

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2023

Public sitting

held on Friday, 15 September 2023, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President Albert J. Hoffmann presiding

**REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE COMMISSION OF
SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW**

(REQUEST FOR ADVISORY OPINION SUBMITTED TO THE TRIBUNAL)

Verbatim Record

Uncorrected

<i>Present:</i>	President	Albert J. Hoffmann
	Vice-President	Tomas Heidar
	Judges	José Lu�s Jesus
		Stanislaw Pawlak
		Shunji Yanai
		James L. Kateka
		Boualem Bouguetaia
		Jin-Hyun Paik
		David Joseph Attard
		Markiy�n Z. Kulyk
		Alonso G�mez-Robledo
		�scar Cabello Sarubbi
		Neeru Chadha
		Kriangsak Kittichaisaree
		Roman Kolodkin
		Liesbeth Lijnzaad
		Mar�a Teresa Infante Caffi
		Jielong Duan
		Kathy-Ann Brown
		Ida Caracciolo
		Maurice K. Kamga
	Registrar	Ximena Hinrichs Oyarce

List of delegations:

STATES PARTIES

Indonesia

Mr L. Amrih Jinangkung, Director General for Legal Affairs and International Treaties, Ministry of Foreign Affairs
Mr Arif Havas Oegroseno, Ambassador of the Republic of Indonesia to the Federal Republic of Germany
Mr Ahmad Bawazir, Minister Counsellor, Embassy of Indonesia in Berlin
Mr Malvino Aprialdy Mazni, First Secretary, Embassy of Indonesia in Berlin
Mr Rahmat Kurniawan, Legal Adviser, Directorate General for Legal Affairs and International Treaties, Ministry of Foreign Affairs
Mr Apul Sihombing, First Secretary, Consulate General of the Republic of Indonesia in Hamburg
Mr Denantyo B. Wiryawan, Second Secretary, Consulate General of the Republic of Indonesia in Hamburg
Ms Diana Soleha, Third Secretary, Consulate General of the Republic of Indonesia in Hamburg

Latvia

Ms Kristīne Līce, Legislation and International Law Adviser to the President of Latvia
Mr Mārtiņš Papiņš, Professor of Public International Law, University College London; member, International Law Commission; member, Permanent Court of Arbitration
Mr Vladyslav Lanovoy, Assistant Professor in Public International Law, Université Laval
Mr Cameron Miles, Member, English Bar; 3 Verulam Buildings
Mr Joseph Crampin, Lecturer of International Law, University of Glasgow
Ms Sabīne Jansone, Jurisconsult, International Law Division, Ministry of Foreign Affairs

Mauritius

Mr Jagdish Dharamchand Koonjul, G.C.S.K., G.O.S.K., Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations, New York
Mr Philippe Joseph Sands KC, G.C.S.K., Professor of International Law, University College, London; Barrister, 11 Kings Bench Walk, London
Ms Kate Cook, Barrister, Matrix Chambers, London
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Micronesia

Mr Clement Yow Mulalap, Adviser (Legal), Permanent Mission of the Federated States of Micronesia to the United Nations, New York

1 **THE PRESIDENT:** Please be seated. Good morning. Today we will continue the
2 hearing in the *Request for an Advisory Opinion submitted by the Commission of*
3 *Small Island States on Climate Change and International Law.*

4
5 This morning we will hear oral statements from Indonesia, Latvia, Mauritius and the
6 Federated States of Micronesia.

7
8 I now give the floor to the representative of Indonesia, Mr Amrih Jinangkung, to
9 make his statement. You have the floor, Sir.

10
11 **MR JINANGKUNG:** Mr President, Mr Vice-President, distinguished members of the
12 Tribunal, it is an honour for me to appear before this Tribunal on behalf of the
13 Government of Indonesia to deliver Indonesia's views on the *Request for the*
14 *Advisory Opinion by the Commission of Small Island States on Climate Change and*
15 *International Law.*

16
17 As a Party to the 1982 UN Convention on the Law of the Sea, which I will refer to as
18 "the Convention", Indonesia is committed to put into action the provisions of the
19 Convention. In this regard, Indonesia commends the work of the Tribunal in
20 safeguarding and ensuring the implementation of the Convention.

21
22 As an archipelagic State, in which 60 per cent of its territory consists of waters,
23 Indonesia is not immune to the multidimensional impact and existential threats of
24 climate change caused by greenhouse gas emissions; on the contrary, the impacts
25 of climate change are even more pertinent to Indonesia's vast marine environment.

26
27 Indonesia, therefore, wishes to reiterate its continued support to the Tribunal in the
28 deliberation of this current case, which would shed the light on one of humankind's
29 most challenging issues. In this spirit, Indonesia has submitted its written statement
30 in June 2023 and wishes to take this opportunity to provide corresponding views to
31 further elaborate its written statement.

32
33 I will address three main issues before the Tribunal: first, the imminent threat of
34 climate change and Indonesia's relentless commitment to deal with it; second,
35 Indonesia's submission affirming that the Tribunal indeed has jurisdiction to render
36 the requested advisory opinion; and, third, the obligations of States Parties on
37 pollution to the marine environment caused by climate change through
38 anthropogenic greenhouse gas emissions.

39
40 Mr President, on the first issue, I wish to stress that Indonesia is deeply concerned
41 with the existential dangers posed by climate change. The increase of greenhouse
42 gases emissions significantly affect the marine environment and biological diversity,
43 especially through the rising of sea levels, ocean warming and ocean acidification.
44 The phenomenon also poses threats to the production of marine life and fisheries,
45 which may lead to gradual reduction of the fisheries' stocks.

46
47 Indonesia, as the largest archipelagic State with extensive low-lying area, is
48 especially vulnerable to the impacts of climate change that may severely threaten
49 our marine and coastal ecosystems.

1 It is predicted that, because of sea-level rise, Indonesia will lose its land territory by
2 more than 30,000 square kilometres in 2050, and by the year 2100, 115 of
3 Indonesia's islands will be underwater. The total populations likely to be affected by
4 the flooding caused by sea-level rise will reach over 4.2 million people in the
5 year 2100.

6
7 As a home to rich marine biodiversity, Indonesia's archipelago hosts almost
8 20 per cent of the world's coral reefs. Unfortunately, ocean warming and ocean
9 acidification induced by climate change has endangered this environment, causing
10 extinction of coral reefs and further reduction of fisheries' stocks.

11
12 Changes to the marine environment because of climate change also affects the
13 coastal communities, whose livelihoods depend on the ocean. This is especially
14 concerning, considering that Indonesia itself is the fifth highest country with people
15 inhabiting lower-elevation coastal zones. Approximately 62 million of the Indonesian
16 population will be living in coastal areas by 2030.

17
18 With these concerns in mind, I shall underline that Indonesia shares similar concerns
19 of many States, particularly the Small Island Developing States, on the catastrophic
20 impacts of climate change.

21
22 Mr President, it has been scientifically proven that the ocean and climate change are
23 closely interrelated, specifically the effects of climate change to the ocean and the
24 ocean's role in the efforts to address climate change. This issue has also been
25 recognized during the 1992 Rio Conference and the subsequent meetings of the
26 Conference of the Parties.

27
28 The ocean is integral to international efforts to reach international goals: (1) to hold
29 the temperature increase well below 2°C above the pre-industrial level; and (2) to
30 limit the temperature increase to 1.5°C.

31
32 In this context, as an archipelagic State, Indonesia continuously promotes ocean-
33 based climate action nationally as well as internationally. Indonesia, as a State Party
34 to the Paris Agreement, is committed to implement the Agreement and fulfil its
35 commitments by including the reduction of greenhouse gas emissions within the
36 oceans and marine sectors as part of its Nationally Determined Contribution.

37
38 In this regard, the ocean and marine sectors are included in Indonesia's latest
39 Enhanced NDC Submission of September 2022, in which it enhances its
40 commitment to reduce emissions from previously 29 per cent to 31.89 per cent,
41 unconditionally, and from previously 41 per cent to 43.20 per cent, with international
42 assistance by 2030.

43
44 I would like to highlight the fact that Indonesia's Enhanced NDC has already
45 exceeded its ocean-based commitments. Some measures to implement this
46 Enhanced NDC in the ocean and marine sectors include, among others:

47
48 first, the expansion of its marine protected area to 28.4 million hectares, exceeding
49 its commitment of 20 million hectares;

1 (2) the establishment of an ocean sector road map for climate solution, rehabilitation
2 of mangroves as well as enhancement of ocean pollution control from sources such
3 as marine litter and plastic debris;

4
5 (3) the ratification of the International Convention for the Prevention of Pollution from
6 Ships, including Annex VI concerning prevention of air pollution from ships, through
7 the Presidential Regulation No. 29 of 2012;

8
9 (4) the adoption of ministerial level regulations to prevent, reduce and control
10 anthropogenic greenhouse gas emissions into the atmosphere within the context of
11 shipping activities, especially the Minister of Transport Regulation No. 24 of 2022 on
12 the Prevention of Maritime Pollution.

13
14 Indonesia also supports the continuous integration of ocean areas as one of the
15 most important areas in climate change mitigation and adaptation measures.
16 Moreover, Indonesia has consistently demonstrated its position on the importance of
17 cooperation and partnership in ocean-based climate action, particularly in mobilizing
18 means of implementation in support of archipelagic States and Small Island
19 Developing States in their mitigation and adaptation efforts in the marine sector.

20
21 Indonesia promotes and invites cooperation among States, especially in capacity-
22 building and resilience improvement of developing States, to address the impacts of
23 climate change to the ocean, through transfer of technology, financial assistance,
24 research and data-collection cooperation, and development of special measures to
25 address the impact of sea-level rise.

26
27 Another concrete example of Indonesia's effort to address this matter collectively is
28 Indonesia's initiative to establish the Archipelagic and Island States (AIS) Forum,
29 which brings together 51 archipelagic and island nations, regardless of their size or
30 level of development. This forum is envisioned to address common challenges
31 including climate change. The forum organizes various collaborative programmes,
32 ranging from research and development to public awareness outreach.

33
34 Indonesia has also encouraged the nexus of the oceans and climate change to gain
35 wider international attention during the subsequent meetings of the Conference of
36 the Parties to the UN Framework Convention on Climate Change, or the UNFCCC,
37 such as the 26th Conference of the Parties in Glasgow. Indonesia emphasized the
38 importance for all States to ensure integrity of all ecosystems, especially the oceans
39 and cryosphere, in carrying out measures to address climate change. Indonesia also
40 highlighted its readiness to continue supporting and strengthening discussions and
41 cooperation on the nexus between the climate change and the oceans in the
42 subsequent climate forums.

43
44 One of the forums is the Ocean and Climate Change Dialogue 2022, where
45 Indonesia once again reiterated that ocean-based actions must be integrated into the
46 Nationally Determined Contribution, National Adaptation Plan (NAP) and other
47 UNFCCC processes. Indonesia suggested that this can be done by strengthening
48 scientific work through research and development, and improving marine modelling
49 and observations for data management and collection.

1 I wish to underline that the ocean-based climate action was one of Indonesia's
2 priorities during its G20 presidency. Ocean-based climate action was one of the
3 focuses in the G20 Environment Deputies Meeting and Climate Sustainability
4 Working Group in 2022.

5
6 Furthermore, the G20 leaders expressed their commitment in the promotion of
7 scientific knowledge-sharing, raising awareness and capacity-building to advance
8 the ocean-based climate action. As a step forward, the G20 November 2022 Summit
9 also resulted in a decision to launch "Ocean 20" as the G20 Engagement Group
10 aimed at producing actionable policy recommendations and strategies for
11 cooperation, especially on the relationship between ocean and climate change.

12
13 The legacy of incorporating ocean-based climate action in G20 meetings was further
14 included in the Outcome Document and Chair's Summary of the G20 Environment
15 and Climate Ministers' Meeting held in Chennai, India, this year.

16
17 I wish to stress that during its ASEAN Chairmanship of 2023, Indonesia also put
18 particular importance to the ocean-based climate action. The ASEAN Summit held in
19 Jakarta on 5 September 2023 issued, among others, an ASEAN Joint Statement on
20 Climate Change to the 28th Session of the Conference of the Parties to the
21 UNFCCC.

22
23 The Joint Statement stressed, among others, that ASEAN:

24
25 Consider, as appropriate, incorporation of ocean-based climate action in their
26 national climate goals and in the implementation of these goals, including but
27 not limited to nationally determined contributions, long-term low greenhouse
28 gas emissions development strategies and adaptation communications.

29
30 The aforementioned information well demonstrate that Indonesia has been steadfast
31 in its commitments and consistent in incorporating ocean-based climate action to
32 fulfil its obligations under the designated climate instruments.

33
34 Mr President, on the second matter regarding jurisdiction, Indonesia noted that
35 certain States Parties, in their written statements, have suggested that the Tribunal
36 does not have jurisdiction to give the advisory opinion and there is compelling reason
37 for the Tribunal to refuse the request for an advisory opinion. Indonesia wishes to
38 take this opportunity to further elaborate its observation on the Tribunal's
39 competence to render the requested advisory opinion.

40
41 Indonesia is of the opinion that article 288 of the Convention, article 21 of the Statute
42 of the Tribunal, and article 138 of the Rules of the Tribunal provide solid bases for
43 the jurisdiction of the Tribunal to render an advisory opinion in this present case.
44 Many States Parties, including Indonesia, have submitted their argument in the
45 written statements to support this position.

46
47 I wish to underline that the Tribunal, in the *Request for Advisory Opinion submitted*
48 *by the Sub-Regional Fisheries Commission* (the Case No. 21), had eloquently
49 provided its clarification on the relationship between the Statute in the Annex VI to

1 the Convention and the Convention itself. The Tribunal asserted that, based on
2 article 318 of the Convention, the Statute enjoys the same status as the Convention.

3
4 Further clarification has also been provided by the Tribunal on how the terms “all
5 matters” and “other agreement” in article 21 of the Statute shall be interpreted. As
6 contained in paragraph 58 of the Advisory Opinion in Case No. 21, the Tribunal
7 asserted that, and I quote:

8
9 All matters specifically provided for in any other agreement which confers
10 jurisdiction on the Tribunal does not by itself establish the advisory jurisdiction
11 of the Tribunal. In terms of article 21 of the Statute, it is the ‘other agreement’
12 which confers such jurisdiction on the Tribunal.

13
14 In line with the argument of the Tribunal in Case No. 21 above, Indonesia is of the
15 view that the Agreement for the Establishment of the Commission of Small Island
16 States on Climate Change and International Law satisfies the requirements of
17 article 21 of the Statute of the Tribunal and article 138 of the Rules of the Tribunal,
18 establishing the advisory jurisdiction of the Tribunal in the present case.

19
20 Mr President, members of the Tribunal, on the third matter, Indonesia would like to
21 take this opportunity to underline its position with regards to the specific obligations
22 of States Parties to prevent, reduce and control pollution of the marine environment
23 that result from, or are likely to result from, climate change, which are caused by
24 anthropogenic greenhouse gas emissions into the atmosphere.

25
26 Indonesia notes that Part XII of the Convention covers the general obligation of
27 States Parties to protect and preserve the marine environment, as well as to take
28 measures necessary to prevent, reduce and control pollution of the marine
29 environment.

