



INTERNATIONAL COURT OF JUSTICE
OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
(Request for an Advisory Opinion)

REPLY STATEMENT OF THE INDEPENDENT STATE OF SAMOA
QUESTIONS ASKED BY
JUDGES CLEVELAND, TLADI, AURESCU AND CHARLESWORTH
AT THE CONCLUSION OF THE ORAL PROCEEDINGS

20 December 2024

Question put by Judge Cleveland:

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

REPLY:

1. States that have produced and subsidised fossil fuels, knowing for decades that such practices would *contribute* to dangerous interference with the climate system, have caused significant harm to the climate system and other parts of the environment.
2. In its Oral Statement, Samoa submitted that States knew from, at least, the 1960s or well before 1994 when the United Nations Framework Convention on Climate Change came into force,¹ that the anthropogenic emission of greenhouse gases into the atmosphere caused global warming and its associated adverse effects. *The overwhelming driver of these greenhouse gases is fossil fuels.*²
3. By licensing, subsidising and expanding fossil fuel production, States have breached the duties of prevention, the obligation to respect human rights and the right to self-determination. The ongoing display of this conduct falls short of the standard of due diligence required by obligations under the law of the sea, specifically Part XII of the United Nations Law of the Sea (UNCLOS). Moreover, the continuing production of fossil fuels fails to meet the requirement of “highest ambition” under the United Framework Convention on Climate Change and the Paris Agreement.
4. Samoa will briefly address two of these obligations: the prevention principle and human rights obligations.

No-Harm Rule / Duty of Prevention

5. Samoa has provided extensive written submissions on the application of the no-harm rule, or prevention principle, to the conduct in its Written Statement (at paras 87–130). Samoa submits that the prevention principle applies to the production of fossil fuels within a territory of a State (regardless of whether the combustion or use of the extracted fossil fuel takes place in the territory of another State or States).

¹ Samoa Oral Statement, verbatim record 2024/49, p.26, paras 13 and 14.

² IPCC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policy Makers*, p. 5; IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021) p. 676 (“Of the total anthropogenic CO₂ emissions, the combustion of fossil fuels was responsible for 81–91%, with the remainder being the net CO₂ flux from land-use change and land management (e.g., deforestation, degradation, regrowth after agricultural abandonment, and peat drainage)”.)

6. As Samoa has submitted, States must act with due diligence to ensure that activities under their jurisdiction or control do not cause damage to other States or to areas beyond jurisdiction.
7. All fossil fuel production results in greenhouse gas emissions, including direct and indirect emissions.³ *These are project-related emissions.* Direct emissions (which have been referred to as ‘scope 1 emissions’⁴) are those greenhouse gas emissions that occur from sources owned or controlled by the fossil fuel producer (such as, vegetation stripping or release of fugitive methane during open cut mining or combustion of fuel for vehicles). In other words, the process of producing fossil fuel itself generates direct greenhouse gas emissions.
8. Indirect emissions include scope 2 emissions, which are greenhouse gas emissions purchased by the fossil fuel producer (such as electricity). Other indirect emissions are scope 3 emissions, which are those greenhouse gas emissions that occur downstream when the fossil fuel produced by the project is used or consumed. Scope 2 and 3 emissions reflect the fact that fossil fuel producers’ value-chain consists of both upstream and downstream activities. In this respect, the production of fossil fuels cannot be separated from their eventual, inevitable combustion.
9. In order to comply with the customary obligation to exercise due diligence in order to prevent transboundary harm, States are required to take into consideration the entirety of the foreseeable impacts of an activity or related to a project undertaken on its territory where there is a risk of damage to another State. States are unable to do so if downstream or scope 3 emissions are artificially removed from consideration. A State could not be taken to have complied with its due diligence obligations if it does not consider *all* adverse impacts of greenhouse gas generation activity taking place or permitted within its jurisdiction or control. The totality of adverse impacts must include *all* impacts that can be reasonably considered as falling within the ambit or scope of the activity or project). This includes, considering the contribution of scope 1, scope 2 *and* scope 3 greenhouse gas emissions to the harm they will cause to the climate system and other parts of the environment in other States and in areas beyond national jurisdiction.
10. The critical point for these proceedings is that, in relation to the anthropogenic generation of greenhouse gases, the scope of the customary obligation to exercise due diligence to prevent transboundary harm is not confined to the actual generation of greenhouse gases by activities subject to a State’s jurisdiction or control, but must equally encompass those activities within the State’s jurisdiction or control which produce the fossil fuels whose

