

**Replies from the Republic of Vanuatu and the Melanesian Spearhead Group to the questions put by Judges Cleveland, Tladi, Aurescu and Charlesworth at the end of the public sitting of Friday 13 December in the oral proceedings concerning the request for an advisory opinion on the Obligations of States in respect of Climate Change**

**20 December 2024**

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## 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. Aspects of this question have been specifically addressed in the written and oral submissions of Vanuatu<sup>1</sup> and the Melanesian Spearhead Group (MSG),<sup>2</sup> which are reaffirmed in full. The views expounded in these submissions converge with those of other States and organisations, both in their written and oral submissions.<sup>3</sup> This reply is intended to address in more detail the issues raised by the question.

### A. The relevance of fossil fuel production and related subsidies

2. The burning of fossil fuels is the main historical and current driver of greenhouse gas emissions,<sup>4</sup> and thus the primary cause of climate change.<sup>5</sup> Fossil fuels are produced in order to be burnt for

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<sup>1</sup> WS Vanuatu, paras. 145-146 (“Policies for expansion of fossil fuel production are clearly “acts” of the State and, given their nature, they are in principle attributable to the State, whether the government is itself the producer of the fossil fuel or not.”); paras. 486-488, 494-495, 512-519, 536-537, 607 (explaining that increased production of fossil fuels and subsidies for the same breach States’ obligations under a wide variety of treaty and customary rules, including peremptory norms and obligations owed *erga omnes*, triggering legal consequences); WC Vanuatu, paras. 39, 43, 163, 177-178; CR 2024/35, pp. 108-109, paras. 8-10, p. 111, para. 3, p. 11, para. 7 (Vanuatu and MSG).

<sup>2</sup> WS MSG, paras. 294-295 (detailing how the provision of fossil fuels subsidies amounts to State conduct that causes significant harm to the climate system in violation of States’ international legal obligations); paras. 315, 333 (explaining that for States that have engaged in internationally wrongful conduct, “the duty of cessation requires States to urgently implement all necessary measures to prevent future emissions that would lead to further human rights harms, including a rapid and just transition away from fossil fuels”); WC MSG, paras. 25, 172, 193, 203, 235; CR 2024/35, pp. 108-109, paras. 8-10, p. 111, para. 3, p. 11, para. 7 (Vanuatu and MSG).

<sup>3</sup> See, e.g., CR 2024/36, p. 86, para. 19 (Barbados); CR 2024/37, p. 48, para. 15, p. 49, para. 17 (Burkina Faso); CR 2024/40, p. 36, para. 22 (Côte d’Ivoire); CR 2024/39, p. 61, paras. 20-21 (Egypt); CR 2024/41, p. 39, para. 8 (Ghana); CR 2024/42, p. 19, paras. 7, 10 (Cook Islands); CR 2024/42, p. 32, para. 14 (Marshall Islands); CR 2024/44, p. 41, para. 13 (Malawi); CR 2024/45, p. 28, para. 38 (Micronesia); CR 2024/47, p. 30, para. 15 (Netherlands); CR 2024/48, pp. 66-67, para. 7 (Saint Lucia); CR 2024/49, pp. 69-70, paras. 13-14 (Gambia); CR 2024/50, p. 47, para. 3 (Sri Lanka); CR 2024/53, p. 20, para. 18; p. 23, para. 12 (COSIS); CR 2024/53, p. 35, para. 6 (SPC); CR 2024/53, p. 49, para. 5 (OACPS); CR 2024/54, p. 11-12, para. 20 (WHO); WS Democratic Republic of Congo, paras. 209, 333; WS Albania, paras. 78, 133; WS OACPS, paras. 145, 165; WS Egypt, para. 391; WS Tuvalu, paras. 61-70; WS Bangladesh, paras. 10, 93, 130, 139; WS Mauritius, para. 127; WS Costa Rica, paras. 103, 110; WS Antigua & Barbuda, paras. 480-482; WS COSIS, paras. 61-62, 125; WS Burkina Faso, paras. 182, 223, 240; WS African Union, paras. 106-108; WS Saint Vincent and the Grenadines, paras. 49, 52; WS Saint Lucia, paras. 37, 39; WS Colombia, para. 4.10; WC COSIS, para. 25; WC Cook Islands, paras. 106, 125(c); WC Sri Lanka, para. 70; WC Gambia, para. 5.15; WC Mauritius, paras. 49, 76, 121; WC Samoa, paras. 145-146, 150; WC Saint Lucia, para. 40; WC Bangladesh, para. 16; WC African Union, para. 35; WC Egypt, para. 98-106; WC Burkina Faso, paras. 4(2), 38(b).

<sup>4</sup> *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20 [hereinafter *Finch*], para. 1. According to the United Nations Environment Programme (UNEP) Production Gap Report 2023, p. 3, close to 90% of global carbon dioxide emissions stem from burning fossil fuels. See also Intergovernmental Panel on Climate Change, *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 (SPM), p. 5; Intergovernmental Panel on Climate Change, *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 CO<sub>2</sub> emissions, the combustion of fossil fuels was responsible for 81–91%, with the remainder being the net CO<sub>2</sub> flux from land-use change and land management (e.g., deforestation, degradation, regrowth after agricultural abandonment, and peat drainage)”).

<sup>5</sup> Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6) Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statements A.1, B.1.1; Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, Full Report (2023), p. 48., fig. 3.5; see also, WS Center for International Environmental Law, para. 2 ([link](#)).

energy purposes,<sup>6</sup> thereby generating emissions of greenhouse gases.<sup>7</sup> Historically, large producers of fossil fuels have also been large emitters of greenhouse gases.<sup>8</sup> There are exceptions, when a large producer exports the bulk of its fossil fuel production—and relies instead on clean energy; or when a large consumer imports the bulk of its fossil fuel consumption—thereby emitting large amounts of greenhouse gases without producing fossil fuels. Yet, as confirmed by the United Kingdom Supreme Court, developments in carbon accounting recognise the responsibility of major exporters of fossil fuels through the concept of ‘scope 3’ emissions, which attribute greenhouse gas emission from burning of fossil fuels to the exporter of the product.<sup>9</sup> It is also important to note the remarkable convergence between the identity of the largest greenhouse gas emitters—China, the United States, India, the European Union and Russia<sup>10</sup>—and the States/jurisdictions providing the largest subsidies to fossil fuels—China, the United States, Russia, the European Union and India.<sup>11</sup>

3. The relationship between fossil fuel production, greenhouse gas emissions, climate change and related risks has been well understood for decades. As early as 1832, science provided some understanding of the environmental effects and risks of the conduct.<sup>12</sup> This emerging understanding of the risks triggered a due diligence obligation for all States, informed by the precautionary principle. The standard of due diligence has increased over time, along with increasing scientific knowledge and certainty about the causes and effects of climate change. It heightened to a stringent standard in the 1960s, when the science was not only well-established but also fully known in policy circles.<sup>13</sup> From this time onwards, abiding by the duty of due diligence has required the phasing out of fossil fuel production.
4. The need to phase out fossil fuels has become extremely urgent in this critical decade given the non-linear nature of climate change, which means that any additional emissions may be the straw that breaks the camel’s back, i.e., that tips the climate system into an entirely different and

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<sup>6</sup> *Finch* [2024] UKSC 20, para. 2 (“*The whole purpose of extracting fossil fuels is to make hydrocarbons available for combustion*”).

<sup>7</sup> *See Finch* [2024] UKSC 20, para. 2, para. 103.

<sup>8</sup> United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5.

<sup>9</sup> *Finch* [2024] UKSC 20, para. 254.

<sup>10</sup> *WS Vanuatu*, paras. 152, 163-168; Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (Exhibit B to *WS Vanuatu*), paras. 25-26; *see* United Nations Environment Programme, *Emissions Gap Report* (2022), p. 7; Matthew W. Jones et al., *National contributions to climate change due to historical emissions of carbon dioxide, methane and nitrous oxide since 1852* (2023) 10:1 *Science Data*, p. 155.

<sup>11</sup> Simon Black, Antung A. Liu, Ian Parry & Nate Vernon, ‘IMF Fossil Fuel Subsidies Data: 2023 Update’ (August 2023) IMF Working Paper (Fiscal Affairs Department), Washington, DC, WP/23/169, p. 4.

<sup>12</sup> *WS Vanuatu*, para. 247 (citing Charles Babbage, *ON THE ECONOMY OF MACHINES AND MANUFACTURES* (first published 1832, Cambridge University Press, 2009), p. 17).

<sup>13</sup> *WS Vanuatu*, paras. 177-192; Expert Report of Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (Exhibit D to *WS Vanuatu*); *WS MSG*, para. 46; *CR 2024/35* p. 97, para. 4 (Vanuatu and Melanesian Spearhead Group); *WC Barbados*, para. 14; *WS Barbados*, paras. 38-82; *CR 2024/36*, pp. 88-89, paras. 12-13 (Barbados); *CR 2024/53*, pp. 53-54, para. 5 (Organisation of African, Caribbean and Pacific States).

incredibly dangerous dynamic.<sup>14</sup> This imperative has been expressly recognised at COP28 through the commitment to “*transitioning away from fossil fuels*”.<sup>15</sup>

5. Against that background, Vanuatu and MSG submit that any State which is a **large** producer of fossil fuels was and is under the obligation to swiftly act to reduce the main driver of greenhouse gas emissions, by phasing out fossil fuel production (and use). A State is a **large** producer when it has produced over time an amount of fossil fuels which, when burned, have yielded cumulative anthropogenic greenhouse gas emissions, whether from its territory or from the territory of consumer countries, sufficient to significantly interfere with the climate system. Such States are under these obligations for two reasons:
  - a) First, **fossil fuel production and associated activities form part of a conduct that is and has been governed by various international legal obligations over time**. In the discharge of these various obligations, all States are required to reduce the main driver of greenhouse gas emissions by phasing out fossil fuels. Today, safeguarding compliance with these obligations takes on a heightened degree of urgency and intensity by reason of the escalating consequences of climate change, including the existential threats continued emissions pose to whole peoples.
  - b) Second and relatedly, **the ongoing production, licensing, and subsidising of fossil fuels by large producer States over time, with awareness over many decades of harms posed to the climate system, environment, individuals and peoples, amounts to violations of numerous of the applicable obligations**. As a legal consequence of these violations, large producer States must cease the wrongful conduct entirely, provide guarantees of non-repetition and make amends for the harm, consistently with the obligations triggered under the general law of State responsibility.
6. As explained below, such States have heightened obligations of due diligence under treaty law and general international law. **Limited reduction of production and, a fortiori, no action or even action to increase the production of fossil fuels (through subsidies to production and/or consumption) constitutes, as a matter of principle, a breach of all State obligations requiring the exercise of due diligence not to cause harm to the climate system and other parts of the environment.**

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<sup>14</sup> WS Vanuatu, para. 100 (citing Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2021), p. 618); WC MSG, para. 35 (citing Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statements B.4.5, B.6 (2022)).

<sup>15</sup> Outcome of the first global stocktake, Decision I/CMA.5, FCCC/PA/CMA/2023/16/Add.1, para. 28(d) ([link](#)).

7. The **conduct effectively observed by large producers of fossil fuels, as recorded by a range of converging reports,**<sup>16</sup> indicates an ongoing breach of these obligations. The content of some of the most relevant obligations is examined next.

**B. Obligations governing the production of fossil fuels, including fossil fuel subsidies**

8. Judge Cleveland’s question refers to “*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*”.

9. As a general matter, the activity of producing fossil fuels has been regulated under international law with increasing specificity for over a century. No State can, in its reply, rely on the terms “*if any?*” of Judge Cleveland’s question to argue for the existence of a non-liquet.

10. First, there are obligations under international law which have been expressly interpreted to govern the production of fossil fuels, including some of those addressed in the written and/or oral submissions.

11. The production of fossil fuels and the limits imposed by international law to such production are regulated by the principles applicable to natural resources in general. The basic tenet governing the exploitation of natural resources in international law, including the production of fossil fuels, is that “*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*”,<sup>17</sup> but this is subject to “*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>18</sup> In the same way that powers over natural resources are defined in a manner which applies to all resources alike—or, in other words, which is not resource-specific—the general obligation to which the exercise of such powers is subject is also defined in a manner which applies to all forms of harm to the environment or any

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<sup>16</sup> See United Nations Environment Programme, Emissions Gap Report 2023: *Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), p. 30; United Nations Environment Programme, Emissions Gap Report 2024: *No more hot air, please! With a massive gap between rhetoric and reality, countries draft new climate commitments* (2024), pp. 4-5; United Nations Environment Programme, Production Gap Report 2023: *Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5; see, also, WS Vanuatu, paras. 162-170, 247-248, 267-278, 285-287, 510, 512, 513; Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (Exhibit B to WS Vanuatu); WC Vanuatu, paras. 52-75, 110 and table 1, 165-168 and table 2.

<sup>17</sup> Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26, principle 2; see Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, A/CONF.48/14/Rev.1, principle 21.

<sup>18</sup> Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26, principle 2; see Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, A/CONF.48/14/Rev.1, principle 21.

sub-component, including specifically the marine environment,<sup>19</sup> ozone layer,<sup>20</sup> the Antarctic,<sup>21</sup> the climate system,<sup>22</sup> biodiversity<sup>23</sup> and international rivers and lakes.<sup>24</sup>

12. More importantly, the formulation of Judge Cleveland’s question suggests that it is not only about whether the production of fossil fuels is subject to limitations in international law—which is certainly the case—but, also, about **whether States were and are required to phase out or down or, in any event, to refrain from phasing up fossil fuel production due to its scientifically acknowledged massive implications for climate change. The answer to this question is yes, both at a general and a specific level.**
13. The production of fossil fuels generates greenhouse gas emissions. It is therefore directly regulated by the obligations governing such emissions, which squarely apply to any activity which emits greenhouse gas. These obligations also apply to the subsequent burning (whether by the producer State or by foreign consumer States) of the fossil fuels produced. Such application is a corollary of the direct and necessary connection between the production of fossil fuels and greenhouse gas emissions resulting from the burning of such fuels, which has been expressly recognised in legal terms by the United Kingdom Supreme Court.<sup>25</sup> These two reasons confirm the applicability of the wide body of rules addressed in the chapeau of Resolution 77/276, the written and oral submissions of Vanuatu,<sup>26</sup> those of MSG<sup>27</sup> and of the overwhelming majority of delegations that made written and/or oral submissions in these proceedings.<sup>28</sup> The next sections

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<sup>19</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, 29 December 1972, 1046 U.N.T.S. 120, in force 30 August 1975, preamble.

<sup>20</sup> Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985, in force 22 September 1988, (1985) 26 ILM 1529, preamble, art 1(2).

<sup>21</sup> Convention on the Regulation of Antarctic Mineral Resource Activities, Wellington, 2 June 1988, not in force, (1988) 27 ILM 868, art 4(2).

<sup>22</sup> United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107, art. 1(1) [hereinafter UNFCCC].

<sup>23</sup> Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, in force 29 December 1993, (1992) 1760 UNTS 69, preamble, arts. 7(c), 8(1), 14(1), 16(1).

<sup>24</sup> Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki, 17 March 1992, in force 6 October 1996, (1992) 31 ILM 1312, art 1(2); Convention on the Law of the Non-navigational Uses of International Watercourses, New York, 21 May 1997, in force 17 August 2014, 2999 U.N.T.S. 77, art 7.

<sup>25</sup> *Finch* [2024] UKSC 20, paras. 2, 103.

<sup>26</sup> WS Vanuatu, ch. IV; WC Vanuatu, paras. 165-168 and table 2; CR 2024/35, p. 100, para. 3 (Vanuatu and MSG).

<sup>27</sup> WS MSG, paras. 231-289; WC MSG, ch. VI.

