

Mr REGENVANU:

I. INTRODUCTION

1. Mr President, Madam Vice-President, Members of the Court, good morning. It is with a profound sense of urgency and responsibility that I stand before you today, representing the Republic of Vanuatu and the Melanesian Spearhead Group (MSG), in these historic proceedings. The outcome of these proceedings will reverberate across generations, determining the fate of nations like mine and the future of our planet.

2. Vanuatu is a nation of islands and island peoples. Our peoples have built vibrant cultures and traditions over millennia that are intimately intertwined with our ancestral lands and seas. Yet today, we find ourselves on the frontlines of a crisis we did not create — a crisis that threatens our very existence and that of so many other peoples who have come in unprecedented numbers to be heard by this Court.

3. The importance of the questions before this Court cannot be overstated. At issue in this case is the legality under the entire corpus of international law of a certain conduct, displayed by specific States over time, which has interfered with the climate system to the point that has already resulted in injury to Vanuatu and that threatens the survival of my people and of humanity as a whole.

4. The General Assembly, acting by consensus, defined this conduct in clear terms¹. — First, in question (a), the General Assembly refers to “anthropogenic emissions of greenhouse gases”². As stated in the 2023 Synthesis Report of the Intergovernmental Panel on Climate Change (IPCC): “Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming”³. This is not only a statement of the global scientific consensus; it was also adopted line-by-line with the consensus of all States, including all those

¹ Vanuatu Written Statement, paras. 137-157.

² UN General Assembly resolution 77/276: Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023, operative part, question (a).

³ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1; Vanuatu Written Statement, paras. 77-82.

present in these proceedings⁴. The unprecedented risks created by anthropogenic greenhouse gas emissions have been known since at least the 1960s, as detailed in our written submissions⁵. Indeed, in an address on 8 February 1965, then United States President Lyndon Johnson identified the problem in the clearest terms: “This generation has altered the composition of the atmosphere on a global scale through radioactive materials and a steady increase in carbon dioxide from the burning of fossil fuels”⁶.

- Second, the General Assembly specifically referred in preambular paragraph 5 of resolution 77/276 to “conduct of States over time in relation to activities that contribute to climate change and its adverse effects”⁷. The conduct on trial here is that of States, which have failed for over a century, despite increasingly dire warnings, to rein in the emissions from their territories. I must emphasize that, since 1990, emissions have increased by over 50 per cent⁸, reaching an all-time high in 2023 last year⁹. More than half of all CO₂ emissions since 1750 were emitted after 1990¹⁰. Whatever the time frame, there is no excuse.
- Third, a handful of readily identifiable States have produced the vast majority of historic and current greenhouse gas emissions¹¹. Yet other countries, including my own, are suffering the brunt of the consequences. The IPCC has recognized this climate injustice, stating: “Vulnerable communities who have historically contributed the least to current climate change are

⁴ Intergovernmental Panel on Climate Change, Appendix A to the Principles Governing IPCC Work: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports (adopted 15th sess., San José, 15-18 April 1999; amended 37th sess., Batumi, 14-18 October 2013, section 4.4); List of the 195 IPCC member countries: available at: https://www.ipcc.ch/site/assets/uploads/2019/02/ipcc_members.pdf; Vanuatu Written Statement, paras. 68-72.

⁵ Vanuatu Written Statement, paras. 177-192; Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (Vanuatu Written Statement, Exhibit D); MSG Written Statement, para. 298.

⁶ Lyndon B. Johnson, Special Message to the Congress on Conservation and Restoration of Natural Beauty, 8 February 1965; Vanuatu Written Statement, para. 182, fn. 305.

⁷ UN General Assembly resolution 77/276: Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023, preambular paragraph 5, *in fine*.

⁸ UN Environment Programme, *No more hot air, please! With a massive gap between rhetoric and reality, countries draft new climate commitments*, Emissions Gap Report, 2024, p. 5, fig. 2.1.

⁹ UN Environment Programme, 2024, *No more hot air, please! With a massive gap between rhetoric and reality, countries draft new climate commitments*, p. 4.

¹⁰ Institute for European Environmental Policy, “More than half of all CO₂ emissions since 1751 emitted in the last 30 years”, 29 April 2020, available at: <https://ieep.eu/news/more-than-half-of-all-co2-emissions-since-1751-emitted-in-the-last-30-years/>.

¹¹ Vanuatu Written Statement, paras. 73, 152-153, 162-170; Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (Vanuatu Written Statement, Exhibit B).

disproportionately affected”¹². The definition of the relevant conduct in question (*b*) thus reflects the beating heart of this request when it asks the Court to determine the “legal consequences” arising for States whose “acts and omissions . . . have caused significant harm to the climate system and other parts of the environment”¹³.

5. The question is therefore simple at its core. Having regard to their obligations under international law, have those States responsible for climate change acted lawfully? Vanuatu’s position is clear: the conduct responsible for this crisis is unlawful under a range of international obligations, including those explicitly mentioned in resolution 77/276. This is a legal case and, as the Court will know from the written submissions, we are far from being alone in making it¹⁴.

6. Mr President, Madam Vice-President, Members of the Court, our delegation has just returned from the recent COP29 in Baku, where we witnessed first-hand, once again, the failure of the process. It is unconscionable that the COP failed to reach any agreement on cutting emissions. The current emission reduction commitments of States, even if fully respected, will see a catastrophic increase in temperature. For many peoples, including in Vanuatu, the prolonged and systematic failure of the COP process has cost them their well-being, their cultures and even their lives. There is an urgent need for a collective response to climate change grounded not in political convenience but in international law.

