# Transcript:

# Government of Vanuatu Press Briefing (November 7, 2024) on Forthcoming International Court of Justice (ICJ) Climate Case

[Link to Video Recording]

For more information, contact:
Preeti Singh at psingh@burness.com
Anne-Sophie Vivier at annesophie.vivier@gmail.com

**[00:00:01.040] - Ellen Wilson (Moderator)**

Thank you for joining us today. I'm Ellen Wilson, and I'll be the moderator for this press briefing, which is hosted by the Government of Vanuatu. Today's press briefing will discuss the landmark International Court of Justice or ICJ, Climate Change Case, and the impacts on international climate action. We will also address the impact of climate change on the country of Vanuatu and why in action at the UN level necessitates legal action. We will also discuss the significance of the ICJ case in changing the trajectory of climate change for future generations and the Vanuatu legal strategy. Also to note, just announced this week is that Vanuatu will be the first country presenting at the ICJ on December 2. Now, I'll briefly introduce today's speakers in speaking order. Ralph Regenvanu is Special Envoy for Climate Change and Environment with the Government of Vanuatu. Margaretha Wewerinke-Singh is legal counsel for Vanuatu's ICJ case, an international lawyer at Blue Ocean Law. Crristelle Pratt is Assistant Secretary General of the Organization of African, Caribbean, and Pacific States, or OACPS. Vishal Prasad is campaign director of Pacific Islands Students Fighting Climate Change. We will have time for questions following the speaker's remarks.

**[00:01:44.520] - Ellen Wilson (Moderator)**

If you are a member of the media and you'd like to submit a question during the briefing, please do so via the chat. Please list your name, media outlet, question, and the speaker to whom you'd like to address your question. We hope to cover as as many as possible. With that, I will hand it over to Special Envoy Ralph Regenvanu. Ralph, please go ahead.

**[00:02:11.500] - Ralph Regenvanu**

Thank you, Ellen. In Vanuatu, where I'm speaking from, and across the Pacific Islands, we live on the front lines of climate change impacts. Each year, our people witness the slow onset effects of climate change, like a sea inching closer to our homes and also the fast impact, like the storms growing stronger and more frequent. We're witnessing the destruction of our lands and livelihoods, our culture, and our human rights. Last year, for example, we were struck by two Category 4 cyclones within days of each other in the month of March, followed by a Category 5 storm later the same year in October, which is one month before cyclone season actually officially starts. Each of these climate disasters we face cost us dearly. We have casualties, injuries, property damage, complete disruption of our daily life. And we generally lose up to a half of GDP each time one of these severe tropical cyclone strike. We are resilient people, and we always have been, but resilience is not enough. For more than In five decades, we know that science has delivered stark warnings about the consequences of greenhouse gas emissions. And this is not only a crisis for Vanuatu, what Vanuatu has experienced for many years is what the rest of the world is now just beginning to feel, and we can see this on the news every day.

**[00:03:48.280] - Ralph Regenvanu**

Seven years ago, 196 parties adopted the Paris Agreement, which was a monumental step meant to safeguard both people on the planet. Yet, nearly a decade later, Vanuatu and other small island states are still trying to prevent further harm while repairing the loss and damage that has already occurred, while seeing a lack of action by these parties that have signed up to the Paris Agreement. While Vanuatu and other small island states are among the most affected by climate change, our nations contribute only a fraction to global emissions. The lack of progress that the UN climate change talks in lowering emissions and slowing down climate change despite that the Paris Agreement, necessitates the legal action we are trying to take now. Our recent call for an advisory opinion from the International Court of Justice on Climate Change is at a pivotal moment in our journey to establish a stronger framework of accountability, one that sets clear international legal obligations for climate action. Vanuatu successfully led a coalition of 132 nations in adopting, by consensus, a UN General Assembly resolution seeking this advisory opinion to clarify how existing laws can be applied to strengthen climate action, protect people and the environment, and uphold the Paris Agreement.

**[00:05:10.000] - Ralph Regenvanu**

The case brings attention to the link between environmental degradation and fundamental human rights, and initially came about from a spark of hope from law students in the Pacific, which you'll be hearing about more later from Vishal Prasad, who is the campaign director of the Pacific Island students fighting climate change. This marks the first time the ICJ has ever addressed the climate crisis, and it's a turning point in the global fight against climate change, and it's an opportunity to clarify what nations owe to each other and to the generations yet to come. It's also an opportunity to move forward with moral clarity, and it's a step towards a commitment to justice. I'm hopeful that these proceedings at the ICJ will ignite a stronger global commitment to act decisively, ensuring that justice and accountability sustainability become the cornerstones of climate action. Thank you, Ellen.

