International Court of Justice

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

REQUEST FOR ADVISORY OPINION

Replies to the Oral Questions by the EUROPEAN UNION

Introduction

At the close of the oral proceedings before the Court, participants to these proceedings were invited to provide written replies to four questions posed by Judges Cleveland, Tladi, Aurescu and Charlesworth. By letter of 13 December 2024, the Registrar circulated these questions.

In complement to its written and oral submissions, the European Union would like to reply as follows to the questions put to the participants to the oral proceedings.

1. 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?"

a) Specific legal obligations with respect of fossil fuels subsidies

In the view of the European Union, there are, at this stage, no specific legal obligations for States in place under international law in respect of subsidies by States within whose jurisdiction fossil fuels are produced.

b) General legal obligations which may be of relevance for fossil fuels subsidies

The obligations under the Paris Agreement which bind all parties, and on which the EU has already made submissions, are, however, of relevance in respect of subsidies for fossil fuel production.

In particular, the obligation under Article 4, paragraph 2 and following of the Paris Agreement to prepare, communicate and maintain successive Nationally Determined Contributions (NDCs), which should demonstrate the highest possible level of ambition to meet the collective temperature goals set in Article 2 is relevant in this respect.

As has been explained by the European Union in its submissions, the substantive obligations in this respect are to be interpreted as obligations of conduct and due diligence and reflect that Parties should progressively increase their efforts to contribute to the overall objectives

of the Paris Agreement. Among the measures that Parties may consider to this end are measures that would seek to phase out subsidies for fossil fuel production.

Equally, The European Union recalls that Article 2, paragraph 1, point (c) of the Paris Agreement calls for *"making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."*

c) Political statements in respect of fossil fuels subsidies

As relevant context for interpreting the obligations under the Paris Agreement, the European Union further recalls certain international political commitments and pledges concerning the progressive reduction in subsidies for fossil fuels which have been expressed over time.

In particular, the European Union refers the Court to the political statement at the G20 Pittsburgh Summit which stated *"(t)oday we agreed [...] to phase out and rationalize over the medium-term inefficient fossil fuel subsidies"*[1] as well as to the Glasgow Climate Pact adopted at COP26 which called on *"Parties to [...] phase-out of inefficient fossil fuel subsidies"*[2].

The first Global Stocktake[3], which is considered to be the central outcome of COP28 and which, as provided in Article 14, paragraph 3, of the Paris Agreement, shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of the Agreement, as well as in enhancing international cooperation for climate action, recognises *"the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5 °C pathways"*.

As one of the ways *"to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches"* Parties are called to *"[a]ccelerating efforts towards the phase-down of unabated coal power", "[t]ransitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve*

1 OECD, 2009, Leaders' statement: the Pittsburgh Summit — September 24-25 2009, Organisation for Economic Co-operation and Development, points 12 and 24.

2 Glasgow Climate Pact, Decision 1/CMA.3, FCCC/PA/CMA/2021/10/Add.1, at point 36.

3 First Global Stocktake, Decision 1/CMA.5, FCCC/PA/CMA/2023/L.17.

net zero by 2050 in keeping with the science"[4] *and "[p]hasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible"*[5].

COP28 has, therefore, been reported as having closed *"with an agreement that signals the "beginning of the end" of the fossil fuel era by laying the ground for a swift, just and equitable transition, underpinned by deep emissions cuts and scaled-up finance"*[6].

The European Union recalls that Parties are to notify their updated NDCs in 2025.

d) Domestic implementation by the European Union

These legal obligations, political commitments and pledges regarding the phasing out of subsidies for the production of fossil fuels are reflected in the European Union's internal legal order, amongst others, in Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030[7], which provides in its Article 3 that *"(t)he attainment of the priority objectives set out in Article 2 shall require the following from the Commission, Member States, regional and local authorities and stakeholders, as appropriate: [...] (h) [...] phasing out environmentally harmful subsidies, in particular fossil fuel subsidies, at Union, national, regional and local level."*

Moreover, according to Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action[8] (Governance Regulation), the State of the Energy Union Report submitted by the Commission to the European Parliament and to the Council on a yearly basis must include an assessment of the *"Member States' progress towards phasing out energy subsidies, in particular for fossil fuels"*[9].