30
31 It specifically prescribes the sources of pollution, which consist of land-based
32 sources, seabed activities within national jurisdiction, activities in the Area, dumping,
33 pollution by vessels and pollution through and from the atmosphere.

34
35 In this regard, Indonesia shares the views expressed by several States Parties in
36 their statements, in which the Paris Agreement and the UNFCCC are the most
37 relevant international legal instruments in addressing climate change and the marine
38 environment. The Convention, including Part XII, does not provide any obligation
39 explicitly addressing the issue of climate change. As a matter of fact, the Convention
40 does not have articles expressly referring to climate change or global warming.

41
42 Therefore, the Tribunal’s interpretation of the Convention is particularly important in
43 rendering the advisory opinion. The Tribunal has to apply the principles of treaty
44 interpretation as enshrined in the Vienna Convention on the Law of Treaties (VCLT).

45
46 Indonesia wishes to provide its observation on the application of the provisions of the
47 VCLT to interpret a treaty from its contextual perspective, considering the original
48 approach when the treaty was negotiated, and also its intended objective.

1 VCLT prescribes, especially in article 31, that the interpretation of a treaty can be
2 based on any agreement relating to the treaty; or instrument in connection with the
3 conclusion of the treaty accepted by the parties as an instrument related to the
4 treaty; subsequent agreement and practice on the interpretation or application of the
5 treaty; and any relevant rules of international law applicable in the relations between
6 the parties.

7
8 In this regard, Indonesia views that, in exercising its authority to interpret the
9 Convention, the Tribunal shall identify the agreements that fulfil the criteria outlined
10 by the VCLT. As mentioned in its written statement, Indonesia has identified those
11 international agreements in conformity with such criteria of the VCLT and not
12 incompatible with the Convention.

13
14 With regard to the subsequent agreement, Indonesia notes with pleasure the
15 completion of the negotiations of the Agreement on the conservation and sustainable
16 use of marine biological diversity of areas beyond national jurisdiction (or the
17 “BBNJ”), as an essential subsequent agreement of the Convention. Indonesia is
18 pleased to see that the Convention, being the “Constitution of the Oceans”, will now
19 be supplemented with an important instrument to conserve the marine biological
20 diversity.

21
22 Mr President, distinguished members of the Tribunal, Indonesia observes the
23 complex relationship between climate change and the ocean that is holistic and
24 multidimensional in nature. As I stated earlier, Indonesia recognizes the UNFCCC
25 and Paris Agreement as the primary instruments regulating specific obligations of
26 States concerning climate change, with full understanding of the common but
27 differentiated responsibilities and respective capabilities of States.

28
29 Indonesia notes that the States Parties to the Convention are also States Parties to
30 the UNFCCC and Paris Agreement. States Parties to the Convention, by virtue of
31 their membership to the international climate change framework, are also bound by
32 the obligations under the UNFCCC and Paris Agreement which they are party to, to
33 integrate ocean-based climate actions within their plans to reduce greenhouse gas
34 emissions.

35
36 In this regard, pollution to the marine environment caused by climate change
37 resulting from greenhouse gas emissions may be addressed under the ambit of the
38 UNFCCC and Paris Agreement.

39
40 As mentioned before, an important feature of the issue of climate change is the
41 recognition of the principle of common but differentiated responsibility, which was
42 included in the Preamble and the operative text of the UNFCCC as well as the Paris
43 Agreement.

44
45 Indonesia notes that the principle of common but differentiated responsibility serves
46 as the basis of obligations under the UNFCCC, which paves ways for countries to
47 take measures in accordance with their respective capabilities in addressing the
48 climate change issue.

1 This view is encapsulated in the provisions under the UNFCCC, which expressly
2 mentioned the specific obligations of developed country Parties to limit their
3 anthropogenic emissions of greenhouse gases, and protect and enhance their
4 greenhouse gas sinks and reservoirs; while all countries – taking into account the
5 common but differentiated responsibilities, as well as respective capabilities and their
6 specific national and regional development priorities, objectives and circumstances –
7 shall promote and cooperate in the development, application and diffusion including
8 transfer of technologies, practices and processes that control, reduce or prevent
9 anthropogenic emissions of greenhouse gases. These differences are also carried in
10 the Paris Agreement which obligate the States Parties to set a national target to
11 reach the temperature goal contained within the Agreement.
12

13 Addressing climate change requires consistent and gradual efforts by all countries in
14 accordance with their capabilities to address it. In addition, the international climate
15 change framework, especially the UNFCCC and the Paris Agreement, shares a
16 differing nature of responsibility and liability. It has no mention of States' liabilities
17 should they fail to fulfil their international obligation.
18

19 The Paris Agreement, for example, does not include any clause or article on
20 liabilities should countries fail to reach their NDCs. Instead, the Paris Agreement
21 encourages collaboration and international cooperation to support countries,
22 especially developing countries, to reach their climate goals. There is also no clause
23 specifying the obligations of States on reparations, remedial actions or compensation
24 if they are unable to meet their obligations under the UNFCCC and Paris Agreement.
25

26 On the other hand, under the Convention, addressing pollution to the marine
27 environment may not require collective effort. It can be done by each State Party
28 individually. The Convention does not recognize the concept of common but
29 differentiated responsibility principle either. The principle cannot serve as a basis in
30 considering liability issues from the violation of the Law of the Sea provisions when
31 pollution to the marine environment occurs. The Convention clearly stipulates in
32 article 235, for example, that States are responsible for the fulfilment of their
33 international obligations concerning the protection and preservation of the marine
34 environment, and that they shall be liable based on international law. This includes
35 the obligation of States to provide remedy or compensation should damages occur
36 as a result of marine pollution.
37

38 As a State Party to both the Convention and the international climate change
39 framework, Indonesia is committed to carry out its obligations under both
40 arrangements. Indonesia is committed to implement the general obligations to
41 protect and preserve the marine environment, as well as to prevent, reduce and
42 control the pollution to the marine environment, in accordance with the terms and
43 provisions outlined in the Convention. At the same time, Indonesia will fulfil its
44 specific obligations outlined in the international climate change framework to
45 implement its ocean-based climate action commitments to preserve and protect the
46 marine environment.
47

48 Mr President, members of the Tribunal, before concluding this oral statement,
49 Indonesia firmly believes that the Tribunal's interpretation of the Convention made
50 within the context of this advisory opinion could play an important role in

1 strengthening the law of the sea, without necessarily expanding the obligation of
2 States Parties to the Convention beyond their consent. That is why the Tribunal has
3 an important task ahead of it.

4
5 Should the Tribunal render its opinion on the present case, Indonesia wishes that the
6 Tribunal will provide greater clarity to the matters that have been placed before it. In
7 this perspective, and as a strong supporter of the Law of the Sea Convention,
8 Indonesia wishes that the advisory opinion of the Tribunal would not be
9 counterproductive to the States Parties' compliance to the Convention.

10
11 It is our fervent hope that the information and observations furnished by Indonesia in
12 its written statements, and again today in these oral proceedings, will be of
13 assistance to the Tribunal.

14
15 Mr President, members of the Tribunal, that concludes Indonesia's statement.

16
17 I thank you for your attention

18
19 **MR PRESIDENT:** Thank you, Mr Amrih Jinangkung. I now give the floor to the
20 representative of Latvia, Ms Līce, to make her statement. You have the floor,
21 Madam.

22
23 **MS LĪCE:** Good morning. Mr President, members of the Tribunal, it is an honour for
24 me to appear before you today as the Agent of the Republic of Latvia in the first case
25 Latvia has taken part in proceedings before the Tribunal. Latvia's choice to
26 participate reflects the particular importance of the issues raised by the request for
27 the advisory opinion submitted by the Commission of Small Island States on Climate
28 Change and International Law (COSIS). I note the powerful explanations of this
29 importance given on Monday by Prime Minister Browne, Prime Minister Natano,
30 Attorney General Loughman and Ms Fifita.¹

31
32 I will address two issues in my presentation: first, jurisdiction and admissibility; and,
33 secondly, the scope of the questions posed in the request. Professor Mārtiņš
34 Pāparinskis will then address the substance of the questions posed.

35
36 I turn first to the jurisdiction of the Tribunal and the admissibility of the request for the
37 advisory opinion submitted by COSIS.

38
39 In Latvia's submission, the Tribunal has jurisdiction and the request is admissible.²
40 The jurisdictional criteria set out in article 21 of the Tribunal's Statute and article 138
41 of its Rules, as explained by the Tribunal in the *Request for Advisory Opinion*

¹ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Verbatim Record ITLOS/PV.23/C33/1 - 11 September 2023 a.m.) 4-19, 29-33.

² *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal) (written statement of Latvia of 16 June 2023)
<https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/1/C31-WS-1-14-Latvia_01.pdf> [4]-[9].

1 submitted by the Sub-Regional Fisheries Commission, are satisfied.³ There is also
2 no compelling reason for the Tribunal to use its discretion not to give an advisory
3 opinion.⁴

4
5 This conclusion reflects the cumulative effect and elements peculiar to this case, and
6 is without prejudice to the position on jurisdiction and admissibility that Latvia may
7 take in future advisory proceedings before the Tribunal or other international courts
8 and tribunals.

9
10 I turn next to the scope of questions posed in the request by COSIS. As Professor
11 Paparinskis will explain shortly, customary principles of treaty interpretation reflected
12 in the Vienna Convention on the Law of Treaties require the Tribunal to draw upon
13 several instruments other than the United Nations Convention on the Law of the Sea
14 (UNCLOS) to answer these questions.⁵

15
16 There are, however, two bodies of rules that are *not* implicated: first, rules of
17 international human rights law. These are not mentioned either in the request of the
18 COSIS⁶ or in most written statements,⁷ including that of COSIS itself.⁸ The
19 relationship between climate change and human rights is an important question, and,
20 as such, should be discussed not incidentally but directly and thoroughly, as, for
21 example, in a case shortly to be heard by the Grand Chamber of the European Court
22 of Human Rights: the case of *Duarte Agostinho and Others v Portugal and 32 Other*
23 *States*, where I will appear as the Agent for Latvia.⁹ This case before the Tribunal,
24 conversely, does not seem an appropriate occasion for addressing such concerns.
25

³ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission* (Advisory Opinion) [2015] ITLOS Reports 4 [58], also [56].

⁴ *Ibid* Chapter III.

⁵ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)* [2023] ICJ Rep <<https://icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-00-EN.pdf>> [87].

⁶ Cf. UN General Assembly, 'Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change' (29 March 2023) UN Doc A/RES/77/276.

⁷ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal) (written statement of Poland of 16 June 2023); *ibid* (written statement of New Zealand of 15 June 2023); *ibid* (written statement of Japan of 15 June 2023); *ibid* (written statement of Norway of 16 June 2023); *ibid* (written statement of Italy of 15 June 2023); *ibid* (written statement of China of 15 June 2023); *ibid* (written statement of the European Union of 15 June 2023); *ibid* (written statement of Australia of 16 June 2023); *ibid* (written statement of Indonesia of 15 June 2023); *ibid* (written statement of Singapore of 15 June 2023); *ibid* (written statement of Korea of 16 June 2023); *ibid* (written statement of Egypt of 16 June 2023); *ibid* (written statement of France of 16 June 2023); *ibid* (written statement of Bangladesh of 16 June 2023); *ibid* (written statement of Belize of 16 June 2023); *ibid* (written statement of Canada of 16 June 2023); *ibid* (written statement of Guatemala of 16 June 2023); *ibid* (written statement of the United Kingdom of 16 June 2023); *ibid* (written statement of the Netherlands of 16 June 2023); *ibid* (written statement of the International Maritime Organization of 16 June 2023); *ibid* (written statement of the International Seabed Authority of 16 June 2023); *ibid* (written statement of the Food and Agriculture Organization of 16 June 2023); *ibid* (written statement of the Vietnam of 16 June 2023).

⁸ The Commission only notes its involvement in advisory proceedings before the Inter-American Court of Human Rights, *ibid* (written statement of the Commission of Small Island States on Climate Change and International Law of 16 June 2023) [22]. See similarly (Verbatim Record ITLOS/PV.23/C33/1 - 11 September 2023 a.m) 5 (Browne), 23 (Akhavan), 30, 32 (Fifita).

⁹ 'Forthcoming Hearings' (31 August 2023) <<https://www.echr.coe.int/w/forthcoming-hearing-1>>.

1 Secondly, the questions posed relate exclusively to primary obligations and not
2 secondary obligations. The Tribunal has explained that terms such as “liable” or
3 “liability” are to be used to refer to the law of State responsibility.¹⁰ COSIS has not
4 used such terms in drafting the questions posed.

5
6 Mr President, members of the Tribunal, I thank you for your kind attention and ask
7 that you invite to the podium Professor Paparinskis.

8
9 **THE PRESIDENT:** Thank you, Ms Līce. I now give the floor to Mr Paparinskis to
10 make his statement. You have the floor, Sir.

11
12 **MR PAPARINSKIS:** Mr President, members of the Tribunal, it is an honour for me to
13 appear before you on behalf of the Republic of Latvia.

14
15 I will address the substance of the questions before you. As you will hear, Latvia’s
16 approach is, in several important respects, similar to that presented by COSIS earlier
17 this week.

18
19 I will make two submissions: first, I will identify the provisions of UNCLOS and other
20 legal instruments that the Tribunal should consider in answering the questions;
21 secondly, I will address the content of the relevant provisions in Part XII of UNCLOS,
22 with a particular focus on the notion of due diligence.

23
24 Before doing so, I will make three preliminary points which may inform the Tribunal’s
25 approach.

26
27 My first preliminary point is that UNCLOS is a *framework* convention, which does not
28 purport to address in detail every legal issue affecting the ocean. It has always been
29 understood that law of the sea must respond to new circumstances and
30 developments in scientific and technical knowledge that might require legal solutions
31 more concrete than a general, comprehensive convention could hope to achieve.

32
33 Part XII, at issue before the Tribunal, is no exception. It contains broadly framed,
34 general obligations, such as article 192, and provisions that contain so-called “rules
35 of reference”, such as article 214, and also envisions, in article 237, that Parties may
36 create, on a global or regional basis, more specific rules for addressing particular
37 environmental challenges.

38
39 It is in this spirit of openness, buttressed by the custom-reflecting principle of treaty
40 interpretation expressed in article 31, paragraph 3(c), of the Vienna Convention on
41 the Law of Treaties, that the interpretation of the Convention must be approached to
42 ensure its continued relevance.¹¹ The practical effect of this is that, when interpreting
43 article 192 and other similar provisions in Part XII, their content is to be informed by

¹⁰ *Responsibilities and obligations of States with respect to activities in the Area* (Advisory Opinion) [2011] ITLOS Reports 10 [66], [70]; *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission* (Advisory Opinion) [2015] ITLOS Reports 4 [145].

¹¹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)* [2023] ICJ Rep <<https://icj-cij.org/sites/default/files/case-related/171/171-20230406-JUD-01-00-EN.pdf>> [87].