**[00:06:05.630] - Ellen Wilson (Moderator)**

Thank you, Special Envoy Ralph. Now, we will hear from Margaretha Wewerinke-Singh. Please go ahead, Margaretha.

**[00:06:14.520] - Margaretha Wewerinke-Singh**

Thank you very much. So these ICJ proceedings ahead of us mark a historic moment for climate justice with unprecedented participation that reflects the urgency of addressing ongoing climate destruction. The schedule for the hearings that has just been released by the Registra is extraordinary. Over two weeks in December, starting on the 2 of December, we will hear from 99 states and 11 international organizations, which include many first-time participants in ICJ proceedings. This makes the case the most... It marks the most extensive participation in ICJ hearings ever. In terms of participation, we can safely say that this is the biggest case in human history. Let me talk a little bit about what is at stake. The court faces two fundamental questions about state's obligations on the international law, their duties to protect the climate system, and the legal consequences when they cause significant harm through their actions or inactions. These are not abstract legal questions. They address ongoing violations of international law affecting communities and nations today. The evidence and arguments are already before the courts in unprecedented volume, 91

written statement and 62 additional written comments submitted in the written phase. And now, beginning with Vanuatu's opening statement on December second, which it will be jointly with the Melanesian Sparehead Group, we'll hear detailed arguments from a remarkable diverse coalition of voices, from small island nations to major economies, from the African Union to the European Union, from the Organization of African Caribbean and Pacific States, to the World Health Organization, and even the Organization of the Petroleum Exporting Countries.

**[00:08:39.050] - Margaretha Wewerinke-Singh**

What makes these proceedings historic isn't just their skill, but their substance. We are not discussing future risks or theoretical threats. Territories are already disappearing, livelihoods are being destroyed, and fundamental human rights are being violated right now. And The conduct that is causing these violations has long been disguised as a lawful. At first glance, this may seem accurate. We may look at the Paris Agreement, the most prominent climate treaty under the UN Framework Convention, and we may conclude that it lacks concrete emission reduction obligations for states. The nationally-determined contributions, NDCs, or pledges that states submit under the Paris Agreement are voluntary. However, climate change is not just regulated by the Paris Agreement. There are obligations under general international law binding all states irrespective of what treaties they have ratified. There are obligations under the law of the sea, environmental law, and human rights, which are equally relevant. If we look at this whole tapestry of obligations and apply it to the evidence we have about the conduct of states, on the one hand, that is their emissions over time, their contributions to global greenhouse gas emissions, the stock of emissions that has accumulated in the global atmosphere, and then on the other hand, the knowledge that they had and have about the risks associated with those emissions.

**[00:10:22.840] - Margaretha Wewerinke-Singh**

We look at the impact that this conduct has produced, then a different picture of legality, or an illegality, emerges. So we then bring into picture how the failure to protect the marine environment against climate pollution violates obligations under the law of the sea, how the same conduct violates the right of self-determination of peoples and other internationally protected human rights. And then we conclude that, broadly speaking, the destruction of the Earth's climate system constitutes an

ongoing breach of international law, and as such, it demands immediate legal recognition and cooperative measures to seize that unlawful conduct, to repair the harm, and to protect our futures from further destruction. So what began as a grassroots initiative, in Vanuatu, culminating in the unanimous adoption of UN General Assembly Resolution 77-76 has now evolved into one of the most significant legal proceedings in climate justice history, and I think we can say in human history. And the advisory opinion that the court is set to deliver has the potential to establish and clarify these very critical obligations and consequences for climate harm, providing a foundation for accountability and redress for communities and peoples already suffering losses and damages. So, again, it's not just about future commitments, it's about addressing current and violations, and ensuring justice for those whose rights are being breached today.

**[00:12:20.590] - Margaretha Wewerinke-Singh**

It's about ensuring that our legal frameworks don't become dead letter, but that they protect our worlds and generations to come.

**[00:12:29.940] - Ellen Wilson (Moderator)**

Thank you, Margaretha. Now we will hear from Crristelle Pratt. Please go ahead, Crristelle. Oh, you're on mute, Christelle.