<sup>28</sup> See, e.g., CR 2024/35, p. 98, para. 5 (Vanuatu and MSG); CR 2024/35, p. 132, paras. 20-23, p. 134, para. 2 (Albania); CR 2024/36, p. 17-18, paras. 7, 10-11 (Antigua and Barbuda); CR 2024/36, p. 60, para. 11, pp. 63-64, para. 27-29 (Bahamas); CR 2024/36, p. 67, paras. 3-4, p. 70, para. 13 (Bangladesh); CR 2024/35, p. 82, para. 4 (Barbados); CR 2024/37, p. 9-12, paras. 18 (Belize); CR 2024/37, p. 21-22, paras. 12-14 (Bolivia); CR 2024/37, pp. 43-44, paras. 2-4 (Burkina Faso); CR 2024/37 p. 53-54, para. 5 (Cameroon); CR 2024/37, pp. 65-66, paras. 9-17 (Philippines); CR 2024/38, pp. 22-23, paras. 15-19 (Chile); CR 2024/38, p. 42, para. 5 (Columbia); CR 2024/38, p. 55, paras. 11-12 (Dominica); CR 2024/39, p. 12, paras. 5-8 (Costa Rica); CR 2024/39, p. 58, para. 9 (Egypt); CR 2024/39, p. 66, para. 3 (El Salvador); CR 2024/40, p. 18, para. 8 (Ecuador); CR 2024/40, p. 32, para. 7 (Spain); CR 2024/40, pp. 68-69, paras. 7-11 (Fiji); CR 2024/41, pp. 20-21, paras. 5-7 (Sierra Leone); CR 2024/41, p. 33, para. 3 (Ghana); CR 2024/41, p. 51, para. 9 (Grenada); CR 2024/41, p. 58, paras. 23-24 (Guatemala); CR 2024/42, p. 14-15, para. 19 (Cook Islands); CR 2024/42, p. 28, para. 4 (Marshall Islands); CR 2024/42, p. 38, para. 6 (Solomon Islands); CR 2024/43, p. 14, para. 11 (Jamaica); CR 2024/43, p. 23, para. 2 (Papua New Guinea); CR 2024/43, p. 31, para. 2 (Kenya); CR 2024/43, p. 44, para. 4 (Kiribati); CR 2024/44, p. 9, para. 8, p. 14, para. 11, p. 16, para. 18 (Latvia); CR 2024/44, pp. 24-25, para. 7, p. 27, para. 17 (Liechtenstein); CR 2024/44, p. 37, para. 21 (Malawi); CR 2024/44, p. 47, para. 3 (Maldives); CR 2024/44, p. 67, para. 17 (African Union); CR 2024/45, p. 10, para. 6 (Mexico); CR 2024/45, p. 20, para. 8 (Federated States of Micronesia); CR 2024/45, p. 39, paras. 8-9; CR 2024/46, p. 8, para. 2 (Nauru); CR 2024/46, p. 24, para. 2 (Nepal); CR 2024/46, pp. 41-42, paras. 2-4 (Palestine); CR 2024/46, pp. 59-60, para. 17 (Pakistan); CR 2024/47, p. 14, para. 3 (Palau); CR 2024/47, p. 20, para. 9

will provide further details regarding applicability of key obligations to this conduct, including to exercise due diligence, to protect human rights, and those contained in the climate treaties.

### *Obligations requiring due diligence*

14. At a general level, the obligations requiring the exercise of due diligence by States, including the duty of due diligence, the prevention principle and the duty to protect and preserve the marine environment, directly govern the impacts and risks of fossil fuel production taking into account the specific context of the climate emergency. This context has been explained in Vanuatu's Written Statement.<sup>29</sup> As stated in the Intergovernmental Panel on Climate Change's (IPCC) Synthesis Report of 2023, "*with every additional increment of global warming, changes in extremes continue to become larger*"<sup>30</sup> and "*the likelihood of abrupt and/or irreversible changes increases with higher global warming levels. Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increases with higher global warming levels*".<sup>31</sup> The increasing risk of abrupt and/or irreversible changes, including potentially "*very large adverse impacts*",<sup>32</sup> with each incremental increase in emissions causing global warming is decisive to determine the degree of diligence required in the context of the climate change emergency. The commentary to the International Law Commission Prevention Articles acknowledges the link between the magnitude of consequences and the degree of diligence: "*The required degree of care is proportional to the degree of hazard involved*".<sup>33</sup>
15. In such context, any conduct other than the phasing out of fossil fuel production is reckless and, for large producers, evidently in breach of their due diligence obligations. These breaches are aggravated where a State actively supports fossil fuel production and consumption through subsidies, thus fuelling the fire.

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(Panama); CR 2024/47, pp. 31-32, paras. 19-21 (Netherlands); CR 2024/47, p. 40, paras. 13-15, p. 42, paras. 26-27 (Peru); CR 2024/47, pp. 46-47, paras. 2-4 (Democratic Republic of the Congo); CR 2024/48, p. 11, para. 24, p. 15, para. 45 (Portugal); CR 2024/48, p. 24, para. 13 (Dominican Republic); CR 2024/48, p. 35, para. 41 (Romania); CR 2024/48, pp. 61-62, paras. 2-7 (Saint Lucia); CR 2024/49, p. 12, paras. 5-6 (Saint Vincent and the Grenadines); CR 2049/49, p. 25, para. 9 (Samoa); CR 2024/49, pp. 60-61, paras. 7-9 (Gambia); CR 2024/49, p. 32, paras. 5-6; CR 2024/49, p. 46, paras. 5-7 (Senegal); CR 2024/50, p. 10, para. 10 (Singapore); CR 2024/50, pp. 19-20, para. 3, p. 25, para. 10 (Slovenia); CR 2024/50, pp. 32-33, paras. 3-4 (Sudan); CR 2024/50, p. 37, para. 4, p. 38, para. 8 (Sri Lanka); CR 2024/50, p. 63, paras. 16-18 (Serbia); CR 2024/50, p. 55, paras. 28-29 (Switzerland); 2024/51, pp. 14-15, paras. 14-15, para. 17 (Thailand); CR 2024/51, p. 41, para. 4 (Tonga); CR 2024/51, p. 64, para. 2 (Comoros); CR 2024/53, pp. 49-50, para. 6 (Organisation of African, Caribbean and Pacific States); *see also* WC Vanuatu, para. 78.

<sup>29</sup> WS Vanuatu, ch. IV.

<sup>30</sup> Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, March 2023, statement B.1.3 ([link](#)).

<sup>31</sup> Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, March 2023, statement B.3 ([link](#)).

<sup>32</sup> Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, March 2023, statement B.3 ([link](#)).

<sup>33</sup> Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, text and commentaries reproduced in *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, commentary to Article 3, paragraph 18 ([link](#)); *see also* *Responsibilities and Obligations of States sponsoring Persons and Entities with respect to Activities in the Area*, Case No. 17, ITLOS (Seabed Dispute Chamber), Advisory Opinion (1 February 2011), para. 117; *Alabama claims of the United States of America against Great Britain*, Decision of 14 September 1872, RIAA vol. XXIX, 125-134, at 129.

16. Large producer States have themselves recognised the need to phase out fossil fuels. For example, a statement on international public support for the clean energy transition, made on 4 November 2021 (during COP26), by several States, including Canada, The Netherlands and the United States, affirms that:

**[W]e will end new direct public support for the international unabated fossil fuel energy sector within one year of signing this statement**, except in limited and clearly defined circumstances that are consistent with a 1.5°C warming limit and the goals of the Paris Agreement ...

In committing to the above we further recognise: ...

the findings of the Intergovernmental Panel on Climate Change (IPCC) and IEA net-zero analysis show that in the pathways consistent with a 1.5°C warming limit and the goals of the Paris Agreement, **the global production and use of unabated fossil fuels must decrease significantly by 2030** ...

**investing in unabated fossil fuel-related energy projects increasingly entails both social and economic risks**, especially through the form of stranded assets, and has ensuing negative impacts on government revenue, local employment, taxpayers, utility ratepayers and public health.<sup>34</sup>

17. In an earlier Declaration of May 2016, the G7 States had pledged to end most fossil fuel subsidies by 2025:

**Given the fact that energy production and use account for around two-thirds of global GHG emissions**, we recognize the crucial role that the energy sector has to play in combatting climate change. We remain committed to the **elimination of inefficient fossil fuel subsidies and encourage all countries to do so by 2025**.<sup>35</sup>

18. Thus, the generality of the duty of due diligence, the prevention principle and the duty to protect and preserve the marine environment in no way precludes them from clearly prescribing the conduct to be observed with regard to fossil fuel production and subsidies.

*Specific obligations arising from human and peoples' rights*

19. At an even more specific level, **there is a broad consensus across human rights institutions that the conduct of large producers is contrary to human rights obligations**. This consensus finds expression in both very specific situations and more general statements regarding what is required by certain human rights. An illustration of a very specific expression of this consensus is provided by a joint letter of 13 January 2023 to company O. J. Pipelines Canada, in which nine Human Rights Council special procedure mandate holders<sup>36</sup> jointly affirmed that:

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<sup>34</sup> Statement on international public support for the clean energy transition, 4 November 2021 ([link](#)) (emphasis added).

<sup>35</sup> G7 Ise-Shima Leaders' Declaration, G7 Ise-Shima Summit, 26-27 May 2016 ([link](#)) (emphasis added).

<sup>36</sup> These are the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights of Indigenous Peoples; the Independent Expert on



**The burning of fossil fuels constitutes one of the human activities that has the largest impact on the Earth’s climate.** In this context, we remain preoccupied by the impact of fossil fuels exploitation in general and the establishment of the pipeline in particular on greenhouse gas emissions, contributing to the current climate crisis. Climate change is having a major impact on a wide range of human rights today, and could have a cataclysmic impact in the future unless ambitious actions are undertaken immediately. **Among the human rights being threatened and violated are the rights to life, health, food, water and sanitation, a healthy environment, an adequate standard of living, housing, property, self-determination, development and cultural rights. In addition, guaranteeing a “safe climate” constitutes one of the substantive elements of the right to a clean, healthy and sustainable environment, as recognized by the Human Rights Council on 8 October 2021 (Res. 48/13) and the General Assembly on July 28 (A/76/L.75).**<sup>37</sup>

20. There are numerous other case-specific statements and positions, including by human rights treaty bodies, which specifically emphasise the inconsistency between fossil fuel production—particularly fossil fuel subsidies—and human rights. For example, in its Concluding observations of 25 July 2018 regarding Australia, the Committee on the Elimination of Discrimination Against Women (CEDAW) specifically recommended that the State:

Adopt a human rights-based approach in the development of climate change responses, make women the central force for the development and implementation of activities relating to climate change at the local, national, regional and international levels, further reduce greenhouse gas emissions, notably those resulting from coal consumption and exports, and reinforce support for gender-sensitive disaster risk reduction and climate change adaptation within the State party and in surrounding small island States.<sup>38</sup>

21. In its Concluding observations of 2 March 2023 regarding Norway, the CEDAW specifically stated that the expansion of fossil fuel production was inconsistent with the rights of women and recommended specific steps, including forward-looking and accountability (responsibility-oriented) ones:

[T]he State party has further expanded its oil and gas industry, including by granting 47 new oil and gas exploration permits in January 2023, including in the Arctic ...

The greenhouse gas emissions of the State party’s extraction industry undermine its obligations to ensure the substantive equality of women with men, as climate change disproportionately affects women, especially those in situations of poverty, as they are more reliant on natural resources for their livelihoods than men and have fewer resources to deal with natural hazards.

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protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women and girls, its causes and consequences.

<sup>37</sup> Letter from the Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises, and others to O.J. Pipelines Canada, 13 January 2023, Ref.: AL OTH 116/2022, p. 6 ([link](#)) (emphasis added).

<sup>38</sup> Concluding observations on the eighth periodic report of Australia, 25 July 2018, CEDAW/C/AUS/CO/8, para. 30(c) ([link](#)).

**The Committee recalls general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change and recommends that the State party:**

**(a) Review its climate change and energy policies, in particular its policy on the extraction and export of oil and gas, as well as the activities of related State-owned companies and private companies, taking into account the disproportionate negative impact on women and girls both within and outside its territory, with a view to radically reducing greenhouse emissions in line with the Paris Agreement on climate change;**

**(b) Adopt relevant legislation, with a monitoring mechanism, to ensure that businesses are held accountable for the impact of their activities on women's human rights and environmental degradation.<sup>39</sup>**

22. Yet another illustration is provided by the Committee on the Rights of the Child's (CRC) Concluding observations of 22 February 2023 regarding Azerbaijan, the host of COP29, recommending the State to "*Consider the impact of climate change on the rights of the child in its energy policy, including in relation to fossil fuel extraction and fossil fuel subsidies*".<sup>40</sup>

23. These are all applications of the consensus mentioned earlier. Such consensus has found more general expressions, e.g., in the Joint Statement of 14 May 2020 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 on 'Human Rights and Climate Change'. This statement concludes that:

**In their efforts to reduce emissions, States parties should contribute effectively to phasing out fossils fuels, promoting renewable energy and addressing emissions from the land sector, including by combating deforestation. In addition, States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially. States should also discontinue financial incentives or investments in activities and infrastructure that are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors, as a mitigation measure to prevent further damage and risk.<sup>41</sup>**

24. On the occasion of COP28, held in Dubai (United Arab Emirates), which was mired in extremely concerning reports that the meeting was being used by the host State to conclude new oil deals on the sidelines,<sup>42</sup> six Special Rapporteurs issued a statement affirming the following:

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<sup>39</sup> Concluding observations on the tenth periodic report of Norway, 2 March 2023, CEDAW/ C/NOR/CO/10, paras. 48(b)-(c), 49(a)-(b) ([link](#)) (emphasis in original).

<sup>40</sup> Concluding observations on the combined fifth and sixth periodic reports of Azerbaijan, 22 February 2023, CRC/C/AZE/CO/5-6, para. 14(c) ([link](#)).

<sup>41</sup> *Statement on Human Rights and Climate Change*, 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, 14 May 2020, HRI/2019/1, para. 12 ([link](#)) (emphasis added).

<sup>42</sup> See, e.g., Justin Rowlett, "UAE planned to use COP 28 climate talks to make oil deals", BBC, (27 November 2023) ([link](#)); David Gelles, "Fossil Fuels and Frustration at COP 28", New York Times, 30 November 2023 ([link](#)).

**Fossil fuels are the largest source of greenhouse gas emissions, which have unequivocally caused the climate crisis.**

This year records were broken with global CO<sub>2</sub>-equivalent emissions reaching 57.4 gigatons and close to 90 days with global temperature increases exceeding 1.5°C in recent months, placing the Paris Agreement commitment of limiting warming to 1.5°C in grave jeopardy.

**While coal, oil and gas literally fuel the climate emergency, which is already preventing the full enjoyment of a range of human rights with disproportionate impacts on certain groups and communities, they also directly contribute to biodiversity loss, toxic pollution and water scarcity.**

**In fact, fossil fuels are at the heart of the planetary ecological crisis and their tremendous negative impacts on human rights are felt throughout their life cycle, from exploration and extraction to combustion and contamination.**

**Fossil fuels exploitation affects the rights to life, health, food, water and sanitation, education, an adequate standard of living, cultural rights, and a clean, healthy and sustainable environment with marginalised and vulnerable communities bearing the brunt of the consequences.**

To address the planetary crisis and tackle the wide range of fossil fuels negative human rights impacts, **States must urgently decarbonise and detoxify. Wealthy States and high emitters should lead the phase out of fossil fuels, beginning with avoiding new investments and terminating fossil fuel subsidies.**<sup>43</sup>

25. In an earlier report of 15 July 2019, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment stated, with great specificity, that:

To address society's addiction to fossil fuels, all States should:

(a) **Immediately terminate all fossil fuel subsidies**, except for clean cookstove programmes ...

(d) Limit fossil fuel businesses and their industry associations from influencing climate, energy and environmental policies, in light of their responsibility for the majority of emissions and their well-known efforts to subvert and deny scientific evidence of climate change ...

Developed States should demonstrate leadership by:

(a) **Prohibiting further exploration for additional fossil fuels, since not all existing reserves can be burned while still meeting the commitments of the Paris Agreement;**

(b) Requiring all new natural gas power plants to use carbon capture and storage technology and requiring existing gas plants to be retrofitted with carbon capture and storage technology;

(c) **Rejecting any other expansion of fossil fuel infrastructure;**

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<sup>43</sup> Mr. David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Mr. Pedro Arrojo Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Marcos A. Orellana, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Mr. Livingstone Sewanyana, Independent Expert on the promotion of a democratic and equitable international order, Mr. Surya Deva, Special Rapporteur on the right to development, and Mr. Olivier De Schutter, Special Rapporteur on extreme poverty and human rights, *Fossils fuels at the heart of the planetary environmental crisis*, 30 November 2023 ([link](#)) (emphasis added).

**(d) Prohibiting the expansion of the most polluting and environmentally destructive types of fossil fuel extraction, including oil and gas produced from hydraulic fracturing (fracking), oil sands, the Arctic or ultra-deepwater.<sup>44</sup>**

26. Far from a niche or narrow point, the general inconsistency of fossil fuel production, and particularly of subsidies for fossil fuel production and/or consumption, with the obligations arising from human rights, is a basic tenet, indeed a ‘key message’ of the Office of the High Commissioner for Human Rights’ interpretation of the UN Guiding Principles on Business and Human Rights in the light of climate change. Key message 7 states that:

In order for States to comply with their human rights obligations and climate commitments, they must discontinue financial incentives for fossil fuels, including subsidies and other forms of public finance, through effective policies designed to avoid negative impacts on the poor and marginalized.<sup>45</sup>

27. The Human Rights Council Advisory Committee puts it in even simpler terms. The very first recommendation to States of its Report of 10 August 2023 reads as follows:

The main way for States **to be human rights compliant is to rapidly phase out fossil fuels.**<sup>46</sup>

28. The obligations arising under international human rights law have an extraterritorial dimension in the context of fossil fuel production. The Inter-American Court of Human Rights, in its Advisory Opinion OC-23/17 on the Environment and Human Rights, affirmed that States have obligations to prevent transboundary environmental harm that affects the human rights of individuals outside their territory.<sup>47</sup> The Committee on the Rights of the Child, in *Chiara Sacchi et al. v. Argentina et al.*, established that States have jurisdiction over transboundary emissions because they exercise control over the sources of those emissions.<sup>48</sup> Because fossil fuel production is the primary driver of anthropogenic greenhouse gas emissions and thus climate change, by virtue of this same path of reasoning, States with requisite control over fossil fuel production are governed by the same human rights obligations in respect of that production.<sup>49</sup>

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<sup>44</sup> David R. Boyd (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019), paras. 77-78 (emphasis added).