³ See, JM Allwood et al, ‘Glossary’ in. O Edenhofer et al (eds), *Climate Change 2014: Mitigation of Climate Change*. (2015, Cambridge University Press), p. 1260 (“Scope 1, Scope 2, and Scope 3 emissions: Emissions responsibility as defined by the GHG Protocol, a private sector initiative. ‘Scope 1’ indicates direct greenhouse gas (GHG) emissions that are from sources owned or controlled by the reporting entity. ‘Scope 2’ indicates indirect GHG emissions associated with the production of electricity, heat, or steam purchased by the reporting entity. ‘Scope 3’ indicates all other indirect emissions, i.e., emissions associated with the extraction and production of purchased materials, fuels, and services, including transport in vehicles not owned or controlled by the reporting entity, outsourced activities, waste disposal, etc. (WBCSD and WRI, 2004).”).

⁴ The categorisation of emissions as ‘scope 1, 2 or 3’ emissions was devised as part of the ‘Greenhouse Gas Protocol’, a joint effort by the World Resources Institute and the World Business Council for Sustainable Development intended to create worldwide standards for measuring greenhouse gas emissions: see <https://ghgprotocol.org> (last accessed 19 December 2024).

subsequent use by other actors *inevitably* generates greenhouse gases which *invariably* harm the territory of other States and areas beyond national jurisdiction. Accordingly, *both* fossil fuel production *and* greenhouse gas generation fall within the scope of the customary obligation to act with due diligence to prevent transboundary harm. In particular, the customary obligation may be breached when:

- a. State organs, State-controlled or State-owned organizations extract and/or produce fossil fuels for sale;
- b. State organs or authorities subsidize, license or permit the extraction and/or production of fossil fuels by private actors and/or production of fossil fuels by private actors or organizations operating within that State's jurisdiction.
- c. State organs, State-controlled or State-owned organizations generate greenhouse gases by the use, consumption or combustion of fossil fuels;
- d. State organs or authorities allow the use, consumption or combustion of fossil fuels, thereby generating greenhouse gases, by private actors operating within that State's jurisdiction.

Human Rights Obligations

11. Samoa has provided extensive written submissions on the application of human rights obligations in relation to climate change in its Written Comment (at paras 54–164). Specifically, Samoa has submitted that the conduct breaches the range of human rights discussed therein. Samoa reaffirms these submissions, which forms part of the reply to this question.
12. For the same reasons above, the production of fossil fuels is part of the same chain of conduct that gives rise to and continues to cause significant harm to the climate system and other parts of the environment. Accordingly, the expansion of fossil fuel production may further violate human rights. Nothing less than immediate cessation of fossil fuel production will protect human rights.
13. Relying on the findings of the IPCC, five UN human rights treaty bodies in a joint statement of 2020, stated that “adverse impacts on human rights are *already* occurring with 1C of global warming” and that “every additional increase in temperature will *further* undermine the realization of rights”.⁵
14. The International Energy Agency (IEA) has noted that there is no scenario under which the 1.5°C Paris Agreement threshold can be met if new investments are made in fossil fuel production.⁶ The IEA also indicated that some fossil fuel infrastructure and oil and gas fields may need to be retired early.⁷ The IEA's findings were reaffirmed by the Pacific Community, the principal scientific and technical organisation of the Pacific region, in

⁵ Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on human rights and climate change*, U.N. Doc. No. HRI/2019/1, 14 May 2020, para. 5 (emphasis added).

⁶ International Energy Agency, *Net Zero Roadmap: A Global Pathway to Keep the 1.5C Goal in Reach* (2023 Update – Executive Summary), p. 6.

⁷ International Energy Agency, *Net Zero Roadmap: A Global Pathway to Keep the 1.5C Goal in Reach* (2023 Update – Executive Summary), p. 3.

its Oral Statement. As the Pacific Community said: “the science is clear: projected emissions from existing fossil fuel infrastructure alone will exceed the remaining carbon budget to limit warming to 1.5°C”.⁸ Moreover, the Pacific Community stated: “under no scientific scenarios can we continue to pursue a future underpinned by fossil fuels and still expect to meet the goals of the Paris Agreement”.⁹

15. Further, the Committee on the Rights of the Child has noted that the realisation of the right to a safe, healthy and sustainable environment recognised under the Convention on the Rights of the Child requires that States “immediately...equitably phase out the use of coal, oil and natural gas, ensure a fair and just transition of energy sources and invest in renewable energy, energy storage and energy efficiency to address the climate crisis.”¹⁰
16. While Samoa has submitted that the conduct is already in breach of human rights, States are required to prevent activities within its territory which violate human rights. Continued fossil fuel production is surely consistent with the enjoyment of the human rights identified by Samoa in its Written Comment. Indeed, given the science above, *each new* fossil fuel project can be said to be materially harmful.
17. In Samoa’s view, State actions and omissions that exacerbate the suffering of individuals and groups in circumstances of environmental hardship and degradation can be characterised as inhumane and degrading treatment and amounts to human rights violation.¹¹ This includes fossil fuel production on a State’s territory.
18. Finally, fossil fuel projects have been refused by domestic courts on the basis of their contribution to climate change, which violates human rights.¹²

Conclusion

19. By continuing to license, subsidize, and even expand fossil fuel production despite overwhelming evidence of the harmful effects produced by anthropogenic greenhouse gas emissions, States may violate their international obligations, including for example, the customary duty of prevention and numerous obligations under international human rights law.