**[00:12:45.680] - Cristelle Pratt**

Thank you very much, Ellen. Good morning, good afternoon, and good evening to you all. As the Assistant Secretary-General for Environment and Climate Action for the Organization of African, Caribbean, and Pacific States, the OACPS, an international organization comprising 79 all developing, all vulnerable countries across Africa, the Caribbean, and the Pacific, I have witnessed firsthand how this Vanuatu led initiative, this ICJ initiative, has united nations across oceans and continents in an unprecedented way. Our member states are just are not just facing similar challenges. They are experiencing tangible losses and carrying the heaviest of burdens, and these right now. For example, the very recent floods in West Africa and Central Africa that have claimed thousands of lives, to the exceptionally long and severe drought gripping countries in East and Southern Africa, affecting tens of millions of people and impacting longer term the lives of at least 20 million children

who are now severely malnourished. In the Caribbean, we have seen intensifying hurricanes arriving much earlier, such as the recent Category 5 hurricane Beryl, which caused tens of billions of dollars in total economic losses and damages, and also led to losses of life across several countries. And in the Pacific, more intense and frequent catastrophic tropical cyclones, such as those just described by Vanuatu's Special Envoy for Environment and Climate Change, Ralph Regenvanu.

**[00:14:36.490] - Cristelle Pratt**

And for OACPS' Atoll states, saltwater intrusion affecting their freshwater lenses and food gardens and sea level rise are real and present. These examples are testament that climate change is already severely impacting our people's lives, livelihoods, and territories, and for many, their greatest existential threat. The remarkable coalition supporting this case extends far beyond small island developing states. We have seen strong backing from nations across Latin America Africa, Europe, and Asia. This isn't simply about island nations. It is about all countries and their communities and citizens, recognizing that the destruction from climate change violates fundamental principles of international law. What makes this case for the OACPS, its 79 members in six regions, truly historic, is how it has mobilized support across traditional geopolitical divides. When nations as diverse as New Zealand and Nigeria, the Bahamas and Bangladesh stand together, it demonstrates that protecting the climate system for the integrity of the Earth system is a universal legal obligation that transcends regional and national interests. The OACPS has played a crucial role in amplifying the voices of our member states and coordinating our collective legal position. We have helped ensure that the experiences and legal arguments of our countries, all from the global south, all bearing the brunt of climate change damages, are central to this case.

**[00:16:32.860] - Cristelle Pratt**

This broad coalition sends a powerful message, and that is, the destruction of our climate system is a violation of international law that affects every nation and requires an urgent coordinated legal response through our highest international court. We all hope that the ICJ Advisory Opinion on the obligations of states with respect to climate change will compel everyone on our blue planet to reduce their greenhouse gas emissions. On a very personal note, if I may, as a citizen of the blue planet from the global south, from a small island state, Fiji, nestled on the blue

pacific continent, I have to be optimistic that together we can hold the continuing degradation of our climate system so that we can all, regardless of who we are and where we are on the blue planet, live the free and worthwhile lives that we and our future generations all deserve. Thank you for this opportunity.

**[00:17:44.130] - Ellen Wilson (Moderator)**

Thank you, Cristelle. Lastly, we will hear from Vishal Prasad. Please go ahead, Vishal.

**[00:17:53.320] - Vishal Prasad**

Thank you, Ellen. *Bula vinaka* ("good health" in Fijian), everyone. Thank you for joining us today. It is a real pleasure to provide to provide some remarks on behalf of the Youth and Civil Society campaign to take climate change to the world's highest quote. As you've already heard for us in the Pacific, climate change is not a distant threat. It is reshaping our lives right now. Our islands are at risk. Our communities face disruptive change at a rate and scale that generations before us have not known. But we're here today not only to talk about what we fear losing, we're here to talk about what we can protect and what we can build if we stand together. This is our home, and we intend to defend our right to thrive in it with courage, with hope, and with all that stand beside us. This is precisely why we began this ICJAO campaign. It has always been about the injustice that our people and communities have faced as temperatures have risen, climate impacts become more severe, and the burden of losses and damages bearing even more heavily on our people. Our traditions, our cultures, our sacred burial sites, land, or the Vanua, as we call in Fiji, and its connection with its people has already fallen as casualties, leaving behind a painful void for many.

**[00:19:19.830] - Vishal Prasad**

Again and again, we find ourselves in a seemingly endless cycle of rebuilding after superstorms, hurricanes, and floods that decimate entire villages, communities, communities and pile on the burden of debt. We are simply tired of watching climate change take more from our islands. By going to the ICJ, we embarked on a voyage on a voyage to correct these injustices and ensure that the existing mechanisms and systems that are meant to protect our climate and our people get a much-needed cause correction in this critical decade of action. We're grateful to

Vanuatu for hearing the strong call from grassroots youth movements and over 1,700 civil society organizations from around the world to draft a legal question that gives us all hope in both looking to address the historical injustice services, but also into the future so that we can protect future generations. This was the call since the campaign began almost five years ago, intergenerational justice. This advisory opinion calls on the and on all countries to uphold a standard of justice that stretches far into the future so that those yet to be born inherit a world in which they can thrive, not just struggle in surviving.