1 the relevant rules of international environmental law.¹² The two particularly relevant
2 instruments in the context of climate change are the United Nations Framework
3 Convention on Climate Change (UNFCCC) and the Paris Agreement.¹³

4
5 The second preliminary point relates to the definition of the “pollution of the marine
6 environment” in article 1, paragraph 1(4) of UNCLOS. In Latvia’s submission, this
7 definition must be read to include greenhouse gas (GHG) emissions. This is
8 consistent with its textual expression as well as the object and purpose of the
9 Convention, which overtly seeks to promote the protection and preservation of the
10 marine environment.¹⁴

11
12 The effective protection and preservation of the marine environment requires taking
13 account of the evolving state of the scientific and factual knowledge of the risks of
14 harm, regardless of their sources, and the multiple ways in which climate change in
15 particular may affect the marine ecosystems.

16
17 The third preliminary point, Mr President, is that the questions before the Tribunal
18 are intertwined. The general obligations relating to the protection and preservation of
19 the marine environment in Part XII of UNCLOS lay out a framework within which
20 more granular obligations concerning the prevention, reduction and control of
21 different sources of marine pollution operate in a mutually reinforcing manner.
22 Together, they respond comprehensively to evolving threats to the marine
23 environment, including climate change. They will therefore be also addressed
24 together in Latvia’s substantive submissions.

25
26 I now turn to the first substantive submission, which will identify the relevant
27 provisions that may assist the Tribunal in answering the questions before it.

28
29 The questions posed by COSIS mirror the wording of articles 192 and 194 of
30 UNCLOS.¹⁵ Article 192, as explained in the *South China Sea* arbitration, provides for
31 an obligation with an ambit that “extends both to ‘protection’ of the marine
32 environment from future damage and ‘preservation’ in the sense of maintaining or
33 improving the present condition.”¹⁶

34
35 To that end, it entails both “the *positive* obligation to take active measures to protect
36 and preserve the marine environment” and “the *negative* obligation not to degrade
37 the marine environment”.¹⁷ Article 194 elaborates on this, imposing an obligation

¹² *The South China Sea Arbitration (The Philippines v. The People’s Republic of China)* (Award of 12 July 2016) [2016] 33 RIAA 153 [945] and [956]-[957].

¹³ See also Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, UN Doc A/CONF.232/2023/4* (reissued 30 June 2023).

¹⁴ United Nations Convention on the Law of the Sea, Preamble, 4th recital.

¹⁵ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal) (written statement of Latvia of 16 June 2023)

<https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/1/C31-WS-1-14-Latvia_01.pdf> [10].

¹⁶ *The South China Sea Arbitration (The Philippines v. The People’s Republic of China)* (Award of 12 July 2016) [2016] 33 RIAA 153 [941].

¹⁷ *Ibid* [941] (emphasis added).

1 upon Parties to take, individually or jointly, measures to prevent, reduce and control
2 pollution of the marine environment.

3
4 Articles 192 and 194 do not operate in a legal vacuum and must be read together
5 with the rest of Part XII. This includes Section 5, which addresses international rules
6 and national legislation to prevent, reduce and control marine pollution, and Section
7 6, which deals with the enforcement of laws and regulations so adopted. Specific
8 provisions of Part XII also play a role. In Latvia's view, the key obligations in this
9 respect include articles 195, 196, 197, 204, 206, 207, 212, 213 and 222.

10
11 Latvia would particularly emphasize the duty to cooperate in article 197. To quote
12 this Tribunal, "the duty to cooperate is a fundamental principle in the prevention of
13 pollution of the marine environment under Part XII of the Convention".¹⁸ The duty
14 may entail several possible substantive and procedural elements, identified in the
15 decisions of the Tribunal and other international courts and tribunals, such as
16 notification, exchange of information, the undertaking of consultations and
17 negotiations, as well as environmental impact assessment and communication of its
18 results to affected parties.¹⁹ In the context of climate change, this duty requires
19 cooperation with and participation in international processes to coordinate the
20 appropriate collective action to prevent, mitigate and adapt to the various diffuse,
21 global challenges it poses.

22
23 Finally, a proper and complete interpretation of Part XII must take account of the
24 rules and standards found in instruments of international law that are specifically
25 related to the particular environmental challenges that climate change poses to the
26 oceans. Two non-exhaustive examples are the UNFCCC and the Paris Agreement,
27 which, together, lay out the most specific and up-to-date legal framework in respect
28 of the greenhouse gas emissions.

29
30 With 198 and 195 Parties, respectively, these treaties reflect the overwhelming
31 consensus of the international community on how to address climate change. Any
32 interpretation of Part XII, therefore, should be informed by the obligations contained
33 within those treaties and mindful of the processes adopted by the Conferences of
34 Parties to implement them. Latvia notes that several other participants in the present
35 proceedings appear to share the same position.²⁰

¹⁸ *The Mox Plant Case (Ireland v. United Kingdom)* (Provisional Measures) (Order) [2001] ITLOS Rep 95 [82].

¹⁹ *Ibid* [84]; *The South China Sea Arbitration (The Philippines v. The People's Republic of China)* (Award of 12 July 2016) [2016] 33 RIAA 153 [988]. See also *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (Judgment) [2015] ICJ Rep 665 [173]; and more recently, *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)* (Judgment of 1 December 2022) <<https://www.icj-cij.org/sites/default/files/case-related/162/162-20221201-JUD-01-00-EN.pdf>> [83].

²⁰ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Request for Advisory Opinion submitted to the Tribunal) (written statement of Democratic Republic of the Congo of 13 June 2023) [96]-[97]; *ibid* (written statement of New Zealand of 15 June 2023) [66], [71]; *ibid* (written statement of Australia of 16 June 2023) [40]; *ibid* (written statement of Republic of Mauritius of 16 June 2023) [38]-[52]; *ibid* (written statement of Republic of Korea of 16 June 2023) [16], [20]; *ibid* (written statement of the Republic of Chile of 16 June 2023) [59]-[60]; *ibid* (written statement of the Federative Republic of Brazil of 15 June 2023) [20]; *ibid* (written statement of the Republic of Sierra Leone of 16 June 2023) [21], [53]; *ibid* (written statement of the Republic of Singapore of 16 June 2023) [37]; *ibid* (written statement of the European

1 I now turn to my second submission, namely, that the key rules contained in Part XII
2 of relevance to this case are, to employ the terminology of the Tribunal in *Request*
3 *for Advisory Opinion submitted by the Sub-Regional Fisheries Commission*, “due
4 diligence obligations”.²¹

5
6 The relevant rules are obligations of conduct and not result.²² Article 194,
7 paragraph 1, requires that Parties take “all measures” necessary to prevent, reduce
8 and control pollution of the marine environment, while “using for this purpose the
9 best practicable means at their disposal”. Other provisions of Part XII contain similar
10 wording, including “as far as practicable” (in articles 204 and 206) or “shall
11 endeavour” (in article 207, paragraph 3).

12
13 By such language, Parties are required, as the Tribunal put it, “to deploy adequate
14 means, to exercise best possible efforts, to do the utmost” to achieve or avoid a
15 particular outcome.²³ The International Court of Justice similarly noted in more
16 general terms that “[a] State does not incur responsibility simply because the desired
17 result is not achieved; responsibility is, however, incurred if the State manifestly
18 failed to take all measures ... which were within its power”.²⁴ It is the notion of “due
19 diligence” that is of “critical importance”.²⁵

20
21 Due diligence is, as this Tribunal has recognized, “a variable concept”.²⁶ In Latvia’s
22 submission, the content of the standard is informed by the specific instruments that
23 govern the particular environmental issues. As I noted earlier, for greenhouse gas
24 emissions and climate change, these are the UNFCCC and the Paris Agreement.

25
26 I will highlight three further considerations relating to due diligence that inform the
27 content of Part XII obligations and their application to greenhouse gas emissions.
28 Latvia notes that several other participants in the present proceedings appear to
29 share the same position regarding the relevance of these considerations.²⁷
30

Union of 15 June 2023) [26]-[31]; *ibid* (written statement of the African Union of 16 June 2023) [15];
ibid (written statement of Commission of Small Islands States on Climate Change and International
Law of 16 June 2023) [353].

²¹ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*
(Advisory Opinion) [2015] ITLOS Rep 4 [129]-[131].

²² See *Responsibilities and Obligations of States with respect to activities in the Area* (Advisory
Opinion) [2011] ITLOS Rep 10 [110]-[112].

²³ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*
(Advisory Opinion) [2015] ITLOS Rep ITLOS 4 [129].

²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia
and Herzegovina v. Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43 [430].

²⁵ *Ibid*.

²⁶ *Responsibilities and Obligations of States with respect to activities in the Area* (Advisory Opinion)
[2011] ITLOS Rep 10 [117].

²⁷ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate
Change and International Law* (Request for Advisory Opinion submitted to the Tribunal) *ibid* (written
statement by the European Union of 15 June 2023) [17]-[20]; *ibid* (written statement of the African
Union of 16 June 2023) [170]-[174]; *ibid* (written statement of Canada) [54]-[59]; *ibid* (written
statement of France of 16 June 2023) [103]-[119]; *ibid* (written statement of the Republic of Djibouti of
16 June 2023) [45]-[46]; *ibid* (written statement of the People’s Republic of Bangladesh of 16 June
2023) [37]; *ibid* (written statement of the Republic of Singapore of 16 June 2023) [29]-[37]; *ibid* (written
statement of the African Union of 16 June 2023) [18]; *ibid* (written statement of Belize of 16 June
2023) [68]-[71].

1 The first consideration is the greatly varying capacity of States.²⁸ UNCLOS reflects
2 this proposition in article 194, paragraph 1, in the context of the marine pollution.²⁹

3
4 Secondly, the “assessment *in concreto*” will also take into account other
5 parameters.³⁰ These include the nature and seriousness of the risk related to the
6 activity at stake, the state of the scientific knowledge of the risks in question, and the
7 passage of time, identified by the Tribunal in the advisory opinion concerning
8 *Responsibilities and obligations of States sponsoring persons and entities with*
9 *respect to activities in the Area*.³¹

10
11 Thirdly, obligations implicating due diligence will not be satisfied merely because a
12 Party to UNCLOS enacts a legal framework for averting harm to the marine
13 environment. Due diligence requires “a certain level of vigilance in the enforcement
14 and the exercise of administrative control”.³² This applies both to activities directly
15 undertaken by Parties themselves, but also in “ensuring [that] activities within their
16 jurisdiction and control do not harm the marine environment”.³³

17
18 To conclude my second submission: when considering the content of the relevant
19 obligations of conduct in Part XII in respect of the prevention and protection of harm
20 to the marine environment caused by climate change, Parties should act with due
21 diligence, as that notion has been understood in international law.

22
23 Mr President, members of the Tribunal, this concludes the submissions of Latvia.
24 I thank you for your kind attention.

25
26 **MR PRESIDENT:** Thank you, Mr Paporinskis. I now give the floor to the
27 representative of Mauritius, Mr Koonjul, to make his statement. You have the floor,
28 Sir.

29
30 **MR KOONJUL:** Mr President, members of the Tribunal, it is an honour for me to
31 appear before you in my capacity as Representative of the Republic of Mauritius.

32
33 Mauritius is participating in these important proceedings because of the grave and
34 urgent threat posed by the impacts of climate change. We are thankful to the

²⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43 [430].

²⁹ United Nations Convention on the Law of the Sea art 194(1).

³⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43 [430].

³¹ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area* (Advisory Opinion) [2011] ITLOS Rep 10 [117]. See also on precautionary approach: *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)* (Provisional Measures) (Order) [1999] ITLOS Rep 280 [77]; *M/V ‘Louisa’ (Saint Vincent and the Grenadines v. Kingdom of Spain)* (Provisional Measures) (Order) [2008-2010] ITLOS Rep 58 [77]; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Cote d’Ivoire)* (Provisional Measures) (Order) [2015] ITLOS Rep 146 [72].

³² *The South China Sea Arbitration (The Philippines v. The People’s Republic of China)* (Award of 12 July 2016) [2016] 33 RIAA 153 [944]; *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)* (Advisory Opinion) [2015] ITLOS Rep ITLOS 4 [131].

³³ *The South China Sea Arbitration (The Philippines v. The People’s Republic of China)* (Award of 12 July 2016) [2016] 33 RIAA 153 [944].

1 Commission of Small Island States for taking the initiative to request this advisory
2 opinion.

3
4 The detrimental effects on the marine environment are already being felt and cannot
5 be overstated, and they are predicted to become significantly worse. The importance
6 of the issues raised by way of this request, and the urgency with which they need to
7 be addressed, is reflected in the unprecedented participation in these proceedings.
8 Fifty-three UNCLOS States Parties have filed written statements (including via the
9 European Union), together with eight intergovernmental organizations, including the
10 United Nations, the African Union, the Pacific Community, amongst others.

11
12 As a Small Island Developing State and a founder member of the Alliance of Small
13 Island States back in 1990, Mauritius is acutely vulnerable to climate change-
14 induced events, including sea-level rise, coastal degradation and coral bleaching.
15 Over the last three decades, Mauritius was experiencing mean sea-level rise of
16 approximately 5 millimetres per year. But, during the last decade, from 2011 to 2020,
17 this rate increased to almost 12 millimetres per year.³⁴

18
19 This is considerably higher than the average rate of change for sea-level rise in the
20 Indian Ocean. By the end of this century, it is estimated that sea-level rise will reach
21 at least 49 centimetres. This will be a direct result of the emissions of greenhouse
22 gases over two centuries, for which Mauritius bears but a miniscule responsibility, if
23 any at all.³⁵

24
25 Sea-level rise and the other consequences of warming temperatures, not least for
26 marine biodiversity, pose an existential threat to large parts of Mauritius, including
27 the whole of the Chagos Archipelago, which this Tribunal recently confirmed to be an
28 integral part of my country, as well as the islands of Cargados Carajos, Agalega and
29 Tromelin. Many of these islands are flat and low-lying, on average no more than one
30 or two metres above mean sea level. Around the main island of Mauritius and
31 Rodrigues, coastal areas are shrinking dramatically due to the rising sea levels and
32 accelerated beach erosion.

33
34 Mauritius has also experienced, and is continuing to experience, above-average
35 rises in sea surface temperature. In 2018 and 2019, 60 per cent of the coral around
36 the island of Mauritius suffered from recurrent bleaching events due to increasing
37 sea surface temperatures. These impacts are by no means unique to Mauritius, but
38 we feel them acutely, as do, no doubt, many other Small Island Developing States. It
39 is in that regard that we consider what was said yesterday by Chile and Nauru, in
40 respect of self-determination and the right of peoples not to be deprived of its own
41 means of subsistence, to be extremely pertinent. Mauritius fully supports this
42 principle.

43
44 Mr President, Mauritius also participates in these proceedings because of the
45 unwavering faith it has in this Tribunal and in the international rule of law to make a
46 real and tangible difference. Over the course of more than 25 years, ITLOS has
47 evolved into the principal judicial guardian of the legal order of the oceans. More

³⁴ Written statement of the Republic of Mauritius, 16 June 2023, para. 23.

³⁵ Updated National Climate Change Adaptation Policy Framework of the Republic of Mauritius (2021), p. 21, available at: <https://unfccc.int/NDCREG> (last accessed 13 June 2023).

1 than 30 UNCLOS States Parties have already appeared before this Tribunal in
2 contentious proceedings, and no less than 41 States Parties have opted for ITLOS
3 pursuant to article 287(1) of the Convention as a means of settling disputes under
4 Part XV of UNCLOS.³⁶ States are also increasingly turning to the Tribunal by way of
5 special agreements to resolve their differences, as Mauritius did recently with regard
6 to the delimitation of its maritime boundary with Maldives.³⁷

7
8 I take this opportunity to express the deep gratitude of my country for the Tribunal's
9 assistance in helping resolve a long-standing dispute. All this clearly shows that the
10 international community has the utmost confidence in the Tribunal's exercise of its
11 vital jurist function.