<sup>45</sup> Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business: Key Messages*, Key Message 7, p. 9 ([link](#)).

<sup>46</sup> Impact of new technologies intended for climate protection on the enjoyment of human rights, Report of the Human Rights Council Advisory Committee, 10 August 2023, A/HRC/54/47, para. 71 ([link](#)) (emphasis added).

<sup>47</sup> *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 95, 101-102.

<sup>48</sup> Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 10.10, see also para. 10.7.

<sup>49</sup> While some point to the European Court of Human Rights’ decision in *Duarte Agostinho v. Portugal* to argue against extraterritorial obligations, it is crucial to note that this decision was on admissibility. It did not preclude the extraterritorial application of the European Convention of Human Rights or other international instruments. The European Court itself acknowledged that other international treaties might provide broader protection and referenced the approaches of the Inter-American Court and the Committee on the Rights of the Child as examples of more expansive approaches. *Duarte Agostinho and Others v Portugal and 32 Others*, App. No. 39371/20, Grand Chamber (9 April 2024), paras. 209-210; see also WC MSG, paras. 92-97.

Accordingly, States have obligations not only to refrain from participating in, authorising or financing fossil fuel production but also to regulate fossil fuel production subject to their jurisdiction and control—whether because it occurs in their jurisdiction or is carried out by actors subject to their regulatory authority.

*Specific obligations under the Kyoto Protocol and the Paris Agreement and other obligations interpreted in its light*

29. Although the issue was not addressed during the oral hearing, Article 2(1)(a)(v) of the Kyoto Protocol expressly requires each Party included in Annex I to:

Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as: ... [p]rogressive reduction or **phasing out of** market imperfections, fiscal incentives, tax and duty exemptions and **subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention** and application of market instruments (emphasis added).

30. While the application of the Kyoto Protocol is limited temporally by its entry into force on 16 February 2005, and only covers its Parties (which exclude the United States), the provision in Article 2(1)(a)(v) colours the duty of due diligence owed by all States, including non-Parties, under customary international law. The “*phasing out*” of “*subsidies in all greenhouse gas emitting sectors that run counter to the objective to the Convention*” was firmly established as a core part of taking mitigation action.

31. As regards the Paris Agreement, again, although its temporal application is limited by its entry into force on 4 November 2016, it also contains obligations which specifically target fossil fuels subsidies. Article 2(1)(c) of the Paris Agreement lays down a specific goal concerning the reorientation of financial flows:

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

Although this provision has received limited attention so far, some commentators have referred to Article 2(1)(c) as “one of the most important parts of the Paris Agreement: aligning finance to support climate action is the means to meeting both the temperature and adaptation goals.”<sup>50</sup>

32. References to the reduction and phasing down of “*high carbon investments and fossil fuel subsidies*” appeared in the Geneva negotiating text, which formed the basis for the final negotiations of the Paris Agreement.<sup>51</sup> However, those references did not appear in the October

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<sup>50</sup> S. Whitley, J. Thwaites, H. Wright, C. Ott, *Making finance consistent with climate goals Insights for operationalising Article 2.1c of the UNFCCC Paris Agreement*, December 2018, ODI, WRI, Rocky Mountain Institute and E3G, page 40.

<sup>51</sup> Work of the Contact Group on Item 3, Negotiating text Advance unedited version, 12 February 2015, paragraphs 34 ter. and 53.1(d) ([link](#)).

Non-Paper presented by the Co-Chairs to the negotiations. The October draft referred to reducing international support for “*high-emission and maladaptive investments*”.<sup>52</sup> None of this language appears in the final text of the Paris Agreement, nor is it included in the COP decision adopting the Agreement.<sup>53</sup> Yet these references leave no doubt that Article 2(1)(c) is not merely about channelling financial resources towards clean energy but also about phasing out distortive fossil fuel subsidies.

33. The pathways identified in Article 2(1)(c) of the Paris Agreement must be interpreted consistently with other provisions, including Article 4(1), (2) and (3). Article 4(1) sets a goal that has become known as “net zero”, namely the peaking of greenhouse gas emissions as soon as possible and the undertaking of rapid reductions thereafter. Article 4(2) provides that:

Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties **shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions** (emphasis added).

34. The standard of diligence to be met in pursuing domestic mitigation measures is stringent, as stressed by Article 4(3):

Each Party’s successive nationally determined contribution will represent a **progression** beyond the Party’s then current nationally determined contribution and reflect **its highest possible ambition**, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances (emphasis added).

35. Even accepting an extreme overstretch, it would be impossible to consider that the conduct of large producers is consistent with a “*pathway*” for financial flows “*towards low greenhouse gas emissions and climate-resilient development*” which displays the “*highest possible ambition*” in “*pursu[ing] domestic mitigation measures*”.

### C. Legal consequences

36. **In light of the foregoing analysis, it is clear that due diligence obligations, human rights obligations and the obligations arising from the climate treaty framework specifically apply to the production of fossil fuels and the provision of fossil fuel subsidies. Under these obligations, both when considered individually and when considered together, large producers’ conduct constitutes a flagrant breach of international law. Importantly, this breach is not merely hypothetical, but factually grounded.** As noted in the oral pleadings of Vanuatu and MSG,<sup>54</sup> the contrast between what is required from a State to comply with their

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<sup>52</sup> Ad Hoc Working Group on the Durban Platform for Enhanced Action, ADP.2015.8.Informal Note, October 2015, Article 6(9)(c) ([link](#)).

<sup>53</sup> Article 2(1)(a)(v) of the Kyoto Protocol to the United Nations Convention on Climate Change, 11 December 1997, 2302 U.N.T.S. 148, does provide for the “[p]rogressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments”.

<sup>54</sup> CR 2024/35, p. 109, para. 10 (Vanuatu and MSG).



international obligations and what they are doing in reality is stark. To recall, the UNEP *Production Gap Report* (2023) concludes that:

While 17 of the 20 countries profiled have pledged to achieve net-zero emissions, and many have launched initiatives to reduce emissions from fossil fuel production activities, **most continue to promote, subsidize, support, and plan on the expansion of fossil fuel production. None have committed to reduce coal, oil, and gas production in line with limiting warming to 1.5°C.**<sup>55</sup>

[T]he increases estimated under the **government plans and projections pathways would lead to global production levels in 2030 that are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5°C-consistent pathways** ... The disconnect between governments' fossil fuel production plans and their climate pledges is also apparent across all three fuels.<sup>56</sup>

37. The wrongful character of this conduct triggers legal consequences under the law of State responsibility. Critically, the obligation of cessation requires that States must act to bring fossil fuel production consistent with ongoing harm to an end, cease subsidies that intensify emissions must end, and take measures must be taken to dismantle the systems enabling continued large-scale emissions.<sup>57</sup> States must engage in policy, regulatory and legislative reform, as a means of guaranteeing non-repetition of breach,<sup>58</sup> including to regulate fossil fuel production by corporate actors. States must also cooperate to phase out fossil fuels, such as by pursuing good faith efforts to negotiate and conclude a Fossil-Fuel Non-Proliferation Treaty.<sup>59</sup>

#### D. Concluding Submission

38. In summary, Vanuatu and MSG submit that obligations exist for all States to phase out fossil fuels (that is, coal, oil and gas), with large producers subject to heightened obligations. The obligation to phase out fossil fuels arises in two ways:
- a) *First*, the obligation to phase out fossil fuels arises for **all States** as a means of discharging due diligence obligations arising under the international legal obligations discussed above. Indeed, compliance with the customary and treaty-based obligations set out above is not possible

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<sup>55</sup> United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 5 ([link](#)) (emphasis added). The 20 countries studied are (in alphabetical order): Australia, Brazil, Canada, China, Colombia, Germany, India, Indonesia, Kazakhstan, Kuwait, Mexico, Nigeria, Qatar, Russian Federation, Saudi Arabia, South Africa, United Arab Emirates, United Kingdom and the United States.

<sup>56</sup> United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)) (emphasis added).

<sup>57</sup> See WC Vanuatu, paras. 177-178, 181-182.

<sup>58</sup> WC Vanuatu, para. 189.

<sup>59</sup> See, CR 2024/53, p. 23, para. 11 (Commission of Small Island States on International Law (COSIS)) (“the Court should also consider the obligations of cessation and non-repetition. In this regard, the 2023 IPCC report concluded with high confidence that “[e]stimates of future CO<sub>2</sub> emissions from existing fossil fuel infrastructures without additional abatement already exceed the remaining carbon budget for limiting warming to 1.5°C. **In this light, several COSIS members have endorsed the Fossil Fuel Non-Proliferation Treaty Initiative**” (emphasis added)). The following 16 States are engaged in discussions on developing a Fossil Fuel Non-Proliferation Treaty: Antigua and Barbuda, the Bahamas, Colombia, Federated States of Micronesia, Fiji, Nauru, Niue, Palau, Pakistan, Republic of Marshall Islands, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, and Vanuatu. See ‘Governments participating in the fossil fuel treaty’, Fossil Fuel Non-Proliferation Treaty ([link](#)).

without a halt to expansion of fossil fuel production and immediate steps to phase it out.<sup>60</sup> The urgency and intensity of this obligation is heightened for large producer States.

- b) *Second*, it arises for States whose acts and omissions over time (including with respect to fossil fuel production) have **already** caused significant harm to the climate and impaired human rights. These States must, **as a legal consequence of breach**, take legislative and other measures to imminently phase out fossil fuels as a means of **cessation** of the wrongful conduct; and take measures to guarantee **non-repetition** of the breach, including protection against false “solutions” such as geoengineering.

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<sup>60</sup> See WS Center for International Environmental Law (CIEL) ([link](#)).



## 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:

1. Aspects of this question have been specifically addressed in the written and oral submissions of Vanuatu,<sup>61</sup> which are reaffirmed in full. The views expounded in these submissions converge with those of other States and organisations, both in their written and oral submissions.<sup>62</sup> This reply is intended to address more specifically the question posed in a concise and direct form.
2. In Vanuatu’s and MSG’s view, a proper interpretation of Article 4 of the Paris Agreement, in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties,<sup>63</sup> requires giving due weight not only to the ordinary meaning of the words and their context, but also to the object and purpose of both the Paris Agreement and the broader climate change treaty framework established by the UNFCCC.
3. In discerning the object and purpose of a treaty, the preamble can be instructive.<sup>64</sup> In the context of the UNFCCC and the Paris Agreement, the preambular paragraphs reveal some commonalities, especially in terms of:

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<sup>61</sup> WS Vanuatu, paras. 400-418; WC Vanuatu, paras. 104-108, 166, see also Table 2, pp. 92-93.

<sup>62</sup> See, e.g., CR2024/36, p. 62-63, paras. 18-26 (Bahamas); CR2024/36, p. 18, paras. 9, 22-23 (Antigua & Barbuda); CR 2024/39, pp. 32-33, para. 20 (Côte d’Ivoire); CR2024/42, p. 39, para. 10 (Solomon Islands); CR2024/43, p. 36, paras. 22-25 (Kenya); CR 2024/43, pp. 49-50, paras. 33-35 (Kiribati); CR2024/44, pp. 12-13, paras. 7-9 (Latvia); CR2024/45, p. 12, para. 6 (Mexico); CR 2024/48, p. 24, para. 14 (Dominican Republic); CR 2024/49, pp. 64-65, paras. 9-12 (Gambia); CR 2024/50, pp. 66-67, paras. 30-33 (Serbia); CR 2024/54, p. 32, para. 11 (IUCN); WS Portugal, para. 54; WS Democratic Republic of Congo, paras 132, 203-210; WS Colombia, paras. 3.31-3.59; WS Tonga, paras. 140-175; WS IUCN, paras. 108-151; WS Singapore, paras. 3.30-3.35; WS Solomons Islands, paras. 59-100; WS Cooks Islands, paras. 246-247; WS Seychelles, paras. 68-96; WS Kenya, paras. 5.34-5.41; WS Sierra Leone, paras. 3.40-3.41, 3.65; WS Grenada, paras. 23-36; WS Parties to the Nauru Agreement Office, paras. 32-36; WS Ecuador, paras. 3.76-3.83; WS OACPS, paras. 130-137; WS Madagascar, paras. 39-52; WS Romania, paras. 87-96; WS Bangladesh, paras. 36-38, 136-139; WS Antigua & Barbuda, paras. 231-297; WS Dominican Republic, paras. 4.30-4.32, 4.60-4.62; WC Democratic Republic of Congo, paras. 22-26; WC Colombia, paras. 3.21-3.38; WC IUCN, paras 18-19; WC Seychelles, paras 33-38; WC Kenya, paras. 4.36-4.52; WC Sierra Leone, paras 3.43-3.44, 3.53-3.55; WC Bahamas, paras. 40-50; WC Latvia, paras. 15-20; WC Mexico, paras. 30-35; WC Ecuador, para. 38; WC Mauritius, paras. 46-49.

<sup>63</sup> See Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, Vienna, 23 May 1969, in force, 27 January 1980, art 31(1) (“*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*” (emphasis added)).

<sup>64</sup> *Case concerning Rights of Nationals of the United States of America in Morocco*, Judgment, 1952 I.C.J. Reports, p. 176, at p. 197 (“*the interpretation of the provisions of the Act must take into account its purposes, which are set forth in the Preamble...*”); *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, 1986 I.C.J. Reports, p. 14, para. 275 (deriving the object and purpose of the relevant treaty from what was “*stated in the Preamble of the Treaty*”); *Case concerning Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, 1996 I.C.J. Reports, p. 803, para. 27; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, 2014 I.C.J. Reports, p. 226, para. 56 (examining the relationship between a particular provision of the relevant treaty and its object and purpose by looking to the various paragraphs of the preamble); see also *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, 2021 I.C.J. Reports, p. 9, Declaration of Judge Tomka, para. 10

- a. Pursuing an effective, progressive and collective response to the urgent threat of climate change, based on the best available scientific knowledge;
  - b. Recognising States' common but differentiated responsibilities and respective capabilities, in light of different national circumstances, with developed country parties taking the lead and playing a critical role in addressing climate change; and
  - c. Recognising other relevant bodies of international law, including the Charter of the United Nations; the principles of international law, including the principle of sovereignty of States, to ensure that activities within State Parties' jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction; and—in the case of the Paris Agreement—obligations to respect, promote, and consider their respective obligations on human rights.
4. Significantly, nothing in the preamble of the UNFCCC or the Paris Agreement suggests that either instrument expressly or implicitly displaces the operation of general international law to anthropogenic greenhouse gas emissions.
  5. Also relevant to the proper interpretation of Article 4 of the Paris Agreement is subsequent practice indicating that loss and damage has already occurred as a result of States' acts and omissions that have caused significant harm to the climate system and other parts of the environment. As noted, these acts and omissions breach myriad obligations, triggering legal consequences under the general law of State responsibility. Of particular note are: the duty of due diligence;<sup>65</sup> the obligation to prevent significant environmental harm;<sup>66</sup> the duty to protect and

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(“[O]ne may just recall the preamble of the Treaty, which sets out the object and purpose of the Treaty”); *The Greco-Bulgarian 'Communities'*, Advisory Opinion of July 31, 1930, P.C.I.J., Series B, No. 17, para. 19; *Competence of the International Labour Organization in Regard to the International Regulation of the Conditions of the Labour of Persons Employed in Agriculture*, Advisory Opinion, P.C.I.J., Series B, No. 2 (1922), p. 9, paras. 25–27, 29.

<sup>65</sup> See, e.g., CR 2024/35, p. 107, para. 2 (Vanuatu and MSG); CR2024/36, p. 20, para. 18 (Antigua & Barbuda); CR 2024/36, p. 61, para. 14 (Bahamas); CR 2024/36, p. 73, para. 7 (Bangladesh); CR2024/37, p.10, para. 4 (Belize); CR 2024/37, p. 23, paras. 18-19 (Bolivia); CR 2024/38, pp. 21-22, para. 12 (Chile); CR 2024/38, pp. 42-3, paras. 8-9 (Colombia); CR2024/39 p. 13, para. 11 (Costa Rica); CR2024/40, p. 20, para. 15 (Ecuador); CR2024/41, p. 45, para. 15 (Ghana); CR2024, p. 28, para. 5 (Marshall Islands); CR2024/43, p. 47, para. 20 (Kiribati); CR2024/45, p. 21, para. 12 (Federated States of Micronesia); CR 2024/46, p. 11-12, para. 13 (Nauru); CR 2024/46, p. 25, para. 4 (Nepal); CR2024/44, p. 38, para. 4 (Malawi); CR2024/49, p. 64, paras. 7-9 (Gambia); CR 2024/48 p. 63, para. 10 (Saint Lucia); CR2024/41, p. 21, para. 7 (Sierra Leone); CR2024/47, p. 48, para. 7 (Democratic Republic of Congo); CR2024/50, p. 40, para. 11 (Sri Lanka); CR 2024/51, p. 15, para. 18 (Thailand); CR 2024/52, p. 36, para. 3 (Zambia); CR 2024/52, p. 13, para. 10 (Uruguay); CR 2024/53, pp. 17-18, paras. 8-12 (COSIS); CR 2024/53, p. 50, para. 7 (Organisation of African, Caribbean and Pacific States); CR 2024/54, p. 31, para. 4 (IUCN); CR 2024/54, p. 21, para. 8 (EU).