7. The Court, as the principal judicial organ of the United Nations, is uniquely positioned to provide authoritative guidance regarding the entire corpus of international law. We look to the Court for recognition that the conduct which has already caused immense harm to my people and so many others is unlawful, that it must cease, and that its consequences must be repaired.

8. In closing, I choose my words carefully when I say that this may well be the most consequential case in the history of humanity. Let us not allow future generations to look back and wonder why the cause of their doom was condoned.

¹² Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2; Vanuatu Written Statement, paras. 83-91, 125-128 and 171-176.

¹³ UN General Assembly resolution 77/276: Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023, operative part, question (*b*).

¹⁴ Vanuatu Written Comments, paras. 149-150.

9. Mr President, Madam Vice President, Members of the Court, I will be followed today by six speakers on behalf of the Republic of Vanuatu and the Melanesian Spearhead Group. First will be Vanuatu's Attorney General, Mr Arnold Loughman, who will emphasize the need for this Court to apply international law to the conduct responsible for climate change. Second will be Mr Ilan Kiloe, who will introduce the Melanesian Spearhead Group and discuss the harms that climate change has already caused to the States and people of Melanesia. Third will be Mr Julian Aguon, who will demonstrate that the conduct responsible for climate change has infringed the rights to self-determination of Melanesian people. Fourth, Professor Jorge Viñuales will explain that this same conduct violates the duties of due diligence, prevention of significant harm to the environment, and the protection and preservation of the marine environment. Next, Professor Margaretha Wewerinke-Singh will discuss the legal consequences resulting from State conduct that breaches these and other rules of international law. Finally, Ms Cynthia Houniuhi will share the impacts of climate change on the youth of present and future generations throughout Melanesia.

10. I thank you for the honour of addressing you. And I now request, Mr President, the Court to call Mr Loughman. Thank you.

The PRESIDENT: I thank Mr Regenvanu. I now give the floor to Mr Arnold Loughman. You have the floor, Sir.

Mr LOUGHMAN:

II. THE NEED FOR INTERNATIONAL LAW TO ADDRESS THE CONDUCT RESPONSIBLE FOR CLIMATE CHANGE

1. Mr President, Madam Vice-President, Members of the Court, as the Attorney General of Vanuatu, my foremost duty is to uphold the Constitution and the rule of law. Our Constitution is a covenant with our people, guaranteeing fundamental rights and freedoms, and committing to the protection of our way of life for present and future generations. Our Constitution also establishes our sovereignty, which we regained in 1980 following more than a century of colonial rule.

2. Yet I stand here before you with a heavy heart. The rights enshrined in our Constitution are being undermined — and not from within, but from the acts and omissions of certain States beyond our borders. We know what the cause of climate change is: a conduct of specific States, which was

explained by Mr Regenvanu, Special Envoy. Vanuatu's contribution to global greenhouse gas emissions is negligible, and yet we are among those most affected by climate change.

3. As the principal legal officer of my country, I have come before this Court because domestic legal remedies are unable to address a crisis of this scope and magnitude. I have come to ask you to uphold the rule of law. Under international law, States have obligations: obligations to act with due diligence; to prevent significant harm to the environment; to reduce their emissions and provide support to countries like mine; to protect the human rights of present and future generations; to protect and preserve the marine environment; and to respect the fundamental rights of my people to self-determination in our own land. The failure by a small number of large-emitting States to fulfil these obligations constitutes an internationally wrongful act, triggering legal consequences under the international law of State responsibility.

4. Each of these States, which are identified on the basis of reliable scientific evidence in Vanuatu's submissions¹⁵, has individually caused significant harm to the climate system and other parts of the environment. Together, they have caused catastrophic harm in the form of climate change and its adverse effects. In a system intended to uphold peace and security, self-determination, the enjoyment of fundamental rights and the protection of the environment, how can the conduct that has taken humanity to the brink of catastrophe, threatening the survival of entire peoples, be lawful and without consequences?

5. We urge the Court to affirm in the clearest terms that this conduct is in breach of the obligations of States under international law and that such breach carries legal consequences.

6. Mr President, Madam Vice-President, Members of the Court, the stakes could not be higher. The survival of my people and so many others is on the line. We trust in the wisdom of this Court to uphold the principles of international law.

7. Thank you for your attention. I would now kindly ask you, Mr President, to call upon Mr Ilan Kiloe to take the floor. Thank you.

The PRESIDENT: I thank Mr Loughman. I now give the floor to Mr Ilan Kiloe. You have the floor, Sir.

¹⁵ Vanuatu Written Statement, paras. 73, 152-153 and 162-170; Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (Vanuatu Written Statement, Exhibit B).

Mr KILOE:

III. INTRODUCTION OF THE MELANESIAN SPEARHEAD GROUP AND ADVERSE EFFECTS OF CLIMATE CHANGE IN MELANESIA

1. Mr President, Madam Vice-President, Members of the Court, I have the honour to address you this morning on behalf of the Melanesian Spearhead Group (MSG), which brings together the Republic of Fiji, the Independent State of Papua New Guinea, Solomon Islands, Vanuatu and the Kanak Socialist National Liberation Front of New Caledonia (FLNKS). New Caledonia is a non-self-governing territory and FLNKS represents the indigenous Melanesian Kanak people. The peoples of West Papua and the Torres Strait are also our Melanesian brothers and sisters.

2. Melanesia is a tapestry of diverse people, each with their own rich cultures, languages and traditions. But we also share, in the words of the Melanesian philosopher, Bernard Narokobi, a “common cultural and spiritual unity”¹⁶ stemming from our interconnectedness with our environment. We are “placepersons”, which means we *are* the places; we are the landscapes, we are the waters, and we are the soils, the stones, and we are the flora and the fauna, we are the weather, the seasons, and the spirits of our ancestral territories.

