

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE  
(REQUEST FOR ADVISORY OPINION)

WRITTEN COMMENTS OF TUVALU ON THE WRITTEN STATEMENTS  
MADE BY OTHER STATES AND INTERNATIONAL ORGANIZATIONS



14 AUGUST 2024

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## I. Introduction

1. Pursuant to the order of the International Court of Justice (the “Court”) of 20 April 2023, Tuvalu submits these written comments on the written statements made by other States and international organizations (“Written Comments”) on the request of the United Nations General Assembly for an advisory opinion on the obligations of States in respect of climate change (the “Request”). The Court received 91 written statements from 95 States and international organizations on the Request between 22 March and 2 April 2024<sup>1</sup>. By order dated 30 May 2024, the Court extended to 15 August 2024 the time-limit within which all written comments on the Request may be presented to the Court.

2. As explained in Tuvalu’s written statement of 22 March 2024, the impacts of climate change in Tuvalu have devastated its marine environment and threaten to make life untenable on Tuvalu’s atoll islands. These impacts will intensify without rapid and dramatic mitigation and adaptation measures. Tuvalu is one of the only sovereign States on Earth facing the existential risk of full submergence due to sea-level rise by the end of this century, assuming current rates of greenhouse gas (“GHG”) emissions without sufficient adaptation.

3. Tuvalu acknowledges those States that amplified Tuvalu’s voice in highlighting the existential crisis it faces<sup>2</sup>. Tuvalu also expresses solidarity with the many other States, including small island States, that described the catastrophic harm they suffer from climate change, along with the difficulties in adapting to it.

4. Tuvalu endorses the written comments of the Commission of Small Island States on Climate Change and International Law (“COSIS”)—of which it serves as Co-Chair together with Antigua and Barbuda—particularly with regard to the best available science relating to climate change, States’ obligations under international environmental law, and the legal consequences of breaches of those obligations.

5. The overwhelming consensus across the written statements is that international law is not and cannot be silent in the face of the climate crisis. Tuvalu agrees with this consensus and emphasizes that small island States cannot survive without rapid reductions in GHG emissions in line with a global phaseout of fossil fuels. Tuvalu reiterates that its traditional concepts of *kaitasi* and *fale-pili*—which express good-neighbourliness and care for community—must guide the global response to climate change<sup>3</sup>.

6. In these Written Comments, Tuvalu focuses on the most important observations in relation to the written statements made by other States and international organizations, divided into four chapters: this introduction in Chapter I; comments on part (a) of the Request regarding States’ international obligations in respect of climate change in Chapter II;

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<sup>1</sup> International Court of Justice, Press Release No. 2024/31, Obligations of States in Respect of Climate Change (Request for Advisory Opinion): Filing of Written Statements (12 April 2024).

<sup>2</sup> See written statements of Antigua and Barbuda, ¶¶ 1, 70–71, 96; The Bahamas, ¶¶ 20(b), 217; Kenya, ¶ 5.68; Kiribati, ¶ 28; Liechtenstein, ¶ 71; Marshall Islands, ¶ 103; Mauritius, ¶¶ 138–139; Federated States of Micronesia, ¶¶ 25–35; Philippines, ¶ 106(b); Saint Vincent and the Grenadines, ¶ 8; Solomon Islands, ¶¶ 28, 215; Vanuatu, ¶ 299.

<sup>3</sup> See Ambassador Tapugao Falefou, *Tuvalu and the Impacts of Climate Change* (2017), pp. 148, 217, 276.

comments on part (b) of the Request regarding the legal consequences for breaches of those obligations in Chapter III; and concluding observations in Chapter IV<sup>4</sup>.

## II. Obligations of States Under International Law in Respect of Climate Change

7. In this Chapter, Tuvalu first sets out the overwhelming agreement in the written statements that climate change impacts a number of international obligations particularly relevant to the existential threats that Tuvalu faces, including those to respect States' sovereignty and right of survival, to respect the nonderogable rights of peoples, and to promote, protect, and respect human rights (Section A). Tuvalu then turns to the implications for international human rights resulting from the transboundary context of climate change (Section B). Finally, Tuvalu addresses how these obligations converge to require States to, at a minimum, take all measures necessary to limit average global temperature rise to within 1.5°C of pre-industrial levels, including by phasing out fossil fuels (Section C).

8. Tuvalu also notes that these customary obligations are longstanding and arise out of known risks based on the unequivocal scientific evidence related to the adverse impacts of climate change dating back for several decades. It is, therefore, no excuse to suggest that such obligations have arisen only recently, or in any way that breaches can occur only on a go-forward basis; in this important respect, Tuvalu supports the submissions of at least 17 States and international organizations<sup>5</sup> to the effect that, in the words of Vanuatu, “[t]he basic requirement . . . that, for a breach to occur, the relevant obligation must be binding on the State at the time it displays the violative conduct[] is clearly met”<sup>6</sup>.

### A. BROAD AGREEMENT THAT CLIMATE CHANGE UNDERMINES THE RIGHTS OF STATES, PEOPLES, AND PERSONS

9. The written statements made by States and international organizations demonstrate broad agreement that States must respect State sovereignty and every State's right to survival; must respect the nonderogable rights of peoples; and must promote, protect, and respect human rights. The written statements also largely agree that the negative effects of climate change undermine those rights of States, peoples, and persons.

#### 1. *Respect for State Sovereignty and Every State's Right to Survival*

10. The written statements of at least 26 States and international organizations explicitly agree that the negative impacts relating to climate change undermine States' enjoyment of their rights to sovereignty and survival<sup>7</sup>, with no participant taking the contrary view. Many

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<sup>4</sup> These Written Comments are not intended to be comprehensive; silence on other issues addressed in the written statements should not be interpreted as agreement.

<sup>5</sup> Written statements of Albania, ¶ 98, fn. 140; Antigua and Barbuda, ¶ 107; The Bahamas, ¶ 80; Brazil, ¶ 26; Cook Islands, ¶¶ 161–165; Costa Rica, ¶¶ 37–39; Dominican Republic, ¶¶ 4.9–4.10; Egypt, ¶¶ 304–314; Kenya, ¶ 3.12; Kiribati, ¶¶ 183–187; Mauritius, ¶ 39; New Zealand, ¶ 22; Saint Lucia, ¶¶ 87–89; Samoa, ¶ 121; Vanuatu ¶¶ 526–529; International Union for the Conservation of Nature (“IUCN”), ¶ 355; Organization of African, Caribbean, and Pacific States (“OACPS”), ¶ 152.

<sup>6</sup> Vanuatu written statement, ¶ 529.

<sup>7</sup> Written statements of Australia, ¶ 1.19; The Bahamas, ¶ 217; Bangladesh, ¶¶ 88–89, 122; Brazil, ¶ 26; Costa Rica, ¶¶ 38, 49, 73–74; Democratic Republic of the Congo, § III.A.2.a; Dominican Republic, ¶¶ 4.34–4.42; El Salvador, ¶ 57; Grenada, ¶ 71; Kiribati, ¶¶ 109–145; Marshall Islands, ¶ 104; Nauru, ¶¶ 34–36, 46; Pakistan, ¶¶ 30–39; Palau, ¶¶ 15–16; Portugal, ¶ 33; Samoa ¶¶ 109–113; Sri Lanka, ¶¶ 97–101; Tonga, ¶ 233; Uruguay ¶¶ 121–122; Vanuatu, ¶ 300; African Union, ¶¶ 91–94; Alliance of Small Island States

States and international organizations also agree that negative impacts relating to climate change impede the exercise of States' permanent sovereignty over their natural resources<sup>8</sup>.

11. The Dominican Republic notes, for example, that the principle of territorial integrity “entails an obligation to respect the definition, delineation and territorial integrity of an existing State” and underscores that the “right of every State to survival” has been recognized by the Court as “fundamental”<sup>9</sup>. Vanuatu states that climate change “impairs territorial sovereignty and inhibits the affected peoples from making a free choice about their futures”<sup>10</sup>. Kiribati emphasizes that “[a]t the heart of international law lies the principle of sovereign equality”, meaning “that States must respect the equal sovereignty of other States and hence may not cause, by acts or omissions, significant harm to them or to common resources”<sup>11</sup>. Brazil, too, stresses the importance of State sovereignty and explained that “the respect of the sovereignty of other states entails a limit to the freedom of any given state”, which has been “in force in international law for centuries”<sup>12</sup>. Several States and international organizations acknowledge, in particular, that submergence of land territory due to sea-level rise impairs States' enjoyment of their rights to sovereignty and survival<sup>13</sup>.