<sup>66</sup> See, e.g., CR 2024/35, p. 107, paras. 2-3 (Vanuatu and MSG); CR 2024/35, p. 132, para. 23, p. 134, para. 3 (Albania); CR 2024/36, p. 19, para. 15 (Antigua & Barbuda); CR 2024/36, p. 59 paras. 7-9 (Bahamas); CR 2024/36, p. 73, para. 7 (Bangladesh); CR 2024/36, p. 84, para. 13 (Barbados); CR 2024/37, p. 10, para. 3 (Belize); CR 2024/37, p. 23, para. 20 (Bolivia); CR 2024/37, p. 35, para. 8 (Brazil); CR 2024/38, p. 21, paras. 10-11 (Chile); CR 2024/38, p. 42, para. 7 (Colombia); CR 2024/38, p. 55, paras. 13-14 (Dominica); CR 2024/38, p. 65, para. 19 (South Korea); CR2024/39, p. 13, paras. 9-12 (Costa Rica); CR2024/40, p. 19, para.14 (Ecuador); CR2024/40, p. 70-71, paras. 13-17 (Fiji); CR2024/41, p. 35, paras. 14-16 (Ghana); CR2024/42, p. 28, para. 5 (Marshall Islands); CR2024/43, p. 45, paras. 11, 14 (Kiribati); CR 2024/45, p. 13, para. 12 (Mexico); CR2024/45, p. 21, para. 12 (Federated States of Micronesia); CR2024/46, p. 14, paras. 1-4 (Nauru); CR 2024/46, p. 25, paras. 4-5 (Nepal); CR 2024/46, p. 49, paras. 3-4 (Palestine); CR 2024/46, p. 61, paras. 23-24 (Pakistan); CR2024/47, pp. 14-17, paras. 2-14 (Palau); CR2024/37, p. 66, para. 3 (Philippines); CR2024/44, pp. 39-40, paras. 6-10 (Malawi); CR2024/48, p. 23, para. 13 (Dominican Republic); CR2024/44, p. 68, para. 20 (African Union); CR2024/49, pp. 15-16, paras. 3-7 (Saint Vincent and Grenadine); CR2024/49, p. 26, para. 15 (Samoa); CR2024/49, p. 32, paras. 7-9 (Senegal); CR2024/49, p. 63, para. 1-5 (Gambia); CR2024/48 pp. 62-63, para. 9 (Saint Lucia); CR2024/41, p. 21 paras. 8-9 (Sierra Leone); CR2024/47, p. 48, para. 7 (Democratic Republic of Congo); CR2024/50, p. 11, para. 11, p. 14, para. 22 (Singapore); CR2024/50, p. 40, para. 11 (Sri Lanka); CR 2024/52, p. 11, paras. 10-11 (Uruguay); CR 2024/52, p. 20, para. 15 (Viet Nam); CR 2024/52, pp. 32-33, para. 4 (Zambia); CR 2024/53, p. 35, para. 5 (SPC); CR 2024/53, p. 18, para. 13 (COSIS); CR 2024/53, p. 50, para. 7 (Organisation of African, Caribbean and Pacific States); CR 2024/54, p. 36, para. 45 (IUCN).

preserve the marine environment;<sup>67</sup> and the obligations arising under the right to self-determination.<sup>68</sup>

6. Ultimately, interpreting Article 4 of the Paris Agreement in a vacuum—without regard to the wider normative structure of the UNFCCC and international law more broadly—would deprive it of much of its meaning.
7. When the provisions of the UNFCCC and the Paris Agreement are properly construed, in light of the object and purpose of the climate treaty framework and subsequent practice, it becomes clear that the obligations contained therein have both a **substantive** as well as **procedural** dimension. In support of this proposition, Vanuatu and MSG offer the following observations:
  - a. The UNFCCC imposes on States not only a general obligation to cooperate towards preventing dangerous anthropogenic interference with the climate system, but also an obligation to do so on the basis of equity and common but differentiated responsibilities and respective capabilities.<sup>69</sup> Under the UNFCCC, States are required, *inter alia*, to “*take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects*”.<sup>70</sup> States are also obliged to cooperate in achieving stabilisation of greenhouse gas concentrations, with specific obligations for developed States to provide finance, technology transfer and capacity building to developing States.<sup>71</sup>

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<sup>67</sup> See, e.g., CR 2024/35, p. 107, para. 3 (Vanuatu and MSG); CR 2024/39, p. 17, para. 21(a)(6) (Costa Rica); CR 2024/40, p. 19, para. 14 (Ecuador); CR 2024/41, p. 33, para. 7 (Ghana); CR 2024/42, p. 28, para. 5 (Marshall Islands); CR 2024/42, p. 62, para. 6 (Indonesia); CR 2024/36, p. 47, para. 20(b) (Australia); CR 2024/36, p. 75, para. 13 (Bangladesh); CR 2024/37, p. 44, para. 4 (Burkina Faso); CR 2024/37, pp. 53-54, para. 5 (Cameroon); CR 2024/38, p. 57, para. 21 (Dominica); CR 2024/38, p. 63, para. 12 (Korea); CR 2024/39, p. 59, para. 12 (Egypt); CR 2024/39, pp. 16-17, para. 21 (Costa Rica); CR 2024/40, p. 19, para. 14, p. 20, paras. 17-18 (Ecuador); CR 2024/41, p. 25, para. 25 (Sierra Leone); CR 2024/41, pp. 31-32, para. 3 (Ghana); CR 2024/41, p. 60, paras. 33-34 (Guatemala); CR 2024/42, p. 28, para. 5 (Marshall Islands); CR 2024/42, p. 62, para. 6, p. 63, para. 9 (Indonesia); CR 2024/44, pp. 15-16, para. 14-17 (Latvia); CR 2024/44, p. 40, para. 11 (Malawi); CR 2024/45, p. 21, para. 10, p. 22, para. 15, p. 27, para. 32 (Federated States of Micronesia); CR 2024/45, p. 34, para. 14 (Myanmar); CR 2024/48, p. 28, para. 6 (Dominican Republic); CR 2024/48, pp. 63-64, paras. 12-13 (Saint Lucia); CR 2024/49, pp. 66-67, para. 16 (Gambia); CR 2024/49, p. 33, para. 14 (Senegal); CR 2024/50, p. 11, para. 11, p. 14, para. 22 (Singapore); CR 2024/51, p. 66, para. 15 (Comoros); CR 2024/53, p. 13, paras. 11-14 (COSIS); CR 2024/53, p. 50, para. 7 (Organisation of African, Caribbean and Pacific States); CR 2024/54, p. 34, paras. 30-32 (IUCN).

<sup>68</sup> See, e.g., CR 2024/35, p. 102, paras. 5, 7, p. 103, paras. 1-2 (Vanuatu and MSG); CR 2024/36, p. 73, para. 7 (Bangladesh); CR 2024/37, p. 57, para. 23 (Cameroon); CR 2024/38, p. 57, para. 20 (Dominica); CR 2024/39, p. 13, para. 15 (Costa Rica); CR 2024/40, p. 71-72 para. 18-20 (Fiji); CR 2024/40, p. 36, para. 19 (Ghana); CR 2024/42, p. 20, para. 12 (Cook Islands); CR 2024/43, p. 35, para. 10-12, 13; CR 2024/43, p. 47, para. 24 (Kiribati); CR 2024/45, pp. 24, 26, paras. 21 and 27 (Federated States of Micronesia); CR 2024/45, p. 45, para. 38 (Namibia); CR 2024/46, p. 12, paras. 14-16 (Nauru); CR 2024/47, p. 23, para. 27 (Panama); CR 2024/44, pp. 24, 25, paras. 7, 8 (Liechtenstein); CR 2024/48, p. 23, para. 13 (Dominican Republic); CR 2024/49, p. 13, para. 7 (Saint Vincent and Grenadine); CR 2024/49, p. 26, para. 15 (Samoa); CR 2024/41, page 24, para 19 (Sierra Leone); CR 2024/50, p. 11, para. 11, p. 14, para. 22 (Singapore); CR 2024/51, pp. 52-56, paras. 2-21 (Tuvalu); CR 2024/51, pp. 45-46, para. 20 (Tonga); CR 2024/51, pp. 69-70, para. 7 (Comoros); CR 2024/52, pp. 55-56, paras. 32-34 (AOSIS); CR 2024/53, p. 35, para. 5 (SPC); CR 2024/53, p. 50, para. 7 (Organisation of African, Caribbean and Pacific States).

<sup>69</sup> See, e.g., CR 2024/35, p. 122, para. 12 (South Africa); CR 2024/35, p. 144, paras. 24-25 (Germany); CR 2024/36, p. 21, para. 20 (Antigua and Barbuda); CR 2024/36, p. 31, para. 5 (Saudi Arabia); CR 2024/36, p. 70 para. 14 Bangladesh); CR 2024/37, p. 25, 27-29 (Bolivia); CR 2024/37, pp. 34-35, paras. 3-6 (Brazil); CR 2024/38, p. 32, paras. 21-23 (China); CR 2024/39, p. 68, para. 9-10 (El Salvador); CR 2024/40, p. 25, paras. 18-19 (Ecuador); CR 2024/41, page 34, para 8 (Ghana); CR 2024/41, pp. 59-60, paras. 28-29 (Guatemala); CR 2024/42, page 39, para 10(1) (Solomon Islands); CR 2024/42, page 56, para 5 (Iran); CR 2024/42, page 67, para 35 (Indonesia); CR 2024/45, p. 13, paras. 14-16 (Mexico); CR 2024/45, p. 53, para 13 (Japan); CR 2024/46, p. 25 para. 7 (Nepal); CR 2024/47, p. 41, para. 20 (Peru); CR 2024/48 p. 60, para 11 (Saint Lucia); CR 2024/50, p. 15, paras. 25-32 (Singapore); CR 2024/50, pp. 33-36, paras. 7-20 (Slovenia); CR 2024/50, p. 66, para. 27 (Serbia); CR 2024/51, p. 18, paras. 31-33 (Thailand); CR 2024/51, p. 25, para. 15, p. 34, para. 28 (Timor-Leste); CR 2024/51, p. 42, paras. 6-8 (Tonga); CR 2024/52, p. 14, para. 14 (Uruguay); CR 2024/52, p. 19, paras. 11-13 (Viet Nam); CR 2024/52, p. 33, para. 5 (Zambia); CR 2024/54, pp. 20-23, paras. 1-17 (European Union); CR 2024/54, p. 33, paras. 22, 24 (IUCN).

<sup>70</sup> UNFCCC, art 3(3).

<sup>71</sup> UNFCCC art 4(1), see art 2.

These provisions, read in context, recognise that greenhouse gas emissions have always been subject to international legal regulation under general principles, including of prevention, due diligence, protection of human rights, and the protection and preservation of the marine environment, even prior to the entry into force of the specialised climate treaties.<sup>72</sup>

- b. The Paris Agreement is aimed at “*enhancing the implementation*”<sup>73</sup> of the UNFCCC, whose ultimate objective, set out in its Article 2, is “*to achieve ... stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*”.<sup>74</sup> This ultimate objective has not been met. The phrase “*enhancing the implementation*” in the chapeau of Article 2 of the Paris Agreement directly acknowledges that fact. As the IPCC’s latest scientific findings confirm, global emissions continue to rise, causing dangerous interference with the climate system—with catastrophic consequences.<sup>75</sup> The interpretative exercise for Article 4 of the Paris Agreement cannot bracket out the legal imperatives of halting and reversing this harmful trajectory and addressing its consequences for States, peoples and individuals.
- c. The UNFCCC’s reference to the prevention principle,<sup>76</sup> and subsequent developments—such as the Cancun Agreements<sup>77</sup> and the explicit linkage to human rights in the Paris Agreement’s preamble<sup>78</sup>—reaffirm that climate obligations arise under multiple sources of international law.<sup>79</sup> As Vanuatu, MSG and many other participants in these proceedings have demonstrated, the continuing failure of States to meet their substantive obligations to prevent significant harm and to respect the rights of those most affected by climate change has given rise to extensive loss and damage, imperilling entire peoples, especially in vulnerable nations, including all of MSG’s members (Fiji, Papua New Guinea, Solomon Islands, Vanuatu and for the Kanak people of New Caledonia).

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<sup>72</sup> The UNFCCC only entered into force on 21 March 1994, the Kyoto Protocol on 16 February 2005, and the Paris Agreement on 4 November 2016. Yet, the massive risks posed by anthropogenic emissions of greenhouse gases were firmly established well before these dates—at least since the 1960s, as the submissions of Vanuatu, the Melanesian Spearhead Group, Barbados and the Organisation of African, Caribbean and Pacific States, among others, have demonstrated in detail. *See* WS Vanuatu, paras. 177-192, Expert Report of Naomie Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (Exhibit D to WS Vanuatu); WS MSG, para. 46; CR 2024/35 p. 97, para. 4 (Vanuatu and MSG); WC Barbados, para. 14; CR 2024/36, pp. 88-89, paras. 12-13 (Barbados); *see also*, CR 2024/53 pp. 53-54, para. 5 (Organisation of African, Caribbean and Pacific States).

<sup>73</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, 3156 U.N.T.S., entered into force 4 November 2016, art. 2(1) [hereinafter “Paris Agreement”].

<sup>74</sup> UNFCCC, art. 2.

<sup>75</sup> *See generally*, Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023).

<sup>76</sup> UNFCCC, preamble, para. 8.

<sup>77</sup> COP Decision 1/CP.16, FCCC/CP/2010/7/Add.1 (15 Mar. 2011) ([link](#)).

<sup>78</sup> Paris Agreement, preamble.

<sup>79</sup> *See* WC Vanuatu, paras. 94-97, 101-109; WC MSG, para. 44.

- d. The Paris Agreement’s temperature goals (holding warming well below 2°C and pursuing efforts to limit it to 1.5°C above pre-industrial levels) are inseparable from its overarching goals of “*increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production*” and “*making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development*”.<sup>80</sup> Together, these goals—encompassing mitigation, adaptation, resilience, finance, and support—are designed to minimise loss and damage already resulting from the failure to comply with existing obligations under the UNFCCC, as well as under other applicable rules of international law.
8. These observations influence the interpretation of the specific obligations under Article 4 of the Paris Agreement. While it is true that the Nationally Determined Contributions (NDCs) required by Article 4 have procedural elements—such as the obligation to prepare, communicate, and maintain successive NDCs, and to pursue domestic mitigation measures with the aim of achieving them—these obligations do not stand alone. They must be read consistently with the overarching object and purpose of the climate treaty framework: to ensure the rapid and equitable decarbonisation of the global economy, the protection of human rights, and the prevention of further irreparable environmental harm. The emphasis on “*highest possible ambition*” and “*progression*” in NDCs,<sup>81</sup> and the global stocktake,<sup>82</sup> reflect an iterative process meant to minimise further harm, with Article 8 seeking to avert, minimise and address loss and damage from climate change.
9. Finally, Vanuatu and MSG wish to underscore that the Paris Agreement, as both process and outcome, has thus far proven woefully insufficient in realising these aims. Persistent support for and proactive expansion of fossil fuel production and consumption,<sup>83</sup> inadequate emissions reductions<sup>84</sup> and failure by developed States to provide necessary climate finance and technology transfer continue to imperil the very communities and ecosystems these instruments were meant to protect. In interpreting any obligations related to NDCs under Article 4 of the Paris Agreement, the Court cannot overlook the conduct of States responsible for this grim reality. For these States,

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<sup>80</sup> Paris Agreement, art. 2(1)(b)-(c), read with art. 7(1).

<sup>81</sup> Paris Agreement, art. 4(3), see also art. 3.

<sup>82</sup> Paris Agreement, art. 14.

<sup>83</sup> CR 2024/35, pp. 108-109, paras. 8-10 (Vanuatu and MSG); WS Vanuatu, paras. 162-170, 247-248, 267-278, 285-287, 510, 512, 513; Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (Vanuatu Written Statement, Exhibit B); WC Vanuatu, paras. 52-75, 110 and table 1, 165-168 and table 2; see also United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (2023), pp. 4-5 (“*While 17 of the 20 countries profiled have pledged to achieve net-zero emissions, and many have launched initiatives to reduce emissions from fossil fuel production activities, most continue to promote, subsidize, support, and plan on the expansion of fossil fuel production*”).