3. Yet now, across our sea of islands, anthropogenic climate change has imperilled our peoples’ physical survival and ripped apart the integral relationships between people and place that grounds our very existence. Simply put, climate change has unravelled the fabric of our lives.

4. As the Court knows, we have submitted 35 testimonies from across communities in Melanesia. These testimonies contain the stories and the realities of our fathers, our mothers and our children. Through these testimonies, our people shared their sacred knowledge, their sacrifice, and their suffering and their grief. In return, they ask only that we bring their voices here, to this Great Hall of Justice, so that the Court can understand what they are going through and how much they have lost. We respectfully ask the Court to read the testimonies of our people with great care to better understand what climate change means for them, including the concrete impact on their right to self-determination.

¹⁶ Bernard Narokobi, *The Melanesian Way*, pp. 6-7, 1983, Institute of Papua New Guinea Studies.

5. Self-determination is at the heart of MSG's mission. Each of MSG's member States emerged from colonial rule less than fifty years ago. Yet climate change is now robbing our peoples of their hard-won self-determination. Melanesian peoples have been deprived of their means of subsistence, lost their territories and suffered the collapse of their self-determined governance systems, economies and cultures. These losses represent severe violations of their right to self-determination.

6. Such violations are especially devastating for the Kanak people, and for other Melanesian peoples who are still colonized, as they compound the ongoing violations they are already enduring due to their dependent political status. Non-self-governing peoples lack the ability to control their responses to climate change or, indeed, even to appear before this honourable Court. MSG is proud to count the Kanak Socialist National Liberation Front (FLNKS) among its membership and to bring the otherwise unheard voices of the colonized people to these important proceedings.

7. More generally, the injustice of the climate crisis is inseparable from our shared colonial histories. The majority of anthropogenic greenhouse gas emissions can be attributed to the conduct of a few readily identifiable States, some of which colonized and exploited the land, the resources and the peoples of Melanesia. We have not yet recovered from the enduring violence that colonization has inflicted on us, as we struggle to rebuild and assert ourselves within a system we do not create. Climate change is now depriving our peoples, again, of our ability to enjoy our right to self-determination in our land. Mr President, Madam Vice-President, and Members of the Court, the harsh reality is that many of our people will not survive.

8. The conduct responsible for these existential harms cannot — I repeat, cannot — be lawful under international law. In closing, MSG joins Vanuatu in asking the Court to affirm that this conduct is unlawful, with ensuing legal consequences.

9. I thank you for your courtesy and attention. Mr President, I respectfully request that you now call Mr Julian Aguon to the podium. I thank you.

The PRESIDENT: I thank Mr Kiloe. I now give the floor to Mr Julian Aguon. You have the floor, Sir.

Mr AGUON:

IV. VIOLATIONS OF THE RIGHT TO SELF-DETERMINATION

1. Mr President, Madam Vice-President, Members of the Court, the right to self-determination is a cornerstone of the international legal order. This Court has characterized self-determination as both an “essential principle[] of contemporary international law”¹⁷ and as a “fundamental human right, [with] a broad scope of application”¹⁸. Its realization is — to quote the United Nations Human Rights Committee — “an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights”¹⁹. The right to self-determination gives rise to obligations of an *erga omnes* character²⁰. The right is also widely recognized as a peremptory norm of international law²¹.

2. Self-determination guarantees the right of all peoples to freely determine their political status and freely pursue their economic, social and cultural development²². It also encompasses their rights to maintain their territorial integrity and permanent sovereignty over their natural resources²³. Yet the conduct responsible for climate change has already infringed on the right to self-determination for the many peoples of Melanesia.

3. Over time and generations, the peoples of Melanesia have self-determined, developing sophisticated systems of governance, economies, cultures and cosmologies grounded in the intimate

¹⁷ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29.

¹⁸ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 131, para. 144.

¹⁹ UN Human Rights Committee, *General Comment No. 12*, Twenty-first session (1984), para. 1.

²⁰ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 139, para. 180; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), pp. 172, 199, paras. 88, 155-156; UN Human Rights Committee, *General Comment No. 12*, Twenty-first session (1984), para. 5.

²¹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, para. 233; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, I.C.J. Reports 2019, separate opinion of Vice-President Sebutinde, pp. 283-291, paras. 25-45; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, separate opinion of Judge Gomez Robledo, paras. 18-22; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, declaration of Judge Tladi, paras. 14-16; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, I.C.J. Reports 2019, separate opinion of Judge Robinson, p. 317, para. 71 (a); Dire Tladi, Fourth Report of the Special Rapporteur on Peremptory Norms of General International Law (Jus Cogens), 31 January 2019, UN doc A/CN.4/727, pp. 48-52, paras. 108-115; Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries, Yearbook of the International Law Commission, 2022, vol. II, Part Two, conclusion 23 and Annex, letter (h).

²² *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, para. 241.

²³ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, paras. 237 and 240.

relationship between each people and their place. The well-established adverse effects of climate change have caused a total collapse of these self-determined ways of life²⁴. Melanesian peoples have already suffered forced dislocations from their traditional territories, loss of natural resources essential for both cultural and physical subsistence, breakdown of political systems and means of self-governance, and rupture of relationships to the cosmos. In short, they have lost nearly everything that has, since time immemorial, formed their very essence as peoples.