⁸ Pacific Community Oral Statement, verbatim record, pp.29-30, para.18. See also, IPCC AR6 Synthesis Report Summary for Policymakers, Chapter B.5.

⁹ Pacific Community Oral Statement, verbatim record, pp.29-30, para.18. See also, IPCC AR6 Synthesis Report Summary for Policymakers, Chapter B.5.

¹⁰ Committee of the Rights of the Child, General Comment No.26 (2023) on children’s rights and the environment, with special focus on climate change, 22 August 2023, CRC/C/GC/26 at para. 8.

¹¹ See, Samoa’s Written Comments at paras 83–88.

¹² See, for example, *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21. The Queensland Land Court was satisfied that the proposed coal mine (and its contribution to climate change) would interfere with the following human rights protected under the Queensland Human Rights Act 2019: the right to life of people in Queensland (s 16); the rights of First Nations people (s 28); the rights of children (s 26(2)); the right to property of people in Queensland (s 24(2)); the right to privacy and home (s 25(a)); and the right of certain groups to enjoy human rights without discrimination (s 15(2)).

20. In the event of a breach of a binding international obligation, a State is required under the law of State responsibility to cease immediately the wrongful conduct. Where acts related to fossil fuel production constitute the wrongful conduct, States must immediately stop any and all acts which facilitate fossil fuel production within their jurisdiction, including ending subsidies, revoking licences and enforcing domestic restrictions on the production of fossil fuels.

Question put by Judge Tladi:

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

Reply:

21. Article 31 of the Vienna Convention on the Law of Treaties (VCLT) enshrines the “general rule of interpretation”, comprising three integral elements: (i) the ordinary (as opposed to a special) meaning of the treaty terms; (ii) determined in the context of the treaty (as opposed to in the abstract); and (iii) in light of the treaty’s object and purpose. It requires these elements to be considered simultaneously in a single combined operation, carried out in good faith.¹³
22. Article 31 does not specify a hierarchy among the various elements which an interpreter is required to consider. Rather, it is envisaged that these different interpretative elements will be evaluated in an integrated, holistic exercise, with appropriate emphasis and weight to be accorded to the various means after careful consideration by the interpreter.
23. One of these elements is the ‘object and purpose’ of the treaty. The inclusion of this element introduces a teleological or functional element into the general rule, and it requires that the terms of a treaty are interpreted in a way that advances the aims of that treaty. The determination of what constitutes the aims of a treaty – its ‘object and purpose’ – itself involves an interpretative exercise. Generally, it involves reading the treaty as a whole, though certain elements, such as the title and preambular paragraphs, may offer particular assistance in this regard. The supplementary means of interpretation indicated in Article 32 of the VCLT may also contribute to this end.
24. Alongside the requirement to interpret the treaty in good faith, consideration of the object and purpose of a treaty ensures that the interpretation gives appropriate effect to its terms.¹⁴

¹³ See, for example, “China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products”, World Trade Organization, Report of the Appellate Body, WT/DS363/AB/R, 21 December 2009, at §399: “...treaty interpretation is an integrated operation, where interpretative rules and principles must be understood and applied as connected and mutually reinforcing components of a holistic exercise.”

¹⁴ See *Yearbook of the International Law Commission 1966*, II, p. 219, para. 6: “When a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation

25. In view of these observations, Samoa considers that the object and purpose of the Paris Agreement is to create a global framework by which States will, through individual, co-operative and collective action, work to avoid and address the harmful impacts of climate change, taking account of the fact that there are notable differences in the extent to which States contribute to and suffer the effects of climate change .
26. Considered in the light of this object and purpose, Samoa understands that Article 4 imposes firm legal obligations on the States Parties to the Paris Agreement. In particular, these obligations include (but are not limited to) the following:
 - a. States must produce nationally determined contributions (**NDCs**) within the stipulated timeframe (that is, every five years) and communicate them to the other States Parties together with all necessary related information;
 - b. States must introduce and implement domestic mitigation measures;
 - c. Each State's NDCs must represent an improvement upon its predecessor, and must reflect the utmost possible contribution of that State at that time (though a certain latitude special circumstances of the least developed countries and small island developing States, such as Samoa, on account of their special circumstances)
 - d. States must provide ongoing support to developing countries to assist in their fulfilment of these obligations.

should be adopted." The principle of effectiveness in treaty interpretation is often referred to by the Latin maxim '*ut res magis valeat quam pereat*' or the phrase '*effet utile*.'