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4 See, on the stranded assets of fossil reserves which would thereby remain unburned, IPCC Sixth Assessment Report, Working Group III: Mitigation and Climate Change, pages 68 (Technical Summary), 646-648 (Section 6.4.2.7) and 698 (Box 6.13).

5 First Global Stocktake, at point 28(b), (d) and (h).

6 See at: https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era; See also speech delivered by UN Climate Change Executive Secretary Simon Stiell at the closing of COP28 in Dubai on 13 December 2023: *"COP28 also needed to signal a hard stop to humanity's core climate problem – fossil fuels and their planet-burning pollution.*
Whilst we didn't turn the page on the fossil fuel era in Dubai, this outcome is the beginning of the end."

7 Official Journal of the European Union, L 114, of 12 April 2022, page 22.

8 Official journal of the European Union, L 328, of 21 December 2018, page 1

9 Governance Regulation, Article 35, paragraph 2, point (n).

Furthermore, more recently, the Council of the European Union[10] reiterated the call for transitioning away from fossil fuels in energy systems in a just, orderly and equitable manner, in line with 1.5°C pathways, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science. The Council explicitly called for phasing out fossil fuel subsidies that do not address energy poverty or just transition, as soon as possible. It also underscored that this must go hand in hand with energy savings and the phase out of fossil fuel energy production and consumption globally.

Finally, for the sake of completeness, the attention of the Court is drawn to the fact that internally, under the Treaty on the Functioning of the European Union (TFEU), State aid measures are, in principle, prohibited[11], unless they have been authorized by the European Commission. In respect of fossil fuels, it follows from the applicable Commission guidelines[12] that the approach of the European Commission is not to authorize State aid to produce fossil fuels.

2. 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 the 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?"

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10 Council Conclusions of 14 October 2024, point 26, at https://data.consilium.europa.eu/doc/document/ST-14459-2024-INIT/en/pdf

11 Article 107, paragraph 1 TFEU:
"1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."

12 Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, Official Journal of the European Union, C 80 of 18 February 2022, page 1.

At the outset, it is to be recalled that the *"General Rule of Interpretation"* under Article 31 of the Vienna Convention on the Law of Treaties (VCLT) includes the interpretation 1° *"in good faith"*, 2° *"in accordance with the ordinary meaning to be given to the terms of the treaty"*, 3° *"in their context"* (which comprises, in addition to the text also certain agreements and instruments, and which also has to take into account subsequent agreements, subsequent practice and rules of international law), and 4° *"its object and purpose"* (sometimes the context and the object and purpose are considered in combination). In its commentary the International Law Commission (ILC) declined to establish a hierarchy between these elements of that general rule of interpretation, but rather underlined that this rule forms an integrated exercise[13].

As explained in greater detail in its written statement, the European Union has taken the view that the obligations with regard to the periodic submission of NDCs, as prescribed by Article 4, paragraphs 2 and following of the Paris Agreement, are, in essence, procedural obligations, which can be understood as obligations of result, while the obligations as to the content of such NDCs are obligations of conduct and due diligence.

This interpretation can be inferred from the ordinary meaning of the words *"shall prepare, communicate and maintain successive nationally determined contributions"* from which a firm procedural obligation can be derived and which can be interpreted as an obligation of result to have an NDC (the obligation to prepare communicate and maintain is thus, on its own, primarily a procedural obligation), while the words *"that it intends to achieve"* and *"with the aim of achieving the objectives of such contributions"*, as well as *"reflect its highest possible ambition"*, tend to demonstrate that the obligations as to the content of such NDCs are to interpreted as obligations of conduct and due diligence.

In the view of the European Union, this interpretation, which is solidly based on the ordinary meaning of the clear wording of Article 4 of the Paris Agreement, is not contradicted by the

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13 Yearbook of the International Law Commission, 1966, vol. II, page 225, point 8: *"The Commission, by heading the article "General rule of interpretation" in the singular and by underlining the connexion between paragraphs 1 and 2 and again between paragraph 3 and the two previous paragraphs, intended to indicate that the application of the means of interpretation in the article would be a single combined operation. All the various elements, as they were present in any given case, would be thrown into the crucible, and their interaction would give the legally relevant interpretation. Thus, article 27* [which now corresponds to Article 31 VCLT] *is entitled "General rule of interpretation" in the singular, not "General rules" in the plural, because the Commission desired to emphasize that the process of interpretation is a unity and that the provisions of the article form a single, closely integrated rule. ..."*

object and purpose of that provision or of the Paris Agreement[14]. To the contrary, it is reinforced.