4. In its written submissions²⁵, MSG has catalogued these horrors in great detail by way of testimonies²⁶, collected from communities across Melanesia — including but not limited to the Ouara Tribe of New Caledonia²⁷, the people of Veraibari Village in Papua New Guinea²⁸, the villagers of Vunidogoloa, Fiji²⁹, the people of Malaita Province, Solomon Islands³⁰, and the people of Yakel Village, Vanuatu³¹. These testimonies unequivocally demonstrate that the conduct responsible for climate change has already caused grievous violations of the right to self-determination of peoples across the subregion.

5. The same is true at the level of sovereign States³². In Vanuatu, for instance, unrelenting natural disasters have flung the nation into a near-constant state of emergency. The Sisyphean task of responding to climate disasters has left the country simply unable to pursue its aspirations for sustainable development and has forced the Government to take on substantial debt, thereby inducing dependency³³. These constraints, together with the degradation and destruction of the nation's natural resources, sharply curtail Vanuatu's ability to self-govern and freely determine its economic, social and cultural development.

²⁴ MSG Written Statement, paras. 59-82.

²⁵ MSG Written Comments, paras. 59-82.

²⁶ MSG Written Statement, Exhibits 5-39.

²⁷ MSG Written Statement, Exhibit 12.

²⁸ MSG Written Statement, Exhibit 14

²⁹ MSG Written Statement, Exhibits 6-8.

³⁰ MSG Written Statement, Exhibits 15-17.

³¹ MSG Written Statement, Exhibits 21-27.

³² Vanuatu Written Statement, paras. 294-301, 514; MSG Written Comments, paras. 71-75, 82; Vanuatu Written Comments, table 2, p. 85.

³³ MSG Written Comments, paras. 71-75.

6. Worse is yet to come. Rising sea levels are projected to submerge the entire territory of certain small island States — possibly within decades³⁴. This would inhibit the sovereignty of these States and, thus, the right of affected peoples to fully enjoy their self-determined political status. It would also force the dispersal of peoples from their ancestral homelands, undermining their right to exist as integral peoples within their own territory, which this Court stated in its most recent Advisory Opinion on the *Occupied Palestinian Territory*, is protected by their right to self-determination³⁵. For the peoples of Melanesia, whose very existence as peoples is fused with their ancestral territories³⁶, this would be tantamount to collective death.

7. No participant in these proceedings has disputed these facts. However, one has argued that these harms do not implicate individual States' obligations. Another has contended that the right of self-determination was not designed to address climate change. These arguments miss the point. While the right to self-determination has a clear normative core — i.e. the right of peoples to determine their own fate — this does not make it a static norm. In fact, the opposite is true, as preserving that core requires the application of the norm in factual situations where that right is most at risk. Indeed, the conduct at issue in this case, profoundly undermines the most core aspects of the self-determination right.

8. All States are obligated to respect the right to self-determination by refraining from any conduct that infringes on the right³⁷. The conduct at issue in this case has caused violations of the right to self-determination — violations which were foreseeable. States engaged in this conduct have thus breached their obligations to respect the right to self-determination, triggering distinct legal consequences.

9. Mr President, Madam Vice-President, Members of the Court, this matter strikes at the very heart of international law. Self-determination enjoys more liberatory heft than any other single norm of international law. Yet the reality is that the conduct of a handful of States has caused severe,

³⁴ Intergovernmental Panel on Climate Change, Chapter 15: Small Islands, in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Full Report* (2022), pp. 382, 2046, 2053-2055, 2095-2096.

³⁵ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 239.

³⁶ MSG Written Statement, paras. 19-20, 245, 330; MSG Written Comments, paras. 79, 149.

³⁷ Vanuatu Written Statement, paras. 302-303.

systemic and sustained violations of this right. The legal framework is robust but still requires your affirmation to translate principles into practice. We urge this Court to reaffirm the rule of law and protect the right of all peoples to self-determination.

10. In closing, throughout these proceedings, we have taken great care to accurately describe the peoples and cultures of Melanesia even though we are aware that most aspects of those same cultures are difficult to translate into any of the languages officially recognized by this Court. But we have done so because, as surely as these peoples deserve to live in the world on their own terms, so too do they deserve to be heard here. The peoples of Melanesia live exceptionally close to the earth and thus feel the vandalism visited upon it acutely. Moreover, theirs represents living, breathing, alternative imaginations — imaginations other than the one that has brought this planet to the brink of ecological collapse. Thus, ensuring they are able to live and thrive in their ancestral spaces is of the utmost importance, and not only for themselves, but for all of humanity.

11. Mr President, Madam Vice-President, Members of the Court, thank you for your attention. Mr President, I now respectfully call upon you to invite Professor Jorge Viñuales to the podium.

The PRESIDENT: I thank Mr Aguon. I now give the floor to Professor Jorge Viñuales. You have the floor, Professor.

Mr VIÑUALES:

V. VIOLATIONS OF THE DUTIES OF DUE DILIGENCE, PREVENTION OF SIGNIFICANT HARM TO THE ENVIRONMENT, AND PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

1. Mr President, Madam Vice-President, Members of the Court, for over 170 years, a handful of States have contributed the overwhelming majority of greenhouse gas emissions, the cause of climate change. For much of this period, international law has required States to act with due diligence, to ensure that their territory is not used in a way that significantly harms others, to prevent significant harm to the environment, which includes the climate system, and to protect and preserve the marine environment.

2. From the *Alabama Claims* arbitration³⁸ and the *Trail Smelter* arbitration³⁹ to this Court's *Corfu Channel* case⁴⁰, its Advisory Opinion on the *Legality of Nuclear Weapons*⁴¹ and its subsequent decisions, most recently in the *Silala* case⁴², these obligations of due diligence and prevention have been recognized as a core requirement of State conduct. Specifically, in 1996, the Court confirmed “[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment”⁴³.