QUESTION PUT BY JUDGE AURESCU:

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

REPLY:

Introduction

27. Samoa has provided detailed written submissions on the right to a clean, healthy and sustainable environment at paras 130–140 of its Written Comment and on the right to a clean, healthy and sustainable environment as recognised under the Convention on the Rights of the Child at paras 148–152. Samoa has also provided extensive written submissions in its Written Comment linking other human rights to environmental protection and, particularly, the prerequisite necessity or pre-condition of a clean, healthy and sustainable environment for the effective protection for many international human rights (see paras 54–164). These submissions are reaffirmed in full.
28. Samoa references in this reply (as in its Written Comment) views and General Comments from treaty bodies, noting that this Court has previously stated that, when interpreting the terms of a particular treaty, special weight should be accorded to the views of the supervisory body established by that treaty.¹⁵

The status of the right to a clean, healthy and sustainable environment

29. The legal content of the right to a clean, healthy and sustainable environment (**RTHE**) is tied to the achievement of its status as a standalone universal human right. While States have for some time been obliged under various human rights norms to ensure that individuals enjoy a clean, healthy and sustainable environment, a specific and standalone right to a clean, healthy and sustainable environment has emerged. This distinct right has evolved as a norm of customary international law or else as a right that is derived from other human rights. It is recognised as such (“as a human right” and “as related to other rights and existing international law”) by the UNGA¹⁶ and the UN Human Rights

¹⁵ See for example, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, ICJ Reports 2010, p. 639, para.66.

¹⁶ United Nations General Assembly (adopted 28 July 2022), *The human right to a clean, healthy and sustainable environment*, A/Res/76/300, 1 August 2022. See, para.1 the UNGA “[r]ecognises the right to a clean, healthy and sustainable environment as a human right” and para.2 “[n]otes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law”. Also, see the Official Record of the 97th plenary meeting of the 76th session A/76/PV.97, p.11. 161 States voted in favour of the resolution, no States voted against the resolution, while Belarus, Cambodia, China, Ethiopia, Iran, Kyrgyzstan, Russia and Syria abstained. Kyrgyzstan subsequently submitted an official letter to the UN indicating that it had abstained in error and intended to vote in favour of the resolution. Saint Kitts and Nevis and Seychelles indicated that they intended to vote in favour.

Council.¹⁷ It has also been recognised as an implied right by Committee on the Rights of the Child under the Convention on the Rights of the Child.¹⁸

30. Inclusion of the RTHE occurred at the 27th and 28th Conference of the Parties to the UN Framework on Climate Change in the Sharm El-Sheikh Implementation Plan and the First Global Stocktake.¹⁹ This added, by consensus, the RTHE to the existing preambular paragraph on human rights in the Paris Agreement as referenced in these documents. The RTHE was also included, by consensus, in the Kunming-Montreal Global Biodiversity Framework in 2022²⁰ and the Bonn Declaration for a Planet Free of Harm from Chemicals and Waste in 2023.²¹
31. The RTHE is recognised regionally in the African Charter on Human and Peoples Rights,²² the Maputo Protocol on the Rights of Women in Africa²³, the San Salvador Protocol to the American Convention on Human Rights²⁴, the Arab Charter on Human Rights²⁵, the Association of Southeast Asian Nations Human Rights Declaration²⁶, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters²⁷, and the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in

¹⁷ Human Rights Council, *Resolution adopted by the Human Rights Council on 8 October 2021*, A/HRC/RES/48/13, 18 October 2021. See, para.1, the Human Rights Council “[r]ecognises the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights” and “[n]otes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law”.

¹⁸ Committee on the Rights of the Child, *General Comment No.26 (2023) on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023 at para.63 (“Children have a right to a clean, healthy and sustainable environment. This right is implicit in the Convention and directly linked to, in particular, the rights to life, survival and development, under article 6, to the highest attainable standard of health, including taking into consideration the dangers and risks of environmental pollution, under article 24, to an adequate standard of living, under article 27, and to education, under article 28, including the development of respect for the natural environment, under article 29”).

¹⁹ Outcome of the First Global Stocktake, 2023, FCCC/PA/CMA/2023/L.17. Sharm El-Sheikh Implementation Plan, 2022, Decision 1/CMA.4.

