

INTERNATIONAL COURT OF JUSTICE

**OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
(REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY FOR AN
ADVISORY OPINION)**

**RESPONSES OF THE FEDERATED STATES OF MICRONESIA TO
QUESTIONS PUT BY JUDGES AURECU AND CHARLESWORTH**

20 DECEMBER 2024

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CHAPTER I

INTRODUCTION

1. On 13 December 2024, at the end of the final public sitting of the International Court of Justice (“Court”) in the oral proceedings concerning the request for an advisory opinion on the *Obligations of States in respect of Climate Change*, Judges Cleveland, Tladi, Aurescu, and Charlesworth put four questions to any interested participants to the oral proceedings.
2. The Federated States of Micronesia has the honor to respond herewith to the questions put by Judges Aurescu and Charlesworth, in that order.

CHAPTER II

QUESTION PUT BY JUDGE AURESCU

3. The question put by Judge Aurescu is as follows:

“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?”

4. The Federated States of Micronesia respectfully refers the Court to paragraphs 78, 79, and 80 of the Written Statement of the Federated States of Micronesia in the present proceedings, for the views of the Federated States of Micronesia on this question, including in connection with the adoption of the United Nations General Assembly of resolution 76/300 recognizing the right to a clean, healthy, and sustainable environment as a human right as well as how this right relates to other human rights of relevance for the present proceedings.¹
5. The Federated States of Micronesia underscores that the international community has reinforced its adoption of resolution 76/300 through consensus adoptions of a number of other instruments, including the Sharm El-Sheikh Implementation Plan of the Conference of the Parties to the United Nations Framework Convention on Climate Change (“UNFCCC”),² the outcome document of the first global stocktake of the Paris Agreement,³ and the Kunming-Montreal Global Biodiversity Framework under the Convention on Biological Diversity.⁴
6. The Federated States of Micronesia further underscores that the right to a healthy environment is found in numerous major regional instruments, including article 24 of the African Charter on Human and Peoples Rights; article 38 of the Arab Charter on Human Rights; article 1 of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; and articles 1 and 4 of the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean.
7. The Federated States of Micronesia additionally underscores that a number of treaty bodies for core international human rights treaties have acknowledged that the right to a healthy environment is related to the rights covered under those treaties, including those

¹ G.A. Res. 76/300, U.N. Doc. A/RES/76/300 (July 28, 2022).

² Sharm El-Sheikh Implementation Plan, 2022, Decision 1/CP.27.

³ Outcome of the First Global Stocktake, 2023, FCCC/PA/CMA/2023/L.17.

⁴ Kunming-Montreal Global Biodiversity Framework para. 14, Decision adopted by the Parties to the Convention on Biological Diversity, CBD/COP/DEC/15/4, Dec. 19, 2022.

under the Convention on the Rights of the Child⁵ as well as under the International Covenant on Economic, Social, and Cultural Rights.⁶

8. Based on existing jurisprudence in regional and national courts, including in the Inter-American Court of Human Rights, as well as on the instruments referenced above, the right to a clean, healthy, and sustainable environment is comprised of substantive as well as procedural elements. Substantive elements including, among others, clean air, safe drinking water, healthy food systems, thriving ecosystems, and a stable climate. Procedural elements include access to information and effective remedies.
9. Each State is obligated to respect, protect, and fulfill the right held by individuals as well as the collective right held by groups such as Indigenous Peoples to a clean, healthy, and sustainable environment. In order to discharge this obligation, each State must refrain from conduct (or cause actors under its jurisdiction or control to refrain from conduct) that harms, degrades, or otherwise undermines the natural environments enjoyed by those right holders. This obligation extends beyond an individual State's territory and applies to the natural environment enjoyed by right holders in another State.

⁵ UN Committee on the Rights of the Child, General Comment 26 (2023) on children's rights and the environment with a special focus on climate change, CRC/C/GC/26, paras. 14-65.

⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) The right to the highest attainable standard of health, E/C.12/2000/4, paras. 4, 11.

CHAPTER III

QUESTION PUT BY JUDGE CHARLESWORTH

10. The question put by Judge Charlesworth is as follows:

“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?”

11. The Federated States of Micronesia, in depositing its instrument of ratification for the Doha Amendment to the Kyoto Protocol, included with the instrument of ratification the following declarations:

“[T]he Government of the Federated States of Micronesia declares its understanding that ratification of the aforesaid Doha Amendment shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Protocol, as amended, can be interpreted as derogating from principles of general international law.

[T]he Government of the Federated States of Micronesia declares that, in light of the best available scientific information and assessment on climate change and its impacts, it considers the emissions reduction obligations in Article 3 of the Kyoto Protocol and the aforesaid Doha Amendment to be inadequate to prevent a global temperature increase of 1.5 degrees Celsius above pre-industrial levels and, as a consequence, will have severe implications for our national interests.”