Indeed, the object and purpose of the Paris Agreement and of the climate change treaty system in general, is to collectively address climate change.

In view of achieving this, a double quantified collective goal of keeping the temperature increase compared to pre-industrial levels well below 2° C, with efforts to keep it to 1,5° C is provided for (Articles 2 and 4, paragraph 1 of the Paris Agreement).

The central instruments for the achievement of this object and purpose are the obligation, for all States, to periodically adopt, communicate and maintain NDCs (Articles 3 and 4 paragraphs 2 and following of the Paris Agreement), with, in addition, certain financial and assistance obligations.

Consequently, while the obligation to prepare communicate and maintain successive NDCs is, as such, to be seen as a (procedural) obligation of result, the content of the NDCs is to be determined by the States, which are thereby bound by obligations of conduct and due diligence.

As explained, this does not mean that there would be an unlimited discretion for the States, because according to Article 4, paragraphs 2 and 3, which must be interpreted in good faith, NDCs have to reflect the *"highest possible ambition"* towards the timely achievement of the collective temperature goals. Such substantive obligation for States, which is an obligation of conduct and due diligence, can therefore be considered particularly "stringent". In addition, according to Article 4, paragraph 3 the successive NDCs must represent a *"progression beyond the Party's then current nationally determined contribution"*. Hence, one may consider that the discretion of the States for their NDCs is to be considered as calibrated by the general object and purpose of the Paris Agreement.

It is recalled that in its Opinion regarding the corresponding obligations under UNCLOS, the International Tribunal for the Law of the Sea considered such obligations of conduct to be qualified as a "stringent"[15].

Consequently, the European Union maintains the view that the interpretation it has set out in greater detail in its written and oral statements is in line with the general rule of interpretation of the VCLT, taken in combination of all its elements.

3. 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?"

The European Union considers that the conceptualization of the right to a clean, healthy and sustainable environment reflects the increasing recognition at scientific, political and judicial level of the close link between climate change and the enjoyment of human rights.

Various participants in these proceedings, including the European Union, have acknowledged the existence of this right and suggested that it is emerging as a norm of customary international law[16].

Indeed, the right to a clean, healthy and sustainable environment has been explicitly included in regional treaties ratified by 133 States and it enjoys constitutional protection in 110 States[17]. It has been recognised by the UN Generally Assembly in 2022[18] and, since then, has been explicitly acknowledged by the Conference of the Parties to the United Nations Framework

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15 Advisory Opinion of the 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 the Tribunal, Case No. 31), paragraphs 241, 243, 248, 256, 258, 279, 398, 399,400, and 441.

16 Written Statement of the European Union, paragraph 258; Written Comment of the European Union, paragraph 85.

17 A/77/284, paragraphs 23 and 24.

18 A/RES/76/300.

Convention on Climate Change (UNFCCC) in 2022[19] and in the first Global Stocktake decision in 2023[20].

The European Union submits that, regardless of a formal recognition of this right as a self-standing norm of customary international law (and until then), the right to a clean, healthy and sustainable environment already exists as an expression of the necessary systemic integration between international human rights and climate change. The content of this right can and should thus be determined on this basis.

It is essentially based on the principle of systemic integration that regional human rights courts as well as UN and regional bodies have increasingly recognised that existing human rights also entail obligations to protect the environment. Notably, the European Court of Human Rights (ECtHR) has in effect derived a human right to a clean, healthy and sustainable environment from existing human rights under the European Convention on Human Rights (ECHR). In particular, the ECtHR found that the right to respect for private and family life[21] must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life[22].

Similarly, the UN Human Rights Committee derived environmental protection duties from the right to life and to family life enshrined, respectively, in Articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR)[23], based on the systemic interpretation of the ICCPR with environmental law[24].

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19 UNFCCC 'Decision 1/CMA.4 Sharm el-Sheikh Implementation Plan' (17 March 2023) UN Doc FCCC/PA/CMA/2022/10/Add.1, preamble. ICJ Dossier No 174.