**[00:20:44.130] - Vishal Prasad**

This legal process is about accountability and our shared humanity. It is a call for every nation, particularly those that have and continue to exacerbate the climate crisis, to take seriously their responsibility for the future that we all share. We owe it to generations unborn to leave behind a more capable international regime that is through and through characterized by the ideals of climate justice. This ICJAO campaign is the start of this transformational shift in how we deal with the climate crisis. We're not alone in wanting the court to address these issues. The UN General Assembly sent this question to the court because the world is ready to seek guidance on its legal responsibility possibilities towards present and future generations. The court's role is now to illuminate the path forward. International law provides all countries with a shared framework for action and reminds us that we must face this global challenge is a united global community. At the upcoming oral hearings, we are looking for this solidarity and demanding action, accountability, and equity when countries take the stand. Our message to the is this. No matter our politics, every one of us shares the desire to see our families and loved ones thrive for generations to come.

**[00:22:08.900] - Vishal Prasad**

This common goal is something we all understand across countries, across beliefs, and across the political spectrum. Climate action is ultimately about protecting what we all hold dear. In the end, our campaign and movement is here because we believe in a world where every voice matters, where every action counts, and where every generation has the right to thrive. This advisory opinion request is a chance to move closer to that vision, and we will keep building that future together no matter how long it takes. Thank you.

**[00:22:42.590] - Ellen Wilson (Moderator)**

Thank you, Vishal. Now we will take questions. Again, reminder, please enter your name, media outlet, uestion, and to whom you are directing your question in the chat. Here is the first question for Margaretha. This comes from Ankei Raspard from DW, Deutsche Welle. What repercussions will this case have on international law?

**[00:23:14.040] - Margaretha Wewerinke-Singh**

That's a very broad question. It depends how we understand repercussions. But if you think in terms of implications, an important point to emphasize is that the case, and then I'm talking, of course, about the outcome, the actual opinion, doesn't create new law. It clarifies existing law. That's very important because that means that this law is already binding. Many of the obligations that the court will clarify are obligations that are binding on all states because one of the core norms at stake in the proceedings are norms of customary international law. That means that these obligations apply to all states. That is particularly relevant in a volatile political climate where treaty membership is in any event often not universal, but there are real threats of, for example, a new US administration, again, pulling out of the Paris Agreement and potentially even pulling out of the Climate Change Convention. And so that makes it even more relevant to have a good understanding of what these obligations are that are universally applicable. Of course, the exact implications will depend on the content of the opinion, but we may expect that the opinion clarifies that the particular conduct is unlawful and as such must seize, and that then also creates obligations, secondary obligations, as we call them for states, not only in the responsible states, but also for other states to cooperate to end these breaches, and for example, adopt new agreements.

**[00:25:27.210] - Margaretha Wewerinke-Singh**

Vanuatu, for example, advocates for Criminalization of Ecosight for a new fossil fuel nonproliferation treaty, and such initiatives can help to bring the unlawful conduct to an end. And then, of course, we're also looking at measures to compensate those who have been injured. And again, there may be new initiatives needed to operationalize those obligations that the court will articulate. I'll leave it here and therefore follow-up questions. I'd be happy to answer them.

**[00:26:04.030] - Ellen Wilson (Moderator)**

Great. Thank you so much. And here's a question for Special Envoy Ralph. What message would you like to send to nations that have the power to accelerate climate action but have yet to commit? Oh, you're on mute, Ralph.

**[00:26:30.360] - Ralph Regenvanu**

We are in a critical time, as the scientists are telling us. We cannot afford to let the momentum for global action on climate change falter or be derailed. We need all countries to make new commitments at COP 29, which is next week. This new collective quantified goal is critical for allowing the finance that will build the resilience to climate change that is particularly needed by the developing countries. We need, of course, the phase out of fossil fuels. That's very clear, and that needs to be really highlighted in this upcoming COP. We need all countries to commit through their NDCs and through actual action, because one of the reasons we are going to the ICJ is that the commitments of states don't match what they actually do after they make the commitments. One of the questions before the ICJ is, if you make these commitments, what is your responsibility to actually fulfill them. We really need... I would say the thing we need the most is real action to match the commitments that we have all made and almost all countries in the world, at Paris, made these commitments. We agreed to the 1.5 Degree pathway.

**[00:28:09.000] - Ralph Regenvanu**

We agreed to climate finance for the most vulnerable countries. Let's step up and do what we said we would do. It's way beyond time, but it's still not too late.