12. As COSIS sets out in its written statement, most States—and a strong majority of island and coastal ones—agree that respect for States' sovereignty and territorial integrity require States to recognize that maritime baselines remain fixed notwithstanding physical changes to the coastline due to sea-level rise<sup>14</sup>. At least 104 States had acknowledged their agreement with fixed maritime baselines by the time that Tuvalu had filed its written statement<sup>15</sup>. Albania and El Salvador added their support in their written statements<sup>16</sup>, taking the consensus to at least 106 States.

13. No participant disagreed with Tuvalu that States' obligations to respect sovereignty and States' right of survival in the climate change context include an inherent transboundary dimension that requires States to avoid harm caused by conduct within their jurisdiction or control that has extraterritorial effects<sup>17</sup>. This makes good sense: States' obligations to respect

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(“AOSIS”), Annex IV, ¶ 8; COSIS, ¶¶ 66, 68–73; Forum Fisheries Agency, ¶ 33; OACPS, ¶¶ 97–100; Pacific Islands Forum, ¶ 33.

<sup>8</sup> See written statements of Antigua and Barbuda, ¶¶ 183, 599; The Bahamas, ¶ 44; Bangladesh, § IV.B.1(c); Barbados, ¶ 202; Belize, ¶ 11; Dominican Republic, ¶¶ 4.17, 4.45; Kiribati, ¶¶ 86, 132–140, 187, 199; Federated States of Micronesia, ¶¶ 23, 114; New Zealand, fn. 40; Samoa, §§ II.D, IV.A; Sierra Leone, ¶¶ 3.86–3.99; Vanuatu, ¶¶ 293–307, 514; African Union, § IV.E.1; AOSIS, Annex 5, ¶ 10; COSIS, ¶¶ 70–72, 78; Forum Fisheries Agency, ¶ 36; Pacific Islands Forum, ¶ 33. See also Costa Rica, ¶ 72; Ecuador, ¶¶ 1.29–1.33, 3.19–3.20; Kenya, ¶¶ 5.28–5.29; Liechtenstein, ¶ 77; Namibia, ¶¶ 26–38; Saint Vincent and Grenadines, ¶¶ 10, 98–99; Solomon Islands, ¶ 183.

<sup>9</sup> Dominican Republic written statement, ¶¶ 4.35–4.36 (quoting *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403, Dissenting Opinion of Judge Koroma, ¶ 21); see also *id.*, ¶¶ 4.34–4.42.

<sup>10</sup> Vanuatu written statement, ¶ 300.

<sup>11</sup> Kiribati written statement, ¶¶ 110–112.

<sup>12</sup> Brazil written statement, ¶ 26.

<sup>13</sup> See, e.g., written statements of Australia, ¶ 1.19; The Bahamas, ¶ 217; Dominican Republic, ¶ 4.37; El Salvador, ¶ 56; Grenada, ¶ 71; Kiribati, ¶ 86; Tonga, ¶ 233; Vanuatu, ¶ 300; COSIS, ¶¶ 70–72.

<sup>14</sup> COSIS written statement, ¶ 72.

<sup>15</sup> See *id.*

<sup>16</sup> Written statements of Albania, ¶ 136; El Salvador, ¶¶ 55–58.

<sup>17</sup> Tuvalu written statement, ¶ 102.

the sovereignty and survival of other States would be meaningless if these obligations did not encompass conduct with effects outside their territorial jurisdiction<sup>18</sup>. The Court’s 1949 *Corfu Channel* judgment set out the general principle in terms of “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of others”<sup>19</sup>. The Court applied that principle in *Pulp Mills* to hold that a “State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State”<sup>20</sup>.

14. In their written statements, three States and one international organization adopt the position that all States’ sovereign rights, including their permanent sovereignty over natural resources and right to development, limit their obligations to mitigate GHG emissions<sup>21</sup>. One State takes this view with respect only to developing oil-exporting States<sup>22</sup>. But States cannot exercise sovereignty over their natural resources in a way that would violate their obligations under international environmental law, including to prevent transboundary harm to other States. This is particularly the case where such harm impedes the rights of such other States to development and permanent sovereignty over their own natural resources, particularly States responsible for low or negligible GHG emissions<sup>23</sup>. The United Nations Convention on the Law of the Sea (“UNCLOS”), for example, imposes obligations on States Parties to protect and preserve the marine environment *even where* they may implicate States’ exercise of their sovereign rights: Article 193 of UNCLOS recognizes that States’ “sovereign right to exploit their natural resources” must be carried out “in accordance with their duty to protect and preserve the marine environment”<sup>24</sup>. In its advisory opinion dated 21 May 2024 on the obligations of States under UNCLOS in relation to climate change, the International Tribunal for the Law of the Sea (“ITLOS”) unanimously held that Article 193 “places a constraint upon States’ exercise of their sovereign right” and “shows the importance the Convention attaches to the protection and preservation of the marine environment”<sup>25</sup>.

15. Likewise, both the Stockholm and Rio Declarations recognize that “the sovereign right to exploit their own resources” is subject to “the responsibility to ensure that activities within

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<sup>18</sup> The Court has thus consistently found these obligations breached in the presence of cross-border harm and other intrusions. See COSIS written statement, ¶ 69 (citing *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, p. 665, ¶ 93; *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2018, p. 139, ¶ 205(3)(a); *Right of Passage over Indian Territory (Merits)*, Judgment, I.C.J. Reports 1960, p. 6 at 45; *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States)*, Judgment, I.C.J. Reports 1986, p. 14, ¶¶ 250–251).

<sup>19</sup> *Corfu Channel (United Kingdom v. Albania)*, Judgment, I.C.J. Reports 1949, p. 4 (“*Corfu Channel Judgment*”) at 22; see COSIS written statement, § III.A.

<sup>20</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, ¶ 101 (citing *Corfu Channel Judgment*, p. 22); see also COSIS written comments, ¶ 58.

<sup>21</sup> Written statements of Argentina, ¶¶ 42–44; Kuwait, ¶¶ 10, 14, 29, 73; Saudi Arabia, ¶¶ 4.16, 4.19; Organization of Petroleum Exporting Countries (“OPEC”), ¶ 24.

<sup>22</sup> Timor-Leste written statement, ¶¶ 146–160.

<sup>23</sup> See written statements of Bangladesh, ¶ 122; COSIS, ¶ 71.

<sup>24</sup> UNCLOS, *United Nations Treaty Series*, Vol. 1833, p. 3 (1982) (Dossier No. 45), Art. 193.

<sup>25</sup> ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion Submitted to ITLOS)*, Case No. 31, *Advisory Opinion, ITLOS Reports 2024*, p. \_\_ (“COSIS Advisory Opinion”), ¶ 187.

their jurisdiction or control do not cause damage to the environment of other States”<sup>26</sup>— principles also reflected in the United Nations Framework Convention on Climate Change (the “UNFCCC”) and the Convention on Biological Diversity<sup>27</sup>. These principles flow from States’ general obligations under international environmental law, such as those to prevent transboundary harm caused by activities within their jurisdiction or control; to prevent, reduce, and control pollution of the marine environment through GHG emissions; and to employ a precautionary approach when regulating activities that may harm the environment, as set out in the ITLOS advisory opinion<sup>28</sup> and COSIS’s written statement<sup>29</sup>.

## 2. *Respect for Peoples’ Nonderogable Rights*

16. The written statements reflect broad agreement that, under customary international law, States must respect peoples’ nonderogable rights, including the right to self-determination, and peoples may not be deprived of their means of subsistence<sup>30</sup>.

17. Singapore, for example, rightly cites the right to self-determination as “a fundamental principle of international law” that is threatened by the “[a]dverse effects of climate change, especially sea level rise, [which] can in extreme scenarios completely inundate the territory of a State or render it incapable of sustaining a permanent population, posing profound challenges to the survival of that State”<sup>31</sup>. The African Union agrees that “States are under a duty to ‘refrain’ from taking action that would deprive peoples of their right to self-determination and disrupt the territorial integrity of another State”, and that “the right to self-determination can be violated by climate impacts that are . . . endanger[ing] the habitability and existence of low-lying island States”<sup>32</sup>. Chile submits that the Court “should apply the

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<sup>26</sup> See Declaration of the United Nations Conference on the Human Environment, document A/CONF.48/14/Rev.1 (16 June 1972) (Dossier No. 136) (“Stockholm Declaration”), Principle 21; Rio Declaration on Environment and Development, document A/CONF.151/26 (Vol. I) (Annex I) (12 August 1992) (Dossier No. 137) (“Rio Declaration”), Principle 2.