20 FCCC/PA/CMA/2023/L.17, preamble.

21 Enshrined in Article 8 of the ECHR.

22 See judgement of the European Court of Human Rights, *Case of Verein KlimaSeniorinnen Schweiz and Others V. Switzerland, Application no. 53600/20*, paragraph 519.

23 See notably, HRC, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 2019, paragraph 62: *"The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors."*; Teitiota v. New Zealand, Communication No. 2728/2016, CCPR/C/127/D/2728/2016, 23 September 2019, paragraphs 9.4 and 9.5; Portillo Cáceres v. Paraguay, Communication No. 2751/2016, CCPR/C/126/D/2751/2016, 20 September 2019, paragraph 7.8.

24 Likewise, systemic integration between human rights and the Paris Agreement has been recognised also in the context of the International Covenant on Economic, Social and Cultural Rights by the Committee

As an expression of the systemic integration between climate change and human rights law, the right to a clean, healthy and sustainable environment essentially entails a duty of States to respect, protect and fulfil human rights in relation to harm stemming from greenhouse gas (GHG) emissions, in line with relevant obligations under international climate change and environmental law[25].

As the Special Rapporteur[26] has indicated, the right to a clean, healthy and sustainable environment is a *"compound right"*, whose content *"is broad, interrelated and transversal to multiple areas"*[27], comprising both substantial and procedural elements. The Special Rapporteur considered that this right includes the substantial elements of clean air, safe climate, safe and sufficient water, healthy and sustainable food, non-toxic environments and healthy ecosystems and biodiversity[28], as well as the procedural elements of access to information, participation and access to justice[29].

In terms of positive obligations of States – to the extent that the right to a clean, healthy and sustainable environment represents an expression of the systemic integration between international climate change law and human rights law – it does not place on States obligations which are necessarily qualitatively or quantitatively different from the already existing human rights. Rather, it reflects the close link between climate change and the enjoyment of human rights and is *"necessary for the full enjoyment of the human rights to life, health, food, water, housing and so forth"*[30] in the context of climate change.

Drawing from the findings of the ECtHR in the recent *Klimaseniorinnen* case, the European Union considers that the obligations of States regarding the right to a clean, healthy and

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on Economic, Social and Cultural Rights, see: Committee on Economic, Social and Cultural Rights, General Comment No. 26 (2022) on land and economic, social and cultural rights, E/C.12/GC/26, 24 January 2023, paragraph 56.

25 See in this regard the Written Statement and Written Comments of the European Union in these proceedings, in particular paragraphs 272-272 of the Written Statement of the European Union.

26 See: Mandate of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, A/HRC/RES/55/2.

27 A/79/270, paragraphs 5 and 38.

28 A/79/270, paragraphs 50-70.

29 A/79/270, paragraphs 39-49. See also: Recommendation of the Committee of Ministers of the Council of Europe to member States on human rights and the protection of the environment, Recommendation CM/Rec(2022)20, page 2: *"(...) everyone has the fundamental right to freedom, equality and adequate conditions of life, and to an environment that is of sufficient quality to permit a life of dignity and well-being in which those rights and freedoms can be fully realised".*

30 A/HRC/37/59, paragraph 15.

sustainable environment, as an expression of the systemic integration between international climate change and human rights law, notably comprise:

- the duty to adopt, in good time and in a consistent manner, regulations and measures capable of mitigating the effects of climate change[31]. In line with the commitments undertaken under the Paris Agreement, States must adopt necessary regulations and measures aimed at preventing an increase in GHG concentrations and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights[32], i.e. beyond the collective goal of the 1.5/2 °C limit.
- the duty to effectively implement and enforce those measures vis-à-vis private operators, in accordance with due diligence[33].
- the duty to adopt and implement adaptation measures aimed at alleviating the most severe or imminent consequences of climate change, considering particular needs for protection and in accordance with best available evidence[34].
- the duty to provide access to essential information allowing individuals to assess risks to their health and lives[35].
- the duty to put in place adequate decision-making processes, which take into consideration the views of individuals concerned, provide for procedural safeguards especially on access to information, and are informed by appropriate studies and investigations[36].

These considerations show that the States are required to respect, protect and fulfil the human right to a clean, healthy and sustainable environment already based on the existing body of international law – regardless of the formal recognition of this right as an autonomous norm of customary international law.