²⁰ At para.14: “The implementation of the framework should follow a human rights-based approach respecting, protecting, promoting and fulfilling human rights. The framework acknowledges the human right to a clean, healthy and sustainable environment”.

²¹ At para.17, “We note General Assembly resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment, and its importance for the promotion of human well-being and the full enjoyment of human rights”.

²² Article 24.

²³ Article 18.

²⁴ Article 11 and the Inter-American Court of Human Rights has found that the RTHE is also a derived standalone right under Article 26 of the *American Convention on Human Rights*. See, Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017 requested by the Republic of Colombia, *The Environment and Human Rights* at para.57 (“It should also be considered that this right is included among the economic, social and cultural rights protected by Article 26 of the American Convention, because this norm protects the rights derived from the economic, social, educational, scientific and cultural provisions of the OAS Charter, the American Declaration of the Rights and Duties of Man (to the extent that the latter “contains and defines the essential human rights referred to in the Charter”) and those resulting from an interpretation of the Convention that accords with the criteria established in its Article 29. The Court reiterates the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights, because they should be understood integrally and comprehensively as human rights, with no order of precedence, that are enforceable in all cases before the competent authorities.”)

²⁵ Article 38.

²⁶ Article 28(f).

²⁷ Preamble and Art. 1.

Latin America and the Caribbean²⁸. More than 140 UN Member States are Parties to these regional instruments.

32. Finally, Samoa cites its Written Comment at paragraph 132 where it notes domestic State practice, including traditional cultural practices across the Pacific region which are founded on or support a healthy environment and environmental sustainability.

The content of the right to a clean, healthy and sustainable environment

33. The RTHE has substantive and procedural elements which create corresponding State obligations.
34. Its substantive content includes: clean air; a safe and stable (or liveable) climate; healthy ecosystems and biodiversity; safe and sufficient water and adequate sanitation; healthy and sustainably produced food; and non-toxic environments in which to live, work and play.²⁹ Its procedural content includes: the right to access environmental information; public participation in environmental decision-making; and access to justice, including the free exercise of these rights without intimidation.³⁰
35. RTHE also essentially protects the *quality* of the environment, as it guards against ‘significant’ environmental harm. ‘Significant’, in this context, is something more than detectable but need not be at the level of serious or substantial.³¹ Ultimately, what is significant will take its colour and meaning from the environment in issue. For example, the measures that a State must take to conserve fragile ecosystems will be greater and different from those it must take to deal with the risk of environmental damage to other components of the environment.³²
36. As a standalone right (referred to also as an autonomous right³³), RTHE, unlike other rights, protects the components of the environment, such as forests, rivers, seas and climate *as legal interests in themselves, even in the absence of a certainty or a risk to individuals*.³⁴ This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have

²⁸ Articles 1 and 4.

²⁹ *Inhabitants of La Oroya v Peru*, Inter-American Court of Human Rights, 2024, at para.118. See also, the Committee on the Rights of the Child, *General comment No.26 (2023) on children’s rights and the environment, with a special focus on climate change* (22 August 2023), CRC/C/GC/26, at para.63; the United Nations Special Rapporteur on the right to a clean, healthy and sustainable environment published reports on each of the substantive elements, including A/74/161 (safe climate), A/75/161 (healthy ecosystems and biodiversity), A/76/179 (healthy and sustainably produced food), A/HRC/40/55 (clean air), A/HRC/46/28 (safe and sufficient water), and A/HRC/49/53 (non-toxic environments).

³⁰ Inter-American Court of Human Rights, 2017, *Advisory Opinion OC-23/17*, at para.212. These procedural elements are rooted in the Universal Declaration of Human Rights (Articles 8, 19 and 21); International Covenant on Civil and Political Rights (ICCPR) (Article 19) and were reiterated in the 1992 Rio Declaration on Environment and Development at principle 10 (“States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”).

³¹ Inter-American Court of Human Rights, 2017, *Advisory Opinion OC-23/17*, at para.136. This is essential the standard for transboundary harm articulated by the International Law Commission in Articles on prevention of transboundary harm from hazardous activities, prepared by the International Law Commission and annexed to United Nations General Assembly Resolution 62/68 of December 6, 2007, UN Doc. A/RES/62/68, art. 1.

³² Inter-American Court of Human Rights, 2017, *Advisory Opinion OC-23/17*, at para.142.

³³ Inter-American Court of Human Rights, 2017, *Advisory Opinion OC-23/17*, at para.62.