12
13 In fact, in our view the Tribunal is uniquely positioned to provide an authoritative
14 statement in respect of the legal obligations of UNCLOS States Parties with regard
15 to the effects and impacts of climate change: authoritative for UNCLOS States
16 Parties; authoritative for all countries and international organizations; for national
17 courts charged with addressing issues of climate change; as well as for international
18 courts before which other climate change proceedings are currently pending or may
19 arise in the future.

20
21 Mr President, Mauritius is mindful that the Tribunal's determinations in these
22 proceedings will have legal effects for UNCLOS States Parties and beyond,
23 notwithstanding that an advisory opinion is not binding as such. In its recent
24 Judgment on Preliminary Objections in the *Dispute concerning delimitation of the*
25 *maritime boundary between Mauritius and Maldives in the Indian Ocean*, a
26 distinguished ITLOS Special Chamber ruled that "judicial determinations made in
27 advisory opinions carry no less weight and authority than those in judgments
28 because they are made with the same rigour and scrutiny by the 'principal judicial
29 organ' of the United Nations with competence in matters of international law."³⁸ In
30 that case, the Special Chamber was referring to the advisory opinion of the
31 International Court of Justice on the *Legal Consequences of the Separation of the*
32 *Chagos Archipelago from Mauritius in 1965*. Mr President, Mauritius considers that
33 the same considerations apply with equal force to the ITLOS advisory opinions which
34 this Tribunal will, in due course, hand down.

35
36 Mr President, the Tribunal has been tasked with answering two legal questions.
37 Mauritius considers that before those questions can be answered, the Tribunal will,
38 first and foremost, need to make determinations of fact. In this case, the facts
39 comprise the large body of scientific evidence which has been put before the
40 Tribunal. It is this scientific evidence, largely but not exclusively emanating with
41 particular authority from the IPCC, which informs the specific obligations of States
42 Parties under Part XII of the Convention on the threats posed by climate change to
43 the marine environment.

³⁶ See: https://www.un.org/depts/los/settlement_of_disputes/choice_procedure.htm (last accessed 29 August 2023)

³⁷ *Dispute concerning the delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean*, ITLOS Case No. 28.

³⁸ *Dispute concerning the delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean*, ITLOS Case No. 28, Judgment on Preliminary Objections, 28 January 2021, para. 203.

1 Professor Sands will address the Tribunal on what Mauritius considers to be some of
2 the salient aspects of the relevant and applicable scientific evidence. Ms Cook will
3 then address you on the legal implications of the scientific evidence for the
4 interpretation of Part XII of UNCLOS, taking into account relevant rules of
5 international law, in particular the UN Framework Convention on Climate Change
6 and the Paris Agreement. These are the primary legal instruments which lay down
7 rules of international law with regard to climate change.

8
9 Indeed, pursuant to article 293(1) of the Convention, the UNFCCC and the Paris
10 Agreement form part of “other rules of international law” which are not incompatible
11 with the Convention. As explained in our written statement, UNCLOS, UNFCCC and
12 the Paris Agreement all bear upon a single issue with respect to the protection of the
13 marine environment from harmful effects of climate change.³⁹ Mauritius therefore
14 invites the Tribunal to adopt a harmonized approach, furthering a relationship
15 between UNCLOS and the climate change regime, as well as general international
16 law, based on systemic integration.

17
18 Professor Sands will then return to examine the specific obligations arising under the
19 Convention, focusing, in particular, on six areas: (1) the relationship between the
20 internationally agreed 1.5°C temperature goal and Part XII; (2) the obligation of due
21 diligence in the context of preventing, controlling and reducing greenhouse gas
22 emissions, including environmental assessment; (3) the duty of cooperation in the
23 context of addressing gaps in the regulation of greenhouse gases; (4) the obligation
24 of due diligence in the context of adapting to the impacts of climate change on the
25 marine environment, taking into account the rights of those affected by such impacts,
26 including matters of technical and financial assistance; (5) the implications of the
27 rules on State responsibility for breach of obligations under Part XII; and (6) the
28 potential impact of climate change on baselines, maritime entitlements and
29 boundaries.

30
31 Mr President, I thank you and the members of the Tribunal for the kind attention, and
32 respectfully request that you invite Professor Sands to the podium.

33
34 **THE PRESIDENT:** Thank you, Mr Koonjul. I now give the floor to Mr Sands to make
35 his statement. You have the floor, Sir.

36
37 **MR SANDS:** Thank you, Mr President and members of the Tribunal. It is an honour
38 to appear before you in these proceedings. As Ambassador Koonjul has noted,
39 Mauritius is greatly concerned by the threat posed by climate change. Along with
40 other Small Island Developing States and countries that are low-lying, Mauritius is
41 already experiencing the effects of human-induced climate change on the marine
42 environment.

43
44 Mr President, with your permission before proceeding, I hope that I might use this
45 occasion to pay tribute to my colleague and friend Professor Alan Boyle, who has
46 passed away very recently. Professor Boyle, I think, is very well known to the
47 Tribunal. He has done to very much to forge the field of international environmental
48 law and to promote this Convention. He played a very key role in bringing this matter

³⁹ Written statement of the Republic of Mauritius, 16 June 2023, para. 46.

1 to the Tribunal, for which we are grateful. He was a wonderful colleague; I taught
2 with him since 1989. He was, as many of you know, a most decent and generous
3 person. I, and many in this room, will miss him very much. May I express the hope
4 that this advisory opinion can come to be seen as a part of his very significant
5 legacy.

6
7 Mr President, for many countries and people, climate change is an existential issue.
8 The law alone will not change the behaviour of States: that requires political will, and
9 more. But the language of international law, our common language, is indispensable
10 in informing the conditions for behaviour and actions. Your opinion can offer an
11 authoritative statement to assist national and international courts, for States, for
12 international organizations, corporations and non-State actors.

13
14 The law turns on the facts. Always. On this matter, the facts are principally the
15 science to guide the interpretation and application of the law. If the Tribunal does
16 one significant thing in its advisory opinion, it will be to affirm the centrality of science
17 to the life of the Convention. Indeed, the basic science has been known for decades,
18 since at least the Second World Climate Conference held in Geneva in November
19 1990, where I, and some others present in the room, were privileged to be present. It
20 was the moment, in fact, when the Alliance of Small Island States was founded,
21 under the leadership of Vanuatu and Ambassador Robert Van Lierop. In 1990, the
22 very real threats that lay ahead were known, and they of course catalyzed the
23 negotiations for the 1992 Framework Convention on Climate Change.

24
25 Thirty-three years have passed. The science of climate change is clear; it is not in
26 dispute, even if the scale and timing of the effects of climate change are not entirely
27 clear. The IPCC is the best available science: climate change is a real and present
28 danger; it is happening; and it will cause a catastrophe for the maritime environment,
29 for biodiversity, for humans and for States.

30
31 As temperatures rise, so do the oceans. As fossil fuels are burned and as
32 concentrations of greenhouse gases increase, so do corals, and other forms of
33 marine life die. The risk of critical thresholds – tipping points they are called – being
34 crossed is now tangible and real, with irreversible harm to the marine environment.⁴⁰
35 This Tribunal cannot run away from the science,⁴¹ it cannot ignore what is
36 happening, and it must make clear that in the face of grave uncertainties as to the
37 consequences, precaution is required.

38
39 Mr President, every advisory opinion deals with the facts and, for this one, there are
40 two key elements: first, the likely impacts of climate change on the marine
41 environment on the basis of different temperature rises; and second, the urgent
42 actions needed to protect and preserve the marine environment, in particular deep
43 and immediate reductions in the emission of greenhouse gases.

44
45 Mauritius and many other participants have addressed the science in detail in their
46 written statements in these proceedings.⁴² The science is not in dispute. The IPCC
47 has warned that on current trajectories, the marine environment is catastrophically

⁴⁰ IPCC AR6 SYN SPM B.3.2.

⁴¹ IPCC AR6 SYN SPM C.2.

⁴² Written statement of Mauritius, pp. 6-10.

1 threatened by ocean warming, acidification, deoxygenation, sea-level rise and
2 substantial loss of coastal and ocean ecosystems. For Mauritius, fragile marine
3 ecosystems, including warm water coral reefs, are already today at risk of total
4 destruction.⁴³

5
6 The IPCC has recommended, in the strongest possible terms, that global
7 temperature rises must be limited to 1.5°C. Even this level will not avert all harm to
8 the marine environment, but an even higher increase will cause even more extreme
9 harms.⁴⁴ A rise of 1.5°C threatens to destroy 70 to 90 per cent of our coral reefs, but
10 2°C likely means total destruction.⁴⁵ Everything. 1.5°C must therefore be the
11 Tribunal's lodestar, to reduce risks to marine biodiversity, fisheries and ecosystems,
12 and their functions and services to humans.⁴⁶

13
14 In 2019, the IPCC published its Special Report on the Ocean and Cryosphere in a
15 Changing Climate. Let me read the brutal conclusion; I quote:

16
17 Over the 21st century, the ocean is projected to transition to unprecedented
18 conditions with increased temperatures (virtually certain), greater upper ocean
19 stratification (very likely), further acidification (virtually certain), oxygen decline
20 (medium confidence), and altered net primary production (low
21 confidence)...The rates and magnitudes of these changes will be smaller
22 under scenarios with low greenhouse gas emissions (very likely).⁴⁷

23
24 The IPCC has also addressed the social and economic consequences of these
25 impacts.⁴⁸ They include food security, physical and mental health, and forced climate
26 migration. The IPCC says that as temperatures rise, the effects are going to cascade
27 and become increasingly difficult to manage.⁴⁹ And Mauritius is already seeing, as
28 you have heard, extreme weather events, sea-level rise and, most significantly for a
29 fishing community, adverse impacts on fisheries as fish migrate to colder waters.
30 The best scientific advice is that much, much worse is yet to come, without action
31 under the law.⁵⁰

32
33 The science is equally clear on the actions needed to limit temperature rises to
34 1.5°C, and on the measures needed to mitigate and adapt to climate change. The
35 IPCC has told us that to prevent the worst impacts of climate change, emissions of
36 greenhouse gas emissions must be reduced to the point where they reach net zero
37 by 2050; that is just 27 years away.⁵¹ The world is not on track to meet this goal. The

⁴³ IPCC AR6 SYN, B.3.2.

⁴⁴ IPCC SR1.5, TS 5 p. 44: “[w]arming of 1.5°C is not considered ‘safe’ for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems as compared to the current warming of 1°C (high confidence).”

⁴⁵ IPCC SR Ocean and Cryosphere, Ch. 4, 4.3.3.5.2, p. 379.

⁴⁶ IPCC SR 1.5 Summary for Policymakers B.4. p. 10.

⁴⁷ SROCC also addresses sea-level rise, A1.1, A.3, A.6, and the impact on biomass including fisheries, see A.5.2, A.8, B.5 and B.8, among other impacts.

⁴⁸ IPCC AR6 SYN, Summary for Policy Makers, A.2.4.

⁴⁹ IPCC AR6 SYN, Summary for Policy Makers, B.2. SROCC, Summary for Policymakers, B.8. p. 26 (see also 3.2.4, 3.4.3, 5.4.1, 5.4.2 and 6.4).

⁵⁰ Written statement of Mauritius, paras. 22-29.

⁵¹ Net zero CO₂ emissions are achieved when anthropogenic CO₂ emissions are balanced globally by anthropogenic CO₂ removals (such as through natural carbon sinks, like the Amazon rainforest, or

1 emissions reductions needed to meet that goal are not difficult to calculate, based on
2 the remaining global carbon budget which must be allocated equitably between
3 States.⁵² The rate at which that budget is currently being exhausted will not limit
4 temperature rises to 1.5°C.⁵³

5
6 What this means, Mr President, is that the current path, the one we are now on,
7 means the end of the marine environment as we know it. What is needed – we are
8 advised by our scientists – is to close the gap between current and planned emission
9 levels, on the one hand, and the levels that are needed to protect the marine
10 environment, on the other.

11
12 The IPCC has made it crystal clear that this puts fossil fuel production, combustion
13 and related industrial processes at the heart of the threat to the marine
14 environment.⁵⁴ That reality cannot be escaped. To close the emissions gap, fossil
15 fuel use and methane emissions have to be addressed. This is what the science
16 requires, this is what is agreed by the Parties to the Paris Agreement, and this is
17 what is reiterated now *ad nauseam* by the scientists for the IPCC and UNEP.

18
19 The UNEP Emissions Gap reports are particularly significant. They address the
20 hugely important gap between emissions reductions promised thus far and the
21 emissions reductions that are needed to achieve the temperature goal of the Paris
22 Agreement. The 2022 report, very recent, (entitled *The Closing Window*), has noted,
23 and I quote, the “very limited progress in reducing the immense emissions gap for
24 2030”.⁵⁵ Seven years away. In other words, States need to do more. In other words,
25 States are not meeting their obligations under this Convention to prevent grave harm
26 to the marine environment.

27
28 And the situation is grave. The 2022 UNEP Report concluded that current policies
29 will lead to global warming of 2.8°C by the end of this century; that is during the lives
30 of our grandchildren, your grandchildren. The existing unconditional and conditional
31 Nationally Determined Contributions under the Paris Agreement will do very little.
32 They will only limit the rise in temperatures to between 2.4°C and 2.6°C.⁵⁶

man-made technology, like carbon capture and storage) over a specific period, see UNEP written statement at para. 49(b) and notes therein.

⁵² The carbon budget represents the total net amount of carbon dioxide that human activities can still release into the atmosphere while keeping global warming to a specified level above pre-industrial levels, after accounting for the warming effects of other GHGs. See: IPCC, Working Group I, Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedbacks, AR6 (2021), p. 777.

⁵³ In order to have a 50 or 67 per cent chance of limiting global warming to 1.5°C above pre-industrial levels, “the remaining carbon budgets amount to 500 and 400 billion tonnes of CO₂, respectively, from 1 January 2020 onward. Currently, human activities are emitting around 40 billion tonnes of CO₂ into the atmosphere in a single year.” See: IPCC, Working Group I, Chapter 5, Global Carbon and Other Biogeochemical Cycles and Feedbacks, AR6 (2021), p. 777.

⁵⁴ IPCC, AR5, SPM 1.2, p. 5: “[e]missions of CO₂ from fossil fuel combustion and industrial processes contributed about 78per cent of the total GHG emissions increase from 1970 to 2010, with a similar per centage contribution for the increase during the period 2000 to 2010 (high confidence)”.

⁵⁵ UNEP, *The Closing Window* (2022), Executive Summary, p. IV, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/40932/EGR2022_ESEN.pdf?sequence=8&isAllowed=y (last accessed 13 June 2023).

⁵⁶ *Ibid.*, p. X.

1 Relatedly, there is also a fossil fuel “production gap”. Unbelievably, despite the
2 crystal-clear science, the 2019 UNEP Report found, and I quote: “The world is on
3 track to produce far more coal, oil and gas than is consistent with limiting warming to
4 1.5°C or 2°C, creating a ‘production gap’ that makes climate goals much harder to
5 reach.”