<sup>84</sup> CR 2024/35, pp. 108-109, paras. 8-10 (Vanuatu and MSG). The highest annual emissions ever were recorded in 2023. See United Nations Environment Programme, *No more hot air, please! With a massive gap between rhetoric and reality, countries draft new climate commitments*, Emissions Gap Report (2024), p. 4. Data for 2024 is not yet available. For more on the inadequacy of emission reduction, see WC Vanuatu, para. 110 and table 1; United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (2023), p. 30; Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat, 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 13.

the “*highest possible ambition*” and “*progression*” demanded by the Paris Agreement must be consistent with rectifying a systemic, rights-violating breach. As elaborated in our submissions, this requires a suite of measures directed at immediate cessation of harmful conduct, guarantees of non-repetition and reparations.<sup>85</sup> In the absence of these, responsible States cannot claim to have met existing obligations under the Paris Agreement—much less remedied the injuries they have caused to those least responsible for the climate crisis.

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<sup>85</sup> CR 2024/35, pp. 112-113, paras. 7-9 (Vanuatu and MSG); *see also* WS Vanuatu, ch. 5, sec. 3; WC MSG, paras. 201-239.

## 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?”

« Certains participants ont fait valoir, dans leurs écritures et/ou lors de la phase orale de la procédure, que le droit à un environnement propre, sain et durable existe en droit international. Pourriez-vous expliciter, de votre point de vue, quel est le contenu juridique de ce droit et quelle est sa relation avec les autres droits de l’homme que vous considérez pertinents aux fins du présent avis consultatif ? »

## Reply:

1. Aspects of this question have been specifically addressed in the written and oral submissions of Vanuatu<sup>86</sup> and MSG,<sup>87</sup> which are reaffirmed in full. The views expounded in these submissions converge with those of many other States and organisations, both in their written and oral submissions.<sup>88</sup> This reply is intended to address in more detail the issues raised by the question.

### A. Legal basis and content of the right

2. The right to a clean, healthy and sustainable environment (right to a healthy environment) ensures an “environment of a quality that permits a life of dignity and well-being”.<sup>89</sup> It is recognised as an autonomous right,<sup>90</sup> protecting both the intrinsic value of the environment and the conditions necessary for present and future generations to enjoy all other human rights.<sup>91</sup> The right should be understood as including a collective dimension, as “a universal value that is owed to both present

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<sup>86</sup> WS Vanuatu, paras. 376-396; WC Vanuatu, p. 91, Table 2.

<sup>87</sup> WS MSG, paras. 283-289.

<sup>88</sup> See, e.g., WS DRC, paras. 145-157; WS Colombia, para. 2.60, WS Solomon Islands, paras. 174-176; WS Seychelles, para. 143; WS Kenya, para. 5.73; WS Albania, para. 96c; WS Micronesia, para. 78; WS Liechtenstein, paras. 45-47; WS Slovenia, paras. 21-29; WS Iran, paras. 139-140; WS Mexico, para. 88; WS Ecuador, para. 3.108; WS Barbados, para. 160; WS Spain, para. 15; WS African Union, para. 192; WS Madagascar, para. 61; WS Namibia, paras. 121-125; WS Tuvalu, para. 100; WS Argentina, para. 38; WS Mauritius, para. 184; WS Costa Rica, paras. 80-83; WS Antigua and Barbuda, para. 182; WS El Salvador, para. 42; WS Bolivia, para. 17; WS Burkina Faso, paras. 195-219; WC European Union, para. 85; WC Kiribati, para. 42; WC Tuvalu, para. 20; WC Marshall Islands, para. 21; WC Sierra Leone, paras. 3.28-3.30; WC Albania, paras. 35-36; WC Mauritius, para. 84; WC Samoa, paras. 131-133; WC OACPS, para. 51; WC Cameroon, para. 83; WC Uruguay, paras. 108-115; CR 2024/37, p. 57, para. 25 (Cameroon); CR 2024/37, p. 65, para. 12 (Philippines); CR 2024/38, p. 57, paras. 18, 20 (Dominica); CR 2024/39, p. 10, para. 8 (Costa Rica); CR 2024/39, p. 67, para. 7 (El Salvador); CR 2024/40, pp. 32-33, paras. 8-10 (Spain); CR 2024/41, pp. 22-23, para. 15 (Sierra Leone); CR 2024/41, p. 46, paras. 20-22 (Ghana); CR 2024/41, p. 61, para. 42 (Guatemala); CR 2024/43, p. 14, para. 11 (Jamaica); CR 2024/44, p. 30, paras. 24-25 (Liechtenstein); CR 2024/44, p. 55, para. 13 (Maldives); CR 2024/45, p. 16, para. 24, p. 17, para. 27 (Mexico); CR 2024/45, p. 24, para. 20 (Micronesia); CR 2024/48, pp. 11-12, paras. 24-30 (Portugal); CR 2024/48, pp. 64-65, para. 15 (Saint Lucia); CR 2024/50, pp. 20-21, para. 7, pp. 23-25, paras. 4-9 (Slovenia); CR 2024/50, p. 39, para. 10 (Sri Lanka); CR 2024/49, p. 37, paras. 37-38 (Senegal); CR 2024/38, p. 33, para. 15 (Colombia); CR 2024/39, p. 14, para. 13; CR 2024/52, p. 36, para. 10 (SPC); CR 2024/54, p. 16, para. 11 (WHO); CR 2024/54, p. 30, para. 10 (IUCN).

<sup>89</sup> See *Stockholm Declaration of the United Nations Conference on the Human Environment*, A/CONF.48/14/ Rev.1, part one, chap. I, principle 1 (1972); Astrid Puentes Riaño (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Overview of the implementation of the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/79/270 (2 Aug. 2024), para. 10.

<sup>90</sup> *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 62; *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgement, Inter-American Court of Human Rights (ser. C), 6 February 2020, para. 203; see also WS Costa Rica, paras. 83-85; WS Antigua and Barbuda, paras. 184-185.

<sup>91</sup> WS Vanuatu, paras. 379-381.

and future generations” across both time and space.<sup>92</sup> The right affords indigenous peoples, including the many indigenous peoples of Melanesia, heightened protections because of their interconnected, vital, and familial relationships to the earth.<sup>93</sup> Indeed, for the indigenous peoples of Melanesia, collective life is grounded in the absolute interconnectedness of people and place.<sup>94</sup> As Jean-Yves Poedi, a cultural expert and member of the Kanak Customary Senate of New Caledonia, explains in his statement to the Court:

We are one of the elements that make up the environment. We are the sharks, we are the trees, we are the stones, we are all that. There is no space, **so when we disturb or hurt the environment, we hurt ourselves**. ... One type of harm ripples out and affects everything else.<sup>95</sup>

3. The vast majority of participants in these proceedings acknowledge that the right to a healthy environment has achieved customary status.<sup>96</sup> They point at multiple streams of evidence for the requisite State practice and *opinio juris*. These include repeated endorsements in international resolutions—most notably recognition of the right to a healthy environment as a universal human

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<sup>92</sup> *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 59.

<sup>93</sup> *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 48 (“Specifically, in cases concerning the territorial rights of indigenous and tribal peoples, the Court has referred to the relationship between a healthy environment and the protection of human rights, considering that these peoples’ right to collective ownership is linked to the protection of, and access to, the resources to be found in their territories, because those natural resources are necessary for the very survival, development and continuity of their way of life. The Court has also recognized the close links that exist between the right to a dignified life and the protection of ancestral territory and natural resources. In this regard, the Court has determined that, because indigenous and tribal peoples are in a situation of special vulnerability, States must take positive measures to ensure that the members of these peoples have access to a dignified life – which includes the protection of their close relationship with the land – and to their life project, in both its individual and collective dimension.”); Human Rights Council, *Human rights and the environment*, A/HRC/RES/37/8, 9 April 2018, preambular para. 11; John H. Knox, *Framework principles on human rights and the environment* (“Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean healthy and sustainable environment”) (24 January 2018) A/HRC/37/59 annex, paras. 47-53 (explaining that “Indigenous peoples are particularly vulnerable to environmental harm because of their close relationship with the natural ecosystems on their ancestral territories” and that States accordingly hold special obligations to protect the human rights of indigenous peoples in relation to the environment); Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015 (Ailsa Roy v. Australia)*, CCPR/C/132/D/2552/2015, para. 8.6 (10 July 2023); Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, para. 7.10 (22 September 2022); see also WS Colombia, paras. 2.60, 2.63; WS Mexico, para. 95; CR 2024/45, pp. 24-25, paras. 21-22 (Micronesia); CR 2024/35, p. 101, para. 2, p. 106, para. 10 (Vanuatu and MSG).

<sup>94</sup> WC MSG, paras. 76, 104-106; see also, e.g., WS MSG, ex. 32, Expert Statement of John Aini, paras. 13-19.

<sup>95</sup> WS MSG, ex. 9, Statement of Jean-Yves Poedi, para. 36 (emphasis added).

<sup>96</sup> See, e.g., CR 2024/41, p. 36, para. 21 (Ghana) (“General Assembly resolution 76/300 recognized the ‘right to a clean, healthy and sustainable environment’. Whilst some might be dismissive of this as a recommendation, we can see how in the past, General Assembly resolutions were declaratory of customary international law as well as many crystallized as hard law, including the Universal Declaration of Human Rights, the Crime of Genocide and the right to self-determination, just to name a few.”); CR 2024/39, p. 67, para. 7 (El Salvador) (“El Salvador respectfully encourages the Court to explore the ways the human rights obligations of States intersect with the effects of climate change. That includes the right to a healthy, clean and sustainable environment affirmed by the General Assembly in resolution 76/300 of 2022, which, we submit, constitutes a rule of customary international law. That rule fits perfectly within the legal framework for the protection of human rights that we already find in treaties such as the two Covenants of 1966, and in the customary rules that they have come to reflect.”); CR 2024/50, pp. 23-25, paras. 4-8 (Slovenia); WC Uruguay, paras. 108-115; WC Kiribati, para. 42; WC Tuvalu, para. 20; WC Albania, paras. 35-36; WC Samoa, para. 131; WS Solomon Islands, paras. 174-176; WS Seychelles, para. 144; WS Kenya, para. 5.73; WS Albania, para. 96(c); WS Micronesia, para. 79; WS Liechtenstein, para. 45; WS Mexico, para. 87; WS Ecuador, para. 3.103-3.107; WS Madagascar, para. 62; WS Namibia, paras. 121-123; WS Bangladesh, para. 110; WS Argentina, para. 184; WS Costa Rica, paras. 80-83; WS El Salvador, para. 42; WS Bolivia, paras. 17-21; CR 2024/37, p. 57, para. 25 (Cameroon); CR 2024/37, p. 65, para. 12 (Philippines); CR 2024/39, p. 67, para. 7 (El Salvador); CR 2024/50, p. 39, para. 10 (Sri Lanka).



right in resolutions of the UN Human Rights Council<sup>97</sup> and the UN General Assembly,<sup>98</sup> both of which passed without any formal objection, as well as frequent references to the right during the Human Rights Council's Universal Periodic Review process.<sup>99</sup> Participants also note that the right has also been recognised in numerous multilateral and regional instruments and by regional human rights tribunals;<sup>100</sup> that it has been codified in the national laws of more than 150 States, including in the constitutions of at least 110 States;<sup>101</sup> and that domestic courts increasingly enforce the right.<sup>102</sup> This broad acceptance also indicates that the right reflects a general principle of law recognised by the community of nations.

4. While a minority of participants argue that the nature of the right remains unclear,<sup>103</sup> others correctly submit that its scope and content have been well-defined through a significant body of convergent international and domestic jurisprudence, as well as the positions of regional and universal human rights bodies.<sup>104</sup> The substantive components of the right include clean air, a safe climate, safe and sufficient water, healthy and sustainably produced food, non-toxic environments, and thriving ecosystems and biodiversity.<sup>105</sup> Its procedural components require access to environmental information, participation in environmental decision-making, and access to effective remedies.<sup>106</sup>

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<sup>97</sup> *The human right to a clean, healthy and sustainable environment*, Human Rights Council Resolution 48/13, adopted 8 October 2021, A/HRC/RES/48/13, para. 1 (adopted with 43 votes in favour, 4 abstentions, 0 votes against).

<sup>98</sup> *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300, para. 1 (adopted with 161 votes in favour, 8 abstentions, 0 votes against).

<sup>99</sup> WS Vanuatu, Ex. ZY, William Schabas, *THE CUSTOMARY INTERNATIONAL LAW OF HUMAN RIGHTS* (Oxford University Press, 2021), pp. 333-334, n. 35.

<sup>100</sup> WS Vanuatu, para. 380; *see also* Astrid Puentes Riaño (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Overview of the implementation of the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/79/270 (2 Aug. 2024), paras. 18-32.

<sup>101</sup> WS Vanuatu, para. 380; David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Right to a healthy environment: good practices*, UN Doc A/HRC/43/53 (30 Dec. 2019), paras. 10, 13 (documenting State recognition of the right, including that 110 States have enshrined the right to a healthy environment in their constitutions and that the right is included in regional treaties ratified by 126 States, and concluding “more than 80 percent of UN Member States (156 out of 193) legally recognize the right to a safe, clean, healthy and sustainable environment”); “Joint statement of United Nations entities on the right to healthy environment”, UNITED NATIONS ENVIRONMENT PROGRAMME (8 March 2021), available at: <https://www.unep.org/news-and-stories/statements/joint-statement-United-nations-entities-right-healthy-environment> (“*The right to a healthy environment is recognized by over 150 UN member states*”).

<sup>102</sup> *See* WS Vanuatu, para. 380, n.756 (collecting cases).

<sup>103</sup> *See* CR 2024/37, p. 17, para. 33 (Canada); CR 2024/36, p. 33, para. 13 (Saudi Arabia); WS New Zealand, para. 114.

<sup>104</sup> *See, e.g.*, CR 2024/40, p. 33, paras. 10-11 (Spain); CR 2024/48, p. 12, para. 27 (Portugal); WS Solomon Islands, para. 178; WS Seychelles, para. 144; WS Albania, para. 96(c); WS Liechtenstein, para. 47; WS Slovenia, paras. 39-42; WS Ecuador, paras. 3.106-3.108; WS Bangladesh, para. 110; WS Antigua and Barbuda, paras. 196-197.

<sup>105</sup> *See* Astrid Puentes Riaño (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Overview of the implementation of the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/79/270 (2 Aug. 2024), paras. 50-70; *see also* David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Right to a healthy environment: good practices*, UN Doc A/HRC/43/53 (30 Dec. 2019), paras. 38-112.

<sup>106</sup> Astrid Puentes Riaño (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Overview of the implementation of the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/79/270 (2 Aug. 2024), paras. 40-49; *see also* David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Right to a healthy environment: good practices*, UN Doc A/HRC/43/53 (30 Dec. 2019), paras. 14-37; *see also* *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 211-241.

These elements have evolved through decades of jurisprudence,<sup>107</sup> commentary, and endorsement by UN human rights bodies and experts.<sup>108</sup>

5. Further, the submissions made in the present proceedings reflect a near-universal understanding that every State must respect, protect and fulfil the right.<sup>109</sup> As we have explained in our written submissions, these obligations extend to individuals and peoples affected by the relevant conduct, both within and outside the territories of States that engage in the relevant conduct.<sup>110</sup>

## B. Relationship with other rights of peoples and individuals

6. As several participants have noted, the right to a healthy environment is not merely an isolated entitlement: it is structurally embedded within, and indispensable to the effective enjoyment of, all other human rights.<sup>111</sup> As noted by Ghana, this “*expresses a truth that is self-evident, namely that without a healthy environment, other rights will become impossible to enjoy and the survival of humans and other species becomes at risk*”.<sup>112</sup> In this way, the right can be understood as a necessary derivation from the suite of human rights protected under international law.<sup>113</sup> Vanuatu explained, in its Written Statement, that:

This necessary derivation arises because what the right to a healthy environment protects—namely, an environment (including a climate system) of a **certain quality**—is a condition precedent for the realization and enjoyment of other rights. This means that any conduct that interferes with the essential minimum quality of

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<sup>107</sup> Astrid Puentes Riaño (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Overview of the implementation of the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/79/270 (2 Aug. 2024), para. 14 (documenting this jurisprudence).

<sup>108</sup> See, e.g., Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023), paras. 64, 66; Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 39 on the rights of indigenous women and girls*, UN Doc. CEDAW/C/GC/39 (31 October 2022), para. 60; *Inhabitants of La Oroya v. Peru*, Inter-American Court of Human Rights, 2024, para. 118; Astrid Puentes Riaño (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Overview of the implementation of the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/79/270 (2 Aug. 2024), para. 14, n. 11 (collecting expert reports on the right).