<sup>27</sup> UNFCCC, *United Nations Treaty Series*, Vol. 1771, p. 107 (1992), Preamble (“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control *do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction . . .*” (emphasis added)); Convention on Biological Diversity, *United Nations Treaty Series*, Vol. 1760, p. 79 (1992), Art. 3 (“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”).

<sup>28</sup> See ITLOS, *COSIS Advisory Opinion*, §§ VII.D.

<sup>29</sup> See COSIS written statement, § III.

<sup>30</sup> See written statements of Albania, § IV.B; Antigua and Barbuda, § III.A.4; The Bahamas, § IV.C.1; Bangladesh, § IV.B.1.c; Barbados, ¶ 328; Bolivia, § 2; Burkina Faso, ¶¶ 201–206; Chile, § III.E; Colombia, ¶ 54; Cook Islands, § V.B; Costa Rica, § D(a)(ix)–(x); Democratic Republic of the Congo, ¶¶ 151; Dominican Republic, § 4.II.C; Kenya, § 5.V; Kiribati, § IV.B; Liechtenstein, § 5.I; Madagascar, § III.D.1; Marshall Islands, ¶¶ 93–95; Mauritius, § V.D.2; Federated States of Micronesia, ¶ 80; Nauru, § V; Philippines, ¶¶ 104–106; Saint Lucia, ¶¶ 38–39; Saint Vincent and the Grenadines, ¶ 109; Samoa, ¶ 185; Sierra Leone, § II.2.II.D; Singapore, § III.D.2; Solomon Islands, § VII.B; Sri Lanka, § IV.B; Timor-Leste, § IX.D; Vanuatu, §§ 4.4.3, 4.4.4; African Union, § III.A.4; AOSIS, Annex 4, ¶¶ 9–10; OACPS, § III.B.1; COSIS, § 3.A; European Union, § 4.6.2; Forum Fisheries Agency, ¶ 36; Melanesian Spearhead Group, ¶ 233–251; Pacific Islands Forum, § D.2.

<sup>31</sup> Singapore written statement, ¶ 3.81.

<sup>32</sup> African Union written statement, ¶ 198.

relevant obligations contained in various international human rights instruments” and endorses the United Nations Human Rights Council’s statement that “climate change-related impacts have a range of implications, both direct and indirect, for the enjoyment of . . . the right to self-determination”<sup>33</sup>.

18. Participants further acknowledge that the rights to self-determination and subsistence are peremptory norms of international law<sup>34</sup>, with no participant taking an opposing view. For example, the Organization of African, Caribbean, and Pacific States (“OACPS”) agrees that “the right to self-determination is a *jus cogens* norm of contemporary international law, which generates *erga omnes* obligations, binding on all members of the international community”<sup>35</sup>. Vanuatu, another small island nation critically affected by climate change, highlights the right to self-determination as having “*erga omnes* character” and “enjoy[ing] the status of a *jus cogens* norm”<sup>36</sup>. Liechtenstein agrees that the right to self-determination, which “includes the right . . . not to be deprived of [a people’s] own means of subsistence”, is “a *jus cogens* norm”<sup>37</sup> and “an obligation of an *erga omnes* character”<sup>38</sup>, which States are obligated to recognize in particular in respect of “States whose land territory becomes inundated by rising sea-levels, and whose populations may as a result be relocated”<sup>39</sup>. Many participants join Tuvalu in drawing particular attention to the nonderogable rights of Indigenous peoples affected by climate change, including under the United Nations Declaration on the Rights of Indigenous Peoples<sup>40</sup>.

19. Since then, the Court has confirmed that peoples’ right to self-determination entails the “right of a people freely to determine its political status and to pursue its economic, social and cultural development” over the entirety of their territory, territorial integrity being a “corollary of the right to self-determination”<sup>41</sup>.

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<sup>33</sup> Chile written statement, ¶¶ 64, 68 (citing Human Rights Council, resolution 41/21, Human Rights and Climate Change, document A/HRC/RES/41/21 (23 July 2019)).

<sup>34</sup> See written statements of Antigua and Barbuda, § III.A.4; Costa Rica, ¶¶ 71–72, 128; Liechtenstein, § 5.I; Nauru, § V; Saint Vincent and the Grenadines, ¶ 109; Sierra Leone, § II.2.II.D; Timor-Leste, § IX.D; Tuvalu, § III.A; Vanuatu, § 4.4.3(E); OACPS, § III.B.1; COSIS, § III.A; European Union, ¶¶ 235–238; Melanesian Spearhead Group, ¶ 233–251.

<sup>35</sup> OACPS written statement, ¶ 66 (internal citations omitted).

<sup>36</sup> Vanuatu written statement, ¶ 289.

<sup>37</sup> Liechtenstein written statement, ¶ 27.

<sup>38</sup> *Id.*, ¶ 28.

<sup>39</sup> *Id.*, ¶ 75.

<sup>40</sup> Written statements of Antigua and Barbuda, ¶¶ 188, 195; Australia, ¶ 3.57; The Bahamas, ¶ 207 & fn. 540; Barbados, ¶¶ 154–157; Burkina Faso, ¶¶ 211–219; Colombia, ¶¶ 2.60–2.66, 3.66–3.71, Annex I, ¶ 58; Cook Islands, ¶¶ 225–228; Dominican Republic, ¶ 4.48; Ecuador, ¶¶ 3.100–3.102, 4.30; Kiribati, ¶¶ 165–171; Liechtenstein, ¶ 70; Mauritius, ¶¶ 167–169; Mexico, ¶ 32; Federated States of Micronesia, ¶¶ 78–88; Nepal, ¶ 35; New Zealand, ¶ 111; Saint Vincent and the Grenadines, ¶¶ 109–110; Samoa, ¶¶ 185–186; Sierra Leone, ¶ 3.92; Solomon Islands, ¶ 225.3; Sri Lanka, ¶ 94; Tuvalu, ¶ 77; Vanuatu, ¶ 292; OACPS, ¶¶ 70–71, 123–191, African Union, ¶ 198(b); COSIS, ¶ 76; Melanesian Spearhead Group, ¶ 273–277.

<sup>41</sup> *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024*, p. \_\_, ¶¶ 237, 241 (citing *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 129 (“Chagos Advisory Opinion”), ¶ 160).



3. *Obligation to Promote, Protect, and Respect Human Rights,  
Including to Cooperate Globally*

20. The written statements of the vast majority of States and international organizations agree not only that longstanding international obligations require States to promote, protect, and respect human rights implicated by climate change and its effects, but also that failing to ensure the protection of the climate system from GHG emissions will undermine those rights<sup>42</sup>. Antigua and Barbuda recognizes, for example, that, in light of the “inherent interdependence of environmental protection and enjoyment of human rights”, “a healthy environment is fundamental to the full enjoyment of a vast range of human rights, and conversely, environmental degradation interferes with the enjoyment of these rights”<sup>43</sup>. The African Union likewise acknowledges “the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”<sup>44</sup>. Tuvalu is aligned with at least 47 States and international organizations that recognize in their written statements the human right to a clean, healthy, and sustainable environment—including those that consider that right to be fundamental and that the obligation to respect it reflects a rule of customary international law<sup>45</sup>—and that it is undermined by climate change<sup>46</sup>. At least 30 participants also agree with Tuvalu that States must cooperate under international law to promote, protect, and respect human rights from