6
7 To meet 1.5°C, fossil fuel emissions must decline rapidly. What this means in
8 practice, the report concludes, is that without “dramatic, unexpected advances in
9 carbon capture and storage ... technology,” and I quote, “...most of the world’s
10 proven fossil fuel reserves must be left unburned”.⁵⁷ If you want to protect and
11 preserve the marine environment and you want to follow the science, you are going
12 to have to say something about fossil fuels being phased out.

13
14 If the science is clear, so must be the law. There is no uncertainty or ambiguity as to
15 what is needed. To have any chance of limiting warming to 1.5°C, the IPCC tells us
16 that global carbon dioxide emissions must, by 2030, decrease by at least 48 per cent
17 from 2019 levels, and they must then reach net zero by 2050. Emissions of non-CO2
18 greenhouse gases, in particular methane, must also decrease analogously.⁵⁸

19
20 Mr President, the science also calls for far-reaching measures on mitigation and
21 adaptation: measures to protect and restore coastal and ocean ecosystems; reduce
22 coastal erosion and flooding; to increase the storage of carbon; and to address food
23 security and the maintenance of biodiversity.⁵⁹

24
25 In short, the current path leads to catastrophic harm to the marine environment. To
26 avert disaster, the science-driven focus has to be on phasing out fossil fuel
27 combustion and all related activities.⁶⁰ Anything less in your opinion will be seen as
28 platitudes. The Tribunal has to address that scientific reality, as the Paris Agreement
29 does, to meet IPCC recommendations.

30
31 Your task, Mr President, members of the Tribunal, in this advisory opinion, which
32 may seem daunting, is to do no less than the science requires, as confirmed by the
33 IPCC, as acted on by the Paris Agreement, informing the interpretation and
34 application of the obligations under the Convention. The science may indeed require
35 more under this Convention than the Paris Agreement currently provides for.

36
37 Mr President, all of this poses a very real challenge. What are judges to do, faced
38 with such a scenario? Do you just bury your heads? Do you hope that somehow we
39 are going to muddle along, that everything will just sort of be okay? To follow or not
40 to follow the science, that is the question. Will the Tribunal “suffer the slings and
41 arrows of catastrophe”, or will it, to take the words of William Shakespeare, “take

⁵⁸ The adoption at UNFCCC COP26 of the Global Methane Pledge signaled a greater international commitment to ensure that such gaps are addressed as a matter of urgency. Participants in the Global Methane Pledge commit to work together in order to collectively reduce global anthropogenic methane emissions across all sectors by at least 30 per cent below 2020 levels by 2030.

⁵⁹ IPCC, AR6, SYN, SPM, C.3.6.

⁶⁰ IPCC, AR5, SPM, 1.2, p. 5: “[e]missions of CO2 from fossil fuel combustion and industrial processes contributed about 78 per cent of the total GHG emissions increase from 1970 to 2010, with a similar per centage contribution for the increase during the period 2000 to 2010 (high confidence)”.

1 arms against a sea of troubles”?⁶¹ The answer to these questions is clear. It has to
2 be: follow the science and follow the law. A clear, firm, principled approach, an
3 opinion that does not shirk from the science and does not blink.

4
5 And so, Mauritius invites this Tribunal to do what an increasing number of national
6 tribunals have done, for example, as in the *Urgenda* case in the Netherlands: follow
7 the science in applying and interpreting the law.⁶² If you do not, this Convention will
8 be a dead letter, and so will the very idea of a rule of law in relation to the oceans.

9
10 Mr President, members of the Tribunal, science is the beating heart of the
11 Convention and it must be the beating heart of the advisory opinion that this Tribunal
12 hands down.

13
14 I thank you for your attention and, depending on the time available, invite you to call
15 Ms Cook to the podium either before or after the break.

16
17 **THE PRESIDENT:** Thank you, Mr Sands. I now give the floor to Ms Cooke to make
18 her statement. You have the floor, Madam.

19
20 **MS COOK:** Mr President, members of the Tribunal, it is an honour to appear before
21 this Tribunal and to do so on behalf of Mauritius.

22
23 Against the background of the science, I will now address the relationship between
24 the 1982 Convention and the legal framework of the broader international climate
25 regime.

26
27 That legal regime is largely set forth in the provisions of the 1992 UNFCCC and the
28 2015 Paris Agreement.⁶³ Under UNCLOS, the Tribunal is required to apply “other
29 rules of international law not incompatible with the Convention”. Those rules clearly
30 include the UNFCCC and the Paris Agreement, as well as customary rules, including
31 the precautionary principle, the polluter-pays principle, and the principle of common
32 but differentiated responsibility.

33
34 The objectives of the UNFCCC and the Paris Agreement⁶⁴ are to prevent dangerous
35 anthropogenic interference with the climate system. That clearly covers interference
36 with the marine environment. The Preamble to the Paris Agreement expressly
37 references the commitment to ensure the integrity of ocean ecosystems, and
38 biodiversity. Article 5(1) explicitly requires Parties to conserve and enhance oceans,
39 and coastal and marine ecosystems, as sinks of greenhouse gases.⁶⁵

40
41 Together, the UNFCCC and the Paris Agreement set out minimum steps that Parties
42 must take to prevent dangerous anthropogenic interference with the climate system
43 and, in this way, contribute to the protection of the marine environment. The

⁶¹ William Shakespeare, *Hamlet*, Act 3, Scene 1.

⁶² Supreme Court of the Netherlands, *Urgenda Foundation v State of the Netherlands*, no. 19/00135, Decision of 20 Dec. 2019.

⁶³ Article 2 UNFCCC, the Paris Agreement being a related legal instrument of the UNFCCC.

⁶⁴ Article 2 UNFCCC, the Paris Agreement being a related legal instrument of the UNFCCC.

⁶⁵ Article 4(1)(d) UNFCCC.

1 relationship between the Convention and these treaties is based on a shared
2 concern for the protection of the marine environment from climate change.

3
4 The Convention and these treaties are intertwined. It is not the case, as some have
5 argued, that they are to be kept separate. The Convention is a living instrument,
6 expressly framed to allow for the development of specific standards and rules, and to
7 evolve in the light of evolving science.

8
9 It is not the case that the Convention does not address climate change because that
10 subject was not expressly considered at the time of its adoption, nor because it is
11 now addressed by other treaties.⁶⁶ The obligations under the Convention to protect
12 the marine environment from climate change are informed by those treaties but they
13 are not limited by those treaties. Those treaties do not, and cannot, limit the
14 obligations that arise under the Convention in the light of the science to which it
15 expressly refers, and in the context of protecting the marine environment, a point
16 I will return to shortly.

17
18 What the Convention and the climate treaties have in common is a requirement that
19 States Parties must base their actions on science. The Convention makes no less
20 than 158 references to science. It requires Parties to act on the basis of scientific
21 evidence for the protection of the marine environment.⁶⁷ Similarly, the UNFCCC
22 refers to scientific evidence as the basis for climate action, as does the Paris
23 Agreement,⁶⁸ which recognizes the need for an effective and progressive response
24 to the urgent threat of climate change on the basis of the best available scientific
25 knowledge.⁶⁹

26
27 Part XII of the Convention is therefore to be interpreted and applied on the basis of
28 the best available scientific evidence. In this way, the scientific evidence identified by
29 the IPCC, and measures indicated by the IPCC, must inform all actions to be taken
30 to meet the requirements of the Convention.⁷⁰

31
32 That evidence, and the measures indicated, include quantified indications of the
33 deep emission reductions that are needed to close the emissions gap and avoid
34 risks of catastrophic irreversible harm to the marine environment.⁷¹

35
36 The science informs the law and, accordingly, the law is about numbers, in relation
37 to both Part XII obligations as well as those under the international climate regime.
38 Those numbers include the quantities of greenhouse gases actually emitted and the
39 scale of reductions required, down to net zero.

⁶⁶ See e.g. written statement of Indonesia at para. 82(b): “There is no specific obligation of the States Parties to the Convention to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, as well as to protect and preserve the marine environment in relation to climate change impact.”

⁶⁷ See e.g. articles 61, 119, 200-201, 204 and 234 of UNCLOS.

⁶⁸ See articles 4(1) and (5), 7(5)(7) and 14(1) of the Paris Agreement.

⁶⁹ Paris Agreement, Preamble.

⁷⁰ See: written statement of the United Nations Environment Programme (UNEP), 16 June 2023, para. 22.

⁷¹ IPCC Special Report on Global Warming of 1.5°C, available at: <https://www.ipcc.ch/sr15/download/> (last accessed 9 September 2023), B.6.3, p. 13 and AR6.

1 Article 300 of the Convention imposes upon the Parties an obligation to act in "good
2 faith" and in the context of the emissions and production gaps to which Professor
3 Sands has referred, good faith, as with the Paris Agreement, requires ambition and
4 effectiveness.⁷² A lack of urgency would run counter to the science and, we say,
5 counter to the law.

6
7 Mr President, science provides the basis for determining the rules and standards
8 necessary for the prevention, reduction and control of greenhouse gas pollution, as
9 required by article 194, and Section 5 of Part XII, taking into account articles 197,
10 200 and 201. Article 194 requires Parties to take "all measures ... that are necessary
11 to prevent, reduce and control pollution of the marine environment from any source".
12 What is "necessary" must be assessed objectively, on the basis of the science and
13 the temperature goal, reinforced by the customary obligation to ensure that activities
14 respect the environment of other States and areas beyond national control, as well
15 as the principles I have already mentioned.

16
17 Emissions of greenhouse gases are a form of pollution within the meaning of
18 article 1(1)(4) of the Convention, as the great majority of participating States agree.
19 Mauritius invites the Tribunal to recognize expressly that greenhouse gas emissions
20 are pollution within the meaning of the Convention, and that they therefore are
21 governed by Part XII.

22
23 Mauritius further invites the Tribunal to confirm that the relationship between the
24 Convention and the international climate regime is based on a coherent and
25 harmonized approach, one that gives full effect to article 293, and also to
26 article 31(3)(c) of the Vienna Convention on the Law of Treaties, which the
27 International Law Commission Study Group has invoked in recognizing the dynamic
28 nature of the international legal order.⁷³ Indeed, this Tribunal has always proceeded
29 on the basis of seeking coherence between the Convention and other rules of
30 international law.⁷⁴

31
32 Coherence requires compliance with nationally determined contributions and related
33 obligations under the Paris Agreement, including in relation to due diligence, but it
34 also requires more. Nationally Determined Contributions may not currently address
35 their implications for the marine environment. While some emissions, including those
36 from vessels and aviation are not yet consistently included in Nationally Determined
37 Contributions, due diligence obligations under Part XII expressly require Parties to
38 address greenhouse gases emissions from "all" sources. In this way, the obligations
39 under the Convention go beyond current practice under the UNFCCC and the Paris
40 Agreement.

41
42 Article 2(2) of the Paris Agreement provides that it will be implemented to "reflect
43 equity and the principle of common but differentiated responsibilities and respective
44 capabilities, in the light of different national circumstances." Mauritius invites the

⁷² Paris Agreement, articles 3, 4(3), 4(5), 4(11) and 6(1).

⁷³ ILC, Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law, A/CN.4/L.702 (18 July 2006), available at: https://legal.un.org/ilc/documentation/english/a_cn4_l702.pdf (last accessed 9 September 2023).

⁷⁴ *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, para. 169 (and the cases cited therein).

1 Tribunal to confirm that this principle is applicable under the Convention. Small
2 Island Developing States, like Mauritius, have contributed the least to global
3 emissions of greenhouse gases but face existential threats as a result of those
4 emissions.

5
6 The Tribunal has previously recognized the importance of precaution in taking
7 actions under the Convention. Mauritius invites the Tribunal to confirm that in the
8 face of uncertainty as to the effects of climate change, a precautionary approach is
9 required under customary law, as reflected in Principle 15 of the Rio Declaration on
10 Environment and Development.

11
12 Mr President, distinguished members of the Tribunal, in summary, what we are
13 saying is that the requirements of the Convention are to be interpreted and applied
14 taking into account the requirements of the UNFCCC and the Paris Agreement, but
15 those treaties do not exclude the application of the Convention to climate change,
16 and they do not limit the obligations that arise. Both regimes are informed by climate
17 science presented by the IPCC and UNEP. The law can require, support and frame
18 an effective response to climate change but only if it is based on the science and the
19 international climate goals agreed in response to that science.

20
21 Mauritius invites the Tribunal to confirm that specific obligations under Part XII are
22 informed by, and must be framed by, the science and the grave risks it has identified.

23
24 I thank you for your kind attention and invite you to call Professor Sands back to the
25 podium.

26
27 **THE PRESIDENT:** Thank you, Ms Cook. We have now reached 11:30. At this stage
28 the Tribunal will withdraw for 30 minutes. We will continue at 12:00.

29
30 *(Short break)*

31
32 **THE PRESIDENT:** Please be seated. I now give the floor to Mr Sands to continue
33 his statement. You have the floor, Sir.

34
35 **MR SANDS:** Thank you very much, Mr President, members of the Tribunal, I turn
36 now to the substantive responses to the questions posed in the request: what are the
37 specific obligations of the Parties to the Convention? And you could say that these
38 are innumerable. So we're going to focus on what we consider to be those areas in
39 which this Tribunal can perhaps offer the greatest assistance. And these are mostly
40 in relation to Part XII, but not exclusively.

41
42 The first area, intimately related to the science, is the fundamental goal: to confirm
43 that the IPCC's 1.5°C temperature goal informs the interpretation and application of
44 all obligations under Part XII. This is now an internationally agreed threshold under
45 the Paris Agreement, and it is one that reflects a minimum commitment to prevent
46 undue harm to the marine environment.⁷⁵ The goal is a specific expression of the

⁷⁵ The risks associated with four of the IPCC's Reasons for Concern—extreme weather events, disproportionate distribution of impacts, global aggregate impacts, and large-scale singular events—moves from moderate to high once average global temperature rise exceeds 1.5°C above pre-industrial levels: SR 1.5, p. 254.

1 UNFCCC's objectives to prevent dangerous anthropogenic interference with the
2 climate system.⁷⁶

3
4 It is also an internationally agreed commitment to “significantly reduce the risks and
5 impacts” of climate change.⁷⁷ A failure to give effect to this goal will of itself be
6 inconsistent with articles 192, 193 and 194 of the Convention, and will expose
7 Parties to the risk of responsibility and liability under the Convention. Mauritius joins
8 others in submitting that this temperature goal limits the Parties' discretion under
9 article 194 of the Convention.⁷⁸

10
11 The temperature goal as an “international rule or standard” must be taken into
12 account, as articles 207 and 212 require, and it must be complied with, as article 211
13 provides. Relatedly, the Part XII obligations may require, as Ms Cook said, even
14 more actions informed by specific emission pathways that have been identified by
15 the IPCC as necessary to achieve the temperature goal because, as the IPCC has
16 made clear, and I quote, “even short periods of overshoot ... are expected to be
17 extremely damaging to coral reefs”.⁷⁹

18
19 Our second key area: Mauritius invites the Tribunal to confirm that the Convention
20 requires all Parties to act with due diligence in relation to any activity that may give
21 rise to greenhouse gas emissions that may harm the marine environment, directly or
22 indirectly. This point is, of course, supported by the great majority of States
23 participating in these proceedings who have also agreed – if I have listened with
24 sufficient care – that the due diligence standard is to be an exacting one.