<sup>109</sup> See note 100, *supra*; see also WS Vanuatu, para. 386; David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 15 July 2019, UN Doc A/74/161, paras. 44, 63.

<sup>110</sup> WS Vanuatu, paras. 329-336, WC MSG, paras. 87-98.

<sup>111</sup> See e.g., CR 2024/50, p. 24, para. 9 (Slovenia) (“[A] clean and healthy environment is an implied precondition for the full enjoyment of relevant human rights.”); CR 2024/39, p. 14, para. 13 (Costa Rica) (“The right to a clean, healthy and sustainable environment is part of general international law. It is not, as some have claimed, a mere aspiration. Whether explicitly expressed in a normative instrument or not, it derives from the simple observation that the effects of climate change on the environment affect access to water, food, health and even life. It is undeniable that, like the right of peoples to self-determination, the right to a healthy environment thus becomes a fundamental presupposition for the exercise of other human rights.”); CR 2024/45, p. 34, para. 16 (Micronesia); CR 2024/50, p. 23, paras. 5-6 (Slovenia); WS Bangladesh, para 110; WS Argentina, para. 38; WS Barbados, para. 162; WS Micronesia, para. 80; WC Marshall Islands, para. 21; WC Samoa, para. 133; WC OACPS, para. 51; WS Vanuatu, para. 381; see also Astrid Puentes Riaño (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Overview of the implementation of the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/79/270 (2 Aug. 2024), para. 14 (“the right to a healthy environment [as] an integral part of the effective enjoyment of all human rights, as they are interdependent, inalienable and indivisible.”); *The human right to a clean, healthy and sustainable environment*, Human Rights Council Resolution 48/13, adopted 8 October 2021, A/HRC/RES/48/13, para. 1 (recognising “the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights”); *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300, para. 2 (recognising the right to a healthy environment is “related to other rights and existing international law”).

<sup>112</sup> CR 2024/41, p. 37, para. 24 (Ghana).

<sup>113</sup> WS Vanuatu, para. 381.

the environment will not only violate the right to a clean, healthy and sustainable environment, but also any other rights which cannot be realized or enjoyed without a healthy environment.<sup>114</sup>

7. The essential link between the right to a healthy environment and the right to self-determination is especially critical. Self-determination is widely acknowledged as a *jus cogens* norm of international law,<sup>115</sup> protecting the rights of all peoples to freely determine their political status and freely pursue their economic, social, and cultural development, as well as to maintain their territorial integrity and permanent sovereignty over their natural resources.<sup>116</sup> For the indigenous peoples of Melanesia and other communities whose identities and self-determined ways of life are intertwined with the land, water, species, climate, and spirits of their ancestral territories,<sup>117</sup> the environment is the basis of collective existence.<sup>118</sup> Environmental decline thus directly impairs their right to self-determination, collapsing the foundations upon which their social, political, and economic life is built.<sup>119</sup> As the Court is aware, all States owe *erga omnes* obligations to respect this right.<sup>120</sup>
8. Given that the right to a healthy environment is essential to the enjoyment of self-determination, Vanuatu and MSG invite the Court to consider that the right to a healthy environment may itself have a *jus cogens* character.<sup>121</sup> Indeed, if self-determination is *jus cogens* and the healthy

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<sup>114</sup> WS Vanuatu, para. 381.

<sup>115</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, para. 233; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Separate Opinion of Vice-President Sebutinde, I.C.J. Reports 2019, paras. 25-45; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Separate Opinion of Judge Gomez Robledo, paras. 18-22; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Declaration of Judge Tladi, paras. 14-16; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Separate Opinion of Judge Robinson, I.C.J. Reports 2019, p. 317, para. 71(a); Dire Tladi, Fourth Report of the Special Rapporteur on Peremptory Norms of General International Law (*Jus Cogens*), 31 January 2019, UN Doc A/CN.4/727, p. 48-52, paras. 108-115; Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, Yearbook of the International Law Commission, 2022, vol. II, Part Two, conclusion 23 and Annex, letter (h).

<sup>116</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, paras. 237, 240.

<sup>117</sup> WC MSG, paras. 76, 104-106; WS MSG, ex. 32, Expert Statement of John Aini, paras. 13-19.

<sup>118</sup> WS MSG, paras. 239-245; WC MSG, paras. 59-82; CR 2024/35, pp. 101-102, paras. 4-5, pp. 103-104, paras. 2-4 (Vanuatu and MSG); see also Human Rights Council, *Human rights and the environment*, A/HRC/RES/37/8, 9 April 2018, preambular para. 11.

<sup>119</sup> CR 2024/41, p. 37, para. 27 (Ghana) (“*The consequences of rising sea levels and desertification will not only be the loss of life, detrimental consequences to health and the loss of subsistence, but also that the very survival of nations and States whose existence is threatened erodes their right to self-determination*”.); CR 2024/45, pp. 24-25, paras. 21-22 (Micronesia) (“*Indigenous peoples have collective rights to self-determination; to enjoy their own cultures; to practice their own religions; to speak their own languages; and to develop and transmit to present and future generations their traditional, ancestral and indigenous knowledge about various elements of the natural environment, including seeds, flora and fauna . . . the exercise of these [] collective rights depends on an environment that is protected from GHG emissions. Micronesia submits that a State is obligated to ensure the protection of the environment from these emissions because that protection is necessary for the enjoyment of those core human rights. The failure to ensure that protection of the environment is a violation of those human rights*”.); CR 2024/49, p. 22, para. 11 (Samoa); see also CR 2024/51, pp. 54-55, para. 12 (Tuvalu); CR 2024/40, p. 71, paras. 18-19 (Fiji) (linking the right to self-determination to the integrity of land and natural resources); CR 2024/41, p. 19, para. 11 (Sierra Leone) (explaining that environmental collapse has placed the fundamental right to self-determination “under siege”); CR 2024/42, p. 29, para. 8 (Marshall Islands); CR 2024/44, p. 25, para. 9 (Liechtenstein); WS Sierra Leone, para. 3.92; WS Antigua and Barbuda, para. 195; WS COSIS, paras. 74-78; cf. CR 2024/45, p. 43, para. 22 (Namibia).

<sup>120</sup> *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 139, para. 180; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, pp. 172, 199, paras. 88, 155-156; UN Human Rights Committee, General Comment No. 12, Twenty-first session (1984), para. 5.

<sup>121</sup> See CR 2024/49, p. 22, para. 11 (Samoa) (“*This case is about the violation of our fundamental human rights as much as it is about environmental degradation. The two cannot – and must not – be separated. Human well-being and dignity are related to environmental health and sustainability. The right to self-determination – a peremptory norm of international law – is being violated*”.); WS El

environment upon which it relies must be guaranteed, then it stands to reason that the right to a healthy environment shares this elevated status. No State can legitimately claim treaty protections or invoke any other legal basis to justify conduct that breaches peremptory norms. Thus, this clarification would greatly assist the UN General Assembly in understanding the nature of the obligations of States with respect to climate change, including by confirming that no conflicting treaty provision or domestic measure can justify derogation.

### C. Violations of the right to a healthy environment and related rights

9. The facts before the Court in these proceedings demonstrate that without a healthy environment, the enjoyment of rights to life, health, food, water, culture, adequate housing, and ultimately self-determination, among others, is severely undermined.<sup>122</sup>
10. The significant—and even catastrophic—harm to the climate system and other parts of the environment caused by anthropogenic climate change, driven by certain States’ acts and omissions,<sup>123</sup> has already violated the right to a healthy environment and related rights of peoples and individuals. This reality has been confirmed by human rights tribunals, bodies, and experts.<sup>124</sup> These acts and omissions constitute a composite act, in breach of States’ obligations to respect, protect and fulfil the right.<sup>125</sup> The resulting injuries include destruction of subsistence agriculture,

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Salvador, para. 42 (“Recognizing the undeniable importance of a healthy environment for human well-being, El Salvador would like to hear from the Court whether the right to such an environment is demonstrably evolving towards the status of a peremptory norm of general international law (*jus cogens*)”).

<sup>122</sup> See e.g., Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.7; see also, e.g., Written Statement of the Melanesian Spearhead Group, exs. 5-36; Written Statement Submitted by the Republic of Vanuatu, exs. F-U; Written Statement of Solomon Islands, paras. 29.1-29.9; Written Statement of the Republic of Kiribati, Annex 2; Written Statement of the Kingdom of Tonga, Annex 2; Written Statement of the Cook Islands, Annex Nos. 4-17; Written Statement of Grenada, Annex 3.

<sup>123</sup> Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2 (“Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people.”); Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.2 (“Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater and coastal and open ocean marine ecosystems (high confidence). The extent and magnitude of climate change impacts are larger than estimated in previous assessments (high confidence). Widespread deterioration of ecosystem structure and function, resilience and natural adaptive capacity, as well as shifts in seasonal timing have occurred due to climate change (high confidence), with adverse socioeconomic consequences (high confidence)”).

<sup>124</sup> *Human Rights and Climate Change*, Human Rights Council Resolution 50/9, adopted 7 July 2022, A/HRC/Res/50/9; *Human Rights and Climate Change*, Human Rights Council Resolution 41/21, adopted 23 July 2019, A/HRC/Res/41/21; *Human Rights and the Environment*, Human Rights Council Resolution 16/11, adopted 12 April 2011, A/HRC/Res/16/11; Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 8; Dr Ian Fry, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, *Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation*, A/77/226 (26 July 2022) para. 88; *Advisory Opinion OC-23/17* (“The Environment and Human Rights”), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 47; Ian Fry, *Promotion and protection of human rights in the context of climate change*, “Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change”, 26 July 2022, UN Doc A/77/226, para. 88 (“Throughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the rights to, inter alia, life, health, food development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery.”); see also WS Vanuatu, Ex. C, Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023), para. 11.

<sup>125</sup> See WS Vanuatu, paras. 530-535.

collapse of fisheries, shortages of drinking water, increased disease, loss of ancestral lands and grave sites, cultural disruption, forced relocation, and, fundamentally, the unravelling of self-determined ways of life.<sup>126</sup> These impairments do not occur in isolation: they constitute simultaneous and overlapping violations of interdependent rights.

11. In Vanuatu's and MSG's submission, this is best explained by way of illustration. To that end, Vanuatu has provided numerous illustrations in its Written Statement of the harms and injuries flowing from a deterioration in the quality of the environment and climate system due to the Relevant Conduct.<sup>127</sup> Moreover, the MSG written submissions,<sup>128</sup> and the testimonials and impact statements annexed thereto,<sup>129</sup> are very helpful in bringing to light the myriad ways through which the Relevant Conduct has impaired rights, all of which sound, simultaneously, as violations of the right to a healthy environment. The paragraphs below seek to provide some illustrations, tangibly demonstrating the essential relationship between the right to a healthy environment and other rights of peoples and individuals, as well as violations caused by the relevant conduct. That said, Vanuatu and MSG stress that these illustrations are by no means exhaustive of how the relevant conduct has impaired the values protected by the right to a healthy environment and offer merely a glimpse into the extent of harm and injury sustained. Moreover, the excerpts that follow do not fully capture the extent of loss the referenced communities have experienced—which in any case cannot fully be conveyed in any language officially recognised by the Court.<sup>130</sup>
12. First, the environmental decline caused by climate change has resulted in direct violations of the right to self-determination for peoples across Melanesia. As noted, the self-determined ways of life of Melanesian peoples are inseparable from the entirety of their lived environments.<sup>131</sup> Thus, ***“Climate change is [an] attack, changing things that are fundamental to our culture—the weather, the seasons, the temperature, the land itself”***.<sup>132</sup>
13. As we have explained,<sup>133</sup> anthropogenic climate change has fundamentally injured the environments that form an integral part of collective existence for the many peoples of Melanesia, including through intrusion of saltwater into freshwater reserves, mass coral bleaching, ecosystem collapse, forced displacement due to cyclones, sea level rise and coastal erosion, loss of biodiversity, increasingly unpredictable weather, and disrupted seasonal patterns. These changes directly undermine their ability to remain self-determining peoples.

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<sup>126</sup> WC MSG, paras. 59-82; CR 2024/35, pp. 103-104, paras. 3-4 (Vanuatu and MSG).

<sup>127</sup> WS Vanuatu, paras. 390-396, 519.

<sup>128</sup> WS MSG, paras. 43-219; WC MSG, paras. 59-173; 201-232.

<sup>129</sup> WS MSG, exs. 5-36.

<sup>130</sup> CR 2024/35, p. 106, para. 10 (Vanuatu and MSG).

<sup>131</sup> See, e.g., WS MSG, paras. 46-58; CR 2024/35, pp. 101-102, paras. 2-5 (Vanuatu and MSG).

<sup>132</sup> WS MSG, ex. 11, Statement of Francois Neudjen, paras. 67 (emphasis added).

<sup>133</sup> WC MSG, paras. 59-82; CR 2024/35, pp. 103-104, paras. 3-4 (Vanuatu and MSG).

14. One example is the disruption of biocultural seasonal calendars, which underpin collective life for many indigenous peoples in Melanesia.<sup>134</sup> Many of the peoples of Melanesia have developed their own economic, social, cultural, legal and political practices over time and generations grounded and inextricably interwoven with the predictable seasonal cycle of the environment and biodiversity, including the interconnected cycle of the hot and cold seasons, moon phases, growth of crops such as yam, taro, fruit and nut trees, the tides, the stars, and the life cycles of various marine species such as fish, palolo worms, and crabs.<sup>135</sup> The seasonal calendar enshrines an intimate, reciprocal relationship between a people and their specific environment, ensuring intergenerational sustainability and abundance.<sup>136</sup> Each element of nature is both kin and ancestor, and so the seasonal calendar also involves the spiritual relationships between a people and all of the elements of their environment.<sup>137</sup>
15. Climate change has disrupted this seasonal calendar:<sup>138</sup> seasons have become unstable; the weather is erratic; and the crop cycle is disrupted. This disruption has undermined place-based governance and, in some cases, completely torn apart the spiritual and material bonds between people and place that make up the fabric of collective life.<sup>139</sup>
16. At bottom, climate change has impaired the right to self-determination of peoples across Melanesia by undermining their very existence as peoples within their territories.<sup>140</sup> As we have explained, Melanesian peoples are “*placepersons*”—a term encapsulating the melded identity of peoples and their specific environments.<sup>141</sup>
17. The adverse effects of climate change have already so degraded the environment as to render the ancestral territories of entire peoples permanently uninhabitable, forcing peoples to abandon them and relocate.<sup>142</sup> Such losses amount to “*collective death*” for the peoples concerned.<sup>143</sup> One example is Vunidogoloa Village, Fiji, rendered uninhabitable due to rising sea levels. Sailosi Ramatu, the village’s former headman, explains the existential injury this loss caused his people:

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<sup>134</sup> WS MSG, ex. 18, Statement of Francis Hickey, paras. 14-31; WS MSG, ex. 19, Statement of Jeanette Lini, paras. 73-93; WS MSG, ex. 29, Statement of Werry Narua, paras. 39-41; WS MSG, ex. 32, Statement of John Aini, paras. 27-39.

<sup>135</sup> WS MSG, ex. 18, Statement of Francis Hickey, paras. 14-30; *see also* WS MSG, Exhibit 35, Expert Statement of Yolarnie Amepou, paras. 52-60; WS MSG, ex. 9, Statement of Jean-Yves Poedi, paras. 38-47.

<sup>136</sup> *See, e.g.*, WS MSG, ex. 18, Statement of Francis Hickey, para. 20-26; WS MSG, ex. 29, Statement of Werry Narua, paras. 39-40.

<sup>137</sup> *See, e.g.*, WS MSG, ex. 18, Statement of Francis Hickey, paras. 23-24; WS MSG, ex. 19, Statement of Jeanette Lini, para. 74-78; WS MSG, ex. 35, Expert Statement of Yolarnie Amepou, paras. 61-74; WS MSG, ex. 32, Expert Statement of John Aini, para. 66.

<sup>138</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.2.

<sup>139</sup> WS MSG, ex. 18, Statement of Francis Hickey, paras. 36-38.

<sup>140</sup> WC MSG, paras. 76-79; CR 2024/35, p. 105, para. 6 (Vanuatu and MSG); *see Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, para. 239.

<sup>141</sup> CR 2024/35, p. 101, para. 2 (Vanuatu and MSG).

<sup>142</sup> WC MSG, paras. 76-79; CR 2024/35, p. 105, para. 6 (Vanuatu and MSG).

<sup>143</sup> WC MSG, paras. 76-79; CR 2024/35, p. 105, para. 6 (Vanuatu and MSG).