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<sup>42</sup> See written statements of Albania, ¶¶ 94–111; Antigua and Barbuda, ¶¶ 171–197, 347–348; Argentina, ¶ 38; Australia, ¶¶ 3.60–3.67; The Bahamas, ¶¶ 141–175; Bangladesh, § IV.B.1; Barbados, ¶¶ 160–166; Bolivia, ¶¶ 13–42; Burkina Faso, § IV.B.2; Cameroon, ¶¶ 11–13; Chile, ¶¶ 64–70; Colombia, ¶¶ 3.66–3.72; Cook Islands, ¶¶ 138–140, 145, 181–194; Costa Rica, ¶¶ 75–85, 92; Democratic Republic of the Congo, ¶¶ 145–157; Dominican Republic, § 4.II.C; Ecuador, § 3.IV; Egypt, § VI.B.7; El Salvador, ¶¶ 42–43; Germany, ¶ 90; Grenada, ¶ 24; India, ¶¶ 77–79; Kenya, § 5.V; Kiribati, ¶¶ 155–171; Republic of Korea, ¶¶ 28–31; Latvia, ¶¶ 62–71; Liechtenstein, § 6; Madagascar, § III.D; Marshall Islands, ¶ 50; Mauritius, ¶¶ 155–187; Mexico, ¶¶ 32, 86–104; Federated States of Micronesia, ¶¶ 78–88; Namibia, § IV.B; Nauru, § V; Nepal, ¶ 19; Netherlands, §§ 3.C, 4.B; Philippines, ¶¶ 104–107; Portugal, § IV.A.iii; Saint Vincent and the Grenadines, § VI.E; Samoa, ¶¶ 177–186; Seychelles, § II.D; Sierra Leone, § III(2)(II); Singapore, § III.D; Slovenia, § II; Solomon Islands, ¶ 164; Spain, ¶¶ 8, 15–16; Sri Lanka, ¶ 94; Thailand, ¶¶ 26–28; Timor-Leste, § IX; Tonga, § IX; Tuvalu § III.B; Uruguay, ¶ 110; Vanuatu, §§ 4.4.4(A)–(C); Viet Nam, ¶¶ 21, 23; African Union, § IV(E); COSIS, ¶ 129; European Union, § 4.6.2.1; Forum Fisheries Agency, ¶ 27; IUCN, § 8; Melanesian Spearhead Group, ¶¶ 252–289; OACPS, § III.B.8.

<sup>43</sup> Antigua and Barbuda written statement, ¶ 182.

<sup>44</sup> African Union written statement, ¶ 189 (quoting the Stockholm Declaration, Principle 1).

<sup>45</sup> See written statements of Costa Rica, ¶ 82; Ecuador, ¶ 3.108; El Salvador, ¶ 42; Philippines, ¶ 54; Sierra Leone, ¶ 3.117; Sri Lanka, ¶ 94(b); Vanuatu, ¶ 379; European Union, ¶ 258; Melanesian Spearhead Group, ¶¶ 284–286.

<sup>46</sup> See written statements of Albania, ¶ 96; Antigua and Barbuda, ¶¶ 180–185; Argentina, ¶ 38; The Bahamas, ¶ 141; Bangladesh, ¶ 110; Barbados, ¶¶ 164–166; Bolivia, ¶ 17; Burkina Faso, ¶¶ 215–219; Canada, ¶ 24; Chile, ¶ 64; Colombia, ¶ 3.67; Cook Islands, ¶ 214; Costa Rica, ¶¶ 81–82; Democratic Republic of the Congo, ¶¶ 147–156; Ecuador, ¶¶ 3.103–3.108; El Salvador, ¶¶ 42–43; Grenada, ¶ 65; Kenya, ¶¶ 5.73–5.75; Republic of Korea, ¶ 28; Liechtenstein, ¶¶ 45–47; Madagascar, § III.D.2; Marshall Islands, ¶ 113; Mauritius, ¶¶ 184–185; Mexico, ¶¶ 87–96; Federated States of Micronesia, ¶¶ 78–80; Namibia, ¶¶ 121–126; Nepal, ¶ 31; Netherlands, ¶¶ 3.27, 3.34; New Zealand, ¶¶ 112, 143; Philippines, ¶¶ 11, 54; Portugal, ¶ 69; Saint Vincent and the Grenadines, ¶¶ 37, 120–123; Seychelles, ¶¶ 136–145; Sierra Leone, § 2.II.F; Slovenia, § II.A; Solomon Islands, ¶ 1.7; Spain, ¶¶ 14–17; Sri Lanka, ¶ 94(b); Thailand, ¶ 27; Timor-Leste, ¶ 298; Tuvalu, ¶ 100; Vanuatu, § 4.4.4.C; African Union, ¶¶ 62, 192; COSIS, ¶ 132; European Union, § 4.6.2.2; IUCN, ¶ 481; Melanesian Spearhead Group, ¶¶ 283–289.

climate change in light of the inherently global nature of the crisis<sup>47</sup>, with no participant taking an opposing view.

21. Only a few written statements seek to deny or limit the role that States' human rights obligations play in respect of climate change. Three States argue that the UNFCCC and the Paris Agreement constitute *lex specialis* that displaces specifically States' human rights obligations<sup>48</sup>, and eight States take the position that international human rights law does not give rise to specific obligations to address climate change beyond those in the UNFCCC and the Paris Agreement<sup>49</sup>. Just as the UNFCCC and the Paris Agreement do not constitute *lex specialis* to the exclusion of international environmental law for the reasons COSIS sets out in its written comments<sup>50</sup>, the UNFCCC and the Paris Agreement, on the one hand, and human rights law, on the other, are separate sources of international law that do not conflict with each other. The Paris Agreement itself acknowledges that States must "respect, promote and consider their respective obligations on human rights" implicated by climate change<sup>51</sup>. As Tuvalu explains in its written statement, international human rights treaties and bodies make clear that their obligations apply in *any* context in which a State's actions or omissions undermine a protected right<sup>52</sup>.

22. A majority of participants introduced overwhelming evidence demonstrating that climate change undermines human rights<sup>53</sup>. Tuvalu itself describes the loss of its land due to

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<sup>47</sup> Written statements of Albania, ¶ 87; Argentina, ¶ 38; Australia, ¶¶ 3.58, 3.65–3.67; The Bahamas, ¶ 110; Bangladesh, ¶ 105; Bolivia, ¶ 15; Burkina Faso, § IV.B.3; Cook Islands, ¶ 185; Ecuador, ¶ 3.103; Egypt, ¶ 219; Kenya, ¶ 4.6; Latvia, ¶ 70; Federated States of Micronesia, ¶ 78; Namibia, ¶ 93; New Zealand, ¶¶ 111, 122; Portugal, ¶¶ 69–74; Sierra Leone, ¶¶ 3.71, 3.81; Singapore, ¶ 3.73; Slovenia, ¶¶ 44–45; Switzerland, ¶ 7; Tuvalu, ¶ 103; Vanuatu, ¶ 312; African Union, ¶ 198; AOSIS, Annex 4, ¶¶ 11–14; COSIS, § III.C.2; IUCN, ¶ 497; Forum Fisheries Agency, ¶ 27; Melanesian Spearhead Group, ¶ 258; OACPS, ¶ 182; Pacific Islands Forum, ¶ 36.

<sup>48</sup> Written statements of China, ¶ 123; Saudi Arabia, ¶¶ 1.15, 4.97–4.98; Timor-Leste, ¶¶ 88–93.

<sup>49</sup> Written statements of Indonesia, ¶ 44; Iran, ¶ 131; Japan, ¶ 11; New Zealand, § 4.3; Russia, pp. 19–20; Saudi Arabia, ¶¶ 1.15, 4.97–4.98, 5.5–5.6; United Kingdom, ¶¶ 33, 122–130; United States, ¶ 4.39.

<sup>50</sup> See COSIS written comments, § III.C.3.

<sup>51</sup> Paris Agreement, *United Nations Treaty Series*, Vol. 3156, p. 79 (2015) (Dossier No. 16) ("Paris Agreement"), Preamble; see also 26th Conference of the Parties to the UNFCCC, Conference Report, document FCCC/PA/CMA/2021/10/Add.1 (8 March 2022), Addendum (Decisions Adopted), decision 1/CMA.3, Glasgow Climate Pact (13 November 2021), Preamble ("Parties should, when taking action to address climate change, respect, promote and consider their *respective obligations on human rights*, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity." (emphasis added)).

<sup>52</sup> See Tuvalu written statement, ¶ 101 (citing the ICCPR, the ICESCR, the Human Rights Council, and the Human Rights Committee).