³⁴ Inter-American Court of Human Rights, 2017, *Advisory Opinion OC-23/17*, at para.62.

on other human rights, such as health or life, but because of their importance to the other living organisms that also merit protection in their own right.³⁵

37. RTHE has an individual and collective dimension. The collective dimension protects the quality of the environment *per se*, constituting a “universal value that is owed to both present and future generations”.³⁶ Its individual dimension is connected to other rights, such as the right to life and the other rights identified below.³⁷ Samoa submits that a violation of an individual’s right may also include the diminution of the quality of their given environment.
38. It is important to note that the RTHE has a group dimension vis-à-vis Indigenous peoples, or other peoples who are similarly situated, who are uniquely dependent upon a safe, healthy and sustainable environment for their cultural, social and economic well-being and, in many cases, their political organisation (such as, Samoa’s chiefly system referred to in Samoa’s Oral Statement³⁸). For these peoples or groups, a higher level of protection is necessary. Accordingly, the threshold for what amounts to ‘significant’ harm must be considerably lower for indigenous and similar peoples whose lives and livelihood are wholly dependent on a healthy natural environment. In particular, RTHE must protect the following essential elements of a healthy and sustainable environment for indigenous peoples:
 - a. subsistence agriculture, gardening, hunting and gathering;
 - b. natural sites with cultural significance and important ecological sites; and
 - c. non-human species (insects, plants, animals, fish, etc). The latter might have a totemic or ancestral relationship with the group or people.
39. The RTHE can provide a legal basis for addressing present or ongoing environmental degradation just as it may guard against foreseeable risks to the environment. In other words, the right obliges States not only to prevent future harm but also to remedy the damage already inflicted. Thus, the right requires States to take positive measures as well as protect the environment from harmful interference, including by private actors.

How the standalone right to a clean, healthy and sustainable environment applies to the conduct

40. As Samoa submitted in its oral submission, the conduct at issue is the individual and cumulative releases of GHG emissions over an extended period of time, from activities under the jurisdiction or control of particular States that result in significant harm to the climate system and other parts of the environment. The climate system (as defined by the IPCC) is a component of the environment.
41. Samoa wishes to focus attention on the following three examples of the applicability of the RTHE in this case:
 - 41.1 The RTHE protects the right to a safe and stable climate (including as its own legal interest or via the RTHE’s collective dimension or with respect to a group,

³⁵ See also, Inter-American Court of Human Rights, 2017, *Advisory Opinion OC-23/17*, at para.62.

³⁶ Inter-American Court of Human Rights, 2017, *Advisory Opinion OC-23/17*, at para.59.

³⁷ Inter-American Court of Human Rights, 2017, *Advisory Opinion OC-23/17*, at para.59.

³⁸ Samoa’s Oral Statement, transcript, at p.22, para.11.

such as Indigenous peoples who rely on a stable and predictable climate within their territory for their subsistence and culture). Samoa submits that any interference with the climate system constitutes significant harm and is destabilising. Further, the escalating climate emergency and the irreversible harm due to the destabilisation of the climate system (as has been outlined in the IPCC's Sixth Assessment Report), has violated this right. There is a clear causal nexus between the conduct and infringement of this right. Global warming has a near linear relationship with cumulative carbon dioxide emissions, the overwhelming majority of anthropogenic greenhouse gas emissions. One does not need to go further than this violation, but it is clear that there has been a grave and a gross infringement of the RTHE when applied to the entirety of the harm to the climate system and other parts of the environment.

- 41.2 The RTHE protects ecosystems. 70-90% of the world's reef building corals will be lost by 1.5°C.³⁹ The destruction of this precious ecosystem worldwide, including in our Pacific Ocean, violates the RTHE, the collective dimension of the RTHE and group rights (for example, the customary land in Samoa includes fringing reefs).
- 41.3 The Committee on the Rights of the Child has said that the realisation of the RTHE for children under the Convention on the Rights of the Child requires States to "immediately...equitably phase out the use of coal, oil and natural gas, ensure a fair and just transition of energy sources and invest in renewable energy, energy storage and energy efficiency to address the climate crisis".⁴⁰
42. Finally, Samoa has dealt with the issue of extraterritoriality of human rights in its Written Comment at paras 153–164. More specifically, the RTHE applies extraterritorially given the transboundary nature of environmental harms (including, obviously, the many adverse impacts forming part of climate change).
43. States are required to cease the conduct and repair the resulting injuries.