25
26 As the Tribunal itself has confirmed in an earlier advisory opinion – and I quote, “[t]he
27 standard of due diligence has to be more severe for the riskier activities”,⁸⁰ end of
28 quote – burning fossil fuels is a most risky activity.

29
30 What this means is that as the risk increases, the standard of due diligence becomes
31 more stringent. As many participating States have noted, the IPCC has expressed
32 with a “high degree of confidence” that “[e]very increment of global warming will
33 intensify multiple and concurrent hazards”.⁸¹ The additional risks posed by
34 temperatures rising by more than 1.5°C necessarily means that, if the emissions gap
35 is to be closed, Part XII requires the due diligence standard to be applied strictly.⁸²

36
37 What does due diligence mean in practice? On the basis of the science and of the
38 Paris Agreement, it means that Part XII of the Convention, and article 194 in
39 particular, requires each State Party to quantify all greenhouse gas emissions from
40 any source. Such emissions must then be assessed and justified against the
41 remaining carbon budget, as identified by the IPCC. This quantitative assessment –
42 numbers – is required by the UNFCCC, the Paris Agreement and, we submit, also by

⁷⁶ Article 2(1)(a) of the Paris Agreement and article 2 of the UNFCCC.

⁷⁷ Article 2(1)(a) of the Paris Agreement.

⁷⁸ Written statement of Portugal, para. 67.

⁷⁹ IPCC, SR 1.5, p. 230.

⁸⁰ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area* (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), para. 117.

⁸¹ IPCC, AR6, SYN, B.1.

⁸² See written statement of Belize, para. 89(b).

1 this Convention. If there is any uncertainty as to specific impacts of climate change
2 on the marine environment, then as we've said, precaution cuts in under the
3 Convention and may require even more actions.

4
5 Quantified assessments are precautionary and necessary to determine whether a
6 State Party has complied with the Convention, in particular whether it has utilized the
7 best efforts and taken "all necessary measures" to protect the environment.⁸³ We
8 have taken note of the question about obligations of conduct or of result, and we're
9 not sure that that much turns upon it. But unlike my good friend Professor
10 Paparinskis, we would say, this is also an obligation of result.

11
12 The days of generalized commitments of waffle about article 192 and 194 are surely
13 over. You must, in your advisory opinion, we respectfully submit, talk about numbers.

14
15 Due diligence has another element: to protect the marine environment, we say that
16 every State Party must ensure that the measures it takes to reduce greenhouse gas
17 emissions do not, of themselves, cause pollution by other means of the environment.
18 This is required by articles 192 and 194, but also by article 195, which prohibits the
19 transfer, directly or indirectly, of one type of pollution into another.

20
21 And this approach applies to all sources of greenhouse gas emissions. For example,
22 land-based sources, which are relevant under the Convention, due diligence is
23 governed by article 207(5), which requires measures "designed to minimize, to the
24 fullest extent possible, the release of toxic, harmful or noxious substances, especially
25 those which are persistent". It is not disputed that greenhouse gases are persistent
26 in their effects.⁸⁴

27
28 In relation to atmospheric pollution, the due diligence standard requires article 212 to
29 be read consistently with the temperature goal and the mitigation framework
30 established under the Paris Agreement.

31
32 There is another aspect of due diligence that is important. The Tribunal has stated
33 that in exercising rights and performing duties under the Convention, States Parties
34 must have regard to the rights and duties of one another.⁸⁵ Climate change is a
35 common concern of humankind, which means that this obligation is all the more
36 significant: reducing emissions, and closing the emissions gap, is an obligation that
37 requires an individual effort and a collective effort.

38
39 And the due diligence standard is also closely connected to the obligation to assess
40 activities before they are implemented. And in this regard, article 206, we say, is of
41 singular importance. Any planned activities that will emit greenhouse gases – that
42 includes the production and use of any fossil fuel – will contribute to causing
43 "substantial pollution" and "significant and harmful changes to the marine
44 environment".

⁸³ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area* (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), para. 110.

⁸⁴ IPCC, SR 1.5, C.2 p. 17.

⁸⁵ *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, ITLOS Advisory Opinion, paras. 130-140.

1 It follows that the Convention requires States to assess those potential effects from
2 all sources and to do so before the activity takes place. This obligation is consistent
3 with the Paris Agreement and assessment obligations under international law more
4 generally in relation to transboundary environmental harms.⁸⁶

5
6 In short, due diligence under the Convention requires States Parties to assess
7 cumulative greenhouse gases from all planned activities – projects, programmes,
8 investments, financings, policies, absolutely everything. And this includes all
9 Scope 1, Scope 2 and Scope 3 emissions.⁸⁷ Assessments must also, to be clear, be
10 carried out in a transparent manner.⁸⁸

11
12 I turn to our third key point. Mauritius invites the Tribunal to underscore the cardinal
13 importance of article 197 of the Convention: States Parties must cooperate, directly
14 or through competent international organisations, on international rules and
15 standards to protect and preserve the marine environment. In the *MOX Plant* case,
16 the Tribunal rightly emphasized, we believe, the fundamental nature of this obligation
17 to cooperate.⁸⁹

18
19 And in this context, cooperation has at least three significant elements under the
20 Convention.

21
22 *First*, Parties must engage constructively in efforts to develop more international
23 rules and standards to prevent climate change so as to protect the marine
24 environment against its adverse consequences.

25
26 *Second*, Parties must act consistently with relevant international rules and standards
27 under the international climate regime, including technical and procedural standards
28 for reporting all their greenhouse gas emissions.

29
30 And *third*, Parties must cooperate to ensure that all relevant sources of emissions of
31 any greenhouse gases are covered. And this means, by way of example, that the
32 venting and flaring of methane from offshore oil and gas infrastructures is subject to
33 all of the constraints imposed by the Convention.

34
35 Mr President, I turn to the fourth key area: Mauritius invites the Tribunal to confirm
36 that due diligence under the Convention also imposes obligations on adaptation to
37 the impacts of climate change on the marine environment. What this means in
38 practical terms is that special regard must be paid to those most affected by such
39 impacts, including the most vulnerable States and communities, and that technical

⁸⁶ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 665, para. 104.

⁸⁷ The GHG Protocol Corporate Standard classifies a company's GHG emissions into three "scopes". Scope 1 emissions are direct emissions from owned or controlled sources. Scope 2 emissions are indirect emissions from the generation of purchased energy. Scope 3 emissions are all indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.

⁸⁸ See articles 4(13) and article 13 of the Paris Agreement.

⁸⁹ *MOX Plant (Ireland v. United Kingdom) Provisional Measures*, Order of 3 December 2001, ITLOS Reports 2001, para. 82.

1 and financial assistance is required as a matter of binding legal obligation under the
2 Convention.

3
4 Let's be clear again: the IPCC has told us that climate change is happening, and that
5 the impacts on the marine environment are going to be grave and irreversible in
6 some cases. Article 192 obliges States Parties to address all of those impacts,
7 period. The nature and extent of those obligations are informed by the terms of the
8 Paris Agreement and by the science: to enhance adaptive capacity, to strengthen
9 resilience and to reduce vulnerabilities. The Paris Agreement requires Parties, in
10 addressing adaptation, to act on the basis of the best available science and, as
11 appropriate, very importantly for many countries and communities, traditional
12 knowledge, knowledge of Indigenous peoples and local knowledge systems.⁹⁰ These
13 principles inform the obligations under Part XII. They inform, for example, the
14 obligation under article 194(5), which is of particular significance to Mauritius, to
15 protect and preserve fragile ecosystems, endangered species, and other forms of
16 marine life.

17
18 The IPCC has highlighted the impacts on those who depend for their well-being and
19 livelihoods on the marine environment by increased exposure to extreme weather
20 events, adverse impacts on fisheries, and coastal inundation and erosion resulting
21 from sea-level rise.

22
23 Mauritius is already impacted by these events and we say that the Convention
24 requires action to mitigate these and other effects of climate change to support
25 increased resilience and to reduce the vulnerabilities. And in this regard, articles 202
26 and 203 of the Convention appear to us to be of singular importance, interpreted and
27 applied in a manner that gives effect to the general principle under international law
28 of common but differentiated responsibility. The Convention requires Parties to have
29 regard to the needs of the most vulnerable and impecunious developing countries,
30 by providing technical assistance and allocating appropriate funds.

31
32 On mitigation and adaptation, the Convention is not silent. It has to be interpreted
33 and applied to give effect to the requirements of the Paris Agreement. Its
34 article 2(1)(c) emphasizes the need for flows of finance to contribute to "low
35 greenhouse gas emissions and climate-resilient development".

36
37 Its article 9(1) requires developed country Parties to provide financial resources to
38 assist developing country Parties for mitigation and adaptation. And the Standing
39 Committee on Finance to the UNFCCC and Paris Agreement has recently
40 emphasized that finance flows must reduce the likelihood of negative climate
41 outcomes.⁹¹ For its part, the IPCC has emphasized that climate goals can only be
42 met by financing adaptation and mitigation on a far greater scale than is already
43 happening.⁹²

44

⁹⁰ Article 7(5) of the Paris Agreement.

⁹¹ Report of the Standing Committee on Finance to the Conference of the Parties, 23 November 2018, FCCC/CP/2018/8, Annex II: Summary and recommendations by the Standing Committee on Finance on the 2018 Biennial Assessment and Overview of Climate Finance Flows, para. 49.

⁹² IPCC, AR6, SYN, SPM, A.4.5.

1 Now, some may ask, what has all of this got to do with the Convention? We say this:
2 articles 192 and 194 impose positive obligations on States Parties, and those
3 obligations encompass an obligation to provide adequate investments to reduce
4 greenhouse gas emissions, as well as an obligation not to finance those measures
5 which will lead to emissions that are not consistent with the 1.5°C goal; for example,
6 on the financing of fossil fuel reduction.

7
8 Article 202 is to be interpreted and applied to require States to provide appropriate
9 assistance to developing States, to minimize the effects of climate change and to
10 assist in preparing their environmental assessment.

11
12 Article 203 imposes an obligation to provide preferential treatment to developing
13 States not as a matter of largesse or generosity, but by operation of law. The
14 Tribunal's affirmation of these points can go some considerable way in enhancing
15 cooperation.

16
17 I turn to our fifth area. Mauritius invites the Tribunal to confirm that article 235 of the
18 Convention, which is in Part XII, is engaged by climate change and its
19 consequences. That provision makes clear that every State is responsible for the
20 fulfilment of its obligations to protect and preserve the marine environment from the
21 effects of climate change, and that a failure to meet its responsibilities will give rise to
22 liability under international law.

23
24 Of particular importance is one cardinal principle: a failure to give effect to the best
25 available scientific evidence, in this case the IPCC, will, we say, expose a State
26 Party to the risk of liability under the Convention as well as general international law.
27 And this Tribunal should be clear in what it says in relation to article 235. If you wish
28 to avoid liability, follow the science. Ignore the science at your peril.

29
30 Now, some States – and we know who they are and why they say this – have
31 suggested that this Tribunal should somehow avoid addressing article 235 even
32 though it's in Part XII.⁹³ We respectfully disagree. The specific obligations to which
33 the two questions refer are directly and pertinently relevant to matters of
34 responsibility and liability under article 235(1) which makes clear that States are
35 responsible for the fulfilment of their international obligations and shall be liable in
36 accordance with international law. Those international obligations include the
37 obligation under the Convention to prevent climate change and the adverse effects
38 of emissions. Those obligations are informed by, but not limited to, obligations
39 arising under the Paris Agreement.

40
41 Loss and damage, as you are aware, have become a central focus of the
42 international agenda, including but not limited to, the Paris Agreement.⁹⁴ Parties to
43 the Paris Agreement are required to avert, minimize and address loss and damage
44 from climate change.⁹⁵ Those commitments, Paris commitments, are entirely and
45 juridically distinct from the requirements of article 235.

⁹³ See written statements of Australia and Portugal (amongst others).

⁹⁴ See article 8 of the Paris Agreement and the COP27 Fund.

⁹⁵ Article 8(1) of the Paris Agreement.

1 They do not seek to extinguish the application of that provision or other analogous
2 provisions. And article 235 may come to assume particular importance to Small
3 Island Developing States like Mauritius, amongst others, whose very existence may
4 be threatened by the actions of others. The well-being of the marine environment
5 and its coastal zones, and the need to avoid harm to human health and fishing and
6 other activities, are all explicitly encompassed by the definition of pollution in
7 article 1(1)(4) of the Convention. The IPCC has addressed these and other
8 hazards.⁹⁶ It has highlighted the threats to life and to human rights posed by the
9 impacts of climate change on the marine environment, and the consequential need
10 for early warning systems and coastal defences.⁹⁷

11
12 In the context of Part XII as a whole, and having regard to the International Law
13 Commission's Draft articles on State Responsibility, in our submission, article 235 is
14 engaged and imposes distinct obligations under the Convention, where a State Party
15 fails to act with due diligence and on the basis of the best available science.⁹⁸ Of
16 course, the application of article 235 will always turn on the facts of a particular
17 situation, which we say necessarily includes historic emissions. But let us be clear:
18 those States that have emitted the most since the age of industrialization bear the
19 greatest responsibility to make the deepest cuts in emissions today.

20
21 Mauritius' contribution to the grave threat of climate change is miniscule, but it is on
22 the front line of vulnerability. Why should Mauritius bear the burden of losses caused
23 by the actions and enrichment of others? Why should Mauritius not be able to invoke
24 its rights under all of the Convention, all of Part XII, including article 235? Mauritius,
25 and every other Party, is entitled to hold others to account under article 235 – any
26 Party that has breached its obligations under the Convention to protect and preserve
27 the marine environment. This, we hope, the Tribunal will state clearly and without
28 ambiguity.

29
30 If you pass in silence on this point, you will in effect create an incentive for States to
31 do nothing.

32
33 Mr President, I turn to our sixth point: Mauritius invites the Tribunal to confirm in this
34 advisory opinion that sea-level rise, a consequence of pollution that is not permitted
35 by reference to the requirements of Part XII, will not affect existing maritime claims or
36 entitlements. This should be so where a State has claimed maritime entitlements on
37 the basis of maritime features prior to sea-level rise, or where claims or boundaries
38 have been agreed by States, or where they have been determined by an
39 international court or tribunal.

40
41 There is, in other words, no obligation under the convention or Part XII as a
42 consequence of rising sea levels caused by pollution for a coastal State to revisit its
43 maritime boundaries. This is intimately connected to issues of obligations in relation
44 to Part XII. And this is a matter of particular importance for a country like Mauritius
45 and so many other coastal States.

⁹⁶ SROCC.

⁹⁷ IPCC, AR6, SYN, SPM, A.3.2. See also: Human Rights Committee General Comment No. 36 on the Right to Life, at para. 62.

⁹⁸ Article 194(1).

1 Mauritius and the Maldives recently appeared before a Special Chamber of this
2 Tribunal to resolve a long-standing dispute over their maritime boundary. The
3 boundary delimited by the Tribunal was based on maritime features – Peros Banhos
4 Atoll, Salomon Islands Atoll and Blenheim Reef in the case of Mauritius, and Addu
5 Atoll in the case of Maldives. All are gravely threatened by sea-level rise. We trust
6 that the Tribunal will confirm that the maritime boundary it determined in this case, as
7 it has in other cases, and all other maritime boundaries it has confirmed, will not be
8 affected by sea-level rise. If you don't say something about this aspect, there's
9 another international court that is waiting to do so, and we hope you will address this
10 point.

