they can also be taken into

[71] *See* Summary of Practice of the Secretary-General as Depository of Multilateral Treaties, ST/LEG/7/Rev.1, available here; the UNSG is designated as the depository under Article 26 of the UNFCCC; Article X of the Kyoto Protocol; and Article 29 of the Paris Agreement.

[72] *See* the declarations and lack of objections on the UN Treaty Collections pages: here for the UNFCCC, here for the Kyoto Protocol and here for the Paris Agreement.

account as supplementary means under Article 32, constituting evidence of the Parties' shared intention at the time of concluding the treaties.

72. Thus, the significance of these declarations is that the Court must reject the arguments of certain States that the climate treaties are a self-contained regime which displaces other parts of international law, including *either* cornerstone principles of international law such as the obligation of prevention and relevant treaty-based rules; *or* secondary rules, including claims or rights concerning compensation or liability due to the adverse effects of climate change.

UNFCCC	
Fiji	The Government of Fiji declares its understanding that signature of the Convention shall, in no way, constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law.
Kiribati	The Government of the Republic of Kiribati declares its understanding that signature and /or ratification of the Convention shall in no way constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law.
Nauru	The Government of Nauru declares its understanding that signature of the Convention shall in no way constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law.
Tuvalu	The Government of Tuvalu declares its understanding that signature of the Convention shall in no way constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law.
Papua New Guinea	The Government of the Independent State of Papua New Guinea declares its understanding that ratification of the Convention shall in no way constitute a renunciation of any rights under International Law concerning State responsibility for the adverse effects of Climate Change as derogating from the principles of general International Law.

Paris Agreement	
Marshall Islands	…the Government of the Republic of the Marshall Islands declares its understanding that ratification of the Paris Agreement shall in no way constitute a renunciation of any rights under any other laws, including international law, and the communication depositing the Republic's instrument of ratification shall include a declaration to this effect for international record;
Cook Islands	The Government of the Cook Islands declares its understanding that acceptance of the Paris Agreement and its application shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Paris Agreement can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation due to the impacts of climate change.
Micronesia	The Government of the Federated States of Micronesia declares its understanding that its ratification of the Paris Agreement does not constitute a renunciation of any rights of the Government of the Federated States of Micronesia under international law concerning State responsibility for the adverse effects of climate change, and that no provision in the Paris Agreement can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation and liability due to the adverse effects of climate change;
Niue	The Government of Niue declares its understanding that acceptance of the Paris Agreement and its application shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Paris Agreement can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation due to the impacts of climate change.
Solomon Islands	… the Government of Solomon Islands declares its understanding that acceptance of the aforesaid Paris Agreement shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change; FURTHER, that the Government of Solomon Islands declares that no provision in this Paris Agreement can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation due to impacts of climate change;
Tuvalu	The Government of Tuvalu further declares its understanding that acceptance of the aforesaid Paris Agreement and its provisional application shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Paris Agreement can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation due to the impacts of climate change.

Nauru	… the Government, of Nauru declares its understanding that the ratification of the Agreement shall in no way constitute a renunciation of any rights under international law concerning State responsibility [for] the adverse effects of climate change. FURTHER, the Government of Nauru declares that no provisions in the Agreement can be interpreted as derogating from the principles of general international law. AND FURTHER, the Government of Nauru declares its understanding that Article 8 and decision 1/CP.21, paragraph 51 in no way limits the ability of Parties to UNFCCC or the Agreement to raise, discuss, or address any present or future concerns regarding the issues of liability and compensation.
Philippines	THAT it is the understanding of the Government of the Republic of the Philippines that its accession to and the implementation of the Paris Agreement shall in no way constitute a renunciation of rights under any local and international laws or treaties, including those concerning State responsibility for loss and damage associated with the adverse effects of climate change;
Vanuatu	WHEREAS the Government of the Republic of Vanuatu declares its understanding that ratification of the Paris Agreement shall in no way constitute a renunciation of any rights under any other laws, including international law, and the communication depositing the Republic's instrument of ratification shall include a declaration to this effect for international record;
Kyoto Protocol (including the Doha Amendment)	
Cook Islands	The Government of the Cook Islands declares its understanding that signature and subsequent ratification of the Kyoto Protocol shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Protocol can be interpreted as derogating from principles of general international law.
Kiribati	The Government of the Republic of Kiribati declares its understanding that accession to the Kyoto Protocol shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of the climate change and that no provision in the Protocol can be interpreted as derogating from principles of general international law.
Nauru	The Government of the Republic of Nauru declares its understanding that the ratification of the Kyoto Protocol shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change; … [The Government of the Republic of Nauru declares] that no provisions in the Protocol can be interpreted as derogating from the principles of general international law.
Niue	The Government of Niue declares its understanding that ratification of the Kyoto Protocol shall in no way constitute a

	renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change and that no provisions in the Protocol can be interpreted as derogating from the principles of general international law.
Belize	The Government of Belize declares its understanding that acceptance of the aforesaid Doha Amendment shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Protocol, as amended, can be interpreted as derogating from principles of general international law.
Marshall Islands	… the Government of the Republic of the Marshall Islands declares its understanding that ratification of the Doha Amendment shall in no way constitute a renunciation of any rights under the international law concerning State responsibility for the adverse of climate change and that no provision in the Protocol, as amended, can be interpreted as derogating from principles of general international law.
Micronesia	[T]he Government of the Federated States of Micronesia declares its understanding that ratification of the aforesaid Doha Amendment shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Protocol, as amended, can be interpreted as derogating from principles of general international law.
Nauru	[T]he Government of the Republic of Nauru declares its understanding that ratification of the aforesaid Doha Amendment shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Protocol, as amended, can be interpreted as derogating from principles of general international law.
Solomon Islands	The Government of Solomon Islands declares its understanding that acceptance of the aforesaid Amendment shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of the climate change and that no provision in the Protocol, as amended, can be interpreted as derogating from principles of general international law.
St. Lucia	The Government of Saint Lucia declares its understanding that ratification of the Doha Amendment shall in no way constitute a renunciation of any rights under the international law concerning State responsibility for the adverse effects of climate change and that no provision in the Protocol, as amended, can be interpreted as derogating from principles of general international law.
Venezuela	For the Bolivarian Republic of Venezuela, no provision of this Amendment, nor subsequent applications thereof through decisions of the Conference of the Parties, shall constitute a renunciation of any of its rights under international law, nor shall the application thereof be interpreted as a renunciation of or

	derogation from the general principles of international law, it being understood that all the provisions of article 2, paragraph 3, of the Kyoto Protocol and of articles 2 and 3 as well as article 4, paragraphs 8 and 10, of the United Nations Framework Agreement on Climate Change are in the national interest.

Zachary Phillips

Agent of Antigua and Barbuda