Other human rights

44. Samoa has extensively addressed in its Written Comment that the RTHE *or the matters it protects* (elements and quality of the environment) are pre-conditions for the effective protection and full enjoyment of many human rights.⁴¹ Samoa has identified and discussed in its Written Comment the conduct's violation of the right to life at paras 73–82, the right not to be subjected to inhumane and degrading treatment at 83–88, cultural rights at paras 89–96, the right to privacy, family and home at paras 97–103, the right to health at paras 104–109, the right to an adequate standard of living at paras 110–113, the right to food at paras 115–122 and the right to water at paras 123–129. It has also shown how each of these rights are related to the RTHE or the matters that the RTHE protects.
45. Samoa also identified the human right to self-determination in common article 1 of the ICCPR and the International Covenant on Economic, Social and Cultural Rights, which

³⁹ See, citation in Samoa's Comment at footnote 106.

⁴⁰ Committee on the Rights of the Child, *General Comment No.26 (2023) on children's rights and the environment, with special focus on climate change (22 August 2023)* CRC/C/GC/26 at para.8.

⁴¹ Samoa Written Comment paras.54-164.

includes an absolute prohibition on the deprivation of a peoples' "means of subsistence"⁴². Means of subsistence includes the environment (including the climate system). Means of subsistence must also mean the physical land territory of States.⁴³ Samoa notes that some of our Pacific neighbouring States have indicated that their entire land territories *will* be completely inundated due to sea-level rise, which has already been committed or locked-in by already emitted greenhouse gas emissions.⁴⁴ The IPCC has said that historical emissions up to 2016 will likely lead to a committed sea level rise of 0.7-1.1m up to the year 2300.⁴⁵ This does not include the compounding effect of continued cumulative greenhouse gas emissions. This is a clear violation of the right to self-determination.

46. Samoa affirms its Written Comments on human rights, which provides an analysis of the underlying pre-condition of a RTHE or matters that it protects with respect to each right identified above. Samoa relies on these submissions as part of its reply to the question put by Judge Aurescu, but does not repeat these submissions in full here.
47. However, Samoa wishes to add to its submissions on the right to life ⁴⁶.
48. In General Comment No.36 on the right to life, the Human Rights Committee (HRC) said that article 6 "concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity".⁴⁷ The right to life (which has been referred to as the right to life with dignity) "extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life", even if such threats and situations do not actually result in loss of life.⁴⁸ In other words, the right to life extends to the conditions of life. More specifically, the HRC has further stated that the right to life applies to environmental degradation, climate change and unsustainable environment.⁴⁹
49. In *Billy v. Australia*, the HRC stated that climate change may violate the right to life *with dignity* in circumstances where: an individual has faced or currently face adverse impacts on their own health; and/or a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten their right to life, including their right to life with dignity.
50. In its submissions, Samoa noted that *the conduct has already violated the right to life*. In its oral submissions Samoa noted that the IPCC has found that climate change has caused

⁴² Common Article 1.2 of the ICCPR and ICESCR: "In no case may a people be deprived of its own means of subsistence".

⁴³ See, Samoa's Written Comment at paras 65–66.

⁴⁴ See, for example, Tuvalu Oral Submissions, transcript, p.48 (Transcript of video recording: 3D model excerpt).

⁴⁵ United Nations, *Surging Seas in a warming world: The latest science on present-day impacts and future projections of sea-level rise*, p. 5.

⁴⁶ See, Samoa's extensive submissions on the right to life in its Written Comment at paras 73–83 and its relation to the RTHE at para. 133.

⁴⁷ Human Rights Committee, *General Comment No.36 (Article 6)*, 3 September 2019, CCPR/C/GC/26, para. 2.

⁴⁸ HRC, *General Comment No.36 (Article 6)*, 3 September 2019, CCPR/C/GC/26, para. 7.

⁴⁹ See, also HRC views where the right to life with dignity was applied in *Norma Portillo Caceres et al. v. Paraguay*, CCPR/C/126/D/2751/2016 and *Daniel Billy and others v. Australia*, CCPR/C/135/D/3624/2019.

“premature deaths”⁵⁰ as well as increased observed “heat related mortality”⁵¹ and other adverse impacts on health.⁵²

51. Moreover, as Samoa noted in its Written Comment, the climate induced increasing intensity of cyclones in our region has caused loss of life and causes a situation of physical endangerment and extreme precarity when it makes landfall.⁵³ Scientists are now able to attribute a percentage of increased intensity of tropical cyclones, particularly increased precipitation, to climate change.⁵⁴ Further, as some Pacific States showed in oral submissions, increased sea level rise has a direct impact on storm surge and flooding and *will* completely inundate whole island-States.⁵⁵
52. While the conduct has already violated the right to life. Climate change and related extreme events will significantly increase ill health and premature deaths from the near to long term. The IPCC has predicted that there will be an excess of 250,000 deaths *per year* due to climate induced heat, undernutrition, malaria and diarrheal events by 2050.⁵⁶
53. Some States have argued that where they are required to take positive measures with respect to the right to life, they should be accorded a margin of discretion to balance competing interests.⁵⁷ Such an approach should be rejected with respect to the right to life, from which no derogation is permitted.

