



PACIFIC ISLANDS FORUM SECRETARIAT

WRITTEN COMMENTS

TO THE

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

15 August 2024

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PACIFIC ISLANDS FORUM SECRETARIAT

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

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I. INTRODUCTION AND SCOPE

1. Having presented its Written Statement on 23 March 2024 on the *Obligations of States in respect of Climate Change (Request for Advisory Opinion)*, the Pacific Islands Forum Secretariat (hereinafter referred to as “**PIF Secretariat**” or “**PIFS**”) wishes to avail itself of the possibility of furnishing written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute of the Court, and, in respect of the Order of the Court of 30 May 2024.

2. These written comments build on the PIFS Written Statement and addresses specific issues arising from relevant written statements by states and international organisations. The written comments are organised in three parts. Following this introductory part, part II addresses specific issues organized under three sub-sections: (A) preserving maritime zones, (B) continuity of statehood, and (C) protection of persons. The third part summarizes the conclusions reached by the written comments. The written comments do not constitute a statement of individual PIF Members, individually or jointly, and are made without prejudice to the right of PIF Members, individually or jointly, to make written comments to the Court.

3. Overall, the PIFS respectfully submits that the Court’s answers to the question put to it should emphasise that the maritime zones of States, as established and notified to the Secretary-General of the United Nations in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise.

4. Additionally, the Court should note the 2023 *Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise* (“**2023 PIF Statehood Declaration**”)’s affirmation that under international law there is a presumption of continuity of statehood and international law does not contemplate a state’s demise in the context of climate change-related sea-level rise. PIF Members have also expressed a commitment to protecting persons affected by climate change related sea-level rise including with respect to human rights duties, political status, culture, cultural heritage, identity and dignity, and meeting essential needs, including through international cooperation.

II. ISSUES ARISING FROM RELEVANT WRITTEN STATEMENTS SUBMITTED TO THE COURT

A. Preserving Maritime Zones

5. The relationship between climate change-related sea-level rise and maritime zones was not contemplated by the drafters of the UNCLOS at the time of its negotiation.¹ The UNCLOS was premised on the basis that, in the determination of maritime zones, coastlines and maritime features were generally considered to be stable.²

6. As recognised in almost all the written statements submitted to the Court,³ and the recent Advisory Opinion of the International Tribunal for the Law of the Sea,⁴ the impacts of sea-level rise are a real and pressing issue. The Pacific Islands Forum (“PIF”) Leaders have declared that the Pacific is facing a climate emergency⁵ and reaffirmed that climate change poses the single greatest threat to the livelihoods, security and wellbeing of the people of the Pacific.⁶

7. In 2019, PIF Leaders noted with concern the threat posed by sea level rise to securing the Blue Pacific⁷ and reaffirmed the importance of preserving its Members’ existing rights stemming from maritime zones.⁸ PIF Leaders then committed to a collective effort, including to develop international law, with the aim of ensuring that once a Forum Member’s maritime zones are delineated in accordance with the UNCLOS, that the Members maritime zones could not be challenged or reduced as a result of sea-level rise and climate change.⁹

8. The 2021 *Pacific Islands Forum Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise* (“**2021 PIF Maritime Zones Declaration**”) clarifies PIF Members’ interpretation of UNCLOS and represents the agreed collective view of PIF Members on how UNCLOS rules on maritime zones apply in the situation of climate change-related sea-level rise. This is a view that is premised on the centrality of the UNCLOS and its underpinning legal principles, including those of legal stability, security, certainty, predictability, and equity. These legal principles were also reinforced in several Written Statements submitted to the Court.¹⁰

9. There is wide and strong support for the agreed PIF collective position on preserving maritime zones, and the rights and entitlements that flow from them, in the face of climate change-related sea-level rise.¹¹ There were Written Statements that expressed endorsement or strong support of the entire 2021 PIF Maritime Zones Declaration,¹² as well as strong support

¹ Preambular paragraph 6, [2021 Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise](#)

² Preambular paragraph 6, [2021 Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise](#)

³ Written Statements of: Portugal, Palau, Tonga, Singapore, Peru, Solomon Islands, the Cook Islands, Seychelles, Vanuatu, the Federated States of Micronesia, Sierra Leone, Liechtenstein, Grenada, Saint Lucia, Saint Vincent and the Grenadines, Belize, The Kingdom of the Netherlands, Bahamas, the Republic of the Marshall Islands, New Zealand, Kiribati, Timor-Leste, Korea, India, Samoa, Latvia, Ecuador, Barbados, Sri Lanka, Uruguay, Egypt, Chile, Tuvalu, Romania, USA, Bangladesh, EU, Kuwait, Mauritius, Nauru, Costa Rica, Indonesia, Pakistan, Antigua and Barbuda, El Salvador, Australia, Vietnam, Dominican Republic, Ghana, Germany, The Gambia, the Melanesia Spearhead Group (MSG), the Office of the Parties to the Nauru Agreement (PNAO), the Forum Fisheries Agency (FFA), the Alliance of Small Island States (AOSIS), The African Union, the Organisation for African, Caribbean and Pacific States (OACPS), and the Commission of Small Island States (COSIS).