3. Prevention is the cornerstone of international environmental law and it is of general application. The International Tribunal for the Law of the Sea has recalled, in its advisory opinion of May 2024, that the principle of prevention is the source of the obligation to protect and preserve the marine environment⁴⁴. The Inter-American Court of Human Rights, in an advisory opinion of 2017, likewise referred to the obligation of States to prevent significant environmental damage within and outside their territory as a foundation of the rights to life and integrity⁴⁵. The United Nations Framework Convention on Climate Change expressly confirms, at paragraph 8 of its preamble, the application of the prevention principle to anthropogenic emissions of greenhouse gases⁴⁶.

4. The obligations of due diligence and prevention are therefore central to the present proceedings. In resolution 77/276, the General Assembly — acting by consensus — requested the Court to have particular regard to “the duty of due diligence . . . , the principle of prevention of

³⁸ *Alabama Claims of the United States of America against Great Britain*, Award rendered on 14 September 1872 by the tribunal of arbitration established by Article I of the Treaty of Washington of 8 May 1871, XXIX *Reports of International Arbitral Awards*, pp. 129-130.

³⁹ *Trail Smelter Arbitration*, III *Reports of International Arbitral Awards*, p. 1965.

⁴⁰ *Corfu Channel (United Kingdom v. Albania), Merits, Judgment*, I.C.J. *Reports* 1949, p. 22.

⁴¹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. *Reports* 1996 (I).

⁴² *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia), Judgment*, I.C.J. *Reports* 2022 (II), p. 614, para. 99.

⁴³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. *Reports* 1996 (I), pp. 241-242, para. 29.

⁴⁴ *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)*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), para. 186.

⁴⁵ *Advisory Opinion OC-23/17 (“The Environment and Human Rights”)*, Inter-American Court of Human Rights, Series A No. 23, 15 November 2017, para. 174.

⁴⁶ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 *UNTS* 107, preamble, para. 8.

significant harm to the environment and the duty to protect and preserve the marine environment”⁴⁷. Later, in formulating question (b), the General Assembly used the terminology of prevention when asking what are the legal consequences of the acts and omissions of certain States which “have caused significant harm to the climate system and other parts of the environment”⁴⁸.

5. The Court will, therefore, have to clarify what were the main contributors to climate change *required* to do to comply with their due diligence and prevention obligations?

6. In the *Pulp Mills* case, the Court answered a similar question in the following terms: “A State is . . . obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State.”⁴⁹

7. The climate system is, of course, both within and beyond the jurisdiction of the affected States, and, in any event, the obligation of prevention also protects the environment of “areas beyond national control”⁵⁰. In the specific context of climate change, exercising the requisite due diligence entails, according to the IPCC, “rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade”⁵¹. The main source of emissions is the burning of fossil fuels, coal, oil and gas⁵². The International Energy Agency found, in a flagship report of 2021, that reaching net-zero emissions by 2050 requires that no new oil, gas or coal projects are approved, beyond those committed in 2021⁵³.

8. Thus, when it comes to activities that significantly contribute to climate change, the required conduct was and is clear: States which have significantly contributed to climate change were and are

⁴⁷ UN General Assembly resolution 77/276: Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023, operative part, chapeau.

⁴⁸ *Ibid.*, question (b).

⁴⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 56, para. 101.

⁵⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (I), p. 242, para. 29.

⁵¹ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.6.

⁵² IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021), Technical Summary, box TS5, p. 80; Vanuatu Written Comments, paras. 38-39.

⁵³ International Energy Agency, *Net Zero by 2050. A Roadmap for the Global Energy Sector* (Summary for policymakers) (2021), p. 11.

required to achieve deep cuts of their greenhouse gas emissions, as well as of their production of fossil fuels.

9. But they have not. For decades, what we have seen from large emitting and producing States is delay, low ambition and, in practice, concrete plans to expand the extraction and use of fossil fuels. In other words, the exact opposite of their due diligence that was and is required from them.

10. This is not a matter of degree. The contrast between word and deed is stark. Large emitting producing States are proactively expanding their fossil fuel production and consumption, paying lip service to their climate commitments. Vanuatu has substantiated this claim in great detail, both empirically and legally, in its written submissions⁵⁴. But it is useful to recall some figures.

- Since 1990, emissions of greenhouse gases have increased by more than 50 per cent⁵⁵.
- The highest annual emissions ever recorded were, well, in 2023⁵⁶ and figures for 2024 are not yet available.
- According to the International Monetary Fund, the cost of fossil fuel subsidies from States reached an all-time high of US\$7 trillion in 2022⁵⁷, that is more than 23 times the figure that developing countries struggled to secure as climate finance in the recent COP29⁵⁸.
- The 2023 edition of the Production Gap Report from the United Nations Environment Programme, befittingly titled *Phasing down or phasing up?*, with interrogation mark, captures the essence of the problem. Looking at 20 large State emitters, it concludes: “While 17 of the 20 countries profiled have pledged to achieve net-zero emissions, and many have launched initiatives to reduce emissions from fossil fuel production activities, most continue to promote, subsidize, support, and plan on the expansion of fossil fuel production”⁵⁹ That would lead,

⁵⁴ Vanuatu Written Statement, paras. 162-170, 247-248, 267-278, 285-287, 510, 512, 513; Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (Vanuatu Written Statement, Exhibit B); Vanuatu Written Comments, paras. 52-75, 110 and table 1, 165-168 and table 2.