<sup>53</sup> See written statements of Albania, ¶¶ 95–97; Antigua and Barbuda, ¶¶ 186–197; The Bahamas, ¶¶ 144–158; Bangladesh, ¶¶ 106–123; Barbados, ¶ 164; Bolivia, ¶ 13; Burkina Faso, § I.B.2; Chile, ¶¶ 64–66; Colombia, ¶ 3.68; Cook Islands, ¶¶ 212–234; Costa Rica, ¶¶ 66–67, ¶¶ 77–78; Democratic Republic of the Congo, § II.B; Dominican Republic, ¶ 4.43, 4.47; Egypt, ¶¶ 198–243; El Salvador, ¶¶ 18–21, 46; France, § II.A.2; Ghana, ¶¶ 32–36; Grenada, ¶¶ 70–71; Indonesia, ¶¶ 41–42; Kenya, ¶¶ 3.23–3.27; Kiribati, ¶¶ 54–64, 83–84; Liechtenstein, ¶¶ 27–71; Madagascar, § III.D; Marshall Islands, ¶¶ 107–117; Mauritius, ¶¶ 167–185; Mexico, ¶¶ 86–95; Federated States of Micronesia, ¶¶ 79–80, 85; Namibia, ¶¶ 89–94, 103, 125; Nauru, ¶¶ 16–25; Nepal, ¶¶ 12–13; Pakistan, ¶¶ 8–9; Peru, ¶¶ 54–56; Philippines, ¶¶ 41–48; Portugal, ¶¶ 71–80; Romania, ¶ 81; Saint Lucia, ¶¶ 24–26, 34; Saint Vincent and the Grenadines, ¶¶ 11, 31–32, 35; Samoa, ¶¶ 22–47, 65–67; Seychelles, ¶¶ 143–146; Sierra Leone, ¶¶ 3.54–3.58; Solomon Islands, ¶¶ 42–45; South Africa, ¶¶ 23–26; Sri Lanka, ¶¶ 60–67, 74–74; Timor-Leste, ¶¶ 296–298; Tonga, ¶¶ 56, 68–72, 103–109; Tuvalu, ¶ 104; United Arab Emirates, ¶ 31; Uruguay, ¶¶ 34–40; Vanuatu, ¶¶ 86–88; Viet Nam, ¶¶ 37–39;

climate change, and that “[c]limate change devastates all aspects of Tuvaluans lives: their homes, customs, economy, livelihood, infrastructure, food and water, and way of life”<sup>54</sup>. Tuvalu’s “people are already suffering catastrophic harms on their land [and] infrastructure”, which “are on track to worsen.”<sup>55</sup> Tuvalu submitted with its written statement compelling evidence of the impact of climate change on Tuvaluans’ rights to life, family, property, housing, food, water, and equality, among others:

- (a) Lina Peleiti, a government employee residing in Funafuti, describes how a strong cyclone in Tuvalu destroyed her home, leaving her without stable housing<sup>56</sup>.
- (b) Itaia Lausavene, a Tuvaluan farmer, explains that saltwater intrusion is impeding the growth of *pulaka*, a root crop that has been a staple of the Tuvaluan diet for “hundreds and hundreds of years”<sup>57</sup>.
- (c) Grace Malie and Ioane Hawaii, two young Tuvaluans, describes how climate change is undermining traditional Tuvaluan cultural practices, including those involving food like *pulaka*<sup>58</sup>.
- (d) Mr. Hawaii also explains how climate change disproportionately harms persons with disabilities<sup>59</sup>.
- (e) Three Tuvaluans demonstrates a three-dimensional model of the main islet in Funafuti to show how sea-level rise and inundation events affect housing, schools, markets, community halls, and the atoll’s only hospital, and how effective adaptation can protect that critical infrastructure<sup>60</sup>.
- (f) Tomasi Kaitu, a magistrate judge in Funafuti, describes how a litigant in his court lost 20 percent of his land due to sea-level rise<sup>61</sup>.

23. As many participants, including Tuvalu, explain, human rights bodies have recognized that climate change implicates human rights<sup>62</sup>. Since the submission of the written statements, the European Court of Human Rights confirmed in *KlimaSeniorinnen v. Switzerland* that human rights obligations apply in the context of climate change. The European Court held that Switzerland’s failure to “put[] in place the relevant domestic regulatory framework” to

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African Union, ¶¶ 188–213; COSIS, ¶¶ 53–55, 132–134; Forum Fisheries Agency, ¶¶ 27–30; Melanesian Spearhead Group, ¶¶ 46–83, ¶¶ 98–134, 238–245; WHO, ¶¶ 8–15.

<sup>54</sup> Written statement of Tuvalu, ¶ 6; *see generally id.*, ¶¶ 25–53 (describing some of the most severe effects of climate change to Tuvalu).

<sup>55</sup> Tuvalu written statement, ¶ 70.

<sup>56</sup> Ms. Peleiti’s video is available at <https://bit.ly/TuvaluElder>.

<sup>57</sup> Mr. Lausavene’s video is available at <https://bit.ly/TuvaluFarmer>.

<sup>58</sup> Ms. Malie’s and Mr. Hawaii’s video is available at <https://bit.ly/TuvaluCulture>.

<sup>59</sup> Mr. Hawaii’s second video is available at <https://bit.ly/TuvaluPWD>.

<sup>60</sup> The presenters are Naomi Maheu, Ministry of Foreign Affairs, Labour, and Trade; Faatupu Simeti, Climate Change Department; and Vaiaoga Vaisaueri Lamioko, a youth climate change activist. The demonstration is available at <https://bit.ly/Tuvalu3DModel>.

<sup>61</sup> Mr. Kaitu’s video is available at <https://bit.ly/TuvaluLand>.

<sup>62</sup> *See, e.g.*, Tuvalu written statement, § III.B (citing, among others, the General Assembly, the Human Rights Council, the Human Rights Committee, and the Inter-American Court of Human Rights).

tackle climate change violated Switzerland’s obligations to respect the right to private and family life under Article 8 of the European Convention of Human Rights<sup>63</sup>. The European Court also recognized that, to ensure that human rights obligations “are practical and effective, not theoretical and illusory”<sup>64</sup>, they had to be interpreted and “updated with due diligence . . . based on the best available evidence”<sup>65</sup>, and therefore held that the right to private and family life required that States “adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change”<sup>66</sup>.

24. ITLOS, too, in its unanimous, landmark advisory opinion on obligations regarding climate change under UNCLOS, “notes that climate change represents an existential threat and raises human rights concerns”<sup>67</sup>. Judge Stanisław Pawlak wrote separately that he considered States internationally responsible for the “lack of adequate protection of persons against diverse impacts of climate change within the framework of international human rights law” in line with jurisprudence from human rights bodies, including the European Court<sup>68</sup>.

#### B. TRANSBOUNDARY NATURE OF STATES’ INTERNATIONAL OBLIGATIONS IN THE CONTEXT OF CLIMATE CHANGE

25. The rights of State sovereignty and survival, as well as States’ obligations to respect peoples’ right to self-determination and the right to subsistence, clearly are implicated in light of the negative, transboundary impacts related to climate change. This is inherent in the nature of those rights as principally governing inter-State relations, as Nauru affirmed<sup>69</sup>. The United Nations Charter refers to the right to self-determination in the interest of developing “friendly relations *among nations*”<sup>70</sup>. The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (the “Friendly Relations Declaration”) underscores the duty of “every *State*” to “respect” the right to self-determination “in accordance with the provisions of the Charter”<sup>71</sup>. The Court has affirmed the “broad scope of application” of the right to self-determination in the inter-State context<sup>72</sup>. Likewise, the absence of limiting language in the International Covenant on Civil and Political Rights (the “ICCPR”) and the International

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<sup>63</sup> European Court of Human Rights, Grand Chamber, *Verein KlimaSeniorinnen Schweiz et al. v. Switzerland*, application no. 53600/20, Judgment (Merits and Just Satisfaction) (9 April 2024), ¶¶ 573–574.

<sup>64</sup> *Id.*, ¶ 545.

<sup>65</sup> *Id.*, ¶ 550.

<sup>66</sup> *Id.*, ¶ 545.

<sup>67</sup> ITLOS, *COSIS* Advisory Opinion, ¶ 66.

<sup>68</sup> *Id.*, Declaration of Judge Pawlak, ¶¶ 1–5.

<sup>69</sup> Nauru written statement, § V.

<sup>70</sup> United Nations Charter, Art. 1(2) (emphasis added).

<sup>71</sup> United Nations General Assembly, resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, document A/RES/2625(XXV) (24 October 1970) (“Friendly Relations Declaration”), p. 123 (emphasis added); *see also* United Nations Human Rights Committee, General Comment No. 12: Article 1 (Right to Self-Determination), document HRI/GEN/1/Rev.1 (13 March 1984), p. 13, ¶ 5 (noting that the right to self-determination enshrined in Article 1 of the ICCPR “entails corresponding duties for all States and the international community”).