11
12 Sea-level rise is affecting maritime features, and Ambassador Koonjul has told you
13 how, in terms of measurable increases in sea-level rise. The location of basepoints,
14 the drawing of baselines, the delimitation of maritime boundaries and entitlements up
15 to and beyond 200 nautical miles are all affected, apparently, by pollution of
16 greenhouse gases.

17
18 The Tribunal can do a lot therefore to promote stability in international relations and
19 certitude that is at the heart of any legal order by addressing this issue. It's a golden
20 thread that runs through international practice and decisions relating to maritime
21 spaces and boundaries.

22
23 And three particular situations come to mind. The first is when a maritime boundary
24 has been determined by an international court or tribunal, as in the case before
25 which Mauritius recently appeared here in Hamburg. The arbitral tribunal in *The Bay*
26 *of Bengal Maritime Boundary Arbitration* resisted the suggestion that its preferred
27 equidistance line could later be affected by consequences of climate change.⁹⁹

28
29 A second situation is where a State has deposited with the Secretary-General of the
30 United Nations material to describe the outer limits of its continental shelf up to
31 200 nautical miles. We say it would be enormously helpful, in terms of stability and
32 certitude, if the Tribunal could confirm that such descriptions apply “permanently” in
33 accordance with article 76(9) of the Convention and will not be affected by sea-level
34 rise, which is caused by the pollution caused by others. Why should Mauritius have
35 to suffer uncertainty in relation to its maritime boundaries because of pollution
36 inconsistent with the requirements of the Convention that have been caused by other
37 States? That is not right and it would not be in accordance with the law.

38
39 A third situation is where a State has submitted material in support of a continental
40 shelf entitlement beyond 200 nautical miles to the Commission on the Limits of the
41 Continental Shelf, pursuant to article 76(8). That provision is clear in providing that
42 the limits of the shelf established pursuant to that process shall be final and binding,
43 but it doesn't address the possible effects of sea-level rise, which may intervene in
44 the regrettably lengthy period which now exists between material being submitted
45 and a Commission recommendation being made. Again, this Tribunal can do much
46 for stability and certitude by confirming that sea-level rise will not affect such
47 determinations.

⁹⁹ *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award, 7 July 2014, paras. 217 & 213-220.

1 The key issues here are stability and certitude in the legal order, and we say they
2 would be undermined if you indirectly or by silence say nothing on this, which
3 effectively would be used by those who wish to say that pollution can cause
4 boundaries to shift. Small and low-lying States have stated a clear and common view
5 that their baselines and maritime entitlements must not be affected by rising sea-
6 levels.¹⁰⁰ An overwhelming majority of all States support that position of principle.
7 The International Law Association rejected the notion of ambulatory baselines in the
8 context of sea-level rise¹⁰¹ and the International Law Commission has followed suit,
9 noting that there was no language in text of the Convention to support a different
10 approach.¹⁰² We do invite the Tribunal to speak, with its customary authority, on this
11 absolutely essential issue.

12
13 Mr President, members of the Tribunal, I conclude on behalf of Mauritius. Climate
14 change is real and present as a danger to the global community, to every State Party
15 of the Convention, to all States and other statal entities, indeed, to every single
16 human being.

17
18 The challenges ahead are daunting by any standard. We cannot be starry-eyed and
19 imagine that the law alone – or the Law of the Sea Convention alone – will offer
20 some sort of a magic remedy. But the law is important, just as our oceans are
21 important, and the Tribunal for the Law of the Sea is the guardian of that most

¹⁰⁰ The Taputapuātea Declaration on Climate Change signed by the leaders of French Polynesia, Niue, Cook Islands, Samoa, Tokelau, Tonga and Tuvalu, 16 July 2015 (<https://www.samoagovt.ws/wp-content/uploads/2015/07/The-Polynesian-P.A.C.T.pdf>); The Delap Commitment on Securing Our Common Wealth of Oceans, signed by the heads of State or their representatives of The Federated States of Micronesia, Republic of Kiribati, Republic of the Marshall Islands, Republic of Nauru, Republic of Palau, Independent State of Papua New Guinea, Solomon Islands and Tuvalu, 2 March 2018 (https://www.pnatuna.com/sites/default/files/Delappercent20Commitment_2ndpercent20PNAPERcent20Leaderspercent20Summit.pdf); Act No. 13 of 2016 (https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/mhl_mzn120_2016_1.pdf); Baselines around the Archipelagos of Kiribati Regulations 2014 (https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/KIR_2014_archipel_baseline_regulations.pdf). Also Kiribati Exclusive Economic Zone Outer Limit Regulations 2014, available at: (https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/KIR_2014_eez_outer_limits_regulations.pdf). Declaration of Archipelagic Baselines 2012, LN No. 7 of 2012 (Tuvalu) (https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/tuv_declaration_archipelagic_baselines2012_1.pdf); Pacific Oceanscape Vision: A Secure Future for Pacific Island Countries and Territories Based on Sustainable Development, Management and Conservation of our Ocean (<https://www.sprep.org/attachments/Publications/BEM/oceanscape-brochure.pdf>); 'Observations by the Federal States of Micronesia in Connection with the Official Deposit of its Lists of Geographical Points of Coordinates, Accompanied by Illustrative maps, for Maritime Baselines and Maritime Zones in Accordance with the 1982 United Nations Convention on the Law of the Sea', available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/FSM_Observations.pdf; Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise (<https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise/>); Launch Of The Alliance Of Small Island States Leaders' Declaration (<https://www.aosis.org/launch-of-the-alliance-of-small-island-states-leaders-declaration/>).

¹⁰¹ Report of the International Law Association, Committee on International Law and Sea-level rise, Sydney Conference (2018) (https://www.ila-hq.org/en_GB/documents/conference-report-sydney-2018cteeversion), pp. 16-19; ILA Resolution 5/2018 (https://www.ila-hq.org/en_GB/documents/conference-resolution-sydney-2018-english-2).

¹⁰² International Law Commission, 'Sea-level rise in Relation to International Law: First Issues Paper', UN Doc A/CN.4/740 (28 February 2020), paras. 78 & 82-104.

1 important law. If you don't speak on these issues, the International Court of Justice
2 or others will.
3

4 There may be a temptation, as I alerted earlier, to say it is all too complicated, or that
5 the matter is being addressed in other fora. To be clear, the Tribunal will want to be
6 sure that what it says in its advisory opinion does not disrupt the work being done in
7 other fora, in particular under the UNFCCC and the Paris Agreement, even if they do
8 not fully meet the obligations under this Convention. But just as those instruments
9 inform the interpretation of this Convention, so does this Convention inform the
10 engagement of those instruments in relation to the protection of the marine
11 environment. This Convention is distinct from Paris. We live with an integrated legal
12 order, and the relationship goes in two ways, which is why this advisory opinion is so
13 potentially very important.
14

15 It can lead the way. It can encourage other international courts and tribunals – and
16 equally importantly, national courts and tribunals who are now facing these kinds of
17 issues – on how the law of the sea and the applicable law under the Convention can
18 be harnessed to protect our oceans and our planet.
19

20 This Tribunal has never shirked its responsibilities. It has, in so many of its cases,
21 not least the Advisory Opinions of 2011 and 2015, spoken in a clear voice, one that
22 has avoided platitudes; one that is not passed in silence on the most difficult issues.
23 And so, by way of conclusion, Mauritius invites the Tribunal to so speak again in this
24 truly most important of matters.
25

26 Mauritius expresses the hope that the Tribunal will offer clear guidance in the
27 following ways:
28

29 *first*, the science is established;
30

31 *second*, all relevant obligations under the Convention are informed by the science;
32

33 *third*, those obligations under the Convention are distinct but necessarily informed by
34 and consistent with other rules of international law, in particular, but not limited to,
35 the UNFCCC and the Paris Agreement;
36

37 *fourth*, that the internationally agreed 1.5°C temperature goal informs specific
38 obligations under the Convention, but does not limit those obligations;
39

40 *fifth*, to protect the marine environment from greenhouse gas emissions, particularly
41 from fossil fuel emissions, States Parties must act in accordance with a standard of
42 due diligence, including in relation to prior environmental assessment;
43

44 *sixth*, the duty of cooperation in relation to the protection of the marine environment
45 is paramount in closing gaps in the regulation of greenhouse gases, including
46 emissions gaps and production gaps;
47

48 *seventh*, the obligation of due diligence covers mitigation and adaptation, including
49 the requirement to provide technical and financial assistance;
50

1 *eighth*, article 235 of the Convention is applicable to the consequences of climate
2 change to the marine environment;

3
4 and *ninth*, baselines, maritime entitlements and boundaries shall not be affected by
5 sea-level rise in the context in which I have addressed.

6
7 Mr President, members of the Tribunal, this concludes the oral statement of
8 Mauritius. We thank you truly for your kind attention.

9
10 **THE PRESIDENT:** Thank you, Mr Sands. I now give the floor to the representative of
11 the Federated States of Micronesia, Mr Mulalap. You have the floor, Sir.

12
13 **MR MULALAP:** Mr President, distinguished members of the Tribunal, good day. It is
14 a tremendous honour for me to deliver an oral statement on behalf of the Federated
15 States of Micronesia in the present case.

16
17 This statement will supplement the written statement that was submitted by the
18 Federated States of Micronesia to the Tribunal earlier this year. For the sake of
19 brevity, I will not repeat the factual recitations and the arguments advanced by the
20 Federated States of Micronesia in our written statement unless necessary. Those
21 recitations and arguments, of course, remain endorsed by the Federated States of
22 Micronesia. Additionally, I wish to inform the Tribunal that for the rest of this oral
23 statement, I will refer to the Federated States of Micronesia as simply “Micronesia.”
24

25 For this oral statement, I will address four main points that build on Micronesia’s
26 written statement, respond to certain points raised in other statements in the present
27 case and introduce a number of additional elements. The four main points are:

28
29 first, the jurisdiction and discretion of the Tribunal to issue the advisory opinion
30 requested by the Commission of Small Island States on Climate Change and
31 International Law, or COSIS;

32
33 second, the deficiencies in focusing narrowly on the United Nations Framework
34 Convention on Climate Change (UNFCCC) and the Paris Agreement, when
35 determining the relevant sources of rules, standards, practices and procedures that
36 inform the implementation of obligations in the United Nations Convention on the
37 Law of the Sea, UNCLOS, particularly its Part XII;

38
39 third, the applicability of international human rights, the rights and knowledge of
40 Indigenous People and the rights of nature; and

41
42 fourth, the relevance of rules on the responsibility of States for internationally
43 wrongful acts.

44
45 On the jurisdiction of the Tribunal to issue the advisory opinion requested in the
46 present case, Micronesia acknowledges that a number of statements in the present
47 case either do not take a definitive position on the question of advisory jurisdiction or
48 raise notes of caution regarding the Tribunal’s exercise of such jurisdiction – with
49 some statements calling on the Tribunal to provide a careful articulation, if not a
50 reconsideration, of the bases for its advisory jurisdiction as a full body.

1 Micronesia recalls that the Tribunal has already articulated in Case No. 21, with
2 authority and conviction, that the Tribunal has jurisdiction to issue advisory opinions
3 as a full Tribunal if certain prerequisites are first met. As articulated in our written
4 statement, and as demonstrated by most other statements in the present case, it is
5 Micronesia's view that the request from COSIS meets all of those prerequisites. We
6 will not recap those statements today.

7
8 We do want to add, however, that in the years since Case No. 21, the international
9 community has signalled strong support for the Tribunal's exercise of advisory
10 jurisdiction as a full Tribunal. We point to the adoption in June of this year of the final
11 text of the so-called BBNJ Agreement, whose article 47(7) authorizes the
12 Conference of the Parties to the BBNJ Agreement to request an advisory opinion
13 from the Tribunal on a particular legal question. This article was negotiated and
14 finalized with a view to meeting the prerequisites for seizing the Tribunal's advisory
15 jurisdiction as a full Tribunal that the Tribunal identified in Case No. 21.

16
17 The BBNJ Agreement was negotiated as an international legally binding instrument
18 under UNCLOS by all States Parties to UNCLOS. Indeed, the President of the
19 Tribunal referenced this development in his remarks to the 33rd Meeting of States
20 Parties to UNCLOS in New York earlier this year, where he said, among other
21 things, that "[t]he inclusion of such a provision in the new agreement reflects the
22 potential usefulness of advisory opinions when dealing with complex ocean
23 governance issues." Therefore, depending on when the BBNJ Agreement enters into
24 force, it is poised to represent either subsequent State practice or subsequent
25 agreement of UNCLOS States Parties that is relevant to the interpretation of
26 UNCLOS, including the provisions of UNCLOS and integral subsidiary documents
27 pertaining to the advisory jurisdiction of the Tribunal.

28
29 This issue of advisory jurisdiction should no longer be doubted, let alone be the
30 subject of outright dispute. The strong positive engagement by the international
31 community in the present case underscores this point. We encourage the Tribunal to
32 reaffirm its advisory jurisdiction, as established in Case No. 21, rather than weaken
33 that jurisdiction in any manner.

34
35 With respect to the Tribunal's discretion to issue an advisory opinion requested in the
36 present case, Micronesia reiterates that the general rule regarding discretion is
37 whether there are "compelling reasons" for the Tribunal to choose not to exercise its
38 advisory jurisdiction. Not only does Micronesia not know of any such compelling
39 reasons, it is our view that the inverse is true, namely, that there are numerous
40 compelling reasons for the Tribunal to exercise such advisory jurisdiction.

41
42 We point to the groundswell of support in the international community for the
43 issuance of advisory opinions relating to anthropogenic greenhouse gas emissions,
44 such as the current advisory proceedings before the Inter-American Court of Human
45 Rights and the International Court of Justice. Synergies between this Tribunal and
46 those other advisory proceedings will be key.