However, such a recognition would have significant advantages. First, it would clarify the content of this right and the actions required of States to maintain a good state of the environment that is compatible with life in dignity and good health and the full enjoyment of

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31 See judgement of the European Court of Human Rights, *Case of Verein KlimaSeniorinnen Schweiz and Others V. Switzerland, Application no. 53600/20*, paragraph 545.

32 Ibid, paragraph 546.

33 Ibid, paragraph 538 and 549.

34 Ibid, paragraph 552.

35 Ibid, paragraph 538.

36 Ibid, paragraph 539.

other fundamental rights[37]. Thereby, it would also incentivize stronger environmental law at domestic and regional level[38] and facilitate a more coherent and effective protection of human rights in the context of climate change.

Finally, this recognition would further consolidate the link between human rights and climate change law. To quote the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: *"As Victor Hugo famously said, it is impossible to resist an idea whose time has come. The interdependence of human rights and the environment is an idea whose time is here"*[39].

4. 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?".

As to the significance of declarations made by some States on becoming parties to the UNFCCC and the Paris Agreement, the European Union's reply is premised on the understanding that "interpretative declaration" means a unilateral statement, however phrased or named, made by a State or an international organization, whereby that State or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions[40].

The European Union recalls at the outset that, as far as the UNFCCC is concerned, four States (Fiji, Kiribati, Nauru and Papua New Guinea)[41] have made declarations on the relationship between the UNFCCC on one hand, and rights under international law concerning State responsibility and principles of general international law on the other. All these declarations

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37 See in this regard: Parliamentary Assembly of the Council of Europe, Recommendation 2211 (2021), adopted on 29 September 2021, paragraph 3.1.

38 See in this regard: Council of Europe, Parliamentary Assembly of the Council of Europe, Resolution 2396 (2021), adopted on 29 September 2021, paragraph 8.

39 A/HRC/37/59, paragraph 20.

40 ILC, Guide to Practice on Reservations to Treaties 2011, paragraph 1.2.

41 See https://unfccc.int/process-and-meetings/the-convention/status-of-ratification/declarations-by-parties

distinguish between (i) rights concerning State responsibility and (ii) principles of general international law.

In relation to the Paris Agreement, nine States (Cook Islands, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Philippines, Solomon Islands, Tuvalu and Vanuatu)[42] have made declarations on the relationship between that agreement with general international law. Except for the declarations made by Marshall Islands and Vanuatu which refer to *"any rights under any other laws, including international law"*, all declarations provide for a distinction between (i) rights concerning State responsibility and (ii) principles of general international law or any claims or rights concerning compensation and liability.

Against this background, the European Union wishes to make the following observations.

First, the aforesaid declarations set out how the States making them understand the obligations arising from the UNFCCC and the Paris Agreement. By themselves, these unilateral declarations are therefore not constitutive of a common interpretation which would be shared by the States which have not made the same declarations.

Second, these declarations record the understanding of some States that no provision in the said agreements may be interpreted as derogation from principles of general international law or any rights concerning compensation or liability. In this respect, it should be noted that the wording used in the question put by Judge Charlesworth suggests that it primarily refers to the second part of certain declarations to the Paris Agreement, namely 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"*[43], and less to the first part, according to which *"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"*[44].

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42 See: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvii-7-d&chapter=27&clang=_en

43 See the wording of the declaration by the Federated States of Micronesia to the Paris Agreement.

44 See the wording of the declaration by Cook Islands to the Paris Agreement.

Third, these declarations set out the understanding that the UNFCCC and the Paris Agreement are to be interpreted in a manner that is compatible with principles of general international law.

Fourth, the European Union recalls, as explained in more detail in its written and oral submissions, that, in its understanding, (i) there is a relationship of systemic integration between the UNFCCC and the Paris Agreement on one hand and other applicable rule of customary international law on the other[45]; and (ii) the customary international law rules of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) are not disapplied by the Paris Agreement[46].

Finally, it is worth recalling that all Parties to the UNFCCC agreed, when adopting the Paris Agreement, that Article 8 of the Agreement, which addresses "loss and damage," does not involve or provide a basis for any liability or compensation. There is nothing inconsistent between this deliberate decision and the aforementioned declarations.

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45 See Written Statement of the European Union, paragraphs 226 et seq.

46 See Written Statement of the European Union, paragraphs 348 et seq., and Written Comments of the European Union, paragraphs 88-92.