**[00:28:22.150] - Ellen Wilson (Moderator)**

Great. Thank you, Special Envoy. For Margaretha, here are two questions from Isabella Kameninsky, freelance journalist panelists covering the hearing for The Guardian and other publications. Is Vanuatu working with other states to harmonize and coordinate submissions, and if so, how? And do you anticipate compensation will be a significant point of contention during the hearing?

**[00:28:56.110] - Margaretha Wewerinke-Singh**

On coordination, yes. Vanuatu is working very hard on coordination, ensuring alignment between as many nations as possible in these proceedings. These efforts happen at various levels. It's Special envoy, Regenvanu, that is leading this at the highest levels, and then at the level of diplomacy and technical experts, Vanuatu's whole diplomatic corps is involved, has been from the campaign stage onward and continues to be involved in having conversations and ensuring that shared priorities are optimally presented and advanced. And then Vanuatu's attorney general's office is also playing a very active role. We have here, not visible, but with us in this virtual room, Leanne Sackert, who is Vanuatu's Legal Affairs Manager and who is leading these efforts alongside Anne-Sophie Vivier, who leads these efforts for the Pacific region, of course, very important region. So that a lot has happened. Special Envoy Ralph, already alluded to various meetings that Vanuatu is organized also at the regional level to essentially workshop submissions at every stage. So that will continue towards the hearings. In terms of compensation, submission. Of course, what we have before us are all of the written submissions, the written statements, and the written comments, which have not yet been released, but we expect them to be released ahead of the 2 of December.

**[00:31:02.060] - Margaretha Wewerinke-Singh**

And then I think for all of us who will go through them, one thing that may be striking is the level of agreement that exists on the applicability of these basic rules of international law that govern breaches of international law and the consequences of breaches, that is the law state responsibility. The law of state responsibility says essentially that what a breach of international law is. It is the situation where conduct of a state is incompatible with its obligations, and what are the consequences? That is always for any and all breaches, it is that the unlawful conduct must cease, and that full reparations must be made by the responsible state or states to the injured state or states. There is very little contention about that point. And of course, there is debate about how exactly that would apply to climate change, and then some states would. And we cite perceived obstacles to the applicability of some of these rules, causation, for example. But it's interesting to see that the applicability of these rules, and so, as you can Maybe the principle that potentially a compensation could be owed for causing harm to the climate system is not as contentious, and you may you may think it would be.

**[00:32:46.910] - Margaretha Wewerinke-Singh**

Of course, there's a lot of detail and mitigrity, but I think it's an interesting observation that there seems to be relatively high level of agreement on that framework as a relevant framework.

**[00:33:05.170] - Ellen Wilson (Moderator)**

Great. Thank you so much. Here is the next question for Special Envoy Regenvanu. It's a question from Stephanie Vandenberg with Reuters. The advisory opinion is not binding. In recent times, we've seen states not engage with advisory opinion of the ICJ, such as, for instance, state obligations regarding the occupation of Palestinian territories. Do you think states will heed the eventual findings in this case? And if so, why? What makes this different? Special Envoy, please go ahead.

**[00:33:45.390] - Ralph Regenvanu**

Okay, so one of the outcomes of this ICJ advisory opinion, we are hoping for a positive outcome, but we are looking for the strong statement about state obligations and what the consequences are for states that don't fulfill the obligations they've signed up to. Let's say, for example, in the Paris Agreement, one of the outcomes is that it will make our negotiations at the UNFCCC COPs a bit easier because we will narrow the definition of what we're talking about based on the results. It will help those negotiations, hopefully advance more quicker because we will eliminate some of these arguments we've been having to contend with for so long, which we are now asking the court to clarify. That's one. The second is that there are, as we all know, there must be thousands of cases all over the world, litigation cases from the lowest courts to the highest courts in the land across all the world. This is another from the ICJ, the highest, the world's highest court, a precedent, a legal authority that will help all cases. States will be faced with this new clarification of obligations that will affect the way these litigation cases are, not necessarily litigation, but all these cases that are being taken on climate action around the world.

**[00:35:29.920] - Ralph Regenvanu**

Then thirdly, I would just like to point, for example, to the possibility for the political change in countries that will. I want to use the example of the Chagos case. That was

the first ever case that Vanuatu appeared before the ICJ. We'd never appeared before the ICJ before. That was in 2018, '19. We came to add weight to testify and argue in favor of the right of Mauritius to these islands. We got an opinion that said, yes, this is a situation. Mauritius does have a right, the UK is wrong. And nothing happened until the recent change in government. And then when the recent change in government, the Labor government came in, and they've actually followed the advisory opinion. They've given the islands back to Mauritius. And so the political change came to effect this decision. So we hope for the right timing as well. We hope for political situations to get to the stage where countries may actually, I'm sure many countries will, abide by the advisory opinion, but there will be changes in circumstances also where we get new governments who are more willing to abide than previous governments, as in the Chagas case.