47
48 We point as well to the clear and alarming evidence, as reported by the
49 Intergovernmental Panel on Climate Change as well as captured in the Synthesis
50 Report for the technical dialogue for the first Global Stocktake under the Paris

1 Agreement, that anthropogenic greenhouse gas emissions are the predominant
2 cause of what the United Nations Secretary-General calls the “global boiling” and
3 “climate breakdown” now afflicting the Earth, including the marine environment.
4 There is no more time for delay, caution and deferral, including by States Parties to
5 UNCLOS.
6

7 I will now address several substantive elements pertaining to the questions
8 presented by COSIS in the present case, with a reminder that, in our written
9 statement, Micronesia has joined the overwhelming majority of submissions in
10 asserting that anthropogenic greenhouse gas emissions constitute pollution of the
11 marine environment under UNCLOS. I begin with the role of the UNFCCC and the
12 Paris Agreement (which I will at times collectively call the “UNFCCC regime”) in the
13 identification of other rules of international law not incompatible with UNCLOS,
14 including internationally agreed rules, standards and recommended practices and
15 procedures that pertain to the pollution, protection and preservation of the marine
16 environment, including as reflected in Section 5 of Part XII of UNCLOS.
17

18 We acknowledge that a number of written statements in the present case emphasize
19 the centrality of the UNFCCC and the Paris Agreement to the international legal
20 infrastructure applicable to addressing climate change. However, we stress that
21 while the UNFCCC and the Paris Agreement are key international instruments for
22 tackling the climate crisis, particularly with respect to establishing the long-term
23 temperature goal in article 2 of the Paris Agreement, they are not the sole sources of
24 applicable international law, and this Tribunal must avoid the trap of being narrowly
25 focused on the UNFCCC regime.
26

27 For example, the International Maritime Organization and the International Civil
28 Aviation Organization address gaps in the UNFCCC regime pertaining to emissions
29 from shipping and aviation, respectively. The Vienna Convention for the Protection of
30 the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone
31 Layer as well as the Kigali Amendment address short-lived but highly impactful
32 climate pollutants that are not directly regulated by the UNFCCC regime. The Parties
33 to the Convention on Biological Diversity recently adopted the Kunming-Montreal
34 Global Biodiversity Framework which, among other things, contains Targets
35 8 and 11 addressing the relationship between anthropogenic greenhouse gas
36 emissions and biological diversity, including in the marine environment.
37

38 Therefore, in terms of treaty law, it is clear that the UNFCCC regime is neither the
39 sole nor the final authority for climate action under international law. The UNFCCC
40 and the Paris Agreement establish a long-term temperature goal for addressing the
41 climate change crisis, but other sources of international law play important roles in
42 achieving and complementing that goal, including through measures that have
43 greater degrees of legal bindingness than much of the Paris Agreement, such as in
44 the Montreal Protocol and Kigali Amendment. This, in turn, helps States Parties
45 satisfy their obligations in UNCLOS pertaining to the pollution, protection and
46 preservation of the marine environment.
47

48 Put another way, if the UNFCCC regime is currently insufficient for preventing,
49 reducing and controlling pollution of the marine environment as well as protecting
50 and preserving the marine environment, then States Parties to UNCLOS that are

1 also Parties to the UNFCCC and the Paris Agreement must push the UNFCCC
2 regime to be more effective in addressing harms to the marine environment, while
3 also pursuing complementary efforts with greater binding effect under other relevant
4 intergovernmental processes and multilateral instruments, including the assumption
5 of legally binding emission reduction obligations.
6

7 Additionally, while we acknowledge that a prominent element of Part XII is the duty
8 to cooperate, we agree with COSIS that adherence to the UNFCCC regime is not
9 sufficient to satisfy the duty to cooperate. There is a need to cooperate beyond those
10 instruments if current cooperation through those instruments is insufficient to achieve
11 the objectives envisioned by UNCLOS for such cooperation.
12

13 We also agree with COSIS that the duty to cooperate does not displace
14 individualized State obligations under UNCLOS to take national action regarding the
15 pollution, protection and preservation of the marine environment. In sum, the
16 UNFCCC regime cannot represent the lowest common denominator preventing more
17 robust global and domestic action by members of the international community
18 because of a misplaced (or bad faith) reverence by States of the UNFCCC regime,
19 to the exclusion of other valid processes and approaches. That sort of thinking, we
20 submit, is not supported by the law, and it is part of the reason we are in a climate
21 crisis today.
22

23 As a necessary corollary, States Parties to UNCLOS can act within UNCLOS itself to
24 regulate anthropogenic greenhouse gas emissions in order to address the pollution,
25 protection and preservation of the marine environment, taking into account the work
26 done under the UNFCCC regime and other international legally binding instruments
27 but not necessarily being limited by such work.
28

29 If the UNFCCC regime and other such instruments did not exist, States Parties to
30 UNCLOS would still be obligated under UNCLOS to prevent, reduce and control
31 pollution of the marine environment as well as to protect and preserve the marine
32 environment from the harms caused from anthropogenic greenhouse gas emissions.
33 The relevant obligations in UNCLOS have inherent and independent force.
34

35 Because of painful political compromises, the UNFCCC regime is unable at the
36 moment to impose legally binding emission reduction targets on its Parties that are
37 necessary to achieve the long-term temperature goal of the Paris Agreement, but
38 that does not prevent States Parties to UNCLOS from adopting such targets for
39 ourselves domestically or in other intergovernmental processes – or from being
40 compelled by a competent tribunal to adopt such targets for ourselves – in order to
41 discharge our obligations under UNCLOS with respect to the pollution, protection
42 and preservation of the marine environment.
43

44 I turn now to the applicability of international human rights and related matters to the
45 present case. A number of statements in the present case – including Micronesia’s
46 own written statement as well as the statements from Chile and Nauru that we heard
47 the other day and from Mauritius today – highlight the relevance of international
48 human rights to the consideration of the harms to the marine environment caused by
49 anthropogenic greenhouse gas emissions.
50

1 Indeed, just because human rights feature prominently in other advisory proceedings
2 pertaining to climate change under other bodies, that is not a sufficient reason for
3 this Tribunal to refrain from addressing human rights. Human rights apply to all
4 peoples at all times and in all spaces, including with respect to the marine
5 environment. This Tribunal has an opportunity to provide an important contribution to
6 international law in a manner that will substantively inform future advisory
7 proceedings that touch on the nexus between human rights and anthropogenic
8 greenhouse gas emissions. The Tribunal should not shy away from this opportunity.
9

10 How, exactly, should the Tribunal characterize the interplay between international
11 human rights and UNCLOS? One way to think about this is that international human
12 rights are part of the corpus of internationally agreed rules, standards, practices and
13 procedures that must be taken into account – if not actively pursued and
14 implemented – when determining what steps must be taken by UNCLOS States
15 Parties to address the pollution, protection and preservation of the marine
16 environment from harms caused by anthropogenic greenhouse gas emissions.
17

18 Additionally, as indicated by the representative of Chile the other day, article 293 of
19 UNCLOS, as interpreted by the Tribunal in Case No. 21, allows for the Tribunal to
20 apply “other rules of international law not incompatible with [UNCLOS]” in advisory
21 proceedings, and international human rights can be deemed to form part of such
22 “other rules”.
23

24 To put this interplay into action, States Parties to UNCLOS must work through all
25 intergovernmental processes and multilateral instruments pertaining to the climate
26 crisis, including, but not limited to, the UNFCCC regime, as well as in domestic
27 contexts in order to prevent, reduce and control anthropogenic greenhouse gas
28 emissions to such an extent as to ensure that all peoples are able to enjoy the full
29 sweep of human rights associated with a healthy marine environment, including the
30 right to life, the right to sustenance – which we heard today – the right to productive
31 economic activity, the right to self-determination – which we heard today as well –
32 and the right to cultural practice, not to mention the standalone right to a clean,
33 healthy and sustainable environment, as recognized in the United Nations General
34 Assembly resolution 76/300.
35

36 If such peoples are not able to enjoy those human rights to that full extent because
37 of harms to the marine environment from anthropogenic greenhouse gas emissions,
38 then that is strong evidence that the measures taken by UNCLOS States Parties to
39 address the pollution, protection and preservation of the marine environment are
40 legally insufficient. This is a failure of States as States Parties to UNCLOS, as well
41 as a failure of these States as duty bearers under international human rights law. Put
42 simply, the marine environment is not truly protected and preserved under UNCLOS,
43 including from pollution, if those who have human rights that are dependent on a
44 healthy marine environment cannot fully enjoy those rights.
45

46 At this point, a special mention must be made of the rights of Indigenous Peoples,
47 whether they are considered a subset of international human rights or a separate
48 body of rights under international law.
49

1 International law – including as reflected in the United Nations Declaration on the
2 Rights of Indigenous Peoples – recognizes that Indigenous Peoples have collective
3 rights pertaining to the safeguarding, conservation, development and sustainable
4 use of their traditional territories, including coastal and maritime spaces. And harms
5 to such traditional territories from anthropogenic greenhouse gas emissions also
6 represent, in our view, harms to the enjoyment by Indigenous Peoples of their
7 relevant rights. These rights must be viewed as being part of international rules,
8 standards, practices and procedures pertaining to the pollution, protection and
9 preservation of the marine environment from harms caused by anthropogenic
10 greenhouse gas emissions.

11
12 UNCLOS States Parties must work through various intergovernmental processes
13 pertaining to the climate crisis, as well as in domestic contexts, to prevent, reduce,
14 and control anthropogenic greenhouse gas emissions to the extent necessary to
15 enable Indigenous Peoples to fully enjoy their rights that are dependent on a healthy
16 marine environment. If such enjoyment is not possible due to emissions harming the
17 marine environment, then this again is evidence of a failure of States Parties to
18 satisfy their relevant obligations under UNCLOS.

19
20 While on the issue of Indigenous Peoples, Micronesia submits that any consideration
21 of the impacts of anthropogenic greenhouse gas emissions on the marine
22 environment – as well as any decisions on what measures are necessary in order to
23 address those impacts – must take fully into account not just the best available
24 science which we support, but also the relevant knowledge of Indigenous Peoples
25 and local communities pertaining to the marine environment.

26
27 We point to references to such knowledge in international legally binding instruments
28 dealing with the marine environment and climate change, such as, for example, the
29 Central Arctic Ocean Fisheries Agreement and the recently adopted BBNJ
30 Agreement, where such knowledge is treated as being on par with and
31 complementary to the best available science and scientific information, including in
32 connection with the conduct of environmental impact assessments under Part XII of
33 UNCLOS.

34
35 We also point to references to such knowledge in the Kunming-Montreal Global
36 Biodiversity Framework, including in its Target 3 on the so-called 30x30 initiative as
37 well as in connection with its Targets 8 and 11. The Intergovernmental Panel on
38 Climate Change has accepted Indigenous knowledge as complements to science in
39 its major reports, including for its Special Report on the Ocean and Cryosphere in a
40 Changing Climate as well as in its recent in recent Sixth Assessment Report Cycle.

41
42 In the Pacific Islands region, such knowledge remains strong, vibrant and key to
43 understanding the marine environment, including tracking the rapid changes in the
44 marine environment in this era of a climate crisis. We urge the Tribunal to afford
45 appropriate consideration to such knowledge as a complement to its discussion of
46 the importance of the best available science, including in the context of Part XII of
47 UNCLOS.

48
49 In addition to international human rights and the rights and knowledge of Indigenous
50 Peoples, Micronesia acknowledges growing interest in the issue of rights of Nature,

1 namely, that Nature itself, or at least certain ecosystems and components therein,
2 enjoy certain rights that are separate from the rights enjoyed by peoples, and which
3 States must safeguard on behalf of Nature or the components therein. At least one
4 State Party to UNCLOS has enshrined the rights of Nature as a whole, including the
5 marine environment, in its national constitution, while localities in other States
6 Parties to UNCLOS have recognized the rights of certain environmental components
7 in their jurisdictions, drawing in part on Indigenous views of Nature.

8
9 To the extent that UNCLOS imposes obligations pertaining to the protection and
10 preservation of the marine environment for its own sake, this raises the intriguing
11 notion that the marine environment, or at least certain components therein, should
12 be deemed to have certain rights under international law, which States Parties to
13 UNCLOS must safeguard, including by preventing dangerous anthropogenic
14 greenhouse gas emission interference with the atmosphere and, by extension, the
15 marine environment.

16
17 Indeed, Part XII of UNCLOS, including the key articles 192 and 194, contemplate
18 harm to the marine environment in and of itself, in addition to harm to the enjoyment
19 of the marine environment by humankind. In Micronesia's view, UNCLOS is worded
20 expansively enough to allow for the potential designation of components of the
21 marine environment as being rights holders.

22
23 Finally, I turn to the relevance, to the present case, of rules on the responsibility of
24 States for internationally wrongful acts. Micronesia reiterates, as in our written
25 statement in the present case, that such rules refer to and represent international
26 legal obligations in and of themselves, including obligations pertaining to reparations
27 in the form of restitution, compensation and satisfaction. Additionally, article 235 of
28 UNCLOS – which is in Part XII, as Mauritius emphasized earlier – addresses the
29 responsibility and liability of States Parties to UNCLOS in the context of the
30 protection and preservation of the marine environment, including the obligation to
31 cooperate to assure prompt and adequate compensation in respect of all damage
32 caused by pollution of the marine environment.

33
34 Micronesia acknowledges that a number of statements in the present case assert
35 that the scope of the present case should not include questions of the responsibility
36 of States for internationally wrongful acts, given that they are considered “secondary
37 rules” under international law. However, we submit that the wording of the questions
38 in the present case, as submitted by COSIS, does not preclude an expansive view of
39 what is meant by “obligations”, given that secondary rules of State responsibility
40 themselves contain obligations, including obligations whose discharge could lead to
41 the prevention, reduction and control of pollution of the marine environment, as well
42 as the protection and preservation of the marine environment in general.

43
44 Such secondary rules include, among other things, the obligation to make
45 reparations that could include the restoration of the marine environment that is
46 harmed; satisfaction of existing treaty requirements regarding the pollution,
47 protection and preservation of the marine environment; and compensation that could
48 be used to finance efforts to protect and preserve other parts of the marine
49 environment not currently harmed, including from pollution.

1 The request from COSIS refers to obligations without distinguishing between primary
2 and secondary roles, and the Tribunal can very well take a holistic view in this
3 regard.

4
5 Micronesia submits that adherence to such rules of State responsibility is essential to
6 addressing the pollution, protection and preservation of the marine environment,
7 including through various forms of reparations, and we are very pleased to come
8 after the delegation of Mauritius, which made many of the same points.

9
10 To conclude, please allow me to quote select passages from the Preamble of the
11 Constitution of the Federated States of Micronesia, with some light editing to make
12 them more gender neutral:

13
14 The seas bring us together, they do not separate us. Our islands sustain us,
15 our island nation enlarges us and makes us stronger Micronesia began in
16 the days when [humankind] explored seas in rafts and canoes. The
17 Micronesian nation is born in an age when [humans] voyage among the stars;
18 our world itself is an island.

19
20 With those images of common purpose, boldness and humanity's deep connection
21 to a marine environment that is the defining environmental feature of this planet, we
22 stress that a robust, expansive, inclusive advisory opinion from the Tribunal will
23 represent a landmark contribution by the Tribunal to international law on an issue of
24 fundamental importance and profound implications for Small Island Developing
25 States like Micronesia, as well as for the international community as a whole.

26
27 We strongly urge the Tribunal to seize this opportunity to provide authoritative
28 guidance and clarity on what States Parties to UNCLOS are obligated to do under
29 the full sweep of international law to curb the dangerous anthropogenic introduction
30 of greenhouse gas emissions into the atmosphere and the marine environment, and
31 by extension, satisfactorily address the pollution, protection and preservation of the
32 marine environment for the benefit of present and future generations of humankind,
33 and for the sake of the marine environment itself on this tiny, fragile, but hopefully
34 enduring "island" we call home as it sails through the cosmos.

35
36 Mr President, distinguished members of the Tribunal, this concludes Micronesia's
37 oral presentation in these advisory proceedings. I thank you very much for your kind
38 attention and patience.

39
40 **THE PRESIDENT:** Thank you, Mr Yow Mulalap. This brings us to the end of this
41 morning's sitting. The hearing will be resumed at 3:00 p.m. The sitting is now closed.

42
43 **THE CLERK OF THE TRIBUNAL:** All rise.

44
45 *(Lunch break)*