⁵⁵ United Nations Environment Programme, *No more hot air, please! With a massive gap between rhetoric and reality, countries draft new climate commitments*, Emissions Gap Report, 2024, p. 5, fig. 2.1.

⁵⁶ *Ibid.*, 2024, p. 4.

⁵⁷ Simon Black, Antung A. Liu, Ian Parry & Nate Vernon, IMF Fossil Fuel Subsidies Data: 2023 Update (August 2023) IMF Working Paper (Fiscal Affairs Department), Washington, DC, WP/23/169, p. 3.

⁵⁸ Decision -/CMA.6, Matters relating to finance. New collective quantified goal on climate finance (advanced version), UN doc. FCCC/PA/CMA/2024/L.22, 24 November 2024, para. 8.

⁵⁹ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises*, 2023, p. 5.

according to the UNEP, “to global production levels in 2030 that are 460%, 29%, and 82% higher for coal, oil, and gas, respectively”⁶⁰.

As I said earlier, lip service to climate commitments.

11. Mr President, Madam Vice-President, Members of the Court, such a deliberate level of subsidies and inaction attributable to specific States over a long period of time in full knowledge of the catastrophic effects for humans and the environment, at least since the 1960s⁶¹, amounts to a serious violation of States’ obligations to act with due diligence, prevent significant harm to the environment, and protect and preserve the marine environment.

12. To echo the words of Attorney General Loughman, how could this deliberate conduct be consistent with international law? Major emitters and producers, in the written submissions, have tried to hide behind the enormity of the problem, overstating the complexity of the legal question. Yet, if an isolated incident of transboundary pollution is unlawful, it is unthinkable that the ultimate form of pollution is not. It would be like accepting the tragic irony, famously noted by Raphael Lemkin, that murder is unlawful, but genocide is not⁶².

13. Thank you for your attention, Mr President. I now respectfully request that you call Professor Margaretha Wewerinke-Singh to the podium.

The PRESIDENT: I thank Professor Viñuales. I now give the floor to Professor Margaretha Wewerinke-Singh. Professor, you have the floor.

Ms WEWERINKE-SINGH:

VI. LEGAL CONSEQUENCES OF THESE VIOLATIONS

1. Mr President, Madam Vice-President, Members of the Court. *Ubi jus ibi remedium*: where there is a right, there is a remedy in breach.

2. The conduct concerned in this case violates international law. The Court has been asked to articulate the legal consequences of these violations. As a majority of Participants have stressed,

⁶⁰ *Ibid.*, pp. 4-5.

⁶¹ Vanuatu Written Statement, paras. 177-192; Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (Vanuatu Written Statement, Exhibit D).

⁶² Raphael Lemkin, *Genocide*, 15/2 *American Scholar*, 1946, pp. 227-230.

these legal consequences are governed by the general law of State responsibility. This is confirmed by the explicit reference to “legal consequences” in question (b) of the Request. It is also clear from the use, in both the English and French texts, of the exact terminology of Article 42 of the International Law Commission’s Articles on the Responsibility of States for Internationally Wrongful Acts⁶³.

3. Remarkably, a few Participants have argued that the law of State responsibility cannot be effectively applied to climate change. But the opposite is true. *Acts*, such as issuing licences for fossil fuel exploration and extraction or granting massive fossil fuel subsidies, as well as *omissions*, such as the failure to regulate emissions, or to provide finance as required under the United Nations Framework Convention on Climate Change and the Paris Agreement, are plainly “conduct” that is attributable to States under the general rule codified in Article 4 of the ILC Articles. The nature of the breach is also captured, in all its complexity, by the rule in Article 15. This rule concerns breaches arising from a composite act, understood as “a series of actions or omissions defined in the aggregate as wrongful”. Furthermore, Article 47 confirms that, when multiple States have displayed the same wrongful conduct, the responsibility of each may be invoked.

4. The suggestion that the UN Framework Convention on Climate Change or the Paris Agreement replaces these secondary rules is, simply put, wrong⁶⁴. Indeed, it has already been dismissed, implicitly or explicitly, by courts around the world⁶⁵, including recently by the European Court of Human Rights, whose judgment in *KlimaSeniorinnen v. Switzerland* expressly relies on

⁶³ UN General Assembly resolution 77/276: Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023, operative part, question (b) (i); Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, as corrected, Art. 42; Vanuatu Written Statement, paras. 544-545.

⁶⁴ Vanuatu Written Comments, para. 216; Kenya Written Statement, paras. 6.100-6.101; MSG Written Statement, para. 322; OACPS Written Statement, para. 188.

⁶⁵ *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 442-443; *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)*, ITLOS Case No. 31, Advisory Opinion (21 May 2024), paras. 223, 286; see also UN Human Rights Committee, Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No 3624/2019, 21 July 2022, UN doc. CCPR/C/135/D/3624/2019, paras. 9-11; *Neubauer and Others v. Germany* [2021] 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (German Federal Constitutional Court); *Advocate Padam Bahadur Shrestha v. Prime Minister and Office of Council of Ministers and Others*, [2018] Order No 074-WO-0283 (2075/09/10 BS) (Supreme Court of Nepal), paras. 13-14; *Salamanca Mancera and others v. Presidencia de la Republica de Colombia and others*, 29 January 2018 (Tribunal Superior de Bogotá), paras. 5.2-5.6; *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda* [2019] ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands), paras. 5.7.5-5.7.9; *Re Constitutionality of Article 42(1)1 of the Framework Act on Low Carbon, Green Growth* (Case No. 2020HunMa289; Case No. 2021HunMa1264; Case No. 2022HunMa854; Case No. 2023HunMa846), 29 August 2024 (Constitutional Court of Korea).