⁴ *Request for an Advisory Opinion submitted by the Commission of Small Islands States on Climate Change and International Law (Request for an Advisory Opinion submitted to the Tribunal)*, Advisory Opinion, Case No. 31, 21 May 2024. Available from: [C31 Adv Op 21.05.2024 orig.pdf \(itlos.org\)](#) (Accessed 14 August 2024)

⁵ Paragraph 33, [Communique of the 51st Pacific Islands Forum Leaders Meeting](#) (2022)

⁶ Paragraph 1(i), [Boe Declaration on Regional Security](#)

⁷ Paragraph 24, [Communique of the 50th Pacific Islands Forum Leaders Meeting](#) (2019)

⁸ Paragraph 25, [Communique of the 50th Pacific Islands Forum Leaders Meeting](#) (2019)

⁹ Paragraph 26, [Communique of the 50th Pacific Islands Forum Leaders Meeting](#) (2019)

¹⁰ Written Statements of: AOSIS; El Salvador

¹¹ Written Statement of: AOSIS; Nauru; Tonga

¹² Written Statements of: Australia; Dominican Republic; Federated States of Micronesia; Pacific Islands Forum Fisheries Agency; New Zealand; Solomon Islands; Tonga; Vanuatu

for key tenets of the Declaration.¹³ Debates at the Sixth Committee of the United Nations General Assembly, have also and generally supported these points. Clearly, there is wide acceptance of the PIF collective position to preserve maritime zones, and the rights and entitlements that flow from them, in the face of climate change-related sea-level rise.

B. Continuity of Statehood

10. In 2022, PIF Leaders **noted** that due to the complexity of the issues of statehood and persons affected by sea-level rise, due consideration of these issues should be guided and informed by applicable principles and norms of international law and relevant international frameworks and standards.¹⁴

11. The 2023 PIF Statehood Declaration recognizes that under international law there is a general presumption that a State, once established, will continue to exist and endure, and maintain its status and effectiveness, and that international law does not contemplate the demise of statehood in the context of climate change-related sea-level rise.¹⁵ In that respect, the 2023 PIF Statehood Declaration declares that the statehood and sovereignty of PIF Members will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise.

12. The 2023 PIF Statehood Declaration is consistent with important principles and rights of international law. These include the right of peoples to self-determination, the right to a nationality, the protection of territorial integrity and political independence, principles of equity and fairness, the maintenance of international peace and security which in turn requires stability in international relations, the right of a state to provide for its preservation, the duty of cooperation, the sovereign equality of states, and permanent sovereignty over natural resources. These principles and rights were further reinforced in several Written Statements submitted to the Court.¹⁶

13. Written statements support the 2023 PIF Statehood Declaration's affirmation that international law supports the presumption of continuity of statehood.¹⁷

C. Protection of Persons

14. The 2023 PIF Statehood Declaration then links protection of persons to statehood by acknowledging that States carry an important duty in ensuring protection of their people, and that continuity of statehood is necessary and fundamental for that protection to be implemented and to endure.¹⁸ It then reiterates this by declaring that PIF Members individually and collectively bear an important responsibility for ensuring protection of their people and are committed to protecting persons affected by climate change-related sea-level rise, including with respect to human rights duties and meeting essential needs.¹⁹

15. The 2023 PIF Statehood Declaration calls upon the international community to support this Declaration and cooperate in achieving its purposes, consistent with the duty of members of the international community to cooperate and principles of equity and fairness.²⁰

¹³ Written Statements of: AOSIS; Bahamas; COSIS; Nauru

¹⁴ Paragraph 39, [Communique of the 51st Pacific Islands Forum Leaders Meeting](#) (2022)

¹⁵ Paragraph 8, [2023 Declaration on the Continuity of Statehood and the Protection of Persons affected by Sea-Level Rise](#)

¹⁶ Written Statements of: Dominican Republic; Melanesian Spearhead Group; Sierra Leone; Solomon Islands; Tonga

¹⁷ Written Statements of: Australia; Dominican Republic; Liechtenstein; New Zealand; Vanuatu

¹⁸ Paragraph 11, [2023 Declaration on the Continuity of Statehood and the Protection of Persons affected by Sea-Level Rise](#)

¹⁹ Paragraph 14, [2023 Declaration on the Continuity of Statehood and the Protection of Persons affected by Sea-Level Rise](#)

²⁰ Paragraph 16, [2023 Declaration on the Continuity of Statehood and the Protection of Persons affected by Sea-Level Rise](#)

III. FINAL REMARKS

16. In conclusion, this PIF Secretariat's Written Comments cite agreed PIF regional collective positions, to date. The 2021 and 2023 PIF Declarations respectively offer interpretation of and the collective views of PIF Members on relevant international law, including the UNCLOS and relevant international law principles, as pertaining to the global phenomenon of climate change-related sea-level rise, and in pursuit of the protection of States, Peoples and individuals of present and future generations affected by the adverse effects of climate change.

17. In all, the PIFS respectfully submits that the Court's answers to the question put to it should affirm the view that the maritime zones of States, as established and notified to the Secretary-General of the United Nations in accordance with the UNCLOS, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise.

18. The Court should also affirm that under international law there is a presumption of continuity of statehood and international law does not contemplate a state's demise in the context of climate change-related sea-level rise. As a necessary corollary, the Court should further affirm that the statehood and sovereignty of States will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise. The Court should also emphasize the duty to cooperate in ensuring the protection of persons affected by climate change-related sea-level rise. Indeed, PIF Members have expressed a commitment to protecting persons affected by climate change related sea-level rise including with respect to human rights, political status, culture, cultural heritage, identity and dignity, and meeting essential needs, including through international cooperation.

19. The PIF Secretariat expresses highest appreciation once again for the opportunity afforded to all UN Members and international organisations to contribute to these important proceedings of the Court. The PIF Secretariat looks forward to further participating on this matter, which remains of utmost importance to our Blue Pacific Continent.

Respectfully submitted,



Baron Waqa
Secretary General
Pacific Islands Forum