<sup>72</sup> *See Chagos* Advisory Opinion, ¶ 144.

Covenant on Economic, Social, and Cultural Rights (the “ICESCR”) accounts for that feature of the right to self-determination<sup>73</sup>.

26. Likewise, international human rights are implicated in the context of climate change in light of the inherently transboundary effects of global warming. As discussed above, if a State knowingly allows its territory to be used for acts that violate the integrity of another State, it has unlawfully imposed its power in the territory of that State<sup>74</sup>. The same principles would apply to acts by one State that interfere unlawfully with the ability of other States to meet their human rights obligations to the individuals subject to their jurisdiction and control. In such circumstances, the breaching State could be said to have necessarily exercised its jurisdiction on another State’s territory, as acknowledged by the Court, for example, with respect to the right to life protected in Article 6 of the ICCPR as being capable of applying in the transboundary context of the use of nuclear weapons<sup>75</sup>.

27. As the Inter-American Court of Human Rights has explained, States must comply with their customary obligation to prevent transboundary environmental harm so as to not “affect the human rights of individuals outside their territory”<sup>76</sup>. Similarly, the United Nations Committee on the Rights of the Child applied the harm prevention rule to find that, in the context of the climate crisis, “States have heightened obligations to protect children from foreseeable harm”, and that the impairment of rights under the United Nations Convention on the Rights of the Child as a result of a State Party’s “acts or omissions regarding the carbon emissions originating within its territory was reasonably foreseeable”<sup>77</sup>. Other United Nations human rights treaty bodies have confirmed that States “have obligations, including extra-territorial obligations, to respect, protect and fulfill all human rights of all peoples”, and that “[f]ailure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations”<sup>78</sup>.

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<sup>73</sup> The obligations related to the right to self-determination in common Article 1 of the ICCPR and ICESCR omit the language in common Article 2 referring to “individuals within [a State’s] territory and subject to its jurisdiction”. The Court has held in other contexts that the absence of such limiting language implies that an obligation will apply “to the actions of a State . . . when it acts beyond its territory”. See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)*, Order of 15 October 2008 (Provisional Measures), *I.C.J. Reports 2008*, p. 386, ¶ 109 (interpreting the lack of territorially limiting language in Articles 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination, *United Nations Treaty Series*, Vol. 660, p. 195 (1966)); see also Nauru written statement, ¶ 40.

<sup>74</sup> See ¶ 13 above.

<sup>75</sup> See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, *I.C.J. Reports 1996*, p. 226, ¶ 25.

<sup>76</sup> Inter-American Court of Human Rights, *State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity*, Case No. OC-23/17, Advisory Opinion (15 November 2017), ¶ 101.

<sup>77</sup> United Nations Committee on the Rights of the Child, Decision Adopted in Respect of Communication No. 104/2019, *Sacchi et al. v. Argentina*, document CRC/C/88/D/104/2019 (22 September 2021), ¶¶ 10.13–10.14; see also United Nations Committee on Economic, Social, and Cultural Rights, Climate Change and the International Covenant on Economic, Social, and Cultural Rights, document E/C.12/2018/1 (31 October 2018), ¶ 5 (“Under the [ICESCR], States parties are required to respect, protect and fulfil all human rights for all. They owe such duties not only to their own populations, but also to populations outside their territories, in accordance with articles 55 and 56 of the Charter of the United Nations.”).

<sup>78</sup> Committee on the Elimination of Discrimination against Women, Committee on Economic, Social, and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of Their

28. In its recent judgment in *Agostinho v. Portugal*, the European Court of Human Rights recognized that transboundary harm caused by climate change may undermine human rights. In its decision, the Court identified:

“a certain causal relationship between public and private activities based on a State’s territories that produce GHG emissions and the adverse impact on the rights and well-being of people residing outside its borders and thus outside the remit of that State’s democratic process. Climate change is a global phenomenon, and each State bears its share of responsibility for the global challenges generated by climate change and has a role to play in finding appropriate solutions.”<sup>79</sup>

29. The European Court went on to stress that “[m]ore fossil fuels being extracted or burnt anywhere in the world . . . will inevitably lead to higher GHG concentrations in the atmosphere and therefore to worsening the effects of climate change globally”<sup>80</sup>. That Court declined to exercise jurisdiction because, in its view, the European Convention on Human Rights, a regional human rights instrument, was not designed as a “global” treaty<sup>81</sup>. But other human rights treaties and rules of customary international law on which States relied in these proceedings were designed to, and do, apply globally—such as the ICCPR and the ICESCR, each having more than 170 States Parties. For the same reason, the handful of States that took the position in their written statements that the extraterritorial limits on human rights obligations means they have limited relevance to the context of climate change<sup>82</sup> misconstrue the role that international human rights play in the climate change context, and in particular ignore the inherently transboundary effects of excess GHG emissions.

### C. OBLIGATION TO TAKE ALL MEASURES NECESSARY TO LIMIT GLOBAL WARMING TO WELL BELOW 1.5°C

30. States’ obligations to respect the rights of States, peoples, and persons converge on an obligation to, at a minimum, take all measures necessary to limit global warming to well below 1.5°C above pre-industrial levels and to assist developing States to adapt to the effects of climate change<sup>83</sup>. These rights and obligations are determined objectively, on the basis of the widely accepted and best available scientific consensus that the negative risks and impacts related to climate change increase dramatically with warming above 1.5°C<sup>84</sup>.

31. A majority of States and international organizations agree that States’ obligations, including those to respect the inherent rights of States, peoples, and persons, must reflect the

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Families, Committee on the Rights of the Child, and Committee on the Rights of Persons with Disabilities, Joint Statement on Human Rights and Climate Change, document HRI/2019/1 (16 September 2019), ¶ 10.

<sup>79</sup> European Court of Human Rights, Grand Chamber, *Agostinho et al. v. Portugal et al.*, application no. 39371, Decision (9 April 2024), ¶ 193.

<sup>80</sup> *Id.*, ¶ 194.

<sup>81</sup> *Id.*, ¶¶ 201, 208, 213.

<sup>82</sup> See written statements of Australia, ¶ 3.64; Canada, ¶ 28; China, ¶¶ 119, 124; Denmark et al., ¶ 86; France, ¶¶ 133–135; Germany, ¶¶ 91–94; Indonesia, ¶ 44; New Zealand, ¶ 116; Russia, § 1.2; Switzerland, ¶¶ 62–63; United Kingdom, § III.F; United States, ¶ 4.48.

<sup>83</sup> Tuvalu written statement, § II.D.

<sup>84</sup> *Id.*, § III.C.

best available science<sup>85</sup>. For example, Nepal submits that “States have an obligation under human rights laws to take urgent steps to limit the rise in global average temperature as far as possible and at least within 1.5 degrees Celsius above pre-industrial levels”<sup>86</sup>. Liechtenstein writes that States are obliged to “take all necessary steps to hold ‘the increase in the global average temperature to well below 2°C above pre-industrial levels and [to pursue] efforts to limit the temperature increase to 1.5°C above pre-industrial levels’” given in particular “the adverse effects of climate change . . . on the right to self-determination”<sup>87</sup>. Bangladesh agrees that, to “meet their obligations under customary international law”, States must “[s]et and enforce GHG emissions reduction targets necessary to stay well within the 1.5°C limit, including by taking steps to transition away from fossil fuels”<sup>88</sup>.

32. Tuvalu’s written statement echoes these points with extensive evidence underscoring that, for its eight atolls, the maxim is “1.5 to stay alive”<sup>89</sup>. For example, Tuvalu describes the results of a state-of-the-art online dashboard developed by oceanographers from the Government and the Secretariat of the Pacific Community that demonstrates a drastic increase in risk of inundation on Funafuti above 1.5°C of global warming<sup>90</sup>.

33. Tuvalu therefore requests that the Court explicitly recognize the obligation of States to take all measures necessary to limit average global temperature rise to well within 1.5°C of pre-industrial levels. This is a clear obligation that must be followed to carry out States’ obligations, including those to respect State sovereignty and right of survival, to respect the nonderogable rights of peoples, and to allow all States effectively to promote, protect, and respect human rights in the context of climate change.

### III. Legal Consequences of Breaches of Obligations in Respect of Climate Change

34. This Chapter addresses part (b) of the Request: the legal consequences for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment.