Article 47 of the ILC Articles, affirming that States can be held internationally responsible for violations stemming from their contributions to climate change⁶⁶. Likewise, the International Tribunal for the Law of the Sea confirmed in its advisory opinion of May 2024 that international responsibility attaches where a State breaches its climate-related obligations under the UN Convention on the Law of the Sea⁶⁷.

5. Mr President, Madam Vice-President, distinguished Members of the Court, this Court is called upon to affirm a similar, yet even more fundamental point: that a State which, by its acts and omissions, has caused significant harm to the climate system and other parts of the environment has thereby breached international law; and that, in the ordinary way, the general law of State responsibility governs the legal consequences of that breach.

6. The Court must not be silent on this crucial point. Silence risks implying that international law condones this conduct. That it carries no legal consequences. And, that it can continue with impunity.

7. As we all know, the legal consequences for such internationally wrongful conduct are well established. First, responsible States must cease the wrongful conduct⁶⁸. What does this mean? In our submission, this means not only stopping actions that fuel the fire — such as expanding, and providing subsidies for fossil fuels — but also dismantling the systemic structures that drive emissions. It requires a suite of regulatory measures capable of achieving immediate and deep emission cuts, bearing in mind that the obligation of cessation is not fulfilled until a responsible State actually ceases to cause further harm.

8. Second, as several Participants have highlighted, assurances of non-repetition must be provided⁶⁹, including effective safeguards against false solutions that risk aggravating the harm, such as geoengineering.

⁶⁶ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 442-443.

⁶⁷ 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), ITLOS Case No. 31, Advisory Opinion (21 May 2024), paras. 223, 286.

⁶⁸ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, as corrected, Art. 30; Vanuatu Written Comments, paras. 175-185.

⁶⁹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, as corrected, Art. 30.

9. Third, reparations. While some Participants cite difficulties establishing a causal link between wrongful conduct and specific injury as if making reparations impossible, others rightly point out that attribution science can establish such links with great precision. More importantly, however, the Court does not need to identify a source-specific causal link to clarify the content of reparations as a legal consequence.

10. The cardinal principle is crystal clear. Responsible States are required to make full reparation for the injury they have caused. How is this given effect in this case? In our submission, responsibility for reparations can and must be proportionate to historic contributions to the harm. As the Supreme Court of the Netherlands held in the *Urgenda* case, an underlying principle of Article 47 of the ILC Articles is that “partial fault also justifies partial responsibility”⁷⁰. Examples such as the Climate Superfund Act passed by the State of Vermont in the United States earlier this year show that holding specific polluters accountable for climate damages is not only possible in theory but achievable in practice⁷¹. We urge the Court to ensure that international law is given full force in this context.

11. Restitution is, of course, the primary form of reparations⁷², and there is ample scope for restitution in its ordinary understanding. For instance, ecosystem restoration is possible at least to some extent, and responsible States must make every effort to achieve and support it. For harms that cannot be undone, monetary compensation is due⁷³. The Court’s express recognition of this obligation is critical in a context where the burden of addressing losses and damages, in practice, remains on those injured. The financial mechanisms established in international negotiations have not changed

⁷⁰ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, as corrected, Art. 34; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *I.C.J. Reports 2010 (I)*, p. 14, para. 273; *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion of 1 February 2011, ITLOS Case No. 17, para. 196.

⁷¹ Climate Superfund Act (Vermont) (No. 122 of 2024).

⁷² Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, as corrected, Art. 35, commentary, para. 3; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, *I.C.J. Reports 2012 (I)*, p. 153, para. 137.

⁷³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, as corrected, Art 36; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *I.C.J. Reports 2010 (I)*, p. 103, para. 273; *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion of 1 February 2011, ITLOS Case No. 17, paras. 196-197.

this reality. As a matter of law, their establishment in no way negates or replaces the obligation of compensation arising from breaches of international law.

12. Satisfaction is required to repair spiritual, dignitary and other aspects of the injury that cannot be cured through restitution or compensation. It should cover a wide range of measures, including acknowledgement of the harm and commemorations and tributes to the victims⁷⁴. The participatory rights of children and youth, who occupy a proximate position to future generations⁷⁵, merit special regard in this context. The recognition of the unlawful character of the relevant conduct is also an important form of satisfaction, consistent with the Court's practice.

13. Fourth, and finally, due to the peremptory nature of the right to self-determination and the *erga omnes* character of relevant obligations, the breach triggers additional obligations for all States and international organizations. Specifically, States and international organizations must not recognize the unlawful situation resulting from the breach. A concrete implication is the obligation to recognize the territory and maritime spaces of small island developing States, as established under the law of the sea, and of their continued sovereignty and statehood despite the effects of climate change⁷⁶. All States and international organizations must also cooperate to bring the breach to an end⁷⁷.

14. Mr President, Madam Vice-President, Members of the Court, the law of State responsibility serves as the international law's foundation. It ensures that no State is above the law. That violations have consequences. That rights do, indeed, come with remedies for victims. The magnitude of climate change, and the severity of the harm already suffered, underscore the urgency of applying these fundamental principles, now, in these proceedings, with full force.

⁷⁴ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, Vol. II, Part Two, as corrected, Art. 37.

⁷⁵ Maastricht Principles on the Human Rights of Future Generations, preambular paragraph VII and Art. 22; Vanuatu Written Statement, para. 526; Vanuatu Written Comments, table 2, p. 97.

⁷⁶ Vanuatu Written Statement, paras. 637-640; Vanuatu Written Comments, para. 231; MSG Written Statement, para. 326; MSG Written Comments, para. 237.