12. Similarly, the Federated States of Micronesia, in depositing its instrument of ratification for the Paris Agreement, included with the instrument of ratification the following declarations:

“The Government of the Federated States of Micronesia declares its understanding that its ratification of the Paris Agreement does not constitute a renunciation of any rights of the Government of the Federated States of Micronesia under international law concerning State responsibility for the adverse effects of climate change, and that no provision in the Paris Agreement can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation and liability due to the adverse effects of climate change; and

The Government of the Federated States of Micronesia further declares that, in light of the best available scientific information and assessments on climate change and its impacts, it considers the emission reduction obligations in the Paris

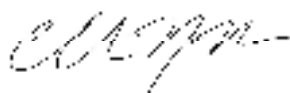
Agreement to be inadequate to prevent a global temperature increase above 1.5 degrees Celsius relative to pre-industrial levels, and as a consequence, such emissions will have severe implications for the national interests of the Government of the Federated States of Micronesia.”

13. The declarations referenced in paragraphs 11 and 12 above were interpretative declarations by the Federated States of Micronesia. They were not reservations to either the Doha Amendment or the Paris Agreement, as neither instrument allows for reservations; and they did not otherwise purport to modify any provisions of the Doha Amendment or the Paris Agreement. Rather, the declarations clarified that nothing in either the Doha Amendment or the Paris Agreement represents a renunciation of any rights of the Federated States of Micronesia under international law with respect to seeking and establishing State responsibility for the adverse effects of climate change; and nothing in either the Doha Amendment or the Paris Agreement can be interpreted as derogating from principles of general international law or (in the case of the Paris Agreement) from any claims or rights concerning compensation and liability due to the adverse effects of climate change.
14. The Federated States of Micronesia acknowledges that the Conference of the Parties to the United Nations Framework Convention on Climate Change (“UNFCCC”) agreed, in paragraph 51 of decision 1/CP.21, that “Article 8 of the Paris Agreement does not provide a basis for any liability or compensation.”⁷ However, this does not invalidate the above-referenced declarations that the Federated States of Micronesia included with its instrument of ratification for the Paris Agreement.
15. Firstly, decision 1/CP.21 is not the Paris Agreement itself, but is instead a separate decision of the Conference of the Parties to the UNFCCC and does not replace or otherwise modify any language in the Paris Agreement itself.
16. Secondly, to the extent that paragraph 51 of decision 1/CP.21 binds the Parties to the UNFCCC, it does so only with respect to Article 8 of the Paris Agreement, which deals solely with a specific institutional arrangement – namely, the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (“WIM”) – rather than the totality of matters covered by the Paris Agreement or the UNFCCC.
17. Thirdly, the WIM does not, by itself, invalidate all other international law obligations – primary and secondary – with respect to loss and damage, including compensation and liability thereto. The WIM has specific functions under the UNFCCC and the Paris Agreement, primarily of a facilitative rather than punitive nature, that do not displace existing and relevant international law, including those pertaining to primary and secondary obligations (inclusive of reparations as secondary obligations flowing from State responsibility for internationally wrongful acts).

⁷ Adoption of the Paris Agreement para. 51, Decision 1/CP.21.

18. The WIM does not even displace the other provisions of the UNFCCC and the Paris Agreement, including those provisions that pertain to developed countries continuing to take the lead to adopt and implement economy-wide reductions of anthropogenic greenhouse gases as well as to provide finance and other means of implementation to developing countries to prevent or otherwise address the adverse impacts of anthropogenic emissions of greenhouse gases.
19. Taken together, and in light of the foregoing, the above-referenced interpretative declarations make clear that primary and secondary obligations under international law pertaining to preventing or otherwise addressing the adverse effects of anthropogenic emissions of greenhouse gases on the climate system and other parts of the environment are not disturbed merely because the Doha Amendment and the Paris Agreement exist. Neither instrument explicitly binds any of its Parties to forsake all other obligations under international law, whether primary or secondary, that are relevant to the subject matter of either instrument.
20. Put another way, neither the Doha Amendment nor the Paris Agreement (or, for that matter, the Kyoto Protocol and the UNFCCC) constitutes *lex specialis* with respect to establishing the obligations of States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases. None of the terms in the UNFCCC, the Kyoto Protocol, the Doha Amendment, and the Paris Agreement explicitly excludes the application of other principles of international law, customary international law, and treaty law. The interpretative declarations by the Federated States of Micronesia and other States underscore this truism, for the avoidance of any doubt.

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Clement Yow Mulalap

Adviser (Legal)
Department of Justice of the Federated States of Micronesia
and
Permanent Mission of the Federated States of Micronesia to the United Nations in New York