The Vanua is the land. ... **The Vanua is our identity. ... It is like our mother. It gives us everything.** When we die, we become one with the Vanua again. Our ancestors who have passed away are already part of the Vanua. **When the land is destroyed and washed away by the sea water coming in, it is like killing us.**<sup>144</sup>

18. Likewise, the people of Ouvea Island in New Caledonia are preparing to relocate. Over the past 10 years, rising seas have destroyed much of the island's coastal area and there is simply nowhere else on the island to go.<sup>145</sup> Francois Neudjen, a leader from Ouvea and the special advisor to the Kanak Customary Senate, explains the consequences for self-determination:

Our custom is the land. How will we hold onto our custom when we are not on our land? How will we hold onto our self-governance without our customs? ... **When we lose our land, our life is going to disappear.**<sup>146</sup>

19. As we have explained in our written submissions, loss of biodiversity, resources, and ecosystems have also deprived peoples of their right to permanent sovereignty over natural resources, undermined means of self-governance, caused the collapse of economic and trade systems, broken down social relationships, and fundamentally deprived peoples of everything that defines their existence in the world.<sup>147</sup> This is further illustrated by the erosion of indigenous languages in Melanesia, where over 1,500 distinct languages are spoken, each of which is specific to a place, embedding unique knowledge, values, cultural practices and spiritual relationships. As a Francois Neudjen explains, indigenous language thus "*allow[s] our world to exist*".<sup>148</sup> As the expert report of indigenous linguist Fabrice Wacalie explains, the loss of elements of nature is now causing another form of extinction, as the words assigned to those elements are disappearing too.<sup>149</sup> This illustrates how, for Melanesian peoples, "*[t]he biodiversity around us creates our world and is also how we understand the world ... the entire culture is in danger of collapsing and disappearing as a result of the loss of these species*".<sup>150</sup> In legal terms, such losses not only amount to violations of the right to a healthy environment but also infringements on the right to self-determination of impacted peoples, whose language is the substrate of knowledge and values that underpin their existence.

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<sup>144</sup> WS MSG, ex. 8, Statement of Sailosi Ramatu, para. 20 (emphasis added).

<sup>145</sup> WS MSG, ex. 11, Statement of Francois Neudjen, para. 52.

<sup>146</sup> WS MSG, ex. 11, Statement of Francois Neudjen, para. 53 (emphasis added); *see also, e.g.*, Written Statement MSG, ex. 12, para. 64 ("*The mountain is coming down and the water is coming up. We are stuck in the middle trying to hold onto our traditions. We have to try our best to hold onto our customs, our ways of doing things here on this island. It is our way of life and who we are. If we lose it, we don't know what will become of us.*"); WS MSG, ex. 14, Statement of Ara Kouwo, para. 77 ("*If we are forced to move to other people's lands, it will never be our own because of how Kastom land works here. It will cause social disharmony and conflict. We will lose our food source and our hunting grounds. We will continue to lose our culture. What will become of us?*").

<sup>147</sup> WC MSG, paras. 59-82; *see also, e.g.*, WS MSG, ex. 29, Statement of Werry Narua, paras. 57-62 (describing collapse of self-determined economic and trade systems as a result of environmental degradation causing loss of essential biodiversity and natural resources).

<sup>148</sup> WS MSG, ex. 30, Expert Report of Fabrice Wacalie, para. 12. WS MSG, paras. 191-193; *see also* WS MSG, ex. 11, Statement of Francois Neudjen, para. 12 ("*The Kanak world, like other societies, is based on values. The values allow the world to exist. Knowledge of the environment and custom practices is essential to allowing our world to exist*").

<sup>149</sup> WS MSG, ex. 30, Expert Report of Fabrice Wacalie, Annex 1, p. 17.

<sup>150</sup> WS MSG, ex. 9, Statement of Jean-Yves Poedi, para. 28.

20. Enjoyment of the right to a healthy environment is also a precondition for enjoyment of the right to food—a right guaranteeing access to food that is available, adequate, sustainable, and physically and economically accessible.<sup>151</sup> One example is Yakel Village, Tanna, Vanuatu, whose people have experienced the collapse of their subsistence-based food system due to anthropogenic climate change.<sup>152</sup> Tanna means “*rich soil*”, so named because the land has always been fertile.<sup>153</sup> Since time immemorial, the people of Yakel have enjoyed abundant harvests.<sup>154</sup> Now, however, erratic weather—both too much sun and too much rain—has caused crops to fail, resulting in severe food shortages.<sup>155</sup> Unrelenting landslides—triggered by more intense cyclones and rains—have destroyed the community’s gardens, hunting grounds, and fisheries. Due to these compound impacts, the people of Yakel have been deprived of **all** of their staple food sources for the past nine years.<sup>156</sup> In a statement they elected to offer communally, women from Yakel explain that these severe food shortages have resulted in malnutrition, stunting, and premature death: “*It affects our health. It is affecting the growth of both our children and adults. We are getting smaller ... Our lifespans are getting shorter. The women are dying younger and they are not reaching the age when they are supposed to die*”.<sup>157</sup> Communities throughout Melanesia are experiencing starvation conditions,<sup>158</sup> which are exacerbated by severe cyclones and other natural disasters—occurrences of which are becoming increasingly common due to anthropogenic climate change.<sup>159</sup>
21. The climate-change-induced breakdown of a healthy environment also entails violations of the right to safe and adequate drinking water—which guarantees water that is sufficient, safe, physically acceptable, and affordable for personal and domestic use.<sup>160</sup> For example, in Veraibari Village, in

<sup>151</sup> See Committee on Economic, Social and Cultural Rights, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (article 11)*, 12 May 1999, E/C12/1999/5, paras. 7, 17. For a more detailed account of the content of this right, see WS Vanuatu, paras. 366-370.

<sup>152</sup> WS MSG, ex. 23, Alpi Nangia, para. 7 (“*We live strong in our Kastom. We have kept our Kastom and are known in Vanuatu as a Kastom village because we decided not to adopt any other religious belief, like others in Tanna. We believe and practice what our ancestors believed*”).

<sup>153</sup> WS MSG, ex. 20, Mangau Iokai, para. 19.

<sup>154</sup> WS Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, para. 25 (“*Tanna has always been an island with plenty. Our land is naturally fertile. Our people were never hungry. We always had food in the garden. Our people were very self-sufficient in terms of subsistence farming. But it is very different now*”).

<sup>155</sup> WS MSG, ex. 20, Mangau Iokai, paras. 9-13; WS MSG, ex. 23, Alpi Nangia, paras. 17-22; WS MSG, ex. 24, Jenny Toata, paras. 9-14; WS Statement MSG, ex. 25, Johnny Loh, paras. 9-32.

<sup>156</sup> Written Statement of the Melanesian Spearhead Group, ex. 27, Statement of the Women of Yakel, paras. 9, 13-17, 24-26.

<sup>157</sup> Written Statement MSG, ex. 27, Yakel Women, paras. 21-22; *see also* Written Statement MSG, ex. 23, Alpi Nangia, para. 25; *see also*, e.g., WS MSG, ex. 34, Expert Statement of Jerry Jacka, paras. 31-34; WS MSG, ex. 14, Statement of Ara Kouwo, paras. 68-74.

<sup>158</sup> WS MSG, ex. 34, Expert Statement of Jerry Jacka, paras. 31-34; WS Vanuatu, ex. R, Impact Statement of Antoine Ravo, Director of the Department of Agriculture, Republic of Vanuatu, paras. 41-43; WS MSG, ex. 14, Statement of Ara Kouwo, paras. 68-74. Even for those who are not yet experiencing total starvation, the collapse of subsistence food systems have left them without access to food that is nutritious, adequate, or affordable. *See, e.g.*, WS MSG, ex. 15, Statement of Cynthia Houniuhi, paras. 17-19; WS MSG, ex. 16, Statement of Hilary Fioru, para. 52; WS MSG, ex. 12, Statement of the Ouara Tribe, paras. 46-48; WS MSG, ex. 7, Statement of Adi Sivo Yabakitolu, para. 12; , Statement of Faye Mercy, paras. 29-37; WS MSG, ex. 19, Statement of Jeanette Lini, paras. 60-62; WS MSG, ex. 29, Statement of Werry Narua, paras. 42-50.

<sup>159</sup> WS Vanuatu, Ex. O, Impact Statement of Robson Tigona, Lecturer in Environmental Sciences at the Vanuatu National University, Republic of Vanuatu, paras. 14, 16-27; *see also*, e.g., WS MSG, ex. 28, Jimmy Namile, paras. 19-22, 26; WS MSG, ex. 19, Statement of Jeanette Lini, para. 51; Statement of Mangau Iokai, paras. 62-64, 70-76 (“*In the past, once a cyclone passed, we still had enough to eat. But now, when the cyclones come, they damage all of the food and we have to wait for the government to give us aid. We have to wait for about three months*”).

<sup>160</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, para. 12(b). For a more detailed account of the content of this right, see WS Vanuatu, paras. 366-370.



the Kikori District of Papua New Guinea, saltwater inundation as a result of rising sea levels compromised all groundwater sources by 1995, leaving the people of Veraibari to rely almost exclusively on rainfall for access to freshwater.<sup>161</sup> Climate change has also caused drought condition to become more frequent and more intense, meaning the community regularly runs out of water.<sup>162</sup> When there is no rain, the community's only source of water is a nearby brackish swamp. Headman Ara Kouwo explains that *"we will sometimes have no choice but to drink this [swamp] water. I have experienced stomach problems, coughs and diarrhoea from drinking this water, but quite often it is the only water source on the island"*.<sup>163</sup>

22. Violations of the right to health—which guarantees both physical and mental well-being as well as the underlying determinants of health, including safe and adequate food, water, and housing<sup>164</sup>—are also apparent from these facts. An example is from Lilisaina Village, Malaita Province, Solomon Islands. In recent years, the community has endured increasingly frequent and intense high tides, which now regularly flood the village, resulting in unsanitary conditions that breed disease.<sup>165</sup> Faye Mercy, a grandmother in the village, explains that this flooding has caused *"a lot of health issues in our village where we have a huge outbreak of our children suffering with continuous flu and cough, diarrhoea, malaria, severe vomiting and stomach ache, and this was due to the fact that our toilets were flooded when there is high tides"*.<sup>166</sup> She explains further that the flooding washes debris into the village, which become a breeding ground for mosquitoes, and that children fall ill with severe malaria after flooding events.<sup>167</sup> On top of this, saltwater inundation, coupled with coastal erosion triggered by intense rainfall, has so degraded soil quality that medicinal herbs used to treat these ailments can no longer grow.<sup>168</sup>
23. The decline of the environment due to climate change has also impacted the mental health of individuals and communities. In Yakel, for example, food shortages are so severe that the community is forced to eat animals required for kastom ceremonies.<sup>169</sup> These ceremonies are essential to culture, communal life, and sense of self<sup>170</sup> and the impossibility of performing them has led to a great deal of mental stress. The women of Yakel explain: *"We are feeling very depressed*

<sup>161</sup> WS MSG, ex. 14, Statement of Ara Kouwo, para. 28.

<sup>162</sup> WS MSG, ex. 14, Statement of Ara Kouwo, para. 29.

<sup>163</sup> WS MSG, ex. 14, Statement of Ara Kouwo, para. 34.

<sup>164</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, art. 12(2); Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, paras. 11, 15; *Advisory Opinion OC-23/17* ('The Environment and Human Rights'), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 110. For a more detailed account of the content of this right, see WS Vanuatu, paras. 371-374.

<sup>165</sup> WS MSG, ex. 17, Statement of Faye Mercy, paras. 14-24.

<sup>166</sup> WS MSG, ex. 17, Statement of Faye Mercy, para. 25.

<sup>167</sup> WS MSG, ex. 17, Statement of Faye Mercy, para. 26; *see also* WS MSG, ex. 28, Statement of Jimmy Namile, para. 23.

<sup>168</sup> WS MSG, ex. 16, Hilary Fioru, paras. 67-70. Other communities have also been deprived of traditional medicine as the necessary plants can no longer tolerate declining environmental conditions. *See e.g.*, WS MSG, ex. 22, Statement of Naus Iaho, paras. 9-12; WS MSG ex. 25, Statement of Sera Nawahta, para. 10; WS MSG, ex. 29, Statement of Werry Narua, para. 36-38.

<sup>169</sup> WS MSG, ex. 27, Statement of the Women of Yakel, para. 28.

<sup>170</sup> WS MSG, ex. 27, Statement of the Women of Yakel, paras. 30-32.

*and worried. Some women in the community have become so worried about the Kastom ceremony they are supposed to be doing that they are having strokes”.*<sup>171</sup>

24. The loss of a clean, healthy and sustainable environment also entails violations of the right to home, privacy, and family life for many of the peoples of Melanesia.<sup>172</sup> For example, while traditional homes have long been able to withstand cyclones and other natural disasters, the unprecedented intensity of these events over the past decade have resulted in widespread and repeated destruction of the physical homes and communal spaces for communities across Melanesia, as well as the materials needed to rebuild them.<sup>173</sup> Violations of the right to privacy, family and home life are also evident where communities have been forced to abandon their ancestral territories entirely.<sup>174</sup> Indeed, the loss of ancestral territories described above amounts to a loss of home and family in the deepest sense.<sup>175</sup> The expert statement of Professor Jamon Halvaksz explains this loss as experienced by the Biangai people of Papua New Guinea:

For all Biangai, land is important. It is what they commonly call their ‘bone,’ something that is core to being a person in this world. The Biangai use the word *ngaibilak* to talk about their land. It translates loosely to “cared for” or “caring land. They see it not necessarily as just them caring for the land as caretakers but the land caring for them as both heritage and ancestry.

All those things—land, family, and ancestors—get intermingled together in important ways in the land and the gardens. ... When those spaces are lost, it’s devastating.<sup>176</sup>

25. Violations of this right may also occur where environmental degradation changes an ancestral territory beyond recognition. For example, Mangau Iokai, a chief and elder of Yakel, laments that due to changing weather patterns, “*even though I am living in my homeland, it feels like I am living*

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<sup>171</sup> WS MSG, ex. 27, Statement of the Women of Yakel, para. 29.

<sup>172</sup> WS Vanuatu, paras. 349-350; *see also* UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.10-8.12.

<sup>173</sup> *See, e.g.*, WS MSG, ex. 14, Statement of Ara Kouwo, paras. 43-46; WS MSG, ex. 12, Statement of the Ouara Tribe, para. 59 (“*Last week, we experienced a big landslide because of the intense rain. The mountain fell down on a family’s home and destroyed it. They had to relocate. Other families were building homes in that area to move away from the flooding happening near the coast at high tide, but because of the landslide they had to stop building and had to find a safer place. The landslides are happening because we’ve been getting too much rain. But it goes both ways now. Sometimes it is too rainy and we get landslides, and sometimes it is too hot and we get fire. For example, two or three years ago, the heat was so extreme that we had a fire here*”); *see also id.* at para. 37 (“*There is also concern about where we might be able to move. Because of the landslides, moving near the mountain is no longer a safe option. But our houses are now also regularly being flooded*”); WS MSG, ex. 14, Statement of Ara Kouwo, paras. 24-25; WS MSG, ex. 16, Faye Mercy, paras. 60-62; WS MSG, ex. 19, Statement of Jeanette Lini, paras. 46-52; WS MSG, ex. 20, Statement of Camilla Noel, paras. 18-20; WS MSG, ex. 28, Statement of Jimmy Namile, paras. 13-15; WS MSG, ex. 31, Expert Statement of Professor David Lipset, paras. 8-13.

<sup>174</sup> *See, e.g.*, WS MSG, ex. 8, Statement of Sailosi Ramatu, paras. 20-21 (“*When we left the old village, we had to break our link with the land and the environment and our ancestors. The day we were relocating was a sad day for us. The people on that day were very emotional and we could hear the cries of the people. I had not experienced mourning until that day and the day we left the village it was the day I felt even more loss than losing a loved one*”).

<sup>175</sup> *See, e.g.*, WS MSG, ex. 36, Expert Statement of Professor Paige West, paras. 17-18; WS MSG, 20ex. 9, Statement of Jean-Yves Poedi, para. 52; WS MSG, ex. 32, Expert Statement of John Aini, paras. 13-19.

<sup>176</sup> WS MSG, Ex. 33, Expert Statement of Professor Jamon Halvaksz, paras. 13-15.

*in a foreign land. It is strange. I don't know my place anymore*".<sup>177</sup> Here also, respect for the right to a healthy environment would simultaneously have safeguarded the right to privacy, family and home life in Yakel and elsewhere.

