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## Discussant Commentary on the Twenty-Sixth Annual Grotius Lecture

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# DISCUSSANT COMMENTARY ON THE TWENTY-SIXTH ANNUAL GROTIUS LECTURE

## HOPE IS A GHOST ISLAND\*

JULIAN AGUON\*\*

Good Evening.

I am honored to be here tonight to serve as the discussant for this year's Grotius Lecture, especially because it is always a pleasure to be in the company of Dame Meg Taylor's spacious mind. Like many in my part of the world, I consider Dame Meg to be one of our region's most forward thinkers. Her influence can be seen in the work of organizations throughout Oceania—from the Pacific Islands Forum which she led for years, to the Pacific Elders Voice which she founded more recently to rekindle our region's once-radical sense of solidarity. What I respect most about Dame Meg is her long track record of standing firm in the face of great pressure, especially pressure applied by outside forces, in order to maintain a principled position—be it to protect the fraught right to life with dignity; the visionary right to free, prior, and informed consent; or the sacred right to self-determination.

I want to focus my brief remarks on one initiative in particular, which Dame Meg touched upon in her lecture—that is, the Republic of Vanuatu's pursuit of an advisory opinion on climate change from

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\* This commentary is also forthcoming in 118 Am. Soc'y Int'l L. Proc. (2024).

\*\* Julian Aguon is the founder of Blue Ocean Law, a progressive firm, which for the past five years has served as legal counsel to Vanuatu and supported its pursuit of an advisory opinion on climate change from the International Court of Justice. Julian and his team have worked for years to defend the right of self-determination of peoples across multiple Pacific Island Countries and Territories. He is a Lecturer in Law at the William S. Richardson School of Law (University of Hawaii at Mānoa), where he teaches Pacific Islands Legal Systems. He is also a Pulitzer Prize finalist and the author of several articles and books including, most recently, *No Country for Eight-Spot Butterflies*.

the International Court of Justice (ICJ). It is one of the great honors of my professional life to say that my law firm, Blue Ocean Law, represents Vanuatu in these proceedings. In fact, our ICJ team, led by my brilliant colleague Margaretha Wewerinke-Singh (with the assistance of a small pool of external counsel, namely, Jorge Viñuales, Pierre-Marie Dupuy, Lavanya Rajamani, and Jennifer Robinson) has advised Vanuatu since the inception of this initiative in 2019. Suffice it to say we could not have been more pleased last year, when the U.N. General Assembly adopted the historic Resolution 77/276 by consensus.<sup>1</sup>

At the heart of the request transmitted to the Court in Resolution 77/276 is a simple but fundamental question: whether certain conduct of states—that is, acts and omissions which have caused significant harm to the climate system and other parts of the environment—is consistent, as a matter of principle, with international law.<sup>2</sup> And by that we mean the entire corpus of international law, including the quintessential rights just mentioned. Given the vast spatial and temporal scope of the target conduct—or the anthropogenic emission of greenhouse gases over time, which has caused catastrophic harm in the form of climate change and its adverse effects the only question capable of eliciting the kind of answer the world needs is a cavernous one. As such, it is a question that the World Court—as the only court of a universal character with general jurisdiction—is supremely positioned to answer.

Rather than repeat the substance of the arguments that climate-vulnerable countries like Vanuatu are making at this time, I would like to very broadly sketch what a welcomed outcome would look like. First, it would include a conclusion by the Court that the target conduct constitutes a breach of at least certain rules of international law of general application (rather than no breach or a breach only of some specific treaties that apply to signatory states), and that such breach has legal consequences under international law, both for injured or specially-affected States and for individuals and peoples of the present

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1. See G.A. Res. 77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, at 1 (Mar. 29, 2023) (adopting the Resolution).

2. See *id.* at 3 (requesting an ICJ advisory opinion, pursuant to Article 65 of the Statute of the Court and “in accordance with Article 96 of the Charter of the United Nations”).

and future generations.

Such an opinion would mark a critical shift because, at present, the actions and omissions of major emitters of greenhouse gases unfold in a context characterized by ambiguity. As a result, emissions of greenhouse gases continue unabated and affected states lack specifically and authoritatively formulated legal grounds to claim that such conduct is unlawful under international law.<sup>3</sup> A welcomed opinion would put this ambiguity to a decisive end, spurring ambitious climate action through authoritative guidance based on internationally agreed norms and standards. What is more, such an opinion could finally begin to deliver on the hitherto elusive promise of climate justice.

The vision for this initiative, as shaped by Vanuatu, youth leaders across the Pacific, and our team at Blue Ocean Law, extends beyond just seeking legal clarity on the obligations of states and the legal consequences of breaches. It is also about transforming international law itself to be more responsive to the defining crisis of our time and better equipped to facilitate the transition to sustainable societies grounded in respect for nature and principles of reciprocity.

Our team has worked hard to bring the voices of those who maintain intimate connections with threatened parts of ecosystems in the Pacific to the Peace Palace in The Hague, first in written form and hopefully later in person, too. This practice of “giving voice” is not only about substantiating legal arguments about rights and obligations, but also about infusing those very norms with the ancient wisdom and worldviews of Pacific peoples. By connecting international law to Indigenous knowledge systems that have sustainably managed resources for millennia, we can reimagine a legal order that works in harmony with the rhythms of the natural world.

In closing, we at Blue Ocean Law would like to think it no coincidence that Vanuatu chose a Micronesian firm to lead this effort. For we come from the part of the Pacific that never lost the art of wayfinding. Wayfinding is what we call traditional navigation, or the method of celestial navigation that has been used for thousands of years to voyage across the blue continent that is Oceania.

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3. *See id.* (questioning what obligations exist under international law to ensure the protection of the environment from greenhouse gas emissions).

One traditional technique, which was developed in the central Carolinian Islands, and which we began to think about rather seriously at the start of this journey, is etak. Etak is a way of calculating one's position at sea by triangulating the stars above three islands: the island of one's departure, the island of one's destination, and a third island off to the side known as a reference island.<sup>4</sup> In short, a navigator stays true to his course by tracking the rate at which the third island moves from beneath the stars where it sat when he left his departure island toward the stars under which it should sit if he is sitting on his destination island.

The tricky thing becomes, however, when one's destination is so far away that there are not enough reference islands along one's route to complete the triangulation. In such a scenario, the navigator must create a third island—in his mind. He then uses this mythical island as a marker, dragging it under its correlating star or constellation. He goes on this way until a real island is encountered, sometimes for hundreds of miles. We call such an island a ghost island.

Hope is a ghost island. It is imagined, but it is also real. It is a place we hold as much in our hearts as anywhere else. It is not a home, but it *is* a homegoing.

And that is something.

Thank you.

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4. The metaphor of hope as a ghost island was set out in an essay by the author that appeared in *The Nation*. See Julian Aguon, *Hope is a Ghost Island*, in *The Nation* (June 14, 2023).