35. Tuvalu focuses this Chapter on two aspects of State responsibility particularly relevant to its situation: why the UNFCCC’s loss-and-damage regime does not displace States’ obligations to make full reparation for their internationally wrongful acts (Section A) and assistance for adaptation to climate change as a central element of the obligation to make full

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<sup>85</sup> See written statements of Albania, ¶¶ 50, 145(b); Antigua and Barbuda, ¶¶ 372–377; Bangladesh, ¶¶ 132–134; Burkina Faso, ¶ 72; Colombia, §§ 2(A), 3(G); Cook Islands, ¶¶ 246–255; Ecuador, ¶¶ 3.27–3.31, 3.48, 3.5; Grenada, ¶¶ 24–36; Kenya, §§ 3, 5(V); Liechtenstein, ¶¶ 35, 74; Madagascar, ¶¶ 37, 65; Mauritius, §§ VI(B), V(D), (E)(3); Namibia, ¶¶ 163–164; Nepal, ¶ 19; Pakistan, ¶¶ 4–5, 38; Romania, ¶¶ 10–15; Saint Lucia, ¶¶ 54, 83; Saint Vincent and the Grenadines, ¶ 38; Seychelles, ¶ 80; Sierra Leone, ¶¶ 3.21–3.22, 3.58; Solomon Islands, ¶¶ 62, 82, 131–132; Spain, ¶ 7; Tuvalu, ¶¶ 105–106; Vanuatu, ¶¶ 397–407; OACPS, ¶¶ 26, 48; African Union, ¶¶ 81, 218; COSIS, ¶¶ 8–9, 203; IUCN, ¶¶ 39, 45, 195, 305.

<sup>86</sup> Nepal written statement, ¶ 19 (citing United Nations Human Rights Committee, General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, document CCPRJC/21/Rev.I/Add. 13 (26 May 2004), ¶¶ 6–8; United Nations Committee on Economic, Social, and Cultural Rights, General Comment 3: The Nature of States Parties’ Obligations, document E11991/23 (14 December 1990), ¶¶ 2, 9).

<sup>87</sup> Liechtenstein written statement, ¶ 74 (citing Paris Agreement, Art. 2(1)(a)) (alteration in original).

<sup>88</sup> Bangladesh written statement, ¶ 139.

<sup>89</sup> Tuvalu written statement, ¶ 62.

<sup>90</sup> See *id.*, ¶¶ 33–35.

reparation (Section B). Tuvalu also endorses COSIS’s submissions on State responsibility more broadly<sup>91</sup>, as well as Vanuatu’s position regarding the actions and omissions of States in the context of climate change that implicate their international responsibility<sup>92</sup>.

A. UNFCCC’S LOSS AND DAMAGE REGIME AND  
CUSTOMARY OBLIGATIONS OF STATE RESPONSIBILITY

36. Most participants agree that high-emitting States owe some form of remedy to affected States for the extensive harm that they suffer as a result of climate change<sup>93</sup>. Most also agree that the scope and content of that remedy is governed by the customary international law of State responsibility, reflected largely in the International Law Commission’s Articles on the Responsibility of States for Internationally Wrongful Acts<sup>94</sup>.

37. A small number of States take the position in their written statements that the UNFCCC and the Paris Agreement constitute *lex specialis* on reparation for climate change by expressing nonbinding commitments to fund compensation mechanisms, such as the Warsaw International Mechanism for Loss and Damage (the “Warsaw International Mechanism”), thus displacing settled rules of State responsibility for the harm caused by GHG emissions<sup>95</sup>. The provision on which the minority principally relied is Article 8(3) of the Paris Agreement, which reads: “Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.”

38. Article 8(3), which expresses a political commitment (“should”) to fund the Warsaw International Mechanism, cannot have *lex specialis* effect because it is not itself directly binding on States Parties to the Paris Agreement, though it may inform implementation of other binding obligations to cooperate in respect of climate change.

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<sup>91</sup> See COSIS written statement, § IV.

<sup>92</sup> See Vanuatu written statement, §§ III, V.

<sup>93</sup> Written statements of Albania, § VI.A.2; Antigua and Barbuda, §§ IV.C.2.c–D; The Bahamas, § IV.C; Bangladesh, § V; Barbados, § VII; Brazil, § IV; Burkina Faso, § V.C; Chile, § V.B; Colombia, § 4; Costa Rica, §§ E.v–vi; Democratic Republic of the Congo, § IV.A.3; Dominican Republic, § 4.III.C; Ecuador, § 4(I); Egypt, § VII; El Salvador, § IV.C; Grenada, § IV.C; Kenya, § 6(I); Kiribati, § IV.C.ii; Latvia, § IV; Madagascar, § IV; Marshall Islands, ¶¶ 55–84; Mauritius, § VI; Federated States of Micronesia, ¶¶ 118–136; Namibia, §§ V.A, B.3; Palau, § IV; Philippines, ¶¶ 120–138; Peru, § IV.D; Saint Lucia, § VI; Saint Vincent and the Grenadines, ¶ 134; Samoa, § IV.B; Sierra Leone, § III.3; Solomon Islands, §§ X.B–C; Sri Lanka, ¶¶ 102–113; Thailand, § IV.i; Timor-Leste, § X; Tonga, § X; Uruguay, § IV.B; Vanuatu, § 5.3.2.B; OACPS, § IV.C; African Union, § V.C; COSIS, § IV.C; IUCN, § 9; Melanesian Spearhead Group, ¶¶ 302–322.

<sup>94</sup> Written statements of Albania, § VI.A.2; Antigua and Barbuda, § IV.B; The Bahamas, § VI; Bangladesh, § V; Barbados, § VII; Brazil, § IV; Burkina Faso, § V.B; Chile, § V.B; Colombia, § 4; Costa Rica, § E.b; Democratic Republic of the Congo, § IV; Ecuador, § 4; Egypt, ¶ 288; Grenada, § IV.D; Kenya, § 6; Kiribati, § IV.C; Latvia, ¶ 76; Madagascar, § IV; Marshall Islands, ¶¶ 55–58; Mauritius, ¶ 210; Federated States of Micronesia, ¶¶ 118–136; Namibia, § V.A; Netherlands, § 5.A; Palau, ¶ 19; Peru, ¶¶ 92–95; Philippines, ¶¶ 120–132; Portugal, ¶ 115; Saint Lucia, § VI; Saint Vincent and the Grenadines, ¶ 128; Samoa, § IV.A; Sierra Leone, § III.3; Solomon Islands, § X; Sri Lanka, §§ 104–105; Thailand, § IV.i; Timor-Leste, § X; Tonga, § X; Tuvalu, § IV; Uruguay, § IV.B; Vanuatu, ¶¶ 486–487; OACPS, § IV.C; African Union, § V; COSIS, § IV; IUCN, § 9; Melanesian Spearhead Group, ¶ 292.

<sup>95</sup> Written statements of China, ¶¶ 95, 133–134, 139–142; Iran, ¶¶ 155–165; Kuwait, ¶¶ 86–107; Saudi Arabia, §§ II.C, IV.C; United Kingdom, ¶ 136.



39. But even if the UNFCCC or the Paris Agreement had created a directly binding contribution scheme for loss and damage, they would not displace bedrock principles of customary international law applicable to reparation for breaches of international obligations. Customary international law—including the law of State responsibility—is a separate source of law from that of the UNFCCC and the Paris Agreement, and these sources are complementary, not conflicting<sup>96</sup>. It therefore cannot be said that the UNFCCC or the Paris Agreement constitute *lex specialis* on this point that can displace the customary international law applicable to reparations.

40. Many small island States, including Tuvalu, made that point explicit upon ratifying the UNFCCC or the Paris Agreement. Tuvalu joined the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Papua New Guinea, the Solomon Islands, and Vanuatu in declaring upon signature of one of those two instruments that acceptance of it “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 relevant instrument “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”<sup>97</sup>.

41. Moreover, as a practical matter, the loss and damage mechanisms in the climate change regime are far from sufficient to wipe out the consequences of all the harm that GHG emissions have caused. As of March 2024, States had contributed only US\$661 million to the Warsaw International Mechanism<sup>98</sup>—far below the goal of US\$100 billion *per year* set in the UNFCCC and the Paris Agreement to fund meaningful climate action<sup>99</sup>. In Tuvalu alone, the Green Climate Fund, established as part of the UNFCCC framework, has committed only US\$36 million to support Tuvalu’s Long-Term Adaptation Plan, a small fraction of the estimated US\$1.3 billion needed to finish it and maintain Tuvalu’s chance of avoiding full submergence by mid-century at current emissions levels<sup>100</sup>.