26. Further, the decline of environmental quality caused by climate change entails violations of the right to life.<sup>178</sup> The right to life protects against actual loss of life as well as loss of life with dignity.<sup>179</sup> Human rights bodies and tribunals have consistently indicated that environmental degradation, including climate change, can result in violations of the right to life.<sup>180</sup> For Melanesian peoples, it is self-evident that the environment is the foundation of life. John Aini, a Maimai man from Lovongai Island, Papua New Guinea explains, "*With the reefs and forest being destroyed, we are losing our livelihood. ... We use both of them to live. When they are gone, that is it*".<sup>181</sup>
27. The adverse effects of climate change have already resulted in demonstrated loss of life across Melanesia<sup>182</sup> and undermined life with dignity. MSG's Written Comments detail the ways in which the collapse of their environments is causing the physical destruction of peoples throughout Melanesia, including the people of Veraibari Village,<sup>183</sup> Yakel Village,<sup>184</sup> and Tench Island, Papua New Guinea. To recall this third example, life for the people of Tench Island has become untenable. Saltwater inundation has destroyed the island's freshwater sources and rendered the land inarable, forcing Tench Islanders to relocate to urban centres where—deprived of the fisheries that were their source of income—they cannot afford to buy adequate food and are experiencing severe malnutrition.<sup>185</sup> These harms are compounded by changes to the climate and weather which have caused serious outbreaks of malaria.<sup>186</sup> Some people from the Tench Islands have expressed that they no longer wish to live.<sup>187</sup> Such conditions—experienced throughout Melanesia<sup>188</sup>—amount not

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<sup>177</sup> WS MSG, ex. 21, Statement of Mangau Iokai, para. 8. He further explains the devastation of losing the Yam, which can no longer grow in Yakel due to altered weather and degraded environmental conditions. The Yam is not only essential for subsistence, it is a spirit, an ancestor, and a relative all wrapped in one. The loss is thus extreme: "*Now that the Yam has vanished, my heart is broken. My connection with the Yam spirit is broken. Before, through my family and my ancestors, I was able to lean on the spirit when I needed it. But now I don't have anything to lean on. It just feels like empty space. Because the spirit is no longer there, I feel empty. I am just walking around like an empty shell*". WS MSG, ex. 21, Statement of Mangau Iokai, para. 43.

<sup>178</sup> See, e.g., CR 2024/38, p. 57, para. 18 (Dominica) ("*It bears repeating that every human being has an inherent right to life. A clean and healthy environment is intrinsic to this right to life, as is the right to enjoy that life with dignity and to be free from acts and omissions that would cause unnatural death*"); CR 2024/46, p. 23, para. 19 (Nepal); CR 2024/48, pp. 11-12, paras. 25-26.

<sup>179</sup> WS Vanuatu, paras. 343-344.

<sup>180</sup> WS Vanuatu, para. 345 (collecting authorities).

<sup>181</sup> WS MSG, ex. 32, Expert Statement of John Aini, para. 67 (emphasis added).

<sup>182</sup> WS Vanuatu, para. 347; WS MSG, ex. 16, Statement of Hilary Fioru, paras. 31-35, 47-55; see also CR 2024/49, p. 28, para. 23 (Samoa).

<sup>183</sup> WC MSG, paras. 157-161.

<sup>184</sup> WC MSG, paras. 153-156.

<sup>185</sup> WC MSG, para. 162.

<sup>186</sup> WC MSG, para. 162.

<sup>187</sup> WS MSG, ex. Expert Statement of Professor Paige West, para. 36 ("*There's a kind of profound depression and inability to face life. For the first time I heard people from Tench say over and over again, 'We wish that we were dead so we didn't have to deal with this. I heard that from three different people from Tench, and they talked about it in terms of their children too. They said, 'We wish that our children weren't alive right now because the island is gone.'*").

<sup>188</sup> See, e.g., WS MSG, ex. 12, Statement of the Ouara Tribe, paras. 36-37, 46-54, 58-59; WS MSG, ex. 16, Statement of Hilary Fioru, paras. 47-55, 67-70; WS MSG, ex. 17, Statement of Faye Mercy, paras. 14-26, 30-35; WS MSG, ex. 31, Expert Statement of Professor

only to a violation of the right to a healthy environment, but also point at a violation of the right to life with dignity.

28. Finally, as catalogued in great detail in MSG’s Written Comments, the relevant conduct also has caused violations of cultural rights whose enjoyment, too, depends on a clean, healthy and sustainable environment.<sup>189</sup> Jean-Yves Poedi, member of the Kanak Customary Senate sums it up:

Climate change is making preservation of our culture more challenging **because our culture is the environment**. The loss of our species, the harm to our crops, the changes to the weather and the sea, these are harms to the fundamentals of our culture.<sup>190</sup>

#### D. Legal consequences

29. It is clear from the materials before this Court that the relevant conduct is in breach of States’ obligations to respect, protect and fulfil the right to a healthy environment—and of myriad obligations arising from correlative rights. These breaches trigger legal consequences under international law, including obligations of cessation, non-repetition and reparation. These obligations require, *inter alia*, that responsible States refrain from acts that would further destabilise the climate system or harm the wider environment, ensure meaningful finance and technology transfers to support a just transition away from fossil fuels, proactively ban false and dangerous ‘solutions’ such as geoengineering, and provide injured States, peoples and individuals with the support needed to restore the web of biocultural relationships affected by the breach.
30. With regard to reparations, Vanuatu and MSG wish to reiterate that recognition of the unlawfulness of the relevant conduct would be an important form of satisfaction, in line with the Court’s own practice. We submit that such recognition could not only help restore the international rule of law, but also consolidate the right to a healthy environment as a universal right. We particularly invite the Court to take account of the legal traditions of Melanesian and other indigenous peoples when considering the content of the right to a healthy environment and determine how it has been breached. Engaging with these traditions can provide a richer, more nuanced understanding of environmental stewardship and holistic well-being, thereby assisting the international community in giving fuller meaning to the right at stake and remedying violations.
31. For example, as Pacific Islands Students Fighting Climate Change President, Cynthia Hounihui explained during Vanuatu and MSG’s oral submission, her legal tradition recognises land as “*a living, timeless plane where generations past, present, and future converge, interconnected and sustained in an unbroken cycle of life. It is upon our land that our values and principles are rooted,*

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David Lipset, paras. 7-13; WS MSG, ex. 33, Expert Statement of Professor Jamon Halvaksz, paras. 16-25, 34-36; WS MSG, ex. 34, Expert Statement of Jerry Jacka, paras. 31-35.

<sup>189</sup> WC MSG, paras. 104-136.

<sup>190</sup> WS MSG, ex. 9, Statement of Jean-Yves Poedi, para. 56 (emphasis added).

preserved, and transmitted across generations”,<sup>191</sup> and enshrines a sacred duty, *Arata ni Noni O’oanaha*, requiring past and present generations to act as stewards of the environment for future generations.<sup>192</sup> Likewise, in the Kanak vision, “*The land fashions us into who we are. And so in life, in practice, in responsibility, we are just guardians of the land. We are not here to stay. We are just passing through this life. During our lives, it is our responsibility to care for the lands, which gave us everything we have and everything we are*”.<sup>193</sup>

32. As Vanuatu and MSG stressed in our oral submission, the approach of Melanesian peoples represents “*living, breathing alternative imaginations—imagination other than the one that has brought this planet to the brink of ecological collapse*”.<sup>194</sup> And as rightly stated by the Commission of Small Island States (COSIS) and Ghana, “*the normative insights of these traditions are worthy of the Court’s attention in the spirit of a pluralistic international law*”.<sup>195</sup>
33. Finally, as many participants have stressed, breaches of obligations arising from peremptory norms, including the rights of peoples, trigger additional legal consequences for all States—notably obligations to cooperate to bring the breach to an end, and to refrain from recognising as lawful the situation stemming from the breach.<sup>196</sup> In our submission, the special legal regime applicable to serious breaches of obligations arising from peremptory norms must also apply where the right to a healthy environment is violated to a degree that undermines the enjoyment of other fundamental human rights and self-determination itself. Here, we invite the Court to articulate the content of these obligations with specific regard for affected peoples’ remedial rights, including their right to restore interspecies relationships in accordance with their own legal systems. Taking these remedial rights seriously would not only be just, but also assist the international community in aligning its practices with the fundamental values underpinning international law.

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<sup>191</sup> CR 2024/35, p. 115, para. 3 (Vanuatu and MSG); *see also, e.g.*, WS MSG, Ex. 36, Expert Statement of Professor Paige West, para. 18.

<sup>192</sup> CR 2024/35, p. 116, para. 5 (Vanuatu and MSG).

<sup>193</sup> WS MSG, ex. 11, Statement of Francois Neudjen, para. 17.

<sup>194</sup> CR 2024/35, p. 106, para. 10 (Vanuatu and MSG).

<sup>195</sup> CR 2024/53, p. 24, para. 16 (COSIS); CR 2024/41, p. 38, para. 29 (Ghana) (“*Finally, with regard to future generations and peoples, Ghana notes that States today are the present custodians for “present and future generations” as set out in the preamble of the General Assembly resolution on a right to a healthy environment. The principle of sustainable development and the precautionary principle are relevant here. In particular, we should be mindful that the air and environment have a sacred quality in a plurality of legal systems. Nature is not something to be tamed by humans or simply exploited for commercial gain. Indigenous understanding of the atmosphere, like land, is based on cultural and spiritual respect for life to preserve and transmit to future generations. In short, humans must walk gently on this earth*”).

<sup>196</sup> CR 2024/35, p. 114, para. 13 (Vanuatu and MSG); WS Vanuatu, paras. 601-607; WC MSG, paras. 233-239; WS Burkina Faso, paras. 389-401.

## 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:

1. Aspects of this question have been specifically addressed in the written and oral submissions of Vanuatu<sup>197</sup> and MSG,<sup>198</sup> which are reaffirmed in full. The views expounded in these submissions converge with those of other States and organisations, both in their written and oral submissions.<sup>199</sup> This reply is intended to address more specifically the question posed in a concise and direct form.
2. The declarations made by certain States upon becoming parties to the UNFCCC, the Kyoto Protocol 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—serve an important legal function. They confirm that the climate treaties do not operate as self-contained regimes precluding the application of the general law of State responsibility, including the right of States to invoke reparation for the injury caused by wrongful conduct.
3. As noted, the UNFCCC does not contain any special rules concerning either the existence of a wrongful act or the consequences of a breach. Nor does it alter the ordinary operation of the secondary rules on State responsibility. This is underscored by Article 14(1), which is the one article in the UNFCCC that addresses enforcement, and is fully compatible with the ongoing applicability of the general law of State responsibility.<sup>200</sup> The reservations added by States such as Fiji, Kiribati, Nauru, Papua New Guinea and Tuvalu at the time of ratification confirm this position, stating that the treaty “*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 provisions in the Convention can be interpreted as derogating from the principles of general international law*”.<sup>201</sup> These formal confirmations reflect the existing legal situation: the UNFCCC does not diminish the capacity of States to invoke and apply the general rules of State

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<sup>197</sup> WS Vanuatu, para. 433; WC Vanuatu, para. 156.

<sup>198</sup> WC MSG, para. 188.

<sup>199</sup> See, e.g., CR 2024/39, p. 63, para. 27 (Egypt); CR 2024/41, p. 34, para. 11 (Ghana); CR 2024/45, p. 48, para. 54 (Namibia); CR 2024/46, p. 8, para. 2 (Nauru); CR 2024/49, pp. 50-51, para. 7 (Seychelles); WC Antigua and Barbuda, para. 94; WC Bahamas, para. 20; WC Namibia, para. 59; WC Cook Islands, para. 56; WC Sri Lanka, para. 63; WC Tuvalu, para. 40; WC OACPS, para. 82; WC Nauru, para. 31; WC Egypt, para. 72.

<sup>200</sup> Art 14(1) of the UNFCCC provides that parties can jointly seek settlement of their dispute “*through negotiation or any other peaceful means of their own choice*”. Art 14(2) entitles parties to unilaterally refer a dispute involving the UNFCCC to the International Court of Justice or to a binding arbitration, subject to each of the parties having made a declaration accepting the jurisdiction of the relevant forum over such disputes; and Art 14(5) provides that where resort to the procedures provided for under paragraphs 1 and 2 has failed, any party to the dispute can submit the dispute to a conciliation commission that would be created upon the request of that party.

<sup>201</sup> Declarations made by Fiji, Kiribati, Nauru and Papua New Guinea. See ‘Status of Ratification of the United Nations Framework Convention on Climate Change’, United Nations Treaty Collection ([link](#)).

responsibility in cases of wrongful conduct causing climate harm. The intention not to displace general international law in this regard is made all the clearer by the set of informal papers provided by delegations related to the preparation of the framework convention on climate change, proposed by Vanuatu on behalf of AOSIS Member States, which confirms that:

This convention, and participation in the negotiations leading to its conclusion, is without prejudice to the existing rights under international law, including rules governing international liability for damage to people, property and the environment.<sup>202</sup>

4. The same reasoning extends to the Kyoto Protocol. While the Kyoto Protocol established a Compliance Committee empowered to take measures, such as limiting a Party's eligibility under carbon trading mechanisms, these treaty-specific procedures do not displace the general law of State responsibility. By analogy with human rights treaties that have their own enforcement bodies, the existence of an internal compliance mechanism does not annul the broader rights of States under general international law to seek cessation of wrongful conduct and reparation for injury.<sup>203</sup> The same is confirmed by declarations of Cook Islands, Kiribati, Nauru and Niue, stating that signing or ratifying the Kyoto Protocol "*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 can be interpreted as derogating from principles of general international law*".<sup>204</sup>
5. The situation is no different for the Paris Agreement. Its Implementation and Compliance Committee's powers do not extend to enforcement, and no participant in these proceedings has sought to argue that the existence of this body in any way restricts the availability of the usual remedies under general international law. Such an argument would indeed be absurd, as it would turn a body supposedly established to facilitate compliance with the treaty's provisions into a bar to accountability and redress.
6. Arguments to the effect that Article 8 of the Paris Agreement or institutional arrangements on 'loss and damage' exclude the applicability of the general law of State responsibility are equally untenable. This is confirmed by the COP decision accompanying the Paris Agreement, stating that Article 8 of the Agreement "*does not involve or provide a basis for any liability or compensation*".<sup>205</sup> States' explicit declarations upon signature or ratification of the Paris Agreement also reaffirm their existing rights under general international law relating to injury caused by the relevant conduct. The Cook Islands, Marshall Islands, Federated States of

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<sup>202</sup> Set of informal papers provided by delegations, related to the preparation of a Framework Convention on Climate Change : note / by the Secretariat, A/AC.237/Misc.1/Add.3 (Geneva, 18 June 1991), para. 1.3, see also para. 3.6 ([link](#)).

<sup>203</sup> Margaretha Wewerinke-Singh, STATE RESPONSIBILITY, CLIMATE CHANGE AND HUMAN RIGHTS UNDER INTERNATIONAL LAW (Hart, 2018) pp. 67-69, see also pp. 65-67.

<sup>204</sup> Declarations made by Cook Islands, Kiribati, Nauru and Niue. See 'Status of Ratification of the UNFCCC and the Kyoto Protocol', United Nations Treaty Collection ([link](#)).

<sup>205</sup> Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, para. 51.

Micronesia, Nauru, Niue, Philippines, Solomon Islands, Tuvalu and Vanuatu all made declarations to this effect.<sup>206</sup>

7. That other States have been silent or have otherwise not objected to such declarations reinforces the conclusion that these understandings are widely accepted as reflecting the proper interplay between the climate treaties and general international law. Under general principles of treaty interpretation, States are presumed to act in good faith, consistent with Article 31(1) of the Vienna Convention on the Law of Treaties. Good faith interpretation, coupled with the principle of acquiescence,<sup>207</sup> suggests that the absence of objections or contrary declarations by other States can be understood as their assent to these understandings. In other words, when certain States explicitly reaffirm that their rights and obligations under general international law, including those concerning compensation and liability, remain intact despite their engagement with climate treaties, and no other States object, a form of tacit consensus emerges regarding the correct interpretation of the relevant treaty provisions.
8. In light of this, the declarations, coupled with the silence of other States, reinforce the conclusion that the UNFCCC and its subsidiary treaties do not constitute a self-contained regime insulating States from legal consequences under general international law. Instead, these instruments are part of a broader international legal framework, including the established rules and principles of State responsibility that afford injured States the right to seek cessation of wrongful acts and reparation.
9. Thus, the declarations serve both as explicit reaffirmations of States' rights and as interpretative aids to understanding the legal relationship between the climate treaties and general international law. In the context of this advisory opinion, they confirm that the protections and remedies available under general international law remain operative and cannot be curtailed or diminished by the specialised arrangements found within the climate treaty framework.

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<sup>206</sup> Declarations made by Cook Islands, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Philippines, Solomon Islands, Tuvalu and Vanuatu. See 'Status of Ratification of the Paris Agreement', United Nations Treaty Collection ([link](#)). see also Margaretha Wewerinke-Singh & Diana Hinge Salili (2020) *Between negotiations and litigation: Vanuatu's perspective on loss and damage from climate change* (2020), 20:6 Climate Policy, pp. 681-692, at p. 685 ([link](#)).

<sup>207</sup> See e.g., *The Temple of Preah Vihear (Cambodia v. Thailand)*, 1962 ICJ Reports p. 6, at p. 23; *Fisheries Case (United Kingdom v. Norway)*, 1951 ICJ Reports, p. 116, at p. 138; *Legal Status of Eastern Greenland (Denmark v. Norway)*, PCIJ Series A/B No. 53, para. 25.



Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'M. Wewerinke-Singh', with a long, sweeping underline.

Dr. Margaretha Wewerinke-Singh  
Counsel for the Republic of Vanuatu and the Melanesian Spearhead Group  
20 December 2024