**[00:37:11.690] - Ellen Wilson (Moderator)**

Thank you so much, Special Envoy. Here is a question for Margaretha from Wolfgang Jenisch with Germany's Südisch Zeitung. How specific can the court's opinion be? Will it spell out reduction paths and fair share concepts in detail, or is this going to be a more general answer to be expected?

**[00:37:44.030] - Margaretha Wewerinke-Singh**

Here, because of the nature of these proceedings, it's unlikely that the courts will be as specific on reduction parts or fair share concepts as courts have been in domestic proceedings such as Neuubauer, or the O'Gennic case in the Netherlands. Here, the court is asked to pronounce on the content of obligations derived from a whole range of different sources and to essentially interpret them holistically and to pronounce on legal consequences. The exercise here has some similarities with the challenges to specific emission reduction targets that have been central to these domestic cases, but it's also quite different. The key difference here is the focus is on the cumulative conduct, the conduct over time of states that has caused harm. There are certainly burden sharing questions, but it's also very much about understanding the nature of the conduct in a way that may seem broad, but in the end is very specific, Because it goes to very specific acts and omissions of state. If it is accepted that causing a significant harm to the climate system is unlawful, then any further contributions to that harm will also be unlawful. It's almost a different paradigm from the paradigm where we are focusing purely on prevention.

**[00:39:47.860] - Ellen Wilson (Moderator)**

Great. Thank you. Here is a related question from Molly Quewell from the Courthouse News Service for you, Margaretha. There have been decisions at other courts regarding climate change, including an advisory opinion at the International Tribunal for the Law of the Sea and a decision at the European Court of Human Rights involving Switzerland. What impact, if any, do these decisions have on how the ICJ may rule?

**[00:40:18.620] - Margaretha Wewerinke-Singh**

Let me highlight the two most important implications of these rulings for these proceedings. So the first is about the role of the Paris Agreement. An argument is often made by states or other entities that wish to avoid accountability, essentially, that climate change is exclusively governed by the climate change treaties and primarily the Paris Agreement. So there's the Paris Agreement. That's the treaty that states have agreed to address climate change and everything else is essentially irrelevance. And then this argument then is supposedly supported by a lack of references to climate change in, for example, human rights treaties. We said human rights treaties do not address climate change, not mentioned anywhere. There's no evidence that these treaties are relevant. This argument, if the International Court of Justice would accept this argument, then that would, of course, lead to a meaningless outcome of these proceedings. Now, these two rulings of Itlos and the European Court of Human Rights in these two cases essentially mean that the courts can throw this argument straight in the dust bin because they've been run in both these proceedings and rejected. So it looks clearly states very explicitly that the climate change regime is not, as we call it in legal terms, *lex specialis* or a special law that would then replace more general law.

**[00:42:10.480] - Margaretha Wewerinke-Singh**

Other obligations apply simultaneously. So these legal frameworks are complementary. And so, for example, in this case, the law of the sea, under the Conventional Law of the Sea, as well as customary law, applies to climate change in parallel with these climate change treaties. And the European Court of Human Rights came to the exact same conclusion here in connection with human rights. So

the argument was also made, again, the Paris Agreement is the relevant framework and other frameworks are not applicable. But the European Court of Human Rights states very clearly that the European Convention of Human Rights is, as it says, it's a dynamic or living instrument that applies to the challenges of our time that affect human rights and climate change clearly affects the enjoyment of human rights. And in this case, it was able to find that Switzerland, in this case, Switzerland's failure to take ambitious climate action violated the rights of individuals under Article 8 of the European Convention, the right to privacy. So again, failure to address climate change meaningfully can violate obligations. And so that's the second point, really, that there are these parallel obligations, not just the Paris Agreement, but there are other obligations as well.

**[00:43:35.180] - Margaretha Wewerinke-Singh**

And if these obligations are substantive, they can be violated, and where these are violated, then it triggers these legal consequences on the law of state responsibility. It's really then for the ICJ now to take the next step and look at these different frameworks, so as opposed to these other bodies that look specifically at one area of law, law of the sea, human rights, etc. The ICJ is really the only court in the world that can look at all these different frameworks, look at these obligations holistically, and then apply it to the facts, and then also conclude that this conduct is violative of these obligations and triggers these legal consequences.