42. In this regard, Tuvalu has taken a leading role in advocating for the need for climate funds to assist small island States in the fight against climate change. In January 2024, for example, His Excellency Dr. Tapugao Falefou, Permanent Representative of Tuvalu to the United Nations, addressed the General Assembly on behalf of the Coalition for Addressing Sea-Level Rise and Its Existential Threats. He explained that “climate financing must be increased for Small Island Developing States and affected communities . . . to empower and accelerate local solutions for strengthening the adaptive capacities and resilience of affected populations”<sup>101</sup>. Without additional financing, small island States like Tuvalu face even more catastrophic consequences as a result of climate change.

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<sup>96</sup> See COSIS written comments, § IV.B.3.

<sup>97</sup> E.g., United Nations Secretary-General, Depositary Notification, Tuvalu: Ratification of the Paris Agreement, C.N.183.2016.TREATIES-XXVII.7.d (22 April 2016).

<sup>98</sup> See Heinrich Böll Foundation, “The Loss and Damage Fund Board: Getting It Right from the Start” (18 March 2024).

<sup>99</sup> IPCC, “Summary for Policymakers”, *Sixth Assessment Synthesis Report* (2023), pp. 11, 33.

<sup>100</sup> See Tuvalu written statement, § II.C.

<sup>101</sup> Statement by His Excellency Tapugao Falefou as Co-Chair of C-SET (16 January 2024).

## B. OBLIGATION TO PROVIDE ASSISTANCE FOR ADAPTATION TO CLIMATE CHANGE

43. Many States and international organizations agree in their written statements that States owe full reparation for breaches of obligations referred to in part (a) of the Request<sup>102</sup>. Many participants also agree that assistance with adaptation to climate change is an essential component of reparation<sup>103</sup>. This is particularly true for small island States like Tuvalu whose continued existence and habitability are at risk as a result of climate change<sup>104</sup>. Critically, the secondary obligation to assist with climate adaptation as a consequence of breach is in addition to States' primary obligations to assist pursuant to, for example, the duty of cooperation under treaty or customary law<sup>105</sup>.

44. Restitution is the first form of reparation available to an injured State, and no written statement expressly disagrees with Tuvalu's view that it is an appropriate remedy for violations of obligations in respect of climate change<sup>106</sup>. Many participants agree that restitution is especially salient in the context of climate change, such as to restore land that existed before sea-level rise submerged it or rendered it uninhabitable<sup>107</sup>.

45. Compensation is appropriate to repair any damages that cannot be made whole by restitution. Many States and international organizations agreed that assistance for adaptation could come in the form of compensation<sup>108</sup>.

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<sup>102</sup> Written statements of Albania, ¶¶ 129, 135–140; Antigua and Barbuda, ¶¶ 529–541; The Bahamas, ¶ 235; Bangladesh, ¶¶ 146–149; Barbados, § VII.A; Brazil, ¶¶ 79–96; Burkina Faso ¶¶ 380–381; Chile, ¶¶ 110, 115–121; Colombia, ¶ 4.13; Costa Rica, ¶¶ 116–122; Democratic Republic of the Congo, § IV.A.3; Ecuador, ¶¶ 4.13–4.16; Egypt, ¶¶ 364–374; Grenada, ¶¶ 74–77; India, ¶ 90; Kenya, § 6.I.B; Kiribati, ¶¶ 180–196; Latvia, ¶ 76; Madagascar, § IV.C; Marshall Islands, ¶¶ 55–58; Federated States of Micronesia, ¶¶ 120, 127–130; Namibia, ¶¶ 135–146; Netherlands, ¶¶ 5.34–5.37; Palau, ¶¶ 4, 23–24; Philippines, ¶¶ 114, 118, 120–126; Saint Lucia, ¶¶ 91–95; Saint Vincent and the Grenadines, ¶¶ 128–129, 133(d)–(e); Samoa, ¶¶ 199–201; Sierra Leone, ¶¶ 3.140–3.149; Solomon Islands, § X.C; Sri Lanka, ¶ 104; Thailand, ¶¶ 29–31; Timor-Leste, ¶¶ 363–364, 374; Tonga, § X.A; Uruguay, ¶¶ 158–161, 177; Vanuatu, § 5.3.2; African Union, ¶¶ 261, 269–275; COSIS, § IV.C.3; IUCN, ¶¶ 532, 580, 586–591; Melanesian Spearhead Group, ¶¶ 322, 332; OACPS, ¶¶ 168, 184–187.

<sup>103</sup> Written statements of Albania, ¶ 144; Antigua and Barbuda, ¶¶ 555–562; The Bahamas, ¶ 244; Barbados, §§ VII.C–D, ¶ 328; Brazil, ¶ 95; Burkina Faso, ¶¶ 374, 376; Colombia, ¶ 4.15; Costa Rica, ¶ 122; Dominican Republic, ¶¶ 4.66–4.67; Egypt, ¶ 3; India, ¶ 90; Kenya, ¶ 6.89; Kiribati, ¶¶ 188–196; Liechtenstein, ¶ 80; Madagascar, ¶¶ 86–92; Marshall Islands, ¶¶ 74–84; Namibia, ¶ 144; Nepal, ¶¶ 28–29; Saint Lucia, ¶¶ 92–94; Saint Vincent and the Grenadines, ¶ 133; Sierra Leone, ¶¶ 3.142–3.149; Sri Lanka, ¶ 104; Tuvalu, ¶¶ 133–139; Vanuatu, § 5.3.2; Viet Nam, ¶¶ 47–52; African Union, ¶ 245; COSIS, ¶ 182; IUCN, ¶¶ 586–590; Melanesian Spearhead Group, ¶¶ 319–322; OACPS, ¶¶ 180–189.

<sup>104</sup> Tuvalu written statement, § II.B.

<sup>105</sup> *See, e.g.*, written statements of Antigua and Barbuda, ¶¶ 391–403; COSIS, ¶ 150; *see also* ITLOS, *COSIS* Advisory Opinion, ¶¶ 296–299.

<sup>106</sup> *See* Tuvalu written statement, ¶¶ 135–140.

<sup>107</sup> *See* written statements of Albania, ¶ 136; Burkina Faso, ¶¶ 375–376; Democratic Republic of the Congo, ¶¶ 336–337; Ecuador, ¶ 4.16; Kenya, ¶ 6.94; Kiribati, ¶ 206(4)(b); Madagascar, ¶¶ 84–85; Federated States of Micronesia, ¶ 129; Namibia, ¶ 136; Saint Lucia, ¶ 92; Solomon Islands, ¶ 239; Timor-Leste, ¶ 371; Tuvalu, ¶¶ 138–140; Vanuatu, ¶ 582; African Union, ¶ 278; COSIS, ¶ 182; OACPS, ¶ 178.

<sup>108</sup> Written statements of Albania, ¶ 144; Antigua and Barbuda, ¶¶ 555–562; The Bahamas, ¶ 244; Barbados, §§ VII.C–D; Burkina Faso, ¶¶ 377–388; Costa Rica, ¶ 122; Dominican Republic, ¶¶ 4.66–4.67; India, ¶ 90; Kiribati, ¶¶ 188–196; Madagascar, ¶¶ 86–92; Marshall Islands, ¶¶ 28–30, 74–84; Namibia, ¶¶ 135–146; Nepal, ¶¶ 28–29; Netherlands, ¶¶ 5.35–5.37; Saint Lucia, ¶¶ 92–94; Saint Vincent and the Grenadines, ¶ 133; Samoa, ¶ 202; Sierra Leone, ¶¶ 3.142–3.149; Sri Lanka, ¶ 104; Tuvalu, ¶¶ 8, 139; Vanuatu,

#### **IV. Conclusions**

46. In response to the Request, and for the reasons set out in Tuvalu's written statement and these Written Comments, Tuvalu reiterates its conclusions as set out in paragraph 150 of its written statement.

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¶¶ 589–597; Viet Nam, ¶¶ 47–52; COSIS, § IV.C.3; Melanesian Spearhead Group, ¶¶ 319–322; OACPS, ¶¶ 180–189.

*(Signed)*

Hon. Feleti Penitala Teo  
Prime Minister of Tuvalu