⁷⁷ Vanuatu Written Comments, para. 231; Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, Vol. II, Part Two, as corrected, Art. 41; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, pp. 139-140, paras. 180-182; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 200, para. 159.

15. Thank you for your careful attention. Mr President, I now kindly ask you to invite Ms Cynthia Houniuhi, a representative of the youth, to the floor to conclude the oral submissions on behalf of the Republic of Vanuatu and the Melanesian Spearhead Group.

The PRESIDENT: I thank Professor Wewerinke-Singh. I now give the floor to Ms Cynthia Houniuhi. Madam, you have the floor.

Ms HOUNIUHI:

VII. PERSPECTIVE OF THE YOUTH OF PRESENT AND FUTURE GENERATIONS

1. Mr President, Madam Vice-President, Members of the Court. My name is Cynthia Rosah Bareagihaka Houniuhi. I am from Makira and South Malaita in the Solomon Islands. Within my blood flows the collective memory of my ancestors (*Hutaa*) who were conceived from the divine law (*Warato'o*) and have thrived on our islands since time immemorial. I stand before you, not as an individual, but as the living embodiment of the voices of our people — past, present and future. I also have the honour to address you as President of the Pacific Island Students Fighting Climate Change, the youth organization that began the campaign to bring climate change before you. Five years ago, I was one of those students who together dreamed up a plan to seek an advisory opinion from this Court and brought that dream to the Government of Vanuatu.

2. Twenty-nine years ago, when this Court considered the legality of the threat or use of nuclear weapons, a Marshallese mother stood where I am standing now: Lijon Eknilang. She was a survivor of the United States' nuclear weapons testing programme, which unleashed 67 nuclear weapons upon her homeland and her people. She appeared before this Court to share the grave injustice inflicted upon her life, her nation, and our region, all in the spirit of contributing to the vision of a peaceful and better world. I am here to do the same.

3. For my people, our land (*Mako*) is the most precious. Land is our mother, a living, timeless plane where generations past, present and future converge, interconnected and sustained in an unbroken cycle of life. It is upon our land that our values and principles are rooted, preserved and transmitted across generations.

4. Our land stretches to the distant waters, where the shark (*Pa'ewa*) swims, rises to the heights where the eagle (*Hatta*) soars, spans the rivers traversed by the crocodile (*Huara*), and reaches into the depths of soil where the snake (*Maā*) burrows. For my *Are'Are* people, the birthright custodians (*Rionimae Noni*) work in sync with our clan totems (*Rionimae*) to safeguard the fundamental relationships with the divine law (*Warato'o*), land (*Mako*) and people (*Noni*).

5. My people understand the continuous duty of past and present generations to protect the environment for the future generations (*Kiramo*). It is the adherence to this duty that enabled my people to live and thrive in harmony with our environment. This duty (*Arata ni Noni O'oanaha*) is our understanding of the legal principle of intergenerational equity.

6. Climate change is undermining our ability to uphold this sacred contract. My people's land of *Fanalei* is nearing a critical point, on the verge of being completely engulfed by the rising seas. Without our land, our bodies and memories are severed from the fundamental relationships that define who we are.

7. Those who stand to lose are the future generations. Their future is uncertain, reliant upon the decision-making of a handful of large-emitting States which, as my colleagues explained, are responsible for climate change. These States have not only enabled but proactively encouraged the production and consumption of fossil fuels and continue to do so today.

8. When the Paris Agreement was concluded, the youth of the world looked up to it as an instrument of hope. Today, the entire COP process has been hijacked by large emitters and major fossil fuel producers, turning it into a polluter safe-harbour and a trap for everyone else. No good-faith understanding of the UNFCCC or the Paris Agreement can be consistent with the conduct of large emitters. By depriving the UNFCCC, the Paris Agreement and COP process of any good-faith meaning, these States have turned all three against their spirit.

9. For my people, and for the world's youth and future generations, the consequences are existential.

10. As judges of the World Court, you possess the power to help us course-correct and renew hope in humanity's ability to address the greatest challenge of our time. And you can do this simply by applying international law to the conduct responsible for climate change.

Palahenga Diana, and thank you.

The PRESIDENT: I thank the representatives of Vanuatu and the Melanesian Spearhead Group for their presentation. Before I invite the next delegation to take the floor, the Court will observe a break of 15 minutes. The hearing is suspended.

The Court is adjourned from 11.15 a.m. to 11.30

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, South Africa, to address the Court and I call His Excellency Mr Vusimuzi Madonsela to the podium. You have the floor, Sir.

Mr MADONSELA:

I. INTRODUCTION

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour to address you today on behalf of the Republic of South Africa on the *Obligations of States in respect of Climate Change*.

2. The consequences of climate change are far-reaching and are already being felt, particularly in developing countries. The best available science tells us the worst is yet to come.

3. My own country, South Africa, is especially vulnerable to the vagaries of climate change due to its location in a region with temperature levels that are rising faster than the global average. We are already facing significant challenges of water scarcity and food insecurity, compounded by slow-onset and extreme weather events. The unprecedented severe flooding and destruction of infrastructure that occurred over the past few years is now followed by the onset of a new drought cycle. This has a devastating impact on our people and the country's ecosystems, which is especially concerning as South Africa is one of the most biologically diverse countries.

4. Domestically, South Africa is a country in which these severe climate challenges compound the most pressing triple challenges of poverty, unemployment and inequality. South Africa's Constitution guarantees the right to have the environment protected for present and future generations, and to do so in a way that promotes justifiable economic and social development.

5. South Africa is fully committed to contributing its best efforts towards addressing the global challenge of climate change. In the context of our just transition and a commitment to a sustainable