**[00:44:20.720] - Ellen Wilson (Moderator)**

Great. Thank you so much. The next question we'd like to hear from Special Envoy Ralph and Vishal. It's a question from Rachel Ramirez with CNN. This is clearly a large and momentous case, but how do you plan to get the attention or encourage the world's largest polluters like the US to participate when their focus is elsewhere, like the US elections, war in Gaza, etc. Special Envoy Ralph, please go ahead.

**[00:44:54.100] - Ralph Regenvanu**

This is a case that involves the application of universal international law. As we've heard Margaretha so eloquently say, it goes right back to the Charter of the United Nations, the Human Rights Protocols. The participation or not of these states in these proceedings, we are, as you heard Margaret say, this is the ICJ Advisory Opinion that

has the most participation from the most states ever in the history of the ICJ. We will get an advisory opinion which is reflective of the majority of states' views on these issues, which will have an impact on the universal application of the laws. It doesn't really matter. I think that I don't know if the US is participating or not, but whether they do or not, the outcome will be equally applicable to them as it is to every other state, including Vanuatu.

**[00:46:09.040] - Ellen Wilson (Moderator)**

Great. Thank you. Vishal, please go ahead.

**[00:46:13.730] - Vishal Prasad**

Thanks, Ellan. Thanks for the question. Maybe just to add on a thought, rightly said by the Special Envoy that the processes will still continue regardless of the participation of these states. The fact that they will be showing up or they might be showing up is one thing, but we really need these states to be coming up and not derailing the processes. There have been conversations we know from previous advisory opinion proceedings for it loss, etc, where certain high polluting countries have come on to derail the process. At the oral hearings, we anticipate the same, but our hope and our expectation is that these countries do not. Then they come forward in support in solidarity as something as in my initial remarks with global south countries. I think that would be the challenge that we would need to address.

**[00:47:13.030] - Ellen Wilson (Moderator)**

Great. Thank you so much. For Cristelle and Special Envoy Ralph, here's a question from Karine Barsegar from Justice Info. The Foreign Minister of Papua New Guinea has said that the COP 29 is, A total waste of time, and that he will not attend it. Is that why this case is so important? Because international justice is the only way to get something done? Please go ahead, Crristelle.

**[00:47:44.380] - Cristelle Pratt**

Well, thank you very much for sharing that quote from the Foreign Minister for Papua New Guinea. But certainly for many of our member states, our 79, as I mentioned from the Global South, We are very much of the view that you do need to participate and actively participate in all of these multilateral processes to be able to

influence and inform these various decisions. And so while that might be the view of Foreign Minister from Papua New Guinea, we certainly would hope that many of our member states would be sending high-level representation to COP 29, and at the same time, engage very proactively in the ICJ Advisory Opinion oral hearings. Just to share with those online today, the OACPS has actively engaged, and with all thanks, really, to Vanuatu's leadership in the OACPS. We have a number of ministerial decisions on this and widespread support. And then in in terms of our members, 42 of our 79 members will engage and will be making oral statements. And eight of our international organizations that are part of the OACPS architecture will also be engaging. The OACPS leaders will be launching a statement at COP 29, and so that will include many of the elements that Special Envoy Regenvanu spoke to in terms of our calls at COP 29.

**[00:49:33.410] - Cristelle Pratt**

But as well as that, we will be referencing and making strong reference to the ICJ Advisory Opinion and the need to engage, not just in the oral hearings, but then beyond that, when we do receive the Advisory Opinion, because, in fact, more work will be needed. Thank you very much.

**[00:49:55.700] - Ellen Wilson (Moderator)**

Special Envoy Ralph, please go ahead.

**[00:50:00.160] - Ralph Regenvanu**

The frustration that's felt and expressed by the foreign minister of Papua New Guinea, it's the reason why we are taking this course of action, because if the cop negotiations were fruitful and achieving what we want to see achieved, we wouldn't be taking this course of action. There is obviously truth in what he's saying, and we feel that way sometimes. But on the other hand, that's why we're taking this course of action. That's why we also joined the Commission on Small Island States to get an advisory opinion from the International Tribunal of the Law of the Sea. That's why we are pushing for the Rome Statute to be altered to include a new crime of ecocyde. That's why Vanuatu was the first country in the world to push for a fossil fuel nonproliferation treaty, because the UNFCC track of negotiations is not going fast enough. We have that frustration that you can see expressed by the foreign minister.

But as Cristelle says, we have to be there. We are the countries with the highest ambition. I'm afraid if we're not at the talks, if we're not at the table, we'll be on the menu. We have to be there, regardless of how frustrated we are.