⁵⁰ IPCC Sixth Assessment Report, Working Group II – Impacts, Adaptation and Vulnerability, *Fact Sheet – Health* under “Observed impacts on health”, 1 (“Climate related illnesses, premature deaths, malnutrition in all of its forms, and threats to mental health and well-being are increasing (*very high confidence*)”).

⁵¹ IPCC Sixth Assessment Report, Working Group II – Impacts, Adaptation and Vulnerability, *Fact Sheet – Health* under “Observed impacts on health”, 1 (“Climate change has increased observed heat-related mortality (*medium confidence*)”).

⁵² IPCC Sixth Assessment Report, Working Group II – Impacts, Adaptation and Vulnerability, *Fact Sheet – Health* under “Observed impacts on health”, 1

⁵³ Samoa Written Comment at [81(a)]-[81(b)].

⁵⁴ For example, see Luke J. Harrington, Sam M. Dean, Shaun Awatere, Suzanne Rosier, Laura Queen, Peter B. Gibson, Clair Barnes, Mariam Zachariah, Sjoukje Philip, Sarah Kew, Gerbrand Koren, Izidine Pinto, Matthew Grieco, Maja Vahlberg, Roop Singh, Dorothy Heinrich, Lisa Thalheimer, Sihan Li, Dáithí Stone, Wenchang Yang, Gabriel A. Vecchi, David J. Frame, Friederike E.L. Otto, *The role of climate change in extreme rainfall associated with Cyclone Gabrielle over Aotearoa New Zealand’s East Coast*, 14 March 2023, see “6. Hazard Synthesis”. See also, Seneviratne, S.I., X. Zhang, M. Adnan, W. Badi, C. Dereczynski, A. Di Luca, S. Ghosh, I. Iskandar, J. Kossin, S. Lewis, F. Otto, I. Pinto, M. Satoh, S.M. Vicente-Serrano, M. Wehner, and B. Zhou, 2021: Weather and Climate Extreme Events in a Changing Climate. In *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 1513–1766, doi: 10.1017/9781009157896.013 at “Chapter 11: Weather and Climate Extreme Events in a Changing Climate”, “Executive Summary”.

⁵⁵ See, Tuvalu Oral Statement, transcript, Thursday 12 December 2024 at 10am, 48 at “Transcript of video recording: 3D model excerpt”; Marshall Islands Oral Statement, transcript, Thursday 5 December 2024 at 3pm, pp.24-27 at paras.1-18.

⁵⁶ IPCC Sixth Assessment Report, Working Group II – Impacts, Adaptation and Vulnerability, *Fact Sheet – Health* under “Projected Risks”, p.1.

⁵⁷ See, for example, United Kingdom Written Comments at para.51.

Question put by Judge Charlesworth:

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

REPLY:

54. These declarations (as paraphrased in the question) made by some States upon becoming a party to the UN Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol or the Paris Agreement reaffirm explicitly the declaring States’ understanding that these treaties do not displace existing obligations or remedies. Similarly, these declarations contradict any suggestion that the longstanding customary rules pertaining to climate change –including the customary obligation to prevent transboundary harm – have lapsed or fallen into desuetude.
55. Samoa has already provided extensive submissions on why the UNFCCC and Paris Agreement treaties are not *lex specialis* and reaffirms them here.⁵⁸ Equally, Samoa observes that a majority of the participants in the oral proceedings in this matter rejected the notion that the UNFCCC/Paris Agreement operate to the exclusion of other international legal rules pertaining to climate change.
56. Indeed, these declarations are also consistent with Samoa’s submissions in its Oral Statement that harms attributable to anthropogenic greenhouse gas emissions had already been produced before the UNFCCC and the Paris Agreement entered into force, respectively in 1994 and 2016. This is evidenced by the IPCC’s first report in 1990, which found that global mean temperature had increased by 0.3C to 0.6C over the preceding century, and global sea level had risen by 10-20cm.
57. Thus, far from waiving their rights to seek remedies (which Samoa argues would require, in any event, an explicit statement to this effect in either the UNFCCC and Paris Agreement), these States have expressed their clear understanding that any harm caused by internationally wrongful conduct – either in breach of rules forming part of customary international law or enshrined in treaties or conventions – remains subject to the full range of remedies and reparations under international law, including cessation, non-repetition and compensation.

⁵⁸ See, for example, Samoa’s Oral Statement, verbatim record CR 2024/49, p.24-26, paras.7-16.