**[00:51:16.940] - Ralph Regenvanu**

But we are also taking option B, C, D, E as well. That's what ICJ is. It's one of these other options we are taking because we see that we're not going fast enough. We're not going deep enough, we're not doing what is required in the cop negotiations themselves.

**[00:51:38.060] - Ellen Wilson (Moderator)**

Great. Thank you. A question for Cristelle from Rosemary Anshari from Capital FM in Nairobi. How can an ICJ advisory opinion address climate-related impacts such as floods in Africa? Happy for Margaretha to also answer that question. Anyone want to chime in? But let's start with you, Cristelle.

**[00:52:00.640] - Cristelle Pratt**

Well, I think as the last, our responses to the last question, there will be, if you like, a menu of responses and measures that will need to be taken for the impacts that are being felt by our countries in terms of historical as well as ongoing and growing impacts of climate-related disasters. And so, of course, the ICJ Advisory Opinion will lend a huge weight in terms of determining the range of measures that Margaret has so eloquently spoke to on the different terms of the judgment by the ICJ. But I also feel that within the Paris Agreement, there are certain things that we need to be mindful of, the voluntary national determined contributions that Margaretha has spoke to, but the need to have access to finance And for many of our countries, all developing countries, all vulnerable countries, we do need highly concessional finance, and there does need to be a significant attention paid to that. Of course, the 100 billion that was agreed in the Paris Agreement is we're finding just not enough. And so how do we start to address that gap? And it's not just floods in Africa, as we know, I reference droughts.

**[00:53:48.190] - Cristelle Pratt**

There are fires, there are many other extreme events that are impacting African countries, both continental countries and their small island developing states. I think that there will be a range of instruments that will need to be brought to bear to be able to support our vulnerable countries on the African continent and our small island developing states that make up the OACPS membership. And so, of course, the ICJ Advisory Opinion will lend some huge additions to the other elements that we need to pursue. The Loss and Damage Fund, which will be discussed, is another aspect that I think needs to be brought to the fore. It needs to be operationalised as soon as possible, and there needs to be a special window set aside for all developing countries to be able to adapt and to mitigate and to address these losses and damages that we are feeling now and that we have felt in in the distant past. Thank you very much.

**[00:55:03.790] - Ellen Wilson (Moderator)**

Thank you very much. And Margaretha, did you want to add anything again on how the opinion can address climate-related impacts such as floods in Africa?

**[00:55:16.800] - Margaretha Wewerinke-Singh**

Yes, I think that Secretary-General Pratt just articulated it very well. From a legal point of view, what I would highlight is that in essence, there's really no difference between countries in the Pacific or in Africa or elsewhere or in type of harm that is suffered as a result of climate change. The question is really, can it be causally linked to the conduct that is unlawful and so to an internationally wrongful act? And if that is the case, then the these consequences apply. Whether we're talking about storms, about sea-level rise in the Pacific or flood in Africa, in essence, this is all one thing from a legal perspective, it's all injury. To injury, the obligation to make full reparations applies. Of course, a lot of them practical details, but in essence, it's all about that.

**[00:56:29.920] - Ellen Wilson (Moderator)**

Great. Thank you. Here is a question from Ankei Rasper from DW, Germany. When do you expect the ICJ ruling to come out? And how frustrating is it to have to wait for the right time in the current conditions? Margaretha? And anyone else who would like to add to that?

**[00:56:54.390] - Margaretha Wewerinke-Singh**

We can't be certain about that. We do know that on average, the The time between a request for an advisory opinion and the issuance of the advisory opinion has averaged between one and a half and two years. Of course, it was last year, March, 29th of March, that the request was made. But then again, these proceedings probably are taking a little longer also in part because deadlines have been extended a few times. But again, in the most recent advisory proceedings, the court was really quite quick. But only a few months after the hearings, the opinion being handed down, of course, the court there was almost certainly experiencing a sense of urgency, which it may also feel in these proceedings. The court is very busy at the moment. The docket is very full, which can, again, I think it's unrealistic, therefore, to expect a very quick answer. But I think that our vision is really that the quality of your opinion should take priority over speed. So we don't want the court to rush. This opinion is going to inform legal responses to climate change for many, many more years to come. And so it's I think we prefer to wait for a few months longer, for example, then to have an opinion that's rushed and therefore then overwhelming.

**[00:58:41.360] - Ellen Wilson (Moderator)**

That makes sense. Thank you so much to the panelists for your excellent remarks. We're at time now, so we're going to be closing the briefing. For the journalists on the call, we'll email you the links to the resources mentioned today and shared in With that, I'd like to say thank you again to everyone for joining this briefing.